ESSENTIAL SERVICES COMMISSION

WRONGFUL DISCONNECTION DECISION UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001

CUSTOMER L & RED ENERGY

DECISION AND REASONS

Key Issue

No notices are required before de-energising a customer's gas account for a second time, where that de-energisation is a continuation of previous disconnection process in which all notice requirements were met.

Background

Date	***Event***
2009	
7 September	Red Energy (Red) establishes L's gas account
2010	
24 August	Red issues a reminder notice
9 September	Red issues a disconnection warning notice
11 October	Disconnection of gas supply for non-payment of $474.76
15 October	L contacts Red to reconnect gas supply (time of call not stated). L advises no payments made yet as he was on holiday. L promises to pay full balance of $474.76 and provide Red with receipt number for payment within 15 minutes. Red reconnects L's gas supply immediately to avoid L being without power all weekend.
11 November	Red sends SMS reminder
15 November	L's payment of $474.76 not received by Red. Red disconnects without further warning.
16 December	Attempt to contact L fails after L hangs up and there is no further opportunity to leave a message.

Decision

Having regard to the information provided by Energy and Water Ombudsman Victoria (EWOV) and Red, the Essential Services Commission (the Commission) finds that the administrative steps taken by Red were sufficient to ensure that the de-energisation on 15 November 2010 was not wrongful.

1. EWOV has not required the Commission to form an opinion on the validity of the disconnection on 11 October 2010.
2. The de-energisation on 15 November 2010 was a continuation of the disconnection on 11 October 2010.
3. Red did not wrongfully disconnect customer L by the de-energisation on 15 November 2010 and compensation is not payable to customer L for the action taken then.

Reasons

The reasons for the Commission's decision are as follows:

1. Red disconnected customer L for non-payment on 11 October 2010. It reconnected in good faith when customer L promised to pay.
2. Red did not need to go through the warning process a second time. This is because the triggers for the disconnection on 11 October 2010 (failure to pay and compliance with the warning process) were still on foot when the de-energisation on 15 November 2010 occurred. The only change to circumstances was a promise to pay which promise was breached. Customer L had not paid the outstanding amounts for which valid notice of disconnection had been given.
3. This is reinforced by the closing paragraph of Clause 13.1 of the Energy Retail Code (ERC) which states:

   To avoid doubt, if the customer does not agree to such a new payment arrangement or does not so make payments under such a new payment arrangement, the retailer may disconnect the customer without again having to observe Clause 13.1 of the ERC.
4. Despite customer L being reconnected, there are no express terms in the ERC which entitle customers to additional rights because there has been a reconnection.

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Dr. Ron Ben-David
Chairperson
Date: 2012