

Customer M and Alinta Energy – Decision and Reasons

**Application of section 48A of the Gas Industry Act 2001 (Vic) –
Compensation for wrongful disconnection**

3 July 2019

Commissioners:

Ms Kate Symons, Acting Chairperson, and
Mr Simon Corden, Commissioner.

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Contents

The complaint	2
Issues for decision	3
The ombudsman’s submissions	3
Customer M’s submissions	4
Alinta Energy’s submissions	4
Relevant facts	6
Customer M requested the disconnection of the gas supply to the premises	6
The gas supply to the premises was disconnected	6
Customer M requested for the gas supply to be reconnected to the premises	7
AGL Sales initiated a request to reconnect the gas supply to the premises	10
Customer M submitted a complaint to the ombudsman about the disconnection	11
Customer M cancelled the reconnection of the gas supply to the premises	12
Relevant obligations	13
Decision	15
Reasons	17
Alinta Energy disconnected the gas supply to Customer M’s premises	17
Alinta Energy failed to comply with the contract terms	18
The gas supply to Customer M’s premises was not reconnected	19
The purpose or object of section 48A of the Act is relevant	20
It is unclear when the reconnection would have occurred	21
Customer M’s refusal of Alinta Energy’s offer of reconnection was affected by misinformation	22
Section 48A of the Act cannot be applied to this dispute	23
Other observations	24
This decision does not affect any other right of Customer M	24

The complaint

1. In the matter of a referral for decision by the Energy and Water Ombudsman (Victoria) (the ombudsman) to the Essential Services Commission (the commission) of a complaint by Customer M.
2. The complaint is about the application of section 48A of the Gas Industry Act 2001 (Vic) (the Act) to a disconnection by Alinta Energy Retail Sales Pty Ltd (Alinta Energy) of the gas supply to Customer M's premises at [address redacted] (the premises). The gas supply to the premises was disconnected at 8:09am on 30 May 2018 and was not reconnected.

Issues for decision

3. The issue for decision by the commission about the complaint is whether the statutory licence conditions under section 48A of the Act required Alinta Energy to make a compensation payment to Customer M.
4. Under section 48A(1) of the Act, a compensation payment is payable in the prescribed amount if:
 - (a) Alinta Energy disconnected the supply of gas to the premises of Customer M, and
 - (b) Alinta Energy failed to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.
5. Under section 48A(3) of the Act, the obligation to make the payment crystallises as soon as practicable after the gas supply was reconnected to Customer M's premises. However in this instance the gas supply was not reconnected.
6. In order to make a decision in this case, the commission must consider the following issues:
 - (a) Did Alinta Energy meet the standard required under clause 118(1)(a) of the Energy Retail Code (version 11a) (the code) to use its best endeavours to arrange for the disconnection of the gas supply to Customer M's premises in accordance with Customer M's request?
 - (b) If not, is compensation payable to Customer M?
 - (c) If so, what is the amount of compensation payable to Customer M in circumstances where the gas supply was never reconnected to Customer M's premises?
 - (d) Can the obligation to make the payment crystallise where the gas supply is not reconnected?
 - (e) Is Alinta Energy obliged to make the prescribed payment under section 48A of the Act in the particular circumstances of this case?

The ombudsman's submissions

7. Through its formal letter of referral and the memorandum accompanying the letter, the ombudsman made submissions for the commission's consideration.
8. The ombudsman noted Alinta Energy's submission that there was no 'de-energisation' as defined by clause 3 of the code on the basis that the gas supply to Customer M's premises was abolished. The ombudsman's view was that because the connection would have first

been closed to prevent the flow of energy to the premises, a 'de-energisation' or 'disconnection' as defined by clause 3 of the code must have occurred.

9. The ombudsman considered that Alinta Energy had breached clause 118(1)(a) of the code because it had arranged for the disconnection to occur on 30 May 2018, prior to Customer M's requested date for the completion of the abolishment on 3 August 2018.
10. The ombudsman considered that it was unclear whether Alinta Energy was required to make payment of a prescribed amount to Customer M because the gas supply was not reconnected to the premises. The ombudsman referred to the commission's past decisions in the disconnection disputes of Customer W and Red Energy (1 August 2018) and Customer H and AGL Sales (12 September 2018). The ombudsman considered that the commission outlined only two possible payment amounts under section 48A of the Act in these decisions, being:
 - (a) the prescribed capped amount of \$3,500 if the customer failed to inform the retailer of the disconnection within 14 days of the disconnection, or
 - (b) the prescribed amount of \$500 for each whole day that the supply is disconnected and a pro rata amount for each part day.

Customer M's submissions

11. Customer M was invited to provide submissions to the commission for its consideration in making its decision.
12. Customer M submitted a timeline of events and a call log to the commission.
13. In the timeline, Customer M submitted that Alinta Energy did not make contact with Customer M after 31 May 2018 (Alinta Energy has submitted information to the commission which shows that Alinta Energy did make contact with Customer M after this date).
14. The timeline and call log that Customer M submitted to the commission were otherwise generally consistent with the information set out in the submissions of the ombudsman and Alinta Energy.

Alinta Energy's submissions

15. Alinta Energy was invited to provide any information and documents to which it considered the commission should have regard in making its decision.
16. Alinta Energy stated that it did not dispute that the gas supply to Customer M's premises was abolished incorrectly and that this 'arguably' placed Alinta Energy in breach of clause 118(1)(a) of the code.

17. Alinta Energy's view was that it used its best endeavours to arrange for a variation to the date for the abolishment in accordance with Customer M's request. Alinta Energy submitted that it was not able to vary the date for the abolishment due to the timing of the request and that the gas distributor Multinet Gas (DB No.1) Pty Ltd and Multinet Gas (DB No.2) Pty Ltd (collectively trading as Multinet Gas Distribution Partnership) (Multinet Gas) had already completed the abolishment.
18. Alinta Energy submitted that on 31 May 2018 it called Customer M to offer to arrange for the reconnection of the gas supply to Customer M's premises. Alinta Energy submitted that it had called Multinet Gas beforehand and Multinet Gas had informed Alinta Energy that only the gas meter had been removed and not the service line. Alinta Energy submitted that it therefore believed that only the gas meter needed to be reinstalled at Customer M's premises to reconnect the gas supply to the premises. As such, on 31 May 2018, Alinta Energy believed that it could arrange an urgent meter reinstallation for completion within two business days. Alinta Energy submitted evidence that it had only become aware on 1 June 2018 that the service line had been removed.
19. Alinta Energy submitted that, on 31 May 2018, Customer M refused Alinta Energy's offer to reconnect the gas supply to his premises. Alinta Energy's view was that if it was required to make payment of a prescribed amount to Customer M, then the prescribed amount should be capped to the date that Customer M refused the offer of reconnection. Alinta Energy submitted that Customer M prevented Alinta Energy from arranging for the reconnection of the gas supply to Customer M's premises by refusing the offer of reconnection.
20. Alinta Energy submitted that if the commission determined compensation was payable to Customer M, then there was a risk of setting a dangerous precedent to encourage energy customers to avoid or prevent reconnection to obtain more compensation.

Relevant facts

21. The commission analysed the ombudsman's request for a decision, made enquiries and sought additional submissions from Customer M and Alinta Energy. The factual circumstances are complex and involve multiple parties.

Customer M requested the disconnection of the gas supply to the premises

22. On 14 May 2018, Customer M contacted Alinta Energy to request the abolishment of the gas supply to his premises to be completed on 3 August 2018. Alinta Energy stated that it required a copy of Customer M's rates notice to arrange the abolishment, which Customer M provided on 15 May 2018.
23. On 22 May 2018, Customer M sent an email to Alinta Energy to request a variation to the abolishment date so that it would be delayed until 14 August 2018.
24. On 24 May 2018:
- (a) At 6:48am, Customer M re-sent the same email to Alinta Energy requesting the variation to the abolishment date.
 - (b) At 12:53pm, Alinta Energy raised a service disconnection request service order and a meter removal request service order with Multinet Gas for the abolishment of the gas supply to Customer M's premises. Alinta Energy failed to complete the 'Preferred Date' field in each request, with the effect that the field defaulted to the next business day, being 25 May 2018. As a result, Alinta Energy inadvertently arranged for the abolishment to be completed within the standard timeframe of 20 business days after 25 May 2018. Alinta Energy failed to notify Multinet Gas of Customer M's request for the abolishment to be completed on 3 August 2018 (or 14 August 2018 in accordance with Customer M's requested variation to the abolishment date).

The gas supply to the premises was disconnected

25. On 30 May 2018:
- (a) At about 8:09am, the gas supply to Customer M's premises was disconnected by Multinet Gas. Both the gas meter and service line were removed.
 - (b) At 4:01pm, Alinta Energy sent an email to Customer M to acknowledge receipt of Customer M's request for a variation to the abolishment date to 14 August 2018 (Alinta

Energy submitted that it had not received Customer M's request to vary the abolishment date until this date).

- (c) At 4:02pm, Alinta Energy sent an email to Multinet Gas to request the variation to the abolishment date.
- (d) At 4:15pm, Alinta Energy raised a cancellation request for the abolishment service orders with Multinet Gas through a business-to-business (B2B) channel (Multinet Gas received the request to cancel the service orders after it abolished the gas supply).

Customer M requested for the gas supply to be reconnected to the premises

26. On 30 May 2018:

- (a) After the abolishment of the gas supply to Customer M's premises, Customer M called Alinta Energy. Customer M notified Alinta Energy that the gas supply to his premises had been disconnected and abolished. Customer M stated that he needed the gas supply reconnected that day. During the phone call, Alinta Energy apologised to Customer M and informed Customer M that it could not arrange for the reconnection of the gas supply to his premises because it '[did] not have a meter installation service...'. Alinta Energy informed Customer M that '...the solution is to find a different retailer...' which has a '...meter installation service...' to arrange for the reconnection of the gas supply. Alinta Energy suggested '...googling different retailers who offer a meter installation service...' Customer M asked Alinta Energy if it would cover the costs of the reconnection of the gas supply to his premises. Alinta Energy stated that it needed to transfer Customer M to discuss this. However, Customer M stated that Alinta Energy needed to provide a solution and not just transfer him between Alinta Energy teams. Customer M stated that there was no need to transfer Customer M's call if Alinta Energy could not arrange for the reconnection of the gas supply. Customer M terminated the call.
- (b) Customer M then called AGL Sales Pty Ltd (AGL Sales) to request the reconnection of the gas supply to his premises. Customer M stated that it was an 'emergency situation' and that he needed '...a new retailer and a new meter...' AGL Sales asked if the service line was still active. Customer M stated that he was not sure. AGL Sales asked Customer M if he had asked for the service line to be removed as well as the meter. Customer M stated that he was not sure. AGL Sales asked if Customer M had confirmed with Alinta Energy that the service line had been removed. Customer M stated that '...I asked them, they have no idea' (after reviewing the call, this is in fact incorrect, Customer M did not ask for this information). AGL Sales advised Customer M

that it needed to make sure whether the service line was removed and inactive before it could arrange for the gas meter installation. AGL Sales advised Customer M that it would take about four weeks for a service line to be installed, and then a further two business days for a gas meter to be installed. Customer M asked AGL Sales if it could confirm that the service line was removed from his premises through its computer system. AGL Sales informed Customer M that it could not check this and that it would need to first arrange an on-site inspection. AGL Sales advised Customer M to contact Multinet Gas to check whether the service line had been removed. Customer M stated that his partner had already called Multinet Gas and Multinet Gas had advised that Customer M only needed to request a new gas meter installation, not a service line (all relevant information and calls were requested from Multinet Gas. Multinet Gas did not provide a recording of a call between Customer M's partner and Multinet Gas to the commission). AGL Sales advised Customer M that in this case it required Customer M to engage a plumber to obtain a site compliance certificate for AGL Sales to arrange to install a gas meter at Customer M's premises. Customer M asked what the total time would be to arrange for the reconnection. AGL Sales stated that '...if the scenario that you are advising me right now is correct, the gas meter installation should be installed in the next 24 to 48 hours after we raise the job... that is, given that the gas pipe in the property that will connect the meter from the street is still active.' AGL Sales advised that if Customer M engaged a plumber to obtain a site compliance certificate, then the plumber could verify whether the service line had been removed.

(c) Customer M arranged for a plumber to visit his premises the next day.

27. On 31 May 2018:

(a) At about 8:21am, Alinta Energy received a service order response from Multinet Gas through a B2B channel confirming that Multinet Gas had removed the gas meter. However, Alinta Energy was apparently not aware whether the service line had also been removed.

(b) In the morning, the plumber visited Customer M's premises and provided Customer M with the site compliance certificate required by AGL Sales.

(c) Customer M called AGL Sales and provided the plumber's site compliance certificate details. AGL Sales asked Customer M if there was a service line at the premises. Customer M stated that there was a service line. Customer M stated that the plumber '...has already checked it, it's all good.' AGL Sales stated that once Multinet Gas accepted the service order for the gas meter installation, the gas meter installation would be completed within two business days. AGL Sales advised that the gas meter would be installed by 5 June 2018. Customer M requested for the gas supply to be reconnected urgently. AGL Sales stated that it would request for Multinet Gas to do so.

- (d) Alinta Energy called Multinet Gas to confirm the time at which the gas meter had been removed at Customer M's premises. Multinet Gas stated that the gas meter was removed at approximately 8:21am on 31 May 2018. Alinta Energy asked Multinet Gas to confirm the status of the service disconnection request service order. Multinet Gas stated that the service order was '...in pending...' and '...still in dispatch...' Multinet Gas confirmed that it received the email from Alinta Energy to vary the abolishment date and forwarded to its dispatch team at 11:14am on 31 May 2018. Alinta Energy stated that the gas supply needed to be reconnected to Customer M's premises. Multinet Gas stated that Alinta Energy would need to submit a meter installation service order and that the meter would be installed to allow for the reconnection of the gas supply to Customer M's premises within 24 to 48 hours.
- (e) Alinta Energy called Customer M in relation to the gas supply to his premises. Alinta Energy acknowledged its failure to notify Multinet Gas that he had requested for the abolishment to be completed in August 2018. However, Alinta Energy stated that it had requested for Multinet Gas to vary the abolishment date before Multinet Gas abolished the meter. Alinta Energy stated that Multinet Gas had abolished the gas meter on 31 May 2018 at 8:21am despite Alinta Energy's request to vary the abolishment date. Customer M stated that the gas meter had actually been abolished on 30 May 2018. Customer M stated that he had already requested for another retailer to arrange for the reconnection of the gas supply, as recommended by Alinta Energy on 30 May 2018. Customer M stated that the gas supply to his premises would be reconnected within the next two business days. Alinta Energy offered to pay Customer M's costs for the reconnection of the gas supply to his premises. Customer M stated that he would engage a legal representative to claim costs from Alinta Energy after the gas supply was reconnected.
- (f) At 4:32pm, Alinta Energy called Customer M again. Alinta Energy offered to arrange for the installation of a gas meter at Customer M's premises. Customer M rejected this offer and stated that he had '...already arranged a new connection with AGL.' Customer M stated that if Alinta Energy had offered to arrange for the reconnection on 30 May 2018, he would have accepted the offer. Customer M informed Alinta Energy that AGL Sales had advised it would complete the reconnection within two business days. Alinta Energy asked Customer M if he still required the service line to be abolished on 3 August 2018. Customer M confirmed his request for the service line to be abolished on 3 August 2018. Alinta Energy stated that it had successfully rescheduled the abolishment of the service line so that it would not occur until 3 August 2018. Customer M asked if the distributor had already removed the service line. Alinta Energy stated that the service line had not yet been removed. Alinta Energy could no longer hear Customer M on the call and so it terminated the call.

28. On 1 June 2018, Alinta Energy received a service order response from Multinet Gas through a B2B channel confirming that Multinet Gas had in fact removed the service line and that it was unable to cancel the abolishment service orders.

AGL Sales initiated a request to reconnect the gas supply to the premises

29. On 4 June 2018, Customer M called AGL Sales to check the status of the reconnection of the gas supply. AGL Sales stated that it had not yet raised the service order with Multinet Gas for the installation of the gas meter. AGL Sales advised Customer M that it would raise the service order and the gas meter would be installed by 8 June 2018.

30. On 5 June 2018, AGL Sales raised a meter installation service order with Multinet Gas through a B2B channel. In the service order, AGL Sales stated that the preferred date for completion was 6 June 2018 and that the service order was 'urgent'.

31. On 6 June 2018:

- (a) Customer M called AGL Sales to check the status of the reconnection of the gas supply. AGL Sales stated that it would follow-up with Multinet Gas.
- (b) At 1:44pm, Multinet Gas notified AGL Sales through a B2B channel that it was unable to complete the meter installation service order because the 'service has been disconnected and needs reinstalling'.
- (c) Customer M called Multinet Gas. Customer M stated that a Multinet Gas contractor had attended Customer M's premises to install a new gas meter but the contractor informed Customer M that the meter could not be installed because the service line had been removed. Customer M asked how long it would take for the gas supply to be reconnected to his premises. Multinet Gas advised Customer M that generally it could not provide a timeframe as it depended upon the circumstances. Multinet Gas referred Customer M to his retailer to arrange for the installation of a new service line. Customer M provided a service order number to Multinet Gas. However, Multinet Gas was not able to find any information with the service order number Customer M provided.
- (d) Customer M called AGL Sales. Customer M stated that a Multinet Gas contractor had attended Customer M's premises to install a new gas meter but the contractor informed Customer M that the meter could not be installed because the service line had been removed. Customer M asked how long it would take for the gas supply to be reconnected to the premises if the service line had to be installed. AGL Sales stated that it did not know the timeframe for reconnection and offered to contact Multinet Gas to confirm the timeframe. Customer M requested the service order number that Multinet Gas had requested from Customer M in his earlier call with Multinet Gas. AGL Sales

refused to provide the service order number and stated that the number was not allowed to be provided to customers. Customer M asked to be transferred to a supervisor. The call was transferred, however AGL Sales could not hear Customer M after the transfer so it terminated the call.

32. On 7 June 2018:
- (a) Customer M called AGL Sales to check the status of the reconnection of the gas supply. AGL Sales stated that there had been a 'technical problem' that had prevented the reconnection of the gas supply. AGL Sales stated that it had been advised to re-raise the service order. Customer M stated that the service line had been removed and asked how long it would take to reconnect the gas supply to his premises in this case. AGL Sales advised that it would take about four weeks 'weather-permitting' to complete the installation of the service line. AGL Sales requested for Customer M to call AGL Sales back after the service line was installed to arrange for the gas meter installation.
 - (b) AGL Sales raised a service connection request service order with Multinet Gas through a B2B channel. In the service order, AGL Sales stated that the preferred date for completion was 7 June 2018.
33. On 18 June 2018, Multinet Gas dispatched the service connection request to a field crew for completion.

Customer M submitted a complaint to the ombudsman about the disconnection

34. On 7 June 2018, Customer M submitted a complaint to the ombudsman about Alinta Energy arranging for the abolishment of the gas supply to Customer M's premises earlier than he had requested.
35. On 21 June 2018, Alinta Energy raised a new meter change service order with Multinet Gas through a B2B channel. In the service order, Alinta Energy stated that the preferred date for completion was 21 June 2018. Alinta Energy also stated 'please install customers (sic) meter in the property ASAP. Level 2 Ombudsman case'. Multinet Gas immediately notified Alinta Energy through the B2B channel that it rejected the service order because the meter was 'de-registered'.
36. On 4 July 2018, the ombudsman sent an email to Customer M to confirm that his complaint about Alinta Energy was resolved on the basis that Customer M had accepted Alinta Energy's offer to pay Customer M the sum of \$2,000 as a customer service gesture for inconvenience caused to him.
37. On 5 July 2018, Alinta Energy made the \$2,000 payment to Customer M.

Customer M cancelled the reconnection of the gas supply to the premises

38. On 29 June 2018:
- (a) At 3:29pm, Multinet Gas sent an email to Customer M to notify him that the reconnection of the gas supply to his premises was estimated to be completed in the third week of July 2018.
 - (b) Customer M called AGL Sales to complain about the delayed reconnection. AGL Sales stated that Multinet Gas was responsible for reconnecting the gas supply, not AGL Sales. Customer M stated that if the gas supply could not be reconnected by 6 July 2018 then the reconnection should be cancelled.
 - (c) At 4:22pm, Customer M sent an email to AGL Sales and Multinet Gas requesting for the reconnection to be cancelled if it could not be completed before 6 July 2018.
39. On 11 July 2018, at 7:45pm, Customer M sent an email to AGL Sales and Multinet Gas to confirm that the reconnection had been cancelled as the deadline that Customer M had set for reconnection of 6 July 2018 had passed.
40. On 13 July 2018, AGL Sales raised a cancellation request for the service reconnection service order with Multinet Gas.
41. On 16 July 2018, Multinet Gas notified AGL Sales through a B2B channel that it had cancelled the service reconnection service order.
42. On 18 July 2018, Multinet Gas sent an email to Customer M to confirm that the service order had been cancelled.
43. On 6 August 2018, Customer M called Alinta Energy to set up the electricity and gas supply to the new premises to which he was moving. Customer M stated that he needed to arrange a final reading and the disconnection of the electricity supply to his current premises as the premises were going to be demolished.
44. On 13 August 2018, Customer M moved out of the premises. The gas supply to Customer M's premises was not reconnected at any time before Customer M moved out of the premises.
45. At a time after 13 August 2018, Customer M's premises were demolished.

Relevant obligations

46. In this matter, the relevant obligations arise from the Act, Alinta Energy's contract with Customer M (the contract), its gas retail licence and the code.

47. The relevant obligations from the Act are:

(a) Section 48A(1) of the Act, which relevantly provides:

'...the conditions to which a licence to sell gas by retail is subject include a condition requiring the licensee to make a payment of a prescribed amount to a relevant customer in accordance with this section if the licensee—

(a) disconnects the supply of gas to the premises of that customer; and

(b) fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.'

(b) Section 48A(3) of the Act, which relevantly provides:

'A payment under a condition under subsection (1) must be made as soon as practicable after the supply of gas is reconnected to the premises of the relevant customer.'

(c) Section 48A(4) of the Act, which relevantly provides:

'Nothing in this section affects any other right any person or body may have to take action against a licensee in relation to a disconnection of a supply of gas.'

(d) Section 48A(5) of the Act, which relevantly provides:

'In this section—

prescribed amount means—

(a) the amount prescribed by the regulations for the purposes of this section; or

(b) if no amount is prescribed by the regulations, \$500 for each whole day that the supply of gas is disconnected and a pro rata amount for any part of a day that the supply of gas is disconnected...'

48. The relevant obligations from the contract are:

- (a) The section of the contract titled 'Notice and warning of disconnection', which stated, in part:

'You may request disconnection and the issue of a final bill. Once you ask us, we will use reasonable efforts to arrange disconnection of your premises in accordance with your request.'

- (b) The section of the contract titled 'General', which stated, in part:

'In selling energy to you and performing our other obligations under this energy contract, we will comply with applicable laws and codes. If a term in this energy contract is inconsistent with an applicable law and (sic) code, the applicable laws and codes with (sic) prevail to the extent of the inconsistency.'

- (c) The section of the contract titled 'Glossary', which stated, in part:

'Words in the contract terms... have the following meaning: ...applicable laws and codes means...codes... including; (a) guidelines or codes issued by the Essential Services Commission of Victoria including the Energy Retail Code...'

49. The relevant obligation from Alinta Energy's gas retail licence is clause 8.1(e), which stated, in part:

'...[Alinta Energy] must comply with... the Energy Retail Code... to the extent they are applicable to activities undertaken by [Alinta Energy] pursuant to this Licence.'

50. The relevant obligations from the code are:

- (a) Clause 3, which stated, in part:

'In this Code—... de-energisation or disconnection of premises means:...(b) in the case of gas—the closing of a connection, in order to prevent the flow of energy to the premises...'

- (b) Clause 118(1), which stated, in part:

'If a customer requests the retailer to arrange for de-energisation of the customer's premises, the retailer must use its best endeavours to arrange for: (a) de-energisation in accordance with the customer's request...'

Decision

51. Alinta Energy is required to comply with the statutory condition of its gas retail licence under section 48A of the Act (the licence condition).
52. Alinta Energy disconnected the gas supply to Customer M's premises at 8:09am on 30 May 2018.
53. Alinta Energy failed to comply with the terms and conditions of its contract with Customer M that specified the circumstances in which the gas supply to Customer M's premises could be disconnected.
54. Accordingly, both conditions set out in section 48A(1) of the Act that must be satisfied for Alinta Energy to be required to make a payment of a prescribed amount to Customer M were satisfied.
55. However, the obligation to pay only crystallises under section 48A(3) of the Act following reconnection of the gas supply. In this case, Customer M refused Alinta Energy's offer to arrange for the reconnection of the gas supply to his premises at 4:32pm on 31 May 2018 because he had previously been advised by Alinta Energy that it could not assist him, and that he should find another retailer who could. This led to Customer M contacting AGL Sales and set off the series of events set out above.
56. As set out in detail above, the factual circumstances involve the provision of inaccurate or incomplete information and delays in actively addressing the matter by multiple parties, including Alinta Energy, AGL Sales and Multinet Gas.
57. As a result of the totality of the circumstances, the gas supply was never reconnected to Customer M's premises.
58. The provisions of section 48A of the Act do not address a circumstance where a gas supply is not reconnected following a wrongful disconnection. Depending on the particular circumstances of a dispute, it may be that, on a purposive construction of section 48A of the Act, the time for payment and the quantification of the compensation liability can be ascertained.
59. However, the commission cannot ascertain the time for payment and the quantification of the compensation liability with sufficient certainty in the circumstances of this dispute, given the number of parties and errors involved. If the commission had a broad discretion to determine and apportion liability, it may have been able to logically develop a series of principles to determine the time for payment and the quantum of the prescribed amount. However, section 48A of the Act does not confer any such discretion on the commission and any such

approach would be insufficiently supported or connected with the purpose or object of section 48A of the Act.

60. Accordingly, section 48A of the Act cannot be applied to this dispute. It follows that, in the commission's view, no compensation is payable by Alinta Energy to Customer M under section 48A of the Act.

Reasons

Alinta Energy disconnected the gas supply to Customer M's premises

61. If the two conditions under section 48A(1) of the Act are met, Alinta Energy is obliged to make a payment of the prescribed amount to Customer M in accordance with section 48A of the Act. The first condition, under section 48A(1)(a) of the Act, was that Alinta Energy disconnected the gas supply to Customer M's premises.
62. On 30 May 2018, at 8:09am, the gas supply to Customer M's premises was abolished.
63. Alinta Energy submitted to the ombudsman that the abolishment of the gas supply to Customer M's premises was not a disconnection as defined by clause 3 of the code. Alinta Energy did not make any submissions directly to the commission on this point to explain its view.
64. If Alinta Energy was correct, then the obligations under the code may not have applied to Alinta Energy arranging for the disconnection of the gas supply to Customer M's premises. Moreover, if Alinta Energy was correct, then the abolishment of the gas supply to Customer M's premises may also not have been a disconnection for the purposes of section 48A(1) of the Act. On this basis, the condition under section 48A(1)(a) of the Act may not have been satisfied.
65. The commission disagrees with Alinta Energy. The commission considers that the abolishment of the gas supply to Customer M's premises was a disconnection under clause 3 of the code and under section 48A of the Act for the following reasons:
 - (a) The commission considers that Customer M's request for the abolishment of the gas supply to his premises necessarily included a request for the 'de-energisation' or 'disconnection' of the gas supply. Clause 3 of the code provided that 'de-energisation' or 'disconnection' of premises was defined as, in the case of gas, the closing of a connection (the physical link between the distribution system and the customer's premises) in order to prevent the flow of energy to the premises. It could not have been the case that Customer M expected the connection to remain open or that there would continue to be a flow of gas to the premises after the gas supply was abolished.
 - (b) The commission considers that Multinet Gas could not have abolished the gas supply without first closing the connection to prevent the flow of gas to the premises.
 - (c) The commission considers that it would distort the object of the Act and section 48A of the Act to interpret 'de-energisation' or 'disconnection' to include disconnection of the gas supply to the premises except when the disconnection is followed by the

permanent removal of the gas supply. As set out below, the object of the Act and section 48A of the Act is customer protection.

66. The commission therefore considers that the first condition under section 48A(1)(a) of the Act that must be satisfied for Alinta Energy to be required to make a payment of a prescribed amount to Customer M was satisfied.

Alinta Energy failed to comply with the contract terms

67. The second condition under section 48A(1)(b) of the Act was that Alinta Energy failed to comply with the terms and conditions of its contract with Customer M specifying the circumstances in which the gas supply to Customer M's premises may be disconnected.
68. Alinta Energy's contract with Customer M included terms and conditions which specified the circumstances in which the gas supply to Customer M's premises may be disconnected. The terms and conditions stated, in part, that 'in selling energy to [Customer M] and performing [its] other obligations under this energy contract, [Alinta Energy] will comply with applicable laws and codes.' The contract also stated, in part, that '...applicable laws and codes means... codes issued by the Essential Services Commission of Victoria including the Energy Retail Code.'
69. Clause 118(1)(a) of the code provided that if Customer M requested Alinta Energy to arrange for the disconnection of the gas supply to Customer M's premises, Alinta Energy was required to use its best endeavours to arrange for the disconnection in accordance with Customer M's request.
70. Alinta Energy's submission that the abolishment of the gas supply to Customer M's premises was not a disconnection as defined under clause 3 of the code as set out above is relevant to the application of clause 118(1)(a) of the code. However, for the same reasons set out above, the commission disagrees with Alinta Energy and considers that the abolishment was a disconnection under clause 3 of the code. Therefore, clause 118(1)(a) of the code applied.
71. Alinta Energy stated that it may 'arguably' have breached clause 118(1)(a) of the code by incorrectly arranging for the abolishment of the gas supply to Customer M's premises to take place on 30 May 2018, rather than on 3 August 2018 in accordance with Customer M's request. However, Alinta Energy claimed that it did use its best endeavours to arrange for the disconnection of the gas supply to Customer M's premises. Alinta Energy submitted that when Customer M requested a variation to the abolishment date, Alinta Energy used its best endeavours to arrange for this variation but was not able to do so because of the timing of the request and the abolishment.
72. The commission considers that Alinta Energy failed to meet the standard required by clause 118(1)(a) of the code to use its best endeavours to arrange for the disconnection of

the gas supply to Customer M's premises in accordance with his request. Alinta Energy failed to enter Customer M's requested date for the abolishment in the 'Preferred Date' field on the service order form. By failing to do so, Alinta Energy effectively requested the abolishment to be completed within 20 business days from the date that Alinta Energy submitted the service order form to Multinet Gas. This caused the abolishment to occur more than two months earlier than Customer M requested.

73. The commission considers that it is not relevant for the purposes of section 48A of the Act that Alinta Energy attempted to arrange for Customer M's requested variation to the abolishment date. Alinta Energy had already failed to meet the requirement to use its best endeavours as set out in clause 118(1)(a) of the code.
74. The commission therefore considers that Alinta Energy failed to comply with the terms and conditions of its contract with Customer M by failing to meet the standard required by clause 118(1)(a) of the code. On this basis, the commission considers that the condition in section 48A(1)(b) of the Act was satisfied.

The gas supply to Customer M's premises was not reconnected

75. The commission considers that both of the conditions set out in section 48A(1) of the Act were satisfied.
76. Section 48A(5) of the Act provides that the prescribed amount is \$500 for each whole day that the gas supply is disconnected and a pro rata amount for any part of a day.
77. The issue in this case is how to quantify the prescribed amount and identify whether and when the obligation to pay crystallises in circumstances where the supply of gas was never reconnected as a result of the provision of inaccurate or incomplete information by multiple parties.
78. Section 48A(3) of the Act provides that a payment under subsection (1) must be made as soon as practicable after the gas supply is reconnected to the premises. On a literal interpretation of section 48A(3) of the Act, the time for Alinta Energy to make payment of the prescribed amount to Customer M will never arise given those premises have been demolished.
79. Alinta Energy submitted that the quantum of any prescribed amount should be capped up to the date when Customer M refused Alinta Energy's offer to arrange for the reconnection of the gas supply to his premises. Customer M refused Alinta Energy's offer of reconnection on 31 May 2018.
80. The ombudsman noted the commission's past decisions in the disconnection disputes of Customer W and Red Energy (1 August 2018) and Customer H and AGL Sales

(12 September 2018) in relation to the calculation of the prescribed amount. However, the commission considers that this disconnection dispute should be distinguished from those two past disputes. In the circumstances of this dispute, the customer refused the retailer's offer to arrange for the reconnection of the gas supply and the gas supply to the customer's premises was never reconnected. These circumstances are different to the circumstances in those two past disputes where the gas supply was reconnected to each of the customers' premises and neither customer refused an offer from the retailer to arrange for the reconnection of the gas supply to the premises.

81. Section 48A of the Act does not expressly set out the time for payment and the quantum of the prescribed amount in circumstances where the gas supply to the premises is not reconnected because the customer refuses the retailer's offer of reconnection.

The purpose or object of section 48A of the Act is relevant

82. Section 35 of the Interpretation of Legislation Act 1984 (Vic) relevantly provides, that:

'In the interpretation of a provision of an Act or subordinate instrument—

- (a) A construction that would promote the purpose or object underlying the Act or subordinate instrument (whether or not that purpose or object is expressly stated in the Act or subordinate instrument) shall be preferred to a construction that would not promote that purpose or object...'*

83. The commission therefore considers that a construction that promotes the purpose or object underlying the Act and section 48A of the Act must be preferred to a construction that would not promote the purpose or object of the Act and section 48A of the Act.

84. Section 1 of the Act states that 'the main purpose of this Act is to regulate the gas industry.'

85. Section 18 of the Act states, in part, that:

'The objectives of the [Essential Services Commission] under this Act are— ... (c) to promote protections for customers, including in relation to assisting customers who are facing payment difficulties.'

86. The commission considers that the purpose or object of section 48A of the Act is the protection of customers.

87. In circumstances where the gas supply is not reconnected because the customer refuses reconnection, a purposive construction of section 48A of the Act may, in some circumstances, allow for identification of the time for payment and quantum of the prescribed amount, for example:

- (a) up to the point where reconnection would have occurred but for the customer's refusal, if that point in time can be ascertained with sufficient certainty, or
- (b) up to the point of the refusal by the customer, if a point in time for reconnection cannot be ascertained with sufficient certainty.

88. However, for the following reasons, the commission considers that this kind of purposive construction of section 48A of the Act cannot be applied to this dispute to determine the time for payment and the quantum of the prescribed amount.

It is unclear when the reconnection would have occurred

89. The events of Customer M's refusal of Alinta Energy's offer of reconnection show that it was not clear when the gas supply to Customer M's premises would have been reconnected if he had accepted the offer.
90. At the time of Alinta Energy making the offer of reconnection to Customer M on 31 May 2018, Alinta Energy had already informed Customer M that it could not assist him and that Customer M should contact another retailer. This led to Customer M contacting AGL Sales and engaging a plumber on the advice of AGL Sales.
91. By the time that Alinta Energy contacted Customer M on 31 May 2018, Customer M had already obtained a compliance certificate from the plumber and had made reconnection arrangements with AGL Sales.
92. Alinta Energy submitted that it was not aware that the service line had been removed from Customer M's premises and needed to be reinstalled to reconnect the gas supply to Customer M's premises. Earlier that day, Alinta Energy had called Multinet Gas to confirm the status of the service disconnection request service order. Multinet Gas stated that the service order was '...in pending...' and '...still in dispatch...' Multinet Gas stated that Alinta Energy would need to submit a meter installation service order and that the meter would be installed to allow for the reconnection of the gas supply to Customer M's premises within 24 to 48 hours. Without being aware that the service line also needed to be reconnected, Alinta Energy may not have known to raise a service connection request service order with Multinet Gas. It was on 1 June 2018 that Multinet Gas Alinta Energy that the service line had also been removed so that Alinta Energy would have been aware that the service line needed to be installed, being the day after Alinta Energy made its offer to Customer M.
93. Even if Customer M had accepted Alinta Energy's offer of reconnection and Alinta Energy had raised the correct service order with Multinet Gas for the installation of the service line, there is no method by which the commission can ascertain with sufficient certainty when Multinet Gas would have completed the reconnection.

94. For its part, AGL Sales did not action the reconnection request agreed to on 31 May 2018, and only did so on 5 June, after Customer M followed up on progress. AGL Sales then actioned the request and was advised the following day by Multinet Gas that the supply line had been removed.
95. This resulted in further delays in the reconnection of the gas supply, although the date for the actual reconnection was at all times uncertain. Multinet Gas did not at any time confirm a specific date for the reconnection to be completed. Ultimately, Customer M cancelled the reconnection before a specific date for the reconnection became certain as a result of the delays and the impending date on which he intended to vacate the premises.
96. Given the tangled involvement and provision of inaccurate or incomplete information by multiple parties, including Alinta Energy, Multinet Gas and AGL Sales, and the resulting uncertainty about the date on which reconnection could have occurred, the commission cannot determine with sufficient certainty when the gas supply to Customer M's premises would have been reconnected if Customer M had not refused Alinta Energy's offer of reconnection.

Customer M's refusal of Alinta Energy's offer of reconnection was affected by misinformation

97. The date of Customer M's refusal of Alinta Energy's offer of reconnection can be ascertained with certainty as 31 May 2018. However, the commission considers that, in the circumstances of this case, Customer M's refusal of Alinta Energy's offer was affected by misinformation from the various sources discussed above. The relevant facts in relation to this are:
- (a) On 30 May 2018, after the abolishment of the gas supply to Customer M's premises, Customer M called Alinta Energy and requested for it to arrange for the reconnection of the gas supply. Alinta Energy advised Customer M that it could not arrange for the reconnection because it '...[did] not have a meter installation service...'. Alinta Energy informed Customer M that '...the solution is to find a different retailer...' which has a '...meter installation service...'
 - (b) On 30 May 2018, when Customer M called AGL Sales to request for it to arrange for the reconnection, Customer M stated that his partner called Multinet Gas and Multinet Gas had advised that Customer M only needed to request a new gas meter installation, not a service line. Although Customer M stated to AGL Sales that Multinet Gas had advised his partner that Customer M only needed to request a new gas meter installation, there was no recording of a call between Customer M's partner and Multinet Gas.

- (c) In the same call on 30 May 2018, AGL Sales advised Customer M that if he engaged a plumber to obtain a site compliance certificate, then the plumber could verify whether the service line has been removed.
- (d) On 31 May 2018, Customer M called AGL Sales. AGL Sales asked Customer M if there was a service line at the premises. Customer M stated that the plumber ‘...has already checked it, it’s all good.’ On the basis of Customer M’s advice that there was a service line, AGL Sales provided a timeframe for the gas meter installation and advised that the gas meter would be installed by 5 June 2018. Neither Customer M nor AGL Sales was aware that the service line had in fact been removed from the premises and needed to be reinstalled, so that the gas meter could not have been installed by 5 June 2018.
- (e) On 31 May 2018, Alinta Energy called Customer M to offer to arrange for the reconnection including meter installation, notwithstanding its earlier advice to Customer M that it could not arrange for the reconnection.

98. In these circumstances, the commission cannot reasonably identify the time for payment and quantum of the prescribed amount by reference to the point of Customer M’s refusal of Alinta Energy’s offer of reconnection.

Section 48A of the Act cannot be applied to this dispute

99. For the above reasons, the commission considers that section 48A of the Act cannot be applied to this dispute. No purposive construction of section 48A of the Act can be applied to determine the time for payment and the quantum of the prescribed amount in this dispute.

100. The commission has made its decision accordingly.

Other observations

This decision does not affect any other right of Customer M

101. The commission notes that this decision does not affect any other right Customer M may have to take action against Alinta Energy in relation to the disconnection of the gas supply to Customer M's premises.
102. Section 48A(4) of the Act provides that nothing in section 48A of the Act affects any other right any other person or body may have to take action against a licensee in relation to a disconnection of a gas supply.