



WRONGFUL DISCONNECTION PAYMENT DISPUTE

TRUENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

MAY 2006

Introduction

Section 40B of the *Electricity Industry Act 2000* places a licence condition on retailers that requires them to compensate a customer if the retailer disconnects a customer's supply and does not comply with the terms and conditions of a customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate a customer \$250 for each whole day that a customer's supply is disconnected or a pro rata amount for any part of a day that supply is disconnected.

Clause 6.5 of the Commission's Interim Operating Procedure – Compensation for Wrongful Disconnection (IOP) requires that where the Energy and Water Ombudsman Victoria (EWOV) is unable to resolve a claim for the wrongful disconnection compensation payment with the agreement of the retailer and the complainant, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the IOP.

Background

EWOV has requested the Commission to make a formal decision as to whether TRUenergy complied with its licence in relation to a dispute between the complainant and TRUenergy regarding a wrongful disconnection compensation payment for the complainant.

The complainant was a customer of TRUenergy. She had difficulty paying her first bill and a payment arrangement was agreed on her behalf by her mother who was authorised to act as her representative. However, she only made one payment towards the arrangement and it was cancelled.

Over a period of four months, TRUenergy sent reminder and disconnection notices, attempted to ring the complainant and visited her property twice. The attempt to ring the complainant was unsuccessful because TRUenergy had the wrong number and no other contact numbers for her.

During the visits to the complainant's property the field officers encouraged her to contact TRUenergy. The complainant contacted TRUenergy on three occasions. On the first, the complainant advised that she would see a financial counsellor and ring TRUenergy, but she did not ring back. On the other two occasions the calls were terminated before TRUenergy could enter into discussions with the complainant.

TRUenergy did not receive any further contact from the complainant and consequently her electricity was disconnected. It was reconnected on the same day. The complainant advised that she was disconnected at 12.00pm and reconnected at approximately 7.00pm.

Issues

For the disconnection to be wrongful the retailer must have breached the terms and conditions of the contract that set out the circumstances under which a customer's supply may be disconnected.

Terms and Conditions Relating to Disconnection

The terms and conditions of the contract between the complainant and TRUenergy are set out in the Energy Retail Code (ERC). The ERC requires that a retailer cannot disconnect a customer for non-payment of a bill until the retailer has offered two instalment plans, sent all relevant notices, assessed and assisted a customer

experiencing payment difficulties and used its best endeavours to contact a customer with insufficient income.

Instalment Plans and Appropriate Notices

Clause 13.1 of the ERC permits a retailer to disconnect a customer for non-payment of a bill if the non-payment relates to a second instalment plan and a reminder notice and a disconnection warning have been sent to a customer. TRUenergy sent the complainant all relevant reminder notices and disconnection warnings prior to disconnecting her.

TRUenergy's customer contact notes show that the complainant was offered an instalment plan on 11 April. She only made one payment towards this payment plan and consequently, the plan was cancelled. TRUenergy did not offer the complainant a second instalment plan. Therefore, TRUenergy did not comply with the requirements of clause 13.1 of the ERC (see further discussion below).

Assessment and Assistance to Customers in Financial Difficulty

The ERC requires that where a retailer and a customer do not agree on a payment arrangement in accordance with clause 11.2(a), the retailer must assess in a timely way whatever information a customer provides or the retailer otherwise has concerning a customer's capacity to pay (clause 11.2(1)). In addition, the retailer must offer a customer at least two instalment plans and provide advice on concessions, energy efficiency and the availability of financial counsellors (clauses 11.2(3) and 11.2(4)).

1. Assessment of capacity to pay

It is noted that the complainant's mother, acting as her authorised representative, advised TRUenergy on 11 April 2005, that the complainant could pay \$40 per fortnight. Based on the complainant's first quarterly bill of \$203, the fortnightly repayment agreed on her behalf, would cover the complainant's arrears and ongoing consumption. On this basis, it is considered that TRUenergy took into account the complainant's capacity to pay when setting her payment arrangement.

2. Second instalment plan

TRUenergy offered the complainant an instalment plan after she had difficulty paying her first bill. Under clause 11.2(3) of the ERC, TRUenergy is required to offer another instalment plan. TRUenergy field officers visited the complainant on 4 July and 6 September, but did not disconnect her to allow her to contact TRUenergy to make payment arrangements.

The complainant contacted TRUenergy on 1 September and 6 September. TRUenergy note that on both occasions the call was terminated by her, thus denying TRUenergy the opportunity to offer her another instalment plan.

The Commission notes that the negotiations with the complainant occurred in September 2005. This is approximately 9 months' after the implementation of the new legislative provisions, which strengthen the requirements on retailers to comply with the ERC obligations.

Therefore, whilst it is acknowledged that the complainant did not allow the negotiations for another payment arrangement to take place by telephone and that she was visited twice by field officers, it is considered that, given the clear obligations under the ERC for no disconnection to occur unless two instalment plans have been

offered, TRUenergy ought to have ensured that this second instalment plan was offered and able to be verified.

As a last resort, the Commission considers that this offer should have been made in writing. If no contact, or unsatisfactory telephone contact, then occurred, TRUenergy could then proceed with disconnection action.

3. Energy efficiency, URGs and independent financial counselling advice

It is noted that the complainant advised TRUenergy that she intended to contact a financial counsellor. Therefore, it is accepted that TRUenergy did not have additional obligations to provide her with independent financial counselling advice.

It is also noted that TRUenergy advised that, given that the complainant is a permanent concession card holder receiving full concessions, she would have received advice about Utility Relief Grants (URGs) on her bills. Nevertheless, notwithstanding that the telephone calls with the complainant were terminated, it is considered that additional efforts ought to have been made by TRUenergy to ensure that the complainant was aware of the availability of URGs for customers with payment difficulties.

It is considered that this obligation by TRUenergy is linked with its obligation to have made additional attempts to offer the complainant a second instalment plan.

Best Endeavours to Contact a Customer with Insufficient Income

Clause 13.2 of the ERC requires that prior to disconnecting a customer, the retailer must use its best endeavours to contact a customer where the failure to pay a bill occurs through lack of sufficient income.

TRUenergy made one attempt to contact the complainant by telephone and visited her twice advising of the imminent disconnection. On this basis, it is considered that TRUenergy used its best endeavours to contact the complainant. However, the Commission considers that, in these circumstances, TRUenergy ought to have understood the imperative to meet its obligations under clause 11.2 of the ERC.

Decision

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by TRUenergy of its retail licence in relation to the disconnection of the complainant. The Commission has decided that TRUenergy did not comply with its licence and the contract terms and conditions relating to the disconnection of the complainant. Therefore, the disconnection of the complainant was wrongful and a compensation payment is required. The amount payable is \$79.92, reflecting the seven hours off supply experienced by the complainant.

R H SCOTT
Delegated Commissioner

May 2006