



**WRONGFUL DISCONNECTION PAYMENT DISPUTE**  
**RED ENERGY AND THE COMPLAINANT**

**STATEMENT OF REASONS**

**APRIL 2007**

## **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 the customer's supply and does not comply with the terms and conditions of the customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate the customer for each day that the customer's supply is disconnected.

Clause 6.5 of the Commission's Operating Procedure – Compensation for Wrongful Disconnection (Operating Procedure) 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 customer, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the Operating Procedure.

## **Background**

EWOV requested the Commission to make a formal decision as to whether Red Energy complied with its retail licence in relation to a dispute between the Complainant and Red Energy, regarding a wrongful disconnection compensation payment. The Complainant was disconnected on 16 October 2006 and reconnected the following day, on 17 October 2006.

The Complainant transferred to Red Energy in October 2005 and was energised in December 2005. The Complainant made five partial payments towards their first bill, which they received in March 2007. The only other payment by The Complainant was \$100 in July 2007.

From the end of March 2006 to 1 May 2006 Red Energy screen notes show that due to continuing arrears, the Complainant received reminders and disconnection communications. The final disconnection notice was despatched on 1 May 2006 at which time the account was \$272.70 in arrears.

When the Complainant contacted Red Energy to query the disconnection notice, they were advised that despite the payments, the account was still in arrears. Red Energy then offered the Complainant an instalment plan which they ultimately accepted on 14 May 2006. The payment plan was an arrangement in which Red Energy gave the Complainant an extension on payment of their March 2006 bill.

The Complainant made three payments under this arrangement, these being \$50 on 16 May, \$35 on 23 May and another \$35 on 30 May 2006. When no further instalments were forthcoming the plan was automatically cancelled on 11 July 2006. According to Red Energy account history, the only other payment made against the Complainant's account was for the amount of \$100 on 31 July 2006.

In the meantime, on 26 June 2006, the Complainant arranged to transfer their electricity supply to another retailer. Red Energy advised that they had objected, hence prevented the transfer because of the accrued debt on the account.

A letter 'farewelling' the Complainant from Red Energy, was despatched to them on 4 August 2006. Red Energy advised that the letter would have been automatically

issued when the transfer request was lodged, even though Red Energy ultimately opposed the transfer.

On 15 August 2006 Red Energy resumed debt recovery action against the Complainant with the mailing of disconnection communications. An attempt was made by Red Energy to contact the Complainant on 1 September and 18 September 2006 using the automatic calling system. The calls were answered on both occasions but immediately disconnected. Red Energy was unable to confirm contact with an account holder.

A disconnection notice addressed to ‘The Occupier’ was sent to the Complainant’s address on 13 September. Red Energy explained that when they do not receive any response to communications, the notices are addressed to ‘The Occupier’ in case there has been a change of occupancy at the property.

By the 11 October 2006, Red Energy had not been contacted by the Complainant and disconnection of the electricity supply was scheduled for 16 October.

## **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.

### *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 in person or by telephone, where the failure to pay a bill occurs through lack of sufficient income.

Red Energy advised that they did not consider the Complainant to be a hardship case and were therefore not required to use ‘best endeavours’ in trying to contact them.

It is acknowledged that up until the end of May 2006, the Complainant did not appear to be suffering from financial difficulties, as there had only been one bill issued, against which part payments were made. The Complainant had also entered a payment arrangement in mid May 2006. Nevertheless, in the following four and one half months leading up to the time of the disconnection, the Complainant exhibited numerous indicators of potential financial difficulties. These indicators were as follows:

- The Complainant was registered as a concession card holder with Red Energy, as indicated by the six monthly automatic concession card check listed in the screen notes of 22 September 2006
- The Complainant had received two bills since joining Red Energy in December 2005 and neither was fully paid
- Payments towards The Complainant’s account had been sporadic
- The Complainant had not maintained the May 2006 payment arrangement

The Commission considers that based on this information, which was available to Red Energy at the time of the disconnection, The Complainant's failure to pay their bills was likely to have been due to a lack of sufficient funds. Accordingly, clause 13.2 requires Red Energy to use its 'best endeavours' in attempting to contact the Complainant in person or by telephone.

Best endeavours to contact a customer in person or by telephone, as defined by the *Wrongful Disconnection Procedures – Operating Procedures (OP)*, requires

- Over a two to three day period and not more than one month prior to disconnection
  - at least one telephone call during business hours attempting to reach the customer
  - if a message was not left in business hours with a reliable adult or an automated telephone service, at least two telephone calls outside business hours

In the six weeks prior to disconnection Red Energy made two attempts to contact the Complainant by telephone. The attempts were made on 1 September 2006 and one month before his disconnection on 18 September 2006. Both calls were via the 'Talking Tech' automatic calling system. In both instances the screen notes state that the calls were answered but were immediately disconnected and Red Energy was unable to confirm contact with the account holder or a responsible adult. No further attempt was made to contact the Complainant by telephone prior to the disconnection.

Furthermore, the OP states that for customers who live outside an urban area, such as the Complainant, the retailer could be required to send a letter advising of the pending disconnection by registered mail. Red Energy confirmed that the imminent disconnection letter was not sent by registered mail and was addressed to 'The Occupier'.

It is acknowledged that Red Energy attempted to contact the Complainant on numerous occasions via written communications and that the two attempts using the automatic calling system were disconnected. Nevertheless, it is noted that the two calls were attempted four weeks or more before the Complainant was disconnected. The Commission believes that Red Energy should have made further attempts to contact The Complainant during the month prior to disconnection either by a personal visit or calls from a customer service operator. On this basis it is considered that Red Energy did not use its best endeavours to contact the Complainant.

#### *Assessment and Assistance to Customers in Financial Difficulty*

The terms and conditions of the contract between Red Energy and The Complainant are set out in the Energy Retail Code (ERC). Clause 13.2 states that a retailer must not disconnect a domestic customer if the failure to pay the retailer's bill occurs through lack of sufficient income of the customer, until the retailer has complied with clause 11.2 of the ERC. The retailer, using its best endeavours to contact the customer, must assess and assist the customer with financial and energy efficiency counselling and advice.

Red Energy stated that it did not consider that the Complainant may have been experiencing financial difficulties. The Commission, as previously discussed, believes that based on the information to hand at the time of the disconnection, the

Complainant's failure to pay their bills was likely to have been due to a lack of sufficient funds.

Therefore it is considered that Red Energy did not comply with clause 11.2 in assessing and offering assistance to customers in financial difficulty.

***Decision***

In accordance with clause 7 of the IOP, the Commission has investigated the alleged breach by Red Energy of its retail licence in relation to the disconnection of the Complainant. The Commission has decided that Red Energy 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 compensation payment is to apply from 11:20 am 16 October 2006 to 10:30 am 17 October 2006. The amount is \$241.50.

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R H SCOTT  
**Delegated Commissioner**  
**April 2007**