

**ESSENTIAL SERVICES COMMISSION**  
**WRONGFUL DISCONNECTION DECISION**  
**UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001**  
**AUSTRALIAN POWER AND GAS & CUSTOMER F**  
**DECISION AND REASONS**

***Background***

Customer F contacted the Energy and Water Ombudsman (Victoria) (EWOV) with regard to the disconnection of the supply of gas to his premises by Australian Power & Gas (APG)<sup>1</sup>. EWOV investigated the matter, but was not able to assist the parties to reach a resolution. EWOV referred the matter to the Essential Services Commission (the Commission) to decide whether the disconnection of gas supply to Customer F's premises was wrongful under section 48A of the Gas Industry Act 2001 (the Act) and, if so, the amount of any payment APG is required to make to Customer F.

***Summary of Facts***

Customer F was a customer of APG and had failed to pay their gas bill. On 28 May 2012 APG issued Customer F a reminder notice, followed by a second reminder notice on 7 June 2012. On 20 June 2012, APG sent Customer F the disconnection warning notice. The Energy and Water Ombudsman Victoria (EWOV) submits that this notice did not comply with the requirements of clauses 13.1(c) of the Energy Retail Code (the Code). As Customer F had not paid their bill, the supply of gas to their property was disconnected at APG's request, for non-payment of \$547.23, on 17 July 2012.

***Relevant Obligations***

Under s48A of the Act, 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:

- disconnects the supply of gas to the premises of that customer; and
- 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.

Clause 13.1(c) of the Code states a retailer may not disconnect customers for non-payment unless the retailer has given the customer a disconnection warning notice containing a statement that the retailer may disconnect the customer's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning. This obligation is replicated in the terms and conditions of APG's contract with the customer (the T&Cs). The T&Cs also state that the disconnection warning from APG will contain the information required by the Energy Laws.

The Commission is aware that between June 2008 and 16 January 2013, disconnection warning notices issued by APG stated a 'disconnection warning period' that was less than 7 business days after the date of receipt of the disconnection warning notice. AGL was provided an opportunity to submit material in response to EWOV's request for a decision on this matter, but did not make any submissions indicating that the disconnection warning notice sent to Customer F stated a compliant disconnection warning period.

This matter relates to a systemic issue that was the subject of a voluntary undertaking made by AGL to the Commission. The Commission now considers this undertaking closed subject to the observation that affected customers retain their existing entitlements to the assistance of EWOV in resolving any ongoing dispute with AGL<sup>2</sup>. The Commission further notes that an undertaking entered into by AGL can have no effect on customers' entitlements to wrongful disconnection payments under the Act.

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<sup>1</sup>AGL Sales Pty Ltd (AGL) acquired APG in September 2013 through a full share acquisition (AGL Annual Report 2013, 14 and 87; AGL Annual Report 2014, 33 and 49)

<sup>2</sup> Essential Services Commission, January 2017, *AGL Administrative Undertaking Audit Summary and Commission's Response*

## **Chronology**

<b><i>Date</i></b>	<b><i>Event</i></b>
February 2012	Australian Power & Gas established a gas account for Customer F at 7 Vista Drive, Emerald VIC 3782
28 May 2012	Australian Power & Gas sent Customer F the first reminder notice
7 June 2012	Australian Power & Gas sent Customer F the second reminder notice
20 June 2012	Australian Power & Gas sent Customer F the disconnection warning notice
17 July 2012	Customer F's gas supply was disconnected for non-payment of the outstanding balance of \$547.23

## **Decision**

Having considered the advice and information provided by APG and EWOV, the Commission finds:

1. In disconnecting the supply of gas to Customer F's premises, APG 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. As a result, under s48A of the Act, as a statutory condition of its licence, APG has an obligation to pay Customer F a wrongful disconnection payment.
2. The wrongful disconnection payment amount is the prescribed amount for the period during which the gas supply to Customer F's premises was disconnected – 3 days, 9 hours and 59 minutes.
3. In accordance with s48A(1A) of the Act, it is a condition of APG's licence that it is required to pay Customer F a wrongful disconnection payment of \$854.00.

## **Reasons**

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

1. According to s48A of the Act, 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 –
  - disconnects the supply of gas to the premises of that customer; and
  - 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.
2. The terms and conditions of the contract between APG and Customer F specifying the circumstances in which the supply of gas to Customer F's premises may be disconnected included:
  - A requirement (replicating clause 13.1(c) of the Code) that APG include in any disconnection warning notice it sent to Customer F a statement that APG may disconnect Customer F's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning; and
3. Based on the information available to the Commission, on the balance of probabilities the Commission finds that prior to disconnecting gas supply to Customer F's premises, APG did not include in the disconnection warning notice it sent to Customer F a statement that APG may disconnect Customer F's gas on a day no sooner than seven business days after the date of receipt of the disconnection warning. APG did not contest this claim when given the opportunity to do so.
4. As a result, APG failed to comply with the terms and conditions of its contract with Customer F and APG is therefore required to pay Customer F a wrongful disconnection payment under s48A of the Act.

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Dr Ron Ben-David

Chairperson

Date: 8 March 2017