

ESSENTIAL SERVICES COMMISSION
WRONGFUL DISCONNECTION DECISION
UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001
AGL SALES & CUSTOMER P
DECISION AND REASONS

Background

Customer P contacted the Energy and Water Ombudsman (Victoria) (EWOV) with regard to the disconnection of the supply of gas to his premises by AGL Sales (AGL). 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 P's premises was wrongful under section 48A of the Gas Industry Act 2001 (the Act) and, if so, the amount of any payment AGL is required to make to Customer P.

Summary of Facts

Customer P was a customer of AGL and had failed to pay their gas bill. On 29 January 2013 AGL issued Customer P a reminder notice. On 8 February 2013, AGL sent Customer P 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 P had not paid their bill, the supply of gas to their property was disconnected at AGL's request, for non-payment of \$242.28, on 28 February 2013.

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. The terms and conditions of AGL's contract with Customer P also required it to comply with clause 13.1(c) prior to disconnecting the supply of gas to Customer P's premises.

A screenshot of AGL's billing system indicates that Customer P was sent a disconnection warning notice with an issue date of 8 February 2013, and a pay-by date of 15 February 2013. The Commission is also aware that during the period that Customer P's disconnection warning notice was issued, AGL was issuing defective disconnection warning notices which stated that the disconnection warning period ended on a date which 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 P 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 AGL¹. 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.

¹ Essential Services Commission, January 2017, *AGL Administrative Undertaking Audit Summary and Commission's Response*

Chronology

<i>Date</i>	<i>Event</i>
8 December 2012	AGL issued an invoice for the balance of \$312.28
29 January 2013	AGL issued a reminder notice for the balance of \$220.98
8 February 2013	AGL issued a disconnection warning notice for the outstanding balance of \$242.28
28 February 2013	Customer P's gas supply was disconnected for non-payment of the outstanding balance of \$242.28
7 March 2013	Customer P's gas supply was reconnected

Decision

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

1. In disconnecting the supply of gas to Customer P's premises, AGL 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, AGL has an obligation to pay Customer P a wrongful disconnection payment.
2. The wrongful disconnection payment amount is the prescribed amount for the period during which the gas supply to Customer P's premises was disconnected – 7 days, 2 hours and 45 minutes.
3. In accordance with s48A(1A) of the Act, AGL is required to pay Customer P a wrongful disconnection payment of \$1,779.00.

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

Dr Ron Ben-David

Chairperson

Date: 8 March 2017