

ESSENTIAL SERVICES COMMISSION
WRONGFUL DISCONNECTION DECISION
UNDER SECTION 40B OF THE *ELECTRICITY INDUSTRY ACT 2000*
AGL SALES & CUSTOMER R
DECISION AND REASONS

Background

On 5 April 2013, AGL Sales (AGL) established an electricity account for Customer R.

On 28 February 2014 AGL issued Customer R a bill for \$382.89. Customer R's supply was ultimately disconnected for failing to pay this bill in full.

Customer R made a payment of \$131.64 on 10 April 2014. On 17 June 2014 AGL issued Customer R a bill for \$413.96. On 14 July 2014 AGL issued Customer R a reminder notice for \$413.96.

On 4 August 2014 AGL issued Customer R a disconnection warning notice for \$413.96. The disconnection warning notice contained a "Balance Due" date of 11 August 2014 and a statement that a failure to pay the balance by 18 August 2014 may result in disconnection. It also stated the consequences of failing to pay by 18 August 2014 and provided contact details for AGL's financial hardship team and EWOV.

According to EWOV, on 27 August Customer R made another payment of \$131.64. On the same day AGL completed a field visit to the supply premises on 27 August 2014. No one answered the door and AGL left an urgent notice at the premises. According to Customer R the field visit occurred on 25 August 2014 and the payment was made on 26 August 2014.

Supply to Customer R's premises was disconnected on 28 August 2014 (though Customer R maintains their supply was disconnected on 27 August 2014). AGL's contact notes for the account indicate that it had made repeated attempts to call Customer R which were all unsuccessful.

The disconnection occurred during the transition period from version 10a of the Energy Retail Code (the Code) to Version 11 (15 July 2014 to 12 October 2014). During the transitional period, retailers were allowed to comply with the requirements of either version 10a or 11 of the code.

EWOV asked the Essential Services Commission (the Commission) to determine whether the disconnection of Electricity supply to Customer R's premises was wrongful under section 40B of the Electricity Industry Act 2001 (the Act) and, if so, the amount of any payment AGL is required to make to Customer R.

EWOV submitted that the disconnection of supply to Customer R's premises by AGL may have been wrongful as it is unclear whether the disconnection warning notice AGL sent to Customer R was compliant with clause 13.1(c) of version 10a of the Code, or Clauses 110 and 108 of version 11 of the Code.

AGL provided a submission in response to EWOV's request for a Commission decision.

In summary, AGL submitted that:

- The Transitional period was intended to allow retailers time to adjust their processes incrementally. Hence licensees were not required to nominate which version of the Code they would comply exclusively with at any point during this period.
- AGL's use of the term "disconnection notice period" does not indicate their intention to comply with version 11 of the Code exclusively.
- the Commission intended that Clause 110 of version 11 of the Code meet "broadly the same outcomes" as clause 13.1(c) of version 10a.
- the intention of these obligations is that
 - the customer must be made aware that they may be disconnected; and
 - the customer must be made aware that there is a minimum period of time prior to the disconnection occurring that will allow them to resolve the reason for their disconnection

Customer R, through their representative at the Consumer Action Law Centre, submitted a letter, dated 30 January 2017, suggesting amendments to EWOV's chronology. A consolidated chronology appears below.

Chronology

Date according to EWOV	Date according to Customer R	Event	Issues/Comments
5 April 2013		AGL established an electricity account for Customer R	
28 February 2014		a bill was issued in the amount of \$382.89	This amount was never fully repaid by Customer R.
10 April 2014		Customer R made a payment of \$131.64 towards the electricity account	
17 June 2014		a bill was issued in the amount of \$413.96	
14 July 2014		a reminder notice was issued in the amount of \$162.71	
4 August 2014		a disconnection warning notice was issued in the amount of \$413.96	Customer R states that they did not receive this notice
27 August 2014	25 August 2014	AGL completed a field visit and left an urgent notice at the property	
27 August 2014	26 August 2014	Customer R made a payment of \$131.64 towards the electricity account	
28 August 2014	27 August 2014	AGL disconnected Customer R's electricity supply for non-payment. The outstanding balance was \$282.32	

Decision

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

1. In disconnecting the supply of electricity to Ms Ryan's premises, AGL did not breach the terms and conditions of the contract specifying the circumstances in which the supply of electricity to those premises may be disconnected.
2. As a result AGL is not required to pay Customer R a wrongful disconnection payment under section 40B of the Act.

Reasons

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

1. AGL, in its standard form customer contract, to which Customer R was signed, states that in disconnecting a customer it will comply with all relevant obligations under the Regulatory Requirements. Regulatory Requirements is defined to include the Act and the Code.
2. The disconnection occurred during the period when version 10a of the Code was being superseded by version 11 ('the transitional period'). The Commission had decided that it would not consider any disconnection that occurred during the transitional period wrongful as long as the retailer complied with the relevant clauses of either version 10a or version 11 of the Code. The Commission informed EWOV and retail licensees of this arrangement.
3. The disconnection warning notice sent to Customer R contained a statement that complied with the requirements of clause 13.1(c) of version 10a of the code, and a pay-by date which complied with the requirements of clause 13.1(b)(B) of version 10a of the Code.

Interpretation of clause 110 of version 11 of the Code

In this decision, the disconnection is found to have not been wrongful, as the notice provided to Customer R complied with version 10a of the Code. Version 10a has been superseded by version 11. Unlike version 10a of the Code, version 11 contains no requirement for a disconnection warning notice to contain a new "pay by date" separate from the statement setting out the disconnection warning notice.

Disconnection warning notices offer an important protection for customers, particularly those experiencing payment difficulties. The purpose of the disconnection warning notice is to:

- warn customers of possible impending disconnection
- inform customers of the actions they can take to avoid disconnection, including the period of time within which they have to take those actions
- inform customers of available assistance.

To avoid reducing the protections contemplated by the Code, a disconnection warning notice should convey the above information in a clear and unambiguous way to the reasonable customer experiencing financial difficulties. In future matters the Commission will adopt the approach that a disconnection warning notice consistent with the purpose of clause 110, under version 11 of the Code should:

- Contain only one date that indicates by when the customer must pay the outstanding amount to avoid disconnection
- Ensure that the date was prominent and likely to be read by the customer
- As a whole, ensure that the reasonable customer facing financial difficulties would easily understand from the notice what they must do to avoid disconnection.

Dr Ron Ben-David
Chairperson
Date: 8 March 2017