

# Customer K and Simply Energy – decision and reasons

**Application of section 40B of the Electricity Industry Act 2000 –  
Compensation for wrongful disconnection**

9 June 2020

**Commissioners:**

Ms Kate Symons, Chairperson,  
Mr Simon Corden, Commissioner,  
Mr Sitesh Bhojani, Commissioner, and  
Ms Rebecca Billings, Commissioner.

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# The complaint

1. The Energy and Water Ombudsman (Victoria) (the ombudsman) has made a referral for decision to the Essential Services Commission (the commission), regarding a complaint by (*name redacted*) (Customer K).
2. The complaint raises the application of section 40B of the Electricity Industry Act 2000 (Vic) (the Act) to a disconnection by IPower 2 Pty Limited & IPower Pty Limited (collectively trading as Simply Energy) of Customer K's electricity supply at (*address redacted*) (the Clifton Hill premises). The electricity supply to the premises was disconnected from 10:09 am on 5 February 2018 to 11:25 am on 24 April 2018, a period of 78 days, one hour and 16 minutes.
3. Prior to the disconnection, Simply Energy had sent monthly bills to Customer K with pay-on-time discounts. Customer K complained that she was expecting quarterly bills, and had overlooked earlier monthly bills and had missed out on the pay-on-time discounts. Simply Energy made various attempts to make telephone contact to discuss the complaint with Customer K who either hung up on customer service staff, or otherwise did not answer the calls. Simply Energy then arranged for the disconnection of the Clifton Hill premises.
4. Clause 116(1)(b) of the Energy Retail Code prohibits disconnection where a complaint that is related to the reason for the disconnection remains unresolved.
5. On the day of the disconnection, Customer K's husband, (*name redacted*) (Mr B), spoke with Simply Energy about an account for different premises which had also been disconnected. During that call, Simply Energy informed Mr B of the disconnection of the Clifton Hill premises. Simply Energy argued that, because it informed Mr B of the disconnection rather than being notified of it by Mr B, the prescribed amount is capped under section 40B(1A).
6. In the referral, the ombudsman has requested the commission to advise on the following questions in relation to the application of section 40B of the Act to the factual circumstances set out in the referral:
  - (a) Whether Simply Energy met the minimum standard of conduct for compliance with the Energy Retail Code, version 11a (the code);
  - (b) Whether Simply Energy failed to meet the terms and conditions of its contract with Customer K that specifies the circumstances in which the supply of electricity to those premises may be disconnected; and
  - (c) whether the wrongful disconnection payment for the disconnection on 5 February 2018 is capped to \$3,500 under section 40B(1A) of the Act.

## Issues for decision

7. The issues for decision by the commission are whether or not Simply Energy breached a condition of its electricity retail licence regarding an obligation to make a prescribed payment to Customer K in circumstances where:
- (a) Simply Energy disconnected the supply of electricity to the premises of Customer K; and
  - (b) Simply Energy failed to comply with the terms and conditions of the contract specifying the circumstances in which the supply of electricity to those premises may be disconnected.

If so, then under section 40B(3) of the Act, Simply Energy was obliged to make the prescribed payment to Customer K as soon as practicable after the supply of electricity was reconnected to Customer K's premises.

8. In order to make a decision in this case, the commission must consider the following issues:
- (a) At the time that Simply Energy arranged for the disconnection of the electricity supply to Customer K's premises, did Customer K have a complaint with Simply Energy that met the following criteria under clause 116(1)(b) of the code:
    - (i) The complaint was directly related to the proposed reason for disconnection;
    - (ii) The complaint was made to Simply Energy under its standard complaints and dispute resolution procedures; and
    - (iii) The complaint remained unresolved.
  - (b) If so, did Simply Energy resolve Customer K's complaint in accordance with Simply Energy's Standard Complaints and Dispute Resolution Policy, prior to arranging for the disconnection of the electricity supply to Customer K's premises?
  - (c) If not, is compensation payable to Customer K?
  - (d) If so, what is the amount of compensation payable to Customer K in the circumstances of this case, where:
    - (i) Mr B was not a primary account holder; and
    - (ii) Simply Energy informed Mr B of the disconnection rather than being notified by Mr B.

## Relevant facts

9. Based on the information available to the commission, the relevant facts in this case are as follows.

### Circumstances leading to the disconnection

10. On 13 June 2017, Customer K called Simply Energy to enquire about setting up a new electricity account for her premises in Clifton Hill. Customer K completed the sign-up process the same day and confirmed she would like to receive all information concerning the account via email, including bills.
11. On 14 June 2017, Simply Energy established an account to supply electricity to Customer K's Clifton Hill premises, with her husband Mr B nominated as a secondary contact on the account. Simply Energy sent a welcome pack the same day which included the terms and conditions of Customer K's contract with Simply Energy. At that time, Customer K and Mr B also had an existing energy account with Simply Energy for a separate premises in Thornbury (the Thornbury premises).
12. On 17 July 2017, Simply Energy issued a bill to Customer K for \$441.01, or \$298.16 if paid by the due date of 2 August 2017, in relation to the electricity supply to the Clifton Hill premises for the period 14 June to 12 July 2017 (the **first bill**).
13. On 8 August 2017, Simply Energy issued a reminder notice to Customer K regarding an overdue balance of \$441.01.
14. On 17 August 2017, Simply Energy issued a second bill to Customer K for \$1,024.80, or \$832.76 if paid by the due date of 4 September 2017, in relation to the electricity supply to the Clifton Hill premises for the period 13 July to 12 August 2017 (the **second bill**). It included an overdue balance of \$441.01.
15. On 18 August 2017, Simply Energy issued a disconnection notice to Customer K regarding the overdue balance of \$441.01 from the first bill.
16. On 17 September 2017, Simply Energy issued a bill to Customer K for \$1,524.84, or \$1,362.12 if paid by the due date of 4 October 2017, in relation to the electricity supply to the Clifton Hill premises for the period 13 August to 12 September 2017 (the **third bill**). It included an overdue balance of \$1,024.80, being the overdue balance of the second bill.

17. On 19 September 2017, Simply Energy's Debt Management Team called Customer K regarding outstanding amounts on both the Clifton Hill and Thornbury premises accounts. During the call, Customer K was transferred four times, resulting in four conversations.

17.1 During the first conversation:

- (a) Simply Energy informed Customer K that there was an outstanding balance of \$1,524.84 for the Clifton Hill premises and asked the reason for the difficulty in paying the bill. Customer K replied that she "had been terribly busy, I'm sorry".
- (b) Customer K stated she had only been at the Clifton Hill premises for just under three months and asked if Simply Energy had sent her a bill, and if so when was this sent.
- (c) Simply Energy confirmed that bills for the Clifton Hill premises were being sent to Customer K's email on the 17<sup>th</sup> of each month and asked if she had not received her bills. Simply Energy stated that there had been no payment for the three months of electricity bills and that these bills were sent monthly.
- (d) Simply Energy offered to resend the bills and provide an extension on the account, which Customer K accepted.
- (e) Customer K initially advised that she did not think she had received the electricity bills for the Clifton Hill premises; however, she was then able to locate the latest bill dated 17 September 2017 in her emails. Simply Energy confirmed that this bill included the amounts from the previous electricity bills.
- (f) Customer K stated that usually electricity bills are issued quarterly and queried why she was getting bills issued monthly. Simply Energy offered to transfer Customer K to their Customer Care Team to discuss the reason for the monthly billing, as the Debt Management Team did not have access to this information. Customer K agreed to be transferred as she had not been expecting monthly bills and wanted to know the reason why. Simply Energy informed Customer K that she could be transferred back to the Debt Management Team after she had discussed her query regarding the billing frequency, and they could set up a payment arrangement regarding the outstanding balance.

17.2 Customer K was then transferred to Simply Energy's Customer Care Team. During this second conversation:

- (g) Simply Energy informed Customer K that she had a smart meter at the Clifton Hill premises, which is reflected as an interval meter on her electricity bills, and that when she changed her offer in June it initiated a change to monthly billing.

- (h) Simply Energy said that as they were able to access usage readings via smart meters a lot quicker from the distributor, Simply Energy had made a business decision that “for most people, budgeting on a smaller amount monthly, is easier than budgeting on a larger amount quarterly”. Simply Energy acknowledged that this decision worked for some customers and not for others but that as Customer K had a smart meter she would be billed monthly.
- (i) Customer K stated that her bills were quite high, and that the Clifton Hill premises was only a two-bedroom apartment. Simply Energy stated that as the smart meter sends usage readings to the distributor remotely every fifteen to thirty minutes, the readings were correct as there is no human error in the readings.
- (j) Simply Energy advised that they could not compare Customer K’s usage to the previous year as she had not been living in the Clifton Hill premises at that time and that smart meter readings are rarely incorrect. Simply Energy informed Customer K that she could access historical usage data on her account via the Simply Energy smart phone application, and that Customer K would be able to see when she was using the most electricity to help monitor her usage.
- (k) Customer K said she would like to make a partial payment on her bill. Simply Energy asked if Customer K would like to set up a payment plan and offered to transfer her back to the Debt Management Team to arrange this. Customer K agreed to be transferred.

17.3 Customer K was then transferred to Simply Energy’s Debt Management Team. During this third conversation:

- (a) Simply Energy confirmed with Customer K that she wanted to set up a payment arrangement for the outstanding bills and have the bills resent to her email address.
- (b) Simply Energy queried if Customer K had received any reminder or disconnection notices prior to this call. Customer K advised she had not.
- (c) Simply Energy asked why Customer K was not able to pay her bills on time. Customer K stated that she had only been at the Clifton Hill premises two and a half months and had been expecting quarterly bills, and that she had not been told she would be billed monthly so had “not been on the lookout for a monthly bill”.
- (d) Customer K asked why Simply Energy had put her on a monthly billing cycle without letting her know about this. Customer K stated she had never heard of electricity and gas companies sending monthly bills and that normally in Australia they are sent quarterly.

- (e) Simply Energy said that they (Debt Management Team) did not have a way of checking how and why Customer K was being billed monthly. Customer K said that the reason she had not been paying her bills is because Simply Energy had been billing her monthly, and that Simply Energy had not notified her of this and was now expecting her to pay those bills.
- (f) Simply Energy asked Customer K if she was disputing how she was being billed. Customer K said she was not disputing how she was being billed, just that she had not been notified she would be getting billed each month and was not prepared for it. Customer K said that Simply Energy could not ask her why she had not paid her bills when she did not know she was getting billed every month.
- (g) Simply Energy said they would have informed Customer K of the monthly billing cycle when she signed up for an account with them. Customer K said she did not think she had been informed, but if that Simply Energy can prove they did she will happily accept that. Simply Energy told Customer K that she could deal with that query with their Customer Care Team.
- (h) Customer K stated that the previous Simply Energy agent she had spoken with had clearly explained why she was on a monthly billing cycle, which she was happy to accept. However, she considered that Simply Energy could not ask why she had not paid her bills when she was only notified of the monthly billing today.
- (i) Simply Energy offered two payment arrangement options to Customer K, one being a twenty-day extension to pay the outstanding bills. Customer K accepted the twenty-day extension until 17 October 2017 and made a partial payment during the call. Simply Energy said that Customer K may still receive reminder or disconnection notices during the extension period, but said to disregard these and that as long as the payment is made no further action will be taken.
- (j) Customer K queried whether the pay-on-time discounts would be applied to the outstanding bills now that an extension had been given. Simply Energy said the discounts would not be applied, but that once Customer K had paid the bills she could discuss whether the discounts could be applied with Simply Energy's Customer Care Team. Customer K said she would like to discuss this with the Customer Care Team now and requested to be transferred.

17.4 Customer K was then transferred to Simply Energy's Customer Care Team. During this fourth conversation:

- (k) Customer K again explained that she had been at the Clifton Hill premises for two and a half months and not been informed she would be billed monthly when she signed up for a Simply Energy account. Customer K said she was “being ripped off a little bit” as she was not receiving the pay-on-time discount for the bills already issued.
  - (l) Simply Energy again explained that the monthly billing cycle was due to Customer K having a smart meter and that the billing cycle could not be changed. Simply Energy stated that if Customer K had signed up over the phone this information was normally explained in the terms and conditions and was also in the welcome pack.
  - (m) Customer K said that if she had been notified of the monthly billing then she would have “kept an eye out” for the bills, but she had not as she was expecting bills on a quarterly basis. Customer K said she was missing out on the pay-on-time discounts from the previous bills and that the discounts were quite substantial. Simply Energy apologised but said that they could not change the billing cycle.
  - (n) Simply Energy stated that Customer K’s other premises in Thornbury was also on a monthly billing cycle and that these bills had been paid monthly, prior to Customer K signing up for the new account for the Clifton Hill premises. Customer K said she was not aware of this as the bills for the Thornbury premises had been getting sent to her husband’s email.
  - (o) Customer K said she would have to lodge a complaint with the ombudsman as she should receive the full discount on the bills. Simply Energy stated that Customer K would have received some reminder notices in the post. Customer K said she did not.
  - (p) Simply Energy informed Customer K that she had been sent reminder text messages about the bills, at which point Customer K terminated the call.
18. On 20 October 2017, Simply Energy’s Debt Management Team called Customer K as she had not paid the outstanding bills by the extension date of 17 October 2017. During this call:
- (a) Simply Energy stated that it had received a partial payment of \$391.75 and queried why Customer K had not been able to follow the payment plan.
  - (b) Customer K stated that she had spoken to someone following her conversation with Simply Energy about the payment extension, and as she had not been told she would be billed monthly, she is not getting the discount she would have received if she was issued bills quarterly. Customer K said she was waiting for Simply Energy to come back to her with a solution to that issue.

- (c) Simply Energy explained that all Victorian customers with smart meters have changed from quarterly to monthly billing and there was no way to change this. Customer K queried when this came in effect. Simply Energy stated since August 2016.
  - (d) Customer K stated that she had previously been issued bills on a quarterly basis. Simply Energy repeated that they could not change the billing cycle.
  - (e) Simply Energy invited Customer K to call Simply Energy back if she was interested in setting up a payment instalment plan for her electricity account. Customer K said she could make a payment plan but was “very confused” as she had not been receiving any bills. Simply Energy checked the notes on the call of 17 September 2017 and said that Simply Energy had re-sent copies of her bills and asked that Customer K check all folders in her email as the bills may have gone to another folder. Customer K stated that she had not received any bills. Simply Energy agreed to send a copy of the bills that day.
  - (f) Customer K stated that Simply Energy was “not getting my point” and that she had already complained to the ombudsman as she was not getting bills on a regular basis, and it was only when the issue was raised that Simply Energy had informed her she was being billed monthly. Customer K again referred to missing out on the pay-on-time discounts which were “massive”.
  - (g) Simply Energy offered to escalate the call to its Customer Care Team to see if the pay-on-time discounts could be applied. Customer K agreed to be transferred but then terminated the call during the transfer attempt. The Customer Care agent told the Debt Management agent he would call Customer K back. There were no further calls made by Simply Energy to Customer K that day.
19. On 24 and 27 October 2017, Simply Energy made the following notes on Customer K’s account:
- DMGT - AWAITING STATUS CLOSURE - CLEARED.*  
*account id: (redacted)*  
*Elec 04*
- ‘[customer] was transferred to CAT in regards to billing cycle issues’ and ‘no notes from CAT//considered to be an open case for now’.*
20. On 2 November 2017, Simply Energy called Customer K who requested a call back as she “was in the middle of something”. Simply Energy agreed to call Customer K back at 6.30pm that night. However Simply Energy’s notes for this call state “Call back arranged for 03/11/2017 at 6:30 pm”.

21. On 3 November 2018, Simply Energy made the following note on Customer K's account:  
*DMGT PMT Follow-up - OB: Call attempt. Msg Left. Disconnection- RegPost Notice.*
22. On 21 November, Simply Energy made the following notes on Customer K's account:  
*DMGT: Disconnection checklist failed.*  
*Account ID: (redacted)*  
*ELEC 04Customer had a complaint regarding bills frequency. Callw as (sic) transferred to CAT last 20/10/2017. but no notes from CAT on the account. Return account to workflow to restart process and transfer to CAT if needed.*
23. Simply Energy made notes on Customer K's account of follow-up call attempts made on 22, 23, 24 and 27 November 2017. For two of these calls, Simply Energy made notes that Customer K hung up after the Simply Energy agent introduced themselves.
24. Simply Energy made notes on Customer K's account of further follow-up call attempts made on 4, 6 and 8 January 2018. For two of these calls, Simply Energy made notes that it left a message for Customer K.
25. On 24 January 2018, Simply Energy made the following notes on Customer K's account:  
*DMGT - Disconnection checklist passed. DNP SORD to be raised*  
*Account ID: (redacted)*  
*Elec05*

### **Simply Energy arranged for the disconnection**

26. On 25 January 2018, Simply Energy raised a service order for the disconnection of the electricity supply of both the Thornbury and Clifton Hill premises to occur on 5 February 2018. The commission is not fully informed as to the circumstances surrounding the electricity account for the Thornbury premises. That account is not the subject of this decision.
27. However, on 5 February 2018, the electricity supply to Customer K's Clifton Hill premises was disconnected. It appears that the Thornbury premises were also disconnected around this same time.
28. On that same day, Mr B called Simply Energy in relation to the disconnection of the electricity supply to the Thornbury premises. During this call:

- (a) Mr B said he was not sure why the Thornbury premises had been disconnected. Simply Energy informed Mr B the disconnection was due to a number of unpaid bills on this account.
- (b) Simply Energy informed Mr B that the Clifton Hill premises had also been disconnected due to unpaid bills. Mr B said he would only deal with the Thornbury premises that day.
- (c) Mr B made payment to Simply Energy to establish reconnection of the electricity supply to the Thornbury premises, as this was where he and Customer K were residing at the time.
- (d) Mr B did not request to reconnect the Clifton Hill premises.

### **Simply Energy arranged for the reconnection**

- 29. On 24 April 2018, Customer K made a complaint to the ombudsman who registered an investigation.
- 30. On the same day, Simply Energy raised a service order for the reconnection of the electricity supply. The electricity supply to Customer K's Clifton Hill premises was reconnected at 10:09am that day.

## Relevant obligations

31. In this matter, the relevant obligations arise from the Act, Simply Energy's contract with Customer K, Simply Energy's Standard Complaints and Dispute Resolution Procedures and the code.
32. Pursuant to section 21(u) of the Act, the electricity retail licence held by Simply Energy is subject to a condition requiring Simply Energy to submit to the commission for its approval, and if approved, to implement, an investigation and dispute resolution scheme concerning disputes between it and customers about its services billing and charging.
33. The relevant obligations from the Act pertaining to compensation for wrongful disconnection are:
  - (a) Section 40B(1) of the Act provides that it is a condition of an electricity retail licensee's licence that the licensee must make a payment of the prescribed amount to a relevant customer if (a) the licensee disconnects the electricity supply to the premises of that customer and (b) fails to comply with the terms and conditions of its contract specifying the circumstances in which the electricity supply to those premises may be disconnected (the statutory licence condition).
  - (b) Section 40B(1A) of the Act provides that if the relevant customer did not notify the licensee of the disconnection within 14 days after the disconnection, the maximum payment under a condition under subsection (1) is the prescribed capped amount.
  - (c) Section 40B(3) of the Act requires the licensee to make any payment under subsection (1) as soon as practicable after the electricity supply was reconnected to the premises of the relevant customer.
  - (d) Section 40B(5) of the Act provides that the prescribed amount was \$500 for each whole day that the electricity supply was disconnected and a pro rata amount for any part day, and that the prescribed capped amount was \$3,500.
34. The relevant obligations from the contract between Simply Energy and Customer K are:
  - (a) Clause 8:
    - 8. 1 When you could be disconnected**
      - a) Please tell us if you require a disconnection and we will arrange this through your distributor including any necessary meter reading and final bill.

- b) In some circumstances where the law allows, we may ask your distributor to disconnect your premises, including if you don't:
  - i) pay your bill;
  - ii) agree or adhere to a payment plan;
  - ...
- c) If we plan to disconnect you, we will notify you beforehand, unless the disconnection is for illegal use of energy.

## 8.2 Your protections

We will observe all the protections for disconnection you have under the law, for example if:

- a) you are in hardship;
  - b) the amounts you haven't paid are less than any minimum set under the law or relate to something other than energy we have sold you;
  - c) you have raised a relevant complaint with us which is unresolved; [...]
- (b) Clause 14:

### 14.2 Governing law

The *laws* of the State in which your *premises* are located govern the *contract*.

### 14.5 Meaning of terms

*law* means any *law* or regulatory or administrative document.

35. The relevant obligations from Simply Energy's Standard Complaints and Dispute Resolution Procedures are:

- (a) Section titled "Procedures" relevantly provided:

In the event you have a complaint in relation to our products or services you need to follow these steps:

- Contact the Simply Energy Customer Care for any complaint in relation to your electricity or dual fuel account. It is at this point of contact where our representatives will aim to help resolve the complaint. Listed below are available options to lodge your complaint.

Phone: 13 88 08 (Monday to Friday 8.30am-6.30pm EST)

Email: [info@simplyenergy.com.au](mailto:info@simplyenergy.com.au)

Post: [PO Box 210, Balwyn VIC 3103](mailto:info@simplyenergy.com.au)

Fax to 13 88 58

- Simply Energy aims to resolve all written complaints within 5 days of receiving it. We will keep you informed if the resolution goes beyond 5 days and establish with you a new time frame.

Please note that Simply Energy's dispute resolution services are provided free of charge.

Simply Energy's procedures are consistent with the Australian Standard AS ISO I0002-2006 (*Customer satisfaction – Guidelines for complaints handling in organisations*).

- (b) Section titled "Complaint Management" relevantly provided:

If a complaint is not resolved by the end of the first phone call or in writing, we can advise you of the escalations steps available to you should you wish to escalate the matter further.

Simply Energy has established Team Leaders within our Customer Service Centre available to address an escalated complaint. If after speaking to the relevant Team Leader you still remain unsatisfied we will advise you immediately of the next course of action including providing contact details to the Ombudsman.

36. The relevant obligations from the code are:

- (a) Clause 116(1) of the code which relevantly provided:

**Restrictions on de-energisation**

Despite any other provisions of this Division but subject to subclauses (2), (3) and (4), a *retailer* must not arrange for the *de-energisation* of a *customer's* premises to occur:

...

- (b) where the customer has made a complaint, directly related to the reason for the proposed de-energisation, to the retailer under the retailer's standard complaints and dispute resolution procedures, and the complaint remains unresolved;

# Submissions

## The ombudsman's submissions

37. The ombudsman's referral set out a chronology of events that led to the disconnection of the electricity supply to Customer K's premises, and included information and documents to which it considered the commission should have regard in making its decision.

## The ombudsman made submissions regarding Simply Energy's compliance with the code

38. The ombudsman acknowledged that Simply Energy demonstrated compliance with clauses 111(1)(c), 111(1)(d) and 111(1)(e) of the code, which require a retailer to give a customer a reminder notice, a disconnection warning notice, and use its best endeavours to contact the customer prior to arranging disconnection for not paying a bill. The commission acknowledges that compliance with these clauses is not in dispute.
39. The ombudsman expressed the view that the complaint raised by Customer K with Simply Energy in their phone conversation of 19 September 2017 was directly related to the reason for disconnection, and that Simply Energy did not conduct an investigation into the complaint, nor did it resolve the complaint prior to arranging disconnection. The ombudsman therefore considered that Simply Energy may have failed to comply with its obligations under clause 116(1)(b) of the code.

## The ombudsman made submissions about the calculation of a prescribed amount

40. The ombudsman submitted that Mr B contacted Simply Energy on the day of the disconnection of two separate premises that Customer K held electricity accounts for, in Thornbury and Clifton Hill respectively. However, the ombudsman submitted that Mr B only notified Simply Energy of the disconnection of the Thornbury premises, which was not subject to the ombudsman's referral. The ombudsman submitted that when Simply Energy informed Mr B that there were also unpaid bills on the Clifton Hill premises he replied, "has that power been disconnected too?". The ombudsman considered that as the Act does not specify a method of notifying the retailer of the disconnection, it was unclear whether the amount of any wrongful disconnection payment should be capped at the prescribed capped amount under section 40B(1A) of the Act in this instance.

## **Customer K's submissions**

41. The ombudsman's referral included Customer K's statement about the matter. Customer K stated that:
  - (a) Customer K was dissatisfied with Simply Energy in relation to the actual disconnection and higher than expected bills.
  - (b) Customer K occupied the premises between June and October 2017 and was disputing the bills up to 12 September 2017 (due 4 October 2017).
  - (c) Customer K was unaware that Simply Energy had changed her billing cycle to monthly. Simply Energy advised Customer K she was entitled to a 40 percent discount from September 2017, but that this discount would not be backdated.
  - (d) Sometime in February or March 2018, Customer K's electricity supply was disconnected after receiving a disconnection warning notice.
  - (e) Customer K paid approximately \$300 to \$400 towards the account since September 2017, with the last payment made on 4 April 2018 for \$90.70.
42. The commission further invited Customer K to provide any information and documents to which she considered the commission should have regard in making its decision. Customer K did not make any submissions for the commission's consideration.

## **Simply Energy's submissions**

43. The commission invited Simply Energy to provide any information and documents to which it considered the commission should have regard in relation to the referral. Simply Energy provided further information and made the following submissions for the commission's consideration:

### **Simply Energy made submissions about its compliance with the code**

44. In relation to clause 116(1)(b) of the code, Simply Energy submitted that Customer K "did not have a formal complaint opened under Simply Energy's standard complaints and dispute resolution procedures at [the] time of de-energisation". Further, that "Simply Energy's dispute resolution policy requires its customers to speak to a Team Leader or one of our Customer Advocates in a specialised customer relations area for a complaint to be formally recorded and reviewed".
45. Simply Energy disagreed with the ombudsman's view that Customer K notified Simply Energy of her dispute during their phone conversation on 19 September 2017. Simply

Energy submitted that Customer K “confirmed that she was not disputing how she was being billed” and “accepted that she was being billed monthly and confirmed that she was clearly advised as to how her meter works going forward”.

46. Simply Energy accepted that Customer K had expressed concerns about missing out on pay-on-time discounts as she was not expecting monthly bills and had therefore not checked her emails for these bills. However, Simply Energy contended that Customer K confirmed her acceptance to pay the bills in full via a payment extension, and that she was informed she could call back once the bills were paid to request that the pay-on-time discounts be applied.
47. Simply Energy stated that Customer K terminated the call on 19 September 2017 because Simply Energy had denied her request to have the pay-on-time discounts applied as at the time of the call the bills had not been paid on time and remained unpaid, and that Customer K was not happy with Simply Energy’s explanation of this.
48. Simply Energy maintained that Customer K did not lodge, or request to lodge a complaint with a Team Leader or one of its Customer Advocates. As Customer K had indicated in her phone conversations with Simply Energy that she would make, or had made a complaint to the ombudsman, Simply Energy stated that it had taken a “conservative approach by noting on the account that there may be a dispute in anticipation however, the complaint never came into fruition”.
49. Simply Energy submitted that at the time it arranged for disconnection for non-payment, Customer K had not raised a formal complaint via the ombudsman, or with Simply Energy under its Standard Complaints and Dispute Resolution Policy. Simply Energy therefore maintained that it had complied with clause 116(1)(b) of the code.

### **Simply energy made submissions about the calculation of a prescribed amount**

50. Simply Energy submitted that if the commission determines that Simply Energy breached its obligations under clause 116(1)(b) of the code, that any wrongful disconnection payment should be limited to the prescribed capped amount of \$3,500 under section 40B(1A) of the Act.
51. Simply Energy submitted that:

the prescribed requirement set out in this Act is not merely based on whether the customer has made “contact” with a retailer for the cap on wrongful De-energisation to be removed. The Act imposes a duty on the customer to notify the retailer within 14 days after De-energisation that the De-energisation has occurred. The Act exists to place an incentive on customers to contact their retailers as soon as possible so that reconnection

of supply can be facilitated, whilst being fair in that the period is enough to allow for customers to make necessary arrangements if they need support in making that contact.

52. Simply Energy submitted that the phone call made by Mr B to Simply Energy on 5 February 2018 was regarding the disconnection of a separate premises in Thornbury, and not the Clifton Hill premises subject to the ombudsman's referral.
53. Simply Energy maintained that neither Mr B or Customer K notified Simply Energy of the disconnection of the Clifton Hill premises, nor did they request this premises be reconnected, therefore any maximum payment applicable should be the prescribed capped amount.

## Decision

54. The commission has had regard to the submissions made by the ombudsman, Customer K and Simply Energy.
55. The commission finds that Simply Energy disconnected the electricity supply to Customer K's premises at 10:09am on 5 February 2018.
56. Simply Energy was required to comply with the code as a condition of its contract with Customer K.
57. Simply Energy arranged for the disconnection of the electricity supply to Customer K's premises in circumstances where Customer K had made a complaint directly related to the reason for the proposed disconnection, under Simply Energy's standard complaints and dispute resolution procedures, and the complaint remained unresolved.
58. Simply Energy accordingly failed to comply with clause 116(1)(b) of the code.
59. Simply Energy therefore failed to comply with the terms and conditions of the contract with Customer K that specified the circumstances in which the supply of electricity to those premises may be disconnected.
60. Mr B was a secondary contact on Customer K's electricity account and his account permissions did not include making requests for services orders to establish connection, disconnection, or reconnection. In the commission's view, Mr B was not the relevant customer for the purpose of section 40B(1A) of the Act. Accordingly, the telephone discussion between Simply Energy and Mr B on 5 February 2018 does not satisfy the notification requirement. Therefore, the prescribed amount is capped under section 40B(1A) of the Act.
61. Accordingly, Simply Energy is required to make a payment of the prescribed capped amount of \$3,500 to Customer K under the statutory licence condition in relation to the wrongful disconnection of the electricity supply to Customer K's premises.

# Reasons

## **Simply Energy was required to comply with the code**

62. Simply Energy's contract with Customer K included terms and conditions which specified the circumstances in which the supply of electricity to her premises may be disconnected. As set out at paragraph 34 above, the contract provided in clause 8.2(c), that "We will observe all the protections for disconnection you have under the law, for example if ... you have raised a relevant complaint with us which is unresolved". The contract defined "law" to mean "any law or regulatory or administrative document". The applicable law, in Victoria, is the Act, and the Energy Retail Code is a regulatory or administrative document that Simply Energy is required to comply with.
63. The commission considers that Simply Energy was required to comply with the provisions of the code specifying the circumstances in which the supply of electricity to Customer K's premises could be disconnected as a condition of its contract with Customer K.

## **Simply Energy failed to comply with clause 116(1)(b) of the code**

64. Clause 116(1)(b) of the code prevents a retailer from arranging the disconnection of a customer's premises in circumstances where the customer has made a complaint directly related to the reason for the proposed disconnection, under the retailer's standard complaints and dispute resolution procedures, and the complaint remains unresolved.
65. It was clear from the conversation between Customer K and each of Simply Energy's agents on 19 September 2017, that Customer K considered that she had unfairly missed out on her pay-on-time discounts because she had not been informed that she would be billed monthly, and as result had not looked out for her bills and ensured they were paid on time.
66. While Customer K did agree to pay the total outstanding amount by the extended due date in her third conversation with Simply Energy, she continued to express concerns about missing her pay-on-time discounts and was transferred back to Simply Energy's Customer Care Team to try to resolve that issue. During the fourth conversation, Customer K told Simply Energy she would have to lodge a complaint with the ombudsman as she should receive the full pay-on-time discounts on her bills. The fourth conversation was terminated by Customer K; however it could not be inferred that the conversation ended with Customer K accepting that she had been billed correctly and was not entitled to her pay-on-time discounts.
67. In the conversation between Customer K and Simply Energy's Debt Management Team on 20 October 2017, Customer K said that the reason she had not paid the total outstanding

amount was that she had spoken with another Simply Energy agent after arranging the payment extension and had been expecting Simply Energy to get back to her about missing her pay-on-time discounts. During this conversation, Customer K stated she had already complained to the ombudsman, at which point a transfer to Simply Energy's Customer Care Team was attempted to escalate Customer K's complaint.

68. Simply Energy arranged for the disconnection of the electricity supply to Customer K's premises due to non-payment of bills.
69. The commission considers that the fourth conversation on 19 September 2017 and the conversation on 20 October 2017 each concern a complaint directly related to the reason for the proposed disconnection. Customer K declined to pay outstanding bills on the basis that she considered she was entitled to pay-on-time discounts.
70. Simply Energy's Standard Complaints and Dispute Resolution Procedures (the **complaint procedures**) set out the steps that customers need to follow to make a complaint. The complaint procedures stated, in part, "Contact the Simply Energy Customer Care for any complaint in relation to your electricity or dual fuel account" and then provided the available methods to make a complaint as phone, email, post and fax. The complaint procedures did not require a customer to 'speak to a Team Leader or one of our Customer Advocates in a specialised customer relations area for a complaint to be formally recorded and reviewed'. There is no substance to Simply Energy's submissions to the contrary. The contemporaneous record made on 24 and/or 27 October 2017 confirm that "[customer] was transferred to CAT in regards to billing cycle issues' and this was 'considered to be an open case for now' (see paragraph 19 above).
71. Customer K's complaint on 19 September 2017 was made to Simply Energy's Customer Care Team during a telephone call initiated by Simply Energy. The commission considers that Customer K's complaint was made under Simply Energy's Standard Complaints and Dispute Resolution Procedures.
72. Simply Energy's Complaint procedures also stated, in part, that "If a complaint is not resolved by the end of the first phone call or in writing, we can advise you of the escalations steps available to you should you wish to escalate the matter further". These escalation steps included speaking with a Simply Energy Team Leader, as discussed in Simply Energy's submissions, and if the complaint was still not resolved to the customers satisfaction, further options would be provided, including contacting the ombudsman.
73. It is clear from the fourth conversation on 19 September 2017, that Customer K intended to escalate her complaint as she stated she would have to raise the matter with the ombudsman. At no point during this conversation did Simply Energy's Customer Care Team

inform Customer K of the escalation options available to her as set out in Simply Energy's complaint's procedures, that is, by referring her to a Team Leader.

74. The commission considers that Simply Energy did not deal with Customer K's complaint in accordance with its standard complaint and dispute resolution procedures. The complaint remained unresolved at the time that Simply Energy arranged for the disconnection.

### **Calculation of prescribed payment amount**

75. Simply Energy submitted that the amount of any wrongful disconnection payment should be limited to the prescribed capped amount because Simply Energy was not notified of the disconnection of the Clifton Hill premises, nor was reconnection requested, within 14 days after the disconnection.
76. Section 40B(1A) provides that if the relevant customer does not notify a retailer of the disconnection within 14 days after the disconnection, the maximum payment is the prescribed capped amount.
77. The term relevant customer is defined in section 40B(5) as having the same meaning as in section 36 of the Act. Section 36(6) provides that relevant customer means a person or class of persons to whom an order in council under section 36(3) applies.
78. Under the relevant Order in Council, the term 'relevant customer' is defined in clause 4 as the person who purchases electricity principally for personal, household or domestic use.
79. The energy retail contract for the premises identifies only Customer K as the customer. However, as noted, Mr B was listed as a secondary contact for the account.
80. The commission requested that Simply Energy provide further information regarding the level of authorisation, and associated permissions, that Mr B held in respect to Customer K's electricity account. Simply Energy confirmed that Mr B was a secondary contact on Customer K's account and provided a list of associated permissions, which did not include the making of requests for service orders.
81. Simply Energy also provided the following statement: "Mr B being a secondary contact, raised a reconnection request for service address (*address redacted*), Thornbury, and made payment towards the account which Simply Energy accepted. Simply Energy informed Mr B that supply was also off for service address (*address redacted*), Clifton Hill, therefore, Mr B also could have requested Simply Energy to reconnect supply to service address (*address redacted*), Clifton Hill and agreed to some form of payment arrangement if desired."
82. However, a reconnection occurs by way of a service order from the retailer to a distributor. A request from a customer that triggers a service order by a retailer to a distributor is therefore

required to establish the connection, disconnection, or reconnection of an energy supply to a premises. Therefore, the commission's view is that Mr B did not have the relevant permission, in his capacity as a secondary account holder, to notify Simply Energy of the disconnection of the Clifton Hill premises. Accordingly, the commission considers that Mr B was not the relevant customer for the purpose of section 40B(1A) of the Act.

83. Customer K did not notify Simply Energy of the disconnection within 14 days after the disconnection. The commission therefore considers that the payment is subject to the prescribed capped amount under section 40B(1A) of the Act.

## Enforcement

84. On the basis of the information available, the commission considers that Simply Energy was in breach of a condition of its electricity retail licence under 40B(1) of the Act and was required to make a payment of the prescribed capped amount of \$3,500 to Customer K as soon as practicable after the reconnection of the electricity supply to Customer K's premises on 24 April 2018.
85. There is no information available to the commission to confirm that Simply Energy has made this payment. Simply Energy may therefore have breached a condition of its electricity retail licence by failing to make the payment to Customer K as soon as practicable after the reconnection.
86. Simply Energy should rectify the breach by making the payment and advise the commission in writing when the payment has been made.
87. If Simply Energy is unable to make payment, it should inform the commission in writing within five business days of receipt of this decision and reasons.
88. If the payment is not made within five business days of Simply Energy receiving this decision and reasons, the commission may take enforcement action against Simply Energy under Part 7 of the Essential Services Commission Act 2001 (Vic) in relation to a breach of section 40B(1) of the Act.

## Other observations

89. This is the second disconnection referral in a short period of time where the commission has had cause to consider the approach adopted by retailers where a customer has made a complaint and subsequently fails to actively engage in the complaints process. The commission recognises the challenges presented to retailers by those circumstances.
90. In those circumstances, retailers should resolve complaints in good faith on the basis of the materials available to them whilst adhering to their standard complaints and dispute resolution procedures.
91. The commission notes that Simply Energy had two levels of additional contacts that could be added to a customer's energy account. The first level being a signatory, giving another person the equal right to manage the customer's account. The second level being a secondary contact, giving another person the right to access the customer's account information only. Consequently, secondary contacts on Simply Energy customer accounts would not be permitted to make changes to the account, including requests for service orders to establish the connection, disconnection, or reconnection of an energy supply.
92. The commission has made its decision on the particular facts of this matter and has not set a broader policy that a secondary contact to an energy account should never have permission to make a request for a service order to establish reconnection or disconnection of supply to a premises.
93. The commission acknowledges that the scope of the permissions granted to a person who is not the primary account holder is a matter for each retailer and there are differing practices across retailers. There may be good reason why a retailer is required to consider the practical application of its permissions to make a service order request in the context of a particular circumstance of a customer's account, including where the primary or secondary account holder may be experiencing issues relating to family violence. The commission encourages retailers to have regard to the particulars of the account, its permissions and the surrounding circumstances when faced with an issue relating to a service order for reconnection or disconnection of supply to a premises.