

Customer S and Origin Energy - decision and reasons

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

10 June 2020

Commissioners:

Ms Kate Symons, Chairperson

Mr Simon Corden, Commissioner

Mr Sitesh Bhojani, Commissioner

Ms Rebecca Billings, Commissioner

An appropriate citation for this paper is:

Essential Services Commission 2020, Customer S and Origin Energy - decision and reasons: Application of section 40B of the Electricity Industry Act 2000 – compensation for wrongful disconnection, 10 June 2020

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C/20/7104

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Referral from the ombudsman

1. On 17 February 2020, the Energy and Water Ombudsman (Victoria) referred this matter to the commission, which arises from a complaint made by a small business customer, Customer S.
2. The referral concerns the application of section 40B of the Electricity Industry Act 2000 to a disconnection by Origin Energy Electricity Limited (ABN 33 071 052 287) of Customer S's electricity supply at the premises.
3. Customer S's electricity was disconnected by Origin as a result of non-payment of bills following a meter reading dispute.
4. The electricity supply to the premises was disconnected from 10:28am on 24 June 2019 to 12:45pm on 24 June 2019 - a period of 2 hours and 17 minutes.

Issues for decision

5. The first issue for decision by the commission is whether or not the disconnection warning notice issued by Origin to Customer S (as a small business customer) on 27 February 2019 complied with the requirement under clause 110(2)(g) of the Energy Retail Code (Version 12) to “include details of the telephone number of the retailer for payment assistance enquiries”.
6. If the commission finds that the disconnection warning notice complied with those requirements, the disconnection was not wrongful and no further issues arise.
7. If the commission finds that the disconnection warning notice was not compliant, the second issue that then arises is whether Origin has a statutory condition of its electricity retail licence imposing an obligation to make a prescribed payment to Customer S in circumstances where:
 - (a) Origin disconnected the supply of electricity to the premises of Customer S; and
 - (b) Origin 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, Origin was obliged to make the prescribed payment to Customer S as soon as practicable after the supply of electricity was reconnected to the premises.

Relevant facts

8. The commission analysed the ombudsman's request for a decision and sought additional submissions from Customer S and Origin. Having assessed the matter and the submissions, the commission makes the factual findings set out below.

Circumstances leading to the disconnection

9. At all relevant times, Origin was the licensee responsible for the supply of electricity to the premises. Customer S, a small business customer, held an account at the premises according to the relevant contracts with Origin discussed below.
10. On 5 October 2017, Origin established a "BusinessSaver electricity" account for Customer S at the premises. This was a 12-month contract.
11. On 9 October 2018, Customer S contacted Origin to dispute his most recent bill that was issued on 16 August 2018 for \$659.09, which he claimed was higher than usual. As a result, and following further discussion, Origin arranged for meter validation checks to occur.
12. On 14 November 2018, Customer S contacted Origin where he was advised that the meter validation checks had been completed and were accurate. Customer S did not accept these findings and maintained that there was an error with his meter and refused to pay the outstanding bill.
13. However, on the same day, Customer S re-contracted with Origin for a further twelve months, this time on a "Business Bill Saver electricity" agreement.
14. On 19 November 2018, Origin issued a bill to Customer S for \$1,117.65 (of which \$659.09 was now overdue) which triggered the disconnection process. The due date for payment on the bill was 3 December 2018.
15. On 6 December 2018, Origin issued a reminder notice to Customer S for \$1,117.65. The due date for payment on the notice was 17 December 2018.
16. On 21 February 2019, Origin contacted Customer S by phone to discuss his outstanding bill. Customer S continued to maintain that his meters were faulty. As a result, Origin arranged for a second meter inspection to occur. Origin advised Customer S that if the meter was found to be operating correctly, then his bill would be payable.
17. On 27 February 2019, Origin issued a disconnection warning notice to Customer S for \$1,117.65. The due date for payment on the notice was 8 March 2019. It is this disconnection warning notice that the ombudsman has raised concerns about with the commission.

18. On 4 March 2019, Jemena (the distributor) conducted meter testing at the premises and confirmed that it was working properly. Origin was notified of these results on 13 March 2019.
19. Also on 13 March 2019, Origin attempted to contact Customer S to inform him of this, but he did not answer. A text message was sent instead.
20. On 26 March 2019, Origin sent an email to Customer S advising him of the second meter testing results.
21. Up until the point of disconnection, Origin had communicated extensively with Customer S about his overdue bills and the imminent disconnection of his electricity, including by emails, text messages and phone calls.
22. Between 8 November 2018 and 17 June 2019, at least 26 text messages, 11 phone calls and 3 emails were made or sent to Customer S to either remind him of the outstanding bill amount or attempt to resolve the dispute about the meter. These communications are not the subject of the ombudsman's concerns, and in light of their limited relevance, have not been set out in detail.

Disconnection of electricity supply to the premises

23. At 10:28am on 24 June 2019, the electricity supply to the premises was disconnected for non-payment.
24. At 12:45pm on the same day, the electricity supply to the premises was reconnected following a complaint by Customer S to the ombudsman.
25. The supply of electricity to the premises was disconnected for a period of 2 hours and 17 minutes.
26. As at the date of this decision, Origin has not made any wrongful disconnection payment to Customer S.
27. Since first raising the bill dispute in October 2018, Customer S has paid \$300 towards his account. As at the date of Origin's submissions to the commission (17 April 2020), the outstanding amount for electricity at the premises is \$2,662.59.

Relevant obligations

28. In this matter, Origin's relevant obligations arise from the following:

(a) The Act:

- (i) Section 40B(1) of the Act which includes a condition into Origin's electricity retail licence an obligation to make a payment of the prescribed amount to a customer if Origin fails 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; and
- (ii) Sections 40B(3) and (5) which require payment of the prescribed amount as soon as practicable after the supply of electricity is reconnected. The prescribed amount is currently \$500 for each full day, and a pro rata amount for each part of a day, that the supply of electricity is disconnected.

(b) Origin's electricity retail licence:

- (i) Clause 7.1 of the licence which requires Origin to ensure its contracts for the sale of electricity expressly deal with each matter which is the subject of a term or condition of the code.
- (ii) Clause 7.3 which requires each term or condition of Origin's contracts for the sale of electricity to be consistent with each term and condition of the Code.
- (iii) Clause 7.4 which requires Origin to comply with the terms and conditions of any contract for the sale of electricity with a relevant customer
- (iv) Clause 14.1(b)(5) which requires Origin to comply with all applicable provisions of the Energy Retail Code.

(c) Origin's contract with Customer S, which contains the following terms and conditions:

- (i) Clause 10 which states that "You must pay your bill in full by the Due Date or make payments in accordance with your payment schedule or instalment plan".
- (ii) Clause 10 which states that "If you don't pay by the Due Date (unless you've requested a review of the bill) we may do one or more of the following:
 - apply any security deposit;
 - disconnect your energy supply;
 - ask a debt collection agency to obtain the payment from you;

- sell the rights to the unpaid amount to a third party who may seek to collect it from you”.
 - (i) Clause 15 which states that “If you have given us up to date contact details. we'll give you notice before we disconnect you. If you're a Small Customer, we'll also follow any procedures set out in the Regulatory Requirements”.¹
 - (ii) Clause 15 which states “We may arrange for disconnection of your energy supply in the following circumstances, unless we're prohibited from doing so under the Regulatory Requirements:
 - if you're a Small Customer and you fail to pay Charges or other amounts on your bill related to the sale of energy by the Due Date;
 - if you're an Other Customer and you fail to pay any Charges or other amounts on your bill by the Due Date.”
 - (iii) Clause 24 which states that “If any matter that is required to be included in this Agreement by a Regulatory Requirement is not expressly dealt with in this Agreement, the Regulatory Requirement is incorporated as if it were a term of this Agreement. If there is any inconsistency between this Agreement and a Regulatory Requirement, then this Agreement will prevail to the extent of the inconsistency, unless a Regulatory Requirement provides that it must prevail.
- (d) The Code:
- (i) Part 6 deals with and specifies the circumstances in which the supply of electricity to premises may be disconnected. In particular, the retailer must not arrange for the disconnection of a customer’s premises except in accordance with clauses 111 to 118.
 - (ii) Clause 111 of the Code sets out the conditions under which a small customer who is not a residential customer may be disconnected for failure to pay a bill or to adhere to a payment plan, which includes the requirement to have issued a disconnection warning notice after the expiry of the period referred to in the reminder notice.
 - (iii) Clause 110(2) of the Code sets out the particulars that must be included in a disconnection warning notice. Clause 110(2)(g) requires the disconnection

¹ “Regulatory Requirements” is defined in the customer contract as meaning “all relevant Acts, regulations, codes, procedures, other statutory instruments, licences, proclamations and laws applicable to the sale end supply of energy to your Supply Address. These include the Competition and Consumer Act 2010 (Cth) and the Privacy Act 1988 (Cth) and in Victoria, the Electricity Industry Act 2000 (Vic), the Gas Industry Act 2001 (Vic) and the Energy Retail Code”.

warning notice to “include details of the telephone number of the retailer for payment assistance enquiries”.

Submissions

The ombudsman's submissions

29. Through its formal letter of referral and the accompanying memorandum, the ombudsman acknowledged that Origin had complied with its requirements under clauses 109, 116(1)(b) and 111(1)(a)-(e) of the Code with respect to the disconnection and its investigation of Customer S's concerns about the meter readings. Given these acknowledgements, the commission has not further investigated these issues.
30. However, the ombudsman raised concerns that the disconnection warning notice issued to Customer S on 27 February 2019 did not comply with clause 110(2)(g) of the Code.
31. The ombudsman acknowledged that the disconnection warning notice included contact details to enable Customer S to discuss what help Origin could provide to stay connected, as well as contact details for questions and complaints. However, the ombudsman considered this to be insufficient for the purposes of clause 110(2)(g) as the notice did not clearly include a telephone number of the retailer for payment assistance enquiries, nor did the notice express that a customer could ask for payment assistance.
32. The ombudsman highlighted that Origin's disconnection warning notice for residential customers (as distinct from warning notices to business customers) contains an additional paragraph that advises the customer that they are entitled to payment assistance options, as well as providing home energy advice, connecting the customer with independent financial counselling and information about government concessions and grants.

Origin's submissions

33. On 20 March 2020, Origin was invited to provide submissions and any information and documents it considered the commission should have regard in making its decision. On 17 April 2020, Origin provided its written submissions for the commission's consideration about the matter.
34. Origin did not dispute the timeline of events as presented by the ombudsman in their referral, however provided additional details it considered relevant for the commission's assessment of the matter.
35. Origin confirmed that Customer S was not a residential customer, having signed up to a "Business Bill Saver agreement" on 14 November 2018, which included Customer S providing an ABN.

36. With respect to Clause 110(2)(g) of the Code, Origin agreed that a disconnection warning notice must contain “details of the telephone number of the retailer for payment assistance enquiries”. However, Origin noted that there are no payment assistance obligations on retailers under Part 3 of the Code for small business customers (or in any other part of the Code), and no customer entitlements in this regard. Origin submitted that the reading of clause 110(2)(g) should therefore be interpreted as including details of the telephone number of the retailer for “guidance in relation to how to pay an amount owing”, rather than expressly stating “payment assistance enquiries”, as that may be misleading to small business customers.
37. Origin also drew attention to assistance messages and phone numbers that were contained in the disconnection warning notice. These are as follows:
- (a) Under the heading “NEED TO GET IN TOUCH? FIND OUT MORE” on the front page, Origin include the text “Enquiries & moving address 1300 661 544”;
 - (b) Under the heading “HOW TO PAY” in the front-page payment panel, under:
 - (i) “DIRECT DEBIT”, Origin include the phone number 1300 661 544, and
 - (ii) “VISA OR MASTERCARD”, Origin include the phone number 1300 658 783
 - (c) Under the heading “NEED TO GET IN TOUCH?” in the back-page panel, Origin include under the sub-heading “Contact us” the text “We're happy to help - any questions or complaints” and include the phone number 1300 661 544;
 - (d) In the letter text, under the sub-heading “We're here to help”, Origin include the text “Get in touch with us to talk about what we can do to help you stay connected - You can reach us on 1300 661 544”.
38. Origin clarified with the commission that the phone number provided in the disconnection warning notice (1300 661 544) was Origin’s contact number for small business customers which led to agents who dealt with “sales, moves and general enquiries including for payment assistance”.
39. Origin also added that they will consider providing payment assistance to small business customers on a case-by-case basis, which is above and beyond the regulatory requirements and not something they are required to do. Origin said that in Customer S’s case, however, he was simply refusing to pay bills and that payment assistance was not requested, nor required in the circumstances.
40. Origin submitted that for the above reasons, the disconnection warning notice was compliant with clause 110(2)(g).

Customer submissions

41. In the referral from the ombudsman, a brief customer statement was provided from Customer S. In the statement, Customer S stated that the bill issued to him on 16 August 2018 was high and despite the meter at the premises being tested and found to be operating properly, he believed the charges were still incorrect.
42. On 20 March 2020, Customer S was invited to provide any information and documents to which it considered the commission should have regard in making its decision. No response was received from Customer S.

Decision

43. The disconnection warning notice issued on 27 February 2019 to Customer S complied with clause 110(2)(g) of the Code.
44. Origin is not in breach of the condition which is deemed into its electricity retail licence by section 40B of the Act.
45. There was no failure on the part of Origin to comply with the terms and conditions of the contract between Origin and Customer S that specified the circumstances in which the supply of electricity to the premises may be disconnected.
46. The supply of electricity to Customer S's premises was not wrongfully disconnected.

Reasons

47. As raised by Origin in their submissions, the payment assistance obligations under the Code do not apply to small business customers. Because Customer S was a small business customer at the premises in question, the requirements of clause 110(2)(g) to “include details of the telephone number of the retailer for payment assistance enquiries” in the disconnection warning notice do not require reference to the payment difficulties framework in Part 3 of the Code.
48. For these reasons, the commission finds that Origin’s disconnection warning notice issued on 27 February 2019 to Customer S complied with clause 110(2)(g) of the Code and therefore, the question as to whether Origin failed to comply with the terms and conditions of the contract with Customer S does not arise.
49. Further to this, Origin stated that they may provide payment assistance to small business customers on a case-by-case basis, which is beyond what is currently required by the Code. Customers can do this by contacting Origin’s dedicated phone number for small business customers (1300 661 544), which is listed seven times within the disconnection warning notice, including under headings about needing to get in touch, seeking help to stay connected and for general customer enquiries.

Other observations

50. The commission expects that for a retailer to comply with clause 110(2)(g) of the Code, disconnection warning notices issued to residential customers should explicitly detail a telephone number and accompanying text that explains how the number can be contacted for payment assistance enquiries.
51. For completeness, the commission confirmed with the distributor that testing to the meter at the premises was conducted on 4 March 2019. This testing showed that the meter was operating within the required Australian standards.