



Wrongful Disconnection Payment Dispute

Simply Energy and The Complainant

November 2010

Statement of Reasons

Introduction

The Compliance Policy Statement for Victorian Energy Businesses (Compliance Policy Statement) provides for the Energy and Water Ombudsman Victoria (EWOV) or a retailer to seek advice from the Essential Services Commission (the Commission) regarding the interpretation of the terms and conditions of a retailer's contract for supply. In addition, EWOV can refer an unresolved dispute for a wrongful disconnection payment to the Commission for a formal decision.

In accordance with clause 3.3.1 of the Compliance Policy Statement, EWOV has referred this case of alleged wrongful disconnection to the Commission for a formal decision. Both The Complainant and Simply Energy were offered the opportunity to provide information directly to the Commission, but did not do so.

Background

The Complainant established both electricity and gas accounts with Simply Energy (SE) in early 2007 at a new address, after being a SE customer at a previous address.

The Complainant stated that another retailer made contact in mid 2007 advising that the Complainant was a customer of that retailer. SE was contacted and confirmed the SE customer status, but stated that there were some questions regarding the metering configuration at the premises and possible errors in establishing the accounts. SE advised that an investigation was on-going. The Complainant asked for a written report on the investigation.

Electricity and gas bills were received for the property in May 2007, but no further advice of the investigation. The Complainant contacted SE in May 2009 and asked for a \$50 per fortnight payment plan. According to the Complainant, SE indicated that it still had concerns about the metering, the account and was still being investigated and any reminder notices should be ignored.

The Complainant stated that all contact to SE was self-initiated and that, in subsequent phone calls, SE denied any knowledge of the previous phone call. The Complainant stated that a payment plan had not been agreed to with SE. On-going bills, reminder notices and disconnection notices were ignored on the basis of SE's on-going investigation of the status of the metering at the property.

SE confirmed that The Complainant was issued with a gas bill in April 2007. There was a delay in issuing the electricity bills because there were two National Metering Identifiers (NMIs) registered in the national database (MSATS). According to SE, The Complainant was contacted in late August 2007 and confirmed the correct NMI. It also found that there was a similar address on site and the NMIs had been confused (SE had been calculating the debt based on the wrong NMI). It resolved the matter with the other retailer.

The Complainant was first billed on 1 May 2008 for electricity (15 months after establishing the account). SE confirmed that the Complainant contacted it on 26 May to establish a payment plan and, in its view, a plan of \$35f/n for electricity and \$50f/n for gas was agreed to. SE stated that it advised The Complainant that the accounts would have to be paid in full if payments were missed. SE stated that it provided information on free financial counselling and energy efficiency advice during this telephone call.

The Complainant did not make the payments and the plans were cancelled on 18 June 2008. SE provided details of the number of times it attempted to contact The Complainant from January 2009, culminating in the disconnection from both electricity and gas supply on 8 July 2009.

The Complainant contacted SE on 10 July, after advice that the \$1736 electricity debt and \$1943 gas debt was required to be paid in full. SE was advised that this was not affordable and EWOV was subsequently contacted.

Regulatory Compliance Issues

The case to the Commission for a decision based on Simply Energy's non-compliance with the following Energy Retail Code requirements.

- Clause 13.1 - disconnecting for non-payment of accounts under the first instalment plan
- Clause 11.2 (1) and (3) and clause 12.2 - not demonstrating how capacity to pay was taken into account when determining the first instalment plan and not offering a comprehensive second instalment plan.
- Clause 11.2 (4) - not providing telephone advice regarding the availability of a financial counsellor, Utility Relief Grants or a financial counsellor.

SE did not consider that it breached the relevant obligations for reasons set out below.

Disconnection for non-payment of account under the first instalment plan

SE acknowledged that The Complainant was disconnected after failing one instalment plan, but claimed that it could not offer a second instalment plan as there was no response to any contacts from January 2009 until the disconnections.

The call centre notes and information provided confirmed that SE made a number of phone calls and sent many SMS messages to The Complainant between early January and mid June 2009 without response. On 11 June 2009, SE sent a registered letter to in which it stated:

"Unfortunately, we have been unsuccessful in making contact with you via telephone, to discuss your account which is overdue.

If you are experiencing payment difficulties, please contact us where we can discuss:

- *Affordable payment plans.*
- *Energy efficiency advice (please refer to enclosed brochure or our website...)*
- *Information about Government concessions and grants and to ensure you are receiving all eligible rebates.*
- *Our BillAssist scheme which provides assistance for customers in need of financial support.*

To avoid further debt recovery action being taken including disconnection on your energy supply, please contact..."

There was no reference in this letter to a specific offer of an instalment plan. None of the telephone contacts or SMS messages mentioned a further instalment plan. There was no evidence that the Complainant was offered a second instalment plan prior to disconnection.

Therefore, it is concluded that SE did not comply with its obligations in disconnecting The Complainant for failure to pay the accounts under the first instalment plan.

Offer and requirements for further instalment plan

If a customer fails to pay an account, retailers are required to offer another instalment plan unless the customer has failed two instalment plans in the previous 12 months. In offering instalment plans, retailers are required to specify the period of the plan and the amount of the instalments, taking into account capacity to pay, outstanding debt and future consumption.

SE believed it complied with the requirements as it attempted to contact The Complainant but was unable to do so. It cited the telephone calls and SMS messages it made in the six month period leading to the disconnections. It is noted that there is no reference in the call centre notes to a further instalment plan being offered.

Further, SE had the opportunity to meet the requirements by specifying the instalment plan details in the registered letter it sent on 11 June 2009. The registered letter sent to The Complainant was a general letter and did not provide any detail of a specific offer of a second

instalment plan. The letter also only implied that “affordable payment plans” may be discussed.

The Commission has previously found that retailers should take additional steps in writing in offering a second instalment plan if they are unable to make telephone contact with the customer. Consequently, it is concluded that SE did not comply with its obligations in offering a second instalment plan.

Assessment of capacity to pay

EWOV considered that SE had not demonstrated how it took The Complainant's capacity to pay into account in establishing its initial instalment plan (\$35f/n for electricity and \$50f/n for gas). The call centre notes for 26 May 2008 provided by SE stated the following:

“Instalment plan granted - \$909.86 electricity \$35.00 F/N...\$1,263.93 Gas \$50 F/N”

It is noted that there is no information as to how these fortnightly payment amounts were agreed. However, it is concluded that, given the size of both the electricity and gas debts (total of \$2173 and \$85 f/n payments), that capacity to pay must have been a factor in determining the fortnightly payments.

It therefore cannot be concluded that capacity to pay was not taken into account in establishing the first instalment plan.

Assistance to customers on financial counselling and other advice

It is noted that SE call centre notes of 26 May 2008 stated *“Offered customer contact information for a free financial counselling service. Energy Efficiency advice offered...Energy Efficiency sent.”*

Further, the registered letter of 11 June 2009 advised The Complainant to contact SE to receive:

- *Energy efficiency advice (please refer to enclosed brochure or our website...).*
- *Information about Government concessions and grants and to ensure you are receiving all eligible rebates.*
- *Our BillAssist scheme which provides assistance for customers in need of financial support.*

It is therefore concluded that SE did meet its obligations to provide the information to The Complainant on the assistance available to her.

Conclusion

Having regard to the advice and information to the Commission, it is found that Simply Energy did not comply with clause 11.2(3), clause 12.2 and clause 13.1(a) of the Energy Retail Code. Therefore, Simply Energy has not complied with the relevant terms and conditions of its contract with The Complainant.

It is concluded that the disconnection of The Complainant is wrongful and a compensation payment is payable as follows:

- Electricity - \$545 (2 days, 4.22 hours)
- Gas - \$539 (2 days, 3.47 hours)

Mr A W Darvall
Delegated Commissioner
November 2010