

Customer D and Momentum Energy – decision and reasons

Application of section 48A of the Gas Industry Act 2001 – compensation for
wrongful disconnection

26 February 2021

An appropriate citation for this paper is:

Essential Services Commission 2021, Customer D and Momentum Energy – decision and reasons: Application of section 48A of the Gas Industry Act 2001 – compensation for wrongful disconnection, 26 February 2021

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Referral from the ombudsman

1. On 8 October 2020, the Energy and Water Ombudsman (Victoria) referred this matter to the commission for decision. The matter arises from a complaint made to the ombudsman by a residential customer, Customer D, about Momentum Energy Pty Ltd (ACN 100 569 159).
2. The referral concerns the application of section 48A of the Gas Industry Act 2001 (Vic) (the Act) following the disconnection of gas supply to Customer D's premises. The disconnection occurred at 11:11am on 17 December 2019.
3. There is no dispute between Customer D and Momentum Energy that the disconnection was wrongful and that compensation is payable under section 48A of the Act. The issue in this matter is whether the amount of compensation is limited to the prescribed capped amount pursuant to section 48A(1A).

Relevant obligations

4. The relevant obligations in this matter arise from the following:

(a) The [Gas Industry Act 2001 \(Vic\)](#):

- (i) Section 48A(1) of the Act provides that it is a condition of Momentum Energy's gas retail licence that it must make a compensatory payment of the prescribed amount to a relevant customer if it disconnects the supply of gas to the premises of the customer without complying with the terms of the contract with the customer that specify the circumstances in which the supply of gas to those premises may be disconnected.
- (ii) Section 48A(1A) of the Act provides that, where a customer does not notify a licensee that the customer's gas supply has been disconnected within 14 days after the date of a wrongful disconnection, the maximum compensatory payment payable by a licensee is the prescribed capped amount.
- (iii) Section 48A(3) of the Act provides that any payment required under section 48A(1) is to be made as soon as practicable after the supply of gas is reconnected.
- (iv) Section 48A(5) of the Act provides that the prescribed amount payable under section 48A(1) is:
 - \$500 for each whole day, and a pro rata amount for any part of a day, that the supply of gas remains disconnected, and
 - the prescribed capped amount applicable under section 48A(1A) is \$3,500.

(b) Momentum Energy's [gas retail licence](#):

- (i) Clause 8.1 of the licence requires Momentum Energy to ensure any contracts it enters with a residential customer for the sale of gas deal expressly with each matter which is the subject of term or condition of the Energy Retail Code (the code).
- (ii) Clause 8.3 of the licence requires that each term or condition of Momentum Energy's contracts for the sale of gas must not be inconsistent with a term or condition of the code.
- (iii) Clause 8.4 of the licence provides that Momentum Energy must comply with the terms and conditions of any contract for the sale of gas with a residential customer.

- (iv) Clause 17.1 of the licence requires Momentum Energy to comply with all applicable provisions of the code.
 - (v) Clause 25.1 of the licence requires Momentum Energy to comply with all applicable laws.
- (c) Momentum Energy's market retail contract with Customer D:
- (i) Clause 33 of the contract provides that Momentum Energy may arrange for the disconnection of the premises subject to it satisfying the requirements in the Regulatory Instruments.
 - (ii) Clause 52 of the contract defines 'Regulatory Instruments' to mean any law or regulatory or administrative instrument relating to or affecting the sale or supply of energy in Victoria, including the Energy Retail Code, National Energy Retail Law and the National Energy Retail Rules, as varied or replaced from time to time.

Issues for decision

5. Momentum Energy acknowledges that on 17 December 2019, Customer D's gas supply was 'wrongfully disconnected' for the purposes of section 48A(1) of the Act. It follows that Momentum Energy has an obligation to make a wrongful disconnection compensation payment to Customer D as a condition of its gas retail licence under that provision.
6. The issue which the commission has been asked to decide is whether the quantum of compensation payable by Momentum Energy is to be 'capped' pursuant to section 48A(1A) of the Act. Under the provision, if Customer D did not notify Momentum Energy of the disconnection of her gas supply within 14 days after the disconnection, then Momentum Energy is obligated to pay Customer D the 'prescribed capped amount' as defined in section 48A(5) of the Act (being \$3,500.00).
7. However, if Customer D did notify Momentum Energy of the disconnection within the relevant 14 day period, the prescribed cap does not apply under section 48A(1A) of the Act. In those circumstances, under section 48A(1) of the Act, Momentum Energy would be required to pay Customer D the 'prescribed amount' as defined by section 48A(5), being compensation of \$500.00 for each day, and a pro rata amount for any part of a day that the supply of gas remained disconnected.
8. In order for the commission to decide whether Customer D provided 'notification of the disconnection within 14 days after the disconnection', the commission must consider the information that is available about any contact that Customer D had with Momentum during the relevant period.

Relevant facts

9. The commission analysed the material provided by Customer D and Momentum Energy included in the ombudsman's referral, and provided further opportunities for additional information and submissions from Customer D and Momentum Energy. Following assessment of the material, the information that the commission considers is relevant to the question as to whether Customer D provided 'notification of the disconnection' to Momentum Energy is set out below.

Disconnection of gas supply to the premises

10. As noted, Momentum Energy acknowledged that the disconnection was 'wrongful' for the purposes of section 48A(1) of the Act. It is therefore not necessary for the commission to make findings about the events leading up to the disconnection. The following background is accordingly provided for the purposes of context only:

- In June 2019, Momentum Energy sought to disconnect Customer D's gas for non-payment. The disconnection of the gas supply at the premises was not practically put into effect by the distributor due to 'access issues', but Momentum Energy considered Customer D's account 'closed' for administrative purposes.
- However, gas usage continued at the premises and Momentum Energy established an 'Occupier' account which started to accrue charges. Momentum Energy placed another disconnection order in respect of the Occupier account for 'non-payment'. This is the disconnection order that was put into practical effect on 17 December 2019.
- In the meantime, Customer D had continued to make payments to the 'closed' account. By January 2020, that account was 'in credit' in the amount of \$589.84 while the Occupier account had accrued charges totalling \$735.95.
- Momentum Energy acknowledged that the contract that it entered with Customer D in respect of her gas supply remained on foot for the entire period until the gas supply was disconnected in December 2019.
- Prior to disconnecting the gas supply to Customer D's premises, Momentum Energy did not take the steps it was required to take under the Energy Retail Code pursuant to its contract with Customer D, including steps required under Part 6 of the Code – Momentum Energy thereby breached clause 33 of its gas supply contract with Customer D and in this sense, the disconnection was 'wrongful' for the purposes of section 48A(1) of the Act.

11. Records provided by the relevant gas distributor show that on Tuesday 17 December 2019, at 11:11am, the gas supply to Customer D's premises was disconnected.

Telephone contact following disconnection of gas supply to the premises

12. Following the disconnection of the gas supply, Customer D made contact with Momentum Energy to discuss reconnection. The central issue in this matter is whether she did so within 14 days of the disconnection.

13. Customer D supplied copies of her telephone call records (which she obtained from her telephone service provider) to the ombudsman.

14. The telephone call records supplied by Customer D to the ombudsman indicate that on Monday 23 December 2019, at 4:57pm, Customer D used her mobile telephone service to contact Momentum Energy using Momentum Energy's telephone support line on 1300 662 778. There is no dispute that this number is Momentum Energy's telephone support line. The records indicate that Customer D made a call to Momentum's support line that remained connected for 28 minutes and 41 seconds.

15. Customer D informed the ombudsman that during the call on 23 December 2019 she spoke with a Momentum Energy customer service representative and advised the representative that her gas supply had been disconnected. Customer D told the ombudsman that:

- the customer service representative advised Customer D that she would be transferred to Momentum Energy's credit team who would be able to assist her
- Customer D was then placed 'on hold'
- Customer D did not speak to another representative before Customer D ended the call.

16. Customer D's call records indicate that she made two further calls to Momentum Energy's telephone support line on Tuesday 24 December 2019.

17. Based on the call records, the first call was made at 9:21am and remained connected for 5 minutes and 50 seconds. Customer D advised the ombudsman that she 'did not speak to a representative' of Momentum Energy during this call.

18. The call records show that a second call was made at 11:10am and remained connected for 50 minutes and 6 seconds. Customer D told the ombudsman that during this call she spoke with a representative of Momentum Energy and advised the representative that her gas supply was disconnected. Customer D told the ombudsman that:

- the customer service representative advised Customer D that she would be transferred to Momentum Energy's credit team who would be able to assist her

- Customer D was then placed 'on hold'
- Customer D did not speak to another representative before Customer D ended the call.

19. On Tuesday 31 December 2019, the relevant 14 day period expired for the purposes of section 48A(1A) of the Act.

20. Customer D's call records show that she used her mobile telephone service to place a further telephone call to Momentum Energy on Saturday 4 January 2020. The call was made at 10.04am and remained connected for 3 minutes and 35 seconds. Customer D advised the ombudsman that she did not speak to a representative of Momentum Energy during this call.

21. On 7 January 2020, Customer D sent an email to Momentum Energy stating:

Subject: Gas reconnection

Hi Anna,

Are you still with momentum energy and if so may I ask some assistance? I was just waiting on hold for forty five mins and gave up. I tried to set up an account online but it kept giving me an error message. Thank you.

22. It is not clear how Customer D knew 'Anna' although the opening line indicates that she may have been a previous contact for Customer D from Momentum Energy.

23. On 8 January 2020, the recipient of Customer D's email at Momentum Energy forwarded the email internally within Momentum Energy stating:

Subject: FW: Online sign up error

Hi,

Please contact this customer below – she has attempted to sign up online but was unable due to error message. She appears to have 3 other accounts with Momentum – 7xxxxx, 7xxxxx and inactive account 3xxxxx. Thank you. Anna.

24. On 13 January 2020, Momentum Energy contacted Customer D by telephone. A recording of the telephone call, which lasted approximately 22 minutes, has been provided to the commission. Relevantly, at the start of the call, the Momentum Energy representative identifies himself as 'John' and states 'I've just got a note saying you're looking to do some connections online and you weren't able to is that right?'

25. Customer D then explains that 'my gas was due to be disconnected at the start of the year but it was actually disconnected before Christmas and I was going away so I didn't really have time to get it sorted and I was like wait this wasn't supposed to be disconnected now, anyway ...'

Customer D states further that 'I've transferred over 600 [dollars] on to my gas and I just wanted to know with my electricity, cause I didn't set that up, I set that up via my bank but not through Momentum, if that money has been going through'.

26. Following completion of an identification process, the Momentum Energy representative states 'I think what I'm going to need to do is [words inaudible] service for you to get that reconnected but I just need to make sure, if I could pop you on hold and double check that, and I'll come straight back and we'll get that fixed up'.
27. The call recording then includes an internal discussion between 'John', and a second Momentum Energy representative, 'Kristen' from the 'credit team'. Kristen states to John 'I actually need to speak to her first because of that credit, we need to put it on to the occupier account, and I need consent to do that, so if she's happy with that I can bring her back through to you, or I can speak to her while you're on the line'. John asks Kristen 'are you happy for me to conference her in?' Kristen answers 'you can conference the call and I'll have that discussion with her'.
28. John then conferences Customer D into the call. The following discussion then took place:

Kristen: I just need to have a quick chat about your account – so from what I can see we disconnected your service for non-payment on the 19th of June 2019. From there an occupier gets set up because we can detect usage at the property but nobody's got an account in their name. Now we're happy for you to put the account in your name, on that closed account I can see you recently made a payment which cleared off the outstanding balance of \$100 leaving \$589.84 in credit. However on that account, the occupier account which was set up after the disconnection, there's an outstanding balance of \$735.95, so are you happy for me to transfer the credit across to cover the usage while it was listed as the occupier account?

Customer D: Yeah no that's fine, sorry I didn't know that that was happening but yeah sure, that's fine'.

Kristen: So there will be a final invoice that comes out to you as well listed under the occupier and then future invoices will be addressed to you, John will look after that'. Kristen then exits the call and Customer D continues to speak with John for the purposes of setting up a new account.

29. John then provided Customer D with scripted information associated with the new account including information regarding pricing, and the following discussion occurred:

John: So what I'll do is I'll put through a read, now just to make you aware as well Emily, there are locks on your gas meter at the moment did you know that?

Customer D: No.

John: So the connection fee to get those removed will be \$66.63 including GST?

Customer D: Yep.

John: And there'll be a read fee of \$10.33 including GST so when I read out the script I'll read out the lesser amount but be aware that you will be billed for the removal of the locks as well.

Customer D: Yep.

John: Ok well I'll get that all done for you on Friday [17 January 2020]'.

30. On Friday 17 January 2020, however, the gas supply was not reconnected at Customer D's premises as further explained below.

Reconnection of gas supply to the premises

31. On Thursday 23 January 2020, Customer D contacted the ombudsman. The ombudsman recorded that it was advised by Customer D of the following information:

- Customer D's gas supply was disconnected on or around 20 December 2019
- prior to the disconnection, Customer D was making \$45 weekly payments towards her account
- Customer D since discovered that Momentum Energy closed the gas account in her name and created an occupier account, and
- Customer D contacted Momentum Energy to request a reconnection; however it stated that she would need to pay a \$1,500 reconnection fee.

32. The ombudsman registered an investigation of Customer D's circumstances with Momentum Energy.

33. Records provided by the relevant gas distributor show that at 10:00am on Friday 31 January 2020, the gas supply was reconnected at Customer D's premises.

Attempts to verify Customer D's account of events

34. The commission sought to contact Customer D on the following occasions to obtain confirmation of the telephone calls she made to Momentum Energy, her recollection of the content of the discussions during those calls, and to obtain further information regarding the screen shots of the telephone records provided by Customer D:

- (a) On 15 December 2020, commission staff wrote to Customer D by email;
- (b) On 18 December 2020, commission staff called Customer D and left a voicemail;
- (c) On 19 January 2021, commission staff again wrote to Customer D by email;
- (d) On 5 February 2021, commission staff called Customer D and left a voicemail;
- (e) On 8 February 2021, commission staff called Customer D on two separate occasions and left two voicemails;
- (f) On 9 February 2021, commission staff called Customer D and left a voicemail.

35. Customer D did not respond to any of the emails or telephone calls made by the commission.

Submissions

The ombudsman's memorandum of referral

36. In the memorandum accompanying its letter of referral, the ombudsman confirmed that Momentum Energy has acknowledged that:

- prior to the disconnection of Customer D's gas supply on 17 December 2019, Momentum Energy did not comply with the terms and conditions of its contract with Customer D specifying the circumstances in which the supply of gas to Customer D's premises could be disconnected, and
- Momentum Energy is required to pay compensation in respect of the wrongful disconnection of Customer D's gas supply pursuant to section 48A(1) of the Act.

37. Accordingly, as recognised by the ombudsman in its memorandum, the issue for resolution by the commission is whether or not the wrongful disconnection payment to be made by Momentum Energy should be capped in this instance under section 48A(1A) of the Act.

38. Under the terms of section 48A(1A) of the Act, the issue to be resolved by the commission turns on whether or not Customer D 'provided notification of the disconnection' of her gas supply to Momentum Energy during the 14 day period starting on Tuesday 17 December 2019 and ending on Tuesday 31 December 2020.

39. As summarised above, screenshots of telephone records provided by Customer D to the ombudsman show that Customer D made three telephone calls to Momentum Energy's telephone support line (on 1300 662 778) during the relevant period:

- a call on Monday 23 December 2019 at 4:57pm that remained connected for 28 minutes and 41 seconds (the first call)
- a call on Tuesday 24 December 2019 at 9:21am that remained connected for 5 minutes and 50 seconds (the second call), and
- a call on Tuesday 24 December 2019 at 11:10am that remained connected for 50 minutes and 6 seconds (the third call).

Information provided by Customer D to the ombudsman about the telephone calls made during the relevant period

40. As has been summarised above, following the commencement of its investigation in late January 2020, Customer D advised the ombudsman that the first call and the third call

proceeded in similar ways. That is, Customer D advised the ombudsman that on both occasions after contacting Momentum Energy:

- she spoke with a customer service representative who advised that she would be transferred to Momentum Energy's credit team who would be able to assist her
- she was then placed 'on hold'
- she did not speak to another representative before she ended the call.

41. Customer D advised the ombudsman that the second call proceeded differently to the first and third calls. Customer D advised the ombudsman that during the second call she did not speak to any customer service representative before she ended the call.

42. In its referral to the commission, the ombudsman also stated that Customer D had advised it that she 'contacted Momentum Energy to request a reconnection; however it stated that she would need to pay a \$1,500 reconnection fee'. Based on the information in the referral, the ombudsman did not ascertain from Customer D precisely when this information was exchanged between Momentum Energy and Customer D. However, as noted below, Customer D has clarified that it is her position that this information was exchanged during the first call on 23 December 2019.

Further information provided by Customer D to the commission

43. On 22 October 2020, the commission wrote to Customer D and invited her to provide further submissions or information about the contact that she had with Momentum Energy during the relevant 14 day period. In particular, the commission invited Customer D to provide any further details or information available about the three telephone calls that she made to Momentum Energy on 23 and 24 December 2019. The commission requested that Customer D provide the information by 6 November 2020.

44. On 10 November 2020, commission staff followed up with Customer D concerning the commission's invitation. Subsequently, on 11 November Customer D provided further information by email. In her email, referring to the telephone calls that she made to Momentum Energy on 23 and 24 December 2019, Customer D advised the commission that she 'did not take notes, but made a note to call back'.

45. Relevantly, Customer D also stated:

I spoke with a lady, I believe her name was Lauren, but this is hazy as it was nearly a year ago, on the 24th. On both occasions I spoke with an initial customer representative who told me I would need to speak to credit management when I told them I had been disconnected from my gas supply. Each time I waited on hold.

I got through to credit management on the 23rd, and that is when I spoke to the female. I was informed that my gas had been restricted and I would need to pay a fee to have this rectified. When I asked why this occurred I was told they would need to investigate and get back to me - she sounded confused. I was placed on hold from credit management and after half an hourish, I hung up.

I tried again the following day and spent a significant amount of time on hold and again, after about 45 mins on hold with credit management, hung up.

...

I can see you have the attachment with my phone records and email dated 8/1/20. Unfortunately, this is the only kind of records [my telephone provider] have for prepaid. I have requested a more in depth one but was redirected to the website.

Momentum Energy's submissions concerning telephone calls during the relevant period

46. The ombudsman provided Momentum Energy with copies of the screenshots supplied by Customer D of telephone records dated 23 and 24 December 2019.

47. Having considered the telephone records contained in the screenshots, Momentum Energy made submissions to the commission to the effect that:

- Momentum Energy's telephone system automatically makes a searchable record of the telephone number of each incoming call made to Momentum Energy's telephone support line.
- Telephone numbers are recorded for all incoming calls including calls that:
 - o are discontinued by the caller before they are answered by a representative of Momentum Energy, or
 - o remain 'on hold', or
 - o are made from a mobile telephone with 'no caller id' enabled.
- Momentum Energy does not consider it is possible that Customer D spoke with a representative of Momentum Energy on 23 or 24 December 2019 because there is no record of Customer D's phone number having connected with Momentum Energy's telephone system on those dates.
- Momentum Energy conducted an extensive search of its telephone call recording system and it did not find any calls from Customer D between the dates of 17 December 2019 and 31 December 2019 inclusive.

- Momentum Energy records all conversations that its representatives undertake with customers when a customer places an incoming call to Momentum Energy’s telephone support number 1300 662 778.
- Momentum Energy staff have listened to every call recording within a two hour window on either side of the relevant contact times on the relevant dates. Momentum Energy has concluded that it did not receive any calls from Customer D during those periods.
- Momentum Energy analysed average wait times of calls on 23 and 24 December 2019 at times corresponding with Customer D’s call records (4:57pm, 9:21am and 11:10am respectively). The average wait times on those dates and times were significantly lower than the wait times indicated by the screenshots of Customer D’s records. The maximum average wait times were:
 - o on 23 December 2019, between 4:46pm and 5:00pm – 6.87 minutes
 - o on 24 December 2019, between 9:15am and 9:30am – 1.93 minutes
 - o on 24 December 2019, between 11:01am and 11:15am – 0.26 minutes
- Customer D has established multiple electricity and gas accounts with Momentum Energy including:
 - o an account in respect of electricity supply that was active from September 2013 until April 2015
 - o an account in respect of electricity supply that has remained active from September 2017 until the present date
 - o an account in respect of gas supply that remained active from October 2017 until June 2019
 - o an account in respect of gas supply that has been active since February 2020
- Momentum Energy has also established one ‘Occupier’ gas supply account that was associated with Customer D’s residential address that remained active from June 2019 until February 2020.
- Momentum Energy has investigated customer records associated with the all the accounts that it has identified as having been established in the name of Customer D, or associated with her residential address as an ‘Occupier’ account. Following its investigation it has not identified any record of having received contact from Customer D, or any other person, on 23 or 24 December 2019 in respect of services associated with those accounts.

- It is Momentum Energy's position that notwithstanding the screenshots of telephone records provided by Customer D, Momentum Energy did not receive any contact from Customer D via its telephone support line on 23 or 24 December 2019.

48. In support of its submissions, Momentum Energy has provided the commission with copies of its:

- records summarising average call wait times for 15-minute intervals corresponding with the times of relevant calls indicated in the screenshots of telephone records supplied by Customer D
- customer contact records associated with all accounts that have been established by Momentum Energy in the name of Customer D
- records summarising the results of its search of its telephone system in respect of incoming calls from Customer D's telephone number between the dates of 1 December 2019 and 22 May 2020

49. Momentum Energy has also confirmed that no customer contact records were ever made by Momentum Energy in respect of the 'Occupier' account established by Momentum Energy that was associated with Customer D's residential address.

50. The commission has reviewed the copies of records provided by Momentum Energy and notes that those records are consistent with the statements made by Momentum Energy in its submissions.

Decision

51. The commission has had regard to the material provided by the ombudsman, and the submissions and information provided by Customer D and Momentum Energy.
52. The commission notes that Momentum Energy acknowledges that:
- (a) Customer D was a 'relevant customer' for the purposes of section 48A of the Act
 - (b) Customer D's gas supply was disconnected at 11:11am on 17 December 2019
 - (c) the disconnection of the supply at that time was 'wrongful' for the purposes of section 48A of the Act and occurred in breach of Momentum Energy's gas retail licence, and
 - (d) that compensation is payable to Customer D in respect of the disconnection under the legislative provision
53. Attempts by the commission to verify Customer D's version of the events were unsuccessful.
54. Accordingly, the issue to be resolved by the commission in the circumstances is the amount of compensation that is payable by Momentum Energy to Customer D having regard to section 48A(1A) of the Act. The question turns on whether Customer D provided notification to Momentum Energy that her gas supply had been disconnected within 14 days of the disconnection (by 31 December 2019). Conflicting factual information has been provided to the commission by Customer D and Momentum Energy in relation to this question.
55. Based on the information and material that is available, the commission does not consider that there is a sufficient basis to conclude that Momentum Energy received 'notification of the disconnection within 14 days after the disconnection'. Accordingly, it is the commission's view that the compensation payable to Customer D by Momentum Energy in respect of the wrongful disconnection is the prescribed capped amount, being \$3,500.

Reasons

56. As stated above, the issue which the commission has been asked to decide is whether the quantum of compensation payable by Momentum Energy is to be 'capped' pursuant to section 48A(1A) of the Act. Compensation is to be capped under the provision if Customer D did not provide notification to Momentum Energy of the disconnection of her gas supply within 14 days of the disconnection.
57. However, if Customer D did notify Momentum Energy of the disconnection within the relevant 14 day period, the prescribed cap does not apply and Momentum Energy would be required to pay Customer D a 'prescribed amount' for each day that the supply of gas remained disconnected (until 31 January 2020).
58. The commission is not a judicial body and the rules of evidence do not apply to this decision. However, findings of fact must be based on logically probative evidence – material that tends logically to prove the existence or non-existence of a fact. The commission recognises that no one bears an onus of proof to establish particular facts. In this case, the commission considers that the evidence is finely balanced.
59. As set out in paras 47 to 49 above, Momentum Energy did not find any calls from Customer D for the period in question after conducting an extensive search of its telephone call recording system. Momentum Energy contends that notwithstanding the screenshots of telephone records provided by Customer D, Momentum Energy did not receive any contact from Customer D via its telephone support line on 23 or 24 December 2019.
60. The commission notes that the particular circumstances of this matter are highly unusual in that the retailer has been unable to locate any records of contact being made to it by the customer within the relevant 14 day period following the disconnection on 17 December 2019.
61. While the screenshots of telephone records provided by Customer D demonstrate that Customer D attempted on a number of occasions to make contact with Momentum Energy within the relevant period, those records fall short of confirming that actual 'notification of disconnection' was provided to Momentum Energy and that Momentum Energy was given opportunity to act on that information within the relevant period.
62. The commission accepts that Customer D believes that she provided notification of the disconnection to Momentum Energy. However, the commission also notes that Customer D has recognised that her recollection of any conversations that she may have had with Momentum Energy in December 2019 are 'hazy', at least in respect of the question whom she spoke with. This is understandable given the passage of time.

63. Therefore, as set out in paragraph 34 above, the commission sought to verify Customer D's account of the events by making seven separate attempts to contact Customer D but Customer D did not respond to the commission's attempts to contact her. Subsection 48A(1A) of the Act poses a statutory requirement for the commission to be satisfied that Momentum Energy was notified of the disconnection within 14 days or otherwise the prescribed capped amount applies.
64. In the unusual circumstances of this matter, without the verification unsuccessfully sought by the commission, it is not open to the commission to conclude that notification was given within the relevant 14 day period.

Enforcement

65. On the basis of the information available, the commission considers that Momentum Energy was in breach of a condition of its gas retail licence under section 48A of the Act and was required to make a payment of the prescribed amount of \$3,500.00 to Customer D as soon as practicable after the reconnection of the gas supply to Customer D' premises on 31 January 2020.
66. There is no information available to the commission to confirm that Momentum Energy has made this payment. Momentum Energy may therefore have breached a condition of its gas retail licence by failing to make the payment to Customer D as soon as practicable after the reconnection.
67. Momentum Energy should rectify the breach by making the payment and advise the commission in writing when the payment has been made.
68. If Momentum Energy is unable to make payment, it should inform the commission in writing within five business days of receipt of this decision and reasons.
69. If the payment is not made within five business days of Momentum Energy receiving this decision and reasons, the commission may take enforcement action against Momentum Energy under Part 7 of the Essential Services Commission Act 2001 (Vic).

Other observations

70. On 13 January 2020, Momentum Energy advised Customer D that her gas supply would be reconnected by Friday, 17 January 2020. Customer D's gas supply was not reconnected until 31 January 2020.
71. Momentum Energy has advised the commission that the delay in reconnecting Customer D's gas supply occurred because reconnection of the gas supply 'required a street reconnection which requires up to 20 business days to complete'. Momentum Energy recognised that on 13 January 2020, it failed to identify that a 'street reconnection' would be required at Customer D's premises, and accordingly provided incorrect information to Customer D about the timeframe in which reconnection could occur.
72. In circumstances where a retailer advises a customer that energy supply will be reconnected by a particular date, and the retailer becomes aware that it will be unable to process the request by the particular date, the retailer should take active steps to contact the customer to correct the information it has previously provided and to provide accurate information about the timeframe in which any reconnection will proceed.