

ESSENTIAL SERVICES COMMISSION
WRONGFUL DISCONNECTION DECISION
UNDER SECTION 48A OF THE *GAS INDUSTRY ACT 2001*
LUMO ENERGY & CUSTOMER W
DECISION AND REASONS

Background

Customer W contacted the Energy and Water Ombudsman (Victoria) (EWOV) with regard to the disconnection of the supply of gas to her premises by Lumo Energy (Lumo) on 22 January 2015. EWOV investigated the matter, but was not able to assist the parties to reach a resolution. On 19 May 2015 EWOV referred the matter to the Essential Services Commission (the Commission) to decide whether the disconnection of gas supply to Customer W's premises was wrongful under section 48A of the *Gas Industry Act 2001* (the Act) and, if so, the amount of any payment Lumo is required to make to Customer W.

Summary of Facts

Customer W had been a dual fuel customer of Lumo since 16 July 2014. On 17 September 2014, Lumo issued Customer W a bill for \$243.99. When the outstanding amount remained unpaid, on 15 October 2014 Lumo issued Customer W a reminder notice for \$243.99. On this reminder warning notice, the stated reminder notice period end date was four business days after the issue date. This was shorter than the six business days required under the Energy Retail Code (version 11) (the Code) as a minimum reminder notice period. Lumo sent Customer W a disconnection warning notice on 5 December 2014 for an outstanding balance of \$597.14. The supply of gas to Customer W's property was disconnected at Lumo's request, for non-payment on 22 January 2015.

Relevant Obligations

Clause 111(1)(c) of the Code states a retailer may not disconnect customers for non-payment unless the retailer has given the customer a reminder notice. Clause 109(2) states that a reminder notice must state the date on which the reminder notice period ends and state that payment of the bill must be made during the reminder notice period. Clause 108 states that a reminder notice period means the period that starts on the date of issue of the reminder notice, and ends no earlier than six business days from the date of issue.

Clause 18 of the terms and conditions of Lumo's Standard Retail Contract state that Lumo may disconnect supply to the customer's premises for failure to pay the customer's bill if:

- the Code does not state that Lumo cannot arrange for disconnection under the circumstances, and
- the customer has received the appropriate reminder notices and disconnection warnings from Lumo in the form and at the times referred to in the Code.

Retailer Submission

The Commission offered Lumo an opportunity to make a submission in relation to the disconnection dispute. In its submission Lumo argued that the disconnection was not wrongful because:

- "[I]t cannot be said, when looking at the process from end-to-end, that Customer W suffered any detriment or was treated unfairly by Lumo Energy".
- Customer W did not respond to repeated attempts by Lumo to discuss repayment options.
- As Lumo waited longer than the minimum amount of time before disconnecting supply to Customer W's premises, she suffered no detriment as a result of the non-compliant reminder notice. "That is, even if the 'due date' had been stated to be two days later than the date provided, Customer W would not have had any additional time to make repayment before disconnection."

Chronology

<i>Date</i>	<i>Event</i>
16 July 2014	Lumo established a dual fuel account for Customer W.
17 September 2014	Lumo issued a bill for \$243.99 with a due date of 8 October 2014.
15 October 2014	Lumo issued a reminder notice for \$243.99 with a due date of 21 October 2014.
5 December 2014	Lumo issued a disconnection warning notice for \$597.14 with a due date of 15 December 2014.
22 January 2015	Customer W's gas supply was disconnected for non-payment.
22 January 2015	Customer W contacted a new retailer and was reconnected.

Decision

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

1. In disconnecting the supply of gas to Customer W's premises, Lumo failed to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected. As a result, under s48A of the Act, as a statutory condition of its licence, Lumo has an obligation to pay Customer W a wrongful disconnection payment.
2. The wrongful disconnection payment amount is for the whole of the period during which the gas supply to Customer W's premises was disconnected – 2 hours and 34 minutes.
3. In accordance with s48A(5)(b) of the Act, Lumo is required to pay Customer W a wrongful disconnection payment of \$27.

Reasons

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

1. According to s48A of the Act, the conditions to which a licence to sell gas by retail is subject include a condition requiring the licensee to make a payment of a prescribed amount to a relevant customer in accordance with this section if the licensee –
 - disconnects the supply of gas to the premises of that customer; and
 - fails to comply with the terms and conditions of the contract specifying the circumstances in which the supply of gas to those premises may be disconnected.
2. Clauses 108, 109(c) and 111 of the Code preclude a retailer from disconnecting supply to a customer's premises unless they have, inter alia, given the customer a reminder notice stating that the outstanding amount must be paid within a period that ends no earlier than six business days after the date of issue of the reminder notice.
3. The terms and conditions of the contract between Lumo and Customer W included a clause which precludes Lumo from disconnecting supply to a customer's premises unless that customer has received the appropriate reminder notices and disconnection warnings from Lumo in the form and at the times referred to in the Code. This incorporates the obligations in clauses 108, 109, and 111 of the Code as terms or conditions of the contract specifying the circumstances under which the supply of gas may be disconnected.
4. Lumo sent Customer W a reminder notice stating a four day reminder notice period. In doing so Lumo did not comply with the obligations in clauses 108 and 109(c) of the Code, as it failed to include in the reminder notice it sent to Customer W a statement that the outstanding amount must be paid on a date no earlier than six days from the date of issue of the reminder notice, as required by clause 108 of the code.
5. In disconnecting supply to Customer W's premises following the issue of this notice, Lumo failed to comply with the terms and conditions of its contract with Customer W specifying the circumstances in which the supply of gas to her premises may be disconnected. Lumo is therefore required to pay Customer W a wrongful disconnection payment under s48A of the Act.

Dr Ron Ben-David
Chairperson
Date 12 August 2015