



WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL AND THE COMPLAINANT

STATEMENT OF REASONS

SEPTEMBER 2006

Introduction

Section 40B of the *Electricity Industry Act 2000* places a licence condition on retailers that requires them to compensate a customer if the retailer disconnects the customer's supply and does not comply with the terms and conditions of the customer's contract that specify the circumstances in which the supply may be disconnected. The retailer must compensate the customer for each day that the customer's supply is disconnected.

Clause 6.5 of the Commission's Operating Procedure – Compensation for Wrongful Disconnection (Operating Procedure) requires that where the Energy and Water Ombudsman Victoria (EWOV) is unable to resolve a claim for the wrongful disconnection compensation payment with the agreement of the retailer and the customer, EWOV must refer the claim to the Commission for a decision in accordance with clause 7 of the Operating Procedure.

Background

EWOV requested the Commission to make a formal decision as to whether AGL complied with its retail licence in relation to a dispute between the complainant and AGL regarding a wrongful disconnection compensation payment for the complainant.

Through information provided to EWOV, it is understood that, on 10 January 2005 the complainant contacted AGL to establish a gas account. A gas account was established on 15 January; however, AGL did not receive any payments towards the account. Over the period August 2005 to January 2006, AGL sent two reminder notices and two disconnection notices and attempted to ring the complainant with no answer on six occasions. On 6 February 2006, AGL attempted to contact the complainant and left a message with a friend for them to contact AGL. AGL subsequently issued a 24 hour disconnection notice on 6 February 2006.

In response to the 24 hour disconnection notice, on 8 February the complainant contacted AGL and agreed to a \$50 per fortnight payment arrangement via Centrepay. AGL requested the complainant to demonstrate a willingness to pay by making a payment of \$50 and advised them that AGL would review their capacity to pay once the first payment was received. AGL did not receive any payments towards the gas account.

AGL sent a further reminder notice on 22 February, followed by two disconnection notices (6 March and 16 March) and a text message to the complainant's mobile number (16 March). AGL also attempted to contact the complainant by telephone phone twice (8 March and 16 March) and left a message with their friend on one occasion. On 27 March 2006, the complainant's gas supply was disconnected.

Following disconnection, the complainant contacted AGL on 27 March and they were referred to AGL's Staying Connected department. The Staying Connected manager reviewed the complainant's capacity to pay and a payment arrangement of \$50 per fortnight was agreed to. AGL placed their gas account on the Staying Connected program and gave them advice on how to reduce their gas consumption for the future.

Issues

For the disconnection to be wrongful the retailer must have breached the terms and conditions of the contract that set out the circumstances under which a customer's supply may be disconnected.

Terms and Conditions Relating to Disconnection

The terms and conditions of the contract between the complainant and AGL are set out in the Energy Retail Code (ERC). The ERC requires that a retailer cannot disconnect a customer for non-payment of a bill until the retailer has sent all relevant notices, used its best endeavours to contact a customer with insufficient income and assessed and assisted a customer having payment difficulties.

Instalment Plans and Sending Relevant Notices

Clause 13.1 of the ERC requires a retailer to offer a customer two instalment plans, send a reminder notice and a disconnection warning prior to disconnecting a customer for non-payment of a bill.

AGL sent the complainant all relevant reminder notices and disconnection warnings prior to disconnecting them.

AGL only offered the complainant one instalment plan prior to disconnection. In its attempts to contact the complainant when account payment was not received, AGL sent a text message and left a phone message with a friend for the complainant to contact their retailer immediately. However, they did not respond and AGL could not make an offer of a further instalment plan verbally.

However, given the clear ERC obligation for customers not to be disconnected if the unpaid bill was related to the first instalment plan, it is considered that AGL should have made an additional effort to offer the complainant a second instalment plan in writing.

Therefore, it is considered that AGL did not comply with all the requirements of clause 13.1 of the ERC.

Best Endeavours to Contact a Customer with Insufficient Income

Clause 13.2 of the ERC requires that prior to disconnecting a customer the retailer must use its best endeavours to contact a customer where the failure to pay a bill occurs through lack of sufficient income.

AGL made three attempts to contact the complainant by telephone between 6 February 2006 and 27 March 2006, prior to disconnection. On two occasions a message was left with a friend for them to contact AGL. On the third occasion, after there was no answer, a text message was sent to their mobile requesting them to contact AGL immediately. On this basis it is considered that AGL used its best endeavours to contact the complainant.

Assessment and Assistance to Domestic Customers

Clause 11.2 of the ERC requires a retailer to assess in a timely way whatever information the customer provides, or the retailer otherwise has, concerning the customer's capacity to pay (clause 11.2(1)). In addition, the clause requires a retailer to offer the customer an instalment plan (clause 11.2(3)) and provide advice on the Utility Relief Grant Scheme (URGS), energy efficiency and the availability of financial counsellors (clause 11.2(4)).

Assessment of capacity to pay

The complainant spoke to AGL on 8 February and agreed to a \$50 per fortnight instalment plan. AGL requested the complainant to demonstrate a willingness to pay by making an initial payment of \$50 and advised them that AGL would review their

capacity to pay the balance once this payment was received. AGL did not receive the initial payment of \$50 and consequently further formal arrangements, including an assessment of their capacity to pay, were not pursued.

The ERC does not require a customer to demonstrate a willingness to pay, or to make a payment, before an assessment of their capacity to pay is to be made. Therefore, on the basis of the information received, the Commission has concluded that AGL did not comply with clause 11.2(1) of the ERC in making an assessment of their capacity to pay prior to offering an instalment plan.

Information on energy efficiency, financial advice and URGs

Clause 11.2(4) of the ERC requires a retailer to provide a customer with details on the URGS, energy efficiency and the availability of independent financial counsellors. AGL advised EWOV that information regarding this assistance was contained on the reminder notices issued to the complainant.

It is not the intention of the ERC that this assistance to customers in financial difficulty is provided by information on reminder notices. It is acknowledged that AGL made many efforts to contact the complainant and the complainant did not meet their obligations to pay after the one occasion when they made direct contact with AGL. Nevertheless, on that occasion, it should have been apparent that the complainant was experiencing considerable difficulty in making their account payments. It therefore is concluded that AGL ought to have provided complete information on the URGS, energy efficiency and the availability of independent financial counsellors.

Furthermore, AGL could have provided this information to the complainant in writing (independently of reminder and disconnection notices). Therefore, it is considered that AGL did not comply with the requirements of clause 11.2(4) of the ERC.

Decision

In accordance with clause 7 of the Operating Procedure, the Commission has investigated the alleged breach by AGL of its retail licence in relation to the disconnection of the complainant. The Commission has decided that AGL did not comply with its licence and the contract terms and conditions relating to the disconnection of the complainant.

Therefore, the disconnection of the complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 12.30pm on 27 March to 2.30pm on 28 March 2006 and amounts to \$270.83.

R H SCOTT
Delegated Commissioner
September 2006