**ESSENTIAL SERVICES COMMISSION**

WRONGFUL DISCONNECTION DECISION UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001

CUSTOMER T & RED ENERGY

DECISION AND REASONS

## Key Issue

No notices are required before de-energising a customer's gas supply for a second time, where that de-energisation is a continuation of a previous disconnection process in which all notice requirements were met.

## Background

| Date | Event |
|---|---|
| **2008** | |
| 20 November | Red Energy (Red) established a gas account for T. |
| **2011** | |
| 9 September | Red issued a reminder notice for $2,247.47, to be paid by 16 September 2011. |
| 20 September | Red issued a disconnection warning notice for $2,247.47, to be paid by 28 September 2011. |
| 30 September | Red issued a final disconnection notice for $2,247.47, to be paid by 6 October 2011. |
| 6 October | Red contacted T by telephone. T agreed to make a $900 payment on 15 October 2011. Red advised T that after making the $900 payment, she must contact Red with a receipt number to avoid disconnection to her gas supply. Disconnection was scheduled for 20 October 2011. Red did not receive the $900 payment on 15 October 2011. |
| 7 October | Red issued a further final disconnection warning notice via registered post and requesting contact from T by 15 October 2011. |
| 20 October | Red disconnected T's gas supply. |
| 8 November | Red received an $800 payment from T towards her arrears. |
| 16 November | T contacted Red to arrange gas supply reconnection. During this telephone call;<br>• T advised that she had made the $800 payment; and<br>• Red agreed to reconnect gas supply if T would both make a further payment of $800 on 19 November 2011 and contact Red with a receipt on 21 November 2011. |
| 16 November | Red reconnected T's gas supply. |
| 24 November | Red had not received the $800 payment or further contact from T, and de-energised T's gas supply a second time. No disconnection warning notice was issued. |

## Decision

Having regard to the advice and information provided by the Energy and Water Ombudsman (Victoria) (EWOV) and Red, the Essential Services Commission (the Commission) finds that:

1. EWOV has not required the Commission to form an opinion on the validity of the disconnection on 20 October 2011. For the purposes of this decision, it is assumed that the disconnection on 20 October was valid.
2. The de-energisation on 24 November 2011 was a continuation of the disconnection on 20 October 2011.
3. Red did not wrongfully disconnect customer T by the de-energisation on 24 November 2011 and compensation is not payable to customer T for the action taken then.

## Reasons

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

1. Red did not need to go through the warning process a second time. This is because the triggers for the disconnection on 20 October 2011 (failure to pay and compliance with the warning process) were still on foot when the de-energisation occurred on 24 November 2011.
2. Once there was a valid disconnection on 20 October, the only change in circumstances was a failure on the part of customer T to meet an agreement by which re-connection occurred.
3. This is reinforced by the closing paragraph of Energy Retail Code (ERC) clause 13.1 which states:

   > *To avoid doubt, if the customer does not agree to such a new payment arrangement or does not so make payments under such a new payment arrangement, the retailer may disconnect the customer without again having to observe this clause 13.1.*

4. Despite customer T being reconnected, there are no express terms in the ERC which entitle customers to additional rights because there has been a reconnection following a legal disconnection if the reconnection is part of the initial disconnection process, as occurred here.

_____

Dr. Ron Ben-David
Chairperson
Date: 2012