

Customer O and Lumo Energy – Decision and Reasons

Application of section 48A of the Gas Industry Act 2001 (Vic)
Compensation for wrongful disconnection

6 June 2018

Commissioners:

Dr Ron Ben-David, Chairperson,
Mr Richard Clarke, Commissioner, and
Ms Kate Symons, Commissioner.

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The complaint

1. In the matter of a referral for decision by the Energy and Water Ombudsman (Victoria) (the ombudsman) to the Essential Services Commission of a complaint by Customer O.
2. The complaint is about the application of section 48A of Gas Industry Act 2001 (Vic) (the Act) for an alleged wrongful disconnection by Lumo Energy of Customer O's gas supply at [address redacted] (the premises), from 9:37am on 18 April 2016 to 3:08pm on 19 April 2016 (a period of 1 day, 5 hours and 31 minutes).

Issues for decision

3. The issue for decision by the commission on the complaint is whether or not Lumo Energy has breached a condition of its gas retail licence regarding an obligation to make a prescribed payment to Customer O in circumstances where:
- (a) Lumo Energy disconnected the supply of gas to the premises of Customer O; and
 - (b) Lumo Energy 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.

If so, then under sub-section 48A(3) of the Act, Lumo Energy was obliged to make the prescribed payment to Customer O as soon as practicable after the supply of gas was reconnected to Customer O's premises.

4. This requires the commission to make findings and reach conclusions regarding the following matters:
- (a) Whether or not Lumo Energy disconnected the supply of gas to the premises of Customer O (see paragraphs 43 and 51 below);
 - (b) Was supply of gas to Customer O's premises reconnected, and if so, when? (see paragraph 45 and 53 below);
 - (c) If Lumo Energy did disconnect the supply of gas to Customer O's premises, for what period of time did the disconnection occur? (see paragraphs 46 and 54 below);
 - (d) What was the contract between Lumo Energy and Customer O? (see paragraphs 17 and 48(c));
 - (e) What were the terms or conditions of that contract which specified the circumstances in which Lumo Energy may disconnect the supply of gas to Customer O's premises? (see paragraphs 48(c) and 59 below);
 - (f) Whether or not Lumo Energy failed to comply with *those* terms and conditions (see paragraph 73 below);
 - (g) Was Customer O entitled to receive payment of a prescribed amount because of any wrongful disconnection by Lumo Energy under section 48A of the Act? (see paragraph 55 below);
 - (h) If so, when was Lumo Energy obliged to make the payment of the prescribed amount? (see paragraphs 53 and 55 below);

- (i) Has Lumo Energy made the payment to Customer O in accordance with its deemed licence condition under section 48A of the Act? (see paragraphs 47 and 56 below);
 - (j) If Lumo Energy has not made the payment what are the consequences? (see paragraphs 82, 83 and 86 below).
- 5. Both the ombudsman and Lumo Energy accepted that Customer O was a customer experiencing payment difficulties and that Lumo Energy was required to comply with clauses 111(2) and 33(3) of the Energy Retail Code (version 11) (the code) prior to disconnecting the supply of gas to the premises of Customer O on 18 April 2016.
- 6. However, the ombudsman considered that it was unclear whether Lumo Energy had complied with clauses 111(2) and 33(3) of the code.
- 7. Regarding clause 111(2), the ombudsman considered that it was unclear whether Lumo Energy had offered Customer O any payment plans in the 12 months prior to the disconnection due to the lack of contact between Customer O and Lumo Energy.
- 8. Regarding clause 33(3), the ombudsman considered that the information on concessions provided to Customer O by Lumo Energy in the account support letter and final disconnection notice, sent on 22 January 2016 and 8 April 2016 respectively, “do not appear to be of sufficient quality” to discharge the obligation.
- 9. Lumo Energy was invited to provide any information and documents to which it considered the commission should have regard in making its decision. Lumo Energy was also invited to make submissions on the complaint from its point of view for the commission to consider. Lumo Energy did provide information and documents and made submissions for the commission’s consideration. Lumo Energy confirmed that the facts as provided by the ombudsman in its memorandum were a correct and accurate statement of the facts.
- 10. Lumo Energy considered that it was not required to make a payment to Customer O under section 48A of the Act due to the lack of engagement by Customer O.
- 11. Lumo Energy considered that it had offered Customer O a first payment plan in the ombudsman’s resolution letter sent to Customer O on 23 November 2015, but that Customer O had not accepted the offer.
- 12. Regarding a second payment plan, Lumo Energy considered that it was not able to offer a second payment plan due to Customer O’s lack of engagement. Lumo Energy argued “[a]ny responsible decision around offering another payment had to be dependent upon Customer O’s capacity to pay. An offer could have been made on the same terms (or any other terms) and would have been meaningless without [Customer O’s] engagement and consent. Lumo

could not offer an alternative without some understanding of [Customer O's] financial position.”

13. Lumo Energy considered that the commission's decision of 2012, 'Obligations to Customers: Disconnection and Reconnection' should be applied. Lumo Energy argued that decision supports the proposition that where a customer does not engage with a retailer after a first payment plan is offered, the retailer is not required to offer a second payment plan, but rather the retailer need only make genuine attempts to contact the customer. Lumo Energy argued they offered a first payment plan and made genuine attempts to contact the customer.
14. Regarding clause 33(3) of the code Lumo Energy considered they had provided sufficient information through the notices sent to Customer O.

Relevant facts

15. The commission analysed the ombudsman's request for a decision and sought additional information from Lumo Energy. Having assessed the matter and the information and documents received by the commission, the commission makes the factual findings set out below.

Background

16. At all relevant times, Lumo Energy was the licensee responsible for supply of gas to the premises.
17. In 2014, Lumo Energy established an account for the supply of gas at the premises to Customer O. It entered into a Market Retail Contract for the supply of gas at Customer O's premises.
18. On 2 October 2014, Lumo Energy established a \$100 per week payment plan for Customer O. This payment plan was cancelled on 19 February 2015.
19. Between 3 October 2014 and 1 September 2015, Customer O made 36 payments to the account, totalling \$3,600.
20. On 1 September 2015, a bill was issued in the amount of \$3,001.69, which triggered the first disconnection process.
21. On 12 October 2015, Lumo Energy disconnected the supply of gas to the premises of Customer O. Customer O's complaint regarding this matter was investigated by the ombudsman and resolved on the basis that the disconnection was wrongful as Lumo Energy had failed to comply with clause 33(3) of the code.
22. As part of the resolution of the ombudsman's investigation into the first disconnection Lumo Energy advised the ombudsman that Customer O's average fortnightly consumption was \$163.00. Accordingly, Lumo energy offered to establish a payment plan of \$82.00 per week, with the first payment to be received by 26 November 2015.
23. On 23 November 2015, the ombudsman wrote to Customer O advising Customer O that the complaint had been resolved and that "Lumo Energy will establish a payment plan of \$82 per week, with the first payment to be received by 26 November 2015." The letter noted that ombudsman staff had spoken to Customer O on the phone (earlier on the same day) and that Customer O was satisfied with Lumo Energy's response.

24. Lumo Energy's contact notes for 24 November 2015 suggest that Customer O had informed Lumo Energy they could afford \$82 per week and had agreed to pay this amount on the understanding that it would be increased over time. The notes also indicated that Customer O was expecting "long term" assistance.
25. Lumo Energy's hardship team then attempted to set up the first payment plan with Customer O.
26. From 1 December 2015, Lumo made several attempts to contact Customer O. From Lumo Energy's contact notes these activities appear to have been done on the basis that Customer O was a "potential hardship referral":
 - (a) On 1 December 2015 Lumo Energy left a voice message, sent an SMS and a letter.
 - (b) On 3 December 2015 Lumo Energy sent another SMS to Customer O asking that Customer O contact its customer service number.
27. Having received no response from Customer O, on 10 December 2015, Lumo Energy's contact notes record that Customer O's account was "put back to standard collection".
28. Importantly however, it should be noted that between 25 November 2015 and 14 April 2016 Customer O made 21 weekly payments of \$100 towards their account, reducing the balance of their account from \$2,668.90 to \$1,799.57.
29. On 15 December 2015, Lumo Energy initiated the disconnection process and made several attempts to communicate with Customer O:
 - (a) a reminder notice was sent on 15 December 2015
 - (b) a reminder telephone call was made on 29 December 2015 and there was no answer
 - (c) a non-contact letter was sent on 1 January 2016
 - (d) a disconnection notice was sent on 6 January 2016
 - (e) a disconnection telephone call was made on 11 January 2016 and there was no answer
 - (f) a second disconnection telephone call was made on 14 January 2016 and there was no answer.
30. On 20 January 2016, Lumo Energy sent Customer O a disconnection warning SMS with the following text:
 - (a) "Urgent message from Lumo Energy: Our records indicate that your gas/power account remains unpaid and may result in being scheduled for disconnection. To prevent this

from occurring, please make immediate payment of the overdue balance of \$xxxx. If you are having payment difficulties please call 1300553615 for assistance”.

31. On 21 January 2016, at 8:53am Customer O replied to the SMS with the following:
 - (a) "I am sick of your constant harassment! Despite a hardship payment agreement negotiated via the energy ombudsman (which I am paying more than the agreed amount per week) you are still bombarding me with phonecalls, threatening letters and now this text message saying I am scheduled for disconnection again! Im going to talk to the ombudsman again and perhaps consult my solicitor about the personal anguish you are causing me and my family."
32. On 21 January 2016, at 3:53pm the Lumo Energy contact notes show the following message was communicated internally within Lumo Energy:
 - (a) "Hi Team,
This has come up for disconnection we can't disconnect because of the ombudsman resolution.
After speaking with [L...] and [J...] can you please get in contact with this client and set up the payment plan. Thank you."
33. The initial disconnection service order was cancelled soon after that message was sent.
34. On 21 January 2016 at 4:16pm, Lumo Energy again attempted to contact Customer O, asking Customer O to contact Lumo Energy to join its hardship program. This was done by telephone, SMS and post. Customer O did not respond.
35. On 21 January 2016 at 7:45pm, Lumo Energy sent another SMS asking Customer O to contact its customer service number.
36. On 22 January 2016, Lumo Energy sent an account support letter to Customer O with the following text:
 - (a) "We think that you may be having some financial difficulty, so we want to let you know we're here to help. By joining our Account Support Program, you will be able to get your energy payments back on track.
We've been trying to contact you, but for some reason we can't get hold of you. It is very important that we chat to you about your account within 5 business days from the date of this letter.
If we can't speak to you within 5 business days, you will be expected to make full payment for all your Lumo Energy bills by the due date.
We can help.
There are a number of ways such as payment plans and government concessions that

might help you. We can also provide you with your own case worker and a financial counsellor, to give you advice on energy efficiency and help you with applying for concessions.”

Circumstances leading to the disconnection in April 2016

37. On 4 March 2016, Lumo Energy issued a reminder notice for the outstanding amount of \$1,963.65, based on the bill that it had issued on 1 September 2015. Customer O had been wrongfully disconnected for non-payment of the 1 September 2015 bill and Lumo Energy had made a wrongful disconnection payment. A resolution between Customer O and Lumo Energy had been facilitated by the ombudsman and Customer O had been making weekly payments of \$100 to their gas account. The reminder notice made no mention of any of those facts or developments.
38. On 24 March 2016, Lumo Energy issued Customer O with a disconnection warning notice in the amount of \$1,663.65. Again no mention was made by Lumo Energy to the facts and developments referred to in the previous paragraph. Since the issuing of the reminder notice Customer O had continued to make their regular weekly \$100 payments to Lumo Energy. Hence the amount outstanding between the issue of the reminder notice and the disconnection warning notice had decreased by \$300.00.
39. On 8 April 2016, Lumo Energy issued Customer O with a final disconnection notice, sent via registered post. It stated that Customer O’s account was overdue with a balance of \$1,463.65. That notice went on to state “We have made several attempts to contact you regarding this matter, **but have received no payments. As a result, your GAS disconnection is scheduled for 18/04/2016.**” (Commission’s emphasis in bold).
40. In fact, Lumo Energy had been receiving regular weekly payments of \$100.00 from Customer O and had received two further payments reducing the outstanding amount in the final disconnection notice to \$1,463.65 from the time it had issued the disconnection warning notice on 24 March 2016.
41. On 11 April 2016, at 1:52pm Lumo Energy raised a service order for the disconnection of gas supply to Customer O’s premises.
42. During this period Lumo Energy also made several attempts to contact Customer O that were not successful.
 - (a) Three telephone calls were made by Lumo Energy on – 16 March 2016, 31 March 2016 and 11 April 2016 – all of which resulted in voice messages being left for Customer O.
 - (b) Two SMS messages were sent by Lumo Energy – on 7 April 2016 and 12 April 2016.

Disconnection of gas supply to the premises

43. On 18 April 2016 at 9:37am, the gas supply to the premises of Customer O was disconnected for non-payment of the outstanding balance of \$1,799.57.
44. On 19 April 2016 at 2.16pm, the ombudsman contacted Lumo Energy instructing it to restore the supply of gas to Customer O's premises.
45. On 19 April 2016 at 3:08pm, Lumo Energy reconnected the supply of gas to Customer O's premises.
46. The premises were disconnected for a period of 1 day, 5 hours and 31 minutes.
47. Lumo Energy has not made any wrongful disconnection payment to Customer O.

Relevant obligations

48. In this matter, Lumo Energy's relevant obligations arise from the following:

(a) The Act:

- (i) Sub-sections 43(1), (1A) and (2) rendering void any term or condition of Lumo Energy's contract for the supply of gas to the extent that it is inconsistent with terms and conditions decided by the commission that specify the circumstances in which the supply of gas to premises may be disconnected and require the licensee to provide information specified by the commission about the rights and entitlements of customers, and instead deeming the terms and conditions decided by the commission to be in the contract;
- (ii) Sub-section 48A(1) of the Act which deems a condition into Lumo Energy's retail licence an obligation to make a payment of the prescribed amount to a customer if there has been a wrongful disconnection; and
- (iii) Sub-sections 48A(3) and (5) which requires payment of the prescribed amount as soon as practicable after the supply of gas is reconnected. Since 1 January 2016 the prescribed amount is \$500 for each full day, and a pro rata amount for each part of a day, that the supply of gas is disconnected.
- (iv) Sections 48E to 48K dealing with hardship policies and in particular the objects of those provisions (section 48F) and the reference to community expectations that the gas supply will not be disconnected solely because of a customer's inability to pay for the gas supply (section 48I(2)(c)).

(b) Lumo Energy's gas retail licence:

- (i) Clause 6.1 of the licence which requires Lumo Energy to ensure its contracts for the sale of gas expressly deal with each matter which is the subject of a term or condition of the code.
- (ii) Clause 6.3 which requires each term or condition of Lumo Energy's contracts for the sale of gas to be consistent with each term and condition of the code.
- (iii) Clause 6.4 which requires Lumo Energy to comply with the terms and conditions of any contract for the sale of gas with a relevant customer.

(c) Lumo Energy's market contract with Customer O, that contained the following terms and conditions:

- (i) Clause 8.3(b) and (d) which state that – “if you are a Residential Customer and have told us that you have difficulty paying your bill we must offer you the option of paying your bill under a Payment Plan”; and “Additional protections may be available to you under our Customer Hardship Policy and under the Regulatory Requirements if you are a Customer experiencing payment difficulties due to hardship. A copy of our Customer Hardship Policy is available on our website.”
 - (ii) Clause 14.1(a) which states that “[s]ubject to us satisfying the requirements in the Regulatory Requirements, we may arrange for the disconnection of your Premises if: (a) you do not pay your bill by the Due Date and you: (i) fail to comply with the terms of an agreed Payment Plan; or (ii) if you are a Residential Customer, do not agree to an offer to pay the bill by instalments, or having agreed, you fail to comply with the instalment arrangement.”
 - (iii) Clause 14.2 which relevantly states that “[b]efore disconnecting your Premises we must comply with relevant warning notice requirements and other provisions in the Regulatory Requirements.”
 - (iv) Clause 14.3 which states that “[w]e will not disconnect you if the Regulatory Requirements prevent us from doing so.”
 - (v) Clause 25 of the Dictionary in Lumo Energy’s contract with Customer O which relevantly states that “Regulatory Requirements means all rules, regulations, codes, statutes, guidelines, licences, orders in council, tariffs, proclamations, directions or standards applicable where your Premises is located that relate to the supply of electricity, gas or both as the case may be, including...in Victoria the Energy Retail Code published by the Essential Services Commission of Victoria.”
- (d) The code:
- (i) Clauses 107 to 118 deal with, and specify the circumstances in which, the supply of gas to premises may be disconnected. In particular, the retailer must not arrange disconnection of a customer’s premises except in accordance with clauses 111 to 118.
 - (ii) Clause 111 of the code sets out conditions under which a customer may be disconnected for failure to pay a bill or to adhere to a payment plan. Clause 111(2) of the code applies where a retailer is informed that the customer is experiencing payment difficulties. In those circumstances, the retailer must not arrange for the disconnection of the customer’s premises unless the retailer has offered the customer two payment plans in the previous 12 months.

- (iii) Clause 72 identifies the requirements in *offering a payment plan* and in *establishing a payment plan*.

49. Lumo Energy's obligations are discussed further below in the reasons.

Decision

50. Lumo Energy is in breach of a condition of its gas retail licence, deemed into Lumo Energy's gas retail licence by section 48A of the Act (the deemed licence condition).
51. Lumo Energy disconnected the supply of gas to Customer O's premises on 18 April 2016 at 9:37am (the disconnection).
52. The disconnection was not in accordance with the deemed licence condition.
53. The supply of gas to Customer O's premises was reconnected on 19 April 2016 at 3:08pm.
54. The supply of gas to Customer O's premises was wrongfully disconnected for a period of 1 day, 5 hours and 31 minutes.
55. Therefore, under the deemed licence condition, Lumo Energy was obliged to pay to Customer O the prescribed amount of \$615 as soon as practicable after the supply of gas was reconnected to Customer O's premises on 19 April 2016.
56. No payment has been made as at 6 June 2018.

Reasons

57. Lumo Energy's gas retail licence requires that:
- (a) Lumo Energy not enter into a contract for the sale of gas with a relevant customer unless the terms and conditions of the contract expressly deal with each matter which is the subject of a term or condition of the code (clause 6.1); and
 - (b) Each term or condition of Lumo Energy's contract for the sale of gas to a relevant customer must not be inconsistent with the terms or conditions of the code (clause 6.3); and
 - (c) Lumo Energy must comply with the terms and conditions of any contract for the sale of gas with a relevant customer (clause 6.4).
58. The deemed licence condition requires Lumo Energy to make a prescribed payment to a customer as soon as practicable after the supply of gas to the customer's premises is reconnected where it:
- (a) Disconnects the supply of gas to the premises of that customer; and
 - (b) 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.
59. Clauses 8 and 14 of Lumo Energy's contract with Customer O effectively specify the circumstances in which the supply of gas to Customer O's premises may be disconnected. Clauses 8 and 14 are subject to compliance with, and incorporate by reference into the contract, the requirements in Part 6 of the code.
60. It is suggested by the ombudsman that there may have been non-compliance with the provisions of clauses 33(3) and 111(2) of the code.

Clause 111(2) of the code – Was Customer O a hardship/payment difficulties customer?

61. It is not in dispute that Customer O was a customer experiencing payment difficulties at least as early as 23 November 2015. Accordingly clause 111(2) of the code required Lumo Energy not to arrange for disconnection of Customer O's premises unless Lumo Energy had offered Customer O two payment plans in the previous 12 months, and:
- (a) Customer O had agreed to neither of them; or

- (b) Customer O had agreed to one but not the other of them but the plan to which Customer O agreed has been cancelled due to non-payment by Customer O; or
- (c) Customer O had agreed to both payment plans but the plans have been cancelled due to non-payment by Customer O.

Clause 111(2) of the code – Did Lumo Energy offer any payment plan?

- 62. Lumo Energy did not offer Customer O any payment plan in the 12 months prior to arranging for disconnection by raising the service order for disconnection on 11 April 2016 (see paragraph 41 above).
- 63. Lumo Energy contended that “one plan was offered in [the ombudsman’s] resolution letter”. Accepting that Lumo Energy could convey an offer of a payment plan through the ombudsman’s letter requires consideration of the terms of the ombudsman’s letter of 23 November 2015 (see paragraph 23 above) with the requirements of an offer in clause 72 of the code. In the ombudsman’s letter dated 23 November 2015 sent to Customer O to communicate a resolution of Customer O’s complaint to the ombudsman, paragraphs 6 and 7 of the letter provide that “Lumo Energy will establish a payment plan of \$82 per week, with the first payment to be received by 26 November 2015. As this is a hardship payment plan, Lumo Energy will carry out quarterly reviews based on your usage and capacity to pay.”
- 64. An offer of a payment plan for the purposes of clause 111(2) of the code required Lumo Energy to inform Customer O of:
 - (a) the duration of the plan;
 - (b) the amount of each instalment payable under the plan, the frequency of instalments and the date by which each instalment must be paid; and
 - (c) the number of instalments to pay Customer O’s arrears (see clause 72(2) of the code).
- 65. There was no such offer of a payment plan by Lumo Energy to Customer O. In this case, the ombudsman’s letter of 23 November 2015 was not expressed to be, and was not, an offer of a payment plan in accordance with the code. Through the ombudsman’s letter, Lumo Energy did not specify the duration of the plan or the required number of instalments to pay Customer O’s arrears.
- 66. If, contrary to the commission’s view, the ombudsman’s letter of 23 November 2015 to Customer O could be characterised as an offer of a payment plan by Lumo Energy to Customer O, then Customer O had accepted that offer and was complying with it by making weekly payments in excess of those required. Accordingly, under this scenario Lumo Energy would be precluded from disconnecting the supply of gas to the premises under clause 111 of the code, as Customer O was complying with a payment plan.

67. Alternatively, to the extent the ombudsman’s letter could be characterised as an offer of an instalment arrangement for the payment of Customer O’s outstanding debt, it was accepted by Customer O and faithfully acted upon by weekly payments of \$100.00. Customer O’s payments were, in fact, in excess of the proposed \$82.00 per week as set out in the ombudsman’s letter.
68. Lumo Energy also contended that “[a]ny responsible decision around offering another payment had to be dependent upon Customer O’s capacity to pay”. This contention by Lumo Energy confuses the requirements under the code in making *an offer of a payment plan* with *establishing a payment plan* under clauses 72(1) and (2) of the code.
69. Lumo Energy could have offered a payment plan based on the requirements of clause 72(2) of the code by taking into account Customer O’s average usage at the relevant time as it did in resolving Customer O’s October 2015 complaint to the ombudsman. Such an offer would need to comply with the requirements of clause 72(2) of the code (see paragraph 64 above).
70. Given that Customer O was consistently making weekly payments above the \$82.00 per week as communicated to Customer O in the ombudsman’s letter, and Lumo Energy’s communications to Customer O from December 2015 simply ignored that fact, it is hardly surprising that Customer O replied to Lumo Energy’s SMS message as set out in paragraph 31 above.
71. Further, it is surprising given the matters set out at paragraph 32 above, that Lumo Energy chose to send out a reminder notice, a disconnection warning notice and a “final disconnection notice” in the form and manner as set out in paragraphs 37 to 39 above. In particular, the commission is concerned that Lumo Energy chose to send out a final disconnection notice with the following false statement and rationale for disconnecting the gas supply to Customer O’s premises –“We have made several attempts to contact you regarding this matter, **but have received no payments. As a result, your GAS disconnection is scheduled for 18/04/2016.**” (Commission’s emphasis in bold).
72. Lumo Energy was consistently receiving \$100.00 payments from Customer O each week between 25 November 2015 and 14 April 2016.
73. In conclusion, Lumo Energy did not comply with the requirements of clause 111(2) of the code, and clauses 8.3(b), 8.3(d) and 14 of its contract with Customer O, in disconnecting the supply of gas to Customer O’s premises on 18 April 2016.
74. Lumo Energy was not entitled to disconnect the supply of gas to Customer O at the premises on 18 April 2016. It breached its deemed licence condition by doing so.

Other observations

Clause 33(3) of the code – Did Customer O need to be informed again about the utility relief grant scheme prior to disconnection?

75. The ombudsman’s referral of this matter regarding the application of section 48A of the Act also queried Lumo Energy’s compliance with clause 33(3) of the code. In view of the commission’s conclusion regarding Lumo Energy’s non-compliance with clause 111(2) of the code and therefore the breach of Lumo Energy’s deemed licence condition, it is not necessary for the commission to deal with the clause 33(3) issue. However, to assist the ombudsman and retailers, the commission provides the following comments.
76. Clause 33(3) is in Part 3 of the code which is headed Customer Retail Contracts, and Division 4 which is headed Customer retail contracts – billing. It is not a term or condition “specifying the circumstances in which the supply of gas to premises may be disconnected”.
77. Accordingly, if there was non-compliance with the requirements of clause 33(3) of the code, that may be a breach of Lumo Energy’s licence conditions. However, such a breach would not satisfy the requirements for the condition at sub-section 48A(1)(b) of the Act. Therefore, there would not be any breach of the deemed licence condition.
78. Lumo Energy’s submission notes that it complied with the requirements of clause 33(3) and that clause 33(3) of the code does not specify timing or content requirements for the provision of the required information. If it had been necessary, the commission would find that Lumo Energy had informed Customer O about the utility relief grant scheme in compliance with the requirements of clause 33(3) of the code.

Lumo Energy’s submissions regarding the commission’s 2012 decision ‘Obligations to Customers: Disconnection and Reconnection’

79. Lumo Energy, in support of its contention regarding the appropriate response from a retailer when a customer is not engaging with them, also referred to the commission’s 2012 decision ‘Obligations to Customers: Disconnection and Reconnection’¹ (the 2012 decision). The commission notes that the 2012 decision raised by Lumo Energy was referring to a previous version of the code, version 8 dated April 2011, as set out in appendix A, at page 45, of the 2012 decision. At that stage, clause 12.2(a) of that version of the code required capacity to

¹ Essential Services Commission 2012, *Obligations to customers: disconnection and reconnection* – Final Decision, February, C/12/5781.

pay to be addressed at the time of offering an 'instalment plan'. That provision is significantly different from the current provision (see clause 72 of the code) contained in version 11 of the code which came into operation on 13 October 2014 and covers the conduct which is the subject of the complaint made by Customer O. Further, that decision applied to circumstances in which a customer had failed to make some payment under a "first instalment plan" before it failed and had subsequently not engaged.

80. Consistent with the commission's reasons at paragraph 65 above, Lumo Energy had not offered a first payment plan. Accordingly, the 2012 decision does not assist Lumo Energy.
81. Consistent with the commission's reasons at paragraph 66 above, if Lumo Energy had offered Customer O a first payment plan, then Customer O had not only made some payments towards the first payment plan, Customer O was consistently and continuously making payments in excess of the agreed amount under the first instalment plan. Accordingly, even in those circumstances, the 2012 decision does not assist Lumo Energy.

Enforcement

82. Lumo Energy has breached its retail licence by failing to make a payment of \$615 as soon as practicable after the reconnection of the supply of gas to Customer O's premises on 19 April 2016.
83. Lumo Energy is required to rectify the contravention by making the payment.
84. Lumo Energy should advise the commission in writing when the payment has been made.
85. If Lumo Energy is unable to make payment it should inform the commission in writing within five business days.
86. If the payment is not made within five business days, the commission may take enforcement action against Lumo Energy under Part 7 of the Essential Services Commission Act 2001 (Vic).