



WRONGFUL DISCONNECTION PAYMENT DISPUTE

ORIGIN ENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

JUNE 2007

Introduction

Section 48A of the *Gas Industry Act 2001* 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 (OP) 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 OP.

Background

EWOV requested the Commission to make a formal decision as to whether Origin Energy complied with its retail licence in relation to a dispute between 'The Complainant' and Origin Energy regarding a wrongful disconnection compensation payment.

The Complainant joined Origin Energy in May 2006. Origin Energy records indicate that between the creation of the account and the disconnection in February 2007, The Complainant did not make a payment towards the account.

The Complainant's payment history also includes three instalment plans, all of which were broken due to non-payment and that The Complainant had received numerous reminders and disconnection warnings in relation to the arrears. The third plan was arranged on 17 January 2007, but again no payment was received and The Complainant made no contact with Origin Energy. The gas supply was subsequently disconnected on 13 February 2007.

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.

Assessment and Assistance to Customers in Financial Difficulty

Capacity to pay

Clause 11.2(1) of the ERC provides for the retailer to assess capacity to pay, based on whatever information the customer provides or the retailer otherwise has.

The Complainant's account history shows that, prior to the disconnection in February 2007, no payments had been made against the account since its establishment in May 2006. In addition to three broken instalment plans, The Complainant had received numerous reminders and disconnection warnings in relation to the arrears. It is considered that these factors are indicative of a customer experiencing payment difficulties, which are likely to be linked to the lack of sufficient income.

Origin Energy advised that it assessed The Complainant's capacity to pay on 17 January 2007. It is not apparent from the screen notes of the approach taken by Origin Energy in assessing The Complainant's capacity to pay.

According to Origin Energy, allowing The Complainant to enter into a third plan at the reduced amount of \$40 per fortnight was a fair assessment of The Complainant's capacity to pay. The basis of this claim is that 'The Complainant' suggested the amount themselves and that the amount was less than the previous plan of \$50 per fortnight.

Notwithstanding the above, it is found that the amount set for the instalment plans does appear to be within an acceptable range for payment of the account over a twelve month period. This would appear to indicate that account was taken of The Complainant's capacity to pay.

Therefore, taking all of the available information into account, it cannot be concluded that 'The Complainant's disconnection was wrongful because Origin Energy did not adequately assess 'The Complainant's capacity to pay.

Advice on URGS, Energy Efficiency and Financial Counsellors

Clause 11.2(4) of the ERC requires a retailer to provide a customer with details on the Utility Relief Grant Scheme, energy efficiency information and the availability of independent financial counsellors.

Origin Energy stated that it did not provide the information required under clause 11.2(4) as it did not consider that 'The Complainant' was experiencing financial hardship. As noted above however, Origin Energy customer care notes indicate that 'The Complainant's capacity to pay was taken into account on a number of occasions in addition to the affordability of the proposed payment instalments. This information suggests that Origin Energy was aware that The Complainant was suffering financial hardship.

The Commission considers that, based on the information to hand at the time of the disconnection, it would seem that The Complainant's payment history was most likely to have been due to a lack of sufficient funds. Therefore it must be considered that Origin Energy did not comply with clause 11.2(4) in offering The Complainant details regarding the Utility Relief Grant Scheme, energy efficiency information and the availability of independent financial counsellors.

Decision

In accordance with clause 7 of the OP, the Commission has investigated the alleged breach by Origin Energy of its retail licence in relation to the disconnection of The Complainant. The Commission has decided that Origin Energy 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 11.35 am 13 February 2007 to 4.30 pm 20 February 2007. The amount is \$1,802.25.

R H SCOTT
Delegated Commissioner
June 2007