

Origin Energy – decision and reasons

Application of section 40B Electricity Industry Act 2000 and section 48A of the Gas Industry Act 2001 – compensation for wrongful disconnection

3 November 2021

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Referral from Origin

1. The relevant entities in this matter are Origin Energy (Vic) Pty Ltd (gas customers), Origin Energy Electricity Limited (electricity customers) and Origin Energy Retail Limited (gas customers in the Mildura region) (collectively **Origin Energy**).
2. On 6 March 2020, Origin Energy wrote to the commission advising of a wrongful disconnection issue that it discovered involving potential breaches of clause 111A(1)(a)(iv) of the Energy Retail Code.
3. Origin Energy reported that between 1 January 2019 and 13 February 2020, it arranged for the disconnection of 875 residential customer accounts in circumstances where the content of its best endeavours messaging did not fully satisfy the requirements of clause 111A(1)(a)(iv) of the Code.
4. Clause 111A(1)(a)(iv) of the Code provides that retailers may only arrange de-energisation of a residential customer's premises for not paying a bill if the retailer has, after the issue of a disconnection warning notice, used its best endeavours to contact the customer in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3 of the Energy Retail Code.
5. Following analysis of the matter, Origin Energy revised the number of customer accounts which were wrongfully disconnected from 875 to 349. The revised number of customers (349) were addressed through a commission decision made on 7 July 2021 in which the commission found the accounts were wrongfully disconnected and 90 penalty notices issued. These penalties were paid by Origin on 5 August 2021.
6. Of the other 526 customer accounts subject of Origin Energy's initial referral, the commission is satisfied that 244 customers were not wrongfully disconnected. However, a question has arisen as to whether the remaining 282 of those accounts were wrongfully disconnected and if so, whether Origin Energy is required to make a wrongful disconnection payment to those customers.
7. For these 282 customers, the number of accounts associated with each Origin entity is as follows:
 - a. Origin Energy Electricity Limited - 212 customers
 - b. Origin Energy (Vic) Pty Ltd – 68 customers
 - c. Origin Energy Retail Limited – 2 customers.
8. All impacted customers were residential customers.
 - a. 260 customers held more than one account with Origin at the same address:
 - 256 of those customers held a combination of electricity and gas accounts;
 - The other four customers held two electricity accounts – which is not unusual in regional/agricultural areas where multiple electricity meters are common.

- b. 12 customers held more than one account with Origin where the properties related to each account were located on the same street. Origin advised that this is likely to be either the same property or contiguous.
- c. 10 customers held more than one account with Origin where the addresses for each account were not related.

Issues for decision

9. This issue in this referral is whether Origin Energy complied with clause 111A(1)(a)(iv) of the Code when providing the 282 customers clear and unambiguous information about their payment assistance entitlements under Part 3 of the Energy Retail Code. The question arises in circumstances where that information was communicated to the customers in relation to a separate overdue account that they held with Origin Energy and during the same period of time.
10. The issues which the commission is therefore required to decide are:
 - a. Whether, when contacting customers in relation to a separate overdue account, Origin Energy complied with its obligation after issuing a disconnection warning notice, to use its best endeavours to contact the 282 customers in relation to the non-payment of that bill and the potential disconnection of their relevant energy supply, and in so doing, provided clear and unambiguous information about the assistance available under Part 3 of the Code, in accordance with clause 111A(1)(a)(iv) of the Code.
 - b. If not, whether Origin Energy is required to make a wrongful disconnection compensation payment to those customers in accordance with section 40B of the Electricity Act 2000 or section 48A of the Gas Industry Act 2001.

Relevant facts

11. During the period 1 January 2019 to 13 February 2020, Origin Energy arranged for the disconnection of the energy supply of 282 customer accounts for non-payment of a bill.
12. After issuing each customer with a disconnection warning notice, but prior to arranging the disconnections (**the best endeavours period**), Origin sent at least three SMS text messages to each customer about their overdue account.
13. The following are examples of text messages that were sent to affected customers:

SMS text

Hi you've still got \$936.79 (incl GST) overdue for Electricity account XXXXXXXXXXXX. To stay connected pay online at origin.com.au/pay/XXXXXXXXXX or call 132461. Need help? You're entitled to a range of assistance. Head to originenergy.com.au/paymentassistance or call us to learn more about these options

Hi. We're still waiting for payment of \$3737.82 (incl GST) for your Electricity acct (XXXXXXXXXX) To stay connected pay at origin.com.au/pay/XXXXXXXXXX or call 132461. Need help? You're entitled to a range of assistance. Head to originenergy.com.au/paymentassistance or call us to learn more about these options

Hi. To avoid disconnection you need to pay the \$367.76 (incl GST) overdue for Electricity account XXXXXXXXXXXX now at origin.com.au/pay/XXXXXXXXXX or call 132461. Need help? You're entitled to a range of assistance. Head to originenergy.com.au/paymentassistance or call us to learn more about these options.

Hi you've still got \$340.78 (incl GST) overdue for Gas account XXXXXXXXXXXX. To stay connected pay online at origin.com.au/pay/XXXXXXXXXX or call 132461. Need help? You're entitled to a range of assistance. Head to originenergy.com.au/paymentassistance or call us to learn more about these options.

Hi. As you haven't paid we've arranged to disconnect your Electricity account XXXXXXXXXXXX. To stay connected call us on 1800132462 by 8pm 12/03/20. Need help? Give us a call to talk about your payment assistance options.

Hi it's Origin here. You've got \$635.20 (incl GST) due on your Gas account XXXXXXXXXXXX. Pay now at origin.com.au/pay/XXXXXXXXXX reply 1 if you'll pay within 7 days or call us on 1300360986

Hi it's Origin here. Don't forget to pay the \$254.76 (incl GST) overdue for Electricity account XXXXXXXXXXXX. Reply 'pay' to pay now via card ending in XXX. Up to 0.72% card fee may apply. Need help? Give us a call on 132461 to talk about your payment assistance options.

Did you know that you're entitled to a range of payment assistance options to help you pay your energy bills? To find out more head to originenergy.com.au/paymentassistance or give us a call on 132461

14. Origin Energy conceded that the content of these text messages alone failed to satisfy the requirement under clause 111A(1)(a)(iv) of the Code to provide customers with clear and unambiguous information about the assistance available under Part 3 of the Code. The commission considers that this concession is correctly made.
15. These text messages were the only contact that customers received from Origin Energy during the best endeavours period in relation to the accounts which were ultimately disconnected.
16. However, also during the best endeavours period, Origin Energy provided the 282 customers with information about the assistance available under Part 3 of the Code either in correspondence, or through a conversation with them, in relation to another overdue energy account that the customer held with Origin Energy.
17. By way of example, a customer held two separate accounts with Origin Energy (Account A and Account B):
 - Both accounts were overdue, however Account A was further progressed in the disconnection steps than Account B.
 - Origin Energy issued a disconnection warning notice to the customer for Account A, and at least three text messages to the customer about Account A in the terms set out at paragraph 13 above.
 - During or after the disconnection process in respect of Account A, a disconnection process was also initiated in in respect of Account B.
 - In relation to Account B, Origin Energy issued a reminder notice (which included a copy of Origin's payment assistance brochure), and sent an email further informing the customer of their payment assistance entitlements.
18. The communications in respect of Account B provided clear and unambiguous advice about the payment assistance options available to the customer.

Relevant obligations

19. The relevant obligations in this matter arise from the Energy Retail Code, the Electricity Industry Act 2000 and the Gas Industry Act 2001.
20. Origin Energy's retail licences require it to comply with all applicable provisions of the Energy Retail Code, and with the terms and conditions of any contract for the sale of gas or electricity with a residential customer.
21. Each relevant consumer retailer contract entered into by Origin Energy with the affected customers provides that Origin will follow the procedures / requirements set out in the Energy Retail Code with respect to disconnecting a customer's energy supply.

The Energy Retail Code

22. Clause 111A(1)(a)(iv) was inserted into the [Energy Retail Code](#) on 1 January 2019.¹ It relevantly provides:

(1) A retailer may only arrange de-energisation of the premises of a residential customer for not paying a bill if:

(a) the retailer:

...

(iv) has, after the issue of the disconnection warning notice, used its best endeavours to contact the customer in relation to the matter and, in so doing, provided clear and unambiguous information about the assistance available under Part 3.

The Electricity Industry Act 2000

23. Section 40B of the [Electricity Industry Act 2000](#) provides that it is a condition of Origin Energy's electricity retail licence that it must make a compensatory payment of the prescribed amount to a relevant customer if it disconnects the supply of electricity to the premises of the customer without complying with the terms of the contract with the customer that specify the circumstances in which the supply of electricity to those premises may be disconnected.

¹ The wording of this clause did not change during the relevant period for the different versions of the Code.

24. Section 40B(1A) of the Act provides that, where a customer does not notify a licensee that the customer's electricity supply has been disconnected within 14 days after the date of a wrongful disconnection, the maximum compensatory payment payable by a licensee is the prescribed capped amount.
25. Section 40B(3) of the Act provides that any payment required under section 40B(1) is to be made as soon as practicable after the supply of electricity is reconnected.
26. Section 40B(5) of the Act provides that the prescribed amount payable under section 40B(1) is:
 - a. \$500 for each whole day, and a pro rata amount for any part of a day, that the supply of gas remains disconnected, and
 - b. the prescribed capped amount applicable under section 40B(1A) is \$3,500.

The Gas Industry Act 2001

27. Section 48A(1) of the [Gas Industry Act 2001](#) provides that it is a condition of Origin's gas retail licence that it must make a compensatory payment of the prescribed amount to a relevant customer if it disconnects the supply of gas to the premises of the customer without complying with the terms of the contract with the customer that specify the circumstances in which the supply of gas to those premises may be disconnected.
28. Section 48A(1A) of the Act provides that, where a customer does not notify a licensee that the customer's gas supply has been disconnected within 14 days after the date of a wrongful disconnection, the maximum compensatory payment payable by a licensee is the prescribed capped amount.
29. Section 48A(3) of the Act provides that any payment required under section 48A(1) is to be made as soon as practicable after the supply of gas is reconnected.
30. Section 48A(5) of the Act provides that the prescribed amount payable under section 48A(1) is:
 - a. \$500 for each whole day, and a pro rata amount for any part of a day, that the supply of gas remains disconnected, and
 - b. the prescribed capped amount applicable under section 48A(1A) is \$3,500.

Submissions

31. Origin Energy submitted that it complied with the requirements of clause 111A(1)(a)(iv) of the Code in respect of the 282 customers, and therefore, is not required to pay wrongful disconnection compensation to those customers. Origin Energy submitted that regardless of which account the correspondence sent to the 282 customers related to, each customer was fully informed of their entitlements under Part 3 of the Code during the best endeavours period.
32. On 6 November 2020, in response to clarifying questions asked by commission staff, Origin Energy provided further details about the 282 customers. In summary, Origin Energy stated that during the best endeavours period:
 - a. The 282 customers received SMS text messages which referred specifically to the relevant energy account which was subsequently disconnected, including details about the debt outstanding, the fuel and the status of the account.
 - b. In addition to these text messages, the 282 customers also received detailed information about their payment assistance entitlements under Part 3 of the Code either in correspondence, or conversation about another energy account.
33. Origin Energy acknowledged that for compliance purposes, the correspondence to customers was 'split between multiple channels and separate accounts'. However it considered that it still complied with the requirements of clause 111A(1)(a)(iv) of the Code and clause 8.3.1 of the [Energy Compliance and Enforcement Policy: Guidance note – Payment difficulty and disconnection \(PDF guidance note\)](#).²
34. Clause 8.3.1 of the PDF Guidance note provides:

Outcomes for the customer

8.3.1 If a retailer complies with clause 111A(a)(iv), we would expect a customer to be:

- a) contacted by their preferred method (if known to the retailer) or another method having regard to the customer's known circumstances; and
- b) advised of the imminent disconnection of their energy supply; and

² Staff note that [Guidance Note 2 \(2020\): Clear and unambiguous information or advice for residential customers anticipating or facing payment difficulties](#) was published on 7 October 2020 and references clause 111A(1)(a) of the Code. However, this guidance note was not published at the time of Origin's alleged conduct and has not been relied upon in this case.

- c) provided with clear and unambiguous information about the assistance available under Division 3; and
- d) advised how to access assistance to ensure that disconnection is only pursued as a measure of last resort.

35. On 5 February 2021, further submissions were received from Origin Energy. Origin Energy submitted that the commission should look at the end outcome, stating that the circumstances of how it contacted the 282 customers during the best endeavours period was:

...not inconsistent with the foundation of the Payment Difficulties Framework (PDF) as a “regulatory design with a focus on outcomes rather than how the outcome is achieved”.

36. Origin Energy also summarised how their efforts in respect of the 282 customers aligned with clause 8.3.1 of the PDF guidance note as per the table below.

<i>1. contacted by their preferred method (if known to the retailer) or another method having regard to the customer’s known circumstances; and</i>	<i>Customers are contacted via multiple channels</i>
<i>2. advised of the imminent disconnection of their energy supply; and</i>	<i>Included in the SMS</i>
<i>3. provided with clear and unambiguous information about the assistance available under Division 3; and</i>	<i>Achieved via the other account</i>
<i>4. advised how to access assistance to ensure that disconnection is only pursued as a measure of last resort.</i>	<i>Included in the SMS</i>

37. By reference to this table, Origin Energy submitted that because each customer had more than one overdue account, they had been provided with comprehensive information on the support available several times throughout the collection cycle, and by the point of actual disconnection. Origin Energy submitted that each customer should have been fully aware of their payment assistance entitlements.

Decision

38. The commission has had regard to the material provided and the submissions made by Origin Energy during the investigation.
39. The commission notes that Origin Energy does not dispute that it arranged for the disconnection of the 282 customers subject of this matter, or that it was required to comply with the Energy Retail Code when doing so.
40. Accordingly, the issue to be resolved by the commission is whether Origin Energy complied with its obligations under clause 111A(1)(a)(iv) of the Code to use its best endeavours to contact the 282 customers in relation to the matter and, in so doing, provided those customers with clear and unambiguous information about the assistance available under Part 3, in accordance with clause 111A(1)(a)(iv) of the Code.
41. If Origin Energy failed to do so, wrongful disconnection compensation is payable to the relevant customers pursuant to section 40B of the Electricity Industry Act 2000 or section 48A of the Gas Industry Act 2001.
42. Based on the information and material that is available, the commission finds that Origin Energy did not comply with clause 111A(1)(a)(iv) in respect of the 282 customers after issue of the disconnection warning notice (for the matter), by failing to use its best endeavours to contact the customers *in relation to the matter*, and in doing so, provide them with clear and unambiguous information about their payment assistance entitlements under Part 3 of the Code.
43. It is the commission's view that compensation is payable to the 282 relevant customers pursuant to either section 40B of the Electricity Industry Act 2000 or section 48A of the Gas Industry Act 2001 as the case may be.

Reasons

44. The commission acknowledges that during the best endeavours period, Origin Energy contacted each customer by text message about the account to be disconnected. However, these text messages did not provide clear and unambiguous information about the assistance available under the Code. This is not disputed by Origin Energy.
45. The commission notes that Origin Energy's combined efforts (as summarised in the table at paragraph 36 above) could be said to artificially meet the individual elements of clause 8.3.1 of the PDF guidance note. However, the commission does not consider that is a proper reading of the guidance note in the correct context, with particular regard to point three in the table.
46. The commission does not accept Origin's submissions that it complied with clause 111A(1)(a)(iv) by contacting customers (through means other than text message) about a separate overdue energy account they held to provide customers with clear and unambiguous information about the assistance available under the Code.
47. The commission considers that the correct interpretation of clause 111A(1)(a)(iv) of the Code requires retailers, during the best endeavours period, to use its best endeavours to contact customers in relation to the account which is at risk of disconnection, and provide clear and unambiguous information about the payment assistance options available under the Code. Correspondence sent to a customer for a separate energy account, whether at the same time or at a different time, cannot be relied upon to satisfy the requirements of clause 111A(1)(a)(iv).
48. As stated, clause 111A(1)(a)(iv) of the Code required Origin Energy to use its best endeavours to contact customers *in relation to the matter* (that is, the imminent disconnection of the gas or electricity account in issue), and, in so doing, provide them with clear and unambiguous information about the payment assistance options available under the Code. In its submissions, Origin Energy relied on correspondence that was sent for a separate account to satisfy the requirement to provide customers with 'clear and unambiguous information' about their payment assistance entitlements. The commission is of the view that this does not constitute contacting customers *in relation to the matter*. The information was provided in relation to a separate energy account and, therefore, a separate matter.
49. Clause 8.3.4 of the PDF guidance note provides further support of the commission's view. It states that:

Best endeavours prior to disconnection is designed to be 'best last efforts' to notify the customer of the imminent disconnection, provide them with clear and unambiguous information about their entitlements to assistance under Division 3 and how to access it, and inform them of the assistance that may be available from government and nongovernment services.

50. Contacting customers about a separate energy account to the account that was ultimately disconnected is not considered to meet the obligation to make 'best last efforts to notify customers of the imminent disconnection'. Best last efforts should have involved contacting customers in relation to the account that was facing imminent disconnection.
51. Furthermore, text message was not the preferred contact method that Origin Energy recorded for its customers at the time. Instead, Origin Energy recorded a customer's preferred contact method as either 'post' or 'email'. Text message was not an option. During the best endeavours period, Origin Energy did not communicate with customers through their preferred contact method for the account that was to be disconnected.
52. Clause 8.3.5 of the PDF guidance note provides examples of compliant conduct with respect to clause 111A(1)(a)(iv) of the Code. Relevantly, it states:

Retailers should attempt to contact customers via their preferred contact method/s, if they are known to the retailer. If the customer prefers telephone contact and the retailer knows the customer's preferred time of day for contact, then the retailer should also rely on this information for the first best endeavours contact attempt.

53. Clause 8.3.12 of the PDF guidance note provides examples of non-compliant conduct that does not constitute best endeavours by a retailer. Relevantly, it states:

(g) If a retailer knows the customer's preferred contact method and has sufficient record of it, but does not attempt to contact the customer by their preferred method.
54. Further, clause 8.3.7 states that retailers may use electronic communications (including text message) to fulfill their best endeavours obligations, but only if the customer provided explicit informed consent to receiving communications via these methods.
55. As noted, Origin did not contact customers through the preferred contact method it had recorded for them.
56. The commission also found that from a practical perspective, relying on correspondence sent about a separate energy account to advise a customer of their payment assistance entitlements has the potential to confuse the customer. While noting that the information provided to customers may not necessarily change, it is possible that a customer may believe that the payment assistance options were only available with respect to the 'other' account – not the account that was to be imminently disconnected.
57. Where a customer holds more than one energy account with a retailer, the commission considers it important that customers are made aware of and understand their entitlement to payment assistance in respect of each individual energy account they hold with that retailer. This is also necessary to give meaning to the best endeavours requirement and to ensure that disconnection is a measure of last resort.

Enforcement

58. On the basis of the information available, the commission considers that Origin Energy was in breach of a condition of its relevant electricity retail licence (under section 40B of the Electricity Industry Act) and its relevant gas retail licences (under section 48A of the Gas Industry Act) and was required to make wrongful disconnection payments to the 282 customers as soon as practicable after the de-energisation of their premises.
59. Origin Energy has advised the commission that it has not made wrongful disconnection compensation payments to the 282 customers, and therefore, may have breached a condition of its electricity or gas retail licence (as the case may be) by failing to make the payments as soon as practicable after reconnection.
60. Origin Energy should rectify the breach by making the payments and advise the commission in writing when the payments have been made.
61. If Origin Energy is unable to make any of the payments, it should inform the commission in writing within 28 days of receipt of this decision and reasons and the efforts it is making to contact affected customers.
62. If the payments are not made by 16 December 2021, the commission may take enforcement action against Origin under Part 7 of the Essential Services Commission Act 2001 (Vic) in relation to a breach of section 40B(1) of the Electricity Industry Act and/or section 48A of the Gas Industry Act.