



Wrongful Disconnection Payment Dispute
Australian Power & Gas and The Complainant
October 2010

Statement of Reasons

Introduction

The Compliance Policy Statement for Victorian Energy Businesses (Compliance Policy Statement) provides for the Energy and Water Ombudsman Victoria (EWOV) or a retailer to seek advice from the Essential Services Commission (the Commission) regarding the interpretation of the terms and conditions of a retailer's contract for supply. In addition, EWOV can refer an unresolved dispute for a wrongful disconnection payment to the Commission for a formal decision.

In accordance with clause 3.3.1 of the Compliance Policy Statement, EWOV has referred this case of alleged wrongful disconnection to the Commission for a formal decision. Both The Complainant and Australian Power & Gas (AP&G) were offered the opportunity to provide information directly to the Commission, but did not do so.

Background

The Complainant's electricity supply was disconnected at 2.00 pm on 17 September 2009 and reconnected at 2.00 pm on 28 September 2009. The electricity account was established on 20 November 2008 and AP&G commenced the first cycle of disconnection warnings on 15 January 2009 issuing the requisite notices.

AP&G rang The Complainant on 16 February 2009 and, at her request, established a payment plan of \$25 per week, commencing on 25 February 2009. A payment plan confirmation letter was sent by AP&G on 17 February 2009. The payment due on 25 February was not received and the plan was cancelled by letter on 9 March 2009.

On 24 April 2009 the second cycle of disconnection warnings commenced, with the requisite notices sent and attempts at telephone contact during April and May. In late May, AP&G made contact and stated that The Complainant agreed to make a payment in full of \$453.22 by 4 June 2009. The Complainant advised EWOV that they have no memory of this conversation and would not have agreed to make a payment in full because their fixed income meant that they did not have the funds to do so.

Notwithstanding this contact, AP&G sent a 'disconnection imminent' notice on 28 May 2009. Payment was not received by 4 June 2009 so AP&G attempted to make contact with The Complainant on 23 June 2009, ultimately leaving a voicemail message.

By 27 July AP&G commenced the third cycle of disconnection warnings, including various attempts to make contact by telephone. The Complainant maintained to EWOV that no bills, notices or disconnection warnings were received prior to disconnection.

AP&G subsequently disconnected the electricity supply on 17 September 2009. The power was reconnected on 28 September 2009 (The Complainant stated that they rang AP&G and was then advised to contact TRUenergy. Reconnection occurred after EWOV was contacted on 25 September 2009).

Regulatory Compliance Issues

This case was referred to the Commission for a decision based on AP&G's non-compliance with the following Energy Retail Code requirements:

- Clause 11.2 – the obligations to assess, for customer's experiencing financial difficulties, their capacity to pay and to provide them with information on concessions and other assistance
- Clause 12.2 – the obligations to specify the period and amount of instalment plans and to monitor and review the plan if the customer demonstrated payment difficulties during the plan
- Clause 13.1(a) – no disconnection of supply if customer failed to meet their obligations under their first instalment plan

AP&G did not believe that it wrongfully disconnected The Complainant's electricity supply on the basis that it assessed capacity to pay on 16 February 2009 when the payment plan of

\$25.00 per week was established. AP&G also considered that the contact it made with The Complainant on several occasions prior to disconnection constituted the offer of a second payment plan.

Assessment and assistance to customers in financial difficulties

In its statement to EWOV AP&G advised that that it initially had reason to believe that The Complainant was experiencing payment difficulties and it assessed The Complainant's capacity to pay on 16 February 2009. In its referral, EWOV states that *"it is not clear from Australian Power & Gas' system how the amount of \$25 per week was arrived at, as there is no discussion with [The Complainant] regarding ...capacity to pay noted in its systems."*

According to the AP&G screen notes, however, a \$25 per week payment plan was established at The Complainant's request. Therefore, it is assumed that AP&G took capacity to pay into account in establishing this initial payment plan.

AP&G considered that it met its obligation to specifically advise customers experiencing financial difficulties of assistance, particularly financial counselling and grants assistance (URGS), by providing general information on its bills, reminder notices and disconnection warnings.

The EWOV referral provides copies of three letters sent by AP&G to The Complainant:

- A letter dated 9 March 2009 which states *"... we have put together a program called 'Energy Support Program', which is aimed at assisting customers who are experiencing genuine hardship in overcoming their difficulties....to find out more about the Energy Support Program', please call 133 298 as soon as possible..."*
- A letter dated 28 May 2009 which states *"...To avoid disconnection, it is important that you call us immediately to discuss payment of the outstanding amount. If you're experiencing genuine financial hardship, we may be able to assist you through:*
 - *Access to government debt waiver schemes*
 - *Referrals to community agencies for free financial counselling*
 - *Concession benefits*
 - *Information about energy efficiency*
 - *A payment plan*
- A letter dated 28 August 2009, which is the same as the letter dated 28 May 2009.

It is acknowledged that The Complainant states that no letters from AP&G were received. However, based on the information provided above, the Commission finds that AP&G did tailor their letters to provide the information required under clause 11.2(4) to The Complainant.

Therefore, it is concluded that AP&G complied with the relevant ERC provisions in assessing The Complainant's capacity to pay for the first instalment plan and providing the information as required under clause 11.2(4).

Offer of a further instalment plan

Clause 11.2(3) requires that a retailer must offer a customer experiencing financial difficulties an instalment plan unless that customer has not complied with two instalment plans in the previous 12 months and does not provide reasonable assurance that they will meet their on-going payment commitments. Clause 12.2 requires AP&G, in offering an instalment plan, to specify the period and amount of the plan taking into account a number of factors.

AP&G stated that The Complainant was offered a second payment plan on 27 May 2009, which was refused with a commitment to pay the full arrears of \$453.22 by 4 June 2009. The customer screen notes do not document this payment plan offer. It is noted that the screen notes state *"Won't put Ext in place as don't think will make payment"*.

AP&G stated that the second payment plan offer was also included in the letters referred to previously.

It is acknowledged that The Complainant denied receiving any letters and did not make contact with AP&G to establish a further payment plan. The initial payment plan of \$25 per week was also not met.

However, the obligation is that the retailer **must** offer a further instalment plan unless the customer has not complied with two instalment plans in the previous 12 months. The Complainant had not complied with one instalment plan in that period. The Complainant disputes that a further instalment plan was offered on 27 May 2009 and the AP&G call centre notes do not appear to support their assertion.

Further, the letters from AP&G implied that a further payment plan **may** be available to The Complainant and did not provide any details of the amount or period of that plan.¹

No disconnection under the first instalment plan

Clause 13.1(a) states that a retailer may only disconnect a customer for failure to pay an account if “the failure does not relate to an instalment under the customer’s first instalment plan with the retailer”. According to the EWOV referral, AP&G stated that, as it offered The Complainant a second instalment plan (see discussion above), they have met their regulatory obligations.

The Commission finds that AP&G did not establish a second instalment plan nor did it comply with the regulatory obligations in offering a second instalment plan.

Conclusion

Having regard to the advice and information provided to the Commission, it is found that Australian Power & Gas did not comply with clause 12.2 and clause 13.1(a) of the Energy Retail Code. Therefore, Australian Power & Gas has not complied with the relevant terms and conditions of its contract with The Complainant.

It is concluded that the disconnection of The Complainant is wrongful and a compensation payment of \$2,750.00 is required (compensation for 11 days).

Mr A W Darvall
Delegated Commissioner
October 2010

¹ It is understood that AP&G is currently reviewing its procedures for offering second instalment plans, including the content of these letters. The Commission would be pleased to work with AP&G in this regard.