

ESSENTIAL SERVICES COMMISSION
WRONGFUL DISCONNECTION DECISION
UNDER SECTION 48A OF THE GAS INDUSTRY ACT 2001
AGL SALES & CUSTOMER B
DECISION AND REASONS

Background

Customer B contacted the Energy and Water Ombudsman (Victoria) (EWOV) with regard to the disconnection of the supply of gas to their premises by AGL Sales (AGL) on 6 May 2015. EWOV investigated the matter, but was not able to assist the parties to reach a resolution. On 3 August 2016 EWOV referred the matter to the Essential Services Commission (the Commission) to decide whether the disconnection of gas supply to Customer B's premises was wrongful under section 48A of the *Gas Industry Act 2001* (the Act) and, if so, the amount of any payment AGL is required to make to Customer B.

Summary of Facts

Customer B was a gas retail customer of AGL. On 24 November 2014, AGL issued Customer B a gas bill for the amount of \$449.96. On 19 December 2014, AGL issued Customer B a reminder notice containing the following statement:

Our records indicate that we have not yet received payment for your gas account. If you have paid in the last few days, thank you and please disregard this notice. Otherwise, payment must be made by 30 Dec 2014.

If your payment ... is not received by 30 Dec 2014, recovery action will commence which may result in additional cost to you.

On 14 January 2015, AGL issued Customer B a disconnection warning notice.

As Customer B had not made any payment towards the outstanding amount, On 11 February 2015, AGL disconnected the supply of gas to Customer B's property. Customer B contacted AGL on 29 April 2015 to request a reconnection of Customer B's gas supply. Customer B contacted EWOV on 6 May 2015 to initiate an investigation and EWOV arranged for their gas to be reconnected

Relevant Obligations

Under s48A of the Act, the conditions to which a licence to sell gas by retail is subject include a condition requiring the licensee to make a payment of a prescribed amount to a relevant customer in accordance with this section if the licensee:

- disconnects the supply of gas to the premises of that customer; and
- 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.

Clause 111(1)(c) of the Energy Retail Code¹ (the Code) states a retailer may not disconnect customers for non-payment unless the retailer has given the customer a reminder notice. Clause 109(2) states that a reminder notice must state the date on which the reminder notice period ends and state that payment of the bill must be made during the reminder notice period. Clause 108 states that a reminder notice period means the period that starts on the date of issue of the reminder notice, and ends no earlier than six business days from the date of issue.

Clause 10.1 of the standard terms and conditions to which Customer B signed (the T&Cs), states that AGL may disconnect energy supply for non-payment of a bill where they "have complied with all relevant obligations under Regulatory Requirements.

Clause 10.3 of the T&Cs states that AGL will not arrange Disconnection otherwise than in accordance with the Regulatory Requirements.

¹ Version 11 of the Energy Retail Code, which came into operation on 13 October 2014.

Chronology

Date	Event
27 March 2014	AGL established a gas account for Customer B
12 May 2014	AGL established a standard payment plan for Customer B for \$73 per fortnight
20 May 2014 – 9 October 2014	Customer B made nine payments towards the account totalling \$832
24 November 2014	AGL issued Customer B, a gas bill for the amount of \$449.96
19 December 2014	AGL issued Customer B a reminder notice for the amount of \$166.41, stating an outstanding balance of \$447.37
14 January 2015	AGL issued Customer B a disconnection warning notice for \$447.37.
29 January 2015	AGL called Customer B and during this call: <ul style="list-style-type: none">- Customer B advised he was at work and requested a return call on 2 February 2015- AGL advised Customer B that he could call AGL back on the telephone number listed on Customer B's bill
11 February 2015	AGL disconnected the supply of gas to Customer B's premises, for non-payment of \$447.37
29 April 2015	Customer B contacted AGL to request a reconnection of their gas supply
6 May 2015	Customer B contacted EWOV to initiate an investigation and EWOV arranged for their gas to be reconnected.

Decision

Having considered the information provided by AGL and EWOV, the Commission finds:

1. In disconnecting the supply of gas to Customer B's premises, AGL 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. As a result, under s48A of the Act, as a statutory condition of its licence, AGL has an obligation to pay Customer B a wrongful disconnection payment. The supply of gas to Customer B's premises was disconnected for 84 days, 6 hours and 10 minutes.
2. The amount payable by AGL to Customer B is \$3,500.00. As Customer B did not inform AGL of the disconnection within 14 days after the disconnection, the payable amount is the prescribed capped amount, under s48A(1A) of the Act.
3. In accordance with s48A(5)(b) of the Act, AGL is required to pay Customer B a wrongful disconnection payment of \$3,500.00.

Reasons

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

1. Under s48A of the Act, the conditions to which a licence to sell gas by retail is subject include a condition requiring the licensee to make a payment of a prescribed amount to a relevant customer in accordance with this section if the licensee –
 - disconnects the supply of gas to the premises of that customer; and
 - 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.
2. The terms and conditions of the contract between AGL and Customer B included a clause which precludes AGL from disconnecting supply to a customer's premises otherwise than in accordance with the Regulatory Requirements (including the Energy Retail Code). This incorporates the obligations contained in clauses 108, 109, and 111 of the Code as terms or conditions of the contract specifying the circumstances under which the supply of gas may be disconnected.
3. Clauses 108, 109(2)(c) and 111 of the Code preclude a retailer from disconnecting supply to a customer's premises unless they have, inter alia, given the customer a reminder notice stating that the outstanding amount must be paid within a period that ends no earlier than six business days from the date of issue of the reminder notice.
4. AGL sent Customer B a reminder notice stating a five day reminder notice period. In doing so, AGL did not to comply with the obligations in clauses 108 and 109(2)(c) of the Code, which constituted terms and conditions of its contract with Customer B specifying the circumstances in which the supply of gas to their premises may be disconnected. AGL is therefore required to pay Customer B a wrongful disconnection payment under s48A of the Act.

Dr Ron Ben-David

Chairperson

Date: 15 February 2017