



**WRONGFUL DISCONNECTION PAYMENT DISPUTE**

**TRUENERGY AND THE COMPLAINANT**

**DECEMBER 2009**

**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 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.

Therefore, in accordance with clause 3.3.1 of the Compliance Policy Statement, EWOV has referred the case of Ms Ward's alleged wrongful disconnection to the Commission for a formal decision.

## **Background**

From information provided by EWOV it is understood that The Complainant's gas supply was disconnected at 12.35pm on 29 October 2008 and supply reconnected at the address at 4.40pm on 23 February 2009.

According to The Complainant's statement, because of personal circumstances they were away from the property between July 2007 and July 2008 and that during this time they had no source of income and were unable to contact TRUenergy. While away, the residence apparently became home to unauthorised occupants. On their return in July 2008 they received disconnection notices and a high gas bill which they could not afford to pay.

In the last recorded exchange with The Complainant on 17 July 2008, The Complainant agreed to an easyway payment plan but TRUenergy did not receive any payments against this arrangement. According to The Complainant approximately two months before the disconnection they contacted TRUenergy in an attempt to negotiate a new payment plan and explain his personal circumstances.

The Complainant said that TRUenergy responded by stating that it would not enter into a payment plan arrangement with him and that a lump sum payment was required. The Complainant also said that during this conversation TRUenergy also advised them that it would continue to issue disconnection notices and disconnect them if payment was not received. TRUenergy advised it has no record of this discussion.

When TRUenergy did not receive any payments it issued numerous reminder and disconnection warnings. Over that same period of time the credit department made several attempts to contact The Complainant on their mobile phone during the day and night, but was unsuccessful. The Complainant did not respond to TRUenergy's attempts to contact them and the gas supply was disconnected on 29 October 2008 due to non payment of arrears.

TRUenergy heard nothing further in relation to The Complainant's account until the 17 December 2008 when a male called to say he moved into the premises on the 8 December 2008 and tried to connect the gas and electricity to Origin Energy. However Origin Energy had rung him to say that the meter at the premises was plugged and that he needed to call TRUenergy. TRUenergy advised the caller that on presentation of a valid lease agreement it would unplug the meter. The caller agreed to this however nothing further was heard from this particular individual.

In January 2009 TRUenergy attempted a number of calls to The Complainant's mobile, leaving a message on one occasion. The retailer also sent two written communications but was unable to make contact with them.

TRUenergy has acknowledged that The Complainant was experiencing repeated difficulties in paying his bill and required payment assistance, and advised that assistance regarding the Utility Relief Grant, energy efficiency advice, the availability of a financial counsellor and concessions were provided to The Complainant via all reminder and disconnection notices and in the registered letter issued on 13 October 2009.

## Issues

The terms and conditions of the contract between TRUenergy and The Complainant are detailed in the *Energy Retail Code* (ERC). Under the ERC a retailer must fulfil certain obligations before disconnecting a customer for non-payment of a bill.

TRUenergy believes that it did not wrongfully disconnect The Complainant's gas supply. However, EWOV considers that TRUenergy has breached a number of the obligations applying to The Complainant and that this is a wrongful disconnection for the following reasons:

1. Clause 11.2(b)(3) - TRUenergy does not appear to have met its obligation to offer a further instalment plan; and
2. Clause 11.2(b)(4) – TRUenergy does not appear to have adequately provided The Complainant with advice on the Utility Relief Grant Scheme (URGS), energy efficiency and the availability of financial counsellors; and
3. Clause 12.2(a) – The registered letter sent to The Complainant on 13 October 2008 does not provide the details of a payment plan offer; and
4. Clause 13.1(a) – TRUenergy disconnected The Complainant when their failure to pay a bill related to an instalment under his first instalment plan.

Both The Complainant and TRUenergy were invited to make further submissions to the Commission. Only TRUenergy took advantage of this offer and met with the Commission (the submission).

According to the EWOV report TRUenergy believes that it did not wrongfully disconnect The Complainant as it was fully compliant with the ERC and issued all relevant notifications including an offer of a second payment plan compliant with Clause 12.2(a) of the ERC.

TRUenergy has advised EWOV that following the conversation with The Complainant on 17 July 2008, in which a payment plan was agreed, it was unable to make contact with the customer thereafter. When no payment was received and TRUenergy was unable to contact The Complainant despite repeated attempts, it issued a registered letter on 13 October 2008, prior to the disconnection on 29 October 2008. According to the EWOV report TRUenergy contend that this registered letter is an offer of a second payment plan and satisfies its obligations under clauses 11.2(b)(3) and 13.1(a) of the ERC.

The extract below is taken from a copy of the registered disconnection warning letter that TRUenergy sends out.

*"If you're having difficulty paying your TRUenergy bill, please call us on 133 466. Our Customer Service advisors can help you find out more about:*

- *Flexible payment arrangements and instalment plans*
- *State government concessions and other assistance programs*
- *Local welfare and advisory service referrals*
- *Energy efficiency advice to help you better manage your energy costs."*

TRUenergy considers that inclusion of the above extract in the registered disconnection warning letter ensures compliance with its obligations under clauses 11.2(b)(3&4), 12.2(a) and 13.1(a) of the ERC. Hence the Wrongful Disconnection Payment does not apply as TRUenergy had used its best endeavours to offer a second payment plan in the twelve months prior to the disconnection of supply.

Further, TRUenergy argues that it was able to disconnect The Complainant as they did not provide reasonable assurance that they would pay the TRUenergy bills as per clause 13.1(1) of the ERC.

## **Discussion**

### *1. 11.2(b)(3) - offer of a second instalment plan*

Clause 11.2(b) (3) requires retailers to offer a customer a second instalment plan unless the customer has, in the previous 12 months, failed to comply with two instalment plans and does not provide a reasonable assurance to the retailer that the customer is willing to meet payment obligations under a further instalment plan.

TRUenergy stated in its account that The Complainant failed to respond to any written communications and was unable to be contacted by phone, hence did not provide reasonable assurance that they would pay the TRUenergy bills. Nonetheless, an offer of advice on flexible payment arrangements and instalment plans was made to The Complainant in the registered disconnection warning letter issued on 13 October 2008.

TRUenergy also reiterated in its submission that the obligation of clause 11.2(b)(3) was met by the inclusion of reference to assistance with payment arrangements in all written communications with The Complainant following the failure of his first payment plan.

Given the above it is therefore concluded that TRUenergy did comply with the requirements of clause 11.2(b)(3) of the ERC.

### *2. 11.2(b)(4) - provide advice on the Utility Relief Grant Scheme (URGS), energy efficiency and the availability of financial counsellors.*

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

Once again, in its submission to the Commission, TRUenergy stated that all written communications to The Complainant from when his first payment plan was broken contained reference to energy efficiency advice and support services.

The Commission acknowledges that the written communications provided a phone number for The Complainant to call for information on the different support services available but, as in previous decisions, the Commission does not consider this an adequate method for communicating this advice. The Commission is of the opinion that retailers should inform hardship customers on the Utility Relief Grant Scheme, energy efficiency assistance and the availability of independent financial counsellors either in detail over the phone if possible or in writing, independently of reminder and disconnection notices.

Further, the EWOV report states that TRUenergy has acknowledged that The Complainant was experiencing repeated difficulties in paying his bill and required payment assistance. It is considered that this is reflected in the amount of the fortnightly repayment of \$30 agreed between The Complainant and the TRUenergy credit department in the conversation of 17 July 2008.

However, during that same conversation while it is documented that The Complainant's capacity to pay was discussed, there is no documented evidence of TRUenergy providing The Complainant with any advice on financial assistance, energy efficiency or the availability of independent financial counsellors.

On the basis of this it is considered that TRUenergy did not comply with the requirements of clause 11.2(b)(4) of the ERC.

### *3. Clause 12.2(a) – Requirements for an Instalment Plan*

Clause 12.2(a) of the ERC requires a retailer offering an instalment plan to specify full details of the instalment plan with the offer.

EWOV considers that TRUenergy did not comply with clause 12.2(a) as it did not provide details of the second instalment plan in its disconnection warning letter of 13 October 2008 to The Complainant.

TRUenergy, in its submission, maintains that clause 12.2 of the ERC needs to be considered in the context of clause 11 whereby a customer who anticipates payment difficulties must contact the retailer and if this does not happen TRUenergy is unable to make an assessment from which to develop the details of a second offer.

While the Commission acknowledges TRUenergy's difficulties in contacting The Complainant it does not consider that the brief reference to the offer of a Special payment Arrangement or Easyway Instalment plan made in the disconnection warning letter satisfies the requirements of clause 12.2(a).

Therefore, it is concluded that TRUenergy did not comply with the requirements of clause 12.2(a) of the ERC.

#### *4. Clause 13.1 - Grounds for Disconnection: Non-payment of a bill*

Clause 13.1 of the ERC states that a retailer may only disconnect the supply address of a customer, being a customer who fails to pay the retailer by the relevant pay by date an amount billed in respect of that supply address if:

*(a) the failure does not relate to an instalment under the customer's first instalment plan with the retailer; and...*

*before disconnection the customer*

*13.1(1) does not provide reasonable assurance to the retailer the customer is willing to pay the retailer's bills;*

TRUenergy acknowledged to EWOV and the Commission that The Complainant was disconnected after failing to make a payment on his first instalment plan but maintains that this was necessary as The Complainant did not contact TRUenergy to make any other arrangements. In its statement to EWOV TRUenergy maintain that because The Complainant failed to respond to any communications, either by phone or in writing, he did not provide reasonable assurance that he was willing to pay the bills and TRUenergy was therefore able to disconnect supply.

Again, the Commission acknowledges the difficulties TRUenergy experienced in attempting to make contact with The Complainant to make other arrangements and that The Complainant did not provide reasonable assurance that he was willing to pay the bills. However, The Complainant was disconnected after failing to make a payment on his first instalment plan even though he was displaying the characteristics of some one experiencing financial hardship.

It is therefore considered that TRUenergy was not in breach of 13.1(1) but did breach the requirements of clause 13.1(a).

#### **Conclusion**

The Commission acknowledges that TRUenergy was unable to contact The Complainant despite many attempts to do so and that this lack of contact resulted in the disconnection of The Complainant's gas supply. Nevertheless, it is the opinion of the Commission that TRUenergy did not comply with clause 11.2(b)(4) of the *Energy Retail Code* and provide information on the Utility Relief Grant Scheme, energy efficiency assistance and the availability of independent financial counsellors other than through warning and reminder notices. TRUenergy has also not complied with clause 13.1(a) in disconnecting The Complainant after failure of his first instalment plan and clause 12.2 in advising The Complainant of the details of his new instalment plan.

Based on the above it is concluded that the disconnection of The Complainant was wrongful and that compensation is payable.

#### **Compensation Payment**

In calculating the compensation due to The Complainant the Commission has taken into consideration the possibility that another individual, and not The Complainant, was in residence from the 8 December 2008. This is based on the customer contact notes for a call placed to TRUenergy on the 17 December 2008 and recordings of that call which Commission Staff have reviewed. The contact notes state that a male called TRUenergy to say he moved into the premises on the 8 December 2008 and tried to connect the gas and electricity to Origin Energy (OE). The electricity was connected but OE later rang and advised that he needed to contact TRUenergy about the plugged gas meter.

During the phone call the caller clearly states the following:

- His name, which for privacy reasons cannot be disclosed;
- He moved into the premises on 8 December 2008. The caller initially said he moved in on the 9 December but later corrected this to the 8 December 2008:
- He attempted to connect the gas and electricity with OE on 9 December 2008:
- He was later advised by OE that he needed to contact TRUenergy about the plugged gas meter;
- The address he gave for the premises needing connection was the same as that registered for The Complainant;
- He referred to 'the previous people that were in there' in association with the property to be connected to gas and electricity.

This Commission considers that this strongly indicates that someone other than The Complainant was in residence from 8 December 2008. Given the presence of this doubt the Commission is of the opinion that compensation can only be granted for the period from 12.35pm on 29 October 2008 to 12 midnight 7 December 2008.

### **Decision**

Having regard to the advice and information provided by EWOV and TRUenergy, it is considered that the disconnection of The Complainant was wrongful and that compensation is payable.

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Mr A W Darvall

**Delegated Commissioner**

November 2009