WRONGFUL DISCONNECTION PAYMENT DISPUTE

AGL SALES AND THE COMPLAINANT

STATEMENT OF REASONS

Introduction

Section 40B of the *Electricity Industry Act* 2001 places a license 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 (Operating Procedure) 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 Operating Procedure.

Background

EWOV has requested that the Commission make a formal decision as to whether AGL has complied with its retail license in relation to a dispute between The Complainant and it regarding a wrongful disconnection compensation payment. From information provided from EWOV, it is understood that The Complainant's electricity supply was disconnected on 4 June 2008 and not reconnected at the time he moved out of the property on 26 June 2008.

The Complainant was disconnected because his landlord intended to demolish the property and accordingly, had requested that AGL disconnect the property. Previously, the landlord had sent a notice of eviction to his tenant, The Complainant. However, the eviction notice raised by the landlord to evict The Complainant was invalid as determined by a Victorian Civil and Administrative Tribunal (VCAT) decision on 5 June 2008, as inadequate notice was provided by the landlord prior to the date of eviction. The Complainant held an electricity account in his name for the property and did not provide authorisation for disconnection or abolishment (industry term) of the meter. After The Complainant found out that AGL has disconnected his property, he called AGL to advise he had not left the property and requested reconnection.

AGL acknowledges that it failed to contact The Complainant prior to disconnection to confirm that The Complainant wanted the property to be disconnected. AGL advised him that in order to re-supply the property, it would require a registered electrician to complete an electrical works request (EWR) and certificate of electrical safety (CES). The Complainant was unable to complete an EWR and CES as he could not afford a registered electrician and the landlord was not willing to reconnect the property. AGL advised that as neither party agreed to complete the EWR and CES, it was consequently unable to organise the reinstatement of the meter. AGL has agreed that WDP is payable as it did not disconnect in accordance with the terms and conditions of its customer's contract, and therefore did not comply with section 40B of the *Electricity Industry Act 2000*. However, AGL believes that it should only be liable for Wrongful Disconnection Payment (WDP) for a maximum of 5 days instead of

nine weeks, as determined by EWOV in its investigations, as it used its best endeavours to reconnect The Complainant's property within a reasonable timeframe.

The Complainant wrote to the Commission providing further information. His landlord had served him a notice to vacate for 31 May 2008. The Complainant knew that it was unlikely that he would be able to move out of the property before 31 May 2008 so he contacted AGL to seek assurance that the property would not be disconnected while he was still residing at the property. AGL assured him that the property would not be disconnected while he was residing there. On 4 June 2008, the property was disconnected. He contacted AGL but was advised that he should contact his landlord to come to an agreement in relation to the reconnection of the property. On 5 June 2008, he obtained an order from VCAT ordering the landlord to rearrange reconnection to the property which he faxed to AGL.

On 6 June 2008, he contacted AGL which informed him that as the meter has been removed, the reconnection became a new connection and an EWR and a CES were required prior to restoring his supply. AGL also advised The Complainant that a payment of $200 would be required if reconnection was to be attended to immediately, otherwise reconnection would take 14-21 days.

On 12 June 2008, The Complainant had another VCAT hearing scheduled. On that day, The Complainant was advised by an electrician that due to the age of the property there was a high probability that the wiring in the property would not meet the current standards and that further work would have to be performed on the property before a CES could be issued. On the same day, this information was conveyed to VCAT along with the fact that the property was soon to be demolished. When all the above information was conveyed to VCAT, they were reluctant to enforce the original order dated 5 June 2008. On 19 June 2008, The Complainant agreed to set aside the requirement to have the electricity restored in the property.

In view of all the above facts, The Complainant believes that the minimum compensation he should be entitled to is 15 days, from 4 June 2008 when his property was disconnected until the 19 June 2008 when he formally withdrew his demand for the property to be reconnected.

Issues

There is no dispute between the parties that WDP compensation is payable to the Complainant. EWOV has specifically requested that the Commission determine the quantum of WDP that is required to be paid by AGL.

Electricity Industry Act 2000 – Section 40B

AGL acknowledges that it should not have disconnected The Complainant's supply but is disputing the length of time it is required to pay WDP. Section 40B of the *Electricity Industry Act 2000 (Vic)* prescribes that an amount of $250 is to be paid for each whole day that the supply of electricity is disconnected and a pro rata amount for any part of a day that the supply of electricity is disconnected. The Commission has no discretion to limit the payment of WDP to particular customers or to place a limit on the maximum amount of compensation to be paid.

Energy Retail Code

As set out in clauses 13.1 to 13.5 of the Energy Retail Code (the Code), the retailer is permitted to disconnect supply if its customer:

- does not pay a bill,
- denies access to the meter,
- does not provide acceptable identification or a refundable advance; or
- requests disconnection.

AGL agrees that it did not comply with the above clauses, therefore, disconnection is wrongful and WDP is payable.

Section 36.1(b) of the Code states:

> *"…a reference in a term or condition to a retailer being obliged to connect, disconnect or reconnect a customer is to be construed as a reference to the retailer being obliged to use its best endeavours to procure the distributor to connect, disconnect or reconnect the electrical system at the customer's supply address to the distributor's distribution system".*

AGL believes that despite the fact that the landlord and The Complainant did not agree to complete a EWR and CES, it could have accomplished the reconnection within 5 days. AGL could not reconnect the property because The Complainant and his landlord could not reach an agreement for reconnecting the property and the EWR and CES were not provided. AGL therefore believes that it had used its best endeavours to reconnect The Complainant's supply.

However the Commission considers that AGL has not used its best endeavours to reconnect The Complainant's property. If AGL had not disconnected The Complainant's supply in error, then The Complainant would not have been inconvenienced by being without supply over a long period of time. Moreover, The Complainant would not have needed to seek alternative accommodation. AGL became aware that the eviction notice raised by the landlord was invalid as determined by a VCAT decision on 5 June 2008 and that The Complainant had the right to reside at the property with the supply immediately restored.

AGL was also aware that it would be unlikely that The Complainant's landlord would agree to reconnect the property as the landlord's aim was to demolish the property. It was also unfortunate that The Complainant could not afford the services of an electrician. The Commission considers that AGL would have demonstrated that it had used its best endeavours to reconnect the property if it had sent an electrician to inspect the property and to determine whether a EWR and a CES could be granted, notwithstanding the fact that subsequently, the property would have been demolished. Moreover, The Complainant was also advised that in the event that an EWR and a CES were obtained, reconnection would take place within 14-21 days unless a payment of $200 was forwarded to AGL.

Accordingly, due to the above reasons, the Commission considers that AGL failed to use its best endeavours to reconnect The Complainant's property.

Conclusion

EWOV has specifically requested that the Commission determine the length of time that compensation for the wrongful disconnection is payable for. The Commission considers that, pursuant to section 36.1(b) of the Code, AGL had not used its best endeavours to reconnect The Complainant as soon as practicable. The Complainant agreed on 19 June 2008 to set aside the requirement for the property to be reconnected. It is considered that AGL's obligation to reconnect his supply ended at this time. Accordingly, The Complainant is eligible for WDP for 15 days, from 4 June 2008 when his property was disconnected to 19 June 2008, when he agreed to set aside the requirement for the property to be reconnected.

Decision

Having regard to the advice and information provided by EWOV, AGL and the Complainant, it is considered that AGL has not complied with the terms and conditions of the customer's contract in that is did not use its best endeavours to reconnect the Complainant. Therefore, the disconnection is wrongful and compensation is payable for 15 days.

Accordingly, the amount of compensation that must be paid to The Complainant is $3750.

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A W DARVALL
Delegated Commissioner
November 2008