

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

Key Issue

Ms G established a gas account with AGL Sales (AGL) on 28 November 2011. AGL disconnected G's gas supply on 12 November 2012, for non-payment of her account.

Clause 13.2(a)(ii) of the Energy Retail Code (ERC) states that a retailer must not disconnect a domestic customer if the failure to pay the retailer's bill occurs through lack of sufficient income of the customer until the retailer has used its best endeavours to contact the customer in person or by telephone.

The Commission was asked to consider whether AGL complied with clause 13.2(a)(ii) of the ERC and used its best endeavours to contact the customer in person or by telephone.

Background

Date	Event
28 November 2011	AGL established a gas account for G at the supply address.
21 December 2011	Another person, 'C', contacted AGL on behalf of G. AGL and C agreed on a payment extension for the balance of \$271.40 to be paid on 28 December 2011.
28 December 2011	G did not make the agreed payment of \$271.40.
28 November 2011 - 6 August 2012	G made sporadic payments to her gas account. The amounts varied between \$113.94 and \$188.57.
3 September 2012	AGL disconnected G's gas supply for non-payment.
6 September 2012	G contacted AGL and confirmed that she had made a payment of \$384.50 to the gas account. AGL agreed to reconnect the gas supply. G added 'C' as an authorised party on her gas account.
4 October 2012	AGL sent G a registered letter relating to her electricity account.
10 October 2012	AGL sent a reminder notice to G for the outstanding balance of \$586.41 on the gas account.
18 October 2012	AGL sent a disconnection warning to G for the outstanding balance of \$586.41.
27 October 2012 (Saturday)	AGL made three automated outbound calls to G and failed to contact her.
12 November 2012 at 9:00 am	G has supply disconnected for non-payment.

Date	Event
22 November 2012	'C' contacted AGL attempting reconnection of gas on behalf of G.
4 January 2013 at 1:30 pm	After EWOV called AGL, gas supply was reconnected.

Decision

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

1. Preceding the disconnection of G's gas supply there were indications that she lacked the income to pay her account and AGL did not pursue this line of enquiry and use its best endeavours to contact the customer;
2. The gas disconnection was wrongful as AGL failed to comply with the terms and conditions of the customer's contract in that AGL failed to comply with clause 13.2(a)(ii) which is incorporated into the contract by the ERC;
3. The wrongful disconnection compensation is payable for the whole disconnection period 12 November 2012 to 4 January 2013; and
4. AGL is required to pay G \$13,297.00 wrongful disconnection compensation under section 48A of the *Gas Industry Act 2001*.

Reasons

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

1. AGL stated that clause 13.2(a)(ii) did not apply as it cannot be established that G did not have sufficient income, since she did not discuss her circumstances with AGL and she made substantial payments to her account.
2. G had a history of making sporadic payments, was issued with multiple reminder notices and disconnection warnings and had her gas supply disconnected for non-payment in September 2012. G's payment history provided AGL with sufficient reason to make further enquiries about G's capacity to pay.
3. AGL stated that it used its best endeavours to contact G despite there being no indication that G lacked sufficient income. AGL advised that it made six outbound calls, three automated outbound calls, sent a registered letter, a disconnection warning and disconnection notice to G.
4. AGL's contact notes for the month before the disconnection show three unsuccessful attempts to telephone G were made within six hours on the same Saturday and no message was left. The contact notes also indicate that internal checking had found that a further call in business hours was required, but not made before the disconnection. No registered letter was sent in place of telephone contact within a month of the disconnection, although a letter had been sent earlier in connection with the (cancelled) electricity disconnection.
5. AGL has not demonstrated that it used best endeavours to contact G before disconnection of the gas supply.
6. Chris, acting for the customer, notified AGL of the disconnection within 14 days of the disconnection taking place, and therefore the payment is not capped.

7. AGL is required to pay G wrongful disconnection compensation of \$13,297 (gas was disconnected for 53 days, 4 hours and 30 minutes).

Dr. Ron Ben-David

Chairperson

Date: 2013