



WRONGFUL DISCONNECTION PAYMENT DISPUTE

TRUENERGY AND THE COMPLAINANT

STATEMENT OF REASONS

APRIL 2007

Introduction

Section 48A of the *Gas Industry Act* 2001 places a licence 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 (IOP) 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 IOP.

Background

EWOV requested that the Commission make a formal decision as to whether TRUenergy complied with its retail licence in relation to a dispute between the Complainant and TRUenergy in relation to a wrongful disconnection compensation payment.

The Complainant, a concession card holder, joined TRUenergy (gas) in September 2005 but between then and their disconnection in November 2006, TRUenergy recorded no payments being received towards their account. The Complainant's payment history also includes three instalment plans since June 2006, all of which were broken due to non-payment.

The Complainant received numerous disconnection communications and was subsequently placed on a shortened collection cycle in May 2006. They first contacted TRUenergy on 27 June 2006 stating they were not aware of any previous bills, reminders or disconnection warnings, possibly due to their mail regularly going missing. At the Complainant's request an Easyway payment plan of \$30 per fortnight was negotiated and agreed to. At the time the Complainant's arrears were \$216 and a minimum payment of approximately \$24 per fortnight would have been sufficient to cover arrears and estimated ongoing usage

No payment was received under the terms of the Easyway plan. When the Complainant called TRUenergy to query a disconnection warning on 22 August 2006 they advised they had not received a payment plan card and that it was their understanding a Centrepay payment arrangement was what had been previously organized. It should be noted that this is not apparent from the TRUenergy voice recording of the conversation and also that TRUenergy may not apply for Centrepay on behalf of customers. It can only mail out an application form to the customer and the customer themselves must complete and lodge this form with Centrelink. The Complainant acknowledged that they were aware of this requirement in a later conversation.

TRUenergy rang the Complainant on 23 August 2006 to discuss the gas account arrears and an outstanding final electricity account. According to TRUenergy screen notes, the Complainant requested and agreed to a Centrepay plan of \$30 per fortnight plan for the gas account. The Complainant's gas arrears at this time were \$322.45 and

a minimum payment of approximately \$28 per fortnight would have been sufficient to cover arrears and estimated ongoing usage.

TRUenergy records indicate that no payments were received on the account. On 17 October 2006 TRUenergy contacted the Complainant again to discuss the matter. The Complainant explained that while they understood that it was their responsibility to lodge the Centrepay application with Centrelink, they had not had the time to do this but advised that they would do so shortly.

TRUenergy records indicate that payment amount of \$30 per fortnight was confirmed again and TRUenergy then attempted to transfer the Complainant directly to Centrelink but was unable to do so. The Complainant then requested that TRUenergy call their back after 1pm, as they had a prior appointment with their financial counsellor. TRUenergy attempted to do so after 2.30 pm but was unsuccessful in making contact with the Complainant.

A final disconnection notice was sent on 3 November 2006 but the TRUenergy records show that there was no further contact from the Complainant. On 13 November 2006 TRUenergy checked with Centrelink but were unable to confirm that a Centrepay arrangement had been made by the Complainant. Disconnection was subsequently arranged for 14 November 2006.

Issues

For the disconnection to be wrongful, the retailer must have breached the terms and conditions of the contract that set out the circumstances under which a customer's supply may be disconnected.

Terms and Conditions Relating to Disconnection

The terms and conditions of the contract between TRUenergy and The Complainant are set out in the Energy Retail Code (ERC). Clause 13.2 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 complied with clause 11.2 of the ERC.

Capacity to pay

The Complainant's payment history shows that no payments had been made towards their account since its creation and prior to their disconnection. In addition, three instalment plan arrangements were negotiated but broken due to non-payment. The Complainant is a concession card holder and had received numerous disconnection warnings in relation to the arrears on their account. The Commission considers that these are indications of a customer experiencing payment difficulties, which may be linked to the lack of sufficient income.

TRUenergy stated that it accepted that the Complainant appeared to be experiencing financial difficulty and it sought to "*establish payment arrangements in line with the Complainant's capacity to pay*". This was through an analysis of their account history, in addition to information gathered from the Complainant.

TRUenergy also advised that the fact that the Complainant had agreed to the \$30 per fortnight instalment amounts on three separate occasions, but did not arrange

Centrepay payment plans with Centrelink, nor visit a financial counsellor, attributed to their belief that they had adequately assessed their capacity to pay.

TRUenergy advises that the following information, gathered from the Complainant, was also taken into account when the assessment was undertaken:

1. The Complainant accepted the \$30 per fortnight arrangements as indicated by the 27 June, 23 August and 17 October 2006 discussions and did not advise TRUenergy that this amount was beyond their means
2. The Complainant advised TRUenergy in the 17 October conversation that though they had not had time to visit Centrelink, they intended to do so and would arrange a Centrepay payment at that time
3. As of 14 November 2006 the Complainant had not arranged a Centrepay arrangement, nor had they contacted a financial counsellor.
4. In addition the Complainant had defaulted on three payment arrangements.

The above provides information as to what commitments the Complainant made (or indicated that they would make) to put in place arrangements to pay their accounts (points 2-4). As none of these commitments were met, it is assumed that TRUenergy has used the majority of this information to form a judgement in relation to the Complainant's 'willingness to pay', rather than their 'capacity to pay'.

In considering the information provided, it appears that TRUenergy did not undertake a systemic assessment of the Complainant's capacity to pay. This conclusion is based on the following facts:

- The two instalment plans established in June and August were both set at \$30 per fortnight, and no evidence has been provided as to the methodology or approach used to set this amount.
- The attempt at an assessment appears only to have occurred a fortnight before the actual disconnection (that is on 2 November), despite the fact that TRUenergy had not received any payments for the term of their account and the three instalment plans negotiated with the Complainant had not been adhered to.

Notwithstanding the above, it is also found that the amount set for the instalment plans does appear to be within an acceptable range for payment of the account over a 12 month period, which demonstrates that account was taken of the Complainant's capacity to pay. That is, to clear the arrears within 12 months and to cover the estimated ongoing consumption, amounts within the range of \$24-\$32 would be reasonable. The amount of \$30 per fortnight required the Complainant to pay approximately 13% of the account on a fortnightly basis.

Taking all the information into account it cannot be concluded that the Complainant's disconnection was wrongful because TRUenergy failed to take into account their capacity to pay.

Advice on URGS, Energy Efficiency and Financial Counsellors

TRUenergy advised that on each reminder and disconnection communication, it states that the customer can call 133 466 for assistance in special payment arrangements, Easyway payment arrangements, Easyway plans, Utility Relief Grant,

State Government Concession, Local Welfare/Advisory Services and Energy Efficiency advice.

As stated in previous decisions, the Commission does not consider that this method is an adequate means of informing customers experiencing financial difficulties about concessions, energy efficiency and the availability of independent financial counselling.

It is acknowledged that the Complainant advised that they were seeing a financial counsellor. Nevertheless, it is considered that this information does not enable TRUenergy to consequently assume that their obligation under the ERC to ensure the relevant information is provided to relevant customers is met.

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

Decision

In accordance with clause 7 of the OP, the Commission has investigated the alleged breach by TRUenergy of its retail licence in relation to the disconnection of The Complainant. The Commission must conclude that TRUenergy did not comply with all of the relevant terms and conditions of the Complainant's contract in relation to their disconnection.

Therefore, the disconnection of the Complainant was wrongful and a compensation payment is required. The compensation payment is to apply from 12:42 pm on 14 November 2006 to 1:45 pm on 15 November 2006. The amount due is \$261.00.

Signed

R H SCOTT
Delegated Commissioner

April 2007