



Listen Assist Resolve

30 March 2012

Attn: Mr Andrew Monaghan
Community Liaison Officer
Essential Services Commission
Level 2, 35 Spring Street
Melbourne VIC 3000

By email: Andrew.Monaghan@esc.vic.gov.au

Dear Mr Monaghan

Re: The Essential Services Commission's: Reasonable actions by energy retailers.

Thank you for the opportunity to comment on this topic. The Energy and Water Ombudsman (Victoria) (EWOV) support the ESC's proposal for further guidance to ensure energy retailers clearly understand their obligations when disconnecting and reconnecting a customer's energy supply.

As an industry-based external dispute resolution scheme, EWOV provides alternative dispute resolution services to Victorian energy and water consumers by receiving, investigating and facilitating the resolution of complaints. EWOV's comments are based on our experience in dealing with actual disconnection complaints that come to us after they have not been resolved between the customer and the retailer.

1. What output might we work towards from this collaboration?

EWOV supports the ESC's proposal to provide guidance to energy retailers about what it deems to be 'reasonable' where an energy retailer has either requested a lump sum or declared that an instalment plan has failed. EWOV believes that this guidance can be provided by publishing a clear written definition of 'reasonable' actions by energy retailers, illustrated by cases studies about different circumstances deemed to be reasonable and unreasonable.

By doing so, this will assist in preventing disputes arising between energy retailers and EWOV when attempting to determine what is compliant, and fair and reasonable when investigating a complaint or making a Wrongful Disconnection Payment (WDP) assessment.

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2. How might it be communicated?

EWOV suggests including this guidance in the ESC's Compliance Policy Statement so that energy retailers and EWOV can use the information to determine whether an energy retailer's actions were reasonable and/or whether a disconnection was wrongful.

To ensure that all energy retailers understand this guidance, the ESC should actively communicate this information with stakeholders.

3. Do you have relevant examples of what is clearly reasonable (or clearly unreasonable) action by a retailer?

EWOV can provide the following case studies as examples of situations when EWOV has investigated a case and determined that the actions of the energy retailer was unreasonable when requesting a lump sum payment from a customer, or declaring that an instalment plan has failed.

Failure of a payment plan

The ESC advised in its decision paper that *'part payments should not automatically constitute failure of an instalment plan...each retailer has an internal process for determining when a plan is no longer viable...we would expect retailers' training processes to ensure consistency of application across all business units.'*¹

The following two cases studies illustrate that part payments can result in the failure of a payment plan. The case studies also highlight that inconsistencies can occur in the actions taken by energy retailer, given there does not appear to be a single approach as to when an instalment plan has failed.

Case Study 1 - WDP/2011/1911 - Part payment made twice prior to disconnection.

Date Opened: 21 November 2011 Date Closed: 16 November 2011

The energy retailer disconnected the customer for non-payment of arrears on 17 November 2011. Between October 2010 and April 2011, the customer failed three instalment plans (established at \$60 per fortnight). Prior to disconnection the energy retailer had sent the customer a Utility Relief Grant (URGS) form and had provided energy efficiency advice.

The customer failed the first instalment plan (established in October 2010) after he made one payment of \$60 on time, followed by two late part payments of \$50.

¹ Page 30 of the ESC's Obligations To Customers: Disconnection And Reconnection - Final Decision.

The customer failed the second instalment plan (established in January 2011) after he made one payment of \$60 on time, followed by another part payment of \$50.00 on time, but then no further payments. The instalment plan was not cancelled until April 2011.

The third and final instalment plan (established in April 2011) was cancelled after the customer made no payments until August 2011. However, the energy retailer did not cancel this payment until August 2011.

The customer contacted EWOV for assistance after the disconnection. EWOV investigated whether the energy retailer disconnected the customer in compliance with its obligations and confirmed that the disconnection was not wrongful.

Case Study 2 - WDP/2010/227 - Part payment made twice prior to disconnection.

Date Opened: 3 December 2010 Date Closed: 16 February 2011

The energy retailer disconnected the customer's gas supply on 1 December 2010, because of non-payment of arrears after the failure of several instalment plans. The customer's second instalment plan was established in July 2010 (\$80 per fortnight). The customer failed this instalment plan after the fourth instalment was missed.

The customer's third instalment plan was established in October 2010 (amount \$110 per fortnight). The customer made an initial payment on time for \$110 but the next payment made was for only \$100. The third and fourth payments made were only \$50. The energy retailer decided to fail the instalment plan after the second part payment was made.

The customer contacted EWOV for assistance after the disconnection. EWOV investigated whether the energy retailer disconnected the customer in compliance with its obligations, and confirmed that the disconnection was not wrongful.

Requesting Lump Sum payments

The ESC advised in its decision paper that there are differing types of customers that require reconnection and therefore it *'will not prohibit lump sums outright prior to reconnection. However, it is a requirement that retailers' actions be reasonable in all the circumstances of the particular case'*².

Given that EWOV investigates disconnection cases where the customer has not been able to resolve the issue with their energy retailer directly, the majority of complaints EWOV receives about this issue involve dissatisfied customers who were not able to pay the lump sum. Clause 15.1 of the *Energy Retail Code* states that energy retailers should reconnect a customer's supply if they:

² Page 33 of the ESC's Obligations To Customers: Disconnection And Reconnection - Final Decision.

- pay the bill or agree to a payment arrangement
- apply for a Utility Relief Grant
- pay the reconnection fee³.

Therefore, EWOV believes that in the following circumstances it would be reasonable for an energy retailer to request a lump sum payment from a customer:

- the customer has shown no indication of financial hardship prior to disconnection (for example: all previous bills paid on time and in full)
- the customer has agreed to pay the reconnection fee (as the lump sum payment), in order to organise the reconnection (in line with clause 15.1 of the Energy Retail Code)
- the customer has offered to pay the amount in full or a significant portion of the arrears.

EWOV believes that the following case study illustrates a situation where the energy retailer has acted unreasonably because the customer was previously identified as experiencing financial difficulty by the energy retailer. The customer has also self-identified themselves as being in hardship, as has a financial counsellor, and yet the energy retailer has required a lump sum payment of more than \$1,000 prior to organising reconnection.

**Case Study 3 - WDP/2011/2030 - Full balance required so that customer was reconnected.
Date Opened: 20 December 2011 Date Closed: not resolved**

The energy retailer disconnected the customer in November 2011, after she failed a instalment plan under its hardship program. The customer and her financial counsellor contacted the energy retailer on several occasions during November and December 2011, to organise reconnection and made a payment of \$800 in November 2011. The energy retailer advised it would not reconnect supply without the full payment of the account arrears. Which the customer and their financial counsellor advised was not possible given the arrears was \$1,200. The energy retailer would not accept any payment less than this.

4. How might we approach examples that are not so clear-cut?

In conjunction with a published definition of 'reasonable actions', to complete an assessment of whether an energy retailer's actions were reasonable, an energy retailer or the ESC could consider similar criteria as EWOV does when investigating a complaint. When EWOV assesses if an energy retailer's actions have been reasonable, EWOV considers the following criteria:

- The relevant laws and codes - as a minimum standard.
- Good industry practice.
- The specific circumstances of the case.

³ Subject to other applicable laws and codes.

We trust the above comments are helpful. If you require further information or have any queries, please contact Belinda Crivelli, Senior Research and Communications Officer on 03 8672 4460.

Yours sincerely,

Cynthia Gebert
Energy and Water Ombudsman (Victoria)