

ENERGY AND WATER OMBUDSMAN DECISION NOTICE

Energy and Water Ombudsman Act 2006

Energy and Water Ombudsman

Reference number:

2014/05/00102

Parties:

Mr and Mrs W

and

Sanctuary Energy Pty Ltd

Delivered on:

26 August 2014

Delivered at:

Brisbane

1. Decision:

- 1.1 I, Forbes Huston Smith, Energy and Water Ombudsman Queensland, as the decision-maker under s.34 of the *Energy and Water Ombudsman Act 2006* (the Act), **order** that Sanctuary Energy Pty Ltd (Sanctuary) pay Mr and Mrs W the sum of \$1,694.74 by 26 September 2014 on the following basis:
- a) By letter dated 5 November 2012, Sanctuary welcomed Mr and Mrs W to Sanctuary, and thanked them for choosing Sanctuary as their electricity retailer for their residence at [Insert Address] (the premises). Sanctuary also advised that the expected supply start date was 7 November 2012.
 - b) The supply of electricity to the premises was subject to a 3 year negotiated customer supply contract (the contract) between the W's and Sanctuary.
 - c) Sanctuary agreed to pay the W's solar feed-in credits in excess of their electricity charges upon request.
 - d) The W's account balance is \$1,694.74 in credit (the credit amount).
 - e) Mr W advised Energy and Water Ombudsman Queensland (EWOQ) that on 6 February 2014 he contacted Sanctuary and requested payment of the credit amount.
 - f) Sanctuary has not paid the credit amount which is in breach of their contract with the W's.
 - g) Sanctuary is required by s.55DB(b)(ii) *Electricity Act 1994* (Electricity Act) to pay the small customer any credit owed after the end of 12 months after the end of the first billing period.

2. The Dispute

- 2.1 On 4 May 2014 EWOQ received a complaint from Mrs W in relation to conduct alleged to have been engaged in by Sanctuary.
- 2.2 On a date unknown, Sanctuary agreed to supply electricity and associated goods and services to the W's at the premises.
- 2.3 The starting date of supply to the premises was expected to be 7 November 2012.
- 2.4 The supply of electricity to the premises was subject to the contract between the W's and Sanctuary.
- 2.5 Mr W alleges that he and his wife are entitled to payment of the credit amount by Sanctuary upon request.
- 2.6 Despite numerous requests having been made by the W's for the payment of the solar feed-in credits, Sanctuary has failed to pay the credit amount as agreed under the contract.

3. Background

3.1 Relevantly, s.3 of the Act provides that one of the main purposes of the Act is to give:

(a) small customers (energy) and relevant occupiers of land a timely, effective, independent and just way of—

(i) referring disputes about particular matters involving energy entities and particular former energy entities; and

(ii) having the disputes investigated and resolved;

3.2 Section 7 of the Act defines a retailer as being an *energy entity*.

3.3 The Dictionary to the Act defines a *retailer* as a *retail entity* under the *Electricity Act 1994* (Electricity Act).

3.4 Section 46 of the Electricity Act provides that a *retail entity* is a person who holds a retail authority. Sanctuary currently holds Retail Authority R01/08.

3.5 Section 64(1) of the Act provides that a retailer becomes a scheme participant only when it enters into a contract for the provision of, or starts to provide, customer retail services to a small customer.

3.6 Customer retail services are defined in the Dictionary to the Act as:

customer retail services under an energy Act.

3.7 Therefore, Sanctuary is an energy entity under the Act.

3.8 Section 6(1) of the Act provides that a person is a small customer (energy) if, under an energy Act, the person is a small customer for premises.

3.9 Section 5 of the Act provides:

An **energy Act** is the *Electricity Act 1994* or *Gas Supply Act 2003*.

3.10 Section 23(3) of the Electricity Act provides that a small customer, or premises, is a customer prescribed under a regulation to be a small customer for the premises.

3.11 Section 30N of the *Electricity Regulation 2006* (the Regulation) provides:

This subdivision applies if, under this division, the relevant distribution entity for a premises may or must decide whether a customer is a small customer for the premises.

3.12 Section 30O of the Regulation provides:

The entity may decide the customer is a small customer for the premises only if, under sections 30P to 30T, the entity considers the customer's annual consumption at the supply point for the premises is, or will be, less than 100MWh.

3.13 Therefore, the W's are a small customer.

3.14 Section 11 of the Act provides, relevantly:

The energy and water ombudsman's functions are—

(a) to receive and investigate, and facilitate the resolution of, disputes referred under this Act to the energy and water ombudsman; and

(b) to resolve the disputes if they can not be resolved by agreement, negotiation or mediation;¹

3.15 Section 34(2) of the Act provides that after finishing the investigation, the energy and water ombudsman may decide to make, or refuse to make, an order (a final order) in favour of the non-entity party.²

3.16 Section 35(1) of the Act provides that a final order may order the relevant entity³ to do all or any of the following as it relates to the subject of the relevant dispute:

(a) pay compensation to the non-entity party;

(b) provide the non-entity party with stated goods or services under the relevant energy Act or the customer water and wastewater code;

(c) amend, or not impose, a stated charge for stated services under the relevant energy Act or the customer water and wastewater code;

(d) perform corrective action or work;

(e) correct, delete from or add to a stated record;

(f) add to a stated record a statement provided by the non-entity party of a correction, deletion or addition sought by the non-entity party;

(g) to do, or not to do or stop doing, a stated act.

3.17 Section 38(1) of the Act provides:

The energy and water ombudsman must give the parties written notice (a **decision notice**) of—

(a) the ombudsman's decision under section 34; and

(b) the reasons for the decision.

3.18 I have reviewed the relevant legislation and the evidence collected by the investigators of EWOQ. I have also considered the matters I am required to consider under s.36(a) of the Act.

3.19 The issues to be determined in this complaint are:

(a) is Sanctuary liable to pay the credit amount to the W's, and

(b) if the answer to (a) is in the affirmative whether Sanctuary has paid the credit amount.

4. Evidence on which the material questions of fact were considered

4.1 The available evidence in this investigation was provided entirely by the W's.

4.2 In addition to the W's oral and written information, the evidence which was considered as part of the process of reaching a final decision included:

¹ The performance of the Energy and Water Ombudsman's functions are subject to s.12 of the Act.

² In this complaint the non-entity party is the W's.

³ In this complaint the entity is Sanctuary.

- a) letter dated 5 November 2012, from Sanctuary welcoming the W's to Sanctuary, thanking them for choosing Sanctuary as their electricity retailer, and advising them that the expected supply start date was 7 November 2012;
- b) Queensland Disclosure Notice 30c FIT Domestic Small Supply;
- c) Sanctuary Client Services Agreement;
- d) Copies of three invoices issued by Sanctuary to the W's (Invoice Nos. 130989; 140832; and 149447).

4.3 All documents described in paragraph 4.2 hereof were provided by the W's and were copies of the original documents held by them.

5. Findings on Material Questions of Fact

- 5.1 In 2012, the W's contracted with a solar energy company named [Solar Entity] to install solar PV panels at the premises. Mr W said that a Green Initiatives representative told him he could ask Sanctuary to pay solar feed-in credits generated by the solar PV system installed by [Solar entity] at any time.
- 5.2 On a date unknown in 2012, Sanctuary agreed to supply electricity and associated goods and services to the W's at the premises.
- 5.3 The starting date of supply to the premises was expected to be 7 November 2012.
- 5.4 The supply of electricity to the premises was subject to the contract between the W's and Sanctuary.
- 5.5 Mr W stated that when he and his wife first entered into the contract with Sanctuary, the Sanctuary representative told them that they could apply for payment of a credit as soon as a bill was received showing the credit amount.
- 5.6 Sanctuary forwarded invoice 130989 to the W's in respect of billing period 7 August 2013 to 6 November 2013 which stated an account balance of \$640.40 in credit.
- 5.7 Sanctuary forwarded invoice 140832 to the W's in respect of billing period 6 November 2013 to 6 February 2014 which stated an account balance of \$1,288.67 in credit.
- 5.8 Sanctuary forwarded invoice 149447 to the W's in respect of billing period 6 February 2013 to 8 May 2014 which stated an account balance of \$406.07 in credit.
- 5.9 Invoice 149447 states that a refund of \$1,288.67 was paid to the W's. The W's state that they have never been paid any refunds.
- 5.10 Mr W advised that on 6 February 2014 he contacted Sanctuary and requested a refund and was told that a cheque would be forwarded in 6 weeks.
- 5.11 Six weeks after 6 February 2014 Mr W again contacted Sanctuary as the cheque had not been received. He was told by Sanctuary that the cheque would take longer to issue. He said he has never received a cheque from Sanctuary.

5.12 On 5 May 2014 EWOQ issued an Investigation Notice to Sanctuary but no response was received despite repeated follow-up requests by EWOQ officers.

5.13 Sanctuary has not made any refunds to the W's and the correct account balance is \$1,694.74 in credit.

6. Reasons

6.1 It is clear from the material that the W's entered into a 3 year contract with Sanctuary for Sanctuary to supply electricity, and associated goods and services, to the W's at the premises.

6.2 It is also clear from the invoices and the information provided by the W's that to 8 May 2014 net credits totaling \$1,694.74 have been generated by the solar PV system at the premises.

6.3 On the evidence the net credit of \$1,694.74 has not been paid by Sanctuary despite repeated requests for payment by the W's.

6.4 The remaining issue is whether Sanctuary agreed to pay any credits on request. The best evidence of such an agreement would be the contract. The W's did not provide a copy of the contract.

6.5 However, based on the following evidence, I am satisfied on the balance of probabilities that Sanctuary did agree to pay credits on request:

- Mr and Mrs W contacted Sanctuary on numerous occasions requesting the credit and were told that a cheque would be forwarded to them;
- a Green Initiatives representative told them that they could apply for payment of a credit as soon as a bill was received showing the credit amount.

6.6 I also note that s.55DB(b)(ii) *Electricity Act 1994* requires a retail entity to pay the small customer any credit owed after the end of 12 months after the end of the first billing period:

It is also a condition of a retail authority that the retail entity must—

(a) reduce the amount payable by a small customer (the **amount due**), for electricity supplied to the small customer in a relevant supply period, by the amount of any credit (**owed credit**) given by a distribution entity in relation to the small customer for the relevant supply period under section 44A(1)(b); and

(b) if the owed credit is more than the amount due for the relevant supply period (the **first period**)—

(i) reduce the amount due for a subsequent relevant supply period by the unused amount of the owed credit; and

(ii) if, after the end of 12 months after the end of the first period, an amount of the owed credit has not been used under subparagraph (i)—pay the small customer an amount representing the amount of owed credit that has not been used;

6.7 Sanctuary has not paid any credit to the W's as required by s.55DB(b)(ii) *Electricity Act 1994*.

Appeal/Review Rights

7.1 The W's may, by written notice to the EWOQ elect to accept or not to accept this order. Any notice electing not to accept this notice may be given only within 21 days after they receive this notice. If a notice electing not to accept is not given within 21 days, the W's are taken to have elected to accept this order and to be bound by it.

7.2 Section 40 of the Act provides:

(1) The non-entity party⁴ may, by written notice (***election notice***) to the energy and water ombudsman, elect to accept or not to accept a final order.

(2) An election notice may be given only within 21 days after the non-entity party receives a decision notice about the order.

(3) If, under an election notice, the election is not to accept the order, the order stops having effect.

(4) If an election notice is not given within the 21 days, the non-entity party is taken to have elected to accept the order and to be bound by it.

(5) The energy and water ombudsman must, as soon as practicable, give the relevant entity⁵ a written notice about whether or not the order has been accepted.

7.3 Section 41 of the Act provides:

(1) This section applies only for an accepted order.

(2) The accepted order—

(a) is final and conclusive; and

(b) binds the parties for all matters that were the subject of the relevant dispute.

(3) Subject to the *Judicial Review Act 1991*, the accepted order—

(a) cannot be challenged, appealed against, reviewed, quashed, set aside or called into question (whether by the Supreme Court, another court, a tribunal, an authority or a person) in any way; and

(b) is not subject to any declaratory, injunctive or other order of the Supreme Court, another court, a tribunal, an authority or a person on any ground.

(4) The parties cannot start a proceeding about any of the matters.

FORBES SMITH

Energy and Water Ombudsman Queensland

26/08/2014

⁴ The W's.

⁵ Sanctuary.