

ENERGY AND WATER OMBUDSMAN DECISION NOTICE

Energy and Water Ombudsman Act 2006

Energy and Water Ombudsman

Reference number:

2014/06/00838

Parties:

Ms T

and

Sanctuary Energy Pty Ltd

Delivered on:

4 September 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 Ms T the sum of \$1,478.81 by 6 October 2014 on the following basis:

- a) By letter dated 15 October 2012, Sanctuary welcomed Ms T to Sanctuary, and thanked her for choosing Sanctuary as her electricity retailer for her residence at [Insert Address] (the premises). Sanctuary also advised that the expected supply start date was 15 October 2012.
- b) The supply of electricity to the premises was subject to a 3 year negotiated customer supply contract (the contract) between Ms T and Sanctuary.
- c) Sanctuary agreed to pay Ms T solar feed-in credits in excess of her electricity charges upon request.
- d) Ms T's account balance is \$1,478.81 in credit (the credit amount).
- e) Ms T advised Energy and Water Ombudsman Queensland (EWOQ) that in late 2013 she emailed Sanctuary requesting payment of her credit on her account.
- f) Ms T emailed Sanctuary again on 6 March 2014 requesting payment of her credit on her account.
- g) By email dated 6 March 2014 Sanctuary advised Ms T that Sanctuary was working to have all outstanding payments resolved no later than 28 March 2014
- h) In late March 2014 Ms T emailed Sanctuary again requesting payment of her credit on her account.
- i) Sanctuary has not paid the credit amount which is in breach of their contract with Ms T.
- j) 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 26 June 2014 EWOQ received a complaint from Ms T 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 Ms T at the premises.

2.3 The starting date of supply to the premises was expected to be 15 October 2012.

2.4 The supply of electricity to the premises was subject to the contract between Ms T and Sanctuary.

- 2.5 Ms T states that she is entitled to payment of the credit amount by Sanctuary upon request.
- 2.6 Despite numerous requests having been made by Ms T 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, Ms T is 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 Ms T, 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

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 Ms T.

³ In this complaint the entity is Sanctuary.

- 4.1 The available evidence in this investigation was provided entirely by Ms T.
- 4.2 In addition to Ms T's oral and written information, the evidence which was considered as part of the process of reaching a final decision included:
- a) Sales agreement between Ms T and [Solar entity] dated 23 July 2012;
 - b) Letter dated 20 August 2012, from Sanctuary welcoming Ms T to Sanctuary, thanking her for choosing Sanctuary as her electricity retailer, and advising her that the expected supply start date was 15 October 2012;
 - c) Queensland Disclosure Notice Domestic Small Supply;
 - d) Sanctuary Client Services Agreement;
 - e) Sanctuary Contract Notice of Retail Price Change;
 - f) Sanctuary Customer Charter: Small Customer;
 - g) Copies of three invoices issued by Sanctuary to Ms T (Invoice Nos. 128594; 138826; and 147776).
- 4.3 All documents described in paragraph 4.2 hereof were provided by Ms T and were copies of the original documents held by her.

5. Findings on Material Questions of Fact

- 5.1 In 2012, Ms T contracted with a solar energy company named [Solar entity] to install solar PV panels at the premises. Ms T told EWOQ that a [Solar entity] representative told her she that she could receive credit rebates quarterly from Sanctuary. She said that for this reason she was prepared to pay for more expensive solar panels purchased from and installed by [solar entity].
- 5.2 On a date unknown in 2012, Sanctuary agreed to supply electricity and associated goods and services to Ms T at the premises.
- 5.3 The starting date of supply to the premises was expected to be 15 October 2012.
- 5.4 The supply of electricity to the premises was subject to the contract between Ms T and Sanctuary.
- 5.5 Ms T told EWOQ that she first requested payment for credits on 26 July 2013. Due to delays in payment of the cheque Ms T made a complaint to EWOQ (File no 2013/11/00574 refers). A cheque for payment of credit in respect of that complaint was paid by Sanctuary in mid-December 2013.
- 5.6 Sanctuary forwarded invoice 128594 to Ms T in respect of billing period 7 July 2013 to 17 October 2013 which stated an account balance of \$427.31 in credit.
- 5.7 Sanctuary forwarded invoice 138826 to Ms T in respect of billing period 17 October 2013 to 17 January 2014 which stated an account balance of \$611.61 in credit. The invoice also stated that a credit of \$427.31 had been refunded. Ms T states that this amount has not been refunded.

- 5.8 Sanctuary forwarded invoice 147776 to Ms T in respect of billing period 17 January 2014 to 17 April 2014 which stated an account balance of \$439.89 in credit. The invoice also stated that a credit of \$611.61 had been refunded. Ms T states that this amount has not been refunded.
- 5.9 Ms T advised EWOQ that in late 2013 she emailed Sanctuary requesting payment of the credit which was then on her account. She emailed Sanctuary again on 6 March 2014.
- 5.10 Sanctuary emailed Ms T on 6 March 2014 advising:

Thank you for your enquiry with regards to your delayed refund. Sanctuary Energy acknowledges we have significant delays in the release of refund cheques and are working to have all outstanding payments resolved no later than 28 March 2014. This has occurred due to a sudden increase in the number of requests and we acknowledge the current process does not support acceptable turnaround times.

We appreciate your patience and please be assured your complaint has been forwarded to our Operations Manager who has been reviewing this situation and working with Senior Management to resolve. We look forward to resolving this outstanding matter promptly.

- 5.11 In late March 2014 Ms T again emailed Sanctuary requesting payment of her outstanding credit.
- 5.12 Ms T stated that she also contacted Sanctuary by telephone on a number of occasions and was told on each occasion that a cheque would be forwarded to her in 6 to 8 weeks.
- 5.13 On 27 June 2014 EWOQ issued an Investigation Notice to Sanctuary but no response has been received despite repeated follow-up requests by EWOQ officers.
- 5.14 Sanctuary has not made any credit refunds to Ms T for invoices numbered 128594, 138826, and 147776 and the correct account balance is \$1,478.81 in credit.

6. Reasons

- 6.1 It is clear from the material that Ms T entered into a 3 year contract with Sanctuary for Sanctuary to supply electricity, and associated goods and services, to her at the premises.
- 6.2 It is also clear from the invoices and the information provided by Ms T that to 17 April 2014 net credits totaling \$1,478.81 have been generated by the solar PV system at the premises.
- 6.3 On the evidence the net credit of \$1,478.81 has not been paid by Sanctuary despite repeated requests for payment by Ms T.
- 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. Ms T 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:

- Ms T contacted Sanctuary on numerous occasions requesting payment of the credit and were told that a cheque would be forwarded to her;
- Ms T was sent an email by Sanctuary on 6 March 2014 in respect of her “delayed refund” and advised that Sanctuary was working to have all outstanding refunds resolved by no later than 28 March 2014;
- a Custom Solar representative told Ms T that she could apply for payment of credit quarterly;
- a refund cheque was sent to Ms T in mid-December 2013 for credit.

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 Ms T as required by s.55DB(b)(ii) *Electricity Act 1994*.

Appeal/Review Rights

7.1 Ms T 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 she receives this notice. If a notice electing not to accept is not given within 21 days, Ms T is 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.

⁴ Ms T.

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
04/09/2014

⁵ Sanctuary.