

## **ENERGY AND WATER OMBUDSMAN DECISION NOTICE**

*Energy and Water Ombudsman Act 2006*

**Energy and Water Ombudsman**

**Reference number:**

2014/04/00480

**Parties:**

Ms F B

and

Sanctuary Energy Pty Ltd

**Delivered on:**

8 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 Ms B the sum of \$912.09 by 10 September 2014 on the following basis:
- a) Sanctuary is the electricity retailer for Ms B at her residence [insert address] (the premises).
  - b) The supply of electricity to the premises was subject to a 3 year negotiated customer supply contract (the contract) between the Ms B and Sanctuary.
  - c) Sanctuary agreed to pay Ms B solar feed-in credits in excess of her electricity charges upon request.
  - d) Ms B's account balance is \$912.09 in credit (the credit amount).
  - e) Ms B has sought payment of the credit amount from Sanctuary.
  - f) Sanctuary has not paid the credit amount which is in breach of their contract with Ms B.
  - 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 15 April 2014 the Energy and Water Ombudsman Queensland (EWOQ) received a complaint from Ms B 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 B at the premises.
- 2.3 Ms B has provided copies of a number of invoices to EWOQ the earliest of which is for the period 15 January 2013 to 15 April 2013.
- 2.4 The supply of electricity to the premises was subject to the contract between Ms B and Sanctuary.
- 2.5 Ms B alleges that she is entitled to payment of the credit amount by Sanctuary upon request.
- 2.6 Despite numerous requests having been made by Ms B for the payment of her solar feed-in credits, Sanctuary has failed to pay the credits 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 B 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;<sup>1</sup>

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.<sup>2</sup>

3.16 Section 35(1) of the Act provides that a final order may order the relevant entity<sup>3</sup> 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 B, 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 almost entirely by Ms B, as Sanctuary did not respond to an Investigation Notice, and provided limited information in response to follow-up requests.

4.2 In addition to Ms B’s information, the evidence which was considered as part of the process of reaching a final decision included:

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<sup>1</sup> The performance of the Energy and Water Ombudsman’s functions are subject to s.12 of the Act.

<sup>2</sup> In this complaint the non-entity party is Ms B.

<sup>3</sup> In this complaint the entity is Sanctuary.

- a) Copies of four invoices issued by Sanctuary to Ms B (Second page of invoice for 15 January 2013 to 15 April 2013; Invoice Nos. 117154; 128179; and 138597);
- b) Negotiated Electricity Contract Queensland Small Supply;
- c) Information provided by Sanctuary.

4.3 All documents described in paragraph 4.2 hereof were provided by Ms B and were copies of the original documents held by her.

## **5. Findings on Material Questions of Fact**

5.1 On a date unknown, Sanctuary agreed to supply electricity and associated goods and services to Ms B at the premises.

5.2 The supply of electricity to the premises was subject to the contract between Ms B and Sanctuary.

5.3 Sanctuary forwarded an invoice to Ms B in respect of billing period 15 January 2013 to 15 April 2013 which stated an account balance of \$166.00 in credit.

5.4 Sanctuary subsequently forwarded invoice 117154 to Ms B in respect of billing period 15 April 2013 to 16 July 2013 which stated an account balance of \$212.80 in credit.

5.5 Sanctuary subsequently forwarded invoice 128179 to Ms B in respect of billing period 16 July 2013 to 15 October 2013 which stated an account balance of \$473.99 in credit.

5.6 Sanctuary subsequently forwarded invoice 138597 to Ms B in respect of billing period 15 October 2013 to 15 January 2014 which stated an account balance of \$438.10 in credit.

5.7 Invoice 138597 states that the credit balance of \$473.99 was refunded. Ms B states that she did not receive this refund.

5.8 On 16 April 2014, an Investigation Notice (Notice) was issued to Sanctuary by EWOQ pursuant the Act. Sanctuary has not responded to the Notice.

5.9 By email dated 26 May 2014, Sanctuary advised EWOQ "We currently have 2 outstanding refunds for this customer and they will be mailed on Wednesday 28<sup>th</sup> May 2014, I will provide an update by 30<sup>th</sup> May 2014." The email referred to two figures \$438.10 and \$473.99.

5.10 Also on 26 May 2014, an EWOQ officer noted that she had been contacted by Sanctuary and advised "26/5/14 - Phone call with [Sanctuary] advised that the customer is due two cheques to be sent on 28/5/14 from (sic) amounts 438.10 and 473.99 – [Sanctuary] has sent an email of even date-see attached."

5.11 By emails dated 5 and 26 June 2014, EWOQ sought information from Sanctuary as to whether the cheques had been paid as advised in Sanctuary's email of 26 May 2014. Sanctuary responded by email on 2 July 2014 advising that "The matter has been raised with our finance team and we will provide you with a response when available."

- 5.12 On 1 August 2014 Ms B advised that she has not been paid the credit amount (\$912.09)
- 5.13 Sanctuary did not make any refunds to Ms B for the period 1 January 2013 to 15 January 2014 and she has a credit balance of \$912.09 for that period.

## 6. Reasons

- 6.1 It is clear from the material that Ms B entered into a 3 year contract with Sanctuary for Sanctuary to supply electricity, and associated goods and services, to Ms B at the premises.
- 6.2 It is also clear from the four invoices for the period 1 January 2013 to 15 January 2014 net credits totaling \$912.09 were generated by the solar PV system at the premises.
- 6.3 On Ms B's evidence, and that of Sanctuary, the credits have not been paid by Sanctuary despite repeated requests for payment by Ms B.
- 6.4 Sanctuary has told Ms B and EWOQ that the credit payment would be made.
- 6.5 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;

- 6.6 The supply of electricity to the premises commenced by no later than 15 January 2013 and no credits have been paid to Ms B for the period 1 January 2013 to 15 January 2014.

## Appeal/Review Rights

- 7.1 Ms B 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 B 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 party<sup>4</sup> 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 entity<sup>5</sup> 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.

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**FORBES SMITH**

Energy and Water Ombudsman Queensland

08/08/2014

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<sup>4</sup> Ms B.

<sup>5</sup> Sanctuary.