

ENERGY AND WATER OMBUDSMAN DECISION NOTICE

Energy and Water Ombudsman Act 2006

Energy and Water Ombudsman

Reference number:

2014/05/00360

Parties:

Mr F

and

Sanctuary Energy Pty Ltd

Delivered on:

4 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 F the sum of \$1,668.18 by 26 August 2014 on the following basis:
- a) In February 2013, Mr F's electricity supply at [address] was transferred to Sanctuary with the starting date of supply being 11 April 2013.
 - b) The supply of electricity to the premises was subject to a negotiated customer supply contract (the contract) between Mr F and Sanctuary.
 - c) Sanctuary agreed to pay Mr F solar feed-in credits in excess of his electricity charges upon request.
 - d) Mr F's account balance is \$1,668.18 in credit (the credit amount).
 - e) Between 3 January 2014 and 18 June 2014 (inclusive) Mr F sought payment of the credit amount from Sanctuary.
 - f) Sanctuary has not paid the credit amount which is in breach of their contract with Mr F.

2. The Dispute

- 2.1 On 12 May 2014 the Energy and Water Ombudsman Queensland (EWOQ) received a complaint from Mr F 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 Mr F at the premises.
- 2.3 The starting date of supply to the premises was 11 April 2013.
- 2.4 The supply of electricity to the premises was subject to the contract between Mr F and Sanctuary.
- 2.5 Mr F alleges that he is entitled to payment of the credit amount by Sanctuary upon request.
- 2.6 Despite numerous requests having been made by Mr F for the payment of his 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, Mr F 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 Mr F, 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 Mr F.

4.2 Information was provided to EWOQ officers orally by Mr F.

4.3 In addition to Mr F's oral information, the evidence which was considered as part of the process of reaching a final decision included:

- a) Custom Contract between Mr F and [Solar panel installer] dated 19 December 2012 but signed by Mr F on 21 January 2013;

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 Mr F.

³ In this complaint the entity is Sanctuary.

- b) Letter dated 1 February 2013 from Sanctuary to Mr F thanking him for choosing Sanctuary as his electricity retailer;
- c) Letter dated 25 February 2013 from Sanctuary to Mr F confirming that his electricity supply had been transferred successfully to Sanctuary;
- d) Queensland Disclosure Notice;
- e) Copies of three invoices issued by Sanctuary to Mr F (Invoice Nos. 127982; 138345; and 147243);
- f) Information provided by Sanctuary.

4.4 All documents described in paragraph 4.3 here of were provided by Mr F and were copies of the original documents held by Mr F.

5. Findings on Material Questions of Fact

5.1 In late January/early February 2013, Sanctuary agreed to supply electricity and associated goods and services to Mr F at the premises.

5.2 The starting date of supply to the premises was 11 April 2013.

5.3 The supply of electricity to the premises was subject to the contract between Mr F and Sanctuary.

5.4 Sanctuary forwarded invoice 127982 to Mr F in respect of billing period 12 July 2013 to 11 October 2013 (the first invoice) which stated an account balance of \$889.06 being State government and Sanctuary solar feed-in credits.

5.5 Mr F contacted Sanctuary and asked that the \$889.06 be paid to him.

5.6 Sanctuary subsequently forwarded invoice 138345 to Mr F in respect of billing period 11 October 2013 to 13 January 2014 (the second invoice) which stated an account balance of \$542.29 being State government and Sanctuary solar feed-in credits.

5.7 Mr F contacted Sanctuary and asked that the \$542.29 be paid to him.

5.8 Sanctuary subsequently forwarded invoice 147243 to Mr F in respect of billing period 13 January 2014 to 10 April 2014 (the third invoice) which stated an account balance of \$236.83 being State government and Sanctuary solar feed-in credits.

5.7 Mr F contacted Sanctuary and asked that the \$236.83 be paid to him.

5.8 Mr F states that none of the credits have been paid to him.

5.9 On 12 May 2014, an Investigation Notice was issued to Sanctuary by EWOQ pursuant the Act.

5.10 On 26 May 2014, Sanctuary advised EWOQ that two refund cheques, \$542.29 and \$236.83, would be issued to Mr F and released on 4 June 2014. Mr F maintained that he was also entitled to a cheque for \$889.06.

5.11 Subsequently, Sanctuary advised that an error had been made in respect of the \$889.06 and it too can be refunded by an electronic funds transfer.

5.12 On 29 May 2014, Sanctuary advised EWOQ that all three credits would be paid.

6. Reasons

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

6.2 It is also clear from the first, second and third invoices that credits totalling \$1,668.18 were generated by the solar PV system at the premises.

6.3 On Mr F's evidence, and that of Sanctuary, the credits have not been paid by Sanctuary despite repeated requests for payment by Mr F and EWOQ.

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. Mr F does not have 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 F contacted Sanctuary on numerous occasions requesting payment which Sanctuary agreed to do, but gave various reasons for the delay in doing so; and
- Sanctuary advised EWOQ that the payments would be made.

Appeal/Review Rights

7.1 Mr F 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 he receives this notice. If a notice electing not to accept is not given within 21 days, Mr F 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 Mr F.

⁵ Sanctuary.

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
04/08/2014