

ENERGY AND WATER OMBUDSMAN DECISION NOTICE

Energy and Water Ombudsman Act 2006

Energy and Water Ombudsman

Reference number:

2014/06/00559

Parties:

Mr and Mrs B

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 and Mrs B the sum of \$573.14 by 26 August 2014 on the following basis:
- a) On or about 11 December 2012, Sanctuary agreed to supply electricity and associated goods and services to Mr and Mrs B to their residence at [address] (premises).
 - b) The supply of electricity to the premises was subject to a negotiated customer supply contract (the contract) between Mr and Mrs B and Sanctuary.
 - c) Sanctuary agreed to pay Mr and Mrs B solar feed-in credits in excess of their electricity charges upon request.
 - d) Mr and Mrs B's account balance is \$573.15 in credit (the credit amount).
 - e) Between 3 January 2014 and 18 June 2014 (inclusive) Mr and Mrs B 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 and Mrs B.

2. The Dispute

- 2.1 On 18 June 2014 the Energy and Water Ombudsman Queensland (EWOQ) received a complaint from Mr B in relation to conduct alleged to have been engaged in by Sanctuary.
- 2.2 In December 2012, Sanctuary agreed to supply electricity and associated goods and services to Mr and Mrs B at the premises.
- 2.3 The starting date of supply to the premises was 11 March 2013.
- 2.4 The supply of electricity to the premises was subject to the contract between Mr and Mrs B and Sanctuary.
- 2.5 Mr B alleges that he is entitled to payment of the credit by Sanctuary upon request.
- 2.6 Despite numerous requests having been made by Mr and Mrs B for the payment of their 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 and Mrs B are small customers.
- 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

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

- 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 Mr 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 Mr and Mrs B as Sanctuary failed to respond to a written notice issued by EWOQ officers under s.29 of the Act requiring Sanctuary to provide information. On three subsequent occasions an EWOQ officer advised Sanctuary in writing that it had not responded to the notice but no replies or acknowledgements have been received from Sanctuary.
- 4.2 Information was provided to EWOQ officers orally by Mr B.
- 4.3 In addition to Mr B’s oral information, the evidence which was considered as part of the process of reaching a final decision included:
- a) [Solar Panel Installer] Preinstallation Site Inspection and Order form GJ 3004;

² In this complaint the non-entity party is Mr and Mrs B.

³ In this complaint the entity is Sanctuary.

- b) [Solar Panel Installer] Terms and Conditions for the supply of goods and services;
- c) [Solar Panel Installer] invoice 00002853 dated 5 November 2012 issued to Mr and Mrs B,
- d) Sanctuary Queensland Disclosure Notice (page 1 only of 11 pages);
- e) Sanctuary negotiated retailer Contract Queensland Small Supply (13 pages);
- f) Letter dated 11 December 2012 from Sanctuary to Mr and Mrs B thanking them for choosing Sanctuary as their electricity retailer;
- g) Letter dated 25 March 2013 from Sanctuary to Mr and Mrs B confirming that their electricity supply had been transferred successfully to Sanctuary;
- h) Copies of two invoices issued by Sanctuary to Mr and Mrs B (Invoice Nos. 136487 and 139095);
- i) Extracts from the information pack sent to Mr and Mrs B by Sanctuary.

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

5. Findings on Material Questions of Fact

5.1 In 2012, Mr B contracted with a solar energy company [Solar Panel Installer] to install solar PV panels at the premises. Mr B was told by the installer that he had no choice but to use Sanctuary as his energy retailer. He believes it was the installer's representative who told him he could request payment of any solar feed-in credits generated by the solar PV system installed by the installer at any time.

5.2 On or about 11 December 2012, Sanctuary agreed to supply electricity and associated goods and services to Mr and Mrs B at the premises.

5.3 The starting date of supply to the premises was 11 March 2013.

5.4 The supply of electricity to the premises was subject to the contract between Mr and Mrs B and Sanctuary.

5.5 Mr B did not have a copy of the contract and states he was never given one. He did receive a welcome pack in the mail from Sanctuary.

5.6 Mr and Mrs B have received one cheque from Sanctuary as payment for their feed-in credit. The cheque was in the sum of \$78.80 and received in about early August 2013.

5.7 Sanctuary forwarded invoice 136487 to Mr and Mrs B in respect of billing period 19 September 2013 to 20 December 2013 (the first invoice) which stated an account balance of \$446.65 in credit.

5.8 On 3 January 2014, Mr B contacted Sanctuary and requested payment of the credit amount of \$446.65. He was advised that he would receive a cheque in six weeks' time.

5.9 Sanctuary subsequently forwarded invoice 139095 to Mr and Mrs B in respect of billing period 20 December 2013 to 17 January 2014 (the second invoice) which stated an account balance of \$126.49 in credit.

- 5.10 On 28 January 2014, Mr B rang Sanctuary and requested a cheque be forwarded to Mr and Mrs B for \$573.14 representing the combined credit of the first and second invoices.
- 5.11 Mr B again rang Sanctuary repeating his request for a cheque to be forwarded to Mr and Mrs B for \$573.14 on 27 February 2014, 3 and 20 March 2014, 28 April 2014, 21 May 2014, and 13 and 18 June 2014. Sanctuary staff gave him a number of reasons why it could not pay including: it was waiting on refunds from the government; a cheque would arrive in 6 weeks; they were having trouble getting the appropriate signatures. On 18 June 2014 he was told that Sanctuary was unable to tell him when he would receive a cheque.
- 5.12 Sanctuary has not paid Mr and Mrs B for either of the solar feed-in credits for the billing periods 19 September 2013 to 20 December 2013 or 20 December 2013 to 17 January 2014.
- 5.13 According to Mr B, Sanctuary has never disputed that the credit amount is owed by Sanctuary and should be paid to Mr and Mrs B.
- 5.14 Sanctuary has not advised EWOQ that it is not liable to pay Mr and Mrs B the credit amount.

6. Reasons

- 6.1 It is clear from the material that Mr and Mrs B entered into a 3 year contract with Sanctuary for Sanctuary to supply electricity, and associated goods and services, to Mr and Mrs B at the premises.
- 6.2 It is also clear from the first and second invoices that for the period 19 September 2013 to 17 January 2014 credits totaling \$573.14 were generated by the solar PV system at the premises.
- 6.3 On Mr B's evidence, supported by his contemporaneous notes, the credit has not been paid by Sanctuary despite repeated requests for its payment.
- 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 B does not have a copy of the contract, and Sanctuary has not engaged with EWOQ in respect of this investigation.
- 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:
- in August 2013 a credit was paid to Mr and Mrs B on request;
 - Mr B contacted Sanctuary on 8 occasions requesting payment which Sanctuary agreed to do, but gave various reasons for the delay in doing so; and
 - Sanctuary has not disputed that it should pay the credits to Mr and Mrs B.

Appeal/Review Rights

7.1 Mr and Mrs 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 Mr and Mrs B receive this notice. If a notice electing not to accept is not given within 21 days, Mr and Mrs B 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

04/08/2014

⁴ Mr and Mrs B.

⁵ Sanctuary.