

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

*Energy and Water Ombudsman Act 2006*

**Energy and Water Ombudsman**

**Reference number:**

2014/05/00598

**Parties:**

Mr M

and

Sanctuary Energy Pty Ltd

**Delivered on:**

6 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 M the sum of \$728.31 by 8 September 2014 on the following basis:
- a) In April 2013, Sanctuary agreed to supply electricity and associated goods and services to Mr M at his residence (premises).
  - b) The supply of electricity to the premises was subject to a negotiated customer supply contract (the contract) between Mr M and Sanctuary which commenced on 3 April 2013.
  - c) Sanctuary agreed to pay Mr M solar feed-in credits in excess of his electricity charges.
  - d) Mr M's account balance is \$728.31 in credit (the credit amount).
  - e) Between 13 January 2014 and 2 August 2014 Mr M sought payment of credit from Sanctuary.
  - f) Sanctuary has not paid any credit which is in breach of their contract with Mr M.

## 2. The Dispute

- 2.1 On 19 May 2014, the Energy and Water Ombudsman Queensland (EWOQ) received a complaint from Mr M in relation to conduct alleged to have been engaged in by Sanctuary. Mr M claims he is owed \$549.81 as a feed-in tariff credit.
- 2.2 On 3 April 2014, Sanctuary entered into a contract with Mr M to supply electricity and associated goods and services to Mr M at the premises.
- 2.3 Mr M alleges that he is entitled to payment of the credit by Sanctuary.
- 2.6 Despite numerous requests having been made by Mr M for the payment of outstanding credit, Sanctuary has failed to pay 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 M 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>

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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 Mr M.

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 Mr M, 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 M as Sanctuary failed to respond to a written notice (notice) issued on 20 May 2014 by EWOQ under s.29 of the Act requiring Sanctuary to provide information.

4.2 On 27 May 2014 Sanctuary contacted EWOQ and advised that the refund cheque for Mr M should be released on 4 June 2014 once the account balance is checked.

4.3 On two subsequent occasions an EWOQ officer advised Sanctuary in writing that it had not responded to the notice. Following the last contact from EWOQ, Sanctuary replied by email on 17 June 2014, relevantly “This matter has been raised with our finance team and we are currently waiting on a response as to when the refund will be released. We will provide you with an update once we have a date of release or more information is available”.

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

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

- 4.3 In addition to Mr M's oral information, the evidence which was considered as part of the process of reaching a final decision included:
- a) Sanctuary Queensland Disclosure Notice;
  - b) Sanctuary negotiated retailer [Solar panel installer](13 pages);
  - c) Transfer Confirmation Notice dated 27 May 2013 from Sanctuary to Mr M;
  - d) Special Conditions Sanctuary feed-in tariff;
  - e) Offer details;
  - f) Copies of invoices issued by Sanctuary to Mr M (Invoice Nos. 116378; 127102; 137920; and 147076).

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

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

- 5.1 In April 2013, Sanctuary agreed to supply electricity and associated goods and services to Mr M at his residence at the premises.
- 5.2 The supply of electricity to the premises was subject to the contract between Mr M and Sanctuary which commenced on 3 April 2013.
- 5.3 Sanctuary agreed to pay Mr M solar feed-in credits in excess of his electricity charges.
- 5.4 Sanctuary forwarded invoice 116378 to Mr M in respect of billing period 28 March 2013 to 2 July 2013 which stated an account balance of \$30.99 in credit.
- 5.5 Sanctuary forwarded invoice 127102 to Mr M in respect of billing period 2 July 2013 to 2 October 2013 which stated an account balance of \$118.67 in credit.
- 5.6 Sanctuary forwarded invoice 137920 to Mr M in respect of billing period 2 October 2013 to 8 January 2014 which stated an account balance of \$549.81 in credit.
- 5.7 Sanctuary forwarded invoice 147076 to Mr M in respect of billing period 8 January 2014 to 9 April 2014 which stated an account balance of \$178.50 in credit.
- 5.8 In respect of Invoice 147076 Sanctuary has calculated the solar feed-in tariff credit for the billing period as \$37.25. For the three previous billing periods the solar fee-in credits were \$423.55, \$503.07, and \$736.16 respectively.
- 5.9 Page 2 of Invoice 147076 states that a refund of \$549.81 has been paid to Mr M. He states that it has not been paid.
- 5.10 Furthermore, the credit of \$37.25 in Invoice 147076 appears to have been calculated by taking the feed-in tariff credit of \$512.56 from the previous credit balance of \$549.81.
- 5.11 The correct calculation is as follows:
- a) \$549.81 credit carried over into billing period 8 January 2014 to 9 April 2014;

- b) Plus additional credits of \$512.56 (\$95.36 + \$417.20) generated during billing period 8 January 2014 to 9 April 2014;
- c) Equals credit of \$1,062.37;
- d) Less Usage and Service Charges of \$303.69;
- e) Less GST of \$30.37;
- f) Equals \$728.31 credit.

5.12 Between 13 January 2014 and 2 August 2014 Mr M rang Sanctuary repeatedly asking for a cheque in the sum of \$549.81 to be forwarded to him. On several occasions he was advised that his matter had been referred to 'head office' and no response had been received. On 21 May 2014 he was advised by Sanctuary that a cheque would be mailed to him on 30 May 2014.

5.13 Sanctuary has not paid Mr M for any of the feed-in credits the subject of the invoices detailed in paragraphs 5.4, 5.5, 5.6 or 5.7 (the invoices) of this decision notice.

5.14 According to Mr M, Sanctuary has never disputed that the credit amount is owed by Sanctuary and should be paid to him, and on one occasion told him a cheque was to be mailed to him.

5.15 Sanctuary has not advised EWOQ that it is not liable to pay Mr M the credit amount, and one on occasion advised EWOQ that a cheque was to be released to him.

## **6. Reasons**

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

6.2 It is also clear from the invoices that for the period 28 March 2013 to 9 April 2014 credits totaling \$728.31 were generated by the solar PV system at the premises.

6.3 On Mr M's evidence 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.

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

- Mr M contacted Sanctuary on numerous occasions requesting payment which Sanctuary agreed to do;
- Sanctuary has not disputed that it should pay the credits to Mr M; and
- Sanctuary told Mr M and EWOQ that a cheque would be released to him.

## Appeal/Review Rights

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

06/08/2014

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<sup>4</sup> Mr M.

<sup>5</sup> Sanctuary.