

ENERGY AND WATER OMBUDSMAN DECISION NOTICE

Energy and Water Ombudsman Act 2006

Energy and Water Ombudsman

Reference number:

2014/06/00369

Parties:

Mr H

and

Sanctuary Energy Pty Ltd

Delivered on:

25 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 H the sum of \$1,314.97 by 26 September 2014 on the following basis:

- a) By letter dated 5 December 2012, Sanctuary welcomed Mr H to Sanctuary and thanked him for choosing Sanctuary as his electricity retailer for his residence at [INSERT ADDRESS](the premises). He was also advised that the expected supply start date was 27 December 2012.
- b) The supply of electricity to the premises was subject to a 3 year negotiated customer supply contract (the contract) between Mr H and Sanctuary.
- c) Sanctuary agreed to pay Mr H solar feed-in credits in excess of his electricity charges upon request.
- d) Mr H's account balance is \$1,314.97 in credit (the credit amount).
- e) Mr H has sought payment of the credit amount from Sanctuary.
- f) Sanctuary has not paid the credit amount to Mr H.
- g) Sanctuary is required by s.55DB(b)(ii) *Electricity Act 1994* 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 12 June 2014 the Energy and Water Ombudsman Queensland (EWOQ) received a complaint from Mr H 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 H at the premises.

2.3 The starting date of supply to the premises was expected to be 27 December 2012.

2.4 The supply of electricity to the premises was subject to the contract between Mr H and Sanctuary.

2.5 Sanctuary agreed to pay Mr H solar feed-in credits in excess of his electricity charges upon request.

2.6 Despite requests having been made by Mr H for the payment of the 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 H 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 H, 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 H.

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

- a) letter dated 3 December 2012, from Sanctuary welcoming Mr H to Sanctuary, thanking him for choosing Sanctuary as his electricity retailer, and advising him that the expected supply start date was 27 December 2012;

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 H.

³ In this complaint the entity is Sanctuary.

- b) Transfer confirmation notice from Sanctuary dated 31 December 2012;
- c) Sanctuary Queensland Residential Electricity Customer Offer Information;
- d) Sanctuary Queensland Residential 30c Fit Electricity Customer Offer Information;
- e) Copies of six invoices issued by Sanctuary to Mr H (Invoice Nos. 107300; 115043; 126725; 136862; 145827; and 154284);
- f) Information provided by Sanctuary.

4.3 All documents described in paragraph 4.2 hereof were provided by Mr H and were copies of the original documents held by them.

5. Findings on Material Questions of Fact

5.1 In 2012, Mr H contracted with a solar energy company named [Solar entity] to install solar PV panels at the premises. Mr H said that a [solar entity] representative told him he could ask Sanctuary to pay solar feed-in credits generated by the solar PV system installed by [solar entity] at any time.

5.2 On a date unknown in 2012, Sanctuary agreed to supply electricity and associated goods and services to Mr H at the premises.

5.3 The starting date of supply to the premises was expected to be 27 December 2012.

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

5.5 Sanctuary forwarded invoice 107300 to Mr H in respect of billing period 27 December 2012 to 26 March 2013 which stated an account balance of \$271.23 in credit. This was the first invoice he received from Sanctuary.

5.6 Mr H told EWOQ that after he received invoice 107300 he contacted Sanctuary and asked to be paid the credit he was owed. He said that Sanctuary agreed to pay him and he subsequently received a cheque for \$271.23.

5.7 Sanctuary forwarded invoice 115043 to Mr H in respect of billing period 26 March 2013 to 28 June 2013 which stated an account balance of \$163.52 in credit.

5.8 Sanctuary forwarded invoice 126725 to Mr H in respect of billing period 28 June 2013 to 25 September 2013 which stated an account balance of \$351.11 in credit.

5.9 Sanctuary forwarded invoice 136862 to Mr H in respect of billing period 25 September 2013 to 23 December 2013 which stated an account balance of \$882.08 in credit.

5.10 Sanctuary forwarded invoice 145827 to Mr H in respect of billing period 23 December 2013 to 27 March 2014 which stated an account balance of \$432.89 in credit. Mr H advised that this invoice stated that the previous credit of \$882.08 had been paid but that the invoice is incorrect.

- 5.11 Sanctuary forwarded invoice 154284 to Mr H in respect of billing period 27 March 2014 to 25 June 2014 which stated an account balance of \$156.42 in credit. The invoice also records a refund of \$432.89. Mr H states that he did not receive this refund.
- 5.12 On 13 June 2014 EWOQ issued an Investigation Notice to Sanctuary but, with one exception, no response was received despite repeated requests by EWOQ officers.
- 5.13 The only response EWOQ has received from Sanctuary was an email on 3 July 2014 which stated 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.”
- 5.14 Mr H advised that he he has been trying to obtain the outstanding credits without success.
- 5.15 I find that there is currently a credit of \$1,314.97.

6. Reasons

- 6.1 It is clear from the material that Mr H entered into a 3 year contract with Sanctuary for Sanctuary to supply electricity, and associated goods and services, to Mr H at the premises.
- 6.2 I accept Mr H’s evidence that with the exception of \$271.23 he has not been refunded any credits by Sanctuary.
- 6.3 Mr H did not provide EWOQ with a copy of the second page of invoice 145827 (the second page details refunds paid) but given that invoice 136862 stated a credit of \$882.08 and the credit for the following invoice, 145827, was only \$432.89 I find that the \$882.08 credit was wrongly deducted from the bill.
- 6.4 It is clear from the invoices and the information provided by Mr H that between 26 March 2013 and 25 June 2014 net credits totaling \$1,314.97 have been generated by the solar PV system at the premises.
- 6.5 On the evidence the net credit of \$1,314.97 has not been paid by Sanctuary despite requests for payment by Mr H.
- 6.6 Section 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 to Mr H as required by s.55DB(b)(ii) *Electricity Act 1994*.

Appeal/Review Rights

7.1 Mr H 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 H 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.

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
25 /08/2014

⁴ Mr H.

⁵ Sanctuary.