

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

*Energy and Water Ombudsman Act 2006*

**Energy and Water Ombudsman**

**Reference number:**

2014/10/00272

**Parties:**

Ms J

and

Sanctuary Energy Pty Ltd

**Delivered on:**

29 January 2015

**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 J the sum of \$582.06 by 1 March 2015 on the following basis:

- a) On 18 May 2009, Mr G and his wife, Mrs G (the Gs/Mr and Mrs G) signed a Sanctuary "Customer Offer and Transfer Authorisation" form accepting an offer by Sanctuary to supply electricity to their residence (premises) subject to the Terms and Conditions outlined in the contract "Sanctuary Energy Negotiated Electricity Supply Contract – Domestic – v2.81".
- b) Sanctuary agreed to pay the Gs 50% of the solar feed-in tariff (FiT) credits, calculated annually.
- c) The term of the agreement was 5 years.
- d) Mr G passed away in October 2012.
- e) On 16 January 2014 Mrs G had to move from the premises due to ill health, and she passed away on 25 March 2014.
- f) According to a final electricity account summary for the premises dated 14 April 2014 issued by Sanctuary the G's account balance is \$161.01 in credit.
- g) Since approximately mid-January 2014, one of the G's children, Ms J, exercising a power of attorney, has unsuccessfully attempted to obtain the \$161.01 from Sanctuary.
- h) On its face the account summary dated 14 April 2014 is in error as no FiT credit for the period the subject of the final bill has been included in the calculations. In addition, there is no information concerning the amount of electricity consumed at the premises, or the basis on which the sum of \$298.73 in usage and service charges was calculated.
- i) An early contract termination fee of \$181.82 has been charged by Sanctuary.
- j) A Queensland Government Electricity Rebate of \$39.41 has not been credited to the account.
- k) Ms J wants to settle the account so that she can finalise her mother's estate, and is content to have her complaint dealt with on the basis of the figures disclosed on the final bill.
- l) The account is in credit in the sum of \$400.24 being the accumulated FiT credit of \$361.01 and the Queensland Government Electricity Rebate of \$39.41.
- m) Compensation in the sum of \$181.82 is to be paid to Ms J in consideration of the:
  - lengthy delay in finalising the account, and
  - errors and omissions in the final bill, and

- anguish and distress caused to Ms J by sending a letter addressed to her late parents advising that Sanctuary had been unable to contact them and seeking their contact details.

## 2. The Dispute

- 2.1 On 9 October 2014 the Energy and Water Ombudsman Queensland (EWOQ) received a complaint from Ms J in relation to conduct alleged to have been engaged in by Sanctuary, as follows.
- 2.2 On 15 May 2009, the Gs accepted an offer by Sanctuary to supply electricity to their residence at the premises and electricity was supplied in accordance with the agreement.
- 2.3 Mr G passed away in October 2012. According to Ms J she advised Sanctuary of his passing, however, his name was never removed from the bill (subsequent bills continued to be addressed to Mr and Mrs G).
- 2.4 On 16 January 2014 Mrs G had to vacate the premises due to ill health.
- 2.5 Ms J contacted Sanctuary to finalise the account and in response to a request by Sanctuary her sister later provided Sanctuary with a copy of an enduring power of attorney appointing Ms J and her sister as attorneys for their mother. The account was in credit at that time.
- 2.6 Mrs G passed away on 25 March 2014 and Sanctuary was advised of her passing that day.
- 2.7 Despite numerous requests having been made by Ms J for the payment of the solar feed-in credit, Sanctuary has failed to pay the credit as requested.
- 2.8 In addition, Sanctuary imposed a penalty of \$181.82 for early termination of the agreement.

## 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, the Gs were 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;<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:

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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 J.

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

- (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 EWOQ investigators. I have also considered the matters I am required to consider under s.36(a) of the Act.

3.19 The issue to be determined in this complaint is what, if any, money is due and payable to Ms J by Sanctuary in respect of the G’s account.

#### **4. Evidence on which the material questions of fact were considered**

4.1 The available evidence in this investigation was provided entirely by Ms J 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 two subsequent occasions an EWOQ officer advised Sanctuary in writing that it had not responded to the notice but no replies or acknowledgements were received from Sanctuary.

4.2 Ms J provided information to EWOQ orally and by email.

4.3 In addition to Ms J’s oral information, the evidence which was considered as part of the process of reaching a final decision included copies of the following documents:

- a) Ms J’s on-line complaint to EWOQ on 9 October 2014;
- b) Sanctuary “Customer Offer & Transfer Authorisation” form signed by Mr and Mrs G on 18 May 2009;
- c) Sanctuary Electricity Account Summary for the premises dated 9 December 2013 for the period 4 September 2013 and 5 December 2013;
- d) Sanctuary Final Electricity Account Summary for the premises dated 14 April 2014;
- e) Enduring power of attorney<sup>4</sup> by Mrs G dated 31 March 2009 appointing Ms J and [her sister] as her attorneys for financial and personal/health matters; and
- f) Letter dated 19 November 2014 from Sanctuary Customer Relations to Mr and Mrs G.

4.4 All documents described in paragraph 4.3 hereof were provided by Ms J.

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<sup>4</sup> Form 2 Powers of Attorney Act 1998

## 5. Findings on Material Questions of Fact

- 5.1 On 18 May 2009, the Gs signed a Sanctuary "Customer Offer and Transfer Authorisation" form accepting an offer by Sanctuary to supply electricity to the premises subject to the Terms and Conditions outlined in the contract "Sanctuary Energy Negotiated Electricity Supply Contract – Domestic – v2.81".
- 5.2 Sanctuary agreed to pay the Gs 50% of the solar feed-in tariff (FiT) credits generated by the solar PV system installed at the premises. Credits were to be calculated annually.
- 5.3 The term of the agreement was 5 years.
- 5.4 Mr G passed away in October 2012.
- 5.5 Ms J advised Sanctuary of Mr G's passing, however, his name was never removed from the bill and subsequent bills continued to be addressed to Mr and Mrs G.
- 5.6 On 16 January 2014 Mrs G had to move out of the premises due to ill health.
- 5.7 Ms J contacted Sanctuary to finalise the account and, in response to a request by Sanctuary, her sister later provided Sanctuary with a copy of an enduring power of attorney appointing Ms J and her sister as attorneys for their mother.
- 5.8 The Sanctuary Electricity Account Summary for the premises dated 9 December 2013 for the period 4 September 2013 and 5 December 2013 shows that the account was in credit in the sum of \$361.01;
- 5.9 Mrs G passed away on 25 March 2014 and Sanctuary was advised of her passing that day.
- 5.10 Ms J has made several requests for payment of the solar feed-in credit, however, Sanctuary did not pay the credit as requested.
- 5.11 The Sanctuary Final Electricity Account Summary (final account) for the premises dated 14 April 2014 shows:
- an opening account balance of \$361.01 in credit
  - usage and service charges were \$288.73
  - \$181.82 had been deducted as an early termination fee
  - the Queensland Electricity Rebate (rebate) for 56 days in the sum of \$39.41 is stated as having been credited to the account
  - GST of \$18.18 had been debited
  - the closing balance is \$161.01.
- 5.12 In respect of the final account I make the following findings:
- the usage and service charges are not particularised
  - in calculating the closing balance the usage and service charges do not appear to have been considered
  - no FiT credit for the period the subject of the final account has been included
  - while the rebate has been noted it has not been credited to the account

- \$181.82 had been deducted as an early termination fee.

5.13 It is not possible to accurately determine from the final account the amount of credit owed to Ms J on behalf of her mother's estate.

5.14 By letter dated 19 November 2014 Sanctuary Customer Relations wrote to Mr and Mrs G advising them that they have unsuccessfully tried to contact them by telephone and asked them to contact Sanctuary.

## **6. Reasons**

6.1 It is clear from the material that on 18 May 2009 the Gs entered into a 5 year contract with Sanctuary for Sanctuary to supply electricity to the Gs at the premises.

6.2 The premises were fitted with a solar PV system and the Gs agreed to receiving 50% of the FiT credit.

6.3 Ms J, exercising a power of attorney, has unsuccessfully attempted to close and finalise the account since January 2014 when her mother vacated the premises due to ill health. Mr G passed away in 2012.

6.4 The final account was not received until April 2014 and contains a number of errors and omissions.

6.5 Ms J advised my office that she does not wish to delay finalisation of this matter any further and is willing to settle the complaint on the basis of the details in the final account.

6.6 Given Ms J's desire to settle this matter and Sanctuary's failure to respond to my office I am prepared to make a final order despite the obvious errors in the final bill. To do otherwise may mean that the complaint is not settled for some time. This is not acceptable given the delays occasioned by Sanctuary's conduct to date.

6.7 I have ordered Sanctuary to pay Ms J \$400.42 on behalf of Mrs G's estate on the basis that the account is \$361.01 in credit and the rebate of \$39.41 was not credited to the account.

6.8 I ordered that Sanctuary pay Ms J compensation in the sum of \$181.82 in consideration of the:

- lengthy delay in finalising the account, and
- errors and omissions in the final bill, and
- anguish and distress caused to Ms J by sending a letter addressed to her late parents advising that Sanctuary had been unable to contact them and seeking their contact details.

## **7. Appeal/Review Rights**

7.1 Ms J may, by written notice to the EWOQ elect to accept or not to accept this decision notice. Any notice electing not to accept this decision notice may be given only within 21 days after Ms J receives this decision notice. If a notice electing not to accept is not given within 21 days, Ms J is taken to have elected to accept this decision notice and to be bound by it.

7.2 Section 40 of the Act provides:

(1) The non-entity party<sup>5</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>6</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

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<sup>5</sup> Ms J

<sup>6</sup> Sanctuary.