ENERGY OMBUDSMAN
TASMANIA

# AWARD

***MADE UNDER THE ENERGY OMBUDSMAN ACT 1998***
***S 21(C)***

## COMPLAINT
## MR & MRS D
## AGAINST AURORA ENERGY PTY LTD

*Energy Ombudsman Act 1998*

# COMPLAINT BY MR & MRS D AGAINST AURORA ENERGY PTY LTD

# AWARD

## Introduction

1. This is an Award under s 21(c) of the *Energy Ombudsman Act 1998*, in relation to a complaint made by Mr & Mrs D against Aurora Energy Pty Ltd under the Act in July 2010.

2. Mr & Mrs D run a shop in Launceston and have done so since 2003. They first contacted my Office on 12 July 2010, alleging that the electricity bills for their shop had been excessive since they opened it. They queried whether their electricity meter was operating accurately. The shop has a single electricity meter. Aurora charges Mr & Mrs D under Tariff 22 for the electricity consumption measured by the meter.

3. Our initial work with the parties failed to resolve the complaint, and I decided that it should be formally investigated, so opening up the potential for an Award to be made. Aurora was advised of this decision by a letter dated 23 May 2011.

4. My office engaged in extensive correspondence with both Aurora and Mr & Mrs D, with a view to establishing whether or not the recorded electricity consumption at the shop was accurate. Both parties provided analyses of the available data. I also retained an expert consultant to conduct an energy assessment at the shop, and he reported to me on 16 September 2010. The consultant's report was provided to the parties.

5. Aurora offered an ex gratia payment to Mr & Mrs D in an endeavour to resolve the matter. Mr & Mrs D rejected this offer, and made a counter offer, which Aurora likewise rejected. The matter thus reached a stalemate, and it consequently became necessary for me to decide whether an Award should be made. In making this Award, I have considered all of the information and submissions provided to me by the parties, together with the consultant's report.

6. I also visited the premises on 25 November 2011, and spoke with Mr & Mrs D about their complaint. On the same day, I spoke with the electricians who visited the premises in 2010, when Mr & Mrs D were investigating the cause of their large electricity accounts.

7. I provided a draft of this Award to Aurora on 8 December 2011, to give the company an opportunity to consider my reasoning. In view of the provisions of s

23(2)(b) of the Act, I also asked the company to let me know whether it agreed to me making an Award with a total value exceeding $20,000.

8. Aurora responded by a letter dated 21 December 2011, indicating that it did not agree to me making an Award of $23,970 and therefore implicitly indicating that it did not agree to me making an Award of more than $20,000. In doing so, it referred to –

*" … the lack of any substantive evidence to indicate that there was an error, the fact that the results of independent meter testing proved the meter to be working correctly and the advice provided in the report prepared by* [the consultant] *…".*

9. I thereafter provided Mr & Mrs D with the opportunity to make submissions in relation to the draft Award, and to provide evidence in support of an Award of costs. They responded by seeking payment of the amount of $385 in relation to an electrician's account.

**Background**

10. Electricity is used at the shop to power ceiling and display lights, a two-door display freezer, computer equipment, a fridge, air conditioning in summer, a security system, and appliances such as televisions and a kettle. In their attempt to limit their electricity consumption, Mr & Mrs D ceased using a display fridge and a hot water system, at a time or times unknown to me. During the summer of 2010-11, they added a small chest freezer and a small refrigerator to the equipment in the shop. They have also installed more efficient fluorescent lighting tubes in the overhead lights during the past year.

11. Aurora has over time provided my Office with a number of graphs depicting the average number of units used each day for all of the billing periods since March/May 2003. These graphs demonstrate a general rise in consumption to a peak in November 2004/February 2005, and then a general fall in consumption ever since that time, with the fall becoming more pronounced since May/August 2010. Mr & Mrs D say that they have been working to limit their electricity consumption, and this explains the fall in consumption from the peak in the summer of 2004-05 through to the start of this more pronounced trend.

12. The graphs also show a seasonal pattern. Every November/February billing period since 2003-04, with the exception of 2010-11, shows a pronounced peak in consumption. This would appear to be related to the greater use of refrigeration equipment in summer. It may also be related to the use of air conditioning equipment.

13. The lowest period of usage for each year since 2003-04 has been winter, with autumn and spring representing "shoulders" between the high of summer and the low of winter. The usage in autumn has been higher than that in spring.

14. Aurora installed a new electricity meter in the shop on 9 October 2010. This was during the billing period 17 August to 17 November 2010. There was an immediate

and very obvious drop in the electricity consumption recorded for the shop. For the first 54 days of the billing period, up to the time when the meter was changed, electricity was consumed at an average rate of 74 units/day. For the remaining 38 days of the billing period, it was consumed at the average rate of 47 units/day.

15. Since that time, the average daily consumption has continued to be much lower than previously. This has been calculated for three separate periods, as follows –

| **Period** | **Average Daily Consumption (ADC)** | **Later consumption as % of earlier** |
|---|---|---|
| 18/11/2010 to 16/2/2011 | 48.98 units/day compared to 136.37 units for 14/11/2009 to 15/2/2010) | 34% |
| 17/2/2011 to 18/5/2011 | 48.31 units/day (compared to 92.63 units for 16/2/2010 to 17/5/2010) | 52% |
| 30/7/2011 to 17/8/2011 | 44.32 units/day[1] (compared to 72.04 units for 18/5/2010 to 16/8/2010) | 62% |

The average of the percentages in the right hand column is 49%. Thus, for a period of nine months since the new meter was installed, the recorded electricity consumption at the shop is half what it was for the equivalent period in the previous year.

16. Aurora had tested the previous meter on site on 12 August 2010, and found it to be operating correctly. The Service Connection Officer who performed the test expressed some surprise at the level of electricity consumption, given the nature of the appliances being used, and asked Mr & Mrs D if it was possible that consumption from adjacent premises might be passing through their meter.[2] However, Mr & Mrs D's electrician had earlier excluded this possibility.[3] The consultant retained by me (Mr Masters) also satisfied himself that this was not the case when he visited the premises.

17. Mr Masters also expressed the view that the consumption that he saw passing through the meter on his visit was consistent with the kW rating for the appliances that he saw in use at that time.

18. Unfortunately, and for reasons which are unknown to me, Aurora allowed the meter to be destroyed shortly after it was replaced. It is not therefore now possible to establish conclusively whether the meter was operating correctly.

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1 This figure comes from an email from Mr & Mrs D to my Principal Officer (Energy), dated 19 August 2011, and was calculated from their bill for the period of May/August 2011. The other figures in this column come from an attachment to an email to my Principal Officer from Aurora dated 4 August 2011.

2 See the email from Aurora to Principal Officer (Energy) of 16 August 2010.

3 By testing carried out on 17 June 2010, the electrician told me on 25 November that he had shut down all power usage in the shop and by performing a "clamp test" established that no one else was at that time tapping into Mr & Mrs D's supply. When he spoke to me, the electrician also volunteered that there was "no way that they [Mr & Mrs D] could use that amount of power".

19. I spoke with two representatives of Electrical Measurements and Testing Pty Ltd (EMT) on 17 October 2011. This is a company which Aurora was using at the time to manage its electricity meters. They identified from their records that the meter was a Polyphase kwH Electricity Meter, Model No. 5192B, manufactured by AMPY Automation Ltd. This is a digital meter. The meter was written off by EMT on 3 November 2010, with the recorded reason being that it was an "obsolete item". (I was told that the digital display on this type of meter was often hard to read because of a malfunction, and that many of the meters were decommissioned on this basis. The fact that this was the recorded reason for writing the meter off is not, therefore, surprising.)

20. One of the EMT representatives said that he remembered receiving an urgent call from Aurora just after the meter had been destroyed, asking whether the meter was still there and, if so, available for testing.

21. Both he and the other EMT representative said that they believed that, being a digital meter, the prospect of it being inaccurate was extremely low. They thought that it was more likely that the meter had been incorrectly wired, with the sudden drop in recorded consumption being because the replacement meter had been correctly wired. I address this possibility below.

22. I spoke with the second EMT representative again on 28 October 2010, when he again emphasized to me that the type of meter which had been replaced in this case was extremely accurate. He gave two reasons why the meter might have been providing incorrect readings. One was that it might have been incorrectly wired. The other was that the internal current transformer in the meter might have been set for the wrong ratio or multiplication factor.

23. I asked EMT for the name of the manufacturer, and it was suggested to me that I contact the Sales Manager with the company Landis & Gyr Pty Ltd in Melbourne. I spoke with the Sales Manager on 28 October 2010 also, and he told me that he could not remember any case in which one of these meters was over-recording. He said that there was a low risk of the meter behaving incorrectly, and said that the meters were "pretty reliable". He said that a normal on-site meter test would have disclosed if the meter had been set up with the wrong ratio or multiplication factor. It would also have disclosed if the meter was incorrectly wired.

## Analysis and decision

24. The central question is whether Mr & Mrs D used the amount of electricity which the previous meter recorded them as having used. This is a question that I have to determine on the balance of probabilities.

25. The data obtained from the new meter shows a radical drop in electricity consumption at the shop since the meter was installed. This radical drop in consumption has been maintained, to a varying extent, for three quarters.

26. There are five possible explanations for the radical variation between the consumption recorded by the old meter and that recorded by the new –

    (1) that the old meter was faulty and the new meter is accurate

    (2) that both the old meter and the new meter were accurate, but the first was incorrectly wired, and was recording electricity consumption from other premises

    (3) that the old meter was accurate, and the new meter is faulty

    (4) that the old meter was accurate, and the new meter, although operating correctly, is not recording all of the electricity consumption in the shop

    (5) that the reduced consumption shown by the new meter reflects greater frugality by Mr & Mrs D, perhaps with a view to strengthening their claim against Aurora.

27. Mr & Mrs D have pressed the first of these explanations.

28. The second explanation was excluded by Mr & Mrs D's electrician, but his test only proves what was happening at the time of the test. Aurora has also pointed out that incorrect wiring of the old meter was not reported by the person who carried out the meter exchange.[4]

29. The third explanation can be excluded, for Aurora has tested the new meter, and has found it to be operating properly.

30. I am told that Aurora has also excluded the fourth of the possible explanations.

31. I also exclude the fifth explanation. I am satisfied from the graphs that I have mentioned that Mr & Mrs D have worked hard since November 2004/February 2005 to minimize their electricity consumption, driven by the need to save money on their electricity accounts. They took this to the extreme of doing away with a hot water service, well before the new meter was installed. On the information available to me, I am satisfied that it would not have been possible for Mr & Mrs D to achieve radical reductions of the kind that would be necessary to explain the recorded drop in consumption which occurred with the installation of the new meter. Added to that, as stated in paragraph 7, Mr & Mrs D have in fact increased the appliances in use in the shop since the new meter was installed.

32. I therefore accept the first explanation, and conclude on the balance of probabilities that the previous meter was faulty. In drawing this conclusion, I recognize that the meter was tested in August 2010, and found to be operating correctly. That was a test on site, however, not in the laboratory. It is also possible that the fault was intermittent.

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[4] Email from Aurora to Principal Officer (Energy) dated 24 November 2011.

33. I also recognize that the expert consultant retained by me took the view that the meter was working correctly, but he only aligned what he observed on the meter with the rated power consumption of the appliances that he saw in the shop. This is not equivalent to a proper meter test.

34. In a case such as this, it would be best for me as Ombudsman, or Mr & Mrs D as the affected customers, to have the suspect meter independently tested in a laboratory. Aurora made this impossible by its own actions, however, by having the meter destroyed. This was a surprising thing to do, when Mr & Mrs D had been questioning whether the meter was accurate, including in conversation with the Service Connection Officer who conducted the on-site test.[5] Aurora should sensibly put systems in place to make sure that a meter which is replaced is stored for a reasonable time, if there is any reason to believe that the accuracy of the meter, and therefore of the bills based on readings from it, is or will be questioned.

35. If any party is to be disadvantaged by the fact that it has not been possible to test the meter in addressing Mr & Mrs D's complaint, it should be Aurora, for Aurora allowed the destruction of the meter to occur.

36. Mr & Mrs D not only claim that the previous meter was faulty, but impliedly claim that it had been faulty since they opened their shop in 2003. They seek a refund on all of their accounts since that time, up to the time when the meter was replaced. The total amount of those accounts up to November 2010 was $47 366.72. I round this figure down to $47 000, because it includes the billing period which straddles the date on which the new meter was installed.

37. There are two possibilities in relation to the length of the period of time over which the former meter was faulty. One is that that meter was faulty from the time of its installation, and therefore for the whole period in respect of which Mr & Mrs D seek a refund; the other is that it became faulty at an unknown time during that period. On the reasoning above, I conclude on the balance of probabilities that the meter was not incorrectly wired, but was faulty. This was a fault which caused the meter to on average record about twice the true consumption. Since the meter was digital, I think it highly improbable that something could have happened to the meter between 2003 and 2010 which caused this fault to arise. On the balance of probabilities, one would expect that the meter was reading incorrectly from the outset, by reason of an inherent fault or incorrect setting within the machine.

38. On this reasoning, and working from the figures set out in paragraph 15?? above, Mr & Mrs D should receive a refund of 51% of $47 000, or $23 970. They might also legitimately seek interest on this sum.

39. Section 23(2)(a) of the *Energy Ombudsman Act* provides that an Award under the Act must not exceed $20 000, unless the energy entity otherwise agrees. As indicated above, Aurora did not agree to me making an Award that exceeded this figure, and I therefore award Mr & Mrs D compensation in the sum of $20 000 only.

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[5] As relayed to my Principal Officer (Energy) in the email mentioned in Footnote 2.

40. As also earlier indicated, Mr & Mrs D have sought costs in the amount of $350, being monies paid to the electrician. The description of the work done is given on the account as –

*"29/9 – 30/9 – 11/10/10*
*Meet Aurora and Ombudsman re excessive power bills and advise on results".*

This is clearly a cost incurred by Mr & Mrs D in pursuing their complaint against Aurora and, acting under s 24 of the Act, I therefore Award them this sum also.

41. For these reasons, I require Aurora to pay Mr & Mrs D the sum of $20 350 in settlement of their complaint.

**Simon Allston**
**Ombudsman**

19 January 2012