



Energy & Water
Ombudsman NSW

This is a determination of the Energy & Water Ombudsman NSW under Clause 6 of the Constitution of The Energy & Water Ombudsman NSW scheme.

Introduction

This determination relates to a claim from a small business customer for compensation for damage to two computers – Mr D.

By way of introduction I wish to note that during its six years of operation, EWON has dealt with a large number of complaints from customers in relation to claims for damage. Overall, this has proved to be a complex and difficult area.

There appears to be no certainty for electricity suppliers or customers in relation to responsibility/liability for damage caused by electricity incidents. Although NSW electricity providers generally incorporate into their customer contracts a position of no responsibility/liability for damage caused by electricity incidents, in practice they pay many claims by customers on an ex gratia, without prejudice basis.

Electricity providers have adopted different approaches to customer claims so that there is no consistency in response across NSW utilities.

It appears that insurance companies are increasingly excluding ‘electrical’ incidents from their coverage, and directing policy holders back to their electricity provider for redress.

As a result of these factors, the position regarding claims for customers is not clear.

It is worth noting that the Essential Services Commission of Victoria has issued a guideline about compensation of customers. This guideline has had the effect of significantly reducing the need for the Energy & Water Ombudsman (Victoria) to be involved in customer claims for compensation.

In my view there does not appear to be any sound reason for an inconsistent approach by electricity providers in NSW to customer claims for damage. We cannot see any competitive advantage to a different approach by companies, and it does not seem equitable for customers to be treated differently in relation to claims depending on the distribution area in which they live. We have called for discussion of these issues by

relevant stakeholders, including electricity distributors, regulatory bodies, and consumer groups.

In the absence of any clear guidelines for customer claims in NSW, it has been left to my office to investigate claims which have been denied by distributors. My determination in individual matters does not create any precedent, but simply reflects an attempt to resolve each case in relation to its individual circumstances.

I believe that the development of standards for claims in NSW will benefit customers, their electricity providers, and the general community.

The Complaint

Mr D, Director of a cleaning company lodged a claim for damage to two eighteen month old iMac computers following a period of approximately one hour duration of what he described as “fluctuating power supply” which preceded a total interruption to his electricity supply on 8 March 2004.

Mr D was in his car travelling home from a doctor’s appointment – (he has a serious illness) - at approximately 3.30pm on 8 March 2004 when his wife rang him to advise that the “lights fluctuated” and “the power had gone on and off a number of times” at their business premises. Mr D suggested she ring their electrical contractor, who subsequently phoned him back and said he had had a number of calls from other customers in their area and it appeared there were supply problems on the electricity network. The contractor said he had advised these customers to ring the electricity provider. The power to Mr D’s business premise was interrupted completely by approximately 4pm and as a result he sent his employees home at this time.

Mr D sustained damage to two iMac computers. The computers failed prior to the power being completely interrupted and would not start up after supply was restored. His repairer provided written advice that both units sustained damage to the analog board, logic board and modem and that both units were uneconomical to repair, as parts and labour costs exceeded replacement cost.

Mr D made a claim to his electricity provider for compensation of \$6838 for the replacement cost of the computers and other costs directly related to the full restoration of the operation of his equipment based on the repairer’s invoice.

In his statement of claim to the provider Mr D said that the damage was caused by “the power continuously going on and off [and] when on [it] appeared that there was not the full amount of electricity therefore damaging computers”. Mr D’s electrical contractor also informed EWON that the customers who rang him around mid-afternoon on 8 March 2004 complained of “fluctuating” power supply problems and the “power being at half strength and the lights at half brightness”. Mr D has emphasized he is only seeking compensation for the damage to his computers and not for loss of productivity and staff wages.

In denying Mr D’s claim, the electricity provider advised him their records do not disclose any variation in the electricity supply on 8 March 2004 that did not comply with their supply standards.

Mr D said there was no electrical storm activity in his area that afternoon.

The electricity provider's Response

In the electricity provider's *Investigation Report* to EWON dated 15 April 2004, the company confirmed there were no records of any network event on or about the date and time claimed which would have directly affected the supply to Mr D's property. There were no records of any emergency service requests related to their network at or around Mr D's address on 8 March 2004. However, The electricity provider's report stated that there were "*numerous, unrelated system incidents in the evening of 8 March 2004 (not mid-afternoon as the claimant states) over a wide area due to electrical storm activity*". The electricity provider also noted that the claimed damage to the computers did not include the power supply unit or components that might normally be expected for a supply related claim.

The electricity provider denied the claim on the basis that their records do not indicate any specific supply problems for Mr D's premises on 8 March 2004.

On 27 May 2004, the company informed EWON that their further investigation indicated they had some load problems in a fairly wide area but there were no records of Mr D's supply being affected. However, "because of the amount of what was going on" this customer's supply "may have been involved in some system interconnection problems".

On 16 July 2004 the company informed EWON that their previous information was incorrect, as they had established that the 11kV network was rearranged to facilitate planned works at a local Zone Substation and, during the course of the transfer of load to another Zone Substation, an 11kV bond failure occurred which resulted in "brown out" conditions for an extensive part of the network. Although the company's Control Centre was aware of supply problems affecting customers in an extensive area including Mr D's suburb, a log entry was not recorded for this information at the time.

On the basis of their further investigation of the supply problems on 8 March 2004 and prior to the provision of a technical report by EWON's independent expert, the company informed EWON that they considered it appropriate to make some gesture to Mr D on the basis of customer goodwill given the incorrect information previously provided to him. However, the company has continued to stand by its denial of this claim on the basis of the customer contract and their position that Mr D's computer equipment should not have failed given the nature of the events on the network that day.

In view of the company's denial of the claim and the conflicting information about the events, EWON sought independent technical advice to assist our investigation.

The network event

EWON's technical expert obtained further information from the provider about relevant conditions for the network on 8 March 2004.

Mr D's property is normally supplied out of (...) Zone Substation. As a result of planned works on 8 March 2004, network switching was carried out to transfer the section of network supplying Mr D to another Zone Substation. EWON's technical adviser noted that, depending on loading conditions, this could have resulted in 11kV voltage conditions being lower than normal. The electricity provider has advised that during this period a bond failed on an 11kV air-break-switch (ABS). The electricity provider has not provided exact details associated with this failure. EWON's independent expert has noted that excessive currents may have occurred during the transfer of load between Zone Substations and that it is possible these excessive currents caused the bond failure.

Mr D's electrical contractor also informed EWON that the customers who rang him around mid-afternoon on 8 March 2004 complained of "fluctuating" power supply problems and the "power being at half strength and the lights at half brightness". EWON's technical adviser has noted that this is consistent with a "brown out" condition, which resulted from the bond failure. The "fluctuating" supply described by Mr D and his electrical contractor may have been caused by an intermittent failure of the bond connection before it eventually failed completely.

EWON's Investigation

In the course of our investigation of this matter we considered in detail the following:

- information provided by Mr D
- information provided by the electricity provider
- information provided by Mr D's electrical contractor
- information provided by the computer repairer
- a report by an independent electrical engineer commissioned by EWON.

Technical Advice

Mr D's repairer advised EWON that his examination of the computers had found scorching on the board(s), some of the diodes were not operational and, although the damage was not "catastrophic", this nonetheless required replacement of the units. Furthermore, he said that the likelihood of the two machines failing at exactly the same time was improbable in the absence of some problem on the incoming mains supply.

EWON obtained independent technical advice from an experienced electrical engineer who acknowledged the limited information provided by the electricity provider regarding the events on the network, but emphasized it was "clear" that the work to carry out the switching to transfer the load temporarily to another Zone Substation was under the reasonable control of the electricity provider. He further noted that the failure of a bond on an 11kV ABS under these conditions implies the possibility of one or more of the following factors:

- (a) a faulty connection on the ABS which was unable to carry the "first level emergency" load;
- (b) overloading of the network by transferring excessive load from one Zone Substation to another Zone Substation;
- (c) incorrect cross-zone switching causing abnormally high currents between the two zone substations resulting in failure of the weakest link.

In addition, the independent technical adviser concluded that *“the sustained and transient voltage conditions that the equipment connected to the system would have been subjected to are likely to be well outside those that equipment tested to reasonably rigorous immunity tests would be required to withstand”*.

In this case, both computers failed at the time of the incident and EWON’s technical adviser considers it is unlikely that this can be attributed to random failure. Rather, he considers it is most likely that the failure of the two computers was due to an abnormal system voltage condition.

Analysis of the information

EWON’s investigation considered the information obtained from all sources listed above. The following factors were considered particularly relevant in determining that it is reasonable for the company to pay Mr D’s claim:

the possible causes of the supply problems on 8 March 2004 which impacted Mr D’s supply are contingencies which appear to have been under the reasonable control of the electricity provider;

The electricity provider have advised that there were nine other claims associated with this incident. It is not known how long the “brown out” conditions persisted and the extent to which voltage transients were present. However, from the information provided, the transient voltage conditions persisted for some time prior to the failure of the bond and the subsequent brown out condition, which seems to have persisted for at least 30 minutes. All of the nine claims occurred downstream of the location of the failure of the bond. Seven of the claims were clustered in the vicinity of the section of the feeder normally supplied from the local Zone Substation. It is clearly more than coincidental that there were a number of other claims besides Mr D’s, indicating that there were supply abnormalities on the network. Under the circumstances it seems reasonable to conclude that Mr D’s computers were subject to excessive and prolonged abnormal voltage conditions;

the work carried out on the network to transfer the load temporarily to another Zone Substation appears to have been under the reasonable control of the electricity provider.

The electricity provider has advised that as the damage reported by the repairer did not include any reference to the computers’ power supply units being damaged, the claimed damage could not have occurred as a result of electricity supply abnormalities. It appears this is not the case, as the repairer has confirmed that on this particular model of computer the power supply is an integral part of the analog board, which is clearly reported as having been damaged in both machines;

it is a matter of some concern that the electricity provider’s records are not able to confirm that a particular customer’s installation has or has not been subject to failures that affected significant sections of the high voltage network. Also of

concern is the apparent readiness of the electricity provider to dismiss the customer's complaint that an incident had occurred despite the fact that, as the company now acknowledges, their call centre was alerted to supply problems in this area. Statements of a licensed electrical contractor who was working in the area on 8 March 2004 also supported this. The company appeared unwilling to accept that their records may have been inadequate on this occasion and their response that "they had no record of an incident" seems insufficient in light of this. Mr D reported that this particular aspect upset him greatly, saying that he rang his provider when he received the letter denying his claim and that he was treated rudely and abruptly;

there appears to be a linkage between the failure of the computers and the failure of the network. It also appears that the cause of the interruption of supply was not beyond the reasonable control of the electricity provider. While the computer system owned by Mr D should ideally have been able to withstand at least some of the conditions experienced as a result of the outage, the presence of what appears to have been a prolonged and significant supply abnormality suggests that responsibility reasonably lies with the electricity provider rather than with the customer.

Conclusion

Given the available information, EWON is not in a position to comment further on the technical aspects of the claim. However, in a situation where there is credible technical information to support Mr D's position, I believe it is reasonable for the benefit of any doubt to go to the customer.

Under the provision of Clause 6 of the Constitution of the Energy & Water Ombudsman NSW scheme I therefore determine that the electricity provider should pay the sum of \$7000 to Mr D as full settlement of his claim. This amount consists of the repair costs plus a small gesture acknowledging the incorrect information that was provided to him by his electricity provider and the inconvenience and delay caused to him as a result.

Under the EWON Constitution, this decision is binding on the company. Mr D may elect within twenty-one days whether or not to accept this decision. If Mr D accepts the decision, he will fully release the electricity provider from all claims, actions, etc in relation to this complaint. In the event that Mr D does not accept my decision, he may pursue his remedies in any other forum he may choose, and the company is then fully released from the decision.

Clare Petre
Energy & Water Ombudsman NSW
25 October 2004