



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

Introduction

The determination relates to a claim from a customer for compensation for damage to one domestic appliance – Mr C.

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 Claim

Mr C lodged a claim for compensation for damage to his computer following two interruptions to the electricity supply to his home.

Mr C advised that there was a total power failure at approximately 3pm on 13 February 2003 and power was restored at approximately 6.30pm. This was followed by another interruption to supply during the night at approximately 3am. Mr C is not sure what time power was restored after this but noted that he had to reset all his electric clocks once again the next morning.

Mr C discovered the damage to his computer at 9.30am on 14 February 2003 when he went to switch the computer on but found it to be “totally dead”. He did not use the computer between the first and second outage. Mr C advised that he always shuts down his computer after use but it remains switched on at the power point. The computer was plugged into a power board with a surge protector installed but following the two outages he found this had burnt out.

Mr C subsequently lodged a claim with his electricity provider on 24 February 2003 for the amount of \$762 being the cost of repair and replacement parts for his computer as stated on the repair invoice. His repairer provided written advice that “all major system circuits were burnt out or damaged”. Mr C has also purchased an “upgraded, stronger” surge protection unit since the incident but has not claimed for this cost.

The provider wrote to Mr C on 27 February 2003 and declined to pay the claim on the basis that while they confirm there was an interruption to supply, there were no surges or overvoltages associated with this interruption, and in such circumstances it is not their policy to make offers of compensation. Mr C contacted EWON on 2 April 2003 asking for a review of the provider’s decision.

The provider’s response

It is not disputed by the electricity provider that the first interruption to supply was caused by the actions of staff of the provider when they damaged 33kV cables supplying the Substation. However the company stands by the denial of the claim on the basis of their *Standard Form Customer Connection Contract June 2002*.

In their Investigation Report to EWON dated 7 April 2003 the provider advised that the cause of the first interruption was “a fault on two underground cables as a result of being damaged by a hole borer”. In their subsequent Investigation Report to EWON

dated 18 June 2003, The provider confirmed that the hole borer was operated by staff of their company.

During the course of EWON's investigation, The provider have confirmed the following:

- There was a protection operation at 3.03pm on 13 February 2003, which tripped 33kV feeders from one 132kV Sub to aZone Substation.
- The cause of the interruption was damage to underground cables by a company owned and operated hole borer.
- The company staff were carrying out an "urgent pole replacement". At approximately 1.30pm on 13 February 2003 an employee observed that a pole had split and moved significantly resulting in the overhead conductor safety clearance being reduced to an unacceptable level. While the damaged pole had already been scheduled for replacement, the planned replacement was brought forward and implemented immediately.
- The provider staff at the worksite although working under pressure to replace the failed pole, exercised caution through checking the area for visible signs of underground services and followed a longstanding practice of hand digging to a depth of 900mm to determine the existence of underground services in an emergency. They were not aware of the existence of underground cables in the area.
- There were no company cable plans on site.
- 18,131 customers in the area and surrounding suburbs were affected by the resulting interruption to supply.
- Supply was progressively restored to all customers over the next three hours.
- Due to the time required to repair the damaged cables, the provider decided to make temporary alterations to the network configuration to ensure capacity to meet anticipated peak loads was available and an interruption was planned for the early hours of the morning to carry out configuration alterations.
- The further interruption to supply occurred at 1.44am on 14 February 2003 and supply was restored at 4.24am.

Investigation by EWON

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

- information provided by Mr C
- information provided by Mr C's repairer
- information provided by the provider
- two reports by an independent electrical engineer.

Technical Advice

EWON obtained independent technical advice from a qualified and experienced electrical engineer on the events leading to the outage and the particular damage that Mr C's computer system suffered.

The conclusions of these reports were:

It is the "*clear view*" of the expert electrical engineer that "*the precautions taken by the provider to check for the existence of not only underground cables but any other assets owned by other utilities [were] totally inadequate*" and the initial interruption to supply was a result of the provider's failure to take sufficient care in the circumstances.

The provider should have checked their records regarding the presence of underground cables in the area before taking action to bore the hole for a new pole and their failure to do so amounts to a failure to take adequate care in the circumstances.

The provider's Network Standard 0156 *Working Near or Around Underground Cables* clearly sets out the risks involved in carrying out excavation without ensuring adequate checks have been carried out, while Network Standard 0128 *Specification for Pole Installation and Removal* requires that before hole sinking, checks be made beforehand of the underground construction plans of all utilities to identify where assets are located. The provider's "*long standing practice of field staff digging to a depth of 900mm to determine the existence of underground services in an emergency*", is not an alternative to the fundamental precaution of checking utility records for the presence of assets.

The critical nature, high value, high repair time and high cost of repairing transmission and sub-transmission assets underlines the need for extreme care in monitoring any risks to these assets. The location of the damaged cables is approximately two hundred metres from the 132kV Substation. It seems a reasonable expectation that this would have led the provider to give consideration to the possibility of critical infrastructure being present in such close proximity to the Substation.

The second interruption to supply was a direct consequence of the initial event and as such would also have been avoidable had adequate precautions been taken.

The interruptions to supply "*were not beyond the reasonable control of the provider*".

In relation to the particular equipment damage suffered, the electrical engineer concluded:

There are a number of scenarios as to how the computer system could have been damaged "*either during the cable failure process, the switching off process or at the switching back on process*".

It is unlikely that the computer was damaged simply due to a random failure of the computer and there is likely to be a high degree of relationship between the event on the network and the failure of the computer system.

Although the computer system itself should ideally have been able to withstand these network conditions without damage, the precipitating event was within the reasonable control of the provider to have prevented. There is thus a “credible situation” for Mr C to pursue a claim against the party that caused the power interruption which ultimately led to the damage sustained by his computer.

Analysis of the information

The provider maintains that the computer in question should have been able to withstand the conditions experienced as a result of the outages and has highlighted that the independent technical expert has also noted this point.

EWON acknowledges the independent expert’s observations that the computer system should have been able to withstand the events on the network. However the expert has also noted that there is “a high degree of relationship between the event on the network and the failure of the computer system”, indicating that it is highly improbable the failure was merely coincidental rather than causal. While it may be that the computer system should ideally have been able to withstand the event on the network, the customer’s computer system would not have sustained the damage in question had the event not occurred.

EWON has received advice from an independent expert that the provider was able to take action that would have avoided the interruption that occurred and moreover had a duty of care to its customers to ensure the appropriate precautionary steps were all taken. The independent expert has stated in his report that the provider’s own response to his enquiries acknowledges that due regard was not given to the requirements of Network Standard 0156 *Working Near or Around Underground Cables* to establish whether there were any critical assets installed underground in the area. The provider also advised EWON that it has now taken action to ensure that the requirements of this standard are applied to all future unplanned (urgent and emergency) excavations.

Given the information outlined above, EWON considers that in this instance it appears the provider had responsibility for causation of the event. As there appears to have been reasonable foreseeability that assets may have been present at the site, it is appropriate that the distributor compensate Mr C who experienced loss as a result.

Due to the circumstances of this matter it is not clear whether Mr C’s computer suffered damage following the first or second interruption. As I understand it, the provider consider that the planned interruption from 1.44am to 4.24am on 14 February 2003 was “unavoidable” and note that it was carried out to avoid prolonged, rotating interruptions across a wide area while repairs were carried out. However, the technical advice obtained supports the position that the first event, which led to the second interruption to allow for major network repairs, was preventable and could have been avoided if due care was taken by the provider to check their own records

for the presence of underground cables in this part of the network prior to operating the hole borer.

Conclusion

The provider disagrees with the technical advice to EWON by our independent technical adviser. This disagreement is with the conclusion of our adviser rather than with his qualifications or expertise.

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 C's position, I believe it is reasonable for the benefit of any doubt to go to the customer. In this case a key consideration is that the interruption to supply was caused by the actions of staff of the company, and as such was within the reasonable control of the provider.

Under the provision of Clause 6 of the Constitution of the Energy & Water Ombudsman NSW scheme I therefore determine that the provider should pay the sum of \$800 to Mr C as full settlement of his claim. This amount consists of the repair costs plus a small gesture acknowledging the considerable delay that has occurred in resolving this customer's complaint.

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

Clare Petre
Energy & Water Ombudsman NSW
18 November 2004