



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 two domestic appliances – 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 Complaint

Mr C lodged a claim for compensation for damage to his security video intercom unit and his wall oven timer following an interruption to the electricity supply to his home on 31 March 2003.

Mr C advised the two appliances were operating well prior to an interruption to supply that occurred at approximately 12.30pm on 31 March 2003. When the power was restored approximately one hour later neither appliance was working and Mr C engaged an electrician to examine and repair the appliances.

Mr C lodged a claim with [his provider] for the amount of \$460 which was the amount originally quoted to him by his electrical contractor. The repairs were carried out subsequent to Mr C having lodged the claim and the actual cost to him was \$350.

[The company] wrote to Mr C on 13 May 2003 and declined to pay the claim on the basis that while they confirm that Mr C's property suffered an unplanned interruption to supply, their records do not disclose any evidence of a surge or voltage irregularity that does not comply with their supply standards. [The company] noted that in such circumstances it is not their policy to make offers of compensation. Mr C contacted EWON asking for a review of [the company's] decision.

The Provider's Response

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

There was a protection operation at 12.02pm on 31 March 2003 that tripped 66/11kV Transformer No 1 at the Zone Substation.

The cause of the interruption was a fault in the tap changer compartment of Transformer No 1.

At the time of the incident, Transformer No 3 was out of service and Transformer No 1 was carrying the load of the 11kV busbar.

The protection-initiated trip of the primary and secondary circuit breakers on Transformer No 1 resulted in the loss of supply to the 11kV busbar at the Zone Substation and all customers supplied by 11kV feeders out of this substation were affected.

The duration of the interruption was approximately 1.25 hours.

A full maintenance procedure was last carried out on the tap changer of No 1 Transformer on 18 March 2002 and the prescribed maintenance period for this type of equipment is 1 year (+/- 3months).

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 the provider
reports by two independent electrical engineers.

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 to Mr C's phone/fax system.

The conclusions of the independent engineer's report were:

“it is reasonable to eliminate the possibility that the failure is a random failure of an appliance that happened to fail at the time that the power failure occurred.”

“the failure is due to failure of the coarse selector of the OLTC (on-line tap changer) on the zone substation transformer.”

“During the period of the failure of the transformer it is most likely that the whole network was subjected to abnormal voltage conditions until such time that a fault developed that was “seen” by the transformer protection, such as a Buchholz relay which detects oil or gas surges within the tapchanger tank or differential protection which detects electrical failure”.

“the failure of equipment, such as [a] tap changer, would generate transients on the system, it is probably a transient that is beyond what would be considered to be a normal system transient, caused by things such as switching surges and lightning”.

“Not only is it possible that components of the tap changer mechanism have failed, but in this instance it seems to have actually occurred. The contact resistance of the coarse selector at the time of the previous major overhaul would provide an indication if normal conditions existed at the time. Unfortunately, this information has not been provided to me by [the company]”.

“It is possible, that for the particular voltage conditions that exist at the Zone Substation, the voltage range is such that the coarse selector is required to carry out more operations than normal. As a result, premature failure may have occurred.”

“Failure of the coarse selector contacts is not an expected fault”.

“the maintenance has been claimed to have been carried out in accordance with the provider’s Network Maintenance instructions.”

“the lack of substantive evidence is a matter of concern. Requests for detailed evidentiary information have been ignored”.

“there is little doubt that significant transients and surges would have been present at the time of the incident on the system.... There would be transients and surges on the low voltage network and would have been seen by appliances connected to the low voltage network”.

“Given that there was a clear incident on the system coincident with the failure of the tap changer and that the nature of the transients would not be normally expected transients on the network, it points to a clear relationship between the event on the network” and the equipment failure.

“It has been concluded that given the network was operating in an abnormal mode...there is a strong relationship between the equipment failure and the event on the network”.

The independent expert made particular comment in relation to his lack of access to documents confirming the maintenance regime for the tap changer mechanism(s) in the Zone Substation. He noted, for instance, that “*it has not been possible to establish if there was any pre-existing condition on the tap changer that should have been identified at the time of the previous major maintenance. The date or number of tapchange operations since the last major maintenance has not been provided*”. He has raised concern that he was thus “*not able to discern whether the information is truly not available, or whether the company has elected not to provide the requested data*”. Consequently, he has concluded that the “*apparent lack of ability to audit maintenance data is a matter of some concern*”.

EWON sought the advice of a second independent expert before considering this matter for determination. The second expert reviewed in full the report provided by the first independent expert and concluded that “*since there is a strong correlation between the abnormal system condition and the claimant’s damage, there is a case for compensation*”. He qualified this comment by noting that “*there is every indication that the customer equipment was subject to a transient overvoltage. Such an event falls into the category of an undetectable failure, provided it can be shown that the tap changer system had been properly maintained according to manufacturer specification*”.

Analysis of the Information

It is agreed that an event occurred on the network at the time claimed by the customer. The provider has indicated to EWON that they consider this event to be a straightforward outage due to network equipment failure. They do not consider that there was any excess voltage associated with this event. The provider also does not consider that this event would have caused the damage claimed by the customer and have emphasised that there were only three claims lodged in relation to this event from affected customers in the area.

The advice provided by the independent technical expert would tend to suggest that it is not the case that the event in question was a “*straightforward outage*”. While the expert has

suggested that failure of coarse selectors within tap changer mechanisms are not “*expected*” faults, he has also expressed concern that the company has not produced maintenance records and supporting documentation to demonstrate that the event was beyond their reasonable control, despite repeated requests by EWON and the expert. He has emphasised that the company’s denial of the claim on the basis that the event was outside their control could only be substantiated by reference to records from the “*previous major overhaul [which] would provide an indication if normal conditions existed at the time. Unfortunately, this information...has not been provided to me by [the company]*”. In the absence of such maintenance records, it is impossible to discount the possibility that the damage sustained to Mr C’s appliances was a result of the “*abnormal voltage conditions*” to which the network was “*most likely*” subject following the failure of the coarse selector, particularly as the appliances failed at the same time as the event occurred. This has led to a situation where there is doubt as to the reasonableness of the company’s decision to deny the claim.

The independent expert has also commented that not only have the company not produced their records and supporting documentation in relation to this matter but they have declined to respond to his requests for this information. While he has suggested that the particular failure in question is an unexpected fault, he has concluded that it is not possible to be conclusive given the lack of supporting information provided by the company. Given that the company advised the independent expert that maintenance reporting is on an exception basis only and thus that records appear to be unavailable in any case, the task of determining the degree to which the failure of the tap change mechanism was beyond the control of the network provider becomes impossible. This is a point made by both independent technical experts.

This results in a situation where there is an unavoidable element of doubt. In this situation, it appears reasonable for the benefit of this doubt to go to the customer.

Conclusion

The provider disagrees with the technical advice to EWON by our independent technical experts. This disagreement is with the conclusion of our experts rather than with their 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 the absence of information from the company that will allow independent assessment, the company has not demonstrated that the failure was beyond its reasonable control.

Under the provision of Clause 6 of the Constitution of the Energy & Water Ombudsman NSW scheme I therefore determine that the company should pay the sum of \$400 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 company is then fully released from the decision.

Clare Petre
Energy & Water Ombudsman NSW
29 April 2005