



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 a domestic appliance – Mr B.

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 B lodged a claim for compensation for damage to his dishwasher following an interruption to the electricity supply to his home.

Mr B advised that there was a total power failure on 13 February 2003 which lasted approximately four hours. The dishwasher had been on at the time of the interruption. When the power was restored, the dishwasher was making a continuous buzzing noise, so he turned it off at the power point. Mr B contacted a repairer from Email who came out to examine the dishwasher. The repairer advised that the part required to repair the dishwasher was no longer available and Mr B subsequently purchased a replacement dishwasher.

Mr B later lodged a claim with his electricity supplier on 28 March 2003 for the amount of \$1090 to cover the repairer's costs of \$75 and the cost of the replacement dishwasher.

The supplier wrote to Mr B on 8 April 2003 and declined to pay the claim on the basis that while they confirm there was an interruption to the electricity supply, there were no surges or over-voltages associated with this interruption and in such circumstances it is not their policy to make offers of compensation. Mr B contacted EWON on 10 December 2003 asking for a review of the decision (Mr B noted that he had been unable to follow this matter up earlier due to personal circumstances).

The Supplier's Response

It is not disputed by the supplier that the first interruption to supply was caused by the actions of their staff when they damaged 33kV cables supplying the Zone Substation. However the company stands by the denial of the claim on the basis of clause 16.4 of their *Standard Form Customer Connection Contract*.

In their Investigation Report to EWON dated 30 December 2003 the company 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..*".

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

There was a protection operation at 3.03pm on 13 February 2003, which tripped 33kV feeders from a 132kV Sub to Zone Substation.

The cause of the interruption was damage to underground cables by a borer owned and operated by the company.

staff of the company were carrying out an “urgent pole replacement”. At approximately 1.30pm on 13 February 2003 a company 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.

company 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 cable plans on site.

18 131 customers in the [location] 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 supplier 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 and Mrs B
- Information provided by Mr B’s repairer
- Information provided by the supplier
- Reports provided to EWON 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. The expert concluded as follows:

It is the “*clear view*” of the expert electrical engineer that “*the precautions taken by [the company] 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 company’s] failure to take sufficient care in the circumstances.

[the company] 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 company’s] Network Standard *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 *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 company’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 supplier 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 company]*”.

EWON also obtained technical advice regarding the relationship between the network event and the damage to Mr B’s dishwasher. The conclusion of the report was:

The company advise that it is estimated that the clearing time of the fault is approx 200ms for each of the cable failures, followed by a trip of the 11kV transformer some minutes after the original fault. As the failure was associated with a long 33kV cable from the Supply Point to Zone Substation, the capacitive reactance of the cable would result in some high-speed transients at the time of the fault.

The circuit breakers utilised on the 33kV and 11kV networks are generally conventional oil circuit breakers which are relatively slow acting and do not cause what is referred to as “current chopping” (as is possible with vacuum circuit breakers). It is unlikely that there are any substantial switching transient voltages on the 11kV network at the time that the circuit breaker is opened. In any case, as this switching is on the high voltage network, such a voltage disturbance would not be normally transmitted to the low voltage

network of any connected transformers, except for high-speed transients that can be transferred through the transformer winding capacitance. The presence of any surge diverters on the 11kV network plus connected load would tend to suppress the voltage spikes.

In the supplier's advice to Mr B dated 8 April 2003, it makes the claim that there were no surges or over-voltages associated with this interruption. It is difficult to see how the supplier could confidently make such an assertion without the use of monitoring equipment at one or other Substations. The supplier has submitted no evidence of the presence of such equipment.

The issue is...whether there is a causal relationship between the event on the network and the failure of the...equipment. The fault on the network involved a short-circuit between either phase to earth and/or phase-phase as a result of the hole borer drilling through the cable. During the short period of the short circuit (which may have only lasted 200milli-seconds) the instantaneous voltage on the 33kV system phase-to-phase and phase-to-earth would have been instantaneously suppressed. As a result all customers on this part of the network would have been subject to some sort of transient voltage. Depending on the arcing conditions that would have been experienced during the period of the fault, various high frequency transients would have been present and would have been reflected on the low voltage network. As electricity flow is instantaneous, the electricity supply to Mr B's premises would have been subject to some sort of transient condition.

The dishwasher, with IT based microprocessor controller would have been subject to abnormal transient conditions which undoubtedly would have been outside the CBEMA/ITIC curve. According to Electricity Supply Standards ES2, the company aims to limit switching transients to less than 2x the nominal system voltage. However, it is not clear as to how the supplier could achieve this objective as there are no specific devices installed on the system that would control transients to this level. The presence of the transient conditions would cause stress on the customer's electrical installation and may result in equipment failure during this period.

As other customers in the area serviced by the 33kV system experienced equipment failure at the time of the incident, it is an indication that the transient conditions that were experienced were severe and outside the capability of the equipment to withstand and thus result in equipment failure...The failure rate is much greater than would be expected for random failures occurring coincidentally at the time of the incident on the network. Accordingly, the coincidence of the presence of abnormal conditions and increased failure rate of equipment implies a causal relationship between the network event and equipment failure.

Analysis of the Information

The supplier maintains that the dishwasher 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 appliances damaged as a result of this event should ideally have been able to withstand the events on the network. However the expert has also noted that the precipitating event was within the reasonable control of the supplier to have prevented and also that it is highly improbable the failure was merely coincidental rather than causal. While it may be that the dishwasher should ideally have been able to withstand the event on the network, the customer's dishwasher would not have sustained the damage in question had the event not occurred.

It is EWON's position that the supplier 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. Indeed the independent expert has stated in his report that the company's own response to his enquiries acknowledges that due regard was not given to the requirements of Network Standard *Working Near or Around Underground Cables* to establish whether there were any critical assets installed underground in the area. The supplier 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 supplier 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 B who experienced loss as a result.

EWON has confirmed with the repairer that in their opinion the dishwasher was unrepairable and that, in any case, the part required would now be unavailable. EWON has also contacted Dishlex regarding the replacement dishwasher purchased by the customer. While this model is no longer produced and they could not confirm the recommended retail price due to it being a discontinued model, they advised that the equivalent model currently retails at between \$1300-1400.

Conclusion

The supplier 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 B'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 supplier, and as such was within the reasonable control of the supplier.

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 \$1150 to Mr B 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 company. Mr B may elect within twenty-one days whether or not to accept this decision. If Mr B accepts the decision, he will fully release the supplier from all claims, actions, etc in relation to this complaint. In the event that Mr B 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
30 May 2005