



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 the repair costs for several items of damaged electronic equipment – a television, VCR, a camcorder battery charger and a PlayStation - Mr C.

By way of introduction I wish to note that during its seven 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 that 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 submitted a claim form dated 15 May 2003 to his electricity supplier following two interruptions to the electricity supply to his home on Sunday 6 April 2003 and Tuesday 8 April 2003<sup>1</sup> respectively. He sought compensation totalling \$660.61 for the repair costs for four items of electronic equipment: a Samsung television (\$192.94), a VCR (\$193.49) a Camcorder battery charger (\$122.38) and a Sony PlayStation (\$151.80). He informed EWON that all items were in sound working order on the day prior to the first outage, Saturday 5 April 2003. He discovered the television and PlayStation, which were used every day, would not operate following the outage on 6 April 2003. He did not discover that the VCR (which he noted was a 'spare' unit and only used if he wanted to tape more than one program) and Camcorder battery charger had also sustained damaged until he checked this equipment after the second supply interruption on 8 April 2003.

In his claim form, Mr C informed his supplier that his equipment had sustained damage *"as a result of 2 power interruptions which were caused by 11kV arcing on the dates mentioned* [in section 4 of the claim form he stated that the first interruption on 6 April 2003 occurred at 4am while the second occurred at 3.12am on 8 April 2003]. The second supply incident *"which appeared to be more abrupt, led to the failure of the equipment listed"*. Mr C also referred to information he obtained when he contacted his supplier<sup>2</sup> following the second interruption noting that *"confirmation with the Consultant at the Emergency Centre verified that the first interruption was not traceable"* however the cause was detected *"when it occurred the 2<sup>nd</sup> time"*. Mr C subsequently informed EWON that his assessment of the cause of the damage as noted in his claim form was based on his discussions on 9 April 2003 with a supply officer at the Depot and with the Customer Service Representative at the "Emergency Centre". He informed EWON that the officer he spoke with at the Depot had discussed the reasons why arcing on the 11kV mains might occur and had also referred to *"some problem with a faulty relay."*

In his letter to EWON dated 3 June 2003 Mr C requested a review of the reasonableness of his supplier's decision to deny his claim. He referred to the two power interruptions to his property and provided additional information about each incident. He reiterated that the first interruption occurred on 6 April 2003 at 4am, that it had lasted less than one hour and that he could *"vaguely recall the loss of two phases initially, then the loss of the third phase minutes after"*. Mr C says he called the *"emergency operator immediately during*

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<sup>1</sup> EWON's investigation indicated that the correct date was 9 April 2003. See later in the report.

<sup>2</sup> Mr C advised that he spoke with staff at both at the Depot and at the "Emergency Centre" following the second supply interruption.

*the first disruption only to find that they were quite aware of the power loss” and was informed that they “would investigate it.”*

Mr C informed EWON that he has three-phase supply to his property and his home alarm system will sound if mains supply is lost or affected and he woke up when this occurred. He said his alarm system also provides a display of the incoming mains voltage level. He further noted that, in contrast with the first outage, the interruption on 8 April 2003 at 3.12am had resulted *“in the loss of all phases suddenly”*.

When Mr C contacted the Depot on 9 April 2003 after discovering the failure of his VCR and battery charger he says his call was subsequently transferred to the Call Centre where the customer service representative informed him that:

*“the location of the first interruption was ‘a result of arcing 11kV high voltage wires but were not traceable’ and that they may have ‘required maintenance’ ”.*

However, he says the company’s representative would not confirm or deny that the second interruption, which lasted approximately 3-4 hours *“was the result of the maintenance which was required, perhaps during off peak hours to minimize any inconvenience but claimed only that the arcing was traced to a location.”* Mr C referred to his supplier’s *“Contract of Supply”* and noted that he had ascertained that *“an Emergency is not constituted by ‘maintenance’”*.

Mr C noted that his supplier had not denied the two supply incidents; however he emphasised the disparity in the information he received, ie:

- from the supplier, that the supply interruptions *“show no evidence of ‘surge’ or ‘voltage irregularity’ that does not comply with their supply standards”*
- from his repairer’s reports which suggested his equipment revealed that a surge or voltage irregularity had occurred.

On 2 July 2003 Mr C wrote to EWON again after EWON had pointed out that the date of 4 April 2003 was written on the copies of the repairer’s reports rather than a date after 9 April 2003. Mr C advised that the date of 4 April 2003 *“was most certainly incorrect”* as he definitely *“presented the items to his repairer for inspection on 9 April 2003 after he had discovered the failure of two more items that morning”*. In his presence, the repairer *“removed the lid of the VCR and sighted a blackened mains fuse, then checked the fuse on the battery charger, which was also blackened”*. Mr C says he instructed his repairer to proceed only if it were economical to do so and the repairer contacted him on 14 April 2003 to advise that the repairs were completed. His letter to EWON dated 2 July 2003 noted that he collected his equipment from the repairer on 18 April 2003 at which time he was advised of the 90-day warranty on all workmanship carried out.

Following discussion with EWON, Mr C rang his repairer on 2 July 2003 and requested that he forward new repair receipts with the correct dates *“as this would also affect the 90 days workmanship warranty”*. He subsequently forwarded to EWON revised information from the repairer to confirm that his original repair receipts were dated incorrectly and that the reports were completed subsequent to the supply incidents of 6 and 8 April 2003. The repair reports indicate that the repairer replaced burnt power supply units in the Samsung television and adaptor [battery charger]; replaced the power supply circuit in

the VCR; and checked and replaced the power board in the Sony PlayStation. Subsequent to his provision of the correctly dated repair receipts, Mr C provided (at his supplier's request) de-identified copies of the repairer's repair invoices issued to other customers immediately prior to and after those repair receipts issued to Mr C in order to verify that the incorrectly dated original receipts had been an inadvertent error.

Mr C also informed EWON on 3 July 2003 that his area experienced many interruptions and when supply was restored "*it regularly surges and is so severe that he needs to replace light globes*". The variation to his supply also includes frequent voltage fluctuations and he believes he regularly receives voltage above an acceptable level. He advised that he had already raised this issue with his supplier. As previously noted, his home alarm system is capable of measuring and displaying voltage levels. He says he checked this unit's display following the outages on 6 and 8 April 2003 and the readouts showed that the voltage had peaked at over 300 volts.

Mr C informed EWON on 21 January 2004 that he had installed a surge arrestor at his switchboard at a cost of approximately \$1500 within two weeks of the supply incidents on 6 and 9 April 2003 to ensure his equipment is protected in the event of any further network incidents that might impact his supply. However, he did not have any form of protection for his equipment prior to these two supply incidents.

## **The Supplier's Response**

In their Claim Determination letter to Mr C dated 23 May 2003, the supplier confirmed that his property had "*suffered two unplanned interruptions to supply on 6<sup>th</sup> and 9<sup>th</sup> April 2003*" however their records "*do not disclose any evidence (such as surge or voltage irregularity) that does not comply with our supply standards at that point in time*".

The company also noted that they do not make offers of compensation in these circumstances and suggested that Mr C might wish to contact his insurer regarding his loss.

In their *EWON Investigation Report* dated 11 June 2003 the company advised that they had conducted a review of their Network records for the period from 6 April 2003 to 10 April 2003 and this had confirmed that there were two protection operations at [name] Zone Substation that interrupted supply on the 11kV feeder [Number..] supplying electricity to Mr C's home. The first interruption occurred when a high voltage circuit breaker operated at 4.50am on 6 April 2003 to open the circuit on the feeder.

The second circuit breaker operation on the feeder occurred at 3.13am on 9 April 2003 and appears to have lasted for approximately one hour. The company advised that the cause of the first interruption was an "*undetermined fault*" beyond Distribution Substation [number..] while the second "*was due to burnt contacts on line isolator [number..]*".

The company also informed EWON that they had received one other claim relating to the supply incident on 6 April 2003 and none resulting from the supply incident on 9 April 2003. The company emphasized in this initial Report to EWON and in a subsequent

Report that their claim determination was based on the Customer Contract and predicated on the position that:

*“The interruption to supply was beyond the reasonable control of [the company] and was due to a protection operation on an 11kV feeder”.*

The company further noted that the repair reports submitted with the claim form were dated 4 April 2003. In their letter to EWON dated 30 July 2003, the company reiterated that their denial of the claim was based on the fact that the *“cause of the outage was protection operations, which were beyond the reasonable control of [the company]”*. They also advised that they did not consider that the incorrect date [4 April 2003 rather than 14 April 2003] shown on the original repair reports was *“a suitable explanation”*. Rather, they requested a copy of the repair invoices *“both prior and post (ie. invoice numbers 18 & 23) from the repairer to substantiate the correct date of the repairs & invoicing of same”*.

In their second *EWON Investigation Report* dated 1 October 2003, the company informed EWON that:

- in regard to the two supply interruptions on 6 and 9 April 2003, *“in both cases interruptions were correct protection operations for network events beyond [the company’s] reasonable control”*
- the company stood by the denial of the claim under the terms of the Customer Contract
- in the twelve months prior to these supply interruptions, Mr C’s supply was interrupted by two system events, each of 1 minute duration [dates not provided].

The company suggested that if Mr C had concerns about ongoing supply issues, he should contact his Regional Customer Supply office to have the matter investigated.

## **EWON’s Investigation**

In our investigation we considered in detail:

- information provided by Mr C
- information provided by the supplier.

EWON also commissioned an independent technical report by an expert electrical engineer to provide professional advice on the technical considerations underpinning the confirmed supply interruptions on the high voltage network on 6 and 9 April 2003 and the nexus, if any, between the nature of these incidents and the claimed damage. EWON’s review of the available information had noted that the company’s *HV Interruption Report [number..]* indicated that the interruption on 6 April 2003 occurred at 4.50am on Sunday morning and was of 101 minutes duration with supply being restored via network switching. This System Operation Report also indicated that the cause of the interruption *“was not ascertained”* however the company had identified that the *“EFI*

[was] defective at UG/OH adj to IS [number..]”.<sup>3</sup> Similarly, the company’s System Operation Report (*HV Interruption Report*) for 9 April 2003 noted that at 3.13am the feeder “tripped, reclosed and locked out”, that the cause was “not ascertained”, and that there were “burnt contacts on IS [number...].”

## **Analysis**

Our review of this matter clarified the discrepancy in the dating of the repair receipts by Mr C’s repairer. It is also apparent that the second interruption to Mr C’s supply occurred in the early morning (3.13am according to the supplier’s records) of 9 April 2003 and not 8 April 2003 as stated by Mr C in his claim form. The fact that Mr C had also specified that this second supply interruption occurred at 3.12am based on the data he obtained from his alarm system strongly supports that the second interruption he has referred to occurred on Wednesday 9 April 2003 rather than Tuesday 8 April 2003. He also says that he discovered the damage to his VCR and camcorder charger on 9 April 2003 and rang his supplier to request a claim form on that date. The supplier’s records also indicate that this form was forwarded to him on 9 April 2003. It seems reasonable to conclude therefore, that there is agreement regarding the timing and dates of the two network events that affected Mr C’s supply.

In their two *EWON Investigation Reports* dated 11 June 2003 and 1 October 2003 the supplier advised that the supply interruptions on the claimed dates resulted from the successful operation of Network protection equipment that was initiated by Network events that were “beyond [the company’s] reasonable control”. The underlying cause of the first supply event was not ascertained and the second “was due to burnt contacts on the line isolator [number..]”. The company also informed EWON on 15 June 2003 that they had not had an opportunity to address the questions about the nature of the network events and any nexus between these events and the claimed damage to Mr C’s equipment that EWON had referred for independent technical advice. EWON considers that the company had the opportunity to provide all relevant information in their Investigation Reports to EWON on 11 June 2003 and 1 October 2003.

EWON’s independent expert has been unable to complete his report on the technical considerations relating to these supply interruptions as the company have not responded to his request on 22 November 2004 for additional information despite several subsequent requests from EWON for this information.

EWON’s independent expert informed EWON on 8 August 2005 that “in view of the paucity of the information so far provided (and some apparent inconsistencies)” he required “more information from [the company] in order to establish what actually happened in relation to the system events of 6 and 9 April 2003”. He emphasised that it was on this basis that he had written to the company on 22 November 2004 requesting additional information.

The questions referred to the company by our independent expert were detailed and specific. It is noteworthy that the expert included the following points in his

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<sup>3</sup> The company’s System Operation records for 6 April 2003 indicate that the earth fault indicator was defective at the underground to overhead connection adjacent to isolating switch [number..]7.

correspondence to the company on 22 November 2004 following his review of their FOD<sup>4</sup> System Report that was provided with EWON's brief:

*“the fault [on 6 April 2003] was a substantial earth fault presumably involving two phases, since it caused the operation of two phases of instantaneous overcurrent protection (A & C) as well as of zone and group earth signals... Given that the fault on 6 April 2003 was a heavy earth fault, it seems extremely unlikely that the cause could remain undetermined following a full investigation, and extremely **likely** that repairs of some kind would have been necessary”*

and,

*“the fault [on 9 April 2003] was a substantial phase to earth fault, since it caused operation of one phase of over current protection (C phase) as well as of group earth signals; the report of burnt contacts on “line isolator” IS [number..]7 is probably irrelevant to the issue as the **cause** of the fault, although burnt contacts may be a consequence of the fault. Given that the fault on 9 April 2003 appears to have been a substantial earth fault, it seems unlikely that the cause could remain undetermined following a full investigation, and likely that repairs of some kind would have been necessary. It also seems extremely unlikely that the burnt contacts on Interruptor Switch IS [number..] were the cause of the fault (as opposed to a possible consequence of it)”.*

Included in the technical expert's questions to the company are those that specifically seek to clarify the interim arrangements the company made on 6 April 2003 “by way of network switching, to restore and maintain 11 kV supply to the affected 17 Distribution Substations [including that supplying Mr C's property] while work was carried out on finding and repairing the fault that had initiated the protection operation”. Similarly, EWON's expert sought to clarify if network repairs on this same feeder [number..] had been completed when the second event occurred on 9 April 2003, “and if so, was the configuration of the network normal when the fault occurred on 9 April?”

EWON has further noted that in comparison with the company's advice to EWON on 11 June 2003 that “the cause of the interruption on 9/4/03 was due to burnt contacts on line isolator IS [number..]” the independent expert has commented in his correspondence to the company that “it also seems extremely unlikely that the burnt contacts on Interruptor Switch IS [number..] were the cause of the fault (as opposed to a possible consequence of it)”.

EWON made several (6) requests to the company over a six-month period for a response to the independent expert's request for information dated 22 November 2004. Given this, EWON considers that the company had sufficient opportunity to provide the requested information to assist our review of Mr C's claim.

In EWON's view the information requested by our technical expert on 22 November 2004 is intended solely to establish the circumstances of the supply system events on 6 April and 9 April 2003 and, as far as is possible, any nexus between the nature of these system events and the damage sustained by Mr C's equipment. Following his review of

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<sup>4</sup> Faults/Outages/Damage System Analysis Report

the information in the company's claim file (as provided to EWON on 20 June 2003), the independent expert advised EWON that:

*“In view of the incomplete and to some extent internally-conflicting information so far provided by [the company] about the cause and circumstances of the supply system events on 6 April and 9 April 2003, it is important to establish, if possible, whether the events were within or beyond the control of [the company]. In other words, the information<sup>5</sup> - which is confined to what actually happened on the days in question - is required in order to establish the ‘cause and effect’ - that is, the nature of the network event and its relationship, if any, to the (apparently resultant) damage to the customer’s equipment”.*

EWON's investigation of this complaint and the request for further information via the commissioning of an independent technical report has attempted to clarify what happened to cause the supply events on 6 April and 9 April 2003; whether the events were to any extent within the reasonable control of the company; and, if so, if there is a reasonable basis for concluding that the nature of these events was consistent with the confirmed damage to Mr C's electronic equipment. The company's failure to provide this additional information has led to a situation where there is doubt as to the reasonableness of the decision to deny Mr C's claim.

## **Conclusion**

Given the available information, EWON is not in a position to comment further on the technical aspects of the claim. However, in view of the failure of the company to provide additional information requested to assist EWON's review of this matter, 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 company should pay the sum of \$660.61 to Mr C as full settlement of his claim.

Under the EWON Constitution, this decision is binding on the company. 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 company 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  
25 August 2005

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<sup>5</sup> The reference here is to the information requested in EWON's technical expert's correspondence to the company dated 22 November 2004



