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 cost of repair to two damaged air conditioning units – Mr A.

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 A lodged a claim with his electricity provider on 10 July 2003 for the repair cost of $3473.80 for damage to two air conditioning units following an interruption to the electricity supply to his property at approximately 9.30am on Thursday 3 July 2003. Mr A says he rang his supplier to report this supply problem. In his claim form he noted that he was without power for approximately 90 minutes and further advised that there was a *"power failure in area which caused air conditioning units to break down* [due to] *electrical fusion of compressor units which were running at time of power failure".* The repair report dated 5 July 2003 which Mr A provided with his claim form stated that the *"damage due to power failure which occurred on Thursday 3 July 2003".* The repairer reported that he found the air conditioning system for levels 2 and 3 of the property *"down to earth"* and the *"compressors for both systems down to earth due to electrical fusion".* This repairer also noted that the compressors and contactors needed replacing; that liquid line drivers would need to be installed; and that both air conditioning systems would have to be recommissioned.

Following his receipt of a letter dated 19 August 2003 denying his claim, Mr A contacted his supplier and requested a review of this decision. The supplier subsequently informed him that their further review did not identify any record of supply variation for his Distribution Substation outside their supply standards. Although the supplier had no record of a network incident affecting Mr A's supply, the company included a brochure with their letter providing information about the steps customers may choose to take to protect their three-phase equipment from damage. In response, Mr A wrote to his supplier on 22 October 2003 emphasising that the provision of the brochure was *"somewhat late"* and that the company had failed to advise him previously[1] that [three-phase] equipment *"is subject to damage unless protective devices are installed to mitigate the effects of power failures."*

Mr A wrote to EWON on 20 October 2003 to request a review of the reasonableness of his supplier's decision to deny his claim. In his letter, he advised that his air conditioning systems had previously sustained damage as a result of a power failure in 2002. He noted that the claim he lodged with his supplier in respect of the 2002 incident was also declined and he had *"accepted this, believing they [the company] had no liability".* In regard to the supply incident on 3 July 2003 that underpinned his current claim, he advised that *"the entire area had a power failure for 3 hours or so"* on this date and that:

> *"Buildings had computer damage. Street lights were out. Police directed traffic at the intersection of [names withheld by EWON] Streets. As a consequence, tenants of our*

[1] Mr A had previously lodged a claim for compensation when his air conditioners were damaged during a low voltage supply incident in 2002.

building had damage to computers and the building suffered damage to 2 air conditioning systems".

Mr A's letter further advised EWON that when he contacted his supplier he was *"told of the power failure and to put in a claim".* He emphasised that when he contacted the company after his claim was declined, they had denied there had been a power failure. He noted also that he believed the damage to his two air conditioning units *"was caused by the surge in power when the power was restored".* He also advised that he had installed phase-fail protection equipment following his receipt of the supplier's letter dated 15 October 2003 advising him of its availability. He reiterated his concern that this information could reasonably have been provided to him by his supplier with their correspondence denying his previous claim in 2002. In a subsequent telephone discussion with EWON on 9 February 2004, Mr A emphasised that it was a matter of great concern to him that the company had repeatedly denied the interruption to his supply on 3 July 2003. He informed EWON that *"all"* of his area was affected by the outage and that *"the police were called to the area as the traffic lights were out and several streets had no supply."*

Mr A wrote to EWON again on 16 February 2004 including two attachments, one of which was a *Statutory Declaration* dated 16 February 2004 advising that:

- he had called his supplier on 3 July 2003 to report a power failure to his premise and to request information about the cause and the anticipated time that power would be restored
- the company had informed him that *"the power was out to the area"* and that he could expect a short-term disruption with the power being restored around midday
- the company had apologised for any inconvenience
- one of his tenants occupying the ground level of his building had phoned him to complain that their lights and computers were out. Mr A recommended that he should contact the supplier to report the incident
- both sides of the street were without power up to the nearest intersection
- the company's *"claim that power to his side of the Street was not disrupted is challenged as being incorrect… the power blackout to [my property] did occur on July 3rd from between 9am and mid-day and was concurrent with the blackout to the immediate area on that day and at that time and due to circumstances not of our control but under the management of the power supplier."*

The other attachment was a statement co-signed by Mr A and the tenants on each of the four levels of his building confirming that the electricity supply had been interrupted from 9am to mid-day on 3 July 2003 and that this *"power failure"* had affected their lighting and computers.

In a follow-up letter on 19 February 2004 Mr A advised that he had canvassed business owners on his side of his street who, he noted, had recalled the supply interruption on 3 July 2003. His letter nominated the affected businesses and flagged that he was seeking *"a document"* from his next-door neighbour [address provided to EWON] *"to signify their*

position". On 10 March 2004 Mr A provided to EWON a copy of a letter from another business operator dated 18 February 2004 [name and contact details supplied] stating that:

> *"On July 3 2003 between the approximate hours of 9am to 12.30pm, a power failure occurred in sections of [the area]. Electricity supply was disrupted to both sides of the street. As a consequence, business operators were without electricity for the period stated. As a business operator on the western side of the street power loss was experienced."*

He also advised that he had engaged a professional engineer who *"maintains that they* [the supplier] *can easily determine to which sub station we are connected to by putting a tracer signal on the line from the sub station to our building. We lost all 3 phases to the building, even though it is claimed that there was only a drop of one phase"*.

Mr A specifically requested that EWON confirm with the supplier which Distribution Substation *"went down"* on 3 July 2003 and the details of the Distribution Substation that the supplier *"claim we receive service from which wasn't affected."* He said in light of the power interruption that he and his tenants experienced, he required *"documented evidence that the western side of the street was unaffected and proof that the sub station we receive power from was not out of service for the period and the date we and others affected claim"*.

The Supplier's Response

The supplier sent Mr A a claim form on 4 July 2003 following his telephone call on that date and wrote to him on 5 August 2003 to acknowledge receipt of the completed form. The Claim Determination letter sent to Mr A on 19 August 2003 advised that the company's investigation of the circumstances underlying his claim had established that their records for 3 July 2003 did not indicate any variation in the electricity supply to his property that did not comply with their supply standards. The supplier further advised that they do not make offers of compensation in these circumstances and suggested that Mr A might wish to refer the matter to his insurer.

Following Mr A's request for a review of their decision, the supplier wrote to him again on 15 October 2003 advising that their records *"do not disclose any variation outside our supply standards at your substation on 3 July 2003. However, the company has established that there was a loss of one phase of supply in the area on 3 July 2003 which is consistent with the outage time stated by yourself"*. The supplier also emphasised that:

- they make no guarantee of an uninterrupted supply of electricity and occasionally incidents occur on the distribution network which are beyond their reasonable or economically practical control
- three-phase equipment is susceptible to loss of phase of supply and should therefore have adequate phase-fail protection installed to isolate the supply in the event of this type of incident
- it is not the company's policy to make offers of compensation regarding this kind of equipment damage.

In their first *EWON Investigation Report* dated 8 December 2003 the supplier advised that Mr A's property is supplied via the high voltage feeder out of the area Zone Substation and via Distribution Substation [number]. This Report also confirmed that the supplier held no record of any network event *"on or about"* 3 July 2003 *"which would have directly affected this customer's electricity supply"*. There were also no records of any emergency service requests *"at or around this customer's address on or about the date claimed"* and the company had not received claims from other customers in the area *"on, or about, the date claimed"*. The company acknowledged that there was a *"system event"* on 3 July 2003 which did impact some customers in the area including those on the opposite side of Mr A's street when one phase of the low voltage distributor (#2) out of Distribution Substation [number] was interrupted. However, *"there is no indication that the claimant was affected by this event."*

The supplier emphasised that their claim determination was predicated on the fact that they had *"no record of any event on the supply network that would have affected this customer's supply"*.

In their *Investigation Report* to EWON sent on 18 December 2003, the company reiterated their advice that:

- they had no record of any system event on 3 July 2003 that would have affected Mr A's supply
- there is a record of an event on 3 July 2003 that affected parts of the area including the opposite side of the street to Mr A's premise. This incident involved the loss of one phase on low voltage distributor 2 out of Distribution Substation [number]; however, *"as Mr A' premise is supplied via Distributor 3 out of Distribution Substation [number], his supply was not affected by this event"*.

On 17 February 2004, in response to EWON's advice regarding receipt of Mr A's *Statutory Declaration* relating to the supply interruption he said he experienced on 3 July 2003, the company undertook to review the possibility of any low voltage interconnections that might have affected Mr A's supply on the claimed date and to check their records for details of any 'script' provided to their Call Centre representatives on that date. The company also noted that the failure of Mr A's air conditioning units' compressors might have resulted in the building losing power. On 1 March 2004 the company informed EWON that they had no record of Mr A's call on 3 July 2003 although the number which he advised EWON he had rung was their emergency service line. However, despite having no record of Mr A's call, the company acknowledged that he would most likely have been advised when he rang that they were already aware that there was a supply problem in the area. The company indicated that they would follow-up regarding the possibility of any supply interconnection, as any system changes are required to be logged by the System Operator.

In response to EWON's emailed enquiry on 10 March 2004 as to the possibility of any alterations to the low voltage network arrangement supplying electricity to Mr A's premise, the company's third *Investigation Report* dated 16 March 2004 emphasised that:

> *"There was certainly no interconnection or 'cross supply' on the 11kV feeding the two Distribution Substations"*.

The company further noted that *"information in respect of LV switching is not as easily accessed as the high voltage system records."* The company also advised that they considered EWON's additional questions *"may only be relevant to the matter if it is shown that LV interconnections may have been in place at the time of the interruption on Sub. [number]"*. Their Report also stated that *"as EWON believes that there was an interruption to the claimant's installation"* it would assist the company's *"evaluation of the circumstances"* if EWON provided *"the details of any evidence or supporting information (other than the customer's statement) that supports this view (eg names and addresses of other customers who were affected etc)"*. The company reiterated that they stood by their denial of Mr A's claim on the basis that there were no records of any system event on, or about, the date claimed that would have affected his supply.

The company informed EWON in an email dated 25 March 2004 that they:

> "*had finally got a reply to EWON's inquiry regarding the possibility of an interconnection between the claimant's supply and Dist.Sub [number], which had a LV fuse operation on the claimed date. The Regional staff have confirmed that LV reticulation modifications had taken place prior to 3/7/03 which resulted in the transfer of the claimant to Distributor 2 of Dist. Sub. [number]. As a result the claimant was affected by an interruption on one phase of the LV supply for about 143 minutes"*.

The company emphasised that they do not make offers of compensation for damage to commercial three-phase equipment resulting from the loss of a phase of supply and, on this basis, their denial of the claim would be maintained *"on contract grounds"*.

On 1 April 2004, in response to EWON's emailed request on 26 March 2003 for additional information about the LV fuse operation at Distribution Substation [# ..] and any known supply problems affecting Mr A's area prior to the incident on 3 July 2003, the supplier confirmed that they had *"originally made a determination of the customer's claim based on information, which has subsequently been found to have been incorrect."* The company further advised that *"the matter is formally denied on the basis of the Customer Contract, due to circumstances beyond [the company's] reasonable control"*. The copy of the System Operation Low Voltage Interruption Report [# ..] that was provided as an attachment to the company's response indicated that the company had received a report of a supply problem via their Emergency Services on Thursday 3 July 2003 at 10.17am. The Report notes that a low voltage fuse had "blown" and that this had affected Distribution Substation [#..]. The cause of the operation of the fuse as noted in the Report is attributed to *"Electrical Overload"*.

In a subsequent discussion with EWON on 14 May 2004 in response to EWON's enquiry regarding the possibility of Distribution Substation [number] being subject to overload, the company confirmed that the LV fuse had operated because the transformer was overloaded but this *"was irrelevant."* The company also informed EWON that any alteration to the low voltage supply arrangement would usually be reported to the System Operator who would normally make a record of this however, in the circumstances of this matter, there was no record made and this was the reason why the company had experienced difficulty in establishing that there had been an alteration affecting Mr A's supply. The company declined to respond to EWON's further enquiries as to whether the acknowledged overload on the transformer at Distribution Substation [number] was reasonably foreseeable.

EWON informed the supplier on 13 August 2004 that independent technical advice had been commissioned to clarify the circumstances underpinning the network incident affecting supply to Mr A's property on 3 July 2003. In response, the company advised that:

- they had already acknowledged that an event involving the loss of one phase of the LV supply had occurred [that had affected Mr A's supply] and the company *"has not at any time disputed the possible relationship between the loss of one phase and the alleged damage"*

- *"there is no technical dispute in respect of the denial of the claim"*

- the company had confirmed that "*the operation of the LV fuse was determined to have been caused by an overload on Distributor 2 out of Distribution Substation [number]"*

- the company does not make settlement offers to customers in these circumstances.

On 21 March 2005 EWON provided the company with summary information regarding the conclusions of the independent technical report commissioner by EWON and the reasons underpinning these. In response, the company informed EWON on 16 May 2005 that in view of the fact that the network incident on 3 July 2003 involved *"a low voltage fuse operation of one phase that resulted in the 3 phase air conditioners in* [Mr A's property] *with only a two phase supply"* and *"as phase failure protection was not installed by the customer prior to the incident, the company does not accept liability in these cases, nor does it offer a customer service payment"*.

The company also informed EWON that:

- *the confusion over the point of supply to* [to Mr A's property] *has caused some understandable customer dissatisfaction. Our plans showed the connection to be on a separate LV feeder that was not affected and it took a field check to correct the error. There is no record or other evidence that the feeders were interconnected at the time of the incident. In fact if they had been, the confusion over the supply to [Mr A's property] would not have happened as the low voltage fuse on both feeders would have had to operate to cause an outage*

- the company disputed that information had been previously provided to EWON that they "*had any evidence that the feeders had in fact been interconnected*"

- while the company "*owes Mr A an apology and an explanation for the confusing information he has received"* the company does not agree that they should compensate Mr A for the repair costs for the damaged air conditioning units.

EWON's Investigation

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

- information provided by Mr A
- information provided by the supplier

- two technical reports by an independent electrical engineer.

Technical Advice

EWON obtained independent technical advice from a qualified and experienced electrical engineer regarding the circumstances underpinning the confirmed network incident that occurred on 3 July 2003 and which affected supply to Mr A's property. His report emphasises that the information provided by the supplier to facilitate the reconstruction of events on 3 July 2003 *"is extremely limited"* and that the factual information provided is insufficient *"to establish a complete and clear sequence of events and therefore clearly identify the cause of the damage to Mr A's equipment"*. Notwithstanding this, the independent engineer concurred with the supplier that the loss of one phase of the electricity supply to Mr A's building on 3 July 2003 caused the damage to the two 3-phase air conditioning units. However, he emphasised that in his assessment the substantive issues that need to be addressed are:

- whether the loss of one phase of the supply was within or beyond the control of the supplier

- if it is reasonable that the supplier *"be held accountable for damage which would have been prevented by the installation (by Mr A on the professional advice of the electrician who installed the 3-phase motor(s) – who arguably had a duty to provide such advice) of phase-fail protection"*.

The foreseeability of the supply incident on 3 July 2003

In reviewing the chronology of events relating to this supply incident, the independent engineer has stated that, based on the limited information available, the only points that can be made with any certainty are that at approximately 10:17 a.m. on 3 July 2003:

- *LV Distributor No. 3 ex Substation [No…] was interconnected with LV Distributor No. 2 ex Substation [No…];*
- *the fuse controlling 'B' phase of Distributor No. 2 ex Substation [No…] operated, interrupting supply to one phase of that distributor; and at the same time*
- *one phase of the supply to Mr A's premises was interrupted, the duration of the interruption being 143 minutes.*

The independent engineer also notes that in their letter to Mr A dated 15 October 2003, *"[the supplier] has, in effect, admitted that the interruption did affect Mr A's premises (by interruption of one phase of the supply)"*. However, his review of the available information has not established that there was a total interruption to the supply to Mr A's premise on 3 July 2003.

In regard to the "electrical overload" specified in the company's *LV Interruption Report [#..]* dated 3 July 2003, the independent engineer makes the following observations:

- *"it is not clear why the two substations were interconnected via the two distributors, or why Distributor No. 3 ex Substation [No…] was without normal supply from [S…] (as it must have been to suffer an interruption)*

- *these matters may be relevant to consideration of the degree of control the company might have had over the events".*

The independent engineer has provided detailed comment regarding LV parallels and the issue of electrical overload on the low voltage system. He has noted that *"optimal design of the network, or substation loadings in areas of heavy load and/or high load factor, often dictates that the facility to supply the LV network of a particular substation via a LV parallel is limited"*. Consequently, the determination of whether and over what period a substation can be supplied by means of a LV parallel *"is technically quite challenging, and requires good data about the loads on all the LV distributors concerned, as well as a degree of experience in the task"*. His Report emphasises that:

> *"For a limited period – perhaps several hours – this* [LV parallel] *is acceptable, although it is likely to reduce slightly the life of some electrical equipment and to some degree risks overheating of conductors and contacts. Substations are not (or should not be) normally left in parallel unnecessarily as protection of the LV network is compromised".*

The Report acknowledges that electrical overloads can occur on parts of the LV distribution system at periods of peak demand. However, if the overload on a LV distributor is large enough, *"the load current may be sufficient, sustained over a period, to cause one or more of the fuses controlling the distributor to operate (or 'blow')"*. He notes further that *"given the characteristics of LV fuses, this would require an overload of the order of some 20% to be sustained for several hours".* Overload situations can also occur when a substation or an individual LV distributor is loaded abnormally through a LV parallel to supply the load of a substation (or occasionally just one distributor), which is taken out of service for maintenance, or work of some kind. The independent engineer has advised that:

> *"This can occur if the available "excess" capacity from adjacent substations is insufficient to supply the load of the out-of-service substation. This may result from inadequate records of substation loads, out-of-date information about distributor loads, poor estimation or calculation of the loads and the adequacy of the parallel, or from changed circumstances in substation loadings due to unforseen local load growth".*

The Report addressed the implications of the supplier's confirmation that i) there was an interconnection between LV Distributor 3 out of Substation [number] and Distributor 2 out of Substation [number] and ii) that the LV fuse operated through overload. The independent engineer emphasised that while he can only surmise that the following occurred, the situation as outlined above *"strongly suggests"* that:

> *"Substation [No…] (or at least part of its network) was not supplied in the normal way, because the HV supply or some significant elements of the substation were temporarily out of service. To enable this, the substation was in parallel with adjacent substations including [S…]. Although [the company] has admitted that the interconnection existed at the time, it has not provided any information about the outage - presumably a planned outage for maintenance or similar work - of Substation [No…] or at least part of its network - necessitating supply via LV parallel from [S.] and presumably other substations as well. However, we can reasonably presume,*

since [the company] has stated that the fuse operation was caused by "overload," that the LV parallel was not in fact adequate to supply the load of Substation No. [number], and the parallel failed".

The independent engineer has emphasised that if there was a planned outage of Distribution Substation [number], then the provision of the LV parallel as an arrangement for maintaining supply to the LV network was under the control of the supplier and, on this basis, *"it might be argued that [the company] had some degree of control over the overload and the consequent operation of the LV fuse on LV Distributor No. 2 ex Substation [No…]".* He therefore surmised that if the LV parallel had, in fact, been arranged by the supplier to facilitate a planned outage of Substation [No..] (or at least part of it), then *"the electrical overload that resulted in the operation of the low voltage fuse controlling 'B' phase of LV Distributor No. 2 ex Substation [No..] was reasonably foreseeable".*

Given the limited information provided by the supplier and the assumptions made concerning a planned outage of Substation [No..] and the LV parallel arrangements made to maintain supply to the network, the independent engineer emphasised that it would be *"prudent"* for EWON to seek additional information from the company to confirm:

- why Distribution Substations [numbers] and/or the respective distributors (# 2 and #3) were interconnected and how long the interconnection (or LV parallel) was in place
- the rated capacities of Distribution Substations [numbers] and their LV distributors
- the maximum recorded Substation and Distributor loads and the date(s) that this data was recorded
- what caused the overload which resulted in operation of 'B' phase fuse on Distributor No 2 ex Substation [No.] . Was it because of a LV parallel (to supply S[..]), which was inadequate?

The protection of 3-phase motor driven equipment

The independent engineer has emphasised that if Mr A's damaged air conditioning units - (which were 3-phase motor-driven equipment) - had been fitted with phase-fail protection there would not have been any damage occasioned by the confirmed supply event on 3 July 2003. He further notes that:

"In many cases, the normal overcurrent protection system for the motor (generally a 3-phase circuit breaker, but in some cases, three individual fuses) will not operate in time to prevent winding damage to the motor, bearing in mind that the overcurrent protection is (or should be) designed to accommodate the motor starting current for a short time in normal operation. Along with individual fusing of each phase on the LV distribution network, this characteristic of 3-phase motors is also well known to electricians and electrical contractors, who would generally suggest to a customer that phase-fail protection be installed for all 3-phase motors. In fact it might well be argued that they have a duty to do so".

Analysis

It is agreed that an event occurred on the network at a time that is reasonably proximate with the time nominated by Mr A for the supply interruption to his premise. It also appears that there is no dispute that the nexus between the failure of Mr A's air conditioning equipment and the loss of a phase in the supply to his premise is extremely strong. The supplier has informed EWON that the confirmed event was beyond their reasonable control and, in any case, in respect of the damage claimed by Mr A, their supply contract and claims policy do not provide for any consideration of claims for 3-phase equipment damage.

EWON acknowledges the independent engineer's comment that it is the customer's responsibility to install appropriate protection equipment, in the knowledge that supply to one phase of a 3-phase supply can be interrupted. In EWON's experience it is also apparent that some customers who have not installed this equipment are unaware of the steps that they can take to mitigate their loss as they are apparently not informed about phase-fail equipment by their electrical contractor at the time they contract to have this equipment installed.

It appears that some private electrical contractors are failing to provide advice about the need for phase fail protection equipment when they install air conditioning units for customers. This is regrettable, as it leaves their customers needlessly exposed to the risk of damage to the units from electricity incidents.

While this is clearly not the responsibility of the supplier or other electricity distributors, I believe that they have a role in providing advice about the need for protection devices when they become aware that a customer has three-phase equipment. In the case of Mr A, the supplier had a clear and direct opportunity to provide advice to him that three-phase equipment is subject to damage unless protective devices are installed to mitigate the effects of power failures. This opportunity arose in 2002 when the company denied the first claim by Mr A for compensation for damage to his air conditioning units. The very nature of Mr A's claim for compensation for damage to his air conditioning units would have alerted his supplier to the fact that he lacked phase failure protection for this equipment. It would have been an obvious and reasonable action for the supplier to provide such information to Mr A at the same time as they denied his claim for compensation. This would have been basic customer service to Mr A, and a simple preventative measure by a supplier with the knowledge that Mr A lacked. The company was in a good position to advise their customer on steps to take to mitigate loss, but for whatever reason elected not to provide this advice when they denied Mr A's claim for compensation.

As it turned out, Mr A installed phase-fail equipment as soon as the company informed him of its availability but unfortunately this was after he had sustained damage to this equipment for a second time following the loss of a phase on the low voltage supply.

While Mr A's failure to have protection equipment installed is a key consideration, so too, is the extent to which the supply incident that occurred on 3 July 2003 was within the supplier's reasonable control. The advice provided by the independent electrical engineer would tend to suggest that Distribution Substation [number] (or at least part of it) was subject to a planned outage on the morning of 3 July 2003 and therefore its LV network (or part of it) was being supplied via a LV parallel involving an interconnection between its Distributor #3 and

Distributor #2 out of Distribution Substation [number]. It also seems that the LV parallel might have been inadequate, and therefore the fuse controlling one phase of Distributor #2 out of Distribution Substation [No…] operated due to the resulting overload. As a consequence, with no other source of supply (given that Distribution Substation [No..] or the relevant part of it appears to have been out of service), an interruption occurred to one phase of the supply to customers supplied by both of the LV Distributors concerned.

Given that the technical expert had to make certain assumptions in the preparation of his independent report based on the limited information available to him, EWON requested that he obtain additional information from the supplier that would assist in clarifying the reasons for the particular network arrangements on 3 July 2003 and the technical considerations underpinning the supply incident that led to Mr A's claim.

On 2 June 2005 EWON's independent expert wrote to the supplier requesting copies of the geographic network plans of the area showing the extent and arrangement of LV distributors from Distribution Substations [numbers] and the parts/sides of each street they supply; the rated capacities of Distribution Substations [numbers] and their LV distributors; the maximum recorded loads (total Substation loads and individual LV distributor loads) and the dates that these were recorded; and information about the load cycles of Distribution Substations [numbers] and when peak load periods (in terms of the time of day and time of year) occur.

On 10 June 2005, the company informed EWON that they did not intend providing a response to these questions as their advice on 17 May 2005 following their review of the conclusions of the independent technical report represented their final position in regard to this claim.

In attempting to resolve customers' complaints, EWON considers the relevant legislative provisions; industry practice and what is fair and reasonable in the circumstances of each case. In the circumstances of this matter, the supplier and EWON's technical adviser agree that there is a very strong relationship between the overload of the low voltage fuse, the consequent failure of one phase in the supply to Mr A's property, and the failure of his two air conditioning systems. There is also agreement that the damage sustained by Mr A's air conditioners would have been prevented by phase-fail protection equipment, had it been fitted[2]. While it is apparent that Mr A could have taken steps to mitigate the risk of further damage/loss to his 3-phase air conditioners after the damage sustained in the first supply event in 2002 had his repairer / electrical contractor advised him of its availability, it also seems reasonable for the supplier to take appropriate steps to minimise the possibility of interruptions to supply.

The company has stated that the confirmed supply event on 3 July 2003 was beyond their practical control. However, for the reasons already outlined in this Determination, it appears that the circumstances of the single-phase supply failure on the claimed date were unusual and, in light of this, EWON's independent technical adviser has indicated that it is important to establish, *"if possible"*, whether the loss of one phase of the supply was within or beyond the control of the supplier. He has emphasised that the information he sought from the company in his correspondence sent on 2 June 2005 was requested in an attempt to clarify this as *"there is some confusion on the part of [the company] about several matters that relate*

[2] EWON's technical adviser has noted that there are no other reasonable explanations for the failure of Mr A's electrical equipment in the circumstances of this matter.

directly to the crucial issue of the degree of its control over the event, especially in light of advice subsequently provided by [the company]".

In order to confirm the company's advice to EWON on 1 April 2004 that this supply event was *"due to circumstances beyond [the company's] reasonable control"*, EWON's technical adviser has indicated that it is important to further clarify certain technical information. This includes establishing *"which Distributor and which Substation provides the supply to Mr A's premises, and which one (or both) was interrupted on 3 July 2003*"; whether the two LV Distributors – (No. 3 ex Substation [No..] and No. 2 ex Substation [No..]) - were interconnected at that time; and,

- *"if (as it appears, despite later denial by [the company]) the two Substations were in LV parallel at the time, the parameters of the parallel in terms of its integrity and the capacity of the substations supplying the remaining load*
- *the cause of the overload which resulted in the supply interruption (in order to establish the nature of the system failure and hence whether it was within the control of [the company])".*

EWON's considers that the requested supplementary information is relevant to an independent, comprehensive investigation of this matter.

Conclusion

Given the available information, EWON is not in a position to comment further on the technical aspects of the supply event underpinning Mr A's claim. However, in a situation where EWON's independent expert has indicated that there is additional technical information that the supplier could reasonably be expected to provide to support their position that the supply event that appears to have damaged Mr A's equipment was beyond their practical control, 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 $2000 to Mr A as full settlement of his claim. The amount recognises that while the company failed to advise their customer of the need for protective action when they were well placed to do so, they do not bear full responsibility for this matter.

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