



Determination 61 – May 2007

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

Introduction

This determination relates to a claim from a customer for compensation for \$1775.76 for damage to an x-ray film printer – Mr S.

By way of introduction I wish to note that during its nine 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 S submitted a claim to his electricity supplier dated 5 October 2004 for \$1619.33 for the estimated cost of repairs to a Film Printer. The Film Printer was damaged following a variation to the electricity supply to Mr S's business premises on Wednesday 29 September 2004. Mr S stated in his *Claim Form* that there was an interruption to the electricity supply which occurred at approximately 12 noon. He also stated that:

“Power supply cut out (blackout) in the suburb. We noted power to all surrounding shops ceased.”

In response to this situation, Mr S advised that he had “turned all the switches off on all [his] machines to avoid damage during return of power supply.” When supply was restored, which he said became apparent when the lights came back on, “the machines were turned on/switched on again, but one machine (film printer) failed to power up.” Mr S included a copy of a repair quotation (undated) with his *Claim Form*, which stated that the Service Estimation he obtained for \$1619.33 was valid until 14 October 2004. This also stated that the “actual cost involved may vary based on parts and labour required”.

The supplier wrote to Mr S on 15 October 2004 advising him that his claim had been denied. The supplier also informed him that he could refer his claim to EWON if he was not satisfied with the decision.

Mr S contacted EWON on 23 November 2004 to request an independent review of his supplier's decision to deny his claim. In his letter to EWON on that date he indicated that the actual cost of the repair to the damaged Film Printer was \$1775.76. He stated that the damaged Film Printer “was on and working prior to the black-out, but failed to work thereafter when power was restored.” The Film Printer was four and a half years old and Mr S commented that he felt fortunate that the repair cost was as modest as it was, given that this equipment cost \$70000. He also informed EWON that:

“ The technician who repaired it showed me that several circuit connections had blackened out in colour due to a power surge and noted so in his report as per copy attached.”

Mr S provided documentation in support of his claim including copies of the accredited repairer’s report for the damaged equipment and a copy of the repair invoice dated 31 October 2004 for \$1775.76.

The supplier’s response

The supplier sent Mr S a *Claim Form* and then wrote to him on 6 October 2004 to acknowledge receipt of the completed form.

In their claim determination letter dated 15 October 2004, the supplier informed Mr S that their records confirmed that his business premises experienced an unplanned supply interruption on 29 September 2004. However, the supplier further advised that:

“[The supplier’s] records do not disclose any variation in the electricity supply (such as surge or overvoltage) that does not comply with our supply standards, at that point in time.”

The supplier noted that their policy is not to make offers of compensation in such circumstances and suggested to Mr S that he might wish to contact his insurer to clarify if his insurance covers the type of loss he had sustained.

In their initial *EWON Investigation Report* dated 31 December 2004, the supplier advised EWON that Mr S’s premises is supplied electricity via Distribution Substation [number] and the high voltage feeder out of the Zone Substation.

The supplier stated that the interruption to supply resulted from a network protection operation at 12.03pm on 29 September 2004, which interrupted supply to the 132kV feeder into the Zone Substation. The cause of this interruption was stated to be “a fault on No.2 Zone Transformer”. The supplier also advised that the loss of the 132kV feeder supplying the Zone Substation resulted in an interruption to supply to 403 Distribution Substations, including that which supplies Mr S’s business premises, for approximately 50 minutes.

The supplier provided EWON with a copy of their *HV Interruption Report* [number] for the incident that occurred on Wednesday 29 September 2004. This primary system operation record confirmed that the network incident involved Transformer No. 2 at the Zone Substation and that this “occurrence” resulted from a “defective transformer.” The supplier also confirmed that at the time of their *EWON Investigation Report* dated 31 December 2004, they had received four other claims relating to the supply incident on 29 September 2004. In

stating the reason for their Claim Determination, The supplier noted that Mr S's claim had been denied on the basis of their Customer Contract, which informs customers that:

“The supplier does not make, or imply, any guarantee of supply and customers must be aware that the supply of electricity could possibly be interrupted without notice at any time.”

The supplier also informed EWON in their Report that:

“the interruption to supply was beyond the reasonable control of the supplier and was due to a fault on No 2 Transformer at the Zone Substation”.

In their response to EWON's request on 10 March 2005 for clarification of the circumstances of the failure of Zone Transformer No 2, the supplier reiterated in their *EWON Investigation Report* dated 12 April 2005 that this incident was beyond their reasonable control:

“The circumstances of the claimant's supply were: an unforeseeable fault at a Zone Transformer caused the automatic protection equipment to operate correctly on the 132kV supply, resulting in an interruption to about 400 Distribution Substations for around 50 minutes. The fault was beyond [the company's] reasonable control.

All equipment involved in this event were within the normal maintenance schedule periods.”

On 27 May 2005, EWON made a further request for additional information about this network incident to assist us to respond to Mr S's concerns. In particular, we sought clarification as to why the failure of the transformer was deemed to be beyond the supplier's control. We also requested further information regarding the maintenance schedule that the supplier referred to in their report dated 12 April 2005.

On 4 July 2005, the supplier informed EWON in their third *EWON Investigation Report* that:

“The interruption was due to the fault condition on the transformer. The interruption was not foreseeable or predictable as all aspects of normal maintenance were within normal schedule periods.”

On 2 August 2005, EWON made another request for specific information regarding the identified reason for the failure of the transformer. In response, the supplier stated in their *EWON Investigation Report* dated 9 August 2005 that:

“The fault was not predictable as all maintainable components of the transformer were found to be in order at the last maintenance prior to the fault. All components were within the normal maintenance schedule periods at the time of the fault. [The

company] does not disclose maintenance details, however all equipment was within the Network Standard maintenance requirements.”

On 21 November 2005 EWON again requested that the supplier provide to EWON a copy of the primary records on which they had based its advice to EWON that:

“...all maintainable components of the transformer were found to be in order at the last maintenance prior to the fault. All components were within the normal maintenance schedule periods at the time of the fault.”

The supplier wrote to EWON on 30 November 2005 to advise that they had “refined” their claims policy and were reviewing Mr S’s claim and those of other customers who had referred complaints to EWON about their claims being denied in light of this policy. Following the supplier’s subsequent advice that they stood by their decision to deny the claim, on 23 June 2006, 28 June 2006 and on 3 July 2006, EWON again requested that the supplier forward a copy of their maintenance records for the failed Transformer. In response to these further enquiries, the supplier advised EWON on 7 July 2006 that:

“[the company’s] position remains as previously stated. [the company] is not prepared to provide EWON with maintenance records.”

Subsequent to this advice, on 26 October 2006 and 1 December 2006, the supplier discussed with EWON the delays for their customers occasioned by the failure to provide the data requested by EWON for its investigations, and indicated that they were committed to improving the standard and timeliness of information provision to EWON. However, as the information we requested was not forthcoming, we forwarded a final request to the supplier on 10 April 2007 outlining the details and dates of our requests for information and again asked that the supplier provide the relevant maintenance records. In response, the supplier advised verbally that they were uncertain if any further information would be made available to EWON.

Mr S has contacted EWON several times regarding the delay he has experienced in obtaining the outcome of EWON’s review of his complaint. Despite the considerable patience he has displayed, Mr S is surprised and concerned at his supplier’s failure to provide the information that they state is available to support their decision to deny his claim, particularly as the supplier referred him to EWON if he wished to have his claim independently investigated:

“If you are not satisfied with [the company’s] decision, you can refer your claim to the Energy and Water Ombudsman (EWON). EWON is an independent body who will review and investigate customer complaints up to a year after the event that occasioned them, at no cost to you.” (letter dated 15 October 2004).

As an independent dispute resolution agency, EWON needs access to all relevant information to enable us to properly investigate customer complaints. In reviewing the supplier's decision to deny Mr S's claim, EWON required access to all the information that can reasonably be assumed to have formed the basis of the supplier's own investigation of the circumstances of the claim.

The supplier has not disputed that the confirmed network incident could have caused the damage claimed. Similarly, EWON does not dispute that business customers are responsible for ensuring that their equipment is adequately protected in the event of supply variations. We also understand that the supplier undertakes inspections and scheduled maintenance to protect its network assets and acknowledge that the failure of network assets can be unpredictable and can occur despite adherence to prescribed maintenance schedules. However, as the supplier has emphasised that the network incident was beyond their reasonable control, it is reasonable that they provide the information supporting this. In the circumstances of this matter, the supplier has stated several times that "all components [of the failed Transformer] were within the normal maintenance schedule periods at the time of the fault." While this might be the case, in responding to customers' requests for an independent review of the supplier's decision to deny their claim, EWON's role is to ensure that all relevant information, particularly primary data, is provided to support a comprehensive and independent investigation.

EWON has requested additional information about the "fault condition" on the failed transformer many times in addition to copies of the supplier's records regarding the maintenance of this equipment. The provision of this information is critical to ensuring that our response to Mr S's complaint is based on a proper review of all the information. This includes making appropriate inquiry as to the records supporting the supplier's response to EWON that the network incident was beyond the supplier's reasonable control given that "all maintainable components of the transformer were found to be in order at the last maintenance prior to the fault." The supplier's advice to EWON in this regard suggests that the company accepts the relevance and significance of this information to their own claim determination.

In his discussions with EWON, Mr S has stated his specific concern about the contemporaneous failure of his Film Printer with the supply variation to his business premises. The supplier's *High Voltage Interruption Report* for 29 September 2004, which states that the supply interruption occurred at 12.03pm, confirms Mr S's statement on his *Claim Form* that he experienced an outage around midday. Mr S's concern about the denial of his claim arises from his experience of the actual supply interruption and his supplier's advice to him that their records "do not disclose any variation in the electricity supply (such as surge or overvoltage) that does not comply with our supply standards, at that point in time"; his accredited repairer's report; and the failure to provide relevant information to EWON that the supplier insists is available about their compliance with the maintenance schedule for the failed Zone transformer. On this basis, Mr S has formed the view that the supplier has responsibility for his loss.

If EWON's independent investigation indicates that there are not sufficient grounds for taking a matter further, we need to explain to the customer the reasons for this as clearly and comprehensively as possible. It is not tenable for EWON to inform a customer that there are records available that support the supplier's statement that the failure of the Zone Transformer was beyond their reasonable control when the company consistently refuses to provide these to EWON. As an independent dispute resolution body, EWON's role is to ensure that all concerns raised by a customer are addressed, and it is not possible for EWON to do this when relevant information is not provided.

In any case, the EWON Constitution provides that: "If a dispute arises in relation to the provision of documents under this clause (5.2), the Ombudsman in his or her absolute discretion is to determine whether the documents or any of them are to be produced."

EWON has attempted several means of addressing this situation but none has been successful, and EWON has not been able to obtain from the supplier the information that is required to complete an investigation of Mr S's claim. Given the supplier's refusal to provide relevant primary records which they have indicated are available and support their denial of the claim, and in the apparent absence of any detailed investigation and reporting by the supplier regarding the failure of the zone transformer that might facilitate a more conclusive position, it is not possible to assess the degree to which the failure of the network equipment was beyond the supplier's reasonable control. This results in a situation where there is an unavoidable element of doubt and, in light of this situation, it appears reasonable for the benefit of this doubt to go to the customer.

Conclusion

Given the incomplete information, EWON is not in a position to complete our investigation of Mr S's claim and we are unable to comment further on the technical merit of the claim. This Determination is therefore essentially made on the grounds of unreasonable delay rather than on the substance of the claim. If the supplier had provided the requested information,

this matter might not have gone to Determination, and would certainly have been finalised much earlier. However, in a situation where the supplier has not responded over an extended period to the valid requests that have been made for information, I believe it is reasonable for the supplier to make a payment to Mr S to finalise this matter on the basis of unreasonable delay and inconvenience for the customer.

Under the provision of Clause 6 of the Constitution of the Energy & Water Ombudsman NSW scheme I therefore determine that the supplier should pay the sum of \$1775.76 to Mr S in acknowledgement of the delay that has occurred in finalising his complaint.

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

Clare Petre
Energy & Water Ombudsman NSW
31 May 2007