



Energy & Water
Ombudsman NSW

Determination 23 – Nov 2005

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 consequential loss due to an extended outage – Mr F.

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 loss and 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 F submitted a *Claim Form* dated 4 September 2003 to his supplier following an extended interruption to the electricity supply to his business premise from the early hours of Tuesday 15 July 2003 until midday on Wednesday 16 July 2003. He sought compensation totalling \$7743.81 for the costs associated with the hire and installation of a generator (\$2716.55); for additional transport costs *“incurred because of delays in delivery caused by the power failure”* (\$550); and for loss of wages (\$4477.26). Mr F provided tax invoices and copies of his employees’ time sheets to substantiate the quantum of his claim. His claim *“did not include business loss due to the fact that there was no means of communication”*. In addition, his employees were *“out of pocket”* because they had to use their own mobile phones to make business calls.

In his letter to EWON dated 10 January 2004 Mr F requested a review of the reasonableness of his supplier’s decision to deny his claim for *“expenses incurred due to an equipment failure on 15 and 16 July 2003”*. He noted that his supplier’s advice that they *“endeavour to minimise interruptions”* is at odds with the response from the [suppliers] repair crew that attended the failure”. He stated that the attending field staff had informed him that *“the underground cable in this section of [the supplier’s network] was very old and degraded and that it was surprising that it had held up for as long as it had”* and that they *“were now back to dig up the street to replace the cable.”*

Mr F stated that he believed his claim *“was fair”* whereas the supplier *“had not endeavoured to minimise interruptions while they knew the infrastructure was sub standard”*. He also noted that he had not included any claim for *“loss of opportunity while our phone ceased working, or for the mobile phone bills...the re-setting of machinery or all the computer problems that arose etc etc”*.

On 2 May 2005 Mr F informed EWON that he had hired a generator in order to meet an urgent business deadline and because the supplier *“would not give me any guarantee of any timeframe”* for the restoration of supply. He stated that he had a clear recollection of the supplier’s advice to him on 15 July 2003 that the affected section of the network was in *“extremely old condition”* and that the field crew *“did not seem to be at all surprised by the fact that it had failed”*. He acknowledged the accuracy of the supplier’s advice to EWON that they were unable to gain access to his premise to disconnect the generator and reconnect mains supply following their completion of repairs at approximately 11.59pm on 15 July 2003 as there would have been no one at his business site at that time of the evening.

The supplier's Response

The supplier sent Mr F a Claim Form on 15 July 2003 and subsequently wrote to him on 8 September 2003 advising that the matter was being investigated. In their Claim Determination letter dated 16 September 2003, the supplier informed Mr F that:

"[We] wish to advise that we endeavour to minimise interruptions but cannot guarantee an uninterrupted supply of electricity".

The supplier also referred Mr F to their "Customer Contract for supply of electricity" which states that interruptions may occur and advises customers that they "do not make offers of compensation in such circumstances for loss of productivity or non-material loss or damage (such as transport costs or generator hire)". On this basis, the supplier suggested that Mr F might wish to contact his insurer.

In their *EWON Investigation Report* dated 14 September 2004 the supplier advised that their review of their Network records for the period from 12 to 18 July 2003 indicated that there was a protection operation at 9.50pm on 14 July 2003, which interrupted a section of their 11kV feeder beyond Distribution Substation [number] which is supplied via the Zone Substation. The supplier stated that the cause of the interruption was a fault in the underground 11kV cable in a street between their Distribution Substations [numbers]. This confirmed network incident on the 11kV feeder interrupted supply to the customers supplied via the six Distribution Substations impacted by this event. Supply was restored by low voltage (LV) interconnection at approximately 10.34pm. The supplier stated that Mr F and other customers affected by this incident were without supply for approximately half an hour.

The supplier also informed EWON that they had received one other claim in relation to this supply incident and that:

"there are no records of any interruption of extended duration in the claimant's area on 15-16 July. There are no records of customers in the claimant's area contacting Emergency Service regarding a long duration interruption. However, depending on the location of the fault and the availability of LV interconnections, it could be possible that some customers may have been affected for the duration of the cable repair work".

The supplier also stated in this initial *EWON Investigation Report* that their claim determination was based on the terms of their *Customer Contract* and predicated on the fact that:

"The interruption to supply was beyond the reasonable control of the supplier and was due to a fault in an underground 11kV feeder".

In their second *EWON Investigation Report* dated 19 October 2004, the supplier informed EWON that:

"most customers connected [to the affected feeder] had supply restored by network switching. This facility was not available to all the affected installations and a small number of customers were affected by a very long duration interruption."

The supplier advised that their field staff had worked all day on 15 July 2003 to isolate the damaged section of underground cable and supply was restored for those customers still without power at 11.59pm that night. As Mr F had installed a generator, the supplier was unable to restore his supply until the following day. In response to Mr F's comment on his discussions with the attending field staff, the supplier stated that:

"The Field Services Supervisor recalls a discussion with the claimant at the time of the event about the option of installing a generator. In accordance with normal procedure, the installation of a generator is the customer's prerogative, provided a visible isolation from the mains supply is made."

The supplier reiterated that they cannot guarantee a continuous supply of electricity and that *"customers who rely on a continuous supply for business purposes and make arrangements for an alternative source of supply, do so at their own cost"*.

EWON's Investigation

EWON's investigation considered:

- information provided by Mr F
- information provided by the supplier
- a preliminary technical report on the circumstances underpinning the confirmed network event by an independent electrical engineer.

EWON's review of the available information noted that the supplier's System Operation Report - *HV Interruption Report* - indicated that supply to Distribution Substation [Number] which supplies Mr F's business premise was interrupted on Monday 14 July 2003 at 9.50pm. This Report states that supply was restored at 10.29pm via network switching and also indicated that the cause of the interruption *"was not found."* However, the System Operator included this comment: *"suspect UG feeder fault between [numbers]."*

On 13 October 2004 EWON requested a copy of the network diagram showing the relative location of Distribution Substation [Number] to the fault on the 11kV feeder and the suspected underground feeder fault (as described on page 4 of the supplier's *HV Interruption Report*). EWON also requested information relating to the supply history for this particular section of the supplier's underground distribution network in order to respond to Mr F's advice that the supplier's field staff had informed him that the underground cable impacted by the fault was *"very old and degraded"*.

On 19 October 2004, in response to EWON's request, the supplier provided a copy of the network diagram noting that *"[the supplier was] not sure what value the network diagram can be to [EWON's] investigation however a copy is attached."* In addition, the supplier stated that *"the age of network assets involved is not relevant to the investigation of this claim and there is no maintenance that can be carried out on underground cables"*. The supplier reiterated this in their *EWON Investigation Report* forwarded on 27 June 2005 which stated that as Mr F's claim for losses was associated with a specific network incident, *"historical information is not relevant to the investigation of this claim"*. Nevertheless, the supplier provided this information on the performance history of the affected 11kV feeder:

“The customer is supplied by LV Distributor [number] out of Distribution Substation [number] on 11kV feeder out of the Zone Substation. Records show that since October 1997 his supply has been affected by 6 network events of which only 3 were on the 11kV feeder (one of these was third party damage to the underground cable). There is no indication of ongoing cable problems that would have suggested that the cable was in poor condition.”

Following our review of the network diagram, we sought the supplier’s assistance in clarifying why the interruption to supply which Mr F experienced was of such lengthy duration when it appeared from the network diagram that alternative supply might have come from the second 11kV feeder supplying Distribution Substation [Number].

In a detailed response dated 27 April 2005, the supplier informed EWON that:

- 1. “The duration of the interruption to a small number of customers supplied by distributor 1 out of Distribution Substation [number] was unavoidable. Most customers were reconnected by LV interconnections on the overhead reticulation. Unfortunately this interconnection facility was not available to all customers (including the claimant).*
- 2. The management of network switching is a complex process requiring significant understanding of network issues. The System Operator manages the operation of the network to minimise the impact of an interruption on customers. The view of the System Diagrams does not address all the complex aspects involved.*
- 3. Only LV interconnections were possible because of the nature of the fault, the location relative to the Distribution Substation, the isolation requirements required to provide a safe work area for repair staff etc. This event was caused by an event beyond the supplier’s reasonable control (an underground cable fault) and alternative network supply sources were not available to the claimant during the repair process. The claimant chose to install a generator to maintain supply to his business, as is his right”.*

However, as the supplier did not respond to our specific request for clarification as to why the interruption to supply was of such lengthy duration given that alternative supply might have come from the second 11kV feeder supplying Substation [Number] - (as shown on the network diagram) - we made a further request for this information on 6 June 2005.

In response, the supplier advised EWON on 27 June 2005 that:

- *“alternative network supply sources were not available to the claimant during the repair process*
- *the management of network switching is a complex process requiring significant understanding of network issues. The System Operator manages the operation of the network to minimize the impact of an interruption on customers. The view of the System Diagrams does not address all the complex aspects involved*

- *only LV interconnections were possible because of the nature of the fault, the location relative to the Distribution Substation, the isolation requirements required to provide a safe work area for repair staff etc.”*

Unfortunately, the supplier’s response dated 27 June 2005, which is provided below, did not directly address the question as to why alternative supply could not be made available via the second high voltage feeder into Distribution Substation [Number]. It remained unclear why this was “*impossible*” as advised by the supplier:

1. *“The circumstances of the fault and subsequent testing and repair works made high voltage interconnection impossible. The supplier carried out interconnections on the low voltage reticulation to restore supply to most of the affected customers.*
2. *Unfortunately a small number of customers supplied by Distributor [number] out of Distribution Substation [number] could not be interconnected on the low voltage and were therefore without supply for an extended period.*
3. *The supplier makes every effort to restore supply to customers as quickly as practicable. In this instance the circumstances of the event resulted in alternative sources of supply not being available. Safety requirements for the testing and repair activities require multiple isolation points, which negated the use of any high voltage interconnection”.*

Given our repeated and unsuccessful attempts to obtain the requested clarification as to why, on this occasion, supply was not available from the second 11kV feeder when the first one failed, we informed the supplier on 19 August 2005 that we had referred the matter to an independent electrical engineer, noting that we were unable to progress our investigation of Mr F’s complaint until we received the necessary clarification.

Independent technical advice

On 26 September 2005 the independent electrical engineer informed EWON that his preliminary review of the information available indicated that:

“[there appear to be] no complications in the circumstances which would have prevented HV interconnection” and that “because of the apparent availability of an alternative source of high voltage supply, the lack of any explanation why the circumstances of the fault and subsequent testing and repair works made high voltage interconnection impossible, more information is likely to be required from the supplier”.

In his Report to EWON dated 7 November 2005, the engineer advised that the HV network is normally designed and arranged (in terms of interconnections and open points) to enable the restoration of supply by switching in the event of a fault and that “*situations where this cannot be done are very rare*”. He also stated that, contrary to the supplier’s advice to EWON on 14 September 2004:

"restoration of supply to almost all the customers affected by the outage by means of LV interconnection is an extremely unlikely eventuality; in reality, restoration must have been by HV switching. It is not clear how some of the customers ("a small number")

supplied by Distributor [No] could be left without supply after all other customers had had their supply restored; this too is extremely unlikely, unless there had been some other system event which affected the LV network supplied by [number]. Otherwise, if the facility existed to supply some of the customers supplied by Distributor [number] by LV interconnection, then logic dictates that it would have been available to all of the customers supplied by Distributor [number]

and,

"if supply to almost all customers - including the bulk of the customers supplied from [number] - was restored by HV network switching as it appears, then it is difficult to know why supply to a small number of customers supplied by Distributor [number], including Mr F, was not restored until 2359 hours on 15 July, an outage duration of 26 hours 9 minutes (neglecting the further delay caused by the need to gain access to Mr F's premises to disconnect the hired generator)

In summary, the independent engineer noted that it seemed “*highly probable*” that Mr F and the other customers whose supply was not restored a short time after the incident, “*were affected by another event, on the LV network, coincident with and presumably arising from the HV feeder failure.*” His review of the supplier’s Investigation Reports to EWON and the supplier’s System Operation Faults, Outage and Damage (FOD) reports, has highlighted some inconsistencies in the supplier’s commentary on this event.

For example, the supplier’s *EWON Investigation Report* dated 14 September 2004 states that supply was restored “*by LV interconnection at about 2234 hrs,*” and the “*loss of 11 kV supply beyond Distribution Substation [number] resulted in an interruption to the customers connected to six distribution substations... for about 0.5 hours.*” However, the FOD report (dated 14 September 2004) provided by the supplier indicates that restoration of supply was by HV network switching at Substations [numbers] respectively. The engineer has concluded that:

*“it is inconceivable that supply to all of the affected substations (or even most of them) could have been restored by LV interconnection (and even if it were possible, the number of paralleling points required would mean that it would take much longer than half an hour). It is also worth noting that the supplier’s Investigation Report dated 19 October 2004 states: “most customers connected to this feeder had supply restored by 2234 hrs, by network switching” (by implication, **HV** network switching). The same report goes on: “This facility was not available to all the affected installations and a small number of customers were affected by a long duration interruption.”*

He noted that the latter statement that not all the customers supplied by the six Distribution Substations were able to have supply restored by HV network switching is inconsistent with the configuration of the network and with the fact that supply was able to be restored to any customers by HV network switching. In addition, the engineer stated that the supplier had not provided any explanation either for this anomaly or why alternative HV supply to Substation [number] was not available or would not have allowed restoration of supply to all of the customers supplied from Substation [number]. In his assessment, it seemed “*extremely unlikely*” that supply to the customers fed by the six substations interrupted by the cable fault

at 2150 hrs on 14 July 2003 could have had supply restored by LV interconnection. He concluded that:

*“I have no doubt that supply to all six was in fact restored by HV network switching, by 2234 hrs the same night. Therefore the extended interruption (over 26 hours) to customers supplied by Distributor [number] could only have arisen through some event on the **LV network**, coincident with and arising from the HV feeder failure, as suggested above. In my view, any conceivable scenario, such as the one I have postulated above, which could give rise to the outcome which in fact resulted on 14 – 15 July 2003 – that being the extended nature of the interruption to a small number of customers including Mr F, could only have come about through **an error** by the supplier’s operating staff (or staff under their direction). The most likely error is that a LV interconnection (between Distributor [number] and another substation, probably [number]) was inadvertently left in place when it should not have been. If this is so, then clearly it was within the practical control of the supplier”.*

Given that Mr F’s premises are supplied by an underground service, and that no one was on the premises at 2359 hours on 15 July to provide access, how was it possible to restore supply at that time to Distributor [number]? If such restoration did not in fact occur until the next day, how was isolation of this distributor maintained until then once normal supply was restored to [number]?

It appears that the circumstances, which gave rise to the extended interruption to Distributor [number] on 14 July 2003, were occasioned by a pre-existing LV interconnection between it and a LV distributor supplied by an adjacent substation. Please verify this, and also verify that such interconnection (LV parallel) should not have been left in place on an extended basis.

Analysis

It is agreed that Mr F’s business premise experienced an extended outage between 14 and 16 July 2003 and that he decided to install a generator to ensure he met an urgent deadline for his business operation after he established with the supplier that they were unable to give him a timeframe for the restoration of supply. The supplier has informed EWON that this confirmed event was beyond their reasonable control and, in any case, in respect of the compensation claimed by Mr F, their supply contract and claims policy do not provide for any consideration of business loss. The supplier’s *Standard Form Customer Supply Contract*, specifically excludes business loss:

The supplier is not liable for any indirect, economic, special or consequential losses or damages of any kind suffered by the customer (including corruption of data losses, business interruption losses, loss of profits or any other indirect costs of any kind)

EWON also acknowledges that faults in underground cables can be difficult to locate and that the time expended on rectification work can be lengthy. EWON also acknowledges the supplier’s advice that “the work to repair the damaged underground cable was carried out in the most effective manner possible” and that there is “no indication of ongoing cable problems that would have suggested the cable was in poor condition”.

However, EWON's investigation of this long-standing complaint has been frustrated by many unsuccessful attempts to obtain relevant information in order to respond to the issues Mr F has raised. EWON received the supplier's claim file on Mr F's complaint on 20 September 2004 after making nine requests for this between 14 January 2004 and 17 September 2004. In light of the significant delay experienced regarding the provision of the claim file, we indicated that a customer service gesture seemed appropriate in the circumstances irrespective of the outcome of our investigation of the substantive claim. Although the supplier acknowledged the "*abnormal delay*" regarding the provision of their file and subsequently stated in their *EWON Investigation Report* forwarded on 27 June 2005 that they had had "*difficulties in getting reports from field staff*", The supplier advised EWON that they "*did not believe that a customer service payment is warranted*".

EWON's investigation of the technical circumstances underpinning the extended interruption to Mr F's supply has similarly been characterised by several unsuccessful attempts to clarify why alternate supply was unavailable from the second 11kV feeder supplying Distribution Substation [number]. The supplier has provided several *EWON Investigation Reports*, none of which has directly addressed our enquiries regarding this point.

EWON's technical expert has provided a Report based on his review of the available information and his on-site inspection of the supplier's network in the immediate vicinity of Mr F's business premise. He has acknowledged that he has had to make certain assumptions in the preparation of his report based on the information available to him. He has emphasised that additional questions could well be asked of the supplier to assist in clarifying the details of the specific network arrangements that were in place on 14 July 2003 that might account for the extended outage that led to Mr F's claim. He has informed EWON that "*it appears that the circumstances which gave rise to the extended interruption to Distributor [number] on 14 July 2003 were occasioned by a pre-existing LV interconnection between it and a LV distributor supplied by an adjacent substation*".

However, he has also indicated that it is reasonable for the supplier "*to verify this, and to verify that such interconnection (LV parallel) should not have been left in place on an extended basis*". His report has also identified other points relating to the duration of the outage impacting Mr F's supply that EWON considers could reasonably be referred to the supplier for comment, such as the enquiry noted below:

Given that Mr F's premises are supplied by an underground service, and that no one was on the premises at 2359 hours on 15 July to provide access, how was it possible to restore supply at that time to Distributor [number]? If such restoration did not in fact occur until the next day, how was isolation of this distributor maintained until then once normal supply was restored to [number]?

I consider that the supplier has had sufficient opportunity to provide relevant and necessary information about this matter to enable EWON to satisfactorily address Mr F's request that EWON review the reasonableness of the decision to deny his claim. The supplier's failure to do so over many months has resulted in an unacceptable delay in EWON being able to provide Mr F with an outcome to his complaint. The additional information the supplier was asked to provide to assist EWON's investigation of this complaint and the commissioning of an independent technical report was an attempt to clarify exactly what happened to cause the extended outage Mr F experienced and whether the duration of this event was to any extent

within the reasonable control of the supplier. The supplier's failure to directly address EWON's request for clarification as to why Mr F's premise could not be supplied via the second 11kV feeder into Distribution Substation [number] and the information in the independent technical report we have commissioned, have led to a situation where there is an unavoidable element of doubt as to the reasonableness of the supplier's decision to deny Mr F's claim, notwithstanding that this is for consequential loss.

As previously noted, the area of claims for compensation in relation to network incidents are complex and this is particularly the case regarding claims for consequential loss. EWON acknowledges there is an onus on customers, particularly business customers, to take steps to mitigate and minimise potential losses. Mr F has provided detailed information to the supplier and to EWON to quantify his claim and has indicated that he would accept its denial if the extended outage was beyond the reasonable control of the supplier. However, he has consistently stated that the supplier informed him that the condition of their infrastructure was wanting. EWON acknowledges the difficulties for network providers regarding the maintenance of underground electricity assets and the supplier's advice that *"there can be no maintenance that can be carried out on underground cables"*.

However, this Determination is made in recognition of the unacceptable delay Mr F has experienced in obtaining an outcome to his complaint. While there appears to be information to suggest that the circumstances underpinning the extended outage (as opposed to the precipitating network incident involving the underground cable fault) might have been within the supplier's reasonable control, this Determination is a decision made on the basis of customer service regarding the timely provision of necessary information, as it is not reasonable for Mr F to experience any further delay in obtaining an outcome.

Conclusion

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 has been incomplete responses over several months to the valid requests that have been made for additional information, I believe it is reasonable for the supplier to make a customer service gesture to Mr F to finalise this matter.

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 \$3500 to Mr F as full settlement of his claim in acknowledgement of the delay that has occurred in resolving his complaint.

Under the EWON Constitution, this decision is binding on the supplier. Mr F may elect within twenty-one days whether or not to accept this decision. If Mr F accepts the decision, he will fully release the supplier from all claims, actions, etc in relation to this complaint. In the event that Mr F 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
28 November 2005