

DETERMINATION BY THE GAS AND ELECTRICITY MARKETS AUTHORITY OF A DISPUTE REFERRED TO UNDER SECTION 39B OF THE ELECTRICITY ACT 1989 (AS AMENDED) CONCERNING FAILURE TO MAKE PAYMENTS UNDER THE ELECTRICITY (STANDARDS OF PERFORMANCE) REGULATIONS 2001 (AS AMENDED).

1. INTRODUCTION

1.1 The Gas and Electricity Markets Authority ('the Authority') has been asked to determine a dispute between [] ('the Customer') and East Midlands Electricity Distribution plc ('the Company'). The dispute concerns the failure to make a payment of compensation to the Customer in accordance with the Electricity (Standards of Performance) Regulations 2001 (as amended) ('the Regulations').

2. BACKGROUND

2.1 On Thursday 30 January and Friday 31 January 2003, the UK experienced high winds, snow showers and freezing temperatures across much of eastern and south eastern England causing disruption and damage to electricity distribution networks in these areas. The Lincolnshire area of the Company's network was particularly affected by the adverse weather conditions, which caused damage to both High Voltage ('HV') and Low Voltage ('LV') overhead line networks with around 55,647 customers affected.

2.2 The Customer's claim is made under Regulation 5 of the Regulations. This provides, except where any exemptions apply, a payment of £50 will be due to a customer if, following an interruption in supply, that supply is not restored within 18 hours of the interruption occurring. A further payment of £25 will be due in respect of each subsequent period of 12 hours if the supply has not been restored by the end of that period.

2.3 The relevant exemption in this dispute (set out in Regulation 17 of the Regulations) is that it was not reasonably practicable for the operator to restore supply within 18 hours (or the subsequent two periods of 12 hours) as a result of severe weather conditions and other circumstances of an exceptional nature (referred to in paragraphs 4.3 to 4.6 below) and that the Company had taken all reasonable steps both to prevent the circumstances from occurring and to prevent them from having that effect.

3. CUSTOMER CASE

- 3.1 The following points have been made in Customer correspondence in this case.
- 3.2 The Customer states that he was off supply for a period of two days, although this has subsequently been confirmed in correspondence by the Company to the Customer to be 42¼ hours, between approximately mid afternoon on 30 January 2003 and early afternoon on 1 February 2003. He believes that the Company should make a compensation payment as laid out under the Regulations.
- 3.3 The Customer claims that upon attempting to contact the Company by telephone during this period, that he either received an engaged tone or a recorded message advising that the Company was aware of a fault in the area, but which did not provide any other useful information (for example, an estimated time for restoration of supply).
- 3.4 The Customer highlights the impact of the loss of electricity supply on his household. He noted that the central heating failed, freezer goods perished, electronic devices such as the TV, computer, alarm clocks did not work and that they were extremely cold. Further, the bed heater for his waterbed was non-operational which in turn rendered it unusable.
- 3.5 The Customer notes that whilst the weather had been inclement, it did not prevent journeys being made in the area and therefore he disputes the Company claim for “force majeure” relating to weather conditions in order to suspend compensation payments to their customers.
- 3.6 The Customer also claims that the incident should be viewed in the overall context of the reliability of supply to the area, which has suffered multiple interruptions leading to great inconvenience for his household. The Customer explains that due to concerns over network resilience he has purchased and had to use a backup generator.
- 3.7 The Customer has also expressed concern over the perceived lack of investment in infrastructure and customer service, which has only served to exacerbate customer frustration during such events.
- 3.8 The following points have been made in subsequent Customer correspondence following the review of the statement of facts.

- 3.9 The Customer continues to dispute the Company's claim of adverse weather and that roads were blocked in his area, which delayed restoration of his supply. The Customer maintains that roads were passable with care even in "normal saloon" cars as opposed to four wheel drive vehicles.
- 3.10 The Customer maintains that despite numerous prior supply failures over the preceding year, no remedial action was taken by the Company to "improve a failing network".
- 3.11 The Customer remains unhappy with the level and quality of information given by the Company to its customers, citing this in conjunction with multiple interruptions to supply as the reason for contacting his Member of Parliament to complain about the level of service offered by the Company.

4. COMPANY CASE

- 4.1 The following points have been made in Company correspondence in this case.
- 4.2 The Company states that initial weather warnings were received from the Met Office on Monday 27 January 2003 predicting high winds affecting higher altitudes from Tuesday onwards. These were predicted to develop as the week progressed with accompanying snow in eastern areas. However, the Company states that it was not until the 29 January 2003, that high confidence level warnings were received. On 30 January 2003, detailed weather warnings were received and distributed to operational distribution staff and main external service providers ('ESP') as per operating procedures.
- 4.3 The Company says that its network was affected by the high winds, snow showers and freezing temperatures that affected much of eastern and south eastern England on 30 and 31 January 2003. It states that the Lincolnshire area of the Company's network was particularly affected by the adverse conditions, which caused damage to both HV and LV overhead lines. In Lincolnshire, wind speeds up to 50 knots (58mph) and up to 12 cm of lying snow were recorded. It also states that drifting snow made road access to damaged equipment difficult and working conditions unsafe and as a consequence this necessarily extended restoration times.
- 4.4 In ensuing communication, the Company stresses the impact that the adverse weather had on the region and argues that records both documentary and photographic demonstrate this.

- 4.5 The Company states that the severe weather event affected 2 per cent of their customer base and 14.3 per cent of customers in the Lincolnshire region of their network. The Company states that across its region within the first 24 hours of the event supplies to around 55,647 customers were affected, but that by midnight of 31 January 2003 supplies had been restored to in excess of 42,000 customers with all remaining customers restored by 06.30 on 2 February 2003. It states that due to the level of damage, infrastructure access, reduced daylight and persistent freezing temperatures the restoration times were prolonged, with customers affected by LV mains and service type incidents affected for several days.
- 4.6 The Company states that the average fault levels for January 2003 amounted to 2 HV faults and 8 LV faults per day. During the period of this storm event, the Company experienced a total of 4 Extra High Voltage faults, 137 HV incidents and 149 LV incidents, with an average rate of 32 HV and 37 LV faults per day. The Company states that a level one emergency was declared at 13.30 on 30 January 2003 due to the rising number of auto-reclose operations and permanent incidents and that this was escalated to level two status at 07.30 on 31 January 2003. The Company states that due to the high level of damage, all planned work was suspended. Assistance was sought from regional ESPs in addition to their core staff and all available resources were diverted to the Lincolnshire area. Despatch of resources was handled as per operating procedure for level two emergencies.
- 4.7 The Company states that they were first made aware of the loss of supply to the Customer at 17.24 hours on 30 January 2003. The Company states that supply was restored at 11.41 hours on 1 February 2003. The cause of the loss of supply was initially identified as an incident on the LV network caused by a jumper being off.
- 4.8 The Company has subsequently indicated that the fault affecting the Customer was in fact due to a jumper being off on the HV network and not on the LV network as originally indicated. This discrepancy was due to the original fault being logged as a 'single customer fault' on the computer records. Whilst later investigations resulted in detecting that it was an HV fault, the computer records were not updated and as a result, whilst compiling the initial statement of facts the incorrect information was submitted. The Company has apologised for this oversight in their original submission.

- 4.9 The Company notes that they attempted to despatch engineers on both the 30 and 31 January in order to make repairs, but that the engineers were unable to reach the affected property due to adverse weather and snow blocked roads in the Welton area. The fault was repaired on the 1 February.
- 4.10 At a technical meeting held at Ofgem's office, the Company also argues that it faced not only having to locate the fault, but would have had to assess ground conditions near the pole concerned, as the pole was near, but not on a road.
- 4.11 The Company also notes that any faults would have needed to be localised and repairs planned. Any repair work would have required authorisation by a senior authorised person of the Company. The Company maintains that there were sixteen such staff on duty, but that it was not possible to identify whether all of these people would have been available at all times, given the nature of the storm event, the volume of HV faults and working conditions. The Company agrees that potentially, field staff may have been available, but awaiting the authorisation to undertake repairs.
- 4.12 The Company are of the opinion that their emergency plan arrangements worked well and that their support systems handled all incidents and reporting in accordance with Standard Licence Condition 49 of their Electricity Distribution Licence.
- 4.13 The Company explains that as with any major storm event, the Operations Manager decided that in order to manage repairs effectively, field staff should be stood down by midnight each night. This decision was based on personal safety issues relating to working in the hours of darkness, freezing temperatures creating hazardous conditions, working time regulations and customers not wishing to be disturbed overnight. Other categories of staff such as call centre staff and incident management staff worked their normal shift patterns but with increased levels of resources in order to meet demand.
- 4.14 The Company states that customer communication, was provided in a variety of formats including the use of automated messaging systems, internal and third party overspill call handling arrangements, contact with the media and also with energywatch.
- 4.15 In subsequent correspondence, the Company disputes the Customer's claim that there were any telephony or messaging problems during the incident, restating that all support systems were in operation. The Company claims that system checks during the incident

and subsequent ongoing dialogue with energywatch has not indicated any telephony related issues.

- 4.16 In later correspondence, the Company stresses that it continues to strive to improve levels of service that it offers to its Customers through actively undertaking polling of customers and consumer agencies in the area.
- 4.17 The Company disputes the Customer's claim of lack of investment. The Company maintains that the frequent interruptions experienced have been mainly due to the correct operation of auto-reclosers on the network.
- 4.18 In successive correspondence, the Company, whilst appreciating the Customer's frustration, emphasises that network investment is a highly complex issue determined both through the price control process in addition to asset management.
- 4.19 The Company also made a claim for an exceptional event under paragraph 10 of Special Licence Condition G of its Electricity Distribution Licence. This is the interruptions incentive scheme licence condition. This claim related to blizzards and severe icing between the 30 January and 2 February 2003.
- 4.20 The Company disputes the validity of the Customer's claim. It points out that Regulation 17(6)(a) and 17(6)(f) of the Regulations provide exemption from paying compensation to customers in cases of severe weather and other cases of an exceptional nature respectively. The Company claims that it is justified in claiming an exemption and that therefore no compensation is due to the Customer.

5. **BACKGROUND TO THE AUTHORITY'S DECISION**

- 5.1 Under Regulation 5 of the Regulations, a distribution company is required, on receipt of an appropriate claim for compensation, to make a payment of £50 to domestic customers and £100 to non-domestic customers if that customer's supply is not restored within 18 hours of the company becoming aware of the loss of supply. A distribution company is required to make additional payments of £25 to all customers for each succeeding period of 12 hours that a customer's supply is not restored.
- 5.2 The requirement to pay compensation is subject to a number of both specific and generic exemptions. The generic exemptions are cited under Regulation 17 of the

Regulations. The Company has indicated that it was not reasonably practical for it to take action required by the Regulations before the contravention times because of the following:

- (i) severe weather conditions; and
- (ii) other circumstances of an exceptional nature.

5.3 In previous determinations relating to Standards of Performance, the Authority and its predecessor in law (the Director General of Electricity Supply) applied three tests in order to determine whether the exemptions cited apply. The Authority needs to be satisfied that:

- (i) the circumstances occurred (**test 1**);
- (ii) the Company took all reasonable steps to prevent those circumstances from occurring (**test 2**); and
- (iii) the Company took all reasonable steps to prevent those circumstances from causing a payment to become due (**test 3**).

5.4 Some of the issues raised by the Customer relate to the Company's telephony and call centre information systems. These issues are outside of the scope of this determination. Nevertheless, they will be addressed as part of Ofgem's ongoing work programme relating to quality of service.

6. SEVERE WEATHER AND NUMBERS OF FAULTS

6.1 Under **test 1**, the Authority needs to consider the nature of the weather conditions during which the Customer's supply was interrupted, and the extent to which those conditions hampered the restoration of the supply. Absolute wind speeds and the relationship between these wind speeds and historical averages can both be important indicators of severe weather.

6.2 The Customer's experience of the weather conditions is outlined in paragraphs 3.4, 3.5 and 3.9. Similarly, a summary of the Company's experience of the conditions is provided in paragraphs 4.3 to 4.5 and also in 4.19.

6.3 There is no dispute between the parties that on 30 and 31 January 2003 winds and snow affected a large part of the area in which the Company has obligations under the

Regulations. However, there is disagreement about the extent of the disruption caused and the impact of the severe weather. To this end, third party information was sourced from both the Met Office and Lincolnshire County Council in order to provide an independent assessment of both meteorological and road infrastructure conditions during this period.

- 6.4 Evidence was obtained from the Met Office relating to mean wind speeds, maximum gusts, precipitation / snowfall and hourly temperatures at weather stations located across the region served by the Company. The nearest observing site to the Customer is Wainfleet, situated approximately 10 kilometres to the south. This station unfortunately does not record snowfall depth, as confirmed by the Met Office report. However, precipitation data was made available and this in conjunction with readings from other observation sites located in the region has been used.
- 6.5 The Met Office advice notes that there were two main snowfalls during this period. Most areas of Lincolnshire (away from the north-west) had frequent snow showers or persistent snow for a period of at least several hours during the second half of 30 January 2003. With freezing temperatures being experienced inland, snow settled extensively during the evening and night with snow depths at Waddington, Cranwell and Coningsby accumulating up to 6 centimetres by the early hours of 31 January 2003. The Met Office notes that this snowfall was part of an extensive weather front stretching from Humberside to London with variable snow depths, and is also likely to have occurred across central and south eastern Lincolnshire. The second band of snow moved across the entire county during the first part of 1 February 2003 and added to the existing lying snow with Waddington and Coningsby recording maximum depths of 7-8 centimetres.
- 6.6 In addition the Met Office notes that the arrival of this cold weather was marked by strong winds during the 29 and 30 January 2003 and that in many parts of the county, the strongest winds coincided with the onset of snow. The strongest winds were recorded further north along the coast at Donna Nook (55 miles per hour), with the stations nearest to the Customer recording up to 36 miles per hour winds. Whilst the wind speeds taken in isolation do not appear particularly unusual (with the exception of Donna Nook), in terms of potential for icing, drifting and disruption to transport and communication, the Met Office suggests that the combination of strong winds and snow is likely to have had a more serious impact with the return period longer than either

event considered in isolation, meaning that it is likely to be more unusual for the time of year.

- 6.7 The Met Office notes that the centre of the anticyclone which had transferred north-westwards from the north-west of Spain to the west of Ireland, caused the winds over the UK to veer from westerly to north-north-westerly early on the 29 January 2003. This brought increasingly cold air over the UK which was eventually of Arctic origin. Temperatures recorded at the weather stations (Wainfleet and Coningsby) nearest to the Customer over the initial period of the disruption (30 and 31 January), indicate daily highs of at or just above freezing, with overnight temperatures dropping to as low as minus 4.1 degrees celsius. By 1 February 2003, daytime temperatures began to rise (highs of 3.4 to 6.1 degrees celsius) although overnight lows were still below freezing.
- 6.8 The Authority notes that the Company has submitted photographic evidence indicating the nature of the weather conditions affecting its network and the extent of damage caused to equipment (for example photographs of snapped poles) due to the severity of the conditions.
- 6.9 The Authority has sought independent advice from Lincolnshire County Council, which confirms that the start of the snowfall which moved south and west across the county led to “local network severe disruption” over a six hour period on the 30 January 2003 and further, that both the A16 and the A153 towards Boston and Horncastle respectively were closed overnight on the 30 January 2003 as a result of drifting snow on high sections of the routes. Further, it states that although roads were re-opened on 31 January 2003, driving on minor roads may have been extremely difficult by anything less than four wheel drive vehicles. Although there were no further problems reported later on 31 January 2003, the incident room of Lincolnshire County Council was not stood down from emergency status until 14.00 hours on Saturday 1 February 2003.
- 6.10 Taking both the Met Office and Lincolnshire County Council’s reports into account in addition to the evidence submitted by the Customer and the Company, the Authority considers that there was severe weather which caused damage to plant and equipment and resulted in the Customer’s supply being interrupted.
- 6.11 The **second test** requires the Authority to consider whether the Company took reasonable steps to prevent the severe weather causing an interruption to the Customer’s

supply. This requires the Authority to take a view as to whether the Company's distribution network serving the Customer was adequately designed to take account of the severe weather.

- 6.12 The Authority is of the opinion that there is no evidence to suggest that the faults occurred due to any failure by the Company to maintain its assets or to suggest that the fault damage was not caused by the weather conditions.
- 6.13 In the light of the evidence presented and having reviewed the design of the HV network to which the Customer is connected, the Authority is of the opinion that it has been designed in accordance with the applicable standards including those required by its electricity distribution licence.
- 6.14 The **third test** requires that the Authority considers whether the Company took reasonable steps to prevent the severe weather conditions causing a payment to become due under Regulation 5. This requires the Authority to take a view as to whether the restoration process undertaken by the Company was reasonable given the circumstances.
- 6.15 The Authority notes that the initial information submitted by the Company was insufficient in order to assess this third test and as a consequence further technical information was sought initially in documentary form and then subsequently a meeting was held in order to clarify the technical issues surrounding this case. The Authority observes that it has had to seek clarification from the company on a number of issues on more than one occasion relating to this incident. At each stage, the Company has however, cooperated fully and provided information requested in a timely manner.
- 6.16 Following the technical meeting, the Company explained that the specific HV fault affecting the Customer would have affected a total of 87 customers overall and was a complex incident. At the meeting, the Company explained that the Customer is supplied through an LV covered conductor overhead line which is supplied via an 11kV overhead line network and indicated that an open circuit fault on its HV overhead line system (damaged connection to one of its switching devices) affected the supply to the Customer. The Authority concurs that this type of fault is likely to have been the cause of the supply disturbance experienced by the Customer.

- 6.17 Following the technical meeting, and in subsequent correspondence, the Company advised that one operational restriction in particular would have impacted on restoration times. It explained that this restriction was imposed by the Company, following consultation with the Health and Safety Executive (HSE) during the HSE's investigation of a fatal accident on the Company's distribution network that occurred in August 2002 when an 11kV switching device was operated manually. A prohibition notice was subsequently issued by the HSE in September 2002 requiring that these devices were not operated by the Company in certain circumstances. This prohibition notice was accepted by the Electricity Association and voluntarily adopted by other distribution companies. The Company explained that this restriction applied to a number of switching devices on this section of its 11kV overhead line network (to which the Customer is connected) and that these restrictions would have impacted on its HV restoration times as the supply to these switching devices needed to be de-energised to allow the Company's staff to operate them.
- 6.18 The Company was unable at the time of this determination to quantify precisely the impact of this restriction on its restoration times in relation to specific switching operations, but claims that anecdotal evidence suggests, that in general the switching time for each operation where this restriction applies is effectively doubled. The Authority notes however, that whilst the operational restriction on the hand operated switching device (of which there were a number installed on the affected HV circuit) could have marginally increased customer restoration times, the Company has not presented any firm evidence that there was any significant impact on the Customer's restoration time. In addition, the Authority notes that in previous Standards of Performance determinations, it did not consider that the operational restriction materially impacted on restoration times and considers this still to be the case.
- 6.19 The Company has advised that during the period in which the Customer was affected, its distribution network was affected by a much higher number of HV and LV faults than average. The Authority notes that this is not an unexpected consequence for overhead line systems during abnormal weather conditions.
- 6.20 The Authority also recognises that the Company implemented its emergency plan, including increasing available manpower by cancelling planned works, but that given the number of faults which occurred it was not unreasonable that the Company had to prioritise its restoration and repair works.

6.21 The Authority notes that the supporting information provided by the Company describes the approach it took in undertaking supply restoration to the unusually high number of customers affected, firstly prioritising on voltage levels but subsequently prioritising on numbers of customers affected. The Authority considers that the general approach that the Company took in prioritising supply restoration was not unreasonable and notes that priority was given to the restoration of the HV network.

6.22 However, from the evidence provided by the Company of its actual fault and restoration profiles for Lincolnshire, the Authority observes that the HV fault affecting the Customer appears to have been restored after the main period of HV fault restoration. This profile indicates that a total of 287 incidents had been recorded by the Company for the Lincolnshire area. Of these incidents, the Company identified that 141 affected its HV networks. The profile describes the progress that the Company made in attending to these incidents and the Authority notes that of the 287 incidents:-

- 140 had been addressed by 16.40 on 31 January 2003
- 161 had been addressed by 08.15 on 1 February 2003

6.23 The Authority notes that the general approach taken by the Company for prioritisation would not necessarily result in all HV incidents being addressed before LV incidents were considered, but also notes that the HV incident affecting this Customer appears to have been addressed during the main restoration phase for LV incidents. In this case, the Authority considers that there may have been a delay in the Customer's restoration time as a consequence of the incident having been incorrectly classed as an LV incident by the Company (see paragraph 4.8). While the evidence does not conclusively prove whether the Customer could have been restored on the evening of the 31 January 2003, the Authority considers that the balance of evidence supports the view that the Company's actions at this time were reasonable. This leads the Authority to consider that whilst it was not unreasonable that the Company breached the first and second contravention period, on the balance of probabilities the breach of the third contravention period need not have occurred (for example, if the Company's information had been accurate during the early stages of the Customer's supply interruption and had the restoration occurred 20 minutes earlier, it would have avoided breach of this third contravention time).

6.24 As such, the Authority considers that although the Company did take reasonable steps to prevent the severe weather conditions from having the effect that a payment would become due under Regulation 5 for the first and second contravention periods, it did not in respect of the third. The Authority considers therefore that the Customer's supply could have been restored earlier in the morning of 1 February, which would have been between 30 and 42 hours after the interruption.

7. OTHER EXEMPTIONS

7.1 In subsequent correspondence, the Company has detailed their additional claim for an exemption under Regulation 17(6)(f) due to "other circumstances of an exceptional nature". The Company has cited the following reasons:

- (i) the nature and volume of faults;
- (ii) access difficulties relating to road infrastructure; and
- (iii) health and safety concerns.

Given that these cited factors are not independent of the weather event, the Authority has already considered these factors in assessing the Company's claim under Regulation 17(6)(a). For the reasons cited above in paragraphs 6.19 through to 6.24, the Authority believes that that these reasons were valid for the first and second contravention period, but not in respect of the breach of the third period.

8. DETERMINATION

8.1 On the basis of the above considerations the Authority determines that the exemptions under Regulation 17(6)(a) and (f) of the Regulations applied for the first and second contravention periods in relation to this incident. The Authority therefore concludes that no order should be made that any payments are due to the Customer for the first 30 hours. However, the Authority concludes that the exemption does not extend to the third contravention period and therefore the Company should make a payment of £25 to the Customer.

Martin Crouch

Director of Electricity Distribution

On behalf of

THE GAS AND ELECTRICITY MARKETS AUTHORITY