AUSTRALIAN COMPETITION TRIBUNAL

Application by Ergon Energy Corporation Limited

(Other Costs) (No 7) [2011] ACompT 1

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| Citation: | | Application by Ergon Energy Corporation Limited (Other Costs) (No 7) [2011] ACompT 1 |
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| Review from: | | Australian Energy Regulator |
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| Parties: | | **ERGON ENERGY CORPORATION LIMITED**  **(ACN 087 646 062)** |
|  | |  |
| File number: | |  |
|  | |  |
| Members: | | **(DEPUTY PRESIDENT),**  **MR R DAVEY AND MR R SHOGREN** |
|  | |  |
| Date of determination: | | 10 February 2011 |
|  | |  |
| Date of hearing: | 15, 16, 17, 19 and 22 November 2010 | |
|  |  | |
| Place: |  | |
|  |  | |
| Number of paragraphs: | 4 | |
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| Counsel for Ergon Energy Corporation Limited: | Mr P O’Shea SC with Mr Bradley | |
|  |  | |
| Solicitor for Ergon Energy Corporation Limited: | Minter Ellison Lawyers | |
|  |  | |
| Counsel for Australian Energy Regulator: | Mr P Hanks QC with Mr P Gray, Mr T Clarke and  Mr L Merrick | |
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| Solicitor for Australian Energy Regulator: | Corrs Chambers Westgarth | |

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| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
|  | FILE NO |

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| RE: | APPLICATION UNDER SECTION 71B OF THE NATIONAL ELECTRICITY LAW FOR A REVIEW OF A DISTRIBUTION DETERMINATION MADE BY THE AUSTRALIAN ENERGY REGULATOR IN RELATION TO ERGON ENERGY CORPORATION LIMITED PURSUANT TO RULE 6.11.1 OF THE NATIONAL ELECTRICITY RULES |
| BY: | ERGON ENERGY CORPORATION LIMITED  (ACN 087 646 062) |

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| MEMBERS: | MIDDLETON J (DEPUTY PRESIDENT),  MR R DAVEY AND MR R SHOGREN |
| DATE: | 10 FEBRUARY 2011 |
| PLACE: |  |

**DETERMINATION (OTHER COSTS)**

# INTRODUCTION

1. The Tribunal has received submissions from the parties pursuant to directions made by the Tribunal.
2. The Tribunal has been advised that the parties agree with the following proposed variation relating to Quoted Services supplied by Ergon Energy.
3. The Tribunal has considered the submissions of the parties and the material before it, and consider that the proposed variation should be made with respect to the AER’s final decision relating to Ergon Energy’s Other Costs for Quoted Services.
4. The Tribunal therefore makes the following determination.

The AER’s Final Decision, Queensland Distribution Determination 2010-11 to 2014-15 dated May 2010 (‘Final Decision’) is varied as follows:

1. The formula applicable to Ergon Energy set out at page 371 of the confidential version (page 370 of the public version) is to apply only to the prices of fee based services.
2. The formula that is to be used to derive prices for quoted services is as follows:

*Pi = Li + Mi + OCi + CAi + GSTi*

where:

*Li* is the cost of labour involved in the delivery of the service (inclusive of on costs and overheads), calculated as the product of an hourly rate and the time spent by the personnel. This amount includes both travel time and time spent delivering the service.

*Mi* is the cost of non-capitalised materials expensed in the delivery of the service (inclusive of overheads).

*OCi* is other one off costs (inclusive of overheads) relating to the delivery of the service, including:

* + - 1. the hire or supply of assets and equipment;
      2. the supply of services such as contractors and external labour; and
      3. the cost of permits.

Other costs are to be charged to customers at their cost to Ergon Energy plus overheads.

*CAi* reflects the return on and return of non-system capital employed in the delivery of the service (for example, trucks and IT systems), which is calculated as a dollar per dollar of labour expenditure in accordance with section 18.3.3.3 of the Final Decision.

*GSTi* is the goods and services tax component of the service charge

1. In addition to the requirements specified in section 18.3.5 of the Final Decision, Ergon Energy's annual pricing proposal must report on any departures from its procurement processes and procedures in delivering quoted services that include other costs.
2. Table I.4 in Appendix I to the Final Decision is amended as follows:
   * + 1. A note is added to each illustrative configuration in the first three lines of Table I.4 stating 'this illustrative configuration does not include other costs’;
       2. The fourth line of Table I.4 is deleted and the following line inserted in its place:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Quoted service** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Removal or relocation of Ergon Energy assets at customer request | 25 562.64 | 26 492.03 | 27 415.75 | 28 388.09 | 29 400.78 |

1. The following information is added to Table 1.4 in Appendix I to the Final Decision:

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Quoted service, continued** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Relocation of Assets 1\* | 221 542.23 | 229 571.44 | 238 049.50 | 247 333.57 | 257 177.66 |
| Relocation of Assets 2\* | 53 339.94 | 55 273.07 | 57 343.74 | 59 626.05 | 62 056.56 |
| Relocation of Assets 3\* | 887 264.33 | 919 295.10 | 953 048.28 | 990 027.80 | 1 029 199.50 |
| Emergency Recoverable Works 1\* | 15 027.46 | 15 564.55 | 16 146.12 | 16 793.30 | 17 483.84 |
| Relocation of Assets 4\* | 367 831.52 | 381 251.69 | 395 118.06 | 410 113.80 | 425 915.50 |
| Relocation of Assets 5\* | 106 834.46 | 110 729.48 | 114 806.12 | 119 242.76 | 123 936.70 |
| Emergency Recoverable Works 2\* | 24 614.67 | 25 491.69 | 26 448.12 | 27 516.90 | 28 659.30 |
| Relocation of Assets 6\* | 81 921.45 | 84 933.91 | 88 001.78 | 91 286.89 | 94 734.66 |
| Relocation of Assets 7\* | 86 109.07 | 89 250.64 | 92 499.80 | 96 015.25 | 99 720.79 |
| Large Customer Connection 1\* | 1 088 303.29 | 1 128 704.09 | 1 169 771.18 | 1 213 587.10 | 1 259 582.56 |
| Large Customer Connection 2\* | 657 147.24 | 681 336.95 | 706 245.00 | 733 069.73 | 761 326.76 |

Note: \*These illustrative examples were received as part of Ergon Energy’s submission to the AER in response to the Australian Competition Tribunal’s direction to the AER that it serve and file a report on ‘other costs’.

1. Table J.20 in the confidential version of Appendix J to the Final Decision is deleted and the following table inserted in its place:

**Table J.20: Removal or relocation of Ergon Energy assets at customer request**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | 3 658.04 | 3 861.56 | 3 997.39 | 4 146.25 | 4 313.48 | 4 491.90 |
| Materials | 15 555.00 | 19 860.42 | 20 610.24 | 21 337.18 | 22 088.44 | 22 865.24 |
| Other costs | 1 493.28 | 597.24 | 597.24 | 597.24 | 597.24 | 597.24 |
| Capital Allowance | 2 999.96 | 1 243.42 | 1 287.16 | 1 335.09 | 1 388.94 | 1 446.39 |
| Price (GST excl) | 23 706.28 | 25 562.64 | 26 492.03 | 27 415.75 | 28 388.09 | 29 400.78 |
| Price path | n/a | 7.83% | 3.64% | 3.49% | 3.55% | 3.57% |

1. The following information is added to the confidential version of Appendix J to the Final Decision for the purposes of capping the first year’s price of the other costs individual formula component and applying the indicative price path for the remaining years of the regulatory control period:

**Table J.50: Relocation of Assets 1 (Gahans Rd Intersection, Bundaberg)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 78 968.98 | 81 748.69 | 84 789.74 | 88 206.77 | 91 858.53 |
| Materials | n/a | 60 795.23 | 63 090.53 | 65 315.78 | 67 615.48 | 69 993.37 |
| Other costs | n/a | 56 350.00 | 58 409.14 | 60 641.69 | 63 108.74 | 65 747.32 |
| Capital Allowance | n/a | 25 428.01 | 26 323.08 | 27 302.30 | 28 402.58 | 29 578.45 |
| Price (GST excl) | n/a | 221 542.23 | 229 571.44 | 238 049.50 | 247 333.57 | 257 177.66 |
| Price path | n/a | n/a | 3.62% | 3.69% | 3.90% | 3.98% |

**Table J.51: Relocation of Assets 2 (Superpak, Kevin Livingston Drive, Childers)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 14 022.79 | 14 516.39 | 15 056.40 | 15 663.17 | 16 311.63 |
| Materials | n/a | 7 305.81 | 7 581.64 | 7 849.05 | 8 125.41 | 8 411.16 |
| Other costs | n/a | 27 496.00 | 28 500.76 | 29 590.13 | 30 793.93 | 32 081.42 |
| Capital Allowance | n/a | 4 515.34 | 4 674.28 | 4 848.16 | 5 043.54 | 5 252.35 |
| Price (GST excl) | n/a | 53 339.94 | 55 273.07 | 57 343.74 | 59 626.05 | 62 056.56 |
| Price path | n/a | n/a | 3.62% | 3.75% | 3.98% | 4.08% |

**Table J.52: Relocation of Assets 3 (Main St – Urraween Rd to McLiver St, Pialba)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 403 651.16 | 417 859.68 | 433 404.06 | 450 870.24 | 469 536.27 |
| Materials | n/a | 267 613.50 | 277 717.12 | 287 512.42 | 297 635.44 | 308 102.60 |
| Other costs | n/a | 86 024.00 | 89 167.49 | 92 575.69 | 96 341.90 | 100 369.96 |
| Capital Allowance | n/a | 129 975.67 | 134 550.82 | 139 556.11 | 145 180.22 | 151 190.68 |
| Price (GST excl) | n/a | 887 264.33 | 919 295.10 | 953 048.28 | 990 027.80 | 1 029 199.50 |
| Price path | n/a | n/a | 3.61% | 3.67% | 3.88% | 3.96% |

**Table J.53: Emergency Recoverable Works 1 (Mariners Peninsula, Townsville)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 7 440.56 | 7 702.47 | 7 989.00 | 8 310.96 | 8 655.03 |
| Materials | n/a | 958.96 | 995.16 | 1 030.26 | 1 066.54 | 1 104.04 |
| Other costs | n/a | 4 232.08 | 4 386.73 | 4 554.40 | 4 739.68 | 4 937.85 |
| Capital Allowance | n/a | 2 395.86 | 2 480.19 | 2 572.46 | 2 676.13 | 2 786.92 |
| Price (GST excl) | n/a | 15 027.46 | 15 564.55 | 16 146.12 | 16 793.30 | 17 483.84 |
| Price path | n/a | n/a | 3.57% | 3.74% | 4.01% | 4.11% |

**Table J.54: Relocation of Assets 4 (Castletown)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 129 119.66 | 133 664.67 | 138 636.99 | 144 224.06 | 150 194.94 |
| Materials | n/a | 171 505.33 | 177 980.43 | 184 257.94 | 190 745.47 | 197 453.56 |
| Other costs | n/a | 25 630.00 | 26 566.57 | 27 582.01 | 28 704.12 | 29 904.24 |
| Capital Allowance | n/a | 41 576.53 | 43 040.02 | 44 641.11 | 46 440.15 | 48 362.77 |
| Price (GST excl) | n/a | 367 831.52 | 381 251.69 | 395 118.06 | 410 113.80 | 425 915.50 |
| Price path | n/a | n/a | 3.65% | 3.64% | 3.80% | 3.85% |

**Table J.55: Relocation of Assets 5 (Chenowith Rd)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 30 309.82 | 31 376.73 | 32 543.94 | 33 855.46 | 35 257.08 |
| Materials | n/a | 36 987.87 | 38 384.33 | 39 738.18 | 41 137.32 | 42 584.02 |
| Other costs | n/a | 29 777.00 | 30 865.11 | 32 044.85 | 33 348.52 | 34 742.82 |
| Capital Allowance | n/a | 9 759.76 | 10 103.31 | 10 479.15 | 10 901.46 | 11 352.78 |
| Price (GST excl) | n/a | 106 834.46 | 110 729.48 | 114 806.12 | 119 242.76 | 123 936.70 |
| Price path | n/a | n/a | 3.65% | 3.68% | 3.86% | 3.94% |

**Table J.56: Emergency Recoverable Works 2 (Emergency Recoverable Works)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 12 689.51 | 13 136.18 | 13 624.84 | 14 173.92 | 14 760.72 |
| Materials | n/a | 53.14 | 55.15 | 57.09 | 59.10 | 61.18 |
| Other costs | n/a | 7 786.00 | 8 070.52 | 8 378.99 | 8 719.87 | 9 084.45 |
| Capital Allowance | n/a | 4 086.02 | 4 229.85 | 4 387.20 | 4 564.00 | 4 752.95 |
| Price (GST excl) | n/a | 24 614.67 | 25 491.69 | 26 448.12 | 27 516.90 | 28 659.30 |
| Price path | n/a | n/a | 3.56% | 3.75% | 4.04% | 4.15% |

**Table J.57: Relocation of Assets 6 (Maunsell Aust P/L Port Access)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 22 240.77 | 23 023.65 | 23 880.13 | 24 842.50 | 25 870.98 |
| Materials | n/a | 48 117.11 | 49 933.74 | 51 694.95 | 53 515.07 | 55 397.08 |
| Other costs | n/a | 4 402.04 | 4 562.90 | 4 737.30 | 4 930.03 | 5 136.15 |
| Capital Allowance | n/a | 7 161.53 | 7 413.62 | 7 689.40 | 7 999.28 | 8 330.45 |
| Price (GST excl) | n/a | 81 921.45 | 84 933.91 | 88 001.78 | 91 286.89 | 94 734.66 |
| Price path | n/a | n/a | 3.68% | 3.61% | 3.73% | 3.78% |

**Table J.58: Relocation of Assets 7 (Cardno – D’Arcy Drive, Idalia)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 29 742.90 | 30 789.85 | 31 935.24 | 33 222.23 | 34 597.63 |
| Materials | n/a | 39 371.54 | 40 858.00 | 42 299.09 | 43 788.40 | 45 328.34 |
| Other costs | n/a | 7 417.41 | 7 688.46 | 7 982.33 | 8 307.07 | 8 654.39 |
| Capital Allowance | n/a | 9 577.21 | 9 914.33 | 10 283.15 | 10 697.56 | 11 140.44 |
| Price (GST excl) | n/a | 86 109.07 | 89 250.64 | 92 499.80 | 96 015.25 | 99 720.79 |
| Price path | n/a | n/a | 3.65% | 3.64% | 3.80% | 3.86% |

**Table J.59: Large Customer Connection 1 (Canelands)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 87 067.10 | 90 131.86 | 93 484.77 | 97 252.20 | 101 278.45 |
| Materials | n/a | 634 826.62 | 658 791.32 | 682 026.89 | 706 041.06 | 730 872.53 |
| Other costs | n/a | 338 373.96 | 350 758.45 | 364 157.42 | 378 978.63 | 394 819.93 |
| Capital Allowance | n/a | 28 035.61 | 29 022.46 | 30 102.10 | 31 315.21 | 32 611.66 |
| Price (GST excl) | n/a | 1 088 303.29 | 1 128 704.09 | 1 169 771.18 | 1 213 587.10 | 1 259 582.56 |
| Price path | n/a | n/a | 3.71% | 3.64% | 3.75% | 3.79% |

**Table J.60: Large Customer Connection 2 (Farrelly’s Lane)**

|  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- |
|  | **2009-10** | **2010-11** | **2011-12** | **2012-13** | **2013-14** | **2014-15** |
| Labour | n/a | 120 381.60 | 124 619.03 | 129 254.86 | 134 463.83 | 140 030.64 |
| Materials | n/a | 313 841.02 | 325 688.51 | 337 175.55 | 349 047.50 | 361 323.50 |
| Other costs | n/a | 184 161.75 | 190 902.07 | 198 194.53 | 206 261.05 | 214 882.76 |
| Capital Allowance | n/a | 38 762.88 | 40 127.33 | 41 620.07 | 43 297.35 | 45 089.86 |
| Price (GST excl) | n/a | 657 147.24 | 681 336.95 | 706 245.00 | 733 069.73 | 761 326.76 |
| Price path | n/a | n/a | 3.68% | 3.66% | 3.80% | 3.85% |

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| I certify that the preceding four (4) numbered paragraphs are a true copy of the Reasons for Decision herein of the Honourable Justice Middleton (Deputy President), RC Davey and RF Shogren. |

Associate:

Dated: 10 February 2011