AUSTRALIAN COMPETITION TRIBUNAL

Applications by Public Interest Advocacy Centre Ltd and Essential Energy [2016] ACompT 3

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| Citation: | Applications by Public Interest Advocacy Centre Ltd and Essential Energy [2016] ACompT 3 |
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| Review from: | Australian Energy Regulator |
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| Applicants: | **PUBLIC INTEREST ADVOCACY CENTRE LTD and ESSENTIAL ENERGY** |
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| File number: | ACT 3 of 2015  ACT 7 of 2015 |
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| Tribunal: | **MANSFIELD J, PRESIDENT**  **MR R DAVEY, MEMBER**  **DR D ABRAHAM, MEMBER** |
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| Interveners in  ACT 3 of 2015  ACT 7 of 2015: | AusNet Services (Distribution) Pty Ltd  AusNet Services (Transmission) Ltd  Australian Gas Networks Ltd  Citipower Pty Ltd  Powercor Australia Ltd  SA Power Networks  United Energy Distribution Pty Ltd  Ergon Energy Corporation Ltd  Minister for Resources, Energy and Northern Australia |
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| Interveners in  ACT 3 of 2015: | Essential |
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| Interveners in ACT 7 of 2015: | Public Interest Advocacy Centre Ltd |
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| Date of Determination: | 26 February 2016 |
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| Dates of hearing: | 21-25 September 2015; 28-30 September 2015;  1-2 October 2015; 6-9 October 2015 |
|  |  |
| Place: | Darwin (via video link to Sydney, Melbourne, Brisbane and Adelaide) |
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| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
|  | ACT 7 of 2015 |

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| RE:  BY: | APPLICATION UNDER SECTION 71B OF THE NATIONAL ELECTRICITY LAW FOR A REVIEW OF DISTRIBUTION DETERMINATION MADE BY THE AUSTRALIAN ENERGY REGULATOR IN RELATION TO ESSENTIAL ENERGY PURSUANT TO RULE 6.11.1 OF CHAPTER 6 OF THE NATIONAL ELECTRICITY RULES  ESSENTIAL ENERGY  Applicant |

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| TRIBUNAL: | MANSFIELD j, president  MR r davey, member  DR d abraham, member |
| DATE OF DETERMINATION: | 26 FEBRUARY 2016 |
| WHERE MADE: | DARWIN (VIA VIDEO LINK TO SYDNEY, MELBOURNE, BRISBANE AND ADELAIDE) |

THE TRIBUNAL DETERMINES THAT:

1. Pursuant to s 71P(2)(c) of the *National Electricity Law*, the *Final Decision Essential Energy distribution determination 2015-16 to 2018-19*, April 2015, including attachments (the Final Decision) is set aside and remitted to the Australian Energy Regulator (AER) to make the decision again in accordance with the following directions:
   * + 1. the AER is to make the constituent decision on opex under r 6.12.1(4) of the *National Electricity Rules* in accordance with these reasons for decision including assessing whether the forecast opex proposed by the applicant reasonably reflects each of the operating expenditure criteria in r 6.5.6(c) of the *National Electricity Rules* including using a broader range of modelling, and benchmarking against Australian businesses, and including a “bottom up” review of Essential’s forecast operating expenditure;
       2. the AER is to make the constituent decision on return on debt in relation to the introduction of the trailing average approach in accordance with these reasons for decision;
       3. the AER is to make the constituent decision on estimated cost of corporate income tax (gamma) in accordance with these reasons for decision, including by reference to an estimated cost of corporate income tax based on a gamma of 0.25; and
       4. the AER is to consider, and to the extent to which it considers appropriate to vary the Final Decision in such other respects as the AER considers appropriate having regard to s 16(1)(d) of the *National Electricity Law* in the light of such variations as are made to the Final Decision by reason of (a)-(c) hereof.

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| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
|  | ACT 3 of 2015 |

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| RE:  by: | APPLICATION UNDER SECTION 71B OF THE NATIONAL ELECTRICITY LAW FOR A REVIEW OF DISTRIBUTION DETERMINATION MADE BY THE AUSTRALIAN ENERGY REGULATOR IN RELATION TO ESSENTIAL ENERGY PURSUANT TO CLAUSE 6.11.1 OF CHAPTER 6 OF THE NATIONAL ELECTRICITY RULES  PUBLIC INTEREST ADVOCACY CENTRE LTD  Applicant |
|  | ACT 7 of 2015 |
| RE:  BY: | APPLICATION UNDER SECTION 71B OF THE NATIONAL ELECTRICITY LAW FOR A REVIEW OF DISTRIBUTION DETERMINATION MADE BY THE AUSTRALIAN ENERGY REGULATOR IN RELATION TO ESSENTIAL ENERGY PURSUANT TO RULE 6.11.1 OF CHAPTER 6 OF THE NATIONAL ELECTRICITY RULES  ESSENTIAL ENERGY  Applicant |

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| TRIBUNAL: | MANSFIELD J, PRESIDENT  MR R DAVEY, MEMBER  DR D ABRAHAM, MEMBER |
| DATE: | 26 FEBRUARY 2016 |
| PLACE: | DARWIN (VIA VIDEO LINK TO SYDNEY, MELBOURNE, BRISBANE AND ADELAIDE) |

**REASONS FOR DETERMINATION**

# BACKGROUND

1. On 30 April 2015, the Australian Energy Regulator (AER) delivered its Final Decision for the Essential Energy (Essential) distribution determination for the period 2015-16 to 2018-19 pursuant to r 6.11.1 of Ch 6 of the *National Electricity Rules* (NER).
2. Essential is a distribution network service provider (DNSP) and is owned by the State of New South Wales (NSW). It is one of three state owned NSW DNSPs which were granted leave to apply for review of the AER’s decisions made on 30 April 2015. They are Ausgrid (ACT 4 of 2015), Endeavour Energy (Endeavour) (ACT 6 of 2015) and Essential (ACT 7 of 2015). They collectively form Networks NSW and are incorporated under the *Energy Services Corporations Act 1995* (NSW).
3. The relevant regulatory control period is 2014-19. In the case of the Networks NSW DNSPs, it included a transitionary period in 2014-15. A placeholder revenue allowance was set by the AER on 16 April 2014 to apply from 1 July 2014 to 30 June 2015. The relevant Final Decisions, including the Essential Final Decision, were delivered after Essential submitted a Regulatory Proposal on 31 May 2014 and the AER had published Draft Decisions on that and the other Regulatory Proposals on 27 November 2014, and Essential had submitted a Revised Regulatory Proposal on 20 January 2015.
4. On 21 May 2015, Essential applied for leave to review the AER’s Final Decision in relation to it under s 71B of the *National Electricity Law* (NEL), as scheduled in the *National Electricity (South Australia) Act 1996* (SA). The NEL is given jurisdictional effect through the *National Electricity (New South Wales) Act 1997* (NSW).
5. On 21 May 2015, the Public Interest Advocacy Centre Ltd (PIAC) also filed an application for leave to apply to review the AER’s Final Decision in relation to Essential under s 71B of the NEL. PIAC also filed applications for leave to apply for review with respect to the AER’s Final Decisions with respect to Ausgrid (ACT 1 of 2015) and Endeavour (ACT 2 of 2015).
6. The Tribunal granted leave to Essential to apply for review, and it also granted leave to PIAC to do so under s 71B of the NEL on 17 July 2015. Essential and PIAC were also each granted leave to intervene in each other’s applications. The Tribunal also granted leave to intervene in each of those matters to AusNet Services (Distribution) Pty Ltd, AusNet Services (Transmission) Ltd, Australian Gas Networks Ltd, CitiPower Pty Ltd, Powercor Australia Ltd, SA Power Networks and United Energy Distribution Pty Ltd (Vic/SA Interveners), Ergon Energy Corporation Ltd (Ergon) and the Commonwealth Minister for Industry and Science (now the Minister for Resources, Energy and Northern Australia) was also granted leave to intervene in each application.
7. The hearing of each of the applications by Networks NSW and PIAC took place together. In addition, ActewAGL Distribution (ActewAGL) applied, and was granted leave, to review a decision of the AER made under the NEL (ACT 5 of 2015) on the same date as the Networks NSW leave decisions. Later Jemena Gas Networks (NSW) Ltd (JGN) applied, and was granted leave, to review a further decision of the AER made on 3 June 2015 under the *National Gas Law* (NGL) (ACT 8 of 2015).
8. Each of the eight applications was heard together because a number of the issues arising in relation to them were common to issues with other applications. There are, of course, some issues particular to one or more of the applicants, and in some respects the issues or arguments relating to particular issues differed slightly.

# THE GROUNDS OF REVIEW

1. Essential’s grounds of review related to a number of the building blocks prescribed by r 6.4.3 of the NER as components of the Final Decision. It claimed that the AER had erred in significant respects in arriving at the Final Decision fixing the revenue allowed for the regulatory control period in respect of:
2. operating expenditure (opex);
3. Efficiency Benefit Sharing Scheme (EBSS);
4. rate of return on equity;
5. rate of return on debt;
6. estimated cost of corporate income tax (gamma); and
7. consequential issues, including form of control mechanism (X factor).

They mirrored the grounds of review of Ausgrid, save for Ausgrid having an additional issue concerning its metering costs.

1. PIAC’s grounds of review related to Essential in the same terms as they related to Ausgrid and Endeavour. PIAC largely sought to restore the Draft Decisions of the AER. Its grounds concerned the building blocks of:
2. opex, by having the benchmark efficiency target fixed at 0.86, being the weighted average of the upper quartile of the efficiency scores of the comparators used by the AER, and removing certain of the operating environment factors (OEF) adjustments made by the AER in each Final Decision;
3. return on equity, to vary the equity beta to 0.5 rather than that used by the AER in each Final Decision; and
4. return on debt, to commence the transitional methodology adopted by the AER to move to the trailing average approach for estimating the return on debt to the earlier (transitional) year 2014-15.

In other respects, it supported each of the AER’s Final Decisions concerning Networks NSW.

1. The Vic/SA Interveners broadly speaking supported the position taken by Networks NSW generally, as did Ergon. Ergon made a separate contention with respect to the transitional consequences of the Final Decisions (relating to all the network service providers) as a result of the 2012 Rule Amendments and the 2013 Legislative Amendments.
2. The Tribunal has decided that it is not necessary, for the purposes of this or the other applications, to address Ergon’s contention. Ergon may seek to raise it, depending on the Final Decision of the AER in relation to Ergon itself.

# THE PIAC-AUSGRID DECISION

1. The Tribunal has, at the same time as this decision is published, published its decision on the applications by PIAC relating to the AER’s Ausgrid Final Decision, and Ausgrid to review that Final Decision: *Applications by Public Interest Advocacy Centre Ltd* *and* *Ausgrid* [2016] ACompT 1 (the *PIAC-Ausgrid* *Decision*).
2. This decision deals only with the applications by PIAC and Essential to review the AER Final Decision concerning Essential. It is intended to be read in conjunction with the decision of the Tribunal in the *PIAC-Ausgrid Decision*. That decision serves as the “lead” decision on the Tribunal’s general considerations, on the significance of matters of common concern, and its consideration of aspects of particular topics that do not need to be repeated in full in the decisions of the Tribunal concerning the other applications. The definitions used in the *PIAC-Ausgrid Decision* are adopted for the purposes of this decision.
3. As noted, in the *PIAC-Ausgrid Decision*, the Tribunal conducted public consultation in relation to the matters raised in each of the eight applications on 6 and 7 August 2015. It then heard the applications concurrently over the period from 21 September 2015 to 9 October 2015.
4. Due to the substantial commonality of issues raised, it was common ground that it would be appropriate for the applicants to prepare common written submissions in relation to those issues or topics which it had substantially in common with other applicants. On this basis, and pursuant to the Tribunal’s directions of 5 August 2015:
   1. the Network Applicants prepared common written submissions on the issues of return on equity and the value of imputation credits;
   2. Networks NSW and ActewAGL prepared common written submission on return on debt; and
   3. Networks NSW prepared common written submissions on framework, opex, X-factor, EBSS, the application of s 71O of the NEL and what constitutes a materially preferable NEO decision.
5. The applicants were to some extent also represented during the hearing by common counsel in respect of those issues or topics which it had in common with the other applicants. Relevantly, common counsel appeared on behalf of each of the Network Applicants in relation to return on equity and gamma, on behalf of Networks NSW and ActewAGL in respect of return on debt, and on behalf of each of Network NSW in relation to framework, opex, X-factor, EBSS, s 71O of the NEL and what constitutes a materially preferable NEO decision. In addition, during the course of the hearing the Network Applicants and the interveners adopted the submissions of other parties where it was appropriate to do so.
6. That recitation is sufficient to indicate why it is, in relation to these two applications, unnecessary to do much more than to note any significant differences between the circumstances of Ausgrid and Essential, any significant differences in the way in which the AER approached its task in relation to its determination of its Final Decisions concerning Ausgrid and Essential (the Tribunal has not discerned any), and any significant points to be made concerning the Tribunal’s reasoning with respect to the topics addressed in the *PIAC-Ausgrid Decision* by reason of the particular circumstances of Essential.

# THE AER’S FINAL DECISION RELATING TO ESSENTIAL

1. The effect of the AER’s Final Decision for Essential was to disallow some $1.716 billion (that is a reduction of about 25 percent) of the revenue for standard control services sought in its Revised Regulatory Proposal over the 2014-19 regulatory period. That sum is made up of a reduction in claimed revenue for opex of $737m; a reduction of $915m in revenue relating to the claimed return on capital (equity and debt) over the period, made up of a $567m reduction in revenue for the claimed return on equity, and a $348m reduction in claimed revenue for the return on debt; and a reduction of $64m in claimed revenue for the value of imputation credits (gamma). There was an offsetting adjustment of $74m for the EBSS penalty adjustment which the AER did not carry into the Final Determination. These figures are as provided by Networks NSW in the course of concluding submissions, in a table “Summary of revenue impacts”. They do not specify whether they are nominal or real figures.
2. The Tribunal notes that those reductions followed the revenue allowance in the placeholder determination for 2014-15, where the claimed revenue was $1291.6m, but the allowance from the AER was $976.1m, that is an additional $315.6m reduction in claimed revenue in 2014-15 and reflected of course after the 2015-19 regulatory period.

# CONSIDERATION

1. The Tribunal proposes to follow the same sequence of principal headings as appears in the *PIAC-Ausgrid Decision*. In addition, given the degree of commonality of issues, the following very largely incorporates reasons by reference to what the Tribunal has said in the *PIAC-Ausgrid Decision*, with respect to the regulatory framework and the grounds raised in relation to this decision. There is very little that requires further detailed discussion, notwithstanding that there are some differences between Essential and Ausgrid both in their operating environment, and in their respective submissions to the AER, and of course in the AER’s reasons for their respective Final Decisions. The Tribunal has, of course, considered those differences.
2. It does not consider that it is necessary generally to expand upon them or to discuss them separately in any particular detail. It has done so where it considers it desirable.
3. Accordingly, the reasons for this decision are hereafter relatively brief.

## (a) Operating Expenditure

1. Although Networks NSW presented common contentions on behalf of each of the three entities, the Tribunal notes that there are particular features of Essential’s network to which attention was drawn. It is an “outlier” in terms of network length (particularly route length) and sparsity of consumers. It has longer distances to be travelled to perform asset inspection and maintenance, and some of its network is in remote and challenging country, even to the extent of impaired telephone access. As a result, it maintains a larger number of local depots across rural NSW so that its response to network difficulties is appropriately timely.
2. Those matters were not said to make its position unique, but to support Networks NSW’s contentions about the validity of the inputs to the EI Model. In response to the EI analysis that there are other comparable DNSPs, it was pointed out that Essential’s line length is about the same as the total of the other rural DNSPs referred to in the EI analysis (Powercor, SAPower and AusNet), with about one third of the customers. Its geographical service area is much larger, and (it was said) the range of varying environmental factors it faced was much broader. Those variables were, to a degree, recognised by the AER and reflected in the OEF adjustments it made post-modelling.
3. Those features of Essential’s network, apart from illustrating the contentions about the appropriateness of the EI Model (addressed in the *PIAC-Ausgrid Decision*), were said to support Networks NSW’s criticism of the AER for regarding a Local Service Agent model for service delivery as available, and so Essential’s service delivery structure and costs as inefficient. In part, they also were said to support the criticism of the AER in concluding that Essential’s Revised Regulatory Proposal concerning its existing and projected vegetation management costs were inefficient.
4. All of those matters are addressed in some detail in the opex section of the *PIAC-Ausgrid Decision*. They are features of Essential’s particular circumstances which were relevant to the reasoning of the Tribunal about why the inputs into the structure of the EI Model led to grounds of review of the AER’s decision that each of Ausgrid and Essential had, and proposed, inefficient opex for the current regulatory period and that it should adopt its own assessment of the efficient opex for both Essential and Ausgrid based upon the EI Model and the benchmarking it referred to.
5. For the reasons explained in detail in the *PIAC-Ausgrid Decision*, the Tribunal is satisfied that common grounds of review as asserted are made out. The AER’s reasons for substituting the opex allowance at the figure it did, having found that Essential’s opex was not efficient, expose the same flaws as the Tribunal referred to in the *PIAC-Ausgrid Decision*. It is not necessary to repeat those reasons. At the conclusion of these reasons, the Tribunal addresses the question of whether any determination should be made as a result of that conclusion.
6. PIAC’s contentions with respect to opex, if successful, would have led to a further significant reduction in the opex allowance for each of the Networks NSW entities. It sought to restore the opex allowance to that proposed by the AER in its respective Draft Decisions. Maintaining in broad terms the methodology adopted by the AER, PIAC contended that the AER erred by reducing the benchmark comparison point below the weighted average of the upper quartile (0.86) of the AER’s analysis and, secondly by making unreasonable OEF adjustments for unquantifiable, immaterial and directionally ambiguous OEFs.
7. As explained in the PIAC-Ausgrid decision, those contentions were dependent on the starting premise about the broad correctness of the AER’s methodology. The Tribunal has not accepted that premise.

## (b) Control Mechanism (X factor)

1. This issue is confined to the Networks NSW DNSPs. It is not a matter upon which PIAC made submissions, either as an applicant or an intervener. Nor did any other intervener address submissions in relation to it.
2. The written and oral submissions on the application of revenue smoothing (involving the use of an X factor) were prepared jointly in each of the applications for review by Ausgrid, Essential and Endeavour. The Tribunal’s reasons on the X factor are set out in the *PIAC-Ausgrid Decision*. It is not necessary to repeat them here.
3. As a consequence of the Tribunal’s decision with respect to opex, the ground of review for the application of the control mechanism has largely fallen away. When the AER revisits and re-determines the opex allowances, it will then have to apply the X factor. It will do so at a time, and in relation to revenues streams, which will require it to make a fresh decision on the X factor.

## (c) EBSS

1. Both Ausgrid and Essential were subject to the same decision, and reasons for decision of the AER as set out in the respective Final Decisions. Of course, the potential benefits sought by Ausgrid and Essential by the re-institution of the EBSS differed. There were no particular elements, peculiar to Essential, which require separate consideration.
2. The Tribunal’s reasons with respect to the EBSS in the *PIAC-Ausgrid Decision* apply equally to Essential’s review concerning the EBSS. The grounds of review advanced by Networks NSW are made out.
3. The Tribunal considers that, because of the interrelationship between the EBSS and the allowance for opex, the AER may wish to revisit this topic in any event. The interrelationship is, of course, a matter relevant to the AER under s 16(1)(c) and (d) and to the Tribunal under s 71P(2a) and (2b) of the NEL.

## (d) Return on Equity

1. The AER’s Final Decisions for Networks NSW are said to compromise two components of the building block “return on capital” under Ch 6 of the NER: the return on equity and the return on debt. The written and oral submissions of the parties separated the two issues, despite their interrelatedness in forming a critical feature of the building block for return on capital. It was appropriate to proceed that way in view of the complexity and individual features of the contentions before the Tribunal with respect to equity and debt.
2. The grounds of review with respect to the rate of return on equity for Essential are common to all the Networks NSW submissions and PIAC’s submissions also apply to Networks NSW as a group.
3. Networks NSW unsuccessfully sought to make out grounds of review in relation to the AER’s reasons for its quantification of the allowance for return on equity. PIAC supported the AER’s contentions in that regard, and successfully so.
4. In addition, PIAC argued that the allowance for return on equity for each of Networks NSW should be reduced because the AER should have adopted an estimate of equity beta of 0.5. The Tribunal did not conclude that that ground of review is made out.
5. The Tribunal has rejected the contentions by Networks NSW seeking to disturb the AER Final Decisions on the rate of return on equity in the *PIAC-Ausgrid Decision*. Those reasons apply equally to Ausgrid and to Essential (and to Endeavour). The consequence is that no grounds of review are made out in relation to the Final Decisions concerning the return on equity.
6. Separately, in the *PIAC-Ausgrid Decision*, the Tribunal has also explained why it does not consider that PIAC has made out its grounds of review in relation to the return on equity.
7. The Tribunal does not need to repeat those reasons.

## (e) Return on Debt

1. As stated above, the grounds of review with respect to the rate of return on capital for Essential, and specifically the return on debt, are common to Networks NSW. PIAC’s grounds of review on this topic also apply to Networks NSW generally.
2. As explained in the *PIAC-Ausgrid Decision*, the competing contentions of Networks NSW and PIAC were directed to the way in which the introduction of the trailing average approach to determining the appropriate return on debt should be transitioned.
3. Their respective positions could not have been further apart.
4. The Tribunal was satisfied that Networks NSW had established grounds of review in relation to each of them about the transition methodology adopted by the AER, largely by reason of its adoption of a standard regulated benchmark efficient entity.
5. PIAC’s contention was again premised on the AER’s approach being broadly correct. It then contended that the transition methodology should have been applied commencing a year earlier than that adopted by the AER. Because the premise was not maintained by the Tribunal, it did not need to fully consider PIAC’s contention.
6. The reasons for those conclusions are set out in the *PIAC-Ausgrid Decision*. There were no particular elements, peculiar to Essential, which require separate consideration.
7. The reasons for the decision on the return on debt for Networks NSW addressed in the *PIAC-Ausgrid Decision* are therefore equally applicable to this application. The contentions on behalf of Networks NSW, as discussed in the *PIAC-Ausgrid Decision*, mean that Essential succeeds on its grounds of review on this topic for the same reasons. That result also means that PIAC’s contentions about the timing for the commencement of the transition methodology of the trailing average for estimating return on debt do not arise.
8. Again, the Tribunal refers to, and adopts, its reasons in the *PIAC-Ausgrid Decision* without repeating them.

## (f) The Value of Imputation Credits (Gamma)

1. The Tribunal’s reasons with respect to gamma for Essential are applicable to each of Networks NSW, as the submissions were common. Consequently, the Tribunal’s reasons and conclusion in the *PIAC-Ausgrid Decision* apply equally to this application. That means that Essential has made out grounds of review with respect to this topic.

## (g) What determination should be made?

1. The Tribunal’s consideration of how the constituent components of the AER’s Final Decisions interrelate with each other, taking into account the RPP under s 71P(2b) of the NEL are addressed as issues common to Networks NSW in the *PIAC-Ausgrid Decision*.
2. The Tribunal has noted in the Conclusions section of the *PIAC-Ausgrid Decision* the different amounts those proposed determinations attributed to each of the Networks NSW entities.
3. As noted in the *PIAC-Ausgrid Decision*, the AER’s reasons for addressing interrelationships, and its consideration of s 16(1)(d) of the NEL, are relevantly in the same terms in each of the Networks NSW Final Decisions. Like Ausgrid, the proposed opex allowance in the Revised Regulatory Proposal of Essential was found to be inefficient, and the operation of the EBSS was suspended from operation for the current regulatory period. Those matters where the AER considered that its relevant Final Decision erred (if at all) on the side of generosity (and about which PIAC made its criticisms) were common to both Ausgrid and Essential. It is not necessary to repeat that material. It provides a sensible analysis method which the Tribunal has adopted.
4. Consequently, the Tribunal’s reasons with respect to whether its decision would, or would be likely to, result in a materially preferable NEO decision under s 71P(2a) of the NEL apply generally to Networks NSW. Consequently, for Essential, for the reasons set out in the *PIAC-Ausgrid Decision*, the Tribunal does not consider that it should vary the Essential Final Decision but is satisfied that it should set aside the Final Decision with respect to Essential in relation to those topics where a ground of review has been made out, or where there is an interrelationship between one or more of those topics and another topic addressed in the Essential Final Decision of the AER. For the reasons also there discussed, that re-opens to the AER, to the extent to which it considers appropriate, the other elements or amounts allowed for the other building blocks in its Final Decision concerning Essential.

# DETERMINATION

1. For those reasons, the Tribunal has decided to make its determination in much the same terms as are made in the Ausgrid application for review, and in the PIAC application for review of the AER’s Ausgrid Final Decision. That means the Essential Final Decision is set aside and the matter remitted to the AER for reconsideration in accordance with the Tribunal’s reasons in this decision, which in turn adopt the reasons in the *PIAC-Ausgrid Decision*. Indeed, for the reasons given in the *PIAC-Ausgrid Decision*, the Tribunal’s determination will enable the AER to revisit such of the other topics it addressed in the Essential Final Decision as it considers appropriate to give effect to s 16(1)(c) and (d) of the NEL. For the same reasons, the Tribunal makes no determination in the PIAC application concerning the Essential Final Decision by the AER.

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| I certify that the preceding fifty-seven (57) numbered paragraphs are a true copy of the Reasons for Decision herein of the Honourable Justice Mansfield, Mr R Davey and Dr D Abraham. |

Associate:

Dated: 26 February 2016