AUSTRALIAN COMPETITION TRIBUNAL

Application by Ergon Energy Corporation Limited

(Service Target Performance Incentive Scheme) (No 5) [2010] ACompT 13

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| Appeal from: | Australian Energy Regulator |
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| Parties: | **Ergon Energy Corporation Limited (ACN 087 646 062)** |
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| File number: |  |
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| Members: |  **(DEPUTY PRESIDENT),****MR R DAVEY AND MR R SHOGREN** |
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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: | 24 DECEMBER 2010 |
| PLACE: |  |

**REASONS FOR DECISION:**

**SERVICE TARGET PERFORMANCE INCENTIVE SCHEME**

# INTRODUCTION

1. These reasons deal with the Service Target Performance Incentive Scheme (‘STPIS’). The expressions employed in these reasons are the same as employed in earlier decisions the subject of the current review.
2. The issue to determine is whether the AER’s decision to set the national distribution STPIS targets for Ergon Energy 10% lower than its minimum service standards under the Queensland Electricity Industry Code (‘the Code’) gives rise to a ground of review on one of the bases set out in s 71C(1) of the NEL.
3. Ergon Energy argued that the AER misunderstood and made a false distinction between the Code’s minimum service standards (‘MSS’) and the STPIS. Ergon Energy also argued that the opex and capex allowances set for it were insufficient for it to meet the STPIS targets.

# BACKGROUND

1. Ergon Energy, along with other distribution network service providers (‘DNSPs’), is subject to a STPIS designed to balance the incentives to reduce expenditure with the need to maintain and improve service performance for customers. The AER determines how it will apply the STPIS to each DNSP at each revenue determination. This is a constituent decision.
2. Section 7 of the NEL provides that:

*The objective of this Law is to promote efficient investment in, and efficient operation and use of, electricity services for the long term interests of consumers of electricity with respect to—*

*(a) price, quality, safety, reliability and security of supply of electricity; and*

*(b) the reliability, safety and security of the national electricity system.*

1. Under cl 6.6.2(a) of the Rules, the AER is required to:

*... develop and publish an incentive scheme or incentive schemes (service target performance incentive scheme) to provide incentives (which may include targets) for* Distribution Network Service Providers *to maintain and improve performance.*

1. In developing and implementing a STPIS, cl 6.6.2(b)(3) of the Rules requires the AER to take into account:

*(i) the need to ensure that benefits to consumers likely to result from the scheme are sufficient to warrant any reward or penalty under the scheme for Distribution Network Service Providers; and*

*(ii) any regulatory obligation or requirement to which the Distribution Network Service Provider is subject; and*

*(iii) the past performance of the distribution network; and*

*(iv) any other incentives available to the Distribution Network Service Provider under the Rules or a relevant distribution determination; and*

*(v) the need to ensure that the incentives are sufficient to offset any financial incentives the service provider may have to reduce costs at the expense of service levels; and*

*(vi) the willingness of the customer or end user to pay for improved performance in the delivery of services; and*

*(vii) the possible effects of the scheme on incentives for the implementation of non-network alternatives.*

1. The STPIS comprises four elements (see cl 2.3 of the STPIS):

• reliability of supply;

• quality of supply;

• customer service; and

• guaranteed service level.

1. The first three elements of the STPIS are known collectively as the ‘s-factors’. Through the s-factors, the STPIS provides a financial incentive for a DNSP to maintain and improve service performance by assigning financial rewards or penalties (in the nature of revenue increments or decrements) where performance is better or worse than performance targets.
2. The Application only concerns the reliability of supply element of the STPIS.
3. The relevant reliability parameters under the STPIS are defined in Appendix A to the STPIS as follows:

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| **Parameter** | **Definition** |
| Unplanned SAIDI (System Average Interruption Duration Index) | The sum of the duration of each unplanned sustained customer interruption (in minutes) divided by the total number of distribution customers. Unplanned SAIDI excludes momentary interruptions (one minute or less). |
| Unplanned SAIFI (System Average Interruption Frequency Index) | The total number of unplanned sustained customer interruptions divided by the total number of distribution customers. Unplanned SAIFI excludes momentary interruptions (one minute or less). SAIFI is expressed per 0.01 interruptions. |

1. Clause 3.2.1(a) of the STPIS relates to performance targets for the reliability of supply component of the STPIS. It states:

*(a) The performance targets to apply during the regulatory control period must not deteriorate across regulatory years and must be based on average performance over the past five regulatory years, modified by the following:*

1. *an adjustment to ensure that average performance over the past five regulatory years reflects events excluded under clause 3.3 and appendix D of this scheme.*

*(1A) any reliability improvements completed or planned where the planned reliability improvements are:*

* 1. *included in the expenditure program proposed by the DNSP in its regulatory proposal, or*
	2. *proposed by the DNSP, and the cost of the improvements is allowed by the relevant regulator, in the DNSP’s previous regulatory proposal or regulatory submission, and*
	3. *expected to result in a material improvement in supply reliability.*

*(1B) an adjustment to correct for the revenue at risk, that is the sum of the s-factors for all parameters, to the extent it does not lie between the upper limit and the lower limit in accordance with clause 2.5(a).*

*(2) any other factors that are expected to materially affect network reliability performance.*

1. Ergon Energy is also subject to the MSS under the Code. The purpose of the MSS is to provide a standard for assessing and comparing the performance of the DNSPs in Queensland.
2. Clause 2.4.2 of the Code requires Ergon Energy to use its best endeavours to ensure that it does not exceed in a financial year the SAIDI Limits and the SAIFI Limits.
3. The MSS set annual limits on the duration and frequency of distribution outages, after removing the impact of excluded events such as severe storms. There are MSS for different types of network feeders, reflecting different service standards that should be achievable at reasonable cost across the network.
4. To ensure that the MSS are successfully met or to manage the risk of not meeting the MSS, Ergon Energy sets corresponding internal ‘stretch targets’ for overall outage duration and frequency for its three distribution feeder categories.
5. For the period 1 July 2010 to 30 June 2015, Ergon Energy adopted an internal ‘stretch target’ of MSS less 10%.
6. Rule 6.8.1 requires the AER to prepare and publish a document (a framework and approach paper) in anticipation of every distribution determination. The framework and approach paper (‘FAP’) should set out the AER’s likely approach in the forthcoming distribution determination to the application to a DNSP of a STPIS. A framework and approach paper in respect of the STPIS is not binding on the AER or the DNSP. The AER’s November 2008 Final framework and approach paper: Application of schemes – Energex and Ergon Energy 2010-15 (FAP) stated that: *“... the AER does not consider that performance targets established under the STPIS should be set at levels below the MSS.”* (A footnote to that statement said: *“That is, the STPIS targets should not be set at a level which provides the DNSP with a less onerous target than the MSS.”*) The FAP also stated that:

*SAIDI and SAIFI performance targets established under the scheme should be determined according to the following principles:*

*...*

*• For network segments where the DNSP’s modified average historical performance is below the MSS performance targets for that regulatory year, the performance target for that parameter will be set equal to the MSS target for that regulatory year. This provides the incentive for … Ergon to improve service performance to the MSS level …* [it is] *… funded to provide.*

*• For network segments where the DNSP’s modified average historical performance is better than the MSS performance target for that regulatory year, the performance target for that regulatory year will be set equal to the average historical performance. This provides the incentive for … Ergon to maintain …* [its] *… average historical service performance.*

1. In the FAP, the AER recognised that:

• the MSS targets require an improved level of service over the next regulatory control period;

• Ergon Energy had indicated that it intended to propose capex and opex in the next regulatory control period to achieve the MSS targets;

• the MSS targets should underpin the STPIS targets; and

• there may be methodological differences between the measurement of service performance under the STPIS and the MSS.

1. In the FAP, the AER set out principles according to which the SAIDI and SAIFI performance targets that were likely to be established under STPIS should be determined.

# ERGON ENERGY’S REGULATORY PROPOSAL AND AER CONSIDERATION

1. In its July 2010 regulatory proposal, Ergon Energy stated that setting the STPIS targets to be the lower of the annual MSS or the historical average performance meets the requirement that performance targets should be modified to reflect the impact of reliability improvement works. Ergon Energy proposed some adjustments to the MSS targets.
2. Ergon Energy’s capex and opex forecasts, as set out in its Proposal, were stated to be designed to achieve Ergon Energy’s MSS targets.
3. The Proposal also identified that Ergon Energy had internally imposed service standards for the purpose of ensuring that its MSS targets could be achieved.
4. An express assumption underlying Ergon Energy’s Capital Expenditure – Reliability and Quality Improvements forecast was that Ergon Energy was planning to meet MSS in the next regulatory control period. That forecast represented Ergon Energy’s assessment of what was required to meet the MSS.
5. In October 2009, Parsons Brinckerhoff Australia Pty Ltd (‘PB’) prepared a report on the Proposal for the AER (‘PB 2009’).

# THE AER’S DRAFT DECISION

1. In its November 2009 Draft Determination, the AER noted the following advice from PB:
	* + 1. Ergon Energy’s internal targets reflect the likely service performance consistent with the proposed forecast expenditures;
			2. part of Ergon Energy’s proposed capex was attributable to reliability improvements and would likely improve aspects of performance; and
			3. the MSS are minimum levels of service performance, whereas the targets under the STPIS are set at the average performance.
2. The AER also noted PB’s advice that Ergon Energy’s internal targets were based on average performance which indicated that network performance was significantly better than the MSS targets in the previous two years. The AER agreed with PB 2009 that as Ergon Energy set its internal targets at a level that required significantly better performance than the proposed STPIS targets, Ergon Energy was ensuring that its service performance would outperform proposed STPIS targets. It accepted PB’s advice that Ergon Energy’s internal targets were consistent with its forecast expenditure.
3. The AER also considered:
	* + 1. PB’s advice that as Ergon Energy’s internal targets (and the likely service performance) are consistent with its forecast expenditure, Ergon Energy was being funded to provide services at a superior level to the MSS;
			2. as Ergon Energy proposed that its STPIS performance targets were aligned with MSS targets (rather than the internal targets on which its forecast expenditure is based), Ergon Energy would effectively be funded through its expenditure allowances to outperform the STPIS targets;
			3. as a result, Ergon Energy would receive a benefit under the STPIS for improving performance where this improved performance had already been funded through its expenditure allowances; and
			4. it would be contrary to cl 3.2.1(a)(1) of the STPIS, which states that performance targets should be modified to account for completed or planned reliability improvements and any other factor expected to affect network reliability performance.

# ERGON ENERGY’S REVISED REGULATORY PROPOSAL AND THE AER CONSIDERATION OF IT

1. In its January 2010 Revised Proposal, Ergon Energy updated its proposed STPIS targets to include the actual performance results for 2008-09 but otherwise maintained that to be consistent with the FAP the targets should be based on the lower of the MSS under the Code or its historical reliability performance.
2. Ergon Energy stated it did not agree with the AER’s decision to set its SAIDI and SAIFI targets based on Ergon Energy’s internal targets because, inter alia:
3. Ergon Energy’s approach is consistent with the FAP – its adjusted MSS for feeder type being more onerous than Ergon Energy’s average historical unplanned reliability performance for the feeder type.
4. neither the MSS targets nor the (unadjusted) MSS-10% internal business targets were used to develop Ergon Energy’s capex and opex programs for the 2010-15 regulatory control period.
5. Ergon Energy’s MSS-10% internal business targets adjusted for planned outages are not based on Ergon Energy’s average historical unplanned performance, and are not indicative of Ergon Energy’s likely unplanned performance in the next regulatory control period.
6. the (unadjusted) MSS-10% internal business targets are Key Performance Indicators that provide an incentive to management to improve planned outage performance.
7. In support of its Revised Proposal, Ergon Energy also provided a document entitled ‘*Service Target Performance Incentive Scheme – Reliability Performance Targets*’, which included the following statements:

*Ergon Energy’s reliability performance is currently subject to the Minimum Service Standards (MSS) and Guaranteed Service Levels (GSLs) mandated through the Electricity Industry Code (EIC) … The MSS are levels of reliability performance which are required to be met every year by Ergon Energy. The MSS are defined for the overall (i.e. inclusive of both the planned and unplanned performance) normalised Reliability of Supply for ...* [each feeder type]*. In April 2009, the Queensland Competition Authority (QCA) released the final MSS and GSLs to apply to Ergon Energy from 1 July 2010.*

*Ergon Energy ... has adopted the MSS as performance targets and the MSS-10% internal business targets as SAIDI/SAIFI ‘stretch’ performance targets across the business. These internal business targets are intended to incentivise staff and management to improve overall reliability performance by targeting planned outage performance (over which Ergon Energy has significant control).*

*In its Draft Determination, the AER accepted PB’s advice and set the STPIS reliability performance targets to be Ergon Energy’s MSS-10% internal business targets adjusted to exclude planned outages.*

*...*

*The (unadjusted) MSS-10% internal business targets are key performance indicators that provide an incentive for management to improve* planned *outage performance only. Consequently, this incentive will have no impact on Ergon Energy’s performance under the STPIS.* [emphasis as in the original]

1. A May 2010 PB report prepared for the AER (‘PB 2010’) noted that Ergon Energy adjusted the MSS targets to account for the different definitions for the measures under the Code and the STPIS. In PB’s view, a further adjustment was required before the STPIS targets could be set equal to the MSS targets. This adjustment was required to account for the different basis of the targets: that is, the MSS targets being ‘at the minimum’ and the STPIS targets being ‘on average’. In its original report, PB considered that the difference in the minimum performance standards represented by the MSS targets and the ‘on average’ performance targets under the STPIS could be informed by the difference between the MSS targets and the internal business targets. PB acknowledged that the internal targets were not based on Ergon Energy’s average historical unplanned performance. As part of PB’s review of Ergon Energy’s revised proposal, Ergon Energy was asked to provide adjusted MSS targets that made an appropriate adjustment for the different basis of the targets. In its response Ergon Energy did not consider that any further adjustments were necessary. PB analysed Ergon Energy’s historical performance to determine the statistical variation about the average. The analysis indicates that the ‘on average’ (STPIS) targets should be set approximately 12% to 19% below the MSS targets to meet the MSS targets, with a probability of Ergon Energy not achieving the MSS targets of one in five years. In PB’s view, this analysis supported the use of Ergon Energy’s internal targets based on the adjusted MSS-10% as appropriate and conservative targets for the STPIS.
2. PB was unable to verify whether the increased expenditures associated with the changed maintenance and planning practices and the expenditure for reliability improvement were sufficient to achieve the MSS targets, as Ergon Energy did not appear to have reconciled the proposed expenditures with its mandated reliability performance. It was PB’s view, however, that unplanned reliability performance will improve significantly under the expenditures proposed by Ergon Energy.
3. PB therefore remained of the view that the MSS -10% targets were likely to represent the future ‘on average’ reliability performance required to ensure that the MSS targets are achieved to an implied level of certainty.

# THE AER’S FINAL DETERMINATION

1. In its Final Determination, the AER decided that the STPIS targets that will apply to Ergon Energy for the 2010–2015 regulatory control period for SAIDI and SAIFI were MSS–10%.
2. Noting the statement of Ergon Energy to the effect that it is required to meet the MSS targets under the Code, the AER considered that:
	* + 1. Fluctuations in performance of feeders are likely to occur from one year to another, due to factors which are beyond the control of the DNSP (for example, due to weather). For this reason the AER considered that a prudent DNSP, subject to the MSS, will not aim for its average service performance to meet the MSS targets. Rather, a prudent DNSP will aim to exceed the MSS targets such that in the years where the performance of some feeders falls due to normal fluctuations it will still meet or exceed the minimum targets imposed by the MSS.
			2. There are methodological differences in measuring service performance between the MSS and the STPIS, that is, the MSS targets are minimum requirements, whereas the STPIS targets measure average performance.
			3. To allow for the different bases in setting targets, the MSS targets need to be adjusted to be used for the STPIS targets. After the adjustment, the level of service performance required to meet the STPIS targets will be similar to the level of service performance required to satisfy the MSS targets, that is, after the adjustment, the DNSP would be required to achieve the same level of service performance to meet the STPIS targets as it would to satisfy the MSS targets.
			4. It is appropriate to set targets in a manner which will not financially reward Ergon Energy under the STPIS for improved service performance where the improvements to service performance have been funded through capex and opex allowances and are required under the Code. In this regard, the AER noted:
				1. Ergon Energy’s inability to reconcile expenditure with its level of service performance is not a reason to set Ergon Energy’s performance targets at a level less onerous than the MSS;
				2. the expenditures proposed by Ergon Energy will significantly improve unplanned reliability; and
				3. no alternative targets or a methodology for setting targets which allowed for the different basis of the targets were provided by Ergon Energy.
3. The AER reviewed PB’s work and considered it to be a robust statistical approach which relied on Ergon Energy’s historical data to determine the likely variance of the minimum service performance from the average service performance. The AER therefore accepted PB’s analysis which supported setting targets at MSS-10%.

# SUMMARY OF GROUNDS FOR REVIEW

1. Ergon Energy alleged that the AER had made errors in its Final Determination by setting STPIS targets that are more onerous than its MSS targets and that the AER did so on the assumption that Ergon Energy’s forecast capex and opex would fund a level of reliability that would outperform its MSS targets.
2. The AER argues that the STPIS targets it set are not more onerous than the MSS targets.

# TRIBUNAL CONSIDERATION

1. The MSS targets need to be adjusted before they can be compared to the STPIS targets because the MSS targets relate to both planned and unplanned interruptions to supply, whereas the STPIS targets relate only to unplanned interruptions. There is no dispute about how these adjustments should be made, with the result that the parties referred to the two sets of targets as if they related to exactly the same elements of performance, and no confusion need arise on that score.
2. Since the elements of performance being measured relate to interruptions to supply, a lower duration or number of interruptions signifies better performance. Accordingly, a lower target requires better performance and is more difficult to achieve.
3. Some confusion arises over the use of the term ‘minimum target’ (used of the MSS). What must be achieved to meet it? Of course, if a target must be achieved then the duration (or number) of interruptions must not exceed the target. The figure in which the target is expressed is in fact a maximum. That confusion can be kept at bay so long as the nature of good reliability performance (fewer/shorter interruptions rather than more/longer interruptions) is always kept in mind. Minimum target should be thought of in terms of performance that must not be under-achieved, which requires interruptions that do not exceed target levels. Again, there was no dispute between the parties on the meanings to be given to these terms.
4. However, whether the MSS targets were in fact minimum targets was in dispute. The significance of the fact that the Code required only that Ergon Energy use its best endeavours to achieve the MSS was also in dispute. Much of the dispute involved the parties speaking at cross purposes as to the meaning of meeting targets.
5. Since there can be no certainty that Ergon Energy would meet a target in any year, and no possible way of compelling it to do so with certainty, the meaning of the term ‘minimum target’ is moot. Ergon Energy’s suggestion that the Code’s requirement that it “... use its best endeavours” is a non-mandatory lesser obligation than the STPIS is dispelled by the Code’s use of the word “must” which prefaces the requirement and the enforcement provisions in Pt 1A, Div 6 of the *Electricity Act 1994* (Qld) which may result in a civil penalty for a failure to meet the requirement. Rather, Ergon Energy is required under the Code’s MSS to meet targets, and under the STPIS is given incentives, positive and negative, to meet targets. For any given level of effort to achieve reliability, there will be a probability that Ergon Energy will achieve any given target.
6. The AER’s interpretation of the MSS is that Ergon Energy is required to achieve the target with a high level of probability. Assuming that both the targets and Ergon Energy’s reliability effort remain constant from year to year, then Ergon Energy’s actual reliability performance, with a given level of effort, would be expected naturally to fluctuate to some degree because of circumstances outside its control. Thus its level of performance over the years will be described by a probability distribution with a mean (the average performance across the years) and a variance (the variability from year to year).
7. To achieve the targets with a high degree of probability, Ergon Energy’s average reliability performance must be somewhat above the target (meaning, as explained above, that its average measures of interruptions must be below the targets). If, by contrast, Ergon Energy’s average performance was in line with the target, then it would be expected to over-perform and under-perform with equal probability. That is, it would under-perform (fail to achieve the targets) about as often as it over-performed (met or exceeded the targets). But that would not constitute achieving the targets with a high degree of probability.
8. Further, if Ergon Energy really was intending, and was funded, to make the level of reliability effort required to achieve the MSS targets with a high degree of probability, then it follows that setting the STPIS targets equal to the (adjusted) MSS targets would result in Ergon Energy over-performing more often than it under-performed. It would therefore receive net positive incentive revenue by making no additional effort – and achieving no better performance – than it was already intending to do, and was required to do by the MSS.
9. So far as that reasoning goes, the Tribunal considers it to be incontrovertible. The question is whether the AER was nevertheless in error through misinterpretation of what Ergon Energy was required to do by the MSS and whether it was funded to achieve the MSS targets with a high degree of probability.
10. In its submissions, Ergon Energy characterised the AER’s error as an assumption that Ergon Energy was intending to outperform the MSS. Thus the AER had mistaken reasons for departing from the FAP principles. It will be recalled that those principles speak in terms of setting the STPIS target equal to the MSS target where historical performance was below the MSS target, and of setting the STPIS target equal to the average historical performance where the average historical performance was better than the MSS target.
11. Counsel for Ergon Energy pointed out that its average historical performance had in fact been inferior to the MSS targets. He then sought to argue that its proposed capex was aimed at meeting MSS targets by the end of the regulatory period, not to miss them in only one out of five or one out of ten or one out of twenty years.
12. But Ergon Energy is required by the Code to use its best endeavours to meet the targets and may incur a penalty if it does not. The Tribunal considers that the AER’s interpretation that this means it should not fail to do so more than once in every five years is reasonable. In this sense, it is arguable that the STPIS targets are in fact “equal” to the MSS targets, as provided for in the FAP principles. In any case, if the STPIS targets are not “equal” to the MSS targets, the Tribunal considers that they may be described as equivalent to them, in the sense of requiring the same level of reliability effort and performance. It follows that if the STPIS targets represent a departure from the FAP principles, then the Tribunal considers that a good basis exists for that departure.
13. In reaching this view, the Tribunal has not put weight on Ergon Energy’s internal targets of MSS–10%, but rather on what is meant by meeting the MSS targets. The Tribunal notes that in its Final Determination the AER, similarly, based its decision on the level of performance required to meet the MSS and STPIS targets. The Tribunal does not consider that the STPIS targets require Ergon Energy to outperform the MSS targets, as Ergon Energy claimed, but to comply with its obligations under the Code.
14. In reaching its decision that there was no error in the setting of the STPIS targets, the Tribunal has also not put weight on the level of funding provided to Ergon Energy. The question of funding, while clearly not independent of the level of reliability performance, is correctly a matter for consideration under another heading. Elements of the AER’s final decision that relate to Ergon Energy’s revenue requirement are dealt with separately. Under the ground of review relating to the STPIS, Ergon Energy did not seek a variation to the AER’s Final Determination in any respect other than a change in the STPIS targets.
15. Nevertheless, considerable argument was put to the Tribunal about the level of funding for reliability and service quality, and something should be said about that issue.
16. The AER decided not to allow the expenditure proposed by Ergon Energy, but rather to maintain reliability and quality improvement capex at current period levels, adjusted upward to account for a historical underspend, plus an allowance for a Supervisory Control and Data Acquisition acceleration strategy. This amounted to a $26 million reduction in Ergon Energy’s proposed capex of $125 million over the regulatory period, largely due to rejection of proposed capex for a Feeder Improvement Program.
17. Ergon Energy’s argument was that with this reduction, its capex was not sufficient to exceed (in performance terms) its MSS targets. But as already mentioned, the Tribunal does not accept that the STPIS targets represent out-performance of the MSS targets. Moreover, against Ergon Energy’s argument is the statement in its Revised Proposal, that neither the MSS targets nor the MSS–10% internal business targets were used to develop Ergon Energy’s capex and opex programs for the regulatory control period. Furthermore, PB noted that Ergon Energy did not appear to have reconciled its proposed expenditures with its mandated reliability performance.
18. These considerations tell against rejection of PB’s advice to the AER that the STPIS targets were achievable. It is also relevant that, as described above, targets ranging some 13% to 19% tighter than the six MSS targets (Urban, Short Rural and Long Rural for both SAIFI and SAIDI) would be consistent with failing to meet the MSS targets not more often than once in every five years. The setting of the STPIS targets at MSS-10% could be expected to require lower expenditure and reduce the level of difficulty Ergon Energy would face in achieving reliability performance.
19. For the above reasons, the Tribunal finds that no ground of review under s 71C(1) of the NEL has been established by Ergon Energy.
20. The Tribunal directs that the parties confer and provide minutes of the appropriate determination to be made in light of the above reasons no later than 4:00pm on Monday 31 January 2011.
21. The Tribunal notes that the AER referred to an error in the course of identifying the incentive rates. This error may need to be reflected in the minutes of the Tribunal’s determination to be made.

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| I certify that the preceding sixty (60) 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: 23 December 2010