AUSTRALIAN COMPETITION TRIBUNAL

Application by Energex Limited (Distribution Ratio (Gamma)) (No 3)

[2010] ACompT 9

|  |  |
| --- | --- |
| Citation: | Application by Energex Limited (Distribution Ratio (Gamma)) (No 3) [2010] ACompT 9 |
|  |  |
| Review from: | Australian Energy Regulator |
|  |  |
| Parties: | **ENERGEX LIMITED (ACN 078 849 055)**  **ERGON ENERGY CORPORATION LIMITED**  **(ACN 078 646 062)**  **ETSA UTILITIES (ABN 13 332 330 749)** |
|  |  |
| File number(s): | 3 of 2010  4 of 2010 |
|  |  |
| Members: | **(DEPUTY PRESIDENT),**  **MR R DAVEY AND MR R SHOGREN** |
|  |  |
| Date of delivery of Reasons: | 24 December 2010 |
|  |  |
| Date of hearing: | 13, 14, 15, 16, 17, 20 and 21 September 2010 |
|  |  |
| Place: | Melbourne |
|  |  |
| Category: | No Catchwords |
|  |  |
| Number of paragraphs: | 5 |
|  |  |
| Counsel for Energex Limited: | Mr S Doyle SC with Mr P O’Shea SC and  Mr A Pomerenke |
|  |  |
| Solicitor for Energex Limited: | Allens Arthur Robinson |
|  |  |
| Counsel for Ergon Energy Corporation Limited: | Mr T Bradley |
|  |  |
| Solicitor for Ergon Energy Corporation Limited: | Minter Ellison Lawyers |
|  |  |
| Counsel for ETSA Utilities: | Mr CA Moore with Mr M Borsky |
|  |  |
| Solicitor for ETSA Utilities: | Gilbert + Tobin |
|  |  |
| Counsel for Australian Energy Regulator: | Mr P Hanks QC with Mr Gray, Ms R Ellyard, Mr T Clarke and Mr L Merrick |
|  |  |
| Solicitor for Australian Energy Regulator: | Corrs Chambers Westgarth |

|  |  |
| --- | --- |
| IN THE AUSTRALIAN COMPETITION TRIBUNAL |  |
|  | File No |

|  |  |  |
| --- | --- | --- |
| 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 ENERGEX LIMITED PURSUANT TO CLAUSE 6.11.1 OF THE NATIONAL ELECTRITICY RULES | |
| BY: | ENERGEX LIMITED (ACN 078 849 055)  Applicant | |
|  |  | |
|  | | File No 3 of 2010 |

|  |  |  |
| --- | --- | --- |
| 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 CLAUSE 6.11.1 OF THE NATIONAL ELECTRICITY RULES | |
| BY: | ERGON ENERGY CORPORATION LIMITED  (ACN 078 646 062)  Applicant | |
|  |  | |
|  | | File No 4 of 2010 |

|  |  |
| --- | --- |
| 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 ETSA UTILITIES PURSUANT TO CLAUSE 6.11.1 OF THE NATIONAL ELECTRITICY RULES |
| BY: | ETSA UTILITIES (ABN 13 332 330 749)  Applicant |

|  |  |
| --- | --- |
| MEMBERS: | MIDDLETON J (DEPUTY PRESIDENT),  MR R DAVEY AND MR R SHOGREN |
| DATE: | 24 DECEMBER 2010 |
| WHERE MADE: | MELBOURNE |

**REASONS FOR DECISION: DISTRIBUTION RATIO (GAMMA)**

1. The Tribunal has received submissions as to the distribution ratio to be used in the calculation of gamma.
2. The AER accepts that on the material presently before the Tribunal, there is no empirical data that is capable of supporting an estimated distribution ratio higher than 0.7. The AER therefore accepts that it is open to the Tribunal to adopt a substitute distribution ratio of 0.7.
3. While each applicant agrees with the submissions of the AER in respect of the distribution ratio to be adopted by the Tribunal in this review, they challenge the AER’s prognosis of what the ratio may be in the future. That is an issue for another day.
4. In light of these submissions and the material before the Tribunal, the Tribunal concludes that the distribution ratio is 0.7 for the calculation of gamma.
5. 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.

|  |
| --- |
| I certify that the preceding five (5) numbered paragraphs are a true copy of the Reasons for Decision herein of the Honourable Justice Middleton (Deputy President), Mr RC Davey and Mr RF Shogren. |

Associate:

Dated: 23 December 2010