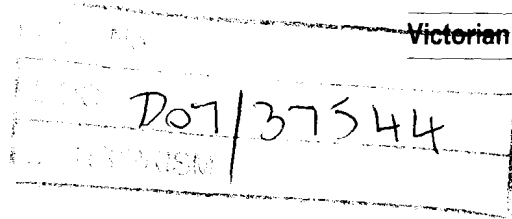


V E N C o r p



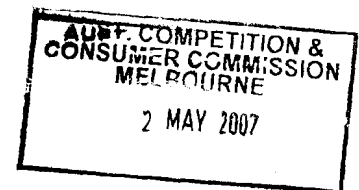
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Victorian Energy Networks Corporation



30 April 2007

Mr Steve Edwell
Chairman
Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001



email: aerinqury@aer.gov.au

Dear Steve

Re: First Proposed Electricity Transmission Network Service Providers Submission Guidelines

VENCorp welcomes the opportunity to comment on the draft First Proposed Electricity Transmission Network Service Providers Submission Guidelines (Submission Guidelines) which have been issued by the Australian Energy Regulator (AER) together with an accompanying Explanatory Statement and Issues Paper.

By way of background to this submission, VENCorp is a statutory body that is constituted as a not-for-profit organisation and is funded by the industry on a cost-recovery basis. VENCorp's role is that of an independent transmission network planner and investment decision-maker in respect of the Victorian transmission network, but it does not own any transmission network assets. Instead, the network is principally owned by SP AusNet. VENCorp's unique position is recognised in the jurisdictional derogation for Victoria in the National Electricity Rules (NER), which provides that:

- the amount of VENCorp's maximum allowable aggregate revenue (MAAR) for a regulatory period (ie. its total revenue cap for that period) must not exceed its statutory electricity transmission-related costs;
- VENCorp's MAAR must be determined on a full cost recovery but no operating surplus basis; and
- where VENCorp's statutory electricity transmission-related costs for a financial year have exceeded, or are anticipated to exceed, the amount of those costs assumed by the AER in determining VENCorp's MAAR, VENCorp may apply to the AER for (and the AER must determine) an adjustment to VENCorp's MAAR for each affected financial year so as to enable VENCorp to recover its statutory electricity transmission-related costs through its MAAR (see NER, cl. 9.8.4C(a), (c)(1), (d), (e)(1), (g2), (g3); see also cl. 9.8.4C(b)(4), (e)(3)(iii), (f)).

VENCorp's statutory electricity transmission-related costs comprise:

- VENCorp's aggregate actual costs in operating and planning the Victorian transmission network;
- all network charges (including charges relating to augmentation) that are payable by VENCorp to any owner of the Victorian transmission network (principally SP AusNet);
- all other charges payable by VENCorp to providers of services which VENCorp uses to provide transmission network services; and
- any other costs that directly arise out of VENCorp's electricity transmission-related functions under the Electricity Industry Act 2000 (Vic), the NER or VENCorp's Victorian transmission licence and for which there is no alternative method of recovery (NER, cl. 9.3.1(2)).

The provisions of the derogation are stated to modify the application to VENCorp of the transmission revenue and price regulation regimes (including the associated procedures) set out in Chapter 6A of the NER (see NER, cl.9.8.4(a)(2), 9.8.4A, 9.8.4C(a2); see also cl. 9.8.4B(a), 9.8.4F(a)). The information which the AER needs for the purpose of enabling it to decide whether or not to approve VENCorp's proposed MAAR for a regulatory period and each year of that regulatory period will therefore be determined by the modified transmission revenue and price regulation regimes that apply to VENCorp. This is expressly recognised by clause 9.8.4C(c)(2) of the NER which requires VENCorp's revenue application to be in a form that complies with the Submission Guidelines "but only to the extent to which those guidelines are relevant and applicable to VENCorp".

Accordingly, VENCorp has prepared the attached submission on the questions set out in the Issues Paper that are relevant to VENCorp, noting those issues which VENCorp believes are not applicable to it.

Should you have any questions in relation to the attached submission, please do not hesitate to contact Louis Tirpcou on (03) 8664 6615.

Yours sincerely



Matt Zema
Chief Executive Officer

Att.

1. General Principles

Are the proposed general principles to be applied to historic and forecast information appropriate? Should any other principles be reflected into the Submission Guidelines?

VENCorp considers that the general principles proposed in section 2 of the Submission Guidelines are broadly appropriate and do not need to be supplemented by any additional principles. However, VENCorp raises the following matters in connection with section 2 of the Submission Guidelines:

- Section 2.2(b) purports to direct TNSPs (albeit in general terms) as to the accounting principles and policies that they must select and apply in preparing their Revenue Proposals. This does not appear to be authorised by clause 6A.10.2 of the NER and it should be sufficient that the TNSP's accounting principles and policies are documented (as required by section 2.2(a)), leaving it to the AER to take those principles and policies into account in assessing the TNSP's Revenue Proposal.
- It is not clear that the AER has the power to require the provision of ad hoc information in order to assess a TNSP's Revenue Proposal (section 2.6). This does not seem to be contemplated by the transmission regulatory regime set out in the NER, which assumes that:
 - the information required in connection with a TNSP's Revenue Proposal will be specified up front in the Submission Guidelines (see cl. 6A.10.1(c)); and
 - the AER will determine at a preliminary stage whether the information provided complies with the requirements of the Submission Guidelines and, if not, the additional information required and the reasons that information would be of assistance to the AER (see cl. 6A.11.1(a)(4), (5), (b), 6A.11.2) — the subsequent ad hoc provision of information is inconsistent with the concept of submissions being made in respect of that fixed body of information and additional information being required to be provided only where this is necessitated by a change to the Revenue Proposal that is made in response to a requirement that is contained in a draft decision of the AER on that Revenue Proposal (see cl. 6A.12.3(c), (f)).

On this basis, the adequacy or otherwise of the information provided by the TNSP is simply a matter that the AER should take into account in determining whether or not to approve the TNSP's Revenue Proposal. While the AER can require a TNSP to provide information that it reasonably requires as an input regarding the performance of the TNSP to inform the AER's decision making in respect of future revenue determinations (NER, cl. 6A.17.1(d)(3)), VENCorp considers that this is not a power that is intended to be exercised during a regulatory reset given the express rules regarding information provision described above.

- Section 2.7(a) requires the TNSP to ensure that all information provided to the AER is independently 'verifiable' by reference to a source document or assumption. This broad obligation has the potential to impose a significant regulatory burden on TNSPs without necessarily achieving a corresponding benefit. VENCorp requests the AER to consider specifying the type of information that must be verifiable, and/or including realistic materiality thresholds.

- It is important that the AER identify any information that it requires to be audited or otherwise verified prior to the preparation by the TNSP of its Revenue Proposal. A requirement to audit or verify such information after the Revenue Proposal has been lodged will be time consuming and may lead to changes in that information (eg. because the auditor cannot verify it in the terms the AER subsequently requires). There appears to be no reason why the AER cannot specify in the Submission Guidelines the type of information that must be audited or otherwise verified. To the extent that section 2.8(a) would enable the AER to require the audit or verification of information contained in a Revenue Proposal after its submission, VENCORP submits that this is neither appropriate nor consistent with clause 6A.10.2(b)(2) of the NER.
- If section 2.8(f) is intended to apply to historical information, it may not be feasible for the TNSP to consult with the AER on the choice of auditor before the relevant regulatory accounting date. It would be preferable for the AER to approve up front the use by a TNSP of an auditor that satisfies certain objective criteria (eg. is a registered company auditor under the Corporations Act).
- If the auditor is appropriately qualified and delivers a report in one of the annexed forms then, contrary to section 2.8(j), VENCORP does not consider that the AER should be able to require a further audit or appoint its own auditor to be employed by the TNSP. At most, the AER should only be able to require a further audit where the previous audit failed to satisfy the requirements of the Submission Guidelines (rather than the requirements of the AER).
- The Submission Guidelines should clarify whether historical information is required to be audited. Section 2.8(k) seems to be confined to audits of forecast information.
- The scope of the directors' responsibility statement as described in section 2.10 of the Submission Guidelines and the definition in the Glossary is broader than the example contained in Appendix B. Schedule 6A.1 of the NER (cl. S6A1.1(5) and S6A1.2(6)) only require the directors of a TNSP to certify the reasonableness of the key assumptions underlying the capital and operating expenditure forecasts in the TNSP's Revenue Proposal. It is critical that TNSPs are aware of the precise form and scope of the required certification in advance of the preparation of their Revenue Proposals. VENCORP submits that such certifications can only be required to be given in respect of the reasonableness of the relevant underlying assumptions.

2. Forecast Information Principles

Are the proposed general principles to be applied to forecast information appropriate? Should any other principles be reflected into the Submission Guidelines?

VENCORP considers that the general principles proposed in section 3 of the Submission Guidelines to be applied to forecast information are broadly appropriate and do not need to be supplemented by any additional principles. In particular, VENCORP agrees that allowing for discretionary headings will assist to facilitate an understanding of a TNSP's business. However, VENCORP notes that not all of the minimum disclosure requirements specified in Appendix A will be relevant to VENCORP (see section 3 below).

3. Revenue Proposal – Information Requirements

Are the proposed requirements in relation to the information to be included in, or to accompany, a TNSP's Revenue Proposal appropriate given the requirements of the NER? Should the AER require any other information to be contained in, or to accompany, the TNSP's Revenue Proposal?

VENCorp considers that the proposed requirements in section 4.3 of the Submission Guidelines in relation to the information to be included in, or to accompany, a TNSP's Revenue Proposal are generally appropriate for most TNSPs. However, in many respects these requirements will not be applicable to VENCorp. This is as a result of the application to VENCorp of the modified transmission revenue regulation regime which is implemented by a Victorian derogation, the operation of which is described in the covering letter. Pursuant to that derogation, VENCorp is entitled to recover its statutory electricity transmission-related costs (as set out in the covering letter) on a full cost recovery but no operating surplus basis.

Accordingly, the information which the AER requires to determine VENCorp's revenue cap, or MAAR, both for a regulatory period and each year of that regulatory period, is restricted to:

- VENCorp's proposed MAAR for each year of the regulatory period (NER, cl. 9.8.4C(b)(1));
- VENCorp's forecast of its statutory electricity transmission-related costs for each such year (this information may include the historical amount of those costs) (NER, cl. 9.8.4C(b)(2)); and
- a statement that reconciles VENCorp's most recent forecast revenue, and most recent forecast statutory electricity transmission-related costs, for the current regulatory period (NER, cl. 9.8.4C(b)(4)) (this is relevant to the adjustment of the next regulatory period's MAAR for any under or over recovery: see NER, cl. 9.8.4C(c)(4), (e)(3)(iii), (f)).

On this basis, VENCorp believes that the information requirements and the corresponding pro forma statements (if any) relating to the following do not apply to it:

- historic and forecast operating and capital expenditure, except to the extent such expenditure falls within VENCorp's statutory electricity transmission-related costs;
- performance incentive scheme parameters;
- efficiency benefits sharing scheme parameters;
- total revenue cap, maximum allowed revenue and post tax revenue model, except as modified to reflect VENCorp's MAAR for the relevant regulatory period and each year of that regulatory period;
- regulatory asset base, roll-forward model and depreciation schedules (as VENCorp does not own any part of Victorian transmission network);
- proposed contingent projects;
- X factors;

- WACC parameters (except to the extent reflected in VENCORP's augmentation charges);
- cost pass-through rules (VENCORP's cost pass-through regime is set out in cl. 9.8.4C(g2) to (g4) of the NER); and
- forecast map of transmission system.

In addition, VENCORP draws the AER's attention to the following specific issues on the information requirements in the Submission Guidelines:

Section 4.1(a)(2) and 4.1(b)	The cross-references should be to Chapter 6A of the NER.
Section 4.3.2	The cross-reference should be to section 2.10 of the Submission Guidelines.
Sections 4.3.3(a)(1) & 4.3.4(a)(1)	It is the operating or capital expenditure (as the case may be), rather than the forecasts, which must comply with cl. 6A.6.6(a) and 6A.6.7(a) of the NER.
Section 4.3.3(b)(1)	The cross-reference should be to clause 6A.6.7(h) of the NER.
Section 4.3.3(b)(2)	The cross-reference should be to clause 6A.6.7(k) of the NER.
Sections 4.3.3(c)(1) & 4.3.4(b)(1)	All of the expenditure described in these sections is required to be efficient as well as <u>prudent</u> and <u>realistic</u> (see NER, cl. 6A.6.6(c); 6A.6.7(c)).
Section 4.3.9(c)	The cross-reference should be to sub-section (a).
Section 4.3.15	This should refer to a "breakdown of the <u>calculation of the weighted average cost of capital</u> nominated by the TNSP".
Section 4.3.18(a)(2) & (b)	These provisions seem inconsistent with NER cl. 6A.10.2(c)(1)(i) and (c)(2). The post-tax revenue model must be prepared and published by the AER in accordance with specified requirements (see NER, cl. 6A.5.2(a), 6A5.3, 11.6.17). It cannot be any model prepared by the TNSP.
Sections 4.3.18(c) & 4.3.19(b)	These sections should read "except to the extent that the information is <u>aggregated</u> or otherwise available".
Section 4.3.19(a)(2)b	The cross-reference should be to Chapter 6A of the NER.
Section 4.3.20	It is not clear why information related to cost pass-throughs is relevant to a TNSP's Revenue Proposal (the application for a cost pass-through is a separate process).
Section 4.3.22	This section should read "A TNSP's Revenue Proposal must contain <u>details of</u> :".
Section 4.3.24(b)	Given that Chapter 6A and the Submission Guidelines introduce a number of new requirements, existing related party contracts may not allow the TNSP to obtain this information. It may be impossible for the TNSP to require the inclusion of such requirements in an existing contract if the related party is not controlled by the TNSP.

4. Revenue Proposal – Submission/Resubmission Arrangements

Are the proposed arrangements for the submission, or resubmission, of a TNSP's Revenue Proposal or revised Revenue Proposal appropriate given the requirements of the NER?

VENCorp considers that sections 4.4 and 4.5 of the Submission Guidelines, which deal with the submission and resubmission of a Revenue Proposal and associated information, are unnecessary given the detailed provisions in clauses 6A.11 and 6A.12.3 of the NER and should not be included in the Submission Guidelines.

5. Revenue Proposal – Publication

Are the proposed arrangements for the publication of a TNSP's Revenue Proposal, and the treatment of 'protected information', appropriate given the requirements of the NER?

VENCorp considers that the information referred to in section 4.6(a)(1) to (6) of the Submission Guidelines cannot be described as "protected information". "Protected information" is defined in clause 6A.18.1(a) of the NER and relates to a TNSP's annual statements and certain additional information. The significance of this distinction is that protected information may be disclosed without the TNSP's consent in certain circumstances (see NER, cl. 6A.18.3), whereas information specified in the Submission Guidelines for the purposes of clause 6A.10.2(b)(3) can only be disclosed with the TNSP's consent. This protection is critical to enable TNSPs to be assured that confidential information which they provide to the AER as part of their Revenue Proposals will remain confidential. In addition, VENCorp notes that:

- the cross-reference to clause 6A.18.1(a)(2) of the NER does not make sense as this clause refers to information relevant to a TNSP's performance under a service target performance incentive scheme; and
- the cross-reference in section 4.6(a)(2) should be to section 4.3.9(a) to (c).

6. Negotiating Framework – Information Requirements

Are the proposed requirements in relation to the information to be included in, or to accompany, a TNSP's proposed negotiating framework appropriate given the requirements of the NER? Should the AER require any other information to be contained in, or to accompany, the TNSP's proposed negotiating framework? (for example, non-price matters?)

VENCorp considers that the proposed requirements in relation to the information to be included in, or to accompany, a TNSP's proposed negotiating framework, are broadly appropriate and that no additional requirements need to be included in the Submission Guidelines. However, VENCorp questions whether it is really necessary to reproduce the detailed information requirements in clause 6.9.5 of the NER in the Submission Guidelines.

In addition, VENCorp draws the AER's attention to the following matters:

Section 5.1(a)	This section should refer to "the price and other terms and
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	conditions on which the service is to be provided".
Sections 5.2(c), (d), (h), (i)(1), (j)	These sections should refer to "the price and other terms and conditions on which" the relevant negotiated transmission service(s) are to be provided.
Section 5.2(f)	This is not consistent with clause 6A.9.1(1). It is unclear why the AER has focussed on this particular Negotiated Transmission Services Principle, and in any event the NER does not require any of these principles to be specified in a negotiating framework (they apply quite independently).
Section 5.2(j)	The cross-reference should be to Part K of Chapter 6A (not schedule 6A.3).
—	Although VENCORP is not in favour of reproducing clause 6A.9.5(c) of the NER, if this approach is to be adopted then there seems to be no reason not to replicate clauses 6A.9.5(c)(8) and (9).
Section 5.3(a)	This needs to be updated to reflect NER clause 6A.9.5(d)
Sections 5.3(c) & (d)	These sections do not reflect the current version of the NER and should be deleted.

7. Negotiating Framework – Submission/Resubmission Arrangements

Are the proposed arrangements for the submission, or resubmission, of a TNSP's proposed negotiating framework, or revised negotiating framework, appropriate given the requirements of the NER?

VENCORP considers that sections 5.4 and 5.5 of the Submission Guidelines, which deal with the submission and resubmission of a negotiating framework and associated information, are unnecessary given the detailed provisions in clauses 6A.11 and 6A.12.3 of the NER and should not be included in the Submission Guidelines.

8. Negotiating Framework – Publication

Are the proposed arrangements for the publication of a TNSP's negotiating framework appropriate given the requirements of the NER?

VENCORP considers that the proposed arrangements for the publication of a TNSP's negotiating framework in section 5.6 of the Submission Guidelines are appropriate, on the basis of the information requirements currently set out in section 5.2. However, VENCORP cannot envisage any circumstances in which any information provided in respect of a TNSP's negotiating framework would not be published. The framework is intended to merely set out procedural matters. In any event, for reasons similar to those referred to in section 5 above, it is not clear how any such information could be "protected information" given the definition of that term in clause 6A.18.1(a) of the NER.

9. Pro Forma Statements

Are the proposed pro forma statements that a TNSP must complete as complete as part of its Revenue Proposal appropriate given the requirements of the NER? Should the AER require any other information to be included in its pro forma statements?

VENCorp notes that a number of the pro forma statements will not apply to VENCorp's Revenue Proposal, or will require modification, as indicated in VENCorp's response to question 3.

10. Glossary

10.1

In relation to the Glossary, VENCorp makes the following comments:

Certified annual statement	It is not clear where this term is referred to in the Submission Guidelines.
Negotiating framework determination	The cross-reference should be to clause 6A.9.5 of the NER.
Regulatory audit report	The first dot point should refer to a special purpose financial <u>report</u> .
Related party	Paragraph (g) should read " <u>is</u> controlled". The concept of "director-related entity" referred to in paragraphs (h) and (i) is unclear. Paragraph (l) should refer to the Corporations <u>Act</u> .