

SP AusNet Submission to MCE on Exposure Draft Legislation for AEMO Establishment

1. Introduction

This submission is made by SP AusNet in response to the exposure draft amendments to the National Electricity Law (NEL) and National Electricity Rules (the Rules) exposure draft amendments to establish AEMO, released by the MCE on 19 December 2008.

The submission concentrates in particular on the proposals for the transfer of VENCORP's electricity transmission functions into AEMO. SP AusNet recognises that the Victorian Government has foreshadowed this for some time, and we are supportive of such an amalgamation of functions that can maintain the practicality of the Victorian regime and leave the rights, responsibilities and interests of Victorian participants unaffected. We understand that the intention for the transfer of functions to be done in a way which does not alter the Victorian framework in a material way.

However, SP AusNet considers that amalgamation in this way is not achieved by the proposals described in the draft legislative package. The proposals, as drafted, significantly alter the current Victorian framework, and in doing so:

- directly impact SP AusNet's provision of transmission services;
- remove key governance arrangements surrounding the regime and confers undue and inappropriate powers on AEMO which may be considered quasi policy making and regulatory; and
- reduce the clarity of the arrangements, where improved clarity is in fact required.

In this submission we discuss the manner in which the proposals impact the current arrangements, in particular affecting SP AusNet, as the principal owner of the Victorian transmission network. We also offer our views as to practical solutions that may be applied.

SP AusNet is also a member of esaa, the Energy Networks Association and Grid Australia, and also supports their submissions.

The remainder of this submission consists of two parts. Sections 2 – 5 discuss the broad issues of major concern to SP AusNet from the proposed arrangements. Section 6 provides a detailed analysis with reference to specific clauses in the draft NEL and Rules amendments.

2. Transmission Service Provider Roles

In our submission into the Implementation Steering Committee's Statement of Proposed Approach (19 September 2008), we discussed the strong interdependency between VENCORP and SP AusNet in carrying out the TNSP role in Victoria. This makes it difficult to assign all of the Rules obligations to one party or the other. We therefore suggested that an effective approach would be for AEMO to be registered or otherwise recognised in the Rules as a TNSP.

The draft legislation proposes an approach which will recognise AEMO as having broad TNSP obligations, and at the same time attempts to delineate these from the obligations of network owner TNSPs, such as SP AusNet.

As noted above, SP AusNet supports the broad concept proposed, as it has potential to improve clarity, however, as presently drafted we believe that it leads to practical difficulties.

The NEL amendments treat the assignment of TNSP responsibilities differently for the various chapters of the Rules. Each of these approaches creates a set of issues. There are several aspects to this, as discussed in the following sections.

2.1. TNSP Responsibilities Relating to Transmission Revenue and Pricing

The NEL amendments relating to transmission revenue and pricing under Chapter 6A of the Rules designate AEMO as the TNSP for shared network services, and provide for SP AusNet to also hold this designation for services it provides to VENCORP. The services SP AusNet would provide to VENCORP are defined as “shared network capability services” under proposed NEL 50D(1).

A major concern to SP AusNet is that it is not explicit how the transmission network services provided by SP AusNet could be recognised within Chapter 6A of the Rules as prescribed transmission services. As a result there is a risk that the AER may be unable to determine a revenue cap for these services, and AEMO’s obligation to make payment for them is therefore also extremely tenuous.

The designation of TNSP roles is covered in amendments to S6A.4.1 of the Rules, and is confusing. Sub-clause 3 is clear in identifying AEMO as a TNSP for *shared transmission services*.

Sub-clause 4 is less clear, but appears to arrive at the position that AEMO is the singular TNSP for *prescribed transmission services*, which includes *prescribed shared network capability services*, where those services are *shared transmission services*.

Whilst paragraph 2 of sub-clause 4 extends a reference to *prescribed transmission services* to *prescribed shared network capability services*, the definition of this service category identifies it as being provided for the purpose of AEMO providing a *prescribed transmission service*.

In addition to the issue of designating TNSP roles, the definition of services in Victoria which constitute *shared transmission services* is also required, and the definition of the services provided by SP AusNet in relation to those services. This is discussed further in Section 4 of this submission.

SP AusNet believes there is a need to preserve the definitions for services provided by Victorian service providers (including AEMO), and for much improved clarity in the drafting to make it quite clear that the AER is to determine a revenue cap for those of SP AusNet’s services that are presently subject to revenue capping.

2.2. TNSP Responsibilities Relating to Network Performance

The proposed amendments relating to designation of TNSP responsibilities for obligations under Chapter 5 of the Rules is treated differently, ascribing TNSP responsibilities to SP AusNet only for entry and exit services. AEMO would be the TNSP responsible for all obligations relevant to the shared network. These designations would be made via new paragraph (f) to be added to clause 5.1.3 of the Rules.

Presently SP AusNet is designated by the Victorian derogations as responsible for TNSP obligations relating to the management, maintenance and operation of its network. VENCORP also has other obligations, and there are obligations that are not specifically assigned in instruments at all, and it is generally interpreted that these apply to SP AusNet and VENCORP as appropriate, having regard to their functions.

However, by virtue of the proposed designation principles, the Rules would apply to allocate all of these obligations to AEMO. This would cause a significant shift of responsibilities and potentially also alter operating arrangements. We do not believe this is intended.

A preferable approach would be to designate certain responsibilities to SP AusNet by exception. Some obligations applying to both parties due to interdependency would also be included, such as the obligations relating to compliance programs¹.

2.3. Other TNSP Responsibilities

The Victorian derogations also assign TNSP responsibilities to SP AusNet and VENCORP for other chapters of the Rules, notably Chapter 3 (Market Rules) and Chapter 4 (Power System Security). However, under the proposed amendments all TNSP references in these chapters would be references to SP AusNet, as apart from application to Chapters 5 and 6, AEMO is not designated as a TNSP.

The approach for Chapters 3 and 4 appears reasonable, as obligations assigned by the Chapter 9 derogations to VENCORP are in respect of information it must provide to NEMMCO. In the future the provider and recipient of this information will be contained within AEMO and the obligations are redundant.

Nevertheless, without assignment to any party, it would likely be interpreted that these obligations are assigned to SP AusNet, as the obligations still exist as TNSP obligations, and AEMO is not designated as a TNSP. Some clarification is therefore necessary.

Finally, we note that the proposed amendments assign the responsibilities of TNSPs, rather than of NSPs where that NSP is a TNSP. We think the amendment should ensure that TNSP obligations referenced in both ways are assigned.

3. AEMO's Information Gathering Powers

The draft amendments provide for AEMO to be granted information gathering powers modelled on the powers provided for the AER in the NEL. The powers were initially proposed by the AEMC to facilitate data gathering for AEMO's National Transmission Planner role.

SP AusNet has serious concerns regarding these powers and we fully support the submissions made on this matter by our affiliate bodies (esaa, ENA and Grid Australia).

In this submission however, we wish to express our serious concern that the draft amendments extend the application of these powers to AEMO's Victorian electricity transmission functions. This extension introduces an extremely heavy-handed capability to the operation of the Victorian transmission arrangements which are not reflective of the intended operational nature of the relationship between AEMO and

¹ The shared obligations in relation to compliance programs under clause 5.7.4 (a1) of the Rules were discussed in SP AusNet's submission of 19 September 2008 on the ISC's Statement of Approach [check title]

SP AusNet, have not previously been envisaged and we do not believe are warranted.

In considering these proposals we have analysed the powers contained within the existing framework, and the experience obtained with that framework. We would expect that the need for any changes would need to be supported by evidence from such analysis, and we note that there is no such explanation from the MCE.

The Victorian electricity transmission arrangements apply the Victorian Electricity Industry Act (2000), VENCORP's Electricity Transmission Licence, the Victorian Electricity System Code, transmitter licences (such as SPI PowerNet's Transmission Licence), the current NEL and Rules, and the Network Agreements which VENCORP has established for all services procured by it.

Of these instruments VENCORP's significant information gathering powers are contained within the operational instruments, being the System Code and the Network Agreements. The information which must be provided is generally explicit, and where this is not the case, the purpose for which VENCORP may request information is identified.

Our experience is that in the 14 years that the Victorian arrangements have been established there have been no disputes over information provision, and where VENCORP has sought specific information SP AusNet has been able to satisfy VENCORP's requirements.

A preferable approach for information gathering in the context of the Victorian arrangements would be to retain the relevant provisions of the System Code. In our earlier submission to the ISC SP AusNet proposed that residual relevant sections of the System Code could be merged into the Rules. The relevant information provision requirements could be included amongst these.

4. Governance Oversight of Victorian Transmission Arrangements

The Victorian System Code, the contestability and land access guideline (Guideline 18) and transmission licences to be administered by the AER (previously by the ESC) contain important clarification of the Victorian transmission arrangements. We understand that these instruments will become redundant with the commencement of AEMO. Much of this clarification will not be transferred into the new arrangements via the proposed legislative arrangements. The effect is to significantly reduce the clarity of the regime, and to remove independent oversight. This changes the current application of these provisions.

Aspects of the System Code are discussed in section 3 of this submission.

In relation to the transmission licences, these are key instruments in defining the shared network in Victoria (VENCORP licence) and services to be provided by SP AusNet (SP AusNet licence). The licences have formed the basis for identifying the transmission service envelope in Victoria, which differs from the general definition in the Rules, and therefore also impacts on the identification of prescribed services provided by SP AusNet. Unique elements of the Victorian shared network definition include critical 66kV circuits and transmission lines providing dedicated service to power stations.

SP AusNet believes these clarifications must be contained within regulatory instruments.

SP AusNet is also concerned with proposals for AEMO to be granted responsibilities which tend toward policy setting. We believe the proposals are inappropriate for a body which is an industry participant (AEMO will be a TNSP) and has a vested interest in the design of the arrangements.

There are a number of areas where these powers are apparent.

4.1. Rules changes

AEMO will have veto power over Rules changes relating to the Victorian arrangements proposed by other parties eligible to propose changes. The Rules change process and the AEMC, itself, are established in a way that is intended to produce appropriate outcomes and no entity involved in the market should be capable of overturning a decision of the AEMC.

AEMO is clearly a body subject to the arrangements which will be set out in the Rules, and it is therefore conflicted as the proposed gatekeeper of the Victorian transmission arrangements. As the operability of this Rules subset is tested over time it is quite feasible that AEMO will take a different view on their effectiveness or the improvements required to the views of other Victorian participants.

The appropriate body to decide on Rules is the AEMC. If it is considered necessary for additional guidance, then the NEL should set out the matters to which the AEMC must have regard in making a Rule, in much the same way as current S89 does for the jurisdictional derogations.

It is unnecessary for any party to hold such a veto power in the Rules. The unique features of the Victorian regime would be preserved in the NEL, through AEMO's 'declared network functions' being invoked by the Victorian minister. Any necessary veto power therefore exists, appropriately, through the ability of the MCE to vary the 'declared network functions' if their intent is followed by Rules development in a way which is detrimental to the good operation and effectiveness of the arrangements.

The 'declared network functions' includes the following elements:

- the assignment of AEMO's functions (section 50C);
- the requirement for network capability services (such as provided by SP AusNet) to be provided to AEMO through Network Agreements, including a dispute resolution process (section 50D);
- the requirement for entry and exit services to be subject to connection agreement between network users and network owners, including a dispute resolution process (section 50E); and
- the basis for AEMOs planning of the network and the approach to augmentation, including procurement of services (Section 50F).

4.2. Design of Contestability Regime

The draft legislative package establishes the augmentation contestability regime in the Rules. The proposed arrangements will grant AEMO considerable oversight responsibility, a role it does not perform in the current Victorian regime. As discussed in Section 4.1, AEMO should be seen as a participant in the arrangements, and by being granted additional powers and freedom in implementation of the regime it is conflicted.

An example is that there is an apparent ability for the threshold for contestability to be varied without any guidance. It would therefore be possible for the threshold to be varied on a project-by-project basis to suit the circumstances facing AEMO at a

particular time. Under the current Victorian regime the governance arrangements provide for the regulator to rule on such matters.

SP AusNet believes that the threshold must either be fixed, and subject to variation via Rules change, or regulatory oversight must be maintained as a primary feature in the application of the regime. There are a number of reasons why this is necessary, including:

- The lack of clarity that would otherwise exist is inconsistent with the nature of the national framework, which seeks to provide a reasonable degree of certainty to participants. The thresholds for application of the regulatory test, for example, are not able to be varied in a flexible manner;
- It should not be unreasonable for the incumbent service provider to be able to forecast with reasonable accuracy the investment in network augmentation which it is obliged to make, i.e. the component which is non-contestable;
- The existing threshold has been set by the ESC taking into account various factors including the costs of contestability. The ability for an arbitrary variation removes the discipline on AEMO to address any issues regarding the implementation of the regime in a transparent and timely fashion;
- Any adjustments to the threshold that may become necessary, e.g. to account for escalation of costs over time, can be readily managed through rule changes sought at the appropriate time.

A further example is the responsibility that will be afforded to AEMO to determine the risk allocation that will apply in tri-partite fashion between the parties subject to a contestable augmentation. These parties include AEMO, the incumbent network owner, and the new contestable service provider. Currently the risk allocation is embedded in the guideline developed and administered by the regulator. The independent oversight provided is an essential feature of good governance in the Victorian regime.

Development of the existing guideline was required through the introduction of an amendment to Victoria's Electricity Industry Act. This resulted from a range of issues surrounding the application of contestability for transmission augmentations. The guidelines place obligations on both the incumbent transmission network owner and on VENCORP. In its final decision on the guidelines in March 2005, the ESC foresaw a continued need for regulatory oversight, both through reporting requirements placed on the parties (including VENCORP), and in monitoring of effectiveness. The ESC stated that it would:

"...closely monitor the operation and performance of the Guidelines with each contestable project and where appropriate, review any issues with the parties involved in order to ensure that the Guidelines achieve the desired objectives of promoting competition and certainty in augmentation projects to the transmission system²".

4.3. Conclusion on Oversight of Victorian Arrangements

AEMO will not be an independent body in relation to the application of the Victorian regime. Rather, it will be a TNSP, as is VENCORP, and therefore it is a participant in the arrangements with a vested interest in the design.

² Page 3, Final Decision, Electricity Guideline No.18 – Land Access and Contestability – Electricity Transmission, ESC, 1 April 2005

The above sections have highlighted key areas where SP AusNet considers AEMO will be entrusted with regime design responsibilities that are not appropriate for it to perform. Our comments on the detailed amendment provisions identify further similar issues, and the regime oversight arrangements should address each of these.

SP AusNet does not consider that AEMO's corporate governance model, of ownership by jurisdictions and industry participants, is able to provide assurance regarding the issues of conflict that we have raised. The membership is diverse, and only a limited number of parties will take interest in these issues. Further, provided AEMO implements the regime in a way which does not disadvantage AEMO itself, it is unlikely that the board would consider implementation issues raised by other participants with any priority. Of course it is also true that the board's objective in considering these issues must also be the best interests of AEMO.

We also note that AEMO will be subject to judicial review. However this form of redress would be unsatisfactory in respect of actions and decisions of AEMO in implementing the Victorian arrangements. This is because AEMO will be acting in accordance with its powers, and it is unlikely that a judicial review would extend its examination by confirming this fact, regardless of whether or not AEMO's actions and decisions are objective or reasonable.

Continued regulatory oversight, as provided for in the current arrangements, remains a necessary feature of the regime. In SP AusNet's view the AER would be an appropriate regulatory body, and a means for transferring this oversight power to the AER should be identified and put in place.

In the event that the MCE concludes that AEMO should have a gatekeeper role for the Victorian arrangements as proposed, SP AusNet suggests that its decisions, and non-decisions, should be subject to merits review. This approach would provide a review capability independent of energy sector interests. As proposed above, the review tribunal could be subject to additional guidance set out in the NEL.

5. Novation of Network Agreement

This section highlights the interdependency between SP AusNet's ability to provide services under its Network Agreement with VENCORP, and the design of the transmission services regime of which the agreement is an integral part.

The NEL amendments will novate to AEMO all transmission service agreements to which VENCORP is a party. This includes the Network Agreement for the provision of all shared network transmission services in Victoria in 1994 when the former State Electricity Commission of Victoria was disaggregated and the current transmission arrangements established. This particular Network Agreement continues to cover the majority of services provided by SP AusNet, which are all prescribed services under chapter 6A of the Rules, and which account for a large proportion of SP AusNet's transmission revenue.

The changes to the Victorian electricity transmission regime arising from the transfer of VENCORP's functions into AEMO alter the ways in which the regime is administered, and there is potential for this to impact on SP AusNet in a number of ways. At the highest level is the corporate structure of AEMO. In the present arrangements VENCORP is a Victorian statutory body, and is therefore implicitly backed by the state and is subject to its direction. A similar level of comfort cannot be provided through the ownership structure proposed for AEMO. Transfer of the Network Agreement to AEMO therefore introduces an additional commercial risk for SP AusNet, which the new arrangements should, but do not, mitigate. SP AusNet wishes to discuss with the Victorian Department of Primary Industries and the MCE,

the means by which this can be achieved. We consider that feasible options may include a form of credit enhancement within AEMO, an explicit government guarantee, or bank guarantee provided by AEMO.

It is to be noted that the schedule for payment for services in the Network Agreement is not consistent with the approach to revenue recovery established by the AEMC in Chapter 6A of the Rules. SP AusNet is concerned that aspects of the agreement which are out of step with current arrangements should not be perpetuated into the new, nationalised Victorian regime.

In summary, SP AusNet requires detailed consideration to be given to various aspects of the proposed Victorian arrangements and the provisions of the Network Agreement before it could agree to novation. Whilst the draft legislation proposes that AEMO will succeed VENCORP under transmission service agreements to AEMO, we note the MCE's intention to consult further with SP AusNet on the transfer to AEMO³.

³ Issue No 57, Legislative Framework: Statement of Proposed Approach for the Australian Energy Market Operator Establishment – ISC Response to Stakeholder Submissions, Dec 2008.

6. NEL Amendments

6.1. NEL Part 5

Definitions	Declared transmission system operator	The definition includes owners, controllers or operators, and includes exempted parties. This is much broader than the registered entity, which is the definition otherwise used in the NEL to identify the operational entity.	Impacts could be broad, however an obvious one is that the definition would require parties in ownership, as well as the registered operational entity, to have a Network Agreement with AEMO under section 50D(1) for provision of the services provided by the transmission system operator.	The definition should be amended to reflect its operational purpose, and be limited to registered entities.
50B (3)	Additional advisory functions	If declared by a jurisdiction, AEMO will have a role, amongst others, to monitor connection planning adequacy.	The powers are intended to apply to SA. They are not appropriate for Vic due to DBs having planning responsibility for connection points. However, it is unclear whether a minister could declare both these powers and the declared network functions.	Confirmation that the two sets of provisions reflect alternatives, and do not coexist in a jurisdiction is necessary
50D(3)	Network Agreements	An "offer" to VENCORP must be made within 20 Business Days	The requirement is elevated to Law, from the transmission licence. This can be an onerous obligation and its achievement relies on joint preliminary work and mutual understanding for it to be achieved.	Should place in the Rules, where it can be amended, or made "as soon as reasonably practical".
50D(4)	Network Agreements	The agreements may be disclosed by AEMO	Confidential commercial agreements subject to public tender may become	Disclosure of contestable service

Clause				
			public. This is not appropriate	agreements to be exempted.
50E	Network Agreements	Identifies parties who must enter into Connection Agreements, but doesn't include other transmission network operators providing contestable services to AEMO.	Incompleteness / inconsistency with the service contestability framework	Include this category of participant.
50F(1)(c)	Augmentation	A transmission system operator may augment if authorised by the Rules	Seems to provide flexibility but the actual intended purpose is not clear	Clarification required
50F(1)	Augmentation	The clause prohibits augmentation by a transmission system operator except as provided for in the amendments. Augmentations in process at transition are not included.	Potentially augmentations in process will be in breach of the provision	Transitional provision required.
50F(2)	Augmentation	Embeds probabilistic planning in the Law	The decision to mandate probabilistic planning has risk allocation implications between AEMO and the declared transmission system operator.	The opportunity for risk to be correctly allocated in existing Network Agreements should be provided.
50F(5)	Assistance	Requires the transmission system operator to do anything reasonably required by AEMO to facilitate an augmentation. Previously, in Guideline 18, the intended scope was established.	This is elevated from a guideline to Law, and is a significantly broader obligation. No financial compensation right accompanies the provision. However, the provision appears to be duplicated in the Rules, under new clause 8.11.5, where the intended scope is established.	Should be accompanied by right to compensation. Guidance in current Guideline 18 on nature of requested assistance should be restored, per the new

Clause				
				Rules, and the NEL provision deleted.
50H	Dispute Resolution by AER	No guidance is provided to the AER in resolving disputes. This is in contrast to other similar dispute resolution regimes, e.g. section 152CR of the Trade Practices Act for application by the ACCC in relation to Telco disputes.	There is a significant risk that the transmission service operator's interests are not protected.	A list of things to which the AER is to have regard should be added. In addition, the resolution process should only apply to new agreements being negotiated for new services (refer comments on 50J(2) and 50J(3) following.
50J(2)	Dispute Resolution by AER	AER bound by statement of principles under the Rules. Dispute resolution will apply to both new network agreements and amendments sought to existing agreements.	The statements of principles are likely to be established by AEMO, creating an ineffective framework for dispute resolution.	Dispute resolution should only apply to new agreements for new services. Existing agreements have a dispute resolution process.
50J(3)	Dispute Resolution by AER	AER cannot alter risk allocation (for an existing network agreement) unless AEMO agrees	This is a power that should not be held by AEMO.	Dispute resolution should only apply to new agreements for new services. If a veto power is to be included for this purpose then it must be

Clause				
				symmetrical.
50J(4)(b)	Dispute Resolution by AER	Proposes that AER will be subject to further changes to the NEL provisions on dispute resolution.	The purpose and impact of the clause is not clear. It doesn't seem necessary to make the statement.	Preferably the provision should be deleted.
51	Information to be provided to minister	This requires AEMO to provide information upon the request of a Minister	There are no bounds as to what information may be provided. At the extreme, it would appear the minister or MCE could ask AEMO to conduct market development work and report to them	The amendment should state that the information should be limited to AEMOs responsibilities
53	Information Gathering	Provides AEMO with the similar information gathering instruments as AER has. It is contained to information on NTP, ESIPC functions and VENCORP transmission functions – or any other function authorised by the Law. It doesn't have the constraints on purpose which are provided for AER	Significant implications for an operational relationship. The powers are extreme and unwarranted for the Victorian declared network functions as existing processes work well. They are similarly an extreme solution for other AEMO functions.	A cooperative approach should be encouraged. For NTP functions use of such powers should be last resort. Application to Victorian transmission should be removed. For ,
54(C)(4)	Disclosure	Allows AEMO to set conditions on treatment of disclosed information	There is no guidance to AEMO on what is expected in passing on information.	The NEL should clarify that the presumption is that information is passed on confidentially
54(C)(5)	Disclosure	Allows AEMO to disclose information in the normal course of its duties and seems to undo the disclosure	The drafting appears to provide a broad authorisation for disclosure, countering protection provisions in the same	Remove the provision. Participants should be

Clause				
		protections.	section.	indemnified if AEMO discloses information which they are required to hold confidential
54G	Disclosure	Authorises AEMO to disclose information for safety and proper operation of the market.	This is an extremely broad authority, and would be difficult to challenge its reasonable use.	Disclosure under this clause should be confined to disclosure deemed necessary under operational circumstances, to manage safety and security in those circumstances
55A	AEMO's Rule Funds	NEMMCO has a number of funds established for the allocation and use of funds. No new funds are proposed, but may be included through Rules changes	At establishment of AEMO a Rules Fund should be established for Victorian transmission revenues, which will be a significant and distinct revenue collection and service payment process	Establish a Rules fund for Victorian transmission revenues
29	Initiation of Rule Making	AEMO has veto power on making of a Rule for the Vic arrangements	This is inappropriate as AEMO is an interested party and would be conflicted.	An independent oversight arrangement is necessary
119	Immunities	Liability limits for AEMO are defined	The Victorian transmission framework has established liability capping framework, and this may be impacted by the proposals	Exclude the declared network functions from the provision
Sch 1, item 16	Matters for Rules	Only regulation of those charges that are subject of a transmission decision	Seems this should be regulation of charges for the provision of shared	The scope should be broadened

Clause	Subject Matter	Principle	Impact	Solution
		are included as a matter for the Rules	transmission services generally. All transmission charges are priced	
Sch 30F	1, Matters for Rules	Sentence incomplete	Not clear that this is intended to apply to AEMO	Editorial correction

6.2. NEL Part 10

19(1)	VENCorp Agreements	Novates the Network Agreement	This does not provide any opportunity for the agreement to be properly transitioned. As the agreement has deficiencies, this impacts SP AusNet, particularly in conjunction with other issues discussed in this submission where revenue certainty is a concern.	The opportunity to resolve the problems caused should be provided, as part of the transition
19(2)	ESI Act	References the provisions of the Act. Should reference section 80, not 81		Correct error
19(2)	VENCorp succession	Specific set of agreements listed as those to be novated to AEMO (load shedding arrangements)	Potentially the Network Agreement would may not be valid, and SP AusNet may be in breach of section 50D	Requires clarification in conjunction with resolution of other issues surrounding existing network agreement

7. Rules Amendments

7.1. AEMOs Declared Shared Network Services

5.1.3(g)	TNSP Roles	<p>Indicates SP AusNet is not a TNSP for shared network service obligations under Chapter 5. This would be a departure from present. It is a much clearer distinction than at present, but simplistic.</p> <p>The allocation under Chapter 4 is deleted, and chapter 3 is not considered either</p>	Potentially AEMO, rather than SP AusNet could be responsible for network management. We understand that this has not been the intention.	<p>Restore SP AusNet's TNSP role for Ch 5 as provided for in the current Victorian derogations.</p> <p>AEMO should also have TNSP responsibilities under Ch 3 and 4</p>
5.1.3 (g)	Terms	The term "declared transmission system" is used, but there is no definition.		Include definition
S6A.4.1(3) & (4)	TNSP Roles	<p>The designation of TNSPs is confusing. Sub-clause 3 is clear in identifying AEMO as a TNSP for <i>shared transmission services</i>.</p> <p>Sub-clause 4 is less clear, but appears to arrive at the position that AEMO is the singular TNSP for <i>prescribed transmission services</i>, which includes <i>prescribed shared network capability services</i>, where those services are <i>shared transmission services</i>.</p> <p>Whilst paragraph 2 of sub-clause 4</p>	SP AusNet would not be designated as a TNSP for <i>prescribed transmission services</i> . SP AusNet would therefore not have access to	Significant clarification in the Rules required to clearly articulate that a declared transmission system operator is a TNSP providing prescribed transmission services which are shared transmission services.

Clause	Subject Matter	Principle	Impact	Solution
		extends a reference to <i>prescribed transmission services</i> to <i>prescribed shared network capability services</i> , the definition of this service category identifies it as being provided for the purpose of AEMO providing a <i>prescribed transmission service</i> .		
S6A.4.2	TNSP Roles	Sub-clause (b) (4) deals with AEMO' s aggregate annual revenue requirement being built up from declared transmission system operators aggregate annual revenue requirements, however this does not clarify that SP AusNet would be a TNSP in respect of those services.	The clause provides no further clarification on the role of TNSP discussed above. As an editorial comment, the reference to clause 6A.4.2 under “(b) Part B” should read clause 6A.2.2	As above. Amend reference
S6A.4.2(4)	AEMOs AARR	The terms “prescribed shared network capability services” and “prescribed shared transmission services” are not defined	Lack of certainty in Vic transmission arrangements	Define these terms.
Ch 6A, Part J CI 6A.23	Pricing – 6A.23.2	Seems to apply only where AEMO acquires services which are prescribed for the network owner. This is incorrect	Lack of certainty in Vic transmission arrangements	The clause should apply to all shared transmission services
6A.23	Pricing – 6A.23.3(d)	The clarification on subparagraph 1 doesn't make sense (no ref to prescribed TUOS). In addition, new paragraph (g) requires immediate advice of revenue allocation to AEMO, whereas new rule 6A.16 (h) is less	Lack of certainty in Vic transmission arrangements	Clarification required. Confirm whether reference should be to 6A.23.3(c)

Clause	Subject Matter	Principle	Impact	Solution
		prescriptive and more appropriate		
6A.26.2 (k)	Prudent discounts	The provision is part of a process for treating revenue determinations where prudent discounts are made, or should be. It allows the AER to reduce a revenue requirement if approval for the discount has not been provided them. This provision is made inapplicable.	There is less incentive on AEMO to negotiate discounts. This could impact on SP AusNet, as AER will still determine SP AusNet's revenue taking into account that provision, unless it is clear that the exclusion applies in Victoria generally. Sch 6A.2.3 "Removal of assets from the regulatory asset base" should also be removed in relation to Victoria. It is not clear how SPI PowerNet is protected against AER responding to these provisions.	The provision should be made inapplicable to SP AusNet as well.
6A.27.4	Payments from AEMO to SP AusNet	This rule (no changes proposed) provides for payment from one TNSP to the other for use of a network.	The clause needs to be able to distinguish between AEMO as co-ordinating TNSP, and SPI PowerNet as a relevant TNSP as well	Clarification in Rules
6A.29.1	Multiple TNSPs in a region	This rule (no changes proposed) provides for a coordinating TNSP where multiple TNSPs provide services	Unless it is clear that SPI PowerNet is providing shared network services we may not be able to appoint a coordinating TNSP and clause 6A.27.4 would not apply.	Clarification in Rules. The Rules must also appoint AEMO as coordinating TNSP
9.3.2	TNSP roles	To be deleted, see note on 5.1.3 (g) above. This also deletes clarification of responsibilities under Chapter 4, and	SP AusNet would lose TNSP role for operating and maintaining its network.	Restore SP AusNet TNSP status for Ch 5 obligations, for the specific provisions

Clause				
		clearly removes SPI PowerNet responsibility for its own network management.		identified in the existing derogation.
9.7.2	Connection applications	To be deleted. The clause has tried to clarify the processes for application process in Victoria. Although messy, nothing seems to replace it in the new Rule.	Lack of certainty in Vic transmission arrangements	Include in Rules with improvements.

7.2. Miscellaneous Amendments (Rules)

Ch 8 Definitions	Separable Augmentation	An augmentation is separable if “AEMO is satisfied that...”	AEMO has a vested interest and should not have this degree of power in settling a matter of impact on the incumbent. Previously the ESC provided oversight.	Propose that the words “AEMO is satisfied that” be deleted. Access to a dispute panel would also assist.
8.11	Augmentations	The ESC guidelines are placed in the Rules. It is not clear how Rule changes for these are initiated.	Regime does not appear to have oversight other than via AEMO. They are a conflicted party and this has impacts for SP AusNet as incumbent. This is not a good governance arrangement.	Oversight by AER required, or AEMC. Alternatively access to merits review for AEMO decisions and actions relating to augmentations
8.11	Augmentations	AEMO is able to fix the threshold (relevant limit) for which contestability	The arrangement appears entirely flexible and without guidance. It does	The threshold should be altered by Rules

Clause	Subject Matter	Principle	Impact	Solution
definitions		applies.	not provide for the incumbent to forecast appropriately and does not place sufficient discipline on AEMO.	amendment.
8.11.5	Augmentations	The tender document is to be provided to the AER, with a compliance checklist a minimum 10 BD before issue. The caveat is “where practicable”.		This caveat should be removed.
8.11.5(c)(4)	ITT documents	Does not require AEMO to provide draft agreements with ITT, as current regime does	The arrangements on which parties are tendering are incomplete	Re-include service agreements as part of documentation to be provided as part of ITT
8.11.5 (g)	Entering into a Network Agreement	AEMO can decide not to accept any tender	The Rules do not clarify that if AEMO decides to proceed with the project, it should be on the basis of a complying tender. Without this clarification it would be feasible for AEMO to revert to a regulated project, after tenderers have committed significant costs in the tendering process. No administrative oversight is provided whereby this eventuality could be disputed.	The Rules should specify that if AEMO proceeds, it shall be via a complying tender.
8.11.6	Risk Allocation	AEMO is required to develop principles, including risk allocation and other commercial aspects for the various agreements. Parties submitting bids that are not consistent must explain themselves	Refer item two above. In addition, it is not clear how these principles bind AEMO, and whether AEMO may apply them to historic agreements. Finally, AEMO should not be	Improved independence in establishing arrangements is necessary. Historic agreements

Clause	Subject Matter	Principle	Impact	Solution
			establishing these principles, as it has a vested interest.	should be excluded.
		There is a need to clarify that a contestable service is not a prescribed capacity service		