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Victorian Energy Networks Corporation

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Dr John Tamblyn
Chairman
Australian Energy Market Commission
PO Box H166
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By Email: submissions@aemc.gov.au

Dear John

Submission on Transmission Revenue Rule Proposal

VENCorp welcomes the opportunity to comment on the Australian Energy Market Commission's (AEMC) Transmission Revenue National Electricity Rules (Rules) Proposal. The draft Rule makes substantial amendments to those parts of Chapter 6 dealing with the regulation of transmission revenues, including in particular:

- a more prescriptive methodology for the determination by the Australian Energy Regulator (AER) of revenue caps for prescribed transmission services;
- a more detailed negotiate-arbitrate regime dealing with prices for negotiated transmission services; and
- detailed procedural requirements to be followed by the AER in making transmission determinations.

While this submission focuses predominantly on the Victorian derogation, VENCorp is generally supportive of the changes to be implemented under the proposed Rule as it will improve regulatory certainty and consistency across the NEM. VENCorp is also supportive of the AEMC's proposals to encourage greater commercial negotiations between TNSPs and connecting parties which remove the emphasis on regulation where it may not be warranted. VENCorp notes that the pricing principles for negotiated transmission services set out in Division 3 largely reflect some of the principles espoused in VENCorp's Connection Augmentation Guidelines[1].

As the AEMC notes the existing Chapter 6 is subject to a number of jurisdictional derogations contained in Chapter 9 of the Rules. These derogations recognise the unique arrangements that apply to the provision of transmission services in Victoria, under which SP AusNet owns and operates the majority of the Victorian Transmission System and provides bulk transmission services to VENCorp under a network agreement, while VENCorp provides shared network services to users and is responsible for planning and directing the augmentation of the shared network.

Significantly, the current derogations have the effect of establishing a self-contained regime for determining VENCorp's revenue requirement. This is set out principally in clause 9.8.4C of the derogation. VENCorp submits that that regime should continue to apply, subject to any modifications necessary to ensure that:

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1 VENCorp, Victorian Electricity Transmission Network Connection Augmentation Guidelines, August 2005.

- the revised regime applicable to other TNSPs is approximately referenced in the provisions that exclude its operation; and
- in respect of the limited provisions of the existing regime that apply to VENCorp (namely, clauses 6.2.4(d) and (e)), that the equivalent provisions under the new Rules are made applicable.

At the same time, VENCorp acknowledges that the new provisions in the draft Rule relating to negotiated transmission services, including the procedural requirements for the establishment of VENCorp's negotiating framework, should appropriately apply to VENCorp. This raises the question of how the substance of the current derogation concerning VENCorp's revenue requirement and the application to VENCorp of the new provisions dealing with negotiated transmission services can best be dealt with, given that procedural requirements for revenue determinations and the approval of negotiating frameworks are effectively integrated into the draft Rule.

VENCorp suggests that the most appropriate means of doing this is for the current derogation to be recast, as suggested by the AEMC, so that it contains a self-contained set of procedures for transmission determinations applicable to VENCorp. This would allow the substance of the existing revenue requirement derogation to be retained, but incorporated within a process that is consistent with the draft Rule insofar as it is relevant and applicable to VENCorp.

To assist the AEMC's consideration of this issue, VENCorp has prepared a draft revision to clause 9.8.4C of the Rules, which recasts the existing derogation (see attachment 1). As noted in the AEMC draft Rule, this will result in consequential changes to a number of the other provisions of Chapter 9, which VENCorp has not provided at this stage.

Should you have any questions please do not hesitate to contact Louis Tirpcou, ☎ (03) 8664 6615.

Yours sincerely

M. Zema

Matt Zema
Chief Executive Officer

Attachment 1 – Proposed amendments to the Victorian Derogation

Clause 9.8.4C Transmission revenue regulatory regime for transmission services provided by VENCorp

Replace clauses 9.8.4C(a) to 9.8.4C(g) with the following new clauses (clauses 9.8.4C(g1) - (g4) remain in their current form):

Making and contents of transmission determination

(a) The *AER* must make a determination (a "*revenue determination*") that specifies, for a *relevant regulatory period* in respect of *VENCorp*, the *maximum aggregate allowable revenue* for the *relevant regulatory period* in accordance with the following principles:

(1) the amount of *VENCorp's maximum allowable aggregate revenue* for a *relevant regulatory period* must not exceed *VENCorp's statutory electricity transmission-related costs*; and

(2) *VENCorp's maximum allowable aggregate revenue* must be determined on a full cost recovery but no operating surplus basis.

(a1) Clause 6.2, other than clause 6.2.13, and Subdivision 1 of Division 4 do not apply to *VENCorp* in respect of *transmission services* provided by *VENCorp*.

(a2) At the same time as it makes a *revenue determination* for *VENCorp*, the *AER* must also make a determination that specifies:

(1) the *negotiating framework* for *VENCorp*; and

(2) the *Negotiated Transmission Service Pricing Criteria* that apply to *VENCorp*.

(a3) The *revenue determination* referred to in clause 9.8.4C(a) and the determinations referred to in clause 9.8.4C(a2) together constitute the *transmission determination* for *VENCorp* that is to apply for the *relevant regulatory period*, and the *AER* must make that *transmission determination* in accordance with the requirements of this clause 9.8.4C and Division 3 of Part A of Chapter 6 (as applicable).

Submission of Revenue Proposal and proposed negotiating framework

(b) *VENCorp* must submit to the *AER* a revenue application (a '*Revenue Application*') for the purpose of enabling the *AER* to determine *VENCorp's maximum allowable aggregate revenue* for a *relevant regulatory period* 13 months before the expiry of the period in respect of which the then current *transmission determination* applies. The *Revenue Application* must set out:

(1) *VENCorp's* proposed *maximum allowable aggregate revenue* for each *financial year* in that *relevant regulatory period;*

(2) VENCorp's forecast *statutory electricity transmission-related costs* for each *financial year* in that *relevant regulatory period;* and

(3) **[Deleted]**

(4) a statement reconciling its most recent forecast of:

(i) the revenue that will be recovered by way of *shared transmission network use charges*; and

(ii) the *statutory electricity transmission-related costs*, for the *relevant regulatory period* immediately preceding the *relevant regulatory period* to which the *Revenue Application* relates.

(b1) At the same time as it submits its *Revenue Application* under clause 9.8.4C(b), *VENCorp* must also submit to the *AER* its proposed *negotiating framework*.

(b2) The *Revenue Application* and proposed *negotiating framework* must:

(2) (in the case of the *Revenue Application)* be consistent with the principles set out in clause 9.8.4C(a); and

(3) comply with the requirements of, and must contain or be accompanied by such information as is required to be contained or provided with them in accordance with the requirements of, the *Information requirements guidelines* but only to the extent to which those guidelines are relevant and applicable to *VENCorp*.

Preliminary examination of Revenue Proposal, proposed negotiating framework and required information

(b3) If the *AER* determines that:

(1) a *Revenue Application* or proposed *negotiating framework* submitted by *VENCorp* pursuant to clauses 9.8.4C(b) or (b1) (as the case may be); or

(2) information contained in or accompanying such a *Revenue Application* or proposed *negotiating framework* pursuant to clause 9.8.4C(b2),

does not comply with the requirements of clause 9.8.4C(b)) or clause 9.8.4C(b2), then the *AER* must notify *VENCorp* of that determination within one month of receiving that *Revenue Application*, proposed *negotiating framework* or information.

(b4) A determination referred to in clause 9.8.4C(b3) must be accompanied by written reasons that set out:

(1) the respects in which the *Revenue Application*, proposed *negotiating framework* or information does not comply with the requirements of clauses 9.8.4C(b) or (b2) and the provisions of those clauses that have not been complied with; and

(2) in the case of information which does not comply with those requirements, the reason that the submission of information in accordance with those requirements would assist the *AER* in assessing the *Revenue Application* or proposed *negotiating framework*.

(b5) If the *AER* notifies *VENCorp* of a determination under clause 9.8.4C(b4), *VENCorp* must resubmit its *Revenue Application* or proposed *negotiating framework* or the required information (as the case may be) in a form that complies with the requirements of clauses 9.8.4C(b) and (b2) within such period as is required by the *AER* for that purpose, being a period that is not more than one month after the *AER* so notifies *VENCorp* of its determination.

Consultation

(c) Except to the extent that the *Information requirements guidelines* provide it will not be publicly disclosed (and, in that case, *VENCorp* has not otherwise consented), the *AER* must *publish*:

(1) the *Revenue Application*;

(2) the proposed *negotiating framework*; and

(3) the information

submitted or resubmitted to it by *VENCorp* under clause 9.8.4C(b) and (b1) or clause 9.8.4C(b5) (as the case may be), together with:

(4) the *AER's* proposed *Negotiated Transmission Service Pricing Criteria* for *VENCorp*; and

(5) an invitation for written submissions on the documents and information referred to in paragraphs (1), (2), (3) and (4),

as soon as practicable after the *AER* determines that the *Revenue Application*, proposed *negotiating framework* and information comply with the requirements of clauses 9.8.4C(b) and (b2) and in any event not later than two months after the date referred to in clause 9.8.4C(b).

(c2) The *AER* may *publish* an issues paper examining the issues raised in connection with the *Revenue Application*, the proposed *negotiating framework* and the proposed *Negotiated Transmission Service*

Pricing Criteria for *VENCorp* within 20 *business days* after the invitation for submissions is *published* under clause 9.8.4C(c)(5).

(c3) Any person may make a written submission to the *AER* on the *Revenue Application*, the proposed *negotiating framework* or the proposed *Negotiated Transmission Service Pricing Criteria* within the time specified in the invitation referred to in clause 9.8.4C(c)(5), which must be not earlier than 30 *business days*, and not later than 40 *business days*, after the invitation for submissions is *published* under clause 9.8.4C(c)(5).

Draft decision and further consultation

(d) Subject to clause 6.18(a), the *AER* must consider any written submissions made under clause 9.8.4C(c3) and must make a draft decision in which it determines *VENCorp's maximum aggregate allowable revenue* for a *relevant regulatory period.* The determination:

(1) must apply the principles set out in clause 9.8.4C(a);

(2) must take into account:

(i) *VENCorp's* functions under the *EI Act,* the application of the *Rules* to *VENCorp* and the conditions imposed on *VENCorp* under its *transmission licence*; and

(ii) **[Deleted]**

(iii) the difference (if any) between the forecasts referred to in clause 9.8.4C(b)(4); and

(3) must set out the *maximum allowable aggregate revenue* for each *financial year* in that *relevant regulatory period*; and

(4) must specify the length of the *relevant regulatory period,* which must not be less than 5 years.

(d1) If, after considering the *Revenue Application*, the *AER* finds there is a difference of the kind referred to in clause 9.8.4C(d)(2)(iii), the *AER* must apply that difference in any determination it makes under clause 9.8.4C(d).

(d2) Subject to clause 6.18(a), the *AER* must consider any written submissions made under clause 9.8.4C(c3) and must make a draft decision:

(1) on the proposed *negotiating framework* submitted or resubmitted to it by *VENCorp* under clause 9.8.4C(b1) or clause 9.8.4C(b5) (as the case may be), in which it either approves or refuses to approve the proposed *negotiating framework*, setting out reasons for its decision and including, if the *AER* refuses to approve the proposed *negotiating framework,* details of the changes required or matters to be addressed before the *AER* will approve it; and

(2) in which it specifies the *Negotiated Transmission Service Pricing Criteria* for *VENCorp*, setting out the reasons for its decision.

(d) The *AER's* draft decision referred to in clause s 9.8.4C(d) and (d2) must be made in accordance with, and must comply with, the requirements of clause 6.17 to the extent to which those requirements are relevant and applicable to the draft decision.

Publication of draft decision and consultation

(e) The *AER* must, not later than six months after the date referred to in clause 9.8.4C(b), *publish*:

(1) its draft decision and reasons under clause s 9.8.4C(d) and (d2);

(2) notice of the making of the draft decision;

(3) notice of a predetermination conference, which is to be held not more than 15 *business days*, and not less than 5 *business days*, after the *publication* of its draft decision; and

(4) an invitation for written submissions on its draft decision.

(e1) The *AER* must hold a predetermination conference at the time, date and place specified in the notice under clause 9.8.4C(e)(3) for the purposes of explaining its draft decision and receiving oral

submissions from interested parties. Any person may attend such a predetermination conference but the procedure to be adopted at the conference will be at the discretion of the senior *AER* representative in attendance.

(e2) Any person may make a written submission to the *AER* on the draft decision within the time specified in the invitation referred to in clause 9.8.4C(e)(4), which must be not earlier than 45 *business days*, and not later than 55 *business days*, after the holding of the predetermination conference under clause 9.8.4C(e1).

Revised Revenue Proposal or proposed negotiating framework

(e3) In addition to making such other written submissions as it considers appropriate, *VENCorp* may, not more than 30 *business days* after the *publication* of the draft decision, submit to the *AER*:

(1) a revised *Revenue Application*; or

(2) a revised proposed *negotiating framework*.

(e4) A revised *Revenue Application* or revised proposed *negotiating framework* submitted under clause 9.8.4C(e3) must comply with the requirements of, and must contain or be accompanied by such information as is required to be contained in or provided with them in accordance with the requirements of, clause 9.8.4C(b) and clause 9.8.4C(b2).

(e5) Except to the extent that the *Information requirements guidelines* provide it will not be publicly disclosed (and, in that case, *VENCorp* has not otherwise consented), the *AER* must *publish*:

(1) any revised *Revenue Application*; or

(2) any revised proposed *negotiating framework*;

as the case may be, that is submitted to it by the *Transmission Network Service Provider* under clause 9.8.4C(e3), together with the accompanying information, as soon as practicable after they are received by the *AER*.

Final decision

(f) Subject to clause 6.18(a), the *AER* must consider any oral submissions made under clause 9.8.4C(e1) and any written submissions made under clause 9.8.4C(e2) on the draft decision, or on any revised *Revenue Application* submitted to it under clause 9.8.4C(e3), and must make a final decision in which it determines *VENCorp's maximum aggregate allowable revenue* for a *relevant regulatory period*. The determination:

(1) must apply the principles set out in clause 9.8.4C(a);

(2) must take into account:

(i) *VENCorp's* functions under the *EI Act*, the application of the *Rules* to *VENCorp* and the conditions imposed on *VENCorp* under its *transmission licence*; and

(ii) **[Deleted]**

(ii) the difference (if any) between the forecasts referred to in clause 9.8.4C(b)(4); and

(3) must set out the *maximum allowable aggregate revenue* for each *financial year* in that *relevant regulatory period*;

(4) must specify the length of the *relevant regulatory period*, which must not be less than 5 years.

(f1) If, after considering the *Revenue Application*, the *AER* finds there is a difference of the kind referred to in clause 9.8.4C(d)(2)(iii), the *AER* must apply that difference in any determination it makes under clause 9.8.4C(f).

(f2) Subject to clause 6.18(a), the *AER* must consider any oral submissions made under clause 9.8.4C(e1) and any written submissions made under clause 9.8.4C(e3) on the draft decision, or on any revised

proposed *negotiating framework* submitted to it under clause 9.8.4C(e3), and must make a final decision:

(1) on *VENCorp's* proposed *negotiating framework* submitted under clause 9.8.4C(e3) or (if *VENCorp* did not submit such a revised proposed *negotiating framework*) the proposed negotiating framework submitted or resubmitted under clause 9.8.4C(b1) or clause 9.8.4C(b5) (as the case may be), setting out the reasons for its decision; and

(2) in which it specifies the *Negotiated Transmission Service Pricing Criteria* for the *VENCorp*, setting out the reasons for its decision.

(f3) The *AER's* final decision referred to in clause 9.8.4C(f) and (f2) must be made in accordance with, and must comply with, the requirements of clause 6.17 to the extent to which those requirements are relevant and applicable to the final decision.

(f4) If the *AER's* final decision is to refuse to approve the proposed *negotiating framework* referred to in clause 9.8.4C(f2), then the *AER* must include in its final decision a *negotiating framework* in place of that referred to in clause 9.8.4C(f2), which is:

(1) based on the revised proposed *negotiating framework* submitted under clause 9.8.4C(e3) or (*VENCorp* did not submit such a revised proposed *negotiating framework*) the proposed *negotiating framework* submitted or resubmitted under clause 9.8.4C(b1) or clause 9.8.4C(b5) (as the case may be); and

(2) amended from the basis in clause 9.8.4C(f2)(1) only to the extent necessary to enable it to be approved in accordance with the *Rules*.

(d) The *AER* must, not later than two months prior to the commencement of the *relevant regulatory period*, *publish*:

(1) its final decision and reasons under clauses 9.8.4C(f) and (f2); and

(2) notice of the making of the final decision.

(g) If the *AER* does not make a final decision under clause 9.8.4C(f) before the commencement of the *relevant regulatory period* in respect of which the *Revenue Application* was made, the AER is to be taken to have made a determination as to *VENCorp's maximum allowable aggregate revenue* in respect of each *financial year* in that *relevant regulatory period* on the same terms as the *Revenue Application*.