



(Moorabool and Central Highlands Power Alliance Inc.)

14 June 2024

Essential Services Commission
Level 8, 570 Bourke Street
Melbourne Victoria 3000

Via email: licences@esc.vic.gov.au

Dear Essential Services Commission (ESC)

Thank you for the opportunity to make a submission regarding the application under the *Electricity Industry Act 2000* (EIA) by Powercor Australia Limited ACN 064 651 109 (Powercor) for its first Transmission Licence, which is requested to encompass the geographic area covered by Powercor's existing Distribution Licence.

The Regional Victorian Power Alliance was registered as the trading name of the Moorabool and Central Highlands Power Alliance Inc. (MCHPA) on 15 May 2023. The MCHPA is a community led incorporated association which was formed in July 2020 as an "umbrella" group representing affected landholders, communities, organisations, businesses, and all other individuals and groups who would potentially be impacted by the proposed WRL (formerly known as WVTNP).

On 16 May 2023 the MCHPA expanded to include VNI West impacted communities, uniting under the "Regional Victoria Power Alliance" banner.

As the RVPA we advocate on behalf of our thousands of members along the proposed Western Renewables Link and VNI West corridors, and of the natural environment, to demand that these projects be reassessed using a comprehensive triple bottom line process to justify their need and understand their impacts, and if proceeded with thereafter, that they are undertaken in way that delivers minimal impacts and risk.

Our further concern, as evidenced by this application, is that the transition to renewable energy is proceeding at a pace that is outstripping proper process and adherence to legislated requirements, powers and objectives, including that of the overarching National Electricity Objective.

These two projects and our communities are entirely located within Powercor's licenced Distribution area, over 145,000 sq km, and would therefore be impacted by the granting of this Transmission licence.

It is our submission that ESC is compelled to reject this application on the following grounds:

- Powercor has not satisfied the requirements of s18(2) of the EIA which requires the submission of an ESC application form containing sufficient specification of detail, particularly as required by 'Section 1.5 - The Licence and transmission infrastructure details'.

- Powercor has not satisfied the technical capacity requirements of s19(4) of the EIA that allows for a licence to be issued in advance of an activity being constructed/operated, as they have not provided proper definition of the proposed activity/activities.
- Approving a Transmission licence for a geographical area corrupts ESC's existing transmission licencing regime.
- Powercor's controlling parent already controls two Victorian Transmission licences within an existing competitive transmission business, contradicting the need for a further licence.
- Powercor is not a fit and proper person to apply for a Transmission licence.

Our submission below puts forward our case in support of this position.

1. **Background**

To assist our submission, we provide below some key background regarding:

- The *Electricity Industry Act 2000* (EIA)
- ESC's Transmission licence application form
- ESC's Application Guideline for all licence types under EIA s18
- ESC's published Application Forms for different licence types under EIA s18
- ESC's existing approved Transmission licences under the EIA
- ESC's existing approved Distribution licences under the EIA
- Powercor and Australian Energy Operations ownership and EIA licences
- National Electricity Rules – mandatory Ring Fencing requirements

1.1 Electricity Industry Act (EIA)

Transmission licences are issued by the ESC under the EIA, with two sections particularly relevant to Powercor's application:

18 Application for licence

- (1) *A person may apply to the Commission for the issue of a licence authorising one or more of the following activities—*
- (a) *to generate electricity for supply or sale;*
 - (b) *to transmit electricity;*
 - (c) *to distribute or supply electricity;*
 - (d) *to sell electricity.*
- (2) *An application must be in a form approved by the Commission and accompanied by such documents as may be required by the Commission.*

...

19 Grant or refusal of application

- (1) *Subject to subsections (2) and (3) the Commission may grant or refuse an application for the issue of a licence for any reason it considers appropriate, having regard to the objectives of the Commission under this Act and under the Essential Services Commission Act 2001.*
- (2) *The Commission must not grant an application for the issue of a licence unless the Commission is satisfied that—*

- (a) subject to subsection (3), in the case of an application for a licence to sell electricity, the applicant is financially viable; and*
- (b) subject to subsection (4), the applicant has the technical capacity to comply with the conditions of the licence.*

...

- (4) The Commission does not have to be satisfied as to the applicant's technical capacity to comply with the conditions of the licence at the time it is issued if—*
 - (a) the activities specified in the licence are not likely to be commenced to be carried out within the next following 12 months; and*
 - (b) the application is granted subject to such conditions as are decided by the Commission relating to further approval of the applicant's technical capacity or approval of future facilities necessary for the carrying out of the activities.*

1.2 ESC's Transmission Licence application form

Persons applying to the ESC for a licence to authorise electricity transmission in Victoria must complete the "Electricity transmission licence application form" which is [provided on the ESC's website](#).

The first two pages of this form include the following:

Basis for this form

Section 18 of the Electricity Industry Act 2000 (the Industry Act) provides that a licence application must be made to the commission in a form approved by the commission. This is the form approved by the commission.

Use of this form and the applicant's responsibilities

...

The applicant should list the information required in the spaces provided in this form and enclose additional information when required.

...

Providing accurate and relevant information and a complete application (answering all questions and providing all information) will assist in timely processing of an application. All applications are assessed on a case-by-case basis. If insufficient information is provided with an application, we will contact the applicant about the requirement for additional information to be submitted before the application is considered further.

Prior reading

It is expected that the applicant has read our [Guideline: Applications for electricity and gas industry licences](#) before completing this form.

It is the applicant's responsibility to ensure its compliance with legal obligations when applying for a licence.

This form is, as stated, the form required under section 18(2) and clearly directs the applicant to abide by its requirements.

1.3 ESC's Application Guideline for all licence types under EIA s18

ESC's "Guideline: Applications for electricity and gas industry licences Version 1.4.1 28 March 2024" includes the following:

1.2. Assessment of licence applications

...

In deciding whether to grant or refuse a licence application, the commission must have regard to its objectives under the Essential Services Commission Act 2001, the Electricity Industry Act 2000 and the Gas Industry Act 2001 (as applicable). Further information about these matters is provided in part four of this guideline and in the respective licence application forms on our website.

... Failure to submit a complete application may result in the application being considered invalid and consideration of the application may not proceed. It is an applicant's responsibility to provide a complete and accurate application.

...

3.1.1. Timing of the application

Applicants should provide all relevant information and material to the commission to allow sufficient time for the application to be assessed.

Applicants should apply for a licence once they have a firm plan to commence carrying out the proposed activity and are able to demonstrate that they meet the relevant criteria for being granted a licence. Applicants should confirm, and be able to demonstrate, that they have an ability to commence operation within a specific and reasonable timeframe should a licence be granted.

We acknowledge that the planning and development phases for some projects that are intended to culminate in licensable activities may take a significant period of time to complete. Further, powers that are granted to certain licensees, such as land access powers, may facilitate those preliminary stages of a project.

The framework permits the granting of applications where the licensable activity is some years away from commencement, particularly for large-scale electricity transmission and generation projects. However, applicants must be able to demonstrate that the activity for which the licence is being applied for is not merely speculative and there is a reasonable likelihood of that activity being undertaken.

The commission will consider a range of factors in determining whether a licence is appropriate at a point in time, including funding, planning and development approvals that have been obtained (or are yet to be obtained) and the stage of any applicable regulatory investment test process. Any licence granted where the activity is not due to commence for a considerable period of time is likely to be subject to conditions to provide for additional commission oversight during this period.

4.1. Information about the applicant and proposed activities

Applicants must provide sufficient detail to demonstrate who they are, the activity or activities they propose to undertake, and the third parties involved with those activities.

4.4. Technical capacity

Our assessment of technical capacity falls within three broad categories:

- *the capacity to operate and manage the relevant business*
- *the capacity to comply with the licence conditions, and*
- *the capacity to comply with relevant regulatory obligations, including legislation, codes of practice and other regulatory requirements.*

The above extracts from the Guideline make it clear that the ESC requires the applicant to provide sufficient detail on its proposed activity/ies in order for the ESC to properly assess the application. And that the applicant needs to show that there is a firm plan to carry out the proposed activity and that the activity for which the licence is being applied for is not merely speculative and there is a reasonable likelihood of that activity being undertaken.

The matter of what we contend to be the highly speculative nature of Powercor’s transmission licence application is further discussed in sections 2 and 3 below.

1.4 ESC’s Application Forms for different licence types under EIA s18

The following application forms for a licence as required under the EIA 18(2) are published on the ESC website:

- *Energy retail licence application form – 28 March 2024 (Retail form)*
- *Electricity generation and wholesale licence application form – 18 August 2022 (Generation form)*
- *Electricity transmission licence application form – 6 March 2024 (Transmission form)*

We note that there is no application form for an Electricity Distribution licence, and this is discussed below.

Our analysis of these forms made under EIA 18(2) has made it apparent that each type of licence issued under EIA 18(1) requires specific and different details than from the other types of licence.

Furthermore, the transmission licence application form requires considerably more detail than the others particularly with regard to “Section 1.5 The Licence and transmission infrastructure details”, which extensively requires a detailed description of the physical activities and locations of the proposed transmission assets, and with information on some additional matters required to be provided in “Section 2 Technical Capacity”. These are further discussed below.

1.5 ESC’s existing approved Transmission licences under the EIA

ESC’s website informs that there are currently 8 Transmission licences active in Victoria. These licences have been summarised in this table:

Licensee & Licence Dates	Extract - Grant of Licence and relevant definition clauses	RVPA Comment
<i>Basslink Pty Ltd</i>	<i>2. The Office, in exercise of the powers conferred by section 19 of the Act, licenses the Licensee to transmit electricity using the Licensee's electricity</i>	This ESC licence is solely for the transmission

<p>Issued June 2001</p>	<p><i>transmission system, subject to the conditions set out in this licence.</i></p>	<p>system assets of this Basslink interconnector.</p> <p>Basslink is a 370km 500MW electricity high-voltage direct current (HVDC) interconnector linking the electricity grids of the states of Victoria and Tasmania, crossing Bass Strait, connecting the Loy Yang Power Station, Victoria on the Australian mainland to the George Town substation in northern Tasmania.</p>
<p><i>Transmission Operations (Australia) Pty Ltd (100% subsidiary of Australian Energy Operations, see below)</i></p> <p>Issued on 4 September 2013</p> <p>Last varied 9 November 2018</p>	<p><i>3.1 In exercise of its powers under section 19 of the Act, the Commission grants the Licensee, as owner of the transmission assets, a licence to transmit electricity via the transmission assets, and on the terms and conditions set out in this Licence.</i></p> <p><i>transmission assets - the assets connecting the Mt Mercer Wind Farm, the Moorabool Wind Farm and the Elaine Wind Farm to the declared transmission system.</i></p>	<p>This ESC licence is solely for the transmission system assets connecting the Mt Mercer Wind Farm, the Moorabool Wind Farm and the Elaine Wind Farm to the declared transmission system.</p>
<p><i>AusNet Transmission Group Pty Ltd</i></p> <p>Issued on 3 October 1994</p> <p>Last varied 20 March 2019</p>	<p><i>2. The Commission, in exercise of the powers conferred by section 19 of the Act, licenses the Licensee to transmit electricity and to supply electricity using the Licensee's electricity transmission system, subject to the conditions set out in this licence.</i></p> <p><i>“electricity transmission system” means a transmission system in Victoria (generally at nominal voltage levels of 66kV or above) which the holder of a transmission licence may use to transmit electricity; and in the case of the Licensee’s electricity system includes, without limitation, the assets connecting</i></p>	<p>This is the original Transmission licence from 1994 for all the transmission system assets that were privatised to one operator under one licence at that time.</p> <p>This licence was last varied in March 2019 to add in the inclusion of specific transmission assets at Bulgana.</p>

	<p><i>the southern and northern parts of the Bulgana wind farm.</i></p> <p><i>3.1 This licence takes effect on and from 3 October 1994.</i></p>	
<p><i>Transmission Operations (Australia) 2 Pty Ltd (100% subsidiary of Australian Energy Operations, see below)</i></p> <p><i>Issued 4 May 2016</i></p>	<p><i>3.1 In exercise of its powers under section 19 of the Act, the Commission grants the Licensee, as owner of the transmission asset, a licence to transmit electricity via the transmission assets, and on the terms and conditions set out in this Licence.</i></p> <p><i>transmission asset - the assets connecting the Ararat Wind Farm to the declared transmission system</i></p>	<p><i>This ESC licence is solely for the transmission system assets connecting the Ararat Wind Farm.</i></p>
<p><i>NSW Electricity Networks Operation Pty Ltd (ACN 609 169 959) as trustee for NSW Electricity Network Operations Trust (ABN 70 250 995 390)</i></p> <p><i>Issued 31 July 2017</i></p>	<p><i>3.1 In exercise of its powers under section 19 of the Act, the Commission grants the Licensee, as owner of the transmission assets, a licence to transmit electricity via the transmission assets, and on the terms and conditions set out in this Licence.</i></p> <p><i>transmission asset – the connection and extension assets associated with the Deer Park Terminal Station</i></p>	<p><i>This ESC licence is solely for the transmission system assets connecting and extending the Deer Park Terminal Station.</i></p>
<p><i>Transgrid Service Pty Limited (ACN 626 1356 865) as trustee for TransGrid Services Trust (ABN 70 250 995 390)</i></p> <p><i>Issued on 4 December 2019</i></p>	<p><i>3.1 In exercise of its powers under section 19 of the Act, the Commission grants the Licensee, as owner of the transmission asset, a licence to transmit electricity via the transmission asset, and on the terms and conditions set out in this Licence with effect from the Commencement date.</i></p> <p><i>transmission asset – the connection and extension assets associated with the Kiamal Solar Farm and Kiamal Terminal Station, located approximately 3km north of Ouyen in north-western Victoria</i></p>	<p><i>This ESC licence is solely for the transmission system assets connecting and extending Kiamal Solar Farm and Terminal Station.</i></p>

<p><i>Transgrid Service Pty Limited (ACN 626 1356 865) as trustee for TransGrid Services Trust (ABN 70 250 995 390)</i></p> <p><i>Issued on 1 July 2020</i></p>	<p><i>3.1 In exercise of its powers under section 19 of the Act, the Commission grants the Licensee, as owner of the transmission asset, a licence to transmit electricity via the transmission asset, and on the terms and conditions set out in this Licence with effect from the Commencement date.</i></p> <p><i>transmission asset – the connection and extension assets associated with the Berrybank Wind Farm and Berrybank Terminal Station, located approximately 14km east of Lismore and 16km west of Cressy in south-western Victoria</i></p>	<p>This ESC licence is solely for the transmission system assets connecting and extending Berrybank Wind Farm and Terminal Station.</p>								
<p><i>Marinus Link Pty Ltd (ACN 630 194 562)</i></p> <p><i>Issued on 20 December 2023</i></p>	<p><i>3.1 Subject to clauses 3.2 and 3.3, in exercise of its powers under section 19 of the Act, the Commission grants the Licensee a licence to transmit electricity via the Transmission Assets on the terms and conditions set out in this Licence.</i></p> <p><i>3.2 This Licence only permits the Licensee to transmit electricity via the Transmission Assets listed in Schedule 1.</i></p> <p><i>transmission assets – the Transmission Assets as described in Schedule 1</i></p> <p><i>Schedule 1:</i></p> <table border="1" data-bbox="427 1312 1002 1751"> <thead> <tr> <th>Transmission Asset</th> <th>Description</th> </tr> </thead> <tbody> <tr> <td>Undersea cables</td> <td>Two bundled High Voltage Direct Current undersea cables operating at a nominal voltage of either +/-320kV from the 3 nautical mile line in the Bass Strait, along with equipment and infrastructure that are directly related to and necessary for the transmission of electricity using those cables. The cables come ashore at Waratah Bay, Victoria, continuing underground to a transition point.</td> </tr> <tr> <td>Underground cables</td> <td>Underground cables that extend from the transition point that span a distance of approximately 88 km to reach the converter station, along with equipment and infrastructure that are directly related to and necessary for the transmission of electricity using those cables.</td> </tr> <tr> <td>Converter station</td> <td>Converter station adjacent to the existing Hazelwood Terminal Station located near Churchill, Victoria which will connect to Ausnet Services' transmission system at 500 kV to the existing Hazelwood Terminal Station.</td> </tr> </tbody> </table>	Transmission Asset	Description	Undersea cables	Two bundled High Voltage Direct Current undersea cables operating at a nominal voltage of either +/-320kV from the 3 nautical mile line in the Bass Strait, along with equipment and infrastructure that are directly related to and necessary for the transmission of electricity using those cables. The cables come ashore at Waratah Bay, Victoria, continuing underground to a transition point.	Underground cables	Underground cables that extend from the transition point that span a distance of approximately 88 km to reach the converter station, along with equipment and infrastructure that are directly related to and necessary for the transmission of electricity using those cables.	Converter station	Converter station adjacent to the existing Hazelwood Terminal Station located near Churchill, Victoria which will connect to Ausnet Services' transmission system at 500 kV to the existing Hazelwood Terminal Station.	<p>This ESC licence is solely for the transmission system assets of this Marinus Link interconnector.</p>
Transmission Asset	Description									
Undersea cables	Two bundled High Voltage Direct Current undersea cables operating at a nominal voltage of either +/-320kV from the 3 nautical mile line in the Bass Strait, along with equipment and infrastructure that are directly related to and necessary for the transmission of electricity using those cables. The cables come ashore at Waratah Bay, Victoria, continuing underground to a transition point.									
Underground cables	Underground cables that extend from the transition point that span a distance of approximately 88 km to reach the converter station, along with equipment and infrastructure that are directly related to and necessary for the transmission of electricity using those cables.									
Converter station	Converter station adjacent to the existing Hazelwood Terminal Station located near Churchill, Victoria which will connect to Ausnet Services' transmission system at 500 kV to the existing Hazelwood Terminal Station.									

All these existing Transmission licences are for specified transmission systems assets, none of these licences are by geographical boundary.

1.6 ESC's existing approved Distribution licences under the EIA

As noted above there is no Distribution form on the ESC website for applying for a Distribution licence. This is because of the nature of the 5 current Distribution licences which were all issued on 3 October 1994 as an outcome of the privatisation at that time of the Victorian electricity system. All 5 Distribution licences were last varied on the same date - 3 August 2022 (with effect from 1 October 2022) and are in a common format:

- **1 Definitions**

1.1 *Unless the contrary intention appears, a term has the meaning shown opposite it:*

- *Distribution Area the area described in Schedule 1.*

- **3 Grant of the licence**

3.1 *Subject to clauses 3.2 and 3.3, in exercise of its powers under section 19 of the Act, the Commission grants the Licensee a licence to distribute or supply electricity on the terms and conditions set out in this Licence.*

3.2 *This Licence only permits the Licensee to distribute or supply electricity to Supply Points located in the Licensee's Distribution Area.*

3.3 *The Licensee was first granted a licence to distribute or supply electricity on 3 October 1994 and the licence has been varied on the dates set out in Schedule 2.*

- **Schedule 1: Distribution Area**

Our note: Each licence sets out detailed boundaries of its distribution area including common boundaries with other licence holders.

It evident to us that the licenced Distribution network can best be described as a jigsaw puzzle of five clearly defined pieces that carve up Victoria into distinct areas of operation, each only for the associated licenced entity, no other. These licences therefore are rightly defined by geographical location, not by physical assets.

1.7 Powercor and Australian Energy Operations ownership and EIA licences

Our investigation shows that Powercor and Australian Energy operations are significantly linked in several ways but predominantly through their ownership by both CK Infrastructure Holdings Ltd and Power Assets Holdings Ltd, and via Power's General Manager of Electricity Networks, Glen Thompon, who is also CEO of Australian Energy Operations, a Victorian electricity transmission business.¹

Powercor's [website](#) states [highlighted emphasis added]:

Ownership structure

CitiPower and Powercor are part of the Victoria Power Networks group of companies and are Victorian based electricity distribution businesses.

Victoria Power Networks is 51% collectively owned by CK Infrastructure Holdings Ltd (CKI) and Power Asset Holdings Ltd (PAH). CKI and PAH are members of the Cheung Kong Group and these two companies are listed on the Hong Kong Stock Exchange.

¹ This description of Mr Thomson's role is as advised in Powercor's webinar held on 16 May - see webinar and transcript - <https://www.powercor.com.au/transmissionlicence/>

The remaining 49% is held by Spark Infrastructure. Spark Infrastructure is owned by Kohlberg Kravis Roberts & Co. L.P. (KKR), Ontario Teachers' Pension Plan Board (OTPP) and Public Sector Pension Investment Board (PSP).

Australian Energy Operations (AEO)'s [website](#) states [highlighted emphasis added]:

ABOUT US

Australian Energy Operations (AEO) is part of a global family of energy companies operating in the United Kingdom, New Zealand, Continental Europe, New Zealand, Canada, the United States, Hong Kong, Mainland China and across Australia.

*Formerly known as **Transmission Operations Australia (TOA)**, AEO constructs, owns and operates electricity transmission assets in the growing Australian market, specialising in connecting generation assets and load requiring assets to the existing electricity network, such as Victoria's Mt Mercer windfarm.*

AEO is jointly owned by CK Infrastructure Holdings Ltd (CKI) (50%) and Power Assets Holdings Ltd (PAH) (50%). It is not a publicly listed company.

ASIC extracts dated 14 June 2024 identify that Australian Energy Operations Pty Ltd (AEO), a fully owned subsidiary of a Bahamas registered entity Australian Energy Operations (Bahamas) Ltd, is the sole parent of:

- Transmission Operations (Australia) Pty Ltd, via Transmission Holdings (Australia) Pty Ltd
- Transmission Operations (Australia) 2 Pty Ltd, via Transmission Holdings (Australia) 2 Pty Ltd

As well as:

- Transmission Operations (Australia) 3 Pty Ltd, via Transmission Holdings (Australia) 3 Pty Ltd
- Transmission Operations (Australia) 4 Pty Ltd, via Transmission Holdings (Australia) 4 Pty Ltd

Which suggests there may be further Victorian Transmission licence applications by AEO controlled entities in the near future.

Powercor holds one licence under the EIA:

- a [Distribution licence in the name of Powercor Australia Limited \(ACN 064 651 109\)](#) last varied on 3 August 2022

AEO holds two licences under the EIA via two wholly owned subsidiaries:

- A [Transmission licence in the name of Transmission Operations \(Australia\) Pty Ltd \(ABN 21 159 526 520\)](#) issued on 4 September 2013 and last varied on 9 November 2018
- A [Transmission licence in the name of Transmission Operations \(Australia\) 2 Pty Ltd \(ABN 34 605 734 129\)](#) issued on 4 May 2016

We also note that in the [Transcript](#) to the [Webinar](#) that Powercor presented on 16 May 2024 to explain their submission the following was stated:

The Powercor business has been providing transmission solutions in Victoria for more than a decade, having supported the development of an ongoing operation of two terminal stations in

Victoria and the connection of four wind farms. And this is application is merely just an extension of that existing capability.

1.8 National Electricity Rules – mandatory ring-fencing requirements

Under the National Electricity Rules (NER), the Australian Energy Regulator (AER) is required to develop [transmission and distribution ring-fencing guidelines](#). The guidelines provide for the accounting and functional separation of the provision of prescribed services by Network Service Providers (NSPs)² from the provision of other services by NSPs. Prescribed services included regulated transmission services and regulated distribution services that NSP's charge ultimately to consumers via their regulated asset bases, subject to 5 yearly price determinations by the AER.

Ring-fencing supports the development of competitive markets for unregulated services by placing restrictions around NSP behaviour to prevent them from taking advantage of their status as a dominant or monopoly service provider. It is mandatory under the NER for NSP's to comply with the AER's ring-fencing guidelines.

The purpose of this mechanism is to prevent regulated businesses from:

- favouring their own competitive activities to the disadvantage of other competitors operating in the market
- using revenue earned from regulated services to cross-subsidise their contestable services.

Ring-fencing benefits consumers in two ways:

- by addressing the risk that consumers pay more than they should for regulated services because a NSP uses regulated revenue to cross-subsidise unregulated services offered in competitive markets; and
- by supporting competitive markets, meaning that electricity consumers can benefit from lower long-term costs and greater consumer choice associated with strong competition.

Ring-fencing guidelines were first published by the Australian Competition and Consumer Commission (ACCC) in August 2002 and includes reporting obligations to the AER by NSPs.

Powercor, as an incumbent Distribution NSP, is well aware of its ring fencing obligations, as per its website: <https://www.powercor.com.au/about-us/regulatory-information/regulatory-framework/>

2. Powercor's Transmission licence application form

In the context of the above background, we have taken a close look at the information provided by Powercor in their transmission application form and compared it against the requirements of the form itself, developed by the ESC under sec 18(2).

The following tables present that information in a manner that incontrovertibly highlights the extensive lack of detailed information provided about any specific activities and that the application is no more or

² Regarding the term Network Service Provider, a person who owns, operates or controls a transmission or distribution system must register with AEMO as an NSP. <https://aemo.com.au/en/energy-systems/electricity/national-electricity-market-nem/participate-in-the-market/registration/register-as-a-network-service-provider-nsp-in-the-nem>

less than a proposal to “*deliver new transmission infrastructure*” in “*a geographic area, being the area covered by its distribution network*”.


Other than providing a series of aspirational statements, Powercor clearly, and without reference to the Guidelines has no “firm plan to commence carrying out” any specific “activity” i.e. identifiable new transmission infrastructure projects and cannot “demonstrate that the activity for which the licence is being applied for is not merely speculative and there is a reasonable likelihood of that activity being undertaken”. They hope delivering new transmission infrastructure can be undertaken, essentially they are promoting a business model, but they cannot be assured, or assure the ESC in the absence of any identified infrastructure, that they can outcompete others for transmission infrastructure projects, which appears to be the underlying premise.

Further, many of the Technical Capacity requirements in the form cannot be answered in any meaningful way given that no specific activities, i.e. transmission infrastructure projects are identified.

Above all, while Clause 19.4 can allow that technical capacity does not need to be met if an activity is more than 12 months into the future, we contend that it cannot contemplate or allow for that if the activity is not identified.

From “Section 1.5 The Licence and transmission infrastructure details”

ESC Transmission licence application form template	Information provided by Powercor in its Transmission Application form
(a) Date from which licence is sought:	<i>1 January 2024.</i>
(b) Transmission asset name:	<i>Not applicable. We are seeking a licence based on a geographical area.</i>
(c) Location of transmission asset (including the local government area, nearest town, or other identifying features):	<i>We are seeking a transmission licence which encompasses Powercor’s distribution network. This is the area described in schedule 1 of the Electricity Distribution Licence issued to Powercor Australia Limited (ESC reference C/22/19829).</i>
(d) Nature and scope of operations for which the licence is sought, including details of works related to the transmission asset (for example, details of the associated generation facility or augmentation of the electricity transmission system):	<p><i>We are seeking a transmission licence for a geographic area, being the area covered by its distribution network. We will use this licence to deliver new transmission infrastructure to support the connection of customers, such as data centres and embedded generators, to our distribution network. The connection of these customers often requires augmentation of both the distribution and transmission network, given the customer’s size of load or generation.</i></p> <p>[confidential]</p> <p><i>Whilst its recognised transmission licenses</i></p>

	<p>are typically granted for specific assets, we are seeking for the ESC to exercise its discretion to grant a transmission licence covering the geographic scope of our distribution network. Such a licence will allow us to seamlessly build, own, operate and maintain any necessary augmentations to the transmission system itself, providing a valuable option for customers [confidential].</p> <p>We understand that the granting of this licence would be relatively novel for the ESC. As such we are eager to work with the ESC to formulate the scope of licensable activities in a manner that provide the ESC comfort.</p> <p>[confidential].</p>
<p>(e) Provide a copy of any maps, shapefiles or line diagrams identifying project footprint, transmission routes and proposed location for connection assets (if applicable):</p> <p>Attachment reference:</p>	<p>The location of the assets will be confined to the Powercor’s licensed distribution area.</p>  <p>We also provide the ESC a link to our Network Visualisation Portal, to enable greater visibility of the assets within the geographic area of the proposed transmission licence – Powercor’s monopoly distribution area is shown in red.</p> <p>The portal can be accessed at this link - https://dapr.powercor.com.au/</p>
<p>(f) Provide details about the proposed connection point (include latitude and longitude, as well as names, locations and other useful identifiers):</p> <p>Attachment reference:</p>	<p>Please see the information in response to (e) for an indication of the potential locations of our connection points within our distribution network.</p>
<p>(g) Provide details of the proposed connection arrangement (physical and electrical layouts) into the existing transmission network:</p> <p>Attachment reference:</p>	<p>We will deliver new shared network infrastructure as functionally defined by the Australian Energy Market Operator (AEMO) on a project-by-project basis. As part of this, we will interface with existing declared transmission system operators.</p>
<p>(h) Provide details of the proposed transmission assets (for example, ratings, HVdc)</p>	<p>If successful, we will deliver new terminal station infrastructure to connect new generation and load to the Victorian declared transmission</p>

<p>technology type, voltage class, substation/converter station details, etc.):</p> <p>Attachment reference:</p>	<p><i>network.</i></p> <p><i>This would include, but not be limited to, busbars, circuit breakers, power transformers, capacitors, reactors, and secondary systems as functionally defined by whichever party is procuring the new infrastructure.</i></p>
<p>(i) Provide details regarding the status of the proposed transmission project with respect to the Regulatory Investment Test – Transmission (RIT-T):</p>	<p><i>We will abide by the regulatory investment test for transmission (RIT-T) requirements for any projects undertaken should we be successful in receiving a transmission licence.</i></p> <p><i>We anticipate this will be required for any new transmission assets required to support connections to the distribution network that we would construct, own and/or operate if we were to be granted a Electricity Transmission Licence.</i></p>
<p>(j) Provide details of when the applicant expects to receive ‘considered project’ status under the National Electricity Rules:</p>	<p><i>We will consider on a case-by-case basis when projects arise which meet the criteria for ‘considered project’ status under the National Electricity Rules (NER).</i></p>

From “Section 2. Technical Capacity”

ESC Transmission licence application form template	Information provided by Powercor in its Transmission Application form
<p>2.9 Material agreements</p> <p>Provide copies of agreements entered into, or intended to be entered into, by the applicant that are material to the undertaking of the transmission activity.</p> <p>Agreements that are material to the undertaking of the transmission activity may include:</p> <p>a) Connection agreements, such as a Generator Connection Agreement and Generator Project Agreement with a generation facility.</p> <p>b) Any contract concerning the construction and delivery of the project (sometimes commonly referred to as a Project Construction and Coordination Deed (PCCD) or Engineering, Procurement and Construction Agreement).</p> <p>c) Any Network Services Agreements.</p> <p>d) Any contracts concerning the managerial aspects of the activity (sometimes commonly</p>	<p><i>As we are applying for a geographic licence, without reference to a specific transmission project or asset, we are not in possession of such agreements referred to above. [confidential]</i></p> <p><i>At a high level, we expect that the following Management Services Agreements will support our transmission activities:</i></p> <ul style="list-style-type: none"> • <i>CHED Services Pty Ltd: corporate services including finance, human resources, legal, company secretarial services, regulation, corporate affairs, information technology and customer service.</i> • <i>Network Services: provision of technical, logistical, direct procurement and field support.</i>

<p>referred to as a Management Services Agreement).</p> <p>e) Any contract concerning the ongoing operations and maintenance of the transmission assets (sometimes commonly referred to as an Operations and Maintenance Agreement).</p> <p>Attachment reference:</p>	
<p>2.10 Declared Transmission System Operator</p> <p>An explanation of whether the transmission assets are contemplated to form part of the Declared Transmission System and whether the applicant is, or has requested to be, a Declared Transmission System Operator.¹</p> <p>Attachment reference:</p> <p>¹ See section 31 National Electricity (Victoria) Act 2005.</p>	<p><i>We propose that new terminal station infrastructure will be an augmentation to, and therefore form part of, the declared transmission system. We also anticipate subsequent augmentations to the transmission system constructed by us pursuant to an Electricity Transmission Licence will form part of the declared transmission system. Construction of those assets has not commenced hence we have not requested to be a declared transmission system operator.</i></p> <p><i>We observe in circumstances where the assets will form part of the declared transmission system, as the person who is carrying out the augmentation, prior to completion of the augmentation, we would be a prospective declared transmission system operator for the purposes of the National Electricity Law (section 50D).³ Once the augmentation to the declared transmission system is complete, we anticipate the Minister for Energy and Resources will declare us to be a declared transmission system operator under section 31 of the National Electricity (Victoria) Act 2005.</i></p> <p>³ Prospective declared transmission system operator is defined in section 50D(7) of the National Electricity Law as ‘a person who is to carry out an augmentation of the declared transmission system and who may therefore become a declared transmission system operator on completion of the augmentation’.</p>
<p>2.11 Approvals</p> <p>Provide a copy of any planning or environmental approvals that permit the applicant to undertake preparatory works in relation to the transmission of electricity.</p> <p>Attachment reference:</p>	<p><i>We will ensure that all transmission works have required environmental approvals. We already have in place a certified ISO14001:2015 Environmental Management System.</i></p> <p><i>When building new network and connection assets, we have in place processes to assess the need for environmental, planning and heritage related permits and approvals, and to obtain those permits. The Health, Safety and Sustainability team assist our delivery teams in meeting these obligations.</i></p> <p><i>When accessing assets within road and rail reserves, we have specific processes and procedures to determine whether consent from the coordinating road authority is required to work within the road reserve, and if permit approvals are</i></p>

	<p><i>required for work in (or near) rail corridors. The Statutory Compliance team is responsible for assessing the works and obtaining the necessary approvals.</i></p>
<p>2.12 Land access</p> <p>Provide the following in relation to land access (if the applicant is intending to access private land for the purpose of transmission (or preparatory works):</p> <p>a) Copies of any agreements to access land for the purpose of the transmission (including preparatory works). If there are multiple agreements on similar terms, a copy of a single agreement is sufficient.</p> <p>b) A description of any complaints, including resolution or outcomes, concerning the applicant’s activities in relation to land access.</p> <p>c) Copies of any policy or process of the applicant relating to the negotiation of access to land for the purpose of the transmission (including preparatory works). Where relevant, that policy or process, should demonstrate the applicant has the technical capacity to undertake land access in accordance with the commission’s Land Access Code of Practice.</p> <p>d) Information about the skills, experience and expertise of the key personnel who will be engaging with local communities and landowners regarding the applicant’s intended use of land access powers under the Electricity Industry Act 2000.</p> <p>Attachment reference:</p>	<p><i>As noted above at section 2.3, subject to one exception, the powers set out in Part 5 of the Electricity Industry Act (EIA) apply equally to transmission and distribution companies. The only section of the EIA that confers ‘unilateral’ powers (i.e., powers that are not conditioned on a Ministerial Order or another Act) is section 93. Section 93 applies equally to transmission and distribution licence holders, meaning that, as a distribution licence holder, we already can exercise these land access powers.</i></p> <p><i>We are closely following the progression of the ESC’s Land Access Code of Practice (Code). Once the final Code is released, we intend to conduct a review of our internal practices and procedures to establish compliance with the Code in relation to any transmission activities.</i></p> <p>[confidential]</p> <p><i>We will also utilise the attached ‘Dealing with the Community’, which sets out requirements for our employees when accessing customer property.</i></p> <p><i>As the licence is not for a specific project, we consider that the questions set out at (a) – (d) above are not relevant at this stage of its application. [confidential]</i></p>
<p>2.13 Engagement with Energy Safe Victoria</p> <p>Provide details about the applicant’s engagement with Energy Safe Victoria and any copies of correspondence regarding the proposed electricity transmission infrastructure.</p>	<p><i>As a distribution operator of a substantial network, we understand the importance of safety, and are prepared to undertake transmission activities, as distinct from distribution activities, in the safest way possible.</i></p> <p><i>We are preparing to engage with the Energy Safe Victoria (ESV) at the Executive level in the week commencing 30 October to discuss this application and our intentions if successful. We are serious about this application and are working to ensure that we are providing the needed comfort</i></p>

	<p><i>and visibility to the safety regulator while we process this transmission licence application.</i></p> <p><i>If successful, before transmission works are undertaken, we are committed to continuing engagement with the ESV at an operational level to ensure our safety policies are acceptable to it.</i></p>
<p>2.14 Additional information</p> <p>Provide any additional information the applicant considers relevant to the commission's assessment of the applicant's technical capacity</p>	<p><i>We recognise assessing this application is a somewhat novel process for the ESC. As such, we are happy to provide any further information that the ESC considers would assist it in carrying out this assessment.</i></p>

3. The meaning of 'activity' – ESC usage versus Powercor's proposed activities

As identified in our "Section 1 Background", the ESC seeks clarity from licence applicants to provide specific details of activities to be licenced. And its Guidelines specifically state [highlighted emphasis added]:

Applicants should apply for a licence once they have a firm plan to commence carrying out the proposed activity . . .

. . .

The framework permits the granting of applications where the licensable activity is some years away from commencement, particularly for large-scale electricity transmission and generation projects. However, applicants must be able to demonstrate that the activity for which the licence is being applied for is not merely speculative and there is a reasonable likelihood of that activity being undertaken.

As discussed in various sections above, Powercor's application is for a broad geographic area only (over 145,000 sq km), provides no detail about a single potential project, and is essentially aspirational and optimistic as to what it might potentially do with its transmission licence.

Part of the content of the Application Form can be re-read in the above tables – but statements such as the following sound far more like a business plan than a licence application made under legislated requirements:

Such a licence will allow us to seamlessly build, own, operate and maintain any necessary augmentations to the transmission system itself, providing a valuable option for customers.

and

If successful, we will deliver new terminal station infrastructure to connect new generation and load to the Victorian declared transmission network.

and

As we are applying for a geographic licence, without reference to a specific transmission project or asset, we are not in possession of such agreements referred to above.

In the letter accompanying the application it is said [highlighted emphasis added]:

Our focus will be on building and upgrading transmission infrastructure, including new terminal stations and 220kV lines for customer-related projects to enable them to easily connect to the transmission network.

In the Vision Statement it is said [highlighted emphasis added]:

We would offer planning, design and construction of new terminal station infrastructure, including 220kV lines, for customer-related projects to enable them to easily connect to the transmission network. These projects would include large-scale solar and wind generation, battery storage, data centres and commercial and industrial businesses.

And in the [Transcript](#) to the [Webinar](#) that Powercor presented on 16 May 2024 to explain their submission the following was stated [highlighted emphasis added]:

At this stage we don't have any projects planned. The projects will on the whole be customer initiated and customer driven. I guess just to reiterate the point that the reason why we've applied for a geographical licence, which is pretty unprecedented, covering the Powercor distribution network across Western Victoria is to drive competition to deliver a better service for our major customers. It's pretty simple.

and

The location of where the new transmission infrastructure will be located will ultimately depend on the customers and the where the customer projects are located.

Given all the above and in the absence of any identified projects how can Powercor's application **not** be considered "merely speculative"?

4. Grounds for rejection of application

4.1 Powercor's application form does not conform with EIA Section 18

Section 18(2) states: "An application must be in a form approved by the Commission and accompanied by such documents as may be required by the Commission."

This is further supported by ESC's Application guidelines and by the Introductory pages to each licence application form.

Powercor has failed to complete the distinct and specific requirements of ESC's Transmission Licence Application form with necessary details of the physical assets being specified that are proposed to transmit electricity. It is a completely open ended application with no physical details.

Powercor's application form therefore does not conform to Section 18 and ought be rejected.

4.2 Powercor application form does not conform with EIA Section 19 technical capacity requirements

Powercor is seeking a transmission licence in advance of the approval, construction and operation of any future physical assets imagined or not imagined. Section 19(4) supports an application process, as applied by ESC to Marinus Link, to issue a licence in advance of the existence of specifically proposed and known activities under specific circumstances. Marinus's application includes in detail the proposed physical transmission assets to be built. Powercor's does not.

While Clause 19.4 allows that technical capacity does not need to be met if an activity is more than 12 months into the future, we contend that it cannot contemplate or allow for a situation in which no activity is properly identified.

The Powercor application form does not conform to Section 19(4) and ought to be rejected.

4.3 Approving a Transmission licence for a geographical area corrupts ESC's Transmission licencing regime

Powercor seeks to complement its existing Distribution licence's monopoly 'Distribution Area' (covering more than 50% of Victoria) with its proposed Transmission licence. As outlined in Section 1.6 above, for sound and practical reasons Victoria's Distribution system has been licenced by geographic boundaries so that each licence has a monopoly for a part of Victoria, and together they cover the whole of the state. However, for Victoria's Transmission system, Transmission licences are not defined by geographic boundaries, they are licenced by physical transmission assets. This is documented in section 1.5 above.

If ESC now accepts a Transmission licence by geographic boundary for a large part of the state without having the detail of any physical transmission asset it completely corrupts its existing Transmission licencing regime. It may cause intended and unintended issues: eg. augmentation disputes, physical works disputes, regulated asset base charge issues etc. It would also give unrestricted power to Powercor under s93 to access any land within more than half of Victoria at any time of its choosing, a massive infringement on the private property rights of Victorians.

ESC must maintain a consistent transmission licencing regime by physical transmission assets and reject licencing by geographic boundary with no transmission asset detail.

4.4 Powercor's controlling parent already controls two Victorian Transmission licences within an existing competitive transmission business

The ultimate controlling owner of Powercor (Cheung Kong Group) already owns 100% of a company in Victoria, Australian Energy Operations (AEO), that for years has provided competitive transmission services in Victoria, and already possesses two Victorian Transmission licences, and is likely it seems to apply soon for more. There is no evidence provided by Powercor or anyone else of a lack of competition or barriers to entry that prohibits AEO from effectively tendering for, winning, constructing and/or operating contestable transmission infrastructure in Victoria. This is contrary to the core premise Powercor has made for this licence. Further, under the EIA act, AEO could apply now for further Transmission licences, consolidate its Transmission licences into one and/or continue to vary its Transmission licence/s to add new 'activities' as and when such activities are clearly known and deemed likely to eventuate, as allowed for under s19(4) of the EIA.

4.5 Powercor is not a fit and proper person to apply for a Transmission licence

Powercor is not a fit and proper person to apply for a Transmission licence, as under the National Electricity Rules (NER), in particular the Australian Energy Regulator (AER)'s Ring Fencing mandatory requirements, there is a need for incumbent regulated electricity infrastructure owners to be prohibited from cross subsidisation and discrimination when bidding for contestable services. This is to avoid anti-competitive behaviour that will negatively impact consumers. Ring Fencing requirements include the need in certain circumstances for legal and other separation of regulated infrastructure entities from

involvement in contestable services. Powercor is well aware of Ring Fencing obligations as evidenced by its website, as discussed in section 1.8 above.

Powercor is the incumbent monopoly Distribution licence holder for all of western Melbourne and western Victoria and it being granted a Transmission licence directly threatens the core objective of the ESC, and the National Electricity Objective. Noting Powercor's ownership is not identical to AEO, like AusNet Services, it is open to the owners of Powercor to incorporate a separate legal entity for contestable services that could potentially obtain a Transmission licence in due course.

5. Conclusion

It is our submission that ESC ought reject Powercor's application on each of the five compelling grounds above, only one of which would require such rejection. It remains within Powercor's power in future to apply under the EIA for a transmission licence:

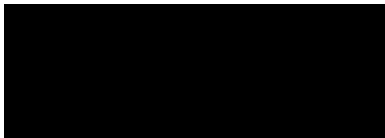
- When proposed activities are sufficiently known physically (what, where etc)
- When the legal structure for such a licence holder has been properly put in place.

ESC ignoring this submission and issuing a licence in accordance with Powercor's wishes directly threatens ESC's objective and the National Electricity Objective to, amongst other things, ensure the best economic outcome for Victorian consumers, as well as directly and inappropriately threatening the private property rights of Victorians.

We do not require this submission to remain confidential - if you require a redacted copy re: contact details please let me know.

Please do not hesitate to contact me by email or on [REDACTED] if you have any questions or wish to meet with myself and Gavin Ronan, Chair of our Legal Working Group.

regards



Vicki Johnson



Chair of Moorabool and Central Highlands Power Alliance Inc. trading as Regional Victoria Power Alliance

