From: *(Redacted for privacy)*

Sent: Wednesday, 6 November 2024 2:59 PM

To: Licence Query Info (ESC)

Cc: *(Redacted for privacy)*

Subject: Transmission Company Victoria Pty Ltd – Application for Electricity Transmission Licence

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SUBMISSION TO ESC

I make this submission on behalf of myself and my sister, *(Redacted for privacy)*. Could you please

confirm receipt of this submission.

I am the co-owner of a cropping property at Swanwater, north of St Arnaud. We have been notified by AEMO/TCV that one pf our paddocks (a block on the Swanwater Road) will be directly impacted by the Victoria New South Wales Interconnector West project in Victoria (VNI West). This will mean a transmission towers together with transmission lines for 850 metre section traversing our paddock. This will be in the form of an easement 70 metres wide which will traverse across the east- west length of this block, mostly abutting the Swanwater Road. I also ask you to note that this is a very productive paddock for crops, given its soil type and location, as it is cropped most years via the use of crop rotation. A number of our neighbours as well as other landowners along the full length of the route will be similarly and directly affected by this project.

Speculative nature of transmission licence application

AEMO has publicly stated it will neither own or operate a transmission line. Whilst ESC has advised that it often grants a licence at a point of time including during change of ownership, this application for the grant of licence to AEMO's wholly owned subsidiary, TCV, is entirely speculative at the time the application is now sought.

There are simply no details as to whom a prospective transmission operator will be, as only process of a tender for the sale of TCV has been announced with very little detail provided as to the content of this tender process itself which will determine the ultimate controller of the project. This lack of any real clarity is explicitly set out in the application itself – see page 4 ff of the Electricity transmission licence application form ("the Application")

At the appropriate point in time prior to the conclusion of the early works, TCV will be

transferred to a third party (New Owner) through a procurement process that is currently being developed by AEMO. After the transfer to the New Owner, the intention is that TCV will continue to develop and then build, own, and operate VNI West.

Further at page 17 of the Application -

It is intended that TCV will register with AEMO as a Network Service Provider in accordance with section 11 of the NEL. However, as mentioned in section 2.1, AEMO will, as a separate stage, tender for and contract with a New Owner for the construction and operation of VNI West. Conditions of the tender process are expected to include the requirements that promptly following the transfer of shares to the New Owner, TCV will be registered with AEMO as a Network Service Provider in accordance with section 11 of the NEL page (my emphasis).

Further, AEMO apparently seeks to sell TCV entity (although this is only an expectation) but of course there is not a guarantee that a potential buyer will want to adopt this approach - buying a subsidiary corporation may have tax/liability issues that buyer might not want especially for foreign owned entities. In the sale of businesses buyers frequently buy assets, contracts, and intellectual property but not corporation itself. How will this be addressed in the licence? Will a potential new buyer need a new licence if materially different from the existing structure of TCV including both technical capacity and or financial stability - what is the ESC's threshold for ascertaining this? Would this issue be covered in licence conditions that should be incorporated

into any sale tender process conducted by AEMO? What happens if no buyer emerges? This question is especially acute given changing political and economic situation concerning energy policy at both a State and Federal level following elections in Qld and with federal elections due in the near future.

I also note the somewhat perplexing comments of Mr Nathan Zhivov (ESC) from Public Forum 1 transcript dated September 19, 2024. Here, Mr Zhivov states that _

So first of all, our understanding from the application and everything that TCV has submitted to us, it is that even if there is a change of control in the entity TCV, the entity TCV is going to be the entity that is involved in the project throughout its life. From the early stages. Now all the way through building all the way through commissioning, all the way through operation to the end of the life of the asset.

Now it is possible because this happens really commonly in the energy industry that you will

see a change of control over the life of TCV.

Here the ESC appears to be acknowledging that the mere statements of AEMO/TCV are taken at face value, whilst noting changes of control are common in the industry. How do we know these representations by TCV will hold true over time. What we may see is a change of control for the actual transmission line over its life irrespective of the "life of TCV." It is difficult to see TCV statements concerning the future as to the life of this project (which could be many decades), as a relevant consideration for current ESC decision making. As noted above the application itself provides only references to the "intentions" of AEMO. How are intentions sufficient for the ESC to grant a licence for a project currently estimated in the $AUS billions adversely affecting entire communities and many hundreds of landholders?

Given all the above, the ESC as decision maker should not grant the licence until it is sufficiently clear who the real operator will be following the proposed tender. To do otherwise is for the ESC to exercise its statutory licensing powers in such a way that the result of the exercise of the powers are uncertain. Accordingly, as a decisionmaker, the ESC must reject the current application.

Further, the ESC is required to ascertain the benefits and costs of regulation (including externalities and the gains from competition and efficiency) including for consumers and users of products or services (including low income and vulnerable consumers). Given the sizeable nature and extent of this project and its very considerable impacts on individuals, families and communities and the long-term agricultural economy of Western Victoria (who are also vulnerable consumers who in the main do not receive any benefit from this project) the grant of licence based on the limited nature of the application at this time would be an abuse of the power by the ESC.

AEMO/TCV is not fit and proper as it operates in bad faith

The ESC in applying a "fit and proper test" should not merely look superficially at qualifications or history of directors/officers set out in the application, as most likely replaced in any event by the subsequent buyer following the tender processes. A broader test should be applied and I refer to Australian Broadcasting Tribunal v Bond (1990) 170 CLR 321, where the concept of 'fit and proper' was described as follows:

The expression "fit and proper person," standing alone, carries no precise meaning. It takes its meaning from context, from the activities in which the person is or will be engaged and the

ends to be served by those activities. The concept of "fit and proper" cannot be entirely divorced from the conduct of the person who is or will be engaging in those activities. However, depending on the nature of the activities, the question may be whether improper conduct has occurred, whether it is likely to occur, whether it can be assumed that it will not occur, or whether the general community will have confidence that it will not occur. The list is not exhaustive but it does indicate that, in certain contexts, character (because it provides indication of likely future conduct) or reputation (because it provides indication of public perception as to likely future conduct) may be sufficient to ground a finding that a person is not fit and proper to undertake the activities in question.

Accordingly, in determining "fit and proper" for the purpose of assessing this application, considerable weight should be given to AEMO/TCV company actions and public statements to date i.e. bad faith consultation and in particular dishonesty as to holding out powers under Electricity Industry Act.

Further, and as part of this fit and proper test, proper regard should be had to false or misleading statements made, or inaccurate information given in application. It is strongly suggested that there is evidence of bad faith and misrepresentation is contained within the application itself. In paragraph 2.12 a) of the Application. AEMO/TCV states that "TCV has commenced discussions with relevant landholders to enter into Land Access Agreements…[which] will be used for the purposes of obtaining access to land to continue investigations into the project as part of the early works." This is dissembling.

In reality, AEMO/TCV will rely on the statutory powers under the Electricity Industry Act 2000 ("EIA"). This is set out on page 16 of its own (now modified) "Landholder Guide - Victoria to NSW Interconnector West" ("the Guide") dated May 2024 that directly refers if it becomes an electricity corporation - "TCV may seek to rely upon section 93 of the EIA for specific access requirements". Obviously if ESC grants this licence application, then TCV will have access to these non-consensual access powers. What is missing from the application is relevant information concerning the very low take up for TCV negotiated Land Access Agreements by land holders given the level of opposition to the project in numerous farming communities. In other words, should not TCV be informing ESC that currently the majority of land access at this preparatory stage of the project will be conducted without the consent of the affected land holder. Access will occur by statutory fiat. There is no reference to this in this deficient

application. Accordingly, the real nature of land access for communities and landholders is a relevant consideration that the ESC needs to consider in the exercise of its statutory powers.

Perhaps the most egregious action of bad faith in previous versions of the document AEMO/TCV simply held itself out to have powers under s 93 of the EIA which it did not have, i.e. without any reference to it not being an electricity corporation at that time. This was deceptive as it suggested that if agreement was not met than AEMO/TCV would simply come onto a property without consent. This was unconscionable and akin to seeking financial advantage by deception (an indictable offense in Victoria - see section 83 of the Crimes Act 1958) as by threatening people to enter into agreements or else, this would potentially significantly benefit the timeline for the project. How could AEMO not know they did not have these powers or whether it had a licence? Further in a letter to me dated 16 October 2023 (after I raised this issue of non-existent s 93 powers with the Victorian Department of Energy, Environment and Climate Action) Mr Alistair Parker, Chief Executive, VicGrid stated "on becoming aware of the issue raised by stakeholders and landholders, TCV undertook to update its information". So, it is up to affected parties to point out obvious legal deficiencies to TCV? This conduct goes to the character and reputation of the entity as alluded to by the High Court. TCV is not a fit and proper person when it unlawfully holds itself out to have statutory powers that it does not for its own advantage. Such appalling corporate behaviour should not be rewarded but rather made an example of.

Further and as to the reputation and character of the applicant, it has demonstrated an exceedingly poor level of community and land holder consultation to date. This is reflected by the high level of community tension now existing. Examples include AEMO refusing to attend a community meeting in St Arnaud in 2023 where energy experts would attend. In other meetings TCV representative include junior persons as technical advisers who unable to answer basic questions regarding aspects of the potential impacts for landholders e.g. such as the insurance implications for a multibillion project running through your property. This appears to me as gaming the process, whereby TCV can publicly refer to number of community consultation meetings in its media presentations. However no meaningful consultation has occurred and community and individual concerns are not assuaged but rather magnified. This is a very cynical approach to both public policy and infrastructure building.

From St Arnaud neighbours I am aware of reports of TCV representatives turning up at elderly

people's residences within surrounding districts unannounced in relation to seeking land access

agreements. This is unconscionable conduct reminiscent of petty scammers and con artists. In my own personal experience, TCV representatives turned up at my residence unannounced. Here given nature of AEMO as essentially a publicly owned corporation (as it is majority owned by the Commonwealth and states and territories) it should be operating on a higher standard, not lying about its powers, or behaving very poorly. I am not aware of any apology for this conduct, so this body is not even attempting to make itself accountable. I would ask you as the relevant decision maker to consider the very high level of community fear and anger that AEMO/TCV has engendered to date in assessing its reputation, and therefore the communities concern as to its potential for future misconduct. I submit that AEMO/TCV is demonstrably not a fit and proper person under the common law test as per its conduct to date in dealing with communities and affected individual landholders. I also submit these heavy handed and deceptive practices fundamentally call into question TCV's ability to comply with its regulatory obligations into the future.

Human rights considerations

What no one appears to have addressed are the human rights impacts of the proposal under Victorian law, which are heightened by the difficulties arising from the lack of detail in the application. I submit that that AEMO (and TCV as a wholly owned subsidiary) are within the definition of a "public authority" as set out under section 4 (c) of the Charter of Human Rights and Responsibilities Act 2006 ("the Charter"). I have raised this issue with Victorian officials and in the Departmental letter response referred to above, Mr Parker stated

"regarding the status of AEMO ... the department does not regulate AEMO's compliance with the Charter, and this question would be better put to AEMO itself for advice."

I do not see the Department's "fob off response" as consistent with its own obligations under the both the Charter and the Victorian Public Service Code of Conduct.

Whilst it is I am certain that ESC would agree that it itself is a "public authority" under the Charter of the Charter and is therefore captured section 38 of the Charter that in "making a decision, to fail to give proper consideration to a relevant human right". The decision to grant a licence under the EIA must fall within its section 38 obligations. In the circumstances contemplated here it is not enough to merely say that TCV is corporation and therefore, it falls

outside the scope of the Charter. To the contrary to comply with its own Charter obligations the ESC must ask 1

Is 1) AEMO and therefore TCV (its subsidiary) a public authority for the purposes of the Charter? and

If 2) if the answer to question 1 is yes, has the AEMO/TCV dealt appropriately and lawfully with its human rights obligation in its actions and decisions to date?

IIt is submitted that the clear answers are yes to question 1 and no to question 2.

In turning to the question of whether AEMO/TCV was a public authority under the Charter, section 4 (1) (c) extends the definition of a public authority to an entity that carries the functions of a public nature, when it is exercising those functions on behalf of the State or a public authority (whether under contract or otherwise).

Section 4 (1) (c) is clarified further by sub -sections 4 (2) and (3) of the Charter. Section 4 (2) sets out that:

"in determining if a function is of a public nature the factors that may be taken into account include—

(a) that the function is conferred on the entity by or under a statutory provision;

(c) that the function is of a regulatory nature;

(d) that the entity is publicly funded to perform the function;

(e) that the entity that performs the function is a company (within the meaning of the Corporations Act) all of the shares in which are held by or on behalf of the State.

In resolving this question, the obvious place to start is the proper construction of the relevant statutory provisions under the EIA and the ministerial orders. Here I would refer the ESC to sections 16Y and 16ZA of the National Electricity (Victoria) Act 2005

("NEVA"). Whilst section 16Y provides for functions under statute that affects both AEMO and other declared transmission system operator, never the less provisions place AEMO in a statutorily different position to other operators. For example, I refer you to section 16Y provisions in paragraphs (h), (i), (j) and (ja) of sub-section 2. It also expressly provides for AEMO's costs in sub-section 16Y.

This treats AEMO as more as a part of government instrumentality than a separate commercial private operator. This is most clearly seen in section 16ZA where under sub section 1, before

making an Order under section 16Y, the Minister must consult with—

(a) the Premier; and

(b) the Treasurer; and

(c) AEMO.

This statutorily places AEMO at the heart of Victorian energy policy development as well as providing technical and operational capabilities to the State. This alone engages the definition of a "public authority".

I now turn to the ministerial orders that were attached to the application. In the NEVA Order of 27 May 2023, the Order at the beginning paragraph 4.6 states that "AEMO is conferred the following functions in respect of the WRL Uprate". This is not the State entering into an agreement with a private entity though a procurement process, but the rather the State placing functions derived from statute upon AEMO and AEMO utilising its wholly owned entity to carry out these functions.

In turning to the Charter itself, the rights engaged, which should have addressed by AEMO include:

* Section 8 – Recognition and equality to before the law
* Section 12 - Freedom of movement
* Section 19 – Cultural rights
* Section 20 – Property Rights

I have seen no evidence to date in either written documentation or by discussion of any reference to human rights whatsoever by either AEMO or TCV. As such how can it be said that these entities have complied with these legal obligations. They have not!

I submit that in regard to the grant of a licence, the ESC must acquits its own human rights obligations and these include the conduct of AEMO in failing to deal with its own obligations as a "public authority." This failure is also relevant to the proper application of the "fit and proper person" test to be applied. I also note that there is question of whether TCV continues to be a "public authority' if, and when, it is sold is matter that may need to be determined at a later point in time

Privacy

As part of the existing consultation processes conducted by AEMO/TCV to determine the route, private landowners and cultural heritage owners have already been forced to divulge a

considerable range of information (including mapping) concerning their properties including cultural heritage issues (locations and their meanings), commercial issues and practices, and environmental issues such as fauna and flora populations/locations aa well as community issues. This significance and values of this information may grow over time as a crop grower I can say we are increasingly being asked to provide information concerning our farms to downstream users/buyers.

Will the transmission companies simply be allowed to on-sell this information as their transmission lines wind through significant agricultural areas of the state? Given that AEMO owned TCV will not be the long-term operator much of this information will be provided to other entities in the tender process and/or subsequently provided to the preferred transmission line operator. Given the enormous legal and power difference between AEMO and affected parties, a fundamental question therefore for the ESC, if the licence is to be granted, is how should these privacy issues be addressed as part of its licence considerations. It is expected

that given the high level of opposition to this project many landholders will not reach agreement with AEMO/TCV therefore forcing the easements through the processes of the Land Acquisition and Compensation Act 1986. As noted above, these land access and acquisition processes are essentially coercive especially when s93 of the EIA powers are used i.e. including the statutory right to come on land without permission before acquisition.

Decommissioning and Rectification

As raised in my discussions with the ESC, there are very real concerns about what happens to affected lands when the life of the transmission is over. In other words, who is responsible for the safe decommissioning of the lines and the rectification of what is often prime agricultural lands. These costs should not fall on affected landholders and/or tax payers but on those who have directly benefited. In relation to land holders, again this is made more galling by the fact that this project is proceeding in the face of their opposition and without their consent.

This problem is also made more acute by the potential sale(s) by relevant operators over the life of transmission life. To deal with this issue, I request that ESC sets out clear licence provisions that deal with this issue from the outset, rather than leaving it to an issue to be determined at the end of the project's life. In my submission, the licence conditions imposed by

the EC should expressly require for the identification and retention of sufficient funds during the life of the project irrespective of ownership or operation to provide for appropriate decommissioning and rectification at the end of project life. In ensuring that these costs are dealt with fairly, ESC should have regard to how this will impact the long-term interests of Victorian consumers and what effect this aspect of the project will have on electricity prices.

Further matters

I ask the ESC to independently assess the impact of this project on electricity pricing and the long-term interests of Victorian consumers before granting the licence. I point to the very considerable work conducted to date by Mr Simon Bartlett and Professor Brian Mountain on this project. This work clearly analyses and then refutes much of the justifications put forward so far as to the benefits of the project in either the short or long term.

In April 2023 the Victorian Energy Policy Centre identified that the project will –

1. Drastastically increase Victoria's susceptibility to state-wide blackouts through exposure to natural disasters and terrorism. AEMO itself projects bushfire risk to rise 10 fold by 2050, but ignore this in its modelling.

2. Double transmission charges in Victoria and lay the foundation for further transmission developments that together will triple transmission charges in Victoria.

3. fORCE new renewable generation along the WRL-VNI route where AEMO predicts congestion which will mean that up to 50% of the renewable generation built along that corridor will be wasted through spills as a result of transmission congestion. Snowy 2.0 – supposedlY a major reason for building WRL-VNI - will be choked so that it presents no storage value to Victor

4. Delay the transition to renewable generation until WRL-VNI is complete in a decade's time, and waste existing transmission capacity from the Latrobe Valley to Melbourne. This is by far the strongest transmission corridor in Australia. It alreadY has plenty of spare transmission capacity and it can be greatly expanded at low cost. Cause a great deal of needless damage to local communities, individuals and the environment.

The project simply does not deliver on a Federal or State level for consumers and tax payers. At a local level on current plans, affected landholders will simply no access to the electricity

transmitted through their properties and therefore no direct consumer benefit.

As a final question, I ask who gets the profits from the proposed sale of TCV?

I make this submission in good faith and acknowledge I am directly affected by the proposal.

John Feeny

November 2024

PS I apologise for this format but I had trouble uploading my word document so I have sent in this format to stay within your deadline.