

19 April 2022

John Hamill
Essential Services Commission
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Dear John Hamill

AusNet appreciates the opportunity to engage with the Essential Services Commission (**ESC**) and comment on the Electricity Transmission Company Land Access Draft Statement of Expectations (the **SOE**). We recognise the importance of quality and constructive engagement practices when transmission licensees are seeking access to private land in order to be able to deliver transmission projects that are essential to enabling the energy transition.

We understand the objective of the SOE is to provide a framework to facilitate constructive, effective relationships between transmission licensees and landowners. However, we are concerned that the scope of the draft SOE is unclear and too broad. The ESC has indicated that the SOE is intended to address engagement with landowners impacted by new transmission projects (e.g. greenfield augmentations), however the scope as currently drafted is significantly broader than this.

AusNet's primary concerns about the scope of the SOE are:

- The ESC does not identify the head of power it intends to rely on to make the SOE. Furthermore, the regulatory status of the SOE as a statement of expectations (as opposed to a guideline under section 13 or code of practice under Part 6 of the ESC Act) is unclear. Ensuring clarity and providing transparency about these matters is essential to enable licensees to readily identify the nature and extent of their compliance obligations. It is also necessary to allow parties engaged in delivering transmission infrastructure projects to determine whether contractual change of law provisions have been triggered. Failure to adequately address these issues at the outset creates commercial risk for licensees and may lead to administrative law challenges to clarify the SOE's status.
- In the vast majority of instances (including in relation to the Western Victoria Transmission Network Project), transmission licensees access private land based on consent or agreement. Access negotiated on these grounds is not an exercise of the licensee's rights under s.93, which is a statutory power to permit access where consent or agreement is not obtained. The code of practice referred to in s.93(5)(d) is limited in its application to circumstances where the licensee is exercising its rights under s.93. The approach taken in this SOE (including as to scope) must reflect this. By doing so, it will avoid the SOE inadvertently encroaching on voluntary access agreements that have no relationship to access obtained under s.93. Importantly, in practice the formal application of the SOE to the exercise of s.93 will necessarily shape how all private land access for greenfield projects is initiated and negotiated. This is because the process for negotiating access will begin the same way for all landowners and will only result in the use of s.93 if a voluntary land access agreement cannot be reached. Therefore, the SOE can provide a clear and consistent framework for all landowner engagement and negotiations, meeting its objectives without unduly compromising land access agreements, while formally limiting its scope to the exercise of s.93 powers.
- In addition, the SOE must clearly delineate the scope of its application by reference to the types of access and projects (including project stages). AusNet's strong recommendation is that it be limited to land access for proposed greenfield transmission augmentation projects where the licensee is working with landowners to negotiate new land access arrangements.

- Failing to clearly delineate the types of access and projects (including specific project stages) that the SOE applies to creates uncertainties for projects currently underway. If the code does apply to projects in train, this will lead to unforeseen compliance costs which, based on the current draft of the SOE, could be considerable. If the project has already reached financial close or other commitments have been made, the compliance costs may affect not only the cost and time of completing the project, but in extreme cases, its viability.
- Specifically, AusNet submits that it is neither necessary nor appropriate for the SOE to apply to all scenarios where access to private land is required. Our transmission network consists of 13,161 transmission towers occupying easements adjacent to thousands of land lots. We conduct more than 10,000 land access visits across these sites per year pursuant to agreed land access arrangements to carry out tower inspections, maintenance and repairs and clear vegetation. We currently secure access using licences (including statutory licences in national parks or rail corridors), leases, easements, options to exercise any of these rights, consents from statutory authorities like VicRoads in relation to road reserves, and other negotiated agreements. To apply the SOE to legitimate legal rights of tenure or access (other than rights exercised under s.93) is an unwarranted and disproportionate encroachment on established voluntary legal arrangements. Where easements have been compulsorily acquired in accordance with statutory requirements, the SOE properly has no further work to do.
- Host landowners on our existing 6,500km network have accommodated access by us for decades. Access to tower assets on easements is often via the gate or driveway of a landowner's property who is party to the easement. Unless requested by the landowner, we do not typically notify the landowner of our attendance or the type of activity that will be carried out or have in place a number of the other practices detailed in the draft SOE. Details of those landowners who request prior notifications, based on previous engagement, are included in an 'Extra Service Required' database and are contacted in advance of access. Only 1 percent of landowners request notification on our existing network. Local knowledge and relationships combined with this database provide for a longstanding quality working access arrangements across our existing network.
- There is no evidence of a problem with this long-standing approach. We receive very few transmission access-related complaints each year. As per the ESC's Industry Forum, other transmission providers also rarely encounter land access challenges as part of their BAU operations. We believe there are a very different set of requirements for BAU land access as compared to new major projects and, as such, the scope of the SOE should be limited to greenfield transmission projects.
- A principle-focused approach guiding how a licensee should exercise its rights under s.93 in the event that voluntary land access is not agreed could provide helpful, practical guidance as to the ESC's expectations. However, we reiterate our position that s.93 is a last resort measure only, to be used only when all other reasonable measures to negotiate a voluntary land access agreement have failed.
- AusNet is pleased that the SOE recognises that emergency situations warrant special consideration. However, we consider further clarification is necessary to expressly state that the SOE does not apply in an emergency situation, such as when there is an imminent or material threat to the safe or secure supply of electricity, or to human health, the environment or property. Regardless of the final scope of the SOE, it is critical that a licensee is able to respond quickly and fulsomely, regardless of the nature of the emergency or its cause. The process requirements imposed by the SOE will impede such timely responses.

Despite these concerns regarding the scope and purpose of the SOE, AusNet supports most of the principles it outlines on the basis that they reflect leading landowner engagement practices. However, we consider it is too prescriptive in parts and we would welcome a more high-level principle-based and flexible SOE. This would better strike a balance between the concerns of impacted landowners and the efficient, cost-effective delivery of essential projects urgently required to unlock renewable generation in the State, to the benefit of customers.

For example, we are concerned that:

- Some of the examples outlined are too prescriptive and, based on our experience with land access, do not accurately reflect the issues that licensees and landowners experience. We propose that the ESC clarify that the examples are merely illustrative and are not intended to be binding, allowing transmission companies can deviate from these examples if appropriate.
- The SOE foreshadows that reporting obligations may be introduced, but does not indicate what they might entail. If the ESC's intention is that reporting will be required from the commencement of the SOE, then we welcome further consultation on these requirements as part of the current consultation process. This will allow the ESC to develop metrics that are measurable and meaningful, and do not impose undue

burden on licensees. It is also important that the SOE clarify the confidentiality of the licensee's reports. Disclosing some metrics publicly may be inappropriate

- Any requirement that a dispute raised by a landowner must be formally concluded before the transmission licensee can process to access land will result in delays to project delivery, and potentially exacerbate supply reliability issues, if access to compete time critical works is denied. It also risks dispute resolution being misused as a tool to deliberately delay projects, thus diverting limited resources unnecessarily. We recognize third party dispute resolution may be required in some circumstances and support the use of a process that allows for voluntary notifications of a dispute and facilitates timely resolutions. Importantly, the process must not prevent urgent interlocutory relief being sought in a court of competent jurisdiction. In addition, the body that administers the dispute resolution process should be transparent, with a clear charter and authority, and established processes for dealing with all parties, including for addressing matters such as privacy and confidentiality. In light of these objectives, we invite the ESC to consider directing parties to the Energy and Water Ombudsman of Victoria (EWOV), including because it already has jurisdiction to deal with transmission land access disputes.


Attached is a marked-up version of the SOE which contains AusNet's further comments on aspects of the SOE. Our comments aim to ensure the SOE:

- includes adequate flexibility to accommodate the various circumstances where a fixed approach is not appropriate
- does not compromise the safety of our employees or contractors (e.g. ensuring identification requirements adequately protect an employee's identity, and permitting security personnel to attend the access)
- does not impose unduly onerous or unachievable requirements on transmission companies when it comes to information sharing with landowners considering the evolving nature of large projects (e.g. it may not be feasible to provide exact times and durations for access or details around all activities required until the land has been assessed)
- does not create concerns regarding sovereign risk of both existing and future transmission infrastructure projects, or otherwise impose additional costs that affect the cost and timing for completion of projects or, in extreme cases, their viability
- recognises and is consistent with but does not duplicate the laws that already bind transmission companies.

The comments contained in this submission are AusNet's views as they apply to this SOE consultation process only. AusNet notes that a code of practice made under Part 6 of the ESC Act concerning land access is likely to raise different operational, commercial, regulatory and legal issues. The fact that AusNet may not have raised or commented on a specific matter during this consultation is not to be taken as constituting acceptance of or acquiescence to any position that may be proposed in any future code of practice or other regulatory instrument.

AusNet welcomes further engagement with the ESC in developing appropriate guidance that leads to more constructive interactions between landowners and transmission companies, in support of the Victorian energy transition.

Yours sincerely



Charlotte Eddy
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