

MEMORANDUM OF UNDERSTANDING

ENERGY SAFE VICTORIA

and

AUSTRALIAN ENERGY REGULATOR

August 2019

1. PURPOSE

- 1.1 This memorandum of understanding (MOU) sets out arrangements to promote effective communication, cooperation and co-ordination between Energy Safe Victoria (ESV) and the Australian Energy Regulator (AER) (together, the Parties) in performing their roles and functions in Australia’s energy industry.
- 1.2 This MOU is a public document and communicates, in a transparent way to all stakeholders, the administrative arrangements that operate between the Parties.
- 1.3 The objectives of this MOU are to promote a best practice approach to regulation where regulatory responsibilities overlap and may complement each other. This MOU seeks to:
 - (a) ensure that the Parties are aware of each other’s regulatory responsibilities; and
 - (b) facilitate the provision of advice and sharing of information between the Parties.

2. TERMS

2.1 This MOU uses the following terms:

ACCC	Australian Competition and Consumer Commission
AEMO	Australian Energy Market Operator Limited (ACN 072 010 327)
AER	Australian Energy Regulator
Declared transmission system	Has the meaning given in section 2 of the NGL
Declared wholesale gas market	Has the meaning given in section 2 of the NGL
EDPR	Electricity Distribution Price Review
ESV	Energy Safe Victoria (ABN 27 462 247 657)
GAAR	Gas Access Arrangement Review
MEC	Major Electricity Company (has the meaning given in section 3 of Part 1 of the Electricity Safety Act 1998)
MOU	This memorandum of understanding between ESV and the AER

NECF	The National Energy Customer Framework includes the National Energy Retail Law, National Energy Retail Rules and National Energy Retail Regulations. Together, these Laws and Rules set out key protections and obligations for energy customers and the businesses they buy their energy from
NEL	National Electricity Law
NERL	National Energy Retail Law
NEM	National electricity market as defined in section 2 of the NEL
NER	National Electricity Rules
NERR	National Energy Retail Rules
NGL	National Gas Law
NGR	National Gas Rules
Participant	A registered participant in the Victorian declared wholesale gas market for the purposes of Part 15A of the NGR
Parties	ESV and the AER
Price review process	Refers to the EDPR and GAAR, and includes management of applications for pass-through, contingent projects and transmission review resets

2.2 In this MOU, unless the contrary intention appears:

- (a) a reference to a statute, regulation, rule or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them; and
- (b) words in the singular include the plural.

3. ROLES OF THE PARTIES

3.1 AUSTRALIAN ENERGY REGULATOR

The AER is Australia's national energy regulator and an independent statutory authority established under the *Competition and Consumer Act 2010* (Cth). The AER is funded by the Commonwealth with staff, resources and facilities provided by the Australian Competition and Consumer Commission (ACCC). The AER:

- (a) monitors and ensures compliance with the NEL and NER and is responsible for the economic regulation of electricity transmission and distribution networks in the NEM;
- (b) monitors and enforces compliance with the NGL and NGR and is responsible for the economic regulation of gas transmission and distribution in all jurisdictions except Western Australia;
- (c) monitors and ensures compliance with the NERL and NERR in jurisdictions which have adopted the NECF; and
- (d) publishes performance reports under the NER and NERR.

In particular:

- (a) Under the *National Electricity (Victoria) Act 2005* (Vic) and *National Gas (Victoria) Act 2008* (Vic), the AER is responsible for:
 - (i) compliance monitoring and enforcement of Victorian energy networks' licence conditions relating to economic regulation or as specified in an Order under the Act for certain non-economic regulatory functions; and
 - (ii) any other economic regulatory functions conferred under the *Electricity Industry Act 2000* (Vic) and *Gas Industry Act 2001* (Vic) (for example, the approval of Advance Metering Infrastructure (AMI) costing).
- (b) Under the *National Gas (Victoria) Act 2008* (Vic), the AER has roles in relation to the:
 - (i) operation of the Victorian declared wholesale gas market; and
 - (ii) Victorian declared transmission system (including in relation to connections, LNG storage, gas quality, metering, market information and system planning, emergencies, system security events and market suspensions).

3.2 ENERGY SAFE VICTORIA

ESV has broad objectives and powers in relation to the safety of the electricity, gas and pipeline industries in Victoria. It is established under the *Energy Safe Victoria Act 2005* (Vic) and, among other things, it is responsible for the implementation and enforcement of the regulations, standards, codes and policies under that Act, the *Electricity Safety Act 1998* (Vic), the *Gas Safety Act 1997* (Vic), and the *Pipelines Act 2005* (Vic), which apply to, and have implications for, regulated industries.

In particular, under the *Electricity Safety Act 1998*, *Gas Safety Act 1997* and *Pipelines Act 2005*, ESV is responsible for:

- (a) the safe conveyance of gas in pipelines, the safe supply and use of gas in appliances and gas installations, and the control of the safety standards of gas work;
- (b) the safety of pipelines conveying petroleum and other dangerous goods;
- (c) the safe generation, supply and use of electricity; and
- (d) the safe design, construction, operation, maintenance and decommissioning of gas and electricity transmission and distribution networks.

Under the *Electricity Safety Act 1998*, major electricity companies and under the *Gas Safety Act 1997*, all gas companies have a general duty to minimise, as far as practicable, risks to persons and property. These businesses are obliged to submit to ESV for acceptance, electricity safety management schemes (“ESMSs” – which include bushfire mitigation plans) / gas safety cases (“safety cases”) that set out the safety management systems by which the operators will meet the general duty. ESV assesses these submitted safety management schemes / safety cases, audits the businesses’ compliance with them and monitors the businesses’ safety performance in meeting their general duty. The major electricity companies are also required to prepare and comply with approved management plans which set out how they will keep electric lines clear of vegetation.

ESV publishes annual safety performance reports on the major electricity companies and gas companies which inter alia reports on the physical investments associated with expenditure identified in the relevant EDPR and GAAR.

Electricity generators and other electricity network operators are also under ESV’s jurisdiction and have a statutory duty to operate safely, but are not obliged to submit ESMSs (although may apply to adopt voluntary ESMSs).

4. NOTIFICATION AND CONSULTATION

4.1 The Parties recognise the importance of mutual consultation when their responsibilities overlap, but also recognise that decisions must be made independently. Where appropriate, the Parties will endeavour to:

- (a) notify each other of any activities that may be relevant to the other Party, and keep each other informed of the progress of those matters. For example, this could include:
 - (i) a market monitoring, inquiry or investigation activity undertaken by either Party which is relevant to the other's objectives and functions;
 - (ii) the ESV assisting the AER in its consideration of relevant safety legislation and its administration by ESV as part of the AER's decision-making in relation to regulated industries;
- (b) provide each other with information and copies of publications that may be relevant to the other Party. It may also be appropriate to provide an advance copy of, and briefing on, the publication, prior to its general release;
- (c) where a publication (such as a report or a webpage) refers to the other Party, provide the Party with an opportunity to comment on the reference prior to the finalisation and general release of the publication; and
- (d) at the request of the other Party, provide advice on issues that are within the Party's responsibility, including those matters addressed in clause 7 of this MOU.

4.2 If either Party becomes aware of a:

- (a) significant incident or dangerous occurrence on the Victorian electricity transmission or distribution systems or other event affecting the Victorian transmission or distribution systems; or
- (b) significant gas network or pipeline related incident or dangerous occurrence on the Victorian declared transmission system or other event affecting the Victorian declared transmission system;

that it considers may be of interest to the other Party, it will endeavour to notify the other Party as soon as practicable (not exceeding 5 business days).

4.3 If either Party becomes aware of a proposal to vary or amend a regulatory provision that, if adopted, may significantly affect operation of the current regulatory regime or the safety provision of:

- (a) Electricity services by a Victorian electricity transmission or distribution system; or

- (b) Gas services by a Victorian gas transmission or distribution pipeline system;

that it considers may be of interest to the other Party, it will endeavour, where appropriate, to notify the other Party within a reasonable period not exceeding 15 business days.

5. REFERRAL OF MATTERS

5.1 The Parties recognise that once a complaint or inquiry is received or an initial investigation has been conducted by a Party, it may become apparent that the matter more appropriately falls within the jurisdiction of the other Party. In these circumstances, the Parties recognise that it may be appropriate to refer the matter to the other Party.

5.2 The Parties will:

- (a) obtain the complainant or inquirer's consent before identifying the complainant or inquirer in the referral to the other Party; and
- (b) provide complainants and inquirers with general information about the other Party (such as the role of ESV or the AER).

5.3 If appropriate and by agreement, the Parties will develop more detailed arrangements for the referral of matters, including the process of consultation about a potential referral, the form and process for the making of a referral, the method and timing of the acceptance or refusal of a referral, the provision of ongoing assistance in relation to a referral and any other matter that may assist in the performance of the Parties' respective roles.

6. INFORMATION SHARING - GENERAL

6.1 ESV is authorised to share information with the AER under the *Energy Safe Victoria Act 2005* (Vic), section 7A *Provision of information and assistance by Energy Safe Victoria to the AER*.

6.2 The Parties recognise the value of sharing information. The Parties also recognise that they each have legal obligations regarding the collection, use and disclosure of information, imposed by statute or otherwise.

6.3 Where appropriate, the Parties will facilitate the exchange of information. Where this information is confidential:

- (a) the Party providing the information will identify the relevant part of the information that is confidential, and any conditions attached to its disclosure;

- (b) the receiving Party will comply with any confidentiality conditions and will only use or disclose that information to the extent permitted by law;
 - (c) where the receiving Party is required by law to disclose the confidential information, for example, an FOI request or where required by a court, the receiving Party will notify the Party that provided the information prior to disclosing the confidential information unless legal requirements or other circumstances make such notification impermissible.
- 6.4 In particular, the Parties recognise that personal and health information must be handled in accordance with privacy legislation including the *Privacy and Data Protection Act 2014* (Vic), *Health Records Act 2001* (Vic) and *Privacy Act 1988* (Cth), as amended from time to time. The Parties will cooperate:
- (a) to ensure compliance with this legislation; and
 - (b) in any investigation of a complaint about the handling of personal or health information.
- 6.5 ESV acknowledges that information may be shared between the AER and ACCC as provided by the *Competition and Consumer Act 2010*. As set out in the ACCC/AER's Information Policy, if the ACCC/AER has obtained information in the course of one matter which is relevant to another matter, the ACCC/AER will, in general, use that information in the context of the other matter subject to any specific legal requirement to the contrary.
- 7. INFORMATION SHARING - ELECTRICITY AND GAS PRICE REVIEWS**
- 7.1 The information exchange under clause 7 of the MOU is intended to provide the AER with access to expert safety and technical advice on whether projects for which funding is sought by the businesses regulated by the AER are required to achieve the objectives of the Victorian safety regulatory framework. This information may assist the AER to make its assessments of funding applications.
- 7.2 The information exchange under clause 7 of the MOU is also intended to provide ESV with information relating to the content of accepted ESMSs and safety cases. This may provide ESV with better oversight of the businesses it regulates.
- 7.3 In order to achieve this, the AER may:
- (a) seek information from ESV through the processes set out in Schedules 1 and 2; and
 - (b) seek advice from ESV on other safety related matters relevant to ESV, such as pass-through or contingent project applications.

- 7.4 ESV may:
- (a) provide information to the AER as requested above; and
 - (b) advise AER of a change to the safety regulatory environment or other event which may be relevant to the AER
- 7.5 Each Party will use its best endeavours to advise the other Party when:
- (a) there is a change to the statutory or regulatory processes or other events which may be of interest to the other Party;
 - (b) there is a step change in the volume of works for which funding has or will be requested, or new work programs; or
 - (c) there is a substitution of works programs or projects specified in an accepted electricity safety management scheme or gas safety case.

8. LIAISON OFFICERS

- 8.1 Each Party will ensure that it has a designated liaison officer, known to the other Party, to act as a direct point of contact in relation to matters arising under this MOU.
- 8.2 At the date of this MOU the liaison officers for ESV and AER are as listed in Schedule 3. A Party may change its liaison officer(s) by providing written notice to the other Party.
- 8.3 The liaison officers listed in Schedule 3 may update the timetables in Schedules 1 and 2 upon agreement with each other.
- 8.4 The Parties may also identify relevant project officers to facilitate coordination in relation to particular matters.

9. REGULAR MEETINGS

- 9.1 The liaison officers will jointly decide whether to hold a coordination meeting as necessary to discuss matters of common interest, including to:
- (a) inform each other about any existing or proposed activities that may be of interest to the other Party – for example, the Parties may exchange annual work programs where relevant;
 - (b) review the referral of complaints or inquiries;
 - (c) identify opportunities for joint activities or the sharing of information; and
 - (c) report on any other developments that may impact on the other Party.

9.2 The Director of Energy Safety and Chief Executive Officer of the AER or their delegates will meet as necessary to assess the operation of this MOU and to discuss the ongoing relationship between the Parties.

10. INFORMATION FOR STAFF

10.1 Where appropriate, each Party will provide information forums for staff of the other Party covering topics such as roles and responsibilities, and changes to relevant regulatory instruments.

10. MANAGEMENT OF MOU

11.1 In the event of any disagreement between the Parties, the liaison officers will seek to resolve the matter in accordance with the purposes of this MOU.

11.2 The Parties will review this MOU on a periodic basis (of at least every 3 years) to ensure it remains current and relevant.

11.3 Each Party will publish this MOU on its website.

12. OPERATION OF MOU

12.1 This MOU is intended to be an effective and flexible tool to facilitate the performance by the Parties of their statutory responsibilities. This MOU:

- (a) is not legally binding – the Parties may develop alternative arrangements to those set out in the MOU; and
- (b) does not limit or fetter a Party in the performance of its statutory responsibilities.

Dated this *15* day of *August* 2019

[Handwritten signature]
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Signed on behalf of

Energy Safe Victoria

Paul Fearon
Director of Energy Safety

Date: *15 August 2019*

[Handwritten signature]
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Signed on behalf of

Australian Energy Regulator

Paula Conboy
Chairperson

Date: *9/8/19*

SCHEDULE 1 – timetable for EDPR

This is the timetable for information exchange between ESV and AER, noting key milestones in the current 2020-2025 EDPR process. The Parties will manage information relating to pass-through applications and contingent projects in a similar manner as they arise.

2019

- Jul: **AER:** Businesses submit regulatory proposals.
Sep: **AER:** Issues paper released.
Oct: **ESV:** BMPs to be signed off by end of month – update electricity safety management scheme summaries if required.
Nov: **ESV:** Respond to AER issues paper and provide summaries of ESMSs.
AER: Submissions on regulatory proposals due.

2020

- Mar: **AER:** Preliminary determination published.
May: **AER:** Submissions on preliminary determination due.
Jun: **AER:** Businesses to submit revised regulatory proposals.
Aug: **AER:** Further submissions due.
Oct: **AER:** Final determination published.

SCHEDULE 2 – timetable for GAAR

This is the timetable for information exchange between ESV and AER, noting key milestones in the 2023-2028 GAAR process. The Parties will manage information relating to pass-through applications and contingent projects in a similar manner as they arise.

2021

TBA	ESV:	Summaries of safety cases for AER prepared.
Jul:	AER:	Businesses submit regulatory proposals.
Sep:	AER:	Issues paper released.
Nov:	ESV:	Respond to AER issues paper and provide summaries of safety cases.
	AER:	Submissions on regulatory proposals due

2022

Mar:	AER:	Preliminary determination published
May:	AER:	Submissions on preliminary determination due
Jun:	AER:	Businesses to submit revised regulatory proposals
Aug:	AER:	Further submissions due
Oct:	AER:	Final determination published.

SCHEDULE 3 – liaison officers

For ESV, the liaison officers are:

- Mr Ian Burgwin (General Manager Electrical Safety & Technical Regulation), or delegates, for electricity matters; and
- Mr Steve Cronin (General Manager Gas & Pipeline Safety & Technical Regulation) for gas and pipeline matters, or delegates

For AER, the liaison officer is:

- Mr Chris Pattas, General Manager at Australian Energy Regulator, or delegates, or as otherwise advised by the Director of Energy Safety

COMPETITION AND CONSUMER ACT 2010

AUSTRALIAN ENERGY REGULATOR

DELEGATION

By resolution of the Australian Energy Regulator (“the AER”) passed at a meeting of the AER held on **9 August 2019** attended by the undersigned, the AER **HEREBY REVOKES** delegations NEG 58 and NEG 59, and, pursuant to section 44AAH of the *Competition and Consumer Act 2010* (“the CCA”), the AER **HEREBY DELEGATES** to the person holding, occupying or performing the duties of an SES employee or acting SES employee assisting the AER as mentioned in section 44AAC of the CCA (the “Delegate”), the powers and functions exercisable by the AER under:

1. clauses 2.1(c) and 2.5(b) of versions 4, 4.1 and 5 of the service target performance incentive scheme that applies to transmission network service providers and is made under clause 6A.7.4 of the National Electricity Rules (the “scheme”), (that is, the calculation in accordance with the scheme, and annual approval of, any s-factor and financial incentive adjustment to the maximum allowed revenue of a transmission network service provider for the purpose of the adjustment to be made under clause 6A.3.2 of the National Electricity Rules);
2. clause 5.4 of versions 4, 4.1 and 5 of the scheme (that is, the approval of the proposed addition or removal of priority projects at the annual service target performance incentive scheme review, the amendment of priority project improvement targets, and the amendment of the ranking of priority projects);
3. clause 6.4 of versions 4, 4.1 and 5 of the scheme (that is, the annual (compliance) review of a transmission network service provider’s service performance information).

DATED:


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PAULA CONBOY

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JAMES COX

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CRISTINA CIFUENTES