

# **Electricity Industry Guideline No. 18**

## **Augmentation and Land Access Guidelines**

**Issue 1**



**1 April 2005**

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**ELECTRICITY INDUSTRY  
GUIDELINE No. 18**

Enquiries concerning the currency of this guideline should be addressed to –

Essential Services Commission  
Level 2, 35 Spring Street  
MELBOURNE VIC 3000

Telephone: (03) 9651 0222  
Facsimile: (03) 9651 3688

**AMENDMENT RECORD**

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## 1. SCOPE AND APPLICATION OF GUIDELINES

### 1.1 Objective

The objective of these guidelines is to facilitate competition in the construction, operation and maintenance of *augmentations* of the *electricity transmission system* and, in particular to make:

- (a) provision for the classification and treatment of certain *augmentations* as *contestable augmentations*; (Section 2) and
- (b) provision for the terms upon which *specified persons* shall be granted access to *land* for the purpose of constructing, operating and maintaining *augmentations*. (Section 3)

### 1.2 Compliance with this guideline

These guidelines are relevant guidelines for the purposes of clause 21 of *VENCorp's electricity transmission licence* and clause 22 of each *transmission company's electricity transmission licence*.

### 1.3 Electricity Industry Act

Section 3 of these guidelines are prepared and issued by the *Commission* under section 26A (1) of the *Electricity Industry Act* and are guidelines for the purposes of sections 21(v) and 26B of that Act.

### 1.4 Commencement

These guidelines commence with effect from 1 April 2005.

### 1.5 Determination

These guidelines are guidelines under section 26A (1) of the *Electricity Industry Act* and have the status of a determination by the *Commission* for the purposes of the *Essential Services Commission Act*.

## 2. AUGMENTATIONS

### 2.1 Background

The purpose of this section is to specify which *augmentations* are *contestable augmentations* and to make provisions relating to the construction, operation and maintenance of those *augmentations*. In particular this section:

- (a) distinguishes between *contestable augmentations* and *non-contestable augmentations*; (clause 2.2)
- (b) sets out certain processes relating to the construction, operation and maintenance of *contestable augmentations* including the process for calling, receiving and evaluating tenders; (clause 2.4) and
- (c) provides guidance in terms of the risk allocation and commercial principles for the purposes of incorporation into any contested process, *connection agreement* or *network agreement*. (clauses 2.6 and 2.7)

### 2.2 Contestable Augmentations

- (a) Subject to clause 2.2(b), an *augmentation* is a *contestable augmentation* if:
  - (i) the *capital cost* of the *augmentation* is reasonably expected to exceed \$10 million; and
  - (ii) the *augmentation* is a *separable augmentation*.
- (b) Notwithstanding anything in clause 2.2(a), an *augmentation* is not a *contestable augmentation* if:
  - (i) the *augmentation* is a *reliability augmentation* or a *funded augmentation*.
  - (ii) *VENCorp*:
    - (A) considers that if the *augmentation* was a *contestable augmentation* it would unduly prejudice *system security* as a result of the time within which a *contestable augmentation* will be implemented in accordance with these guidelines; and
    - (B) has notified the *Commission* in writing of those views and the reasons for them and the *Commission* has not objected to that classification within 10 *business days* of receipt of the notice; or
  - (iii) *VENCorp* or an *incumbent transmission company* recommends to the *Commission* in writing that it does not consider it economical or practical for the *augmentation* to be characterised as a *contestable augmentation* and the *Commission*:
    - (A) indicates that it agrees with *VENCorp* or the *incumbent transmission company*; or

- (B) fails to object to that recommendation,  
within 10 *business days* of receiving it.
- (c) Notwithstanding clause 2.2(a)(i), an *augmentation with a capital cost* of less than \$10 million shall be a *contestable augmentation* if:
  - (i) *VENCorp* recommends to the *Commission* in writing (giving reasons) that it considers the *augmentation* should be a *contestable augmentation*; and
  - (ii) The *Commission* confirms its acceptance of the recommendation in writing.
- (d) A *non-contestable augmentation* is an *augmentation* that is not a *contestable augmentation*.

### 2.3 Monitoring

- (a) *VENCorp* must, to the extent possible, indicate in its Annual Planning Review whether *augmentations* identified in that review are likely to be *contestable augmentations* or *non-contestable augmentations*.
- (b) *VENCorp* must:
  - (i) notify the *Commission* of any *augmentations* which are *non-contestable augmentations*;
  - (ii) where the *capital cost* of an augmentation was estimated to be between \$7.5 million and \$12.5 million, provide a detailed breakdown of how that amount was calculated; and
  - (iii) inform the *Commission* when each *non-contestable augmentation* is complete, providing reasonable detail regarding the *augmentation* including details of actual cost, performance according to timeframe and of any problems encountered.

### 2.4 Contestability

- (a) If an *augmentation* is a *contestable augmentation* this clause applies for the purposes of prescribing the treatment of that *augmentation*.
- (b) For the purposes of procuring the construction, operation and maintenance of *contestable augmentations* and the provision of network services, *VENCorp* must:
  - (i) publish a generally applicable tender and evaluation process which accords with the then current understanding of best practice, and may include, but need not be limited to:
    - (A) typical timetables for the tender and evaluation process;
    - (B) details of typical evaluation criteria;
    - (C) indications of the way in which different matters are to be or might be weighted for evaluation purposes;

- (D) provision for declaration and management of conflicts of interest;  
and
  - (E) provision for the debriefing of unsuccessful tenderers;
  - (ii) periodically review the above-mentioned tender and evaluation process to ensure its compliance with best practice and its suitability in relation to the sorts of circumstances which it is designed to regulate;
  - (iii) establish and maintain a register, which shall be disclosed to the **Commission** upon request of parties who have from time to time expressed interest in being a **contestable provider** and, from time to time, seek to update that register to reflect the developing market.
- (c) In respect of each **contestable augmentation VENCorp** must:
- (i) prepare a timeline in consultation with the **incumbent transmission company** which includes a reasonable time for each of **VENCorp** and the **incumbent transmission company** to comply with their respective obligations under these guidelines and reasonable construction period having regard to the nature and extent of the **augmentation**;
  - (ii) comply with the proposed timeline to the extent reasonably practicable;
  - (iii) call for expressions of interest from the market in relation to that **contestable augmentation**;
  - (iv) in consultation with the **incumbent transmission company**, compose a detailed tender specification setting out the scope of the works relating to the **augmentation**, including matters such as details of the **technical interface** that is required in relation to that **augmentation**;
  - (v) develop a confidential strategic plan for the implementation of **contestable augmentations** including contingencies in the event of **market failure** to respond to the invitation to tender;
  - (vi) prepare and issue an invitation to tender based upon the document published in accordance with paragraph 2.4(b)(i) above, setting out the details of the **contestable augmentation**, the tender and evaluation process in relation to the particular **contestable augmentation**, taking particular care to ensure that it:
    - (A) provides maximum certainty to tenderers regarding the terms and conditions subject to which they are being invited to undertake the works relating to the **contestable augmentation**;
    - (B) identifies the **relevant land** (if any) that is available for or in connection with the **contestable augmentation**;
    - (C) in relation to the **relevant land** referred to in paragraph (B) above, include details of the current usage of the **relevant land** and a geo-technical and environmental report about that **relevant land**;



- (D) specifies the services that will be provided pursuant to the **network agreement**; and
  - (E) includes (to the extent relevant) a **model lease**, **proposed connection agreement** and a **proposed network agreement** in relation to the **contestable augmentation** which agreements must, subject to clause 2.5, be consistent with the risk allocation, commercial principles, **model provisions** and the **model lease**; and
  - (vii) where it is reasonably practicable to do so, provide a copy of the invitation to tender and evaluation document prepared in accordance with paragraph (E) above, and a completed **compliance checklist** to the **Commission** at least 10 **business days** before it is issued.
- (d) **VENCorp** must take all reasonable steps to ensure that there is transparency in the process for **contestable augmentations** including without limitation providing that all persons that seek to undertake the works relating to a **contestable augmentation** have access to the same information prior to submitting a response to the invitation to tender.
- (e) An **incumbent transmission company** must do all things reasonably required of it by **VENCorp** to facilitate the construction, operation and maintenance of the **contestable augmentation**, including:
- (i) providing assistance to **VENCorp** in relation to the preparation of the tender documents such as:
    - (A) the technical interface; and
    - (B) the information referred to in paragraph 2.4 (c) above;
  - (ii) providing such assistance to **VENCorp** within whatever period of time **VENCorp** may reasonably require;
  - (iii) providing a draft **connection agreement** to be included in the invitation to tender which should, subject to clause 2.5, be consistent with the risk allocation and commercial principles in these guidelines; and
  - (iv) negotiate in good faith with a proposed **contestable provider** any changes to the **proposed connection agreement** which are suggested or sought by that **contestable provider**.
- (f) An **incumbent transmission company**:
- (i) may tender for **works** in relation to a **contestable augmentation**; and
  - (ii) must not engage in conduct for the purpose of preventing or hindering the process relating to the construction operation and/or maintenance of the **contestable augmentation**.
- (g) **VENCorp** must evaluate, assess and negotiate responses to the invitation to tender in accordance with the published tender and evaluation process.

- (h) If there is only one response to a tender, **VENCorp** must evaluate and consider that tender in accordance with the published tender and evaluation process referred to in paragraph 2.4(b).
- (i) Having completed the tender and evaluation process **VENCorp** must notify the **Commission** and all persons who tendered for the works in relation to the **contestable augmentation** of:
  - (i) their decision about whether to enter into a **network agreement** with a tenderer in relation to the **contestable augmentation**; and
  - (ii) if they decide to enter into a **network agreement** with a tenderer in relation to the **contestable augmentation**, the identity of that tenderer.
- (j) Having completed the tender and evaluation process **VENCorp** must, if they enter into a **network agreement**, notify the **Commission** of the cost of services to be purchased by it from the **contestable provider**.

## 2.5 Risk Allocation and Commercial Principles

- (a) The **Commission** has included preferred risk allocation (Attachment 2) and commercial principles (Attachment 3) to assist **incumbent transmission companies, contestable providers** and **VENCorp** in allocating risk between each of them in respect of a **contestable augmentation**.
- (b) The **Commission** recognises that each **contestable augmentation** may have unique features that may render a particular risk allocation or commercial principle inappropriate.
- (c) If **VENCorp** and/or an incumbent **transmission company** wish to adopt alternative risk allocation or commercial principles in the tender documentation supplied under clause 2.4(c)(vi), they must, before the invitation to tender is issued by **VENCorp**:
  - (i) notify the **Commission** of the proposed alternative risk allocation or commercial principles;
  - (ii) provide the **Commission** with an explanation of why they wish to use alternative risk allocation or commercial principles (including the likelihood of occurrence of the risk and the consequence thereof);
  - (iii) supply the **Commission** with their assessment of the relevant risk, by completing the relevant section of the **compliance checklist**.

## 2.6 Connection Agreement

- (a) If the **works** relating to a **contestable augmentation** are to be carried out by a person other than the **incumbent transmission company**, that **transmission company** must enter into a **connection agreement** with respect to the **contestable augmentation** with the **contestable provider**.
- (b) The **proposed connection agreement** provided by **VENCorp** in accordance with clause 2.4(c)(vi) should usually be adopted.

- (c) If an *incumbent transmission company* or a *contestable provider* wish to enter into a *connection agreement* on terms different from those specified in the tender documentation, *VENCorp* may be asked to reconsider the terms and conditions of the *proposed connection agreement*.
- (d) If 10 *business days* after having asked *VENCorp* to reconsider the terms and conditions of the *proposed connection agreement* in accordance with the procedures set out in paragraph (c), any of *VENCorp*, the *incumbent transmission company* or the *contestable provider* remains dissatisfied, they may ask that the matter be resolved in accordance with the dispute resolution procedures provided for in section 4.
- (e) A *connection agreement* may contain provisions relating to matters not included in the *proposed connection agreement*.
- (f) Any response to a connection enquiry made by a *contestable provider*, any information provided to a *contestable provider* and any offers to connect made by the *incumbent transmission company* under the *NEC* must not be inconsistent with this clause 2.6.
- (g) *VENCorp* must not unreasonably withhold its consent to the termination of any *connection agreement* arising from a material default by the *contestable provider* under that agreement.

## 2.7 Network Agreement

- (a) *VENCorp* must enter into a *network agreement* concerning *works* and the provision of network services relating to a *contestable augmentation* and a *contestable provider*.
- (b) Subject to clause 2.5 an agreement under this clause should, so far as is practicable, be in the form of the *proposed network agreement* and should usually accommodate the risk allocation and commercial principles specified in these guidelines.

## 2.8 National Electricity Code

- (a) These guidelines are not intended to limit or override any obligations on *VENCorp*, any *transmission company* or any *contestable provider* under the *NEC*.
- (b) If there is any inconsistency between:
  - (i) the respective obligations placed on *VENCorp*, any *transmission company* or any *contestable provider* under the *NEC*; and
  - (ii) the respective obligations placed on *VENCorp*, any *transmission company* or any *contestable provider* under these guidelines,the respective obligations under the *NEC* prevail, but only to the extent of the inconsistency.
- (c) *VENCorp*, any *transmission company* or any *contestable provider* must notify the *Commission* in writing as soon as it becomes aware of any such inconsistency.

## 2.9 Report and Audit

- (a) On or before 30 June each year *VENCorp* and every licensed *transmission company* must each prepare and provide to the *Commission* a report setting out its compliance with this guideline including any *network agreement* or *connection agreement* each of them has entered into during the preceding 12 month period.
- (b) The report prepared in accordance with paragraph (a) above must provide:
  - (i) a statement of whether each *augmentation* was a *contestable augmentation* or a *non-contestable augmentation*;
  - (ii) in relation to each *non-contestable augmentation*, an explanation of why that *augmentation* was so classified;
  - (iii) a summary of the timelines proposed for each *contestable augmentation* and, compliance with those timelines;
  - (iv) the terms and conditions of each lease, *network agreement* and *connection agreement* including any deviations from the risk allocation, commercial principles, *model provisions* and *model lease* prescribed by this guideline;
  - (v) in relation to each *contestable augmentation*, the name of each person who tendered in relation to that *augmentation* and an indication of which person was the successful tenderer; and
  - (vi) a discussion of any probity issues that were encountered during the preceding 12 month period.
- (c) The *Commission* may in any event instruct an appropriately qualified person to audit some or all aspects of *VENCorp's* contestability processes and, any *transmission company's* compliance with this guideline.
- (d) Where the *Commission* instructs a person in accordance with paragraph 2.9(c) *VENCorp* and the relevant *transmission company* must provide that person with reasonable access to such documentation as that person may reasonably request.

### 3. LAND ACCESS

#### 3.1 Background

The purpose of this section is to satisfy the *Commission's* statutory obligation under section 26A (1) (a) of the *Electricity Industry Act* and to provide guidance concerning rights of access to *land* under section 21(v) of that Act. In particular this section specifies:

- (a) the persons to whom a *transmission company* must lease *relevant land* in accordance with sections 21(v) and 26B of the *Electricity Industry Act*;
- (b) the circumstances in which it is necessary for a *transmission company* to lease *relevant land* to a *specified person*; and
- (c) the sorts of terms and conditions which it might be reasonable for a *transmission company* to require in order to allow a *specified person* access to any of its *relevant land*.

#### 3.2 Access Obligation

- (a) A *contestable provider* who has entered into a *network agreement* with *VENCorp* in respect of a *contestable augmentation* is a *specified person* for the purposes of section 21(v) of the *Electricity Industry Act*.
- (b) A *transmission company* must enter into a lease in the form of the *model lease* for *relevant land* with a *specified person* within 30 *business days* of receiving a written request from that person asking to lease that land from the *transmission company*.
- (c) A *specified person* may issue a request in respect of a particular parcel of *land* (listed in the invitation to tender) under paragraph (a) at the same time it enters into a *network agreement* with *VENCorp* where access to *relevant land* is required by that *contestable provider* for the purposes of the *augmentation* that is the subject of the *network agreement*.
- (d) The lease will, in respect of *relevant land*, be completed as follows:
  - (i) **Term:** the term of the *network agreement*;
  - (ii) **Encumbrances:** encumbrances will be those existing at the date the Lease is signed;
  - (iii) **Permitted Use:** the use will be that which gives effect to the *network agreement*;
  - (iv) **Further Terms:** to reflect any right to renew the *network agreement*;
  - (v) **Connection Agreement Party:** the party to the *connection agreement* if that is not the *incumbent transmission company*.

## 4. DISPUTE RESOLUTION

### 4.1 Determined by the Commission

Disputes as to:

- (a) whether an *augmentation* is a *contestable augmentation* or a *non-contestable augmentation*;
- (b) whether the terms of a proposed *connection agreement* should be varied in accordance with clause 2.6(c); or
- (c) any other dispute arising under these guidelines,

**(collectively called relevant disputes)**

will be resolved by the *Commission* and the *Commission* reserves the right to appoint a person to facilitate resolution of disputes and advise the *Commission* in this regard.

### 4.2 Procedure

Where there is a relevant dispute the parties shall:

- (a) submit an agreed notice of dispute to the *Commission* setting out the nature of the dispute and the points of agreement and disagreement; and
- (b) make written submissions to the *Commission* within 10 *business days* of submitting the abovementioned notice.

### 4.3 The decision

The *Commission* shall:

- (a) make any requests for further information or submissions within 10 *business days* of having received both submissions; and
- (b) inform the parties of its decision within 10 *business days* of having received both submissions or, if further information or submissions are required for the purposes of making that decision, within 10 *business days* of having received that information.

### 4.4 Compliance

No party to a dispute may act unreasonably or in an obstructive manner in relation to any aspect of this procedure.

## 5. DEFINITIONS

Definitions used in this guideline:

<b>augmentation</b>	Works to enlarge an <i>electricity transmission system</i> or to increase the capability of that system to transmit electricity
<b>capital cost</b>	Is the amount, determined by <i>VENCorp</i> that a <i>contestable provider</i> would reasonably expect to incur in the construction of the <i>Works</i> and, would be treated as capital expenditure if applicable accounting standards were applied to that expenditure.
<b>Commission</b>	Essential Services Commission
<b>compliance checklist</b>	Is the document marked as "attachment 5" to the guidelines.
<b>connection agreement</b>	The agreement between an <i>incumbent transmission company</i> and a <i>contestable provider</i> providing for the physical connection of an existing <i>electricity transmission system</i> and an <i>augmentation</i> to be constructed by that <i>contestable provider</i>
<b>contestable augmentation</b>	Has the meaning given by clause 2.2
<b>contestable provider</b>	In relation to a <i>contestable augmentation</i> the person selected by <i>VENCorp</i> in accordance with clause 2.4(i) to undertake that <i>augmentation</i>
<b>business days</b>	A day that is not gazetted in Melbourne as a public holiday or a Saturday or Sunday.
<b>Electricity Industry Act</b>	<i>Electricity Industry Act 2000 (Vic)</i>
<b>electricity transmission system</b>	The apparatus, equipment, plant and buildings needed to convey, and control the conveyance of electricity to customers (whether wholesale or retail) [excluding any connection assets]
<b>Essential Services Commission Act</b>	<i>Essential Services Commission Act 2001</i>
<b>funded augmentation</b>	Has the meaning given in the NEC
<b>incumbent transmission company</b>	A <i>transmission company</i> which owns that part of the <i>electricity transmission system</i> to which the <i>contestable augmentation</i> will connect

<b>land</b>	Any strata above or below the surface of land and easements and rights to use land or strata above or below the surface of the land.
<b>market failure</b>	In relation to an invitation to tender issued under this guideline means: <ul style="list-style-type: none"> <li>• a failure to receive any tenders whatsoever; or</li> <li>• a failure to receive any tenders which meet the necessary requirements of that tender</li> </ul>
<b>model provisions</b>	The form of certain clauses to be included in the <i>Connection Agreement</i>
<b>model lease</b>	The form of lease to be attached to the guideline
<b>NEC</b>	National Electricity Code, as amended from time to time
<b>network agreement</b>	An agreement between a <i>contestable provider</i> and <i>VENCorp</i> made in accordance with clause 2.7 of these guidelines
<b>non-contestable augmentation</b>	Has the meaning given by clause 2.3
<b>proposed connection agreement</b>	A draft document that is included in the tender documentation, which is intended to form the basis of any <i>connection agreement</i> that might be necessary in connection with the <i>contestable augmentation</i> .
<b>proposed network agreement</b>	A draft document that is included in the tender documentation, which is intended to form the basis of the <i>network agreement</i> in relation to the <i>contestable augmentation</i> .
<b>relevant land</b>	That part of the <i>land</i> of a transmission company to which access is necessary for a <i>relevant purpose</i>
<b>relevant purpose</b>	Construction, operation or maintenance of an <i>augmentation</i> and the provision of network services.
<b>reliability augmentation</b>	An <i>augmentation</i> that: <ul style="list-style-type: none"> <li>• is necessitated solely by the inability of the <i>existing transmission system</i> to comply with applicable legislation, regulations, rules or other binding requirements; and</li> <li>• will result in a breach of such laws by the <i>incumbent transmission company</i> if the</li> </ul>



	<p>augmentation is not undertaken;</p> <p>excluding however augmentations which relate to functions which are the responsibility of <i>VENCorp</i>.</p>
<b>separable augmentation</b>	<p>An <i>augmentation</i> which satisfies both of the following criteria:</p> <ul style="list-style-type: none"> <li>• will result in a distinct and definable service to be provided by the <i>contestable provider</i> to <i>VENCorp</i>; and</li> <li>• will not have a material adverse effect on the ability of the incumbent transmission company to provide services under any relevant Network Services Agreement between <i>VENCorp</i> and the <i>incumbent transmission company</i>.</li> </ul>
<b>specified person</b>	<p>A person who, in relation to an <i>augmentation</i> who:</p> <ul style="list-style-type: none"> <li>• has entered into an <i>Network Agreement</i> (whether or not that agreement is subject to conditions precedent) with <i>VENCorp</i>; and</li> <li>• requires or will require access to the <i>relevant land</i> for a <i>relevant purpose</i></li> </ul>
<b>system security</b>	<p>The safe scheduling, operation and control of the <i>electricity transmission system</i> on a continuous basis.</p>
<b>technical interface</b>	<p>A set of technical requirements that explains how an <i>augmentation</i> is to be joined to the <i>electricity transmission system</i>.</p>
<b>transmission company</b>	<p>A person who is the holder of a licence to transmit electricity under the <i>Electricity Industry Act</i>.</p>
<b>VENCorp</b>	<p>Victorian Energy Networks Corporation</p>
<b>works</b>	<p>The physical works required to give effect to the particular <i>augmentation</i></p>

## **ATTACHMENT 1**

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## ATTACHMENT 2

### Risk Allocation

*VENCorp* and the *incumbent transmission company* must identify, prevent, contain, mitigate and manage the risks associated with a *contestable augmentation* in accordance with the risk allocation principles below.

This attachment allocates risk between the parties in accordance with the following table and explanatory notes:

	Type of Risk	Description	<i>VENCorp</i>	Transmission Company	Contestable Provider
<b>Site Risks</b>					
1.	Construction/works approvals including: <ul style="list-style-type: none"> <li>• State &amp; Federal environmental eg; planning, works approval, environmental</li> <li>• Building</li> </ul>	Events such as difficulties obtaining approvals, sourcing materials or workplace safety which may cause cost and delay			➡
2.	Pre-existing Contamination of land	The risk that the land is contaminated			➡
3.	Latent				
4.	Native Title	Risk of costs delay if native title claims are made in respect of the Land or the Works			➡
<b>Output Specification Risks</b>					
5.	Output Specification  (the technical requirements set out in the tender and evaluation documents relating to the <i>contestable augmentation</i> )	Risks of loss, damage and costs caused by inadequacy in the output specification	➡		

	Type of Risk	Description	<i>VENCorp</i>	Transmission Company	Contestable Provider
<b>Design &amp; Construction and Commissioning Risks</b>					
6.	Design, construction and commissioning	Unexpected costs associated with the design, construction and/or commissioning of the <i>augmentation</i>			➔
<b>Force Majeure Risk</b>					
7.	Force Majeure	In relation to a person's obligation, that person will be unable to perform that obligation because of circumstances beyond their reasonable control	➔	➔	➔
<b>Operating Risks</b>					
8.	Systems failure	The risk that the <i>contestable provider</i> will not be able to fulfil its obligations for reason other than force majeure that are reasonably beyond its control	➔	➔	➔
<b>Sponsor and Financial Risk</b>					
9.	Finance	The risk that <i>VENCorp</i> will be exposed to extra expense because the <i>contestable provider</i> cannot meet its obligations	➔		➔
<b>Network and Interface Risk</b>					
10.	Damage to <i>electricity transmission systems</i>	Risk of damage to one part of the <i>electricity transmission system</i>		➔	➔

	Type of Risk	Description	VENCorp	Transmission Company	Contestable Provider
<b>Industrial Relations Risk</b>					
11.	Industrial relations	May affect the construction, operation and/or maintenance of the <i>augmentation</i>			➔

**Explanatory Notes:**

- **Site Risk**

Site risk is the risk that the *land* will generate unanticipated liabilities with the result that the ability of the *contestable provider* to deliver network services at the price agreed with *VENCorp* is adversely affected.

Site risk is allocated to the *contestable provider*. Site risks are primarily reflected in the construction phase and, in the management of the site on an ongoing basis. Whether a *contestable provider* or an incumbent *transmission company* is undertaking the *augmentation*, the same risks must be dealt with. The *Commission* sees no reason for the *transmission company* to be burdened with site risks simply because it is the landholder. The allocation of this risk does not mean that the costs of dealing with that risk are not recognised in the payment structure for the *augmentation*.

Risks associated with indigenous cultural heritage and the existence of native title is allocated to the *contestable provider*.

- **Statutory Approvals**

This is the risk that planning, environmental and other approvals cannot be obtained or will be subject to conditions which affected the cost of the *contestable augmentation*.

This risk is allocated to the *contestable provider*.

- **Native Title Risk**

This is the risk that the *augmentation* will be affected by potential or actual native title claims in respect of the *relevant land*. This risk is allocated to the *contestable provider*.

- **Output Specification Risk**

Design Risk is allocated to the *contestable provider* to the extent that the *contestable provider* responds to the output specification issued by *VENCorp*. Design risk should be borne by *VENCorp* where inadequacies in the output specification have caused or contributed to the design inadequacies. The

*incumbent transmission company* will bear any design risk directly resulting from incorrect information provided by it.

- **Design Construction and Commissioning Risk**

The *contestable provider* usually incurs substantial up-front design and construction costs in the construction of the *augmentation*. Its revenue is from the purchase of network services by *VENCorp*. Any unanticipated increase in the costs of the *augmentation* may have a significant impact on the profitability/viability benefit of the *contestable augmentation*. This risk is therefore allocated to the *contestable provider*.

- **Force Majeure Risk**

This is the risk that a specified event/event beyond the reasonable control of a party prevents that party from complying with its contractual obligations. In those circumstances where a *transmission company*, a *contestable provider* or *VENCorp* is the person unable to perform certain of the obligation affected party, then subject to mitigation obligations, that person will be excused from performance of those specific obligations.

- **Operating Risk**

This is the risk that the *contestable provider* is unable to deliver the network services being purchased by *VENCorp*. Other than in respect of force majeure, this risk is shared between the *contestable provider* and *VENCorp*. The *contestable provider* is responsible for delivering network services. *VENCorp* is responsible for ensuring the delivery of services.

- **Sponsor and financial risk**

This is the risk that the *contestable provider* is unable to meet its contractual obligations under the *Connection Agreement* or the *Network Services Agreement*. This risk is shared between the *contestable provider* and *VENCorp*. Any *contestable provider* must have the financial resources to meet its obligations and must demonstrate that to *VENCorp*. *VENCorp* must verify and establish during the tender evaluation process and on an ongoing basis that the *contestable provider* has the financial capacity to fulfil its obligations.

- **Network and Interface Risk**

This is the risk that the interface between the augmentation and the existing *electricity transmission system* will not be constructed, maintained, operated in accordance with the tender specification and/or to a satisfactory standard, resulting in damage to the pre-existing *electricity transmission system*, a loss of *system security*, system reliability and/or *augmentation reliability*.

This risk is allocated to the party whose system affects the other in an adverse way unless that adverse result is directly caused by the provision of incorrect information in which case the risk is borne by the party who provided that information.

- **Industrial Relations Risk**

This is the risk that any form of industrial action adversely impacts on the construction of the *augmentation* or the delivery of the network services. This risk is allocated to the *contestable provider* unless industrial action directed at the *incumbent transmission company* prevents access by the *contestable provider* to the relevant *land* or its assets in which case the industrial relations risk is borne by the *incumbent transmission company*.

## ATTACHMENT 3

### Commercial Principles

The following commercial principles are to be followed by the parties in drafting, negotiating and finalising the *connection agreement* in relation to a *contestable augmentation*. The inclusion of *model provisions* in the *connection agreement* will be considered by the *Commission* to be compliance by the parties with this guideline:

1. **Mutuality**

The *connection agreement* should recognise that the agreement deals with the connection of two systems and for that reason should be even-handed and mutual in the obligations imposed on each party such that no party has obligations that are more onerous than the other. The performance standards for a *contestable provider* in a *connection agreement* and a *network agreement* must be materially the same as those in any agreement between *VENCorp* and the *incumbent transmission company*.

2. **Performance Criteria**

The *connection agreement* must specify the performance criteria to be met by each of the *contestable provider* and the *incumbent transmission company* at the point of connection.

3. **Indemnities**

The *incumbent transmission company* and the *contestable provider* will mutually indemnify each other for any direct loss that the other suffers as a result of a breach of the *connection agreement* subject to the cap referred to below. Indemnities which are given by an incumbent *transmission company*, where they relate to operational issues for which *VENCorp* is responsible under the network services agreement between *VENCorp* and the *incumbent transmission company* must be reflected in indemnities given by *VENCorp* to the *incumbent transmission company*.

4. **Cap on Liability – Connection Agreement**

The *Commission* considers that it is reasonable to cap the liability of each of the *contestable provider* and an *incumbent transmission company*. Caps on liability are common commercial practice and, not to include a cap or, to include an excessive cap may render the guidelines ineffective by making the potential risk disproportionate to the potential reward.

The Cap on Liability in the Model Provisions will be completed by *VENCorp* in each case to be the aggregate of the *capital cost* of the works and the value of any insurance obtained in respect of the risks covered by the relevant insurance policy.

5. **Termination**

An incumbent *transmission company* may not terminate a *connection agreement* or a *Lease* with a *contestable provider* without the consent of *VENCorp*. An



*incumbent transmission company* may disconnect the interface where the safe operation of the *electricity transmission system* is threatened.

6. **Occupational Health and Safety**

Each of *VENCorp*, a *transmission company* and a *contestable provider* are required to acknowledge and accept responsibility for those liabilities arising from the application of occupational health and safety laws which each of them may cause or contribute to and must manage such risks in accordance with best industry practice. Each party must seek their own legal advice in relation to the scope and nature of such risks as the result of any *augmentation* or any works associated with that *augmentation*. Such acknowledgment must be contained in the relevant *connection agreement* or *network agreement*.

## **ATTACHMENT 4**

### **Model Lease**

## ATTACHMENT 5

### Compliance Checklist

Details of *contestable augmentation*: [insert]

Guidelines	Complied	Explanation
1. Preparation of timeline (clause 2.4(c)(i))	Y/N	
2. Adhere to timeline (clause 2.4(c)(ii))	Y/N	
3. Expressions of interest (clause 2.4(c)(iii))	Y/N	
4. Equal access to information (clause 2.4(d))	Y/N	
5. Informed the <i>Commission</i> of decision (clause 2.4(i))	Y/N	
6. Conform to the risk allocation or commercial principles (clause 2.5(c))	Y/N	
7. Did the <i>contestable provider</i> secure access to the relevant land	Y/N	