

Electricity Transmission Company Land Access Draft Statement of Expectations

08 April 2022

Energy Grid Alliance would like to thank the Essential Services Commission (ESC) for developing a Statement of Expectations in relation to how transmission companies access land and for the opportunity to community and stakeholders to provide important feedback. It has been noted that the proposed statement will comprise of a set of principles outlining how electricity transmission companies should exercise their powers according to section 93 of the Electricity Industry Act 2000 to access land.

Energy Grid Alliance was established with the purpose of engaging with energy transmission companies, industry regulators, market operators, relevant peak bodies, government and communities to establish best planning practices for new energy transmission infrastructure and to advocate the importance of working with communities to acquire and maintain social license.

Energy Grid Alliance will first respond to questions raised by the ESC, followed by itemised responses to the Draft Statement of Expectations.

QUESTIONS RAISED

1. What has worked well in relation to prior instances of land access?

Through recent experiences, working with communities impacted by the Western Victoria Transmission Network Project (WVTNP), it has become abundantly evident there is a lack of meaningful process, lack of trust, lack of social license and above all, a severe lack of accountability when it comes to exercising land access powers. Reports of alleged assaults, deceitful conduct, undue stress and anxiety imposed on landowners all indicate an urgent need to develop through, transparent and accountable mechanisms for accessing land under section 93 of the Electricity Industry Act 2000.

2. What key challenges have you been faced with in relation to exercise of land access rights? have faced under the current land access arrangements?

- Understanding the powers according to section 93
- Understanding the process for how landowners will be notified
- Understanding the specific reason for the land access
- Understanding the specific period of access required
- Understanding what specific work will be undertaken on the land
- Understanding where this specific work will be carried out on the land
- Understanding who will access the land
- Understanding what rights, the landowner has in terms of denying access or negotiating a suitable access period
- Understanding what compensation landowners will receive for legal advice, business disruption, moving of stock and equipment, agistment that may be required
- Understanding of what remediation measures will be taken to reverse any adverse impact made to the property during the access period

3. What information do you consider you need prior to land access to feel comfortable with an exercise of a right to access land?

All points summarised at point 2 (above)

4. Do you think the principles of the draft Statement of Expectations on land access addresses issues of concern to you?

Energy Grid Alliance believe that setting clear expectations of Victorian electricity transmission licence holders is an important first step. It is important however to recognise that this statement of expectations only applies to transmission companies at this time, though a future code of practice may have a broader scope. This statement of expectations is an interim measure, pending the commission's future development of a Code of Practice under Part 6 of the Essential Services Commission Act 2001 in relation to land access.

Energy Grid Alliance believe that without parallel development of a Code of Practice, the Statement of Expectations represents a guideline only that does not have to be adhered to. The Code of Practice referenced and accountability mechanisms, to ensure electricity transmission companies are fulfilling these expectations, do not yet exist.

The concern is that without real accountability, electricity transmission companies will simply continue to access land as they are now.

5. Is there anything else you want us to consider when finalising this Statement of Expectations?

Energy Grid Alliance will discuss further items in responses to the Draft Statement of Expectations (following)

RESPONSES TO THE DRAFT STATEMENT OF EXPECTATIONS

(Draft clauses are in bold)

1. About this statement of expectations

1.3.1 This statement of expectations applies to holders of electricity transmission licences issued by the commission under section 19 of the Act (electricity transmission companies).

When communicating with landholders prior to gaining access, it is important that electrical transmission companies provide physical proof of such license and proof that this license applies to the project the access is required for. This should be in the form a statutory declaration indicating project ownership.

1.4. Changes to this statement

This statement of expectations is an interim measure, pending the commission's future development of a Code of Practice under Part 6 of the Essential Services Commission Act 2001 in relation to land access.

As mentioned above, Energy Grid Alliance believe that without parallel development of a Code of Practice, the Statement of Expectations represents a guideline only that does not have to be adhered to. The Code of Practice referenced and accountability mechanisms, to ensure electricity transmission companies are fulfilling these expectations, do not yet exist.

1.5. Reporting outcomes

The commission may request an electricity transmission company to report outcomes achieved in meeting the expectations set out in this statement. This data and other information about how the expectations are being adhered to will be reported publicly and compliance levels will be taken into account by the commission in its approach to a Code of Practice.

Energy grid Alliance is concerned that the inclusion of the word 'may' will result in the abandonment of a feedback loop as electricity transmission companies are under no obligation or expectation to report outcomes. In developing a parallel Code of Practice, it is crucial this feedback loop be mandatory. It is also important to understand when will this feedback will occur.

2. General principles for land access

2.1 Comply with this statement of expectations)

An electricity transmission company will comply with this statement of expectations, and with any additional access terms and conditions agreed in writing with landowners or parties interested in land.

It is not clear how compliance will be measured and who will monitor and regulate this compliance.

2.2 Ensure staged, timely engagement and consultation

An electricity transmission company will undertake staged, timely, relevant and appropriate engagement and consultation with landowners and parties interested in land potentially affected by a proposed transmission project.

It is unclear how this communication will take place. All communication should be via registered mail.

Practices of advertising in local papers, via social media, via email etc are not personalised and do not often reach the landowner in question.

2.3 Be accessible and responsive

An electricity transmission company will provide affected landowners with an accessible point of contact in the company. They will be available to respond to questions and address issues promptly during all stages of a transmission project.

It is important to understand that this is not always achievable given staff turnover rates. Electricity transmission companies need to ensure the contact details provided are for staff who play a key role in managing land access and are trained to understand the Statement of Expectations and Code of Practice.

2.4 Use accessible, readable communications

All electricity transmission company communication materials regarding land access must be readable and readily accessible by those affected by a transmission project.

As referenced in 2.2, it is important that any communication that relates to directly to a given parcel of land be sent directly to the landowner or parties interested in land which may include a tenant with a leasehold interest. Posting general material on websites and local papers does not always reach the intended audience.

2.5 Employ respectful two-way communication

On request from a landowner an electricity transmission company should share the outcomes of its investigations with the landowner where appropriate and where able to do so.

The inclusion of the word 'should' and phrase 'where appropriate' and 'where able to do so' does not require electricity transmission companies to share this information with landholders and is likely to result in non-occurrence. It is important that engagement with landholders is transparent and their rights to understand what was investigated and determined on their land is shared with them. Understand some information may be commercial in confidence but at the very least, a summary report should be provided.

2.8 Outline access rights and obligations

An electricity transmission company will provide information on the rights of landowners' and parties interested in land in relation to its land access, as well as the company's commitment to meeting the principles in this statement of expectations.

The Statement of Expectations indicates electricity transmission companies are to direct stakeholders to this statement of expectations and to related published information. The Statement of Expectations does not address what rights landowners have nor does it indicate whether landowners can seek independent legal advice and who pays for this advice.

2.9 Make clear when and why access is required

An electricity transmission company will provide such information as is necessary for a landowner to understand when and why proposed access to the landowner's property is required.

This should include explanation of:

- Powers according to section 93
- The process for how landowners will be notified and engaged
- Which stage of the transmission project lifecycle access relates to (that is for planning and investigations, construction, or for operation and maintenance of installed assets)
- The specific purpose of access (for example, survey, physical investigation, photographs or works)
- The specific period of access required including exact dates and times when access is sought
- What specific work will be undertaken on the land
- The nature of proposed investigations (for example, soil composition, groundwater, flora, fauna, indigenous sites)
- The specified area or areas of land which are requested to be accessed. A map should also be provided
- Who will access the land?
- The expected point or points of entry
- What rights, the landowner has in terms of denying access or negotiating a suitable access period
- What compensation landowners will receive for legal advice, business disruption, moving of stock and equipment, agistment that may be required
- What remediation measures will be taken to reverse any adverse impact made to the property during the access period

2.11 Commit to details on how access will occur

An electricity transmission company will consult with landowners on access details and commit to how access will occur. Where possible, landowners' preferences will be taken into consideration.

In addition to the points mentioned in the draft statement, electricity transmission companies should also identify what right landowners have in relation to rescheduling access should circumstances change.

2.13 Keep records

In accordance with electricity transmission licences, an electricity transmission company will maintain access-related records of its contact with landowners and parties interested in land for a period of seven years.

In the case of the WVTNP, it has been noted that Ausnet Services staff and/or representatives are wearing body cameras to record access events. It is important that if this is to occur, the electricity transmission company inform the landowner or parties interested in land that recording will take place on their private land. It is also important that landowners understand their rights with regard to recording events on private land and also understand what will happen with those recordings, where they will be viewed, archived, how and when they will eventually be disposed of.

2.15 Minimise impact on land and landowners

An electricity transmission company will take all reasonable measures to minimise the impact of its access on landowners and parties interested in land, and on the land itself.

In addition to the points mentioned in the draft statement, it is also important landowners understand what compensation they will receive for legal advice, business disruption, moving of stock and equipment, or agistment that may be required.

2.18 Implement environmental and biosecurity controls

An electricity transmission company will take all reasonable actions to ensure that in accessing land, it does not spread weeds, pests or pathogens. They will consult with landowners to understand property-specific needs and provide details of environmental and biosecurity policies and plans on request.

Managing biosecurity is fundamental to the prosperity of all Victorians and landowners have a responsibility under the Catchment and Land Protection Act 1994 (CaLP Act). Exotic pests and diseases can threaten the agricultural sector and animal industries. It is important that biosecurity policies and plans are developed and agreed to by the landowner prior to any access taking place. Biosecurity incidents can destroy farming and agricultural businesses and impact the broader environment so need to be taken seriously. Landowners also need to understand how they will be compensated for any biosecurity incidents as a direct result of electricity companies accessing their land.

2.21 Implement effective complaint handling

An electricity transmission company will implement effective complaint-handling processes and standards that meet current Australia and New Zealand standards for complaints handling.

It is important that the complaints handling process be transparent and robust. The process needs to detail

- how a complaint can be made
- what information is required
- who will receive the complaint
- how quickly will the complaint be responded to
- will the landowner be responded to in person, letter, phone or email
- what does the landholder do if they are not satisfied with the outcome of the complaint
- who can the landholder escalate the complaint to

2.22 Offer dispute resolution

An electricity transmission company will offer third party dispute resolution to landowners and parties interested in land affected by its land access. An electricity transmission company will provide landowners and parties interested in land affected by its land access with details of the Energy and Water Ombudsman Victoria (EWOV) scheme. An electricity transmission company will ensure that its negotiated access agreements include provision for third party dispute resolution.

Energy Grid Alliance are aware this is the current process, and it does not appear to work. Reporting to EWOV has not resolved disputes that have occurred during access disputes associated with the WVTNP. There need to be a more robust process in place. The Essential Services Commission is an independent statutory authority established under the Essential Services Commission Act 2001 (the Act). The commission has both regulatory and advisory roles under the Act. Energy Grid Alliance recommend that dispute resolution, at least in the short term, be handled by the ESC as this will provide the necessary feedback loop in development of a Code of Practice in parallel with the Statement of Expectations.

FINAL WORD

Energy Grid Alliance appreciate the development of this statement is an interim measure, pending the commission's future development of a Code of Practice under Part 6 of the Essential Services Commission Act 2001.

While the Statement of Expectations is a great first step, Energy Grid Alliance believe that without parallel development of a Code of Practice, the Statement of Expectations represents a guideline that does not need to be adhered to and from recent experiences, it likely never will. The concern is that without these mechanisms, electricity transmission companies will simply continue to access land as they are now.

A Code of Practice and accountability mechanisms are urgently needed to ensure electricity transmission companies are fulfilling their obligations. Energy Grid Alliance recommended that all land access relating to the WVTNP be put on hold by the ESC until access, reporting and accountability mechanisms have been put in place.

Energy Grid Alliance look forward to continuing to develop these principles and associated Code of Practice in collaboration with the ESC and key stakeholders to address issues under the current land access arrangements.