



HERBERT
SMITH
FREEHILLS

**Jemena Electricity Networks (Vic) Ltd and
Others**

Application for interim and final authorisation

19 April 2024



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1 Executive summary

Victoria's Electricity Distribution Network Service Providers (**Applicants**) are seeking interim and final authorisation under sections 91(2) and 88(1) of the *Competition and Consumer Act 2010* (Cth) (**CCA**) to continue the accreditation scheme for contractors performing underground civil works that has previously been authorised by the ACCC (authorisations A91393, A91394 and A91395).

The purpose of the accreditation scheme is to ensure that civil contractors who perform underground civil works involving electrical infrastructure assets are sufficiently trained and experienced to perform the work and have adopted appropriate management system audit processes to ensure the work is performed safely and to a high standard.

The Applicants were first authorised to establish and operate the scheme in 2009 and obtained re-authorisation to continue the scheme in 2014. Over this time, the accreditation scheme has resulted in significant public benefits including:

- minimising the compliance burden and costs on civil contractors;
- minimising information asymmetry and improving confidence in the quality of civil contractors;
- increasing safety and quality of underground civil works on network electrical infrastructure with benefits to consumers, contractors, and developers;
- increasing ability of civil contractors to perform works across distribution networks around Victoria; and
- presently approximately 225 contractors are fully trained and accredited to perform these works safely and to the expected high standard.

These public benefits will continue to be realised with the on-going operation and authorisation of the scheme. Without re-authorisation, each Applicant would be required to establish and maintain separate civil-contractor accreditation schemes, resulting in civil contractors being required to sign-up to, and meet, the cost and burden of adhering to potentially multiple standards and requirements.

There has been no identified public detriment associated with the scheme and none is expected to arise following re-authorisation. It remains the case that civil contractors that are not accredited under the scheme can still perform works for electricity distribution networks, as long as additional quality and safety checks are performed.

In light of the significant public benefits and lack of detriment arising from the accreditation scheme, the Applicants are applying for the scheme to be re-authorised for a further period of 10 years, consistent with the period of time granted in 2014.

The existing authorisation will expire on 15 May 2024. The Applicants are seeking the grant of interim authorisation to ensure that the accreditation scheme can continue in its current form, and to avoid the risks, disruption and costs of needing to suspend the scheme prior to the final determination of this application.



2 Background

2.1 Underground civil works: roles of the Applicants, developers and civil contractors

The Applicants are Victorian electricity distribution network service providers licensed pursuant to Part 2 Division 3 of the *Electricity Industry Act 2000* (Vic) (collectively, **Victorian electricity distributors**). They each operate their respective electricity distribution networks within designated areas of Victoria (see section 3 below).

Customers of the Applicants include developers of industrial and residential estates seeking connections of premises to an electricity distribution network. Such developers often elect to be responsible for installing underground electricity assets in an estate to enable connection of each premises to the relevant electricity distribution network. The Applicants, as licensed distribution network service providers, are required under their regulatory obligations to give their customers the option to elect either to arrange for their own design and/or construction work, or to engage with the relevant electricity distribution network operator to undertake such work. The network operators ultimately take ownership of these network augmentations and responsibility for their maintenance.

Each of the Applicants also perform work on their own networks, including augmentation and maintenance works.

The Applicants will often engage third party contractors to undertake these works, including underground civil works. Civil works relating to underground electrical infrastructure includes excavations, trenching, installation of conduits and ducts, boring, cable hauling and installation of earthing systems.

2.2 The accreditation scheme authorised by the ACCC

Following ACCC authorisations granted on 23 April 2009 (A91114-6) (**2009 Determination**), the Applicants implemented an accreditation scheme requiring all civil contractors undertaking underground electricity infrastructure works to meet certain accreditation standards. Those authorisations were granted for five years.

On 9 April 2014 the ACCC granted authorisations (A91393-5) (**2014 Determination**) to the same effect for a further 10 years. These authorisations came into force on 15 May 2014 and are due to expire on 15 May 2024.

The accreditation scheme authorised under the 2009 and 2014 Determinations and implemented by the Applicants requires:

- civil contractors engaged in electrical infrastructure work to implement a third-party management system audit process for safety, quality and environment matters that are specific to electrical infrastructure works; and
- civil contractors' staff to complete an approved training course on industry-standard infrastructure works before they can perform work on electrical infrastructure assets that will ultimately be owned and operated by the Applicants.

The features of the accreditation scheme have not changed and, as noted above, it remains the case that contractors can perform works even if they are not accredited. Currently, there are approximately 225 civil contractors that are accredited under the accreditation scheme. There are 14 training providers,¹ and the costs of accreditation and undertaking training remain very low, as detailed further in section 5.2 below.

¹ <http://vedn.vesi.com.au/search/searchRTO.php?go>, as at 8 April 2024.



3 The Applicants and parties to the proposed conduct

3.1 The Applicants

The Applicants are as follows:

- 1 **AusNet Electricity Services Pty Ltd** (formerly SPI Electricity Pty Ltd) ABN 91 064 651 118 (**AusNet**).
Level 31, 2 Southbank Boulevard, Southbank, Vic 3006.
AusNet is a Victorian electricity distribution network service provider, servicing approximately 802,000 customers across an area of 80,000 square kilometres comprising the eastern half of Victoria, including the eastern metropolitan region of Melbourne.
- 2 **CitiPower Pty Ltd** ABN 76 064 651 056 (**CitiPower**)
40 Market Street, Melbourne, Vic 3000.
CitiPower is a Victorian electricity distribution network service provider, servicing approximately 332,000 customers across an area of 157 square kilometres comprising the Melbourne CBD and inner suburbs.
- 3 **Jemena Electricity Networks (Vic) Ltd** ABN 82 064 651 083 (**Jemena**)
Level 16, 567 Collins Street, Melbourne, Vic 3000.
Jemena is a Victorian electricity distribution network service provider, servicing approximately 377,000 customers across more than 950 square kilometres comprising Melbourne's north and north-western suburbs.
- 4 **Powercor Australia Ltd** ABN 89 064 651 109 (**Powercor**)
Level 8, 40 Market Street, Melbourne, Vic 3000.
Powercor is a Victorian electricity distribution network service provider, servicing approximately 844,000 customers across an area of 145,600 square kilometres comprising Melbourne's outer-western suburbs as well as regional and rural locations across central and western Victoria.
- 5 **United Energy Distribution Pty Ltd** ABN 70 064 651 029 (**United Energy**)
635 Waverley Road, Glen Waverley, Vic 3150.
United Energy is a Victorian electricity distribution network service provider, servicing around 700,000 customers in Melbourne's south-eastern suburbs and the Mornington Peninsula.

3.2 Other persons

Consistent with the previous authorisations, the Applicants seek authorisation to make and give effect to certain arrangements with each other (as described below) as well as any future Victorian electricity distribution network service providers that are licensed to distribute electricity in Victoria.



4 Proposed authorisation

4.1 Conduct to be reauthorised

The conduct the Applicants apply to have reauthorised and authorised on an interim basis has not changed and remains as described in paragraph 78 of the 2014 Determination as authorised.²

Specifically, the Applicants are seeking authorisation for the parties described in section 3 of this application to make and give effect to arrangements that provide that all Victorian electricity distributors will continue to require civil contractors to be 'interim approved', 'pre-qualified' or 'accredited' before being permitted to bid in tenders for performing, or to perform, underground civil works on network electrical infrastructure, for either Victorian electricity distributors or third parties performing these works.

The exception to this requirement is that a civil contractor can undertake underground civil works for Victorian electricity distributors or third parties when the civil contractor is not interim approved, pre-qualified or accredited – but it will be required to have 100 per cent of its underground civil works visually inspected by an approved auditor before backfilling or cabling works can be undertaken.

Underground civil works include work related to electrical infrastructure projects such as trenching, installing conduits, backfilling, installation of cover slabs, installation of marker tape and underground cable hauling.

Civil contractors are 'interim approved', 'pre-qualified' or 'accredited' where they have met the requirements specified by the Victorian electricity distributors. Civil contractors will achieve full accreditation if they have:

- completed the relevant application forms recording their current level of capability and training;
- an audited management system that is based on Australian Standards and ISO standards on safety, quality and environmental management (ISO 9000, ISO 14001 and ISO 4501);
- one or more personnel who have completed an approved electrical infrastructure civil works industry training course; and
- submitted a copy of an open trench audit report.

4.2 Details of the scheme

The scheme will continue to involve two key elements:

1 **Accreditation in respect of civil contractors' management systems:**

- Civil contractors will be required to gain accreditation with a recognised accreditation body in respect of their management systems, based on specified Australian and international standards on safety, quality and environmental matters.
- Accreditation of contractors will be gained by incorporating specified Victorian electricity industry requirements into a management system that is audited by an independent accreditation body on an annual basis.

² As with the 2014 Determination, the Applicants confirm that they are not seeking authorisation relating to overhead construction works, as noted in paragraph 79 of the 2014 Determination.



- A recognised accreditation body will continue to be an organisation that has certification from JAS-ANZ (the government-appointed accreditation body for Australia and New Zealand responsible for providing accreditation of conformity assessment bodies in the fields of certification and inspection).³

2 Training requirement for contractors' personnel:

- Contractors' personnel in control of electrical infrastructure civil works will be required to complete an approved industry training course. This requirement is to ensure that such personnel have the relevant skills and knowledge when undertaking civil work on electricity distribution infrastructure.

It remains the case that although it is not their preference, the Applicants will still allow civil contractors to perform underground civil works on their networks where they are not accredited under the scheme, but those contractors will be required to have 100 percent of their underground civil works visually inspected by an approved auditor before backfilling or cabling works can be undertaken.

The scheme remains similar to other established accreditation systems adopted by government authorities who require contractors to gain accreditation in respect of their management systems including, for example, schemes involving water and sewage (Victoria – Greater Western Water,⁴ South East Water,⁵ Yarra Valley Water,⁶ Melbourne Water;⁷ NSW – Sydney Water⁸) and roads (Victoria – VicRoads;⁹ NSW – Transport for NSW¹⁰).

The Applicants also note that Victoria is the only jurisdiction where ACCC authorisations have been obtained to establish a single accreditation scheme for these types of civil works. There are five distribution network service providers in Victoria, who are the Applicants. Other than NSW, all other states and territories in Australia are single network service provider jurisdictions in which electricity distributor accreditation systems are established by the sole distributor. In NSW, there is a statewide accreditation scheme managed by NSW Department of Climate Change, Energy and Environment.¹¹

4.3 Potentially relevant provisions of the CCA

Each of the Applicants supplies electricity distribution network services within its separate geographic territory in Victoria. In the supply of these services the Applicants are not relevantly competitive.

Each of the Applicants acquires services, including civil works services, from third party contractors. To that extent, the Applicants could be considered to be potentially competitive with each other in respect of the services to be acquired from civil contractors

³ There are currently 23 JAS-ANZ accreditation bodies operating in Victoria as at April 2024.

⁴ <https://www.gww.com.au/about/corporate-information/suppliers-contractors/accredited-consultants-contractors>

⁵ <https://southeastwater.com.au/building-and-development/developers/accredited-contractors/>

⁶ <https://www.yvw.com.au/help-advice/develop-build/consultants/accreditation>

⁷ <https://www.melbournewater.com.au/building-and-works/developer-guides-and-resources/design-and-construction-works/design-works>

⁸ <https://www.sydneywater.com.au/plumbing-building-developing/provider-information/listed-providers.html>

⁹ <https://www.vicroads.vic.gov.au/business-and-industry/tenders-and-suppliers/contractors-and-consultants/prequalification-scheme>

¹⁰ <https://www.transport.nsw.gov.au/operations/roads-and-waterways/business-and-industry/vehicle-examiners-certifiers-assessors-1>

¹¹ <https://www.energy.nsw.gov.au/nsw-plans-and-progress/regulation-and-policy/asp-scheme-and-contestable-works>



supplying services to the Victorian electricity network (although each Applicant does acquire the services independently).

The Applicants are seeking authorisation in respect of the following provisions of the CCA in the event they may be considered to apply in respect of the making or giving effect to an arrangement as between the Applicants regarding the persons or classes of persons from whom they will acquire civil contractor services (being accredited civil contractors), and/or requiring civil contractors to attain accreditation from a third party:¹²

- Cartel conduct provisions: sections 45AF, 45AG, 45AJ and 45AK of the CCA, insofar as any agreement between the Applicants may contain a cartel provision as defined under section 45AD of the CCA;
- Provisions concerning contracts, arrangements or understandings that restrict dealings or affect competition: section 45(1) of the CCA, insofar as any agreement between the Applicants may include provisions having the purpose or effect of substantially lessening competition; and
- Provisions concerning exclusive dealing: sections 47(6) and (7) of the CCA, insofar as the supply of a contract opportunity by an Applicant to a civil contractor requiring the contractor to acquire accreditation services from an independent accreditation body or acquire training services from a registered training organisation may have the purpose or effect of substantially lessening competition.

4.4 Term of authorisation

As outlined in section 5 below, the accreditation scheme has resulted in significant public benefits and no identifiable public detriment (including competitive harm).

The conduct the Applicants now apply to have authorised is the same conduct that the ACCC authorised for an initial five-year period in 2009, and subsequently, a 10-year period in 2014.

In 2014 the ACCC determined that an authorisation period of 10 years was appropriate because the accreditation scheme had successfully operated for five years (at that time) and the public benefits continued to outweigh the detriment.¹³ That continues to be the case for this application, with the scheme having now successfully operated for 15 years delivering significant net public benefits.

The market conditions in which the Applicants and industry participants operate have remained stable and have not changed over the period of the current authorisation and its predecessor (i.e. since April 2009).

This is expected to remain the case for the foreseeable future, and the potential for any future public detriment is even lower as the accreditation scheme has become the accepted practice for industry participants, and there is a vibrant ecosystem of training providers and construction contractors accredited under the scheme.

The granting of an authorisation for a period of 10 years will provide long-term certainty for the continuation and ongoing improvement of the scheme. For example, a 10-year period of authorisation would:

- provide continued certainty to accredited civil contractors, training providers and accreditation bodies, to support long term decisions with respect to their

¹² These provisions are the same provisions in respect of which the conduct was previously authorised (albeit renumbered in the case of the cartel conduct: previously exclusionary provisions within the meaning of section 45 of the version of the CCA in force as at the date of the 2014 Determination).

¹³ See paragraph 73 of the ACCC's 2014 Determination.



- businesses (i.e. to continue to provide training and accreditation, or to invest in acquiring training and renewing accreditation for contractors);
- incentivise new civil contractors entering the market (or those not already accredited under the scheme) to obtain accreditation, on the basis that the time and costs of training and accreditation (although limited) will continue to benefit them over the full 10-year period;
 - allow regulators and networks (i.e. the Applicants):
 - to monitor performance and produce more accurate and consistent life cycle reporting for network assets (which are long-term assets) over an extended period (for example, reporting against the *Greenfields Negotiated Electricity Connection Customer Service Standards*);
 - to continue to plan for and make long-term improvements to the safety standards and practices that the scheme supports. This is particularly important over the coming 10-year period, where there is potential for increased investment in distribution networks to meet the needs of the energy transition. With increased investment, the Applicants would expect there to be an increased demand for contractors' civil works services, and associated safety demands that will be best managed with the certainty of an ongoing scheme; and
 - retain consistency over that period with the preferred approach adopted in all other NEM jurisdictions, where a single safety accreditation scheme will continue to apply (see section 4.1 above).

The Applicants anticipate that relevant industry participants, including the Victorian branch of the Civil Contractors Federation and Energy Safe Victoria, will support the granting of an authorisation for a period of 10 years.

In light of the significant benefits and low prospects, if any, for harm resulting from the accreditation scheme, the Applicants consider it appropriate for the ACCC to grant authorisation for a further 10-year period.

5 Public benefits outweigh any potential public detriment

During its period of operation to date, the accreditation scheme has resulted in significant and demonstrated public benefits and there is no evidence of any appreciable public detriment, including any competitive harm.

As discussed in the following sections of this application:

- these benefits will continue if the conduct is re-authorised by the ACCC as it remains the case that absent re-authorisation the Applicants would be required to establish and maintain separate civil contractor accreditation schemes and registers to avoid the risks and harms caused by non-confirming and poor work quality; and
- consistent with the experience of the accreditation scheme to date, no public detriment is expected to arise following re-authorisation. In fact, as time has passed since the scheme was first implemented, the potential for any detriment has decreased even further.

The Applicants submit that the significant public benefits that will continue to result from the accreditation scheme will outweigh the limited potential for any competitive detriment.



5.1 Significant public benefits will continue

The benefits of the accreditation scheme have been proved over the 15 years of its operation and will continue if the scheme is re-authorised. These benefits are discussed in the following sections of this application.

Minimising the compliance burden and costs on civil contractors

Having a consistent accreditation scheme throughout Victoria ensures that civil contractors can engage simultaneously with all the Applicants by complying with one set of common requirements, thereby keeping compliance costs to contractors to a minimum.

As the ACCC recognised in the 2009 and 2014 Determinations, this reduction in compliance costs for contractors is a significant public benefit resulting from the scheme.

This will continue to be a significant benefit of the scheme if it is re-authorised. Given the quality and liability risks that the Applicants, customers and public would face without an accreditation scheme (discussed in further detail in relation to quality and conformity below), the Applicants would be forced to adopt individual accreditation and training requirements, potentially resulting in additional compliance costs on civil contractors and confusion about the requirements, if the scheme was not re-authorised.

Minimising information asymmetry and improving confidence in the quality of civil contractors

As the ACCC noted at paragraph 39 of the 2014 Determination, it can be difficult for customers (including developers), especially where they do not often acquire services from contractors who perform the types of works required, to form views as to the required works and the suitability of individual contractors.

The accreditation scheme continues to ensure that customers (including both the Applicants and other stakeholders such as developers) can have confidence that civil contractors meeting the requirements of the scheme have the relevant skills and are capable of completing the relevant works to the appropriate standard.¹⁴ This benefit will continue if the scheme is re-authorised.

Increased safety and quality of works resulting in benefits to all stakeholders

The accreditation scheme has resulted in substantial public benefits of increased safety, maintenance of minimum quality standards for work on electricity networks and will continue to do so if it is re-authorised.

Prior to the scheme being authorised in 2009, customers who engaged civil contractors to perform work on electricity distribution networks were not required to ensure that the contractors were appropriately trained to perform the work or that the work adhered to specific quality and regulatory standards.

This led to significant quality, safety and liability issues, including:

- customers and distribution businesses being exposed to potential liabilities resulting from defective work causing injury to people or property. For example, due to cables being laid too shallow without sufficient protection or where not indicated on plans;
- additional public safety hazards, such as footpath tripping hazards;

¹⁴ This is supported by the experience of industry audits, as detailed below



- the distribution businesses having to take over ownership and maintenance of work without direct influence over its quality and suffering costs and delays through addressing complaints and non-compliant work.

As previously noted by the Applicants, civil works accounted for more than 50% of all non-conformances identified in work audits. The authorisation and implementation of the accreditation scheme has significantly reduced this percentage by ensuring common accreditation standards are adopted and training is implemented. In the past 10 years, the Applicants are only aware of one case of non-conforming civil works performed by an accredited civil contractor.

The accreditation scheme has also allowed for the early detection of any non-conformances, resulting in their early rectification thereby minimising any impact on project timelines and associated costs, and minimised the risk to persons working near the electrical assets of the Applicants and to the public.

These benefits have continued to accrue since the ACCC authorised the scheme in 2014. In correspondence to the Applicants of April 2024, ACA Audits,¹⁵ one of the industry's leading prequalification and accreditation auditors, stated the following about the effectiveness of the accreditation scheme:

“Through our ongoing Third-Party Certification audits and our VEDN audits over the past fourteen years, we have observed the stability of the civil industry involved in the construction of underground electrical infrastructure, particularly in large scale subdivisions.

There are rarely any major non-conformances related to electrical underground installation works (VEDN). Network Auditor reports of the civil works undertaken, tend to identify minor defects only, that are readily rectified. The occurrence of major defects (common prior to the VEDN program) are rare.

We conduct the VEDN audits for over 45% of the currently accredited/pre-qualified contractors, and we continue to observe a high standard of work in the field. The higher standard not only applies to the technical compliance to the network standards, but also a higher standard of health & safety, and environmental management on sites.

This latter improvement has generated considerable reduction in risk to workers on sites and has a beneficial effect to the community (especially for work sites in built-up areas) with sites that are better isolated from the public and more efficiently managed.”

The Applicants have discussed this proposed reauthorisation with Victoria's energy safety regulator, Energy Safe Victoria, and it has also indicated that it would not object to the continuance of the scheme, as has the Association of Land Development Engineers (ALDE) and the Urban Development Institute of Australia (UDIA).

To avoid the safety and quality issues described above, the Applicants would need to adopt separate accreditation schemes and registers if re-authorisation was not granted. However, as the ACCC recognised at paragraph 48 in the 2014 Determination, these quality and safety benefits are likely to be higher under the single scheme than where a number of separate schemes operate, as it likely as it is likely there will be reduced confusion and enhanced compliance.

The Applicants have discussed this proposed reauthorisation with Victoria's branch of the Civil Contractors Federation (CCF), the peak representative body for the civil construction industry in Australia, representing a membership of civil contractors, utilities authorities, councils, developers, consultants and manufacturer, responsible for design, construction and maintenance of state infrastructure including roads, bridges, ports, rail, renewables,

¹⁵ <https://www.acaaudits.com.au/>



and land development services for the provision of power, water, communications and gas. In correspondence to the Applicants of April 2024, CCF¹⁶ stated the following about the importance of the accreditation scheme for stakeholders across their diverse membership groups:

“It is important that infrastructure is constructed safely and to a standard that ensures generational operation for future users. In line with our engagement values, CCFV work closely with our Members and the VEDN in providing training and an industry platform for communications on VEDN matters; thus CCFV endorse the current VEDN processes that underpin the delivery of quality outcomes in the field of electrical infrastructure for the Victorian electricity network operators, and ultimately for the owners of properties serviced by such infrastructure.

Without the standardised approach established by VEDN processes, varying standards would arise between different networks that may hinder the performance of tasks by our Members.

CCFV work hand in hand with network operators to ensure the training of our Member workforces meet the standards expected by the community and our safety regulators. The CCFV commits to continue supporting its’ Members in their operations and endorse the VEDN framework.”

Additionally, since March 2023 the Essential Services Commission has required each of the Applicants to report on the performance of the civil contractors that they each engage that are trained and audited under the accreditation scheme as part of the Greenfields Negotiated Electricity Connection Customer Services Standards.¹⁷

5.2 Limited, if any, potential for public detriment

There is limited potential, if any, for the accreditation scheme to result in public detriment. The risk of any detriment has decreased as the time has passed since the scheme was implemented. As discussed in the following sections of the application, this will continue to be the case if the scheme is re-authorised.

In particular, the Applicants note that:

1 **The scheme has not resulted in restrictions on choice of civil contractors and there is a low risk of this occurring**

As recognised by the ACCC in the 2014 Determination:

- the scheme is run in an objective manner that is independent of the Applicants, in accordance with published charter, guidelines and key criteria;
- any civil contractor can apply for accreditation;
- a large number of civil contractors in Victoria are accredited – presently approximately 225;
- civil contractors that are not accredited can still perform works on electricity distribution networks so long as appropriate additional quality and safety checks are performed; and

¹⁶ <https://www.ccfvic.com.au/>

¹⁷ <https://www.esc.vic.gov.au/electricity-and-gas/market-performance-and-reporting/resetting-greenfields-negotiated-electricity-connection-customer-service-standards-2023#tabs-container2>



- the scheme is well-accepted by industry participants, and it is similar to schemes in other industries involving government bodies in Victoria and New South Wales, as noted above in section 4.2.

2 **Contractors have a wide range of training providers to choose from**

The scheme requires civil contractors to demonstrate that one or more of their personnel has or have completed an electrical infrastructure civil works industry training course.

At the scheme's inception in 2009 there was one provider of this training course, which had grown to grown to eight providers by 2014. There are now 14 organisations registered as providers of training for the accreditation scheme.¹⁸

The Applicants continue to provide the training course and training materials at no cost to training providers, and it therefore continues to be easy for new organisations to be added to the register of training organisations.

3 **The costs of accreditation continue to be low**

As recognised by the ACCC in the 2014 Determination, contractors are likely to face costs of accreditation regardless of whether the scheme was authorised due to the fact that the Applicants were likely to have separate accreditation requirements absent the authorisation of the scheme.

This remains the case and accreditation costs are likely to be lower under the single accreditation scheme if the re-authorisation is granted.

Given the maturity and success of the accreditation scheme, most contractors would not need to incur any of the initial costs of setting up a management system to obtain accreditation. ACA Audits has estimated that the typical annual costs for accreditation under the scheme would be between \$1,800 and \$2,500 a small fraction of the turnover of these types of contractors.

The training costs are also very low, for example the Civil Contractors Federation charges participants between \$350 and \$400 and the course runs for one day.¹⁹

As recognised previously by the ACCC, contractors can choose not to become accredited and incur these low accreditation costs and still perform the works, albeit subject to other safety requirements.

6 Interim authorisation

The Applicants recognise that the ACCC is unlikely to be in a position to issue a final determination on this application for authorisation before the existing authorisations expire on 14 May 2024.

To ensure that the accreditation scheme can continue during the period before the final determination of this application, the Applicants urgently apply for an interim authorisation in accordance with section 91(2) of the CCA.

Interim authorisation will ensure that the significant and demonstrated benefits of the accreditation scheme can continue during the interim period and to avoid the risks,

¹⁸ Electricity Training & Development; Construction Training Group; Interlink Training; Civil Contractors Federation; Aurecon Australasia; National Civil Train; Workspace Training; Enersafe; Optec; Thomson Bridge; AGA – Apprenticeships Plus; Energy Services; Holmesglen Institute; ESI Training & Consulting; see <http://vedn.vesi.com.au/search/searchRTO.php?go>.

¹⁹ <https://www.ccfvic.com.au/training/vedn-infrastructure-underground-electrical-infrastructure-1day/>



disruption, costs and confusion that are likely to result if the Applicants are required to take steps to suspend the accreditation scheme.

Absent an interim authorisation, in the 4 to 6 months following 14 May 2024, the Applicants are concerned that the following is likely to occur:

1 Discontinue the accreditation scheme

In order to avoid any risk of engaging in conduct in contravention of the CCA, the Applicants would have to consider suspending the accreditation scheme. This would involve the Applicants discontinuing their collective activities, including, for example, the joint publication of accreditation scheme and related materials on the VEDN website, and making the suspension of the scheme clear to the relevant industry participants, including customers and contractors.

The Applicants are concerned that it will be highly confusing to contractors, as the Applicants will need to advise all contractors that the scheme is discontinuing, that that discontinuation may be temporary, however the network businesses are unable to confirm whether the safety and accreditation requirements under the scheme will continue to be sufficient and consistent across all Victorian distribution networks. That will be a significant change, compared to the prior 15 years of certainty.

2 Impact on ongoing accreditation

The Applicants understand that approximately 51 of the 225 contractors (i.e. 20%) will need to complete their annual accreditation within the next 4 to 6 months. As the accreditation scheme will be discontinued during that period, contractors may choose not to complete accreditation (i.e. not invest the cost and time required, even if limited) given uncertainty around the scheme.

In addition, the 23 accreditation bodies may determine that they are unable to provide accreditation services during that period, given that the scheme will be discontinued at the time.

Further, the current 14 training providers will be unable to confirm to any contractors considering obtaining a new accreditation that the scheme is currently active, or that their training services will lead to an accreditation that meets all Victorian network businesses' (i.e. the Applicants') requirements.

3 Potential individual approaches

The Applicants and customers would need to make their own independent decisions whether to adopt the same or differing approaches to verifying the qualifications of contractors and the standard of their work during at least an interim period. This would create additional administration, costs, confusion and disruption for participants in the scheme:

- **Applicants and customers:** the adoption of individual approaches will impose additional administration and costs on each of the Applicants as all work performed by civil contractors will require more rigorous inspection by the Applicants than previously. Customers would face similar administration and cost burdens. Those inspections may lead to unexpected delays in ongoing works projects.
- **Civil contractors** would need to ensure that, where they perform work for more than one of the Applicants, that they are compliant with the requirements of each of the Applicants (which may differ).

Granting an interim authorisation will not permanently alter the competitive dynamics of any relevant market. To the contrary, interim authorisation will maintain the status quo (as



contemplated by the ACCC's Guidelines, [10.3]) until the ACCC can more fulsomely consider the Applicants' authorisation application.

For the reasons above, civil contractors, training providers and accreditation bodies all rely on the certainty that an interim authorisation would provide as to the ongoing operation of the scheme and to enable them to continue to provide their services on the same basis.

Given the significant public benefits of the continuation of the accreditation scheme – without disruption – and the low to nil risk of interim authorisation resulting in any harm, the Applicants submit that it would be appropriate for the ACCC to grant interim authorisation on this occasion.



7 Declarations by the Applicants

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

Signature of authorised person on behalf of **AusNet Electricity Services Pty Ltd**

Office held

ANDREW O'HALLORAN

(Print) Name of authorised person

This 19 day of April 2024



HERBERT
SMITH
FREEHILLS

The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application.

The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the *Criminal Code* (Cth).

.....
Signature of authorised person on behalf of **CitiPower Pty Ltd**

.....
GENERAL MANAGER ELECTRICITY NETWORKS
Office held

GLEN THOMSON
(Print) Name of authorised person

This day of April 2024



HERBERT
SMITH
FREEHILLS

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.....
Signature of authorised person on behalf of **Jemena Electricity Networks (Vic) Ltd**

Network Investment & Delivery Manager

.....
Office held

David Speirs

.....
Name of authorised person

This 19th day of April 2024



HERBERT
SMITH
FREEHILLS

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.....
Signature of authorised person on behalf of **Powercor Australia Ltd**

.....
GENERAL MANAGER ELECTRICITY NETWORKS

Office held

GLEN THOMSON
(Print) Name of authorised person

This day of April 2024



HERBERT
SMITH
FREEHILLS

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.....
Signature of authorised person on behalf of **United Energy Distribution Pty Ltd**

GENERAL MANAGER ELECTRICITY NETWORKS

.....
Office held

GLEN THOMSON

(Print) Name of authorised person

This day of April 2024