



New South Wales

# Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024

under the

Electricity Infrastructure Investment Act 2020

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Electricity Infrastructure Investment Act 2020*.

PENNY SHARPE, MLC  
Minister for Energy

## Explanatory note

The objects of this regulation are as follows—

- (a) to specify actions the consumer trustee is required and not required to do in authorising a network operator to carry out a REZ network infrastructure project, including to either undertake and consider a cost benefit analysis or consider an infrastructure investment objectives report,
- (b) to restrict certain persons from making a tender bid in a competitive tender for an LTES agreement in relation to an infrastructure project,
- (c) to require the consumer trustee to publish its reasons for determining there are exceptional circumstances to allow persons, otherwise restricted, to make a tender bid in a competitive tender for an LTES agreement for infrastructure,
- (d) to establish a time frame by when the consumer trustee is to conduct a competitive tender requested by the infrastructure planner,
- (e) to require the infrastructure planner to include certain matters in a development agreement between the infrastructure planner and a participant for the grant or increase of access rights, including a right to terminate the access right if the project has not achieved the finance and construction criteria by the nominated date,
- (f) to restrict the infrastructure planner from exercising certain functions until it publishes a standard development agreement,
- (g) to give the infrastructure planner additional access scheme functions, including to carry out an application process without a competitive tender for the grant or increase of access rights and to make recommendations to the scheme financial vehicle in relation to payment deeds with access rights holders,
- (h) to make other minor and consequential amendments.

## **Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024**

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### **1 Name of regulation**

This regulation is the *Electricity Infrastructure Investment Amendment (Consumer Trustee and Infrastructure Planner) Regulation 2024*.

### **2 Commencement**

This regulation commences as follows—

- (a) for Schedule 1[2]–[8]—on 1 July 2024,
- (b) otherwise—on the day the regulation is published on the NSW legislation website.

## Schedule 1 Amendment of Electricity Infrastructure Investment Regulation 2021

[1] **Clause 3 Definitions**

Omit clause 3. Insert instead—

**3 Definitions**

The dictionary in Schedule 4 defines words used in this regulation.

**Note—** The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this regulation.

[2] **Clause 19 Recommendations by consumer trustee about network infrastructure projects—the Act, ss 60(4)(c) and 66(5)(d)**

Omit “under the Act, section 31”.

[3] **Clause 19(2)**

Omit “The” in subclause 19(2). Insert instead “For a recommendation under the Act, section 31(1)(a), the”.

[4] **Clause 19A, heading**

Omit “consumer trustee and”.

[5] **Clause 19A**

Omit subclauses (2) and (3).

[6] **Clause 19A**

Omit “or the consumer trustee under the Act, section 31(1)(b)” from clause 19A(4).

[7] **Clause 19B**

Insert after clause 19A—

**19B Authorisations by consumer trustee—the Act, ss 31(6), 60(4)(c) and 79(1)**

- (1) This clause applies to an authorisation by the consumer trustee under the Act, section 31(1)(b).
- (2) The consumer trustee must not authorise a network operator to carry out a REZ network infrastructure project unless satisfied the project is in the long-term financial interests of NSW electricity customers.
- (3) In determining whether it is satisfied the project is in the long-term financial interests of NSW electricity consumers under subclause (2), the consumer trustee must—
  - (a) undertake a cost benefit analysis of the project in accordance with clause 19C and give primary consideration to the analysis, or
  - (b) give primary consideration to the most recent infrastructure investment objectives report as at the time of the infrastructure planner’s recommendation in relation to the authorisation.
- (4) If the quantitative measurements of the cost benefit analysis are negative, the consumer trustee may be satisfied the project is in the long-term financial interests of NSW electricity customers having regard to both the quantitative measurements and qualitative elements of the cost benefit analysis.

**Note—** When authorising a network operator the consumer trustee is also required to do so in a way that is consistent with the objects of the Act. See the Act, section 3(3).

- (5) In making an authorisation, the consumer trustee is not required to—
  - (a) investigate the accuracy of the infrastructure planner’s recommendations about the project, or
  - (b) consider technical information except for the technical information specified in clause 44, or
  - (c) consider the technical information provided to the consumer trustee in the infrastructure planner’s recommendation, or
  - (d) assess or review recommended contractual arrangements by the infrastructure planner before including them in an authorisation.
- (6) An authorisation must require the network operator to enter into the recommended contractual arrangements.
- (7) An authorisation ceases to have effect on the termination or expiry of the contractual arrangements entered into by the network operator under the authorisation.

#### **19C Authorisations by consumer trustee—cost benefit analysis**

- (1) A cost benefit analysis for an authorisation must consider the following—
  - (a) the costs to the NSW electricity customers from the project,
  - (b) the benefits to NSW electricity customers from generation and storage infrastructure connecting to the project,
  - (c) the costs and benefits under different scenarios,
  - (d) if required to understand the impact of uncertainty in the project’s costs and benefits—a sensitivity analysis,
  - (e) the costs or benefits from the expected change in greenhouse gas emissions as a result of the project,
  - (f) the costs to finance the project, including interest costs.
- (2) The cost benefit analysis must—
  - (a) not include scenarios inconsistent with the infrastructure investment objectives, and
  - (b) not include an options analysis of alternatives or variants to the REZ network infrastructure projects recommended by the infrastructure planner, and
  - (c) not assess distributional impacts or carry out a distributional analysis, and
  - (d) not consider the costs and benefits to government or electricity producers as a result of the REZ network infrastructure project.
- (3) The cost benefit analysis must be in accordance with the *NSW Government Guide to Cost-Benefit Analysis* published by the NSW Treasury on its website from time to time.

**Note—** See the TPG23-08 *NSW Government Guide to Cost-Benefit Analysis* published by the NSW Treasury, February 2023.
- (4) If there is inconsistency between the requirements under subclauses (1) and (2) and the *NSW Government Guide to Cost-Benefit Analysis*, the requirements under subclauses (1) and (2) prevail.

- (5) Without limiting any other disclosure, the consumer trustee may disclose the assumptions, scenarios, results or forecasted costs and benefits in relation to the cost benefit analysis to—
- (a) the Secretary, or
  - (b) the infrastructure planner.

**[8] Clause 28 Competitive tenders for LTES agreements—the Act, s 47(3)(a)**

Insert “as a result of a competitive tender conducted by the consumer trustee” after “access scheme” in clause 28(1)(b).

**[9] Clause 28**

Insert after clause 28(2B)—

- (2C) A person may not make a tender bid in a competitive tender for an LTES agreement for infrastructure if—
- (a) an access right for the infrastructure has already been conferred on the person under an access scheme other than by a competitive tender conducted by the consumer trustee, and
  - (b) the infrastructure project has achieved the finance and construction criteria.

**[10] Clause 42A Functions of consumer trustee—the Act, s 60(4)**

Omit clause 42A(2)(b). Insert instead—

- (b) for a competitive tender requested by the infrastructure planner, conduct the competitive tender—
  - (i) within 60 days after the request, or
  - (ii) at the same time as the first competitive tender for an LTES agreement that occurs after 60 days after the request, or
  - (iii) if there is no competitive tender for an LTES agreement within 8 months of the request—by no later than 8 months after the request.

**[11] Clause 42C Functions of infrastructure planner—access schemes—the Act, s 63(4)(d)**

Omit clause 42C(3). Insert instead—

- (3) The infrastructure planner must not exercise the following functions until it has published the standard development agreement—
- (a) to request the consumer trustee to conduct a competitive tender under subclause (1),
  - (b) to conduct a competitive tender under Schedule 1A, clause 3(1),
  - (c) to conduct an application process under Schedule 1A, clause 5(1).
- (4) In this clause—  
*access scheme functions*, for an access scheme, means the functions in Schedule 1A.

**[12] Clause 42CA**

Insert after clause 42C—

**42CA Functions of infrastructure planner—standard development agreement under access schemes—the Act, ss 63(4)(d) and 66(5)(a)**

- (1) The infrastructure planner must include the following in an agreement (a *development agreement*) between it and a participant for a project in relation to the grant or increase of access rights under the access scheme—
  - (a) a date (the *nominated date*) agreed to by the participant and infrastructure planner by which the project is to achieve the finance and construction criteria,
  - (b) a right for the infrastructure planner to terminate the access right if the project has not achieved the finance and construction criteria by the nominated date,
  - (c) a right for the infrastructure planner to vary the nominated date, from time to time, by no more than 2 years from the first nominated date if the infrastructure planner is satisfied the project will achieve the finance and construction criteria within the 2 years,
  - (d) a condition that the participant must enter into a payment deed with the scheme financial vehicle before the access right is granted or increased,
  - (e) conditions for the development of the project by the participant.
- (2) The infrastructure planner must publish on its website the standard form and content of a development agreement (the *standard development agreement*) that includes the matters under subclause (1).

**[13] Clause 55A**

Insert after section 55—

**55A Fees for access scheme—principles—the Act, s 26(1)**

For the Act, section 26(1)(d), transparency in total determined or expected fees payable under the access scheme for participants is prescribed.

**[14] Schedule 1A**

Insert after Schedule 1—

**Schedule 1A Access scheme functions**

clause 42C(4)

**1 Administer scheme**

To administer the access scheme.

**2 Access rights register**

To establish, administer, regularly update and operate a publicly available register for access rights under the access scheme.

**3 Competitive tenders**

- (1) For a competitive tender, in relation to the granting or increasing of access rights, not conducted by the consumer trustee—
  - (a) to make rules about the conduct of the competitive tender, and
  - (b) to conduct the competitive tender in accordance with the rules.

- (2) For a competitive tender, in relation to the granting or increasing of access rights, conducted by the consumer trustee—to give to the consumer trustee information relevant to—
  - (a) determining fees payable under the Act, section 26, and
  - (b) conducting the competitive tender.

#### **4 Eligibility criteria for competitive tenders**

To determine the eligibility criteria of participants in a competitive tender in relation to the granting or increasing of access rights—

- (a) in consultation with the consumer trustee, and
- (b) before the competitive tender is conducted.

#### **5 Application process**

- (1) To conduct an application process if the infrastructure planner considers it is necessary for the timely delivery of a REZ network infrastructure project.
- (2) To make guidelines—
  - (a) for inviting, accepting and assessing applications from participants for the grant or increase of access rights without a competitive tender (the *application process*), and
  - (b) setting out the eligibility criteria for participants who may make applications.
- (3) To publish on its website the guidelines for the application process and eligibility criteria.
- (4) To conduct the application process in accordance with—
  - (a) the declaration for the access scheme, and
  - (b) the guidelines for the application process.

#### **6 Grant or increase of access rights**

- (1) To assess and determine the grant or increase of access rights to participants in the access scheme.
- (2) To determine the terms and conditions for the grant or increase of access rights to participants in the access scheme.
- (3) To consider, assess and determine proposals—
  - (a) in relation to the grant or increase of access rights to participants in the access scheme, and
  - (b) made in accordance with the access scheme for the augmentation of network infrastructure in the renewable energy zone in which the access scheme is located.

#### **7 Payment deeds for scheme financial vehicle**

- (1) Before granting or increasing access rights, to recommend the scheme financial vehicle enters into a payment deed with the access rights holder on certain terms and conditions for the payment of access fees determined by the consumer trustee under the Act, section 26.
- (2) To consult with the scheme financial vehicle and consumer trustee on the terms and conditions, including bonding arrangements, of a payment deed between the scheme financial vehicle and access rights holder.

## **8 Termination of access rights**

To exercise a right to terminate an access right in accordance with the relevant contract and access scheme declaration if the participant has not achieved the financial and construction criteria by—

- (a) the first nominated date if the participant fails to demonstrate to the infrastructure planner the participant can achieve the finance and construction criteria within 2 years of the first nominated date, or
- (b) the nominated date as varied by the infrastructure planner.

## **9 Assessing and approving connections and disconnections**

To assess and approve connections to, and disconnections from, an access rights network or access control network under the access scheme, including to give consent in accordance with the following provisions of the *National Electricity Rules*—

- (a) clause 5.3.4(a1) and (a2),
- (b) clause 5.3.6(a4) and (a5),
- (c) clause 5.3.9(b1).

**Note—** See the *National Electricity (New South Wales) Regulation 2022*, Schedule 1, Part 1.

## **10 Technical matters**

To assess, calculate, forecast, determine and implement technical matters for the access scheme, including in relation to the following—

- (a) network capacity,
- (b) network constraints,
- (c) network utilisation,
- (d) access rights,
- (e) maximum capacities applying during different periods.

## **11 Extending term of scheme**

To extend, if applicable, the term of the access scheme.

## **12 Giving notices and information**

- (1) To give notices or publish information in relation to the access scheme.
- (2) Within 30 business days after varying a nominated date under clause 42CA(1)(c), to publish reasons on its website for varying the nominated date.
- (3) To not publish commercially sensitive information as determined by the infrastructure planner unless in accordance with the Act or regulations.

## **13 Amendment of declaration of scheme**

For a proposed amendment of the declaration for the access scheme—

- (a) to consider, consult on and assess the proposal, and
- (b) to provide advice to the Minister, and
- (c) to determine voting procedures.

## **[15] Schedule 4**

Insert after Schedule 3—

## Schedule 4 Dictionary

clause 3

**advocate** means the electricity infrastructure jobs advocate.

**appointed member** means a member of the Board appointed by the Minister under the Act, section 7(2)(a) or (c).

**appropriate referenced costs process**—see clause 47E(7).

**audit subject**, for Part 13—see clause 68.

**auditor**, for Part 13—see clause 68.

**authorisation** has the same meaning as in the Act, section 36.

**basis risk**, for Part 5—see clause 22.

**Board** means the board for manufacturing and construction in the NSW renewable energy sector established under the Act, section 7.

**competitive assessment process** means a process carried out by the infrastructure planner under clause 45 to competitively assess persons who apply to carry out all or part of—

- (a) REZ network infrastructure project, or
- (b) a priority transmission infrastructure project.

**contestable augmentation** means a network infrastructure project carried out by a network operator where—

- (a) the project is an augmentation to a network infrastructure project (the **related project**), and
- (b) the network operator is subject to a contestable revenue determination in relation to the related project.

**contestable revenue determination** means a revenue determination made as a result of a competitive assessment process.

**cost recovery declaration**, for Part 9, Division 3—see clause 54B(1).

**declaration**, for an access scheme, means the declaration made under the Act, section 24 for the scheme.

**development agreement**—see clause 42CA(1).

**development pathway** means the development pathway referred to in the Act, section 45(1)(a).

**eligible network operator**, for Part 9, Division 3—see clause 54A.

**existing contractual arrangements**, for a contestable augmentation, means contractual arrangements entered into by the network operator under an authorisation in relation to the related project.

**finance and construction criteria** means the project commitment criteria named as the finance criteria and the construction criteria on the generator information page being the information resource established, maintained and published by AEMO under the *National Electricity Rules*, rule 3.7F, from time to time.

**Note**— The information page is available at [www.aemo.com.au](http://www.aemo.com.au).

**fixed shape, fixed volume derivative arrangement**, for Part 5—see clause 22.

**greenhouse gas**—see clause 60.

**higher emission firming infrastructure**, for Part 12—see clause 60.

**infrastructure investment objectives report** means a report prepared by the consumer trustee under the Act, section 45(1).

**joint chairperson** means either of the 2 members appointed as the joint chairperson of the Board under the Act, section 7(3).

**LTES operator for firming infrastructure**, for Part 12—see clause 60.

**member** means any member of the Board.

**nominated date**, in relation to a development agreement—see clause 42CA(1)(a).

**non-contestable revenue determination** means a revenue determination made other than as a result of a competitive assessment process.

**non-financial value criteria**, for an LTES agreement, means matters that are not directly related to the financial value of the LTES agreement, including the following—

- (a) the use of land,
- (b) community engagement activities undertaken by the LTES operator,
- (c) how the LTES operator will share with the local community the benefits of the construction and operation of infrastructure under the LTES agreement,
- (d) regional economic development in New South Wales,
- (e) for firming infrastructure—the extent to which an LTES agreement contributes to a reduction in scope 1 emissions of greenhouse gas in the NSW electricity sector.

**NSW carbon credit units**, for Part 12—see clause 60.

**NSW region** means the region identified as the New South Wales region in the Regions Publication, published by AEMO under the *National Electricity Rules*, clause 2A.1.3.

**offset requirement**, for Part 12—see clause 62(1).

**offset units**, for Part 12—see clause 60.

**plan** has the same meaning as in the Act, Part 2.

**recommended contractual arrangements**—see clause 43.

**regulator's guidelines** means the guidelines prepared by the regulator about revenue determinations under clause 47.

**related project**, for a contestable augmentation—see the definition of contestable augmentation.

**revenue determination** means a determination made by the regulator under the Act, section 38 in relation to a network operator subject to an authorisation.

**scope 1 emission**, for Part 12—see clause 60.

**surrender**, for Part 12—see clause 60.

**standard development agreement**—see clause 42CA(2).

**the Act** means the *Electricity Infrastructure Investment Act 2020*.

**transmission efficiency test** means the transmission efficiency test under the Act, section 38(4).