

# National Electricity (New South Wales) (Savings and Transitional) Regulation 1998

under the

# National Electricity (New South Wales) Act 1997

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *National Electricity (New South Wales) Act 1997*.

BOB DEBUS, M.P.,  
Minister for Energy

### Explanatory note

The object of this Regulation is to make provisions of a savings or transitional nature consequent on the enactment of the *National Electricity (New South Wales) Act 1997* and the commencement of the national wholesale market for electricity under that Act. The Regulation deals with the following matters arising under the *Electricity Supply Act 1995* in relation to the New South Wales wholesale market for electricity that formerly existed under that Act:

- (a) the preservation of certain limitations of liability under the New South Wales wholesale market for electricity (clauses 5, 6 and 7),
- (b) the winding up of the New South Wales wholesale market for electricity (clauses 8, 9 and 10),
- (c) the modification of a price-fixing determination made by the Independent Pricing and Regulatory Tribunal in relation to the New South Wales wholesale market for electricity (clause 11).
- (d) other matters of a minor, consequential or ancillary nature (clauses 1, 2, 3, 4 and 12).

## 1998 No 672

National Electricity (New South Wales) (Savings and Transitional) Regulation 1998

Explanatory note

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This Regulation is made under the *National Electricity (New South Wales) Act 1997*, including clause 3 of Schedule 2 (the power to make regulations of a savings or transitional nature).

## Contents

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	Page
<b>Part 1 Preliminary</b>	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
4 Notes	3
 <b>Part 2 Preservation of limitations of liability arising under NSW wholesale market for electricity</b>	
5 Transitional arrangements with respect to certain liabilities affecting electricity generators	4
6 Protected contracts	4
7 Treasurer's certificates	6
 <b>Part 3 Winding up of NSW wholesale market for electricity</b>	
8 Continuation of unamended Act for purposes of winding up	7
9 Effect of repeal or expiry of rules, procedures and conditions of wholesale market operation	8
10 Recovery of management fees	9
 <b>Part 4 Miscellaneous</b>	
11 Modification of IPART Determination No 5.3 of 1997	10
12 National electricity market to commence 1.00am New South Wales summer time	10

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## **National Electricity (New South Wales) (Savings and Transitional) Regulation 1998**

### **Part 1      Preliminary**

#### **1      Name of Regulation**

This Regulation is the *National Electricity (New South Wales) (Savings and Transitional) Regulation 1998*.

#### **2      Commencement**

This Regulation commences on 13 December 1998.

#### **3      Definitions**

In this Regulation:

**1995 Act** means the *Electricity Supply Act 1995*.

**1997 Act** means the *National Electricity (New South Wales) Act 1997*.

**appointed day** means 13 December 1998

**protected contract** means a contract referred to in clause 6 (1) (a), (b), (c) or (d), not being a contract that has ceased to be a protected contract as referred to in clause 6 (2).

**Treasurer's certificate** means a certificate issued by the Treasurer in accordance with clause 7.

#### **4      Notes**

The explanatory note and table of contents do not form part of this Regulation.

## 1998 No 672

Clause 5	National Electricity (New South Wales) (Savings and Transitional) Regulation 1998
Part 2	Preservation of limitations of liability arising under NSW wholesale market for electricity

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## Part 2      Preservation of limitations of liability arising under NSW wholesale market for electricity

### 5 Transitional arrangements with respect to certain liabilities affecting electricity generators

- (1) This clause applies to and in relation to any contract for the supply of electricity that was entered into by Pacific Power or by an electricity generator (within the meaning of the *Energy Services Corporations Act 1995*) before the appointed day, other than a protected contract.
- (2) Despite clause 2 of Schedule 2 to the 1997 Act:
  - (a) section 78 of the *National Electricity (NSW) Law* applies, and
  - (b) section 83 of the *Electricity (Pacific Power) Act 1950* does not apply.

for the purposes of any contract to which this clause applies and of any proceedings arising out of, or calling into question any provision of, a contract to which this clause applies.

- (3) This clause does not affect the operation of clause 2 of Schedule 2 to the 1997 Act with respect to a protected contract.

### 6 Protected contracts

- (1) The following contracts are *protected contracts* for the purposes of this Regulation:
  - (a) the contract known as the *Capral Aluminium Smelter Contract* between Delta Electricity and Capral Aluminium Limited (ACN 004213692), being the contract that arises from the agreements between those parties (or their predecessors in title) dated 30 March 1966 and 21 June 1993, together with:
    - (i) any variations of contract agreed to before the appointed day, and
    - (ii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate,

- (b) the contract known as the ***BHP Port Kembla Slab and Plate Products Contract*** between Delta Electricity and BHP Steel (AIS) Pty Ltd (ACN 000 019 625), being the contract that arises from the agreements between those parties (or their predecessors in title) dated 24 May 1955, 27 November 1958 and 1 December 1969, together with:
  - (i) any variations of contract arising from the ***Combined Port Kembla and Newcastle Supplementary Agreement No 1 of 1998*** between Delta Electricity, BHP Steel (AIS) Pty Ltd (ACN 000 019 625) and The Broken Hill Proprietary Company Limited (ACN 004 028 077) dated 19 June 1998, and
  - (ii) any other variations of contract agreed to before the appointed day, and
  - (iii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate,
- (c) the contract known as the ***BHP Newcastle Rod and Bar Products Contract*** between Delta Electricity and The Broken Hill Proprietary Company Limited (ACN 004 028 077), being the contract that arises from the agreement between those parties (or their predecessors in title) dated 13 August 1959, together with:
  - (i) any variations of contract arising from the ***Combined Port Kembla and Newcastle Supplementary Agreement No 1 of 1998*** between Delta Electricity, BHP Steel (AIS) Pty Ltd (ACN 000 019 625) and The Broken Hill Proprietary Company Limited (ACN 004 028 077) dated 19 June 1998, and
  - (ii) any other variations of contract agreed to before the appointed day, and
  - (iii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate.

## 1998 No 672

Clause 6                      National Electricity (New South Wales) (Savings and Transitional) Regulation 1998

Part 2                        Preservation of limitations of liability arising under NSW wholesale market for electricity

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- (d) the contract known as the ***Tomago Aluminium Smelter Contract*** between Macquarie Generation and Tomago Aluminium Company Pty Ltd (ACN 001 862 228), being the contract that arises from the agreements between those parties (or their predecessors in title) dated 23 August 1979, 27 April 1981 and 23 January 1991, together with:
  - (i) any variations of contract agreed to before the appointed day, and
  - (ii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate.
- (2) A protected contract that becomes subject to a variation of contract for which a Treasurer's certificate has not been issued ceases to be a protected contract:
  - (a) in the case of a variation of contract that extends the period for which the protected contract will remain in force, on the date on which the protected contract would have ceased to be in force but for the variation, and
  - (b) in the case of a variation of contract that is expressed to have effect on and from a specified date, on that specified date, and
  - (c) in any other case, on the date on which the variation of contract is agreed to.

or, in the case of a variation of contract of a kind referred to in 2 or more of paragraphs (a), (b) and (c), on the earlier or earliest of the dates ascertained in accordance with those paragraphs.

### 7 Treasurer's certificates

- (1) The Treasurer may issue a certificate with respect to any variation of contract that is proposed to be agreed to with respect to a protected contract.
- (2) Such a certificate is not to be issued if the Treasurer is of the opinion that the variation of contract:
  - (a) extends the period for which the protected contract will remain in force, or
  - (b) substantially affects the operation of, or rights and liabilities under, the protected contract.

## **Part 3      Winding up of NSW wholesale market for electricity**

### **8   Continuation of unamended Act for purposes of winding up**

- (1) Subject to this Part, the provisions of the 1995 Act that are amended or repealed by the 1997 Act (as those provisions were in force immediately before the appointed day) continue to have effect for the purpose only of dealing with matters arising out of the wholesale market for electricity formerly regulated by that Act.
- (2) In particular, for the purpose referred to in subclause (1):
  - (a) any authorisation in force under the 1995 Act immediately before the appointed day remains in force:
    - (i) subject to the same conditions (whether arising by operation of that Act or otherwise) as those to which it was subject immediately before the appointed day, and
    - (ii) despite any condition that purports to terminate the authorisation as a consequence of the commencement of the 1997 Act or the national electricity market referred to in the 1997 Act, and
  - (b) the person who, immediately before the repeal of section 77 of the 1995 Act, was the Market and System Operator under that Act continues to be the Market and System Operator, and
  - (c) any rules, procedures and conditions of wholesale market operation that were in force under section 78 of the 1995 Act immediately before the appointed day continue to have effect in accordance with their terms as if that section had not been repealed, and
  - (d) any powers that, immediately before the appointed day, were exercisable by the Market and System Operator under section 79 of the 1995 Act with respect to the imposition of management fees continue to be exercisable by the Market and System Operator, and

## 1998 No 672

Clause 8                      National Electricity (New South Wales) (Savings and Transitional) Regulation 1998

Part 3                        Winding up of NSW wholesale market for electricity

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- (e) any powers that, immediately before the appointed day, were exercisable by the Minister under Schedule 1 to the 1995 Act in connection with a contravention of the requirements of that Act or the regulations under that Act, or the conditions of an authorisation in force under that Act, continue to be exercisable by the Minister, and
  - (f) any right of appeal that, immediately before the appointed day, existed under section 95 of the 1995 Act in connection with a decision by the Minister of the kind referred to in paragraph (e) continues to exist.
- (3) The matters in respect of which any management fees referred to in subclause (2) (d) may be charged include:
  - (a) any functions exercised by the Market and System Operator under clause 2A of Schedule 2 to the 1997 Act, and
  - (b) any functions exercised by the Market and System Operator under the rules, procedures and conditions of wholesale market operation referred to in subclause (2) (c).
- (4) This clause does not affect the operation of any provision of the 1995 Act other than those referred to in subclause (1).
- (5) This clause ceases to have effect on the day on which the Minister causes notice to be published in the Gazette that the System Control Fund, the Market Operations Fund and the Market Settlements Fund have been wound up as referred to in clause 2A of Schedule 2 to the 1997 Act.

### **9 Effect of repeal or expiry of rules, procedures and conditions of wholesale market operation**

The repeal or expiry in accordance with their terms of any rules, procedures and conditions of wholesale market operation under section 78 of the 1995 Act:

- (a) does not affect their previous operation, or anything duly suffered, done or commenced under them, and
- (b) does not affect any right, privilege, obligation or liability acquired, accrued or incurred under them.



## **10 Recovery of management fees**

Section 103 of the 1995 Act applies to the recovery by the Market and System Operator (or by any person on behalf of, or in the name of, the Market and System Operator) of any management fee imposed under section 79 of the 1995 Act, whether before or after the appointed day, in the same way as it applies to the recovery by the Minister of a monetary penalty imposed under that Act.

## **1998 No 672**

Clause 11            National Electricity (New South Wales) (Savings and Transitional) Regulation 1998

Part 4                Miscellaneous

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### **Part 4        Miscellaneous**

#### **11    Modification of IPART Determination No 5.3 of 1997**

In Determination No 5.3 of 1997 made by the Independent Pricing and Regulatory Tribunal and published in Gazette No 93 of 22 August 1997 at pages 6609-6621, footnote 1 on page 6617 is taken to read “Fees for market operations and ancillary services charged by TransGrid in accordance with the *Electricity Supply Act 1995* or by NEMMCO in accordance with the National Electricity Code.” for the purpose of using factor “F” in the formula for regulating gross margins (as set out on that page) for any period occurring after the appointed day.

#### **12    National electricity market to commence 1.00am New South Wales summer time**

Until 1.00am (New South Wales summer time) on the appointed day:

- (a)    the 1995 Act, and any other Act amended by the 1997 Act, continue to have effect as if the 1997 Act had not been enacted, and
- (b)    the *National Electricity Law* applied by the 1997 Act, the amendments made by the 1997 Act and the savings and transitional provisions effected by the 1997 Act and by this Regulation (this clause excepted) do not have effect.