



Electricity Supply (General) Amendment (Greenhouse Gas Emission Reduction) Regulation 2002

under the

Electricity Supply Act 1995

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Electricity Supply Act 1995*.

KIM YEADON, M.P.,
Minister for Energy

Explanatory note

The objects of this Regulation are to provide for the following matters as a consequence of the commencement of the *Electricity Supply Amendment (Greenhouse Gas Emission Reduction) Act 2002*:

- (a) the prescription of sulphur hexafluoride as a greenhouse gas,
- (b) the persons who may elect to become benchmark participants under the greenhouse gas benchmark scheme enacted by that Act,
- (c) the persons who are to be large customers for the purposes of electing to become benchmark participants,
- (d) the making and duration of elections to become benchmark participants,
- (e) the liability of former benchmark participants for greenhouse penalties,
- (f) the adjustment of the amount of greenhouse penalty in line with the consumer price index, after the first year of the greenhouse gas benchmark scheme,
- (g) when Commonwealth renewable energy certificates may be used to offset a potential liability to pay a greenhouse penalty,

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- (h) the assessment of a benchmark participant's greenhouse shortfall (if any) and liability for greenhouse penalty,
- (i) other minor consequential matters.

This Regulation is made under the *Electricity Supply Act 1995*, including sections 97AB, 97BB, 97CA, 97CD and 106 (the general regulation-making power).

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1 Name of Regulation

This Regulation is the *Electricity Supply (General) Amendment (Greenhouse Gas Emission Reduction) Regulation 2002*.

2 Commencement

This Regulation commences on 1 January 2003.

3 Amendment of Electricity Supply (General) Regulation 2001

The *Electricity Supply (General) Regulation 2001* is amended as set out in Schedule 1.

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Schedule 1 Amendments

Schedule 1 Amendments

(Clause 3)

[1] Clause 3 Definitions

Insert in alphabetical order:

greenhouse gas benchmark statement means a statement required to be lodged by a benchmark participant under section 97CB of the Act.

[2] Clause 3 (2)

Insert at the end of the clause:

- (2) Expressions defined for the purposes of Part 8A of the Act have the same meaning in this Regulation as they have in that Part.

[3] Part 8A

Insert after Part 8:

Part 8A Greenhouse gas benchmarks

Division 1 General

73A Greenhouse gases

For the purposes of the definition of *greenhouse gas* in section 97AB of the Act, sulphur hexafluoride is prescribed as a greenhouse gas.

Division 2 Benchmark participants

73B Benchmark participants

Macquarie Generation is prescribed as an electricity generator for the purposes of section 97BB (1) (b) of the Act in respect of its supply of electricity to the Tomago Aluminium Company Pty Ltd.

73BA Circumstances in which customer is taken to be a large customer

- (1) For the purposes of section 97BB (2) (d) of the Act, a customer is taken to be a large customer if:
 - (a) the amounts of electricity required to be used for the purposes of the definition of *large customer* in section 97AB of the Act, as measured from the point of consumption, are used by the customer in the year preceding the making of the election to be an elective participant, or
 - (b) the Tribunal is satisfied that the customer is likely to use the required amounts of electricity in the year in which the election is to have effect.
- (2) For the purposes of section 97BB (2) (d) of the Act, a customer is taken to be a large customer who uses electricity at more than one site in this State if:
 - (a) subsection (1) applies to the customer, and
 - (b) each site is owned or occupied by the customer.

73BB Elections to become benchmark participants

- (1) An election by a person to become an elective participant is to be made in the form and manner approved by the Tribunal and is to specify the period (being 1 year or a specified number of years) for which the election is to have effect.
- (2) An election must indicate the retail supplier or electricity generator who is to supply electricity to the person making the election.
- (3) An election must be made not later than 30 June in the year preceding the year in which the election is to have effect or on any later day approved by the Tribunal.
- (4) Despite subclause (3), an election to be a benchmark participant in respect of the year commencing 1 January 2003 may be made not later than 1 April 2003 or any later day approved by the Tribunal.

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73BC Elections by large customers

- (1) A customer who makes an election to become an elective participant as a large customer must, before or when making the election, provide to the Tribunal evidence that the customer used or is likely to use 100 gigawatt hours or more of electricity at a single site, or at more than one site (one of which uses 50 gigawatt hours or more), in this State, as referred to in clause 73BA.
- (2) For that purpose, the Tribunal may require the customer to provide specified information and documents.
- (3) A customer may make an election to become an elective participant as a large customer in respect of part of the customer's electricity load (whether or not it is part of a load related to a single site or more than one site) if that part meets the requirements under the Act and this Regulation for classification as a large customer.
- (4) A customer may not make an election to become an elective participant as a large customer unless each electricity load or part of the load covered by the election is capable of being separately metered.

73BD Duration of election to be elective participant

- (1) An election to be an elective participant has no effect unless it is accepted by the Tribunal.
- (2) The Tribunal must, as soon as practicable after accepting an election, give written notice of the acceptance to:
 - (a) the person who made the election, and
 - (b) any other benchmark participant that supplies electricity to that person.
- (3) An election to be an elective participant that is accepted by the Tribunal has effect, subject to this clause, for the period specified in the notice of acceptance.
- (4) An election by a large customer to be an elective participant ceases to have effect at the end of a year in which the Tribunal gives the customer written notice of cancellation or the customer notifies the Tribunal of its intention not to continue as an elective participant.

- (5) An elective participant who does not wish to continue to be an elective participant in the succeeding year must notify the Tribunal not later than 30 June in the preceding year.
- (6) Notice for the purpose of subclause (5) must be given in the form and manner approved by the Tribunal.

73BE Tribunal may cancel election

- (1) The Tribunal may cancel an election by an elective participant that has made an election as a large customer if it is satisfied, or reasonably suspects, that the elective participant was not eligible to make the election or does not meet the requirements for making an election as a large customer.
- (2) In considering whether to take action under subclause (1), the Tribunal is not required to consider any reduction in the consumption or anticipated consumption of electricity by an elective participant that is due to abatement measures carried out for the purposes of the Act, this Regulation or the greenhouse gas benchmark rules.

73BF Payment of greenhouse penalty when election ceases to have effect

If an election by an elective participant ceases to have effect and a further election is not made by the participant or is refused by the Tribunal:

- (a) any greenhouse penalty payable in respect of the election period, and any greenhouse penalty payable for greenhouse shortfall carried forward from the previous year, is to be assessed and paid at the end of that period as if the election were still in force, and
- (b) a greenhouse shortfall may not be carried forward if so provided by the greenhouse gas benchmark rules.

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Division 3 Adjustment of greenhouse penalty

73C CPI adjustment to greenhouse penalty

- (1) For the purposes of section 97CA (3) of the Act, the amount of the greenhouse penalty is to be adjusted, on and from 1 July in each year (commencing on 1 July 2004) by the following formula:

$$P = M \times \frac{A}{B}$$

where:

P is the amount of the adjusted penalty (rounded to the nearest 50 cents).

M is the greenhouse penalty for the previous year.

A is the sum of the consumer price index numbers for each quarter of the year previous to the year commencing on 1 July when the adjustment is to be made.

B is the sum of the consumer price index numbers for each quarter of the year 2 years previous to the year commencing on 1 July when the adjustment is to be made.

- (2) In this clause:

consumer price index has the same meaning as it has in section 97CA of the Act.

Division 4 Renewable energy certificates

73D Definitions

In this Division:

relevant acquisition has the same meaning as it has in the *Renewable Energy (Electricity) Act 2000* of the Commonwealth.

renewable power percentage has the same meaning as it has in the *Renewable Energy (Electricity) Act 2000* of the Commonwealth.

73DA Circumstances in which renewable energy certificates may be counted towards greenhouse gas benchmark

- (1) A renewable energy certificate may be counted towards the greenhouse gas benchmark, or to abate a greenhouse gas shortfall, for a year by a benchmark participant (other than an elective participant) if the following are satisfied:
 - (a) the certificate has been surrendered by the participant under the *Renewable Energy (Electricity) Act 2000* of the Commonwealth or the Tribunal is satisfied that an offer to surrender the certificate has been made under that Act for that year,
 - (b) the participant's greenhouse gas benchmark statement specifies the number of renewable energy certificates surrendered or proposed to be surrendered under that Act for that year,
 - (c) the costs of, or associated with, the certificate have not been paid or reimbursed to the participant by an elective participant or otherwise passed on by the participant to an elective participant.
- (2) A renewable energy certificate may be counted towards the greenhouse gas benchmark, or to abate a greenhouse gas shortfall, for a year by an elective participant if the following are satisfied:
 - (a) the certificate has been surrendered by another benchmark participant under the *Renewable Energy (Electricity) Act 2000* of the Commonwealth or the Tribunal is satisfied that an offer to surrender the certificate has been made under that Act for that year,
 - (b) the elective participant's greenhouse gas benchmark statement specifies the number of renewable energy certificates proposed to be counted for that year,
 - (c) the costs of, or associated with, the certificate have been paid by or reimbursed by the elective participant to another benchmark participant or have been otherwise passed on to the elective participant by another benchmark participant,

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- (d) evidence satisfactory to the Tribunal of the matters referred to in paragraph (c) has been provided to the Tribunal with the elective participant's greenhouse gas benchmark statement.

73DB Limit on number of renewable energy certificates that may be counted

- (1) The maximum number of renewable energy certificates that may be counted by a benchmark participant towards the participant's greenhouse gas benchmark in a year is the number calculated in accordance with this clause.
- (2) In the case of a benchmark participant that is a market customer (other than a retail supplier), the total number of the certificates is calculated by multiplying the total amount in MWh of the participant's relevant acquisitions of electricity purchased for use in this State in the year concerned by the renewable power percentage for the year and rounding the result to the nearest MWh.
- (3) In the case of a benchmark participant that is a retail supplier or a participant referred to in section 97BB (1) (b) of the Act, the total number of the certificates is calculated:
 - (a) by multiplying the total amount in MWh of the participant's relevant acquisitions of electricity purchased for use in this State in the year concerned by the renewable power percentage for the year and rounding the result to the nearest MWh, and
 - (b) by subtracting from that amount the number of any certificates of a kind referred to in clause 73DA (2) (c) applicable to the year.
- (4) In the case of an elective participant, the total number of the certificates is calculated:
 - (a) if electricity is purchased at a connection point located in a distribution network, by multiplying the total amount in MWh of electricity purchases related to the electricity load covered by the election in the year concerned by the renewable power percentage for the year and by the distribution loss factor applicable to the

connection point and rounding the result to the nearest MWh, or

- (b) if electricity is not so purchased, by multiplying the total amount in MWh of electricity purchases related to the electricity load covered by the election in the year concerned by the renewable power percentage for the year and rounding the result to the nearest MWh.

- (5) In this clause:

connection point has the same meaning as it has in the *National Electricity Code*.

distribution network has the same meaning as it has in the *National Electricity Code*.

distribution loss factor has the same meaning as it has in the *National Electricity Code*.

Division 5 Assessment of compliance with greenhouse gas benchmarks

73E Assessment of compliance with greenhouse gas benchmarks

- (1) The assessment of the greenhouse shortfall (if any) and of liability for greenhouse penalty set out in the greenhouse gas benchmark statement of a benchmark participant is, unless another assessment is or has been made by the Tribunal, taken to be the greenhouse shortfall or the liability of the participant for greenhouse penalty for the participant for the year concerned.
- (2) The assessment has effect as if it were a notice of assessment signed by the Tribunal and given to the participant on the day on which the assessment is taken to have been made.
- (3) The assessment is taken to have been made on 1 March in the following year, or the day on which the greenhouse gas benchmark statement is lodged, whichever is the later.

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73EA Default assessments

- (1) The Tribunal may make an assessment of the greenhouse shortfall (if any), and of the liability for greenhouse penalty, for a year of a benchmark participant if the participant fails to lodge a greenhouse gas benchmark statement for the year in accordance with the Act.
- (2) In making an assessment under this section, the Tribunal may:
 - (a) base its assessment on its best estimate of the participant's sale or use of electricity in this State, verified by NEMMCO where possible, and
 - (b) take into account any other matters the Tribunal considers appropriate.

73EB Amendment of assessments

- (1) The Tribunal may at any time amend any assessment of the greenhouse shortfall (if any), and of the liability for greenhouse penalty, for a year of a benchmark participant by making any alterations or additions that the Tribunal thinks necessary, whether or not a greenhouse penalty has been paid for the year.
- (2) If the Tribunal is of the opinion that there has been an avoidance of a greenhouse penalty, the Tribunal may:
 - (a) if of the opinion that the avoidance of the penalty is due to fraud or evasion—at any time, or
 - (b) in any other case—within 1 year from the day on which the assessment is made,amend the assessment by making the alterations or additions that the Tribunal thinks necessary to correct the assessment.
- (3) A benchmark participant may, not later than 1 year from the day on which an assessment is made, apply to the Tribunal for an amended assessment.
- (4) An application by a benchmark participant must be in writing and state the grounds on which it is made.

- (5) A benchmark participant may, for the purposes of an application under this clause or, with the consent of the Tribunal, submit details of abatement certificates sought to be surrendered, and of renewable energy certificates sought to be counted, that have not been submitted previously in respect of the year concerned for consideration for the purposes of an amended assessment.
- (6) The Tribunal may take into account details submitted under subclause (5) when determining whether to amend an assessment.
- (7) A benchmark participant whose liability for a greenhouse penalty is reduced as a result of an amended assessment is entitled to a refund of any additional greenhouse penalty paid under the previous assessment.

73EC Time limits for amended assessments

- (1) An amendment that reduces a benchmark participant's liability to pay a greenhouse penalty is not effective unless it is made within 1 year from the day on which the assessment was made.
- (2) If an assessment has been amended in any particular, the Tribunal may, within 1 year from the day on which a greenhouse penalty became payable under the amended assessment, make, in or in relation to any particular, any further amendment of the assessment that, in the Tribunal's opinion, is necessary to effect any just reduction in the benchmark participant's liability under the assessment.
- (3) If an application is made by a benchmark participant for an amendment of an assessment within 1 year after a greenhouse penalty became payable under that assessment, the Tribunal may amend the assessment even though the period of 1 year has elapsed.

73ED Amended assessments generally

- (1) Nothing in this Division prevents the amendment of an assessment of the greenhouse shortfall (if any), and of the liability for greenhouse penalty, of a benchmark participant to give effect to:
 - (a) the decision on any review or appeal under the Act, or

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- (b) its amendment by reduction of any particular following the participant's objection or pending any review or appeal under the Act.
- (2) A greenhouse penalty payable under an assessment amended under this Division is taken to be payable:
 - (a) if the amendment is wholly or partly as a result of an error by the Tribunal—on the day on which the amended assessment is made, or
 - (b) in any other case—on the day on which a greenhouse penalty became payable under the original assessment.
- (3) An amended assessment is taken to be an assessment for the purposes of the Act and this Regulation.

73EF Notice of assessments

As soon as practicable after an assessment of the greenhouse shortfall (if any), and of the liability for greenhouse penalty, of a benchmark participant is made or amended under this Division, the Tribunal must give written notice of the assessment or amended assessment to the participant.

BY AUTHORITY