



New South Wales

Electricity Infrastructure Investment Amendment (Safeguard) Regulation 2021

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*.

MATT KEAN, MP
Minister for Energy and Environment

Explanatory note

The objects of this Regulation are as follows—

- (a) to further provide for the electricity infrastructure investment safeguard under the *Electricity Infrastructure Investment Act 2020*, Part 6, including in relation to—
 - (i) the consumer trustee's reports about the infrastructure investment objectives, and
 - (ii) how tenders for long-term energy service agreements are conducted, and
 - (iii) the risk management framework prepared by the consumer trustee,
- (b) to further provide for the functions of the infrastructure planner,
- (c) to provide that, if the Australian Energy Regulator (*AER*) is appointed as the regulator under the *Electricity Infrastructure Investment Act 2020*, AER is an authorised officer for the purposes of issuing penalty notices,
- (d) to specify the offences under the *Electricity Infrastructure Investment Act 2020* for which a penalty notice may be issued and specify the penalty notice amount payable.

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1 Name of Regulation

This Regulation is the *Electricity Infrastructure Investment Amendment (Safeguard) Regulation 2021*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Electricity Infrastructure Investment Regulation 2021

[1] Clause 3 Definitions

Insert in alphabetical order in clause 3—

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

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

[2] Clause 13 Calculating maximum demand—the Act, s 12(3)

Insert after clause 13(2)—

(2A) In calculating the maximum demand for a financial year, the energy security target monitor may take into account major constraints on transmission infrastructure across different sub-regions of New South Wales, as specified in the most recent—

- (a) Inputs, Assumptions and Scenarios Report, and
- (b) ISP methodology.

[3] Clause 15 Additional information for calculating firm capacity—the Act, Dictionary, definition of “firm capacity”

Insert after clause 15(3)—

(4) In calculating the firm capacity for a financial year for the purposes of clause 14, the energy security target monitor may take into account major constraints on transmission infrastructure across different sub-regions of New South Wales, as specified in the most recent—

- (a) Inputs, Assumptions and Scenarios Report, and
- (b) ISP methodology.

[4] Part 2B

Insert after Part 2A—

Part 2B Electricity infrastructure investment safeguard—the Act, Part 6

16A Reliability standard—the Act, s 43

For the purposes of the Act, section 43, definition of *reliability standard*, the following are prescribed—

- (a) until 30 June 2025—the interim reliability measure specified in the *National Electricity Rules*, clause 3.9.3C(a1),
- (b) from 1 July 2025—the reliability standard specified in the *National Electricity Rules*, clause 3.9.3C(a).

16B Content of infrastructure investment objective reports by consumer trustee—the Act, s 45

(1) An infrastructure investment objectives report must contain the following—

- (a) how the infrastructure required under the development pathway specified in the report will assist in achieving the infrastructure investment objectives,

- (b) information about the expected timing, staging and sequencing of the construction of—
 - (i) the infrastructure required under the development pathway, and
 - (ii) REZ network infrastructure projects that may be required,
 - (c) a comparative assessment of the merits of constructing long-duration storage infrastructure that exceeds the minimum objective specified in the Act, section 44(3)(b) and firming infrastructure to meet the reliability standard,
 - (d) a forecast of wholesale electricity costs and costs for NSW electricity customers that are due to contributions required to be paid by distribution network service providers under the Act, section 58,
 - (e) details of the current, planned and expected construction and operation of infrastructure for the supply of electricity in New South Wales and the national electricity market,
 - (f) an analysis, including the methodology, of the risks to NSW electricity customers of early or delayed investment in infrastructure to which the Act, Part 6 applies,
 - (g) an estimate of the amount of electricity in gigawatt hours that is equivalent to the gigawatts of capacity required under the minimum objectives specified in the Act, section 44(3), using information in the 2020 Integrated System Plan published by AEMO under the *National Electricity Rules*.
- (2) An infrastructure investment objectives report, other than the first report prepared under the Act, section 45(2)(a), must also contain the following—
- (a) a description of the changes since the previous report to—
 - (i) the development pathway, and
 - (ii) the plan for competitive tenders under the Act, section 45(1)(b),
 - (b) the outcomes of tenders carried out since the previous report, including—
 - (i) the number of persons who made a bid in each tender, including the number of eligible and ineligible bids according to the rules made under the Act, section 47(5), and
 - (ii) the number of LTES agreements recommended by the consumer trustee after each tender, and
 - (iii) the number of LTES agreements entered into,
 - (c) details of the infrastructure constructed, or proposed to be constructed, under LTES agreements entered into, or agreed to be entered into, since the previous report,
 - (d) an assessment of the progress in achieving the minimum objectives specified in the Act, section 44(3),
 - (e) an assessment of the resilience of the NSW electricity system in relation to lulls in variable renewable energy sources, as it relates to the development pathway in the report, including by reference to climate modelling.

16C Preparation of infrastructure investment objectives reports—the Act, s 45(4)

- (1) The consumer trustee must take the following into account in preparing an infrastructure investment objectives report—

- (a) any target breaches identified in the most recent energy security target monitor report,
 - (b) the forecast of unserved energy from the most recent statement of opportunities published by AEMO under the *National Electricity Rules*,
 - (c) the most recent Integrated System Plan published by AEMO under the *National Electricity Rules*,
 - (d) market conditions, including supply chains and labour and capital constraints,
 - (e) the payments required to be made by the scheme financial vehicle under existing and planned LTES agreements,
 - (f) how the development pathway in the infrastructure investment objectives report will contribute to the object of the Act, specified in the Act, section 3(1)(a),
 - (g) the resilience of the NSW electricity system in relation to lulls in variable renewable energy sources, including by reference to climate modelling.
- (2) Subclause (1)(g) does not apply to the first infrastructure investment objectives report prepared under the Act, section 45(2)(a).
- (3) When preparing the development pathway for an infrastructure investment objectives report, the consumer trustee must—
- (a) take into account several scenarios for the construction of generation, long-duration storage and firming infrastructure in New South Wales, and
 - (b) analyse the resilience of the outcomes for each scenario, including in relation to—
 - (i) the reliability of supply, and
 - (ii) the financial exposure risks to NSW electricity customers.
- (4) This clause does not limit the matters the consumer trustee may take into account in preparing an infrastructure investment objectives report.

16D Tendering for LTES agreements—the Act, s 47(3)(a)

- (1) The consumer trustee must conduct a competitive tender in a way that—
- (a) encourages genuine competition between the persons making tender bids, and
 - (b) encourages competition between market participants, and
 - (c) encourages tender bids from persons who are not already parties to LTES agreements, and
 - (d) is transparent, open and fair for all persons making tender bids.
- (2) Subclause (1)(d) does not require the consumer trustee to disclose information the consumer trustee considers confidential or commercially sensitive.
- (3) When conducting a competitive tender, the consumer trustee must consider recent trends and changes in the following—
- (a) electricity infrastructure technology,
 - (b) the national electricity market,
 - (c) the behaviour of customers and market participants.

- (4) The assessment of the financial value of a tender bid must consider the effect of the infrastructure proposed to be constructed and operated under an LTES agreement on the following—
 - (a) wholesale electricity costs,
 - (b) the costs of network infrastructure, including REZ network infrastructure projects, required to support the infrastructure that will be constructed and operated under the LTES agreement,
 - (c) the costs of other services associated with power system security,
 - (d) the payments that will be required to be made by the scheme financial vehicle under LTES agreements,
 - (e) other matters the consumer trustee considers relevant.
- (5) The consumer trustee must—
 - (a) ensure the costs to the consumer trustee of carrying out a competitive tender are reasonable, and
 - (b) minimise the costs of making a tender bid for the persons making tender bids.
- (6) In this clause—

market participant has the same meaning as in the *National Electricity Rules*.
power system security has the same meaning as in the *National Electricity (NSW) Law*.

16E Risk management framework—the Act, s 51(8)

- (1) A risk management framework prepared by the consumer trustee must—
 - (a) mitigate the following risks—
 - (i) the risk that the cash balance of the Fund will not be sufficient to make the payments specified in the Act, section 55(b),
 - (ii) the risk to the financial interests of NSW electricity customers of unexpected or significant increases in the liabilities for payments by the scheme financial vehicle under LTES agreements from year to year, and
 - (b) provide for risk management contracts that mitigate the risks specified in paragraph (a).
- (2) A risk management contract entered into by the scheme financial vehicle under the risk management framework may consist of loans or repayable grants to the scheme financial vehicle.

[5] Clauses 18 and 19

Insert after clause 17—

18 Infrastructure planner recommendations about REZ network infrastructure projects—the Act, s 30(2)

- (1) The infrastructure planner must assess and make recommendations about network operators who may be authorised or directed to carry out a REZ network infrastructure project.
- (2) The infrastructure planner may determine—
 - (a) the extent of the assessment, and
 - (b) how the assessment will be carried out.

19 Penalty notices—authorised officers

- (1) This clause applies if the AER is appointed as the regulator.
- (2) For the purposes of the Act, section 76(6), definition of *authorised officer*, the AER is prescribed.

[6] Schedule 2

Insert after Schedule 1—

Schedule 2 Penalty notice offences

1 Application of Schedule

- (1) For the purposes of the Act, section 76(2)—
 - (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
 - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
 - (a) the limited kind of offence, or
 - (b) an offence committed in the limited circumstances.

Column 1	Column 2	Column 3
Provision	Penalty— corporations	Penalty— individuals
Offences under the Act		
Section 17(1)	\$55,000	\$2,750
Section 18(4)	\$55,000	\$2,750
Section 75(1)	\$22,000	\$1,100