



New South Wales

Electricity Infrastructure Investment Amendment Regulation 2022

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

Explanatory note

The objects of this Regulation are as follows—

- (a) to provide for risk management arrangements associated with the electricity infrastructure investment safeguard,
- (b) to provide for reporting of the financial administration of the electricity infrastructure fund,
- (c) to make arrangements for contribution determinations and contribution orders for the payment of money into the electricity infrastructure fund.

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1 Name of Regulation

This Regulation is the *Electricity Infrastructure Investment Amendment Regulation 2022*.

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—

basis risk, for Part 2B—see clause 16AA.

fixed shape, fixed volume derivative arrangement, for Part 2B—see clause 16AA.

[2] Clause 16AA

Insert before clause 16A—

16AA Definitions

In this Part—

basis risk means the risk arising from differences in the variables between LTES agreements and risk management contracts, including price, volume and timing.

fixed shape, fixed volume derivative arrangement means a derivative arrangement in which—

- (a) the amount paid by an LTES operator or the scheme financial vehicle on the exercise of an option is the difference between—
 - (i) the regional reference price in the wholesale electricity market, and
 - (ii) the fixed price for electricity under the LTES agreement, settled against the delivery of specified amounts of electricity at specified times of day, and
- (b) the LTES operator has financial exposure to the wholesale electricity market.

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

Insert after clause 16D(2)—

- (2A) Before conducting a competitive tender involving an LTES agreement for the construction and operation of generation infrastructure that includes an option to exercise a derivative arrangement that is not a fixed shape, fixed volume derivative arrangement, the consumer trustee must be satisfied that—
 - (a) the arrangement is in the long-term financial interests of NSW electricity customers, and
 - (b) the arrangement allows for the reasonable forecasting of financial impacts to NSW electricity customers, including impacts arising from the volume of electricity produced by the LTES operator throughout the day and over the term of the agreement, and
 - (c) the risks, including the basis risk, associated with the arrangement can be managed under the risk management framework.

[4] Clauses 16E–16G

Omit clause 16E. Insert instead—

16E LTES agreement for generation infrastructure—the Act, s 46(2)(f)

An LTES agreement for the construction and operation of generation infrastructure must give the LTES operator an option to exercise a derivative arrangement that—

- (a) is a fixed shape, fixed volume derivative arrangement, or
- (b) is a kind of arrangement the consumer trustee is satisfied—
 - (i) is in the long-term financial interests of NSW electricity customers, and
 - (ii) allows for the reasonable forecasting of financial impacts to NSW electricity customers, including impacts arising from the volume of electricity produced by the LTES operator throughout the day and over the term of the agreement, and
 - (iii) has risks, including basis risk, that can be managed under the risk management framework.

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

- (1) A risk management framework must mitigate the following risks—
 - (a) the risk that the cash balance of the Fund will not be sufficient to make the payments specified in the Act, section 55(b),
 - (b) the risk to the financial interests of NSW electricity customers of unexpected or significant increases in liabilities for payments by the scheme financial vehicle under LTES agreements from year to year,
 - (c) the risk of a reduction in the liquidity of the wholesale electricity market, excluding the spot market within the meaning of the *National Electricity Rules*, if options under LTES agreements are exercised,
 - (d) the risk that significant increases to contribution determinations under the Act, section 56 will be required to maintain a prudent cash balance for the Fund,
 - (e) the basis risk to the scheme financial vehicle.
- (2) A risk management framework must also—
 - (a) include information about how the consumer trustee will implement the framework, including details of policies and guidelines to be developed by the consumer trustee, and
 - (b) provide for a cap on the basis risk to the scheme financial vehicle aggregated across all risk management contracts, and
 - (c) provide for the scheme financial vehicle to enter into risk management contracts to mitigate the risks specified in the framework, and
 - (d) require the scheme financial vehicle to demonstrate to the consumer trustee how the basis risk arising from a risk management contract that is a derivative arrangement will be managed, and
 - (e) set out the requirements for the scheme financial vehicle to report to the consumer trustee about—
 - (i) the overall performance of the framework, and
 - (ii) breaches of the framework and risk management contracts.
- (3) If a risk management contract provided for by the risk management framework is a derivative arrangement, the scheme financial vehicle must not enter into the contract unless satisfied that entering into the contract—

- (a) is a reasonable and appropriate way to mitigate a risk specified in the framework, and
 - (b) is in the long-term financial interests of NSW electricity customers, and
 - (c) will not result in the scheme financial vehicle exceeding the cap on basis risk provided for by the framework.
- (4) A risk management contract entered into by the scheme financial vehicle under the risk management framework may, but is not required to, include loans or repayable grants to the scheme financial vehicle.
- (5) To avoid doubt, subclause (1) does not limit the risks, and in particular the risks to the financial interests of NSW electricity customers, that may be addressed by a risk management framework.

16G Renewal or extension of risk management contract—the Act, s 52(3)

A risk management contract may not be renewed or extended if, at the time of the renewal or extension, the risk management framework does not permit the scheme financial vehicle to enter into the contract.

[5] Part 2C

Insert before Part 3—

Part 2C Electricity infrastructure fund

16H Financial reporting by scheme financial vehicle—the Act, s 53(3)

- (1) The scheme financial vehicle must, as soon as practicable after the end of each financial year, prepare a financial report about the Fund.
- (2) The financial report must—
 - (a) be prepared in accordance with the Australian Accounting Standards, and
 - (b) include information on the net exposure of the scheme financial vehicle to the wholesale electricity market under—
 - (i) LTES agreements, and
 - (ii) risk management contracts that are derivative arrangements.
- (3) The scheme financial vehicle must prepare monthly records of payments into and from the Fund.
- (4) In this clause—
Australian Accounting Standards means the standards issued by the Australian Accounting Standards Board, as in force from time to time.

16I Contribution determination—matters to be taken into account—the Act, s 56(6)

- (1) In making a contribution determination, the regulator must take the following into account—
 - (a) the need to limit variability in contribution determinations from year to year,
 - (b) the equitable allocation of the contribution determination between distribution network service providers based on each provider's—
 - (i) volumetric energy delivery in the previous financial year, and
 - (ii) peak demand in the previous financial year,

- (c) the need for the scheme financial vehicle to be able to meet its liabilities as they fall due,
 - (d) information provided to the regulator by the consumer trustee, the financial trustee, the infrastructure planner or the Tribunal.
- (2) In this clause—

peak demand means the aggregate amount of actual, non-coincident and raw electricity demand, measured in megavolt amps, at the zone substation level and at the trading interval when the aggregate amount is the highest.

volumetric energy delivery means the measured or estimated amount of electricity delivered to electricity customers from a distribution network service provider's network, measured in gigawatt hours at the appropriate customer charging location.

16J Payment of contribution by distribution network service provider—the Act, s 58(2)

A contribution order must specify that the amount the distribution network service provider is to pay into the Fund for a financial year is to be paid in 4 equal instalments payable on or before each of the following—

- (a) 1 November,
- (b) 1 February,
- (c) 1 May,
- (d) 1 August.

16K Provision of information to regulator—the Act, ss 60(4), 61(2) and 63(4)

The consumer trustee, the financial trustee and the infrastructure planner must, if requested to do so by the regulator, provide information to the regulator that the regulator considers reasonably necessary to enable the regulator to make a contribution determination.