



New South Wales

# Electricity Infrastructure Investment Amendment (Miscellaneous) 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 object of this Regulation is to provide for the following—

- (a) the carrying out of network infrastructure projects,
- (b) long-term energy service agreements between the scheme financial vehicle and infrastructure operators,
- (c) contributions by distribution network service providers to the electricity infrastructure fund,
- (d) other minor matters.

## **Electricity Infrastructure Investment Amendment (Miscellaneous) Regulation 2022**

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### **1 Name of Regulation**

This Regulation is the *Electricity Infrastructure Investment Amendment (Miscellaneous) 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—

*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.

*NSW region*, for Part 5—see clause 22.

### [2] Clause 3, definitions of “basis risk” and “fixed shape, fixed volume derivative arrangement”

Omit “for Part 2B—see clause 16AA” wherever occurring.

Insert instead “for Part 5—see clause 22”.

### [3] Part 2A, heading

Omit the heading. Insert instead—

## Part 3 Energy security targets

### [4] Part 4

Insert after clause 16—

## Part 4 Network infrastructure projects

### 17 Classes of network infrastructure

For the Act, Dictionary, definition of *REZ network infrastructure project*, paragraph (b), the classes of network infrastructure are as follows—

- (a) class 1—transmission assets within the meaning of the *National Electricity Rules*,
- (b) class 2—distribution assets within the meaning of the *National Electricity Rules*,
- (c) class 3—network infrastructure that is—
  - (i) not owned or controlled by a network operator, and
  - (ii) used to provide network services within the meaning of the *National Electricity Rules*,
- (d) class 4—network infrastructure that—
  - (i) provides for the continuous and safe scheduling, operation and control of the power system within the meaning of the *National Electricity Rules*, and
  - (ii) is not class 1 or 2.

**18 Consumer trustee may give advice and recommendations about network infrastructure projects—the Act, s 60(4)(c)**

- (1) The consumer trustee may, on the request of a relevant person, give the relevant person advice about a network infrastructure project.
- (2) The consumer trustee may also give the advice to other relevant persons.
- (3) In this clause—  
*relevant person* means the following—
  - (a) the Minister,
  - (b) the infrastructure planner,
  - (c) the Energy Corporation.

**19 Recommendations by consumer trustee about network infrastructure projects—the Act, s 66(5)(d)**

The consumer trustee must not make a recommendation under the Act, section 31(1)(a) that the Minister give a direction under the Act, section 32 unless the consumer trustee is satisfied the direction is reasonably necessary to achieve the infrastructure investment objectives.

**20 Directions to carry out network infrastructure projects—the Act, s 32(2)(f)**

- (1) A direction given by the Minister under the Act, section 32 must—
  - (a) specify the grounds on which the Minister is satisfied giving the direction is consistent with the objects of the Act, and
  - (b) contain other matters the Minister considers relevant.
- (2) A direction given by the Minister under the Act, section 32 that a network operator carry out a REZ network infrastructure project must also specify—
  - (a) the class of the network infrastructure as specified in clause 17, and
  - (b) the technical specifications for the network infrastructure project set out in a recommendation by the infrastructure planner to the consumer trustee under the Act, section 30.

**21 Transfer of network infrastructure—the Act, s 42**

- (1) A person (the *transferee*) to whom network infrastructure is transferred is taken to be a network operator to whom the Act, Part 5, Division 3 applies if—
  - (a) the network infrastructure is transferred from a network operator (the *transferor*), and
  - (b) the transferor is subject to an authorisation in relation to the network infrastructure, and
  - (c) the authorisation provider approves the transferee being taken to be a network operator to whom the Act, Part 5, Division 3 applies.
- (2) If the Energy Corporation is the infrastructure planner in relation to the transferred network infrastructure—
  - (a) the Energy Corporation may make a recommendation to the authorisation provider in relation to whether to give approval under subclause (1)(c), and
  - (b) the authorisation provider must consider the Energy Corporation's recommendation before giving approval.

- (3) On the approval of the authorisation provider, a determination under the Act, section 38 that, immediately before the approval, applied to the transferor, is taken to apply to the transferee.
- (4) To avoid doubt, the transferee is not entitled to receive amounts paid to the transferor by the scheme financial vehicle before the transfer.
- (5) In this clause—  
**authorisation** has the same meaning as in the Act, section 36.  
**authorisation provider** means—
  - (a) for an authorisation referred to in the Act, section 36(4), definition of **authorisation**, paragraph (a)—the consumer trustee, and
  - (b) for an authorisation referred to in the Act, section 36(4), definition of **authorisation**, paragraph (b) or (c)—the Minister.

**[5] Part 2B, heading**

Omit the heading. Insert instead—

**Part 5 Electricity infrastructure investment safeguard—  
the Act, Part 6**

**[6] Clause 16AA Definitions**

Insert in alphabetical order—

**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.

**[7] Clauses 16AA–16D**

Renumber the clauses as clauses 22–26.

**[8] Clauses 27–30**

Insert after clause 26, as renumbered by Schedule 1[7]—

**27 Notice of proposal to exercise option under LTES agreement**

The minimum notice period for the Act, section 46(2)(d) is 6 months before the exercise of the option.

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

- (1) A person may not make a tender bid in a competitive tender for an LTES agreement for infrastructure if—
  - (a) the infrastructure is not connected, or proposed to be connected, to network infrastructure in the NSW region, or
  - (b) an access right for the infrastructure has already been conferred on the person under an access scheme.
- (2) Subclause (1)(b) does not apply if the consumer trustee is satisfied there are exceptional circumstances.
- (3) In this clause—  
**exceptional circumstances** means circumstances specified by the consumer trustee before conducting the competitive tender.

## **29 Tender rules**

- (1) Rules made under the Act, section 47(5) dealing with eligibility criteria for making a tender bid for generation infrastructure or long-duration storage infrastructure must not restrict—
  - (a) the location in the NSW region in which the infrastructure may be constructed or operated, or
  - (b) the type of technology or fuel that may be used to construct or operate the infrastructure.
- (2) Rules made under the Act, section 47(5) may provide for the matters specified in subclause (1) to be considered in the assessment of a tender bid.
- (3) For the Act, section 47(5)(g), the rules must deal with the assessment of a tender bid against the non-financial value criteria for LTES agreements.

## **30 Recommendations about LTES agreements**

- (1) The consumer trustee may include the following information in a recommendation to the scheme financial vehicle under the Act, section 48—
  - (a) information obtained or produced during a competitive tender process,
  - (b) information obtained or produced during the consumer trustee's assessment of a tender bid, including information obtained or produced by a person acting at the direction of the consumer trustee.
- (2) Subclause (1)(b) applies only if the information was obtained or produced for the benefit of the consumer trustee and the scheme financial vehicle.
- (3) When making a recommendation about an LTES agreement, the consumer trustee must take into account the non-financial value criteria for LTES agreements.

### **[9] Clauses 16E–16G**

Renumber the clauses as clauses 31–33.

### **[10] Part 2C, heading**

Omit the heading. Insert instead—

## **Part 6 Electricity infrastructure fund**

### **[11] Clauses 16H and 16I**

Renumber the clauses as clauses 34 and 35.

### **[12] Clauses 36 and 37**

Insert after clause 35, as renumbered by Schedule 1[11]—

#### **36 Notification of contribution determinations—the Act, s 64(4)**

The regulator must, within 1 week after a contribution determination is published in the Gazette, give each distribution network service provider a notice setting out the percentage of the contribution determination relating to LTES agreements for generation infrastructure.

**37 Recovery of amounts payable under contribution orders—the Act, s 58(6)**

- (1) A distribution network service provider must calculate the part of the amount payable by the provider under a contribution order that is attributable to each exempt customer (the *relevant component*).
- (2) A distribution network service provider is authorised to recover the relevant component from an exempt customer if the distribution network service provider gives the exempt customer the following credit against the charges payable by the exempt customer—
  - (a) for an exempt customer who uses electricity supplied by the distribution network service provider to produce green hydrogen—
    - (i) if the applicable reference year is before 2029—90% of the relevant component, or
    - (ii) if the applicable reference year is 2029—60% of the relevant component, or
    - (iii) if the applicable reference year is 2030—30% of the relevant component,
  - (b) for an exempt customer who uses electricity supplied by the distribution network service provider in an industry that is both emissions intensive and trade exposed—90% of the part of the relevant component that is attributable to LTES agreements for generation infrastructure.

- (3) In this clause—

*exempt customer* means a person who, under the *Electricity Supply Act 1995*, Schedule 4A, clause 22 is, for an electricity load, exempt from the energy savings scheme established by that Schedule.

*green hydrogen* has the same meaning as in the *Electricity Supply Act 1995*, Schedule 4A, Part 1.

*reference year* means the reference year identified in an order under the *Electricity Supply Act 1995*, Schedule 4A, clause 22.

**[13] Clauses 16J and 16K**

Renumber the clauses as clauses 38 and 39.

**[14] Part 3 Miscellaneous**

Renumber and relocate the Part as Part 7 and renumber the clauses in the Part appropriately.