



New South Wales

# Electricity Infrastructure Investment Amendment (Revenue Determinations) 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) long-term energy service agreements that show outstanding merit,
- (b) matters the infrastructure planner must take into account when exercising certain functions,
- (c) the functions of the regulator,
- (d) assessments and recommendations by the infrastructure planner,
- (e) revenue determinations made by the regulator,
- (f) other minor and consequential amendments.

## **Electricity Infrastructure Investment Amendment (Revenue Determinations) Regulation 2022**

under the

Electricity Infrastructure Investment Act 2020

### **1 Name of Regulation**

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

*authorisation* has the same meaning as in the Act, section 36.

*competitive assessment process* means a process carried out by the infrastructure planner under clause 45 to competitively assess persons who apply to carry out all or part of—

- (a) a REZ network infrastructure project, or
- (b) a priority transmission infrastructure project.

*revenue determination* means a determination made by the regulator under the Act, section 38 in relation to a network operator subject to an authorisation.

*transmission efficiency test* means the transmission efficiency test under the Act, section 38(4).

### [2] Clause 3, definition of “NSW region”

Omit the definition. Insert instead—

*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.

### [3] Clause 19, heading

Omit “the Act, s 66(5)(d)”. Insert instead “the Act, ss 60(4)(c) and 66(5)(d)”.

### [4] Clause 19(2)

Insert at the end of clause 19—

- (2) The consumer trustee is not required to consider technical information when considering the infrastructure planner’s recommendations about a REZ network infrastructure project under the Act, section 31, other than technical information—
  - (a) specified in clause 44, and
  - (b) provided to the consumer trustee in the infrastructure planner’s recommendation.

### [5] Clause 21 Transfer of network infrastructure—the Act, s 42

Omit clause 21(5), definition of *authorisation*.

### [6] Clause 22 Definitions

Omit the definition of *NSW region*.

### [7] Clause 26A

Insert after clause 26—

#### 26A LTES agreement showing outstanding merit—the Act, s 48(4)

- (1) For the Act, section 48(4)(a), a circumstance in which an LTES agreement shows outstanding merit includes the consumer trustee being satisfied the agreement shows more merit than other LTES agreements for generation infrastructure recommended by the consumer trustee.

- (2) For the Act, section 48(4)(b), the consumer trustee must take the following into account in making a recommendation that relates to generation infrastructure specified in the Act, section 43(1)(a) that is not, or will not be, part of a renewable energy zone—
- (a) the long-term financial interests of NSW electricity customers,
  - (b) how the LTES agreement contributes to achieving the infrastructure investment objectives,
  - (c) the non-financial value criteria of the LTES agreement,
  - (d) the impact of generation infrastructure under the LTES agreement on congestion in the NSW region.

**[8] Part 7, heading**

Omit the heading. Insert instead—

## **Part 7 Administration**

**[9] Clauses 41 and 42 and Parts 8–10**

Omit clauses 41 and 42. Insert instead—

**41 Considerations for infrastructure planner—the Act, s 63**

In exercising functions under the Act, Part 5, the infrastructure planner must take the following into account—

- (a) guidelines issued by the Minister under the Act, section 4,
- (b) the plan approved by the Minister under the Act, section 8.

**42 Functions of regulator—the Act, s 64(4)(b)**

- (1) The regulator must—
- (a) issue guidelines for network operators about the following—
    - (i) the legal separation of the entity through which a network operator conducts regulated activities from any other entity through which it conducts business,
    - (ii) the establishment and maintenance of consolidated and separate accounts for regulated activities and other activities conducted by the network operator,
    - (iii) the limitations on the flow of information from or within the network operator if there is the potential for a competitive advantage or disadvantage to arise, and
  - (b) set standards about the legal and functional separation of the regulated activities of a network operator from other activities of the network operator, and
  - (c) monitor compliance by network operators with the standards.
- (2) In this clause—  
*regulated activities*, of a network operator, means activities for which the network operator is paid under a revenue determination.

## Part 8 Assessments and recommendations by infrastructure planner

### 43 Matters requiring assessment and recommendations—the Act, ss 30 and 63(4)

- (1) The infrastructure planner must assess and make recommendations about the following—
  - (a) proposed REZ network infrastructure projects,
  - (b) priority transmission infrastructure projects in relation to which the infrastructure planner is appointed,
  - (c) network operators who may be authorised or directed to carry out—
    - (i) a REZ network infrastructure project, or
    - (ii) a priority transmission infrastructure project,
  - (d) other persons who may assist the network operator to carry out—
    - (i) a REZ network infrastructure project, or
    - (ii) a priority transmission infrastructure project,
- (2) The infrastructure planner may decide—
  - (a) the extent of an assessment under subclause (1), and
  - (b) how the assessment will be carried out, including whether to carry out a competitive assessment process.
- (3) An assessment and recommendation made by the infrastructure planner in relation to a priority transmission infrastructure project must be provided to the Minister.

**Note—** An assessment and recommendation about a REZ network infrastructure project must be provided to the consumer trustee under the Act, section 30(1).
- (4) For the purposes of the Act, section 34(2)(d), the Minister must consider an assessment and recommendation by the infrastructure planner before giving—
  - (a) a direction under the Act, section 32(1)(b), or
  - (b) an authorisation under the Act, section 36(2).

### 44 Technical specifications for REZ network infrastructure projects—the Act, s 30

The infrastructure planner's assessment and recommendations about a REZ network infrastructure project must deal with the following—

- (a) technical specifications about the following—
  - (i) proposed routes of the network infrastructure, including substation locations,
  - (ii) connections between proposed and existing network infrastructure,
  - (iii) the operating voltages and network capacity of the network infrastructure,
- (b) how the project will ensure the safe operation of the network infrastructure and the reliability and security of electricity supply,
- (c) how the project will meet the system strength requirements under the *National Electricity Rules* for the NSW region,
- (d) if the project includes class 3 network infrastructure—details of the person who is proposed to own or control the network infrastructure.

**45 Competitive assessment process—the Act, ss 30(5)(a) and 63(4)**

- (1) The infrastructure planner may carry out a competitive assessment process in relation to—
  - (a) a proposed REZ network infrastructure project, or
  - (b) a priority transmission infrastructure project in relation to which the infrastructure planner is appointed.
- (2) The competitive assessment process must involve a request from the infrastructure planner for a binding bid from—
  - (a) 2 or more network operators proposing to carry out all or part of the project, or
  - (b) 2 or more persons who will assist network operators to carry out all or part of the project.
- (3) The infrastructure planner must, for network operators and other persons who may be requested to make a binding bid, develop—
  - (a) eligibility criteria, and
  - (b) a selection process.
- (4) Before and during a competitive assessment process, the infrastructure planner must—
  - (a) consult with the regulator, and
  - (b) provide the regulator with information about and obtained from the competitive assessment process, if requested.
- (5) In the exercise of the regulator’s functions under the Act, Part 5, the regulator may rely on and adopt information provided to the regulator by the infrastructure planner if—
  - (a) the infrastructure planner obtained the information from a competitive assessment process, and
  - (b) the regulator is satisfied that the competitive assessment process was genuine and appropriate.

**Part 9 Revenue determinations**

**Division 1 Making revenue determinations**

**46 Principles for regulator—the Act, s 37(1)(e)**

- (1) The following principles are prescribed—
  - (a) a genuine and appropriate competitive assessment process—
    - (i) results in the costs of carrying out an infrastructure project being prudent, efficient and reasonable, and
    - (ii) provides incentives to promote economic efficiency, and
    - (iii) results in revenue for the ongoing ownership, control and operation of the infrastructure project being commensurate with the regulatory and commercial risks,
  - (b) a network operator is entitled to recover the following—
    - (i) prudent, efficient and reasonable costs incurred by the network operator in complying with a regulatory requirement,
    - (ii) payments required to be made by the network operator to the infrastructure planner under a contractual arrangement, if the

network operator was required to enter the contractual arrangement under the relevant authorisation,

- (iii) reasonable costs incurred by the network operator, as assessed by the regulator, if the regulator fails to make a revenue determination within the time period specified in clause 50.
- (2) The regulator must, when assessing reasonable costs for the purposes of subclause (1)(b)(iii), take into account whether the network operator contributed to the delay.
  - (3) In this clause—  
**regulatory requirement** for a network operator means a requirement imposed on the network operator by the following—
    - (a) the Act or this Regulation,
    - (b) the *National Electricity (NSW) Law* or the *National Electricity Rules*,
    - (c) an Act, including an instrument made under the Act, that—
      - (i) imposes a tax or levy, or
      - (ii) relates to the protection of the environment, or
      - (iii) regulates the use of land, or
      - (iv) otherwise materially affects the carrying out of the infrastructure project by the network operator.

**47 Guidelines about revenue determinations—the Act, s 38(10)(a)**

The regulator must publish guidelines on its website about the exercise of the regulator's functions under the Act, Part 5.

**48 Network operator to give information to regulator—the Act, s 38(10)(b) and (c)**

- (1) A network operator must give the regulator the information about the proposed amounts payable to the network operator for carrying out an infrastructure project that the regulator reasonably requires to exercise the regulator's functions under the Act, Part 5.
- (2) The information must be given before a revenue determination is made in relation to the network operator.
- (3) The network operator must prepare the information in accordance with—
  - (a) the guidelines published by the regulator about the transmission efficiency test, and
  - (b) the guidelines published by the regulator under clause 47, and
  - (c) other requirements notified by the regulator to the network operator.
- (4) The regulator must take into account the information given by the network operator when—
  - (a) calculating the transmission efficiency test, and
  - (b) making a revenue determination

**49 Consultation with infrastructure planner—the Act, s 38(10)(a)**

- (1) The regulator must consult the infrastructure planner before making a revenue determination.
- (2) The infrastructure planner must give the regulator all information about an infrastructure project that the regulator considers necessary to make the

revenue determination, including information about or obtained from a competitive assessment process.

**50 Timing for making revenue determinations—the Act, s 38(10)(a)**

- (1) The regulator must make a revenue determination in relation to a network operator within the following period after the regulator has received the information from the network operator required by clause 48—
  - (a) for a determination made as a result of a competitive assessment process—42 business days,
  - (b) otherwise—126 business days.
- (2) The regulator may, by written notice to the network operator, extend the time period under subclause (1)(a) by a further 42 business days if the regulator is satisfied that the extension is reasonably necessary because—
  - (a) the revenue determination is complex, and
  - (b) some of the information from the network operator was obtained other than from a competitive assessment process.
- (3) As soon as practicable after the regulator fails to make a revenue determination within the period required by this clause, the regulator must—
  - (a) prepare a report that specifies—
    - (i) the reasons for the failure, and
    - (ii) the date by which the regulator expects to make the revenue determination, and
  - (b) give the report to the Minister, and
  - (c) publish the report on the regulator’s website.

**Division 2 Content and publication**

**51 Adjustment of amounts—the Act, ss 38(10)(f) and 40**

- (1) A revenue determination may include provision for the adjustment of any amount included in the revenue determination, whether or not the amount relates to a capital cost.
- (2) A provision in a revenue determination for adjustment may specify the following—
  - (a) that a particular adjustment must be carried out at particular times or in particular circumstances,
  - (b) that a particular adjustment may or may not require the revenue determination to be reviewed and remade.  
**Example—**An adjustment may be made for inflation without a review or remake of the revenue determination. The occurrence of a significant event may require the revenue determination to be reviewed and remade.
- (3) All adjustments must be carried out in accordance with—
  - (a) the guidelines issued under clause 47, and
  - (b) if the revenue determination was made as a result of a competitive assessment process—the contractual arrangements the network operator entered into as required under the relevant authorisation.
- (4) In reviewing and remaking a determination for the purposes of adjustment, the regulator may adopt, without recalculation, the existing capital costs



calculated using the transmission efficiency test for the previous determination.

**52 Information to be included in revenue determination—the Act, s 38(10)(d)**

- (1) A revenue determination must include a schedule of the amounts required to be paid to the network operator.
- (2) The schedule must—
  - (a) set out each amount required to be paid and the date on which the amount must be paid, and
  - (b) if the revenue determination was made as a result of a competitive assessment process—correspond with the term of the contractual arrangements that the network operator enters as required under the relevant authorisation.

**53 Publication of revenue determinations—the Act, s 38(10)(f)**

- (1) The regulator must publish the following on its website—
  - (a) if a revenue determination is made or remade—
    - (i) the revenue determination, and
    - (ii) the reasons for making the revenue determination,
  - (b) if an adjustment is made to a revenue determination under clause 51 that did not require the revenue determination to be reviewed and remade—an updated schedule of amounts required to be paid to the network operator.
- (2) The revenue determination or schedule must be published as soon as reasonably practicable.
- (3) The regulator must consult with the infrastructure planner before publishing a revenue determination on its website.
- (4) The regulator may decide not to publish part of a revenue determination if satisfied it is not appropriate, taking into account the following—
  - (a) the public interest,
  - (b) the extent to which publishing the part of the revenue determination would disclose information that is confidential or commercially sensitive,
  - (c) the effect of publishing the part of the revenue determination on future competitive assessment processes.

**54 Review and remake of revenue determination for errors—the Act, s 40**

- (1) The regulator may review and remake a revenue determination to the extent necessary to correct—
  - (a) a material error, misdescription or miscalculation, or
  - (b) an error resulting from the provision of false or materially misleading information to the regulator.
- (2) Before reviewing or remaking a revenue determination under subclause (1), the regulator must consult the following—
  - (a) the network operator,
  - (b) the consumer trustee,
  - (c) the infrastructure planner,

- (d) other persons the regulator considers appropriate.
- (3) This clause does not require the regulator to review or remake a revenue determination because of a change to a forecast or assumption relied on by the regulator to make the revenue determination.

## **Part 10 Miscellaneous**

### **55 Penalty notices—authorised officers**

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