



New South Wales

Electricity Infrastructure Investment Amendment (Non-Contestable 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 objects of this Regulation are—

- (a) to make various amendments relating to revenue determinations made by the regulator under the *Electricity Infrastructure Investment Act 2020*, and
- (b) to make other minor amendments.

Electricity Infrastructure Investment Amendment (Non-Contestable Revenue Determinations) Regulation 2022

under the

Electricity Infrastructure Investment Act 2020

1 Name of Regulation

This Regulation is the *Electricity Infrastructure Investment Amendment (Non-Contestable 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—

contestable revenue determination means a revenue determination made as a result of a competitive assessment process.

non-contestable revenue determination means a revenue determination made other than as a result of a competitive assessment process.

regulator's guidelines means the guidelines prepared by the regulator about revenue determinations under clause 47.

[2] Clause 46 Principles for regulator—the Act, s 37(1)(e)

Omit clause 46(3). Insert instead—

(3) In this clause—

regulatory requirement, for a network operator, means a requirement imposed on the network operator by a relevant law but does not include a requirement to pay a fine, penalty or compensation for a breach of a requirement imposed on the network operator by a relevant law.

relevant law means 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 that 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.

[3] Clauses 47–47D

Omit clause 47. Insert instead—

47 Regulator's guidelines about revenue determinations—the Act, s 38(10)

- (1) The regulator must—
 - (a) prepare guidelines setting out how the regulator will exercise functions under the Act, Part 5, and
 - (b) publish the regulator's guidelines on the regulator's website.
- (2) The regulator's guidelines must be consistent with the Act and this Regulation.
- (3) Different regulator's guidelines may be made for contestable revenue determinations and non-contestable revenue determinations.

47A Regulator's guidelines about non-contestable revenue determinations—the Act, s 38(10)

- (1) This clause applies to regulator's guidelines for non-contestable revenue determinations.

- (2) The regulator must make a non-contestable revenue determination in accordance with the regulator's guidelines for non-contestable revenue determinations.
- (3) The regulator must—
 - (a) ensure the regulator's guidelines set out how a non-contestable revenue determination will be made by the regulator, and
 - (b) as far as is reasonably practicable, make the regulator's guidelines consistent with the *National Electricity Rules*, Chapter 6A as that Chapter applies to the AER making a transmission determination.
- (4) The regulator's guidelines for non-contestable revenue determinations must deal with matters set out in the *National Electricity Rules*, Chapter 6A, including the following—
 - (a) the building blocks approach,
 - (b) the regulatory asset base,
 - (c) return on capital,
 - (d) depreciation,
 - (e) the estimated cost of corporate income tax,
 - (f) forecast operating expenditure,
 - (g) forecast capital expenditure,
 - (h) reopening of a revenue determination for capital expenditure,
 - (i) network support pass through,
 - (j) cost pass through.
- (5) The regulator's guidelines for non-contestable revenue determinations must not deal with the following matters under the *National Electricity Rules*, Chapter 6A—
 - (a) pricing,
 - (b) benchmarking reports,
 - (c) ring-fencing arrangements,
 - (d) shared assets,
 - (e) the X-factor,
 - (f) small-scale incentive schemes,
 - (g) demand management innovation allowance mechanism,
 - (h) contingent projects,
 - (i) transmission consultation procedure,
 - (j) removal of assets from the regulatory asset base.

47B Regulator's guidelines about non-contestable revenue determinations must include schemes and models—the Act, s 38(10)

- (1) The regulator's guidelines for non-contestable revenue determinations must include the schemes and models to be used by the regulator in making a non-contestable revenue determination, including the following—
 - (a) an efficiency benefit sharing scheme,
 - (b) a capital expenditure sharing scheme,
 - (c) a post-tax revenue model,
 - (d) a roll forward model.

- (2) The regulator’s guidelines for non-contestable revenue determinations must also include a service target performance incentive scheme to be used by the regulator in remaking a non-contestable revenue determination under the Act, section 40.
- (3) The schemes and models included in the regulator’s guidelines under this clause must be consistent with the equivalent schemes and models under the *National Electricity Rules*, Chapter 6A.

47C Amendment of regulator’s guidelines

- (1) Before amending the regulator’s guidelines, the regulator must—
 - (a) publish the proposed amendment on the regulator’s website for a period of at least 20 business days, and
 - (b) consider any submissions received within the period.
- (2) Subclause (1) does not apply to—
 - (a) the first publication of the regulator’s guidelines under clause 47(1)(b), or
 - (b) an amendment the regulator considers minor or administrative.
- (3) This clause extends to an amendment of a scheme or model included in the regulator’s guidelines.

47D Making non-contestable revenue determinations—the Act, s 38(10)(a)

- (1) This clause applies to the making of a non-contestable revenue determination.
- (2) Before determining the amount for the component under the Act, section 38(2)(a), the regulator must calculate the depreciation using the depreciation schedules prepared in accordance with the *National Electricity Rules*, Chapter 6A.
- (3) The regulator must modify the depreciation schedules for the purposes of subclause (2) if satisfied that it is reasonably necessary to ensure—
 - (a) the revenue determination is consistent with the objects of the Act specified in the Act, section 3(1)(a)–(c), and
 - (b) the network operator is capable of efficiently obtaining finance to carry out the infrastructure project.
- (4) When determining the amount for the component under the Act, section 38(2)(b), the regulator must apply the current rate of return instrument made by the AER under the *National Electricity (NSW) Law*, section 18I, as in force at the time of the revenue determination.
- (5) The regulator must take into account contractual arrangements entered into by a network operator as required under a relevant authorisation for a previous contestable revenue determination if—
 - (a) the regulator is establishing the value of the regulatory asset base for the purposes of a non-contestable revenue determination, and
 - (b) a contestable revenue determination was previously made in relation to all or part of the same network infrastructure.

[4] Clause 49, heading

Insert “**and consumer trustee**” after “**infrastructure planner**”.

[5] Clause 49(1A)

Insert after clause 49(1)—

- (1A) If the revenue determination relates to a REZ network infrastructure project, the regulator must also consult with the consumer trustee.

[6] Clause 49(3)

Insert after clause 49(2)—

- (3) The consumer trustee must give the regulator information about the amount notified to the regulator under the Act, section 31(2) that the regulator considers necessary to make the revenue determination.

[7] Clause 50 Timing for making revenue determinations—the Act, s 38(10)(a)

Omit “a determination made as a result of a competitive assessment process” from clause 50(1)(a).

Insert instead “a contestable revenue determination”.

[8] Clause 50A

Insert before clause 51—

50A Components of non-contestable revenue determinations—the Act, s 38(2)(d)

Allowances for the following are prescribed as components of a non-contestable revenue determination—

- (a) indexation of the regulatory asset base,
- (b) the estimated cost of corporate income tax of the network operator,
- (c) an increase or decrease in the network operator’s revenue resulting from the operation of the schemes included in the regulator’s guidelines under clause 47B(1)(a) and (b) and (2),
- (d) repayment of prudent, efficient and reasonable capital costs not included in the component specified in the Act, section 38(2)(a),
- (e) other risks for which the network operator is not already compensated under the component specified in the Act, section 38(2)(b).

[9] Clause 51 Adjustment of amounts—the Act, ss 38(10)(f) and 40

Insert “, whether or not the revenue determination is reviewed and remade,” after “adjustments” in clause 51(3).

[10] Clauses 51(3)(b)

Omit “if the revenue determination was made as a result of a competitive assessment process”.

Insert instead “for a contestable revenue determination”.

[11] Clause 52 Information to be included in revenue determination—the Act, s 38(10)(d)

Omit clause 52(2)(b). Insert instead—

- (b) for a contestable revenue determination—correspond with the term of the contractual arrangements that the network operator enters as required under the relevant authorisation, and
- (c) for a non-contestable revenue determination—set out the amounts required to be paid for the following 5 years.

[12] Clause 52(3)

Insert after clause 52(2)—

- (3) A non-contestable revenue determination may also include other information the regulator considers appropriate, taking into account the regulator’s guidelines.

[13] Clause 53, heading

Insert “**and related information**” after “**determinations**”.

[14] Clause 53(5) and (6)

Insert after clause 53(4)—

- (5) The regulator may also publish on its website information given to the regulator under clause 48 that relates to a non-contestable revenue determination.
- (6) The regulator must not publish information under subclause (5) if satisfied that the information is confidential or commercially sensitive.