



New South Wales

Electricity Infrastructure Investment Amendment (Cost Recovery) 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 insert a new Division in the *Electricity Infrastructure Investment Regulation 2021* dealing with cost recovery for infrastructure project costs, and
- (b) to provide for the *National Electricity Rules* to be modified to take account of the new Division.

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1 Name of Regulation

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

cost recovery declaration, for Part 9, Division 3—see clause 54B(1).

eligible network operator, for Part 9, Division 3—see clause 54A.

[2] Part 9, Division 3

Insert after clause 54—

Division 3 Cost recovery of infrastructure project costs—the Act, ss 39(2) and 41

54A Meaning of “eligible network operator”

In this Division—

eligible network operator means a network operator who—

- (a) is subject to an authorisation under the Act, Part 5, Division 3, and
- (b) is subject to a non-contestable revenue determination, and
- (c) if the network operator is a distribution network service provider—
 - (i) is subject to an existing distribution determination under the *National Electricity Rules*, Chapter 6, and
 - (ii) provides distribution services to customers in the NSW region, and
- (d) if the network operator is a transmission network service provider—
 - (i) is subject to an existing transmission determination under the *National Electricity Rules*, Chapter 6A, and
 - (ii) provides transmission services to customers in the NSW region.

54B Cost recovery declaration

- (1) The Minister may make a declaration (a *cost recovery declaration*) that an eligible network operator is entitled to receive a cost recovery amount in relation to specified network infrastructure.
- (2) On the commencement of the declaration—
 - (a) the scheme financial vehicle ceases to be required to pay the eligible network operator for the network infrastructure in accordance with a revenue determination by the regulator, and
 - (b) the regulator ceases to be required to make revenue determinations, or to review or remake revenue determinations, in relation to the network infrastructure, and
 - (c) the eligible network operator is entitled to receive a cost recovery amount for the network infrastructure.
- (3) In this clause—

cost recovery amount, for network infrastructure, means an amount under the *National Electricity (NSW) Law* that the network operator is entitled to receive for carrying out the network infrastructure project under the authorisation to which the network operator is subject.

54C Making a declaration

- (1) The Minister may make a cost recovery declaration—
 - (a) on the Minister's own initiative, or
 - (b) on the application of a relevant person for the declaration.
- (2) Before making a cost recovery declaration, the Minister must consider the following—
 - (a) the costs and savings, if the declaration is made, for—
 - (i) the eligible network operator to whom the declaration is proposed to apply, and
 - (ii) the regulator, and
 - (iii) the scheme financial vehicle,
 - (b) the impact of the declaration on the financial interests of electricity customers in the NSW region,
 - (c) anything else the Minister considers relevant.
- (3) Before making a cost recovery declaration, the Minister must—
 - (a) consult with each relevant person for the declaration, and
 - (b) get the written consent of the eligible network operator.
- (4) The cost recovery declaration must be published in the Gazette.
- (5) In this clause—

relevant person, for a declaration, means the following—

 - (a) the eligible network operator to whom the declaration is proposed to apply,
 - (b) the regulator,
 - (c) the infrastructure planner,
 - (d) the consumer trustee.

54D Content of cost recovery declaration

- (1) A cost recovery declaration must—
 - (a) specify the network infrastructure of the eligible network operator to which the declaration applies, and
 - (b) specify whether, for the purposes of the *National Electricity Rules*, the network infrastructure forms part of—
 - (i) the transmission system, or
 - (ii) the distribution system, and
 - (c) classify, for the purposes of the *National Electricity Rules*—
 - (i) services provided by the eligible network operator in relation to the transmission system as transmission services, and
 - (ii) services provided by the eligible network operator in relation to the distribution system as distribution services, and
 - (d) further classify, for the purposes of the *National Electricity Rules*—
 - (i) the services classified as transmission services as—
 - (A) prescribed common transmission services, or
 - (B) prescribed TUOS services, and

- (ii) the services classified as distribution services as direct control services that are standard control services, and
- (e) specify a commencement date for the declaration, which must be a date that is—
 - (i) at the start of a regulatory control period for the eligible network operator, and
 - (ii) at least 2 years after the date on which the declaration is published in the Gazette.
- (2) In this clause—
regulatory control period has the same meaning as in the *National Electricity Rules*.

[3] Clause 58, heading

Omit “s 27”. Insert instead “ss 27 and 41”.

[4] Clause 59 Modifications relating to access scheme cease to apply when scheme ceases

Omit “Schedule 3, Part 1”. Insert instead “Schedule 3.1”.

[5] Schedule 3 Modification of National Electricity Rules

Omit Part 1, heading. Insert instead—

3.1 Modifications relating to access schemes

[6] Schedule 3.2

Insert after Schedule 3.1, as renumbered by item [5]—

3.2 Modifications relating to infrastructure project cost recovery

[1] Clause 6.2.1 Classification of distribution services

Insert after clause 6.2.1(e)—

- (f) A distribution service specified in a cost recovery declaration must be classified as a direct control service.

[2] Clause 6.2.2 Classification of direct control services as standard control services or alternative control services

Insert after clause 6.2.2(e)—

- (f) A direct control service specified in a cost recovery declaration must be classified as a standard control service.

[3] Clause 6.4.3 Building block approach

Insert after clause 6.4.3(a)(5)—

- (5A) the revenue increments or decrements, if any, for that year arising from the application of adjustments made in accordance with the *Electricity Infrastructure Investment Regulation 2021*, clause 51 under a revenue determination,

[4] Clause S6.2.1 Establishment of opening regulatory asset base for a regulatory control period

Insert after clause S6.2.1(e)—

- (e1) For a distribution system of a distribution network service provider for which all or part is network infrastructure subject to a cost recovery declaration, the value of the regulatory asset base must be adjusted in accordance with *Establishment of opening regulatory asset base for a regulatory control period*, published in the Gazette on 2 December 2022.

[5] Clause 6A.5.4 Building blocks approach

Insert after clause 6A.5.4(a)(5A)—

- (5B) the revenue increments or decrements, if any, for that year arising from the application of adjustments made in accordance with the *Electricity Infrastructure Investment Regulation 2021*, clause 51 under a revenue determination,

[6] Clause S6A.2.1 Establishment of opening regulatory asset base for a regulatory control period

Insert after clause S6A.2.1(f)—

- (f1) For a transmission system of a transmission network service provider for which all or part is network infrastructure subject to a cost recovery declaration, the value of the regulatory asset base must be adjusted in accordance with *Establishment of opening regulatory asset base for a regulatory control period*, published in the Gazette on 2 December 2022.

[7] Clause S6A.2.3 Removal of assets from regulatory asset base

Insert after clause S6A.2.3(a)—

- (a1) Despite paragraph (a), the AER may not determine to remove, from the regulatory asset base for a transmission system, the value of an asset or group of assets if the assets comprise network infrastructure subject to a cost recovery declaration.

[8] Chapter 10 Glossary

Insert after the definition of *prescribed common transmission services*, paragraph (b)—

Prescribed common transmission services includes services classified as prescribed common transmission services in a cost recovery declaration.

[9] Chapter 10, definition of “prescribed transmission service”

Insert at the end of paragraph (c)—

or

- (c1) services classified as transmission services in a cost recovery declaration,

[10] Chapter 10, definition of “prescribed TUOS services or prescribed transmission use of system services”

Insert after paragraph (b)—

Prescribed TUOS services includes services classified as prescribed TUOS services in a cost recovery declaration.