



New South Wales

Electricity Infrastructure Investment Amendment (Firming) 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 Part in the *Electricity Infrastructure Investment Regulation 2021* dealing with firming infrastructure, and
- (b) to enable the Environment Protection Authority to be appointed as a regulator, but only to exercise functions under the new Part.

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1 Name of Regulation

This Regulation is the *Electricity Infrastructure Investment Amendment (Firming) 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 after clause 3, definition of *non-financial value criteria*, paragraph (d)—

- (e) for firming infrastructure—the extent to which an LTES agreement contributes to a reduction in scope 1 emissions of greenhouse gas in the NSW electricity sector.

[2] Clause 41A

Insert after clause 41—

41A Appointment of regulator—the Act, s 64(1)

For the Act, section 64(1)(c), the Environment Protection Authority is prescribed, but only for exercising a function in relation to Part 12.

[3] Part 12

Insert before Schedule 1—

Part 12 Firming infrastructure

Division 1 Preliminary

60 Definitions

In this Part—

greenhouse gas has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth.

higher emission firming infrastructure, for a calendar year, means firming infrastructure where the firming infrastructure emissions intensity in the calendar year is higher than the NSW emissions intensity for the calendar year.

LTES operator for firming infrastructure means the LTES operator under the LTES agreement for the firming infrastructure.

NSW carbon credit units means Australian carbon credit units registered for a project area under the *Carbon Credits (Carbon Farming Initiative) Act 2011* of the Commonwealth, section 147 for eligible offset projects in New South Wales.

offset requirement—see clause 62(1).

offset units means—

- (a) NSW carbon credit units, or
- (b) other carbon credit units approved by the regulator.

scope 1 emission has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth.

surrender of offset units means the voluntary cancellation of the units—

- (a) for NSW carbon credit units—in accordance with the *Australian National Registry of Emissions Units Act 2011* of the Commonwealth, Part 6, or
- (b) otherwise—in a way that ensures the units can no longer be transferred.

61 Conditions of LTES agreements for firming infrastructure—the Act, s 46(2)(f)

An LTES agreement for firming infrastructure must contain conditions that—

- (a) set out a framework to require the LTES operator for the firming infrastructure to comply with this Part, and
- (b) will contribute to the reduction of scope 1 emissions of greenhouse gas in the NSW electricity sector, and
- (c) otherwise give effect to the requirements set out in this Part.

Division 2 Offset requirements

62 Offset requirements for firming infrastructure—the Act, s 46(2)(f)

- (1) An LTES operator for firming infrastructure who has been given notice under clause 65(3)(a) requiring the LTES operator to procure and surrender a number of offset units for a calendar year must satisfy the requirement (the *offset requirement*) by procuring and surrendering the offset units.
- (2) The offset units procured and surrendered by the LTES operator must be—
 - (a) NSW carbon credit units, and
 - (b) held in the account of the LTES operator in the Australian National Registry of Emissions Units under the *Australian National Registry of Emissions Units Act 2011* of the Commonwealth.
- (3) An LTES operator who is unable to procure and surrender NSW carbon credit units because NSW carbon credit units are not available may instead satisfy the offset requirement by making a payment to the scheme financial vehicle equal to—
 - (a) the cost of the offset units as estimated by the regulator, and
 - (b) a reasonable administration fee decided by the regulator.
- (4) The LTES operator must—
 - (a) satisfy the offset requirement no later than 3 months after the notice is given, and
 - (b) as soon as practicable after satisfying the offset requirement, give written notice to the regulator that it has been satisfied.

63 Payments must be used to procure offset units—the Act, s 46(2)(f)

- (1) A payment received by the scheme financial vehicle to satisfy the offset requirement must be paid into the Fund.
- (2) The regulator must procure and surrender the offset units required to be procured and surrendered by an LTES operator who made a payment under clause 62(3) instead of procuring and surrendering the offset units.
- (3) If the cost of the procured offset units is different from the cost estimated by the regulator under clause 62(3)(a), the LTES operator must pay, or be refunded, the difference.

Division 3 Calculations

64 Functions of regulator under Division

- (1) If a regulator is not appointed under the Act, section 64, the functions of the regulator under this Division must be exercised by the Environment Protection Authority and not the Tribunal.

- (2) The regulator must—
 - (a) make a calculation under this Division for a calendar year no more than 3 months after the information necessary for the calculation is reported by the Clean Energy Regulator under the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth, section 24, and
 - (b) publish the calculation on the regulator’s website, and
 - (c) provide information about the following for inclusion in the report under the Act, section 70(2)—
 - (i) the calculation,
 - (ii) offset units procured and surrendered under clauses 62 and 63,
 - (iii) payments made under clause 62(3) as adjusted under clause 63(3).
- (3) The regulator may exercise a function under this Division in relation to a calendar year during which an LTES agreement is in force even if at the time the function is exercised the LTES agreement is no longer in force.

65 Regulator must calculate emissions intensity and offset units—the Act, s 64(4)

- (1) For each calendar year commencing before 1 January 2036, the regulator must, for an LTES agreement for firming infrastructure, calculate in accordance with clause 66—
 - (a) the NSW emissions intensity for the calendar year, and
 - (b) the firming infrastructure emissions intensity for the calendar year, and
 - (c) for higher emission firming infrastructure for the calendar year—the number of offset units that must be procured and surrendered by the LTES operator for the firming infrastructure for the calendar year.
- (2) For a calendar year commencing on or after 1 January 2036, the regulator must, for an LTES agreement for firming infrastructure, calculate the number of offset units that must be procured and surrendered by the LTES operator for firming infrastructure to offset all scope 1 emissions of greenhouse gas from the firming infrastructure for the calendar year.
- (3) For higher emission firming infrastructure for a calendar year, the regulator must—
 - (a) give written notice to the LTES operator for the firming infrastructure—
 - (i) as soon as practicable after making a calculation under subclause (1)(c) for the firming infrastructure, and
 - (ii) setting out the number of offset units required to be procured and surrendered, and
 - (b) no more than 2 months after being given notice by the LTES operator under clause 62(4)(b), confirm the LTES operator has—
 - (i) procured and surrendered the offset units, or
 - (ii) paid the required amount to the scheme financial vehicle.

66 Method of calculating emissions intensity and offset units

- (1) The regulator must develop a methodology in accordance with this clause for calculating the following—
 - (a) NSW emissions intensity,
 - (b) firming infrastructure emissions intensity,

- (c) the number of offset units that must be procured and surrendered for firming infrastructure.
- (2) The ***NSW emissions intensity*** for a calendar year must be calculated by—
 - (a) taking the reported amount, in tonnes of carbon dioxide equivalent, of all scope 1 emissions of greenhouse gas by NSW designated generation facilities for the calendar year, and
 - (b) dividing the amount by the reported amount, in megawatt hours, of all electricity generated by NSW designated generation facilities for the calendar year, and
 - (c) expressing the result in tonnes of carbon dioxide equivalent per megawatt hour.
- (3) The ***firming infrastructure emissions intensity*** for firming infrastructure for a calendar year must be calculated by—
 - (a) taking the reported amount, in tonnes of carbon dioxide equivalent, of scope 1 emissions of greenhouse gas by the firming infrastructure for the calendar year, and
 - (b) dividing the amount by the reported amount, in megawatt hours, of the electricity generated by the firming infrastructure for the calendar year, and
 - (c) expressing the result in tonnes of carbon dioxide equivalent per megawatt hour.
- (4) The number of offset units that must be procured and surrendered for firming infrastructure for a calendar year must be calculated by—
 - (a) deducting the NSW emissions intensity for the calendar year from the firming infrastructure emissions intensity for the calendar year, and
 - (b) multiplying the result by the reported amount, in megawatt hours, of the electricity generated by the firming infrastructure for the calendar year.
- (5) If the result of the calculation under subclause (4) is less than zero, the result is taken to be zero.
- (6) If an LTES agreement for firming infrastructure applies for only part of a calendar year, the calculations under this clause must be adjusted proportionally to reflect the proportion of the calendar year.
- (7) In this clause—
 - designated generation facilities*** has the same meaning as in the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth, section 7.
 - NSW designated generation facilities*** means designated generation facilities connected to the NSW region of the national electricity market.
 - reported*** means reported by the Clean Energy Regulator under the *National Greenhouse and Energy Reporting Act 2007* of the Commonwealth, section 24.

67 Emissions intensity of battery is zero

For the purposes of this Division, the firming infrastructure emissions intensity for firming infrastructure is taken to be zero for a calendar year if the electricity generated by the firming infrastructure during the calendar year is zero.