



New South Wales

Electricity Infrastructure Investment Amendment (Network Infrastructure) Regulation 2024

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*.

PENNY SHARPE, MLC
Minister for Energy

Explanatory note

The object of this regulation is to amend the *Electricity Infrastructure Investment Regulation 2021* to establish a framework for the making of revenue determinations for projects that augment existing network infrastructure projects subject to a contestable revenue determination.

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Electricity Infrastructure Investment Act 2020

1 Name of regulation

This regulation is the *Electricity Infrastructure Investment Amendment (Network Infrastructure) Regulation 2024*.

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—

appropriate referenced costs process—see clause 47E(7).

contestable augmentation means a network infrastructure project carried out by a network operator where—

- (a) the project is an augmentation to a network infrastructure project (the *related project*), and
- (b) the network operator is subject to a contestable revenue determination in relation to the related project.

existing contractual arrangements, for a contestable augmentation, means contractual arrangements entered into by the network operator under an authorisation in relation to the related project.

related project, for a contestable augmentation—see the definition of *contestable augmentation*.

[2] Clause 45 Competitive assessment process—the Act, ss 30(5)(a) and 63(4)

Omit clause 45(5). Insert instead—

- (5) If the competitive assessment process is for a contestable augmentation, the infrastructure planner may work with the network operator for the related project when carrying out the functions under subclauses (1)–(4).
- (6) In the exercise of the regulator’s functions under the Act, Part 5, the regulator must rely on and adopt information if—
 - (a) the information was given to the regulator—
 - (i) by the infrastructure planner, or
 - (ii) by the network operator under clause 48(1A)(a), and
 - (b) the infrastructure planner or network operator obtained the information from a competitive assessment process, and
 - (c) the regulator is satisfied the competitive assessment process was genuine and appropriate.

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

Insert after clause 46(1)(b)—

- (c) an appropriate referenced costs 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.

[4] Clause 47A Regulator’s guidelines about non-contestable revenue determinations—the Act, s 38(10)

Insert “, including how the regulator will make a determination under clause 47E(4) for a contestable augmentation” after “by the regulator” in clause 47A(3)(a).

[5] **Clause 47E**

Insert after clause 47D—

47E Making revenue determinations for contestable augmentation—the Act, s 38(10)(a)

- (1) The regulator must determine the amount for the components under the Act, section 38(2) for a revenue determination for a contestable augmentation in accordance with this clause.
- (2) The regulator must determine the amount for the component in accordance with the regulator’s guidelines for contestable revenue determinations if—
 - (a) the costs of the component are derived as a result of a competitive assessment process, and
 - (b) the regulator is satisfied the competitive assessment process was genuine and appropriate.
- (3) The regulator must determine the amount for the component by relying on and adopting information provided by the network operator or infrastructure planner if—
 - (a) subclause (2) does not apply to the component, and
 - (b) the regulator is satisfied—
 - (i) the existing contractual arrangements contain an appropriate referenced costs process, and
 - (ii) the amount is determined using the appropriate referenced costs process.
- (4) The regulator must determine the amount for a component in accordance with the regulator’s guidelines for non-contestable revenue determinations if subclauses (2) and (3) do not apply to the component.
- (5) The regulator, when making a determination under this clause, must take into account—
 - (a) the existing contractual arrangements, including incentive regimes in the contractual arrangements, and
 - (b) any other contract entered into by the network operator under an authorisation in relation to the contestable augmentation, including incentive regimes in the contract.
- (6) A revenue determination for a contestable augmentation is made after each of the amounts for the components determined under this clause is added to make a single determination.
- (7) In this clause—

appropriate referenced costs process means a mechanism in an existing contractual arrangement that the regulator is satisfied is appropriate for wholly or partially determining the amount for a component under a contestable augmentation.

component includes part of a component.

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

Insert after clause 48(1)—

- (1A) A network operator who is subject to an authorisation for a contestable augmentation must give the regulator the following information that the

regulator reasonably requires to exercise the regulator's functions under the Act, Part 5—

- (a) information about and obtained from a competitive assessment process,
- (b) information relevant to determining an amount under clause 47E(3).

[7] Clause 49 Consultation with infrastructure planner and consumer trustee—the Act, s 38(10)(a)

Omit clause 49(2). Insert instead—

- (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—
 - (a) information about or obtained from a competitive assessment process, or
 - (b) information relevant to determining an amount under clause 47E(3).

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

Insert after clause 50(1)(a)—

- (a1) for a revenue determination for a contestable augmentation—84 business days,

[9] Clause 50(2A)

Insert after clause 50(2)—

- (2A) The regulator may, by written notice to the network operator, extend the time period under subclause (1)(a1) by a further 42 business days if the regulator is satisfied the extension is reasonably necessary because—
 - (a) the revenue determination is complex, and
 - (b) the regulator has been unable to satisfy itself of one or more of the matters specified in clause 47E(2)(b) or (3)(b).

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

Insert at the end of clause 51(3)(b)—

- , and
- (c) for a revenue determination for a contestable augmentation—
 - (i) the existing contractual arrangements, and
 - (ii) for an amount determined under clause 47E(2)—another contract entered into by the network operator if—
 - (A) the contract is entered into under an authorisation in relation to the contestable augmentation, and
 - (B) the regulator is satisfied the contract was made following a genuine and appropriate competitive assessment process, and
 - (iii) for an amount determined under clause 47E(3)—adjustments set out in an appropriate referenced costs process.

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

Insert at the end of clause 52(2)(c)—

- , and

- (d) for a revenue determination for a contestable augmentation—
correspond with the term of the existing contractual arrangements.

[12] Clause 53 Publication of revenue determinations and related information—the Act, s 38(10)(f)

Omit clause 53(5). Insert instead—

- (5) The regulator may also publish on its website information given to the regulator under clause 48 that relates to—
 - (a) a non-contestable revenue determination, or
 - (b) a determination under clause 47E(4) for a contestable augmentation.