

National Electricity (New South Wales) (Savings and Transitional) Regulation 1998

[1998-672]



New South Wales

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The provisions displayed in this version of the legislation have all commenced.

Authorisation

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National Electricity (New South Wales) (Savings and Transitional) Regulation 1998



New South Wales

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *National Electricity (New South Wales) (Savings and Transitional) Regulation 1998*.

2 Commencement

This Regulation commences on 13 December 1998.

3 Definitions

In this Regulation:

1995 Act means the *Electricity Supply Act 1995*.

1997 Act means the *National Electricity (New South Wales) Act 1997*.

appointed day means 13 December 1998.

protected contract means a contract referred to in clause 6 (1) (a), (b), (c) or (d), not being a contract that has ceased to be a protected contract as referred to in clause 6 (2).

Treasurer's certificate means a certificate issued by the Treasurer in accordance with clause 7.

4 Notes

The explanatory note and table of contents do not form part of this Regulation.

Part 2 Preservation of limitations of liability arising under NSW wholesale market for electricity

5 Transitional arrangements with respect to certain liabilities affecting electricity

generators

- (1) This clause applies to and in relation to any contract for the supply of electricity that was entered into by Pacific Power or by an electricity generator (within the meaning of the *Energy Services Corporations Act 1995*) before the appointed day, other than a protected contract.
- (2) Despite clause 2 of Schedule 2 to the 1997 Act:
 - (a) section 78 of the *National Electricity (NSW) Law* applies, and
 - (b) section 83 of the *Electricity (Pacific Power) Act 1950* does not apply,for the purposes of any contract to which this clause applies and of any proceedings arising out of, or calling into question any provision of, a contract to which this clause applies.
- (3) This clause does not affect the operation of clause 2 of Schedule 2 to the 1997 Act with respect to a protected contract.

6 Protected contracts

- (1) The following contracts are **protected contracts** for the purposes of this Regulation:
 - (a) the contract known as the **Capral Aluminium Smelter Contract** between Delta Electricity and Capral Aluminium Limited (ACN 004 213 692), being the contract that arises from the agreements between those parties (or their predecessors in title) dated 30 March 1966 and 21 June 1993, together with:
 - (i) any variations of contract agreed to before the appointed day, and
 - (ii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate,
 - (b) the contract known as the **BHP Port Kembla Slab and Plate Products Contract** between Delta Electricity and BHP Steel (AIS) Pty Ltd (ACN 000 019 625), being the contract that arises from the agreements between those parties (or their predecessors in title) dated 24 May 1955, 27 November 1958 and 1 December 1969, together with:
 - (i) any variations of contract arising from the **Combined Port Kembla and Newcastle Supplementary Agreement No 1 of 1998** between Delta Electricity, BHP Steel (AIS) Pty Ltd (ACN 000 019 625) and The Broken Hill Proprietary Company Limited (ACN 004 028 077) dated 19 June 1998, and
 - (ii) any other variations of contract agreed to before the appointed day, and
 - (iii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate,

- (c) the contract known as the **BHP Newcastle Rod and Bar Products Contract** between Delta Electricity and The Broken Hill Proprietary Company Limited (ACN 004 028 077), being the contract that arises from the agreement between those parties (or their predecessors in title) dated 13 August 1959, together with:
 - (i) any variations of contract arising from the **Combined Port Kembla and Newcastle Supplementary Agreement No 1 of 1998** between Delta Electricity, BHP Steel (AIS) Pty Ltd (ACN 000 019 625) and The Broken Hill Proprietary Company Limited (ACN 004 028 077) dated 19 June 1998, and
 - (ii) any other variations of contract agreed to before the appointed day, and
 - (iii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate,
 - (d) the contract known as the **Tomago Aluminium Smelter Contract** between Macquarie Generation and Tomago Aluminium Company Pty Ltd (ACN 001 862 228), being the contract that arises from the agreements between those parties (or their predecessors in title) dated 23 August 1979, 27 April 1981 and 23 January 1991, together with:
 - (i) any variations of contract agreed to before the appointed day, and
 - (ii) such variations of contract agreed to after the appointed day as are the subject of a Treasurer's certificate.
- (2) A protected contract that becomes subject to a variation of contract for which a Treasurer's certificate has not been issued ceases to be a protected contract:
- (a) in the case of a variation of contract that extends the period for which the protected contract will remain in force, on the date on which the protected contract would have ceased to be in force but for the variation, and
 - (b) in the case of a variation of contract that is expressed to have effect on and from a specified date, on that specified date, and
 - (c) in any other case, on the date on which the variation of contract is agreed to,
- or, in the case of a variation of contract of a kind referred to in 2 or more of paragraphs (a), (b) and (c), on the earlier or earliest of the dates ascertained in accordance with those paragraphs.

7 Treasurer's certificates

- (1) The Treasurer may issue a certificate with respect to any variation of contract that is proposed to be agreed to with respect to a protected contract.
- (2) Such a certificate is not to be issued if the Treasurer is of the opinion that the variation

of contract:

- (a) extends the period for which the protected contract will remain in force, or
- (b) substantially affects the operation of, or rights and liabilities under, the protected contract.

Part 3 Winding up of NSW wholesale market for electricity

8 Continuation of unamended Act for purposes of winding up

- (1) Subject to this Part, the provisions of the 1995 Act that are amended or repealed by the 1997 Act (as those provisions were in force immediately before the appointed day) continue to have effect for the purpose only of dealing with matters arising out of the wholesale market for electricity formerly regulated by that Act.
- (2) In particular, for the purpose referred to in subclause (1):
 - (a) any authorisation in force under the 1995 Act immediately before the appointed day remains in force:
 - (i) subject to the same conditions (whether arising by operation of that Act or otherwise) as those to which it was subject immediately before the appointed day, and
 - (ii) despite any condition that purports to terminate the authorisation as a consequence of the commencement of the 1997 Act or the national electricity market referred to in the 1997 Act, and
 - (b) the person who, immediately before the repeal of section 77 of the 1995 Act, was the Market and System Operator under that Act continues to be the Market and System Operator, and
 - (c) any rules, procedures and conditions of wholesale market operation that were in force under section 78 of the 1995 Act immediately before the appointed day continue to have effect in accordance with their terms as if that section had not been repealed, and
 - (d) any powers that, immediately before the appointed day, were exercisable by the Market and System Operator under section 79 of the 1995 Act with respect to the imposition of management fees continue to be exercisable by the Market and System Operator, and
 - (e) any powers that, immediately before the appointed day, were exercisable by the Minister under Schedule 1 to the 1995 Act in connection with a contravention of the requirements of that Act or the regulations under that Act, or the conditions of an authorisation in force under that Act, continue to be exercisable by the Minister, and

- (f) any right of appeal that, immediately before the appointed day, existed under section 95 of the 1995 Act in connection with a decision by the Minister of the kind referred to in paragraph (e) continues to exist.
- (3) The matters in respect of which any management fees referred to in subclause (2) (d) may be charged include:
 - (a) any functions exercised by the Market and System Operator under clause 2A of Schedule 2 to the 1997 Act, and
 - (b) any functions exercised by the Market and System Operator under the rules, procedures and conditions of wholesale market operation referred to in subclause (2) (c).
- (4) This clause does not affect the operation of any provision of the 1995 Act other than those referred to in subclause (1).
- (5) This clause ceases to have effect on the day on which the Minister causes notice to be published in the Gazette that the System Control Fund, the Market Operations Fund and the Market Settlements Fund have been wound up as referred to in clause 2A of Schedule 2 to the 1997 Act.

9 Effect of repeal or expiry of rules, procedures and conditions of wholesale market operation

The repeal or expiry in accordance with their terms of any rules, procedures and conditions of wholesale market operation under section 78 of the 1995 Act:

- (a) does not affect their previous operation, or anything duly suffered, done or commenced under them, and
- (b) does not affect any right, privilege, obligation or liability acquired, accrued or incurred under them.

10 Recovery of management fees

Section 103 of the 1995 Act applies to the recovery by the Market and System Operator (or by any person on behalf of, or in the name of, the Market and System Operator) of any management fee imposed under section 79 of the 1995 Act, whether before or after the appointed day, in the same way as it applies to the recovery by the Minister of a monetary penalty imposed under that Act.

Part 4 Miscellaneous

11 Modification of IPART Determination No 5.3 of 1997

In Determination No 5.3 of 1997 made by the Independent Pricing and Regulatory Tribunal and published in Gazette No 93 of 22 August 1997 at pages 6609–6621, footnote 1 on

page 6617 is taken to read “Fees for market operations and ancillary services charged by TransGrid in accordance with the [Electricity Supply Act 1995](#) or by NEMMCO in accordance with the National Electricity Code.” for the purpose of using factor “F” in the formula for regulating gross margins (as set out on that page) for any period occurring after the appointed day.

12 National electricity market to commence 1.00am New South Wales summer time

Until 1.00am (New South Wales summer time) on the appointed day:

- (a) the 1995 Act, and any other Act amended by the 1997 Act, continue to have effect as if the 1997 Act had not been enacted, and
- (b) the *National Electricity Law* applied by the 1997 Act, the amendments made by the 1997 Act and the savings and transitional provisions effected by the 1997 Act and by this Regulation (this clause excepted) do not have effect.

13 Continuation of IPART Determinations Nos 2.2 and 10 of 1996, Nos 5.3 and 5.4 of 1997 and No 6 of 1998

- (1) Each of the following determinations made by the Independent Pricing and Regulatory Tribunal continues to have effect until the end of 31 January 2000, and is to be read accordingly, despite any provision to the contrary contained in any such determination:
 - (a) Determination No 2.2 of 1996 published in Gazette No 43 of 4 April 1996 at pages 1616–1623, as modified by the determination referred to in paragraph (c),
 - (b) (Repealed)
 - (c) Determination No 5.3 of 1997 published in Gazette No 93 of 22 August 1997 at pages 6609–6621, as modified in accordance with clause 11,
 - (d) Determination No 5.4 of 1997 published in Gazette No 93 of 22 August 1997 at pages 6622–6628, except in so far as it modifies Determination No 10 of 1996 published in Gazette No 1 of 3 January 1997 at pages 29–34,
 - (e) Determination No 6 of 1998 published in Gazette No 171 of 11 December 1998 at pages 9661–9662.
- (2) Each of the following determinations made by the Independent Pricing and Regulatory Tribunal continues to have effect until the end of 30 June 2000, and is to be read accordingly, despite any provision to the contrary contained in any such determination:
 - (a) Determination No 10 of 1996 published in Gazette No 1 of 3 January 1997 at pages 29–34, as modified by the determination referred to in paragraph (b),
 - (b) Determination No 5.4 of 1997 (item 4 (Monopoly Fees) excepted) published in

Gazette No 93 of 22 August 1997 at pages 6622–6628, to the extent to which it modifies the determination referred to in paragraph (a).

- (3) A provision of a determination referred to in subclause (2) ceases to have effect, despite this clause, if the Independent Pricing and Regulatory Tribunal so declares by notice published in the Gazette.

14 Transitional arrangements with respect to certain liabilities affecting electricity supply authorities

For the purposes of clause 1 (2) and (3) of Schedule 2 to the 1997 Act, 31 January 2000 is prescribed in place of 30 June 1999.