

# Electricity Infrastructure Investment Regulation 2021

[2021-102]



New South Wales

## Status Information

### Currency of version

Historical version for 15 July 2022 to 18 August 2022 (accessed 3 July 2024 at 20:24)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### Notes—

- **Staged repeal status**

This legislation is currently due to be automatically repealed under the [Subordinate Legislation Act 1989](#) on 1 September 2026

### Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

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# Electricity Infrastructure Investment Regulation 2021



New South Wales

## Part 1 Preliminary

### 1 Name of Regulation

This Regulation is the *Electricity Infrastructure Investment Regulation 2021*.

### 2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

### 3 Definitions

In this Regulation—

**advocate** means the electricity infrastructure jobs advocate.

**appointed member** means a member of the Board appointed by the Minister under section 7(2)(a) or (c) of the Act.

**authorisation** has the same meaning as in the Act, section 36.

**basis risk**, for Part 5—see clause 22.

**Board** means the board for manufacturing and construction in the NSW renewable energy sector established under section 7 of the Act.

**competitive assessment process** means a process carried out by the infrastructure planner under clause 45 to competitively assess persons who apply to carry out all or part of—

- (a) a REZ network infrastructure project, or
- (b) a priority transmission infrastructure project.

**development pathway** means the development pathway referred to in the Act, section 45(1)(a).

**infrastructure investment objectives report** means a report prepared by the consumer trustee under the Act, section 45(1).

**fixed shape, fixed volume derivative arrangement**, for Part 5—see clause 22.

**joint chairperson** means either of the 2 members appointed as the joint chairperson of the Board under section 7(3) of the Act.

**member** means any member of the Board.

**non-financial value criteria**, for an LTES agreement, means matters that are not directly related to the financial value of the LTES agreement, including the following—

- (a) the use of land,
- (b) community engagement activities undertaken by the LTES operator,
- (c) how the LTES operator will share with the local community the benefits of the construction and operation of infrastructure under the LTES agreement,
- (d) regional economic development in New South Wales.

**NSW region** means the region identified as the New South Wales region in the *Regions Publication*, published by AEMO under the *National Electricity Rules*, clause 2A.1.3.

**plan** has the same meaning as in Part 2 of the Act.

**revenue determination** means a determination made by the regulator under the Act, section 38 in relation to a network operator subject to an authorisation.

**the Act** means the [Electricity Infrastructure Investment Act 2020](#).

**transmission efficiency test** means the transmission efficiency test under the Act, section 38(4).

**Note—**

The Act and the [Interpretation Act 1987](#) contain definitions and other provisions that affect the interpretation and application of this Regulation.

## **Part 2 NSW renewable energy sector board and electricity infrastructure jobs advocate**

### **Division 1 The Board—the Act, s 7(7)**

#### **4 Functions of Board**

- (1) The Board may advise the Minister on any matter to which a plan may relate.
- (2) The Board must review a plan under section 7(4)(b) of the Act at least once every 2

years after the plan is approved by the Minister.

## **5 Objectives of plan**

For the purposes of section 8(1)(d) of the Act, the following objectives are prescribed—

- (a) to protect the financial interests of NSW electricity customers,
- (b) to be consistent with Australia's international trade obligations.

## **6 Term of office**

- (1) An appointed member holds office for a term of 3 years and may be re-appointed.
- (2) A person may not be appointed as an appointed member for more than 9 years in total, whether or not consecutively.

## **7 Members and procedures of the Board**

Schedule 1 contains provisions relating to the members and procedures of the Board.

## **Division 2 The advocate—the Act, s 11(5)**

### **8 Employment and remuneration**

- (1) The office of the advocate is a statutory office and the provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do not apply to the office, except as provided by this clause.
- (2) The following provisions of, or made under, the *Government Sector Employment Act 2013* relating to the employment of Public Service senior executives apply to the advocate—
  - (a) provisions relating to the band in which an executive will be employed,
  - (b) provisions relating to the contract of employment of an executive,
  - (c) provisions relating to the remuneration, employment benefits and allowances of an executive,
  - (d) provisions relating to the termination of employment of an executive.
- (3) For the purposes of applying the provisions of the *Government Sector Employment Act 2013* to the advocate under subclause (2), a reference to the employer of a Public Service senior executive is taken to be a reference to the Minister.

### **9 Vacancy in office**

The office of the advocate becomes vacant if the advocate—

- (a) dies, or

- (b) completes a term of office and is not re-appointed, or
- (c) resigns from the office by written instrument to the Minister, or
- (d) is removed from office, or

**Note—**

The advocate may be removed under the [Government Sector Employment Act 2013](#), section 41 or Part 6.

- (e) becomes bankrupt or insolvent, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of the advocate's remuneration for the creditors' benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence punishable by imprisonment for 12 months or more, or
- (h) is convicted outside of New South Wales of an offence that, if committed in New South Wales, would be punishable by imprisonment for 12 months or more.

**10 Disclosure of pecuniary and other interests**

- (1) This clause applies if—
  - (a) the advocate has a direct or indirect pecuniary or other interest in a matter about which the advocate is advising, or is about to advise, the Minister, and
  - (b) the interest appears to raise a conflict with the proper performance of the advocate's duties in relation to advising on the matter.
- (2) For the purposes of subclause (1), the advocate is not taken to have a pecuniary or other interest if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence the advice the advocate might give to the Minister.
- (3) The advocate must, as soon as possible after the relevant facts have come to the advocate's knowledge, disclose the nature of the interest to the Minister.
- (4) It is sufficient disclosure of the nature of an interest relating to a specified company, body or person that arises after the date of the disclosure if the advocate has disclosed that the advocate—
  - (a) is a member, or is in the employment, of the company or other body, or
  - (b) is a partner, or is in the employment, of the person, or
  - (c) has some other specified interest relating to the company, body or person.
- (5) If a disclosure made under this clause relates to a matter about which the advocate is advising, particulars of the disclosure must be included in the advice to the Minister



about the matter.

### **11 Code of conduct**

The Minister may issue a code of conduct for the advocate.

## **Part 3 Energy security targets**

### **12 Interpretation**

Words used in this Part have the same meaning as in the *National Electricity Rules*.

### **13 Calculating maximum demand—the Act, s 12(3)**

- (1) In calculating the maximum demand for a financial year, the energy security target monitor must—
  - (a) take into account the most recent forecast of maximum demand for sent out generation in New South Wales in summer, as published by AEMO, and
  - (b) adjust the forecast to reflect the maximum demand as generated by generating units in New South Wales in summer.
- (2) In calculating the maximum demand for a financial year, the energy security target monitor must also take into account the forecast of use of distributed energy resources in New South Wales in the financial year, as specified in the most recent statement of opportunities.
- (2A) In calculating the maximum demand for a financial year, the energy security target monitor may take into account major constraints on transmission infrastructure across different sub-regions of New South Wales, as specified in the most recent—
  - (a) Inputs, Assumptions and Scenarios Report, and
  - (b) ISP methodology.
- (3) In this clause—

***distributed energy resource*** means a device, not directly connected to network infrastructure, that can generate or store electricity.

### **14 Calculating firm capacity—the Act, Dictionary, definition of “firm capacity”**

- (1) In calculating the firm capacity for a financial year, the energy security target monitor must take into account the following capacity—
  - (a) the capacity of scheduled generating units in New South Wales in the summer of the financial year,
  - (b) the capacity of semi-scheduled generating units in New South Wales in the

summer of the financial year,

- (c) the capacity of non-scheduled generating units in New South Wales, as the energy security target monitor considers appropriate,
  - (d) the capacity of interconnectors in New South Wales, operating under normal conditions,
  - (e) the capacity from demand response, other than capacity expected to be available under the reliability and emergency reserve trader.
- (2) In calculating the firm capacity for a financial year, the energy security target monitor must also take into account the capacity of the following if, in the energy security target monitor's opinion, the capacity is likely to be available to NSW electricity customers in the financial year—
- (a) generating units listed, at the time of the calculation, as existing or committed on the generation information page,
  - (b) generating units that will be constructed and operated under an LTES agreement,
  - (c) generating units that will be constructed under funding programs run by, or on behalf of, a NSW or Commonwealth government agency,
  - (d) interconnectors for which a revenue determination has been made under rule 6A.4 of the *National Electricity Rules*,
  - (e) interconnectors for which a determination has been made under the Act, section 38,
  - (f) interconnectors under a priority transmission infrastructure project to which a direction under the Act, section 32(1)(b) relates.
- (3) In calculating the firm capacity for a financial year, the energy security target monitor must also take into account information about demand side participation, as specified in the most recent statement of opportunities.

**15 Additional information for calculating firm capacity—the Act, Dictionary, definition of “firm capacity”**

- (1) In calculating the capacity of generating units for the purposes of clause 14, the energy security target monitor must take into account information on the generation information page.
- (2) In calculating the capacity of semi-scheduled generating units and non-scheduled generating units for the purposes of clause 14, the energy security target monitor must take into account—
  - (a) information about the amount of electricity produced, at times of peak demand in

summer over the past three financial years, by generating units that use variable renewable energy sources, for example, the sun, waves and wind, and

- (b) based on the information in paragraph (a)—the amount of electricity likely to be produced, at times of peak demand in summer in the financial year, by generating units that use each variable renewable energy source.
- (3) In calculating the capacity of interconnectors for the purposes of clause 14, the energy security target monitor must take into account information about interconnectors operating under normal conditions, as specified in the most recent—
- (a) Inputs, Assumptions and Scenarios Report, and
  - (b) ISP methodology.
- (4) In calculating the firm capacity for a financial year for the purposes of clause 14, the energy security target monitor may take into account major constraints on transmission infrastructure across different sub-regions of New South Wales, as specified in the most recent—
- (a) Inputs, Assumptions and Scenarios Report, and
  - (b) ISP methodology.

#### **16 Energy security target monitor reports—the Act, s 13**

- (1) In preparing a report under the Act, section 13(1), the energy security target monitor must take into account each scenario and the sensitivities relating to each scenario, as specified in the most recent statement of opportunities, to the extent they relate to New South Wales.
- (2) The report must include the following for each scenario and the sensitivities relating to each scenario, to the extent they relate to New South Wales—
  - (a) the energy security target monitor’s forecast of variations to—
    - (i) the maximum demand, and
    - (ii) the firm capacity, and
    - (iii) any target breach,
  - (b) an analysis of the factors that might affect the forecast of variations to a target breach, for example, whether generating units that are being constructed or have been committed will be constructed on time.

### **Part 4 Network infrastructure projects**

## 17 Classes of network infrastructure

For the Act, Dictionary, definition of **REZ network infrastructure project**, paragraph (b), the classes of network infrastructure are as follows—

- (a) class 1—transmission assets within the meaning of the *National Electricity Rules*,
- (b) class 2—distribution assets within the meaning of the *National Electricity Rules*,
- (c) class 3—network infrastructure that is—
  - (i) not owned or controlled by a network operator, and
  - (ii) used to provide network services within the meaning of the *National Electricity Rules*,
- (d) class 4—network infrastructure that—
  - (i) provides for the continuous and safe scheduling, operation and control of the power system within the meaning of the *National Electricity Rules*, and
  - (ii) is not class 1 or 2.

## 18 Consumer trustee may give advice and recommendations about network infrastructure projects—the Act, s 60(4)(c)

- (1) The consumer trustee may, on the request of a relevant person, give the relevant person advice about a network infrastructure project.
- (2) The consumer trustee may also give the advice to other relevant persons.
- (3) In this clause—

**relevant person** means the following—

- (a) the Minister,
- (b) the infrastructure planner,
- (c) the Energy Corporation.

## 19 Recommendations by consumer trustee about network infrastructure projects—the Act, ss 60(4)(c) and 66(5)(d)

- (1) The consumer trustee must not make a recommendation under the Act, section 31(1)(a) that the Minister give a direction under the Act, section 32 unless the consumer trustee is satisfied the direction is reasonably necessary to achieve the infrastructure investment objectives.
- (2) The consumer trustee is not required to consider technical information when considering the infrastructure planner's recommendations about a REZ network

infrastructure project under the Act, section 31, other than technical information—

(a) specified in clause 44, and

(b) provided to the consumer trustee in the infrastructure planner's recommendation.

**20 Directions to carry out network infrastructure projects—the Act, s 32(2)(f)**

(1) A direction given by the Minister under the Act, section 32 must—

(a) specify the grounds on which the Minister is satisfied giving the direction is consistent with the objects of the Act, and

(b) contain other matters the Minister considers relevant.

(2) A direction given by the Minister under the Act, section 32 that a network operator carry out a REZ network infrastructure project must also specify—

(a) the class of the network infrastructure as specified in clause 17, and

(b) the technical specifications for the network infrastructure project set out in a recommendation by the infrastructure planner to the consumer trustee under the Act, section 30.

**21 Transfer of network infrastructure—the Act, s 42**

(1) A person (the **transferee**) to whom network infrastructure is transferred is taken to be a network operator to whom the Act, Part 5, Division 3 applies if—

(a) the network infrastructure is transferred from a network operator (the **transferor**), and

(b) the transferor is subject to an authorisation in relation to the network infrastructure, and

(c) the authorisation provider approves the transferee being taken to be a network operator to whom the Act, Part 5, Division 3 applies.

(2) If the Energy Corporation is the infrastructure planner in relation to the transferred network infrastructure—

(a) the Energy Corporation may make a recommendation to the authorisation provider in relation to whether to give approval under subclause (1)(c), and

(b) the authorisation provider must consider the Energy Corporation's recommendation before giving approval.

(3) On the approval of the authorisation provider, a determination under the Act, section 38 that, immediately before the approval, applied to the transferor, is taken to apply to the transferee.

(4) To avoid doubt, the transferee is not entitled to receive amounts paid to the transferor by the scheme financial vehicle before the transfer.

(5) In this clause—

**authorisation provider** means—

(a) for an authorisation referred to in the Act, section 36(4), definition of **authorisation**, paragraph (a)—the consumer trustee, and

(b) for an authorisation referred to in the Act, section 36(4), definition of **authorisation**, paragraph (b) or (c)—the Minister.

## **Part 5 Electricity infrastructure investment safeguard—the Act, Part 6**

### **22 Definitions**

In this Part—

**basis risk** means the risk arising from differences in the variables between LTES agreements and risk management contracts, including price, volume and timing.

**fixed shape, fixed volume derivative arrangement** means a derivative arrangement in which—

(a) the amount paid by an LTES operator or the scheme financial vehicle on the exercise of an option is the difference between—

(i) the regional reference price in the wholesale electricity market, and

(ii) the fixed price for electricity under the LTES agreement, settled against the delivery of specified amounts of electricity at specified times of day, and

(b) the LTES operator has financial exposure to the wholesale electricity market.

### **23 Reliability standard—the Act, s 43**

For the purposes of the Act, section 43, definition of **reliability standard**, the following are prescribed—

(a) until 30 June 2025—the interim reliability measure specified in the *National Electricity Rules*, clause 3.9.3C(a1),

(b) from 1 July 2025—the reliability standard specified in the *National Electricity Rules*, clause 3.9.3C(a).

### **24 Content of infrastructure investment objective reports by consumer trustee—the Act, s 45**

(1) An infrastructure investment objectives report must contain the following—

- (a) how the infrastructure required under the development pathway specified in the report will assist in achieving the infrastructure investment objectives,
  - (b) information about the expected timing, staging and sequencing of the construction of—
    - (i) the infrastructure required under the development pathway, and
    - (ii) REZ network infrastructure projects that may be required,
  - (c) a comparative assessment of the merits of constructing long-duration storage infrastructure that exceeds the minimum objective specified in the Act, section 44(3)(b) and firming infrastructure to meet the reliability standard,
  - (d) a forecast of wholesale electricity costs and costs for NSW electricity customers that are due to contributions required to be paid by distribution network service providers under the Act, section 58,
  - (e) details of the current, planned and expected construction and operation of infrastructure for the supply of electricity in New South Wales and the national electricity market,
  - (f) an analysis, including the methodology, of the risks to NSW electricity customers of early or delayed investment in infrastructure to which the Act, Part 6 applies,
  - (g) an estimate of the amount of electricity in gigawatt hours that is equivalent to the gigawatts of capacity required under the minimum objectives specified in the Act, section 44(3), using information in the 2020 Integrated System Plan published by AEMO under the *National Electricity Rules*.
- (2) An infrastructure investment objectives report, other than the first report prepared under the Act, section 45(2)(a), must also contain the following—
- (a) a description of the changes since the previous report to—
    - (i) the development pathway, and
    - (ii) the plan for competitive tenders under the Act, section 45(1)(b),
  - (b) the outcomes of tenders carried out since the previous report, including—
    - (i) the number of persons who made a bid in each tender, including the number of eligible and ineligible bids according to the rules made under the Act, section 47(5), and
    - (ii) the number of LTES agreements recommended by the consumer trustee after each tender, and
    - (iii) the number of LTES agreements entered into,

- (c) details of the infrastructure constructed, or proposed to be constructed, under LTES agreements entered into, or agreed to be entered into, since the previous report,
- (d) an assessment of the progress in achieving the minimum objectives specified in the Act, section 44(3),
- (e) an assessment of the resilience of the NSW electricity system in relation to lulls in variable renewable energy sources, as it relates to the development pathway in the report, including by reference to climate modelling.

**25 Preparation of infrastructure investment objectives reports—the Act, s 45(4)**

- (1) The consumer trustee must take the following into account in preparing an infrastructure investment objectives report—
  - (a) any target breaches identified in the most recent energy security target monitor report,
  - (b) the forecast of unserved energy from the most recent statement of opportunities published by AEMO under the *National Electricity Rules*,
  - (c) the most recent Integrated System Plan published by AEMO under the *National Electricity Rules*,
  - (d) market conditions, including supply chains and labour and capital constraints,
  - (e) the payments required to be made by the scheme financial vehicle under existing and planned LTES agreements,
  - (f) how the development pathway in the infrastructure investment objectives report will contribute to the object of the Act, specified in the Act, section 3(1)(a),
  - (g) the resilience of the NSW electricity system in relation to lulls in variable renewable energy sources, including by reference to climate modelling.
- (2) Subclause (1)(g) does not apply to the first infrastructure investment objectives report prepared under the Act, section 45(2)(a).
- (3) When preparing the development pathway for an infrastructure investment objectives report, the consumer trustee must—
  - (a) take into account several scenarios for the construction of generation, long-duration storage and firming infrastructure in New South Wales, and
  - (b) analyse the resilience of the outcomes for each scenario, including in relation to—
    - (i) the reliability of supply, and



(ii) the financial exposure risks to NSW electricity customers.

(4) This clause does not limit the matters the consumer trustee may take into account in preparing an infrastructure investment objectives report.

**26 Tendering for LTES agreements—the Act, s 47(3)(a)**

(1) The consumer trustee must conduct a competitive tender in a way that—

- (a) encourages genuine competition between the persons making tender bids, and
- (b) encourages competition between market participants, and
- (c) encourages tender bids from persons who are not already parties to LTES agreements, and
- (d) is transparent, open and fair for all persons making tender bids.

(2) Subclause (1)(d) does not require the consumer trustee to disclose information the consumer trustee considers confidential or commercially sensitive.

(2A) Before conducting a competitive tender involving an LTES agreement for the construction and operation of generation infrastructure that includes an option to exercise a derivative arrangement that is not a fixed shape, fixed volume derivative arrangement, the consumer trustee must be satisfied that—

- (a) the arrangement is in the long-term financial interests of NSW electricity customers, and
- (b) the arrangement allows for the reasonable forecasting of financial impacts to NSW electricity customers, including impacts arising from the volume of electricity produced by the LTES operator throughout the day and over the term of the agreement, and
- (c) the risks, including the basis risk, associated with the arrangement can be managed under the risk management framework.

(3) When conducting a competitive tender, the consumer trustee must consider recent trends and changes in the following—

- (a) electricity infrastructure technology,
- (b) the national electricity market,
- (c) the behaviour of customers and market participants.

(4) The assessment of the financial value of a tender bid must consider the effect of the infrastructure proposed to be constructed and operated under an LTES agreement on the following—

- (a) wholesale electricity costs,
  - (b) the costs of network infrastructure, including REZ network infrastructure projects, required to support the infrastructure that will be constructed and operated under the LTES agreement,
  - (c) the costs of other services associated with power system security,
  - (d) the payments that will be required to be made by the scheme financial vehicle under LTES agreements,
  - (e) other matters the consumer trustee considers relevant.
- (5) The consumer trustee must—
- (a) ensure the costs to the consumer trustee of carrying out a competitive tender are reasonable, and
  - (b) minimise the costs of making a tender bid for the persons making tender bids.

- (6) In this clause—

**market participant** has the same meaning as in the *National Electricity Rules*.

**power system security** has the same meaning as in the [National Electricity \(NSW\) Law](#).

#### **26A LTES agreement showing outstanding merit—the Act, s 48(4)**

- (1) For the Act, section 48(4)(a), a circumstance in which an LTES agreement shows outstanding merit includes the consumer trustee being satisfied the agreement shows more merit than other LTES agreements for generation infrastructure recommended by the consumer trustee.
- (2) For the Act, section 48(4)(b), the consumer trustee must take the following into account in making a recommendation that relates to generation infrastructure specified in the Act, section 43(1)(a) that is not, or will not be, part of a renewable energy zone—
  - (a) the long-term financial interests of NSW electricity customers,
  - (b) how the LTES agreement contributes to achieving the infrastructure investment objectives,
  - (c) the non-financial value criteria of the LTES agreement,
  - (d) the impact of generation infrastructure under the LTES agreement on congestion in the NSW region.

## 27 Notice of proposal to exercise option under LTES agreement

The minimum notice period for the Act, section 46(2)(d) is 6 months before the exercise of the option.

## 28 Competitive tenders for LTES agreements—the Act, s 47(3)(a)

- (1) A person may not make a tender bid in a competitive tender for an LTES agreement for infrastructure if—
  - (a) the infrastructure is not connected, or proposed to be connected, to network infrastructure in the NSW region, or
  - (b) an access right for the infrastructure has already been conferred on the person under an access scheme.
- (2) Subclause (1)(b) does not apply if the consumer trustee is satisfied there are exceptional circumstances.

- (3) In this clause—

**exceptional circumstances** means circumstances specified by the consumer trustee before conducting the competitive tender.

## 29 Tender rules

- (1) Rules made under the Act, section 47(5) dealing with eligibility criteria for making a tender bid for generation infrastructure or long-duration storage infrastructure must not restrict—
  - (a) the location in the NSW region in which the infrastructure may be constructed or operated, or
  - (b) the type of technology or fuel that may be used to construct or operate the infrastructure.
- (2) Rules made under the Act, section 47(5) may provide for the matters specified in subclause (1) to be considered in the assessment of a tender bid.
- (3) For the Act, section 47(5)(g), the rules must deal with the assessment of a tender bid against the non-financial value criteria for LTES agreements.

## 30 Recommendations about LTES agreements

- (1) The consumer trustee may include the following information in a recommendation to the scheme financial vehicle under the Act, section 48—
  - (a) information obtained or produced during a competitive tender process,
  - (b) information obtained or produced during the consumer trustee's assessment of a

tender bid, including information obtained or produced by a person acting at the direction of the consumer trustee.

- (2) Subclause (1)(b) applies only if the information was obtained or produced for the benefit of the consumer trustee and the scheme financial vehicle.
- (3) When making a recommendation about an LTES agreement, the consumer trustee must take into account the non-financial value criteria for LTES agreements.

### **31 LTES agreement for generation infrastructure—the Act, s 46(2)(f)**

An LTES agreement for the construction and operation of generation infrastructure must give the LTES operator an option to exercise a derivative arrangement that—

- (a) is a fixed shape, fixed volume derivative arrangement, or
- (b) is a kind of arrangement the consumer trustee is satisfied—
  - (i) is in the long-term financial interests of NSW electricity customers, and
  - (ii) allows for the reasonable forecasting of financial impacts to NSW electricity customers, including impacts arising from the volume of electricity produced by the LTES operator throughout the day and over the term of the agreement, and
  - (iii) has risks, including basis risk, that can be managed under the risk management framework.

### **32 Risk management framework—the Act, s 51(8)**

- (1) A risk management framework must mitigate the following risks—
  - (a) the risk that the cash balance of the Fund will not be sufficient to make the payments specified in the Act, section 55(b),
  - (b) the risk to the financial interests of NSW electricity customers of unexpected or significant increases in liabilities for payments by the scheme financial vehicle under LTES agreements from year to year,
  - (c) the risk of a reduction in the liquidity of the wholesale electricity market, excluding the spot market within the meaning of the *National Electricity Rules*, if options under LTES agreements are exercised,
  - (d) the risk that significant increases to contribution determinations under the Act, section 56 will be required to maintain a prudent cash balance for the Fund,
  - (e) the basis risk to the scheme financial vehicle.
- (2) A risk management framework must also—
  - (a) include information about how the consumer trustee will implement the

framework, including details of policies and guidelines to be developed by the consumer trustee, and

- (b) provide for a cap on the basis risk to the scheme financial vehicle aggregated across all risk management contracts, and
  - (c) provide for the scheme financial vehicle to enter into risk management contracts to mitigate the risks specified in the framework, and
  - (d) require the scheme financial vehicle to demonstrate to the consumer trustee how the basis risk arising from a risk management contract that is a derivative arrangement will be managed, and
  - (e) set out the requirements for the scheme financial vehicle to report to the consumer trustee about—
    - (i) the overall performance of the framework, and
    - (ii) breaches of the framework and risk management contracts.
- (3) If a risk management contract provided for by the risk management framework is a derivative arrangement, the scheme financial vehicle must not enter into the contract unless satisfied that entering into the contract—
- (a) is a reasonable and appropriate way to mitigate a risk specified in the framework, and
  - (b) is in the long-term financial interests of NSW electricity customers, and
  - (c) will not result in the scheme financial vehicle exceeding the cap on basis risk provided for by the framework.
- (4) A risk management contract entered into by the scheme financial vehicle under the risk management framework may, but is not required to, include loans or repayable grants to the scheme financial vehicle.
- (5) To avoid doubt, subclause (1) does not limit the risks, and in particular the risks to the financial interests of NSW electricity customers, that may be addressed by a risk management framework.

### **33 Renewal or extension of risk management contract—the Act, s 52(3)**

A risk management contract may not be renewed or extended if, at the time of the renewal or extension, the risk management framework does not permit the scheme financial vehicle to enter into the contract.

## **Part 6 Electricity infrastructure fund**

**34 Financial reporting by scheme financial vehicle—the Act, s 53(3)**

- (1) The scheme financial vehicle must, as soon as practicable after the end of each financial year, prepare a financial report about the Fund.
- (2) The financial report must—
  - (a) be prepared in accordance with the Australian Accounting Standards, and
  - (b) include information on the net exposure of the scheme financial vehicle to the wholesale electricity market under—
    - (i) LTES agreements, and
    - (ii) risk management contracts that are derivative arrangements.
- (3) The scheme financial vehicle must prepare monthly records of payments into and from the Fund.
- (4) In this clause—

**Australian Accounting Standards** means the standards issued by the Australian Accounting Standards Board, as in force from time to time.

**35 Contribution determination—matters to be taken into account—the Act, s 56(6)**

- (1) In making a contribution determination, the regulator must take the following into account—
  - (a) the need to limit variability in contribution determinations from year to year,
  - (b) the equitable allocation of the contribution determination between distribution network service providers based on each provider’s—
    - (i) volumetric energy delivery in the previous financial year, and
    - (ii) peak demand in the previous financial year,
  - (c) the need for the scheme financial vehicle to be able to meet its liabilities as they fall due,
  - (d) information provided to the regulator by the consumer trustee, the financial trustee, the infrastructure planner or the Tribunal.
- (2) In this clause—

**peak demand** means the aggregate amount of actual, non-coincident and raw electricity demand, measured in megavolt amps, at the zone substation level and at the trading interval when the aggregate amount is the highest.

**volumetric energy delivery** means the measured or estimated amount of electricity

delivered to electricity customers from a distribution network service provider's network, measured in gigawatt hours at the appropriate customer charging location.

### **36 Notification of contribution determinations—the Act, s 64(4)**

The regulator must, within 1 week after a contribution determination is published in the Gazette, give each distribution network service provider a notice setting out the percentage of the contribution determination relating to LTES agreements for generation infrastructure.

### **37 Recovery of amounts payable under contribution orders—the Act, s 58(6)**

- (1) A distribution network service provider must calculate the part of the amount payable by the provider under a contribution order that is attributable to each exempt customer (the **relevant component**).
- (2) A distribution network service provider is authorised to recover the relevant component from an exempt customer if the distribution network service provider gives the exempt customer the following credit against the charges payable by the exempt customer—
  - (a) for an exempt customer who uses electricity supplied by the distribution network service provider to produce green hydrogen—
    - (i) if the applicable reference year is before 2029—90% of the relevant component, or
    - (ii) if the applicable reference year is 2029—60% of the relevant component, or
    - (iii) if the applicable reference year is 2030—30% of the relevant component,
  - (b) for an exempt customer who uses electricity supplied by the distribution network service provider in an industry that is both emissions intensive and trade exposed—90% of the part of the relevant component that is attributable to LTES agreements for generation infrastructure.
- (3) In this clause—

**exempt customer** means a person who, under the [Electricity Supply Act 1995](#), Schedule 4A, clause 22 is, for an electricity load, exempt from the energy savings scheme established by that Schedule.

**green hydrogen** has the same meaning as in the [Electricity Supply Act 1995](#), Schedule 4A, Part 1.

**reference year** means the reference year identified in an order under the [Electricity Supply Act 1995](#), Schedule 4A, clause 22.

**38 Payment of contribution by distribution network service provider—the Act, s 58(2)**

A contribution order must specify that the amount the distribution network service provider is to pay into the Fund for a financial year is to be paid in 4 equal instalments payable on or before each of the following—

- (a) 1 November,
- (b) 1 February,
- (c) 1 May,
- (d) 1 August.

**39 Provision of information to regulator—the Act, ss 60(4), 61(2) and 63(4)**

The consumer trustee, the financial trustee and the infrastructure planner must, if requested to do so by the regulator, provide information to the regulator that the regulator considers reasonably necessary to enable the regulator to make a contribution determination.

**Part 7 Administration**

**40 Appointment of consumer trustee—the Act, s 66(5)(a)**

- (1) A person may be appointed as consumer trustee only if the person is a company limited by guarantee.
- (2) The company limited by guarantee must—
  - (a) have AEMO as a member, and
  - (b) not have any other members except for one or more of the following—
    - (i) the Crown in right of the Commonwealth,
    - (ii) the Crown in right of New South Wales,
    - (iii) the Crown in right of another State or Territory, and
  - (c) be a subsidiary of AEMO, and
  - (d) have a constitution that sets out—
    - (i) objects that are not inconsistent with the exercise of the functions of the consumer trustee, and
    - (ii) the functions of the company's members, and
  - (e) enter into an agreement with AEMO that deals with—



- (i) the governance arrangements of the company, and
- (ii) the provision by AEMO of services to assist the company in exercising its functions as consumer trustee.

(3) This clause applies only to the first person appointed as consumer trustee under the Act, section 60.

#### **41 Considerations for infrastructure planner—the Act, s 63**

In exercising functions under the Act, Part 5, the infrastructure planner must take the following into account—

- (a) guidelines issued by the Minister under the Act, section 4,
- (b) the plan approved by the Minister under the Act, section 8.

#### **42 Functions of regulator—the Act, s 64(4)(b)**

(1) The regulator must—

(a) issue guidelines for network operators about the following—

- (i) the legal separation of the entity through which a network operator conducts regulated activities from any other entity through which it conducts business,
- (ii) the establishment and maintenance of consolidated and separate accounts for regulated activities and other activities conducted by the network operator,
- (iii) the limitations on the flow of information from or within the network operator if there is the potential for a competitive advantage or disadvantage to arise, and

(b) set standards about the legal and functional separation of the regulated activities of a network operator from other activities of the network operator, and

(c) monitor compliance by network operators with the standards.

(2) In this clause—

***regulated activities***, of a network operator, means activities for which the network operator is paid under a revenue determination.

### **Part 8 Assessments and recommendations by infrastructure planner**

#### **43 Matters requiring assessment and recommendations—the Act, ss 30 and 63(4)**

(1) The infrastructure planner must assess and make recommendations about the following—

- (a) proposed REZ network infrastructure projects,

- (b) priority transmission infrastructure projects in relation to which the infrastructure planner is appointed,
  - (c) network operators who may be authorised or directed to carry out—
    - (i) a REZ network infrastructure project, or
    - (ii) a priority transmission infrastructure project,
  - (d) other persons who may assist the network operator to carry out—
    - (i) a REZ network infrastructure project, or
    - (ii) a priority transmission infrastructure project,
- (2) The infrastructure planner may decide—
- (a) the extent of an assessment under subclause (1), and
  - (b) how the assessment will be carried out, including whether to carry out a competitive assessment process.
- (3) An assessment and recommendation made by the infrastructure planner in relation to a priority transmission infrastructure project must be provided to the Minister.

**Note—**

An assessment and recommendation about a REZ network infrastructure project must be provided to the consumer trustee under the Act, section 30(1).

- (4) For the purposes of the Act, section 34(2)(d), the Minister must consider an assessment and recommendation by the infrastructure planner before giving—
- (a) a direction under the Act, section 32(1)(b), or
  - (b) an authorisation under the Act, section 36(2).

**44 Technical specifications for REZ network infrastructure projects—the Act, s 30**

The infrastructure planner's assessment and recommendations about a REZ network infrastructure project must deal with the following—

- (a) technical specifications about the following—
  - (i) proposed routes of the network infrastructure, including substation locations,
  - (ii) connections between proposed and existing network infrastructure,
  - (iii) the operating voltages and network capacity of the network infrastructure,
- (b) how the project will ensure the safe operation of the network infrastructure and the reliability and security of electricity supply,

- (c) how the project will meet the system strength requirements under the *National Electricity Rules* for the NSW region,
- (d) if the project includes class 3 network infrastructure—details of the person who is proposed to own or control the network infrastructure.

**45 Competitive assessment process—the Act, ss 30(5)(a) and 63(4)**

- (1) The infrastructure planner may carry out a competitive assessment process in relation to—
  - (a) a proposed REZ network infrastructure project, or
  - (b) a priority transmission infrastructure project in relation to which the infrastructure planner is appointed.
- (2) The competitive assessment process must involve a request from the infrastructure planner for a binding bid from—
  - (a) 2 or more network operators proposing to carry out all or part of the project, or
  - (b) 2 or more persons who will assist network operators to carry out all or part of the project.
- (3) The infrastructure planner must, for network operators and other persons who may be requested to make a binding bid, develop—
  - (a) eligibility criteria, and
  - (b) a selection process.
- (4) Before and during a competitive assessment process, the infrastructure planner must—
  - (a) consult with the regulator, and
  - (b) provide the regulator with information about and obtained from the competitive assessment process, if requested.
- (5) In the exercise of the regulator’s functions under the Act, Part 5, the regulator may rely on and adopt information provided to the regulator by the infrastructure planner if—
  - (a) the infrastructure planner obtained the information from a competitive assessment process, and
  - (b) the regulator is satisfied that the competitive assessment process was genuine and appropriate.

**Part 9 Revenue determinations**

## Division 1 Making revenue determinations

### 46 Principles for regulator—the Act, s 37(1)(e)

- (1) The following principles are prescribed—
  - (a) a genuine and appropriate competitive assessment 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,
  - (b) a network operator is entitled to recover the following—
    - (i) prudent, efficient and reasonable costs incurred by the network operator in complying with a regulatory requirement,
    - (ii) payments required to be made by the network operator to the infrastructure planner under a contractual arrangement, if the network operator was required to enter the contractual arrangement under the relevant authorisation,
    - (iii) reasonable costs incurred by the network operator, as assessed by the regulator, if the regulator fails to make a revenue determination within the time period specified in clause 50.
- (2) The regulator must, when assessing reasonable costs for the purposes of subclause (1)(b)(iii), take into account whether the network operator contributed to the delay.
- (3) In this clause—

**regulatory requirement** for a network operator means a requirement imposed on the network operator by 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 the 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.

**47 Guidelines about revenue determinations—the Act, s 38(10)(a)**

The regulator must publish guidelines on its website about the exercise of the regulator's functions under the Act, Part 5.

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

- (1) A network operator must give the regulator the information about the proposed amounts payable to the network operator for carrying out an infrastructure project that the regulator reasonably requires to exercise the regulator's functions under the Act, Part 5.
- (2) The information must be given before a revenue determination is made in relation to the network operator.
- (3) The network operator must prepare the information in accordance with—
  - (a) the guidelines published by the regulator about the transmission efficiency test, and
  - (b) the guidelines published by the regulator under clause 47, and
  - (c) other requirements notified by the regulator to the network operator.
- (4) The regulator must take into account the information given by the network operator when—
  - (a) calculating the transmission efficiency test, and
  - (b) making a revenue determination

**49 Consultation with infrastructure planner—the Act, s 38(10)(a)**

- (1) The regulator must consult the infrastructure planner before making a revenue determination.
- (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 information about or obtained from a competitive assessment process.

**50 Timing for making revenue determinations—the Act, s 38(10)(a)**

- (1) The regulator must make a revenue determination in relation to a network operator within the following period after the regulator has received the information from the network operator required by clause 48—
  - (a) for a determination made as a result of a competitive assessment process—42

business days,

(b) otherwise—126 business days.

(2) The regulator may, by written notice to the network operator, extend the time period under subclause (1)(a) by a further 42 business days if the regulator is satisfied that the extension is reasonably necessary because—

(a) the revenue determination is complex, and

(b) some of the information from the network operator was obtained other than from a competitive assessment process.

(3) As soon as practicable after the regulator fails to make a revenue determination within the period required by this clause, the regulator must—

(a) prepare a report that specifies—

(i) the reasons for the failure, and

(ii) the date by which the regulator expects to make the revenue determination, and

(b) give the report to the Minister, and

(c) publish the report on the regulator's website.

## **Division 2 Content and publication**

### **51 Adjustment of amounts—the Act, ss 38(10)(f) and 40**

(1) A revenue determination may include provision for the adjustment of any amount included in the revenue determination, whether or not the amount relates to a capital cost.

(2) A provision in a revenue determination for adjustment may specify the following—

(a) that a particular adjustment must be carried out at particular times or in particular circumstances,

(b) that a particular adjustment may or may not require the revenue determination to be reviewed and remade.

#### **Example—**

An adjustment may be made for inflation without a review or remake of the revenue determination. The occurrence of a significant event may require the revenue determination to be reviewed and remade.

(3) All adjustments must be carried out in accordance with—

(a) the guidelines issued under clause 47, and

(b) if the revenue determination was made as a result of a competitive assessment process—the contractual arrangements the network operator entered into as required under the relevant authorisation.

(4) In reviewing and remaking a determination for the purposes of adjustment, the regulator may adopt, without recalculation, the existing capital costs calculated using the transmission efficiency test for the previous determination.

**52 Information to be included in revenue determination—the Act, s 38(10)(d)**

(1) A revenue determination must include a schedule of the amounts required to be paid to the network operator.

(2) The schedule must—

(a) set out each amount required to be paid and the date on which the amount must be paid, and

(b) if the revenue determination was made as a result of a competitive assessment process—correspond with the term of the contractual arrangements that the network operator enters as required under the relevant authorisation.

**53 Publication of revenue determinations—the Act, s 38(10)(f)**

(1) The regulator must publish the following on its website—

(a) if a revenue determination is made or remade—

(i) the revenue determination, and

(ii) the reasons for making the revenue determination,

(b) if an adjustment is made to a revenue determination under clause 51 that did not require the revenue determination to be reviewed and remade—an updated schedule of amounts required to be paid to the network operator.

(2) The revenue determination or schedule must be published as soon as reasonably practicable.

(3) The regulator must consult with the infrastructure planner before publishing a revenue determination on its website.

(4) The regulator may decide not to publish part of a revenue determination if satisfied it is not appropriate, taking into account the following—

(a) the public interest,

(b) the extent to which publishing the part of the revenue determination would disclose information that is confidential or commercially sensitive,

- (c) the effect of publishing the part of the revenue determination on future competitive assessment processes.

#### **54 Review and remake of revenue determination for errors—the Act, s 40**

- (1) The regulator may review and remake a revenue determination to the extent necessary to correct—
  - (a) a material error, misdescription or miscalculation, or
  - (b) an error resulting from the provision of false or materially misleading information to the regulator.
- (2) Before reviewing or remaking a revenue determination under subclause (1), the regulator must consult the following—
  - (a) the network operator,
  - (b) the consumer trustee,
  - (c) the infrastructure planner,
  - (d) other persons the regulator considers appropriate.
- (3) This clause does not require the regulator to review or remake a revenue determination because of a change to a forecast or assumption relied on by the regulator to make the revenue determination.

### **Part 10 Miscellaneous**

#### **55 Penalty notices—authorised officers**

- (1) This clause applies if the AER is appointed as the regulator.
- (2) For the Act, section 76(6), definition of **authorised officer**, the AER is prescribed.

### **Schedule 1 Members and procedures of NSW renewable energy sector board**

clause 7

#### **1 Payment of allowances**

An appointed member is entitled to be paid allowances to reimburse the member for expenses, including travel and accommodation, as determined by the Minister.

#### **2 Vacancy**

- (1) The office of an appointed member becomes vacant if the appointed member—
  - (a) dies, or



- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by written instrument to the Minister, or
- (d) is removed by the Minister under subclause (2), or
- (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration for their benefit, or
- (f) becomes a mentally incapacitated person, or
- (g) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office at any time.

### **3 Disclosure of pecuniary and other interests**

(1) If—

- (a) a member has a direct or indirect pecuniary or other interest in a matter being considered or about to be considered at a Board meeting, and
- (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a Board meeting.

(2) A disclosure by a member at a Board meeting that the member—

- (a) is a member, or is in the employment, of a specified company or other body, or
- (b) is a partner, or is in the employment, of a specified person, or
- (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in a matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

(3) Particulars of a disclosure made under this clause must be recorded by the Board and made available to any person on request.

(4) After a member has disclosed the nature of an interest in a matter, the member must not, unless the Board otherwise determines—

- (a) be present during a deliberation of the Board that relates to the matter, or
  - (b) take part in a decision of the Board that relates to the matter.
- (5) The member who made the disclosure may be present at the time the Board is making a determination under subclause (4) but must not take part in the making of the determination.
- (6) Before making a determination under subclause (4), the Board must consult with a person who has relevant experience in probity and conflicts of interest.
- (7) A contravention of this clause does not invalidate a decision of the Board.

#### **4 General procedure**

- (1) The joint chairpersons together may call a Board meeting at any time.

**Note—**

Section 7(5) of the Act requires the Board to meet at least once every 6 months.

- (2) The joint chairpersons together must call a Board meeting if requested by a simple majority of the members.
- (3) The procedure for the calling of Board meetings and for the conduct of business at those meetings is, subject to the Act and this Regulation, to be determined by the Board.

#### **5 Presiding member**

- (1) Each joint chairperson is to preside at alternate Board meetings, as agreed to by both joint chairpersons or, in the absence of an agreement, as determined by the Secretary.
- (2) In the absence of the joint chairperson nominated to preside at a Board meeting, the other joint chairperson is to preside at the meeting.
- (3) In the absence of both joint chairpersons at a Board meeting, a member elected by the members who are present at the meeting is to preside at the meeting.

#### **6 Quorum**

- (1) The quorum for a Board meeting is a majority of the members for the time being, subject to subclause (2).
- (2) The quorum must consist of at least—
- (a) 1 member appointed under section 7(2)(a)(i), (ii) or (vii) of the Act, and
  - (b) 1 member appointed under section 7(2)(a)(iii)–(vi) of the Act, and
  - (c) 1 member appointed under section 7(2)(a)(viii) of the Act, and

- (d) 1 member appointed under section 7(2)(a)(ix) of the Act, and
- (e) the Energy Corporation.

## **7 Voting**

- (1) A decision supported by the majority of votes cast at a Board meeting at which a quorum is present is the decision of the Board, subject to subclauses (2)–(4).
- (2) A majority must consist of—
  - (a) a majority of the votes cast by the members appointed under section 7(2)(a)(i)–(vii) of the Act, and
  - (b) a majority of the votes cast by the members appointed under section 7(2)(a)(viii) and (ix) and (c) of the Act and the Energy Corporation.
- (3) If there is an equality of votes among the votes cast by the members specified in subclause (2)(a), the member who is also appointed as joint chairperson under section 7(3)(a) of the Act has a second or casting vote.
- (4) If there is an equality of votes among the votes cast by the members specified in subclause (2)(b), the member who is also appointed as joint chairperson under section 7(3)(b) of the Act has a second or casting vote.

## **8 Transaction of business outside meetings or by telecommunication**

- (1) The Board may, if it thinks fit, transact any of its business—
  - (a) by the circulation of papers, by email or other electronic means, among all members, or
  - (b) at a meeting at which all or some members participate by telephone, audio-visual link or other means, but only if a member who speaks on a matter at the meeting can be heard by the other members.
- (2) If the Board transacts its business by the circulation of papers under subclause (1)(a), a written resolution approved in writing by a majority of the members, as specified in clause 7 of this Schedule, is taken to be a decision of the Board made at a Board meeting.
- (3) For the purposes of a meeting held under subclause (1)(b) or the approval of a resolution under subclause (2), each member has the same voting rights as at an ordinary Board meeting.
- (4) A resolution approved under subclause (2) is to be recorded in the minutes of the Board meeting.

## **9 Alternate members**

- (1) An appointed member may, at any time with the approval of the Secretary, appoint a person to act in the place of the appointed member during the absence or illness of the member.
- (2) While acting in the place of the appointed member, the alternate member has all the functions of the appointed member and is taken to be an appointed member.
- (3) The Secretary may delegate the Secretary's function under subclause (1) to an employee of the Department.

## **10 Minutes**

The Board must keep minutes of each Board meeting and the minutes must include all decisions of the Board.

## **11 Code of conduct**

The Minister may issue a code of conduct for appointed members.

## **12 First meeting**

The Secretary may call the first Board meeting as the Secretary thinks fit.

# **Schedule 2 Penalty notice offences**

## **1 Application of Schedule**

- (1) For the purposes of the Act, section 76(2)—
  - (a) each offence created by a provision specified in this Schedule is an offence for which a penalty notice may be issued, and
  - (b) the amount payable for the penalty notice is the amount specified opposite the provision.
- (2) If the provision is qualified by words that restrict its operation to limited kinds of offences or to offences committed in limited circumstances, the penalty notice may be issued only for—
  - (a) the limited kind of offence, or
  - (b) an offence committed in the limited circumstances.

**Column 1**

**Column 2**

**Column 3**

**Provision**

**Penalty—corporations**

**Penalty—individuals**

**Offences under the Act**

Section 17(1)	\$55,000	\$2,750
Section 18(4)	\$55,000	\$2,750
Section 75(1)	\$22,000	\$1,100