Electricity Infrastructure Investment Regulation 2021

[2021-102]

New South Wales

Status Information

Currency of version

Historical version for 19 January 2024 to 4 April 2024 (accessed 16 April 2024 at 0:49)

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  This legislation is currently due to be automatically repealed under the Subordinate Legislation Act 1989 on 1 September 2026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.

File last modified 19 January 2024

Electricity Infrastructure Investment Regulation 2021

New South Wales

Contents

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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.

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

audit subject, for Part 13—see clause 68.

auditor, for Part 13—see clause 68.

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.

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.

contestable revenue determination means a revenue determination made as a result of a competitive assessment process.

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

declaration, for an access scheme, means the declaration made under the Act, section 24 for the scheme.

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

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

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.

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-contestable revenue determination means a revenue determination made other than as a result of a competitive assessment process.

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,

(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.

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.

recommended contractual arrangements—see clause 43.

regulator's guidelines means the guidelines prepared by the regulator about revenue determinations under clause 47.

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

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.

3A 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.

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, including the major constraints 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.

(1A) A recommendation by the consumer trustee must include the recommended contractual arrangements.

(1B) The consumer trustee is not required to assess or review the recommended contractual arrangements before including them in a recommendation.

(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.

19A Authorisations by consumer trustee and Minister—the Act, ss 60(4)(c) and 79(1)

(1) An authorisation by the Minister under the Act, section 36(2) must require the network operator to enter into the recommended contractual arrangements.

(2) An authorisation by the consumer trustee under the Act, section 31(1)(b) must require the network operator to enter into the recommended contractual arrangements.

(3) The consumer trustee is not required to assess or review the recommended contractual arrangements before including them in an authorisation under subclause (2).

(4) An authorisation by the Minister under the Act, section 36(2) or the consumer trustee under the Act, section 31(1)(b) ceases to have effect on the termination or expiry of the contractual arrangements entered into by the network operator under the authorisation.

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

(a1) require the network operator to enter into the recommended contractual arrangements, 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.

(3) A direction ceases to have effect on the termination or expiry of the contractual arrangements entered into by the network operator under the direction.

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 2028—the interim reliability measure specified in the *National Electricity Rules*, clause 3.9.3C(a1),

(b) from 1 July 2028—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.

(2A) A person may not make a tender bid in a competitive tender for an LTES agreement for generation infrastructure if the infrastructure involves generation from wood waste

from timber native to Australia.

(2B) A person may not make a tender bid in a competitive tender for an LTES agreement for firming infrastructure if the infrastructure involves electricity generated from biomass from timber native to Australia.

(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.

(4) This clause is subject to clause 28(2A).

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.

31A Circumstances in which LTES agreements may not be made—the Act, s 49(2)

(1) An LTES agreement for generation infrastructure may not be made if the infrastructure involves generation from wood waste from timber native to Australia.

(2) An LTES agreement for firming infrastructure may not be made if the infrastructure involves electricity generated from biomass from timber native to Australia.

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.

(2A) Subclause (2)(a) ceases to apply to an exempt customer 10 years after 1 July in the reference year.

(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.

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.

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.

42A Functions of consumer trustee—the Act, s 60(4)

(1) The consumer trustee has the functions set out in this clause in relation to an access scheme if—

(a) the declaration for the access scheme provides for situations in which the infrastructure planner may grant or increase an access right based on a recommendation from the consumer trustee, or

(b) the infrastructure planner requests the consumer trustee to conduct a competitive tender in relation to the granting or increasing of access rights under the access scheme.

(2) The consumer trustee must—

(a) make rules, in consultation with the infrastructure planner, about the conduct of a competitive tender in relation to the granting or increasing of access rights, and

(b) conduct a competitive tender in accordance with the rules, and

(c) make recommendations to the infrastructure planner based on the outcome of the competitive tender, and

(d) prepare a report on the competitive tender and the recommendations and give the report to the infrastructure planner.

42B Functions of financial trustee—the Act, s 61(2)(c)

(1) The financial trustee must report to the regulator on the activities of the scheme financial vehicle during a financial year.

(2) The report must be included as part of the report provided by the financial trustee to the regulator under the Act, section 70(1).

(3) The financial trustee may request information from the scheme financial vehicle for the purposes of preparing the report.

(4) In this clause—

activities do not include activities referred to in clause 32(2)(e).

42C Functions of infrastructure planner—access schemes—the Act, s 63(4)(d)

(1) The infrastructure planner may request the consumer trustee to conduct a competitive tender in relation to the granting or increasing of access rights—

(a) under an access scheme, and

(b) in accordance with the declaration for the access scheme.

(2) The infrastructure planner for an access scheme must exercise—

(a) the access scheme functions for the access scheme if the infrastructure planner is appointed to administer the access scheme, or

(b) a particular access scheme function for the access scheme if the infrastructure planner is directed to exercise the function in the declaration for the access scheme.

(3) The ***access scheme functions*** for an access scheme are as follows—

(a) to administer the access scheme, including to establish, administer and operate a register for access rights under the access scheme,

(b) for a competitive tender, in relation to the granting or increasing of access rights, not conducted by the consumer trustee—

(i) to make rules about the conduct of the competitive tender, and

(ii) to conduct the competitive tender in accordance with the rules,

(c) to determine the eligibility criteria for the grant or increase of access rights to participants in the access scheme—

(i) in consultation with the consumer trustee, and

(ii) before the competitive tender is conducted,

(d) to determine the terms and conditions for the grant or increase of access rights to participants in the access scheme,

(e) to assess and determine the grant or increase of access rights to participants in the access scheme,

(f) to assess and approve connections to, and disconnections from, an access rights network or access control network under the access scheme, including to give consent in accordance with the following provisions of the *National Electricity Rules*—

(i) clause 5.3.4(a1) and (a2),

(ii) clause 5.3.6(a4) and (a5),

(iii) clause 5.3.9(b1),

Note—

See the *National Electricity (New South Wales) Regulation 2022*, Schedule 1, Part 1.

(g) to assess, calculate, forecast, determine and implement technical matters for the access scheme, including in relation to the following—

(i) network capacity,

(ii) network constraints,

(iii) network utilisation,

(iv) access rights,

(v) maximum capacities applying during different periods,

(h) to consider, assess and determine proposals—

(i) in relation to the grant or increase of access rights to participants in the access scheme, and

(ii) made in accordance with the access scheme for the augmentation of network infrastructure in the renewable energy zone in which the access scheme is located,

(i) to extend, if applicable, the term of the access scheme,

(j) to give notices or publish information in relation to the access scheme,

(k) for a proposed amendment of the declaration for the access scheme—

(i) to consider, consult on and assess the proposal, and

(ii) to provide advice to the Minister, and

(iii) to determine voting procedures.

42D Functions of infrastructure planner—particular renewable energy zones—the Act, s 63(4)(d)

(1) This clause applies if—

(a) the Energy Corporation is appointed as the infrastructure planner for a renewable energy zone, and

(b) the Minister has declared, in accordance with the Act, section 24(1), the access scheme that applies in the renewable energy zone or part of the renewable energy zone, and

(c) the declaration specifies that the scheme financial vehicle is, in relation to the access scheme, liable to pay the infrastructure planner the component of fees payable under the Act, section 26 to be held for use for—

(i) a community purpose, or

(ii) an employment purpose.

Note—

See the *Energy and Utilities Administration Act 1987*, section 35, which establishes the Energy Administration Account.

(2) The infrastructure planner for a renewable energy zone to which an access scheme applies has the following functions—

(a) to administer, manage and make payments of money held for use in relation to a community purpose or employment purpose,

(b) to make guidelines about the administration, management and payment of money under this clause.

(3) In this clause—

community purpose has the same meaning as in the Act, section 26.

employment purpose has the same meaning as in the Act, section 26.

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,

(e) the contractual arrangements that a network operator may be required to enter into to carry out a REZ network infrastructure project or priority transmission infrastructure project under an authorisation (the ***recommended contractual arrangements***).

(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) 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.

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,

(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.

(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 a relevant law but does not include a requirement to pay a fine, penalty or compensation for a breach of a requirement imposed on the network operator by a relevant law.

relevant law means 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 that 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 Regulator's guidelines about revenue determinations—the Act, s 38(10)

(1) The regulator must—

(a) prepare guidelines setting out how the regulator will exercise functions under the Act, Part 5, and

(b) publish the regulator's guidelines on the regulator's website.

(2) The regulator's guidelines must be consistent with the Act and this Regulation.

(3) Different regulator's guidelines may be made for contestable revenue determinations and non-contestable revenue determinations.

47A Regulator's guidelines about non-contestable revenue determinations—the Act, s 38(10)

(1) This clause applies to regulator's guidelines for non-contestable revenue determinations.

(2) The regulator must make a non-contestable revenue determination in accordance with the regulator's guidelines for non-contestable revenue determinations.

(3) The regulator must—

(a) ensure the regulator's guidelines set out how a non-contestable revenue determination will be made by the regulator, including how the regulator will make a determination under clause 47E(4) for a contestable augmentation, and

(b) as far as is reasonably practicable, make the regulator's guidelines consistent with the *National Electricity Rules*, Chapter 6A as that Chapter applies to the AER making a transmission determination.

(4) The regulator's guidelines for non-contestable revenue determinations must deal with matters set out in the *National Electricity Rules*, Chapter 6A, including the following—

(a) the building blocks approach,

(b) the regulatory asset base,

(c) return on capital,

(d) depreciation,

(e) the estimated cost of corporate income tax,

(f) forecast operating expenditure,

(g) forecast capital expenditure,

(h) reopening of a revenue determination for capital expenditure,

(i) network support pass through,

(j) cost pass through.

(5) The regulator's guidelines for non-contestable revenue determinations must not deal with the following matters under the *National Electricity Rules*, Chapter 6A—

(a) pricing,

(b) benchmarking reports,

(c) ring-fencing arrangements,

(d) shared assets,

(e) the X-factor,

(f) small-scale incentive schemes,

(g) demand management innovation allowance mechanism,

(h) contingent projects,

(i) transmission consultation procedure,

(j) removal of assets from the regulatory asset base.

47B Regulator's guidelines about non-contestable revenue determinations must include schemes and models—the Act, s 38(10)

(1) The regulator's guidelines for non-contestable revenue determinations must include the schemes and models to be used by the regulator in making a non-contestable revenue determination, including the following—

(a) an efficiency benefit sharing scheme,

(b) a capital expenditure sharing scheme,

(c) a post-tax revenue model,

(d) a roll forward model.

(2) The regulator's guidelines for non-contestable revenue determinations must also include a service target performance incentive scheme to be used by the regulator in remaking a non-contestable revenue determination under the Act, section 40.

(3) The schemes and models included in the regulator's guidelines under this clause must be consistent with the equivalent schemes and models under the *National Electricity Rules*, Chapter 6A.

47C Amendment of regulator's guidelines

(1) Before amending the regulator's guidelines, the regulator must—

(a) publish the proposed amendment on the regulator's website for a period of at least 20 business days, and

(b) consider any submissions received within the period.

(2) Subclause (1) does not apply to—

(a) the first publication of the regulator's guidelines under clause 47(1)(b), or

(b) an amendment the regulator considers minor or administrative.

(3) This clause extends to an amendment of a scheme or model included in the regulator's guidelines.

47D Making non-contestable revenue determinations—the Act, s 38(10)(a)

(1) This clause applies to the making of a non-contestable revenue determination.

(2) Before determining the amount for the component under the Act, section 38(2)(a), the regulator must calculate the depreciation using the depreciation schedules prepared in accordance with the *National Electricity Rules*, Chapter 6A.

(3) The regulator must modify the depreciation schedules for the purposes of subclause (2) if satisfied that it is reasonably necessary to ensure—

(a) the revenue determination is consistent with the objects of the Act specified in the Act, section 3(1)(a)–(c), and

(b) the network operator is capable of efficiently obtaining finance to carry out the infrastructure project.

(4) When determining the amount for the component under the Act, section 38(2)(b), the regulator must apply the current rate of return instrument made by the AER under the *National Electricity (NSW) Law*, section 18I, as in force at the time of the revenue determination.

(5) The regulator must take into account contractual arrangements entered into by a network operator as required under a relevant authorisation for a previous contestable revenue determination if—

(a) the regulator is establishing the value of the regulatory asset base for the purposes of a non-contestable revenue determination, and

(b) a contestable revenue determination was previously made in relation to all or part of the same network infrastructure.

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.

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.

(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).

(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 and consumer trustee—the Act, s 38(10)(a)

(1) The regulator must consult the infrastructure planner before making a revenue determination.

(1A) If the revenue determination relates to a REZ network infrastructure project, the regulator must also consult with the consumer trustee.

(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).

(3) The consumer trustee must give the regulator information about the amount notified to the regulator under the Act, section 31(2) that the regulator considers necessary to make the revenue determination.

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 contestable revenue determination—42 business days,

(a1) for a revenue determination for a contestable augmentation—84 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.

(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).

(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

50A Components of non-contestable revenue determinations—the Act, s 38(2)(d)

Allowances for the following are prescribed as components of a non-contestable revenue determination—

(a) indexation of the regulatory asset base,

(b) the estimated cost of corporate income tax of the network operator,

(c) an increase or decrease in the network operator's revenue resulting from the operation of the schemes included in the regulator's guidelines under clause 47B(1)(a) and (b) and (2),

(d) repayment of prudent, efficient and reasonable capital costs not included in the component specified in the Act, section 38(2)(a),

(e) other risks for which the network operator is not already compensated under the component specified in the Act, section 38(2)(b).

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, whether or not the revenue determination is reviewed and remade, must be carried out in accordance with—

(a) the guidelines issued under clause 47, and

(b) for a contestable revenue determination—the contractual arrangements the network operator entered into as required under the relevant authorisation, 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.

(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.

(5) A revenue determination may include provision for adjustment that is to be carried out in relation to the termination or expiry of the contractual arrangements entered into by the network operator under the relevant authorisation.

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) for a contestable revenue determination—correspond with the term of the contractual arrangements that the network operator enters as required under the relevant authorisation, and

(c) for a non-contestable revenue determination—set out the amounts required to be

paid for the following 5 years, and

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

(3) A non-contestable revenue determination may also include other information the regulator considers appropriate, taking into account the regulator's guidelines.

53 Publication of revenue determinations and related information—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.

(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.

(6) The regulator must not publish information under subclause (5) if satisfied that the information is confidential or commercially sensitive.

53A Revenue determination ceases to have effect—the Act, s 38(10)(f)

A revenue determination ceases to have effect if the relevant authorisation ceases to have effect.

Note—

An authorisation ceases to have effect on the termination or expiry of the contractual arrangements entered into by the network operator under the authorisation. See clauses 19A(4) and 20(3).

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.

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

54A Meaning of “eligible network operator”

In this Division—

eligible network operator means a network operator who—

(a) is subject to an authorisation under the Act, Part 5, Division 3, and

(b) is subject to a non-contestable revenue determination, and

(c) if the network operator is a distribution network service provider—

(i) is subject to an existing distribution determination under the *National Electricity Rules*, Chapter 6, and

(ii) provides distribution services to customers in the NSW region, and

(d) if the network operator is a transmission network service provider—

(i) is subject to an existing transmission determination under the *National Electricity Rules*, Chapter 6A, and

(ii) provides transmission services to customers in the NSW region.

54B Cost recovery declaration

(1) The Minister may make a declaration (a ***cost recovery declaration***) that an eligible network operator is entitled to receive a cost recovery amount in relation to specified network infrastructure.

(2) On the commencement of the declaration—

(a) the scheme financial vehicle ceases to be required to pay the eligible network operator for the network infrastructure in accordance with a revenue determination by the regulator, and

(b) the regulator ceases to be required to make revenue determinations, or to review or remake revenue determinations, in relation to the network infrastructure, and

(c) the eligible network operator is entitled to receive a cost recovery amount for the network infrastructure.

(3) In this clause—

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

54C Making a declaration

(1) The Minister may make a cost recovery declaration—

(a) on the Minister's own initiative, or

(b) on the application of a relevant person for the declaration.

(2) Before making a cost recovery declaration, the Minister must consider the following—

(a) the costs and savings, if the declaration is made, for—

(i) the eligible network operator to whom the declaration is proposed to apply, and

(ii) the regulator, and

(iii) the scheme financial vehicle,

(b) the impact of the declaration on the financial interests of electricity customers in the NSW region,

(c) anything else the Minister considers relevant.

(3) Before making a cost recovery declaration, the Minister must—

(a) consult with each relevant person for the declaration, and

(b) get the written consent of the eligible network operator.

(4) The cost recovery declaration must be published in the Gazette.

(5) In this clause—

relevant person, for a declaration, means the following—

(a) the eligible network operator to whom the declaration is proposed to apply,

(b) the regulator,

(c) the infrastructure planner,

(d) the consumer trustee.

54D Content of cost recovery declaration

(1) A cost recovery declaration must—

(a) specify the network infrastructure of the eligible network operator to which the declaration applies, and

(b) specify whether, for the purposes of the *National Electricity Rules*, the network infrastructure forms part of—

(i) the transmission system, or

(ii) the distribution system, and

(c) classify, for the purposes of the *National Electricity Rules*—

(i) services provided by the eligible network operator in relation to the transmission system as transmission services, and

(ii) services provided by the eligible network operator in relation to the distribution system as distribution services, and

(d) further classify, for the purposes of the *National Electricity Rules*—

(i) the services classified as transmission services as—

(A) prescribed common transmission services, or

(B) prescribed TUOS services, and

(ii) the services classified as distribution services as direct control services that are standard control services, and

(e) specify a commencement date for the declaration, which must be a date that is—

(i) at the start of a regulatory control period for the eligible network operator, and

(ii) at least 2 years after the date on which the declaration is published in the Gazette.

(2) In this clause—

regulatory control period has the same meaning as in the *National Electricity Rules*.

Part 10 Access schemes

55 Declaration of access scheme—the Act, s 24(5)(f)

(1) A declaration for an access scheme may specify the following matters in relation to the access scheme—

(a) the arrangements for the administration of the access scheme,

(b) the classes of the following that may be part of, or subject to, the access scheme—

(i) infrastructure, plant or equipment,

(ii) owners, controllers or operators of infrastructure, plant or equipment,

(c) the eligibility criteria for participating in the access scheme,

(d) matters related to the access and connection or disconnection process, including—

(i) access and connection to, or disconnection from, an access rights network or access control network under the access scheme, and

(ii) the administration of the process for access and connection or disconnection, and

(iii) the assessment and approval of changes to a connection or a connected facility to which an access right relates, including disconnection of the facility,

(e) matters related to proposals—

(i) in relation to the grant or increase of access rights to participants in the access scheme, and

(ii) made in accordance with the access scheme for the augmentation of network infrastructure in the renewable energy zone in which the access scheme is located,

(f) matters related to technical matters for the access scheme, including in relation to the following—

(i) network capacity,

(ii) network constraints,

(iii) network utilisation,

(iv) access rights,

(v) maximum capacities applying during different periods,

(g) requirements for establishing, administering and operating a register for access rights under the access scheme,

(h) requirements for giving notices or publishing information in relation to the access scheme,

(i) how the access scheme may be extended or terminated,

(j) how the declaration may be amended under the Act, section 28(1)(d).

(2) In this clause—

access control network, under an access scheme, means all or part of a transmission network or distribution network—

(a) that is not an access rights network under the access scheme, and

(b) to which access is controlled under the access scheme.

access rights network, under an access scheme, means all or part of a transmission network or distribution network identified as an access rights network in the declaration for the access scheme.

plant has the same meaning as in the *National Electricity Rules* and includes plant that consumes electricity but not generation infrastructure or storage infrastructure.

56 Fees for access schemes—community purposes—the Act, s 26

(1) For the Act, section 26(2), a component of a fee is taken to be used for a community purpose if it used to provide one or more of the following benefits to the relevant local

community—

(a) public or community services or infrastructure,

(b) health services or infrastructure,

(c) accommodation or housing,

(d) local or regional energy programs or infrastructure,

(e) environmental programs or infrastructure,

(f) parks and recreation infrastructure,

(g) education programs or research,

(h) arts or cultural programs,

(i) tourism programs or infrastructure,

(j) services, programs or infrastructure for First Nations people,

(k) other services, programs or infrastructure that benefit the relevant local community.

(2) For the Act, section 26(3)—

(a) the minimum proportion for the component of the annual access fee for a participant is—

(i) if the participant's annual access fee is $2,600 per megawatt or more—$1,700 per megawatt, or

(ii) otherwise—60%, and

(b) the maximum amount for the component of the annual access fee for a participant is—

(i) during the term of the access scheme—no maximum is prescribed, or

(ii) otherwise—$0.

(3) In this section—

relevant local community means the local community in the geographic area that forms the renewable energy zone to which the access scheme applies.

57 Fees for access schemes—employment purposes—the Act, s 26

(1) For the Act, section 26(4), a component of a fee is taken to be used for an employment purpose if it used to provide for one or more of the following to relevant

employees—

(a) employment programs and associated services and facilities,

(b) skills and training programs and associated services and facilities,

(c) a program, service or facility that supports the relevant employees to gain employment skills or experience relevant to employment.

(2) For the Act, section 26(5)—

(a) the minimum proportion for the component of the annual access fee for a participant is—

(i) if the participant's annual access fee is $2,600 per megawatt or more—$600 per megawatt, or

(ii) otherwise—20%, and

(b) the maximum amount for the component of the annual access fee for a participant is—

(i) during the term of the access scheme—no maximum is prescribed, or

(ii) otherwise—$0.

(3) In this section—

relevant employee means an employee who is—

(a) in the geographic area that forms the renewable energy zone to which the access scheme applies, and

(b) affected by changes in electricity generation in the State.

Part 11 Modification of National Electricity Rules

58 Modification of National Electricity Rules—the Act, ss 27 and 41

(1) The *National Electricity Rules* are modified as set out in Schedule 3.

(2) Terms used in Schedule 3 have the same meanings as in the *National Electricity Rules*.

59 Modifications relating to access scheme cease to apply when scheme ceases

The modifications contained in Schedule 3.1 that apply to a person because of an access scheme no longer apply to the person when the access scheme ceases.

Note—

The infrastructure planner for the access scheme is required to publish a notice on its website notifying the public when the access scheme ceases.

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 firming infrastructure

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.

Part 13 Performance audits—the Act, s 67

68 Definitions

In this part—

audit subject means the following—

(a) the consumer trustee,

(b) the financial trustee,

(c) the scheme financial vehicle,

(d) the infrastructure planner,

(e) the energy security target monitor,

(f) the regulator.

auditor means the following—

(a) for an audit of the performance of the energy security target monitor—the person appointed by the Minister under the Act, section 67(3),

(b) for an audit of the performance of the regulator—the person appointed by the Minister under the Act, section 67(3),

(c) otherwise—the regulator.

69 Annual audit plans

(1) The regulator must prepare an annual audit plan setting out the routine performance audits the regulator plans to undertake in the following year.

(2) In preparing an annual audit plan, the regulator must consult—

(a) each audit subject the regulator proposes to audit under the plan, and

(b) the appointor of each audit subject, and

(c) the Auditor-General.

(3) An annual audit plan must be published on the regulator's website at least 1 month before the beginning of the relevant year.

(4) In this clause—

year means a period of 12 months commencing on 1 July.

70 Frequency of audits

(1) This clause applies to the audit of an entity under the Act, section 67(1).

(2) The regulator may conduct a routine performance audit of the entity no more than once every 5 years.

(3) If a routine performance audit of an entity identifies matters of high risk, the regulator may conduct a follow-up audit of the entity and assess whether or not the entity has taken action to address identified matters of high risk, including action recommended by the regulator.

(4) The regulator may also conduct a performance audit whenever the regulator—

(a) reasonably suspects the entity may be unable to effectively undertake its functions under the Act, or

(b) receives information that indicates the entity may—

(i) be incompetent, or

(ii) have engaged in misconduct, or

(iii) lack capacity.

71 Scope of audits

(1) In determining the scope of an audit, the auditor must consider the following—

(a) high risk areas of the audit subject's functions,

(b) the administrative burden imposed on the audit subject by the audit,

(c) external control and assurance measures relevant to the audit subject including under the following—

(i) the *Corporations Act 2001* of the Commonwealth,

(ii) the *Government Sector Audit Act 1983*,

(iii) the *Public Governance, Performance and Accountability Act 2013* of the Commonwealth.

(2) In determining the scope of an audit, the auditor—

(a) must consult the following—

(i) the audit subject,

(ii) the appointor of the audit subject, and

(b) may consult the Auditor-General.

72 Guidelines

(1) The regulator must develop guidelines about how the regulator proposes to conduct performance audits of entities under the Act, section 67(1) (the ***guidelines***).

(2) The guidelines must include the following—

(a) guidance on how the auditor may—

(i) give notice of an audit, and

(ii) consult on the scope of an audit, and

(iii) consult the audit subject on adverse comments or findings proposed to be included in an audit report, and

(iv) audit more than 1 audit subject at the same time,

(b) examples of what may—

(i) constitute incompetence, misconduct or incapacity on the part of the audit subject, or

(ii) compromise the ability of an audit subject to effectively carry out its functions,

(c) guidance on the roles and responsibilities of the auditor and the audit subject.

(3) The guidelines may include other matters the regulator considers appropriate.

(4) In developing or reviewing the guidelines, the regulator must—

(a) consult the Minister and audit subjects, and

(b) consider the submissions made.

(5) The guidelines must be published on the regulator's website.

(6) The regulator must publish the guidelines under this clause before undertaking the first performance audit under this part.

73 Conduct of audits

(1) An audit under this part must be conducted in accordance with—

(a) the Australian Auditing Standards, and

(b) the equivalent international standards.

(2) In conducting an audit, the auditor must, without limitation, assess the following—

(a) the extent to which the audit subject, in exercising functions and complying with obligations under the Act, is acting efficiently, effectively and economically,

(b) the exercise of the audit subject's functions under the Act,

(c) compliance with the audit subject's obligations under the Act.

(3) The auditor must notify the Minister before commencing an audit.

(4) If there is a conflict or inconsistency between a provision of the Australian Auditing Standards and a provision of an equivalent international standard, the provision of the Australian Auditing Standards prevails to the extent of the conflict or inconsistency.

(5) In this clause—

Australian Auditing Standards means the *Australian Auditing Standards* issued by the Auditing and Assurances Standards Board from time to time.

international standards means the international standards on auditing issued by the International Auditing and Assurance Standards Board.

74 Obligation to give information to auditor

An audit subject must, if requested to do so by an auditor, provide information to the auditor that the auditor considers reasonably necessary for the audit.

75 Reporting

(1) An audit report must, as soon as practicable after the audit is completed, be published—

(a) if the regulator is the auditor—on the regulator's website, or

(b) otherwise—on the Department's website.

(2) Before publishing an audit report, the auditor must—

(a) consult the audit subject, and

(b) give a copy of the report to—

(i) the Minister, and

(ii) the audit subject.

(3) The auditor may decide not to publish part of an audit report 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 report would disclose information that is confidential or commercially sensitive,

(c) the effect of publishing the part of the report on competitive assessment processes.

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

Schedule 3 Modification of National Electricity Rules

clause 58

3.1 Modifications relating to access schemes

[1] Clause 3.13.3 Standing data

Insert after clause 3.13.3(b1)—

(b2) A Scheduled Generator, Semi-Scheduled Generator or Market Participant holding an access right under an access scheme for a generating system must not, when notifying AEMO of the maximum generation of a generating unit—

(1) for a generating system comprised of 1 generating unit—specify an amount that is higher than the maximum capacity for the system during any capacity period as specified for the system in the access rights register for the access scheme, or

(2) for a generating system comprised of 2 or more generating units—specify an amount that, when aggregated with the amounts notified for all the other generating units comprising the generating system, is higher than the maximum capacity for the system during any capacity period as specified for the system in the access rights register for the access scheme.

(b3) Paragraph (b2)(2) does not apply to a generating system comprised of 2 or more generating units if—

(1) the generating units are aggregated for central dispatch under clause 3.8.3, or

(2) the generating system—

(i) comprises plant that consumes electricity other than auxiliary load, and

(ii) is specified as not being subject to paragraph (b2)(2) by the infrastructure planner for the access scheme—

(A) in the access rights register for the access scheme, or

(B) in a written notice given to the Scheduled Generator, Semi-Scheduled Generator or Market Participant.

[2] Clause 4.8.9 Power to issue directions and clause 4.8.9 instructions

Insert after clause 4.8.9(j)—

(k) AEMO is not prevented from issuing a direction or clause 4.8.9 instruction merely because the maximum capacity of a Registered Participant's generating system as specified in an access rights register under an access scheme is less than the amount required to be generated under the direction or instruction.

[3] Clause 5.3.1 Process and procedures

Insert after clause 5.3.1(b1)—

(b2) Clause 5.3.2(a)–(e) does not apply to a person who proposes to establish a connection for a generating system to an access rights network under an access scheme.

[4] Clause 5.3.4 Application for connection

Insert after clause 5.3.4(a)—

(a1) A person must not submit an application to connect to an access rights network under an access scheme unless—

(1) for the connection of a generating system—the person is registered as the holder of an access right for the generating system in the access rights register for the access scheme, or

(2) otherwise—the person has obtained the consent of the infrastructure planner for the access scheme.

(a2) A person must not submit an application to connect the following to an access control network under an access scheme unless the person has obtained the consent of the infrastructure planner for the access scheme—

(1) a transmission network,

(2) a distribution network,

(3) a generating system.

[5] Clause 5.3.6 Offer to connect

Omit "paragraph (a3)" from clause 5.3.6(a). Insert instead "paragraphs (a3)–(a5)".

[6] Clause 5.3.6(a4) and (a5)

Insert after clause 5.3.6(a3)—

(a4) A Network Service Provider must not make an offer to connect a person's facilities to an access rights network under an access scheme unless—

(1) for the connection of a generating system—

(i) the person seeking to connect the generating system is registered as the holder of an access right for the generating system in the access rights register for the access scheme, and

(ii) the generating system is to be connected to the part of the network to which the access right relates, or

(2) otherwise—the Network Service Provider has obtained the consent of the infrastructure planner for the access scheme.

(a5) A Network Service Provider must not make an offer to connect the following to an access control network under an access scheme unless the Network Service Provider has obtained the consent of the infrastructure planner for the access scheme—

(1) a transmission network,

(2) a distribution network,

(3) a generating system.

[7] Clause 5.3.9 Procedure to be followed by a Generator proposing to alter a generating system

Insert after clause 5.3.9(b)—

(b1) Before submitting information under paragraph (b), a Generator to which this clause applies must, if the generating system is connected to an access rights network or access control network under an access scheme, obtain the consent of the infrastructure planner for the access scheme.

[8] Clause 5.5.1 Application

Insert after clause 5.5.1(c)—

(d) This rule 5.5 does not apply to a dispute about the application of the following provisions—

(1) clause 5.3.1(b2),

(2) clause 5.3.4(a1) and (a2),

(3) clause 5.3.6(a4) and (a5),

(4) clause 5.3.9(b1).

[9] Clause 5.9.3 Involuntary disconnection

Insert after clause 5.9.3(a)—

(a1) An infrastructure planner for an access scheme may direct a Network Service Provider to disconnect a facility from an access rights network under the access scheme if—

(1) the access right for the facility is suspended or terminated, and

(2) the suspension or termination of the access right is specified in the access rights register for the access scheme.

(a2) The Network Service Provider must comply with the direction promptly.

[10] Clause 5.9.4A Notification of disconnection

Renumber clause 5.9.4A as clause 5.9.4A(a).

[11] Clause 5.9.4A(b)

Insert after clause 5.9.4A(a)—

(b) An infrastructure planner must, before giving a direction under clause 5.9.3(a1) to a Network Service Provider, consult with the following on how the disconnection, including the timing of the disconnection, will affect power system security—

(1) AEMO,

(2) the Network Service Provider,

(3) other Network Service Providers that may be affected by the disconnection.

[12] Schedule 5.6 Terms and Conditions of Connection agreements and network operating agreements

Insert after Part A, paragraph (o)—

(p) if the Connection Applicant is connecting a generating system to an access rights network under an access scheme—

(1) details of the access right applicable at the connection point, and

(2) a requirement—

(i) specifying that, for a capacity period as set out in the access rights register for the access scheme, the maximum permitted output of the generating system must not be higher than the maximum capacity specified in the

access rights register, and

(ii) that applies for the duration of the access scheme, and

(iii) that does not limit an obligation to comply with a direction or clause 4.8.9 instruction.

[13] Chapter 10 Glossary

Insert in alphabetical order—

access control network, under an access scheme, means all or part of a transmission network or distribution network—

(a) that is not an access rights network under the access scheme, and

(b) to which access is controlled under the access scheme.

access right means an access right allocated—

(a) under an access scheme, and

(b) in accordance with the declaration for the access scheme.

access rights network, under an access scheme, means all or part of a transmission network or distribution network identified as an access rights network in the declaration for the access scheme.

access rights register, for an access scheme, means the register—

(a) of access rights under the access scheme, and

(b) established under the declaration for the access scheme.

access scheme has the same meaning as in the *Electricity Infrastructure Investment Act 2020*.

declaration, for an access scheme, means the declaration made under the *Electricity Infrastructure Investment Act 2020*, section 24 for the access scheme.

infrastructure planner, for an access scheme, means the infrastructure planner appointed under the *Electricity Infrastructure Investment Act 2020* for the renewable energy zone, or part of the renewable energy zone, to which the access scheme relates.

[14] Chapter 10, definition of "Connection Applicant"

Insert after paragraph (b)—

In respect of establishing or modifying a connection to an access rights network under

an access scheme, a Connection Applicant includes a person who—

(a) is, or intends to become, a Registered Participant, and

(b) holds an access right registered on the access rights register for the access scheme.

3.2 Modifications relating to infrastructure project cost recovery

[1] Clause 6.2.1 Classification of distribution services

Insert after clause 6.2.1(e)—

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

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

Insert after clause 6.2.2(e)—

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

[3] Clause 6.4.3 Building block approach

Insert after clause 6.4.3(a)(5)—

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

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

Insert after clause S6.2.1(e)—

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

[5] Clause 6A.5.4 Building blocks approach

Insert after clause 6A.5.4(a)(5A)—

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

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

Insert after clause S6A.2.1(f)—

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

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

Insert after clause S6A.2.3(a)—

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

[8] Chapter 10 Glossary

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

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

[9] Chapter 10, definition of "prescribed transmission service"

Insert at the end of paragraph (c)—

or

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

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

Insert after paragraph (b)—

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