

## AER draft input into IPART annual report about NSW Electricity Infrastructure Roadmap

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
Consideration of recommendations by the infrastructure planner	Section 31	The regulator must not disclose the maximum amount for development and construction of the REZ network infrastructure to any person.	Y	N/A	We have not received a revenue proposal.
Consultee for priority transmission infrastructure projects	Section 34(1)	The Minister must consult the regulator before directing a network operator to carry out a priority transmission infrastructure project,	Y	N/A	No direction has yet been made.
Consultee for authorising a network operator	Section 36(3)	The Minister must consult with the regulator before authorising a network operator under subsection (2). <sup>2</sup>	Y	N/A	No authorisation has yet been made.
Regulator to take into account principles	Section 37	In exercising its functions, the regulator is to take into account the following principles—	Y	N/A	We have not received a revenue proposal.

<sup>1</sup> In this column, references to sections are to sections of the Act, while references to clauses are references to clauses of the regulations.

<sup>2</sup> Section 36(2) - "The Minister may authorise a network operator to carry out a priority transmission infrastructure project for the purposes of this Division."

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		<p>(a) a network operator is entitled to recover the prudent, efficient and reasonable costs incurred by the network operator for carrying out the infrastructure project.</p> <p>(b) incentives should be given to network operators to promote economic efficiency,</p> <p>(c) a network operator is entitled to revenue for the ongoing ownership, control and operation of an infrastructure project that is commensurate with the regulatory and commercial risks to the network operator,</p> <p>(d) a network operator is entitled to be informed of material issues being considered by the regulator under this Division,</p> <p>(e) other principles prescribed by the regulations.</p>			

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Making revenue determinations	Section 38	The regulator to determine amount payable to network operators for network infrastructure projects. Procedural requirements for the determination are set out in sections 38(2)-(4) and (6).	Y	N/A	We have not made any revenue determinations.
	Section 38(5)	The regulator is to publish guidelines on its website about the transmission efficiency test.	Y	The AER prepared a draft guideline <sup>3</sup> setting out how it will undertake the transmission efficiency test, assess capital costs and make revenue determinations for network operators selected through a contestable procurement process undertaken by the infrastructure planner. The draft guideline was released for consultation on 6 May 2022. The final guideline was published 19 August 2022 and will be used to assess competitive tenders the infrastructure planner has commenced for the Waratah Super Battery and transmission network for the Central-West Orana renewable energy zone.	

<sup>3</sup> Revenue determination guideline for NSW contestable network projects, 19 August 2022

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
				The NSW Office of Energy and Climate Change (OECC) is developing regulations in relation to non-contestable guidelines, and we expect to release a draft guideline in the second half of 2022.	
	Section 38(7)	The regulator may, by written notice to a network operator, require the network operator to provide information to the regulator that the regulator considers necessary to enable the regulator to make a determination.	N	N/A	No revenue determination processes have commenced.
Reviewing determinations	Section 39	The regulator is, in accordance with the regulations, to remake a determination under section 38—  (a) once every 5 years, and  (b) at any time the CT directs.  The regulator may review and remake a determination at any time, subject to the regulations.	Y	N/A	No revenue determination processes have commenced.

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
	Section 40	The CT can direct the regulator to remake a determination under section 38 at any time (in accordance with the regulation)	Y	N/A	No revenue determination processes have commenced.
Tendering for LTES agreements	Section 47(1)	The regulator may authorise the CT to not conduct a competitive tender for LTES agreements.	N	N/A	This function has not been exercised.
Consultee on tendering rules	Section 47(6)	The regulator is to be consulted before the CT makes tendering rules under section 47(5)	Y	Complete. Over the past several months, the consumer trustee shared its tender rules with the AER, and feedback was exchanged between the AER and consumer trustee.	AER website contains draft tender rules presented by the CT and all correspondence exchanged between the AER and CT. See <a href="https://www.aer.gov.au/networks-pipelines/nsw-renewable-energy-zones">https://www.aer.gov.au/networks-pipelines/nsw-renewable-energy-zones</a> .

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
Risk management framework	Section 51	The regulator must approve the risk management framework prepared by the CT. The Minister may require the regulator to review an approved risk management framework.	Y	<p>On 27 June 2022, the AER received the risk management framework<sup>4</sup> from the Consumer Trustee.</p> <p>The AER approved the risk management framework on 8 July 2022.<sup>5</sup></p>	The AER fulfilled this function pursuant to section 51 of the EII Act and clause 32 of the EII Regulations, and according to the purpose set out in section 51(1) EII Act that a risk management framework is to protect the financial interests of NSW electricity customers in connection with the risks associated with LTES agreements.
Regulator to make annual contribution determinations	Section 56	The regulator is to determine an amount for a financial year (a contribution determination) that is required for the scheme financial vehicle to be able to make the payments from the Fund that are required under the Act, including the amount required for the scheme financial vehicle to meet its liabilities as they fall due.	Y	N/A	We have not made a contribution determination. The first contribution determination will be made by 28 February 2023.

<sup>4</sup> Risk Management Framework, AEMO Services, July 2022

<sup>5</sup> AER letter to Consumer Trustee – Approval of risk management framework, 8 July 2022

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
	Section 57	The regulator may, by further order published in the Gazette, vary a contribution determination in certain circumstances.	N	N/A	We have not made a contribution determination. The first contribution determination will be made by 28 February 2023.
	Section 57(2)	The regulator is to publish guidelines on its website about the exercise of the regulator's functions under this section.	Y	<p>The AER prepared a draft guideline<sup>6</sup> setting out how it will make annual contribution determinations to calculate the annual costs of the NSW Electricity Infrastructure Roadmap.</p> <p>On 31 May 2022, the AER released the draft guideline and model<sup>7</sup> for consultation and subsequently undertook a mock trial determination process to test the arrangements set out in the draft guideline.</p> <p>The guideline will be finalised in the first quarter of 2022-23 ahead of the first contribution determination, to be gazetted by 28 February.</p>	The final guideline is on track for release by 30 September 2022.

<sup>6</sup> Contribution determination guideline under NSW electricity roadmap, 31 May 2022

<sup>7</sup> Draft contribution determination template, 31 May 2022

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
Guidelines	Section 64	The regulator has the function of issuing guidelines in relation to the exercise of functions by the persons and bodies appointed under the Act (see below the entry for clause 42 of the regulations.)	Y	<p>We have issued draft guidelines on:</p> <ul style="list-style-type: none"> <li>how we will undertake a transmission efficiency test and revenue determination for contestable projects (a final was released 19th August)</li> <li>how we will make annual contribution determinations to facilitate the recovery of the costs of the NSW Electricity Infrastructure Roadmap.</li> </ul> <p>The OECC is developing regulations in relation to non-contestable guidelines, and we expect to release a draft guideline in the second half of 2022. We also intend to develop supporting administration-related guidelines in Q2 2023 (see the below row on clause 42 for detail).</p>	<p>The final guideline in relation to contribution determinations will be published in the second half of 2022.</p> <p>The final guideline in relation to non-contestable network projects will be released in the second half of 2022.</p>
Delegation	Section 71	The regulator may delegate any of their functions, other than the power of delegation, to a person of a class prescribed by the regulations.	N	N/A	We have not exercised any delegations under this provision of the EII Act.



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Penalty notices	Section 76	The AER (as an authorised officer) <sup>8</sup> may issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence.	N	N/A	We have not issued any penalty notices.
Contribution determination	Clause 35	In making a contribution determination, the regulator must take into account the matters listed in the clause.	Y	N/A	We have not made a contribution determination. The first contribution determination will be made by 28 February 2023.
	Clause 36	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.	Y	N/A	We have not made a contribution determination. The first contribution determination will be made by 28 February 2023.

<sup>8</sup> Clause 55(1) prescribes the AER is an authorised officer.

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
	Clause 39	The regulator may require the consumer trustee, financial trustee and infrastructure planner to provide information to the regulator where the regulator considers it is reasonably necessary to enable the regulator to make a contribution determination.	N	N/A	We have not commenced a contribution determination process. The first process will commence in October 2022, leading into our first contribution determination to be made by 28 February 2023.
Functions of the regulator	Clause 42	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,	Y	Under clause 42 of the EII Act, we will exercise this function by developing a ring-fencing guideline. We will develop this guideline by Q2 2023.	Our engagement with scheme entities to date indicates that no ring-fencing issues are likely to arise before Q2 2023.

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		<p>(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</p> <p>(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</p> <p>(c) monitor compliance by network operators with the standards.</p>			
Competitive assessment process	Clause 45	<p>In the exercise of the regulator's functions under Part 5 of the Act, the regulator may rely on and adopt information provided to the regulator by the infrastructure planner if—</p> <p>(a) the infrastructure planner obtained the information from a competitive assessment process, and</p>	N	N/A	No competitive assessment processes have been completed and therefore we have not received any such information.

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
		(b) the regulator is satisfied that the competitive assessment process was genuine and appropriate.			
Principles for regulator	Clause 46	The regulations prescribe principles that the regulator must follow when making revenue determinations.	Y	N/A	We have not made any revenue determinations.
Guidelines	Clause 47	The regulator must publish guidelines on its website about revenue determinations.	Y	<p>We have published a guideline on how we will undertake a transmission efficiency test and revenue determination for contestable projects.<sup>9</sup></p> <p>The NSW Office of Energy and Climate Change is developing regulations in relation to non-contestable guidelines, and we expect to release a draft guideline in the second half of 2022.</p>	Initially the guidelines would not have been split between contestable and non-contestable, however given the NSW Government's decision to advance Waratah Super Battery, a guideline for contestable projects was most pressing.
Network operator to give information to regulator	Clause 48	The regulator may require the provision of information from network operators.	N	N/A	We have not requested information from network operators as we do not have any revenue determinations underway.

<sup>9</sup> Revenue determination guideline for NSW contestable network projects, 19 August 2022

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
Consultation with the infrastructure planner	Clause 49	The regulator must consult the infrastructure planner before making a revenue determination	Y	N/A	We have not made a revenue determination.
Timing for making revenue determinations	Clause 50	<p>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</p> <p>(a) for a determination made as a result of a competitive assessment process—42 business days,</p> <p>(b) otherwise—126 business days.</p> <p>The report must be provided to the Minister and published on the regulator's website as soon as practicable.</p>	Y	N/A	We have not made a revenue determination.
Content and publication	Clauses 51-52	Provides the content the regulator must include in the revenue determinations.	Y	N/A	We have not made a revenue determination.

Function area	Ref <sup>1</sup>	Function	Mandatory (Y/N)	Status and outputs	Comments
	Clause 53	<p>The regulator must publish the following on its website—</p> <p>(a) if a revenue determination is made or remade—</p> <p style="padding-left: 20px;">(i) the revenue determination, and</p> <p style="padding-left: 20px;">(ii) the reasons for making the revenue determination,</p> <p>There are some exemptions to publishing in Clause 53(4).</p>	Y	N/A	We have not made a revenue determination.
Review of errors in revenue determinations	Clause 54	<p>The regulator may review and remake a revenue determination to the extent necessary to correct—</p> <p>(a) a material error, misdescription or miscalculation, or</p> <p>(b) an error resulting from the provision of false or materially misleading information to the regulator.</p>	N	N/A	We have not made a revenue determination.

