



ELECTRICITY INFRASTRUCTURE ROADMAP

# Tranche two regulations to support the Electricity Infrastructure Roadmap

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Issues Paper



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## Executive summary

In November 2020, the NSW Government released its Electricity Infrastructure Roadmap (the Roadmap) to coordinate investment in new generation, firming, storage and network infrastructure. The *Electricity Infrastructure Investment Act 2020* (the EII Act) provides the legislative framework to deliver the Roadmap. The Act provides for this framework to be further detailed through regulations and regulatory instruments.

The Department of Planning, Industry and Environment (the Department) intends to develop recommendations for the regulations under the EII Act in three tranches throughout the 2021 calendar year. The first tranche of regulations was specific to the Renewable Energy Sector Board (Board) required under Part 2 of the EII Act. This regulation simply enabled the Board to be established so it could meet its statutory reporting timelines.

The purpose of this Issues Paper is to seek stakeholder feedback on the second tranche of regulations which deal with urgent or mechanical policy details required to deliver the EII Act. The Department intends to seek preliminary feedback on the third and most substantial tranche of regulations later in the second quarter of the 2021 calendar year, and then again on draft regulations in the third quarter of the 2021 calendar year.

This Issues Paper sets out the following proposed matters for regulation:

- definitions of reserve margin, maximum demand, and firm capacity so the Energy Security Target Monitor can assess the Energy Security Target
- classes of Renewable Energy Zone (REZ) network infrastructure project to provide a framework to develop the Transmission Efficiency Test
- defining the reliability standard for generation and inter-regional transmission
- principles for competitive tenders for Long Term Energy Service Agreements so the Consumer Trustee can develop tender rules
- matters the Consumer Trustee must consider in preparing the Infrastructure Investment Objectives Report so the Consumer Trustee can prepare this report
- establishing the penalty notice regime.

Figure 1 provides a summary of the three tranches of regulations under the EII Act. This issues paper relates to the second tranche of regulations, which are outlined in Chapter 2.

The Department invites written submissions from all interested parties on the issues, options and questions (see following page for summary) set out in this Issues Paper.

**Figure 1 Summary of regulation tranches under the EII Act**

Part 2 - Board and advocate	7(7) NSW renewable energy sector board							Tranche 1
Part 3 - Energy security targets	12(1) Definition of reserve margin	12(3) Calculating maximum demand	17(1)/17(2) Offences	18(4) Disclosure of confidential information				Tranche 2
Part 4 - Renewable energy zones and access schemes	21(2) Application for declaration of REZ	24(5)(f) Minister declaration of access scheme for REZ	26 Fees for access schemes	27(1) Application of NEL and NER				Tranche 3 (indicative)
Part 5 - Network Infrastructure projects	36 - 42 Functions of Regulator (note 1)							
Part 6 - Electricity Infrastructure Investment safeguard	43(3) Prescribe reliability standard	45(4) Planning by consumer trustee	47(3)(a) Tendering for LTES agreements - Requirements	47(5) Tendering for LTES agreements - Rules	48(4) Recommendations about LTES agreements	49 - 50 Operation of LTES Agreements (note 2)	51(8) Risk management framework	
Part 7 - Electricity Infrastructure fund	56(4)(b)/56(6)(b) Regulator determinations	58(2)/58(6) Contributions by DNSPs						
Part 8 - Administration	64(1)(c) Regulator appointment	66 General provisions of appointments	67(4) Performance audits					
Part 9 - Miscellaneous	76(2)/(4)/(6) Penalty notices	79(1) General regulations						
Dictionary	Definitions							

Note 1: Functions of regulator includes s. 37(1)(e), 37(2)(c), 38(2)(d), 38(10), 39(2), 40(1), 41(1), 42(1) and 42(2).

Note 2: Operation of LTES agreements includes s. 50(1), 50(5)(e) and 50(6).

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## Summary of questions for stakeholders

In this Issues Paper, stakeholder feedback is sought on questions relating to the development of regulations under the EII Act. These questions are collated below to align with chapters in this Issues Paper.

### Questions related to the Energy Security Target

**Question 1:** Should the Energy Security Target Monitor define the method to determine the derating factor or should the method be defined in the regulations? If not by derating factors, how else should the regulations address the probabilistic nature of semi-scheduled generators in the context of the deterministic Energy Security Target?

**Question 2:** Should the regulations prescribe any other matters for inclusion in the Energy Security Target Monitor's report? If so, what are they?

### Questions related to the Electricity Infrastructure Investment Safeguard

**Question 3:** To what extent are the requirements for carrying out competitive tenders of Long Term Energy Service agreements appropriate? Are there any other requirements that should be considered?

**Question 4:** Do you agree with the matters the Consumer Trustee must take into account when preparing the Infrastructure Investment Objectives Report? Are there any other matters that should be taken into account?

**Question 5:** In what circumstances should the Consumer Trustee prefer long duration storage over firming infrastructure to meet the reliability standard?

### Questions on classification of REZ network infrastructure

**Question 6:** Are there any other considerations that should be taken into account in classifying REZ network infrastructure in regulations, including the need for, and scope of, sub-classifications?

**Question 7:** What types of network infrastructure could be subject to economic regulation under Part 5 of the EII Act?

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# 1. Call for submissions

The Department invites submissions from interested parties on this tranche two regulations issues paper.

We encourage stakeholders to provide their feedback in response to the questions set out in this tranche two regulations issues paper. This will help us interpret and incorporate your responses into our decision making process. Stakeholders are encouraged to provide evidence to support claims where possible.

**Preferred option:** Stakeholders can respond to questions in the tranche two regulations issues paper by using the online form on the [Electricity Infrastructure Investment Regulations webpage](#).

**Alternative options:** Alternatively, stakeholders may fill in and return a submission form (Word document) that is available on the [Electricity Infrastructure Investment Regulations webpage](#). The Department also welcomes free form submissions, instead of, or in addition to, the submission form. Please email your submission form and/or free form submission to [Electricity.Roadmap@dpie.nsw.gov.au](mailto:Electricity.Roadmap@dpie.nsw.gov.au) with ‘**Your Name – Tranche Two Issues Paper Submission**’ in the subject line.

Please identify if you would like your submission to be confidential or anonymous.

Please note that participation in providing submissions is entirely voluntary, is not assessable, and does not in any way include, exclude, advance or diminish any entity from any future procurement or competitive process in regard to Renewable Energy Zones, Long Term Energy Service Agreements (LTESAs) under the NSW Electricity Infrastructure Investment Safeguard, or any other NSW programs.’

The Department is committed to an open and transparent process, and all survey responses and submissions will be made publicly available, except those requested to be kept confidential. **The Department will redact personal details from submissions made by individuals to protect personal information.** In particular, if a submission author regards any content of their submission as revealing protectable corporate intellectual property, they should clearly note and define this in their submission. In the absence of an explicit declaration to the contrary, the Department will assume that information provided by respondents is not considered intellectual property of the respondent. Written submissions should be provided as documents that can be published on the Department’s website.

**If you wish for your written submission to remain confidential (except to Department project staff and advisors, who are subject to appropriate confidentiality arrangements), please clearly state this in your submission, and only your organisation’s name will be published.**

The Department may disclose confidential information provided by you to:

- the NSW Minister for Energy and Environment or Minister’s office
- the NSW Ombudsman, Audit Office of NSW or as may be otherwise required for auditing purposes or Parliamentary accountability
- directly relevant departmental staff, consultants and advisors
- the Australian Energy Market Operator (AEMO), Energy Security Board (ESB), Australian Energy Market Commission (AEMC), Australian Energy Regulator (AER) or the Australian Competition & Consumer Commission (ACCC)

- TransGrid, the Clean Energy Finance Corporation (CEFC) or the Australian Renewable Energy Agency (ARENA) or distribution network service providers
- other parties where authorised or required by law to be disclosed.

Where the Department discloses this information to any of these parties, it will inform them that the information is strictly confidential. The Department may publish or reference aggregated findings from the consultation process in an anonymised way that does not disclose confidential information.

## 2. Context, overview of regulations and scope of paper

The November 2020 Electricity Infrastructure Roadmap (the Roadmap) describes how the NSW Government plans to develop our world-class renewable energy resources, modernise the State's electricity system and provide NSW consumers with a more affordable, reliable, secure and sustainable electricity supply.<sup>1</sup>

The Roadmap is being implemented through the *Electricity Infrastructure Investment Act 2020* (the EII Act). The Act specifies the bodies and rules under which the Roadmap will be implemented, including the coordinated development of five or more Renewable Energy Zones (REZs), involving large-scale wind and solar farms, transmission lines, electricity storage and firming infrastructure. This coordination is essential to ensuring timely and efficient development of new energy infrastructure, that this infrastructure is built in locations where communities want it and that benefits are equitably shared with host regions.

The EII Act was enacted in December 2020 and provides the legislative framework to implement the Roadmap. The Department is now consulting stakeholders on policy issues to resolve in regulations under the EII Act.

### Overview of regulations to support the Roadmap

To support the EII Act, the Department intends to develop recommendations to the Minister on regulations in the following three tranches.

#### Tranche one regulations (made on 10 March 2021)

The tranche one regulation relates to the membership, functions and procedures of the Renewable Energy Sector Board. The Minister has established the Renewable Energy Sector Board under section 7 of the EII Act. The Renewable Energy Sector Board will create and monitor a plan for the manufacturing and construction of infrastructure in the renewable energy sector. The Board was established in February 2021 and the regulation was made on 10 March 2021.

#### Tranche two regulations (the subject of this paper)

Tranche two regulations are the subject of this Issues Paper. The second tranche of regulations covers matters under the EII Act that are urgent or mechanical, including:

- definitions for the reserve margin, maximum demand, firm capacity so the Energy Security Target Monitor can assess the Energy Security Target
- classes of Renewable Energy Zone (REZ) network infrastructure project to provide a framework to develop the Transmission Efficiency Test
- defining the reliability standard for generation and inter-regional transmission
- principles for competitive tenders for LTESA so the Consumer Trustee can develop tender rules
- matters the Consumer Trustee must consider in preparing the Infrastructure Investment Objectives Report so the Consumer Trustee can prepare this report
- establishing the penalty notice regime.

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<sup>1</sup> NSW Government, NSW Electricity Infrastructure Roadmap, Building an Energy Superpower, Detailed Report, November 2020.

Following stakeholder consultation the Department will recommend regulations be made on these matters before July 2021.

### Tranche three regulations (consultation pending)

Items to be addressed by the tranche three regulations will include matters that require further policy development and stakeholder consultation. An overview of matters that may be included in tranche three regulations is set out below with reference to the relevant parts of the EII Act:

- **Part 4** is about processes to declare REZs and access schemes, and fees for access schemes.
- **Part 5** outlines the assessment of REZ network infrastructure projects, Ministerial directions on network infrastructure projects and network revenue determinations.
- **Part 6** covers LTES Agreements, including their tendering, operation, and risk management.
- **Part 7** is about the regulator's contribution determinations and contribution requirements on distribution network service providers.

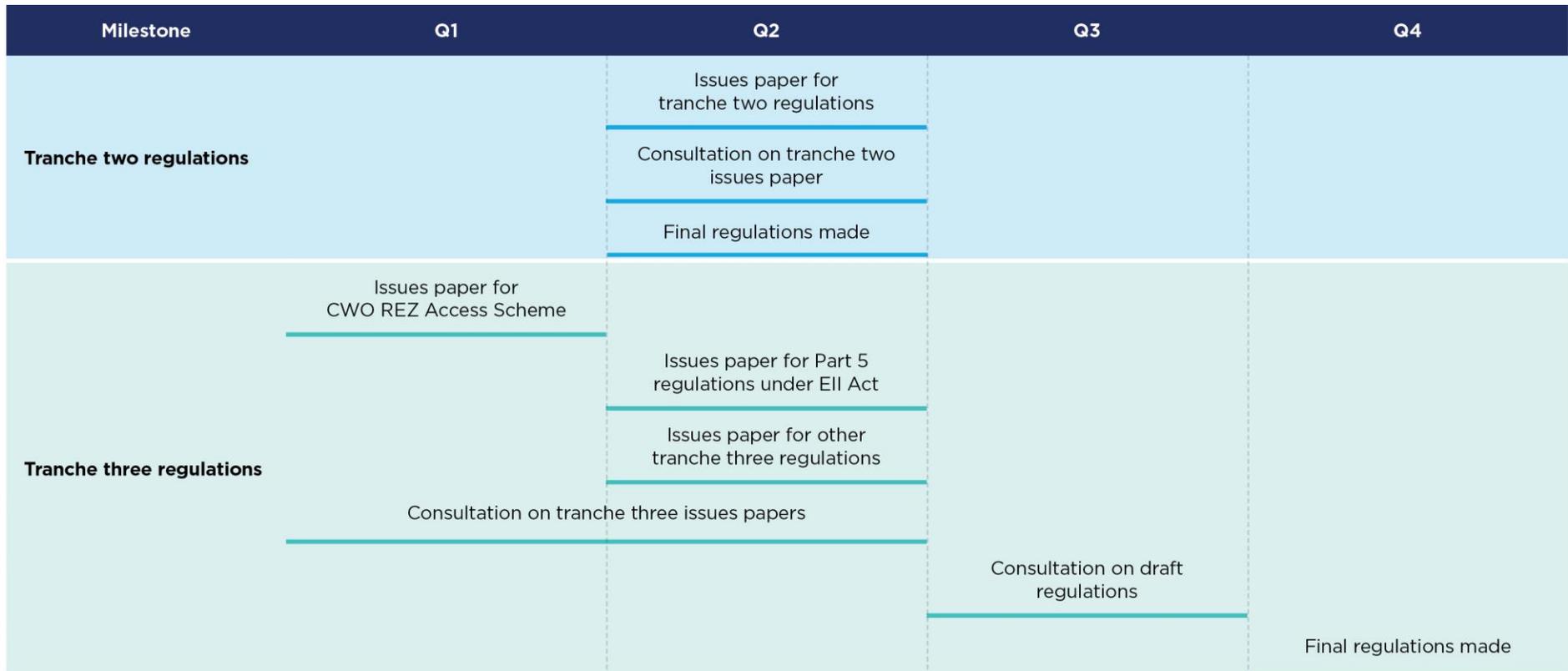
Figure 2 summarises the tranches of regulation to be developed under the EII Act.



## Indicative timeline to develop regulations to support the roadmap

Figure 3 shows the indicative consultation timeline to develop regulations under the EII Act.

**Figure 3 Indicative consultation timeline to develop regulations under the EII Act**



## Additional instruments and reporting requirements under the EII Act

In addition to regulations, the EII Act also requires other instruments to be made such as the guidelines and rules. Several entities have statutory obligations to produce reports and plans under the EII Act. For more details, see Appendix A.

## Scope of this Issues Paper

This Issues Paper outlines matters for consultation related to tranche two regulations and seeks stakeholder feedback on some of these regulations, as noted in chapters 3 to 5 of this report.

## Structure of Issues Paper

- **Chapter 3 – Energy Security Target** – regulations prescribing the definitions of reserve margin, maximum demand and firm capacity and contents of Energy Security Target Monitor reports
- **Chapter 4 – Electricity Infrastructure Investment Safeguard** – regulations prescribing the reliability standard; requirements for tendering of LTESAs; and minimum requirements for the Infrastructure Investment Objectives Report
- **Chapter 5 – Classes of REZ Network Infrastructure for the purposes of cost recovery** – regulations to prescribe different classes of REZ network infrastructure
- **Chapter 6 – Enforcement and compliance of offences** – regulations to prescribe notices, the, the amount payable for a penalty, and authorised officers in relation to a penalty notice.

### 3. Energy Security Target

Regulation making provisions regarding the Energy Security Target are provided under Part 3 of the EII Act, including for:

- definition of reserve margin
- factors to be considered and method for calculating maximum demand
- definition of firm capacity
- further matters to be included in Energy Security Target Monitor reports.

This section sets out the proposed positions for these regulations.

The Energy Security Target is a signal to energy market participants of the NSW Government's expectation for investment in new infrastructure to maintain a reliable supply of electricity over the medium to long term.

The Energy Security Target is calculated for each of the following 10 financial years as the sum of maximum demand and the reserve margin. The Energy Security Target is calculated by the Energy Security Target Monitor.

#### Definition of reserve margin

The reserve margin acts as a buffer to ensure there is enough electricity supply to meet forecast maximum demand, while also covering for the credible loss of the two largest available generating units in New South Wales (NSW).

Section 12(1) of the EII Act defines the Energy Security Target as being the sum of the maximum demand and reserve margin. Section 12(1) defines the terms 'maximum demand' and 'reserve margin' (reproduced below) and makes provision for further details to be provided in the regulations.

#### Section 12(1) of EII Act: Definition of reserve margin

**reserve margin** is the sum of the amount of megawatts of electricity capable of being produced by the 2 generating units in the State that are capable of producing the largest amounts of megawatts of electricity according to AEMO for the financial year or a different amount prescribed by the regulations.

#### The Department's position on regulations

The EII Act allows for regulations to prescribe a different amount for the reserve margin. The Department does not intend to recommend prescribing a different amount for the reserve margin at this time.

Currently in NSW, the two largest scheduled generating units consist of one unit at Eraring Power Station (680 megawatts (MW)) and one unit at Mount Piper Power Station 1 (a recently upgraded unit is rated 705MW).

Under the current definition of reserve margin in the Act, there may be potential for a new renewable energy project to be one of the two generating units in NSW that are capable of producing the largest amounts of megawatts of electricity in a financial year.

In the future, a large new renewable energy project could potentially become one of the State's two largest generating units and become the measure for contingency events under the Energy Security Target. This could either be due to the retirement of large existing scheduled generating units or the development of a large new renewable energy project that becomes one of the State's two largest generating units. If this were to occur, the Department may consider recommending regulations prescribing a different amount for the reserve margin. This is because renewable energy projects, including where firmed by storage, may have different operational characteristics (including scheduling and intermittent supply of electricity) from scheduled generating units. Regulations on how the Energy Security Target Monitor is to treat capacity from large renewable generation units and utility-scale batteries may be considered at a later date.

## Factors to be considered and method of calculating maximum demand

### Section 12(1) of EII Act: Definition of maximum demand

**maximum demand** is the forecast peak demand for megawatts of electricity used by NSW electricity customers, based on a 10% probability of exceedance (POE) forecast methodology.

Note. A 10% POE forecast is expected to be exceeded, on average, 1 year in 10 years.

### 12(3) The regulations may prescribe –

- (a) the factors to be considered in calculating the maximum demand, and
- (b) the method for calculating the maximum demand.

The Energy Security Target uses POE10 (1 in 10 year) maximum demand to calculate the Energy Security Target. Section 12(3) allows regulations to be made prescribing the factors to be considered and the method for calculating maximum demand as part of the Energy Security Target.

### The Department's position on regulations

The Department intends to develop and recommend regulations that prescribe the factors and method for calculating maximum demand.

This will be based on AEMO's most recent forecast for maximum summer operational demand 'as generated'. 'As generated' demand is measured at each generating unit's terminal point and represents the gross electrical power output from the generating unit. It comprises:

- electricity power supplied to all customers (known as 'as consumed' demand); and
- distribution and transmission losses; and
- auxiliary loads from generators.<sup>2</sup>

<sup>2</sup> AEMO, *Demand Terms in EMMS Data Model*, January 2021, p. 7, accessed at [www.aemo.com.au/-/media/files/electricity/nem/security\\_and\\_reliability/dispatch/policy\\_and\\_process/demand-terms-in-emms-data-model.pdf?la=en](http://www.aemo.com.au/-/media/files/electricity/nem/security_and_reliability/dispatch/policy_and_process/demand-terms-in-emms-data-model.pdf?la=en) on 5 March 2021

This proposal is consistent with the intended definition of firm capacity (discussed below) which measures summer rated capacity ‘as generated’.

Aligning with AEMO’s existing forecasts means the Energy Security Target Monitor’s report would be consistent with the AEMO’s Electricity Statement of Opportunities report.

## Definition of firm capacity

### Dictionary

**firm capacity** for a financial year means the total number of megawatts of electricity expected to be available to NSW electricity customers at times of peak demand during the financial year, calculated by the energy security target monitor in consultation with the Secretary and in accordance with the regulations.

Section 13 of the EII Act requires the Energy Security Target Monitor to report to the Minister about the energy security target each year. The report must calculate the firm capacity for an outlook of 10 financial years and assess whether the firm capacity will meet the Energy Security Target for each of the 10 financial years. Where the Energy Security Target Monitor identifies a financial year in which the firm capacity will fall short of the Energy Security Target (known as a ‘target breach’), the Energy Security Target Monitor must calculate the expected size and duration of the target breach. This information will help the Minister consider if action is required in relation to the target breach.

### The Department’s position on regulations

The Department’s position is to recommend prescribing the calculation of firm capacity based on the sum of:

- the summer scheduled capacities of Scheduled Generators in NSW as published on AEMO’s Generation Information Page, which are **derated** for expected conditions<sup>3</sup> (derating is explained below)
- the summer scheduled capacities of Semi-Scheduled Generators (e.g. wind and solar) in NSW as published on AEMO’s Generation Information Page multiplied by a derating factor
- the nameplate capacities<sup>4</sup> of non-scheduled generators over 30MW in NSW, which are not wind or solar, as published on AEMO’s Generation Information Page<sup>5</sup>
- the nameplate capacities of non-scheduled generators over 30MW in NSW which are wind or solar technologies multiplied by a derating factor (semi-scheduled)

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<sup>3</sup> In accordance with rule 3.7F of the National Electricity Rules.

<sup>4</sup> Nameplate capacity, also known as nameplate rating, is the maximum continuous output or consumption in MW of an item of equipment as specified by the manufacturer, or as subsequently modified (see clause 10 of the National Electricity Rules).

<sup>5</sup> AEMO, *Generation Information page*, is available at: <https://www.aemo.com.au/energy-systems/electricity/national-electricity-market-nem/nem-forecasting-and-planning/forecasting-and-planning-data/generation-information>

- the nominal capacities<sup>6</sup> of interconnector capacity into NSW as published by AEMO in its Integrated System Plan (ISP) Inputs, Assumptions and Methodologies Report.<sup>7</sup> AEMO is required to publish quarterly information on interconnector transfer capabilities, in accordance with clause 3.13.3(p) of the NER.

The forecast demand response capacity that can be relied upon in NSW for market participation (i.e. not including the Reliability and Emergency Reserve Trader) as published by AEMO for use in its most recent Electricity Statement of Opportunities report.<sup>8</sup> The derating factor referred to above is intended to provide an estimate of the generation available from variable renewable energy resources (wind and solar). The Department's preliminary estimates of this derating factor published in April 2020<sup>9</sup> was based on the generation sent out in settlement intervals (calculated over a 30 minute period of time) at 6pm (the time most likely for annual maximum demand) on days with demand over 12,500MW (to ensure the analysis only captures maximum demand conditions) over the years 2017 to 2019<sup>10</sup>. The regulations will prescribe a revised approach to the derating factor. The Department has identified two options.

- **The first option** (the Department's preferred option) is for regulations to require the Energy Security Target Monitor to base the derating factor on each generator's technology type and a comparison of the summer scheduled capacity to the 10<sup>th</sup> percentile amount of generation for each technology type available during the trading intervals with the highest 0.1% of operational demand as generated over the past three financial years. This means there would be two derating factors – one derating factor for wind and one derating factor for solar.
- **The second option** is for the regulations to provide principles that the Energy Security Target Monitor is to consider when developing a derating factor.

The Department believes there is a need to introduce a framework in the regulations setting out what the Energy Security Target Monitor must consider when determining the forecast supply available to meet the Energy Security Target. It will differ from AEMO's project commitment framework.

The Department intends to recommend for the regulations to require the Energy Security Target Monitor to, when determining the forecast supply available, include all Scheduled, Semi-Scheduled, Non-Scheduled Generator projects over 30MW projects in NSW:

- listed as existing or committed on AEMO's most recent Generation Information Page, or
- with a LTES agreement in place with the Scheme Financial Vehicle or with a contract under a government program for their construction.

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<sup>6</sup> Nominal capacity is defined as the optimal capacity for a particular interconnector, when there are no transmission outages. The actual interconnector capacity, that is the achievable transfers at any point in time, may therefore differ from the nominal. AEMO, *Interconnector Capabilities for the National Electricity Market*, 2017, accessed at [https://aemo.com.au/-/media/files/electricity/nem/security\\_and\\_reliability/congestion-information/2017/interconnector-capabilities.pdf](https://aemo.com.au/-/media/files/electricity/nem/security_and_reliability/congestion-information/2017/interconnector-capabilities.pdf)

<sup>7</sup> In accordance with clause 5.22.8 of the National Electricity Rules.

<sup>8</sup> In accordance with clause 3.13.3A of the National Electricity Rules.

<sup>9</sup> NSW Government, *Energy Security Target and Safeguard*, Consultation Paper, April 2020.

<sup>10</sup> Department of Planning, Industry and Environment, *Energy Security Target and Safeguard Consultation Paper*, pp5, 2020, accessed at <https://energy.nsw.gov.au/government-and-regulation/consultation/energy-security-target-safeguard>

The regulations would require the Energy Security Target Monitor to consider the projects defined above for each financial year up until their expected closure year according to information published by AEMO, unless the Energy Security Target Monitor considers that the capacity would be unavailable to NSW consumers without significant uncommitted network upgrades. Unavailable capacity in this sense does not refer to instances where network capacities may be constrained at times of peak demand. It refers to significant network infrastructure projects that are required for capacity to be available to NSW.

The Energy Security Target Monitor should treat generation below 30MW consistent with AEMO's demand and generation methodology for small scale generation.

The Minister can direct a network operator to carry out a priority transmission infrastructure project under Part 5 of the EII Act. The Department intends to recommend for the regulations to require the Energy Security Target Monitor to include nominal capacities of priority transmission projects in its calculation of firm capacity.

The regulations will also require the Energy Security Target Monitor to include nominal capacities of interconnector projects for which revenue determinations have been made under Chapter 6A of the NER. Revenue determinations are made by the Australian Energy Regulator that provide for a transmission network service provider's regulated revenue for their transmission services.

The regulations will require the Energy Security Target Monitor to treat the demand reduction potential of distributed energy resources, both in terms of the net demand (i.e. net consumption after sending out electricity generated by distributed energy resources) and the potential for active demand reduction, in a manner consistent with AEMO in its Electricity Statement of Opportunities forecasting.

### Questions for stakeholders on the definition of 'firm capacity'

**Question 1:** Should the Energy Security Target Monitor define the method to determine the derating factor or should the method be defined in the regulations? If not by derating factors, how else should the regulations address the probabilistic nature of semi-scheduled generators in the context of the deterministic Energy Security Target?

## Energy Security Target Monitor report

The Energy Security Target Monitor is to report to the Minister about the energy security targets. Section 13(3) and 13(4) of the EII Act set out the information that must be included, or taken into account, in an Energy Security Target Monitor report.

### Section 13(3) Energy security target monitor report

- (3) A report must include the following –
- (a) the energy security target for each of the following 10 financial years and how they were calculated,
  - (b) the firm capacity for each of the following 10 financial years and how they were calculated,
  - (c) an assessment of whether or not the firm capacity will meet the energy security target over the following 10 financial years,
  - (d) for a financial year in which the energy security target monitor considers the firm capacity will not meet the energy security target (a *target breach*) –

- (i) the expected size of the target breach in megawatts, and
  - (ii) the expected duration of the target breach,
  - (e) information that may assist the Minister in considering what action, if any, the Minister intends to take in relation to a target breach,
  - (f) other information the energy security target monitor considers relevant,
  - (g) other matters prescribed by the regulations.
- (4) In preparing the report, the energy security target monitor must –
- (a) consult with the Secretary and AEMO, and
  - (b) take into account any matters prescribed by the regulations.

### **The Department's position on regulations**

The Department's position is the Energy Security Target Monitor should maintain their discretion to include other information if it considers it relevant. As a result, there does not appear to be a need to prescribe other matters in regulation at this time.

### **Questions for stakeholders on the contents of the Energy Security Target Monitor Report**

**Question 2:** Should the regulations prescribe any other matters for inclusion in the Energy Security Target Monitor's report? If so, what are they?

## 4. Electricity Infrastructure Investment Safeguard

This section sets out proposals for regulations relating to the Electricity Infrastructure Investment Safeguard, under Part 6 of the EII Act relating to:

- the reliability standard referenced by long term objectives for long-duration storage and firming infrastructure under the EII Act
- tendering of LTESAs
- minimum requirements that the Consumer Trustee must include in the first and subsequent Infrastructure Investment Objectives Reports.

The Electricity Infrastructure Investment Safeguard (Infrastructure Safeguard) supports investment in new electricity infrastructure in NSW. The Infrastructure Safeguard provides a competitive framework for generation, long duration storage and firming infrastructure projects to compete for LTESAs.

The EII Act establishes the Consumer Trustee, a role that is designed to have primary carriage of implementing the Infrastructure Safeguard. The person or body appointed as Consumer Trustee is responsible for planning of the levels of investment in generation, storage and transmission over time, authorizing network infrastructure projects for cost recovery, administering tenders to identify the best generation and storage projects, designing LTESAs to encourage new generation and storage investment, and appointing a financial trustee, and other functions conferred by the legislation.

### Reliability standard referenced by long term objectives for long-duration storage and firming infrastructure

#### The reliability standard in the EII Act

Section 44 of the EII Act (Part 6) sets out infrastructure investment objectives. These include overall objectives to construct long-duration storage and firming infrastructure needed to meet the **reliability standard**.<sup>11</sup>

#### Section 43(3) Reliability standard

**reliability standard** means the reliability standard implemented by AEMO under the *National Electricity Rules* that is prescribed by the regulations.

Section 43(3) sets out the definition of reliability standard that is to apply to Part 6 of the EII Act. Regulations are needed to prescribe the reliability standard under the EII Act so the Consumer Trustee can plan the development pathways to meet it.

<sup>11</sup> In the case of firming infrastructure, the overall objectives includes an objective for the construction of firming infrastructure necessary to meet both the energy security target and the reliability standard.

## The reliability standard under the National Electricity Rules

A power system is reliable if there is enough capacity to meet consumer demand. The reliability standard is the level of reliability sought from the National Electricity Market (NEM) generation and transmission interconnector assets.<sup>12</sup> Under clause 3.9.3C(a) of the National Electricity Rules (NER), the **reliability standard** for generation and inter-regional transmission elements in the NEM is expressed as ‘a maximum expected unserved energy in a region of 0.002% of the total energy demanded in that region for a given financial year’ i.e. we expect to have enough supply to meet demand 99.998% of the time.

The NER also includes an **interim reliability measure**. In 2020, the ESB found that regions that were forecast to just meet the reliability standard of 0.002 per cent of expected unserved energy should expect some involuntary load shedding<sup>13</sup>. To meet community expectations, the ESB recommended moving to a higher standard of 0.0006 per cent expected unserved energy. In response to the ESB’s recommendations, Energy Ministers agreed to the following interim measures to improve reliability, ahead of the Post 2025 market design project making more permanent recommendations.

- the establishment of an out of market capacity reserve triggered to keep unserved energy to no more than 0.0006 per cent in any region in any year that would apply for the 2020-21 summer and beyond
- amending the triggering arrangements for the retailer reliability obligation (RRO) to improve incentives on retailers to contract and support reliability.

In 2020, the NER were amended to include the interim reliability measure.<sup>14</sup> Under clause 3.9.3C(a1) of the NER, the interim reliability measure for generation and inter-regional transmission elements in the NEM is a maximum expected unserved energy of 0.0006 per cent of the total energy demanded, in a region, for a given financial year.

## The Department’s position on regulations

The Department’s position is to develop regulations that prescribe the reliability standard under the EII Act to be the interim reliability measure implemented by AEMO under the NER. This means the reliability standard for generation and inter-regional transmission elements under Part 6 of the EII Act will be a maximum unserved energy in NSW of 0.0006% of the total energy demanded in NSW in a given financial year, until the interim reliability measure ceases to apply on 30 June 2025.<sup>15</sup>

After 30 June 2025, the reliability standard under Part 6 of the EII Act will revert to the reliability standard that applies in the NER (currently 0.002% in clause 3.9.3C(a) of the NER). These regulations will provide consistency with the NER.

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<sup>12</sup> Reliability Panel AEMC, *Reliability standards and settings review* 2018, Final Report, 30 April 2018, p. i. accessed at [www.aemc.gov.au/markets-reviews-advice/reliability-standard-and-settings-review-2018](http://www.aemc.gov.au/markets-reviews-advice/reliability-standard-and-settings-review-2018) on 24 Feb 2021

<sup>13</sup> Involuntary load shedding was expected to occur, on average, once out of every three years, absent interventions such as the Reliability and Emergency Reserve Trader (RERT). Energy Security Board, *Interim Reliability Measures – RRO trigger*, October 2020, p.4. Accessed at <https://energyministers.gov.au/publications/energy-security-board-rro-trigger-rule-change> on 29 March 2021.

<sup>14</sup> Energy Security Board, *Interim Reliability Measures* <https://energyministers.gov.au/reliability-and-security-measures/interim-reliability-measures> viewed on 29 March 2021.

<sup>15</sup> Energy Ministers, *National Electricity Amendment (Retailer Reliability Obligation) Rule 2020*. viewed at <https://energyministers.gov.au/reliability-and-security-measures/interim-reliability-measures> viewed on 29 March 2021.

# Requirements for competitive tenders for Long Term Energy Service Agreements

## Background

As part of the Infrastructure Safeguard a Consumer Trustee will be appointed to run a competitive tender process to offer LTESAs to projects on behalf of consumers. This is provided for under section 47 of the EII Act. The LTESAs will drive investment in projects that align with the direction outlined in the Infrastructure Investment Objectives Report and provide investors with more certainty about their future revenues.

The Infrastructure Safeguard will have clear administrative arrangements for the competitive processes, including the frequency of competitive tenders, eligibility criteria and merit criteria.

To support clear administrative arrangements around the role of the Consumer Trustee related to competitive tenders for LTESAs, the Department:

- has proposed tranche two regulations that prescribe requirements that the Consumer Trustee must take into account in carrying out competitive tenders for LTESAs, under section 47 of the EII Act
- will consider developing further regulations under section 47 of the EII Act under tranche three regulations. This is expected to occur later in 2021.

The Consumer Trustee is to carry out competitive tenders for LTESAs in accordance section 47(3) of the EII Act, as outlined below.

### **Section 47 Tendering for LTES agreements**

- (3) A competitive tender must be carried out in accordance with –
- (a) any requirements prescribed by the regulations, and
  - (b) the rules made by the consumer trustee under this section.

## The Department's position on regulations

The Department considers that there is benefit in developing regulations to prescribe requirements for how competitive tenders for LTESAs are to be carried out and to prescribe matters that the Consumer Trustee's rules must be consistent with. These regulations are to be made under section 47 of the EII Act. The rules for competitive tenders for LTESAs are to be made separately by the Consumer Trustee, consistent with the matters in section 47(5) of the EII Act.

### **Regulations that are proposed in tranche two regulations**

The regulations under section 47 will provide guidance to clarify how competitive tenders are to be carried out consistently over time, promoting certainty in the competitive tender process for investors, consumer groups and other key stakeholders. The Department proposes regulations under section 47 that set out the principles that the Consumer Trustee is to follow in carrying out competitive tenders for LTESAs:

- to facilitate the recommending of LTESAs required to meet the infrastructure investment objectives in section 44 of the EII Act. That is, to meet the infrastructure investment objectives in the most efficient way

- to provide competitive pressure so that tender participants offer LTESAs on terms which deliver the highest long-term financial value
- to consider the long-term financial value of the tender participant's offer to consumers based on the proposed terms of an LTES agreement and the relevant infrastructure's expected impact, including but not limited to wholesale electricity prices, network investment and need for essential system services
- to support the ability of new entrant parties to engage with the tender process by minimising transaction costs and providing high-quality forward-looking information
- to encourage competition amongst generators, and retailers, in the NSW electricity sector. To conduct and require participation in tenders in a manner that ensures the integrity and transparency (including appropriate information provision) of the process
- to conduct tenders in a manner that ensures that administrative costs for all participants are reasonable
- to provide for the fair and ethical treatment of all participants in the process
- to conduct tenders in a manner that has considered alternative strategies and can readily adjust to significant changes in technology and market settings.

### **Regulations that are to be considered in tranche three regulations**

In addition to the tranche two regulations outlined above, the Department will consider tranche three regulations under section 47 of the EII Act. The tranche three regulations may prescribe matters that the Consumer Trustee's rules must be consistent with.

#### **Question for stakeholders on requirements for rules for LTES agreement competitive tenders**

**Question 3:** To what extent are the requirements for carrying out competitive tenders of LTESAs appropriate? Should any other requirements, if any, be taken into account?

## **Infrastructure Investment Objectives Report**

The Infrastructure Investment Objectives are set out under section 44 of the EII Act and include the construction of:

- generation infrastructure that is necessary to minimise electricity costs for NSW electricity consumers, and
- long-duration storage infrastructure that is necessary to meet the reliability standard, and
- firming infrastructure that is necessary to meet the energy security target and reliability standard, and
- minimum amounts of generation and long-duration storage infrastructure by 31 December 2029.

The Consumer Trustee is to prepare a report about the infrastructure investment objectives that contains the information set out in section 45 of the EII Act, as detailed below. The Consumer Trustee is to prepare a report as soon as practicable after 1 July 2021 and every two years after the first report.

The Infrastructure Investment Objectives Report will provide information to investors as to when NSW generation, long-duration storage, and firming infrastructure is required over a

20-year period to minimise electricity costs and maintain reliability for NSW electricity customers. The intent of the report is to provide investors with high-quality information as to when the Consumer Trustee will conduct competitive tenders for LTESAs over the following ten years, with a particular focus on the following two years.

The report will also be used to inform decision making with respect to REZ declarations and recommendations and authorisations for REZ network infrastructure projects.

The objectives for long duration storage and firming infrastructure both include the reliability standard. So the Consumer Trustee may need to choose a tender for one form of infrastructure over another. The legislation requires minimum construction of 2GW long duration storage by 2030. This means this choice is more likely to arise after 2030. The regulations may need to guide the Consumer Trustee's process for choosing between tenders for one form of infrastructure over another. Each infrastructure type can provide different services. For example, long duration storage is more likely to reduce curtailment of renewable generation infrastructure, when compared to firming infrastructure (e.g. gas and short duration storage), as long duration storage can store more electricity.

In this respect, the structure of the EII Act, the conditional nature of the firming development objectives and the extrinsic materials suggest that Parliament should be taken to have intended that long duration storage is to be the prime way for the Consumer Trustee to achieve the reliability objectives of the Act. However, there may be cases where the Minister may decide to authorise priority transmission projects or where firming is required to supplement long duration storage to deal with high impact low probability reliability events, or near term reliability gaps.

#### **Section 45 Planning by consumer trustee**

- (1) The consumer trustee is to prepare a report about the infrastructure investment objectives that contains -
  - (a) the development pathway for the infrastructure to which this Part applies that is required to be constructed over the following 20 years to achieve the infrastructure investment objectives, and
  - (b) a plan for the competitive tenders that the consumer trustee will conduct during the following 10 years to give effect to the development pathway, including when tenders will be conducted and the classes of LTES agreements for which a tender will be conducted, and
  - (c) other matters prescribed by the regulations.
- (2) The consumer trustee is to prepare a report-
  - (a) as soon as practicable after the commencement of this section, and
  - (b) every 2 years after the first report.
- (3) The consumer trustee is also to prepare a report as soon as practicable after being directed by the Minister under section 47(2) to conduct a competitive tender for LTES agreements for firming infrastructure.
- (4) The regulations may prescribe the matters that the consumer trustee is to take into account in preparing the report.

## The Department's preliminary position on regulations

The Department notes that the EII Act provides high level information about the Infrastructure Investment Objectives Report and considers that there would be benefit in providing additional information to clarify what the Consumer Trustee is to include in these reports.

The Department proposes that regulations be developed under section 45 of the EII Act that set out the matters that the Consumer Trustee must take into account in preparing the Infrastructure Investment Objectives Report. In preparing the Infrastructure Investment Objectives Report, the Consumer Trustee would take into account the following matters:

- how the timing and scale of investments, and flexibility associated with those investments, will support the objectives of minimising electricity costs for consumers, meeting the reliability standard and energy security target, and the need for essential system services (such as system strength)
- expected generation, firming and long-duration storage project lead times to plan, develop, construct and commission infrastructure considering existing supply chains, regulatory approval processes and any labour or capital market constraints
- the expected timing, scale and lead times for new REZ network infrastructure projects that would need to be authorised, planned, constructed and commissioned over time to enable the infrastructure objectives to be met
- the possible future supply demand balance across regions of the NEM given government policy, planned retirements, committed projects, consumer trends and the above points
- the relative merits of meeting the reliability standard with firming or long duration storage infrastructure considering, but not limited to, the minimum objective of 2GW of long duration storage in construction by 2030, expected levels of curtailed electricity, technology costs, project lead times, and any expected Energy Security Target breaches
- preferred and alternate scenarios for construction of new generation, firming and long duration storage infrastructure over the following 20 years
- the resilience of the expected outcomes to various scenarios, including differences in these scenarios for reliability outcomes and the financial exposure of consumers. These scenarios include, but are not limited to, changes in generation, storage and firming technology costs and performance, economic and population growth, industry structure, green hydrogen industry development and consumer uptake of energy technologies
- forecast delivered electricity costs for electricity customers in each region of the NEM under the preferred and alternate scenarios
- forecast unserved energy from AEMO's Electricity Statement of Opportunities and breach of the Energy Security Target the Energy Security Target Monitor's report
- how the preferred scenario seeks to minimise risks and regrets to NSW consumers of over- or under-investment of infrastructure types and possible evolutions of the development pathways, consistent with the EII Act in response to various changes
- overlap or conflict with relevant processes occurring in other regions of the NEM and AEMO's Integrated System Plan.

The Department proposes that regulations be developed under section 45 of the EII Act prescribing that subsequent Infrastructure Investment Objective Reports, prepared after the first Infrastructure Investment Objectives Report, must also include:

- a description of how the development pathway has changed since previous reports and the reasons for any changes
- a description of how the 10-year tender plan has changed since previous reports and the reasons for any changes
- the amount of generation, firming and long-duration storage infrastructure in operation, under construction, committed or with a recommended or executed LTESA which can be counted towards the infrastructure objectives
- the outcomes of previous tenders for LTESAs, including the number of eligible and ineligible participants, the number of offers that were recommended, the number of offers that were executed
- an assessment of expected versus actual infrastructure that has been constructed under the NSW Electricity Roadmap.

### **Questions for stakeholders on the contents of the Infrastructure Investment Objectives Report**

**Question 4:** Do you agree with the matters that the Consumer Trustee must take into account when preparing the Infrastructure Investment Objectives Report? Are there other matters which should be taken into account?

**Question 5:** In what circumstances should the Consumer Trustee prefer long duration storage over firming infrastructure to meet the reliability standard?

## 5. Classification of REZ network infrastructure

This section sets out a preliminary identification of the nature of regulations relating to the classification of network infrastructure.

### Background

This section sets out the definition of, and references to, the term ‘REZ network infrastructure project’ in the EII Act. This background informs the development of regulations around the definition of ‘REZ network infrastructure project’, and in particular the classes of network infrastructure under the EII Act.

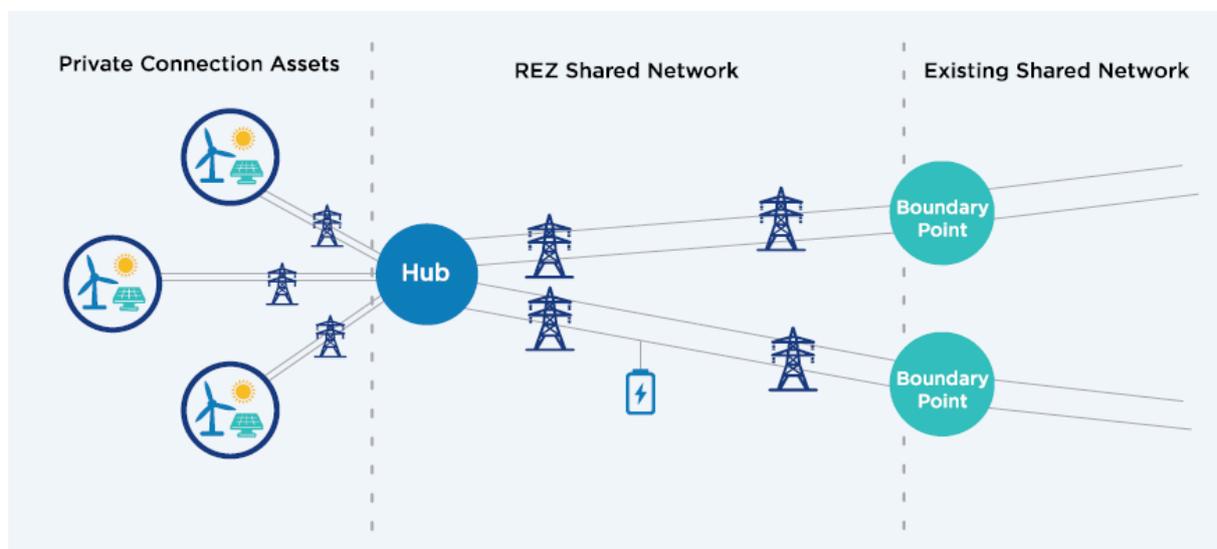
### References to REZ network infrastructure project in the EII Act

The EII Act includes a number of references to REZ network infrastructure project. These relate to classes of network infrastructure, as outlined below.

The EII Act provides for consideration of recommendations by the Infrastructure Planner in relation to REZ network infrastructure projects. Under section 31(4) of the EII Act, ‘regulations may make provision for or with respect to the eligibility criteria and selection process for network operators who may be authorised or directed to carry out a network infrastructure project under this Part’.

The EII Act allows the Minister to direct network infrastructure projects to be carried out. Under section 32(5) of the EII Act, ‘the regulations may make further provision for or with respect to the classes of renewable energy zones and the classes of REZ network infrastructure project and priority transmission infrastructure project in relation to which a direction can be given’. Figure 4 below provides an indicative diagram of network infrastructure in the CWO REZ. This includes private network components, the REZ shared network and the existing shared network.

**Figure 4: Indicative diagram illustrating the relationship between components of the CWO REZ.**



## Definition of REZ network infrastructure project in the EII Act

A REZ network infrastructure project may include various classes of network infrastructure. The term REZ network infrastructure project is defined under the EII Act as outlined below.

### Dictionary

**REZ network infrastructure** project means a network infrastructure project that -

- (a) forms part of a renewable energy zone, and
- (b) consists of network infrastructure of a class prescribed by the regulations.

**network infrastructure** means transmission infrastructure and distribution infrastructure.

### The Department's preliminary position on regulations

Regulations are required to prescribe classes of network infrastructure for the purposes of the definition of REZ network infrastructure project. The classification of the different parts of a REZ network infrastructure project enables the various roles under the EII Act to undertake their functions in respect of a REZ once it is declared.

The Department proposes to prescribe different classes of network infrastructure in regulations in order to clarify what is a REZ network infrastructure project versus what is network infrastructure more generally, and what are the sub-classes of REZ network infrastructure.

These regulations will clarify whether or not a project (or part of a project) is subject to economic regulation under Part 5 of the EII Act. Broad classes consistent with this proposed delineation are outlined in Table 1.

**Table 1: Proposed classes of network infrastructure**

Class	Description
Network infrastructure	Existing and new network infrastructure that is not related to the NSW Electricity Roadmap
REZ network infrastructure – Regulated	Network infrastructure that is related of a REZ in the NSW Electricity Roadmap and is subject to economic regulation under Part 5 of the EII Act
REZ network infrastructure - Unregulated	Private network assets that are related to a REZ in the NSW Electricity Roadmap and are not subject to economic regulation under Part 5 of the EII Act

The Department is considering the need for further classification in regulations. The following considerations are intended to be taken into account when developing regulations on these different classes of network infrastructure, including the need for, and scope of, sub-classifications:

- whether the Infrastructure Planner for the REZ in which the network infrastructure will be located is or is not the Energy Corporation of NSW (i.e. whether the REZ is proposed by the NSW Government or a third party), whether or not the network infrastructure is subject to a direction by the Minister or authorisation by the consumer trustee
- whether the network infrastructure provides services to one, a limited number, or all participants in a REZ access scheme

- whether the network infrastructure is transmission or distribution infrastructure, whether network infrastructure is located within or outside the geographic boundary of a REZ (i.e. network infrastructure that forms part of a REZ and is located outside the geographic area of the REZ)
- whether the network infrastructure is a connection point between the REZ network and the shared transmission and distribution networks.

In considering the need for, and scope of, further sub-classifications of network infrastructure, the Department will consider applying a similar approach to the NER. Table 2 below outlines the service classifications that apply to different classes of assets operated by distribution and transmission network service providers in the NER. The Department is seeking stakeholder feedback on the need for, and scope of, sub-classifications in prescribing regulations on this matter.

Consideration is also required of the potential need to upgrade an existing transmission or distribution network to facilitate a REZ. In this regard, regulations may need to identify different classes of network infrastructure to allow for this. Stakeholder feedback is welcomed in developing regulations on this matter. In particular how it might work in practice where an existing asset is being augmented as a result of a direction or authorisation under part 5 of the EII, and the asset is delivering a regulated service under chapter 6 or chapter 6A of the NER. Table 2 sets out information on how transmission network infrastructure is defined under the NER. Stakeholder feedback is sought on the appropriateness of a similar framework being applied as a sub-classification to network infrastructure under the EII Act.

**Table 2: Current classifications relevant to connection and access to the distribution and transmission network under the NER<sup>16</sup>**

Service classification	Treatment under the NER	Assets involved
Prescribed transmission services	Subject to access under Chapter 5 and economic regulation under Chapter 6A	Transmission network Network connection assets
Distribution Services	Subject to access under Chapter 5 and economic regulation under Chapter 6	Distribution network Network connection assets
Negotiated transmission services	Subject to access under Chapter 5	Transmission network  Identified user shared assets with a capital cost of less than \$10 million
Negotiated distribution services	Subject to access under Chapter 5	Distribution network
Large Dedicated Connection Asset services <sup>17</sup>	Subject to access under the access policy established under clause 5.2A.8	Large dedicated connection assets
Non-regulated transmission services	Not subject to access under Chapter 5 or economic regulation under Chapter 6A	Transmission system  Identified user shared assets with a capital cost of more than \$10 million  Dedicated connection assets

<sup>16</sup> Clause 5.2A.3 of the National Electricity Rules

<sup>17</sup> The classification of large dedicated connection asset (DCA service is currently under consideration by the AEMC in the DCA rule change (ERC0294) and this is proposed to become 'DNA services'

**Questions for stakeholders on classes of REZ network infrastructure**

**Question 6:** Are there any other considerations that should be taken into account in classifying REZ network infrastructure in regulations, including the need for, and scope of, sub-classifications?

**Question 7:** What types of network infrastructure could be subject to economic regulation under Part 5 of the EII Act?

## 6. Compliance and enforcement of offences

This section sets out a preliminary assessment of regulations to prescribe:

- penalty notice offences related to the Energy Security Target Monitor’s information gathering powers
- other offences under the EII Act
- authorised officers in relation to penalty notices.

### Penalty notice offences

#### Background

The EII Act prescribes two offences related to the Energy Security Target Monitor’s information gathering powers:

- failing to provide relevant information to the Energy Security Target Monitor
- unlawfully disclosing protected information provided to the Energy Security Target Monitor.

The EII Act also prescribes an offence related to disclosing information in connection with the administration or execution of the EII Act unlawfully.

Section 76(2) provides that the regulations may prescribe an offence as a penalty notice offence. Section 76(4) provides that the amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.

These sections of the EII Act are detailed below.

#### Section 17 Offences

- (1) A person must not, without lawful excuse, fail to comply with a requirement made of the person under section 16.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

#### Section 18 Disclosure of protected information

- (4) A person to whom protected information is disclosed by the Minister must not disclose protected information, except—

(a) with the authorisation of the Minister, and

(b) in accordance with a direction, if any, given by the Minister to the person that imposes a condition on or restricts the disclosure.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

#### Section 75 Disclosure of information

- (1) A person must not disclose information obtained in connection with the administration or execution of this Act unless that disclosure is made—

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of legal proceedings arising out of this Act, or
- (d) in accordance with a requirement of the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

- (2) This section does not apply to information that is protected information under section 18.

### **Section 76 Penalty notices**

- (2) A penalty notice offence is an offence against this Act or the regulations that is prescribed by the regulations as a penalty notice offence.
- (4) The amount payable under a penalty notice issued under this section is the amount prescribed for the alleged offence by the regulations, not exceeding the maximum amount of penalty that could be imposed for the offence by a court.

## The Department's preliminary position on the application of penalty notices

The Department has considered two options in relation to offences:

1. **Not to prescribe offences as penalty notice offences in the regulations** – this means that if the regulator or Energy Security Target Monitor suspects that an offence has been committed, they can either issue an official warning or caution, or refer the matter to the regulator for prosecution.
2. **Prescribe penalty notice offences in the regulations** – section 76(2) of the EII Act allows for offences to be prescribed by the regulations as penalty notice offences. This means that if a person issued with a penalty infringement notice does not wish to have the matter determined by the court, the person can pay the amount specified in the notice instead and is not liable for any further proceedings. These penalty notices can be issued by an authorised officer (see section below) with an amount prescribed in the regulations.

The Department intends to recommend prescribing in the regulations to make it clear that the following offences are also penalty notice offences:

- offences related to the Energy Security Target Monitor's information gathering powers under section 17(1) of the EII Act.
- offences related to disclosure of protected information by a person under section 18(4) of the EII Act
- a person unlawfully disclosing information in connection with the administration or execution of the EII Act under section 75 of the EII Act.

These regulations will have the benefits outlined below:

- They will facilitate more efficient enforcement and administration of offences, compared to the need for proceedings in either the Local Court or Supreme Court.
- An entity issued with a penalty notice will have the ability to request that the penalty notice be reviewed or have the matter determined by a court.

## The Department's preliminary position on the amount payable

The Department considers that regulations are required to prescribe the amount payable under a penalty notice.

When prescribing the amount payable under a penalty notice, the following matters will be considered:

- the elements of the offence
- the seriousness of the offence
- whether there may be high rates of offending.

## Other offences

In addition to the offences above, the EII Act also prescribes the following offences:

- knowingly providing false or misleading information to the Energy Security Target Monitor
- a network operator failing to comply with the Minister's direction to carry out a network infrastructure project
- a network operator failing to comply with a requirement made of the network operator
- providing false or misleading information to an appointed entity under the EII Act.

These offences under the EII Act are detailed below.

### Section 17 Offences

- (2) A person must not give information in purported compliance with a requirement under section 16 knowing that the information is false or misleading in a material respect.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

### Section 35 Failure to comply with direction

- (1) A network operator to whom a direction is given under section 32 must not, without reasonable excuse, fail to comply with the direction.

Maximum penalty—5,000 penalty units for a corporation or 2,500 penalty units for an individual.

### Section 38 Regulator to determine amount payable to network operators for network infrastructure projects

- (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.

- (9) A network operator must not, without lawful excuse, fail to comply with a requirement made of the network operator under subsection (7).

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

### **Section 74 False or misleading information**

A person must not, for the purposes of this Act, give to any of the following persons or bodies, whether orally or in writing, information or a document that the person knows to be false or misleading in a material particular, unless the person informs the person or body of that fact—

- (a) the consumer trustee,
- (b) the financial trustee,
- (c) the scheme financial vehicle,
- (d) the regulator,
- (e) the infrastructure planner.

Maximum penalty—2,000 penalty units for a corporation or 100 penalty units for an individual.

## The Department's preliminary position on regulations for offences under sections 17(2), 35, 38 and 74 of the EII Act

The Department has considered two options in relation to offences under sections 17(2), 35, 38 and 74 of the EII Act:

1. **Not prescribe offences as penalty notice offences in the regulations** – this means that if the Energy Security Target Monitor or regulator suspects that an offence has been committed, the appropriate recourse is to issue an official warning or caution or prosecute the person for the breach.
2. **Prescribe penalty notice offences in the regulations for** – section 76 of the EII Act allows for offences to be prescribed by the regulations as penalty notice offences. This means that if a person issued with a penalty infringement notice does not wish to have the matter determined by the court, the person can pay the amount specified in the notice instead and is not liable for any further proceedings. These penalty notices can be issued by an authorised officer (see section below) with an amount prescribed in the regulations.

Penalty notices are generally used for high-volume, less complex and minor offences. The offences under sections 17(2), 35, 38 and 74 of the EII Act are serious, more complex offences, that are expected to occur infrequently. Therefore, the Department does not consider that offences under sections 17(2), 35, 38 and 74 of the EII Act should be penalty notice offences.

## Authorised officers in relation to penalty notices

The EII Act provides that an authorised officer can issue a penalty notice to a person if it appears to the officer that the person has committed a penalty notice offence. The EII Act provides that the regulations may prescribe a class of person as authorised officers.

### Section 76 Penalty notices

(6) In this section –

**authorised officer** means a person of a class prescribed by the regulations.

## The Department's preliminary policy position on authorised officers

The Department notes that the EII Act requires regulations to prescribe the class of person who is an authorised officer.

The Department intends to recommend prescribing certain officers of the regulator as authorised officers. The regulator is best placed to identify alleged offences under sections 17(1), 18(4), and 75 of the EII Act.

## 7. Defined terms

Term	Meaning
ACCC	Australian Consumer and Competition Commission
AEMC	Australian Energy Market Commission
AEMO	Australian Energy Market Operator
AER	Australian Energy Regulator
ARENA	Australian Renewable Energy Agency
Board	Renewable Energy Sector Board
CEFC	Clean Energy Finance Corporation
CWO REZ	Central-West Orana Renewable Energy Zone
Department	Department of Planning, Industry & Environment
EII Act	Electricity Infrastructure Investment Act 2020
ESB	Energy Security Board
ESOO	Electricity Statement of Opportunities
ISP	Integrated System Plan
Jobs Advocate	Electricity Infrastructure Jobs Advocate
NEM	National Electricity Market
NER	National Electricity Rules
LTESAs	Long Term Energy Service Agreements
MW	Megawatts
POE	Probability of Exceedance
REZ	Renewable Energy Zone
RRO	Retailer Reliability Obligation

## Appendix A: Additional instruments and reporting requirements

**Appendix Table 1: Additional instruments required to be made under the EII Act**

Issuer	Type	Content	Indicative timing
Minister	Guidelines	Consultation and negotiation with local Aboriginal communities	Q3 2021
Minister	Guidelines	Access scheme declaration(s) for each REZ.	From Q4 2021
Infrastructure Planner	Guidelines	The Infrastructure Planner's power to prohibit connections to network infrastructure	To be confirmed
Regulator	Guidelines	The Transmission Efficiency Test	Early 2022
Regulator	Guidelines	The regulator's functions on varying contribution determinations	To be decided by the regulator
Regulator	Guidelines	The exercise of functions by appointees under the Act, such as the Consumer Trustee, Financial Trustee, Infrastructure Planner and Energy Security Target Monitor	To be decided by the regulator
Consumer Trustee	Rules	Tendering for LTESAs.	Q3 2021

**Appendix Table 2: Reporting requirements under the EII Act**

Issuer	Recipient and content	Indicative timing
Renewable Energy Sector Board	Minister to approve plan for NSW renewable energy sector Approved plan to be published on Department's website	First plan second half 2021 Reviewed at least every 2 years
Renewable Energy Sector Board	Minister to receive report on Renewable Energy Sector Board's activities	By 31 March 2021; By 30 June 2021; and By 30 June of each following financial year.
Jobs advocate	Minister to receive report on activities of the Jobs advocate	As soon as practicable after being appointed, and once a year after the first report
Energy Security Target Monitor	Minister to receive report on the Energy Security Target	Once a year, no later than 60 days after AEMO publishes a statement of opportunities under the NER, and at any time the Minister requests a report
	Energy Security Target Monitor report to be published on Department's website	No later than 60 days after report Energy Security Target Monitor gives report to the Minister

Secretary of the Department	Minister to receive report on potential effects of the declaration of REZ on electricity costs for NSW electricity customers	Before the Minister makes a REZ declaration
Consumer Trustee	Report on infrastructure investment objectives to be published on Consumer Trustee's website	As soon as practicable after 1 July 2021, and every 2 years after the first report.
Consumer Trustee	Report on infrastructure investment objectives related to the construction of firming infrastructure to be published on Consumer Trustee's website	As soon as practicable after being directed by the Minister to conduct a competitive tender for LTESAs for firming infrastructure.
Minister	Report summarising information received from LTES operators to be tabled in Parliament	Annually
Consumer Trustee, Financial Trustee and Infrastructure Planner	Regulator to receive annual reports on the exercise of Consumer Trustee, Financial Trustee and Infrastructure Planner's functions under the EII Act during the financial year	Annually
Regulator	Minister to receive annual report on the Consumer Trustee, Financial Trustee, Infrastructure Planner and the Regulator itself  Regulator to publish annual report on its website	Annually, no later than 4 months after end of the financial year to which the annual report relates  As soon as reasonably practicable after providing the annual report to the Minister
Minister	Minister to table report on outcome of review of Act I Parliament	Within 12 months after the end of the period of 5 years from 1 July 2021