



New South Wales

Electricity Supply Amendment (Transmission Operator's Levy) Bill 1998

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.
This Bill is cognate with the *Appropriation Bill 1998*.

Overview of Bill

The object of this Bill is to amend the *Electricity Supply Act 1995*:

- (a) to impose an annual levy on transmission operators from 1 July 1998, comparable with the annual levy currently imposed under that Act on electricity distributors, and
 - (b) to fix the maximum price increase for the provision of electricity network services that may be permitted above the pricing determination of the Independent Pricing and Regulatory Tribunal for the provision of those services at 0.550 cents per kilowatt hour, and
 - (c) to enable the Governor, by order made on the recommendation of the Treasurer, to determine a price increase that is less than the maximum price increase referred to in paragraph (b), and
 - (d) to remove references from that Act to "eligible customers" as this classification of customers is no longer necessary.
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Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on 28 June 1998.

Clause 3 is a formal provision giving effect to the amendments to the *Electricity Supply Act 1995* set out in Schedule 1.

Schedule 1 [5] inserts proposed Part 4A (Electricity supply by transmission operators to direct customers) into the *Electricity Supply Act 1995*.

Division 1 of the proposed Part relates to the imposition of the transmission operator's levy. It mirrors the provisions contained in Division 5 of Part 3 that deal with the imposition of the electricity distributor's levy. It contains the following provisions:

Proposed section 43F contains definitions for the purposes of the new Division.

Proposed section 43G imposes a levy on a transmission operator in each financial year, based on profit from "network income". That income is derived by the transmission operator from the use of the electricity network in the provision of electricity network services to direct customers. The actual amount of the levy is as determined by the Governor on the recommendation of the Treasurer in accordance with the principles set out in the proposed section.

Proposed section 43H permits the amount of the levy to be varied in respect of the financial year to which it relates.

Proposed sections 43I and **43J** make provision for the levy in the case of persons who become transmission operators during a financial year or cease to be transmission operators during a financial year.

Proposed section 43K makes provision for the payment and recovery of the levy.

Proposed section 43L makes it clear that the new Division does not affect the provisions of the *Public Finance and Audit Act 1983* relating to the payment of dividends.

Division 2 of the proposed Part relates to the pricing of electricity. It mirrors the provisions contained in Division 4 of Part 4 that deal with the pricing of electricity supplied by electricity distributors. It contains the following provisions:

Proposed section 43M contains definitions for the purposes of the new Division.

Proposed section 43N increases the price of electricity supplied to direct customers by transmission operators. The maximum increase is 0.550 cents per kilowatt hour. A lower price may be set by the Governor, by order made on the recommendation of the Treasurer. The increase is factored into the determination made by the Independent Pricing and Regulatory Tribunal, and accordingly the increase has to be passed on to direct customers by transmission operators unless the Treasurer otherwise approves under the *Independent Pricing and Regulatory Tribunal Act 1992*. Provision is made to prevent the supply component of the price of electricity being reduced to offset the increase in the network component.

Proposed section 43O requires transmission operators to furnish returns to the Treasurer.

Proposed section 43P, in subsection (1), enables regulations of a transitional nature to be made if it is not practicable to ascertain the amount of electricity used in the first period after the commencement of the proposed section. Subsections (2)–(4) enable exemptions from the new Division to be made where appropriate. Subsection (5) states that the new Division does not provide grounds for customers to challenge electricity accounts.

Schedule 1 [6] makes a consequential amendment.

Schedule 1 [2] enables the Governor, by order made on the recommendation of the Treasurer, to determine a price increase that is less than the maximum price increase specified in the *Electricity Supply Act 1995* for the provision of electricity network services for non-franchise customers of electricity distributors.

Schedule 1 [1], [3], [4] and [7] remove references to “eligible customers” from the *Electricity Supply Act 1995* as this classification of customers is no longer necessary for the purposes of that Act. The classification is no longer necessary because, from 1998–99, the network price increase is to be deferred until a customer chooses its electricity retail supplier or is declared to be a non-franchise customer under the timing arrangements specified in the non-franchise customer declaration under section 92 of the *Electricity Supply Act 1995*, whichever first occurs.

First print



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New South Wales

Electricity Supply Amendment (Transmission Operator's Levy) Bill 1998

No. , 1998

A Bill for

An Act to amend the *Electricity Supply Act 1995* to impose a transmission operator's levy; and for other purposes.

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Electricity Supply Amendment (Transmission Operator's Levy) Act 1998*.

2 Commencement

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This Act commences or is taken to have commenced on 28 June 1998.

3 Amendment of Electricity Supply Act 1995 No 94

The *Electricity Supply Act 1995* is amended as set out in Schedule 1.

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Schedule 1 Amendments

(Section 3)

[1] Sections 32B (2) (d), 43B (1), 43D (1) (a) and 43E (2), (3) and (6)

Omit "eligible customers" wherever occurring.
Insert instead "non-franchise customers".

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[2] Section 43B Pricing of electricity for non-franchise customers

Omit "equal to" from section 43B (1).
Insert instead "determined by an order made by the Governor on the recommendation of the Treasurer and published in the Gazette that does not exceed".

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[3] Section 43C Pricing of electricity for other customers

Omit "(other than an eligible customer)".

[4] Section 43E Operation of Division

Omit "an eligible customer" from section 43E (4).
Insert instead "a non-franchise customer".

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[5] Part 4A

Insert after Part 4:

Part 4A Electricity supply by transmission operators to direct customers

Division 1 Levy

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43F Definitions

In this Division:

direct customer of a transmission operator means a person (other than the holder of an electricity distributor's licence or a generator but only in so far as the person acts in the capacity of the holder of an electricity distributor's licence or a generator):

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- (a) who is connected to the network otherwise than by means of the distribution system of the holder of an electricity distributor's licence, and
- (b) who is in New South Wales.

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generator means a person who owns, controls or operates a generator of electricity that supplies electricity to a network.

network income of a transmission operator means the income derived by the transmission operator from the use of the electricity network in the provision of electricity network services by the transmission operator with respect to the supply of electricity to its direct customers. 5

43G Transmission operator's levy 10

(1) A transmission operator must pay to the Treasurer, in respect of each financial year, the levy determined in respect of that year by order of the Governor, on the recommendation of the Treasurer, applying to the transmission operator and published in the Gazette. 15

(2) The Treasurer, in recommending the amount of a levy for a financial year payable by a transmission operator, must be satisfied that the amount reasonably represents the amount by which the network income (as estimated by the Treasurer) of the transmission operator in that year is likely to exceed the sum of the amounts (as estimated by the Treasurer) to be: 20

- (a) the costs of deriving the income, and
- (b) the taxes payable in deriving that income, and
- (c) a reasonable return on the capital of the transmission operator used in deriving that income, 25

having regard to:

- (d) the likely consumption of electricity in that financial year by its direct customers, and 30
 - (e) such other matters as the Treasurer determines after consultation with the transmission operator.
- (3) The levy is payable for the financial year commencing on 1 July 1998 and later financial years.

43H Variation of levy

- (1) The amount of a levy payable by a transmission operator in respect of a financial year may be varied by order of the Governor applying to the transmission operator and published in the Gazette. 5
- (2) Such an order may be made before or during the financial year concerned or during the following financial year, but not later.
- (3) The Treasurer, in recommending a variation of a levy for a financial year payable by a transmission operator, must be satisfied of the matters referred to in section 43G (2). 10

43I Becoming a transmission operator during a year

- (1) If a person becomes a transmission operator during a financial year, a levy may be determined under this Division for the transmission operator in respect of the remaining part of that financial year. 15
- (2) The other sections of this Division apply to the transmission operator in respect of that financial year as if references in those sections to a financial year were references to the remaining part of that financial year. 20

43J Ceasing to be a transmission operator during a year

- (1) If a person ceases to be a transmission operator during a financial year, the amount of levy payable by the transmission operator may be adjusted by order of the Governor, applying to the transmission operator and published in the Gazette, having regard to the length of the portion of that financial year during which the person was a transmission operator. 25
- (2) Such a person is entitled to a refund of any money paid in excess of the amount of the levy as so adjusted. 30
- (3) However, a person does not, by ceasing to be a transmission operator, cease to be liable to a levy, or to a variation of a levy under section 43H, in respect of any period during which the person was a transmission operator. 35

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- (4) Accordingly, a reference in this Division to a transmission operator includes a reference to a former transmission operator, but without making the former transmission operator liable to a levy in respect to any period after the person ceased to be a transmission operator. 5
- (5) The other sections of this Division apply for the purpose of calculating an adjustment referred to in subsection (1) or a variation referred to in subsection (3) as if references in those sections to a financial year were references to the portion of the financial year during which the person was a transmission operator. 10

43K Payment and recovery of levy

- (1) The levy in respect of a financial year is payable at such times (whether during or after that year) and in such manner as are: 15
- (a) determined in the order imposing, varying or adjusting it (subject to any agreement referred to in paragraph (b)), or
- (b) agreed on between the Treasurer and the transmission operator. 20
- (2) A levy under this Division is recoverable as a debt due to the Crown in any court of competent jurisdiction.

43L Operation of Division

Nothing in this Division affects the operation of section 59B of the *Public Finance and Audit Act 1983*. 25

Division 2 Pricing of electricity

43M Definitions

In this Division:

direct customer of a transmission operator has the same meaning as in Division 1. 30

IPART electricity network pricing determination means a determination of the Independent Pricing and Regulatory Tribunal under the *Independent Pricing and Regulatory Tribunal Act 1992* to the extent that it relates to: 35

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- (a) the determination of the maximum price for the provision of electricity network services by a transmission operator, or
 - (b) the determination of the methodology for fixing the maximum price for the provision of electricity network services by a transmission operator. 5

43N Pricing of electricity for direct customers

- (1) The maximum price for electricity network services that are the subject of an IPART electricity network pricing determination and that are provided by a transmission operator with respect to the supply of electricity to its direct customers is increased by an amount determined by an order made by the Governor on the recommendation of the Treasurer and published in the Gazette that does not exceed 0.550 cents per kilowatt hour of the electricity supplied. 10 15
- (2) An IPART electricity network pricing determination has effect under the *Independent Pricing and Regulatory Tribunal Act 1992* (without limitation including section 18, but excluding sections 16 and 17 and any prescribed provisions of that Act) as if it contained provisions for the increase effected by subsection (1). 20

43O Returns

- (1) A transmission operator is, within such periods as are specified or described from time to time by the Treasurer by notice to the transmission operator or by notice published in the Gazette, required to furnish to the Treasurer a return setting out: 25
 - (a) such information relating to forecast and actual consumption of electricity by its direct customers as is specified or described in such a notice, and 30
 - (b) such other information as is specified or described in such a notice, being information that is relevant to the transmission operator's obligations under this Division. 35

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- (2) The information in such a return is to be furnished in such manner and form as is specified or described in such a notice.
 - (3) The Treasurer may, by notice to the transmission operator by notice published in the Gazette, require supplementary or further information from the transmission operator at any time. 5

43P Operation of Division

- (1) The regulations may make provision for or with respect to phasing in the increase effected by section 43N (1) in relation to any class or classes of persons in cases where it is not practicable to ascertain the exact amount of electricity supplied for any period commencing with the commencement of this section. 10
- (2) This Division does not apply to electricity network services: 15
 - (a) provided to a person under a contract:
 - (i) that was entered into between a transmission operator and a direct customer before the commencement of this section, and 20
 - (ii) that contains a provision in force before that commencement that expressly precludes payment of additional charges for electricity network services provided under it, or 25
 - (b) provided to a person under a connection agreement that is entered into between a transmission operator and a person pursuant to an arrangement, being an arrangement:
 - (i) that was entered into between the transmission operator and the person before the commencement of this section, and 30
 - (ii) that contains a provision that expressly precludes payment of additional charges for electricity services provided under the connection agreement. 35

Electricity Supply Amendment (Transmission Operator's Levy) Bill 1998

Amendments

Schedule 1

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| (3) | This Division does not apply in relation to electricity network services provided during any period specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette. | 5 |
| (4) | This Division does not apply in relation to electricity network services provided to persons of a class specified or described in an order made by the Governor on the recommendation of the Treasurer and published in the Gazette. | 10 |
| (5) | Nothing in this Division gives rise to any rights that are justiciable by a person to whom electricity network services are provided by a transmission operator or to any grounds that constitute a defence to proceedings for the recovery of any amount from such a person. | 15 |

[6] Section 99A IPART determinations

Omit "and Division 4 of Part 4".

Insert instead " , Division 4 of Part 4 and Part 4A".

[7] Dictionary

Omit the definition of *eligible customer*.

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