

South Australia

# National Gas (South Australia) (Capacity Trading and Auctions) Amendment Act 2018

An Act to amend the *National Gas (South Australia) Act 2008*.

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *National Gas (South Australia) (Capacity Trading and Auctions) Amendment Act 2018*.

### **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

### **3—Amendment provisions**

In this Act, a provision in Part 2 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*.

## **Part 2—Amendment of *National Gas Law***

### **4—Amendment of section 2—Definitions**

- (1) Section 2(1), definition of *Bulletin Board information*, (a)—after "section 223(1)" insert:

or 223A(1)

- (2) Section 2(1)—insert in alphabetical order:

*capacity auction* means an auction conducted by AEMO through which a person may buy transportation capacity;

*capacity auction agreement* means an agreement that relates to participation in a capacity auction and to which AEMO and persons participating in the capacity auction are parties;

*capacity auction functions* of AEMO are set out in section 91BRM(1);

*capacity auction information* means information that—

- (a) a person gives to AEMO, to comply with section 91FEE(1); or
- (b) a person gives, in circumstances expressly required or permitted by the Procedures or Rules—
  - (i) to AEMO in its capacity as operator of a capacity auction in which the person participates; or
  - (ii) to AEMO in its capacity as operator of a regulated gas market or a gas trading exchange if that information is to be used for the purpose of a capacity auction in which the person participates;

*capacity auction participant* means a person (other than AEMO) who is, or who was at the relevant time, a party to a capacity auction agreement;

***Capacity Transfer and Auction Procedures*** means Procedures directed at the operation and administration of capacity auctions and transaction support arrangements;

***compression service facility*** means—

- (a) a designated compression service facility; or
- (b) any other facility or part of a facility (whether or not forming part of another facility or located on or connected to another facility) for compressing natural gas other than—
  - (i) a facility operated as part of a gathering system operated as part of an upstream producing operation; or
  - (ii) anything downstream of a point on a pipeline from which a person takes natural gas for consumption purposes;

***designated compression service facility*** means a facility or part of a facility for compressing natural gas prescribed by the Regulations as a designated compression service facility;

***disposal***, in relation to a right to use transportation capacity, includes disposal by means of—

- (a) transfer, sale, assignment, exchange or other disposal; and
- (b) the grant of a right to use, directly or indirectly, the transportation capacity;

**Note—**

See the definition of *transfer*.

***initial Operational Transportation Service Code*** means the Operational Transportation Service Code made under section 294DA;

***operational transportation service*** means—

- (a) a transportation service that is provided under an operational transportation service agreement using transferred transportation capacity; and
- (b) a service ancillary to the provision of a service referred to in paragraph (a);

***operational transportation service agreement*** means an agreement between a transportation service provider and a transportation facility user that provides for—

- (a) the transportation facility user to receive a transfer of transportation capacity acquired through any of the following means—
  - (i) a capacity auction; or
  - (ii) a gas trading exchange; or
  - (iii) any other means provided for in the agreement; and
- (b) the terms and conditions applicable to the use of that transportation capacity;

***Operational Transportation Service Code*** has the meaning given by section 228H;

***primary capacity transaction***, in relation to transportation capacity, means the grant by a transportation service provider of the right to use the transportation capacity under the contract from which the transportation capacity is first derived;

***secondary capacity transaction***, in relation to transportation capacity, means a disposal of a right by a person to use the transportation capacity but does not include the primary capacity transaction in relation to that transportation capacity;

**Note—**

See the definition of *disposal*.

***standard gas day*** means the 24 hour period starting at the time specified in the standard market timetable;

***standard market timetable*** means the standard market timetable provided for in the Rules in accordance with section 83B;

***standard OTSA*** means an operational transportation service agreement within the meaning of section 228B as amended from time to time;

***transaction support arrangements*** means arrangements to facilitate transactions with respect to transportation capacity and related goods and services concluded or to be concluded through a gas trading exchange or a capacity auction;

***transfer***, in relation to transportation capacity, includes a reduction in a person's right to the transportation capacity and a corresponding increase in another person's right to transportation capacity, whether or not on the same terms and conditions;

***transportation capacity*** means a right under a contract with a transportation service provider to be provided with a transportation service by means of a transportation facility, for a given quantity of natural gas over a given period of time;

***transportation facility*** means—

- (a) a pipeline; or
- (b) a compression service facility; or
- (c) another facility of a type specified by the Regulations for the purposes of this paragraph;

***transportation facility user*** means a person who is a party to a contract with a transportation service provider under which the transportation service provider provides, or intends to provide, a transportation service to that person by means of a transportation facility and includes a user and a non scheme pipeline user;

***transportation service*** means—

- (a) a pipeline service; or

- (b) a service provided by means of a compression service facility; or
- (c) a service provided by means of any other facility of a type specified by the Regulations for the purposes of paragraph (c) of the definition of *transportation facility*;

*transportation service provider* means a person who owns, controls or operates a transportation facility;

- (3) Section 2(1), definition of *Natural Gas Services Bulletin Board*—after "services" insert:

and secondary capacity transactions

- (4) Section 2(1), definition of *Registered participant*—after "Rules" insert:

, but does not include a transportation service provider registered under section 91BRR

## 5—Insertion of section 8AA

After section 8 insert:

### 8AA—Meaning of transportation service provider

If AEMO controls or operates (without at the same time owning) a compression service facility or another facility of a type prescribed by the Regulations for the purposes of paragraph (c) of the definition of *transportation facility* in section 2, AEMO is not for that reason to be taken to be a transportation service provider for the purposes of this Law.

## 6—Amendment of section 10—Things done by 1 service provider to be treated as being done by all of service provider group

- (1) Section 10(1)(a)—delete paragraph (a) and substitute:
  - (a) more than 1 service provider (a *service provider group*) carries out a controlling facility activity in respect of a transportation facility (or a part of a transportation facility); and
- (2) Section 10(4)—delete "or Chapter 4 Part 2" and substitute:

, Chapter 4 Part 2 or section 228K or 228L
- (3) Section 10(5), definition of *controlling pipeline activity*—delete the definition and substitute:

*controlling facility activity* means own, control or operate a transportation facility (or part of a transportation facility);

*service provider* means—

- (a) in relation to a pipeline—a service provider (within the meaning of section 8) for that pipeline; and
- (b) in relation to a transportation facility other than a pipeline—a transportation service provider for that facility.

## **7—Amendment of section 27—Functions and powers of the AER**

Section 27(1)—after paragraph (e) insert:

- (ea) to make and amend the Operational Transportation Service Code in accordance with this Law and the Rules; and

## **8—Amendment of section 74—Subject matter for National Gas Rules**

- (1) Section 74(1)(a)(iii)—after "gas services" insert:

and secondary capacity transactions

- (2) Section 74(1)—after paragraph (aaa) insert:

- (aab) the capacity auction functions of AEMO, the operation of a capacity auction and the activities of transportation service providers and transportation facility users in connection with a capacity auction; and

- (aac) transaction support arrangements; and

- (aad) access to and the provision of operational transportation services; and

- (3) Section 74(3)—after paragraph (fa) insert:

- (fb) provide for Procedures governing the operation and administration of capacity auctions and transaction support arrangements;

## **9—Insertion of sections 83B to 83D**

After section 83A insert:

### **83B—Standard market timetable**

- (1) Without limiting any other provision, the Rules may provide for a standard market timetable.
- (2) The standard market timetable may do the following:
  - (a) specify the start time of a standard gas day;
  - (b) provide for the times for nominations and renominations for the use of transportation services and deliveries or receipts of natural gas;
  - (c) provide for the circumstances in which the standard market timetable must be used, which may include provision in relation to any of the following:
    - (i) transportation services;
    - (ii) the supply, production or storage of natural gas;
    - (iii) the measurement and allocation of deliveries or receipts of natural gas;
    - (iv) a regulated gas market, a gas trading exchange and a capacity auction.

- (3) Without limiting any other provision, the Rules may require a person of the following kind to use the standard market timetable in accordance with the Rules:
- (a) a transportation service provider;
  - (b) a transportation facility user;
  - (c) a person who measures, or determines the allocation of, deliveries or receipts of natural gas;
  - (d) a producer;
  - (e) a storage provider;
  - (f) any other person of a kind prescribed by the Regulations for the purposes of this subsection.

### **83C—Use of the standard market timetable**

A person required by the Rules to use the standard market timetable must do so in accordance with the Rules.

### **83D—False or misleading statements** □

A person of the following kind must not, in connection with the supply or possible supply of goods and services, make a false or misleading representation concerning the effect of a requirement for the person to use the standard market timetable on the price for the supply of the goods or services:

- (a) a transportation service provider;
- (b) a transportation facility user;
- (c) a person who measures, or determines the allocation of, deliveries or receipts of natural gas;
- (d) a producer;
- (e) a storage provider;
- (f) any other person of a kind prescribed by the Regulations for the purposes of section 83B(3)(f).

Maximum penalty:

- (a) in the case of a natural person—\$2 000;
- (b) in the case of a body corporate—\$10 000.

## **10—Amendment of section 91A—AEMO’s statutory functions**

- (1) Section 91A(1)(ba)—after "parts of markets," insert:
- capacity auctions and transaction support arrangements
- (2) Section 91A(1)—after paragraph (ga) insert:
- (gb) the capacity auction functions;
  - (gc) to establish, operate and administer transaction support arrangements;



## **11—Insertion of Chapter 2 Part 6 Divisions 2C to 2E**

Chapter 2 Part 6—after Division 2B insert:

### **Division 2C—Capacity auctions for transportation services**

#### **91BRM—AEMO’s capacity auction functions**

- (1) AEMO’s capacity auction functions are as follows:
  - (a) to establish, operate and administer 1 or more capacity auctions;
  - (b) in relation to a capacity auction, to make and administer capacity auction agreements;
  - (c) to make, amend or revoke Procedures governing the operation and administration of a capacity auction.
- (2) AEMO may, subject to the Rules and Procedures, suspend a capacity auction.

#### **91BRN—Capacity auctions not to constitute a regulated gas market**

A capacity auction is not a regulated gas market.

### **Division 2D—Capacity Transfer and Auction Procedures**

#### **91BRO—Making of Capacity Transfer and Auction Procedures**

AEMO may, in accordance with the Rules, make Capacity Transfer and Auction Procedures.

#### **91BRP—Nature of Capacity Transfer and Auction Procedures**

- (1) Capacity Transfer and Auction Procedures are a form of statutory instrument directed at—
  - (a) the effective operation and administration of a capacity auction in accordance with the Rules; and
  - (b) the effective operation and administration of transaction support arrangements.
- (2) The Capacity Transfer and Auction Procedures may deal with the following matters:
  - (a) the matters specified by the Rules;
  - (b) any other matter relevant to a capacity auction, a gas trading exchange or transaction support arrangements on which this Law or the Rules contemplate the making of Procedures.
- (3) The Capacity Transfer and Auction Procedures—
  - (a) may vary according to the persons, times, places or circumstances to which they are expressed to apply; and

- (b) may confer functions or powers on, or leave any matter or thing to be decided by, AEMO; and
  - (c) may confer rights or impose obligations on a transportation service provider, a transportation facility user, a capacity auction participant or a gas trading exchange member; and
  - (d) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and
  - (e) may confer power on AEMO to require a person on whom a right is conferred, or an obligation imposed, under the Procedures—
    - (i) to comply with a guideline, standard or other document of an administrative nature; or
    - (ii) to conduct, or submit to, a test designed by AEMO under the Procedures; and
  - (f) may exempt, or confer a power of exemption, from the application of the Procedures or specified provisions of the Procedures; and
  - (g) may contain provisions of a savings or transitional nature.
- (4) AEMO must not, without the consent of the MCE, make Capacity Transfer and Auction Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The Capacity Transfer and Auction Procedures cannot—
- (a) create an offence; or
  - (b) provide for a criminal or civil penalty.

### **91BRQ—Compliance with Capacity Transfer and Auction Procedures**

- (1) AEMO and each person to whom the Capacity Transfer and Auction Procedures are applicable must comply with those Procedures.
- (2) If AEMO has reasonable grounds to suspect a breach of the Capacity Transfer and Auction Procedures, it must, after making such inquiries and investigation as it considers appropriate, make a decision as to whether the breach is a material breach.
- (3) If AEMO decides the breach is material, AEMO—
  - (a) must publish the decision and the reasons for it on its website; and
  - (b) may direct the person suspected of the breach to rectify it or to take specified measures to ensure future compliance (or both); and
  - (c) may refer the breach to the AER.

- (4) A direction by AEMO under subsection (3)(b) must—
  - (a) specify the breach; and
  - (b) specify the date by which the direction is to be complied with; and
  - (c) be addressed to, and given to, the person suspected of the breach.
- (5) A person to whom a direction is given under subsection (3)(b) must comply with the direction.
- (6) AEMO must give a copy of its decision under subsection (2), its reasons for the decision and (if relevant) any direction under subsection (3)(b) to the AER.
- (7) If AEMO decides the breach is not material, AEMO must give a copy of the decision and the reasons for it to the AER.

**Note—**

AEMO may provide the AER with relevant information (including protected information) related to a suspected breach of the Procedures. (For disclosure of protected information, see section 91GC(2)(b) and 91GG(1)(b).)

## **Division 2E—Registration in relation to transportation facility**

### **91BRR—Registration obligation**

- (1) A transportation service provider for a transportation facility must, in accordance with the Rules, register—
  - (a) that transportation facility; and
  - (b) as a transportation service provider for that transportation facility.
- (2) Subsection (1) does not apply if—
  - (a) the transportation facility or the provider is exempted from registration under that subsection by or under the Rules; or
  - (b) the transportation facility or the provider is exempted by the AER from registration under that subsection by or under this Law or the Rules.
- (3) For performing statutory functions, AEMO is not required to be registered.

### **91BRS—Exemptions from obligation to register**

- (1) A transportation service provider (or prospective transportation service provider) for a transportation facility may request the AER to exempt the transportation service provider (or prospective transportation service provider on becoming the transportation service provider for the transportation facility) from the obligation to register—
  - (a) the transportation facility under section 91BRR(1)(a); or
  - (b) as a transportation service provider for the transportation facility under section 91BRR(1)(b).
- (2) A request under subsection (1) must be made in accordance with the Rules.
- (3) On receipt of a request under subsection (1), the AER may, subject to the Rules, grant the exemption.
- (4) An exemption granted under subsection (3) may be subject to such terms and conditions as may be required by the Rules or as the AER considers appropriate in accordance with the Rules.
- (5) In this section—

*prospective transportation service provider* for a transportation facility means a person who intends to own, control or operate the transportation facility.

### **91BRT—Certificates of registration and exemption from registration**

- (1) A certificate signed by an authorised officer certifying that a transportation facility described, or a transportation service provider named, in the certificate is registered, or exempt from registration, is evidence of the registration or exemption.
- (2) In this section, an *authorised officer* is—
  - (a) in relation to registration, AEMO’s CEO or a person authorised by the CEO to issue certificates under this section; or
  - (b) in relation to exemption, the AER’s CEO or a person authorised by the CEO to issue certificates under this section.

## 12—Insertion of Chapter 2 Part 6 Division 6 Subdivisions 3 and 4

Chapter 2 Part 6 Division 6—after Subdivision 2 insert:

### **Subdivision 3—Capacity auction information**

#### **91FEE—Obligation to give information to AEMO**

- (1) A person of the following kind who has possession or control of information that relates to and is necessary for the operation and administration of a capacity auction by AEMO or the performance of any other capacity auction function of AEMO must give AEMO the information for use by AEMO for the operation and administration of that capacity auction or performance of that other function if the person is required to do so under the Procedures or Rules:
  - (a) a capacity auction participant;
  - (b) a transportation service provider;
  - (c) a transportation facility user;
  - (d) another person who is prescribed by the Regulations for the purposes of this subsection.
- (2) The information must be given to AEMO in accordance with the Procedures or Rules.
- (3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.
- (4) However, subsection (1) does not require—
  - (a) a person to disclose information that is the subject of legal professional privilege;
  - (b) a natural person to disclose information that would incriminate the person or make the person liable to a criminal penalty under the law of an Australian jurisdiction (whether or not the jurisdiction is a participating jurisdiction).

#### **91FEF—Person cannot rely on duty of confidence to avoid compliance with obligation**

A person must not refuse to comply with the requirement in section 91FEE(1) on the ground of any duty of confidence.

#### **91FEG—Giving to AEMO false and misleading information**

A person must not give capacity auction information to AEMO that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a natural person—\$2 000;
- (b) in the case of a body corporate—\$10 000.

### **91FEH—Immunity of persons giving information to AEMO**

- (1) A person who gives capacity auction information to AEMO does not incur any civil monetary liability for an act or omission in preparing or giving that information unless the act or omission is done or made in bad faith or through negligence.
- (2) The civil monetary liability for an act or omission of a kind referred to in subsection (1) done or made through negligence may not exceed the prescribed maximum amount.
- (3) The Regulations may, for the purposes of subsection (2), without limitation do all or any of the following:
  - (a) prescribe a maximum amount that is limited in its application to persons, events, circumstances, losses or periods specified in the Regulations;
  - (b) prescribe maximum amounts that vary in their application according to the persons to whom or the events, circumstances, losses or periods to which they are expressed to apply;
  - (c) prescribe the manner in which a maximum amount is to be divided amongst claimants.
- (4) A person mentioned in subsection (1) may enter into an agreement with another person varying or excluding the operation of a provision of this section and, to the extent of that agreement, that provision does not apply.

### **Subdivision 4—Information used for a capacity auction**

#### **91FEI—Giving false and misleading information used for capacity auctions**

A person must not give to a transportation service provider information that relates to and is necessary for the operation and administration of a capacity auction by AEMO or the performance of any other capacity auction function of AEMO that the person knows is false or misleading in a material particular.

Maximum penalty:

- (a) in the case of a natural person—\$2 000;
- (b) in the case of a body corporate—\$10 000.

### **13—Amendment of section 91GG—Disclosure of protected information for safety, proper operation of the market etc**

Section 91GG(1)(b)—after "market" insert:

, a capacity auction or the Capacity Transfer and Auction Procedures,

**14—Amendment of section 91H—Obligations under Rules or Procedures to make payments**

Section 91H(4), definition of *Registered participant*—delete the definition and substitute:

*Registered participant* includes the following:

- (a) an exempted participant;
- (b) a capacity auction participant;
- (c) a transportation service provider registered with AEMO under section 91BRR or exempted from registration under that section;
- (d) a gas trading exchange member.

**15—Amendment of section 218—AEMO’s obligation to maintain Bulletin Board**

Section 218(2)(b) and (3)—after "services" wherever occurring insert:  
and secondary capacity transactions

**16—Amendment of section 219—AEMO’s other functions as operator of Natural Gas Services Bulletin Board**

Section 219(b)—after "services" insert:  
and secondary capacity transactions

**17—Amendment of section 223—Obligation to give information to AEMO about natural gas and natural gas services**

Section 223(1)—after paragraph (a) insert:

- (b) a person who determines the allocation of deliveries or receipts of natural gas;

**18—Insertion of section 223A**

After section 223 insert:

**223A—Obligation to give information to AEMO about secondary capacity transactions**

- (1) A person of the following kind who has possession or control of information in relation to secondary capacity transactions must give AEMO the information if the person is required to do so under the Rules:
  - (a) a transportation service provider;
  - (b) a transportation facility user;
  - (c) another person who is prescribed by the Regulations for the purposes of this subsection.
- (2) The information must be given to AEMO in accordance with the Rules.

- (3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.
- (4) AEMO must, in accordance with the Rules, make available for the operation of the Bulletin Board information about secondary capacity transactions that it acquires in its capacity as operator or administrator of a gas trading exchange.

### **19—Amendment of section 224—Person cannot rely on duty of confidence to avoid compliance with obligation**

Section 224—after "section 223(1)" insert:

or 223A(1)

### **20—Insertion of Chapter 7A**

After Chapter 7 insert:

## **Chapter 7A—Access to operational transportation services**

### **Part 1—Standard terms for operational transportation services**

#### **228B—Transportation service provider to publish standard OTSA**

- (1) A transportation service provider for a transportation facility must, in accordance with the Rules, prepare and publish on its website a form of operational transportation agreement in respect of the transportation facility that complies with the applicable requirements of the Rules and the Operational Transportation Service Code (a *standard OTSA*) unless—
  - (a) the provider is exempted from the requirement under this section to prepare and publish a standard OTSA in respect of that transportation facility by or under the Rules; or
  - (b) the provider is exempted by the AER from the requirement under this section in respect of that transportation facility by or under this Law or the Rules.
- (2) A transportation service provider for a transportation facility in respect of which a standard OTSA must be prepared and published under this section must, where required by the Rules or the Operational Transportation Service Code, prepare and publish on its website an amended standard OTSA in respect of the transportation facility.
- (3) A transportation service provider for a transportation facility may, where permitted by the Rules or the Operational Transportation Service Code, prepare and publish on its website an amended standard OTSA in respect of the transportation facility.



### **228C—Formation of contracts on standard terms**

- (1) A transportation service provider for a transportation facility must on request by any person made in respect of the transportation facility—
  - (a) make an offer to enter into the standard OTSA for the transportation facility in accordance with the Rules; and
  - (b) if the offer is accepted, enter into the agreement in accordance with the Rules.
- (2) Subsection (1) does not apply to a transportation service provider in respect of a transportation facility—
  - (a) if the provider is exempted from compliance with that subsection in respect of that transportation facility in accordance with the Rules; or
  - (b) if the provider is exempted by the AER from compliance with that subsection in respect of that transportation facility under this Law or the Rules; or
  - (c) in other circumstances specified by the Rules.
- (3) A standard OTSA takes effect as a contract between the transportation service provider and another person when—
  - (a) the other person accepts the transportation service provider's offer to enter into the standard OTSA and enters into the OTSA; and
  - (b) any pre-conditions to the formation of the contract are satisfied.
- (4) A contract formed in accordance with subsection (3) may be amended in accordance with its terms.
- (5) A contract formed in accordance with subsection (3) expires and may be terminated in accordance with its terms.

### **228D—Exemptions from obligations under section 228B or 228C**

- (1) A transportation service provider for a transportation facility may request the AER to exempt that person from an obligation imposed under section 228B or 228C in respect of that transportation facility.
- (2) A request under subsection (1) must be made in accordance with the Rules.
- (3) On receipt of a request under subsection (1), the AER may, subject to the Rules, grant the person the exemption.
- (4) An exemption granted under subsection (3) may be subject to such terms and conditions as may be required by the Rules or as the AER considers appropriate in accordance with the Rules.

### **228E—Requirements relating to standard OTSA**

Without limiting any other provision, the Rules may make provision for or with respect to such things as—

- (a) the time and manner of preparation and publication of a standard OTSA; and
- (b) the form and content of a standard OTSA, including the transportation services that may be available for use under a standard OTSA; and
- (c) offers for, and entry into, a standard OTSA; and
- (d) amendments to a standard OTSA and contracts in the form of a standard OTSA; and
- (e) matters of a savings or transitional nature.

### **228F—Service provider may enter into agreements different from a standard OTSA**

Subject to section 83C, nothing in this Law is to be taken as preventing a transportation service provider from entering into an operational transportation service agreement with a transportation facility user or a prospective transportation facility user that is different to a standard OTSA prepared and published by the transportation service provider under section 228B.

## **Part 2—Operational Transportation Service Code**

### **228G—Operational Transportation Service Code**

The AER may, in accordance with the Rules—

- (a) amend the initial Operational Transportation Service Code; and
- (b) from time to time make subsequent amendments to the Code.

### **228H—Nature of the Operational Transportation Service Code**

- (1) The Operational Transportation Service Code (the *Code*) is—
  - (a) the initial Operational Transportation Service Code; or
  - (b) if the initial Operational Transportation Service Code is amended under section 228G—that Code as amended and as subsequently amended from time to time under that section.
- (2) The Code is made under the Rules and specifies the content of, or requirements for the content of, a standard OTSA, including the transportation services that may be provided under a standard OTSA and the terms and conditions applicable to the use of those transportation services.

- (3) The Code may deal with the following matters:
  - (a) the matters specified by the Rules;
  - (b) any other matter relevant to a standard OTSA that this Law or the Rules contemplates being dealt with in the Code.
- (4) The Code may specify provisions or classes of provisions that—
  - (a) confer rights or impose obligations under a standard OTSA; and
  - (b) vary according to the persons, times, places or circumstances to which they are expressed to apply; and
  - (c) must be made by a transportation service provider in accordance with the Rules or Code and incorporated in a standard OTSA; and
  - (d) must not be included in a standard OTSA.
- (5) The Code may contain provisions of a savings or transitional nature.
- (6) The AER must not, without the consent of the MCE, make a provision in the Code that confers a right or function, or imposes an obligation, on the MCE or a Minister of a participating jurisdiction.
- (7) The Code cannot—
  - (a) create an offence; or
  - (b) provide for a criminal or civil penalty.

### **Part 3—Other matters relating to access to operational transportation services**

#### **228I—Service requirements may be specified in the Rules**

Without limiting any other provision, the Rules may make provision for or with respect to the following:

- (a) principles that must be complied with when preparing terms and conditions for a standard OTSA;
- (b) charges under a standard OTSA and review of those charges by the AER;
- (c) the priority to be given to a transportation service;
- (d) the allocation to zones of points on a transportation facility where transportation services are provided and the provision and use of transportation services using zones;
- (e) the obligations of transportation service providers with respect to facilitating the operational transfer of transportation capacity;
- (f) the use of an operational transportation service after termination or suspension of the contract from which the transportation capacity was first derived;

- (g) requests by a transportation facility user for changes to the point on a transportation facility where natural gas may be injected or withdrawn;
- (h) the collection, recording and use of information about nominations and renominations for use of transportation services and the scheduling of that use.

### **228J—When operational transfer must be offered**

- (1) If a transportation facility user states terms and conditions (the *first terms*) on which the user offers to grant to another person a right to use, directly or indirectly, the transportation capacity of the user without arranging for its transfer to the other person, the user must, on request by the person, state the terms and conditions on which the user will arrange for a transfer of the transportation capacity to the person for use under an operational transportation service agreement (the *second terms*).
- (2) If there is a difference in the price stated in the first terms and the second terms, the transportation facility user making the offer must include in the second terms a statement of the reasons for the difference.

### **228K—Preventing or hindering access to operational transportation services**

- (1) A person who is—
  - (a) a transportation service provider; or
  - (b) a transportation facility user; or
  - (c) an associate of a transportation service provider or a transportation facility user,must not engage in conduct for the purpose of preventing or hindering the access of another person to an operational transportation service.
- (2) For the purposes of subsection (1), a person is deemed to engage in conduct for a particular purpose if—
  - (a) the conduct is or was engaged in for that purpose or for a purpose that includes, or included, that purpose; and
  - (b) that purpose is or was a substantial purpose.
- (3) A person may be taken to have engaged in conduct for the purpose referred to in subsection (1) even though, after all the evidence has been considered, the existence of that purpose is ascertainable only by inference from the conduct of the person or of any other person or from other relevant circumstances.
- (4) Subsection (3) does not limit the manner in which the purpose of a person may be established for the purpose of subsection (1).

- (5) In this section—
- (a) a reference to engaging in conduct is a reference to doing or refusing to do any act, including the following:
    - (i) refusing to supply a transportation service or an operational transportation service;
    - (ii) without reasonable grounds, limiting or disrupting a transportation service or an operational transportation service or a transfer of transportation capacity;
    - (iii) making, or giving effect to, a provision of a contract or arrangement, arriving at, or giving effect to, a provision of an understanding, or requiring the giving of, or giving, a covenant; and
  - (b) a reference to refusing to do an act includes a reference to—
    - (i) refraining (otherwise than inadvertently) from doing that act; or
    - (ii) making it known that that act will not be done.
- (6) Subsection (1) does not apply to conduct engaged in in accordance with an agreement (other than conduct in breach of this Law, the Regulations, the Rules or the Procedures), if the agreement was in force on 19 March 2018.

**228L—Transportation service provider providing operational transportation services must not price discriminate**

- (1) A transportation service provider must not engage in price discrimination when providing operational transportation services.
- (2) Subsection (1) does not apply if the transportation service provider engages in price discrimination that is conducive to efficient service provision.

**21—Insertion of section 294DA**

After section 294D insert:

**294DA—South Australian Minister to make initial Rules relating to the capacity reforms**

- (1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) Act 2008* of South Australia (the *South Australian Minister*)—
  - (a) may make Rules for or with respect to any one or more of the following subjects:
    - (i) the capacity auction functions of AEMO, the operation of a capacity auction and the activities of transportation service providers and transportation facility users in connection with a capacity auction;

- (ii) transaction support arrangements;
  - (iii) access to and the provision of operational transportation services;
  - (iv) the making and amendment of an Operational Transportation Service Code;
  - (v) the standard market timetable and the standard gas day;
  - (vi) the collection, use, disclosure, copying, recording, management and publication of information in relation to secondary capacity transactions;
  - (vii) the collection, use, disclosure, copying, recording, management and publication of information in relation to natural gas or natural gas services from a person who determines the allocation of deliveries or receipts of natural gas;
  - (viii) the matters referred to in sections 83B, 83C, 228E and 228I;
  - (ix) the buying and selling of transportation capacity through the gas trading exchange;
  - (x) the subject matter of a new head of power added to Schedule 1 by the Capacity Trading and Auction amendments;
  - (xi) any other subject contemplated by, or consequential on, the Capacity Trading and Auction amendments; and
- (b) may make Rules that revoke or amend a Rule as a consequence of the enactment of the Capacity Trading and Auction amendments and any of the Rules referred to in paragraph (a); and
  - (c) may make Rules that require a contract (including a contract made in accordance with an access arrangement or an access determination) to be amended as a consequence of the enactment of the Capacity Trading and Auction amendments and any of the Rules referred to in paragraph (a) or (b); and
  - (d) may make an Operational Transportation Service Code.
- (2) Rules or an Operational Transportation Service Code may only be made under subsection (1) on the recommendation of the MCE.
  - (3) Section 74(3) applies to Rules made under subsection (1) in the same way as it applies to Rules made by the AEMC.

- (4) As soon as practicable after making Rules or an Operational Transportation Service Code under subsection (1), the South Australian Minister must—
  - (a) publish notice of the making of the Rules or Code in the South Australian Government Gazette; and
  - (b) make the Rules or Code publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
  - (a) the date on which the Rules or Code commence operation; or
  - (b) if different Rules or provisions of the Code will commence operation on different dates, those dates.
- (6) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (5).
- (7) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.
- (8) Once the first Operational Transportation Service Code has been made under subsection (1), no further Operational Transportation Service Code can be made under that subsection.
- (9) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.
- (10) In this section—

*Capacity Trading and Auction amendments* means the amendments made to this Law by the *National Gas (South Australia) (Capacity Trading and Auctions) Amendment Act 2018*.

## **22—Amendment of section 322—Service provider may enter into agreement for access different from applicable access arrangement**

Section 322—after "Subject to" insert:

section 83C and

## **23—Amendment of Schedule 1—Subject matter for the National Gas Rules**

- (1) Schedule 1, item 56—after "natural gas services" insert:  
and secondary capacity transactions
- (2) Schedule 1—after item 68 insert:

### **Facilitating capacity trades and the capacity auction**

68A The making of, and amendment to, an Operational Transportation Service Code, including—

- (a) the establishment, membership and operation of a representative panel for the Code; and
- (b) the functions of AEMO in relation to the panel; and

- (c) the functions of the panel in connection with proposals for amendment of the Code.
- 68B The content of an Operational Transportation Service Code.
- 68C Requirements for a standard OTSA and the services provided under a standard OTSA.
- 68D Publication of a standard OTSA, entry into a standard OTSA and amendment of a standard OTSA.
- 68E Requirements for transportation service providers to give effect to operational transfers.
- 68F The determination of payments to transportation service providers for use of an operational transportation service after termination or suspension of the contract from which the transportation capacity was first derived.
- 68G A registration scheme to be administered by AEMO for registration of transportation service providers and transportation facilities.
- 68H The provision of information to AEMO about the points at or between which transportation services are provided and the publication of that information by AEMO.
- 68I The allocation of service points to zones and the transfer of transportation capacity between service points.
- 68J The recording of information about nominations and renominations for the use of transportation services and the scheduling and curtailment of transportation services and the provision of that information to AEMO or the AER.
- 68K The recovery of the costs of transportation service providers in connection with the provision of a standard OTSA, a capacity auction and the transaction support arrangements and the publication of schedules of charges.
- 68L The negotiation or determination of provisions in agreements with transportation facility users to facilitate sale by operational transfer and the transfer of capacity between service points.
- 68M Exemptions in connection with a standard OTSA or capacity auction.
- Capacity auctions**
- 68N The capacity auction functions and the operation and administration of a capacity auction.
- 68O The transportation services to be available through a capacity auction and the determination of the quantities of transportation capacity to be offered in the capacity auction.
- 68P The form of a capacity auction and the rules relating to the conduct (including suspension) of a capacity auction.
- 68Q The duties and obligations of transportation service providers in relation to a capacity auction, including the provision of information and the maintenance of records in relation to the nomination, scheduling and supply of transportation services.
- 68R The content, operation and administration of capacity auction agreements.
- 68S The duties and obligations of capacity auction participants.
- 68T The activities of transportation service providers and transportation facility users in connection with a capacity auction.



- 68U The determination and settlement of payments in relation to a capacity auction.
- 68V The order of priority to be given to transportation services using transportation capacity bought in a capacity auction, including in the scheduling, supply or curtailment of transportation services.
- 68W The classification of transportation services as priority services in connection with a capacity auction.
- 68X The functions of the AER in relation to transportation services classified as priority services in connection with a capacity auction and variations to those services.
- Standard market timetable**
- 68Y Provision for or with respect to a standard market timetable, including requirements concerning use of a standard market timetable and the measurement of gas flows over periods corresponding to the standard gas day.
- 68Z Provision for or with respect to the negotiation or determination of amendments to contracts for transition to the use of a standard market timetable.

## 24—Amendment of Schedule 3—Savings and transitionals

Schedule 3—after Part 15 insert:

### **Part 16—Transitional provisions relating to capacity trading and auctions and harmonisation amendments**

#### **91—Immunity from liability—implementation or use of standard market timetable**

- (1) Unless the Regulations otherwise indicate or provide, a person required by the Rules to use the standard market timetable incurs no civil monetary liability in connection with a pre-harmonisation contract for using the standard market timetable in accordance with the Rules contrary to the terms of that pre-harmonisation contract.
- (2) Subclause (1) does not apply to deprive a person of a contractual right under a pre-harmonisation contract to be—
  - (a) provided with a certain amount of goods or services under the contract; or
  - (b) paid for goods and services provided under the contract.
- (3) In this clause—

*pre-harmonisation contract* means a contract or other arrangement entered into by a person before the commencement of this clause.

## 92—Immunity from liability—supply of capacity through capacity auctions

- (1) Unless the Regulations otherwise indicate or provide, a transportation service provider incurs no civil monetary liability to a transportation facility user because of the supply of transportation services to any other person by means of transportation capacity sold through a capacity auction in breach of a relevant exclusivity right where the sale of the transportation capacity through that capacity auction is required by the Rules.

- (2) In this clause—

*relevant exclusivity right*, in relation to transportation services, means an express contractual right that arose under a contract entered into before the commencement of this clause that—

- (a) prevents a transportation service provider from supplying transportation services to persons who are not parties to the contract concerned; or
- (b) limits or controls the supply by a transportation service provider of transportation services to persons who are not parties to the contract,

but does not include a transportation facility user's right under the contract to be provided with a certain amount of transportation services.

## 93—Immunity for giving effect to the auction priority principles

- (1) Unless the Regulations otherwise indicate or provide, a transportation service provider incurs no civil monetary liability to a transportation facility user for the supply by the provider of a transportation service in accordance with a priority of service rule in priority to any transportation service supplied or that may be supplied to the transportation facility user under an agreement entered into between the transportation service provider and the transportation facility user before the commencement of this clause.

- (2) In this clause—

*priority of service rule* means a requirement of the Rules or the Operational Transportation Service Code for or with respect to—

- (a) the priority to be given to transportation capacity acquired through a capacity auction in connection with the supply of a transportation service; or
- (b) the time for (including a delay in) the scheduling of supply of a transportation service so as to give priority to transportation capacity acquired through a capacity auction;

*supply*, in relation to a transportation service, includes to schedule, provide and curtail supply (within the meaning of section 2) of the transportation service.

## 94—Transitional regulations

- (1) The Regulations may deal with matters of a transitional nature with respect to the Capacity Trading and Auction amendments.
- (2) Regulations under subclause (1) may defer, exclude or modify the application of any of the Capacity Trading and Auction amendments—
  - (a) in any participating jurisdiction; or
  - (b) in relation to a person, transportation service or transportation facility specified by the regulations; or
  - (c) in relation to a class of persons, transportation services or transportation facilities specified by the regulations.
- (3) Regulations under subclause (1) may—
  - (a) be of general or limited application; or
  - (b) vary according to the persons, times, places or circumstances to which they are expressed to apply.
- (4) If regulations under subclause (1) so provide, they have effect despite any provision of the NGL, the National Gas Regulations, the National Gas Rules, the Capacity Transfer and Auction Procedures or the Operational Transportation Services Code.
- (5) In this clause—

***Capacity Trading and Auction amendments*** means the amendments made to this Law by the *National Gas (South Australia) (Capacity Trading and Auctions) Amendment Act 2018*.