

Legislative Council—No 123

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South Australia

**National Gas (South Australia) (Short Term
Trading Market) Amendment Bill 2009**

A BILL FOR

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) (Short Term Trading Market) Amendment Act 2009*.

5 **2—Commencement**

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

3—Amendment provisions

10 In this Act—

- (a) a provision in Part 2 amends the *National Gas Law* set out in the Schedule to the *National Gas (South Australia) Act 2008*;
- (b) a provision in Part 3 amends the *National Gas (South Australia) Act 2008*.

Part 2—Amendment of *National Gas Law*

15 **Division 1—Short term trading market amendments**

4—Amendment of section 2—Definitions

- (1) Section 2, definition of *adoptive jurisdiction*—after "functions" insert:
or STTM functions
- (2) Section 2, definition of *initial National Gas Rules*—delete "or 294A" and substitute:
20 , 294A or 294B
- (3) Section 2, definition of *Registered participant*—after "section 91BJ" insert:
, section 91BRD
- (4) Section 2, definition of *regulated gas market*—after paragraph (a) insert:
(ab) a short term trading market; or

(5) Section 2—insert the following definitions in alphabetical order:

short term trading market means a market for the supply of natural gas that—

- (a) operates in an adoptive jurisdiction; and
- (b) is defined in a Rule made for the purposes of Chapter 2, Part 6, Division 2A to be a short term trading market of that adoptive jurisdiction;

Note—

There may be more than 1 short term trading market of an adoptive jurisdiction.

STTM amendments means—

- (a) the amendments to this Law made by the *National Gas (South Australia) (Short Term Trading Market) Amendment Act 2009* of South Australia; and
- (b) the amendments to the Rules made under section 294B; and
- (c) the STTM Procedures first made under this Law after the enactment of the amendments referred to in paragraph (a);

STTM functions—AEMO's STTM functions are as set out in section 91BRB;

STTM hub means a point or points, situated in an adoptive jurisdiction, specified in the Rules or STTM Procedures, at which a short term trading market operates;

STTM information means information that—

- (a) a person gives to AEMO, to comply with section 91FEA(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 short term trading market in which the person participates;
 - (ii) to AEMO in its capacity as operator of another regulated gas market if that information is to be used for the purpose of a short term trading market in which the person participates;

STTM Procedures means Procedures directed at regulating a short term trading market;

STTM trading participant means a person referred to in section 91BRC;

5—Amendment of section 3—Meaning of civil penalty provision

Section 3, Table—after item 2D insert:

2DA	Section 91BRD(1)
2DB	Section 91BRJ(5)
2DC	Section 91FEA

6—Amendment of section 4—Meaning of conduct provision

Section 4, Table—after item A1 insert:

A2	Section 91BRF
A3	Section 91BRG

7—Amendment of section 74—Subject matter for National Gas Rules

5 Section 74(1)(a)—after subparagraph (v) insert:

- (va) AEMO's STTM functions and the operation of a short term trading market of an adoptive jurisdiction; and

8—Amendment of section 91A—AEMO's statutory functions

Section 91A(1)(f)—after "functions" insert:

10 or STTM functions (as the case requires)

9—Insertion of Chapter 2 Part 6 Division 2A

Chapter 2 Part 6—after Division 2 insert:

Division 2A—Short term trading markets

Subdivision 1—Preliminary

91BRA—Application of this Division

- 15
- (1) This Division applies to, and in relation to, a participating jurisdiction if (and only if) the application Act of that jurisdiction, or an instrument made under that Act, declares that it does so apply.
- 20
- (2) A rule or other form of subordinate legislation made for the purposes of this Division applies to and in relation to a participating jurisdiction if (and only if) this Division applies to and in relation to that jurisdiction.

91BRB—AEMO's STTM functions

- 25
- (1) AEMO's STTM functions are as follows:
- (a) to operate and administer a short term trading market;
- (b) to make, amend or revoke Procedures governing the operation and administration of a short term trading market.
- (2) AEMO may trade in natural gas to the extent necessary or desirable to provide market operator services.
- 30
- (3) AEMO may, subject to the Rules, suspend a short term trading market.

Subdivision 2—Short term trading markets

91BRC—Market participation

A person participates in a short term trading market in a registrable capacity if the person is—

- (a) a person who supplies natural gas to an STTM hub; or
- (b) a person who withdraws natural gas from an STTM hub; or
- (c) a person classified by the Rules as a participant in a short term trading market.

91BRD—Registration required for market participation

- (1) A person must not participate in a short term trading market in a registrable capacity unless registered (or exempted from registration) in accordance with the Rules.
- (2) A person who participates in a short term trading market in 2 or more registrable capacities must be registered (or exempted from registration) in both or all those capacities.
- (3) For performing statutory functions, AEMO is not required to be registered.

91BRE—Certificates of registration etc

- (1) A certificate signed by an authorised officer certifying that a person named in the certificate is registered, or exempted from registration, is evidence of the registration or exemption.
- (2) For this section, an *authorised officer* is AEMO's CEO or a person authorised by the CEO to issue certificates under this section.

91BRF—Title to gas

An STTM trading participant must not supply natural gas to an STTM hub unless—

- (a) the participant has title to the gas, or authority to dispose of title to the gas; and
- (b) the gas will, at the point of supply, be free from any mortgage, charge or encumbrance.

91BRG—Gas supplied to STTM hub must meet quality specifications specified in the Rules

An STTM trading participant must not supply natural gas to an STTM hub that does not comply with the gas quality specifications specified in the Rules for that STTM hub.

Subdivision 3—STTM Procedures

91BRH—STTM Procedures

AEMO may, in accordance with the Rules, make STTM Procedures.

91BRI—Nature of STTM Procedures

- 5
- (1) STTM Procedures are a form of statutory instrument directed at the regulation of a short term trading market.
- (2) The STTM Procedures may deal with the following matters:
- 5 (a) the matters specified by the Rules;
- (b) any other matter relevant to a short term trading market on which this Law or the Rules contemplate the making of Procedures.
- (3) The STTM Procedures—
- 10 (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
- 15 (c) may confer rights or impose obligations on STTM trading participants, exempted participants, or other persons; and
- (d) may confer power on AEMO to make or issue guidelines, tests, standards and other documents of an administrative nature; and
- 20 (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
- 25 (ii) to conduct, or submit to, a test designed by AEMO; 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.
- 30 (4) AEMO must not, without the consent of the MCE, make STTM Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.
- (5) The STTM Procedures cannot—
- 35 (a) create an offence; or
- (b) provide for a criminal or civil penalty.

91BRJ—Compliance with STTM Procedures

- (1) AEMO and each person to whom the STTM Procedures are applicable must comply with those Procedures.

- 5 (2) If AEMO has reasonable grounds to suspect a breach of the STTM 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.
- 5 (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
- 10 (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
- 15 (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.
- 20 (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—
- (a) publish the decision and the reasons for it on its website; and
- 25 (b) 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).)

30

10—Insertion of new Subdivision heading in Chapter 2 Part 6 Division 6

Chapter 2 Part 6 Division 6—before section 91F insert:

Subdivision 1—Market information orders and market information notices

35 **11—Insertion of Chapter 2 Part 6 Division 6 Subdivision 2**

Chapter 2 Part 6 Division 6—after Subdivision 1 insert:

Subdivision 2—STTM information

91FEA—Obligation to give information to AEMO

- 5 (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 short term trading market by AEMO must give AEMO the information for use by AEMO for the operation and administration of that short term trading market if the person is required to do so under the Procedures or Rules:
- 10 (a) an STTM trading participant;
 - (b) a service provider;
 - 15 (c) a storage provider;
 - (d) a producer;
 - (e) another person who is prescribed by the Regulations for the purposes of this paragraph.
- (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—
- 20 (a) a person to disclose information that is the subject of legal professional privilege; or
 - (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).
- 25

91FEB—Person cannot rely on duty of confidence to avoid compliance with obligation

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

91FEC—Giving to AEMO false and misleading information

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

Maximum penalty:

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

91FED—Immunity of persons giving information to AEMO

- 40 (1) A person who gives STTM 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.

- 5
- (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:
- 10
- (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.
- 15
- (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.

12—Insertion of section 294B

20 After section 294A insert:

294B—South Australian Minister to make initial Rules related to AEMO's declared STTM functions

- 25
- (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***) may make Rules on any 1 or more of the following subjects:
- (a) AEMO's STTM functions;
- (b) the subject matter of a new head of power added to Schedule 1 by the STTM amendments;
- 30
- (c) any other subject contemplated by, or consequential on, the STTM amendments.
- (2) Rules 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.
- 35
- (4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
- (a) publish notice of the making of the Rules in the South Australian Government Gazette stating the date of commencement or, if they commence at different times, various dates of commencement; and
- 40
- (b) make the Rules publicly available.

- 5
- (5) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (4)(a) or this subsection.
 - (6) Once the first Rules have been made under subsection (1), no further Rules can be made under that subsection.
 - (7) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.

13—Amendment of Schedule 1—Subject matter for the National Gas Rules

- 10
- (1) Schedule 1, item 55A—delete "gas market" second occurring and substitute:
regulated gas market
 - (2) Schedule 1, item 55C—after "functions" insert:
or STTM functions
 - (3) Schedule 1, item 55E—after "declared wholesale gas market" insert:
or short term trading market
 - 15 (4) Schedule 1, item 55L—after "interest" insert:
and the provision of related security
 - (5) Schedule 1, item 55L(a)—delete "declared wholesale gas market" and substitute:
regulated gas market
 - 20 (6) Schedule 1—after item 55L insert:
 - 55M Rules for determining the ownership of, and the transfer of title to, natural gas supplied at an STTM hub and for resolving disputes about ownership.
 - 55N The terms and conditions on which service providers, or classes of service providers, may recover costs for allocating quantities of natural gas relating to market operator services.

14—Amendment of Schedule 2—Schedule applies to statutory instruments

Schedule 2, clause 51(3), definition of *statutory instrument*—delete "or the Rules" and substitute:

, the Rules or Procedures

15—Amendment of Schedule 3—New Part 12

Schedule 3—after Part 11 insert:

Part 12—Transitional provision related to short term trading markets

87—Initial STTM Procedures

- (1) This clause applies if on the day section 9 of the *National Gas (South Australia) (Short Term Trading Market) Amendment Act 2009* of South Australia comes into operation there are Rules in force that specify a procedure to be followed in the making of Procedures (the *NGR Procedures Rules*).
- (2) Despite the NGR Procedures Rules, AEMO is not required to comply with the NGR Procedures Rules for the purpose of making the first STTM Procedures under section 91BRG after the enactment of the *National Gas (South Australia) (Short Term Trading Market) Amendment Act 2009*.

Division 2—Other amendments

16—Amendment of section 2—Definitions

Section 2—after the definition of *market information notice* insert:

market operator service means a service classified under the Rules as a market operator service;

17—Amendment of section 91A—AEMO's statutory functions

After section 91A(1)(b) insert:

- (ba) conduct trials relating to the operation and administration of markets, or parts of markets, for natural gas that are or will be governed by this Law, the Rules and the Procedures;

18—Insertion of Chapter 2 Part 6 Division 11

Chapter 2 Part 6—after Division 10 insert:

Division 11—Other matters

91KD—Disclosure of information for purpose of market trials

- (1) This section applies if AEMO—
 - (a) conducts a trial relating to the operation and administration of a market, or a part of a market, for natural gas; and
 - (b) under, or for the purpose of, that trial is given information by another person (the *discloser*) that relates to another person.

- 5
- (2) The discloser, by giving the information to AEMO, incurs no liability for breach of contract, breach of confidence or any other civil wrong.
 - (3) AEMO, by giving or disclosing the information to a person, or publicly releasing the information, incurs no liability for breach of contract, breach of confidence or any other civil wrong.

19—Amendment of section 290—Definitions

Section 290, definition of *urgent Rule*—delete the definition and substitute:

10 *urgent Rule* means a Rule relating to any matter or thing that, if not made as a matter of urgency, will result in that matter or thing imminently prejudicing or threatening—

- (a) the effective operation or administration of a regulated gas market operated and administered by AEMO; or
- (b) the supply of gas.

Part 3—Amendment of *National Gas (South Australia) Act 2008*

20—Insertion of section 23

After section 22 insert:

23—Application of provisions relating to short term trading markets

20 Division 2A of Part 6 of Chapter 2 of the *National Gas (South Australia) Law* applies to, and in relation to, South Australia.