

South Australia

National Gas (South Australia) (Australian Energy Market Operator) Variation Regulations 2009

under the *National Gas (South Australia) Act 2008*

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Variation provisions

Part 2—Variation of *National Gas (South Australia) Regulations*

- 4 Insertion of regulation 5A
 - 5A Recognised energy industry ombudsman
 - 5 Insertion of new regulation 7A
 - 7A Information gathering powers—AEMO
 - 6 Substitution of regulations 10 and 11
 - 10 Maximum civil monetary liabilities—AEMO (including Bulletin Board functions)
 - 11 Retail market participation
 - 7 Variation of regulation 14—Fees
 - 8 Insertion of regulation 15
 - 15 Transitional provision—declared wholesale gas market of adoptive jurisdiction
 - 16 Transitional provision—registered participants—retail market participation
 - 9 Variation of Schedule 1—Designated pipelines
 - 10 Variation of Schedule 3—Civil penalties
 - 11 Variation of Schedule 4—Conduct provisions
-

Part 1—Preliminary

1—Short title

These regulations may be cited as the *National Gas (South Australia) (Australian Energy Market Operator) Variation Regulations 2009*.

2—Commencement

These regulations will come into operation on the day on which the *National Gas (South Australia) (National Gas Law—Australian Energy Market Operator) Amendment Act 2009* comes into operation.

3—Variation provisions

In these regulations, a provision under a heading referring to the variation of specified regulations varies the regulations so specified.

Part 2—Variation of *National Gas (South Australia) Regulations*

4—Insertion of regulation 5A

After regulation 5 insert:

5A—Recognised energy industry ombudsman

For the purposes of the definition of *recognised energy industry ombudsman* in section 2 of the NGL, each of the following bodies or persons are classified as a recognised energy industry ombudsman:

- (a) for the State of New South Wales—Energy and Water Ombudsman (NSW) Limited (ACN 079 718 915);
- (b) for the State of Victoria—Energy and Water Ombudsman (Victoria) Limited (ACN 070 516 175);
- (c) for the State of Queensland—Energy Ombudsman Queensland established under Part 2 of the *Energy Ombudsman Act 2006* of Queensland;
- (d) for the State of South Australia—Energy Industry Ombudsman (SA) Limited (ACN 089 791 604);
- (e) for the State of Tasmania—Energy Ombudsman established under Part 1 of the *Energy Ombudsman Act 1998* of Tasmania;
- (f) if a body or person referred to in paragraphs (a) to (e) is dissolved or otherwise abolished and another body or person is established with functions and powers that correspond to the functions and powers of the body or person referred to in paragraphs (a) to (e)—that other body or person;
- (g) if the functions and powers of a body or person referred to in paragraphs (a) to (e) are transferred to another body or person—that other body or person.

5—Insertion of new regulation 7A

After regulation 7 insert:

7A—Information gathering powers—AEMO

For the purposes of section 91F of the NGL—

- (a) in relation to a market information instrument that relates to a relevant function under section 91F(2)(a) of the NGL—persons of a kind listed in section 223(1) of the NGL are declared to be a class to which a general market information order or a market information notice may be addressed; and

- (b) in relation to a market information instrument that relates to a relevant function under section 91F(2)(b) of the NGL—persons who participate in a declared wholesale gas market and who are registered (or exempted from registration) in accordance with the Rules are declared to be a class to which a general market information order or a market information notice may be addressed.

6—Substitution of regulations 10 and 11

Regulations 10 and 11—delete the regulations and substitute:

10—Maximum civil monetary liabilities—AEMO (including Bulletin Board functions)

- (1) For the purposes of section 91K and 226 of the NGL, the maximum amounts are prescribed as follows:
 - (a) the maximum amount of AEMO's civil monetary liability to each person who suffers loss as a result of a relevant event is, in respect of that event—
 - (i) in the case of the performance or exercise, or purported performance or exercise, of a function or power relating to AEMO's declared system functions—\$2 million;
 - (ii) in any other case—\$400 000;
 - (b) however, if the amount of AEMO's civil monetary liability to the person in respect of that event (as affected, if at all, by paragraph (a)) exceeds the prescribed amount in respect of the relevant event, the maximum amount of AEMO's civil monetary liability to that person in respect of that event is that prescribed amount;
 - (c) the maximum amount of each person's civil monetary liability with respect to giving Bulletin Board information to AEMO in its capacity as the operator of the Natural Gas Services Bulletin Board to each person who suffers loss as a result of a relevant event is, in respect of that event, \$400 000;
 - (d) however, if the amount of a person's civil monetary liability with respect to giving Bulletin Board information to AEMO in respect of that event (as affected, if at all, by paragraph (c)) exceeds the prescribed amount in respect of the relevant event, the maximum amount of the person's civil monetary liability to a person in respect of that event is the prescribed amount;
 - (e) paragraphs (a), (b), (c) and (d) do not apply in relation to civil monetary liability for death or bodily injury;

- (f) the maximum amount of the civil monetary liability of each officer or employee of AEMO to each person who suffers loss as a result of a relevant event is, in respect of that event, \$1.
- (2) AEMO and each person who gives Bulletin Board information to AEMO must ensure that the following provisions are complied with in relation to claims against AEMO or a person who gives Bulletin Board information to AEMO alleging civil monetary liabilities in respect of relevant events:
- (a) the claims must be dealt with in an orderly manner, without bad faith and with reasonable dispatch;
 - (b) a register must be maintained containing the following in relation to each claim lodged with it:
 - (i) a unique identifier assigned to the claim and linked to each entry in the register relating to the claim;
 - (ii) the date on which the claim was lodged;
 - (iii) the amount of the claim (if stated by the claimant);
 - (iv) the date or dates on which the relevant event to which the claim relates is alleged to have occurred;
 - (v) the date of payment of the claim;
 - (vi) the amount paid on the claim;
 - (c) separate running totals must be kept in the register of—
 - (i) the amounts of the claims (as stated by the claimants) in relation to relevant events alleged to have occurred during the same prescribed 12 month period; and
 - (ii) the amounts paid on the claims in relation to relevant events alleged to have occurred during the same prescribed 12 month period;
 - (d) the running totals kept in the register must be made available for inspection by the public, during ordinary business hours and at no fee, in each participating jurisdiction in which AEMO or the person who gives Bulletin Board information to AEMO carries on business;
 - (e) a person appointed by the AER must be allowed, at any time during ordinary business hours, to conduct inspections of the register and other records of AEMO or the person who gives Bulletin Board information to AEMO, and to question officers and employees of AEMO or the person who gives Bulletin Board information to AEMO, for the sole purpose of checking the accuracy of the register.

(3) In this regulation—

prescribed amount in respect of a relevant event means—

(a) in relation to AEMO—

- (i) in the case of a relevant event relating to the performance or exercise, or purported performance or exercise, of a function or power relating to AEMO's declared system functions—the amount obtained by deducting from \$100 million the aggregate of the amounts already paid by AEMO in discharge of AEMO's civil monetary liabilities to persons suffering losses as a result of relevant events within the same category occurring during the same prescribed 12 month period as that in which the relevant event occurred;
- (ii) in the case of a relevant event within any other category—the amount obtained by deducting from \$20 million the aggregate of the amounts already paid by the AEMO in discharge of AEMO's civil monetary liabilities to persons suffering losses as a result of relevant events within the same category occurring during the same prescribed 12 month period as that in which the relevant event occurred;

(b) in relation to a person who gives Bulletin Board information to AEMO—the amount obtained by deducting from \$20 million the aggregate of the amounts already paid by the person in discharge of the person's civil monetary liabilities to persons suffering losses as a result of relevant events occurring during the same prescribed 12 month period as that in which the relevant event occurred;

prescribed 12 month period means each period of 12 months commencing on 1 July in any year and ending on 30 June in the following year;

relevant event means—

- (a) in relation to AEMO—a negligent act or omission, or a series of connected negligent acts or omissions, in the performance or exercise, or purported performance or exercise, of a function or power falling into 1 of the following categories:
 - (i) AEMO's declared system functions and powers;
 - (ii) AEMO's functions and powers relating to its capacity as the operator of the National Gas Services Bulletin Board;
 - (iii) AEMO's functions and powers relating to a regulated retail gas market;

- (iv) any other function or power of AEMO under the NGL or the Rules;
- (b) in relation to a person who gives Bulletin Board information to AEMO—a negligent act or omission, or a series of negligent acts or omissions, in giving Bulletin Board information to AEMO;
- (c) in relation to an officer or employee of AEMO—a negligent act or omission, or a series of negligent acts or omissions, in the performance or exercise, or purported performance or exercise, of a function or power of AEMO under the NGL or the Rules.

11—Retail market participation

- (1) For the purposes of section 91LA(2)(g) of the NGL, the following classes are prescribed:
 - (a) swing service providers;
 - (b) shippers.
- (2) Subregulation (1) only applies in relation to the regulated retail gas market of South Australia.
- (3) In subregulation (1)—

shipper means a person who is a shipper within the meaning of the Retail Market Procedures governing the operation of the regulated retail gas market of South Australia;

swing service provider means a person who is a swing service provider within the meaning of the Retail Market Procedures governing the operation of the regulated retail gas market of South Australia.

7—Variation of regulation 14—Fees

Regulation 14—after its present contents (now to be designated as subregulation (1)) insert:

- (2) A fee is not payable for the notification of an access dispute under section 181 of the NGL if the notification is made by a user consuming less than 1 terajoule of gas per year.

8—Insertion of regulation 15

After regulation 14 insert:

15—Transitional provision—declared wholesale gas market of adoptive jurisdiction

For the purposes of clause 60(2)(a) of Schedule 3 of the NGL, in relation to the declared wholesale gas market of Victoria as an adoptive jurisdiction, the following persons are to be automatically registered as Registered participants in the following capacities:

- (a) as declared transmission system service providers:

- (i) APA GasNet Australia (Operations) Pty Ltd (ACN 083 009 278);
- (ii) APA GasNet Australia (NSW) Pty Ltd (ACN 079 136 413);
- (b) as interconnected transmission pipeline service providers:
 - (i) Gas Pipelines Victoria Pty Ltd (ACN 079 003 099);
 - (ii) Jemena Vichub Pipeline Pty Ltd (ACN 085 550 689);
 - (iii) South East Australia Gas Pty Ltd (ACN 096 437 900);
 - (iv) Origin Energy Resources Limited (ACN 007 845 338);
- (c) as distributors:
 - (i) Vic Gas Distribution Pty Ltd (ACN 085 899 001);
 - (ii) Multinet Gas (DB no 1) Pty Ltd (ACN 086 026 986) and Multinet Gas (DB no 2) Pty Ltd (ACN 086 230 122) trading as *Multinet Gas Distribution Partnership*;
 - (iii) SPI Networks (Gas) Pty Ltd (ACN 086 015 036) trading as *SP AusNet*;
 - (iv) The Albury Gas Co Ltd (ACN 000 001 249);
- (d) as market participants—retailers:
 - (i) Origin Energy (VIC) Pty Ltd (ACN 086 013 283);
 - (ii) AGL Sales Pty Ltd (ACN 090 538 337);
 - (iii) TRUenergy Pty Ltd (ACN 086 014 968);
 - (iv) AGL Sales (Queensland) Pty Ltd (ACN 121 177 740);
 - (v) IPower Pty Ltd (ACN 111 267 228) and IPower 2 Pty Ltd (ACN 070 374 293) trading as *Simply Energy*;
 - (vi) Santos Direct Pty Ltd (ACN 108 846 288);
 - (vii) Victoria Electricity Pty Ltd (ACN 100 528 327);
 - (viii) Energy Australia (ABN 67 505 337 385);
 - (ix) Red Energy Pty Ltd (ACN 107 479 372);
 - (x) Australian Power and Gas Pty Ltd (ACN 118 609 813);
- (e) as storage providers:
 - (i) APA GasNet Australia (Operations) Pty Ltd (ACN 083 009 278);

- (ii) TRUenergy Gas Storage Pty Ltd
(ACN 079 089 311);
- (f) as producers:
 - (i) BHP Billiton Petroleum (Bass Strait) Pty Ltd
(ACN 004 228 004);
 - (ii) Esso Australia Resources Pty Ltd
(ACN 091 829 819);
 - (iii) Origin Energy Petroleum Pty Ltd
(ACN 010 728 962);
- (g) as market participants—producers:
 - (i) BHP Billiton Petroleum (Bass Strait) Pty Ltd
(ACN 004 228 004);
 - (ii) Esso Australia Resources Pty Ltd
(ACN 091 829 819);
 - (iii) Origin Energy Petroleum Pty Ltd
(ACN 010 728 962);
- (h) as market participants—traders:
 - (i) AGL Energy Sales and Marketing Ltd
(ACN 076 092 067);
 - (ii) Origin Energy (VIC) Pty Ltd (ACN 086 013 283);
 - (iii) Southern Natural Gas Development Pty Ltd
(ACN 004 724 038);
 - (iv) AGL Sales (Queensland) Pty Ltd
(ACN 121 177 740);
 - (v) Origin Energy Uranquinty Power Pty Ltd
(ACN 120 384 938);
 - (vi) Aurora Energy (Tamar Valley) Pty Ltd trading as
AETV Power (ACN 123 391 613);
 - (vii) Victoria Electricity Pty Ltd (ACN 100 528 327);
- (i) as a market participant—distribution customer—VISY
Paper Pty Ltd (ACN 005 803 234);
- (j) as transmission customers:
 - (i) Country Energy (ABN 37 428 185 226);
 - (ii) International Power (Energy) Pty Ltd
(ACN 062 798 510);
- (k) as market participants—transmission customers:
 - (i) Country Energy (ABN 37 428 185 226);
 - (ii) International Power (Energy) Pty Ltd
(ACN 062 798 510).

16—Transitional provision—registered participants—retail market participation

- (1) For the purposes of clause 60(2)(a) of Schedule 3 of the NGL, in relation to the regulated retail gas market of Queensland, the following persons are to be automatically registered as Registered participants in the following capacities:
 - (a) as distributors:
 - (i) APT Allgas Energy Pty Limited (ACN 009 656 446);
 - (ii) Envestra Limited (ACN 078 551 685);
 - (b) as retailers:
 - (i) AGL Sales (Queensland) Pty Limited (ACN 121 177 740);
 - (ii) AGL Sales Pty Limited (ACN 090 538 337);
 - (iii) Australian Power and Gas Pty Limited (ACN 118 609 813);
 - (iv) Origin Energy Retail Limited (ACN 078 868 425).
- (2) For the purposes of clause 60(2)(a) of Schedule 3 of the NGL, in relation to the regulated retail gas market of South Australia, the following persons are to be automatically registered from 1 October 2009 as Registered participants in the following capacities:
 - (a) as a network operator—Envestra Limited (ACN 078 551 685);
 - (b) as users:
 - (i) AGL South Australia Pty Limited (ACN 091 105 092);
 - (ii) IPower Pty Limited (ACN 111 267 228) and IPower 2 Pty Limited (ACN 070 374 293) trading as *Simply Energy*;
 - (iii) Origin Energy Retail Limited (ACN 078 868 425);
 - (iv) Santos Direct Pty Ltd (ACN 108 846 288);
 - (v) TRUenergy Pty Ltd (ACN 086 014 968);
 - (c) as transmission system operators:
 - (i) Epic Energy South Australia Pty Limited (ACN 068 599 815);
 - (ii) South East Australia Gas Pty Ltd (ACN 096 437 900);
 - (iii) Envestra (SA) Limited (ACN 008 139 204);
 - (iv) Envestra Limited (ACN 078 551 685);

- (v) APT Pipelines (SA) Pty Limited
(ACN 124 754 347);
- (d) as swing service providers:
 - (i) AGL Wholesale Gas (SA) Pty Limited
(ACN 094 384 291);
 - (ii) TRUenergy Pty Ltd (ACN 086 014 968);
 - (iii) Origin Energy Retail Limited (ACN 078 868 425);
 - (iv) International Power (Energy) Pty Ltd
(ACN 062 798 510);
- (e) as shippers:
 - (i) AGL Wholesale Gas (SA) Pty Limited
(ACN 094 384 291);
 - (ii) TRUenergy Pty Ltd (ACN 086 014 968);
 - (iii) Origin Energy Retail Limited (ACN 078 868 425);
 - (iv) International Power (Energy) Pty Ltd
(ACN 062 798 510).
- (3) For the purposes of clause 60(2)(a) of Schedule 3 of the NGL, in relation to the regulated retail gas market that relates to the Mildura region, Envestra Limited (ACN 078 551 685) is to be automatically registered from 1 October 2009 as a Registered participant as a network operator.
- (4) For the purposes of clause 60(2)(a) of Schedule 3 of the NGL, in relation to the regulated retail gas market of Victoria (other than the Mildura region), the following persons are to be automatically registered as Registered participants in the following capacities:
 - (a) as transmission system service providers:
 - (i) APA GasNet Australia (Operations) Pty Ltd
(ACN 083 009 278);
 - (ii) APA GasNet Australia (NSW) Pty Ltd
(ACN 079 136 413);
 - (iii) Gas Pipelines Victoria Pty Ltd (ACN 079 003 099);
 - (iv) Jemena Vichub Pipeline Pty Ltd
(ACN 085 550 689);
 - (v) South East Australia Gas Pty Ltd
(ACN 096 437 900);
 - (vi) Origin Energy Resources Limited
(ACN 007 845 338);
 - (b) as distributors:
 - (i) Vic Gas Distribution Pty Ltd (ACN 085 899 001);

- (ii) Multinet Gas (DB no 1) Pty Ltd (ACN 086 026 986) and Multinet Gas (DB no 2) Pty Ltd (ACN 086 230 122) trading as *Multinet Gas Distribution Partnership*;
 - (iii) SPI Networks (Gas) Pty Ltd (ACN 086 015 036) trading as *SP AusNet*;
 - (iv) The Albury Gas Co Ltd (ACN 000 001 249);
- (c) as market participants—retailers:
- (i) Origin Energy (VIC) Pty Ltd (ACN 086 013 283);
 - (ii) AGL Sales Pty Ltd (ACN 090 538 337);
 - (iii) TRUenergy Pty Ltd (ACN 086 014 968);
 - (iv) AGL Sales (Queensland) Pty Ltd (ACN 121 177 740);
 - (v) IPower Pty Ltd (ACN 111 267 228) and IPower 2 Pty Ltd (ACN 070 374 293) trading as *Simply Energy*;
 - (vi) Santos Direct Pty Ltd (ACN 108 846 288);
 - (vii) Victoria Electricity Pty Ltd (ACN 100 528 327);
 - (viii) Energy Australia (ABN 67 505 337 385);
 - (ix) Red Energy Pty Ltd (ACN 107 479 372);
 - (x) Australian Power and Gas Pty Ltd (ACN 118 609 813);
- (d) as market participants—other:
- (i) APA GasNet Australia (Operations) Pty Ltd (ACN 083 009 278);
 - (ii) BHP Billiton Petroleum (Bass Strait) Pty Ltd (ACN 004 228 004);
 - (iii) Esso Australia Resources Pty Ltd (ACN 091 829 819);
 - (iv) TRUenergy Gas Storage Pty Ltd (ACN 079 089 311);
 - (v) Origin Energy Petroleum Pty Ltd (ACN 010 728 962);
 - (vi) AGL Energy Sales and Marketing Ltd (ACN 076 092 067);
 - (vii) VISY Paper Pty Ltd (ACN 005 803 234);
 - (viii) Origin Energy (VIC) Pty Ltd (ACN 086 013 283);
 - (ix) Country Energy (ABN 37 428 185 226);

- (x) Southern Natural Gas Development Pty Ltd
(ACN 004 724 038);
 - (xi) International Power (Energy) Pty Ltd
(ACN 062 798 510);
 - (xii) AGL Sales (Queensland) Pty Ltd
(ACN 121 177 740);
 - (xiii) Origin Energy Uranquinty Power Pty Ltd
(ACN 120 384 938);
 - (xiv) Aurora Energy (Tamar Valley) Pty Ltd trading as
AETV Power (ACN 123 391 613);
 - (xv) Victoria Electricity Pty Ltd (ACN 100 528 327).
- (5) For the purposes of clause 60(2)(b) of Schedule 3 of the NGL, in relation to the regulated retail gas market of New South Wales and the Australian Capital Territory, persons who, on the relevant changeover date—
- (a) fall within the ambit of Rule 135AB(1)(a) or (b) of the *National Gas Rules* and were, immediately before that date, members of Gas Market Company Limited (ACN 095 400 258); or
 - (b) fall within the ambit of Rule 135AB(1)(c) of the *National Gas Rules* and were, immediately before that date, a party to a Service Agreement with Gas Market Company Limited,
- are specified as a class of persons to be automatically registered as Registered participants.

9—Variation of Schedule 1—Designated pipelines

Schedule 1, clause 1 and 2—delete clauses 1 and 2

10—Variation of Schedule 3—Civil penalties

- (1) Schedule 3—after "Rule 112" insert:

Rule 135CE(2)

- (2) Schedule 3—after "Rule 138" insert:

Rule 138A(2)

Rule 138A(4)

11—Variation of Schedule 4—Conduct provisions

Schedule 4—after "Rule 138" insert:

Rule 138AC

Note—

As required by section 10AA(2) of the *Subordinate Legislation Act 1978*, the Minister has certified that, in the Minister's opinion, it is necessary or appropriate that these regulations come into operation as set out in these regulations.

Made by the Governor

on the unanimous recommendation of the Ministers of the participating jurisdictions and with
the advice and consent of the Executive Council

on 25 June 2009

No 192 of 2009