

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

**Exposure Draft
25/5/2009**

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

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The Parliament of South Australia enacts:

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *National Gas (South
Australia) (Short Term Trading Market)
Amendment Act 2009*.

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

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, definition of *adoptive jurisdiction*—
after "functions" insert:

or STTM functions

- (2) Section 2, definition of *initial Gas Rules*—omit
"or 294A" substitute:

, 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 the short term trading market
of that 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 by
the [***name of Rules to be inserted***]; 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 information means information that—

- (a) a person gives to AEMO to comply with section 91FEA(1); or
- (b) a person gives, in circumstances expressly permitted by the Rules, to AEMO in its capacity as operator of the short term trading market of the adoptive jurisdiction in which the person participates;

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

STTM Procedures means Procedures directed at regulating the short term trading market of an adoptive jurisdiction;

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

5 Amendment of section 3—Meaning of civil penalty provision

Section 3, Table, after item 2D insert:

Item	Provision
2DA	Section 91BRD(1)
2DB	Section 91BRI(5)
2DC	Section 91FEA

6 Amendment of section 4—Meaning of conduct provision

Section 4, Table, after item A1 insert:

Item	Provision
A2	Section 91BRF

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

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:

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

- (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.
- (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

- (1) AEMO's STTM functions are as follows:
 - (a) to operate and administer the short term trading market;
 - (b) to make, amend or revoke Procedures governing the operation and administration of the short term trading market.
- (2) AEMO may, subject to the Rules, suspend the short term trading market.

Subdivision 2—Short term trading markets

91BRC Market participation

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

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

91BRD Registration required for market participation

- (1) A person must not participate in the 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 the 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 deliver 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 delivery, be free from any mortgage, charge or encumbrance.

Subdivision 3—STTM Procedures

91BRG STTM Procedures

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

91BRH Nature of STTM Procedures

- (1) STTM Procedures are a form of statutory instrument directed at the regulation of the short term trading market.
- (2) The STTM Procedures may deal with the following matters:
 - (a) the matters specified by the Rules;
 - (b) any other matter relevant to the short term trading market on which this Law or the Rules contemplate the making of Procedures.
- (3) The STTM 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 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
 - (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; 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 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—
- (a) create an offence; or
 - (b) provide for a criminal or civil penalty.

91BRI Compliance with STTM Procedures

- (1) AEMO and each person to whom the STTM Procedures are applicable must comply with those Procedures.
- (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.
- (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
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- (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—
 - (a) publish the decision and the reasons for it on its website; and
 - (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).)

**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**

**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

- (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 the short term trading market by AEMO must give AEMO the information if the person is required to do so under the Rules:
 - (a) an STTM trading participant;
 - (b) a service provider;
 - (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 Rules.
 - (3) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.
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- (4) However, subsection (1) does not require—
- (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).

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.

Penalty:

- (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

- (1) A person who gives STTM information to AEMO does not incur any civil monetary liability for an act or omission in giving that information unless the act or omission is done or made in bad faith or through negligence.
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- (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.

12 Amendment of section 290—New definition of urgent Rule substituted

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

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.

13 Insertion of section 294B

After section 294A insert:

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

- (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;
 - (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.
 - (4) As soon as practicable after making Rules under subsection (1), the South Australian Minister must—
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- (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
 - (b) make the Rules publicly available.
- (5) The South Australian Minister may, by a later notice published in the South Australian Government Gazette, vary a commencement date fixed under subsection (5)(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.

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

- (1) Schedule 1, item 55A—delete "gas market" (where secondly occurring) and substitute:
 - declared wholesale gas market or short term trading 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
 - (4) Schedule 1, item 55L—after "interest" insert:
 - and the provision of related security
-

(5) Schedule 1, paragraph (a) of item 55L—delete
"declared wholesale gas market" and substitute:
a regulated gas market

(6) Schedule 1—after item 55L insert:

55M Rules for determining the ownership of, and
the transfer of title to, natural gas delivered
to an STTM hub and for resolving disputes
about ownership.

**15 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

**16 Amendment of Schedule 3—Savings and
transitionals**

Schedule 3—after clause 86 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 Procedure Rules, AEMO is
not required to comply with the NGR
Procedure Rules for the purpose of making
the first STTM Procedures under section
91BRG after the enactment of the *National*

National Gas (South Australia) (Short Term Trading Market) Amendment
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Part 2—Amendment of National Gas Law

*Gas (South Australia) (Short Term Trading
Market) Amendment Act 2009.*

ENDNOTES