

LEGISLATIVE FRAMEWORK: RESPONSE TO SUBMISSIONS ON THE AMENDMENTS TO THE NATIONAL GAS LAW FOR THE SHORT TERM TRADING MARKET

During June and July 2009, the Ministerial Council on Energy (MCE) Standing Committee of Officials (SCO) sought comments from interested parties on the proposed amendments to the National Gas Law (NGL) to establish the Short Term Trading Market (STTM), as released through the *National Gas (South Australia) (Short Term Trading Market) Amendment Bill 2009*.

Five submissions were received which are available on the MCE’s website at:

www.ret.gov.au/Documents/mce/emr/gas_market_dev/pngsa-submissions.html

The following table sets out the issues raised during this consultation process and SCO’s responses.

No.	Provision	Stakeholder	Issue	Comments & Proposed Response
STTM information				
1.	s2 Definition of STTM Information	Networks	<p>The current STTM Information definition does not clearly include data provided to AEMO in its capacity as retail market operator under the Retail Market Procedures, for example, the end of gas day metering.</p> <p>The STTM design adopts existing sources of data used by the retail market rather than incur inefficiencies to redevelop specific data systems to meet the needs of the STTM.</p> <p>The current STTM Information definition also is ambiguous regarding use in calculations performed by the network operators. As a result, the immunity under section 91FED may not apply to network operators when providing calculations and allocations.</p>	<p>Accepted</p> <p>The definition will be broadened to include any information that a person provides to AEMO under any provision of the Law, Rules or Procedures, to the extent used by AEMO for the purposes of the STTM. The definition will also be clarified to cover the preparation of information, to confirm that it is not only the act of providing the information that is covered by the immunity.</p>

No.	Provision	Stakeholder	Issue	Comments & Proposed Response
Liability and immunity				
2.	s91FED Immunity of Persons Giving Information to AEMO	Pipelines, Networks	The provision of information to AEMO (in its capacity as retail market operator under the Retail Market Procedures) may not be covered by the immunity clause. For example, network operators and pipeline operators will not be trading participants under current market design, however, both will have obligations to process and provide information to AEMO under the STTM or Retail Market Rules and Procedures, which will be used by AEMO to calculate trading participants' provisional or final settlements.	Accepted The definition of STTM Information will be expanded to include information provided under the Retail Market Procedures to ensure that this immunity applies.
3.	s91FED Immunity of Persons Giving Information to AEMO	Pipelines, Networks	The Rules need to recognise the increased liability regarding the provision of STTM information, as timelines for new information provision requirements are very strict.	Noted The Rules will clarify the extent of the obligations on persons providing information.
4.	s91FED Immunity of Persons Giving Information to AEMO	Pipelines, Networks	The specific immunity for pipeline operators needs to accommodate errors and omissions in calculations performed by pipeline operators, as well as in the information provided to them. 'Negligence' should not be a reason for withdrawing immunity. Suggested solution: <ul style="list-style-type: none"> To include all information used by AEMO for STTM purposes in the immunity provisions; To include calculations and allocations directly in the immunity provisions; and Not to exclude negligence and bad faith 	Noted High quality information is essential to the operation of the STTM. It is therefore appropriate that pipeline operators are obliged to meet reasonable standards in providing the data including minimising errors and omissions. Having said this, it is acknowledged that information will not always be perfect and there may be errors in the early stages. The Rules will specify the pipeline operators' obligations in handling information and what level of error is deemed acceptable. Section 91FED will also be clarified to confirm that the immunity extends to the preparation as well as the giving of information.

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			from immunity.	
5.	s91FED Immunity of Persons Giving Information to AEMO	Networks	Addition of a provision to the proposed amendments whereby a network operator's liability in respect of claims arising from the provision of data used in STTM operation is limited to an obligation to rectify errors and omissions in information provided, to the extent reasonably practicable.	Noted Pipelines will be obliged to provide the best available information, the Rules will clarify their obligations in providing the information. In relation to network operators, the processes for preparing and revising relevant information is set out in Retail Market Procedures.
6.	s91FED Immunity of Persons Giving Information to AEMO	Pipelines	Suggestion that the cap on liability currently at \$400 000 per claimant per event be changed to an annual cap on liability not exceeding \$400 000. Also, that individual officers, employees and directors of the pipeline operators have only a \$1 liability cap (consistent with National Gas Regulation 10 – Maximum civil monetary liabilities – AEMO (including Bulletin Board functions) Para 1(f)).	Not Accepted The Bulletin Board liability cap is inappropriate for the STTM given the greater importance placed on STTM information. The liability cap for service providers providing information to the STTM will be \$2 million per incident, consistent with the cap on AEMO's liability in the Declared Wholesale Gas Market. It is not appropriate to extend the \$1 liability cap for AEMO officers and employees to the staff of service providers given the fundamental differences between a not-for-profit entity performing public functions and for-profit commercial businesses.
7.	s91FED Immunity of Persons Giving Information to AEMO	Networks	The STTM design requires network operators to provide certain operational assistance for Contingency Gas operation. It is not reasonable that a network operator's decisions in regard to potential load curtailment, made in good faith to meet technical objectives of safe and reliable supply and asset integrity, should be clouded by risk of unquantified potential financial consequences for wholesale market participants upstream of the network at the Hub.	Noted Network operators are required to provide information to AEMO to assist with decisions to schedule Contingency Gas, although the decision will ultimately be made by AEMO. The STTM Rules will clarify the extent of the operators' obligations. It should also be noted that the Contingency Gas regime is a voluntary market-based mechanism rather than a compulsory load shedding arrangement. The STTM is not intended to affect the physical operation of networks and service providers should continue to operate their pipelines with priorities given to safety and technical considerations in accordance with current jurisdictional technical and safety requirements and existing protections for network operation.
8.	s91FEC	Users, Networks,	The penalties for providing false or erroneous information are too low, and do not provide	Noted The penalties of \$2 000 for individuals and \$10 000 for corporations

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	Penalty for False and Misleading Information	Pipelines	sufficient incentives for rigorous information collection and dissemination.	are consistent with those used in the NGL and NEL. SCO does not consider that it is appropriate to revisit them at this stage. It should also be noted that s91FEC is a criminal penalty provision.
Transition Arrangements				
9.		Pipelines, Networks	For the purposes of determining breaches and liability, there should initially be some leniency towards all participants as they adapt to new market, processes and systems.	Noted. It is anticipated that the Australian Energy Regulator (AER) will use discretion in prosecuting breaches of the Rules in the start-up period of the STTM. It should also be noted that the NGL allows a range of factors about the circumstance of the breach to be considered when determining the size of any penalties.
Cost Recovery				
10.		Pipelines, Networks	Pipeline operators have not been guaranteed any cost recovery for the development of new STTM systems and processes. For the most part, gas is a discretionary fuel and is therefore subject to competitive pressures. Any increase in insurance costs to gas distribution businesses would need to be passed through to customers. AEMO should include identified pipeline STTM costs into its own system for cost recovery charging and then reimburse pipelines from the revenues it collects.	Not Accepted The majority of new costs incurred as a result of the STTM should be recovered by pipelines through commercial arrangements with shippers or through access arrangements. SCO notes that none of the transmission pipelines delivering gas to the initial STTM hubs are subject to access arrangement regulation. Having said this, GMLG has agreed that pipeline operators will be permitted to recover the costs of providing MOS allocation costs from AEMO.
11.		Major Energy Users	There should be provision to enable the verification of costs which are 'passed through', such as those related to the Carbon	Noted The market operator's costs will be clearly identified in AEMO participant fees which are developed in consultation with industry.

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			Pollution Reduction Scheme (CPRS) or to the market operator.	The process for verifying CPRS cost is currently being developed as part of the process for finalising the CPRS legislation.
Title to Gas				
12.	s91BRF Title to gas	Pipelines	SCO should clarify how title will be transferred (such as for the purpose of passing through the proposed CPRS obligations) in regard to: <ul style="list-style-type: none"> Shippers passing their obligations to Network Users under the STTM; and Pipeline operators passing on their obligations (eg from the use of compressor fuel etc). 	<p>Noted The Rules will specify the detail of how transfers of title will occur.</p> <p>The CPRS legislation assigns liabilities to greenhouse gas emitters and details how liabilities would be transferred through the supply chain. To apply liabilities for emissions, the legislation will assign Obligation Transfer Numbers (OTNs). OTNs are intended to manage scheme obligations between upstream fuel suppliers and direct emitters and would be passed among participants to help determine liability for greenhouse gas emissions.</p> <p>The CPRS legislation is intended to recognise the transfer of obligation for natural gas sold through pool arrangements such as the Declared Wholesale Gas Market and the STTM.</p>
13.	s91BRF Title to gas	Pipelines	The Law should not refer to Trading Participants delivering gas to the hub as the gas is physically delivered by the pipelines.	<p>Accepted. The drafting will be clarified.</p>
AEMO Functions				
14.	s91BRB AEMO's STTM Functions	Pipelines	<p>The role of AEMO is to administer a market between buyers and sellers and regulate behaviours; the word 'operate' implies a more proactive role. The following suggested changes better represent the role of AEMO in the STTM:</p> <p><i>91BRB AEMO's ATTM functions</i> <i>1) AEMO's STTM functions are as follows:</i> <i>a) to operate and administer and regulate the short term trading market;</i></p>	<p>Noted The current terminology is consistent with that used for AEMO's role as market operator in the National Electricity Market (NEM) and the Declared Wholesale Gas Market. Even though AEMO will not have a system operations function (as it does in the NEM and Declared Wholesale Gas Market), it is still considered to operate the STTM. SCO also does not consider it appropriate to refer to AEMO regulating the STTM, as this may confuse their functions with that of AER.</p>
15.	s91BRH	Pipelines,	AEMO's procedure making powers are	Noted

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	Nature of STTM Procedures	Networks	currently very broad. Consideration to be given to some limiting of this power. For example, tests and guidelines should be able to be scrutinised by registered parties before finalisation.	AEMO's power to make procedures will be constrained by the Rules and the Procedure change process.
16.	s91BRH Nature of STTM Procedures	Pipelines, Networks	The Market Procedures should be strictly procedural in nature.	Noted It is intended that the Procedures deal with levels of technical detail and procedural matters that are not appropriate for, but will be guided by, the Rules.
17.	s91BRH Nature of STTM Procedures	Pipelines, Networks	The scope for AEMO to alter the STTM design via Procedural change is too broad and may inappropriately limit industry participation.	Noted AEMO will be required to use the Procedure change process in Part 15B of the NGR when amending the STTM Procedures.