

South Australia

National Gas (South Australia) (Market Transparency) Amendment Bill 2019

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

5 This Act may be cited as the *National Gas (South Australia) (Market Transparency) Amendment Act 2019*.

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.

3—Amendment provisions

10 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

- 15 (1) Section 2(1), after the definition of *AER economic regulatory function or power* insert:

AER gas market advisory and reporting functions means the following functions of the AER:

- (a) to monitor and review, as the AER thinks fit, the performance of gas markets;
- (b) to provide, as the AER thinks fit, advice on the performance of gas markets to the MCE or the Australian Energy Market Commission;
- (c) other monitoring, analysing or reporting functions that relate to gas markets conferred on the AER by this Law or the Rules;

AER gas price reporting functions means the following functions of the AER:

- (a) to collect and analyse information about the prices for goods and services in gas markets from sources determined by the AER or specified in the Rules;
- (b) to prepare and publish, in accordance with the Rules, gas price series;
- (c) to make and publish price information orders;
- (d) other monitoring, analysing or reporting functions that relate to prices for goods and services in gas markets conferred on the AER by this Law or the Rules;

- (2) Section 2(1), definition of *Bulletin Board information*, (a)—delete "section 223(1) or 223A(1)" and substitute:

Chapter 7

- (3) Section 2(1), after the definition of *compression service facility* insert:

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

- (4) Section 2(1), after the definition of *extension and expansion requirements* insert:

facility developer means a person who owns, controls or undertakes a project for the development or expansion, or for the proposed development or expansion, of a natural gas industry facility;

- (5) Section 2(1), after the definition of *Gas Code* insert:

gas market means any market for processable gas or natural gas (including liquified natural gas) or transportation capacity, whether or not regulated under this Law or the Rules, and includes—

- (a) a declared wholesale gas market; and
- (b) a short term trading market; and
- (c) a gas trading exchange; and
- (d) a capacity auction; and
- (e) a retail gas market;

gas price series means aggregated and anonymised information or data about prices for goods and services in a gas market published as a series on a regular basis and derived by processing information from multiple sources;

- (6) Section 2(1), after the definition of *gas statement of opportunities* insert:

gas supply transaction includes the supply, purchase, disposal, import or export of processable gas or natural gas (including liquefied natural gas) and may include a transaction concluded outside this jurisdiction;

- (7) Section 2(1), after the definition of *greenfields pipeline incentive* insert:

GSOO information means information that—

- (a) a person gives to AEMO to comply with section 91DB; or

- (b) a person gives to AEMO for the preparation of the gas statement of opportunities in circumstances expressly permitted by the Rules;

GSOO Procedures means Procedures directed at regulating the collection of information for the gas statement of opportunities;

- 5 (8) Section 2(1), after the definition of **limited access arrangement** insert:

LNG service provider means a person who owns, controls or operates a facility for producing liquefied natural gas or for processing liquefied natural gas to a gaseous state;

- 10 **LNG supplier** means a person who carries on a business of importing or exporting natural gas and includes an LNG service provider;

- (9) Section 2(1), after the definition of **National Energy Retail Rules** insert:

natural gas industry includes activities and transactions relating to—

- 15 (a) processable gas; or
 (b) transportation capacity and transportation services; or
 (c) natural gas (including liquefied natural gas) and natural gas services;
 or
 (d) natural gas industry facilities;

natural gas industry facility means—

- 20 (a) a pipeline; or
 (b) a compression service facility; or
 (c) an LNG facility; or
 (d) a production facility; or
 (e) a storage facility; or
 (f) a user facility; or
 25 (g) a facility of a type brought within the ambit of this definition by the Regulations;

- (10) Section 2(1), definition of **Natural Gas Services Bulletin Board**—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

- 30 (11) Section 2(1), after the definition of **pipeline service standard** insert:

price information order means an order under section 64A;

- (12) Section 2(1), definition of **producer**—after "producing natural gas" insert:

and includes a production service provider

- (13) Section 2(1), after the definition of **producer** insert:

- 35 **production service provider** means any person who owns, controls or operates a gas processing plant;

(14) Section 2(1), definition of *storage provider* delete the definition and substitute:

storage facility means a facility for storing processable gas or natural gas (including liquefied natural gas) before or after processing;

storage provider means any person who owns, controls or operates a storage facility;

(15) Section 2(1), after the definition of *user* insert:

user facility means a facility by means of which natural gas is consumed (including by transformation of the gas into a new form) and which is not any other form of natural gas industry facility;

5—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 person (a *service provider group*) carries out a controlling facility activity in respect of a natural gas industry facility (or part of a natural gas industry facility); and

(2) Section 10(5)—delete subsection (5) and substitute:

(5) In this section—

controlling facility activity means—

(a) in relation to a pipeline—own, control or operate, or intend to own, control or operate, the pipeline (or part of the pipeline); or

(b) in relation to any other natural gas industry facility—own, control or operate the natural gas industry facility (or part of the facility);

service provider means, in relation to a natural gas industry facility, a person who carries out a controlling facility activity in relation to the facility.

6—Amendment of section 27—Functions and powers of the AER

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

(ga) AER gas market advisory and reporting functions; and

(gb) AER gas price reporting functions; and

7—Insertion of Chapter 2 Part 1 Division 5A

Chapter 2 Part 1—after Division 5 insert:

Division 5A—Price information orders**64A—Making of price information orders**

- 5 (1) Subject to this Division, the AER may make an order (a *price information order*) for the provision to the AER of information reasonably necessary for the performance by the AER of the AER's gas price reporting functions.
- 10 (2) A price information order is an order made by the AER in accordance with this Division that requires a person of a specified class to provide to the AER the information specified in the order.
- (3) A price information order must not be made solely for the purpose of—
- 15 (a) investigating breaches or possible breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or
- (b) instituting or conducting proceedings in relation to breaches of provisions of this Law, the Regulations or the Rules, including offences against this Law; or
- 20 (c) instituting or conducting appeals from decisions in proceedings referred to in paragraph (b); or
- (d) any application for review of a decision of the AER under Chapter 8 Part 5.
- 25 (4) The AER must, in accordance with the Rules, consult with the public on the price information order it intends to make before it makes that order.
- (5) If, under this Law or the Rules, the AER publishes a notice inviting submissions in relation to the making of a price determination order, the AER, in making the decision—
- 30 (a) must consider every submission it receives within the period specified in the notice; and
- (b) may, but need not, consider a submission it receives after the period specified in the notice expires.
- 35 (6) A price information order made under this section must be published on the AER's website as soon as practicable after it is made.
- (7) As soon as practicable after making a price information order, the AER must—
- 40 (a) arrange for notice of the making of the price information order to be published in the South Australian Government Gazette; and
- (b) make the price information order publicly available.

64B—Form and content of price information order

- 5
- (1) A price information order must specify—
- (a) the information required to be provided to the AER; and
 - (b) the manner and form in which the information described in the order is required to be prepared and provided to the AER; and
 - (c) when the information must be provided; and
 - (d) the class of persons to whom the order applies.
- 10
- (2) The information that may be required to be provided to the AER under a price information order may include—
- (a) historic, current and forecast information (including financial information); and
 - (b) information that is or may be derived from other information in the possession or control of a person to whom the order applies.
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- (3) A price information order may require that the information specified in the order—
- (a) be provided to the AER on a regular basis or some other basis, including on the occurrence of a specified event or state of affairs;
 - (b) be provided to the AER, or prepared, maintained or kept, in accordance with specified Rules;
 - (c) be provided to the AER, or prepared, maintained or kept, in accordance with any document, code, standard, rule, specification or method formulated, issued, prescribed or published by the AER or any person, authority or body whether—
 - (i) wholly or partially or as amended by the order; or
 - (ii) as formulated, issued, prescribed or published at the time the order is served or published or at any other time before the order is served or published; or
 - (iii) as amended from time to time;
 - (d) be verified by way of statutory declaration by an officer of a person to whom the order applies;
 - (e) be audited—
 - (i) by a class of person specified in the order before it is provided to the AER; and
 - (ii) at the expense of the person required to comply with the order.
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64C—Compliance with price information order

- (1) On publication of a price information order in accordance with section 64A(6), a person who is a member of the class of person to which the order applies must comply with the order.
- (2) Subsection (1) does not apply to a person who has been given an exemption under section 64D.

64D—Exemptions from compliance with price information order

- (1) The AER may exempt a person, or a class of persons, from complying with section 64C—
- (a) unconditionally or on specified conditions; or
 - (b) wholly or to the extent as is specified in the exemption.
- (2) An exemption under this section must be in writing.

64E—Providing AER false or misleading information

A person must not, in purported compliance with a price information order requiring the person to provide information to the AER, provide information to the AER 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.

64F—Person cannot rely on duty of confidence to avoid compliance

- (1) A person must not refuse to comply with a price information order on the ground of any duty of confidence.
- (2) A person incurs, by complying with a price information order, no liability for breach of contract, breach of confidence or any other civil wrong.

64G—Legal professional privilege not affected

A price information order, and section 64C, are not to be taken as requiring a person to—

- (a) provide to the AER information that is the subject of legal professional privilege; or
- (b) produce a document to the AER the production of which would disclose information that is the subject of legal professional privilege.

64H—Protection against self-incrimination

It is a reasonable excuse for a natural person to whom section 64C applies not to comply with a price information order requiring the person to provide information to the AER if to do so might tend to incriminate the person, or make the person liable to a criminal penalty, under a law of this jurisdiction or another participating jurisdiction.

8—Insertion of sections 66A and 66B

After section 66 insert:

66A—Use of information provided under a price information order

The AER may use information provided to it by a person in compliance with a price information order for any purposes connected with the performance or exercise of a function or power of the AER under—

- (a) this Law or the Rules; or
- (b) the National Electricity Law or the National Electricity Rules; or
- (c) the National Energy Retail Law or the National Energy Retails Rules.

66B—Confidential supplier information

- (1) In this section—

confidential supplier information means information obtained by the AER from a person under—

- (a) section 42 for the performance or exercise by the AER of an AER gas market advisory and reporting function; or
- (b) a price information order; or
- (c) a market information notice for the performance or exercise by the AER of an AER gas market advisory and reporting function;

designated entity means—

- (a) the AER; or
- (b) a member of the AER; or
- (c) a person assisting the AER in the performance of its functions (or in the exercise of its powers) under this Chapter.

- (2) Subject to this section, confidential supplier information is to be regarded as having been given to the AER in confidence.

(3) Despite anything to the contrary in this Part or the Rules, the AER must not in the performance of—

- (a) an AER gas market advisory and reporting function; or
- (b) an AER gas price reporting function,

disclose confidential supplier information unless the confidential supplier information has been combined or arranged with other information so that it does not reveal any confidential aspects of the confidential supplier information or identify the person to whom the information relates.

(4) Despite any Act or law to the contrary, no liability for breach of confidence attaches to a designated entity with respect to the disclosure of confidential supplier information by any designated entity if the designated entity who made the disclosure reasonably believed—

- (a) that the information was not confidential supplier information; or
- (b) that the information disclosed did not reveal any confidential aspects of the information or would not identify the person to whom the information relates.

(5) The AER may disclose confidential supplier information in accordance with Chapter 10 Part 2 Division 1.

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

(1) Section 74(1)(a)(iii)—delete ""natural gas services and secondary capacity transactions" and substitute:

the natural gas industry including the Natural Gas Services Bulletin Board or the gas statement of opportunities

(2) Section 74(1)—after paragraph (aa) insert:

(ab) gas price series to be published by the AER; and

10—Insertion of section 83AA

After section 83A insert:

83AA—Information and transparency requirements relating to other facilities

(1) Without limiting any other provision, the Rules may provide for such things as—

- (a) the collection, disclosure, verification, management and publication of information in relation to services that may be provided by means of a compression service facility or a storage facility; and

- 5 (b) without limiting paragraph (a), requirements about the information that must be provided by a compression service provider or a storage provider (a *service provider*) in relation to access (or potential access) to services provided by means of any compression service facility or storage facility, including information about—
- 10 (i) the terms and conditions on which the service provider is prepared to make the facility available for use by others; and
- 15 (ii) the procedures that the service provider will apply in determining a proposal for access to the facility; and
- (iii) relevant prices, costs and methodologies associated with gaining access to (and using) a facility and relevant or related services; and
- (iv) access contracts and arrangements used (or required to be used) by the service provider; and
- 20 (c) without limiting paragraphs (a) and (b), information to be provided by a compression service provider or a storage provider in response to a request for access to services provided by means of a compression service facility or a storage facility; and
- (d) requirements to ensure that information is accurate and complete; and
- 25 (e) the imposition or recovery of costs associated with any matter referred to in a preceding paragraph or otherwise associated with facilitating access (or potential access) to services provided by means of a compression service facility or a storage facility.
- 30 (2) Nothing in subsection (1) limits any power to grant an exemption from complying with a provision, or part of a provision, of the Rules.

11—Amendment of section 91D—Object and content of gas statement of opportunities

Section 91D(1)—delete "pipeline capacity and other aspects of"

35 12—Amendment of section 91DA—AEMO's obligation in regard to gas statement of opportunities

Section 91DA—after its present contents (now to be designated as subsection (1)) insert:

- 40 (2) AEMO also has the following functions in relation to the gas statement of opportunities:
- (a) to collect and collate GSOO information;
- (b) to collect and collate other information in relation to the natural gas industry;

- (c) to derive from information of the type mentioned in paragraph (a) or (b) information for inclusion in the gas statement of opportunities.

13—Insertion of sections 91DB to 91DH

5 After section 91DA insert:

91DB—Information for the gas statement of opportunities

- 10 (1) A person who has possession or control of information in relation to the natural gas industry must give the information to AEMO for use by AEMO in the preparation of the gas statement of opportunities if the person is required to do so under the Rules.
- (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.
- 15 (4) For the purposes of the gas statement of opportunities, AEMO may use information that it acquires in its capacity as the operator or administrator of the Natural Gas Services Bulletin Board, a regulated gas market or any other market.

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

20 A person must not refuse to comply with the requirement in section 91DB on the ground of any duty of confidence.

91DD—Giving AEMO false and misleading information

25 A person must not give GSOO 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.

91DE—Immunity of persons giving GSOO information to AEMO

- 30 (1) A person who gives GSOO 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.
- 35 (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 arrangement 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.

91DF—GSOO Procedures

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

91DG—Nature of GSOO Procedures

- (1) GSOO Procedures are a form of statutory instrument directed at the collection of information for the gas statement of opportunities.
- (2) The GSOO Procedures may deal with the following matters:
 - (a) the matters specified by the Rules;
 - (b) any other matter relevant to the gas statement of opportunities on which this Law or the Rules contemplate the making of Procedures.
- (3) The GSOO 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; 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 to whom a right is conferred, or an obligation is 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 designated 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 Procedures that confer a right or function, or impose an obligation, on the MCE or a Minister of a participating jurisdiction.

(5) The GSOO Procedures cannot—

(a) create an offence; or

(b) provide for a criminal or civil penalty.

91DH—Compliance with GSOO Procedures

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

(2) However, if there is an inconsistency between an applicable access arrangement and the GSOO Procedures, a person is, to the extent of the inconsistency, not required to comply with the GSOO Procedures.

(3) If AEMO has reason to believe that a person is not complying with the GSOO Procedures, it may, by notice in writing, direct the person to comply with the relevant provisions of the GSOO Procedures.

(4) A person to whom a direction is addressed under subsection (3) must comply with the direction.

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

(1) Section 218(2)(b)—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

(2) Section 218(3)—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

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

(1) Section 219(b)—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

(2) Section 219(d)—before "to publish information" insert:

subject to the Rules,

16—Substitution of sections 223 and 223A

Sections 223 and 223A—delete the sections and substitute:

223—Obligation to give information to AEMO

- 5 (1) A person who has possession or control of information in relation to the natural gas industry must give the information to AEMO for use by AEMO in connection with the Natural Gas Services Bulletin Board if the person is required to do so under the Rules.
- 10 (2) Without limiting any other provision, the Rules may provide for—
- (a) the provision of information about activities or transactions relating to—
- 15 (i) exploration for, or recovery or processing of, processable gas; or
- (ii) the grant, disposal or use of transportation capacity or transportation services (including primary capacity transactions and secondary capacity transactions); or
- 20 (iii) the transportation, allocation, delivery, supply, use, consumption, import or export of processable gas or natural gas (including liquefied natural gas), including any gas supply transaction; or
- (iv) the development, construction, commissioning, use or operation of any natural gas industry facilities; and
- 25 (b) the requirement to provide information to be imposed in relation to—
- (i) a transportation service provider; or
- (ii) a transportation facility user; or
- 30 (iii) a person who determines the allocation of deliveries or receipts of natural gas; or
- (iv) a producer; or
- (v) a storage provider; or
- (vi) a trader; or
- 35 (vii) a person who owns or controls an interest in a right to explore for, appraise, extract, recover or process petroleum; or
- (viii) a compression service provider; or
- (ix) an LNG supplier; or
- (x) a person who owns, controls or operates a user facility; or
- 40 (xi) a facility developer; and

(c) any other matter prescribed by the Regulations for the purposes of this section.

(3) The information must be given to AEMO in accordance with the Rules.

(4) Subsection (1) does not apply if the person is exempt under the Rules from giving the information.

(5) Subsections (1) and (2) apply subject to any provision made by the Regulations as to any person, transaction or activity that is not to be the subject of any Rules made under this section.

(6) AEMO must make available for the operation of the Bulletin Board information about the natural gas, natural gas services or the use of natural gas that it acquires in its capacity as operator or administrator of a regulated gas market.

(7) In this section—

petroleum includes any naturally occurring hydrocarbon, mixture of hydrocarbons or mixture of hydrocarbons and non-hydrocarbons, whether in gaseous, liquid or solid state.

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

Section 224—delete "section 223(1) or 223A(1)" and substitute:

section 223

18—Insertion of section 294FA

After section 294F insert:

294FA—South Australian Minister to make initial Rules relating to enhanced market transparency

(1) The Minister in right of the Crown of South Australia administering Part 2 of the *National Gas (South Australia) act 2008* (the *South Australian Minister*) may make Rules—

(a) for or with respect to any 1 or more of the following subjects:

(i) the Natural Gas Services Bulletin Board;

(ii) the matters referred to in section 83AA;

(iii) the collection and use of information for, or the content of, the gas statement of opportunities;

(iv) gas price series;

(v) the subject matter of a new head power added to Schedule 1 by the market transparency amendments;

(vi) any other subject contemplated by, or consequential on, the market transparency amendments; and

- (b) that revoke or amend a Rule as a consequence of the market transparency amendments and any of the Rules referred to in paragraph (a).
- (2) Rules may only be made under subsection (1) on the recommendation of the MCE.
- (3) Section 74(3) applies to the 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—
- (a) publish a notice of the making of the Rules in the South Australian Government Gazette; and
- (b) make the Rules publicly available.
- (5) The notice referred to in subsection (4)(a) must state—
- (a) the date on which the Rules commence operation; and
- (b) if different Rules will commence operation on different dates, those dates.
- (6) The 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) Rules in the nature of a derogation may be made under this section even though no request has been made for the derogation.
- (9) In this section—
- market transparency amendments*** means the amendments made to this Law by the *National Gas (South Australia) (Market Transparency) Amendment Act 2019*.

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

- (1) Schedule 1—after item 50 insert:
- AER gas price reporting functions**
- 50A Gas price series to be published by the AER including the development and publication of the methodology that has been used.
- (2) Schedule 1—after item 55J insert:
- 55JA Principles to be applied, and procedures to be followed, by AEMO in exercising a power or performing a function in relation to the gas statement of opportunities.
- 55JB The kinds of information that may or must be given to AEMO for the gas statement of opportunities, who must give AEMO the information, the circumstances in which the information may or must be given, and the procedure for giving the information

- (3) Schedule 1, item 56—delete "natural gas services and secondary capacity transactions" and substitute:

the natural gas industry

- (4) Schedule 1, item 58—after "to AEMO," insert:

5 who must give AEMO the information,