



3 August 2018

Guidance Note: AER's role under the capacity trading reform package

1. Introduction

On 29 June 2018, the Council of Australian Governments (COAG) Energy Council (Energy Council) agreed to implement the legal and regulatory framework required to give effect to the final design of the capacity trading reform package. This legal and regulatory framework comprises:

- amendments to the National Gas Law (NGL), the regulations made under the NGL (Regulations) and the National Gas Rules (NGR); and
- the introduction of a new regulatory instrument, the Operational Transportation Service Code (Code).

Consistent with the approach that is usually employed when changes of this nature are made to the legal and regulatory framework, the final versions of the NGL, Regulations, NGR and Code will only be published once they are made, which is currently expected to occur in November 2018. To provide stakeholders with some guidance in the intervening period, the Gas Market Reform Group (GMRG) has published the following:¹

- **Information Paper: Capacity trading reform package legal and regulatory instruments**, which sets out the final design of the reform package and key dates for various obligations that the Australian Energy Market Operator (AEMO), the Australian Energy Regulator (AER) and market participants will be subject to; and
- **Guidance Note: AEMO's role under the capacity trading reform package**, which provides further detail on a number of the functions and powers that AEMO will have under the reform package, the registration framework, participation fees and the matters to be dealt with in the procedures AEMO is required to prepare.

The purpose of this Guidance Note is to outline the functions and powers that the AER will have under the reform package and to provide further detail on:

- the exemptions framework, which the AER will be responsible for administering;
- the classification of transitional firm services by auction facility operators, which the AER will be responsible for overseeing; and
- the record keeping guidelines, which the AER will be responsible for developing.

The publication of this Guidance Note is intended to assist market participants and the AER with market readiness activities that are expected to be carried out before or shortly after the final legal and regulatory instruments will be published.

¹ See <http://gmrg.coagenergycouncil.gov.au/publications>.



2. AER's functions and powers under the NGL and the NGR

Under the legal and regulatory framework that the Energy Council has agreed to implement, the AER will be responsible for:

- granting transportation facilities (or parts thereof) that meet the relevant criteria in the NGR an exemption from the capacity trading reforms and revoking exemptions if the facility ceases to qualify for an exemption (see section 3 for more detail);
- overseeing the classification of transitional firm services by service providers and monitoring compliance with the conditions of use of these services (see section 4 for more detail);
- developing and publishing record keeping guidelines (see section 5 for more detail), which will set out the matters to be included in:
 - the nomination, renomination and scheduling records to be maintained by the operators of auction facilities ('auction facility operators') and the manner in which the records are to be made and kept; and
 - the renomination records to be maintained by shippers using auction facilities;
- making and amending the Code in accordance with the NGL and NGR;²
- monitoring and enforcing³ compliance with various obligations in the NGL, NGR and procedures, including, amongst others:
 - the new reporting obligations for the Bulletin Board and day-ahead auction;
 - the obligation that service providers for non-exempt facilities will have to:
 - publish standard operational transportation agreements (OTSA) that comply with the principles set out in the NGR and the Code (including the principles relating to the recovery of standardisation costs); and/or
 - offer to enter into such agreements if requested to do so by a prospective shipper;
 - the obligation that sellers of secondary capacity in bilateral trades will have to:
 - offer buyers the option of using an operational transfer; and
 - report any bilateral trades of capacity involving forward haul, backhaul, park, loan or compression services⁴ to AEMO for publication on the Bulletin Board;

² The initial Code will be made by the South Australian Minister and future amendments to the Code will be subject to a hybrid governance model, which will involve the following:

- An industry Panel (the OTS Code Panel), comprising a member from AEMO (who will chair the Panel), two service providers and two shippers (one of which must be a large user of gas). The OTS Code Panel will consider proposals to amend the Code, having regard to stakeholder feedback, and provide its recommendations to the AER on the proposed amendments.
- Amendments recommended by the OTS Code Panel will only take effect if approved by the AER. In deciding whether to approve the amendments, the AER must consider the Code objective and a number of other principles and matters specified in the NGR. The AER will have the power to approve, reject and remit the proposed change. It will also have the power to amend the Code on its own initiative. However, before doing so, the AER must request advice from the OTS Code Panel and AEMO, and consult with interested parties.

³ The enforcement options available to the AER depend, in part, on whether the provisions in the NGL or NGR are designated as civil penalty provisions and/or conduct provisions.

⁴ The following transactions will not be required to be reported: the use of capacity to satisfy an obligation under an agreement for the supply of natural gas; an agreement to swap a quantity of gas at a location for a quantity of natural gas at another location; a novation of an agreement with a service provider; or between closely related entities.



- the obligations that market participants will have to comply with:
 - the market conduct rules that will apply to the capacity trading platform;⁵ and
 - the market conduct and nomination rules that will apply to the day-ahead auction;⁶
- the obligation that shippers will have not to make false or misleading nominations and renominations;
- the obligations that non-exempt service providers will have to facilitate capacity trades and comply with the Capacity Transfer and Auction Procedures; and
- the obligation that auction facility operators will have to:
 - classify their transportation services as a firm service or a lower tier service in accordance with the definitions in the NGR;
 - comply with the auction service priority principles;
 - give effect to the auction results; and
 - comply with other auction related obligations.

The AER will also be required to conduct a review of the compliance of standard OTSAs and standardisation charges with the principles in the NGR and Code within 12 months of the capacity trading platform and auction being implemented.

Exemptions framework

The exemptions framework for the capacity trading reform package provides for:

- Exemptions from **all aspects of the capacity trading reform package** (excluding the secondary capacity transaction reporting framework)⁷ to be:
 - automatically available to distribution pipelines, a transportation facility that forms part of the Declared Transmission System, compression facilities that are not designated in the Regulations⁸ or are not stand-alone facilities,⁹ and a transportation facility located in the NT until the first transmission pipeline capable of transporting natural gas between the NT and Queensland, New South Wales or South Australia is commissioned; and
 - available on application to the AER, to transportation facilities that are not providing third party access.

⁵ Users of the capacity trading platform will be subject to the same market conduct rules that apply to the Gas Supply Hub and will also be prohibited from short-selling transportation capacity.

⁶ Auction participants will be required to comply with similar general conduct requirements (e.g. not to act fraudulently, dishonestly or in bad faith) and market conduct rules (e.g. an auction participant must not manipulate or attempt to manipulate the auction) to those that currently apply in the Gas Supply Hub. Service providers will also be prohibited from bidding (directly or indirectly) in the auction for capacity on their own facility or engaging in conduct with the intent of distorting or manipulating prices.

⁷ The secondary capacity trading reporting obligations apply to trading parties rather than facilities. The exemptions set out here do not therefore apply to this reporting framework.

⁸ The designated compression facilities are the Wallumbilla, Moomba, Iona and Ballera facilities.

⁹ A stand-alone compression facility is or may be used to facilitate the flow of natural gas between transmission pipelines and in respect of which compression services are or may be provided (but does not include a facility operated as part of a gathering system operated as part of an upstream production operation or downstream of a point on a pipeline from which a person consumes gas).



- Conditional exemptions from the **day-ahead auction and the obligation to publish a standard OTSA** to be available on application to the AER to transportation facilities:
 - that are servicing a single transportation user (shipper); or
 - with a nameplate capacity less than 10 TJ/day.

The exemption from the obligation to publish a standard OTSA does not extend to the obligation to prepare and offer to enter into a standard OTSA, or a number of other measures to facilitate capacity trading,¹⁰ which is why these facilities are referred to as 'conditionally exempt' facilities.

Procedural requirements

Following commencement of the amendments to the NGR, a service provider of a transportation facility that is not a designated compression facility and meets one or more of the following criteria may apply to the AER for an exemption:

- the transportation facility is not providing third party access;
- the transportation facility is a single user facility; or
- the transportation facility has a nameplate rating less than 10 TJ/day.

The first two of these criteria are identical to the exemption criteria in Part 23 of the NGR, while the last criterion differs.

The AER must, on the application of the service provider, grant an exemption in respect of the transportation facility (or a part of the facility), if:

- the service provider has demonstrated to the AER's reasonable satisfaction that the transportation facility (or part thereof) qualifies for an exemption;
- in the case of part of a transportation facility, the grant of the exemption will not hinder access to operational transportation services on any other part of the facility; and
- the AER is otherwise satisfied that in all the circumstances the exemption should be granted.

The AER must decide whether to grant or refuse to grant an exemption within 40 business days after the application is made.

The AER also has the power to grant an exemption for a class or group of transportation facilities on the application of a service provider for one or more facilities or on its own initiative based on its understanding that a facility meets the criteria specified in the NGR. The AER could, for example, grant an exemption on its own initiative to those transmission pipelines that have obtained an exemption under Part 23 of the NGR because they are not providing third party access or are a single user facility.¹¹

¹⁰ Service providers of these facilities will, for example, also be required to: comply with the standardisation cost principles; give effect to operational transfers; provide users with an amending facility agreement if requested to do so by the user; and comply with the use of additional pipeline service point provisions. See the Information Paper for further detail.

¹¹ The AER would not be able to use this power to grant an exemption to transmission pipelines that have obtained a size based threshold under Part 23 because the size thresholds differ under the capacity trading reform package.



An exemption granted to a transportation facility (or part thereof) that is a single user facility or has a nameplate rating less than 10 TJ/day must be subject to a condition that the service provider must, if it receives an eligible request¹² for an OTSA, prepare and offer to enter into such an agreement within 60 business days. The AER may impose other conditions when granting an exemption, which the service provider must comply with.¹³

If circumstances change, such that the transportation facility (or part thereof) no longer qualifies for an exemption, the service provider must notify the AER without delay. The exemption may then be revoked by the AER. The AER may also revoke the exemption on its own initiative or following an application made by any person. If the AER proposes to vary or revoke an exemption other than on application of the service provider concerned,¹⁴ it must notify the service provider and invite it to make submissions about the proposal. If the AER varies or revokes an exemption it must give the service provider written reasons for its decision.

An application for an exemption, variation of an exemption or revocation of an exemption must be in the form, and contain the information, specified in any AER-issued guidelines concerning exemptions. The AER may ask the applicant to provide further information or clarification in support of an application if the AER considers the application is incomplete or requires clarification.

Transitional exemptions

The obligation to register an existing transportation facility and for a service provider to comply with other obligations will commence when the amendments to the NGR start or shortly thereafter (see Table 2 of the Information Paper).

Exemptions will be available on a transitional basis during the transitional period, which will extend from the commencement of the amendments to the NGR to the auction commencement date.¹⁵ During this period, the AER may, on the application of a service provider¹⁶ or on its own initiative, grant a transitional exemption to a transportation facility (or part thereof). The AER may do so if it is satisfied, having regard to any matter it considers relevant, that the transitional exemption should be granted.

These transitional arrangements have been included in the NGR to allow the AER to grant an exemption to a transportation facility (or group or class of facilities) on an interim basis, while it considers whether the facility (or group or class of facilities) qualifies for an exemption. A transportation facility granted a transitional exemption will be exempt from the obligation to register with AEMO.

¹² An eligible request is a request made by a prospective secondary shipper who meets the eligibility criteria set out in the NGR in order to be offered a standard OTSA and who intends to enter into the agreement and use its reasonable endeavours to procure transportation capacity on the transportation facility.

¹³ The AER may vary the conditions of an exemption on the application of the service provider for the transportation facility, or on its own initiative.

¹⁴ Any person can apply to the AER for an exemption to be revoked or to be varied.

¹⁵ The auction will commence on 1 March 2019 or, if the amendments to the NGR commence after 1 December 2018, 60 business days after the amendments come into force.

¹⁶ This application must be made in accordance with the process for applying for a standard exemption.



The ability to grant a transitional exemption may assist the AER in handling high volumes of exemption applications in the period following commencement of the capacity trading reforms.

When granting a transitional exemption, the AER can determine if any conditions will apply. For example, if a facility is only likely to be eligible for a conditional exemption (i.e. because it services a single transportation user), the AER could determine that the facility should be subject to the same obligations that a conditionally exempt facility would be subject to for the period of the transitional exemption.¹⁷

Any transitional exemption granted by the AER will automatically expire on the earlier of:

- a date specified by the AER when it grants the transitional exemption;
- the effective date of a standard exemption granted by the AER for the transportation facility (or part thereof) that is the subject of the transitional exemption; and
- the day after the commencement of the auction (i.e. 1 March 2019 or, if the amendments to the NGR commence after 1 December 2018, 60 business days after the amendments come into force).

The AER may revoke a transitional exemption by giving not less than 10 business days' written notice to the service provider.

3. Classification of transitional firm services for the auction

Transitional arrangements will be implemented for a two-year period following the commencement of the day-ahead auction to enable transportation services that meet the following criteria to be treated as 'transitional firm' services for the purposes of the auction priority principles and therefore rank ahead of the auction product:

- the transportation service is currently treated as firm once scheduled;
- the transportation service is used for the supply of gas for consumption by a gas-fired generator that is a market generating unit;
- at least one of the service points is either a point at which gas is supplied for consumption by a market generating unit, or is on another transportation facility that is used to receive gas for onward transportation to a market generating unit; and
- the terms and conditions for use of the transportation service are set out in a primary facility agreement made on or before 19 March 2018 and are the same, or substantially the same, as the terms and conditions in force on that date.

Facility operators will be responsible for classifying a service as a transitional firm service if they meet the criteria set out above and must notify the AER if they intend to do so no later than 30 business days before the classification takes effect. The notice must include:

- a copy of the agreement or agreements containing the terms and conditions on which the transportation service is provided (including any amendments);

¹⁷ See footnote 10.



- an assessment of the transportation service against the criterion set out above with reference to the terms of the agreement or other information relied on for the assessment; and
- any other information or documentation reasonably required by the AER.

The AER may request more information from the facility operator if it requires it and the facility operator must provide that information within the time specified. The AER *may* also require a facility operator to procure and provide an independent expert opinion on the transitional firm service classification addressed to the AER and on which the AER may rely.¹⁸ This opinion must list the information and documentation relied on, set out any assumptions made and any qualifications to the opinion, confirm the service provider's transitional firm service specification is accurate and contain an assessment of whether the transportation service satisfies each of the criteria listed above. Any information provided to the AER in relation to the classification of transitional firm services will be taken to have been provided to the AER in confidence.

If the AER is not satisfied a service meets the transitional firm service criteria, it may reject the classification. The AER may also revoke the classification at a later point if it is not satisfied the criteria outlined above are met.

The AER will be responsible for monitoring compliance with the conditions of use of the transitional firm services (e.g. to ensure the services are being used at a gas-fired generation site). To this end the AER may, by notice, require a facility operator or a shipper provided with a transitional firm service, to appoint an independent and suitably qualified auditor to conduct an independent audit of the quantities classified as transitional firm quantities having regard to the classification criteria set out above, and provide a report to the AER.

4. Record keeping guidelines

To enable the AER to effectively monitor the compliance of market participants with the market conduct and nomination rules applicable to the day-ahead auction:

- auction facility operators will be required to make and maintain records of nominations, renominations and scheduled quantities; and
- shippers will be required to make and maintain records of any renominations of firm or auction services.

These records must be made and maintained in accordance with the Nominations and Scheduling Records Guidelines and the Renomination Records Guidelines that the AER will be responsible for developing, which may be published as a single instrument.

The AER must develop and publish the initial guidelines by 1 December 2018, or if the amendments to the NGR commence after that date, 20 business days after the amendments commence. When developing the initial guidelines, the AER will not be required to comply with the standard consultative process. Future amendments to the

¹⁸ Such an opinion must be given by a person engaged by the facility operator and approved by the AER that has the qualifications and experience to give an opinion on whether the transitional firm service classification criteria are met. The person must not be an employee of the facility operator or any of its associates, but may be one of the facility operator's usual advisors or auditors.



guidelines will, however, be subject to the standard consultative process set out in Part 3 of the NGR.

Further detail on these guidelines is provided below.

Nomination and Scheduling Records Guidelines

Auction facility operators will, as noted above, be required to make and maintain nomination, renomination and scheduling records for each of their auction facilities, recording:

- day-ahead nominations for the use of the auction facility (including deemed or default nominations) made prior to the nomination cut-off time, which will include information on the quantity nominated and the time the day-ahead nomination was made;
- renominations that occur following nomination cut-off time, which will include information on the quantity renominated and the time the renomination was made; and
- the scheduled quantity for each service provided by means of the facility.

These records must be maintained for a period of five years.

The AER's guideline must set out the matters to be included in the nomination, renomination and scheduling records and the manner in which the records are to be made and kept. The guidelines must provide for the nomination, renomination and scheduling records to separately record the information for each gas day, shipper, auction facility and service. The guidelines applicable during the first two years, must also provide for the separate identification of:

- each transitional firm quantity and the market generating unit to which the transitional firm quantity was supplied; and
- any renomination of the transitional firm service that occurred after the nomination cut-off time that reduced the transitional firm quantity, or resulted in any part of the transitional firm quantity used in the calculation of an auction quantity limit being supplied other than:
 - for consumption by a market generating unit; or
 - to another transportation facility for onward transport to a market generating unit.

In developing this guideline, the AER must have regard to the need for the costs that are likely to be incurred by facility operators in complying with the guidelines, to be proportionate and appropriate.

Renomination Records Guidelines

A shipper using an auction facility that makes a material renomination after the nomination cut-off time for a transportation service that is taken into account in the calculation of an auction quantity limit (i.e. a firm service or transitional firm service) or an auction service, must make a contemporaneous record in relation to the renomination. The contemporaneous record must specify:

- the material conditions and circumstances giving rise to the renomination;



- the shipper's reasons for making the renomination, which must be verifiable and specific;
- the time at which the event or other occurrence giving rise to the renomination occurred; and
- the time at which the shipper first became aware of the event or other occurrence.

These records must be maintained for a period of five years.

A renomination will be considered 'material' if the renomination, either alone or when taken together with other renominations by the shipper for that service (whether before or after the renomination), results in a variation of more than 10% to the following:

- the last day-ahead nomination received prior to nomination cut-off for services other than the auction service; or
- the initial nomination for use of the auction service.

A shipper must, upon written request from the AER and in accordance with guidelines published by the AER, give the AER information to substantiate and verify the reason for a material renomination (including any record made in accordance with the requirements set out above) as the AER may require from time to time.

The AER must develop and publish guidelines in relation to requests for information to substantiate and verify the reason for a material renomination. The guidelines must include the amount of detail to be included in the information provided to the AER and procedures for handling claims by shippers that the information is confidential.

In developing the guidelines, the AER must have regard to the need for the costs that shippers are likely to incur in complying with the guidelines to be proportionate and appropriate having regard to the need for:

- accurate, reliable and timely information about the intended use of capacity for the efficient conduct of the auction; and
- the efficient scheduling and use of capacity for all shippers.