



**ANALYSIS OF DRAFT PACKAGE OF LEGISLATIVE AND REGULATORY CHANGES
TO GIVE EFFECT TO CAPACITY TRADING REFORM PACKAGE**

May 2018

	ISSUE/ CONCERN	LEGISLATIVE/ REGULATORY PROVISION	COMMENTS	SUGGESTION FOR REGULATORY CHANGE/ IMPROVEMENT
NATIONAL GAS LAW				
1.	Auction – market conduct rules	Section 83D – False or misleading statements	The prohibition on making false or misleading representations in section 83B relates to “implementation of the standard market timetable.” This concept is ambiguous, which could affect enforcement.	Clarify what is meant by “implementation of the standard timetable”.
2.	Auction – market conduct rules	Section 91BRR – Compliance with Capacity Transfer and Auction Procedures	The practical threshold for determining whether a breach of the Compliance with Capacity Transfer and Auction Procedures is “material” is unclear.	Provide further guidance regarding the meaning of “material breach”.
3.	Auction – reporting obligations	Section 91FEG – Giving AEMO false and misleading information	The prohibition on providing capacity auction information that is false or misleading is confined to cases when the person <i>knows</i> the information is false or misleading in a material particular. The prohibition should be extended to cases where the person should	Extend prohibition to cases where a person should <i>reasonably have known</i> information is false or misleading. Provide further guidance regarding the meaning of “material particular”



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			<i>reasonably have known</i> the information is false or misleading. In addition, it is unclear when information will be considered to relate to “a material particular” so as to attract the prohibition.	in the context of providing capacity auction information to AEMO.
4.	Auction – reporting obligations	Section 91FEI – Giving false and misleading information used for capacity auctions	The prohibition on providing a transportation service provider capacity auction information that is false or misleading is confined to cases when the person <i>knows</i> the information is false or misleading in a material particular. The prohibition should be extended to cases where the person should <i>reasonably have known</i> the information is false or misleading. In addition, it is unclear when information will be considered to relate to “a material particular” so as to attract the prohibition.	Extend prohibition to cases where a person should <i>reasonably have known</i> information is false or misleading. Provide further guidance regarding the meaning of “material particular” in the context of providing capacity auction information to a transportation service provider.
5.	Secondary capacity transactions – reporting obligations	Section 223A – Obligation to give information to AEMO about secondary capacity transactions	To help ensure the integrity and accuracy of information about secondary capacity transactions, this section should be supplemented with a prohibition on providing false and misleading	Add prohibition on providing false and misleading information to AEMO regarding secondary capacity transactions.



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			information to AEMO regarding secondary capacity transactions.	
6.	Standard operational agreements - publication	Section 228B – Transportation service providers to publish standard operational agreements	The obligations on a transportation service provider to publish the standard form operational agreement and ensure its compliance with the OTS Code are currently merged in section 228B(1). These obligations should be separated in discrete provisions to facilitate enforcement.	Separate obligations on a transportation service provider to (a) publish the standard form operational agreement and (b) ensure its compliance with the OTS Code. (We note that clause 632 of the NGR requires standard operational agreements to comply with the Code. However, this should be reflected in the NGL).
7.	OTS Code – governance arrangements	Section 228F – Operational Transportation Service Code	Section 228F(a) contemplates complete “replacement” of the OTS Code by the AER. This could lead to uncertainty in gas markets, particularly during transition to a newly replaced Code, which could affect the well-functioning of markets. Ideally, the circumstances in which the AER could replace the Code should be clarified.	Clarify the circumstances in which the AER could completely replace the OTS Code.
8.	Supply of operational transportation service - access	Section 228J(1) – Preventing or hindering access to operational transportation services	Non-compliance with section 228J goes to the heart of the objectives of the capacity trading reforms. Conduct that prevents or hinders	Non-compliance with section 228J(1) should attract a civil penalty.



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			access to an operational transportation service should be appropriately penalised.	
9.	Supply of operational transportation service - pricing	Section 228K – Transportation service provider providing operational transportation services must not price discriminate	Under the current drafting, the prohibition on price discrimination when providing operational transportation services might not apply if the transportation service provider subjectively considers that price discrimination is “conducive to efficient service provision”. The prohibition should be based on an objective rather than subjective standard.	Require the transportation service provider to objectively demonstrate that price discrimination is conducive to efficient service provision.
NATIONAL GAS RULES				
10.	OTS Code – governance arrangements	Part 24, Clause 595 – Objective and effective date	Clause 595(3) contemplates that the AER may make “modifications” to the OTS Code. Section 228F(a) of the NGL contemplates complete “replacement” of the OTS Code by the AER. This possible inconsistency should be addressed.	Reconcile drafting of clause 595(3) of NGR with section 228F(a) of NGL.



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11.	OTS Code – governance arrangements	Part 24, Clause 606 – Members of OTS Code Panel	A consumer advocate should ideally be represented on the OTS Code Panel.	Provide for composition of OTS Code Panel to include consumer representation.
12.	Competitive markets - zones	Part 24, Clause 628 – Principles for determining zones	The current drafting of the principles for determining zones effectively establish a default zone of one service point. Including more than one service point requires demonstration by AEMO that to do so “seems reasonably likely to promote efficient trade in and use of transportation capacity”. The reasonableness requirement should be removed to enhance competition at a service point.	The implicit default zone of one service point should be removed. The reasonableness requirement when demonstrating that more than one service point should be included in a zone should be removed.
13.	Recovery of standardisation costs by transportation service providers	Part 24, Clause 634 – Recovery of standardisation costs	Under the current drafting, recovery of standardisation costs by a transportation service provider is possible based on costs incurred, rather than outcomes delivered by the service provider. There is also limited incentive for the service provider to minimise its costs.	Require transportation service provider to demonstrate how its costs are linked to delivery of services and outcomes required under the capacity trading reforms.