



## **Decision under sections 19 and 20 of the *Competition and Consumer (Gas Market Emergency Price) Order 2022* on the application by AGL Energy Limited for an exemption from the ‘price cap’ under s 18.**

**5 April 2023**

### **Decision**

1. The ACCC is satisfied that it is appropriate to grant an exemption to AGL Energy Limited (**AGL Energy**) pursuant to subsection 19(1) and to impose conditions on that exemption under subsection 20(2) of the Order.
2. The exemption is granted in relation to the application of the price cap under each of subsections 8(1), (2) and (3) of the Order.
3. The exemption is granted for the period of the Order, unless varied or revoked.
4. The ACCC has formed the view that is appropriate to grant this exemption based on AGL Energy’s current circumstances as set out in the documents and materials provided to the ACCC. Should the ACCC become aware of any material change in those circumstances, it may review the exemption and consider whether it is appropriate that the exemption should be varied or revoked under s22(1) of the Order.
5. The conditions are as follows:

#### **Condition 1 – Notification**

- a. AGL Energy must notify the ACCC in writing within 10 business days of entering into any agreement for the sale of all or part of its interest in the Silver Springs Facility.
- b. AGL Energy must notify the ACCC in writing of any material change to its circumstances, or material changes to information specified in AGL Energy’s application or further information response within 10 business days of the change.

#### **Condition 2 – Reporting and provision of information**

- a. Having regard to the geographical application under section 6 of the Order, AGL Energy must report to the ACCC, within 10 business days of entering the agreement, the volume and price of any gas to be supplied under a gas supply agreement that AGL Energy enters into during the period of the Order for supply of gas greater than or equal to 0.5 petajoules (PJ) per annum.
- b. AGL Energy must, within 10 business days of the request, provide any information requested by the ACCC in relation to

- i. the volume of regulated gas supplied by AGL Energy during the term of this exemption;
  - ii. the persons to whom and the terms on which such gas was supplied;
  - iii. the volume of gas produced by or acquired from the Silver Springs or Spring Gully Facilities; and/or
  - iv. any matter which the ACCC considers might give rise to a material change in circumstances
6. The ACCC has made this decision based on information available at this time, and has had regard to the matters in subsection 19(2) of the Order and AGL Energy's application and further information response provided.

## Statement of reasons

### Summary

The ACCC is satisfied that:

- **AGL Energy is a regulated gas producer within the meaning of the Order, with minor gas production volumes as a proportion of its total business operations.**
- **AGL Energy delivers gas, electricity and telecommunication services to various customer segments across Australia, with gas production equating to 0.2% of AGL Energy's total gas turnover.**
- **AGL Energy is the ultimate holding company of the AGL Group.**
- **Granting an exemption to AGL Energy would not undermine the object of Part IVBB of the *Competition and Consumer Act 2010*, rather it would enable the AGL Group to continue its normal operations in the concentrated retail market.**
- **Granting an exemption to AGL Energy is appropriate and would not have any material adverse impact on gas prices for customers in Australia.**

### Legislative Framework

1. On 16 December 2022, the *Competition and Consumer Act 2010* (Cth) (**CCA**) was amended to include Part IVBB (**'Gas Market'**) to enhance the welfare of Australians through the regulation of the Australian gas market and in particular, to limit increases in gas prices.<sup>1</sup>
2. The *Competition and Consumer (Gas Market Emergency Price) Order 2022* (**'Order'**), made under section 53M of the CCA, commenced on 23 December 2022. The Order prohibits regulated gas producers and affiliates of regulated gas producers from making certain offers on a gas trading exchange, entering into agreements to supply regulated gas, or supplying regulated gas under such agreements, at a price above \$12 per gigajoule (GJ) (known as the **'price cap'**) for a period of 12 months.
3. Under subsection 19(1) of the Order, the Australian Competition and Consumer Commission (**'ACCC'**)<sup>2</sup> may grant an exemption, in relation to a person, if they have made an application under section 18 of the Order and the ACCC is satisfied that it is appropriate to do so having regard to the following matters outlined in subsection 19(2):
  - (a) if the person is a regulated gas producer – the volume of regulated gas produced by the person;
  - (b) if the person is a regulated gas producer – the proportion of the business operations of the person represented by the business of producing regulated gas that it carries on;
  - (c) any material changes in the person's circumstances since the commencement of the Order;
  - (d) the object of Part IVBB of the CCA;
  - (e) any other matter that the ACCC considers to be relevant.

---

<sup>1</sup> CCA s 53.

<sup>2</sup> The power to grant an exemption in writing from any or all of subsections 8(1), (2) and (3) of the Order was delegated to the ACCC on 23 December 2022 per the *Competition and Consumer (Gas Market Emergency Price) Delegations 2022*.

## The application

4. By application dated 12 January 2023, pursuant to subsection 18(1) of the Order, AGL Energy applied for an exemption from the application of the price cap as contained in subsections 8(1), (2) and (3) of the Order (the **application**).
5. AGL Energy provided a response to the ACCC's request for further information on 15 February 2023 (**further information response**).
6. AGL Energy provided a response to the ACCC's further request for additional information on 10 March 2023 (**additional information response**).

## Factual Background

7. AGL Energy is involved in the production of coal seam gas, and submits that it does not meet the exception requirements, including those contained in section 12 (exception for gas storage) and section 16 (exception for retailers) of the Order.<sup>3</sup>
8. AGL Energy submits that it is a regulated gas producer within the meaning of the Order. AGL Energy holds controlling interests over a large group of entities (the **AGL Group**) and is the ultimate holding company of the AGL Group.<sup>4</sup>
9. AGL Gas Storage Pty Ltd, AGL Upstream Investments Pty Ltd and AGL Upstream Gas (MOS) Pty Ltd have also applied for exemptions under section 19 of the Order.
10. AGL Energy wholly-owns AGL Gas Storage Pty Ltd, AGL Upstream Investments Pty Ltd and AGL Upstream Gas (MOS) Pty Ltd.
11. AGL Energy submits that it holds interests in 3 gas producing facilities: Moranbah Gas Project, Spring Gully and Silver Springs.
12. AGL Energy submits that it has [REDACTED] ownership interests in the Moranbah Gas Project joint venture with [REDACTED].
13. AGL Energy submits that it has ownership interests of around [REDACTED] in the Spring Gully Project joint venture with [REDACTED].
14. AGL Energy owns land associated with the Silver Springs facilities only, while AGL Upstream Gas (MOS) Pty Ltd and AGL Gas Storage Pty Ltd hold the relevant tenement interests.
15. AGL Energy has regulated gas production interests through ownership of the Moranbah Gas Project, and Spring Gully facilities.<sup>5</sup>

## Consideration

16. The ACCC is satisfied that it is appropriate to grant a conditional exemption to AGL Energy. The ACCC has made this decision based on information available at this time and has had regard to the matters in subsection 19(2) of the Order and AGL Energy's application and further information response provided.
17. The ACCC's reasons for the decision to grant the exemption, by reference to each of the matters in paragraph 19(2) of the Order, are set out below.

---

<sup>3</sup> AGL Energy, further information response, response to Q4

<sup>4</sup> See Attachment A to the Applicant's application.

<sup>5</sup> See AGL Energy application, response to Q1.

### **Section 19(2)(a) – For a regulated gas producer – Volume of regulated gas produced**

18. AGL Energy submits that it is a regulated gas producer within the meaning of the Order<sup>6</sup> and is the parent entity of the AGL Group<sup>7</sup>. The ACCC accepts that AGL Energy carries on a business of producing gas, and so is a regulated gas producer within the meaning of section 5 of the Order.
19. AGL Energy is entitled to a maximum of [REDACTED] per day under the joint venture agreement. However, AGL Energy has submitted that their forecast share of the gas produced by the Spring Gully project is [REDACTED] in 2023.
20. The Silver Springs facility, which is used primarily for the injection and storage of gas, is forecast to produce [REDACTED] of gas in 2023. AGL Energy is not allocated a share of the gas produced by the Silver Springs project as AGL Energy only owns the land associated with the Silver Springs facility.
21. The gas production facility that AGL Energy has production interests in is Spring Gully, with gas from this facility expected to equate to less than 0.1% of total forecast east coast demand in 2023 (571 PJ).<sup>8</sup>

### **Section 19(2)(b) – For a regulated gas producer – Proportion of business operations represented by the production of regulated gas**

22. AGL Energy submits, in accordance with AGL's ownership interests, the Spring Gully facility is expected to generate [REDACTED] in revenue in 2023. The Silver Springs project is forecast to generate just under [REDACTED] in revenue, attributable to gas production in the same year.<sup>9</sup> The 2023 revenue forecast is shared with AGL Gas Storage Pty Ltd and AGL Upstream Gas (MOS) Pty Ltd as other parties of the joint venture.
23. In total, AGL Energy's forecast revenue attributable to gas production in the 2023 calendar year totals to just under [REDACTED]. This equates around [REDACTED] of AGL Energy Limited's total gas turnover of [REDACTED] in the 2023 calendar year.<sup>10</sup> The AGL Group does not currently have the forecast total annual turnover of AGL Energy Limited for calendar year 2023.
24. Regulated gas production is not AGL Energy's primary business activity as wholesale and retail turnover as a proportion of AGL Energy's gas turnover is over 99%.<sup>11</sup>
25. AGL Energy submits that the Spring Gully and Silver Springs facility generated [REDACTED] and [REDACTED] respectively in revenue in the 2022 calendar year. As a proportion of total business operations, gas production equates to around [REDACTED] of AGL Energy Limited's total annual turnover for the 2022 calendar year.<sup>12</sup>

### **Section 19(2)(c) – Any material changes in circumstances since 23 December 2022 (the commencement of the Order)**

26. AGL Energy's application has not identified any material changes in AGL Energy's circumstances since the Order commenced.

---

<sup>6</sup> AGL Energy, application, response to Part A Q1.

<sup>7</sup> See Attachment A of the Applicant's application.

<sup>8</sup> See ACCC, Gas Inquiry 2017-25 interim report, January 2023, pp 11.

<sup>9</sup> AGL Energy, further information response, Attachment.

<sup>10</sup> AGL Energy, further information response, response to Q8.

<sup>11</sup> AGL Energy, further information response, response to Q8.

<sup>12</sup> AGL Energy, additional information response, response to Q4c.

### **Section 19(2)(d) – Object of Part IVBB of the CCA**

27. The object of Part IVBB of the CCA is to enhance the welfare of Australians through regulation of the Australian gas market, including limiting the increase in gas prices.
28. The ACCC is of the view that, due to the low volume of gas produced by AGL Energy, granting an exemption would not undermine the object of Part IVBB of the CCA.
29. Further, granting the exemption will not have any direct impact on prices for end-users as the prices at which the AGL Group supplies regulated gas to end-users will continue to reflect prevailing market prices at the retail level. However, not granting an exemption, should it lead to AGL not competing as effectively in the retail market, could lead to higher retail prices which could undermine the object of Part IVBB.

### **Section 19(2)(e) – Other matters the ACCC considers to be relevant**

30. The ACCC has considered the corporate structure and commercial arrangements relating to AGL Energy and the broader AGL Group in reaching this decision, noting that the effect of granting this exemption is that certain affiliates of AGL Energy will not be bound by the price cap in the Order in the circumstances set out in section 17 of the Order.
31. The ACCC is satisfied that AGL Energy and its affiliates do not have the potential to supply significant amounts of gas into the wholesale domestic market. Accordingly, the ACCC is satisfied that granting the exemption will not have any material impact on prices for wholesale customers.
32. The AGL group is a significant supplier of gas at the retail level. Prices at the retail level will continue to reflect prevailing market prices if the exemption is granted.
33. In summary, the ACCC considers that granting an exemption to AGL Energy will not have any material adverse impact on gas prices for customers in Australia. It will conversely support the AGL Group's operations in the retail market by assisting AGL Group to manage supply effectively.

### **Section 20(2) – Conditions imposed on price cap exemption**

34. The ACCC considers it appropriate to grant a conditional exemption to AGL Energy, having regard to the matters in subsection 19(2) of the Order, based on the information available at this time.

#### ***Condition 1 – Notification***

35. Material changes in AGL Energy's circumstances could impact the appropriateness of it holding an exemption. As such, the ACCC is satisfied that it is appropriate that the exemption include a condition requiring AGL Energy to notify the ACCC if there has been any material changes to its circumstances or information provided to the ACCC in support of its application for an exemption.
36. Without limiting the scope of the condition to notify the ACCC of any material changes in circumstances, the ACCC considers that entering into any agreement for the sale of all or part of its interest in the Silver Springs facility would constitute a material change in circumstances, and requires AGL Energy to inform the ACCC of any such agreement within the time specified in the condition.

## ***Condition 2 – Reporting and provision of information***

37. The ACCC has formed the view that it is appropriate to grant this exemption, based, in part, on its understanding that AGL Energy will not supply regulated gas direct to end-user customers outside the AGL Group.
38. As AGL Energy is a regulated gas producer within the meaning of section 5 of the Order, the ACCC is satisfied that it is appropriate that the exemption be subject to a condition that, AGL Energy must report to the ACCC of any gas supply agreements that AGL Energy enters into during the period of the Order.
39. The ACCC it is also satisfied that it is appropriate to include a condition requiring AGL Energy to provide information requested by the ACCC, in the event it makes such a request, in relation to this exemption. As the exemption will only operate for a limited time, it is important that any information sought by the ACCC be provided promptly.
40. The exemption provides AGL Energy with the ability to supply its regulated gas above the price cap and the ACCC may review AGL Energy's compliance with its exemption and conditions. The ACCC is satisfied that it is appropriate to require AGL Energy to provide information to the ACCC in relation to its compliance with the conditions imposed on the exemption and any material changes of circumstance if such information is requested by the ACCC.
41. The ACCC is satisfied that these conditions are appropriate having regard to section 19(2) of the Order.