



Australian Government

Department of Climate Change, Energy,
the Environment and Water

COMPETITION AND CONSUMER (GAS MARKET CODE) REGULATIONS 2023

DECISION NOTICE

Exemption from provisions of the Gas Market Code

Pursuant to sections 61, 63 and 65 of the *Competition and Consumer (Gas Market Code) Regulations 2023* (the **Code**), I, the Hon Chris Bowen MP, Minister for Climate Change and Energy, grant each person specified in Schedule 1 (**Exempt Person**) an exemption from each Gas Penalty Provision specified in Schedule 1, subject to the Conditions specified in Schedule 2 and Schedule 3 attached to this document. The reasons for this decision are provided in a separate statement of reasons.

The day on which I made my decision to grant this Exemption is specified in Schedule 1.

The period during which this Exemption is in force is also specified in Schedule 1.

A handwritten signature in black ink, appearing to read 'Chris Bowen'.

THE HON CHRIS BOWEN MP
Minister for Climate Change and Energy



Schedule 1 Exemption Details

1 Exempt Person(s)	Each of: <ol style="list-style-type: none">1. Australia Pacific LNG Pty Limited (ABN 68 001 646 331) of Level 4, 139 Coronation Drive, Milton QLD 4064 (APLNG);2. Australia Pacific LNG (CSG) Pty Ltd (ABN 23 099 577 769) (APLNG CSG);3. Australia Pacific LNG (Moura) Pty Ltd (ABN 95 064 989 813) (APLNG MOURA);4. Australia Pacific LNG CSG Marketing Pty Ltd (ABN 72 008 750 945) (APLNG CSG Marketing); and5. Australia Pacific LNG Marketing Pty Ltd (ABN 51 141 937 920) (APLNG Marketing).
2 Gas Penalty Provisions covered by this Exemption	Sections 26(1), 27(1) and 28(1) of the Code.
3 Exemption Decision Date	16 November 2023
4 Exemption Period	The period during which the Exemption is in force: <ol style="list-style-type: none">(a) commences on 16 November 2023 (Start Date); and(b) ends on 31 December 2025 (End Date).

Schedule 2 Conditions

This Exemption is subject to the Conditions set out in this Schedule and in any other Schedules attached to this Exemption.

Capitalised terms used in this Schedule, together with provisions governing their interpretation, are set out at the end of this Schedule.

1. Particulars

The particulars set out in the table below (**Particulars**) apply as outlined in the table, for the purposes of the Exemption and these Conditions.

1.1 Additional Supply Volume	The Additional Supply Volume does not include any Existing Contracted Gas. For the purposes of clause 3, the Additional Supply Volume (in PJ) in each Year of the Supply Period is set out in the following table:				
	<table border="1"><thead><tr><th>Additional Supply Volume (PJ) for CY 2024</th><th>Additional Supply Volume (PJ) for CY 2025</th></tr></thead><tbody><tr><td>10 PJ</td><td>10 PJ</td></tr></tbody></table>	Additional Supply Volume (PJ) for CY 2024	Additional Supply Volume (PJ) for CY 2025	10 PJ	10 PJ
	Additional Supply Volume (PJ) for CY 2024	Additional Supply Volume (PJ) for CY 2025			
10 PJ	10 PJ				
1.2 Commodity Price	<p>For the purposes of clause 3 in respect of the Additional Supply Volume of Gas specified in item 1.1 above:</p> <p>(a) the Commodity Price is set at \$12/GJ, subject to CPI escalation as set out in sub-paragraph (b) (Commodity Price); and</p> <p>(b) the Commodity Price set out in sub-paragraph (a) above is subject to CPI escalation at the beginning (1 January) of each Year of the Supply Period, calculated in accordance with the following formula:</p> <p>Commodity Price = $CP \times [1 + \{(CPI_a - CPI_o)/CPI_o\}]$, where:</p> <p>CP = \$12/GJ</p> <p>CPI_a= the CPI for the Quarter ending immediately prior to the beginning (1 January) of the applicable Year during the Supply Period.</p> <p>CPI_o= the CPI for the Quarter ending on 31 December 2022.</p> <p>CPI means the Consumer Price Index (All Groups), Australia, as published by the Australian Bureau of Statistics.</p>				

2. Application of the Conditions to more than one Exempt Person

If this Exemption applies to more than one Exempt Person, then these Conditions apply to each of them jointly and separately.

3. Additional Supply Commitment

The Exempt Persons must supply (in aggregate):

- (a) not less than the relevant Additional Supply Volume of Gas for each Year to Customers during that Year of the Supply Period, as specified in item 1.1 of the Particulars; and

- (b) at a Gas price not to exceed the Commodity Price specified in item 1.2(a) of the Particulars for that Year,

subject to the Special Conditions set out in Schedule 3.

4. Supply to Affiliates

Any sale or supply of Gas by the Exempt Persons to an Affiliate will not be taken into account for the purposes of satisfying (or contributing to the satisfaction of) the Exempt Persons' Gas supply commitments under clause 3, except to the extent that it is on-sold or resupplied to a Customer.

5. Reporting to the Commission

For the purposes of sections 39(1)(d), (2) and (3) of the Code (and without limiting the operation of section 39 of the Code), each Exempt Person will demonstrate its compliance with these Conditions by providing the following information to the Commission as soon as practicable after the end of each consecutive period of 3 months during the Exemption Period (with the first such period commencing on the Exemption Decision Date) and each such period is referred to as a **Reporting Period**:

- (a) in respect of the relevant Reporting Period:
- (i) the volume (in PJ) of Additional Supply Volume contracted by (or on behalf of) all Exempt Persons under Gas Sale Agreements to satisfy the Additional Supply Commitment;
 - (ii) the volume (in PJ) of Additional Supply Volume supplied by (or on behalf of) all Exempt Persons to Customers under Gas Sale Agreements to satisfy the Additional Supply Commitment; and
 - (iii) the volume (in PJ) of Existing Contracted Gas supplied by (or on behalf of) all Exempt Persons.

6. Acknowledgment

The Exempt Persons acknowledge that:

- (a) the Additional Supply Commitment is intended to contribute to the production, supply and availability of Gas to meet domestic demand on the east coast of Australia;
- (b) the Exempt Persons' actual performance against the Additional Supply Commitment will be a relevant consideration for reviews of the operation of the Code to be caused by the Energy Minister and the Resources Minister (as defined in the Code), the first of which is due to occur no later than 1 July 2025; and
- (c) noting potential commercial sensitivities, the Energy Department will work together with the Exempt Persons to determine how the details of the Exempt Persons' performance against the Additional Supply Commitment will be made publicly available.

7. Definitions

7.1 Definitions

In this Schedule, unless the context requires otherwise:

Additional Supply Volume has the meaning given to it in item 1.1 of Schedule 2.

Additional Supply Commitment means the Exempt Persons' obligations to supply Gas in accordance with clause 3.

Affiliate has the meaning given to that term in the Code, except that Origin Energy Retail Limited ABN 22 078 868 425 (who holds a retailer authorisation (within the meaning of the National Energy Retail Law) shall not be considered an "Affiliate" of any Exempt Person by virtue of sharing a common director(s).

Broker Pre-matched Trade, in relation to a Gas Trading Exchange, has the meaning given in the Gas Trading Exchange Agreement for the Gas Trading Exchange.

Code means the *Competition and Consumer (Gas Market Code) Regulations 2023* (Cth).

Conditions means the conditions imposed on the Exempt Persons by the Minister in accordance with the Code and which are set out in this Schedule and Schedule 3 attached to this Exemption.

Commission means the Australian Competition and Consumer Commission, established under section 6A of the *Competition and Consumer Act 2010* (Cth), and includes a member of the Commission or a Division of the Commission performing functions of the Commission.

Customer means a person who contracts to acquire any Gas supplied or to be supplied in accordance with these Conditions, and who:

- (a) as at the time of that contract informs the Exempt Persons (subject to the Exempt Persons having made reasonable enquiries) that it does not intend to export that Gas from Australia (nor to sell or supply it to a person who has that intent); and
- (b) is not an Affiliate of an Exempt Person.

Energy Department has the meaning given to that term in section 4 of the Code.

Excusing Event means the occurrence of any of the following events in respect of an Exempt Person:

- (a) a Customer becomes insolvent;
- (b) the occurrence of any of the following, to the extent that it prevents or materially adversely affects the Exempt Persons' ability to sell or supply Gas in accordance with the Additional Supply Commitment:
 - (i) a change to, or a new requirement for, an approval under a law of the Commonwealth, a State or a Territory;
 - (ii) a change to an existing legal obligation of, or the imposition of a new legal obligation on, the Exempt Persons;
 - (iii) any equipment needed to produce or supply Gas (as applicable) for the purposes of the Additional Supply Commitment becomes unavailable due to circumstances that could not have been reasonably foreseen by the Exempt Person;

- (iv) a service needed to deliver the Gas becomes unavailable due to circumstances that could not have been reasonably foreseen by the Exempt Persons;
- (v) a technical or operational issue that could not have been reasonably foreseen by the Exempt Persons has had a substantial effect on the Exempt Persons' ability to procure the supply of Gas.

Exempt Persons means each person so specified in item 1 of Schedule 1.

Exemption means the conditional Ministerial exemption granted by the Minister to the Exempt Persons under the Code and to which this Schedule is attached.

Exemption Decision Date means the date so described in item 3 of Schedule 1.

Exemption Period means the period commencing on the Start Date and ending on the End Date, as set out in item 4 of Schedule 1.

Existing Contracted Gas means Gas contracted to be sold or supplied by any one or more Exempt Persons under existing contracts with customers on foot before the Exemption Decision Date.

Gas means regulated gas as defined in the Code.

Gas Penalty Provision has the meaning given to that term in section 60 of the Code.

Gas Sale Agreement means an agreement for the sale or supply of Gas by an Exempt Persons to a Customer.

Gas Trading Exchange means a gas trading exchange established by the Australian Energy Market Operator (AEMO) under section 91BRK(1) of the National Gas Law.

Gas Trading Exchange Agreement has the same meaning as in the National Gas Law.

Mandatory Government Agreement means mandatory government agreement as defined in the Code.

Particulars means the items set out in the table in clause 1 of Schedule 2 for the purposes of these Conditions.

Pre-matched Trade, in relation to a Gas Trading Exchange, has the meaning given in the Gas Trading Exchange Agreement for the Gas Trading Exchange.

Reporting Period has the meaning given to that term in clause 5 of Schedule 2.

Supply Period means the period commencing on 1 January 2024 and ending on 31 December 2025.

Quarter means each period of 3 months commencing on 1 January, 1 April, 1 July and 1 October.

Year or CY means each calendar year (or part of a calendar year) arising during the Exemption Period.

7.2 Words and headings

In these Conditions, unless the context requires otherwise:

- (a) words denoting the singular include the plural and vice versa;

- (b) the word 'includes' in any form is not a word of limitation;
- (c) where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) headings and sub-headings are for ease of reference only and do not affect the interpretation of these Conditions; and
- (e) no rule of construction applies to the disadvantage of the Minister on the basis that the Minister prepared or put forward these Conditions or any part of them.

7.3 Specific references

In these Conditions, unless the context requires otherwise, a reference to:

- (a) a gender includes all other genders;
- (b) any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- (c) writing includes writing in digital form;
- (d) 'this Exemption' and 'these Conditions' is to this Exemption and these Conditions, respectively, as amended from time to time;
- (e) 'A\$', '\$', 'AUD' or 'dollars' is a reference to Australian dollars;
- (f) a clause, is a reference to a clause of this Schedule;
- (g) a Schedule (other than this Schedule) or attachment is a reference to a Schedule or attachment attached to this Schedule;
- (h) any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- (i) a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- (j) a person includes the legal personal representatives, successors and permitted assigns of that person, and in the case of a trustee, includes any substituted or additional trustee; and
- (k) any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.



Schedule 3 Special Conditions for the Additional Supply Commitment

1. Definitions

Capitalised terms used in this Schedule 3 are defined in clause 7.1 of Schedule 2, unless the context requires otherwise.

2. Satisfaction of the Additional Supply Commitment

- (a) For the purposes of determining whether the Exempt Persons have met the Additional Supply Commitment for a Year during the Supply Period, Gas considered to be sold or supplied by the Exempt Persons for that purpose will include:
- (i) Gas sold or supplied to Customers during that Year under Gas Sale Agreements entered into on or after the Exemption Decision Date;
 - (ii) Gas sold or supplied to Customers during that Year pursuant to a Mandatory Government Agreement; and
 - (iii) uncontracted Gas sold or supplied during that Year through a Gas Trading Exchange:
 - (A) other than as a Pre-matched Trade or a Broker Pre-matched Trade with a person who the Exempt Person knows is a person who exports or intends to export the Gas from Australia (in liquid form); and
 - (B) only up to a maximum aggregate quantity of Gas (in PJ) of not more than 20% of the aggregate quantity of Gas required to be sold or supplied during that Year under the Additional Supply Commitment for that Year.
- (b) The Exempt Persons will be deemed to have satisfied the Additional Supply Commitment:
- (i) upon entry into Gas Sale Agreements for sale or supply of Gas during the Supply Period that satisfy the Additional Supply Commitment, regardless of whether the Customer takes the full contract quantity of Gas in PJ or TJ to be supplied under a Gas Sale Agreement:
 - (A) except to the extent that a breach of a Gas Sale Agreement (including, as applicable, any inability of an Exempt Person, Affiliate or contractor of an Exempt Person to supply the Gas) or negligence by an Exempt Person causes or contributes to the Customer not taking that annual contract quantity; and
 - (B) provided that, where the Customer is the nominating party, the Customer is afforded reasonable opportunity under the Gas Sale Agreement to nominate Gas for delivery to the Customer at an agreed delivery point (up to an amount not exceeding a maximum daily quantity specified in the Gas Sale Agreement) by no later than 1 gas day before the date on which the Gas is required by the Customer; or
 - (ii) if any of the Exempt Persons use all reasonable endeavours during the Exemption Period to enter into Gas Sale Agreements with Customers for a Year:
 - (A) for an aggregate volume of Gas that is not less than the Additional Supply Volume for that Year; and

- (B). on reasonable terms and conditions, having regard to usual market practice of the Exempt Persons for Gas Sale Agreements with Customers,

to satisfy the Additional Supply Commitment for the Year, but is unable to do so.

3. Offer requirements in Gas Sale Agreements

Without limiting the Exempt Persons' Additional Supply Commitment, the initial terms and conditions on which the Exempt Persons offer to enter into Gas Sale Agreements during the Supply Period will be consistent with their standard domestic gas supply terms and conditions, provided these meet the requirements specified in clause 2(b)(ii) of this Schedule, including:

- (a) delivery of Gas at the outlet of APLNG-owned infrastructure or at the Wallumbilla Hub; and
- (b) TPQ to be 100% of CQ, where:

CQ means the contract quantity of Gas in PJ or TJ to be supplied to a Customer under a Gas Sale Agreement; and

TPQ means the take or pay quantity of Gas in PJ or TJ which must be either taken and paid for (or paid for) by a Customer under a Gas Sale Agreement.

4. Supporting warranties to be included in Gas Sale Agreements

To facilitate the intended effect of the Additional Supply Commitment, the Exempt Person will use all reasonable endeavours to, in each Gas Sale Agreement it enters into for the sale or supply of Gas to satisfy the Additional Supply Commitment, require each party to whom Gas is sold or supplied under that Gas Sale Agreement to warrant (or warrant on materially consistent terms) that:

- (a) it is not a person who:
 - (i) intends to or does export Gas initially sold or supplied by the Exempt Person from Australia (in either gaseous or liquid state); or
 - (ii) intends to or does contract with any person referred to in sub-paragraph (i) above in respect of Gas initially sold or supplied by the Exempt Person; and
- (b) it will not export from Australia the Gas (either in gaseous or liquid state) sold or supplied to that party by the Exempt Person under that Gas Sale Agreement.

5. Excusing Events

- (a) Subject to clause 5(b) below, if any or all Exempt Persons are the subject of an Excusing Event then they will be relieved of those obligations under the Additional Supply Commitment, to the extent to which the Excusing Event prevents them from performing, or materially adversely affects their ability to meet, those obligations.
- (b) If the Exempt Persons wish to have recourse to clause 5(a) in respect of an Excusing Event then, as soon as reasonably practicable after the occurrence of the Excusing Event, the Exempt Person must provide written notice to the Commission of the Excusing Event, providing full particulars of it including details as to:
 - (i) which of the Exempt Persons have been affected by the Excusing Event; and

- (ii) how the Excusing Event has prevented or materially adversely affected the Exempt Persons from meeting their obligations under the Additional Supply Commitment;
and
- (iii) what measures the affected Exempt Persons are taking (or are proposing to take) to address and remove or alleviate the effects of the Excusing Event.