



Price Cap Exemption Granted – Decision pursuant to section 19 of the *Competition and Consumer (Gas Market Emergency Price) Order 2022* on the application by Shell Energy Australia Pty Ltd for an exemption from the Price Cap

3 May 2023

Pursuant to subsection 19(1) of the *Competition and Consumer (Gas Market Emergency Price) Order 2022* (Cth) (**the Order**), the Australian Competition and Consumer Commission (**the ACCC**)¹, has decided to grant Shell Energy Australia Pty Ltd (ABN 18 085 757 446) (**the Applicant**) a Price Cap exemption (**the Exemption**) from subsections 8(1), 8(2) and 8(3) of the Order.

The Exemption is in force during the period from 3 May 2023 and ceases to be in force at the end of 23 December 2023.

Statement of Reasons

Summary

The ACCC is satisfied that:

- **Shell Energy Australia Pty Ltd (SEAu) is not a regulated gas producer within the meaning of the Order.**
- **SEAu an affiliate of a regulated gas producer within the meaning of the Order.**
- **The primary business of SEAu is attributable to gas aggregation and trading activities.**
- **Granting a conditional exemption to SEAu subject to specified conditions would not undermine the object of Part IVBB of the *Competition and Consumer Act 2010* (Cth) (CCA). Not granting an exemption, if it leads to SEAu not competing in the retail market for supply to commercial and industrial customers, or facilitating competition by other parties through financial hedging, may lead to a lessening of competition in the retail market and result in higher prices.**

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.²
2. The Order, made pursuant to section 53M of the CCA, commenced on 23 December 2022. The Order prohibits regulated gas producers and affiliates of regulated gas

¹ 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.

² *Competition and Consumer Act 2010* (Cth) ('CCA') s 53.

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. Pursuant to subsection 19(1) of the Order, the ACCC 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) of the Order:
 - (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.

The Application

4. On 13 January 2023, pursuant to subsection 18(1) of the Order, Shell Energy Australia Pty Ltd (**SEAu**) applied for an exemption (the Application), from the Price Cap as prescribed in subsections 8(1), (2) and (3) of the Order
5. Shell Energy Retail Pty Ltd (**Shell Energy Retail**) and Powershop Australia Pty Ltd (**Powershop**) also submitted applications for exemption from the Price Cap on 13 January 2023.
6. SEAu provided additional information to the ACCC on 27 January 2023 (**Further Information Response**) to support SEAu's application.
7. SEAu provided a response to the ACCC's further request for additional information on 24 January 2023, 2 February 2023 and 14 February 2023 (**Additional Information Response**) to support SEAu's application.

Factual Background

8. SEAu is a wholly-owned subsidiary within the Shell Group and is the holding company for Shell Energy Retail and Powershop.³ Shell Energy Holdings Australia Limited (SEHAL) is the holding company for SEAu.
9. SEAu states that it is a gas aggregator and trader that operates in the wholesale gas market.⁴ SEAu further states that it operates a domestic gas trading business, purchasing gas from various sources and selling gas on a wholesale basis, including to its own gas-fired peaking power station.
10. In addition to acting as an aggregator and trader, SEAu provides 'load following financial hedges' to Powershop and Shell Energy Retail, and other unrelated parties, to allow those parties to manage their floating price exposure in the AEMO-operated

³ See Attachments C and E to SEAu's application and Annex 1 to Shell Energy Australia Pty Ltd (SEAu) Additional Information Response.

⁴ SEAu application, response to Part B, Q1.

19. The Domestic Gas Marketing Ringfencing Protocol requires that members of the SEAU gas marketing team (below the firewall) are not also involved in domestic gas marketing activities for Walloons and are physically separated from members of the Walloons domestic gas marketing team. The same requirement applies to members of the Walloons domestic gas marketing team with respect to SEAU's marketing activities.¹⁶
20. SEAU state that prior to the ringfencing arrangements being put in place, SEAU and Walloons were restricted from trading with each through the Wallumbilla and Moomba Gas Supply Hubs (GSH) under clause 6 of the Gas Supply Hub Exchange Agreement.¹⁷ Under this clause, related parties can request a restriction to ensure that Bids and Offers of the Trading Participants are not matched.¹⁸ SEAU have stated that this trading restriction has been reinstated.¹⁹
21. The ACCC is not satisfied that the ringfencing arrangements between Walloons and SEAU will prevent arrangements that have the purpose of facilitating supply of gas from Walloons to SEAU, either directly, via third parties or through the trading markets. In reaching this view, the ACCC has had regard to the ringfencing arrangements, and in particular, that there are key personnel who have roles at both SEAU and Walloons (including oversight of marketing activities).
22. SEAU submit that they do not consider Arrow Energy Holdings Pty Ltd (**Arrow Energy**) to be an affiliate for the purposes of the Order.
23. Arrow Energy is a 50-50 joint venture between SEHAL (the holding company for SEAU) and PetroChina Company Limited (**PetroChina**). SEAU have supply agreements in place with Arrow Energy for small volumes in 2023.
24. While the ACCC accepts that Arrow Energy is not an affiliate of SEAU, the ACCC understands that QCLNG (an affiliate of SEAU under the Order) has rights to gas produced by Arrow Energy under exclusivity arrangements entered into with Arrow Energy (for supply from the Surat Gas Project).²⁰

Consideration

25. The ACCC is satisfied that it is appropriate to grant a conditional exemption to SEAU. The ACCC has made this decision based on information available at this time and has had regard to the matters in prescribed in subsection 19(2) of the Order, and the Application and Further Information Response.

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

26. SEAU states that it is an affiliate of a regulated gas producer within the meaning of the Order.²¹
27. However, SEAU submits that it does not have any direct interest in the production of regulated gas.²² It is not a regulated gas producer, and it does not produce any volumes of regulated gas.

¹⁶ See Annex 3 to SEAU's Additional Information Response.

¹⁷ See Attachment E to SEAU's application.

¹⁸ AEMO Gas Supply Hub Exchange Agreement.

¹⁹ SEAU letter dated 20 March 2023.

²⁰ ACCC, Gas Inquiry Interim Report July 2022, p. 101, <https://www.accc.gov.au/system/files/ACCC%20Gas%20Inquiry%20-%20July%202022%20interim%20report%20-%20FINAL.pdf>.

²¹ SEAU application, response to Part A, Q1.

²² SEAU application, response to Part A, Q3.

28. The ACCC is satisfied that the conditions that apply to the exemption granted to SEAU will ensure that SEAU continues not to have access to regulated gas produced by an affiliate.

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

29. The ACCC accepts that SEAU is an affiliate of a regulated gas producer and is not a regulated gas producer within the meaning of section 5 of the Order. On that basis, the ACCC understands that no portion of its business operations relate to its own production of regulated gas.
30. The ACCC is satisfied that the conditions that apply to the exemption granted to SEAU will ensure that no proportion of SEAU's business operations is represented by regulated gas production or arises from access to regulated gas produced by an affiliate.

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

31. SEAU has not identified any material changes in its circumstances since the Order commenced.

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

32. The object of Part IVBB of the CCA is to enhance the welfare of Australians through regulation of the Australian gas market, including limiting increases in gas prices.
33. SEAU is a substantial gas aggregator and trader. It submits that the Exemption is required to enable it to compete effectively in the wholesale market, and that, if the Exemption is not granted, it will no longer be able to offer hedging arrangements to SER, Powershop and other gas buyers, and that will lead to a lessening of competition in the retail market.
34. The ACCC considers that exemption is consistent with the object of Part IVBB of the CCA where it enables SEAU to compete effectively in the wholesale market, and continue to provide hedging services to SER and Powershop, provided it does not result in any significant volumes of regulated gas for sale to wholesale customers being sold above the Price Cap. The ACCC is concerned to ensure that exemption does not facilitate other Shell-owned regulated gas producers, including Arrow Energy, making gas sales to end users via SER, whether directly or via third parties or the trading markets, at prices above the Price Cap.
35. Such conduct would be contrary to the object of Part IVBB of the CCA and contrary to the basis on which the ACCC has determined that it is appropriate for SEAU to be granted an exemption.
36. The ACCC therefore proposes to grant the Exemption subject to conditions which prevent SEAU from engaging in any new arrangements for supply to SEAU from regulated gas producers that are Shell group companies and/or Arrow Energy. These conditions reflect the basis on which SEAU has sought an exemption, which is that its business does not relate to the sale of regulated gas by these entities.

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

37. SEAU submits that as a gas aggregator and trader, it faces different cost structures than regulated gas producers. The ACCC has taken into account these differences in deciding that it is satisfied that a conditional exemption should be granted to SEAU.

Section 20(2) – Conditions imposed on Price Cap exemption

38. The ACCC considers it appropriate to grant a conditional exemption to SEAU, having regard to the matters in subsection 19(2) of the Order and based on the information available at this time.
39. Material changes in SEAU's circumstances could impact the appropriateness of it holding the Exemption, including a change in the role of SEAU as an aggregator and trader in wholesale markets. The ACCC considers that conditions to inform the ACCC of any such change and to address the potential for SEAU to enter into arrangements to secure additional regulated gas from Shell group companies are necessary.
40. The ACCC also considers that conditions are required for the ACCC to monitor and identify conduct that may constitute non-compliance with the conditions of the Exemption. As the Exemption will only operate for a limited time, it is important that any information sought by the ACCC be provided promptly.
41. The ACCC considers that the conditions set out below are appropriate and reasonable to ensure that granting this exemption is consistent with the object of Part IVBB.

Condition 1 – Notification of Material Change

42. The ACCC grants this Exemption on condition that SEAU notifies the ACCC if there has been a material change to its circumstances or the information provided to the ACCC in support of its application for an exemption, as soon as practicable and no later than 10 business days from the change.

Condition 2 – Gas agreements and trades

43. The ACCC grants this Exemption on condition SEAU does not seek to purchase gas from Walloons, Arrow Energy or any other Shell-owned regulated gas producers during the period of the Exemption and that:
 - a. SEAU does not enter into any new arrangements, including transaction notices, however described, agreed during the period of this Exemption that facilitate or provide for the supply of gas from any affiliated regulated gas producers (including QCLNG) to SEAU, either directly, via third parties or via the Wallumbilla and Moomba Gas Supply Hubs.
 - b. SEAU does not enter into any new arrangements, including transaction notices, however described, agreed during the period of this Exemption that facilitate or provide for the supply of gas from Walloons, or any related parties of Walloons, to SEAU, either directly, via third parties or via the Wallumbilla and Moomba Gas Supply Hubs.
 - c. SEAU does not enter into any new arrangements, including transaction notices, however described, agreed during the period of this exemption that facilitate or provide for the supply of gas from Arrow Energy Limited, or any related parties of Arrow Energy Limited, to SEAU, either directly or via third parties.
 - d. SEAU does not enter into any new arrangements, however described, agreed during the period of this exemption that relate to the price for the purchase or sale of natural gas from the AEMO trading markets with any Shell upstream gas production companies, or any Shell-owned regulated gas producers
 - e. SEAU does not enter into any new arrangements, however described, agreed during the period of this exemption that relate to the price for the purchase or

sale of natural gas from the AEMO trading markets with Walloons, or any related parties of Walloons

- f. SEAu does not enter into any new arrangements, however described, agreed during the period of this exemption that relate to the price for the purchase or sale of natural gas from the AEMO trading markets with Arrow Energy Limited, or any related parties of Arrow Energy Limited.
- g. SEAu is unable to coordinate its purchases of regulated gas through a trading market with Walloons, Arrow Energy or their affiliates.

Condition 3 –Provision of information to monitor compliance with condition 2

44. The ACCC grants this exemption on condition that SEAu provides:

- a. any information requested by the ACCC in relation to its compliance with a condition to this exemption within a reasonable timeframe and no later than 10 business days after the request is received;
- b. information on supply of regulated
- c. any gas supply agreement it enters into for supply of gas to SEAu by a Shell group company, or the supply of gas by SEAu to a gas buyer (equivalent to 0.5 PJ per annum), as soon as practicable and no later than 10 business days after it is agreed;
- a. by the fifth of each month, a summary of all trades (including price and counterparty) in the
 - i. Wallumbilla and Moomba Gas Supply Hubs
 - ii. Brisbane, Sydney and Adelaide STTMs; and
 - iii. Victorian DWGM