



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 Retail Pty Ltd for an exemption from the Price Cap under s 18.

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 Retail Pty Ltd (ABN 87 126 175 460) (**the Applicant**) a Price Cap exemption (**the Exemption**) from subsection(s) [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 Retail Pty Ltd (SER) is not a regulated gas producer within the meaning of the Order.
- SER is an affiliate of a regulated gas producer within the meaning of the Order.
- The primary business of SER is attributable to its activities as a gas retailer.
- Granting an exemption to SER 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 SER not competing in the retail market for supply to commercial and industrial customers, 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'**) with the object 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 producers from making certain offers on a gas trading exchange, entering into agreements to supply regulated gas, or supplying regulated gas under such

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.

agreements, at a price above \$12 per gigajoule (**GJ**) (the '**Price Cap**') for a period of 12 months.

3. Pursuant to subsection 19(1) of the Order, the ACCC may grant an exemption from the Price Cap, 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 Retail Pty Ltd (**SER**) applied for an exemption (the Application) from the Price Cap as prescribed in subsections 8(1), (2) and (3) of the Order.
5. Powershop Australia Pty Ltd (**Powershop**) and Shell Energy Australia Pty Ltd (**SEAu**) 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 SER's exemption application.
7. SER 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 SER's exemption application.

Factual Background

8. SER is part of the Shell group of companies and is a wholly owned subsidiary of SEAu, which is also the holding company for Powershop.³
9. SER is an affiliate of wholly-owned Shell Group company QGC Upstream Limited Partnership, which is a regulated gas producer for the purposes of section 5 of the Order.⁴
10. SER states that it is an electricity and gas retail business that was acquired in 2019 as part of the Shell Group's acquisition of ERM Group. SER states that it holds a retailer authorisation for electricity and gas in the Australian Capital Territory, Victoria, New South Wales, Queensland and South Australia, and in Tasmania for electricity only.⁵
11. SER submits that while it does not have any direct interest in the production of regulated gas, it is 'related to Shell entities that are regulated gas producers' and is

³ SER application, response to Part B, Q1.

⁴ See Attachment C of SER application and SER application, response to Part A, Q1.

⁵ SER application, response to Part A, Q3.

therefore an 'affiliate' of regulated gas producers for the purposes of sections 8 and 9 of the Order⁶, including QGC Upstream Limited Partnership.⁷

12. Walloons is a joint venture between Shell entity QGC (75%) and CNOOC (25%). Each of the Shell upstream gas production companies sells 100% of gas it produces to Walloons.⁸ Walloons also acquires gas from Shell's joint venture with APLNG.⁹
13. SER submits that it is not a vertically integrated gas retailer.¹⁰ It would satisfy the retailer exception in section 16 of the Order, if not for the fact that the annual turnover test is applied on a corporate group basis rather than at the level of its specific gas business. When the annual turnover test is applied on a corporate group basis rather than at the level of the specific gas business, it incorporates the substantial gas production and domestic sales of Walloons as a related entity.¹¹
14. SER states that it does not have any current or planned gas supply arrangements with SEAU, Walloons, nor Powershop for 2023.¹² SER further states that it purchases all of its gas as a market participant from third parties directly from the Short-Term Trading Market (**STTM**) and the Victorian Declared Wholesale Gas Market (**DWGM**).¹³
15. SER states that SEAU provides SER with a load following financial hedge to allow SER to manage its floating price risks on the STTMs and DWGM, and further states that this arrangement does not involve the physical supply of gas by SEAU to SER.¹⁴ This arrangement may involve SEAU selling into the STTMs and DWGM while SER is purchasing from these markets in order to manage this price risk.
16. SER submit that they do not consider Arrow Energy Holdings Pty Ltd (**Arrow Energy**) to be an affiliate for the purposes of the Order.
17. Arrow Energy is a 50-50 joint venture between SEHAL (the holding company for SEAU) and PetroChina Company Limited (**PetroChina**). SER do not have supply agreements in place with Arrow Energy for 2023.
18. While the ACCC accepts that Arrow Energy is not an affiliate of SER, the ACCC understands that QCLNG (an affiliate of SER 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).¹⁵

Consideration

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

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

⁶ SER application, response to Part B, Q1.

⁷ See Attachment C of SER's application, Corporate Structure.

⁸ See Attachments C and E to SER's application.

⁹ See Attachment E to SER's application.

¹⁰ SER application, response to Part B, Q1.

¹¹ SER application, response to Part B, Q3.

¹² SER application, response to Part B, Q1.

¹³ SER application, response to Part A, Q4.

¹⁴ SER application, response to Part B, Q1.

¹⁵ 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>.

20. SER states that it is an affiliate of a regulated gas producer within the meaning of the Order.¹⁶
21. However, SER submits that it does not have any direct interest in the production of regulated gas.¹⁷ It is not a regulated gas producer, and it does not produce any volumes of regulated gas.
22. The ACCC is satisfied that the conditions that apply to the exemption granted to SER will ensure that SER 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

23. The ACCC accepts that SER 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.
24. The ACCC is satisfied that the conditions that apply to the exemption granted to SER will ensure that no proportion of SER'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)

25. SER has not identified any material changes in its circumstances since the Order commenced.

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

26. 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.
27. SER is a substantial gas retailer. It submits that the Exemption is required to enable it to compete effectively in the retail market, and that, if the Exemption is not granted, there will be a lessening of competition in the retail market.
28. The ACCC considers that exemption is consistent with the object of Part IVBB of the CCA where it enables SER to compete effectively in the retail market and 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.
29. 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 SER to be granted an exemption.
30. The ACCC therefore proposes to grant the Exemption subject to conditions which prevent SER from engaging in any new arrangements for supply to SER from regulated gas producers that are Shell group companies. These conditions reflect the basis on which SER 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 the ACCC considers to be relevant

¹⁶ SER application, response to Part A, Q1.

¹⁷ SER exemption application, response to Part B, Q1.

31. SER submits that as a gas retailer, 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 SER.

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

32. The ACCC considers it appropriate to grant a conditional exemption to SER, having regard to the matters in subsection 19(2) of the Order and based on the information available at this time.
33. Material changes in SER's circumstances could impact the appropriateness of it holding the Exemption, including a change to the role of SER as a supplier of regulated gas to wholesale customers. The ACCC considers that conditions to inform the ACCC of any such change and to address the potential for SER to enter into arrangements to secure additional regulated gas from Shell group companies are necessary.
34. 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.
35. 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

36. The ACCC grants this exemption on condition that SER 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

37. The ACCC grants this exemption on condition SER 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. SER does not enter into any new arrangements, 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 SER, either directly, via third parties or via the Wallumbilla and Moomba Gas Supply Hubs.
 - b. SER does not enter into any new arrangements, 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 SER, either directly, via third parties or via the Wallumbilla and Moomba Gas Supply Hubs.
 - c. SER does not enter into any new arrangements, 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 SER, either directly or via third parties.
 - d. SER 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. SER 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. SER 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. SER 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

38. The ACCC grants this exemption on condition that SER 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. any gas supply agreement it enters into for supply of gas to SER by a Shell group company, or the supply of gas by SER 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