

# 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 Pricing Penalty Provision specified in Schedule 1, subject to the Conditions specified in Schedule 2 and Schedule 3 attached to this document.

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.

THE HON CHRIS BOWEN MP

Minister for Climate Change and Energy

# Schedule 1 Exemption Details

1	Exempt Person(s)	Woodside Energy (Bass Strait) Pty Ltd (ABN 29 004 228 004) Mia Yellagonga, 11 Mount Street, Perth, Western Australia 6000						
2	Gas Pricing Penalty Provisions covered by this Exemption	Sections 26(1), 27(1) and 28(1) of the Code.						
3	Exemption Decision Date	15 January 2024						
4	Exemption Period	The period during which the Exemption is in force:  (a) commences on the Exemption Decision Date ( <b>Start Date</b> ); and  (b) ends on 1 October 2033 ( <b>End Date</b> ).						

## 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	Gas Reserves and Resources	For the purposes of these Conditions:					
		(a) GBJV Reserves: means all Gas reserves developed to date in respect of Petroleum Tenements available to the GBJV and from which Gas is currently (or has in recent years been) produced by or for the GBJV;					
		(b) KUJV Reserves: means all Gas reserves developed to date in respect of Petroleum Tenements available to the KUJV and from which Gas is currently (or has in recent years been) produced by or for the KUJV;					
		<ul> <li>(c) Kipper 1B Reserves: means all developed and undeveloped Gas reserves in respect of Petroleum Tenements (existing and/or proposed) the subject of the Kipper 1B Project;</li> </ul>					
		(d) Turrum Phase 3 Resources: means all contingent and resources in respect of Petroleum Tenements (existing the subject of the Turrum Phase 3 Project.					
		The production volumes set out in Schedule 3 represent the estimated total volume of Gas forecast to be produced from the Kipper 1B Reserves and Turrum Phase 3 Resources from 2026 to 2033, subject to the qualifications set out in Schedule 3.					
.2	Investment Commitments	The requirements set out in the following tables apply for the purposes of clause 2:					
	Communents	1. Remaining GBJV Works	Date				
		The Exempt Person to:	Within 14 days				
		<ul> <li>(a) approve (as a GBJV participant) the remaining works required for the production of Gas from the GBJV Reserves, in accordance with the 2023 GBJV Work Program and Budget set out in Schedule 4; and</li> </ul>	of the Start Date.				
		(b) recommend (as a GBJV participant) that the GBJV Operator returns to the "business-as-usual" planning and budget cycle basis that applied prior to December 2022.					
		2. Recommencement of Project Capital Works	Date				
		The Exempt Person to request (as a participant in each of the GBJV and KUJV) that the GBJV Operator and KUJV Operator recommences work on capital investment projects for future Gas supply development, including the Kipper 1B Project and Turrum Phase 3 Project.	Within 14 days of the Start Date.				

#### 2. Investment commitments

#### (a) The Exempt Person must:

- (i) subject to sub-clause (b), in its capacity as a GBJV participant, approve the remaining works required for the production of Gas from the GBJV Reserves in accordance with the 2023 GBJV Work Program and Budget set out in Schedule 4, and recommend that the GBJV Operator returns to the "business as usual" planning and budget cycle that applied prior to December 2022, as further specified in item 1.2 of the Particulars, by the date specified in that item 1.2; and
- (ii) request that each of the GBJV Operator and KUJV Operator recommence work on capital investment projects for future Gas supply development, as further specified in item 1.2 of the Particulars, by the date specified in that item 1.2.
- (b) The Exempt Person acknowledges and agrees that the 2023 GBJV Work Program and Budget set out in Schedule 4 is included only to give effect to the Investment Commitments under clauses 2(a)(i) and 2(a)(ii) and as such, this Exemption and these Conditions do not:
  - endorse or approve the content or accuracy of the 2023 GBJV Work Program and Budget; or
  - (ii) substitute or in any way affect any other legal or regulatory requirements that the Exempt Person has in respect of the 2023 GBJV Work Program and Budget.

#### 3. Gas Supply Commitments

#### 3.1 Domestic Gas Supply Commitment

Subject to clause 3.3, the Exempt Person must not enter into an agreement to sell or supply Gas to any person (including an Affiliate) who, at the time of entering into the agreement, intends to export that Gas from Australia.

#### 3.2 Supporting warranty to be obtained from contract counterparties

To facilitate compliance with clause 3.1 and subject to 3.3, the Exempt Person must, in each agreement it enters into for the sale or supply of Gas during the Exemption Period, require each party to whom Gas is sold or supplied under that agreement to warrant that it does not intend to and will not export that Gas from Australia.

#### 3.3 Gas sold or supplied through the STTM or DWGM

- (a) For the avoidance of doubt, clauses 3.1 and 3.2 will not apply to the sale or supply of Gas through the STTM or DWGM, other than in connection with or to give effect to an agreement by the Exempt Person for the sale or supply of Gas to a person who intends to export that Gas from Australia (in liquid form).
- (b) Clause 3.1 and 3.2 will not apply to the sale or supply of Gas through the STTM or DWGM:
  - in connection with a gas hedging agreement under which a person who intends to export that Gas from Australia (in liquid form) obtains a right to Gas injected into the STTM or DWGM by the Exempt Person; and

(ii) at the time of that agreement, the Exempt Person does not know (subject to the Exempt Person having made reasonable enquiries) that the person buying the Gas intends to export that Gas from Australia (in liquid form).

#### 4. Gas Marketing Commitments

#### 4.1 Marketing Forecasts to be published

By no later than 1 month prior to the commencement of each Year during the Exemption Period, the Exempt Person must publish on its website a 5 Year forecast of the information specified in clause 4.2 (Marketing Forecast) for that Year and each of the following 4 Years (together 5 Years) (Marketing Period).

#### 4.2 Contents of Marketing Forecasts

Each Marketing Forecast published under clause 4.1 must include the following information in respect of the Exempt Person's participant share of Gas production from the Gas Reserves and Resources for the Marketing Period covered by that Marketing Forecast:

- a forecast of the volume of uncontracted Gas likely to be available from the Exempt Person for each Year of that Marketing Period; and
- (b) the volume of that uncontracted Gas that is likely to be available from the Exempt Person in respect of which the Exempt Person intends to:
  - be the subject of one or more Gas EOIs to the domestic Gas market in that Marketing Period; and
  - (ii) be supplied under one or more Gas Sale Agreements the Exempt Person intends to enter in that Marketing Period,

and must also include information referred to in section 34(6) of the Code, except that for the purposes of this clause 4.2 all references to "24 month period" in section 34(6) of the Code should be read as referring to the 5-Year Marketing Period.

#### 4.3 Exempt Person to issue Gas EOIs

- (a) Within 4 months of the commencement of the first Year of each Marketing Period, the Exempt Person must issue at least one Gas EOI meeting the requirements of the Code for Gas EOIs (except for the Gas Pricing Penalty Provisions the subject of this Exemption) in respect of the Marketing Period:
  - (i) for specified volumes of uncontracted Gas available for supply and sale from the Exempt Person to Customers on a firm basis; and
  - (ii) in respect of which the Exempt Person proposes to enter into Gas Sale Agreements with Customers for a period of at least 12 months.
- (b) As soon as reasonably practicable following the completion of each Gas EOI process for each Gas EOI issued under clause 4.3(a), the Exempt Person must publish at least one updated forecast of the uncontracted Gas that it has available for sale or supply to Customers on a firm basis for the remainder of the Marketing Period referred to in clause 4.3(a).

#### 4.4 Gas that is not sold under a Gas EOI issued under these Conditions

(a) Any volume of uncontracted Gas which:

- (i) is the subject of a Gas EOI issued under these Conditions; and
- (ii) remains uncontracted in respect of a Year for which it was made available for supply or sale to Customers under that Gas EOI.

must, as soon as reasonably practicable (and in any case within 24 months) following the completion of that Gas EOI process be offered for supply by the Exempt Person through:

- (iii) another Gas EOI meeting the requirements of the Code (except for the Gas Pricing Penalty Provisions the subject of this Exemption) for Gas EOIs for a period of at least 12 months;
- (iv) a Gas EOI meeting the requirements of the Code (except for the Gas Pricing Penalty Provisions the subject of this Exemption) for Gas EOIs for a period of less than 12 months;
- (v) the DWGM or STTM; or
- (vi) any other method, subject to complying with the Code,

provided that, subject to clause 3.3, such sale or supply must not be in connection with or to effect (or give effect to) an agreement for the sale or supply of Gas to a person who intends to export that Gas from Australia.

(b) If any Gas referred to in clause 4.4(i)-(ii) is not offered for supply by the Exempt Person in accordance with clause 4.4(a)(iii)-(vi) within the 24-month period referred to in clause 4.4(a), the Exempt Person must provide reasons for the delay in a Report provided to the Commission under clause 5.1 before expiry of the relevant 24 month period.

#### 4.5 Application of this clause

For the avoidance of doubt (and with the exception of the Gas Pricing Penalty Provisions the subject of this Exemption):

- (a) the obligations of the Exempt Person under this clause 4 are in addition to the Exempt Person's obligations under the Code and are not intended to affect or limit the operation of the Code; and
- (b) without limiting clause 4.5(a), the provisions of the Code in respect of Gas EOIs, Gas initial offers, Gas final offers and agreements for supply of regulated Gas apply to all Gas EOIs and Gas Sale Agreements referred to in this clause 4.

#### 5. Reporting to the Commission

#### 5.1 Regular 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), the Exempt Person will demonstrate its compliance with these Conditions by providing the information in paragraphs (a), and (e) to (j) (inclusive) to the Commission as soon as practicable after the end of each consecutive period of 3 months (with the first such period commencing on the Exemption Decision Date and each such period referred to below as a **Reporting Period**) and procuring the GBJV Operator and KUJV Operator (as applicable) to provide the information in paragraphs (b) to (d) (inclusive) as soon as practicable at the end of each Reporting Period:

- (a) (for the first Reporting Period only) confirmation that the Exempt Person has complied with its investment commitments under clauses 2(a)(i) and 2(a)(ii), with supporting evidence sufficient to demonstrate such compliance;
- (b) a progress report in respect of each of the Projects comprising:
  - (i) key Project related activities undertaken in the Reporting Period;
  - (ii) expenditure incurred during the Reporting Period in relation to such key Project activities;
  - (iii) a status summary for each Project indicating:
    - A. key Project activities undertaken since the commencement of the Exemption Period, including any material changes in Project scope;
    - B. key Project activities still to be undertaken or achieved, with updated target dates for starting and completing, or achieving, each of them; and
    - a forecast of expected production volumes of Gas (in PJ) for each of the remaining calendar years specified in Schedule 3;
- (c) confirmation of whether, during the Reporting Period, for each of the Kipper 1B Reserves and Turrum Phase 3 Resources, there has been any reclassification in respect of the level of certainty associated with their recoverable production volumes. For example, any change in classification from contingent resources or prospective resources to possible, probable and proved reserves (as applicable);
- (d) the actual volume of Gas produced (in PJ) in respect of all GBJV Reserves and KUJV Reserves during the Reporting Period and, if updated, a forecast of all Gas expected to be produced from all Gas Reserves and Resources for that calendar year and for each of the remaining calendar years of the Exemption Period;
- (e) the actual volume of Gas (in PJ) supplied by the Exempt Person to all persons during the Reporting Period, together with evidence that the warranty required under clause 3.2 has been included in each gas supply agreement in respect of which the Exempt Person is the supplier;
- a copy of each Marketing Forecast published in accordance with clauses 4.1 and 4.2 during the Reporting Period;
- (g) a copy of each Gas EOI issued in accordance with clauses 4.3 and 4.4 during the Reporting Period;
- (h) the following information in respect of all Gas Sale Agreements entered into during the Reporting Period:
  - (i) the total volume of all Gas contracted under those agreements;
  - (ii) the total number of those agreements;
  - (iii) the total number of Customer counterparties to those agreements; and
  - (iv) a statement as to whether or not each of those agreements contains a warranty substantially in accordance with clause 3.2;
- (i) any volumes of Gas sold through the DWGM or an STTM, for the purposes of meeting the Exempt Person's obligations under clause 4.4, during the Reporting Period; and

(j) any information required to be provided under clause 4.4(b).

#### 5.2 Other reporting

The Exempt Person must notify the Commission as soon as reasonably practicable if the Exempt Person becomes aware that it has, or is likely to, be in breach of any Conditions under this Exemption.

#### 6. Definitions and Interpretation

#### 6.1 Definitions

In this Schedule, unless the context requires otherwise:

Affiliate has the meaning given to it in the Code.

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

**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.

**Conditions** means the conditions imposed on the Exempt Person by the Minster in accordance with the Code and which are set out in this Schedule and in any other Schedules attached to this Exemption.

**Customer** means a person who acquires or contracts to acquire any Gas supplied or to be supplied by the Exempt Person and who:

- (a) as at the time of that acquisition or that contract 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 the Exempt Person.

**DWGM** means a declared wholesale gas market (within the meaning of the National Gas Law).

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

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

**Exemption Application** means the Exempt Person's application dated 13 September 2023, in respect of which this Exemption has been granted.

**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.

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

Gas means regulated gas as defined in the Code.

Gas EOI means gas EOI as defined in the Code.

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

Gas Reserves and Resources means the Gas Reserves and Resources described in item 1.1 of the Particulars.

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

Gas Trading Exchange has the meaning given to that term in the Code.

**GBJV** means the unincorporated Gippsland Basin Joint Venture between Woodside Energy (Bass Strait) Pty Ltd (**Woodside**) and Esso Australia Resources Pty Ltd (**Esso**) in relation to the development of and production of Gas from the GBJV Reserves and in which Woodside has a 50% non-operating participation interest and Esso has a 50% operating participation interest.

GBJV Operator means Esso Australia Resources Pty Ltd.

GBJV Reserves has the meaning given to that term in item 1.1(a) of the Particulars.

**Kipper 1B Project** means the proposed further development by the KUJV of the Kipper 1B Reserves for the production of Gas.

Kipper 1B Reserves has the meaning given to that term in item 1.1(c) of the Particulars.

**KUJV** means the unincorporated Kipper Unit Joint Venture between Woodside Energy (Bass Strait) Pty Ltd (**Woodside**), Esso Australia Resources Pty Ltd (**Esso**) and Mitsui E&P Australia Pty Ltd (**Mitsui**) in relation to the development of and production of Gas from the KUJV Reserves and in which Woodside has a 32.5% non-operating participation interest, Esso has a 32.5% operating participation interest and Mitsui has a 35% non-operating participation interest.

KUJV Operator means Esso Australia Resources Pty Ltd.

**KUJV** Reserves has the meaning given to that term in item 1.1(b) of the Particulars.

Marketing Forecast has the meaning given to that term in clause 4.1 of Schedule 2.

Marketing Period has the meaning given to that term in clause 4.1 of Schedule 2.

**Minister** means the Energy Minister, as defined under the Code, or any person to whom the Energy Minister has delegated the exercise of the Energy Minister's powers and functions in respect of conditional Ministerial Exemptions issued under the Code in accordance with section 77 of the Code.

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

**Petroleum Tenement** means any licence, lease, authority or permit issued under any Australian Commonwealth, State or Territory legislation entitling its holder to explore for, prospect for, lease, extract and/or produce petroleum or Gas in any form.

Project means each of the Kipper 1B Project and Turrum Phase 3 Project.

Start Date has the meaning given to that term in item 4 of Schedule 1.

**STTM** means a short term trading market (within the meaning of the National Gas Law).

**Turrum Phase 3 Project** means the proposed further development by the GBJV of the Turrum Phase 3 Resources for the production of Gas. **Turrum Phase 3 Resources** has the meaning given to that term in item 1.1(d) of the Particulars.

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

#### 6.2 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.

#### 6.3 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, reenacted 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;
- a clause, is a reference to a clause of this Schedule;
- 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;
- a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- 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 Production Volume estimates for each Project

As noted in item 1.1 of the Particulars, the estimated production volumes forecast to be produced from each of the following Gas reserves in each calendar year is set out in the table below (**Production Forecasts**).

The Exempt Person acknowledges that:

- subject to the rest of this Schedule 3, the Production Forecasts are intended to contribute to the production, supply and availability of Gas to meet domestic demand on the east coast of Australia:
- the Exempt Person's actual performance against the Production Forecasts will be a relevant consideration in a review of the operation of the Code pursuant to section 76 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
- noting potential commercial sensitivities, the Energy Department will work together with the Exempt Person to determine how the details of the Exempt Person's performance against the Production Forecasts will be made publicly available.

The Exempt Person notes that the Production Forecasts may be impacted by a number of factors, including:

- approval of annual work plans and associated budgets by the relevant GBJV and KUJV participants;
- reaching final investment decision on each Project, which is subject to the inherent uncertainty in geologic, engineering, operational and market factors that are beyond the control of the Exempt Person; and
- obtaining all necessary regulatory approvals in respect of the Projects.

Source	Production Volume (PJ) for CY 2026	Production Volume (PJ) for CY 2027	Production Volume (PJ) for CY 2028	Production Volume (PJ) for CY 2029	Production Volume (PJ) for CY 2030	Production Volume (PJ) for CY 2031	Production Volume (PJ) for CY 2032	Production Volume (PJ) for CY 2033
Kipper 1B								
Reserves								
Turrum Phase Resources								
2								
Turrum Phase Resources								
Resources								
Total								
Total								
(PJ gross								

## Schedule 4 2023 GBJV Work Program and Budget

#### 2023 GBJV Work Program and Budget Databook

The 2023 GBJV Work Program and Budget includes operating and capital expenditure as outlined in the attachment **Annexure A**. The associated work is to be completed throughout 2023.

Operating Expense enables continued operation of the facilities that currently produce Gas from the Gas Reserves and Resources.

Capital Expense includes categories of works that support ongoing and future operation of facilities that currently produce Gas from the Gas Reserves and Resources. The development drilling line item specifically reflects preparatory work for the potential development of Turrum Phase 3 Resources.

### Annexure A - 2023 Gippsland Basin Joint Venture Work Program and Budget







