

AUSTRALIAN COMPETITION AND CONSUMER COMMISSION

Competition and Consumer (Gas Market Emergency Price) Order 2022 (Cth)

Variation to the Price Cap Exemption Granted on 3 May 2023

Pursuant to subsection 22(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 vary the Exemption granted to Shell Energy Australia Pty Ltd (the **Exempted Party**) on 3 May 2023 (the **Exemption**) from subsection(s) 8(1), 8(2) and 8(3) of the Order.

The variation to the Exemption is in force during the period from 26 July 2023 and ceases to be in force at the end of 23 December 2023.

The ACCC has formed the view that it is appropriate to vary the Exemption based on the Exempted Party's current circumstances. 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 further varied or revoked under s 22(1) of the Order.

A material change in circumstance would include, but is not limited to:

- A material change in the Exempted Party's trading activity in the Wallumbilla and Moomba Gas Supply Hubs, Brisbane, Sydney and Adelaide Short Term Trading Markets, and Victorian Declared Wholesale Gas Market (the **Trading Markets**), and/or the Exempted Party acquiring material volumes of gas from the Trading Markets.
- The Exempted Party acquiring or entering into any agreement to acquire any interest in any regulated gas producer, or otherwise becoming in any way concerned in the production of regulated gas from any facility.

Where used, terms defined in the Order have the same meaning as in the Order.

The Exemption is subject to the following conditions:

1.0 Notification

- 1.1 The Exempted Party must notify the ACCC in writing of any material change to its circumstances, or material changes to information specified in the Exempted Party's application or Additional information Response within 10 business days of the change.

2.0 Gas agreements and trades

- 2.1 The Exempted Party must not enter into any new arrangements, however described, including transaction notices, that facilitate supply of gas to the Exempted Party by:
 - 2.1.1 any Shell Upstream gas production companies or any wholly-owned Shell regulated gas producers
 - 2.1.2 Walloons or any affiliates of Walloons; or
 - 2.1.3 Arrow Energy or its subsidiaries.
- 2.2 The Exempted Party must maintain AEMO-administered trading restrictions that prevent it from being matched with Walloons through the Wallumbilla or Moomba Gas Supply Hubs.

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.

- 2.3 The Exempted Party must not coordinate its purchases of regulated gas through the Wallumbilla and Moomba Gas Supply Hubs, Brisbane, Sydney and Adelaide Short Term Trading Markets, and Victorian Declared Wholesale Gas Market (the **Trading Markets**) with Walloons or its affiliates or Arrow Energy or its subsidiaries.
- 2.4 The Exempted Party must not enter into any agreements in the Wallumbilla or Moomba Gas Supply Hubs that have the purpose of facilitating supply to the Exempted Party by Walloons or any affiliate of Walloons.
- 2.5 The Exempted Party must not enter into any agreements or arrangements, however described, that relate to the price for the purchase or sale of natural gas from the Trading Markets with:
- 2.5.1 any Shell Upstream gas production companies or any wholly-owned Shell regulated gas producers
 - 2.5.2 Walloons or any affiliates of Walloons excluding any agreements or arrangements with Shell Energy Retail Pty Ltd or Powershop Australia Pty Ltd; or
 - 2.5.3 Arrow Energy or any affiliate of Arrow Energy.

3.0 Provision of information to monitor compliance with condition 2

- 3.1 The Exempted Party must report to the ACCC the volume and price of any gas to be supplied by the Exempted Party under any gas supply agreement that the Exempted Party enters into during the period in which this Exemption is in force for supply of gas of greater than or equal to 0.5 petajoules (PJ) per annum, and where any part of the supply is within the period in which this Exemption is in force, within 10 business days of entering into the agreement.
- 3.2 The Exempted Party must, within 10 business days of the request, provide any information requested by the ACCC in relation to:
- 3.2.1 the volume of regulated gas supplied by the Exempted Party during the term of this exemption; and
 - 3.2.2 the persons to whom and the terms on which such gas was supplied; and/or
 - 3.2.3 any matter which the ACCC considers might give rise to a material change in circumstances.
- 3.3 The Exempted Party must provide, by the fifth business day of each month, the following information for all trades in the Trading Markets:
- 3.3.1 the name of the Trading Market the trade was facilitated through;
 - 3.3.2 the price paid, per gigajoule, for the contracted gas amount;
 - 3.3.3 the volume of regulated gas, in gigajoule(s), traded by the Exempted Party.

4.0 Compliance with directions issued pursuant to section 91AF of the National Gas Law

- 4.1 In the event that the Exempted Party is required to acquire regulated gas from a person identified in paragraph 2.1 above to comply with a written direction issued by the Australian Energy Market Operator (the **AEMO**) pursuant to section 91AF(1) of the National Gas Law² (an **East Coast Gas System Direction**):

² *National Gas (South Australia) Act 2008 (SA) Schedule.*

- 4.1.1 Conditions 2.1 to 2.5 of this Exemption do not apply to the extent necessary to enable the Exempted Party to comply with the East Coast Gas System Direction; and
 - 4.1.2 any trade, arrangement or agreement entered into by the Exempted Party in compliance or purported compliance with the East Coast Gas System Direction must comply with subsection(s) 8(1), 8(2) and 8(3) of the Order, subject to the exceptions in sections 11-16 of the Order.
- 4.2 The Exempted Party must:
- 4.2.1 promptly notify the ACCC where the Exempted Party is required by an East Coast Gas System Direction to enter into a trade or agreement for the supply of any volume of gas during the period in which this Exemption is in force, or where any part of the supply of gas is to occur within the period in which this Exemption is in force; and
 - 4.2.2 report to the ACCC the volume and price of the gas supplied or to be supplied under that agreement, within 10 business days of receiving that direction by the AEMO.

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, as required by subsection 22(1), and further information received from the Exempted Party.

Dated 26 July 2023