



Competition and Consumer (Gas Market Code) (Subsection 33(3), 34(3), 34(7) and 35(3)) Determination 2023

The Australian Competition and Consumer Commission makes the following determination.

Dated:

Gina Cass-Gottlieb
Chair
Australian Competition and Consumer Commission

Australian Competition and Consumer Commission

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Part 1—Preliminary

1 Name

This instrument is the *Competition and Consumer (Gas Market Code) (Subsections 33(3), 34(3), 34(7) and 35(3)) Determination 2023*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under subsections 33(3), 34(3), 34(7), 35(3) and 35(7) of the *Competition and Consumer (Gas Market Code) Regulations 2023*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Code, including the following:

- (a) buyer gas final offer;
- (b) covered supplier;
- (c) gas EOI;
- (d) gas final offer;
- (e) gas initial offer;
- (f) regulated gas.

In this instrument:

ABN means an Australian Business Number.

ACN means an Australian Company Number.

Australian market supply condition means an Australian market supply condition for land under the *Petroleum and Gas (Production and Safety) Act 2004* (Qld).

annual contract quantity means the quantity of regulated gas to be supplied under an agreement in a calendar year.

basin means a large geological area holding a thick accumulation of sedimentary rock.

base quarter means the initial quarter used in a base year to escalate the price using Consumer Price Index.

base year means the initial year used to escalate the price using Consumer Price Index.

buyer means a person supplied with, or who may be supplied with, regulated gas from a covered supplier.

Note: A buyer could include gas retailers, commercial and industrial users, and gas powered generators.

buyer gas initial offer: an offer of basic terms forming the basis of negotiations for the purposes of entering into a binding agreement for the person making the offer to be supplied with regulated gas is a **buyer gas initial offer** if acceptance of the offer does not result in the entering into of such an agreement (but may lead to negotiations for the purposes of entering into such an agreement).

Note: A buyer gas initial offer is an offer made by the person who will be supplied with regulated gas. A gas initial offer (within the meaning of the Code) is an offer made by a person who will be supplying regulated gas.

buyer gas offer means:

- (a) a buyer gas initial offer; or
- (b) a buyer gas final offer.

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

commodity means a raw material or product.

commodity linked slope means the percentage of a commodity-based price indicator which is used to calculate the price of regulated gas.

Consumer Price Index means a measure of changes, over time, in retail prices of a constant basket of goods and services representative of consumption expenditure by resident households in Australian metropolitan areas.

currency terms means the medium of exchange of value expressed as the monetary denomination of a country.

fixed price component means the part of a pricing formula that remains constant.

joule means a unit of energy in the International System of Unit.

load factor means the ratio of the annual aggregate of the maximum daily quantity and the annual contract quantity.

measurement period means the month used to calculate the price of the commodity link in relation to the month of delivery of regulated gas.

petajoule means 1 million billion joules.

pricing formula means the calculation used to determine the price payable for a given period.

pricing indication means a written indication of pricing from a covered supplier to a buyer.

quarter means a period of 3 months beginning on 1 July, 1 October, 1 January or 1 April.

supplier gas offer means:

- (a) a gas initial offer; or
- (b) a gas final offer.

take or pay multiplier means the percentage of regulated gas that must be paid for by a buyer, irrespective of whether or not the buyer actually takes delivery of the regulated gas.

Part 2—Details to be kept in records by supplier

5 Purpose of this Part

This Part is made for the purposes of paragraph 33(2)(m) of the Code.

6 Details relating to agreements to supply regulated gas

- (1) If a covered supplier enters into an agreement to supply regulated gas, the supplier must make a record of each of the following details about the agreement:
 - (a) the document identifier of the agreement;
 - (b) whether the agreement is:
 - (i) a gas supply agreement;
 - (ii) a variation of a gas supply agreement, of the kind described in section 8(2) of the Code;
 - (iii) a master gas supply agreement; or
 - (iv) a transaction notice;
 - (c) the title of the agreement;
 - (d) the name of the buyer who is supplied the regulated gas under the agreement, including (if applicable) either or both the buyer's ABN and ACN;
 - (e) whether the agreement is subject to an exemption under the Code and, if so, which exemption applies;
 - (f) if the agreement is a variation of a kind described in section 8(2) of the Code, and whether the variation determines the price payable;
 - (g) the delivery points of the regulated gas to be supplied to under the agreement;
 - (h) which of the following regions is the most applicable delivery region where the regulated gas is being supplied to:
 - (i) Queensland;
 - (ii) Queensland—Carpentaria Gas Pipeline;
 - (iii) New South Wales;
 - (iv) Victoria;
 - (v) Northern Territory;
 - (vi) South Australia;
 - (vii) East Coast, if supply is to more than one of the abovementioned regions;
 - (i) the date on which the term of the agreement commenced;
 - (j) the start date of supply under the agreement;
 - (k) the end date of supply under the agreement;
 - (l) either:
 - (i) the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years for which the supplier has a contract quantity in place; or

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- (ii) if no annual contract quantity is specified in the agreement—the quantity that is to be supplied, expressed in the measurement of petajoules, for all the first and all subsequent years of the agreement;
 - (m) the basin that the supplier expects, at the time of entering into the agreement, to be the predominant source of regulated gas supplied under the agreement;
 - (n) whether an Australian market supply condition applies to the land from which any of the regulated gas to be supplied under the agreement is produced from, including the volume of regulated gas that is subject to that condition.

Note: For the purposes of paragraph (a), a document identifier can include the title of the document or a document number given to it by a computer program.

- (2) A covered supplier is to keep a record of a detail mentioned in subsection (1) for a period of 6 years starting after the agreement was entered into.

7 Details relating to agreements to supply regulated gas for 12 months or more

- (1) If a covered supplier enters into an agreement to supply regulated gas over a period of 12 months or more, the supplier must make a record of each of the following details about the agreement:
 - (a) if the price payable under the agreement is calculated using the Consumer Price Index, whether the formula is calculated using a base year, including:
 - (i) the base quarter;
 - (ii) the base year;
 - (iii) frequency with which the price payable is escalated by the Consumer Price Index;
 - (b) if the agreement has a fixed price component (excluding GST), the following:
 - (i) the price for the fixed price component for each year of the agreement;
 - (ii) the currency terms of the fixed price component;
 - (iii) the pricing formula;
 - (c) if the agreement has a commodity linked slope component, the following:
 - (i) the commodity linked slope for each year of the agreement;
 - (ii) the relevant commodity;
 - (iii) the measurement period;
 - (iv) the pricing formula;
 - (d) if the agreement has a take or pay multiplier, the take or pay multiplier for each year of the agreement, including:
 - (i) if the take or pay multiplier varies—the variation; or
 - (ii) if there is an average of the take or pay multiplier—that average;
 - (e) if the agreement has a load factor, the load factor for the first and all subsequent years the load factor is active.
- (2) A covered supplier is to keep a record of a detail mentioned in subsection (1) for a period of 6 years starting after the agreement was entered into.

8 Details in relation to variations of agreements to supply regulated gas

- (1) If a covered supplier enters into a variation of an agreement to supply regulated gas, the supplier must make a record of each of the following details about the variation:
- (a) the document identifier of the variation;
 - (b) the title of the variation;
 - (c) the name of the buyer who is supplied the regulated gas under the variation, including (if applicable) either or both the buyer's ABN and ACN;
 - (d) whether the variation is subject to an exemption under the Code and, if so, which exemption applies;
 - (e) the document identifier of the original agreement that is being varied;
 - (f) the delivery points of the regulated gas to be supplied to under the variation;
 - (g) which of the following regions is the most applicable delivery region where the regulated gas is being supplied to:
 - (i) Queensland;
 - (ii) Queensland—Carpentaria Gas Pipeline;
 - (iii) New South Wales;
 - (iv) Victoria;
 - (v) Northern Territory;
 - (vi) South Australia;
 - (vii) East Coast, if supply is to more than one of the abovementioned regions;
 - (h) the date on which the term of the variation commenced;
 - (i) the start date of supply under the variation;
 - (j) the end date of supply under the variation;
 - (k) either:
 - (i) the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years for which the supplier has a contract quantity in place; or
 - (ii) if no annual contract quantity is specified in the variation—the quantity that is to be supplied, expressed in the measurement of petajoules, for all the first and all subsequent years of the variation;
 - (l) the basin that the supplier expects, at the time of entering into the agreement, to be the predominant source of regulated gas supplied under the variation;
 - (m) whether an Australian market supply condition applies to the land from which any of the regulated gas to be supplied under the variation is produced from, including the volume of regulated gas that is subject to that condition.

Note: For the purposes of paragraph (a) and (e), a document identifier can include the title of the document or a document number given to it by a computer program.

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- (2) A covered supplier is to keep a record of a detail mentioned in subsection (1) for a period of 6 years starting after the variation was entered into.

9 Details relating to variations to agreements to supply regulated gas for 12 months or more

- (1) If a covered supplier enters into a variation to an agreement to supply regulated gas over a period of 12 months or more, the supplier must make a record of each of the following details about the variation:
- (a) if the price payable under the variation is calculated using the Consumer Price Index, whether the formula is calculated using a base year, including:
 - (i) the base quarter;
 - (ii) the base year;
 - (iii) frequency with which the price payable is escalated by the Consumer Price Index;
 - (b) if the variation has a fixed price component (excluding GST), the following:
 - (i) the price for the fixed price component for each year of the variation;
 - (ii) the currency terms of the fixed price component;
 - (iii) the pricing formula;
 - (c) if the variation has a commodity linked slope component, the following:
 - (i) the commodity linked slope for each year of the variation;
 - (ii) the relevant commodity;
 - (iii) the measurement period;
 - (iv) the pricing formula;
 - (d) if the variation has a take or pay multiplier, the take or pay multiplier for each year of the variation, including:
 - (i) if the take or pay multiplier varies—the variation; or
 - (ii) if there is an average of the take or pay multiplier—that average;
 - (e) if the variation has a load factor, the load factor for the first and all subsequent years the load factor is active.

- (2) A covered supplier is to keep a record of a detail mentioned in subsection (1) for a period of 6 years starting after the variation was entered into.

10 Details in relation to certain offers

- (1) A covered supplier is to make a record of each of the details mentioned in subsections (2) and (3) about an offer if:
- (a) the offer is either:
 - (i) a supplier gas offer issued by the supplier; or
 - (ii) a buyer gas offer given to the supplier; and
 - (b) the offer under which the buyer is to be supplied regulated gas for a period of 12 months or more.
- (2) The following details about the offer:

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- (a) whether the offer is one of the following:
 - (i) a gas initial offer;
 - (ii) a gas final offer;
 - (iii) a buyer gas initial offer;
 - (iv) a buyer gas final offer;
 - (b) the date the offer was issued by the supplier to a buyer or given to the supplier by a buyer (whichever is applicable);
 - (c) the date that a response was given by (whichever is applicable):
 - (i) the buyer to the offer issued by the supplier; or
 - (ii) the supplier to the offer issued by the buyer;
 - (d) whether the offer is:
 - (i) accepted; or
 - (ii) rejected; or
 - (iii) under consideration; or
 - (iv) superseded;
 - (e) the document identifier for the offer;
 - (f) the name of the buyer, including (if applicable) either or both the buyer's ABN and ACN;
 - (g) if the offer was the result of a gas EOI, state the document identifier of the gas EOI;
 - (h) whether the offer, or the agreement proposed by the offer, is subject to an exemption under the Code and, if so, which exemption applies;
 - (i) whether the offer proceeded to an agreement to supply regulated gas and, if not, the reasons why not;
 - (j) if the offer proceeded to an agreement to supply regulated gas, the document identifier of the agreement.

Note: For the purposes of paragraphs (e) and (g), a document identifier can include the title of the document or a document number given to it by a computer program.

- (3) Details about the following matters to the extent the offer deals with those matters:
 - (a) the delivery points of the regulated gas to be supplied to in accordance with the offer;
 - (b) which of the following regions is the most applicable delivery region where the regulated gas is intended to be supplied in accordance with the offer:
 - (i) Queensland;
 - (ii) Queensland—Carpentaria Gas Pipeline;
 - (iii) New South Wales;
 - (iv) Victoria;
 - (v) Northern Territory;
 - (vi) South Australia;
 - (vii) East Coast, if supply is to more than one of the abovementioned regions;
 - (c) the proposed start date of supply;
 - (d) the proposed end date of supply;

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- (e) either:
 - (i) the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years of the agreement proposed by the offer; or
 - (ii) if no annual contract quantity is specified in the offer—the quantity that is offered to be supplied, expressed in the measurement of petajoules, for all the first and all subsequent years of the agreement proposed by the offer;
 - (f) if the agreement proposed by the offer has a take or pay multiplier—the take or pay multiplier;
 - (g) if the agreement proposed by the offer has a load factor—the load factor;
 - (h) whether the agreement proposed by the offer has banking rights;
 - (i) if the price payable under the agreement proposed by the offer is calculated using the Consumer Price Index, whether the formula is calculated using a base year, including:
 - (i) the base quarter; and
 - (ii) the base year;
 - (j) if the agreement proposed by the offer has a fixed price component (excluding GST), the following:
 - (i) the price for the fixed price component, for each year;
 - (ii) the currency terms of the fixed price component;
 - (iii) the pricing formula.
 - (k) if the agreement proposed by the offer has a commodity linked slope component, the following:
 - (i) the commodity linked slope for each year;
 - (ii) the relevant commodity;
 - (iii) the measurement period;
 - (iv) the pricing formula.
- (4) If the offer proceeded to an agreement to supply regulated gas, the supplier must keep a record of a detail mentioned in subsections (2) and (3) for a period of 6 years starting after the agreement was entered into.
- (5) Otherwise, the supplier must keep a record of such a detail for a period of 6 years starting after the record was made.

11 Details in relation to gas EOIs

- (1) If a covered supplier issues a gas EOI, the supplier is to make a record of each of the details mentioned in subsections (2) and (3) about the gas EOI.
- (2) The following details about the gas EOI:
 - (a) the document identifier for the gas EOI;
 - (b) the date the gas EOI was issued;
 - (c) whether the gas EOI is subject to an exemption under the Code and, if so, the exemption that applies;
 - (d) the number of persons to whom the gas EOI was issued;

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- (e) the number of persons who responded stating an interest in further negotiations relating to the gas EOI;
 - (f) the names of the persons to whom the gas EOI was issued, including (if applicable) either or both of the ABN and ACN of each of those persons;
 - (g) the URL of the website that the gas EOI was published on and the date on which the gas EOI was so published;
 - (h) the date the gas EOI opened;
 - (i) the date the gas EOI closed;
 - (j) whether a public holiday occurred during the period the gas EOI was open;
 - (k) whether the gas EOI proceeded to a gas initial offer and, if not, the reasons why not;
 - (l) if the gas EOI did proceed to a gas initial offer, the document identifier of the gas initial offer.

Note: For the purposes of paragraphs (a) and (n), a document identifier can include the title of the document or a document number given to it by a computer program.

- (3) Details about the following matters to the extent the gas EOI deals with those matters:
 - (a) the intended start date of supply of gas in accordance with the gas EOI;
 - (b) the intended end date of supply of gas in accordance with the gas EOI;
 - (c) the delivery points of the regulated gas to be supplied to in accordance with the gas EOI;
 - (d) which of the following regions is the most applicable delivery region where the regulated gas is intended to be supplied in accordance with the gas EOI:
 - (i) Queensland;
 - (ii) Queensland—Carpentaria Gas Pipeline;
 - (iii) New South Wales;
 - (iv) Victoria;
 - (v) Northern Territory;
 - (vi) South Australia;
 - (vii) East Coast, if supply is to more than one of the abovementioned regions;
 - (e) either:
 - (i) the annual contract quantity, expressed in the measurement of petajoules, for the first and all subsequent years of the agreement proposed by the gas EOI; or
 - (ii) if no annual contract quantity is specified in the gas EOI—the quantity of regulated gas that is proposed to be supplied, expressed in the measurement of petajoules, for all current and future years;
 - (f) if the agreement proposed by the gas EOI has a take or pay multiplier—the take or pay multiplier;
 - (g) if the agreement proposed by the gas EOI has a load factor—the load factor;
 - (h) if the agreement proposed by the gas EOI has banking rights.

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- (4) If the gas EOI proceeded to an agreement to supply regulated gas, the supplier is to keep a record of a detail mentioned in subsections (2) and (3) for a period of 6 years starting after the agreement was entered into.
 - (5) Otherwise, the supplier is to keep a record of such a detail for a period of 6 years starting after the record was made.

Part 3—Information to be published by supplier

12 Timing of information to be published by supplier

For the purposes of paragraph 34(2)(b) of the Code, the following days are specified:

- (a) 1 April in each year;
- (b) 1 October in each year.

13 Information to be published by supplier

For the purposes of paragraph 34(6)(d) of the Code, the statement mentioned in subsection 34(1) of the Code is to set out the volume of uncontracted regulated gas that is likely to be available to the covered supplier in each quarter that occurs in a 24 month period starting on a day specified by section 12 of this instrument.

Note: *Quarter* is defined in section 4 of this instrument.

Part 4—Information to be reported by supplier

14 Timing of information to be reported by supplier

For the purposes of paragraph 35(2)(b) of the Code, the following days are specified:

- (a) 1 April in each year;
- (b) 1 October in each year.