



AUSTRALIAN
COMPETITION
& CONSUMER
COMMISSION

Decision under sections 19 and 20 of the *Competition and Consumer (Gas Market Emergency Price) Order 2022* on the application by AGL Gas Storage Pty Ltd for an exemption from the ‘price cap’ under s 18.

22 March 2023

Decision

1. The ACCC is satisfied that it is appropriate to grant an exemption to AGL Gas Storage Pty Ltd (**AGL Gas Storage**) pursuant to subsection 19(1) and to impose conditions on that exemption under subsection 20(2) of the Order.
2. The exemption is granted in relation to the application of the price cap under each of subsections 8(1), (2) and (3) of the Order.
3. The exemption is granted for the period of the Order, unless varied or revoked.
4. The ACCC has formed the view that is appropriate to grant this exemption based on Exempted Party’s current circumstances as set out in the documents and materials provided to the ACCC. 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 varied or revoked under s22(1) of the Order.
5. The conditions are as follows:

Condition 1 – Notification

- a. AGL Gas Storage must notify the ACCC in writing within 10 business days of entering into any agreement for the sale of all or part of its interest in the Silver Springs Facility.
- b. AGL Gas Storage must notify the ACCC in writing of any material changes to its circumstances or material changes to information specified in AGL Gas Storage’s application or further information response within 10 business days of the change.

Condition 2 – Reporting and provision of information

- a. AGL Gas Storage must report to the ACCC, within 10 business days of entering the agreement, the volume and price of any gas supplied under a gas supply agreement that AGL Gas Storage enters into during the period of the Order for supply of gas of greater than or equal to 0.5 petajoules (PJ) per annum.
- b. AGL Gas Storage must, within 10 business days of the request, provide information requested by the ACCC in relation to:
 - i. the volume of regulated gas supplied by AGL Gas Storage during the term of this exemption;
 - ii. the persons to whom and the terms on which such gas was supplied;

- iii. The volume of gas produced by or acquired from the Silver Springs Facility; and/or
 - iv. any matter which the ACCC considers might give rise to a material change in circumstances
- 6. 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 and AGL Gas Storage's application and further information response and additional information response provided, including in relation to the volume of gas produced by AGL Gas Storage Pty Ltd.

Statement of reasons

Summary

The ACCC is satisfied that:

- **AGL Gas Storage is a regulated gas producer within the meaning of the Order, producing small volumes of regulated gas.**
- **The primary business of AGL Gas Storage is attributable to oil and gas production and processing.**
- **AGL Gas Storage's revenue interests from the Silver Springs facility, shared with AGL Upstream Gas (MOS) Pty Ltd and AGL Energy Limited, is forecast to be just under ██████████ in 2023. This equates to 0.08% of AGL Energy Limited's total gas turnover.**
- **Granting an exemption to AGL Gas Storage would not undermine the object of Part IVBB of the *Competition and Consumer Act 2010*, rather it would enable the AGL Group to continue its normal operations in the concentrated retail market.**
- **Granting an exemption to AGL Gas Storage is appropriate and would not have any material adverse impact on gas prices for customers in Australia.**

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.¹
2. The *Competition and Consumer (Gas Market Emergency Price) Order 2022* (**'Order'**), made under 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 agreements, at a price above \$12 per gigajoule (GJ) (known as the **'price cap'**) for a period of 12 months.
3. Under subsection 19(1) of the Order, the Australian Competition and Consumer Commission (**'ACCC'**)² 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.

¹ CCA s 53.

² 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 per the *Competition and Consumer (Gas Market Emergency Price) Delegations 2022*.

The application

4. By application dated 12 January 2023, pursuant to subsection 18(1) of the Order, AGL Energy Limited applied for an exemption from the application of the price cap as contained in subsections 8(1), (2) and (3) of the Order on behalf of AGL Gas Storage (the **application**).³
5. AGL Gas Storage provided a response to the ACCC's request for further information on 15 February 2023 (**further information response**).
6. AGL Gas Storage provided a response to the ACCC's further request for additional information on 10 March 2023 (**additional information response**).

Factual background

7. AGL Gas Storage is involved in oil and gas production and processing and submits that it does not meet the exception requirements, including those contained in section 12 (exception for gas storage) and section 16 (exception for retailers) of the Order.⁴
8. AGL Gas Storage submits that it is a regulated gas producer within the meaning of the Order. AGL Gas Storage is part of a larger group of entities, including AGL Energy Limited and the entities it controlled as at the time of the application (the **AGL Group**).⁵
9. AGL Gas Storage is wholly-owned by AGL Upstream Gas (MOS) Pty Ltd which is in turn wholly-owned by the parent company, AGL Energy Limited.⁶ AGL Energy Limited and its wholly-owned Australian resident subsidiaries formed a tax-consolidated group of which AGL Energy Limited is the ultimate holding company.
10. AGL Upstream (MOS) Pty Ltd, AGL Energy Limited and AGL Upstream Investments Pty Ltd have also applied for exemptions under section 19 of the Order.
11. AGL Gas Storage, together with AGL Energy Limited and AGL Upstream Gas (MOS) Pty Ltd, own 100% of the Silver Springs facility.
12. AGL Gas Storage has regulated gas production interests through ownership of the Silver Springs facility through the holding of a combination of authority to prospects and production licences. AGL Gas Storage submits that the Silver Springs facility is its only regulated gas production interest.

Consideration

13. The ACCC is satisfied that it is appropriate to grant a conditional exemption to AGL Gas Storage. 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 and AGL Gas Storage's application and further information response provided.
14. The ACCC's reasons for the decision to grant the exemption, by reference to each of the matters in paragraph 19(2) of the Order, are set out below.

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

15. AGL Gas Storage submits that it is a regulated gas producer within the meaning of the Order⁷ and is part of the AGL Group⁸. The ACCC accepts that AGL Gas Storage carries

³ The ACCC considers AGL Gas Storage Pty Ltd to be the formal Applicant under section 18 of the Order for the purposes of assessing the exemption application made by AGL Energy Limited on behalf of AGL Gas Storage Pty Ltd.

⁴ AGL Gas Storage, further information response, response to Q4

⁵ See Attachment A to the Applicant's application.

⁶ See Attachment A to the Applicant's application.

⁷ AGL (MOS), application, response to Part A Q1. Attachment A to the Applicant's application.

⁸ See Attachment A to the Applicant's application.

on a business of producing gas and so is a regulated gas producer within the meaning of section 5 of the Order.

16. AGL Gas Storage submits that its only production interests are through its ownership of the Silver Springs facility. AGL Gas Storage has indicated that the gas produced by the Silver Springs facility is reported on a combined asset basis and is not measured or reported on an individual tenement holder basis.
17. The only gas production facility in which AGL Gas Storage has an interest is Silver Springs.⁹ The Silver Springs facility is used primarily for the injection and storage of gas¹⁰ and is forecast to produce approximately [REDACTED] of gas in 2023. This is less than 0.3%¹¹ as a proportion of the total forecast east coast demand in 2023 (571 PJ)¹².
18. The ACCC accepts that a low volume of regulated gas is produced by AGL Gas Storage through its production interests in the Silver Springs facility.

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

19. AGL Gas Storage submits that the AGL Group prepares its financial statements on a consolidated basis across AGL entities and that it does not prepare separate financial statements for individual AGL entities.
20. AGL Gas Storage submits that the Silver Springs facility is forecast to generate just under [REDACTED] in revenue attributable to gas production in the 2023 calendar year. The 2023 revenue forecast is shared with AGL Upstream Gas (MOS) Pty Ltd and AGL Energy Limited as other parties of the joint venture. The forecast revenue generated by Silver Springs equates to around 0.08% of AGL Energy Limited's total gas turnover in the 2023 calendar year. The AGL Group does not currently have the forecast total annual turnover of AGL Energy Limited for calendar year 2023.
21. The primary business of AGL Gas Storage is attributable to oil and gas production and processing, with regulated gas production equating to 38% of the Silver Springs total gas revenue.¹³
22. AGL Gas Storage submits that the Silver Springs facility generated [REDACTED] in revenue in the 2022 calendar year. As a proportion of total business operations, gas production equates to around 0.02% of AGL Energy Limited's total annual turnover for the 2022 calendar year.¹⁴
23. The ACCC accepts that regulated gas production is the primary business of AGL Gas Storage.

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

24. AGL Gas Storage's application has not identified any material changes in AGL Gas Storage's circumstances since the Order commenced.

⁹ A joint venture between AGL Energy Limited, AGL Gas Storage Pty Ltd and AGL Upstream Gas (MOS) Pty Ltd.

¹⁰ AGL, <https://www.agl.com.au/about-agl/how-we-source-energy/silver-springs-gas-storage>.

¹¹ ACCC calculation of the sum of gas produced internally by AGL Gas Storage's gas forecast production as a proportion of total forecast east coast gas demand.

¹² See ACCC, Gas Inquiry 2017-25 interim report, January 2023, pp 11.

¹³ See AGL Gas Storage, further information response, Attachment.

¹⁴ AGL Energy, additional information response, response to Q4c.

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

25. The object of Part IVBB of the CCA is to enhance the welfare of Australians through regulation of the Australian gas market, including limiting the increase in gas prices.
26. The ACCC is of the view that, due to the low volume of gas produced by AGL Gas Storage, granting an exemption would not undermine the object of Part IVBB of the CCA.
27. Further, granting the exemption will not have any direct impact on prices for end-users as the prices at which the AGL group supplies regulated gas to end-users will continue to reflect prevailing market prices at the retail level. However, not granting an exemption, should it lead to AGL not competing as effectively in the retail market, could lead to higher retail prices which could undermine the object of Part IVBB.

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

28. The ACCC has considered the corporate structure and commercial arrangements relating to AGL Gas Storage and the AGL Group in reaching this decision, noting that the effect of granting this exemption is that certain affiliates of AGL Gas Storage will not be bound by the price cap in the Order in the circumstances set out in section 17 of the Order.
29. The ACCC is satisfied that AGL Gas Storage and its affiliates do not have the potential to supply significant amounts of gas into the wholesale domestic market. Accordingly, the ACCC is satisfied that granting the exemption will not have any material impact on prices for wholesale customers.
30. The AGL group is a significant supplier of gas at the retail level. Prices at the retail level will continue to reflect prevailing market prices if the exemption is granted.
31. In summary, the ACCC considers that granting an exemption to AGL Gas Storage will not have any material adverse impact on gas prices for customers in Australia. It will conversely support the AGL Group's operations in the retail market by assisting AGL Group to manage supply effectively.

Section 20(2) – Conditions imposed on price cap exemption

32. The ACCC considers it appropriate to grant a conditional exemption to AGL Gas Storage, having regard to the matters in subsection 19(2) of the Order, based on the information available at this time.

Condition 1 – Notification

33. Material changes in AGL Gas Storage's circumstances could impact the appropriateness of it holding an exemption. As such, the ACCC is satisfied that it is appropriate that the exemption include a condition requiring AGL Gas Storage to notify the ACCC if there have been any material changes to its circumstances or information provided to the ACCC in support of its application for an exemption.
34. Without limiting the scope of the condition to notify the ACCC of any material changes in circumstances, the ACCC considers that entering into any agreement for the sale of all or part of its interest in the Silver Springs facility would constitute a material change in circumstances, and requires AGL Gas Storage to inform the ACCC of any such agreement within the time specified in the condition.

Condition 2 – Reporting and provision of information

35. The ACCC has formed the view that it is appropriate to grant this exemption, based, in part, on its understanding that AGL Gas Storage will not supply regulated gas direct to end-user customers outside the AGL group.
36. The ACCC is satisfied that it is appropriate that the exemption be subject to a condition that, if AGL Gas Storage decides to commence supply of regulated gas to domestic customers, the ACCC considers it appropriate that AGL Gas Storage report to the ACCC any gas supply agreements resulting in direct supply of regulated gas produced by AGL Gas Storage directly to customers.
37. The ACCC also is also satisfied that it is appropriate to include a condition requiring AGL Gas Storage to provide information requested by the ACCC, in the event it makes such a request, in relation to this exemption. As the exemption will only operate for a limited time, it is important that any information sought by the ACCC be provided promptly.
38. The exemption provides AGL Gas Storage with the ability to supply its regulated gas above the price cap and the ACCC may review AGL Gas Storage's compliance with its exemption and conditions. The ACCC is satisfied that it is appropriate to require AGL Gas Storage to provide information to the ACCC in relation to its compliance with the conditions imposed on the exemption and any material changes of circumstance if such information is requested by the ACCC.
39. The ACCC is satisfied that these conditions are appropriate having regard to section 19(2) of the Order.