



Australian Government

Department of Climate Change, Energy,
the Environment and Water

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(s)**) an exemption from each Gas Pricing Penalty Provision specified in Schedule 1, subject to the Conditions specified in Schedule 2 attached to this document. The reasons for this decision are attached.

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.

A handwritten signature in blue ink that reads 'Chris Bowen'.

CHRIS BOWEN
Minister for Climate Change and Energy

Schedule 1 Exemption Details

| | |
|--|---|
| 1. Exempt Person(s) | Each of the following entities: <ul style="list-style-type: none">• Santos NA (19-12) Pty Ltd (ACN 064 963 346);• Santos NA Emet Pty Ltd (ACN 050 134 908);• Santos NA Timor Sea Pty Ltd (ACN 053 698 794);• Santos NA Bayu Undan Pty Ltd (ACN 097 445 942);• Santos NA (19-13) Pty Ltd (ACN 099 996 782); and• Santos (JPDA 91-12) Pty Ltd (ACN 056 937 752). |
| 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 April 2024 |
| 4. Exemption Period | The period during which the Exemption is in force: <ul style="list-style-type: none">(a) commences on 15 April 2024 (Start Date); and(b) ends on the date that is 12 months after the Start Date (End Date). |

Schedule 2 Conditions

This Exemption is subject to the Conditions set out in this Schedule.

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 | For the purposes of these Conditions: Gas Reserves means all Gas reserves in respect of all Petroleum Tenements available to the BUJV (whether developed, partly developed, undeveloped, contingent or prospective) held in part or in whole by an Exempt Person (whether legally or beneficially) at the Exemption Decision Date. |
| 1.2 Committed Supply Volume | For the purposes of clause 4.1, the Committed Supply Volume for the Exemption Period is 100% of the total volume of Gas produced, in aggregate, from the Gas Reserves during the Exemption Period. |

2. Application of the Exemption

The Exemption applies to the Exempt Persons only in respect of Gas supplied by them from the Gas Reserves and subject to the rest of these Conditions.

3. Application of the Conditions to more than one Exempt Person

If this Exemption applies to more than one Exempt Person, then these Conditions apply to each of them jointly and separately.

4. Gas Supply Commitment

4.1 Committed Supply Volume

The Exempt Persons must supply the Committed Supply Volume to the Customer during the Exemption Period, in accordance with the rest of this clause 4.

4.2 Supply for the purposes of these Conditions

For the purposes of these Conditions, the Exempt Persons will be deemed to have satisfied the supply commitment under clause 4.1 if the Exempt Persons enter into a deed of amendment to the Existing Gas Sale Agreement with the Customer, substantially in the form annexed to these Conditions in Attachment 1 (**GSA Deed of Amendment**), subject to clause 4.4.

4.3 Domestic Gas Supply Commitment

During the Exemption Period, the Exempt Persons must not enter into an agreement to sell or supply Gas from the Gas Reserves to any person (including an Affiliate) who, at the time of entering into the agreement, intends to export that Gas from Australia.

4.4 Supporting warranty to be obtained from contract counterparties

To facilitate compliance with clause 4.3, the Exempt Persons must, in the Existing Gas Sale Agreement (as amended by the GSA Deed of Amendment) (or in a separate collateral agreement), require the Customer to warrant that it shall not export the Gas supplied to it under the Existing Gas Sale Agreement (as amended by the GSA Deed of Amendment) (nor sell or supply any of that Gas) to a person referred to in clause 4.3.

5. Reporting to the Commission

5.1 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 Persons will provide the following information 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 as a **Reporting Period**):

- (a) (for the first Reporting Period only):
 - (i) a copy of the Existing Gas Sale Agreement (as amended by the GSA Deed of Amendment) and any collateral agreement entered into in accordance with clause 4;
 - (ii) confirmation of the total volume of Gas contracted to be supplied to the Customer under the Existing Gas Sale Agreement (as amended by the GSA Deed of Amendment); and
 - (iii) a statement as to whether or not the Existing Gas Sale Agreement (as amended by the GSA Deed of Amendment) (or a separate collateral agreement) contains a warranty substantially in accordance with clause 4.4; and
- (b) the volume of Gas which was, during the Reporting Period:
 - (i) produced (in PJ), in aggregate, from the Gas Reserves; and
 - (ii) supplied to the Customer.

5.2 The Exempt Persons acknowledge that any information they provide to the Commission under this clause 5 may be disclosed by the Commission in accordance with section 42 of the Code.

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.

BUJV means the Bayu-Undan joint venture between the Exempt Persons (Santos), BU12 Australia Pty Ltd and BU13 Australia Pty Ltd (SK E&S), INPEX Sahul, Ltd. (INPEX), Eni JPDA 03-13 Limited (Eni) and Tokyo Timor Sea Resources Pty Ltd (TTSR) in relation to the development of and production of Gas from Gas Reserves and in which Santos has a 43.4% operating interest and the remaining interest is held by SK E&S (25%), INPEX (11.4%), Eni (11%) and TTSR (9.2%).

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.

Committed Supply Volume has the meaning given to that term in item 1.2 of the Particulars.

Conditions means the conditions imposed on the Exempt Persons by the Minister in accordance with the Code and which are set out in this Schedule 2.

Customer means the Northern Territory's Power and Water Corporation (ABN 15 947 352 360).

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

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

Exemption Decision Date has the meaning given to that term in item 3 of Schedule 1.

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.

Existing Gas Sale Agreement means an agreement dated 29 August 2023 between (among others) the Exempt Persons and the Customer relating to the sale or supply of Gas to the Customer from the Gas Reserves, as amended on 17 October 2023.

Gas means regulated gas as defined in the Code.

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

Gas Reserves has the meaning given to that term in item 1.1 of the Particulars.

GSA Deed of Amendment has the meaning given to that term in clause 4.2 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, production sharing contract or permit that entitles its holder to explore for, prospect for, lease, extract and/or produce petroleum or Gas in any form.

Reporting Period has the meaning given in clause 5 of Schedule 2.

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

6.2 Words and headings

In these Conditions, unless the context requires otherwise:

- (a) words denoting the singular include the plural and vice versa;

- (a) the word 'includes' in any form is not a word of limitation;
- (b) where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (c) headings and sub-headings are for ease of reference only and do not affect the interpretation of these Conditions; and
- (d) 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, re-enacted 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;
- (f) a clause, is a reference to a clause of this Schedule;
- (g) 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;
- (i) a person includes a firm, partnership, joint venture, association, corporation or other body corporate;
- (j) 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.

Attachment 1 GSA Deed of Amendment



HERBERT
SMITH
FREEHILLS

Deed

Gas Sale Agreement

Amending Deed

DRAFT 21 MARCH 2024



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Amending Deed

Date ►

Between the parties

Santos NA (19-12) **Santos NA (19-12) Pty Ltd**
ABN 73 064 963 346 of Santos Centre, 60 Flinders Street, Adelaide,
South Australia, 5000
(Santos NA (19-12))

Eni **Eni JPDA 03-13 Limited**
ABN 14 054 729 930 of Ebury Bridge House, 10 Ebury Bridge Road,
London, United Kingdom SW1 W8PZ
(Eni)

Santos NA Emet **Santos NA Emet Pty Ltd**
ABN 49 050 134 908 of Santos Centre, 60 Flinders Street, Adelaide,
South Australia, 5000
(Santos NA Emet)

Inpex **INPEX Sahul, Ltd.**
ABN 28 059 844 781 of Akasaka Biz Tower 5-3-1, Akasaka, Minato-
ku, Tokyo 107-6332, Japan
(Inpex)

Santos NA Timor Sea **Santos NA Timor Sea Pty Ltd**
ABN 85 053 698 794 of Santos Centre, 60 Flinders Street, Adelaide,
South Australia, 5000
(Santos NA Timor Sea)

Santos NA Bayu-Undan **Santos NA Bayu-Undan Pty Ltd**
ABN 64 097 445 942 of Santos Centre, 60 Flinders Street, Adelaide,
South Australia, 5000
(Santos NA Bayu-Undan)



| | |
|-------------------|---|
| TTSR | Tokyo Timor Sea Resources Pty Ltd ABN 39 000 751 593 of Level 36, QV1 Building, 250 St Georges Terrace, Perth, Western Australia 6000 (TTSR) |
| Santos NA (19-13) | Santos NA (19-13) Pty Ltd ABN 77 099 996 782 of Santos Centre, 60 Flinders Street, Adelaide, South Australia, 5000 (Santos NA (19-13)) |
| Santos | Santos (JPDA 91-12) Pty Ltd ABN 44 056 937 752 of Santos Centre, 60 Flinders Street, Adelaide, South Australia, 5000 (Santos) |
| BU12 Australia | BU12 Australia Pty Ltd ABN 84 644 038 433 of Level 27, 152-158 St Georges Terrace, Perth, Western Australia 6000 (BU12 Australia) |
| BU13 Australia | BU13 Australia Pty Ltd ABN 31 644 038 648 of Level 27, 152-158 St Georges Terrace, Perth, Western Australia 6000 (BU13 Australia) |
| | <i>Santos NA (19-12), Eni, Santos NA Emet, Inpex, Santos NA Timor Sea, Santos NA Bayu-Undan, TTSR, Santos NA (19-13), Santos, BU12 Australia and BU13 Australia are each a 'Seller', and are together the 'Sellers'.</i> |
| Buyer | Power and Water Corporation ABN 15 947 352 360 of Level 2, Mitchell Centre, 55-59 Mitchell Street, Darwin, Northern Territory (Buyer) |



Recitals

- 1 The parties entered into a Gas Sale Agreement on 29 August 2023, as amended on 13 October 2023 (**Principal Agreement**).
- 2 Clause 20.3 of the Principal Agreement provides that a variation of any term of the Principal Agreement must be in writing and executed by the parties.
- 3 The parties want to amend the Principal Agreement in the manner set out in this deed.

This deed witnesses as follows:



1 Definitions, interpretation and deed components

1.1 Definitions

In this deed, a word or phrase defined in the Principal Agreement has the same meaning as in the Principal Agreement.

1.2 Interpretation

Clause 20.9 of the Principal Agreement applies to this deed.

1.3 Deed components

This deed includes any schedule.

2 Condition precedent

2.1 Condition Precedent

The amendments under clause 3 of this deed are subject to the following conditions and do not become binding unless the following conditions are fulfilled (or waived):

(a) **Sellers Condition Precedent**

- (1) The Sellers have received written approval from ANP with respect to the amendments under clause 3 of this deed.

(b) **Buyer Condition Precedent**

- (1) The Buyer obtaining written approval from:
- (A) the Buyer's board of directors; and
 - (B) the Buyer's Shareholding Minister under the *Government Owned Corporations Act 2001* (NT),
- to it entering into this deed.

2.2 Effect of non-fulfilment

If the conditions referred to in clause 2.1 are not fulfilled (or waived under clause 2.3) on or before [insert] (**Cut-off Date**), then this deed is at an end as to its future operation except for the enforcement of any right or claim which has arisen before this deed comes to an end. The Cut-off Date may only be extended by mutual agreement of all parties.

2.3 Fulfilment by waiver

The conditions referred to in clause 2.1 are waived if, and only if, each Seller (in the case of clause 2.1(a)) or the Buyer (in the case of clause 2.1(b)) gives notice of waiver of the conditions to the other parties.



2.4 Obligations to satisfy condition

Each Seller and the Buyer shall use their respective reasonable endeavours to ensure that the conditions referred to in clause 2.1 are fulfilled as soon as practicable after the date of this deed and, in any event, on or before the Cut-Off Date.

2.5 Extent of obligation to fulfil condition

The obligation imposed on a party by clause 2.4 does not require that party to waive any condition under clause 2.3.

2.6 Information and consultation

Each party will keep the other party fully informed of all material communications, discussions and dealings given or received by that party in connection with an application for any consent or approval required as a condition under this deed.

2.7 Notification

Upon the Buyer or any Seller becoming aware that any consent or approval required to be obtained as a condition under this deed has been obtained or refused, that party will immediately notify the other parties.

3 Amendment to Principal Agreement

3.1 Amendment

(a) With effect on and from the date of this deed, the Principal Agreement is amended as follows:

(1) In clause 1.1 of the Principal Agreement, insert the following definitions in the appropriate alphabetical order as follows:

| | |
|-------------|--|
| ACCC | <i>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.</i> |
|-------------|--|

| | |
|------------------------|---|
| Gas Market Code | <i>Competition and Consumer (Gas Market Code) Regulations 2023 (Cth).</i> |
|------------------------|---|

| | |
|------------------------------|---|
| Ministerial Exemption | <i>the conditional Ministerial exemption that applies to the supply of gas under this Agreement granted in respect of the requirements in sections 26 and 27 of the Gas Market Code, under section 61 of the Gas Market Code.</i> |
|------------------------------|---|



Ministerial Exemption Date the start date of the exemption period under the Ministerial Exemption.

- (2) In clause 3 of the Principal Agreement, delete the entire clause 3 and replace with “3. Not used”.
- (3) After clause 4.2 of the Principal Agreement, insert the following new clause 4.3:
- “4.3 Buyer warranty - no export**
- “The Buyer warrants that it will not export any gas supplied under this Agreement, nor sell or supply any of that gas, to a person who intends to export that gas from Australia.”*
- (4) In clause 5(f) of the Principal Agreement, delete the reference to “14 days’ notice” and replace with “28 days’ notice”.
- (5) After clause 5(f) of the Principal Agreement, insert new clauses 5(g) and 5(h) as follows:
- “(g) Subject only to clause 5(h), and notwithstanding anything else in this clause 5, if the Ministerial Exemption is not received on or before [insert date] or the Ministerial Exemption Date occurs after [insert date], this Agreement will automatically terminate on [insert date], and no party will have any further liability whatsoever to the other parties under this Agreement. Such termination shall be without prejudice to any right or claim which has arisen before this Agreement is terminated.
- (h) The Sellers may by notice to the Buyer before [insert date] extend the date specified in clause 5(g) or waive the requirement for Ministerial Exemption under clause 5(g).”
- (6) In clause 8.2(b) of the Principal Agreement, delete the reference to “P = AUD\$ [redacted] /GJ” and replace with the following:
- “P =
- During the period from the Commencement Date until the Ministerial Exemption Date - AUD\$ [redacted] /GJ; or
 - On and from the Ministerial Exemption Date until the End Date - AUD\$ [redacted] /GJ.”
- (7) In clause 17.2(f) of the Principal Agreement, delete “or” at the end of that clause.
- (8) In clause 17.2(g) of the Principal Agreement, delete the “,” at the end of that clause and replace with “; or”.



- (9) After clause 17.2(g) of the Principal Agreement, insert the following new clause 17.2(h):

“(h) to any Governmental Authority (including the ACCC and the Minister for Climate Change and Energy), for the purpose of seeking and complying with the terms and conditions of a Ministerial Exemption.”

- (10) Delete Schedule 2 of the Principal Agreement, and replace with the following:

“Schedule 2 – Contract Price

The Contract Price of Available Gas delivered in each Fortnight during the Supply Period shall be:

- (a) *During the period from the Commencement Date until the Ministerial Exemption Date:*
- 1 *AUD\$ [REDACTED]/GJ in respect of Available Gas delivered up to the Contract Fortnightly Quantity; and*
 - 2 *AUD\$ [REDACTED]/GJ in respect of any Available Gas delivered in excess of the Contract Fortnightly Quantity.*
- (b) *On and from the Ministerial Exemption Date until the End Date:*
- 1 *AUD\$ [REDACTED]/GJ in respect of Available Gas delivered up to the Contract Fortnightly Quantity; and*
 - 2 *AUD\$ [REDACTED]/GJ in respect of any Available Gas delivered in excess of the Contract Fortnightly Quantity.*

There will be no indexation of the Contract Price.

The Contract Price will be calculated to 3 decimal places and the quantity of all gas which has been delivered will be rounded to the nearest GJ for the purposes of computing the Contract Price and other charges payable under this Agreement.”

- (b) The amendments to the Principal Agreement as set out in clause 3.1(a) of this deed are shown as revisions to that agreement attached in the Schedule.

3.2 Amendments not to affect validity, rights, obligations

- (a) This deed is intended only to vary the Principal Agreement on the terms set out in clause 3.1(a) of this deed, and not to terminate, discharge, rescind or replace the Principal Agreement.
- (b) The amendments to the Principal Agreement do not affect the validity or enforceability of the Principal Agreement.
- (c) Nothing in this deed:
- (1) prejudices or adversely affects any right, power, authority, discretion or remedy which arose under or in connection with the Principal Agreement before the date of this deed; or
 - (2) discharges, releases or otherwise affects any liability or obligation which arose under or in connection with the Principal Agreement before the date of this deed.



3.3 Confirmation

On and with effect from the date of this deed, each party is bound by the Principal Agreement as amended by this deed.

3.4 Acknowledgement

Each party acknowledges that this deed is issued in accordance with the Principal Agreement.

4 General

4.1 Governing law and dispute resolution

The governing law provision set forth in clause 20.6 of the Principal Agreement applies to this deed as if set out in full in this deed and as if references in that clause to 'this agreement' were to 'this deed'.

4.2 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this deed and the transactions contemplated by it.

4.3 Counterparts

- (a) This deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this deed by signing any counterpart.

4.4 Attorneys

Each of the attorneys executing this deed states that the attorney has no notice of the revocation of the power of attorney appointing that attorney.



HERBERT
SMITH
FREEHILLS

Schedule

Amendments to Principal Agreement



Signing page

Executed as a deed

Signed by

Santos NA (19-12) Pty Ltd

By its authorised representative

sign here ►

Authorised Representative

print name

Signed by

Eni JPDA 03-13 Limited

By its authorised representative

sign here ►

Authorised Representative

print name



Signed by

Santos NA Emet Pty Ltd

by its authorised representative

sign here ►

Authorised Representative

print name

Signed by

INPEX Sahul, Ltd.

by its attorney under power of attorney

sign here ►

Attorney

print name

Signed by

Santos NA Timor Sea Pty Ltd

By its authorised representative

sign here ►

Authorised Representative

print name



Signed by

Santos NA Bayu-Undan Pty Ltd

By its authorised representative

sign here ►

Authorised Representative

print name

TTSR

Signed by

Tokyo Timor Sea Resources Pty Ltd

by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

Signed by

Santos NA (19-13) Pty Ltd

By its authorised representative

sign here ►

Authorised Representative

print name



Signed by
Santos (JPDA 91-12) Pty Ltd
By its authorised representative

sign here ►

Authorised Representative

print name

BU12 Australia

Signed by
BU12 Australia Pty Ltd
by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name

BU13 Australia

Signed by
BU13 Australia Pty Ltd
by

sign here ►

Company Secretary/Director

print name

sign here ►

Director

print name



Buyer

Signed by

Power and Water Corporation

by

sign here ►

Authorised signatory

sign here ►

Authorised signatory

position

position

print name

print name
