



Price Cap Exemption Granted – Decision pursuant to section 19 of the *Competition and Consumer (Gas Market Emergency Price) Order 2022* on the application by Denison Gas (Queensland) Pty Ltd for an exemption from the Price Cap

24 May 2023

Pursuant to subsection 19(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 grant Denison Gas (Queensland) Pty Ltd (**Denison**) a price cap exemption (**the Exemption**) from subsection 8(2) of the Order.

The Exemption is in force during the period from 24 May 2023 and ceases to be in force at the end of 23 December 2023.

Statement of Reasons

Summary

The ACCC is satisfied that:

- **Denison is a regulated gas producer within the meaning of the Order, producing and on-selling small volumes of regulated gas.**
- **The primary business of Denison is attributable to gas production and exploration of gas in the east coast of Australia.**
- **Denison’s regulated gas production represented 100% of its revenue from its business operations.**
- **Granting an exemption to Denison, that is limited to Denison’s existing arrangements with an intermediary to on-sell small volumes of gas to the short-term trading markets, would not undermine the object of Part IVBB of the *Competition and Consumer Act 2010* (Cth). Rather it would allow Denison to compete on an equivalent playing field with other or larger gas producers.**
- **Granting an exemption to Denison 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 to enhance the welfare of Australians through the regulation of the Australian gas market and in particular, to limit increases in gas prices.²

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 Section 53 of the CCA.

2. The 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**') may grant an exemption,³ 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.⁴

The Application

4. By application dated 18 April 2023, pursuant to subsection 18(1) of the Order, Denison applied for an exemption from the price cap as contained in section 8 of the Order with respect to agreements for the spot sale of gas (**Trades**) entered into under an existing Master Gas Sales Agreement (**MGSA**) and a subordinate transaction notice with Strategic Gas Market Trading Pty Ltd (**SGMT**).
5. Denison provided a response to the ACCC's request for further information on 12 May 2023 (**further information response**).

Factual Background

6. Denison submits that it is a small, regulated gas producer in Queensland.^{5,6,7}
7. Denison further submits that it is currently economically inefficient for Denison to be a registered market participant in the short-term trading markets (**STTMs**)⁸ due to the significant costs it would incur to become a registered participant in the STTMs, including engaging trained trading staff that would be required for Denison to directly trade in the STTMs.
8. Denison submits that it has entered into a commercial arrangement to sell any excess gas (beyond that required to meet their contractual commitments) to an intermediary,⁹ SGMT, who then sells that gas into the STTMs.¹⁰

³ 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*.

⁴ Subsection 19(2) of the Order.

⁵ Denison, application, response to Part B Question 1.

⁶ Denison, application, response to Part B Question 2.

⁷ Denison, application, response to Part A Question 3 (d).

⁸ Denison, application, response to Part A Question 3 (d)-(e).

⁹ Denison, application, response to Part A Question 3 (f).

¹⁰ Denison, application, response to Part A Question 3 (f) and see Appendix generally.

9. On or around 3 December 2019, Denison entered into a MGSA with SGMT.¹¹ On 13 December 2022, Denison entered into a transaction notice under the MGSA with respect to future spot sales of Denison's excess gas (**DEN61 Transaction Notice**). The parties have since entered into a number of Trades pursuant to the MGSA and DEN61 Transaction Notice during the price cap period.
10. The MGSA and the DEN61 Transaction Notice are not relevant agreements for the purposes of subsection 8(2) of the Order, as they were entered into prior to the price cap period. However, a Trade entered into pursuant to those agreements is a separate subordinate agreement that incorporates the terms of the MGSA and the DEN61 Transaction Notice, and therefore subject to the operation of the Order.
11. Under section 14 of the Order, an agreement to supply gas is exempted from the Order if the agreement results directly from a transaction or a gas exchange that is a declared wholesale gas market or a STTM (within the meaning of the National Gas Law).^{12,13}
12. Denison submits that it has concerns that the wording of the exception for gas exchange transactions pursuant to section 14 of the Order does not capture Denison's spot sales due to the use of SGMT as an intermediary.¹⁴
13. Denison submits that the commencement of the Order has inadvertently compromised Denison's ability to effectively compete with larger gas producers, who have the capability and capacity to directly trade in the STTMs.¹⁵

Consideration

14. The ACCC is satisfied that it is appropriate to grant a conditional exemption to Denison. 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 the application and further information response provided.
15. 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

16. Denison submits that it is a regulated gas producer within the meaning of the Order.¹⁶ The ACCC accepts that Denison carries on a business of producing regulated gas and consequently is a regulated gas producer within the meaning of section 5 of the Order.
17. Denison is the sole entity within the Denison group of companies that sells gas as a regulated gas producer.¹⁷ Denison currently supplies 23-24TJ/day to the east coast gas market, where approximately 20TJ/day is subject to long-term firm contracts.¹⁸ Any additional gas produced is sold through STTMs via SGMT.¹⁹

¹¹ Denison, application, response to Part A Question 3 – 2(g).

¹² Section 14 of the Order.

¹³ Section 14 of the Order.

¹⁴ Denison, application, response to Part A Question 3 – 2(k).

¹⁵ Denison, application, response to Part A Question 3 – 2(l).

¹⁶ Denison, application, response to Part A Q1.

¹⁷ Denison, application, response to Part B Q1.

¹⁸ Denison, application, response to Part B Q2.

¹⁹ Denison, application, response to Part A Question 3 – (f).

18. Total regulated gas produced and sold by Denison in calendar year 2022 was 6.64 PJ and Denison submits that its regulated gas production for calendar year 2023 is expected to be 9.08 PJ.²⁰
19. Denison's expected regulated gas production for 2023 is equivalent to less than 1.6%²¹ of the total forecast east coast demand in 2023 (564 PJ).²² Denison expects that it will sell 1.63 PJ through STTMs via SGMT in 2023,²³ which represents less than 0.3% of the total forecast east coast demand in 2023.²⁴ Denison's forecast sales through the STTMs represents 0.7% of total industrial user demand in 2023.²⁵
20. The ACCC accepts that a low volume of regulated gas will be produced and supplied into the STTMs by Denison.

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

21. Denison submits all of Denison's business operations relate to the business of producing regulated gas.²⁶
22. The ACCC accepts that regulated gas production is the primary business of Denison.

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

23. Denison submitted that the only material change in its circumstances since the Order commenced was their most recent drilling programme.²⁷ The program has resulted in an increase in Denison's production of regulated gas.²⁸
24. The ACCC considers that a small increase in expected production of regulated gas is not a material change in Denison's circumstances for the purposes of assessing Denison's exemption application.

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 increases in gas prices.
26. The ACCC is of the view that, due to the low volume of gas produced by Denison, and an even lower volume of gas limited to the Trades under the existing agreement with SGMT being sold on the STTMs, granting an exemption to Denison would not undermine the object of Part IVBB of the CCA.
27. On the other hand, refusing to grant an exemption will limit Denison's revenue from gas sold on STTMS through SGMT. This could potentially reduce the amount of gas available for domestic use, if Denison were to lower their production, thereby leading to higher wholesale prices in the STTMs as supply is constrained, which could undermine the object of Part IVBB.

²⁰ Denison, application, response to Part B Q5.

²¹ ACCC calculation of the Denison's regulated gas production as a proportion of total forecast east coast gas demand sourced from AEMO March 2023 Gas Statement of Opportunities.

²² ACCC, Gas Inquiry 2017-25 interim report, January 2023, pp 11.

²³ Denison, application, response to Part B Q5.

²⁴ ACCC calculation of the sum of gas forecasted to be sold through STTMs via SGMT as an intermediary in 2023 as a proportion of total forecast east coast gas demand.

²⁵ AEMO March 2023 Gas Statement of Opportunities.

²⁶ Denison, application, response to Part B Q6.

²⁷ Denison, application, response to Part B Q2.

²⁸ Denison, application, response to Part B Q2.

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

28. The ACCC has considered Denison’s circumstances as a small producer and whether Denison, if it was a direct participant in the STTMs, would be covered by the exception in section 14 of the Order.²⁹
29. The ACCC has also considered whether Denison is disadvantaged relative to other or larger producers by the introduction of the Order (given the arrangements entered into by Denison in order to trade in the STTMs).
30. The ACCC accepts that it is economically inefficient for Denison to become a direct STTM participant during the period in which the exemption will be in effect.³⁰ The ACCC further accepts that Denison is disadvantaged relative to other or larger producers who have the in-house capability to directly trade in the STTMs.
31. The ACCC accepts that Denison’s Trades with SGMT, which are intended to facilitate trades into the STTMs, are subject to the Order as these Trades do not directly result from a transaction on a gas exchange.³¹
32. The ACCC also accepts that if it were a direct participant, Denison would be covered by the exception in section 14 of the Order.
33. The ACCC is satisfied that it is appropriate to grant an exemption to Denison, for any Trades with SGMT under the MGSA and DEN61 Transaction Notice, as it will allow Denison to continue to trade in the STTMs and will ensure that Denison is not disadvantaged relative to other or larger producers as a result of the Order.

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

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

Condition 1 – Gas supply arrangements

35. The exemption is subject to the condition that it operates only in relation to a supply of regulated gas under an agreement entered into in the price cap period between Denison and SGMT for the spot sale and purchase of gas (referred to as a ‘Trade’) on the terms set out in the MGSA entered into on or around 3 December 2019 and the transaction notice dated 13 December 2022 (with a trade number reference of ‘DEN61’) issued under the MGSA.

Condition 2 - Notification

36. Material changes in Denison’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 Denison to notify the ACCC within 10 business days if there has been any material changes in its circumstances or information provided to the ACCC in support of its application for an exemption.

²⁹ See section 14 of the Order.

³⁰ Denison, application, response to Part A Q3.

³¹ Reference to section 14 of the Order.

Condition 3 – Reporting

37. The ACCC is also satisfied that it is appropriate to include a condition requiring Denison 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.