



The Australian Gas Light
Company
ABN 95 052 167 405

10 September 2004

→ from Tower
Mr. J Cox
Acting Chairman
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Dear Jim,

Submission on the DRAFT Allen Consulting Group Report on Assessment Terms & Conditions

This submission is in response to the draft report prepared by the Allen Consulting Group (ACG) entitled "Revisions to AGLGN's Access Arrangement – Assessment of Terms and Conditions".

Although ACG raise several matters for consideration by the Tribunal, AGLGN believes it is significant that ACG conclude that:

"the Allen Consulting Group does not consider there to be any particular elements or provisions that in themselves could be regarded as materially contrary to effective third party access to the AGLGN network."

AGLGN has considered comments by ACG and the public submissions and is prepared to amend many clauses in its Access Arrangement (AA) where those amendments will clarify the proposed Terms and Conditions without unduly restricting the commercial operations of the network over the revised Regulatory Period. Under these proposed amendments AGLGN agree to address eleven of the nineteen aspects of the terms and conditions that ACG consider unreasonable.

AGLGN however believe that some of the key recommendations of the AGC Report are based on a misunderstanding of:

- Section 3.6 of the Gas Code and the relationship between AGLGN's Access Arrangement and AGLGN's Transportation Agreement.
- the relationship between the AA and the Gas Market Company Business Rules
- the pricing structure in the AA and the role that overrun charges play in ensuring the integrity of that structure.

The relationship between the AA and AGLGN's Transportation Agreement.

The terms and conditions in AGLGN's AA are designed to meet section 3.6 of the Gas Code. These terms and conditions are supported by standard Transportation Agreements



that are available on AGL's website, but which may vary periodically as circumstances change.

It was not the intention of the Gas Code that detailed terms and conditions be included in, or be attached to **an** AA. In addition, the inclusion of such detail in **an** AA would generate practical problems due to the resulting inflexibility of the resulting terms and conditions throughout regulatory periods. Once incorporated in an AA, the terms and conditions for a reference service can only be varied through a very formal and time consuming review process.

The Gas Code was developed on the principles established in the Inter-governmental Competition Principles Agreement. Section 6 of the Inter-governmental Competition Principles Agreement provides that wherever possible third party access to a service provided by means of a facility should be on the basis of terms and conditions agreed between the owner of the facility and the person seeking access. This substantiates AGLGN's view that it is not the intention of the Gas Code to remove all aspects of negotiation between users and service providers in respect of access to reference services.

Section 6 of the Gas Code itself provides further evidence of this principle. Clause 6.13 clearly contemplates that there can be a dispute about a reference service and clause 6.27 clearly provides that an arbitrator can determine the contractual terms even when the dispute relates to a reference service. This is inconsistent with the concept that clause 3.6 mandates a standard binding services agreement for reference services. (i.e. if clause 3.6 required a standard agreement, there would have been no reason for 6.27 to give the arbitrator power to make a decision on the terms of a contract for a reference service.)

Evidence that this interpretation of the Code is shared by the ACCC is that the ACCC does not require detailed terms and conditions from service providers for gas transmission assets and yet is clearly satisfied that the AA's comply with the Code. The ACCC drafted its own AA for the Moomba Sydney Pipeline and did not include detailed terms and conditions.

The ACCC in Carpentaria Gas Pipeline Final Decision supported this position with the resulting terms and conditions similar in nature to that now proposed by AGLGN. During the review of that AA Submission the CGPJV's stated that if the alternative approach of having fully detailed terms and conditions in the AA were adopted :

“any variation to the standard Access Agreement with **an** individual user would constitute a ‘negotiated service’, rather than a reference service, even though fundamentally it would be the same as the reference service. CGPJV considers that this would be a ‘perverse outcome.’”

Requiring a Service Provider to include detailed terms and conditions in an AA, which a Regulator would then approve, is tantamount to the Regulator assuming the necessary legal, technical, operational, financial and business acumen to make detailed decisions concerning operation and management of the network. The removal from the Service

Provider of the responsibility for the management of the operational and legal issues associated with these conditions should not be done without also removing the operational and legal risks that result from the consequences of these decisions.

The relationship the between the AA and the Gas Market Company business rules

The Gas Market Company's (GMC's) role is to regulate arrangements between retail market participants and it has been constituted with the objective "*to develop and operate cost effective and efficient retail market arrangements, which are fair and equitable, to facilitate competition in the gas retail market.*"

Retail market arrangements in NSW and the ACT are built on top of the open access environment delivered in the AAs of Country Energy, ActewAGL, and AGLGN. Under this model the AAs specify the arrangements between regulated networks and Users, while the GRMBR primarily regulate arrangements between retailers. In this context the AA and the GRMBR necessarily deal with similar subject matter but from different and complementary perspectives.

Network Operators as members of the GMC have obligations under the GRMBR, however these obligations are structured to facilitate GMC's regulation of arrangements between Retail members rather than to regulate the terms of access to regulated infrastructure between Network and Retail members.

The GRMBR themselves recognize the underpinning role of network access arrangements. Specifically clause 3.3 of the GRMBR states that the rules only apply to the extent that they are consistent with relevant access arrangements.

ACG's view that the AGLGN's Terms and Conditions are in conflict with or unnecessarily duplicate the GRMBR is misinformed. It is worth noting that this view has not been put forward by any User or by the GMC itself.

The GMC provides a vehicle for retailers and network operators to satisfy their license obligations to be members of an approved retail market scheme, however it has no jurisdiction or constitutional mandate in relation to regulating the terms and conditions of access to networks regulated under the Gas Code. AGLGN is of the view that its AA must deal with all key terms and conditions relevant to access to its network, and that it would be inappropriate to rely the GRMBR.

A letter from the GMC confirming the nature of these governance arrangements is attached.

The pricing structure in the AA and the role that overrun charges play in ensuring the integrity of that structure

The pricing structure in the AA is designed so that the revenue derived from the various services will cover the efficient costs of providing those services. If revenue derived from

services related to non-tariff delivery points is to cover the costs of those services, then it is essential that Users contract for the appropriate level of usage of those services.

If there were no mechanism to ensure that Users pay for an appropriate amount of capacity, then the pricing structure would not meet the requirements of section 8.1(a) of the Gas Code as it would not provide AGLGN with “the opportunity to earn a stream of revenue that recovers the efficient cost of delivering the Reference Service”

Overrun charges are not a penalty imposed on Users but the essential mechanism used to encourage Users of Services related to Non-Tariff Delivery Points to contract for the appropriate level of services. Overrun charges also correct a shortfall where a User has failed to contract for an appropriate level of service under a capacity reservation service.

If AGLGN’s ability to impose overrun charges was taken away this would require a complete redesign of AGLGN’s services and pricing structure. It is highly likely that any replacement pricing structure would be less rational, equitable and predictable than that proposed in AGLGN’s proposed AA.

Aspects and elements of the terms and conditions that ACG consider unreasonable

As stated previously AGLGN agree to address eleven of the nineteen aspects and terms and conditions that ACG consider unreasonable. These aspects and elements are summarised below:

- **failure of the terms and conditions to address several matters that are commonly included in service agreement for gas distribution services, and many common to commercial contracts**

As set out above AGLGN does not concur with ACG’s interpretation of this issue.

- **failure of the terms and conditions to deal adequately with the interactions between the terms and conditions for distribution services and the GRMBR**

ACG’s comments on this issue appear to be based on a misunderstanding of the GRMBR in New South Wales and does not accept that clause 7 of schedule 2A is inconsistent with the Code.

- **absence of explicit qualitative and quantitative limits on the level and type of security that AGLGN may seek from users**

While the AA does not contain limits on the level and type of security, it does require AGLGN to act reasonably and is subject to the dispute resolution procedures contained in the Code.

AGLGN believe that the proposed terms in relation to security:

- protect both the service providers and users reasonable business interests;

- are a continuation of the current arrangements that have not proven an obstacle for users in the past;
 - avoid the problems associated with prescriptive security provisions adopted in some other jurisdictions which do not allow the service provider to assess all available information;
 - lessen the likelihood of significant revenue losses that are not allowed for in any aspect of the allowed cost of service equation.
- determination of liability to overrun charges where a delivery point is shared between users and service agreements

AGLGN does not agree with this recommendation which appears to be based on a misunderstanding of clauses 20 and 27 of the AA.

- absence of qualitative and quantitative limits on the extent to which AGLGN may pass on to users the costs incurred in undertaking works required to enable a new receipt point to be established and integrated into the AGLGN Network

AGLGN agree to include a reasonableness test on costs to be recovered from users that would work in conjunction with existing appeal provisions.

- absence of qualitative and quantitative limits on the extent to which AGLGN may require users to make alterations to receipt points or to pass on to users the cost of alterations to receipt points

AGLGN agree to include a reasonableness test on costs to be recovered from users that would work in conjunction with existing appeals provisions.

- inadequate specification of terms and conditions for accounts and payment

AGLGN maintain that existing provisions are clear and address all material principles. Additional details are rightly addressed in transportation agreements.

- absence of qualitative and quantitative limits on the ability of AGLGN to impose charges on a user in respect of a user request to stop or suspend the delivery of gas at a delivery point.

AGLGN accept the ACG recommendation to limit clause 49 to reasonable costs.

- provision for AGLGN to impose restrictions upon the terms and conditions under which users may enter into contracts or arrangements in which AGLGN is not a party

AGLGN does not share the view of ACG that this arrangement is unreasonable. Users have a direct contractual relationship with third parties that is not available to

AGLGN and this provision is required to protect AGLGN's legitimate and reasonable business interests.

- excessively broad liability of users in respect of gas swaps

AGLGN accepts the ACG recommendation to amend this provision.

- ambiguities in requirements for the specification of MDQ and MHQ in service agreements

AGLGN maintain that clause 5 of Schedule 2B is not ambiguous.

- Irrelevant inclusion of the terms and conditions set out in Schedule 2B as part of the terms and conditions of the Meter Data Service and Gas Swap Service

AGLGN agrees that this reference is not necessary.

- an unreasonably broad provision for limitation of AGLGN's potential liability in relation to load shedding

AGLGN agrees to amend this provision.

- the absence of provision for removal of delivery points from a service agreement for the Local Network Multiple Delivery Point Service and Trunk Multiple Delivery Point Service

AGLGN agrees to amend this provision, although it does not agree that the existing provision is contrary to the operation of a competitive gas market.

- limits on the time period within which an additional delivery points may be added to a service agreement for the Local Network Multiple Delivery Point Service and the Trunk Multiple Delivery Point Service

The effect of the limitation on the addition of delivery points is to qualify a user's right to add a delivery point to a Multiple Delivery Point Service Agreement to "at any time" within the term of the proposed AA.

As ACG observe, the Multiple Delivery Point Service has an indefinite term. AGLGN maintain that it is reasonable to limit the addition of delivery points to periods within the term of the AA and that it is also reasonable for this limitation to be set out in the AA for clarity.

- ambiguity as to whether for the Trunk Capacity Reservation Service, Trunk Managed Capacity Service and Trunk Throughput Service, gas may be transported to one or more multiple delivery points under a single service agreement

AGLGN agrees to clarify this provision.

- inconsistency between provisions of Schedule 2B and terms and conditions specific to each reference service in relation to specification of MDQ and MHQ

AGLGN agrees to clarify this provision.

- ambiguity as to whether the MDQ under a service agreement for Capacity Reservation Services includes capacity obtained as a short term capacity

AGLGN agrees to clarify this provision.

- ambiguity as to whether additional capacity for Capacity Reservation Services is obtained under an existing service agreement or under a further service agreement relating specifically to the additional capacity

AGLGN agrees to clarify this provision.

Yours faithfully

A handwritten signature in black ink, appearing to read 'D A Pringle', with a stylized flourish at the end.

D A Pringle
Manager Regulatory Affairs, Gas Networks

GAS MARKET COMPANY



30 August 2004

Mr Alf Rapisarda
Commercial Manager
AGL Energy Networks
111 Pacific Highway
North Sydney NSW 2060

Dear Mr Rapisarda

Thank you for the opportunity of reviewing the Draft Report on the Assessment of Terms and Conditions in the Revisions to AGLGN's Access Arrangement by The Allens Consulting Group (Allens).

While Gas Market Company supports Allen's conclusion that "conflict between the GRMBRs and the terms and conditions of distribution services should be avoided", we believe the GRMBRs already deal with this issue by effectively requiring the GRMBRs to be consistent with the Access Arrangement (rule 3.3 of the GRMBRs). The retail market participants agreed in establishing the GRMBRs that, should conflict exist between the GRMBRs and the Access Arrangement, the terms of the Access Arrangement would apply to the extent of any inconsistency. This provision recognized the fact that the terms of access to the distribution networks are governed under the National Third Party Access Code for Natural Gas Pipelines, and are approved by an independent regulator after extensive consultation. The GRMBRs are determined by the retailers (with some specific rights accorded to network operators in relation to safety and security of the network and cost recovery), and it would be inappropriate for retailers to be able to impose conditions on the network operator relating to transportation of gas which were inconsistent with those approved by the regulator. Accordingly, any rule governing the interaction between retailers and network operators in the competitive retail market should be framed in a consistent manner with those approved terms.


We believe that the GRMBRs were originally drafted in a consistent and complementary manner to the Access Arrangements existing at the time, and that all changes have remained consistent. Further, the GRMBRs do not deal in the main with Business to Business matters, the market participants preferring to deal with such matters contractually through the transportation agreements.

In looking at the specific areas in which Allens raised concerns, we note that Gas Market Company does not at this time govern meter data agents, and that this remains a covered service under the Access Arrangements, so that the terms and conditions of this service need to be set out in that Access Arrangement. We also note that the Gas Balancing Committee which is presently considering the gas balancing arrangements in NSW and the ACT are pursuing options other than an OBA, and therefore we would seek the flexibility in the Access Arrangement which is contemplated in the AGLGN terms to introduce a different balancing scheme. However, unless change is introduced, the current arrangements under the Access Arrangement need to be maintained.

Allens have recommended that IPART seek amendment of clause **48** of Schedule 2A to remove provision for AGLGN to suspend the delivery of gas to a delivery point if AGLGN is requested by the manager of an approved scheme to suspend the delivery of gas to the delivery point. Market participants through the Business Rules Industry Committee are presently finalizing rule changes to address the issue of settlement of imbalances on a user's exit from the market. Those rules will, if accepted, introduce a provision to allow the market administrator to request network operators to suspend delivery of gas in certain circumstances. The circumstances in which such a request would be made will be limited and set out in detail in the new rule, if adopted. Therefore, we would request that the provision for AGLGN to suspend delivery to gas if requested by the manager of an approved scheme to suspend the delivery of gas to the delivery point be retained.

Should you or IPART wish to discuss any of these matters further, please contact me.

Yours sincerely,

A handwritten signature in black ink that reads "Patricia McKenzie". The signature is written in a cursive, flowing style.

Patricia McKenzie