

6 February 2003

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Australian Competition and Consumer Commission  
Level 7, Angel Place, 123 Pitt Street  
SYDNEY NSW 2000

**Tender Approval Request  
for the Supply of Natural Gas to the Central Ranges Region of NSW**

We refer to the call for submissions in relation to the Tender Approval Request for the Supply of Natural Gas to the Central Ranges Region of NSW.

Between 1998 and 2000, Agility, AGL Gas Networks and the Australian Pipeline Trust worked intensively to develop a project to bring gas to the region. At the time, neither AGL nor APT were able to finally commit to the project as projected loads were not considered to be sufficient to make the project economically viable, and the project was put on hold. The project was developed to the stage where a licence has been issued by the NSW Government under the *Pipelines Act 1967*.

Agility and its clients AGL and the Australian Pipeline Trust nevertheless maintain an interest in the project, given the potential additional gas customers that have been identified by the CRNG&TAI Inc, and may wish to submit a tender.

On this basis, Agility makes the following submissions on the TAR, in its own right and also on behalf of AGL and The Australian Pipeline Trust.

**PART 1 - GENERAL COMMENTS**

**1.1 APT Involvement**

The TAR states in several places that APT will not be proceeding with involvement in the project. This is not correct. APT has confirmed its interest in updating and reviewing the economics of the project and may subsequently wish to submit a response to the tender.

**1.2 Exclusion of Retail Tariffs from the TAR Process**

The tender fails to recognise a key factor in the successful structure of the project, namely, the delivered price to the end customer. The absolute, certain and sustainable attainment of this price is the most critical element to the project.

In particular, volumes to be transported will depend on end user pricing, and pipeline tariffs will vary depending on the volume transported. It will be very difficult to determine loads without the involvement or commitment of a retailer to the project and the TAR process. A related concern is that without IPART approval the allowable retail price for small users is unknown.

The total delivered price must bring together the field price of gas, relevant haulage costs through transmission pipelines, distribution tariffs from necessary reticulation systems, and an appropriate retail margin. This is generally the role of the retailer, whose role is absent from this tender process.

Of equal importance is an accurate understanding of conversion factors and costs affecting potential large gas users, and retail marketing strategies to be applied to these potential customers leading to their timely and successful conversion. This again, is the domain of the retailer.

Lastly, but equally significant, is the long term (up to 20 years) development of the tariff market. This will require an aggressive approach in marketing the product "natural gas" to residential and small business users. This again will require the commitment of a retailer.

Since the gas business has been unbundled in NSW retailers have been most reluctant to participate in new greenfield gas projects. When they have participated, they have concentrated on energy brand marketing rather than the product "natural gas", connected the simple and most profitable customers and virtually left town. As a result there is no ongoing work to increase customer size and customer numbers such that the pipeline and network investment assumptions can be realised.

It is therefore recommended that the tender documents include information about the retailing structure proposed for the project and how it will interact with transportation and distribution tariffs process.

### **1.3 Project Subsidy**

During the previous attempts to develop this project by Agility, AGL Gas Networks and APT it became clear that even with an optimistic view of the project loads the project would not be economically viable without a significant government subsidy.

Since that time, potential new gas loads have been identified, the most significant being the possibility of an ethanol plant in Gunnedah. However even with the new potential load there remains significant uncertainty about whether the project will become economic, particularly given the current uncertainty about the commitment of new customers, their final actual gas consumption and timing of potential connection.

It is our view that this project may still require a government assistance/subsidy in order to be economically viable, as has recently been the case with similar projects of this kind such

as the Marsden to Dubbo Pipeline and the Tasmanian Gas Distribution Project. In order for the TAR process to be genuinely competitive and comply with section 3.28 of the Code, the tender needs to make provision for subsidy requirements and include selection criteria which take into account the level and nature of any subsidy a tenderer requires in submitting a tender. If there is no provision for a subsidy in the tender, tenderers may have to submit 'non-conforming' tenders identifying the need for a subsidy and the process may have to be re-run, or alternatively they will not participate in the tender at all.

The lack of identification of the subsidy issue is also likely to mislead a number of tenderers as to the real economics of the project. The lack of recognition of the possible need for a subsidy will not assist the timely development of the project, as the project will have to be deferred until demand in the region grows to a level which makes the project economic.

#### **1.4 Requirement to disclose CAPEX and OPEX**

The requirement to include cost information (capex and opex (non-capital) costs) as part of the tender is totally inconsistent with a competitive tender process and inappropriate from a commercial perspective. It is not necessary for such costs to be disclosed in order to meet the objectives of the Code or the tender. An assessment that a tender is non-conforming because of the non-inclusion of capex and opex will contravene the requirement of s3.28(e) of the Code.

#### **1.5 Confidentiality**

The tender documents will need to include confidentiality provisions, to ensure that tender responses and any other information provided by tenderers to the CRNG&TAI in the course of the tender process will be kept strictly confidential.

### **PART 2 -SPECIFIC COMMENTS**

#### **ACCC/IPART Issues Paper**

##### **2.1 *Term for access arrangements determined outside the tender process***

Notwithstanding the TAR process, some elements of access arrangement proposals may still require ACCC / IPART assessment of the elements not determined by the tender process. Tenderers will require assurances in the tender documents that ACCC / IPART will give a 15 year term for all elements of the access arrangements so they are the same as the tender tariff term.

#### **TAR Section 1 – Background and Information**

##### **2.2 *Section 6.1 - Key aspects of the tender***

Paragraph 2 states that “The successful tenderer will be selected principally on the basis that it can provide for the supply (\*should be transport) of natural gas to consumers at the lowest sustainable combined distribution and transmission tariffs”.

Tenderers will require further information, such as:

- At what point in time?
- How are time changes allowed for?
- How are load assumptions allowed for?
- What economic life is to be used (15 years, 40 years?)

### **2.3 *Revisions Commencement Date***

We submit that the Revisions Commencement Date referred to in Section 6.1 should be 15 years from date that first gas is transported for the pipeline user, rather than a specific date, given the lack of timeframes in the tender and the potential delays due to the speculative nature of a greenfields project such as this.

### **2.4 *Section 7 – Information held by APT/Agility***

Agility has provided the CRNG&TAI with alternate wording to reflect current arrangements for the assignment and sale of information held by Agility/APT. The sale and assignment process is still the subject of ongoing discussions between Agility and the CRNG&TAI. We understand that the CRNG&TAI will ensure the ACCC/IPART is fully informed about the process and the terms of the sale, including the independent expert valuation that will be used to determine the sale price, prior to any tender being issued.

## **TAR Section 2 – Tender Specifications**

### **2.5 *Section 4.1.1 & 4.1.2 – Information to be included in tender***

The tender documents should clearly define Transmission Pipeline and Distribution Pipeline with regards to where tariffs start and stop, given that these terms are not clearly defined under NSW law.

### **2.6 *Section 9.1 – Construction timetable***

Given the need to obtain further ACCC and IPART approvals after the tender, tenderers should only be asked to use “all reasonable endeavours” not “must use its best endeavours”.

### **2.7 *Schedule 1 – Information to be provided***

We submit that the years for specifying forecast gas volumes should be described as Year 1, 2 etc. It is not appropriate to specify 2003 as no gas will be flowing that year.

### **2.8 *Schedule 2 - Selection criteria and selection process***

