6 October 2004

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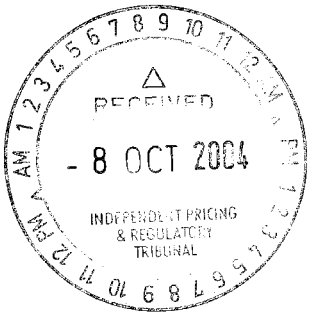


Dear Mr Cox

AGLGN December 2003 Access Arrangement

EnergyAustralia welcomes the opportunity to provide further comments as part of the process of the review of the Access Arrangement submitted by AGL Gas Networks Limited (**AGLGN**) in December 2003 (**2003 Access Arrangement**). In this second submission EnergyAustralia comments on:

- the report prepared by the Allen Consulting Group (**ACG**); and
- the proposed gas swap service and associated proposal to collapse the current three Trunk Capacity Reservation Charge zones between Wilton and Horsley Park into a single zone

Report prepared by ACG

EnergyAustralia has reviewed the report prepared ACG which addresses comments on the terms and conditions of the 2003 Access Arrangement. EnergyAustralia responds to a number of ACG's detailed conclusions on a number of issues in **Attachment 1**.

One major issue concerning the review of the AA is the requirements of section 3.6 of the National Third Party Access Code. EnergyAustralia has obtained legal advice on this issue because it seemed that ACG's approach to the review of the terms and conditions was unduly narrow and restrictive. Also, ACG considered provisions individually, but not as a whole.

The advice concluded that in deciding whether to approve AGLGN's proposed revisions to its AA, the Independent Pricing and Regulatory Tribunal must satisfy itself that the terms and conditions of the proposed AA are objectively reasonable in all of the circumstances, including the costs to users of ambiguous, repetitive and confusing provisions (including provisions dealing with important issues such as liability and indemnity). The test requires IPART to consider each of the terms and conditions of the Access Arrangement individually as well as the combined effect of the terms and conditions. (A summary of the advice is contained in **Attachment 2**).

Given this approach, one aspect of the combined effect of the terms and conditions, which IPART ought to consider is whether the layout of the liability and indemnity provisions (spread across AGLGN's AA) is efficient for Users. The layout of the liability and indemnity provisions

is such that Users are required to deploy significant resources to come to grips with their overall potential exposure under the liability and indemnity provisions, and then translate that position into their contracts with their customers. The deployment of those significant resources increases the costs of Users and is not consistent with the objectives of the Code, including the public interest in having competition in markets and the interests of Users.

In sum, the layout of the liability and an indemnity provisions in AGLGN's AA is not reasonable, and they should not be approved by IPART. In addition, the ambiguity of several of the liability and indemnity clauses is likely to lead to future disputes about the interpretation of the clauses, further increasing the costs of Users.

Proposed Gas Swap Service and trunk zone structure

EnergyAustralia supports a gas swap service that meets the objectives articulated in correspondence by AGLGN but does not have the effect of lessening competition in the New South Wales gas market. **Attachment 3** sets out a proposal supported by EnergyAustralia for such a gas swap service (which is substantially the same as the proposal submitted by Alinta as part of this process). Some key points to note from EnergyAustralia's perspective are:

- A gas swap service would provide additional flexibility to the wholesale gas market and in that respect is a welcome change. EnergyAustralia endorses some of the benefits of a gas swap service as explained by AGLGN;

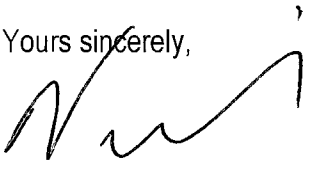
- It is accepted that a gas swap service would have a positive effect on competition. Having said that, if the existing price advantage for users of the Eastern Gas Pipeline is eroded, then the positive effect on competition will be mitigated. That would be the effect of the gas swap service as articulated by AGLGN;

- EnergyAustralia supports the alternative proposal set out in **Attachment 3** prepared by Alinta and other market participants because the proposal provides the flexibility of the AGLGN gas swap service but without the anti-competitive effects. It is also more cost reflective; and

- If AGLGN's gas swap service proposal is implemented then the competitive advantage currently held by users of the EGP will be lost. This is estimated to be $0.026/GJ at a 100% load factor. This would be a material cost shift for new retailers and in EnergyAustralia's experience, customer decisions to switch retailers are made on lesser price differentials.

If you have any further queries in relation to this submission, please do not hesitate to contact me on (02) 9269 4911 or Anne Pearson, Acting Manager Regulated Retail Business on (02) 9269 7264.

Yours sincerely,



Nick Saphin
General Manager Retail & Marketing

Attachment 1

Allen Consulting Group's response to EnergyAustralia's first submission	EnergyAustralia's final response
EnergyAustralia highlighted deficiencies in the form of the proposed Access Arrangement (**AA**). Allen Consulting Group (**ACG**) is of the view the Independent Pricing and Regulatory Tribunal (**IPART**) has limited ability not to approve the AA because of perceived drafting deficiencies or to require remedies to the drafting. The reason for this is that the Code requires only that the terms and conditions be reasonable.	EnergyAustralia acknowledges that the terms and conditions must be reasonable and that IPART's abilities in this regard may be considered to be limited. Having said that the reasonable terms and conditions need to be readily ascertainable and understood. The Access Arrangement was originally drafted in 1996 (as an access undertaking). Since then the regime for access has developed and the document has been amended considerably and in a piecemeal fasion. It is appropriate to begin afresh with a new, clearer set of terms and conditions.
Terms and conditions EA requested that the terms and conditions of the access agreements be attached to the AA as it has proven to be difficult to negotiate terms and conditions with AGLGN. Also the terms and conditions that AGLGN proposes in its agreements with users can and do differ from the high level principles in the AA. ACG is of the view that: *"... it is probably not possible under the Code for IPART to require that AGLGN submit the standard service agreements as part of the proposed revisions of the access arrangement and assess the terms and conditions contained in these service agreements against the requirements of the Code. Rather IPART may be limited in its role to assessment of the terms and conditions set out in the proposed access arrangement against the criterion of reasonableness established in section 3.6 of the Code. This may, however, take into account whether the terms and conditions address all matters necessary and are sufficiently detailed to adequately describe the rights and obligations of AGLGN and a user*	**Provision of the full terms and conditions** AGLGN argues in its response that it is not required to include the detailed terms and conditions in the AA. It points to the ACCC's approach in certain decisions on transmission pipelines which is to allow the "Principles for Terms and Conditions". While this may be the ACCC's approach, it is not the approach of other Australian regulators of gas distribution pipelines and it is not based upon the correct construction of the Code. Section 3.6 of the Code is clear in its requirement that an AA must include **the** terms and conditions on which the Service Provider will supply each Reference Service. Section 3.6 does not refer to "principles". The wording is specific in contrast, for example, to references to queueing and trading policies. If the terms and conditions are not complete or if the Service Provider has reserved some terms and conditions in separate documentation - then the requirement in section 3.6 is not fulfilled. (As an aside, EnergyAustralia queries how IPART determine the reasonable terms and conditions without seeing them as a whole. A limited set of high level principles may appear to be reasonable on their own but once they are detailed in an agreement and read alongside a host of other provisions that are not included in the original list of principles, the outcome may be different.) In support of its argument, AGLGN also refers to section 6.27 of the Code, which allows the arbitrator to make decisions on the terms and conditions of a draft contract reflecting the arbitrator's determination. However, clause 6.27 also covers disputes regarding access to non-Reference Services, in which case such a power would be necessary.

under a service agreement if a service agreement was entered into under the terms and conditions as set out in the proposed access arrangement."	Any contract involves a trade-off between price and risk. A Reference Tariff for a Reference Service becomes meaningless in the absence of the terms and conditions on which it will be provided. The "principles" for the terms and conditions on which the services will be provided, in EnergyAustralia's view, is not sufficient. **Omission of relevant terms and conditions** At the very least, ACG is clearly correct in stating that: • IPART's consideration of reasonableness may include consideration of whether the terms and conditions set out in the AA address all matters necessary to specify the rights and obligations under a service agreement; • the terms and conditions in the AA fail to address several matters commonly addressed in service agreements for gas distribution services; and • it is open for IPART to find the terms and conditions to be unreasonable by virtue of these omissions. IPART should require AGLGN to address these areas in its AA. **Inadequate specification of existing terms and conditions** Even if it is accepted that IPART cannot require the complete terms and conditions to be included in the AA, there must be a sufficient level of detail included in the terms and conditions submitted to IPART to enable IPART to approve the AA. As set out in EnergyAustralia's original submission, AGLGN's proposed AA does not provide a sufficient level of detail (particularly when compared to the underlying transportation agreements). ACG supports this view in a number of cases (eg provision of security and accounts and payment). AGLGN has already prepared the detailed contracts and should be required to include more detail in the AA in relation to its proposed terms and conditions sufficient to enable a User or Prospective User to properly understand all of their rights and obligations under the Access Contract. Given that the contracts are already prepared, AGLGN gives no reason why it is unable to provide more detail on these areas, even if this falls short of including the entire terms and conditions relating to the matter from the transportation agreements.

	(Having regard to the test of reasonableness set out in *Waters v Public Transport Corporation* as described in EnergyAustralia's covering letter, the effect on Users far outweighs the minor inconvenience to AGLGN of including more detail in the AA.)
Security EnergyAustralia suggested some changes to the security provisions on the basis that what was contained in the AA is vague and uncertain. The security must be of a type and amount that AGLGN reasonably determines. This is very open. Other submissions to this effect were also made. ACG noted that that there has been no contention that AGLGN has previously imposed unreasonable requirements for security on users. ACG concluded that greater detail on security may be warranted.	EA accepts the inclusion of security provisions in third party access agreements. The issue for EA is the type and content of security provisions included in access agreements with AGLGN. They are draconian and uncommercial. Also, AGLGN is resistant to amending its security provisions in the agreements themselves. Detailed provisions should be included in the AA itself if the agreements are not to be attached. In its first submission EnergyAustralia referred the Tribunal to the provisions contained in the equivalent agreements in Victoria.
Overruns EnergyAustralia commented on the overrun provisions and requested that they be consolidated. ACG is of the view that IPART cannot request this unless it can be demonstrated that the provisions are unreasonable.	As referred to above, EnergyAustralia is of the view that provisions are unreasonable if they cannot be readily ascertained. The reasonableness test must be made having regard to all the circumstances, included the costs to users of ambiguous, repetitive and confusing provisions.
Payment EnergyAustralia stated that provisions dealing with payment of accounts did not cover all necessary issues. AGLGN accommodates additional provisions into the access agreements and some of those provisions are less than 'commercial'. ACG considers that the terms and conditions relating to accounts and payments are unreasonable by virtue of failing to address these matters. IPART could seek amendment.	EnergyAustralia endorses this view and refers IPART to the suggested provisions prepared by EnergyAustralia.
Liability EnergyAustralia provided an extensive analysis of the liability provisions in the AA and requested that they be consolidated. EnergyAustralia also suggested changes to make the provisions more balanced and consistent with general commercial practice.	EnergyAustralia's comments were presented from the legal perspective and requests that IPART consider EnergyAustralia's comments in this light. EnergyAustralia queries how ACG has been able to consider effectively the liability provisions in the AA from an economic perspective without an understanding of the legal environment in which they operate. . This observation is particularly relevant to EnergyAustralia's submission in relation to Users being squeezed between the AA and

ACG considered the liability provisions from an economic rather than legal perspective. From this perspective ACG questions whether it is reasonable 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.	consumers' statutory rights as set out in paragraphs 1.3 to 1.7 of Attachment E to EnergyAustralia's submission which was not addressed in any detail by ACG. **Clauses 54 and 60** ACG concluded that these clauses are reasonable. EnergyAustralia did not raise any objections to them in its previous submission to IPART. **Clause 55 (e) and clause 58** ACG has characterised as duplicative the exclusion from consequential loss in respect of claims of third parties in clause 55(e) and clause 58 by which one party indemnifies another in respect of third party claims. Clause 55 (e) characterises claims of third parties as consequential loss and absolves each party of liability in respect of such loss. However, under clause 58 the parties indemnify each other in respect of certain third party losses. They are inconsistent in that they would require a party to indemnify the other in respect of a loss for which the indemnifying party is not liable. In EnergyAustralia's view, ACG has not properly understood the two clauses which are not duplicative, and perform entirely different functions. **Clause 56** ACG has advised IPART to seek legal advice in respect of EnergyAustralia's concerns with the scope of the limitations in this clause. **Clause 57** ACG recommends that clause 57, by which AGLGN requires Users to include certain limitation in the Users' contracts with gas customers, be removed on the basis that AGLGN could take other measures to limit liability to gas customers. EnergyAustralia agrees with ACG's recommendation. Clause 57 is an unnecessary fetter on a user's freedom to contract with its customers. EnergyAustralia previously recommended that the clause be replaced with a clause that: • acknowledges that a user may, if it so chooses and where it is legally permissible to do so, limit its liability to its customers; and • which requires AGLGN to indemnify the User for all loss suffered as a result of AGLGN breaching the terms and conditions of the AA (see para 3.12 at Attachment 3 to our advice of 25 March 2004). EnergyAustralia is of the view that the clause be included in the AA in place of AGLGN's

	proposed clause 57. **Section 2.1.1** ACG does not accept EnergyAustralia's arguments on the lack of clarity of section 2.1.1 (which indemnifies AGLGN for MDQ being exceeded). However, the AA should be modified to put beyond doubt that a user is not be required to indemnify AGLGN for against losses etc arising from the User taking a volume of gas which is within its MDQ plus the Additional Capacity once that Additional Capacity has been approved by AGLGN. **Section 2.7** ACG accepted EnergyAustralia's submission that the indemnity in relation to gas swaps was too broad and is, therefore, unreasonable. ACG recommended that an alternative clause and AGLGN, in its response of 10 September 2004, agreed to the clause. The alternative clause requires an indemnity in favour of AGLGN for loss suffered as a result of a User: - providing inaccurate or misleading information to AGLGN; or - failure to ensure users' daily requirements and gas swaps reflect arrangements for delivery to receipt points. The alternative clause appears reasonable. However, for the reasons set out in section 1 above, it should be moved to the liability regime in clauses 53 to 60 to ensure that its relationship to clauses 55, which excludes consequential loss, and 60, which excludes liability for AGLGN's acts which contribute to the loss, is clear. **Section 59 (c)** ACG state that clause 59(c) unambiguously relates to clauses 46 to 52 of the AA which, in turn, relate to suspensions and interruptions. AGLGN should confirm that ACG's interpretation of the clause is the same as AGLGN's interpretation of the clause. If that is so, the clause references should be inserted into clause 59(c). **Load Shedding** At page 80 of ACG's report, ACG recommends that the limitation of AGLGN's liability in respect of load shedding be confined to circumstances where the AGLGN acts in good faith and in accordance with the principles of the Access Arrangement. This recommendation has been accepted by AGLGN. However, clause 60 of the AA would have a similar effect to the adoption by AGLGN of ACG's recommendation. This only reinforces our view that IPART ought to require AGLGN to

	consolidate all the liability provisions in the one section of the AA.
Gas balancing EnergyAustralia expressed the view that the fallback arrangements for gas balancing were unsatisfactory. An industry agreed alternative should replace the provisions in the AA. ACG concludes that the AA should be subordinate to the Gas Retail Market Business Rules on the issue of gas balancing.	EnergyAustralia supports this conclusion.
Load shedding EnergyAustralia suggested that the load shedding provisions do not require an actual emergency before they can be invoked. Important terms are not defined – what is a gas supply reduction or a prospective gas supply reduction? The load shedding principles could be amended to reflect alternative sources of gas supply and transmission routes and provide some incentive for users to diversify their sources of supply. ACG commented that no one raised the broad power of AGLGN to interrupt gas deliveries as it sees fit in cases of emergency or risk to injury to persons or damage to property under clause 52 of Schedule 2A. ACG concluded that the load shedding principles are common practice in Australia and on that basis it is reasonable. Whether or not it is efficient is not within the scope of this review. On the issue of sources of supply ACG was of the view that it could be difficult to implement – especially if a user sourced gas from a number of sources for provision to different customers without any explicit designation of gas from a particular source to particular customers.	EnergyAustralia is of the view that at the very least the circumstances in which AGLGN can shed load (whether under the load shedding principles or schedule 2A) should be more clearly defined in the AA.
Term for reference services EnergyAustralia queries why there must be a minimum/maximum period for the provision of non-tariff reference services. Even if a customer transfers from one user to	EnergyAustralia does not agree that the minimum term is common for contract carriage pipelines. There is no minimum term for the Adelaide metropolitan network in South Australia. Also, even if the minimum term is accepted, is it reasonable AGLGN be able to recoup double network charges for a

another, the original user must still pay the network charges even though AGLGN is obtaining the same amount of money from the new user. The original user will only be reimbursed at the expiry of the term. ACG is of the view that the minimum terms are reasonable and that it is common practice for contract carriage pipelines.	delivery point as is currently the case?
Other comments	EnergyAustralia notes and supports ACG's comments on the relationship between the AA and the Gas Retail Market Business Rules. The potential for duplication of the Business Rules should be avoided and, accordingly, the AA should not replicate the provisions of the Business Rules. Also, the Access Arrangement should not seek to supplement the Business Rules in a manner that is unreasonable. EnergyAustralia supports the Gas Market Company's submission on the alternative mechanism for management of accounted for gas and accommodating that in the AA. This would give the Gas Market Company and its members additional flexibility to address some difficult issues associated with balancing and reconciling the market (as well as promoting convergence with other jurisdictions). EnergyAustralia supports ACG's comments on the ambiguities in schedule 2B and supports the request that the terms and conditions contained in the schedule be clarified.

Attachment 2 – Test of reasonableness

In deciding whether to approve AGLGN's proposed revisions to its AA, IPART must satisfy itself that the terms and conditions of the proposed Access Arrangement are reasonable.

The test of reasonableness in section 3.6 of the Code is an objective test, and not the test of unreasonableness in the *Wednesbury* decision.

The *Wednesbury* test requires examination of whether the decision is so unreasonable that no reasonable decision maker could ever have come to it. For example, in *Application by Epic Energy South Australia Pty Ltd (2003)* ATPR ¶ 41-932 at 46,925, the Australian Competition Tribunal held that section 39(2) of the Gas Pipelines Access Law (which concerns the unreasonable exercise of discretion by a decision maker) required the Tribunal to be concerned with:

(a) the correction of the exercise of a discretion that was so unreasonable on the basis of the matters before the decision maker that no reasonable decision maker could have ever come to it (citing *Associated Provincial Picture House Ltd v Wednesbury Corporation* [1948] 1 KB 223 at 223 - 234); and

(b) the situation where the decision is so far outside the range of decisions open to a reasonable decision maker that it bespeaks of error even though the particular error cannot be identified (citing *House v The King* (1936) 55 CLR 499 at 505).

In contrast to the Wednesbury test of manifest unreasonableness, section 3.6 of the Code requires IPART to satisfy itself that the terms and conditions of the AA are objectively reasonable in all the circumstances. The question is not, therefore, whether the terms and conditions in AGLGN's proposed AA are so unreasonable that no reasonable decision maker would approve them, but whether they are objectively reasonable having regard to all the circumstances, including the costs to Users of ambiguous, repetitive and confusing liability and indemnity provisions.

The High Court of Australia enunciated the requirements of what is objectively reasonable in all the circumstances in *Waters v Public Transport Corporation* (1991) 103 ALR 513 (per Dawson and Toohey JJ (endorsed by Brennan, Deane and McHugh JJ)), when the Court cited with approval the findings of Bowen CJ and Gummow J in *DFAT v Styles* (1989) 88 ALR 621 that:

> *The test of reasonableness is less demanding than one of necessity, but more demanding than a test of convenience. The criterion is an objective one, which requires the court to weigh the nature and extent of the discriminatory effect on the one hand, against the reasons advanced in favour of the requirement or condition on the other. All the circumstances must be taken into account.*

The objective test requires IPART to consider each of the terms and conditions of the Access Arrangement in their own right (as ACG recognises), as well as (importantly) the combined effect of the terms and conditions.

Attachment 3 – Proposed gas swap service

We refer to the Independent Pricing and Regulatory Tribunal's (**IPART's**) letter to AGL requesting further information regarding AGLGN's proposed trunk zone structure and AGLGN's subsequent response to that request dated 27 August 2004. Given the significant implications for shippers on the Eastern Gas Pipeline (EGP) associated with the proposed trunk zone aggregation, we consider it appropriate to comment on AGLGN's response and, perhaps more importantly, to offer an alternative mechanism.

AGLGN is proposing to introduce a Gas Swap Service. To give effect to this service it is proposing that three currently existing zones be aggregated into one zone (thereby reduce the current zones from seven to five). By implementing this aggregation, AGLGN is then able to offer a Gas Swap Service with two functionalities - a User Swap and a Receipt Point Swap.

While we believe the proposed Gas Swap Service (or more particularly the Receipt Point Swap) would offer additional flexibility to that under the current Access Arrangement, unfortunately we also believe that the proposed pricing arrangements associated with the aggregation of the zones would unfairly discriminate against shippers on the EGP and distort the efficiency of the market.

It is accepted that a Gas Swap Service would have a positive effect on competition, consistent with the objectives of the Gas Code. However, if the current price differential for users of the Eastern Gas Pipeline (due to the lower portion of usage) is eroded, then this positive effect on competition will be mitigated. That would be the effect of the Gas Swap Service as articulated by AGLGN.

In particular, we note that the pricing arrangements for the proposed Zone A represent a departure from one of the key cost allocation principles contained in the Gas Code (section 8.38) - cost reflectivity. This is because a user would be required to pay for transportation across the entire length of the proposed Zone A regardless of the length of the pipe actually being used. For example, where a shipper only transports gas over a very short section of the overall Zone, then that shipper would be required to pay as if the entire length of the pipeline had been used. This is the situation facing shippers on the EGP injecting into the AGLGN trunk at Horsley Park. The ultimate effect of the proposal would be that EGP shippers would be required to pay a disproportionate amount of AGLGN's revenue from within the Trunk Zone A, which in turn would distort the market.[1]

Importantly however, while we have significant concerns with AGLGN's proposed pricing arrangement, we believe that we have identified a solution that provides most, if not all, of the benefits under AGLGN's proposed arrangement, but without the anti-competitive effects.

Proposed New Approach: Collapsed zone with differential pricing

We are proposing that AGLGN's Gas Swap Service (incorporating the Receipt Point Swap and User Swap) be accepted in its entirety except for the pricing arrangement. That is, we do not object to the collapsing of the seven zones into five to create a new Trunk Zone A. However, rather than maintaining the same tariff for all receipt points within Trunk Zone A, we are proposing differential pricing depending on the location of the Receipt Point. All other aspects of AGLGN's proposed Gas Swap Service would be retained.

[1] For more information on the impact associated with the proposed pricing arrangements on EGP shippers refer to previous submissions to IPART on the AGLGN Access Arrangement by Alinta (27 April and 21 June 2004) and Energy Australia (20 April 2004)

Assuming the 2003-04 tariffs ($/GJ per day) contained in AGLGN's current Access Arrangement our proposed tariffs would be as follows[2]:

Horsley Park – Newcastle	$0.3109
Wilton – Newcastle	$0.3368

By accepting AGLGN's proposed Gas Swap Service (save for pricing) and creating a new Trunk Zone A all of the benefits identified by AGLGN in its submission to IPART on 27 August would be retained. The only exception to this is that there would be some minor administrative tasks that would not be required under AGLGN's proposal. These tasks are essentially of a billing nature – that is, where a shipper swaps a Receipt Point it would be necessary to enter the Receipt Point details into the billing package to enable the correct calculation of the transportation tariff. This is a simple administrative task similar to that necessary for balancing purposes.

We accept that by maintaining the pricing differential some minor efficiencies are forgone (associated with billing entries) however, when considered against the anti-competitive effects of AGLGN's proposed pricing arrangements, the cost of the forgone efficiencies are far outweighed by the benefits of our proposal. The forgone efficiencies also need to be considered in the context of the number of Gas Swaps that are likely to take place – a very small number in all likelihood.

It is important to emphasise that the intent of our proposal is for costs associated with utilising the Gas Swap Service (including the billing costs) to be captured by the tariff for that Service and ultimately borne by those whose actions give rise to the costs. That is, a typical user-pays arrangement.

Benefits identified by AGL with respect to the zone aggregation

AGL in its response of 27 August identified a number of advantages associated with the aggregation of the zones[3]:

> "The ability to accommodate simple and timely short term requests for use of different receipt points
>
> *De-commercialising such requests from a level which necessitates contractual variations to recover charges for incremental contracted capacity under Service Agreements*
>
> *Standardising the provision of such requests into an operational function, much the same as daily balancing nominations"*

We simply note that all of these advantages are retained under our proposal.

It is useful to explain how we see our proposal working in a practical sense. A user would enter into a transportation agreement with AGLGN. That transportation agreement would refer to an MDQ and a Receipt Point within Trunk Zone A. The agreement would identify the different tariff depending on the nominated Receipt Point. It would be apparent within the transportation agreement that a shipper would be able to swap Receipts Points within Trunk Zone A, but only where that shipper has also entered into a Gas Swap Service.

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[2] It is recognised that this tariff assumption is unrealistic as the 2004-05 prices will be different to the 2003-04 prices for a number of reasons.

[3] AGL Submission to IPART, 27 August 2004

Where a user wishes to swap Receipt Points that user enters into a Gas Swap Service (as is the case proposed by AGLGN). There will be a fee for that service (to cover, among other things, costs associated with administering the swap from a billing perspective) to be paid only when a Gas Swap takes place (again, as proposed by AGLGN).

Accordingly, all of the advantages identified above by AGLGN would be enjoyed, including the removal of the need for contractual variations where a Receipt Point Swap is in fact utilised.

Comparison of benefits of AGLGN's proposal and our proposal

In addition to the above-noted benefits attributed to the zone aggregation AGL also provided a comparison of the benefits associated with five zones as opposed to seven. However in providing that comparison AGL did so in the context of the aggregated zone having just the one tariff for all receipt points within that zone. A comparison of AGL's proposal (aggregated zone with one tariff) against our proposal (aggregated zone with differential tariffs) is shown as Schedule A to this **Attachment 3**.

In its letter to IPART on this issue dated 27 August 2004, AGLGN presented a comparison of the proposed new five zone structure with the current seven zone structure. AGLGN observed that the seven zone structure would include additional trunk charges for capacity utilised by a retailer for trading purposes. However, shippers of gas on the EGP would argue that it is considerable more efficient to pay slightly higher trunk charges on the rare occasions that gas is injected at Wilton, rather than be subjected to a permanent trunk charge increase for a section of the pipeline that is not utilised for the majority of the time.

Additional matters for consideration

AGL noted in its letter dated 27 August that as a result of the GMC Business Rules there is a somewhat convoluted process to give effect to a Receipt Point Swap and observes that its proposal would remove these difficulties. AGLGN also notes a number of additional benefits associated with removing GMCo from Receipt Point Swaps. As our proposed approach is consistent with that of AGLGN (save for the pricing) the same benefits are enjoyed under both proposals.

AGL made some observations regarding the materiality of the cost to EGP shippers associated with the pricing arrangements attached to the zone aggregation. In particular, AGL noted that the effective price increase for EGP shippers is $0.026/GJ, and then contrasted this against the delivered price of gas. We believe a more relevant analysis is to simply assess the cost impact on shippers delivering into Horsley Park from the EGP.

Given confidentiality reasons Alinta is not able to reveal the current delivered quantities into Horsley Park. However, Alinta has advised that up to 50TJ/d is a reasonable estimation. At $0.026/GJ, and at a 100% load factor, this represents an annual increase to EGP shippers of just under $500,000 or, conservatively, $2.5 million over the period of the proposed AGLGN Access Arrangement. This amount is substantially higher if a more realistic load factor is used in the analysis. Contrary to AGL's observation, this is clearly a material amount.

The materiality is also reinforced when considered in the context of a new entrant entering the NSW gas market. As AGL is the dominant incumbent retailer the bundled price that it offers into the market effectively sets a ceiling as to what new entrants can charge. Therefore, for new entrants utilising the EGP to service the Sydney market the cost increase of AGLGN's proposal would, by competitive necessity, come straight off their bottom line. That is, new entrants could not pass

through the tariff increase as it would make them uncompetitive relative to the incumbent. Accordingly, this tariff increase would have a detrimental impact on the introduction of new entrants into the Sydney retail market.

It should also be remembered that the $0.026 tariff increase represents a greater than 100% increase in Trunk charges for EGP shippers.

The tariff associated with the Gas Swap Service is only one consideration in assessing the viability of entering into a Receipt Point Swap. Other matters requiring consideration include the costs of gas injected at the alternate Receipt Point and the additional charges associated with transportation on an alternative transmission pipeline. Short term gas supply agreements and as-available transportation agreements are typically significantly higher than long term supply and transportation arrangements. These additional costs are important in the context of assessing the likely frequency of Receipt Points Swaps being entered into. Clearly the additional costs through the supply chain associated with short term arrangements reduces the attractiveness of such transactions, and therefore the likely extent of uptake of the Gas Swap Service.

A further point worth remembering is that prior to the EGP connecting to the Sydney market, AGLGN's tariff for the Trunk Zones between Wilton and Horsley Park were somewhere in the vicinity of $0.25GJ/d higher than that currently charged. That is, as a result of the EGP entry there was a very significant reduction in the charge from Wilton to Horsley Park. AGLGN is now proposing to remove that differential all together.

It is also useful to comment on AGLGN's comparison of the size of its proposed Trunk Zone A to zones on other pipelines. While it is true that there are other pipelines within Australia with larger zones than the proposed Trunk Zone A, none of these larger zones in question contain an interconnected, competing pipeline servicing the same market.. It is clear that the EGP and that portion of the Trunk duplicated by the EGP are in direct competition to delivered gas to Horsley Park. We believe it is this competitive reality that renders irrelevant any comparison of the length of AGLGN's proposed Zone A with zones on other pipelines.

Schedule A

	AGLGN Proposal	Our Proposal
Consistency of AA charges seen by end users	End customers charged as per Access Arrangement. No costs of capacity utilised for trading rolled into transportation charges.	Users would be charged consistent with the Access Arrangement. Users will be charged for transportation based on their MDQ attributed to a Receipt Point. Where a users wishes to utilise a Gas Swap Service a fee is charged accordingly.
Gas Balancing	Quantities are exactly accounted for in network calculations. Network Calculations reconcile against pipeline and shipper imbalances.	As we are also proposing collapsing the seven zones into five, the same benefits accrue under our proposal.
Gas Swap administration	The same for all users irrespective of which receipt point and type of swap they utilise.	Administration of the Gas Swap Service would be the same for all users irrespective of receipt point. There will be a different tariff in respect of the transportation contract depending on location of the Receipt Point - this is limited to a billing entry along the same lines as gas balancing.
Market responsiveness	Gas Swaps can be initiated at will – can cater for spontaneous trade decisions.	Gas Swaps can be initiated at will – can cater for spontaneous trade decisions.
Consistency and transparency of costs	Only pay for gas swap transaction charge on a "as used" basis. Same cost implications for all users.	Gas Swap charge would be the same for all users – there would however be a differential in respect of the transportation contract depending on location of Receipt Points. This differential recognises the greater length of Trunk Zone A utilised by those users injecting at Wilton compared to Horsley Park.