



29 May 2015

Landholder compensation review
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Lodged electronically at www.ipart.gov.au

Dear Sir/Madam,

AGL submission to IPART landholder benchmark compensation rates Issues Paper

AGL Energy (AGL) welcomes the opportunity to make a submission in relation to the Independent Pricing and Regulatory Tribunal (IPART) Issues Paper *Landholder benchmark compensation rates Gas exploration and production in NSW*.

AGL is one of Australia's leading integrated energy retailers, operating across the energy supply chain with investments in coal-fired, gas-fired, renewable and embedded electricity generation, upstream gas production and providing energy solutions to over 3.8 million customers.

In New South Wales (NSW), AGL operates the Camden Gas Project, which has been producing coal seam gas (CSG) since 2001 and currently supplies around five percent of the state's gas demand. AGL's Gloucester Gas Project is also in development with the potential to meet an additional 15 percent of NSW's gas needs.

In recent years, AGL has worked with local communities in South Australia, Victoria, NSW and Queensland to develop utility scale wind, solar and natural gas projects; it is therefore well placed to comment on landholder compensation arrangements.

1. AGL approach to land access and compensation

AGL believes that the success of CSG projects in NSW is highly dependent on the relationships that are developed with the landowners who host exploration and production activities on their land. AGL is committed to building long-term relationships with landholders based on trust and mutual respect, and to demonstrating the successful co-existence of CSG activities with other land uses, by ensuring that operations are conducted in a responsible way that minimises impact on landholders, their operations and the environment.

In March 2014, AGL signed on to the *Agreed Principles of Land Access* with Santos, NSW Farmers Association, Cotton Australia and NSW Irrigators Council, reconfirming that we will respect the wishes of landholders regarding any exploration and production operations that take place on their land, meaning that landholders are free to say "yes" or "no". Many landholders agree to CSG operations on their land, and AGL has over 200 land access agreements in place with landholders in NSW. AGL has never accessed a person's land without their permission or exercised arbitration rights available under law for CSG exploration or production. AGL is therefore confident that landholders will only sign access agreements with us that are considered by them to be fair and reasonable, and are in their commercial interests. Often landholders will value the diversification of revenue streams for their property and the stable and predictable payments that arise from hosting gas activities, which are not dependent on weather or other seasonal variances.

AGL's current compensation principles provide for fair and equitable compensation to landholders. The level of compensation reflects the type of activity proposed, the location of the project as well as

the value and agricultural productivity of the land. AGL works with landholders to develop Access and Compensation Agreements, under which AGL will pay compensation for:

- Landholders' time across the life of the agreement;
- Reasonable legal costs;
- An initial works payment for disturbance during construction (e.g. traffic and construction noise);
- Annual compensation for "rental" for the use of land for wells, pipelines, access roads and other infrastructure.

Each agreement made with a landholder is unique, reflecting the characteristics of the particular property and the proposed CSG activities and infrastructure to be hosted. In addition, AGL looks for other opportunities to provide compensation in-kind, in ways that are specific to the property and the landholder. AGL notes that there are different types of landholders, including private landholders, governments and mining companies, which will have different requirements, and compensation agreements are negotiated accordingly. There is certainly no "one size fits all".

AGL works with landholders to identify appropriate locations for CSG surface infrastructure and develops Land Access Plans that form part of the agreement. This sets out the agreed ways in which AGL and its contractors will carry out works, including how they will access land, timing, locations and site-specific requirements of the landholder.

CSG infrastructure is not permanent, with wells usually operating for around 15 years. At the end of the activity, AGL removes all equipment and rehabilitates the land back to the same or better standard as when the activity commenced. Rehabilitation works are undertaken in consultation with the landholder, and are not completed until they are satisfied.

AGL does not consider that there is any decline in land value associated with our CSG (or other energy) projects, either during their operation or at the end of their lives. In 2014, the NSW Valuer General reported that it found no evidence of an impact on NSW land values as a result of CSG activities. In Queensland there have been examples of properties advertised for sale where compensation agreements in place for CSG projects have been listed as a positive selling point, as providing a guaranteed income stream.

2. Published guidance needs to be fit for purpose

AGL supports the development of guidance to assist landholders when negotiating access and compensation arrangements with CSG companies, which could include:

- Best practice principles for negotiating compensation;
- The factors that should be considered when determining compensation (i.e. the 'heads of compensation'), including definitions and examples in plain English;
- Guidelines for considering and calculating reasonable compensation rates;
- Advice for landholders to assist them in identifying and articulating what is most important to them, and their goals for the negotiation process.

Such information would build upon other publically available material designed to assist landholders, to further equip them for negotiations (such as the guide published by NSW Farmers). AGL agrees that the proposed principles of transparency, adaptability and practicability are appropriate to guide the recommendations of the review, and also that any guidance needs to be fit for purpose and useful to its intended audience. AGL therefore recommends that the review include consultation not only on the draft report for the review, but also on draft benchmarking materials or guidance that are intended for publication and use by landholders.

While some gas companies have published the compensation rates (or the calculations that will be used to determine compensation) that they will pay for certain projects, AGL considers that it would be very difficult to determine a benchmark that could reasonably be applied to the whole CSG industry given the large number of site-specific variables taken into account when negotiating an Access and Compensation Agreement.

Gas companies also structure compensation payments in different ways, which makes direct comparison on a like-for-like basis difficult. For example in NSW, during the production phase of a project, annual compensation paid by AGL is largely based on the value of land occupied by infrastructure. Other operators calculate compensation based on different principles. Each approach may see landholders receive more or less compensation, depending on the value of land, the amount of infrastructure hosted, well production and commodity prices.

3. Factors to consider for compensation

3.1 Structure for AGL's CSG landholder compensation agreements

The factors that AGL considers when determining compensation for CSG project landholders are outlined below.

| Issue | Examples | AGL approach to compensation |
|----------------------|--|---|
| 1. Landholder time | Time spent by landholders to negotiate agreements with gas companies initially, as well as for variations and ongoing liaison during the term of the agreement. | <p>AGL agrees a reasonable payment with landholders for their time, with a value for year 1 and for each subsequent year of the agreement.</p> <p>Payments are based on the estimated number of hours spent by the landholder (depending on the complexity of the agreement and the proposed work program) and a dollar per hour value for their time based on average wages.</p> |
| 2. Professional fees | <p>Legal fees</p> <p>Property valuation fees</p> | <p>Depending on the landholder's preference, AGL will either:</p> <ul style="list-style-type: none"> • Pay a one off contribution in a lump sum towards the anticipated expenses from negotiating and executing the agreement, including legal fees; or • Pay directly to the landholder's solicitor reasonable legal costs associated with the negotiation and execution of the agreement. <p>In some cases, AGL will also pay for other specialist services, such as property valuation fees.</p> <p>AGL considers that the payment of professional fees should be capped at a reasonable level to ensure that legal firms and other service providers negotiate fees in good faith.</p> |
| 3. Initial Works | <p>Disturbance from construction work, including:</p> <ul style="list-style-type: none"> • Land use for construction • Increased traffic movements • Construction noise • Temporary cessation or relocation of landholder activities | <p>Construction is typically the most intensive period of works for CSG projects. Landholders receive a higher level of compensation for this period to reflect the higher level of disturbance and amenity issues they experience during this time. When developing the work program, AGL works with landholders to minimise the impacts of construction on their land, activities and lives.</p> <p>Compensation for landholders takes into account the type and extent of construction works proposed, typically including payments for each:</p> <ul style="list-style-type: none"> • New gas well; • Trench dug underground (to hold gas or water pipelines and electricity and telecommunication cables), based on the linear distance of the trench; • New access road constructed, based on the area of land occupied; and • New water monitoring bore. <p>The value for each item varies depending on the value of the land, improvements, land uses, etc.</p> |

| Issue | Examples | AGL approach to compensation |
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| 4. Annual compensation during the term of the agreement | <p>Land occupied by surface and underground infrastructure</p> <p>Occasional disturbance from gas operation and maintenance activities</p> | <p>Annual compensation is based on a range of factors including the nature and extent of the agreed works, operational factors, and the value of land occupied. Annual compensation will typically include payments for each:</p> <ul style="list-style-type: none"> • Well that is producing gas; • Well that is shut-in; • Linear meter of pipelines or telecommunications lines (above or below ground); • Square metre of land used for access roads; and • Water monitoring bore. <p>Annual compensation rates are adjusted for CPI each year. AGL considers that both 'market rental' and 'gross margin' approaches could be used in estimating the value of land to determine these types of 'rental' payments, depending on the type of property.</p> <p>The value of land varies significantly between properties in the same region (or between areas on the same property) as a result of natural attributes and improvements, so the use of published average land values for different zones of NSW (such as those published by the Department of Primary Industries) in these calculations would not be appropriate.</p> |
| 5. Damage or loss | <p>Damage to land, improvements or buildings (e.g. cut fences)</p> <p>Damage to, or loss of crops, trees or livestock</p> | <p>AGL will make good any loss or damage caused by its activities or that of its contractors (as required by regulation).</p> <p>Depending on the type of loss or damage, AGL may repair the damage, provide financial compensation, or other arrangements that are agreed by the landholder.</p> |
| 6. Temporary disruption of landholder activities | <p>Temporary suspension or relocation of landholder activities during CSG construction and maintenance (e.g. moving livestock to a different location)</p> | <p>AGL works with the landholder in the development of the work program to minimise impacts on their land use and other operations.</p> <p>AGL agrees reasonable compensation with landholders for disruptions on a case by case basis, which may include payments (e.g. to pay for landholders' time if livestock need to be moved) or in kind payments.</p> |
| 7. Production bonus | <p>Additional payments for landholders when project performance exceeds forecasts</p> | <p>For its Gloucester Gas Project, AGL has agreed to pay private landholders a share of an annual 'Production Bonus Fund' into which AGL contributes funds for each well on private land for which production exceed project forecasts. These payments are additional to the agreed annual compensation.</p> <p>These landholders are therefore able to share in the upside benefits from the project when it is performing well, while retaining a reliable income stream from annual compensation payments at other times (and not being exposed to any downside risk from low production rates or commodity prices).</p> |

| Issue | Examples | AGL approach to compensation |
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| 8. Special value and loss of opportunity | Planned improvements to property that cannot go ahead due to CSG activities | <p>AGL considers that it is reasonable to provide compensation in relation to impact on special value of land and/or loss of opportunities due to CSG activities where the special value or opportunity is demonstrable or forms part of the planned works for the property (rather than speculative, such as a potential for future subdivision in the event of changes to land zoning).</p> <p>Typically, such impacts can be avoided because there is some flexibility as to where wells can be located (for example, AGL has no known examples of such impacts across NSW). AGL works with landholders to avoid or minimise such impacts, but where they are unavoidable, takes them into account in determining initial and annual compensation.</p> |
| 9. Nuisance and Amenity | Visual impacts of operations Noise, dust and light from construction and traffic Lifestyle impacts | <p>AGL works with landholders to minimise such impact through the design of the work schedule, the placement of infrastructure and by conducting activities in a responsible and respectful manner.</p> <p>Nuisance and amenity are considered when determining initial and annual compensation depending on the extent and duration of the impact, particularly if construction activity is conducted in close proximity to residences.</p> <p>Impacts are also regulated and minimised through license and approval conditions.</p> |
| 10. Rehabilitation | Decommissioning of access roads, wells and other infrastructure at the end of life and rehabilitation of property | <p>AGL will remove all equipment and rehabilitate land and improvements back to the same or better standard as prior to construction – except where landholders would prefer that infrastructure such as roads or fences be retained, with ownership reverting to the landholder.</p> <p>All wells and monitoring bores are plugged and abandoned (filled with cement and cut off below ground level), with the surface land fully rehabilitated.</p> <p>When the landholder is satisfied that rehabilitation works on the land are completed, AGL will pay a final rehabilitation payment, marking the end of the term of the access and compensation agreement.</p> |
| 11. Payments in kind | Provision of goods or services in lieu of monetary payments | <p>AGL works in partnership with landholders to understand where it would be beneficial to provide payments in kind instead of, or as well as, monetary payments as some landholders, depending on their circumstances, prefer to receive payments in kind. Examples have included: building fences, building roads and driveways, clearing dams, providing piping, etc.</p> <p>This flexibility often results in a mutually beneficial outcome for AGL and the landholder.</p> |

3.2 Compensation for wind farm landholders

In recent years AGL has also negotiated landholder agreements for the development of wind farms in South Australia, Victoria, Queensland and New South Wales. These agreements follow similar principles whereby landholders typically receive an annual payment during the period prior to commencement of construction, a 'construction payment' for disturbance during construction works, and annual payments for hosting wind turbines and associated infrastructure once the wind farm is operational. At the end of its life, AGL is responsible for decommissioning the wind farm and the rehabilitation of landholders' property.

3.3 Heads of compensation for CSG projects

AGL does not consider that the 'heads of compensation' proposed by IPART that are applicable to compulsory acquisition of land are necessarily appropriate for CSG projects. Several of these are not relevant, such as costs for relocation of residences, solatium and severance (landholders generally do not permanently relocate and properties are rarely 'severed' for extended periods by CSG activities). AGL also considers that there should be greater recognition of the ongoing nature of the relationship between the landholder and the CSG company. Compulsory acquisition tends to be a permanent arrangement, whereas CSG wells operate for around 15 years; during this time other land uses continue to coexist with the gas activities, and at the end of life the well is rehabilitated and the land reverts back to the landholder for use. Factors that need to be taken into account when determining compensation are therefore quite different for CSG activities and compulsory acquisition.

AGL suggests that any recommendations made by IPART use CSG-specific heads of compensation, presented in plain English (rather than legalistic terms that are not well understood by the community). AGL also sees merit in including heads of compensation in section 109 of the *Petroleum (Onshore) Act 1991* as this would provide clearer guidance for what should be considered when determining compensation for all parties.

3.4 Neighbouring landholders

AGL considers that it is appropriate for impacts on neighbouring landholders to be managed through the Planning Approval process, rather than the land access regime. All projects that have been granted Planning Approval must adhere to conditions that ensure that impacts on neighbouring properties are limited to a reasonable level, including restrictions on noise, dust and operating hours. Where projects are operating within their conditions, AGL does not consider that neighbouring landowners should be entitled to compensation. This aligns CSG projects with other comparable industries, where compensation is not paid to neighbours, such as:

- Farmers cultivating a paddock on their property causing noise and dust;
- Construction of a house on an adjacent property causing noise and dust;
- An adjacent property hosting power line infrastructure – while the landowner receives compensation, neighbours do not (even if they can see it);
- Public authorities constructing road works nearby to properties.

3.5 Appropriate timing for payments

AGL supports compensation payments being made to landholders at the relevant time for which CSG infrastructure is located on a landowner's property. For example, payments for professional fees and landholder time relating to agreement negotiation are made at the time the agreement is signed. Initial works payments are split so that half is received before the works commence, and the remainder received the following July, and annual compensation is paid each year. AGL does not support paying compensation to landholders as a once off lump sum, as this would not promote an ongoing partnership, and in the event the property were sold, there would be no benefit for the incoming owner.

4. Additional benefits for landholders and communities

AGL agrees that the communities that host CSG projects should share in their benefits, however we consider that any additional funds should benefit the wider community rather than be focused on landholders. The current barriers to producing more natural gas in NSW are not related to the ability of CSG companies to sign mutually beneficial land access and compensation agreements with landholders, but rather arise from concerns about CSG extraction in the broader community. Therefore AGL does not consider that diverting a proportion of government royalties to landholders in the form of a benefits payment would result in additional gas projects or more gas production in NSW (as proposed by IPART).

AGL supports the NSW Government's proposed Community Benefits Fund which will be supported by government and industry and will be used to fund projects within the communities where coal seam gas is produced. In this way, affected local communities will share in the benefits of gas development and will have a say in decisions about the allocation of funding. In particular, AGL supports the proposal to front-end investment from the fund so that communities can see benefits during the construction phase of projects, rather than waiting for when royalties are paid in the

production phase. The design of this fund will allow CSG companies to contribute to the fund as a means of partially offsetting royalties payable to the government.

AGL also supports the communities in which our projects are located through our community investment programs, employing local people and the use of local suppliers where possible. Throughout FY2014, the contribution of AGL's Gloucester, Camden and Hunter Gas Projects to the national and NSW State economies were over \$45 million and \$35 million respectively, including over \$10.1 million which AGL spent on local suppliers at these projects. AGL also supports community initiatives, events and organisations, which in FY2014 included:

- Over \$47,000 invested in the local Gloucester community, including to support educational facilities, fundraising events, sponsoring local events at shows and rodeos, and other cultural festivals;
- Almost \$30,000 in the local Camden community, including to support the local chamber of commerce, sponsoring local shows, Christmas events and sporting events;
- Over \$31,000 in the Hunter Valley community, including to support educational initiatives, agricultural competitions, business awards and sponsoring local shows.

AGL also looks for additional ways to support local industries, as demonstrated by a co-operation agreement signed between AGL and the peak dairy industry body, Dairy Connect, in May 2014. Under this agreement AGL and the dairy industry agree to work together to help the dairy industry grow, while at the same time facilitating the responsible growth of the gas industry in NSW.

5. Closing remarks

AGL is proud of the partnerships that we have formed over many years with the landholders that host our CSG projects, as these relationships are vital to our success. AGL is committed to providing fair and equitable compensation to our landholders, and to ensuring that they have access to the information they need to make informed decisions to enter into land access and compensation agreements. AGL considers that the arrangements that we have in place to compensate landholders ensure that the benefits of our projects are enjoyed by landholders, as well as the broader community.

Responses to the specific questions raised in the Issues Paper are provided as an appendix.

Should you have any questions or comments, please contact myself on (02) 9921 2563 or swestgate@agl.com.au or Fiona Orton on (02) 9921 2165 or forton@agl.com.au.

Yours sincerely,

Suzanne Westgate
Head of Land and Approvals
AGL Energy Limited

Appendix: AGL responses to questions raised in Issues Paper

- 1. Do you agree with our proposed principles of transparency, adaptability and practicability to guide our recommendations for this review? Are there other principles that we should apply in making our recommendations?**

AGL agrees with the proposed principles. See section 2 for further information.

- 2. Do you agree with the four key steps in our proposed approach for this review (identify impacts, estimate compensation for these impacts, estimate benefit payments and make recommendations)? If not, what are your concerns?**

AGL supports the development of guidance materials to further assist landholders when negotiating access agreements, which could include best practice principles for negotiating compensation, and methodologies that could be used to calculate reasonable compensation rates.

AGL considers that it would be very difficult to determine a benchmark that could reasonably be applied to the whole CSG industry given the large number of site-specific variables taken into account when negotiating an Access and Compensation Agreement. See section 2 for further information.

AGL supports the NSW Government's proposed Community Benefits Fund which would deliver benefits to the communities that host CSG projects, rather than focusing on landholders. See section 4 for further information.

- 3. Do you agree with our preliminary view on the relevant heads of compensation for hosting CSG exploration and production (value of land occupied and loss due to severance, injurious affection and disturbance)? Are there other temporary impacts of CSG exploration and production on landholders that we should consider?**

See section 3.3 for commentary on appropriate heads of compensation for CSG projects.

Section 3.1 sets out the factors that AGL considers when determining compensation for CSG project landholders.

- 4. Should we consider any 'special value' of land and 'loss of opportunity to make planned improvements on the land' in recommending compensation for CSG exploration and production?**

See item 8 of the table in section 3.1.

- 5. Are there any permanent impacts on the market value of land arising from hosting gas exploration and production that we should consider?**

There is no evidence to suggest that CSG activities impact land value. See section 1 for further information.

- 6. Do you agree with our preliminary view that NSW legislative provisions for landholder compensation for gas exploration and production should be broadened? If so, how? If not, why?**

AGL sees merit in including heads of compensation in section 109 of the *Petroleum (Onshore) Act 1991* as this would provide clearer guidance for what should be considered when determining compensation for all parties. See section 3.3 for further information on appropriate heads of compensation.

- 7. Do you agree with our preliminary view that our recommendations on compensation should be limited to landholders who host CSG activities and their neighbours who are directly affected? If not, why?**

See section 3.4 which covers compensation for neighbouring landholders.

- 8. Are gross margin and market rental approaches appropriate for estimating compensation for the value of land occupied? Are there other approaches that we should consider?**

See item 4 of the table in section 3.1.

9. Do you agree with our preliminary view that because severance is site-specific and highly variable, providing benchmark compensation would be of limited use to landholders? If not, how should we estimate and structure compensation for severance?

AGL suggests that any recommendations made by IPART use CSG-specific heads of compensation, presented in plain English, rather than legal terms such as 'severance'. AGL does not consider that severance is particularly relevant for CSG projects as properties are rarely 'severed' for extended periods by CSG activities. See section 3.3 for further information.

See items 3, 4 and 6 of the table in section 3.1 for further information about how AGL negotiates compensation to consider temporary disturbance or disruption of landholder activities as a result of CSG activities.

10. Do you agree with non-market valuation and relocation cost approaches for estimating compensation for injurious affection? Are there other approaches that we should consider?

AGL suggests that any recommendations made by IPART use CSG-specific heads of compensation, presented in plain English, rather than legal terms such as 'injurious affection'. Landholders generally do not need to relocate as a result of CSG activities. See section 3.3 for further information.

AGL works with landholders to avoid or minimise impacts on their land use and other operations. See items 3, 4, 5, 6 and 9 of the table in section 3.1 for further information about how AGL considers compensation for disruption as a result of CSG activities.

11. Do you agree with our proposed approaches for estimating compensation, or passing through costs, for disturbance? Are there other approaches that we should consider?

AGL works with landholders to avoid or minimise impacts on their land use and other operations.

See items 3, 4, 6 and 9 of the table in section 3.1 for further information about how AGL negotiates compensation to consider temporary disturbance or disruption of landholder activities as a result of CSG activities, as well as item 11 covering payments in kind.

12. Do you agree with our preliminary view that benefit payments should apply during the production phase for those landholders hosting gas development on their land? If not, why?

See item 7 of the table in section 3.1 for information on AGL's approach to providing landholders with production bonus payments.

AGL supports the NSW Government's proposed Community Benefits Fund, particularly the proposal to front-end investment from the fund so that communities can see benefits during the construction phase of projects (which tends to be the most intensive period of works), rather than waiting for when royalties are paid in the production phase. See section 4 for further information.

13. Do you agree that the costs of benefit payments should be shared between the gas company and the NSW Government? If so how? If not, why?

AGL supports the NSW Government's proposed Community Benefits Fund, which will be supported by government and industry, to fund projects that benefit the communities that host CSG projects. The design of this fund will allow CSG companies to contribute to the fund as a means of partially offsetting royalties payable to the government. See section 4 for further information.

14. Should funds for benefit payments be pooled and divided among a group of landholders that have signed access agreements? If so, how?

See item 7 of the table in section 3.1 for information on AGL's approach to providing private landholders with production bonus payments for its Gloucester Gas Project.