



30 October 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 Draft Report

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

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 3.7 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 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 CSG drilling operations that take place on their land, meaning that landholders are free to say "yes" or "no". In September 2015 the NSW Country Women's Association and Dairy Connect also became signatories to these principles. Many landholders agree to CSG operations on their land, and AGL has never accessed a person's land without their permission.

AGL welcomes the release of the Draft Report, and supports its key findings which reflect themes raised by AGL in our previous submission in response to IPART's Issues Paper¹, including:

- 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 works closely with landholders to develop agreed land access protocols (which form part of the access and compensation

¹ AGL's submission in relation to the Issues Paper is available to read in full here:
<http://aglblog.com.au/2015/06/submission-to-ipart-landholder-compensation-review/>

agreements) which set out 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. Establishing these conduct arrangements in partnership with landholders is critical to the long-term success of our projects.

- There is no “one size fits all” for landholder compensation, as 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. 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.
- When negotiating access and compensation agreements, landholders should receive compensation for their time, as well as for specialised professional services, including legal or property valuation fees.
- AGL supports the development of independent, objective guidance to assist landholders when negotiating arrangements with CSG companies.

Importantly, the recommendations in the Draft Report are generally consistent with AGL’s approach to negotiating land access and compensation agreements.

Our detailed comments in response to the recommendations in the Draft Report (and associated draft tools) follow.

1. Draft compensation spreadsheet model

AGL supports the provision of independent and objective information to assist landholders to estimate indicative compensation rates based on their individual circumstances. However, AGL considers that any benchmark information (spreadsheet model or otherwise) should be treated as guidance only and should not replace the existing compensation principles which have been established by CSG companies over time, in conjunction with hundreds of landholders.

The draft IPART benchmark model is based on the principles of the NSW *Land Acquisition (Just Terms Compensation) Act 1991 (Land Acquisition Act)*. Valuations under the Land Acquisition Act (typically undertaken for compulsory acquisitions of land) will not necessarily be fair and equitable as the values determined for severance and injurious affection can be highly subjective and in many cases are not particularly relevant for CSG activities (as gas companies work closely with landholders to agree on infrastructure placement and conduct arrangements to minimise these impacts).

Instead, AGL’s approach to access and compensation agreements is to determine fair rental value of the disturbed area based on a number of factors, and this approach has been accepted as fair and equitable by our landholders.

Some inputs to the IPART spreadsheet model (such as land value changes relating to severance and injurious affection) are likely to require specialised assessments by registered valuers. It will be important to ensure that landholder compensation comparisons do not become onerous or administratively complex, as in many cases the impacts on landholders from these issues are short-term or not significant (such as severance). In addition, any valuation assessments completed for the purposes of inputs to the benchmark compensation model should be undertaken independently of any compensation offer by CSG companies, in order to obtain an unbiased and independent assessment.

AGL does not support paying compensation to landholders as a once-off lump sum upfront, 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.

2. Benefits payments

AGL agrees that landholders should be able to share in upside benefits from CSG projects and therefore for the Gloucester Gas Project, we have 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.

AGL considers that benefit payments should be specific to each project and provided at the discretion of each company.

Additionally, 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, so that the broader community is also able to share in project benefits.

3. Compensation for neighbours

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. Where projects are operating within their conditions, AGL does not consider that neighbouring landowners should be entitled to compensation through the land access regime.

However, where impacts on neighbouring properties (such as noise levels or hours of operation) are demonstrated to exceed planning or license conditions, AGL agrees that the CSG company should mitigate those impacts to an acceptable level. This may include relocation for that time period, or other mutually agreeable compensation.

4. Amendments to the *Petroleum (Onshore) Act 1991*

AGL supports amending the *Petroleum (Onshore) Act* to align with section 532 of the Queensland *Petroleum and Gas (Production and Safety) Act 2004*. This section defines 'compensatable effect' as:

- a) All or any of the following relating to the eligible claimant's land-
 - i) Deprivation of possession of its surface;
 - ii) Diminution of its value;
 - iii) Diminution of the use made or that may be made of the land or any improvement on it;
 - iv) Severance of any part of the land from other parts of the land or from other land that the eligible claimant owns;
 - v) Any cost, damage or loss arising from the carrying out of activities under the petroleum authority of the land;
- b) Accounting, legal or valuation costs the claimant necessarily and reasonably incurs to negotiate or prepare a conduct and compensation agreement, other than the costs of a person facilitating an alternative dispute resolution.

- c) Consequential damages the eligible claimant incurs because of a matter mentioned in paragraph a) or b).

5. Landholder time and professional fees

AGL supports compensating landholders for their time spent negotiating agreements with gas companies, and this reflects AGL's practice. However consistent with the recommendations of the *Walker Review* and amendments to the *Petroleum (Onshore) Act 1991*, compensation should be capped at a reasonable level.

Within the spreadsheet model, the example provided is that 150 hours would be spent negotiating the initial agreement. This is well above the typical range. Our experience is that negotiating an agreement would typically take around 60 hours.

AGL also agrees that CSG companies should cover reasonable costs for landholders to obtain independent, professional advice in relation to the agreement (such as for legal, valuation, and accounting fees). However, AGL also 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.

AGL does not consider that it is reasonable for the IPART spreadsheet model to nominate an example value for these fees, as they can vary significantly between agreements (depending on the services required and the level of complexity). We also recommend that the model does not include these fees as 'compensation' in year one of the agreement, as they are typically directly funded by the CSG company (rather than paid for by the landholder and subsequently reimbursed).

While we recognise that the default values included in the spreadsheet model are intended as examples or placeholders (to be replaced by the 'real' figures for the landholder), they may well set an expectation about what is a 'normal' value for each input field. We therefore recommend that these values not be included as part of the spreadsheet model as it does not form part of the landowners compensation. Instead, the benchmark should refer to the fact that the companies are responsible for the reasonable fees for the professional advice associated with negotiating the agreement.

6. Independent workshops for landholders

AGL supports the recommendation that the NSW Farmers Association (or indeed any other peak agriculture body) provide independent workshops to assist landholders in understanding land access for CSG projects and negotiating land access and compensation agreements. AGL agrees that these workshops should be funded by the NSW Government. AGL considers that attendance at these workshops should be limited to genuine landholders affected by CSG exploration and production activities and they should not be an open forum for the general public to attend.

Where organisations wish to provide CSG related information to other interested community members, these events should not be taxpayer funded.

7. Voluntary public register of CSG compensation payments

AGL supports the recommendation of a voluntary and non-identifying public register of CSG compensation payments, as a resource to be used by landholders to understand typical and reasonable compensation rates. This should allow landholders to

anonymously provide information about their compensation, as well as contextual information such as land use (e.g. dairy farm), and the number of wells and length of roads hosted (to help distinguish between the range of reported compensation amounts).

Landholders should not be compelled to disclose their compensation arrangements if they do not wish to do so, and their right to privacy should be respected.

AGL considers that any register should be maintained by the NSW Land and Water Commissioner, who is independent of any particular agricultural industry group, CSG company or landholder.

8. 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.

Should you have any questions or comments, please contact myself on [REDACTED] or swestgate@agl.com.au or Fiona Orton on [REDACTED] or forton@agl.com.au.

Yours sincerely,

Suzanne Westgate
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AGL Energy Limited