

AGLGN Additional Comments on ACG's Report Final Recommendations

This Submission is in response to IPART's email of 4 November, 2004 requesting AGLGN's comments on six nominated matters raised in the latest ACG report.

This submission is supplementary to AGLGN's earlier submissions on the ACG report and the Public Forum held on 15 September.

In its email of 4 November, the Tribunal requested responses on six specific matters.

1. Overruns (s4.8 of ACG report)

AGLGN agree to include a condition to the effect that "*where a delivery point is served under two or more service agreements then an overrun is only deemed to occur where withdrawals at that delivery point exceed the total for all service agreements for MDQ in any day or MHQ in any hour*". This is the intent and effect of existing provisions.

2. Suspension of Supply (s4.16 of ACG report)

The existing clause (schedule 2A, clause 48) of the proposed AA would allow AGLGN to suspend supply where "requested by the manager of an approved scheme". The onus rightfully rests with the scheme manager to act within their authority under market rules when making such a request.

The amendment recommended by ACG would have the effect that the onus would be on AGLGN to be satisfied that the manager had the necessary authority under the market rules, and in the particular circumstances¹, before acting on such a request. If it was later found that the manager did not have the necessary authority in those particular circumstances, then there may be a risk that AGLGN could not rely on clause 50 of schedule 2A.

AGLGN agrees with ACG's intent, but believes that this intent is already implicit in the proposed AA, as a manager of an approved scheme is unlikely to issue such an instruction where they do not have the necessary authority. If that likelihood is accepted, then there would be no need to amend the AA as proposed by ACG. If that likelihood is not accepted, then the ACG amendment effectively places an onus on AGLGN to "police" the scheme manager. It should also be recognised that AGLGN may not be party to all information concerning the circumstances which lead to a request by the scheme manager, and therefore AGLGN may not be in a position to determine whether the manager is acting within their authority or not.

Market rules fall under the oversight and approval of the NSW Minister for Energy and Utilities, and GMC seeks ministerial concurrence for rule changes. In addition, all users contracting with AGLGN for reference services are also members of GMC. Given that market rules and operation is subject to ministerial governance, and given that users could pursue wrongful administration of the rules by the scheme manager

¹ It is possible that authority under the rules is given to the manager for dealing with specific circumstances, rather than as a general authority. This "circumstantial authority" is foreshadowed in the Gas Market Company's letter to the Tribunal of 31 August, 2004.

through their relationship with the scheme, AGLGN believes that any consideration of the scheme manager's authority in the access arrangement would be redundant and duplicative of other legislative and market frameworks.

AGLGN believes that it is reasonable to expect that a manager of an approved scheme would not issue such an instruction unless they were authorised to do so, or reasonably believed that they were. Accordingly, AGLGN disagrees with ACG's recommendation and maintains that the existing clause 48 (d) of schedule 2A of the proposed AA should be retained.

3. Extension of Term of Service Agreements (s4.24 of ACG Report)

ACG have made recommendations that:

- a) Clause 4 of schedule 2B should be amended to indicate that an application by a user for extension of a service in the circumstances contemplated by this clause is not subject to the queuing policy; and
- b) Clause 3 of schedule 2B should be amended to indicate the period over which a service may be continued.

With respect to the first recommendation, AGLGN agrees with ACG's intent that a user's capacity rights, and entitlement to extend those rights, should not be reduced through the fact that they have entered into a new reference service agreement under the terms of a future AA. While AGLGN questions the effectiveness of amending the 2005 AA to provide rights at a time when the 2010 AA would be in force, AGLGN would agree to amend clause 4 to the effect that "where a user has entered into such a Services Agreement, then notwithstanding clause 3 (a), the provisions of clauses 3, 5, 6 and 7 will continue to apply, subject always to the provisions of the access arrangement in force from time to time."

With respect to the second recommendation, AGLGN notes that clause 5 of schedule 2B states "...the User shall be entitled to continue to receive the Services for a further term....". Accordingly, AGLGN maintains that ACG's recommended amendment is not necessary. AGLGN would agree to include a footnote reference on the word "term" in clause 5 to the effect of "the length of term is to be nominated by the user when requesting an extension under clause 3 (b), subject to any minimum, maximum or specified length of term as set out in the access arrangement for a capacity reservation service, managed capacity or throughput reference service as applicable to that delivery point".

4. Load Shedding Triggers (s4.26 of ACG report)

With respect to ACG's recommendation concerning an *explicit provision for AGLGN to suspend delivery of gas to delivery points for reason of a general shortfall of gas supply in the distribution system*, AGLGN agrees to amend the phrase "... gas supply reduction, or a prospective gas supply reduction, in a part of the Network .." in Schedule 4: Operational Principles, Load Shedding, to include a footnote to the effect of "including, for example, prospective reductions in gas supply associated with upstream events".

5. Short Term Capacity (s5.8 of ACG report)

AGLGN does not agree with ACG's recommendation to remove the *description of activities for which gas delivered under short term capacity [>30 TJ] may be used*. Features of the provisions of the current AA and AGLGN's proposed AA are:

- Short term capacity (>30 TJ) can be requested in advance or in retrospect.
- It is available, and intended, for circumstances which are beyond the reasonable control of the end customer and are not characteristic of usual utilisation - eg: breakdowns, refiring of kilns following infrequent re-builds etc.

The change proposed by ACG would make short term capacity (>30 TJ) available in any circumstances subject to one request per year. ie: ACG propose that short term capacity (>30 TJ) would be available for "elective" increases in demand and no longer associated with uncharacteristic / unforeseen consumption as originally intended.

AGLGN's reasons for disagreeing with ACG's recommendation are:

- a) the fundamental principles underlying AA pricing and allocation of efficient costs are that non-tariff users book a MDQ which fairly reflects their capacity requirements and that MDQ bookings are maintained for 12 month minimum terms. Charges for capacity are calculated to be, and expressed as, an annual charge. Under the ACG proposal, users could systematically utilise substantial additional capacity without fairly contributing to the efficient cost of providing that capacity.
- b) short term capacity (>30 TJ) is currently available "retrospectively", which is intended to cater for unforeseen events (eg: breakdowns) where capacity cannot be requested and reserved in advance. The ACG proposal would enable users to "buy out" up to a one month block of overrun days per annum after the month had past. Users would therefore have 9 overrun days, plus the ability to retrospectively neutralise one month of overrun days per annum. This outcome is not consistent with the concept that the MDQ fairly reflects capacity requirements of a delivery point, and introduces an opportunity for users to underbook capacity and subsequently top up underbookings in arrears.
- c) ACG's recommendation changes the context of short term capacity (>30 TJ) from dealing with uncharacteristic / unforeseen events, to altering the current relationship between MDQ levels and overruns. It provides in effect, a new third element to be considered when selecting the MDQ level for a service. If the recommendation is adopted, then it would be necessary for AGLGN to revisit its MDQ forecasts for the AA period to analyse the likely reduction in forecast MDQ and consequential increase in reference tariffs.

6. Clarification of AGLGN's arguments concerning addition of delivery points (after the revisions commencement date) for the multiple delivery point service.

AGLGN has previously put the view that it is reasonable to limit the addition of delivery points [to a multiple delivery point service agreement] to periods of time within the timeframe of the proposed AA and that it is also reasonable for this limitation to be set out in the AA for clarity.

This view is built up as follows:

- The multiple delivery point service is intended for Users which require individual non-tariff reference services to more than one delivery point, and is available as an alternative to that User entering into separate service agreements for each of those individual non-tariff reference services. The structure of the multiple delivery point service is such that is an umbrella which encompasses the terms and conditions of the capacity reservation, managed capacity and throughput non-tariff reference services.
- Once a service agreement is effected with a user, the relationship between the user and AGLGN (including the user's rights to request and receive additional services) are subject to the service agreement. Irrespective of a change in the AA, the service agreement continues to stand as a legal document until it is changed, expires or is superseded through agreement between the parties.
- In the case of a capacity reservation, managed capacity or throughput service, it is clear that to add a delivery point (a new service) it is necessary to make a request. If a separate service agreement is entered into for that individual service, then this request would be made under the users rights under the AA (as no service agreement exists prior to a service being requested). In this case, once the AA is changed, then the User can only request a service to a new delivery point under the AA in force at the time – ie: they cannot add a delivery point on the terms set out in an AA after the revisions commencement date, as another AA is then in place.
- However, where a multiple delivery point service agreement (MDPSA) exists, then the user's rights to add delivery points become captured in that umbrella service agreement which can continue to bestow rights and obligations notwithstanding a change in the AA at the revisions commencement date. Accordingly, it is conceivable that users would have the contractual right to request and receive services under a MDPSA which reflects terms and conditions of an access arrangement even after the period of currency of that AA has past.
- AGLGN believes that it is the intention that users should be able to request reference services on the terms of the access arrangement in force from time to time. AGLGN therefore argue that the right of a user to add delivery points to a MDPSA established under the proposed access arrangement should not automatically continue once reference service terms and conditions have been revised by a subsequent AA.