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EnergyAustralia™

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Dear Dr Keating

AGLGN Access Arrangement – draft decision

EnergyAustralia welcomes the opportunity to provide comments on the Tribunal's draft decision on the proposed Access Arrangement of AGL Gas Networks Limited (**AGLGN**).

EnergyAustralia's is pleased that a number of its comments set-out in previous submissions have been incorporated into the draft decision. They include:

- maintenance of the existing 7 trunk zone structure;
- WACC reduced to 7%, in line with electricity distribution network service providers in NSW; and
- reference to uninsured events removed.

Also, a number of detailed comments regarding the Access Arrangement terms and conditions have also been incorporated. Having said that, there remains one outstanding issue for EnergyAustralia in this regard.

EnergyAustralia requests that the Tribunal reconsider its draft decision in relation to liability and indemnity. In its decision the Tribunal stated that '*...most of the proposed provisions covering liability and indemnity are reasonable*'. In the draft decision there is very little analysis to determine the basis upon which the Tribunal drew its conclusions. The Tribunal seems to have based its decision on the analysis done by the Allen Consulting Group (ACG). ACG provided economic, not legal, analysis.

In its previous submissions EnergyAustralia provided detailed discussion on the liability and indemnity provisions in the draft Access Arrangement. The issues raised in these submissions do not appear to have been addressed in the draft decision. In particular, the Tribunal has not addressed the point raised by EnergyAustralia that users are 'squeezed' between the provisions of the access arrangement (as interpreted by AGLGN in the relevant service agreements) and consumers' statutory rights. EnergyAustralia requests that the Tribunal reconsider all of the points raised by EnergyAustralia on liability and indemnity from a legal perspective.



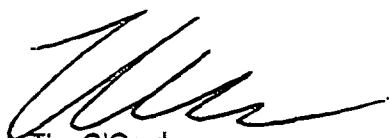
Partner

The Tribunal has decided that AGLGN should not be required to include in its proposed access arrangement the complete terms and conditions contained in AGLGN's proposed service agreements. EnergyAustralia does not agree with this conclusion but will not pursue this issue further except in relation to liability and indemnity. One of the main reasons for EnergyAustralia focussing so much attention on liability and indemnity was its direct experience with AGLGN in negotiating the current service agreements. The liability and indemnity provisions actually contained in its existing transportation agreements with AGLGN are somewhat different from what is contained the current access arrangement (In EnergyAustralia's view it is also inconsistent with the terms of the Access Arrangement).

There is much discussion in the draft decision on 'negotiation' between the parties. In practice, this does not happen in any meaningful way. Service agreements are presented to users on a 'take it or leave it' basis. Users have limited bargaining power in these circumstances. In this regard EnergyAustralia requests that the Tribunal reconsider its decision not to require AGLGN to include the full terms and conditions in the Access Arrangement in relation to liability and indemnity. EnergyAustralia would like the provisions in the Access Arrangement to be comprehensive and as they would appear in the service agreements themselves.

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, Manager Retail Regulatory Affairs on (02) 9269 7264.

Yours sincerely,



Tim O'Grady
Acting General Manager Retail & Marketing