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28 February 2005

Dr Michael Keating  
Chairman  
Independent Pricing and Regulatory Tribunal  
Level 2, 44 Market Street  
Sydney NSW 2000

Dear Sir,

**PUBLIC SUBMISSION**  
**Review of AGL Gas Networks NSW Access Arrangement**

Hydro Aluminium owns and operates an aluminium smelter located at Kurri Kurri. The smelter has been previously owned and operated by Alcan, Capral Aluminium and VAW. Hydro Aluminium, a subsidiary of Norsk Hydro, took ownership of the business upon the purchase of VAW by Norsk Hydro during 2003.

**Background**

During the 1999 and 2000 Access Arrangement review, Capral Aluminium was an active participant in the review process, including attending the various Public Hearings, providing written submissions (both public and confidential) to IPART and attending meetings with Tribunal members and staff.

One of the key messages delivered in the various submissions and discussions was that the Kurri smelter bore the highest Local Network Charges of all major gas users in the NSW Network – and by a substantial margin. We believe we still hold that dubious distinction!

During the past four years, the site has paid Newcastle Local Network Zone 2 pricing.

In our deliberations during the last Access Arrangement process, we undertook a feasibility study for the construction of a bypass pipeline – a copy of which was provided to IPART on a confidential basis – and also submitted to IPART our concerns as to the treatment of past capital contributions made by Alcan/Capral to AGLGN for the cost of the pipeline to the site.

During the period since 2000, VAW and now Hydro Aluminium has looked very closely at its options, including participation in the construction of a new pipeline or to challenge the treatment of past capital contributions via arbitration under the Code.



### **Proposal for a New Gas Pipeline**

IPART will be aware of a proposal for the construction of a new gas pipeline by Hunter Gas Pipeline Pty Limited (HGP). HGP proposes to construct a pipeline connecting to the AGLGN trunk main at Seahampton and to deliver gas to the Hunter Economic Zone (HEZ) at Kurri Kurri and via the Hydro Aluminium smelter through to Rutherford. The HGP pipeline will potentially be the first Embedded Network connected to the AGLGN gas network.

The proposed pipeline seeks to ensure there is increased gas supply capacity into the region. The current AGLGN distribution network does not have sufficient available capacity to meet potential increased demand, which includes HEZ industrial loads and possible future Hydro capacity expansion.

HGP also seeks to provide a tariff outcome which is competitive against tariff offerings by AGLGN under both its current and proposed Access Arrangement. IPART would certainly be aware of concerns expressed by Newcastle users on the comparatively high gas prices in the region. Despite tariff reductions being submitted by AGLGN in its proposed Access Arrangement, Newcastle network pricing remains higher than for Sydney for most users – and particularly for users in the Kurri Kurri area.

### **Hydro Transportation Contract with Hunter Gas Pipeline**

Hydro Aluminium has entered into a ten year contract with HGP for the supply of gas transportation services from the AGLGN trunk main to the Kurri smelter. This transportation services contract is subject to all necessary approvals and construction by HGP.

The HGP transportation services contract will deliver a pricing outcome to Hydro Aluminium which is lower than AGLGN's proposed tariffs – but subject to it only having to pay trunk transportation charges to AGLGN without also having to pay local network charges.

**In relation to transporting the gas from the AGLGN trunk pipeline to the Hydro site, the charges under the HGP contract are substantially lower than the both the current and proposed AGLGN local network charges.**

The AGLGN Access Arrangement should facilitate the development of economic distribution systems for the benefit of users. As currently drafted, the Access Arrangement could be used to prevent Hydro from securing optimal gas pricing to its smelter at Kurri Kurri.



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In round numbers, Hydro currently pays in excess of \$650,000 pa in AGLGN Network charges. This figure will fall to around \$530,000 pa, made up of Trunk charges of \$220,000 pa and Local Network and metering charges of \$310,000 pa.

**We simply ask this question:**

- **What incentive does AGLGN have to negotiate an outcome which requires them to forego their local network charges of \$310,000 ?**

**Required Amendments to the AGLGN Access Arrangement**

To facilitate the development of Embedded Networks such as the HGP pipeline, there are a number of key areas where the AGLGN Access Arrangement requires amendment:

**Partial Use of Network or Separation of Trunk and Local Network Services**

The AGLGN Access Arrangement states that a Trunk Reference Service is only available in conjunction with a corresponding Local Network Reference Service, and vice versa.

In the Final Decision 2000 (page 224), IPART stated:

“In the draft decision, the Tribunal required AGLGN to introduce reference services which allow for partial use of assets. AGLGN has argued that a significant part of the market will not require this service and has proposed that this service be a negotiated service. The Tribunal is now satisfied with AGLGN’s explanation that a significant part of the market will not require this service at present. Partial use of the network should therefore be specified as a negotiated service in the Access Arrangement.”

Hydro Aluminium has a fundamental problem with this position.

Unless there is an absolute requirement for AGLGN to provide a reference service for partial use of the network, AGLGN could effectively kill off any Embedded Network proposal by requiring payment of high Local Network Charges – even if the Local Network was not being used.

Hydro Aluminium understands that HGP has commenced discussions with AGLGN on connection and services, but there is nothing which ensures that AGLGN could not use the provisions of the Access Arrangement to effectively prevent the new pipeline from proceeding unless it is on AGLGN’s terms – thereby potentially preventing an appropriate competitive outcome to be achieved.



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Contract users of the proposed HGP pipeline will still be customers of AGLGN via trunk services. However, unless there is a clear requirement for AGLGN to provide a partial service as a reference service for those users who seek such a service, there will be a potential barrier to users who may seek to utilise the services offered by Embedded Networks.

**If a partial trunk reference service cannot be achieved from AGLGN, the Hydro Aluminium contract with HGP will not be economic. It would be ridiculous for users to potentially be exposed to an AGLGN Local Network tariff (for a part of the system not utilised) and the HGP charge for the use of the Embedded Network.**

This affects not only Hydro Aluminium but also other proposed and potential users of the HGP pipeline.

**End-users should be entitled to book only those parts of the Network Services which they require, ie Trunk Services only where only Trunk Services will be used, and as a Reference Service.**

This request is entirely consistent with the provisions of the National Third Party Access Code, which under clause 3.2(b) states:

“To the extent practicable and reasonable, a User or Prospective User must be able to obtain a Service which includes only those elements that the User or Prospective User wished to be included in the Service.”

Furthermore, clause 3.6 of the Code states:

“An Access Arrangement must include the terms and conditions on which the Service Provider will supply each Reference Service. The terms and conditions included must, in the Relevant Regulator’s opinion, be reasonable.”

Given the separation of trunk and local network assets and charges in the Access Arrangement – as was required by IPART during the previous Access Arrangement review process – and given the clearly stated provisions of clause 3.2(b) of the Code, Hydro is firmly of the opinion that IPART should ensure there is no arbitrary linking of trunk and local network services under the terms and conditions of the proposed Access Arrangement, and such a request is both practicable and reasonable in all the circumstances.



### Term of Services Agreement

Hydro Aluminium will commence services from HGP upon commissioning of the pipeline from Seahampton to Kurri Kurri. At this stage, the date for completion of construction is anticipated to be during the second half of 2005.

AGLGN seeks to retain the standard term for the Capacity Reservation Service and other Reservation Services to be for a “minimum of one year and a maximum of two years from the commencement of the Service.”

The Hydro Aluminium site has been a long term contract user of the AGLGN gas network. Where the company seeks to terminate its use of the Local Network service, it should not be subject to a minimum one year term. This is not an attempt by a contract user to “game” the use of the system by only utilising the network during the peak demand period. There is a logical argument here which supports the fact that Hydro Aluminium should be able to terminate its Local Network Service (and metering and related services) on the AGLGN network at the time of completion the HGP becomes operational. If AGLGN can hold a contract user to a minimum one year period, then Hydro may be exposed to up to 12 months of unwanted local network and metering charges (that figure being dependent upon which month the HGP pipeline ultimately is completed versus the rolling 12 month booking required under the AGLGN Access Arrangement).

Hydro’s current 12 month networks booking ends on 28 February 2006.

In the case of Embedded Networks, maintaining that a contract user cannot transfer at their preferred timing could be construed as unreasonably impeding competition, whilst also having a materially detrimental effect on the economics of the Embedded Network.

A customer should be entitled to some flexibility in term where it seeks to change its future supply requirements by a decision to cease taking a particular AGLGN service and taking a service from an Embedded Network.

IPART should require AGLGN to act reasonably in allowing cancellation of services, in particular where a service is no longer required.



### Load Shedding Priority

Load Shedding priority 2 should be deleted to ensure that Embedded Network Users' customers are treated exactly the same as other AGLGN contract users. The current Access Arrangement (pages 32 and 33) provides that:

“Unless there is an agreement on load shedding between AGLGN and the Embedded Network Operator, the Embedded Network Operator will be subject to Load Shedding priority 2 as described in Schedule 4.

It may be difficult for an Embedded Network Operator to reach an equitable outcome on load shedding priorities with a party which is losing some of its revenue base to the Embedded Network Operator. It may even be in AGLGN's interest not to reach such an agreement – so as to increase the risk to users moving to the Embedded Network. This type of issue is what the Third Party Access Code is and should be about – to prevent inappropriate opportunities for the potential use of monopoly power.

Notwithstanding the fact that AGLGN has never publicly released its positioning/ranking of particular end-users within its Load Shedding Table, the Hydro Aluminium smelter would certainly not be a priority 2 customer under the current Load Shedding Table.

Gas is a critical input into the smelter process, and we would be most distressed if the site is not provided with an appropriate level of priority relative to all other users of the AGLGN gas network.

Why are end-users who just happen to utilise an Embedded Network treated any differently to any other end-user on the AGLGN distribution system ?

IPART and AGLGN must recognise that the relationship between Hydro and AGLGN should be treated no differently for the purposes of load shedding whether the delivery point is at Kurri Kurri (ie the smelter site) or at Seahampton (ie the inlet into the proposed HGP Pipeline).

Whether there is “an agreement on load shedding between AGLGN and the Embedded Network Operator” or not, AGLGN is confusing the issue of embedded networks and the issue of equitable and non-discriminatory services across its customer base.

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**The current load shedding table is discriminatory against the end-users which may choose to utilise an Embedded Network and must be amended.**

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We look forward to participating further in the Public Forum on 23 March 2005 and are available to provide any additional information which IPART may seek during the course of this Review process.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Trevor Coombe', with a long horizontal flourish extending to the right.

Trevor Coombe  
Chief Executive Officer