16 April 2004

Mr J.P. Cox
Acting Chairman
Independent Pricing and Regulatory Tribunal
Level 2, 44 Market St
Sydney, NSW, 2000

Dear Jim,

**Review of AGL Gas Networks Access Arrangements 1 January 2005 to 30 June 2010.**

Thank you for the opportunity to comment on the above mentioned proposed Access Arrangements.

TXU is a major gas distributor in Victoria and a significant gas retailer in Victoria and South Australia. TXU owns and manages Australia's only underground gas storage facility at Port Campbell in Victoria and is an equity partner and foundation shipper in the recently commissioned SEAGas pipeline linking the Victorian and NSW gas markets. TXU has joined the NSW Gas Market Company and plans to enter the NSW gas retail market in 2004. As such TXU is a major gas industry participant in Australia and maintains a keen interest in the positive development of the NSW gas market.

Whilst TXU is generally happy with the form of these proposed Access Arrangements, TXU remains concerned regarding seven specific areas as described below.

1. Network Constraints.
2. Wilton to Horsley Park trunk.
3. Queuing Policy.
4. Balancing Arrangements.
5. Substituted and Bare Transfers.
6. Terms and Conditions.
7. Reservation Services.

**1. Network Constraints.**

TXU is concerned that the proposed Access Arrangements utilise capacity rights under a contract carriage regime. TXU is familiar with this form of right as it is common in transmission systems where system capacity is often constrained. Network systems however tend to be less constrained, allowing a relatively uninhibited flow of gas and not requiring capacity rights.

If the system is indeed constrained, necessitating the use of physical transmission rights, TXU has serious concerns around its ability to fairly compete in this market. The incumbent (AGLGN) has a significant beneficial position as it holds most of the current distribution system capacity by default. Without an equitable mechanism for trading unutilised capacity AGLGN maintains a significant advantage over new market entrants, with the ability to prohibit competition for some large customers.

Advantages accrue to the incumbent by the nature of its ability to manage its portfolio risk. For example, in a constrained system where the aggregate peak demand of all system users is greater than the delivery capacity of the system, system operators rely on a degree of non-coincident peak demand to allow them to meet the needs of all system users. If a new entrant seeks to capture a customer with say a 10TJ/d peak day load it may be argued that the system identifiable capacity dedicated to this load is (say) 8TJ/d. The additional 2TJ/d required on the peak day is provided by under-utilised capacity within the incumbent's portfolio i.e. dedicated load from other customers not required on that day.

A new entrant retailer will not have access to the additional 2TJ/d and as such will be forced to:

a. bid for the customer with additional cost (eg system augmentation costs) and/or,
b. bid with significant commercial risk and/or,
c. bid at a lower level of service or,
d. decline to bid for the customer.

This assumes that the Access Arrangements do not provide the perverse incentive for the incumbent to refuse to trade/sell/release the identifiable dedicated capacity used by the contestable customer. The advantage enjoyed by the incumbent may mean that it is strategically better for it to inefficiently retain all of the unutilised capacity rather than allow competitors access to the market.

In these circumstances a retailer with a large portfolio of customers is far more capable, at less risk and lower cost, of providing the capacity the customer requires on its peak day as its more diverse customer base allows it to manage it's demand by utilising non-coincident peak loads.

TXU believes the proposed Access Arrangements should provide incentives for AGLGN to trade its unutilised capacity with other market participants at a fair and equitable market price so that new market entrant retailers have the opportunity to compete for customers on a level playing field and customers have access to a genuinely competitive range of energy solutions.

TXU does not at this time have sufficient understanding of the system operation to know whether an effective and efficient trading market can be established for distribution network capacity that would be fair and equitable to new market entrants as well as to the incumbent.

On the other hand, if the distribution network is not constrained, TXU questions the need for capacity rights. As discussed above, the existence of capacity rights is a barrier to entry that can only be overcome by instituting an equitable trading mechanism. In an unconstrained distribution network, this is an unnecessary additional cost.

**2. Wilton to Horsley Park trunk.**

TXU believes that it is appropriate to manage the Wilton to Horsley Park Section of the network under a portfolio management scheme rather than a customer management scheme. In the proposed access arrangement AGLGN have removed trunk zones 1-3 and created one zone, which is a price disadvantage for customers whose gas is being supplied from the Eastern Gas Pipeline (EGP). In the current access arrangement there is a $0.03/GJ price differential. TXU would be willing to support the concept of one node on the Wilton to Horsley Park network section provided that it was through a portfolio management approach. By this we mean that the gas could enter the node at either Wilton or Horsley Park and the receipt point for the customer would be the new node, not specified to either Wilton or Horsley Park as per the current customer management scheme. TXU believes this approach would enhance security of supply for customers.

Whilst the introduction of gas swaps represents an additional service to the access arrangements that may provide retailers with some additional flexibility to manage their retail position, TXU is concerned that the lack of flexibility associated with the gas swap service as provided in the proposed Access Arrangements will limit the potential benefits of such a system. TXU believes that users are unreasonably burdened by liabilities and costs associated with the service, irrespective of their use of it. TXU would like to see more flexible conditions applied to gas swaps in the Access Arrangements.

**3. Queuing Policy.**

TXU has some experience with a capacity queuing system similar to that proposed in the Access Arrangements. The queuing system applied to the Moomba to Adelaide Pipeline System operates on a “first in best dressed” basis and this has caused some problems for TXU in the past. Although this approach seems on the surface to provide an equitable basis for the allocation of limited capacity, its practical application has been found to be flawed and has resulted in a dispute involving TXU.

Problems arise when a significant percentage of the network capacity becomes available at one time, in a competitive market place. The driver to be first in the queue in the knowledge that other parties may desire the same capacity, can deliver perverse outcomes with parties potentially going to extreme lengths to be “first in the door” when capacity becomes available.

TXU proposes that the concept relating to the time the request for capacity was received, be reviewed so that all bids received in the same period (say month) are considered to have been received at the same time. Alternatively, when the network operator receives requests, they advertise receipt of such requests to the market requesting any other competing requests be provided within a defined period. Competing requests received within the defined period are deemed to have been received at the same time. Such measures would help to mitigate the somewhat arbitrary allocation of capacity based solely on the chronology of capacity requests.

**4. Balancing Arrangements.**

TXU believes an alternative arrangement to the Operational Balancing Agreement (OBA) should be included as part of the Access Arrangements. Workshops will commence shortly on the Business Rules that will review alternative balancing arrangements to those that currently form a part of the Access Arrangements. Under the current arrangements, AGLGN must approve any alternative arrangements to the current scheme, which will be subject to the alternative arrangement meeting the operational requirements of the network. TXU believes that the alternatives to the OBA currently being discussed as part of the Business Rules could form part of AGLGN’s new Access Arrangements.

**5. Substituted and Bare Transfers.**

TXU has concerns that AGLGN has the opportunity to use the transferring facilities within the Access Arrangements, which apply to substitute transfers, to the advantage of its retail business. A substituted transfer is a transfer or assignment of any interest in the user’s right to obtain a service in which the contract between AGLGN and the user either does not remain in effect or remains in effect with terms not identical to those existing between AGLGN and the user immediately prior to the transfer or assignment. A substituted transfer requires the prior written consent of AGLGN. Such consent is permitted to “only be withheld on reasonable commercial or technical grounds, and which may be given subject to reasonable commercial and technical conditions”. Under this scenario, AGLGN defines what constitutes reasonable commercial or technical grounds in isolation and without an obligation to consult with the other affected parties.

The proposed Access Arrangements permit a user to make a bare transfer to another person. However, the transferee must notify AGLGN of the portion and nature of the contacted capacity subject to the bare transfer prior to utilising any transferred contracted capacity. A bare transfer is defined in the Access Arrangements as a transfer or assignment of any interest in the right to obtain a service in which the contract between AGLGN and the user remains in effect in terms identical to those existing immediately prior to that transfer or assignment. The Access Arrangements do not require AGLGN's consent for a bare transfer.  This is appropriate, as AGLGN's contracted arrangements remain unaffected by the bare transfer.

## 6. Terms and Conditions.

TXU is concerned that the Terms and Conditions contained in the proposed Access Arrangements are somewhat one-sided and provide inadequate protection for parties engaging with AGLGN through these arrangements.  Examples of TXU's concerns include:

- AGLGN can request any security it considers necessary. This broad power needs to be limited whereby additional security is only to be provided if certain trigger events occur (eg for downgrading of credit rating).
- Where a user is required to establish a receipt station, AGLGN may request certain alterations or additions to be made to that receipt station at the user's cost. There is currently no limit on AGLGN's power to request these, and no cap on the amount that a user would pay.
- Although the parties are relieved from any liability arising out an event of force majeure, such relief is not available where a party could have used "reasonable endeavours" to overcome the force majeure event after a reasonable period of time has passed. TXU believes it appropriate to remove the "reasonable endeavours" requirement from the Access Arrangements.
- The provisions relating to suspension of supply are overly onerous (eg if a party requests suspension it must still pay a charge and may also need to still pay for the service; and if AGLGN suspends deliveries, the party must indemnify AGLGN against claims made by the party's customers arising out of the suspension). This latter clause is of particular concern and should be removed from the Access Arrangements.  Alternatively this clause could be amended to limit indemnity to those occasions where the party requests suspension.
- TXU believes that its liability should be limited to a monetary cap with consequential losses excluded.

## 7. Reservation Services.

TXU believe that the proposed Access Arrangement should provide greater flexibility with respect to reservation services.  The proposed arrangements require customers to commit to the specified MDQ for a minimum period of 12 months irrespective of the period of the supply contract remaining between the customer and their retailer.  This essentially means that customers will not be able to adjust their MDQ within 12 months of the termination of their supply contract.  TXU believes the Access Arrangements should provide customers with the flexibility to adjust their MDQ for a minimum period of less than 12 months.

**Conclusion.**

TXU appreciates the opportunity to assist IPART in its determination of AGLGN's proposed Access Arrangements. Although TXU is keen to enter the NSW gas retail market, several impediments to market entry exist within the Access Arrangements as proposed. TXU trusts that IPART will fully consider the impact of its determination on new entrant retailers and customers wishing to access a genuinely competitive energy market.

Should any clarification of the points contained herein or any further information be required, please do not hesitate to contact me.

Yours sincerely,

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