



**Weston Aluminium Pty Ltd**

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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,

### **Review of Proposed AGL Gas Networks NSW Access Arrangement**

Weston Aluminium is a medium-sized gas user located in Weston (near Kurri Kurri), west of Newcastle. The company operates the largest secondary aluminium plant in Australia with a capacity of 40,000 tonnes per year, catering for the recycling and export of aluminium and its by-products.

Weston Aluminium is currently supplied gas via the AGLGN Newcastle local network – which happens to be very expensive by any measure for a small to medium sized gas user.

We have recently committed to contract for transportation services from the proposed Hunter Gas Pipeline (HGP), being developed by Hunter Energy. This pipeline will deliver gas from a proposed new connection on the AGLGN trunk main at Seahampton via a newly constructed pipeline which will deliver gas via Hunter Economic Zone (HEZ), Weston and Kurri Kurri.

The new tariffs which have been offered by HGP are competitive not only against the existing local network zone 2 and 3 charges under the current Access Arrangement, but also against the proposed charges submitted by AGLGN to IPART in December 2003.

The HGP service is essentially a competitive alternative supply pipeline to the AGLGN local network in the region.

Of fundamental concern to Weston Aluminium is the fact that the proposed AGLGN Access Arrangement requires that a Trunk Capacity Reservation Service is only available in conjunction with a corresponding Local Network Capacity Reservation Service [Section 2.1.2 Terms and Conditions].

Weston Aluminium seeks IPART's reconsideration of its stated position on page 25 of its December 2004 Draft Decision, where IPART concluded as follows:

"Furthermore the Tribunal is not persuaded that the interests of a few users in having access to standalone services would outweigh the legitimate business interests of AGLGN or the interests of other users.

The Tribunal considers that a partial use of network service (involving the separation of local and trunk network services) is not likely to be sought by a significant part of the market and, having taken into account the various factors in section 2.24 of the Code, it is therefore satisfied that it should not be included as a reference service in the services policy of AGLGN's access arrangement. As this does not preclude prospective users and AGLGN negotiating the provision of such a service outside the access arrangement, there is still an incentive for AGLGN to develop and offer negotiated services for users that require a separate trunk and local network service."

In reaching this decision, we believe IPART has failed to have sufficient regard for the following key factors:

- The Service Provider's legitimate business interests (Code clause 2.24)

How is it reasonable to determine that AGLGN's legitimate business interests must include protection of its monopoly status? It may be in their business interests to try and stifle competition, but is it legitimate to entrench onerous terms and conditions to stifle the legitimate business opportunity being sought by an alternative pipeliner.

We quote the Introduction in the Code:

"The objective of this Code is to establish a framework for third party access to gas pipelines that:

- (a) .....
- (b) prevents abuse of monopoly power
- (c) promotes a competitive market for natural gas in which customers may choose suppliers
- (d) Provides rights of access to natural gas pipelines on conditions that are fair and reasonable for both Service Providers and Users ...."

- The public interest, including the public interest in having competition in markets (Code clause 2.24(e))

How can a decision to not require separation of local and trunk network reference services in any way meet the obligation to take into account the public interest in having competition in the market.

- The interests of Users and Prospective Users (Code clause 2.24(f))

An end-user should be entitled to make a decision about transportation services on the basis of a level playing field. It makes no sense that an end-user's interests are not being taken into account or are given less weight (versus the

Service Provider's interests). IPART appears to be placing more weight on AGLGN's interests than those of the customers AGLGN serves.

- 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 wishes to be included in the Service (Code clause 3.2(b)).

It is clearly both practicable and reasonable for a trunk reference service to be able to be provided without a corresponding local network reference service. AGLGN is prepared to provide that separation in relation to the Wollongong market, so clearly it can and does work – why not require it across the whole network?

- The likely demand for separate services (IPART Draft Decision Dec 2004 – p.25 paragraph 2)

IPART concluded that it was not satisfied that a significant part of the market would seek a partial use of network service. There is already a significant part of the market which either has or is seeking a partial use of the network, including:

- Orica at Kooragang Island
- BlueScope and other users at Wollongong
- CSR
- Pilkington
- Austral Bricks

These companies have an aggregate total gas demand of approximately 20 PJ per annum – by any measure a significant part of the market (which totals only 100 PJ).

- There is still an incentive for AGLGN to develop and offer negotiated services for users that require a separate trunk or local network service (IPART Draft Decision Dec 2004 – p.25 paragraph 6)

Theoretically there may be an incentive for AGLGN to negotiate services for users that require a separate trunk or local network service where there is a threat that AGLGN may lose business, eg complete bypass of AGLGN's Wollongong distribution system at the time of the construction of the EGP.

But where is the incentive for AGLGN to negotiate when they have no incentive to do so? In the case of the potential customers on the HGP, the Access Arrangement already affords them the full trunk and local network tariffs whether the gas is delivered to either the Weston Aluminium site or into the HGP at Seahampton. AGLGN has \$100,000 of reasons not to negotiate a separate trunk tariff on commercial terms – because if they do, they could lose all of that amount (being the current amount in AGLGN annual local network charges paid by Weston Aluminium) and only retain trunk charges of approximately \$50,000 pa.

IPART has not recognised the lack of a level playing field in relation to such a potential negotiation – and the fact that such a situation could quite easily result

in AGLGN being able to use its monopoly position to crater potential embedded networks.

I seek an opportunity to attend and address the proposed Public Forum to be held by IPART on 23 March 2005 in relation to this issue.

Yours sincerely,

Garbis Simonian  
Managing Director