INDEPENDENT PRICING AND REGULATORY TRIBUNAL

PUBLIC CONSULTATION MEETING INTO REVIEW OF GAS ACCESS ARRANGEMENTS - AGLGN

Tribunal Members

Mr James Cox - Acting Chairman
Ms Cristina Cifuentes- Part-time Member

Held at the Marra Room, Level 2
Grace Hotel, 77 York Street, Sydney NSW 2000

On Wednesday, 15 September 2004, at 2pm

MR COX: Good afternoon, ladies and gentlemen, and welcome. My name is Jim Cox and I am Acting Chairman of the Independent Pricing and Regulatory Tribunal. With me is my colleague Cristina Cifuentes and a number of members of the tribunal secretariat.

The purpose of today's forum is for us to hear and to take into account the views of interested parties on three key issues relating to the review of AGLGN's proposed revisions to its access arrangement. These issues are: the total cost review, proposed trunk zone merger, and terms and conditions.

As you will be aware, the tribunal has engaged several consultants to work on these issues. The Energy Consulting Group has undertaken a review of the capital and non-capital cost of AGL's access arrangement submission. The Allen Consulting Group has carried out a review of terms and conditions and, in addition, the tribunal secretariat has undertaken some analysis of the proposed merger of AGL trunk zones.

Today's meeting gives you the chance to have your say on those issues and will also enable the tribunal to have the benefit of your views as we form views on these difficult issues.

I should emphasise that to date the tribunal has made no decisions on whether to accept in full or in part either or any of the consultants' findings or recommendations; nor have we formed any view on the zone merger. For that reason your views are very important as they will inform and assist the tribunal in making decisions on these matters.

I should emphasise that in addition to the forum today, we will accept written submissions on these and any other matters up to Wednesday, 6 October 2004. That's a later date than the 29 September date currently on the web site.

We will run this forum by having a number of brief presentations followed up by roundtable discussion from people sitting at the table here. Then, if there is time, we will take comments and questions from people sitting at the back of the room. There are three main items to be discussed and we will have a short break after the second

session.

I should emphasise that the discussion will be transcribed for the benefit of the tribunal and the secretariat so that we have a record of what is said at the meeting. It would be useful if you could introduce yourselves for the benefit of the transcribers when you start to speak, and also try and speak slowly and clearly, as I am endeavouring to do now.

Before I move on to presentations I will pass over to Ruth Lavery, who will talk just briefly about the review process and the timetable.

MS LAVERY: As Jim mentioned, the web site at the moment says that public submissions are due by 29 September. We have extended that for another week; it is now Wednesday, 6 October. We are looking at this stage for the new access arrangement to commence on 1 April next year, not 1 January. We are not going to meet that deadline.

We are planning on putting out a draft decision during November. We will be looking for AGL's response and holding more public forums in January, at this stage, with a view to putting out a final decision in February next year to meet that 1 April start time. The web site will be updated to show that, probably this afternoon or tomorrow.

TOTAL COST REVIEW

MR COX: The first presentation will be made by Ed Teoh, who is a director of the Energy Consulting Group. He will talk about the total cost review.

I have done a very cruel thing to Ed by not allowing him to use his slides, so he is just going to speak to us. Given the fairly crowded nature of this room, I think it will probably work a bit better. He has promised me he will keep to 20 minutes and when he has finished, we will follow up with a roundtable discussion on the issues he has raised.

MR TEOH: Thank you. With me is Malcolm Young. He is also a director of Energy Consulting Group. During the discussions, if I cannot answer any questions, Malcolm certainly will be able to assist in that area.

As you are aware, the report has been out for a while now, so in terms of its specific details, please refer to the report itself. I will just go through basically what we have done and some of the thoughts that we went through in making the decisions and reaching the conclusions that we came to.

As you are aware, what we have done is basically a total cost study. In terms of this process, what is very important to us is the gas code itself. In terms of how we have applied it, I think it is very important for you to understand the way that we have looked at it. The network, as we see it, is a long-term asset. Whilst we are looking at a review over a five-year period, we have considered it in a perspective of how the assets would operate over the long-term period?

We have also looked at things in terms of the business processes itself - how is cost controlled within the business to ensure that there are sufficient cost controls, and if there is an optimum balance between the capital expenditure and the non-capital expenditure.

We have also given consideration to the safety aspect and the integrity of the networks, which we believe is very important aspect of operating the network. In terms of how we have applied it, we have considered what is reasonable and good industry practice.

We went through a series of questions and answers with the gas networks. I suppose from that perspective, we had enormous cooperation in the providing of data. We also met up with a few stakeholders - Orica and EnergyAustralia and others. We considered a number of documents including the asset management plan, the safety and operating plans, marketing strategies and business plans, and various project justifications.

If you look at the gas networks, our view is that the AGL gas networks is in a pretty good condition. The primary mains, which are steel mains, are cathodically protected. That gives them, I suppose, a good assurance that the assets will last their economic life. 95 per cent of the low pressure and medium pressure system has already been renewed, which means in terms of the work moving forward it has to be justified on economic grounds itself.

With regard to the other ancillary assets - the regulating stations, the meters - our view is that primarily they are in very good condition. There are some issues with regulating stations and spare parts, but that is not isolated to AGL alone. Residential meters are currently within a field life extension program. To me that is very much current practice with other utilities as well.

In terms of the capital expenditure for 2000-2004, we have looked at it from a perspective to see where they underspent and where overspending has occurred and the reasons for those occurrences. If you look at it in terms of the expansion capital, there is about $45m above what has been approved for the access arrangement. In the other areas - system related and non-system - there has been underspending.

When we looked at the expansion capital, we considered it from the perspective of the unit cost itself: What is the cost of laying mains? What is the cost of laying the services and what is the cost of installing meters? What we have come up with essentially is that in terms of the service costs and the meter costs that AGL has incurred over this current period, we believe they are consistent with what we would consider efficient.

Turning to the mains cost, what has been submitted is based on what I would call a building block approach, which is essentially a contractor's costs plus overhead costs. Factored into that would be the mix of customers that those mains are laid for.

In one particular category, we believe that the unit cost itself is a little bit higher than what we would consider sufficient from an industry perspective. As a result of that, we have adjusted our recommended capital expenditure from the $252m that has been submitted down to about $249m. So there is a minor adjustment in a particular mains category because we considered that the cost was a little bit high.

Moving on to the renew/replacement category and the reinforcement category, we looked at what AGL has incurred over the current period. Essentially the expenditure is 48 per cent less than what was actually approved. The reasons is that there has been a deferral of the primary mains loop project and there has been a reduction of the meter replacement program as a result of the field life extension. We looked at the reinforcement program on a project-by-project basis and what we have come up with is that the reinforcement program is reasonable, the cost is reasonable, the mains and rehabilitation and also the meter replacement program have substantially been reduced. From that perspective, when we looked at how it has actually been applied, we considered that that has been reasonable as well. So we are recommending the expenditure that has been submitted in the access arrangement.

The non-system assets is an interesting issue. Some $21.3m was submitted in that category. Out of that, there was about $7.5m of motor vehicles cost and about $5.3m of IT costs. With regard to the motor vehicles' costs we looked at the motor vehicle policy that AGL Gas Networks supplies - how they have considered it on a cyclic nature? What do they do as far as trucks are concerned? - and we looked at the unit cost of the vehicles. We believe that the cost they have submitted is reasonable itself and we are recommending that expenditure.

In terms of the IT costs, it is mainly related to the FRC cost itself and the reconciliation of FRC costs for this current period. Whilst there has been a separate exercise to review the FRC costs, when we did the final reconciliation we accepted it on the basis that it falls within what was that separate exercise. So we are recommending that expenditure.

During this exercise, AGL did advise us that they inadvertently left out corporate IT costs, and that was a total of about $24.9m being submitted as part of that. We looked at it from a project-by-project basis and what was the business case and justification for that $24.9m? Although it is a separate exercise from what has been considered here, I thought I should mention that when we looked at it, we thought that the cost was reasonable.

Moving forward to the current period or the forecast period, certainly the expenditure level is much, much higher than the actual expenditure for the past period itself. When we looked at that, there was good justification for some projects and we have, I suppose, applied our judgment on others as well.

I will start off by talking about the market expansion category. As I mentioned, we looked at it from the unit cost perspective - mains, services and meters. In the case of mains, we have applied the same rule as we did for our review in the current period itself. Where we have come up with the one particular category of laying mains as being higher, it is the same in this area. The way we have applied it is, although we realise that AGL does use a lot of contractors, it is the application of the cost itself being carried through to forming an estimate for unit costs. Looking at those sorts of estimates and comparing those, we believe that particular category which is for new homes in established areas is higher than what we would consider reasonable.

As to services, we concur with the estimates that AGL have put together. In terms of residential meters, I suppose, there are different categories of residential meters. There are what I will call small, medium and large sized meters. Because of the mix of meters, the unit cost is a weighted average cost of those three particular categories.

We believe that the industry today is moving in terms of the medium-sized meter to a lower cost option. The reason for that is the introduction of instantaneous hot water services, which is increasing the medium-sized meters more so than, I suppose, was the case a few years ago. What we are seeing in other utilities is the introduction of a cheaper meter option that would then sort of fill that gap as compared with what is actually being applied in AGL at the moment.

In discussions with AGL, we have been advised that certainly they are trialling the meters at the moment. They have not found a suitable option. However, we believe that if you look at other jurisdictions, other utilities, they are already being used and that should be factored into the estimates for the next period itself. So our recommended expenditure is a little bit lower than AGL came up with.

In terms of the other categories, which is the industrial and commercial meters and costs of laying mains and services for those areas, in our review we have looked at how they have applied it, and we agree with their numbers.

Just in broad numbers, in terms of the forecast to our recommended expenditure, in five years AGL are saying the total expenditure will be about $272m. We are recommending in the order of $256m.

Moving on to system reinforcement, there are over 70 projects proposed in this area. Obviously we cannot look at all of then, but we have looked at material projects, the ones essentially over $1m. We have looked at two project in particular - one is the Wollongong secondary mains project and the other is the Narellan medium pressure reinforcement. With those two projects in particular, we believe, there are opportunities to reduce the costs.

In the case of the Wollongong secondary mains, the information that has been provided to us shows a couple of options. The option that we are recommending is staging the cost over a period rather than doing it over this current period. Doing that gives AGL the opportunity of looking at the growth and whether it warrants doing a complete project versus doing it over the current period, which is then spending the total full amount over this period.

In terms of the Narellan project, we believe, given the data available to us, that it can be deferred to the next access arrangement period.

The other aspect in looking at this expenditure is that we quite often look at reinforcements that have been put forward as compared with what has actually occurred. The reason for that is, in terms of demands and customers numbers, the expenditure that is usually incurred over the period is always slightly less than what has actually been forecast. That is because with the forecast data, not only talking about growth and customer numbers and demand but also in systems procedure, generally at a point in time you will find that there is an opportunity to defer them, move them forward, because the loads that are supposed to occur have not actually occurred. We believe, given that situation, there is an opportunity of a 10 per cent reduction in expenditure.

Moving on to renewal and replacement, the program we have at this stage is what I spoke about earlier. About 5 per cent of the low pressure medium pressure network has

not been renewed. Our view is that, under those circumstances, there should be a clear asset management plan developed to look at rolling out or renewing that 5 per cent. That should be done on the basis of economic grounds and on safety and reliability.

What we saw to date in terms of the information that is available to us says that it certainly justifies some work to be done, but not to the extent of having the 5 per cent renewed over this period. We believe that an asset management plan will put out this expenditure maybe in the order of a five to a ten-year period. So we recommend about half the expenditure of what has been submitted on that basis. At the same time with AGL, and us as well, there is extra data to be gathered which will also indicate the appropriate time for the replacement of the remainder of the 5 per cent.

In terms of the meter replacement, we have certainly looked at it to see what are the initiatives that AGL is putting in. In two particular areas, which are the domestic regulator replacement areas and the industrial regulator replacement areas, we believe there are opportunities for a cost reduction or lessening of the workload itself. This is mainly because current industry practice is that you do not replace an industrial regulator on a meter change. You do it on a needs basis. In some cases, we acknowledge that it has to be done, but not all the cases. So we have allowed some expenditure for that category, but not all of it.

The same applies for domestic regulators: it is done at a time when the meters are changed due to, I suppose, expiry of their life in the field. In discussions with AGL they moved from total replacement to a targeted replacement and we have agreed on that approach itself. So there has been a slight cost reduction as a result of further discussions with AGL.

Turning to the Sydney primary loop project, the cost has actually increased significantly from about $36m to $51m. We have looked at it on two bases: is there justification for the cost itself and is there a need for that particular project? In the information that has been provided to us as to the difficulty about conducting in that area - there is an extension of three kilometres of pipeline, there is extra reinstatement of conditions required - it justifies the increase in cost. Even if it justified the increase in costs the quandary that we went through was: the project has been put forward as a risk mitigation project to increase the security of supply through to Sydney itself, and is that mitigation justified?

If you look at Victoria and in particular what happened during the Longford incident and after that, there was $200m spent on building underground storage to increase the security of supply to Melbourne itself. On top of that, if you look at the Victorian system, there is a duplication of the Victorian system that should one of the mains be hit by a construction contractor, or something like that, at least not all of Melbourne will lose the supply. Based on the numbers that we have worked through, we believe there is sufficient justification for recommending that the primary loop project go ahead in the current periods.

Moving onto the non system capex areas, I suppose the two main areas, one is in the IT and the other one is in vehicles. We believe that in terms of vehicles, looking at the number of vehicles required, there is no justification for increased costs as was submitted in this current period, that the numbers of vehicles is realised on a cyclical nature, that what is being replaced in the previous period should be about the same number as currently. We recommend the same level of expenditure, not an increase.

In terms of IT costs, there was over $37m submitted in that area. We have looked at the IT, what proposals have come through, business cases that either have been developed or considered at this point of time, and what are I suppose what I would consider on the "wish list" itself. We believe that there is sufficient justification for some of the projects, not all of them at this point of time, and there is also a need to ensure that whilst we go through the five-year period there are sufficient, I suppose, moneys in there for ad hoc changes and enhancements in those systems. What we are recommending is an expenditure of $30m instead of the $37m that has been submitted.

Given that situation, what we have come up with is in the five-year period there is a total expenditure of about $560m. We are recommending in the order of about $500m.

Moving on to non capital cost, I suppose the approach we have taken is to look at the costs of 2004 as the line in the sand before we looked at what is proposed for the current period. The reason why we have done that is in terms of benchmarking there is really high level benchmarking to be done and that is indicating to us that, although AGL's costs are at a reasonable level compared to other utilities, our concern is how is it in comparison to what the operating conditions are in New South Wales.

In looking at this current period, we believe that given the customer growth and the demand that is above what was initially forecast, the operations and maintenance costs, and the overheads costs as an aggregate, are considered reasonable. In further discussions with AGL, there is a reduction in insurance costs and that has been factored into the overheads component itself.

Marketing expenditure is one that we have had a very close look at and I suppose we are very aware of the penetration in the New South Wales market as compared to the Victorian and ACT markets, which are I suppose of a colder climate. In terms of where the AGL expenditure is today, we believe that most of it is in incentives to builders and that it is currently about at the right level.

Whilst we looked at the forecast expenditure for this next period, I suppose AGL's expenditure for the operating and maintenance period we have looked at from a perspective that, if they are at that level, can the networks be operated efficiently and, despite the fact that we are not recommending a full replacement, is that level of expenditure sufficient. In our view, given that it is a long-term asset, and deterioration of the assets does not occur rapidly, we believe there is sufficient I suppose expenditure in the operations and maintenance to cover that area. We are recommending the operations and maintenance expenditure as has been submitted.

In terms of the efficiency improvement, AGL submitted about 1.5 per cent efficiency improvement instead of 3 per cent for the current period. We have looked at it from a utilities throughout Australia perspective as to what has been the efficiency improvement experience in those areas and also what has been put in as far as different access arrangements are concerned, and we believe that about 1.5 per cent is a reasonable level to be achieving over the next period.

AGL also has put in another incentive in terms of their marketing area as a $3m business case for I suppose targeting the hot water market itself. What we did was we had a considerable discussion with them as to who they are targeting, which part of the market they are targeting and what their plans are moving forward. In looking at their costs aspects in terms of justifying the whole process, we concur with them that this initiative should be recommended.

In terms of, the last one, forecasts, AGL has put in 2.2 per cent for unaccounted for gas. We believe that, given the changes in demand, there is probably justification for 2.2 per cent over half the period and after that, given the forecast is low moving forward, we believe this should come down to 2.1 per cent.

Given the time, that is the philosophy of how we have actually applied our review on the capex and opex side, so I hand it over to Jim.

MR COX: Thank you very much. The next stage is to proceed to the round table discussion. I will ask AGL to go first but, before we do that, I thought we might just go quickly around the table and give everyone a chance to introduce themselves, so if you could just say who you are and what your interest is, I think we will all appreciate it.

MS DAVEY: Susan Davey, EnergyAdvice.

MR McINTOSH: Andrew McIntosh, EnergyAdvice.

MR MARSHALL: John Marshall, Macquarie Generation.

MR GROVE: David Grove, Origin Energy.

MR WILLIAMS: Garry Williams, Country Energy.

MS PEARSON: Anne Pearson, EnergyAustralia.

MR LEONG: George Leong, Orica.

MS REED: Shelley Reed, TXU.

MR LIVENS: Stephen Livens, Alinta.

MR DAVIES: John Davies, OneSteel.

MS GYZEN: Lynda Gyzen, Agility.

MR PRINGLE: David Pringle, from AGL.

MR BATES: Grant Bates, Agility.

MR YOUNG: Malcolm Young, Energy Consulting Group.

MR COX: And you know who we are. If I can start off with AGL - David.

MR PRINGLE: Just a few general comments to kick off the round table, if you like. First we would like to point out that prior to the appointment of ECG, Parsons Brinckhoff, who were contracted, reached a conclusion that AGL Gas Networks, were at the better end of the range of gas distributors in Australia and in terms of their performance indicators were lower at the costs per customer and cost per kilometre of mains in relation to other service providers and they were at the better end of the reliability indicators.

PB also found that since 2000 AGL has improved its relative performance in most of those indicators, including a 24 per cent real improvement on the operating costs per customer, which is quite significant.

With that as background, AGL has acknowledged that ECG recommended that 98 per cent of AGL's capex over the previous period, 98 per cent of proposed opex for the future period and 98 per cent of proposed capex should be considered, or it would be recommending to IPART, as prudent and efficient.

Having said that, AGL disagrees with many, or some but certainly not all, of the recommendations that ECG is putting forward and AGL will be putting written submissions putting a case for that. Most of those items are fairly technical issues in terms of why the costs are what they are so I would not intend to debate those issues today, but we will be putting our case in writing.

Finally, I would like to point out that it is essential that the whole, or the various forecasts put together for the access arrangement, are consistent so that, for example, if the demand forecasts change it is essential that the forecast operating capital costs are changed to reflect that and, similarly, if IPART decides that certain items of capital expenditure such as program rehabilitation should not be allowed, that should be reflected in the allowable level of operating costs and unaccountable gas.

MR COX: Thank you.

MS DAVEY: No comment.

MR McINTOSH: No comment.

MR GROVE: Nothing from me.

MR WILLIAMS: Not at this stage.

MR LEONG: It is very difficult for Orica to comment on some of the costs because of the privileged nature of the correspondence but there is one cost, which is the market operations costs, about $4.17m, which AGL said that it applied for, and the market operations costs is for the management of load shedding, the monitoring of gas quality, gas balancing and type B industrial and commercial appliance approvals. This is the third access arrangement and I would have thought those costs, that we would have paid for those somewhere else in the system, and I cannot understand why AGL wants additional moneys.

I would just like to point out that the gas balancing costs, the function is really spelt out in the gas market rules and that has been known all along, so I just need some clarification why this extra money has been asked for.

Managing load shedding, I can understand that, but we have not had any load shedding to date, I don't believe. The comments from the consultant regarding monitoring gas quality I agree with. Basically all they do is monitor the quality of the gas. There is no functionality there. I am not sure what type B appliance approvals are but I would expect that should be a user pays system.

MR COX: We will come back to Ed Teoh later. First of

all, I should ask whether there are any additional comments at this stage from people sitting at the table? Silence probably indicates absence of outrage.

MR LEONG: I can make some more comments.

MR COX: Perhaps I will ask David and Ed if they want to respond in any way first.

MR PRINGLE: The only real question appears to be in relation to those market operations costs. Our argument there was that in 2000 the efficient level operating cost was largely determined on a basis of comparison with the costs of the Victorian distributors and there is a significant level of costs of the order of $4m a year where their functions are carried out by gas networks in New South Wales which are not carried out by the distributors in Victoria, so our argument was that our costs were unfairly determined in 2000 because of the fact that we incurred this $4m of costs that Victorian distributors don't incur and it was not factored into the equation.

MR TEOH: I suppose when we looked at it, we considered what was actually done here in terms of the market operations aspect as compared to Victoria and certainly we do concur with some of the activities that are done here that are not done by the distributors in Victoria.

In terms of things like load shedding, there is a need to manage load shedding. There is a need to ensure that if something is required, for argument sake, a load shedding table, and drawing up that aspect, certainly from my experience in Victoria you would have to do something like that. It is not a once-off exercise that has to be done.

The other thing that you also speak about is I suppose the type B appliances. They are generally for, I suppose, the complex appliances, I will call them. In terms of New South Wales, it has been proved by AGL that they can be brought into service. In terms of Victoria, they have been done by the Office of Gas Safety, so we do recognise the fact that there are some costs that have been incurred here that in terms of the benchmarking exercise done earlier are probably not taken into consideration.

Having said that, we also said in terms of when we had discussions with AGL that we looked at activities and some of the costs aspects of that, and in one particular part of it we did recommend a reduction because we thought it should be already included in terms of the opex component.

MR COX: Thank you, so other comments?

MR LEONG: The consultant made some comments about asset utilisation that I just don't understand, as well as the actual conclusion. Can you clarify what was the actual conclusion there? You basically said that there is some reduction in utilisation of the Sydney/Newcastle trunk and also the Sydney/Wollongong trunk but was there anything more spoken about that? It was just left there.

MR TEOH: One of the things we had to look at was certainly asset utilisation in terms of the system. The main areas that we think in this area are relevant is in the primary mains side of things and we did that in terms of the Wollongong mains and the Newcastle mains. I suppose the way we approached it was, if you look at the capacity of a pipeline, the capacity of a pipeline is not what is contracted to supply but what we call a diversified contract capacity. What we then had to do was, given that situation, what was the load in both pipelines, how does it compare in terms of contract versus tariff load, and from the information that we had we then worked out roughly that if you look at it from a diversified system perspective, what is it that it is equivalent to in terms of a reduction in load as a result of a reduction in contract load. And, I suppose without actually going through the technical calculation, the conclusion that we drew was that from a diverse load perspective there is approximately 10 per cent reduction in the actual load.

How is that applied moving forward? I suppose there is a whole series of questions that perhaps need to be answered. I am not sure if this is the forum to debate it, but certainly one of the issues would be, given the reduction in load, would that necessarily mean a reduction in the pipeline size itself? It is standard industry practice that you go on increasing pipeline size, and that is not necessarily dependent - it is not just a marginal increase, it depends on what the pipeline size is, say 150mm to 200mm, not 150mm to 180mm, so there is a whole series of questions. In terms of identifying it from a diversified load perspective, we have estimated it is about a 10 per cent load reduction.

MR LEONG: That is fine, I just wanted to bring it to everyone's attention, that is all.

MR COX: Thank you for doing that. Is there anyone at the back of the room who would like to make a comment or question anything at this stage? If not, there is a final chance for comments from people sitting at the table.

MR DAVIES: Can I just ask a question, maybe it is just some clarification: this market development number that we are talking about and the fact that you are allowing, I have forgotten the number, several million there for the development of the hot water system, is that captured in terms of the sales component? I was unclear. Clearly one does not go into investing in a market development without the anticipation that it will balance with the sales, therefore how do you reflect this? Are we talking about it as a cost to AGL? AGL must have clear plans to substantially grow the volume and the volume therefore justifies that expenditure surely?

MR TEOH: I suppose what we looked at was the business case that has been put forward by AGL in terms of justifying this particular market initiative. In terms of the sales aspects, we certainly have not looked at the revenue side of things. What we have done is looked - when I say revenue side, the revenue side in comparison to what has been submitted in terms of the access arrangement - what we looked at is in terms of the revenue side in regard to justifying this project and whether the hurdle rate that AGL has put forward meets the hurdle rate.

From our perspective, certainly what has been put forward does meet the hurdle rate. The business plan makes sense to us, so if the question is in regard to just looking at the project in isolation, yes, we have looked at that. The project in regard to the total revenue stream for AGL, certainly we have looked at that as well.

MR PRINGLE: Can I just add to that and say that the costs or marketing costs of that scheme are allocated wholly 100 per cent to the tariff market. It is designed to grow the tariff market volumes. We have that included as a separate line item in our demand forecast, the extra terajoules to grow from that, and that is what Ed was talking about, if we show that it is economically beneficial to spend that money and get the load that we presume we will get, and we have shown over time because of that, because of the equation, it transfers back to the benefit in the medium to longer term straight to those tariff customers, so that extra load you just queried is built into our demand forecasts and we have demonstrated to the tribunal and to ECG that over time the tariff customers will benefit by lower tariffs because of their allowance of that initial marketing expenditure up front.

MR DAVIES: Can I just add in response that obviously as a self-contracting industrial customer we would be hoping as you grow the tariff load that the larger customers might see that the better utilisation of your assets might benefit us in terms of not shouldering a larger share of the burden.

MR PRINGLE: In some ways that would flow through to contract customers, you are right.

MR COX: Further comments?

MR WILLIAMS: My question is more a point of clarification. I read the term "metering", or "the cost of metering", and I was wishing to have clarification on how much of metering or what components might be included in that term, whether it is the meter itself, whether it is the meter and regulator, whether it is installation thereof?

MR TEOH: Well, I suppose it depends. We have used the term "metering" in different ways. Where we have used metering in regard to say new customers, it is the cost of the total installation, but in terms of like a meter replacement program the term "metering" we would use in regard to the replacement of the meter itself, because in the report we have separately reported on the replacement of regulators, so it depends on I suppose which area we are talking about.

MR WILLIAMS: The area that I had looked at specifically was on page 39 where the cost was discussed on mains, services and metering per customer and there was a figure of $380 per customer written there.

MR TEOH: It is a total installation cost in that category.

MR WILLIAMS: From?

MR TEOH: From just the meter.

MR WILLIAMS: That is the meter regulator, not the service?

MR TEOH: Not the service, that is right.

MR PRINGLE: That also includes in high-rise buildings there is a large cost per customer because of all the electronics to get the information back to the meter - and water meters as well.

MR WILLIAMS: Water meters I think you have separately identified anyway.

MR YOUNG: That includes not only the costs of those to the regulators but the physical cost of installing it as well as the costs of the components.

MR WILLIAMS: Thank you.

MR COX: Thank you. Another question or comment? I think we should perhaps close off the discussion here. You obviously do have the chance to make further submissions to us by 6 October. In the absence of further submissions, we have obviously the views of AGLGN and the views of ECG, which as David Pringle pointed out, do not differ that much at the end of the day, so we await further comments.

PROPOSED TRUNK ZONE MERGER

MR COX: The next session is on the five-zone versus the seven-zone issue. We will hear first from Sarina Fisher from the Centre for International Economics, who has been assisting the secretariat and the tribunal in understanding the issue - but I'm not sure that the tribunal does understand the issue. She will make a brief presentation and then we will follow it up with roundtable discussions.

MS FISHER: As you will all be aware, one of the more significant changes in the proposed AA that has been raised in submissions is the proposal to merge the three Sydney trunk zones into one. So, effectively, customers delivering gas into the Sydney local networks would face the same trunk capacity reservation charges whether their receipt point is at Wilton or at Horsley Park.

The submissions we received in the first round principally focused on the perceived costs of that merger. In particular there were several issues raised in terms of cost reflectivity, which is an issue for the gas code, because users are effectively paying for transportation across the length of the proposed zone A rather than, in some cases, users who are only using one or two of those zones.

There were also issues raised in terms of potential competition impacts given the removal of the price differential between shippers on the EGP the MSP and the consequences for the competitive situation in the New South Wales gas market.

In response to some questions raised by the tribunal, AGLGN has come back with additional information on the benefits that are up for grabs as a result of the zone merger and in particular how the gas swap service would work under, effectively, a five-zone structure rather than a seven-zone structure.

Essentially, we think that there are two key areas of potential benefit out there. One principally relates to the more effective operation of switches in short-term arrangements for a gas supplier between the different receipt points, improving the operation of the gas swap service by removing the network as a player in those sorts of arrangements and making them neutral to the arrangements that retailers or customers might want to strike in setting the swap arrangements, and also the gas swap service in terms of the receipt points swaps would themselves be more simple because you would be removing time delays involved in changing contractual arrangement, changing standing orders in GMC, changing annual capacity bookings and things of that nature.

Obviously the costs and benefits have been talked about amongst the secretariat and the tribunal for some time now. As Jim mentioned originally, no decision has been made yet and it continues to be discussed. But we are seeing this forum as an opportunity to take some of these issues a little bit further.

The new information that AGLGN has made available to

us on this issue was put up on the web site. I am not sure how much time people have had to digest it effectively, but we are interested in people's responses to it. I guess by implication, the proposed benefits that are available as a result of merging the three Sydney trunk zones imply that the existing system is essentially not well suited to changes in short term gas supply arrangements between receipt points, particularly of the small opportunistic kind, and that it was perhaps set up with long term customers in mind before retailers came into the picture and before the EGP was established.

We would obviously be interested in the demand in the market to improve the efficiency of those changes in short-term supply arrangements. This is an open forum and we are open to discussion on any issues that people have in relation to the trunk zone merger. There are three overarching issues that we would like to invite comment on if that will help our conversation here. Firstly, how beneficial are the increases in the efficiency of short-term gas supply arrangements to retailers and other stakeholders? For instance, do current arrangements under a seven-zone structure inhibit short-term shifts in supply from different receipt points; and, if so, to what degree of inconvenience and cost?

Secondly, is there demand for further wholesaling and trading opportunities out there in the market? We would be interested to know if more trading would occur, if it was facilitated by the creation of a regional hub, which in principle, it would be. Thirdly, coming back to many of the issues that were raised in submissions originally on the costs of the zone merger, what is the materiality of what are essentially small price changes - and very small in most instances - in the cost of delivered gas to customers and to competition in the New South Wales market?

MR COX: AGL would you like to comment at this stage before we start the roundtable discussion.

MR MARTIN: My name is Scott Martin from AGL. The tribunal asked us to actually address a bit of a shortfall in understanding as to what we are actually trying to do. There was a perception that there was a little bit of lack of clarity as what are the benefits and what is the flexibility and what is the simplicity of what we trying to do? Rather than directly answering those three questions, that Sarina put up, I might go back to the start and have a bit of a look at why we have done what we have done and I think my going through that will actually answer those questions.

Over the last three years there has been a variety of approaches to us to facilitate short-term transactions between users or between users and shippers that did not fit into their standard transportation arrangements. I say "standard transportation arrangements" in the sense that, at the moment, all our transportation services are point to point. So when you have a non-tariff delivery point service, that service goes from a specified receipt point to that delivery point. Gas is therefore defaulted - determined to come in at that receipt point for the load of that particular customers.

In order to change the services to or change receipt of gas to another receipt point, therefore for a point-to-point service, you have to change the starting point. You have to shift it across to the other receipt point. That causes, firstly, contractual issues, because the user then has to come to Gas Networks to get a contractual variation to change the initial starting point.

Since the advent of market systems, the receipt point or the delivery point is actually part of the standing data that is held in the gas market system. So there is a five-day transactional process to actually comply with the gas market business rules to keep your receipt point for a delivery point current. That is fine for long-term gas supplier arrangements, and I guess in the past that has been typically the way that the New South Wales market has evolved with long-term gas supply arrangements. Increasingly more and more users are starting to say,"Hang on. For the next two days I want to get 20TJ from this other receipt point"; or, "I want to get 20TJ from this other user because of some other arrangement in another state or take or pay commitments" - or whatever.

There are commercial drivers going on between users and the wholesale marketplace and they are then looking for ways to express those and to work those things out. Presently, as I say, for us to cater for that arrangement, the change in receipt point is very, very inflexible. We sat down and said, "What do we want do to?" Number one, we want to get out of the picture. For us to do that, then it

is really important that we are commercially neutral on where the gas comes in - whether it is at Horsley Park or Wilton - and in 12 months time, there will be another receipt point operational in the current zone 2, which is at Menangle Park; so even more so the level of complexity will increase.

With the point-to-point nature of the transportation services, charges are also based on that point. So when the point is at Wilton, there is a certain charge. When the point is at Horsley Park, there is another certain charge. The concept here is to say: let us take that zone, where there are three sources of gas coming into it, or you have gas from Victoria, South Australia, Sydney Basin, and make it one common pricing point. Then, from a commercial point of view, Gas Networks can basically step back and there is no longer a revenue recovery driver for us to ensure that transportation services and capacity booked is consistent with our contract carriage principles. By establishing a simple point node, then those same point-to-point principles can apply without the obstruction.

Once you do not have to change the receipt point on a point-to-point service, then the requirement to change market rules does not change either because that receipt point is still that nominated for a particular delivery point; that is the way it is set up. We then take that basic existing transportation service structure - so there is no change to the services; the services that people are familiar with over the past few years do not change - but we overlay above it, I guess, a framework of facilitating gas transfer arrangements that are negotiated between users. In the same way that users currently make nominations, then it should happen in the same time frame. So, again, it is having that short-term - being able to spontaneously affect trades.

That is basically what we wanted to do. We wanted to create some flexibility. We wanted to take any unnecessary contractual things out of the way and basically treat gas trades from a network balancing point of view as, I guess an allocation issue, an inventory reconciliation issue rather than a contractual point-to-point transportation issue. That is what we have tried to do, and that is what the aggregation of those three zones does.

If we retain the seven-zone structure, obviously we are not getting rid of those three separate pricing points. That means that AGLGN maintains a contractual interest in the way that non-tariff services are set up. It means that we are still going to go through a process of having to ensure that where a user wants to use another receipt point for a short-term period of time, then a capacity service has to be established there on the same principles as apply to any other capacity reservation service. So we are there creating a situation for the next five years where the same difficulties and inconveniences that users have expressed some frustration with over the past four years continue for that period.

As I say, with another receipt point coming on, there are opportunities for trades and for more sophisticated operations in the wholesale market for growing maturity. That potential is there. I guess the solution we have tried to put in place here is that we can just step out of the way largely and then set things up so that trades then become just a part of everyday nominations rather than a contractual variation, then a five-day market transaction, and then a five-day market transaction, and change it back again after you have got your gas for two days. So we are trying to go to something that is actually workable and flexible. Those are the benefits of what we are trying to do and why the five-zone structure really is a big part of that.

On the question of what are the competitive effects, we have done some pretty simple numbers. When you look at the price differential between Wilton and Horsley Park at the moment it is about 2.6 cents a gigajoule. Effectively what it comes down to, on an equivalent throughput basis, if you convert the capacity reservation charges, for an end customer who is, let's say, paying $4 for his gas at the city gate plus network transportation, you are looking at about 0.3 of a per cent. That is certainly not a material number. We would speculate and propose that there are greater opportunities for greater savings through more dynamic wholesale activity and that 0.3 of a per cent is likely to be swamped quite readily by increasing the opportunities for different sources of gas and for different flexibility of users rather than tying them into their long-term agreements with very little flexibility to go elsewhere on short-term notice.

It is a step away from cost reflectivity. We agree with that and do not dispute that. On the other hand, first, it is not material, as I have just highlighted, and I guess the second point is that it is really not inconsistent with other regulatory decisions.

If you look at Northern Territory Gas or the Dampier to Bunbury pipeline, they are both decisions under the code and the zones there with much longer than the 69-kilometre zone that we are proposing. With Dampier to Bunbury, I think there are two zones that feed around Perth to the north and south. Both of those are over 110 kilometres long each. Both of those have in excess of eight delivery points each and they are all commonly priced. We are proposing a 69-kilometre zone, so that is entirely consistent with what has been proved elsewhere as being consistent with the code.

That is basically what I had to say on that. I guess there are significant benefits that come from the five zones and in terms of the effects of competition, it really is not material and it has certainly not proven to be inconsistent with the code when we look at other jurisdictions.

MR COX: Thank you very much. We will now proceed to comments from other stakeholders. Perhaps we could start with EnergyAdvice.

MR McINTOSH: Firstly, Scott, 2.6 cents, what load factor was that based on?

MR MARTIN: That is just 100 per cent.

MR McINTOSH: 100 per cent load factor? My argument would be that that doesn't reflect the true usability of gas and that that figure would, in fact, be a lot greater, maybe up around the 4 to 6 cents mark. In a competitive commercial market that is a huge difference. That is one statement that I would like to make; that that is, in fact, a big advantage to those who are bringing the gas in to Wilton currently, which coincidentally would be AGL, I assume.

Another other point I would like to make relates to the January crisis. You are talking about a four-day period. Can you just explain how you manage that because I believe that AGL brought the gas in to the Horsley Park city gate at that stage; is that correct?

MR MARTIN: What we are talking about here is commercial transactions. Obviously, when there is shortage of gas supply and the choice of customers getting disconnected or getting gas in at another receipt point comes into play, then everyone works together to do what they can do. What we are really talking about here is the commercial transactions, when parties want to do it for their own commercial benefit, rather than for, I guess, an emergency supply situation. So they are two quite separate situations.

MR RAPISARDA: The other point there is that under the emergency supply situation, the Gas Market Company will suspend them.

MR McINTOSH: But you said that one of the advantages of going to five zones was to make administration easier.

MR MARTIN: Correct.

MR McINTOSH: My argument is that during a crisis you are able to do that anyway such as the 1 January crisis that you had.

MR MARTIN: As I have said, number one, the market rules with respect to gas balancing are suspended during an emergency situation. That only applies under certain criteria. If changing receipt point for a delivery point, then you would be obliged to go through a five-day transactions under the market rules to comply with the market rules.

In terms of AGL's commercial position, then, in those situations, we discuss those issues with the users at the time to make sure that it is commercially neutral. What we are talking about here is setting up a reference service that gives users the ability and the right under the access arrangement to access trades in a manner that meets their commercial environment. It is quite clear that, in the past, in adopting principles of the reference services that are set out the access arrangement, the requirement to change delivery points has not met those parties' interests.

MR McINTOSH: Thank you.

MR COX: We will come back to you, if you wish.

MR GROVE: Nothing from me.

MS PEARSON: I have a couple of comments to make on this particular issue. EnergyAustralia is certainly supportive of the gas swap service, particularly once we received AGL's additional information we would acknowledge that it increases the flexibility for the gas trades. Having said that, EnergyAustralia thinks that that needs to be balanced against the issue of the price changes. Whilst Scott Martin suggested a figure of 2.6 cents per gigajoule as being not material, for a new entrant retailer trying to win customers, that is material and it is enough to discourage a customer from switching retailers. That has certainly been our experience.

Whilst we support the flexibility created by gas swap service, we think that it would be detrimental to competition, particularly in the smaller commercial industrial sector of the market over the next little while.

MR LEONG: I support AGL's proposal to have five-zones instead of seven. I believe that it is the only way we can establish a spot market for gas in New South Wales. Having the EGP delivery at Horsley Park, the MSP at Wilton, and Sydney Gas at Menangle Park all delivering to the same zone will facilitate that same transaction. I think it just makes sense. I don't know how much of the spot market we will have, but unless we have facilities to be able to swap gas, then we will never know.

MS REED: My biggest concern with the gas swap is whether it has to be an on-the-day swap or a trade like that. From a commercial perspective, I would like to be able to do whatever I want on a day and either supply the gas from Moomba on the day or supply the gas from Longford, and I will have to have contractual arrangements with whichever pipeline in order to do that.

I would like that ability, without having to go to another retailer and potentially have a swap with them, to carry that out on a day. It could be my misunderstanding of the service and how it works. That is certainly what we would be looking for in that sort of service in order to support that.

MR LIVENS: We have already put forward fairly substantial submissions with respect to this issue. We have noted the new response by AGL to IPART in response to your letter to AGL. We intend to put in a further submission with regards to AGL's response.

Just in general, you commented on materiality. You were interested in the materiality issue. I have to agree with EnergyAdvice and EnergyAustralia. It is a material amount. If you look at how much gas is going into Horsley Park at a point in time - I can't tell you how much that is; it is clearly commercially confidential - figures around 30TJ to 50TJ a day are pretty much what you are looking at. If you multiply that out by 2.6 cents you are looking at sums of up to half a million dollars a year. Over the access arrangement period you are looking at potentially up to $2.5m. To the extent that that gas is being used by a new entrant, that is clearly a commercial issue and it makes it difficult for that entrant to enter the market, those are significant sums, and other comparisons are largely irrelevant, I believe.

We spoke about the length of the proposed zoning, that it will be 69 kilometres or 79 kilometres, and that was compared against Darwin and the Dampier to Bunbury pipeline. The difference there is that the market is entirely different in those cases; there are sole pipelines supplying that market. There are not competitive forces in place. There are not two or three pipelines delivering gas into that particular market. I just think again that that analysis or that comparison is largely meaningless because the reality is the EGP is in competition with the MSP, and that is just not the case in the other pipelines.

It seems to me that the gas swap service has two parts to it: There is user swap and the receipt point swap. In AGL's response to IPART's letter I think it was made pretty clear that in terms of the user swap the collapsing of the seven zones down to five does not really achieve too much. Whether it be five zones or seven zones, it is pretty much the same. So really all you are looking at is the receipt point swap. That is the key issue that needs to be looked at.

A lot of this seems to revolve around GMCo's requirements in that if you have a change in receipt point,

you need to advise GMCo and that takes five days, or whatever the time frame is.

I do not understand, if is it simply a name thing; so if we call those three zones, zone whatever, and then had different charging within that zone, would that mean that you would not need to advise GMCo of where that particular gas is coming from? You can answer that now, if you wish.

MR MARTIN: But the receipt point is actually used for balancing. Otherwise if you do not know where a user is getting their gas from, then you have no view as to the view of the network inventory in terms of pipeline, under an OBA, that is essential. Under any other arrangement, then it is still necessary to maintain the view of the actual reality of where the gas is coming from.

MR LIVENS: So how is that changed by having that? Changed for whom? Is it for AGLGN in the trunk section or in the --

MR MARTIN: Under the five zones - we are getting into detail, I suppose. Basically the transfer of gas to the other receipt point we are proposing would be done by an overlaying adjustment to the inventory rather than by actually physically changing the receipt point. In doing that, we get the exact quantity of the trade transferred. So the exact quantity of the amount agreed between the parties is actually switched across to the receipt point rather than the whole demand of a particular delivery point.

I guess the other side of the coin as well is the network's commercial position, and the fact is that we charge capacity reservation services based on the point-to-point services and the charge for that service. Where there is a difference in service, then the consistent services have to be set up to introduce that other receipt point for that user to utilise. Once they then physically change that receipt point, then the delivery point is, for balancing purposes, pointing across to that other site, we do need to inform GMCo. So it all ties together.

MR LIVENS: I think I have raised this with you in previous meetings as well. It just seems to me I do not see why you cannot maintain the price differential and yet achieve the same service. On the EGP we regularly have receipt point swaps, 24-hour turnaround, and it is just done. Sure, it takes a bit of administration but, in the scheme of things, someone changes the bill essentially, and a bit of balancing is required. It is just not a huge issue. That is just an observation.

Another way you could achieve the same outcome is that not everyone, I imagine, would actually want the flexibility of having a gas swap service. So those who don't want it, would be paying for it effectively, even though they don't want it. I do not see why you could not necessarily provide that flexibility. You could have your different charging arrangements for the different zones. If someone does want the added flexibility of a gas swap service, then they pay a certain amount to have that flexibility. That would achieve the same outcome, I believe. I think we have discussed this before.

MR MARTIN: There is a million ways to skin a cat. What we have tried to do is come up with something simple in recognition that we didn't want to make commercial transactions through gas networks so there was no requirement to establish transportation services and incur annual transportation charges and the like. The whole idea was to make it commercially neutral. That is the simplest and cleanest way to do it. Any other way of doing it is a bandaid approach, an ad hoc approach, and there are compromises all the way through. We have tried to bring some of those compromises out in that submission to IPART, just comparing the five zone versus the seven zone. It can work, but you lose the bulk of the benefit with the seven-zone structure.

MR LIVENS: I am not convinced of that. You say to make it commercially neutral. Clearly it is not, it has a significant impact on shippers, so it may be commercial from your perspective perhaps. I think I have covered my points.

MR DAVIES: It seems to me sitting around the table that we are a group of users and we probably all have our own objectives, but I support the previous speaker's comments there.

I can understand my friend at the end, Mr Leong, who is a self-contracting user, and his position out of this exercise. OneSteel looks at the numbers for the 2.6 cents

through and I am bound by confidentiality agreements which would result in my tongue being removed if I said anything, but these numbers are material to us, and I am sure Scott Martin would be aware of that.

The issue for us is that certainly we do take gas off the EGP and when I look at the haulage component and the comparison there of users, if you look at the delivered price of gas, and 2.6 cents is not material against that, that is not the issue, it is against the distribution cost that we face, and against that it is a material number.

I also believe that in terms of the exercise that large users should be treated perhaps a little differently. We don't have the advantage perhaps of a retailer of attaching onto the bill a pass-through charge. I know they have got to be competitive and the like but they can probably get away with it more with the mums and dads than we can. We have to be internationally competitive and if we are seeing costs passed through which don't fairly represent our product, and our product costs, it would seem to me to be not in the interests of the nation either for this to be occurring, so I think our comment would be that if there was some mechanism in there that for the industrial, the large industrial users, who after all tend to be in the category that AGL referred to of the longer term, we are there and we have long-term contracts, that perhaps there needs to be some recognition of an alternate mechanism perhaps than having simply this blended costs being thrust upon us. If that is the way it works, that is the practice, then we can't have a more washed out costs perspective. That is about all I can add at this stage.

MR COX: Scott, would you like to respond?

MR MARTIN: Andrew, on your point about the 2.6 cents, I guess it really depends upon the load factor of a particular customer and whether it will vary from delivery point to delivery point.

MR McINTOSH: No load customer has 100 per cent.

MR MARTIN: As far as the total delivered cost to an end customer, the 2.6 cents is between point 3 and point 5 per cent. Even if you double that, even if you had a 50 per cent load factor, which is not very good, you still have less than 1 per cent. The question then becomes whether or not the benefits of having the opportunity for wholesale trading to open up over the next five years is likely to return benefits greater than that to end customers.

I guess that is also the same response to Anne and Steve, just in terms of the materiality of it, you know, for an end customer, which is really the market that we are part of, or at least the gas networks is part of, that is sort of the question, whether the benefits from this actually outweigh that small change in cost reflective.

MS REED: I have seen customers transfer on less than that differential, even on one cent, if that is what it means to them. So, saying that it is not that material, customers do transfer on less than that and so it does have an impact.

MR MARTIN: What I am saying is that by doing this, it is a small amount, and I hear what you are saying, that you have got different views as to what is small, but I guess by doing this then you are bringing another element into play where the wholesale trading can get a toehold, so the question then becomes whether that is something that users actually want, whether they want the full flexibility of this or not and whether they think there is a benefit, and for IPART whether the net benefit is greater or not.

MS PEARSON: At the moment, as I alluded to before, if you are looking at the benefits of the service as opposed to the competition, we would have to say we think it is probably anti competitive, so at the moment, if we have to chose between one or the other, we would probably prefer to maintain the competition.

MR LIVENS: The key point is that there are ways of achieving the desired outcome we believe that don't have the same competition impacts. That is what we would like the tribunal to explore.

MR MARTIN: Shelley, on your question as to whether or not a user at one particular receipt point can access gas from another receipt point, under the five-zone structure all the common pricing loads that provide the upstream arrangements for gas are in place for that transaction, you are just nominating that other shipper.

MS REED: I am not physically doing a ship with any other

retailer, I am just nominating?

MR MARTIN: You can do a swap yourself, from within yourselves, so it does not require another user to be involved in the transaction.

That is really what we have tried to accommodate, so it is user to user, users between themselves, just shifting it from one receipt point to another, that all those things are done in exactly the same way rather than treating one a certain way and doing another transaction another way. With one transaction AGL has a commercial interest, so you have to go through this process, et cetera, and, Steve, as I said, there are ways of patching things together in doing it. The question is what is the smartest and the way of setting the reference services up under the access arrangements so that the same deal is there for everyone and everyone's access to the service is the same. The five-zone structure does that. In looking at all the options, that was the simplest and the sweetest trading mechanism.

Steve, on your comment on WA, that there is no other competitive pipeline there, I guess we are looking at cost reflectivity and that was my point. That is not to say that this arrangement would not be cost reflective in terms of the code. The fact that another regulator has deemed it to be cost reflective is what we are pointing at. I guess the other example I didn't mention there is the EGP itself, that although it is not a covered pipeline, certainly it is over three zones, Orbost/Longford in one zone, and in everything from Bomaderry to Horsley Park in another zone. It is the same. That is much larger than what we are actually proposing.

MR LIVENS: My point was, I am not talking about the ultimate length of the pipes or the zones in question, it is whether or not those particular sections of pipe are facing competition. Clearly when it comes to cost reflectivity you are never cost reflective across the board because you have to go down to the nth degree, but it is where you have competition within a market that you need to ensure that to the extent possible, the greatest extent possible, that you are cost reflective.

MR COX: I guess this discussion leaves me with two main thoughts. The first and interesting point is the people in this room who would value and would use a gas swap service. That does interest me. Secondly, there is concern that the effect of moving from seven to five zones could adversely affect some shippers and retailers of gas and that it might encourage people to move suppliers. That is not an easy position for us. Who would like to take things further?

MR LIVENS: I would like to repeat what I have said, that I believe you can achieve --

MR COX: There may be other ways.

MR LIVENS: You can achieve the benefits through other mechanisms, and I am more than happy spending time with yourselves to discuss those options.

MR COX: That would be helpful, thank you. Any further comments on this? Anyone at the table want to have another go? Perhaps there is someone sitting in the back of the room. Sarina, or Scott, any final comments? Okay, thank you for the discussion.

SHORT ADJOURNMENT.

PROPOSED TERMS AND CONDITIONS

MR COX: We will now commence the third session, which is on proposed terms and conditions. We are going to start off with a presentation by Ray Challen from the Allen Consulting Group. Ray has very kindly agreed to speak without showing his slides, and we thank him for accommodating us in doing that. He will make a brief presentation, then it will be followed up by round table discussion.

MR CHALLEN: Thank you, Jim. The Allen Consulting Group was asked to review the terms and conditions for the reference services set out in what I will call the proposed access arrangement or the revisions to the access arrangement. We were asked to look at two things.

Firstly, we were asked to look at were there any particular aspects of the terms and conditions that would appear to have a broad impact on users of the network and on customers for gas that would be inconsistent with the general principles of third party access regulation, in other words, that in themselves would be seen to inhibit

effective third party access to the network and the benefits that generally are accepted as flowing from that.

Secondly, we were asked to look at the specific provisions of the terms and conditions for reference services, to look at are there any particular provisions, particular clauses, that are inconsistent with the specific requirements of the code in regard to terms and conditions, this being the reasonableness criteria under section 3.6 of the code. For the sake of clarity, just to repeat what that section actually says, section 3.6 of the code says that "an access arrangement must include the terms and conditions on which the service provider will supply each reference service and the terms and conditions included must in the relevant regulator's opinion be reasonable".

I guess I will answer the first of those questions initially and get it out of the way. In terms of were there any provisions in the terms and conditions which could in themselves be seen to inhibit third party access our view was that there was not. There was no provision in the terms and conditions that could be seen to be inconsistent with effective third party access in itself. That does not mean that some of the provisions, the particular provisions, the particular clauses, could not be regarded as unreasonable in their own right. I will move on to that now.

In looking at particular provisions of the terms and conditions we looked at a number of general matters as well as the particular elements of the terms and conditions, and I will look at these general matters first. Firstly, we looked at the manner in which the terms and conditions in the access arrangement were specified. There were submissions made on the proposed access arrangement that questioned the manner in which the terms and conditions were actually set out in the access arrangement and in particular raised issues of ambiguity, repetition and lack of clarity in the specification of the terms and conditions.

Secondly, we looked at an issue of incomplete specifics of terms and conditions for reference services, that is, the past practice of AGL of actually establishing service agreements for reference services that contained terms and conditions that were in addition to those set out in the access arrangement and, indeed, the apparent intention of AGL to continue doing that in so much as the terms and conditions set out in the access arrangement would generally be regarded as inadequate for a party to enter into a service agreement with AGL on the basis of the terms and conditions as set out.

We looked at, in response to submissions made on the proposed access arrangement, the terms and conditions for non reference services, and I will briefly talk about that point now, that whilst some submissions did raise questions in regard to what is set out in the access arrangement as the embedded network service which had some terms and conditions specified, that is actually not a reference service under the access arrangement and in regard to the terms and conditions for that service the regulator has no role in the approval or non approval of those except if the regulator decided as a matter of the services policy to make that service a reference service.

In the absence of a determination, or direction from IPART to consider the embedded network service in that context, it is not a matter considered in relation to the reasonableness of the terms and conditions under section 3.6 of the code.

I will put that matter aside. Finally, as a general matter we looked at the relationship and interaction between the terms and conditions for network access with the gas retail market business rules. Looking then more at some of those general matters, firstly, the manner in which the terms and conditions for reference services are specified and, as I have mentioned, there were submissions made that the proposed access arrangement and in particular the terms and conditions is drafted in a manner that is disjointed and repetitive and, indeed, that some of the terms used were unnecessarily clumsy, complicated and difficult to comprehend, confusing and repetitive.

In addition, it was indicated that the specification of terms and conditions within the access arrangement and in multiple schedules to the access arrangement gives rise to a number of elements of duplication of terms and conditions and, indeed, inconsistencies in the specification of terms and conditions.

In looking at this issue, we effectively have come back to the requirement under section 3.6 of the code as to

what a regulator is required to do and, indeed, does the requirement for the regulator to satisfy himself, or herself or both, of the reasonableness of the terms and conditions as to the clarity in which those terms and conditions are specified a matter that can be taken into account.

After taking into account in effect a range of legal advice, a range of positions taken by regulators around the country to date on this issue, our view is that IPART would actually have limited ability to require amendment of the access arrangement simply to remedy perceived deficiencies in drafting. More specifically, that the poor drafting would only constitute cause for IPART to require amendment if the deficiencies in drafting were considered to cause the terms and conditions to be regarded in some sense as unreasonable.

That may occur if the drafting was such as to result in the terms and conditions being specified in a way that leads to ambiguity in the understanding of rights and obligations and inconsistencies in duplicated provisions. While we would say that IPART would have a limited ability to seek amendment of the terms and conditions for the purposes of improving drafting, as a matter in itself we did find in our report to IPART that there were several instances of deficiencies that are exhibited as ambiguities or inconsistencies which can be addressed in regard to specific provisions.

The second general issue was one of incomplete specification of terms and conditions for reference services and, indeed, we took the view in our report to IPART that the terms and conditions set out in the access arrangement do actually omit provisions on many issues that would be expected to comprise part of the terms and conditions under a service agreement. Indeed, my view is that AGL would have no problem in agreeing with that, that it reflects somewhat a difference in view perhaps on what the terms and conditions in an access arrangement are actually supposed to achieve.

In this regard AGLGN does not actually rely on the terms and conditions as set out in the access arrangement but rather uses what may be regarded as a fuller and more detailed specification of terms and conditions as set out in standard reference service transportation agreements, which for some reference services are published on AGL's web site.

Whether an incomplete specification of terms and conditions for reference services is or is not acceptable under the code is very much a matter that relies on the construction that is taken or the interpretation given to the section 3.6 of the code and other provisions of the code, which at the moment between regulators Australia-wide has been interpreted both as that the code requires a precise and complete specification of terms and conditions as well as that the code only requires a statement of important principal terms and conditions, so there are inconsistencies in precedents set by other regulators there.

However, I should add that as yet there has been no guidance provided by a court or an appeals body on that element of the code.

Our view, as set out in our report, is that it would be consistent with the intent of the code that the terms and conditions set out in the access arrangement would be sufficient for parties to enter into a service agreement on the basis of those terms and conditions and also that the code would act to prevent the service provider from unilaterally imposing any additional terms and conditions to those set out in the access arrangement. But, as I have said, the construction of the code in that respect is open to different interpretation and, in the absence of any guidance provided by a court or an appeals body, IPART is going to have to come to a view itself on the construction of the code in that respect.

Moving onto the third general mater, the interaction of the terms and conditions with the gas retail market business rules, as most of you would be aware the gas retail market business rules are regulatory arrangements, or established under regulatory arrangements, that provide for the operation of the gas market and the gas retail market business rules contain their own process for change in those rules by consultation and agreement by participants.

Almost unavoidably the gas retail market business rules deal with a range of matters and potentially deal with a wider range of matters that are also dealt with

under the access arrangement and the terms and specifications for reference services, and some examples include such matters as metering and gas balancing.

Obviously any conflict between the gas market business rules and the terms and conditions should be avoided simply for effective operation of the gas market and third party access. How that conflict is to be avoided, though, is a matter of some difficulty.

The gas retailers and people participating in the gas market are required by law to comply with the gas retail market business rules, which would create a problem if they were bound to some contradictory provisions under contract with AGLGN for third party access. How could conflict therefore be avoided? We have stated a view on this in our report, albeit we see it as a matter that probably extends beyond or needs consideration beyond the context of the access arrangement. Indeed, it is very much a matter that falls into the realm of government policy on gas markets. However, for the purpose of assessing the terms and conditions, we would see it as important that the terms and conditions for access as set out in the access arrangement do not seek to replicate the provisions of the gas retail market business rules. Indeed, where the terms and conditions in the access arrangement address matters that are addressed under the gas retail market business rules they should exist in the context of reserve provisions only where, for one reason or another, the gas retail market business rules cease to be effective.

Secondly, and relatedly, we recommend that the terms and conditions should not seek to supplement the gas retail market business rules except where such supplementation is beyond the jurisdiction of the gas market company.

That deals with those three major general issues. Moving on to a number of specific elements of the terms and conditions, as I previously mentioned, the code requires that the regulator be satisfied that the terms and conditions set out in the access arrangement are reasonable. That does not necessarily help a great deal until you come to some understanding of what you might mean by reasonableness. For that purpose, we have set out a number of criteria for how it might be considered when looking at the terms and conditions.

These criteria against which we made our assessment and recommendations to IPART are, one, that reasonableness requires that the terms and conditions be complete, that they be internally consistent, that they be unambiguous, that they reflect common industry and/or commercial practice, and, in taking that further, they need to be consistent with other law that affects commercial practice in the nature of contractual arrangements.

So looking at these criteria, we did actually go through a fairly detailed process of looking at particular provisions and particular clauses of the terms and conditions. It was a somewhat lengthy process, although I think the report was actually easier to write than it would be to read. However we did find several instances where there were provisions that we think might not meet these criteria of reasonableness. I will mention some of the major ones of those where we actually saw there were issues of substance at stake. I will skip the ones where we were concerned more with issues of ambiguity.

Firstly, there was an issue of some qualitative or quantitative limit on the level and type of security that AGLGN may require in regard to service agreements. This is a matter on which different regulators around the country have again taken different positions, and, indeed, governments have taken different regulatory positions.

In some cases like Victoria, there are actually separate regulations in place which exist in addition to the access arrangements which themselves specify particular criteria for determining a level of security under service agreements. In other cases, service providers have themselves set out more detailed criteria for the specification of security, and, in other cases again, regulators have been satisfied that a constraint on the service provider to be reasonable in setting security requirements is sufficient. Indeed that latter case is one that exists under the proposed access arrangement: that in setting levels of security, AGL would be bound by a qualitative constraint of being reasonable in setting security requirements.

We did not take the position in our report of saying where in this broad range of precedents on the regulatory decisions IPART should land on making a determination on this issue; however, we were concerned that where AGL is

only bound by a reasonableness requirement, there are no dispute resolution mechanisms in the actual terms and conditions as set out under the access arrangement. This consideration that we have taken here relates not only to the matter of the setting of security but to a number of other elements of the terms and conditions where AGL would be bound by this qualitative reasonableness requirement.

As a general proposition we would propose that that would only meet the reasonableness provisions of the code where there is actually an effective dispute resolution mechanism that has been either demonstrated to be effective or found to be effective, and generally regarded to be such by users, or has been subject to the scrutiny of a regulator.

Secondly, there is an issue in the nature of overrun charges and the extent to which these constitute a charge for a service or a charge that is in the nature of a penalty. For those who maybe have kept an eye on the proceedings with access arrangements outside of New South Wales, this is a very significant issue in Western Australia at the moment where Western Power is in a dispute I guess with the regulator with regard to overrun charges and other like charges with the Dampier to Bunbury natural gas pipeline where they are claiming that charges in the nature of a penalty - in other words, where a charge does not reflect a cost incurred or likely to be incurred by the actual service provider - is actually illegal.

The Western Australian regulator - and this is actually described in the final decision on the Dampier to Bunbury pipeline for those who are interested - actually found that there was no clear and unambiguous legal opinion to be found here. However, it is at least possible that that may indeed be the case: that the charges that are in the nature of a penalty - in other words, charges that are imposed with the intent of modifying behaviour of a person without being cost reflective in some way - may actually be illegal, noting that there is no unambiguous legal position on that.

Having said that, though, that is a matter that is currently before the Gas Review Board in Western Australia as a subject of appeal on the regulator's decision in regard to the Dampier-Bunbury natural gas pipeline. So there may be some more guidance available there.

There are a number of other specific elements. Another main one relates to some ambiguity in the intended term of service agreements and also the effect of provisions relating to extensions of service agreements. While in the access arrangement proper AGL has set out certain minimum terms and certain terms for the reference services, in the clauses relating to the extensions of terms, there is some implication that the terms of the contracts for reference services are only intended to be, in effect, for the term or to coincide with the term of an access arrangement or at least for some of the rights of users to be circumscribed if the contract term extends beyond the term of the access arrangement. In our view, certainly with the information made available to us in this review, there is no particular reason why that constraint should be in place, and no reason why the term of a service agreement should necessarily coincide with that of the access arrangement.

There are some other issues here in regard to liability. Liability, obviously is liability under the service agreement. The service agreement is a matter that is affected by law outside of the gas code in relation to the body of law that deals with liability under contracts. However, there are a couple of liability issues that we can address from an access point of view.

Firstly, we saw that there was an excessively broad potential liability of users under access agreements, under service agreements in respect of gas swaps and also in respect of load shedding to the extent that that liability was not reasonably shared with AGL in circumstances where AGL may have failed to act in good faith in implementing its own contractual obligations.

MR COX: You need to wrap up.

MR CHALLEN: The final significant issue that was addressed in submissions on the terms and conditions related to load shedding priorities. As I just mentioned, there was a substantial concern amongst parties making submissions that load shedding priorities for gas transportation through the network should be related to the cause of the supply shortfall and to the nature of the end users of gas affected by any load shedding.

Our view was that this would actually be difficult to address through the terms and conditions for a number of reasons; first, that load shedding priorities affect non-reference services as well as reference services and the regulator does have a limited ability, indeed no ability, to make decisions in relation to the terms and conditions for non-reference services; second, that there are actually complex information requirements necessary to link end users of gas with supply sources, and indeed there may be no direct link; and, third, it is an area where there would be interaction or potential interaction with the gas retail market business rules.

For this reason, while we acknowledge the concerns that parties had about the load-shedding priorities, we considered it would be a matter that would need to be addressed in a forum outside of the access arrangements and the access law perhaps through the gas retail market business rules, if the jurisdiction of the Gas Market Company extends to that. Thank you.

MR COX: Ray, thank you very much. AGL, do you want to make any comments at this stage?

MR MARTIN: I will just make a bit of a general comment. AGL has made a response to the draft report, and that is actually on the tribunal's web site. There were a few fundamental differences of view between ourselves and Allens, but we found that in a lot of the other sections really, Allens were finding things to be reasonable or they were just raising points of clarification.

In terms of the response to the draft report, I would just note that we have responded positively to all of those 19 recommendations on the basis that they really are just clarifying the existing intent and what is actually intended.

Some of those major items that were just mentioned - the terms and conditions, the manner of specification, the market rules - all those issues we have actually addressed in our submission, and also the market rules included a response from the gas market company. So I think our comments are adequately set out there. As to the other points that were raised I think we have also commented on all of those as well. So there is probably not much point in going into it in a lot of detail.

MR COX: Thank you. We will now proceed to roundtable discussion. Obviously there are a number of general issues that Ray Challen raised, such as the extent to which the access arrangement should include complete specifications of terms and conditions, the interaction with the gas retail market rules, and the extent of inconsistencies and ambiguities in the terms and conditions. Those are three general issues. There are a number of specific ones, such as liability, indemnity, load shedding, security payment and so on. All of that embraces concerns by Allens. We would be most interested in the views of the stakeholders on any of those issues. We will start off with EnergyAdvice, if we may.

MR McINTOSH: To IPART I'd like to bring a couple of points of note. Firstly, on page 15 and 16, section 3.4, you make reference to the fact that there are certain services that are treated as non-reference. Our suggestion is maybe that some services should be considered to be made reference so that they can be covered as well.

Also on page 34, 35, section 4.9, there was an ACG claim that there was no submission addressing metering. You make reference to our submission. In section 8, page 10, we made the submission that metering should be contestable. On page 78 and 79, in talking about load shedding there was reference there to embedded services which was given a rating of around about 2. That was another reason why we felt that that should be considered for reference as a reference service because there will be some instances where there will be higher priority services embedded in that that will be classified as a 2 where they shouldn't be.

At page 81, reference is made to a coupled service. This is where, to get a local network service, you also have to contract to a trunk service. We feel that there again should be some sort of representation that you can do them separately as well.

Area 5.6 again refers to the metering and to access to meter data. In our submission, we argued that this should be available to the end user as opposed to the contracted user, which is the retailer, and requires their consent. We feel that there should be an ability for the consumer to get access to their data on a more readily available

process.

In reference to term you made the finding that the one-year term you felt was reasonable. In our submission, we made the point that we felt that there were instances where that is not reasonable. You made the statement that you could trade capacity, but it is our understanding that this is not practical unless it is upstream of the point of delivery because the network services are point to point.

Also in reference to backhaul tariffs we feel that there should be an appropriate tariff so that there could be the possibilities of backhauling within, say, areas of Newcastle. I think that covers everything that I have to say right now.

MR MARSHALL: I would just like to make some comments in relation to a matter that Macquarie Generation is interested in. We ask that the tribunal release the final MMA demand report for review by interested parties. Macquarie is concerned that MMA has simply dismissed the prospect of Macquarie Generation's gas turbine project as potentially proceeding.

The Tomago project is fully approved, it has a DA, and is targeting to commence during the term of the proposed access arrangement. The access arrangement, we are concerned, must have regard for the terms and conditions required for a peaking power plant. It currently does not provide sufficient flexibility for virtually anything other than an MDQ booking on an annual basis. We ask that the access agreement be looked at very closely and at the terms and conditions required for a third-party pipeline connection to the AGL system. Again that is a very costly arrangement.

MacGen will submit a detailed submission to IPART to look at and develop these points.

MR COX: Thank you very much. We look forward to your submission. On the MMA report I think our intention is to release it with our own draft report. So there will be opportunity for further consultation following the release of the draft report.

MR MARSHALL: What will be the timing of that? Will that be next year?

MR COX: The draft decision, I am told, is coming out in November.

MR GROVE: There were no major issues but we did find some of the same issues that Allens Consulting identified. I guess one of the key issues was objectivity of triggers for security deposits and so forth. I am not aware of any other access arrangements that don't have objective triggers, so we believe that is an issue and that it could lead to anti competitive conduct if there are no objective triggers. That is just one issue but we will come up with something more in the near future.

MR WILLIAMS: At this stage we just note those things being discussed and we will give submissions later.

MS PEARSON: We are currently considering the lengthy report and we will probably be making some written submissions about it, but I guess from our perspective when considering section 3.6 of the code we are looking that the regulator be satisfied that the terms and conditions are reasonable and, Ray, you mentioned some criteria there that they be complete, internally consistent and unambiguous, for example. A further criterion perhaps needs to be added and that is that when you are looking at whether or not the terms and conditions are reasonable you have to look at that from the point of view of a new entrant retailer. That is really Energy Australia's comments on the terms and conditions and in particular our view that the terms and conditions, the complete terms and conditions, should be attached to the access arrangement for a new entrant retailer to go through all of those terms and conditions and work out - because everyone knows what our comments are, I guess, we have provided lengthy comments on that aspect - but it really is a lengthy and expensive exercise to go through that access arrangement against the service agreement that AGLGN provides to users from time to time. It is costly, and when I compare what EnergyAustralia went through last time round with the New South Wales access arrangement and how it has been dealing with access arrangements in other jurisdictions I have to say that it was a much more painful process with AGLGN than it has been with other network operators.

That is really the only point I would make now. We will be considering some of the specific terms and

conditions and getting some further legal advice, particularly on liability.

MR COX: Thank you.

MR LEONG: I have just got a comment to make regarding overruns. I have a capacity reservation service and the way I control that is, while controlling the number of overruns I am allowed - I am only allowed a certain number per any core period - I control it by not allowing additional capacity. I have to nominate it for a 12-month period. I do it by summer tranches, which I can nominate between October and April, or short-term capacity requests, which are valid from one week to four weeks.

All of those are subject to availability, which I don't have a problem with, but one I do have a problem with is the short-term capacity. That is subject to certain criteria which have to be approved by AGLGN and I just recently made a request for short-term capacity for four weeks and it was basically refused because AGLGN didn't think it conformed to the access criteria. I don't believe there should be access criteria for a maximum four weeks short-term capacity request. I think if our business requires that much gas, and if AGLGN has the capability of supplying that, they should provide it, no questions asked.

MR DAVIES: A couple of issues. In terms of the Ts and Cs we are talking about here, where we have got users such as in the OneSteel case here and we are looking at issues like the security issue, there are specific issues you will run against in terms of how businesses are structured, some of the banking covenants and the like that businesses may face, and I believe that it should be fair and reasonable that the way that this is structured encourages businesses in New South Wales. For a new venture to come in, set up, banks are likely to have covenant provisions in terms of how they can or what sort of guarantees they are giving to other parties and where you fit in the feeding line, and I think IPART should reflect the practical realities that exist.

Also it would be very hard if our directors were being imposed with personal liabilities. That would be very counter. You need to recognise certain basic things in that security area, that companies will be discouraged to come to New South Wales if that is the sort of thing that can be imposed.

With overruns, I support what George Leong has commented on. We should be here about encouraging the efficient and maximum utilisation of systems. I notice EnergyAdvice commenting about overruns, MDQs and the like. We see across Australia that pipes are wherever possible trying to divert away from the regulated charge and trying to build in draconian and one would say not cost reflective penalties, and they are penalties which in fact are having a negative effect on the way operations run. I will say no more on that, but companies will respond to that and it won't necessarily be good for the overall economics of the country.

I simply point out that in the Newcastle case, although my friends at Macquarie will put a peaking plant up there, it would appear that the current facility is under-utilised so one would argue that penalty charges are entirely unreasonable in the way they are structured because they are very aggressive, they get to a form where they are almost exponential, which will restrict the willingness of businesses to invest in the way they operate.

The other aspect of course is liability. We support the concerns of people here. Liabilities for users should be generally capped. To have uncapped or open-ended liability provisions really is a major problem to a user. They will go hunting those of us in the room with enough assets to sue, I guess, so that is another area.

I can't talk about curtailment because I really don't know what the final position is in New South Wales. I am concerned about that. Obviously IPART will take that into account going forward.

They are just a few of my comments. I guess we will be constructing a document to send to you to reinforce some of these points. Thank you.

MR COX: AGL, if it wants to comment; then back to Ray Challen.

MR MARTIN: As I say, most of the points we have actually commented on in the actual submission, but I will run through some of these. On some of Ray Challen's points

there on security and just the absence of dispute resolution provisions, the code is pretty clear that there is a dispute resolution provision under the code and that if the service provider is found not to act in accordance with the access arrangement then users have every right and opportunity to involve the tribunal in an access dispute under the code. There is a dispute framework that is already there. I guess what you are talking about is whether or not the terms and conditions should say that, that a service agreement should include a dispute resolution clause. That is certainly the case at the moment, so when you start getting into those general commercial questions and legal issues I think they are things that we believe are better left to negotiation between the parties and leave the access arrangement to deal with things that are material, definition of service and references.

Most of the things that have been commented on we have actually mentioned in the report. The only point there is, as George Leong mentioned, the short-term capacity. George identified that there is some flexibility there to actually manage his capacity booking with additional capacity in summer tranches and short-term capacity, the basic principles of contract carriage, and Allens also recognised in the report that it is normal and consistent and not unusual for contract carriage capacity to have a 12-month term on it. Short-term capacity for greater than 30TJ customers is the same as in the current access arrangement and it is really there for circumstances that happen totally outside the control of the party and that are really linked to a mechanical break down type event. I don't know your particular circumstances but I guess I just want to reinforce that there are quite clear criteria around that at the moment.

MR LEONG: I want those criteria removed because I can't see why we should have to comply. If I have a business requirement for additional gas for four weeks or less and the gas is available, capacity is available, I should be given that capacity.

MR MARTIN: Again, the intent is that the capacity is booked for a period of 12 months. The charges of the access arrangement, the total structure, is based on that principle. There is no diversity factored in, it is factored in on the basis and forecast on the basis of

12-month terms. Changing those sorts of principles - and this also applies to overruns - changing the basic nature of overruns requires a reasonable capacity booking to be made and really undermines the fundamental structure and goes really back to first principles.

MR LEONG: I agree that you book capacity for 12 months. I agree there are tools to manage my overruns. I am just focusing on one tool, and one of the tools is a short-term capacity request I can make between seven days to four weeks, and the access arrangements say you can only comply with four or five situations and that AGLGN has the ability to decline my request because they don't believe it fits in to one of those classifications. I believe that those classifications should be removed, that if I have a business requirement for that gas for that short term, I should be given it if it is available.

MR RAPISARDA: The whole concept of short-term tranches for one month or whatever is completely inconsistent with the basic price structure and the only reason they are there is we have agreed to provide them for circumstances outside the user's control, because if they were there at the user's discretion it completely undermines the price structure and is inconsistent with the 12-month capacity reservation. They can't go together.

MR MARTIN: Just following on from that, the other point was the overrun charges are based on the actual withdrawals at delivery point. They are based on the reference tariff, so what they effectively do is kick in where the original MDQ booking, which is up to the user to nominate, did not reasonably reflect the needs of that delivery point. So they are based on actual quantities. They are reflective of the utilisation of that point and are not an arbitrary penalty. As I say, all the other points we have covered in our submission.

MR COX: Thank you. Ray, any comments you would like to make?

MR CHALLEN: Only I guess to reiterate that not only is there some ambiguity in the way the code should be interpreted in regard to terms and conditions, which obviously some of this dispute is about, then IPART has an unenviable job in having to take a stance on these issues given the somewhat diverging stances taken by other

regulators under the code around the country.

As I often tell regulators that we are advising from time to time, the appeals process is a valuable part of the regulatory framework and one with which regulators invariably disagree, but it is only with appeals and working through some of these issues that there are clear precedents set, and there is actually a growing body of precedent through appeals in both the courts and merits bodies as to how the code should be interpreted and, indeed, some further guidance will be provided by the current appeals on those which will address some of those issues that are obviously in contention here.

The second general point would be that there are boundaries, if you like, between what should be addressed in the terms and conditions, what should be addressed as part of a services policy, what should be addressed as part of the gas retail market business rules and what indeed should be outside of regulation altogether. Again, a lot of the matters raised here relate to that and, just as an example, the availability of metering services is something quite clearly addressed by the gas retail market business rules and the opportunity for contestability in metering, and indeed that is something where the people administering the regulatory framework have to be quite clear about the boundaries between an access arrangement and a gas retail market business rule so we don't have duplication and administrative difficulties in administration.

Without getting into particular issues, I think that is all the general comment I have to make.

MR COX: Are there further comments from people sitting around the table at this point?

MR RAPISARDA: One quick comment. Ray Challen mentioned a couple of times, perhaps there is some confusion, in terms of contestability of metering. The access arrangement, as written last time, and as we are proposing this time, allows for contestability, and there are provisions in there which applied before contestability and after contestability and they just kick in whenever the market becomes contestable and they are totally consistent with the way the Gas Company deals with that changeover. I am happy to talk about that further.

MR CHALLEN: There is no issue from our point of view on contestability and metering.

MR COX: Any further issues people would like to raise? Someone sitting at the back of the room, perhaps, any issues? Any issues we have not discussed today that people would like to draw to our attention because this is really your last chance to do that, this and the submissions, before our draft report.

If not, thank you very much for that. I remind everyone that the closing date for submissions is 6 October. As we have undertaken to provide a draft report during November, it obviously is extremely important for us to be able to meet that deadline that your submissions are provided by 6 October. I do commend to people who are making submissions on the subject matter of the last session that they read both the Allens report and AGL's response to it, as I think that does provide the context in which further submissions will be useful to us. I commend those documents very much to anyone who wants to take this further.

Finally, thank you to the participants today, both my colleagues and those in the round table, and also those who made presentations. I think it has been extremely useful to us and I thank everyone for their constructive participation.

AT 4.55PM THE MEETING CONCLUDED