

25 June 2004

Mr Michael Walsh  
Director, Gas Group  
Regulatory Affairs Division  
Australian Competition and Consumer Commission  
GPO Box 3648  
Sydney NSW 2001

Dear Mr Walsh

### **Draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers**

This submission by AGL is in response to the Commission's invitation to comment on Draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers issued by the Commission in May 2004.

As the owner of gas networks in New South Wales, AGL has a particular interest in the proposed guidelines because of their potential to be taken as a precedent by other Regulators including the Australian Energy Regulator, once established.

AGL believes that it is inappropriate for the Commission to be proposing new reporting requirements when the Productivity Commission is still considering Information Requirements under the Code in its review of the Gas Access Regime. AGL also has a number of concerns about the Draft Guidelines themselves:

- The Commission discusses its "Authority" for making the guideline in section 1.2. Despite this, it is not clear whether the Commission intends the Draft Guidelines to be general accounting guidelines issued under the Code, or guidance for Service Providers in preparing their own guidelines for approval by the Commission. It is important that this ambiguity be resolved.
- To the extent that Draft Guidelines require auditing and annual reporting, they appear to exceed the scope envisaged for guidelines under section 4.2 of the Code.
- Sections 4.12 and 4.13 establish ringfencing compliance reporting requirements where the focus is on the form, adequacy and effectiveness of compliance systems and procedures. The auditing and reporting obligations proposed in the Draft Guidelines appear to go beyond the scope of those sections and would require a greater level of reporting and assurance than the Commission has accepted in the past as fulfilling the requirements of the Code. It is unnecessary to make a special case of the account-keeping obligations in the context of ringfencing compliance reporting.



The attached submission contains AGL's detailed comments. If you wish to discuss any aspect of the submission, please contact Mr Chris Harvey on (02) 9921 2601.

Yours sincerely

Robert Wiles  
General Manager, Regulation and Policy

# Submission by AGL in response to ACCC Draft Regulatory Reporting Guidelines for Gas Pipeline Service Providers

## Relationship to the Productivity Commission's review of the Natural Gas Access Regime

AGL believes that the Commission's proposal to establish additional reporting requirements is inappropriate when a proposal by regulators to extend information gathering powers was rejected by NGPAC in 2003, and when the NGPAC outcome has been reinforced by the Productivity Commission in its Draft Report. For example, the Productivity Commission has said:

“However, the [Productivity] Commission recognises that information requirements are not costless, and does not consider that the benefits of allowing regulators to obtain information in between access arrangement reviews would be greater than the costs on service providers. This is consistent with the current design of the Gas Code, where the role of regulators is to vet proposed access arrangements that, once approved, generally remain in force until the end of the access arrangement period. Also the onus should be on regulators to minimise the costs of information requirements where possible.

DRAFT FINDING 7.3

*Regulators are currently seeking to have their powers extended so they can obtain information between access arrangement reviews. This extension has the potential to add unnecessarily to service providers' compliance costs.”*

and

“DRAFT RECOMMENDATION 7.3

***The Gas Code should be amended to ensure that regulators' requirements for establishing and maintaining information are standardised across jurisdictions and are as close to existing gas industry accounting or record keeping practices as possible.”<sup>1</sup>***

As to the ringfencing provisions themselves, the Productivity Commission's Draft Finding (10.1) is that:

*“The ring fencing and associate contract provisions of the Gas Code are warranted and are important for an effective regulatory regime. They do not appear to have involved inappropriate costs.”<sup>2</sup>*

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<sup>1</sup> Productivity Commission 2003, *Review of the Gas Access Regime*, Draft Report, Canberra, page 246  
<sup>2</sup> Ibid., page 332

While not canvassed with the Productivity Commission, there could well be a case for reducing rather than increasing the intensity of regulatory supervision of ringfencing, given the nature of the concerns expressed in the small number of submissions made to the review on ringfencing matters.

In light of the views expressed by the Productivity Commission in its Draft Report and the fact that a Final Report is imminent, AGL believes that now is not an appropriate time for the Commission to be proposing new/additional reporting requirements. Nevertheless, we discuss below our concerns with the Draft Guidelines themselves.

### **The relationship between the Draft Guidelines and section 4.2 of the Code**

It is unclear how the Commission intends the proposed Guidelines to operate in relation to section 4.2 of the Code. Section 4.2 provides for:

- (a) the Commission to publish general accounting guidelines or
- (b) where the Commission has not published general guidelines, for it:
  - to approve guidelines prepared by the Service Provider or, in the absence of such guidelines;
  - to issue provider-specific guidelines.

On AGL's reading this means that, if there are general accounting guidelines, then there is no place for guidelines to be prepared by the service provider and approved by the Commission or for provider-specific guidelines. Conversely, if guidelines are prepared by the service provider and approved, or if provider-specific guidelines are issued, there is no place for general accounting guidelines.

It is difficult to see where guidelines in the form proposed by the Commission would stand in this context. The Draft Guidelines themselves are ambiguous. On the one hand the statement is made that:

“The requirements specified in sections 4 and 5 and Appendices 2 and 3 of these guidelines (being the submission of the Annual Regulatory Report consisting of the Regulatory Financial Statements prepared in accordance with the Regulatory Accounting Manual, the Statement of Compliance and the Auditor's Report) have been developed for the purposes of sections 4.2(a), 4.12 and 4.13 of the Code.”<sup>3</sup>

This suggests that the Commission regards sections 4 and 5 and Appendices 2 and 3 together as constituting “general accounting guidelines [published by the Relevant Regulator]” under section 4.2(a). This would appear to rule out the approval of guidelines prepared by the service provider or the imposition of provider-specific guidelines under section 4.2(b). But then the statement is made at the foot of page 3 that:

“These guidelines are intended to assist Service Providers to prepare a Regulatory Accounting Manual for approval by the Commission under section 4.2(b) of the Code.”<sup>4</sup>

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<sup>3</sup> Draft Guidelines, page 4  
<sup>4</sup> Ibid., page 3

If that is the case, and a Service Provider's Regulatory Accounting Manual is approved as "guidelines prepared by the Service Provider and approved by the Relevant Regulator" under section 4.2(b), it is the Manual that is applicable and the Commission's guidelines would cease to be relevant.

In AGL's view, it is important that this ambiguity be resolved.

Subject to the other matters discussed in this submission, AGL would favour an approach where the Commission issued general accounting guidelines under section 4.2(a) to apply uniformly to all service providers. The alternative would be to encourage service providers each to establish "guidelines prepared by the Service Provider and approved by the Relevant Regulator" under section 4.2(b), in which case the Commission's guidelines would be no more than a guide for the preparation of such guidelines.

### **Reporting:**

The Draft Guidelines would require the service provider to lodge regulatory accounts each year together with specific attestations by an Auditor, the Board, and Senior Management apparently in addition to whatever reporting is required under sections 4.12 and 4.13.

In 2002 the Commission issued a pro forma which has been the basis for ringfencing compliance reporting for the years ended 30 June 2002 and 2003, and will be used again for the current year. The pro forma requires among other things that the Board and Management certify compliance with section 4.1 of the Code including section 4.1(c), (d) and (e) which are now the subject of the Draft Guideline.

AGL concurs with the Commission's statements in its overview of the 2003 ringfencing reporting cycle that:

"[The pro forma] was designed to ensure that the information provided fulfils the reporting requirements of the Code without creating an unreasonable regulatory burden on Service Providers. For this reason service providers were required to base their 2003 compliance reports on the same pro forma document." (emphasis added)

and:

"The approval and sign-off requirements [in the pro forma] meant that the board of directors of each company were accountable for the information provided in the report. They also provided the ACCC with sufficient confidence that the assessment by each Service Provider of the effect of the procedures in place has been carried out thoroughly."<sup>5</sup> (emphasis added)

The Commission has not made a case for changing the ringfencing compliance reporting requirements, especially given the outcome of the NGPAC process and the views expressed by the Productivity Commission in its Draft Report.

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<sup>5</sup> ACCC Gas Group, 2003: Ring Fencing Issues – Overview of the 2003 ring fencing compliance reports, page 1

The Commission's overview of the 2003 reporting cycle goes on to say that:

“The ACCC is of the view that its role in monitoring compliance with the ring fencing requirements of the Code can be enhanced with the introduction of Accounting Guidelines. Section 4.2 of the Code allows the ACCC to introduce accounting guidelines that operate in addition to the minimum ring fencing obligations set out in section 4.1.”<sup>6</sup>

In AGL's view section 4.2 envisages guidelines that are limited in scope to a specification of the manner in which the relevant accounts are to be prepared and cannot be (or impose) obligations “that operate in addition to the minimum ring fencing obligations set out in section 4.1.”

Sections 4.12 and 4.13 establish ringfencing compliance reporting requirements where the focus is on the form, adequacy and effectiveness of compliance systems and procedures. The accounts that must be kept under section 4.1 are the product of complying with the Code including any guidelines issued under section 4.2. In AGL's view it would be beyond the scope of guidelines under section 4.2, as well as sections 4.12 and 4.13, to require that the regulatory accounts be audited and/or that the accounts themselves be submitted annually.

A requirement to provide accounts each year would also be inconsistent with the design of the Code which is to allow the service provider to manage its affairs between access arrangement reviews without regulatory intrusion. Moreover, provision of accounts would not assist the Commission in “verifying the calculation of Reference Tariffs”<sup>7</sup> during an access arrangement period. The Access Arrangement contains a Reference Tariff Variation Method which deals with tariff variations during the period. The Code (beginning at section 8.3A) requires a Service Provider to give prior notice of a tariff variation which the Regulator may disallow if it does not conform to the Tariff Variation Method. Regulatory accounts are not relevant to that process.

AGL concurs with the Commission when it says that the current reporting pro forma ensures that the information provided fulfils the reporting requirements of the Code. It is inappropriate and unnecessary to make a special case of sections 4.1(c), (d) and (e) in the context of ringfencing compliance reporting.

**Other matters:**

- There is no support anywhere in the Code, let alone in section 4, for the imposition of the additional reporting requirements envisaged by section 6 of the Draft Guidelines.
- In AGL's view it is unnecessary and inappropriate to require that an auditor's duty of care be to the Commission. It is the service provider who must comply and give assurances in reporting on compliance. If it were necessary to audit the accounts to provide support for such an assurance, the auditor's duty would normally be to the service provider. In

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<sup>6</sup> Ibid., page 3.

<sup>7</sup> Draft Guidelines, page 19

AGL's view there is nothing about the ringfencing context to suggest that the relationship should be any different.

- Section 3.3 of the Draft Guideline includes “the intent and objectives of the Code” among the criteria to be taken into account by the service provider in drafting (and reviewing) an Accounting Manual and then by the Commission in deciding whether to approve (or require amendments to) a Manual. It is unclear how such a criterion can be interpreted and applied: it adds to rather than resolves uncertainty and should be removed.

The Australian Gas Light Company  
June 2004