

AUSTRALIAN CAPITAL TERRITORY
ACTEW/AGL PARTNERSHIP FACILITATION ACT 2000
DECLARATION FOR THE DISTRIBUTION PARTNERSHIP
PURSUANT TO SECTION 11

I, Gary Humphries, Treasurer of the Australian Capital Territory, under sub-section 11(1) of the *ACTEW/AGL Partnership Facilitation Act 2000* (**the Act**), **DECLARE:**

- 1 All of the assets, rights and liabilities of AGL or a subsidiary of AGL comprising the AGL Distribution Contribution as defined in the Schedule to this Declaration (including, to avoid doubt, network facilities vested in AGL Gas Company (ACT) Limited (ACN 008 552 663) pursuant to a Declaration made pursuant to section 10 of the Act on the same day as this Declaration) vest in the Distribution Partnership.
- 2 Subject to paragraph 3, paragraph 1 takes effect on the day that the Minister receives the Completion Notice duly executed by all the parties to it.
- 3 If paragraph 2 does not take effect on or before the Cut Off Date, this Declaration will be of no effect.
- 4 Expressions used in this Declaration (including in the Schedule and Annexure) and not otherwise defined in the Schedule have the same meaning as in the Act.

Date: 29th August 2000

Gary Humphries MLA
Treasurer

SCHEDULE

ACT Area means the geographical area comprising:

- (a) the Australian Capital Territory; and
- (b) the shires of Queanbeyan and Yarrowlumla in New South Wales.

ACT EGP Connector means that portion of the EGP Connector which has been constructed within the ACT on the day this Declaration takes effect.

AGL means The Australian Gas Light Company (ARBN 052 167 405).

AGL Business Names mean the registered and unregistered business names of the AGL Group and all associated goodwill.

AGL Confidential Information means all trade secrets and all financial, marketing and technical information, ideas, concepts, know how, technology, processes and knowledge of the AGL Group in relation to the Gas Businesses which is confidential or of a sensitive nature, but excludes that which is in the public domain.

AGL Customer Information means all trade secrets and all financial, marketing and technical information, ideas, concepts, knowhow, technology, processes and knowledge of the AGL Group in relation to customers of the Gas Businesses which is confidential or of a sensitive nature, but excludes that which is in the public domain.

AGL Distribution Contribution means;

- (a) the Total AGL Distribution Assets; and
- (b) the Total AGL Distribution Liabilities.

AGL Distribution Pro Forma Statement of Net Working Assets at Completion means the statement of net working assets in respect of the AGL Distribution Contribution, prepared in accordance with the Completion Agreement.

AGL Excluded Assets means:

- (a) the assets not included in the regulated asset base in respect of the Gas Distribution Business;
- (b) the AGL NSW Gas Retail Assets;
- (c) the rights to AGL's existing offices in Civic, including related office equipment;
- (d) the lease of AGL's depot (located in Fyshwick);
- (e) the rights in relation to the AGL Energy Shop located in Fyshwick;
- (f) the electricity retail customers of the AGL Group in the ACT
- (g) non-distribution assets in connection with AGL's natural gas vehicle facilities;

- (h) the AGL Trade Marks and AGL Business Names;
- (i) shares in the AGL Partners; and
- (j) rights of AGL and a Related Entity of AGL pursuant to the Completion Agreement and the Establishment Agreements (other than a right of an AGL Partner held as a Partner).

AGL Excluded Liabilities means:

- (a) the AGL NSW Gas Retail Liabilities;
- (b) any liabilities for Tax; and
- (c) any indebtedness of the AGL Parties.

AGL Gas Infrastructure means gas distribution network facilities comprising the infrastructure of the AGL gas network (including any tanks, reservoirs, machinery, equipment or meters directly attached to the gas network) owned and used or held for use by the AGL Group in carrying on the Gas Distribution Business in the ACT Area on the day this Declaration takes effect.

AGL Goodwill means the goodwill of the Gas Distribution Business and Gas Retail Business including, but not limited to, the exclusive right of the Partnerships to represent themselves as carrying on the Gas Distribution Business and Gas Retail Business as the successor to the AGL Group excluding the goodwill comprised in the AGL Business Names and AGL Trade Marks.

AGL Group means AGL and each of its Related Entities.

AGL NSW Gas Retail Assets means the assets forming part of the AGL NSW Gas Retail Business.

AGL NSW Gas Retail Liabilities means the liabilities forming part of the AGL NSW Gas Retail Business.

AGL NSW Gas Retail Business means the Gas Retail Business carried on in New South Wales by AGL and its Related Entities.

AGL Parties means AGL and the AGL Partners.

AGL Partners means AGL Gas Company (ACT) Limited and AGL ACT Retail Investments Pty Limited.

AGL Plant and Equipment means:

- (a) all plant, equipment, motor vehicles, machinery, furniture, fixtures and fittings; and
 - (b) all consumables, spare parts, tools and maintenance items, and office supplies,
- in each case owned and used or held for use by the AGL Group solely in carrying on the Gas Distribution Businesses.

AGL Prepayments and Security Deposits means the prepayments and security deposits held by the AGL Group in connection with the Gas Businesses on the day this Declaration takes effect.

AGL Receivables means the trade debts and other receivables of the AGL Group in connection with the Gas Businesses on the day this Declaration takes effect.

AGL Retail Completion Borrowers means the Related Entities of AGL nominated by AGL to issue the AGL Retail Completion Loan Notes.

AGL Retail Completion Loan Notes means the promissory notes of the AGL Retail Completion Borrowers in accordance with the form contained in the Completion Agreement, evidencing the obligation of the AGL Retail Completion Borrowers to pay the AGL Retail Completion Receivable to the Retail Partnership.

AGL Retail Completion Receivable means the receivables of the AGL Retail Completion Borrowers to the Retail Partnership in the amount shown against "Completion Loan" for the "AGL Retail Contribution" in schedule 60 of the Completion Agreement, as evidenced by the AGL Retail Completion Loan Notes.

AGL Retail Contracts means contracts and commitments with franchise and contestable customers entered into by the AGL Group solely in connection with the Gas Retail Business before the date of this Declaration and between the date of this Declaration and the date this Declaration takes effect which are not fully performed as at the day this Declaration takes effect.

AGL Retail Goodwill means the goodwill of the Gas Retail Business including, but not limited to, the exclusive right of the Retail Partnership to represent itself as carrying on the Gas Retail Business as the successor to AGL excluding the goodwill comprised in the AGL Business Names and AGL Trade Marks.

AGL Retail Prepayments and Security Deposits means the prepayments and security deposits held by the AGL Group in relation to the Gas Retail Business on the day this Declaration takes effect.

AGL Retail Pro Forma Statement of Net Working Assets means the statement of net working assets in respect of the AGL Retail Contribution, prepared in accordance with the Completion Agreement.

AGL Retail Contribution means:

- (a) the Total AGL Retail Assets; and
- (b) the Total AGL Retail Liabilities.

AGL Retail Receivables means the trade and customer receivables of the AGL Group in connection with the Gas Retail Business on the day this Declaration takes effect excluding the AGL Unbilled Receivables.

AGL Retail Statutory Licences means all licences, consents, rights, permits and certificates relating to the Gas Retail Business issued by any governmental authority (whether Commonwealth, State or local), insofar as they may be transferred to the Retail Partnership or the Retail Partners.

AGL Specifically Included Assets means:

- (a) the AGL Gas Infrastructure;
- (b) the AGL Receivables;

- (c) the AGL Prepayments and Security Deposits;
- (d) the AGL Plant and Equipment;
- (e) the AGL Goodwill;
- (f) the AGL Confidential Information used or held solely for the purposes of the Gas Businesses;
- (g) the AGL Customer Information;
- (h) the AGL Statutory Licences; and
- (i) the ACT EGP Connector.

AGL Statutory Licences means all licences, consents, rights, permits and certificates relating to the Gas Businesses issued by any governmental authority (whether Commonwealth, State or local), insofar as they may be transferred to the Partnerships or the Partners.

AGL Trade Marks means the trade marks of the AGL Group.

AGL Unbilled Receivables means receivables of the AGL Group in relation to the Gas Businesses as at the date this Declaration takes effect which have not at such date been billed to customers of the AGL Group.

Completion Agreement means the ACTEW / AGL completion agreement dated on or around the date of this Declaration between:

- (a) ACTEW Corporation Limited (ACN 069 381 960);
- (b) The Australian Gas Light Company (ARBN 052 167 405);
- (c) Ecowise Services Limited (ACN 073 025 224);
- (d) ACTEW Energy Limited (ACN 074 371 207);
- (e) AGL Gas Company (ACT) Limited (ACN 008 552 663); and
- (f) AGL ACT Retail Investments Pty Limited (ACN 093 631 586).

Completion Notice means the notice in the form set out in the Annexure to this Declaration.

Cut Off Date means the day six months after the date of the Completion Agreement.

Distribution Partnership means the partnership between AGL Gas Company (ACT) Limited and Ecowise Services Limited formed pursuant to the Distribution Partnership Agreement between them dated on or about the date of this Declaration.

Distribution Partnership Agreement means the partnership agreement between Ecowise Services Limited and AGL Gas Company (ACT) Limited dated on or about the date of this Declaration.

EGP Connector means the Eastern Gas Pipeline connector which, when completed, will connect the Eastern Gas Pipeline with the ACT gas distribution network.

Establishment Agreements means all the following agreements dated on or about the date of this Declaration:

- (a) Distribution Partnership Agreement;
- (b) Retail Partnership Agreement;
- (c) Umbrella Agreement between ACTEW, AGL, Ecowise Services Limited, ACTEW Energy Limited, AGL ACT Retail Investments Pty Limited and AGL Gas Company (ACT) Limited;
- (d) Water & Sewerage Managing Contractor Alliance Agreement among ACTEW, Ecowise Services Limited and AGL Gas Company (ACT) Limited;
- (e) Wholesale Electricity Sale Agreement among AGL Electricity Limited, ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited;
- (f) Wholesale Gas Supply Agreement among AGL Wholesale Gas Limited, AGL ACT Retail Investments Pty Limited, ACTEW Energy Limited, AGL Energy Sales & Marketing Limited and AGL Retail Energy Limited;
- (g) ACTEW Staff Services Agreement among ACTEW, Ecowise Services Limited, AGL Gas Company (ACT) Limited, ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited;
- (h) Retail Management Services Agreement among AGL Retail Energy Limited, ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited;
- (i) Distribution Asset Management Services Agreement among Agility Management Pty Limited, Ecowise Services Limited and AGL Gas Company (ACT) Limited;
- (j) ACTEW Trade Mark Licence Agreement among ACTEW and the Distribution Partnership and Retail Partnership;
- (k) AGL Trade Mark Licence Agreement among AGL and the Distribution Partnership and Retail Partnership;
- (l) any Inter-partnership agreements agreed prior to the date on which this Declaration takes effect pursuant to clause 9.9(f) of the Completion Agreement;
- (m) the Electricity Hedge Pass Through Agreement among AGL Electricity Limited and ACTEW Energy Limited;
- (n) ACTEW Retail Equitable Charge among ACTEW and ACTEW Energy Limited;
- (o) ACTEW Distribution Equitable Charge among ACTEW and Ecowise Services Limited;
- (p) AGL Retail Equitable Charge among AGL and AGL ACT Retail Investments Pty Limited; and
- (q) AGL Distribution Equitable Charge among AGL and AGL Gas Company (ACT) Limited.

Gas Distribution Business means the business of distributing gas in the ACT Area through a gas network carried on by AGL and its Related Entities by means of, among other things, the AGL Gas Infrastructure.

Gas Businesses means the Gas Distribution Business and the Gas Retail Business.

Gas Retail Business means the business of supplying gas from a gas network to end users in the ACT Area for consumption carried on by AGL and its Related Entities.

Government Agency means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, department, commission, authority, tribunal, agency or entity.

GST means goods and services tax or similar value added tax in the Commonwealth of Australia pursuant to GST law.

GST law has the meaning given to such term in A New Tax System (Goods and Services Tax) Act 1999 of Australia or a successor Act.

ICARC means the Independent Competition and Regulatory Commission and any successor body thereto.

Non-transferred AGL Unbilled Retail Receivables means the AGL Unbilled Receivables in respect of the Gas Retail Business in the amount of the AGL Retail Completion Loan Notes.

Partnerships means the Distribution Partnership and the Retail Partnership.

Related Entity of an entity means another entity which is related to the first within the meaning of section 9 of the Corporations Law or is in any economic entity (as defined in any approved accounting standard) which contains the first.

Retail Partners means ACTEW Energy Limited and AGL ACT Retail Investment Pty Limited.

Retail Partnership means the partnership to be formed under the Retail Partnership Agreement.

Retail Partnership Agreement means the partnership agreement between ACTEW Energy Limited and AGL ACT Retail Investments Pty Limited dated on or about the date of this Declaration.

Tax means a tax, levy, charge, impost, fee, deduction, withholding or duty of any nature, including, without limitation, stamp and transaction duty or any goods and services tax (including GST), value added tax or consumption tax, which is imposed or collected by a Government Agency, except where the context requires otherwise. This includes, but is not limited to, any interest, fine, penalty, charge, fee or other amount imposed in addition to those amounts.

Total AGL Distribution Assets means all those assets owned or used or held for use by the AGL Group in conducting the Gas Businesses included in the regulated asset base of the AGL Group in respect of the Gas Businesses as determined by ICARC, including without limitation AGL Specifically Included Assets, but in any event excluding:

- (a) AGL Excluded Assets; and
- (b) Total AGL Retail Assets.

Total AGL Distribution Liabilities means liabilities of the AGL Group, to the extent only that they are expressly provided for in the AGL Distribution Pro Forma Statement of Net Working Assets at Completion, but in any event excluding:

- (a) AGL Excluded Liabilities; and
- (b) Total AGL Retail Liabilities.

Total AGL Retail Assets means:

- (a) AGL Retail Contracts;
- (b) AGL Retail Goodwill;
- (c) AGL Retail Receivables;
- (d) AGL Retail Prepayments and Security Deposits;
- (e) AGL Confidential Information used or held solely for the purposes of the Gas Retail Business;
- (f) AGL Retail Statutory Licenses; and
- (g) the issue of the AGL Retail Completion Loan Note

but in any event excluding:

- (h) AGL Excluded Assets; and
- (i) Non-Transferred AGL Unbilled Retail Receivables.

Total AGL Retail Liabilities means liabilities of the AGL Group, to the extent only that they are expressly provided for in the AGL Retail Pro Forma Statement of Net Working Assets at Completion in respect of the AGL Retail Contribution, but in any event excluding the AGL Excluded Liabilities.

**Annexure
Completion Notice**

To: The Treasurer of the Australian Capital Territory

**NOTICE PURSUANT TO CLAUSE 11.4(b) OF THE COMPLETION AGREEMENT
BETWEEN ACTEW CORPORATION LIMITED (ACN 069 381 960) AND THE
AUSTRALIAN GAS LIGHT COMPANY (ARBN 052 167 405) AND OTHERS
("COMPLETION AGREEMENT")**

This is the notice for the purpose of clause 11.4(b) of the Completion Agreement.

Dated:

ACTEW Corporation Limited

The Australian Gas Light Company