

## **FIRST PROPOSED ORDER OF THE TRIBUNAL:**

### **CONDITIONS TO THE TRIBUNAL AUTHORISATION**

The authorisation granted by the Tribunal to AGL Energy Limited is subject to the conditions set out below (**Conditions**). The conditions apply to AGL Energy Limited and its Subsidiaries (together referred to as (**AGL**)) and the Conditions apply from the date the authorisation is granted by the Tribunal.

#### **1. CONDITION TO OFFER NSW HEDGES**

The authorisation is subject to the condition that, for each Trading Interval of the Liquidity Obligation Term, AGL:

- (a) offers to enter into Products; or
- (b) enters into Products,

in accordance with the Product Offer Mechanism so that the aggregate Quantity of the Products offered or entered into (as determined in accordance with the Product Offer Mechanism) is equal to or greater than the Obligation Quantity (called the "**Offer Condition**").

#### **2. HOW AGL SATISFIES THE OFFER CONDITION**

##### **2.1 Meaning of Product, Obligation Quantity and Product Offer Mechanism**

Key definitions applicable to the Offer Condition are:

- (a) **Product** means:
  - (i) an Over the Counter Product where AGL is the person who is to pay the floating price; or
  - (ii) an Exchange Product where AGL is the person who is to pay the cash settlement price;
- (b) **Obligation Quantity**, for each Trading Interval of the Liquidity Obligation Term, means a Quantity of:
  - (i) 250MW for the first 26 whole Trading Weeks of the Liquidity Obligation Term; and
  - (ii) 500MW for the balance of the Liquidity Obligation Term; and
- (c) **Product Offer Mechanism** means the mechanisms set out in conditions 2.2 to 2.4 which describe how AGL may offer to enter, or enter, into Products which enable it to comply with the Offer Condition.

##### **2.2 How Products may be offered and entered into by AGL**

For the purposes of complying with the Offer Condition:

- (a) AGL must offer Products or enter into Products by only using one or more of the following methods:
  - (i) offer to enter, or enter, into an Over the Counter Product with Retailers without using an Electricity Broking Service; or

- (ii) placing one or more orders for an Over the Counter Product with an Electricity Broking Service that may be, or are, accepted by Eligible Participants; or
  - (iii) placing one or more price and quantity orders on the ASX Futures Exchange, which can be or are executed in accordance with the rules of the ASX Futures Exchange;
- (b) when AGL offers to enter, or enters, into an Over the Counter Product with an Eligible Participant, it must be on one of the following bases:
- (i) the Product is to be subject to the terms of an ISDA Master Agreement between the Eligible Participant and AGL that has not terminated or expired prior to the entry into of the Product; or
  - (ii) if there is not an ISDA Master Agreement between the Eligible Participant and AGL as referred to in condition 2.2(b)(i), the Product is to be subject to a condition that the Eligible Participant and AGL enter into an ISDA Master Agreement; and
- (c) the offer to enter, or entry, into any Over the Counter Product is to be subject to the Eligible Participant complying with AGL's Counterparty Trading Arrangements for that Product.

### 2.3 **When a Product does not satisfy the Offer Condition**

When determining the Quantity of Products entered into by AGL for the purposes of complying with the Offer Condition, AGL may not include the Quantity of:

- (a) Exchange Products entered into by AGL, where AGL is the purchaser;
- (b) any NSW Transactions effected by orders through an Electricity Broking Service, where AGL is the acquirer of the Product; or
- (c) any NSW Transaction involving the Target Company.

### 2.4 **When AGL is deemed to have offered to a Product to satisfy the Offer Condition**

- (a) For the purpose of complying with the Offer Condition, if AGL makes offers in accordance with this condition 2.4, AGL will be deemed to have offered to enter into Products which enable it to comply with the Offer Condition.
- (b) For the purpose of this condition 2.4, **Offer Period** means, for a Trading Interval which occurs:
  - (i) prior to the first anniversary of the commencement of the Liquidity Obligation Term, that number of First Year Trading Days which occur in the period after the Completion Date; and
  - (ii) on or after the first anniversary of the commencement of the Liquidity Obligation Term, 120 Trading Days which occur in the 12 months prior to the relevant Trading Interval.
- (c) For any Trading Interval, AGL will be deemed to have offered a Product for the purpose of this condition 2.4, if:
  - (i) AGL has prior to the Trading Interval, for a number of Trading Days not less than the Offer Period:

- (A) made offers to enter into Over the Counter Products to Retailers, which include that Trading Interval and which remained open for acceptance for a minimum of one hour;
  - (B) placed orders to sell Over the Counter Products to Eligible Participants with an Electricity Broking Service between 9am and 12.30pm and 2pm to 4pm on any Business Day, which include that Trading Interval and which remained open for acceptance for a period not less than one hour during those periods; or
  - (C) placed orders to sell Exchange Products on the ASX Futures Exchange, which include that Trading Interval and which remained open for acceptance for a period of not less than one hour; and
- (ii) each offer to enter into a Product or order placed to sell Products, as referred to in condition 2.4(c)(i), satisfies the following conditions:
- (A) it is for a Quantity no less than 20MW for any Trading Interval;
  - (B) it is for a price that is no greater than the higher of:
    - (aa) \$0.75 above the most recent Trading Day's clearing price (in \$/MWh) for the equivalent Exchange Product on the ASX Futures Exchange immediately before the day that the offer was made or the order was placed; and
    - (bb) the price of the last trade for the equivalent Exchange Product on the ASX Futures Exchange, for which AGL was not a party, on the day that the order was placed with the Electricity Broking Service or placed on an ASX Futures Exchange,

however; in determining the price of an Over the Counter Product for the purpose of this condition, the price may be adjusted to take account of transaction terms for the Product (including a term that the AFMA Benchmark Carbon Addendum applies) relating to the management of greenhouse gas emissions or concentrations; and
  - (C) for an Over the Counter Product, it complies with conditions 2.2(b) and 2.2(c).
- (d) For the purposes of complying with the Offer Condition, for a Trading Interval:
- (i) if AGL has made offers to enter into a Product or placed orders to sell Products in accordance with condition 2.4(c); then
  - (ii) AGL will be taken to have offered to enter into a Quantity of Products equal to:
    - (A) the Obligation Quantity; less
    - (B) the Quantity of Products entered into by AGL in accordance with the Product Offer Mechanism for that Trading Interval.

### 3. **CONDITION TO NEGOTIATE THE SALE OF PRODUCTS TO RETAILERS**

#### 3.1 **Negotiation Condition**

The authorisation is subject to the following conditions:

- (a) if a Retailer requests to enter into a Product with AGL on a Business Day during the Liquidity Obligation Term then AGL must negotiate the terms of that Product in good faith with that Retailer; and
- (b) on and from the Completion Date and subject to conditions 3.2(c) and 3.2(d), if a Retailer requests AGL to enter into a Product which is for Trading Intervals only in the Liquidity Obligation Term, then AGL must offer a Quantity up to the Price Obligation Quantity for each relevant Trading Interval for which the Retailer has made a request at a price no greater than the higher of:
  - (i) \$0.75 above the most recent Trading Day's clearing price (in \$/MWh) for the equivalent Exchange Product on the ASX Futures Exchange immediately before the day of the request; and
  - (ii) the price of the last trade for the equivalent Exchange Product on the ASX Futures Exchange on the last Trading Day, for which AGL was not a party, on the day of the request,

(collectively called the "**Negotiation Condition**").

#### 3.2 **Application of Negotiation Condition**

For the purpose of complying with the Negotiation Condition:

- (a) **Price Obligation Quantity** for each Trading Interval means the lesser of:
  - (i) 50MW; and
  - (ii) the Obligation Quantity less the total Quantity of any Products entered into by AGL in accordance with the Product Offer Mechanism for all of the Trading Intervals included in the Product requested by the Retailer,provided it shall never be less than zero;
- (b) **Product** has the meaning given in condition 2.1(a);
- (c) if AGL has already entered into Products on the Business Day that the Retailer makes its request which are:
  - (i) with the Retailer or other Retailers;
  - (ii) for some or all of the Trading Intervals included in the Product requested by the Retailer; and
  - (iii) entered into in accordance with the Product Offer Mechanism,then the maximum Quantity AGL is obliged to offer the Retailer under condition 3.1(b), for a Trading Interval, is 50MW less the total Quantity of the Products entered into on that Business Day with the Retailer or other Retailers for that Trading Interval; and
- (d) the Negotiation Condition will not apply to a Trading Interval, if:

- (i) for that Trading Interval, AGL has already complied with the Offer Condition;  
or
- (ii) the first Trading Interval the subject of the request occurs before the first Trading Interval of the next Quarter.

#### 4. **INDEPENDENT AUDIT**

##### 4.1 **Independent Audit Condition**

The authorisation is subject to the condition that AGL:

- (a) appoints and maintains the appointment of an Approved Independent Auditor to audit and report on AGL's compliance with the Offer Condition and the Negotiation Condition;
- (b) procures the Approved Independent Auditor to provide an Audit Report to the ACCC and AGL in respect of AGL's compliance with the Offer Condition and the Negotiation Condition within 20 Business Days after the end of each Quarter occurring after the start of the Liquidity Obligation Term up until three months after the expiry of the Liquidity Obligation Term; and
- (c) provides the Approved Independent Auditor with a copy of the table titled "Credit exposure and maturity limits" in Annexure 1 for the purpose of undertaking the Audit Report in accordance with the Independent Audit Condition.

(called the "**Independent Audit Condition**").

##### 4.2 **Processes associated with the Independent Audit Condition**

For the purpose of complying with the Independent Audit Condition, AGL must comply with the conditions set out in Schedule 2.

#### 5. **PERIOD FOR WHICH AGL MUST COMPLY WITH THE CONDITIONS**

- (a) AGL must comply with the Conditions until the earlier of the date:
  - (i) seven years after the Completion Date;
  - (ii) a determination is made by the Tribunal (if any) that it is no longer necessary for AGL to comply with the Conditions (including in circumstances where the ACCC has accepted an undertaking under section 87B of the Act in substantially the same terms as the Conditions);
  - (iii) if the parties do not complete the Proposed Acquisition, when AGL notifies the Tribunal of the non-completion of the Proposed Acquisition (and provides a copy of the notice to the ACCC); and
  - (iv) that AGL Energy Limited ceases to be in Control of the owner of the Generation Assets or the AGL entity holding the Generation Assets ceases to hold 50% or more of the Generation Assets.
- (b) AGL must continue to comply with the conditions in Part 3 of Schedule 2 notwithstanding that the balance of the Conditions cease to apply to AGL in accordance with condition 5(a).

6. **REVIEW EVENT**

- (a) **Review Event** means an event or circumstance or combination of events which is beyond the reasonable control of AGL which may result in:
- (i) AGL being prevented from or delayed in complying with any of the Conditions; or
  - (ii) less than 50% of the total capacity of the Generation Assets, as registered with AEMO, being able to be sent out into the NEM during all or part of the Liquidity Obligation Term,
- and which could not reasonably have been avoided by the exercise of a standard of care and diligence consistent with Good Electricity Industry Practice.
- (b) If a Review Event occurs, AGL may apply to the Tribunal to vary or suspend (for a period of time) one or more of the Conditions to the extent the variation or suspension is necessary to deal with the effect of the Review Event on AGL.

7. **DEFINED TERMS AND INTERPRETATION**

- (a) A term or expression starting with a capital letter in the Conditions:
- (i) which is defined in the Dictionary in Part 1 of Schedule 1 (Dictionary), has the meaning given to it in the Dictionary; or
  - (ii) which is defined in the Corporations Act, but is not defined in the Dictionary, has the meaning given to it in the Corporations Act.
- (b) Part 2 of Schedule 1 sets out rules of interpretation for the Conditions.

**SECOND PROPOSED ORDER OF THE AUSTRALIAN COMPETITION TRIBUNAL:**

**ANNEXURE 1 TO REMAIN CONFIDENTIAL**

The Tribunal orders that the table titled "Credit exposure and maturity limits" in Annexure 1 of the Conditions must remain confidential, and must not be made publicly available by the Tribunal, or otherwise be made available by any person to persons who are not parties to the proceedings before the Tribunal in which this order is made.

# SCHEDULE 1 TO THE FIRST AND SECOND PROPOSED ORDERS

## 1. DICTIONARY

**ACCC** means the Australian Competition and Consumer Commission established under section 6A of the Act.

**Act** means the *Competition and Consumer Act 2010* (Cth).

**AEMO** means Australian Energy Market Operator Limited ACN 072 010 327 or any other entity that operates the NEM.

**AFMA** means the Australian Financial Markets Association.

**AFMA Carbon Benchmark Addendum** means the addendum published by AFMA titled "Australian Carbon Benchmark Addendum", dated August 2010 as amended from time to time.

**AGL** means AGL Energy Limited and its Subsidiaries.

**AGL Energy Limited** means AGL Energy Limited ACN 115 061 375.

**AGL's Counterparty Trading Arrangements** means the requirements that a counterparty to a Product sold by AGL must satisfy as set out in Annexure 1.

**Approved Audit Plan** means the plan approved by the ACCC under the conditions in Schedule 2.

**Approved Independent Auditor** means the person appointed under condition 4.1 and in accordance with the processes set out in Part 1 of Schedule 2.

**ASX Futures Exchange** means the market operated by ASX Energy Limited involving the trading of electricity futures and options.

**Audit Report** has the meaning given to that term in condition 3(a) of Schedule 2.

**Australian Financial Services Licence** means an Australian financial services licence granted under Chapter 7, Part 6 of the Corporations Act.

**Business Day** means a day other than a Saturday or Sunday on which banks are open for business generally in NSW.

**Completion Date** means the date on which the Proposed Acquisition is completed.

**Conditions** means the obligations on AGL under paragraphs 1 to 7 (inclusive) of the order of the Tribunal in proceeding *[insert proceeding reference]* made on *[insert date of the first proposed order set out above]*.

**Corporations Act** means the *Corporations Act 2001* (Cth).

**Electricity Broking Service** means a firm or individual operating under an Australian Financial Services Licence that arranges transactions between a buyer and seller of electricity derivative contracts for an agreed commission upon successful deal execution.

**Eligible Participant** means:



- (a) any Retailer; and
- (b) any person that holds an Australian Financial Services Licence other than AGL.

**EnergyAustralia** means EnergyAustralia Pty Ltd ABN 99 086 014 968 and its Subsidiaries.

**Entity Connected** means such entities connected with a corporation as defined in section 64B of the Corporation Act.

**Establishment Audit** has the meaning given to it in condition 3(c)(i) of Schedule 2.

**Exchange Product** means a product which is a NSW Transaction and which is listed on the ASX Futures Exchange and is described in the "Contract Reference Guide" published by the ASX Futures Exchange as an ASX Australian Electricity Base Future (being Base Load Month, Base Load Quarter or Base Load Calendar/Financial Year Strip).

**First Year Trading Days** means, for a Trading Interval occurring prior to the first anniversary of the Liquidity Obligation Term, 120 multiplied by the number of days that have elapsed from the start of the Liquidity Obligation Term to the day in which the relevant Trading Interval falls and dividing that number by 365.

**Generation Assets** means the generation assets owned by the Target Company on the day prior to the Completion Date.

**Good Electricity Industry Practice** means the exercise of that degree of skill, diligence, providence and foresight that could reasonably be expected of a significant proportion of participants in Australia who, relevantly, are involved in the generation of electricity or participate in the wholesale electricity market relating to the NEM, taking into account the size, duty, age, fuel type and technological status of the generation assets (to the extent relevant) and the relevant application of the Law.

**Independent Audit Condition** has the meaning given in condition 4.1.

**ISDA Master Agreement** means the 2002 ISDA Master Agreement published by the International Swaps and Derivatives Association, Inc. or such other version published by the International Swaps and Derivatives Association, Inc from time to time.

**Law** includes any treaty, law, rule or regulation of any government revenue authority.

**Liquidity Obligation Term** means the period commencing on the date that is six months after the Completion Date and ending seven years after the Completion Date.

**MW** means megawatts of electricity.

**MWh** means megawatt hours of electricity.

**National Electricity Law** means the National Electricity (NSW) Law as defined in the *National Electricity (New South Wales) Act 1997* (NSW).

**National Electricity Rules** means the National Electricity Rules under the National Electricity Law.

**Negotiation Condition** has the meaning given in condition 3.1.

**NEM** means:

- (a) the wholesale exchange operated and administered by the AEMO under the National Electricity Law and the National Electricity Rules; and
- (b) the national electricity system.

**NSW** means New South Wales.

**NSW Regional Reference Node** means the Sydney West 330kV node as determined under the National Electricity Rules.

**NSW Regional Reference Price** means the Regional Reference Price at the NSW Regional Reference Node as determined by the AEMO.

**NSW Transaction** means a transaction under which the amount of the consideration, or the value of the transaction, is ultimately determined, derived from or varies by reference to (wholly or in part) the value or amount of the NSW Regional Reference Price.

**Obligation Quantity** has the meaning given to that term in condition 2.1(b).

**Offer Condition** has the meaning given in condition 1.

**Offer Period** has the meaning given to that term in condition 2.4(b).

**Origin** means Origin Energy Limited ABN 30 000 051 696 and its Subsidiaries.

**Over the Counter Product** means a product listed in Annexure 2 and which is a NSW Transaction entered into under:

- (a) the terms of an ISDA Master Agreement between the relevant parties; or
- (b) an agreement which is subject to a condition that the relevant parties enter into an ISDA Master Agreement and the transaction is to be governed by the terms of an ISDA Master Agreement.

**Product** has the meaning given in condition 2.1(a).

**Product Offer Mechanism** has the meaning given in condition 2.1(c).

**Proposed Acquisition** means the proposed acquisition by AGL of the assets of the Target Company as part of the NSW Government privatisation of electricity generation assets.

**Proposed Independent Auditor** means a person named in the Proposed Independent Auditor Notice.

**Proposed Independent Auditor Notice** means a completed notice in the form of Part 4 of Schedule 2.

**Quantity** means the quantity of a Product described in MW, which for:

- (a) an Over the Counter Product, is two times the notional quantity described in the Product but expressed as MW rather than MWh; and
- (b) an Exchange Product, is the quantity specified in the trade expressed in MW.

**Quarter** means a calendar quarter ending on 30 June, 30 September, 31 December and 31 March.

**Regional Reference Node** has the meaning given to that term in the National Electricity Rules.

**Regional Reference Price** has the meaning given to that term in the National Electricity Rules.

**Related Bodies Corporate** has the meaning given to it by section 50 of the Corporations Act.

**Related Entities** has the meaning given to it by section 9 of the Corporations Act.

**Related Parties** has the meaning given to it by section 228 of the Corporations Act.

**Retailer** means any person who holds a retail authorisation for NSW issued under Part 5 of the National Energy Retail Law as applied in NSW by the *National Energy Retail Law (Adoption) Act 2012* (NSW) and:

- (a) holds an Australian Financial Services Licence or is otherwise exempt from the requirement to hold an Australian Financial Services Licence; or
- (b) a related body corporate of the person described in paragraph (a) holds an Australian Financial Services Licence or is otherwise exempt from the requirement to hold an Australian Financial Services Licence,

other than AGL, EnergyAustralia or Origin.

**Review Event** has the meaning given to that term in condition 6(a).

**Subsidiary** has the meaning given by section 4A of the Act.

**Target Company** means Macquarie Generation (registration number: U0921901) owned by the NSW State Government pursuant to the *State Owned Corporations Act 1989* (NSW) and the *Energy Services Corporation Act 1995* (NSW).

**Tribunal** means the Australian Competition Tribunal.

**Trading Day** means a day that the ASX Futures Exchange is open for business.

**Trading Interval** a trading interval as that term is defined in the National Electricity Rules in NSW.

**Trading Week** means the period of 7 days commencing at the start of the Trading Interval which ends at 12.30 am on a Sunday.

## 2. **INTERPRETATION**

For the purpose of AGL complying with the Conditions, the following provisions apply to the interpretation of the Conditions unless the context otherwise requires:

- (a) headings are inserted for convenience only and do not affect the interpretation of a condition;
- (b) if the day on which any act, matter or thing is to be done under a condition is not a Business Day, the act, matter or thing must be done on the next Business Day;

- (c) a reference in a condition to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (d) a reference in a condition to any company includes its Related Bodies Corporate;
- (e) a reference in a condition to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced;
- (f) a reference to a condition, part, schedule or annexure is a reference to a condition, part, schedule or annexure of this authorisation;
- (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency;
- (h) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
- (i) a word which denotes the singular also denotes the plural, a word which denotes the plural also denotes the singular, and a reference to any gender also denotes the other genders;
- (j) a reference to the words 'such as', 'including', 'particularly' and similar expressions is to be construed without limitation; and
- (k) a reference to:
  - (i) a thing (including, but not limited to, a chose in action or other right) includes a part of that thing;
  - (ii) a party includes its successors and permitted assigns; and
  - (iii) a monetary amount is in Australian dollars.

# **SCHEDULE 2 TO THE FIRST AND SECOND PROPOSED ORDERS INDEPENDENT AUDIT CONDITION PROCESSES**

## **APPLICATION OF THIS SCHEDULE**

This Schedule sets out the conditions with which AGL must comply for the purposes of complying with the Independent Audit Condition.

To the extent a condition refers to action to be performed by the ACCC, AGL is not required to ensure that the ACCC performs the specified action. If the ACCC does not perform the specified action, then AGL is relieved from a requirement to comply with any condition that is dependent on the ACCC performing such action, until the ACCC actually performs the specified action.

Nothing in this Schedule 2 requires the provision of information or documents by AGL or the Approved Independent Auditor in respect of which AGL has a claim of legal professional or other privilege.

### **1. PART 1 – APPOINTMENT AND MAINTENANCE OF INDEPENDENT AUDITOR**

- (a) On or before 15 Business Days after the Completion Date, AGL must provide the ACCC with a notice for a Proposed Independent Auditor in the form set out in Part 4 of Schedule 2 (**Proposed Independent Auditor Notice**).
- (b) After receiving a notice for a Proposed Independent Auditor Notice, the ACCC is to decide whether to:
  - (i) approve the appointment of the person named in the Proposed Independent Auditor Notice as the Approved Independent Auditor which includes approving the:
    - (A) terms of appointment attached to the Proposed Independent Auditor Notice; and
    - (B) draft audit plan attached to the Proposed Independent Auditor Notice; or
  - (ii) not approve the person named in the Proposed Independent Auditor Notice as the Proposed Independent Auditor, and
    - (A) identify and approve a person as the Approved Independent Auditor;
    - (B) approve the terms of appointment;
    - (C) approve a draft audit plan; and
    - (D) direct the appointment of the Approved Independent Auditor on the approved terms of appointment.
- (c) The factors to which the ACCC may have regard include whether the:
  - (i) person named in the Proposed Independent Auditor Notice or identified by the ACCC has the qualifications and experience necessary to carry out the functions of the Approved Independent Auditor;
  - (ii) person named in the Proposed Independent Auditor Notice or identified by the ACCC is sufficiently independent of AGL;

- (iii) terms of appointment and the draft audit plan are consistent with the Conditions; and
  - (iv) terms of appointment and the draft audit plan are otherwise acceptable to the ACCC.
- (d) Within 10 Business Days after receiving a Proposed Independent Auditor Notice, the ACCC is to notify AGL in writing of its decisions and any direction made pursuant to condition 1(b) of Part 1 of Schedule 2.
- (e) The ACCC may extend the period within which it will provide notice of the decision or direction (if applicable) described in condition 1(d) of Part 1 of Schedule 2 by notifying AGL in writing of the extension within 10 Business Days after receiving the Proposed Independent Auditor Notice.
- (f) If:
- (i) an Approved Independent Auditor has not been appointed within 27 Business Days after the Completion Date; or
  - (ii) a new Approved Independent Auditor has not been appointed within 17 Business Days after the Approved Independent Auditor resigns or otherwise ceases to act as the Approved Independent Manager,
- and the reason for an Approved Independent Auditor not being appointed is not the extension of time period specified in condition 1(d) of Part 1 of Schedule 2 by the ACCC under condition 1(e) of Part 1 of Schedule 2, then condition 1(g) of Part 1 of Schedule 2 applies.
- (g) If condition 1(f) of Part 1 of Schedule 2 applies, the ACCC at its absolute discretion is to:
- (i) identify and approve a person as the Approved Independent Auditor;
  - (ii) prepare and approve the terms of appointment of the Approved Independent Auditor; and
  - (iii) prepare and approve an audit plan.
- (h) Within 10 Business Days of the occurrence of the relevant event specified in condition 1(f) of Part 1 of Schedule 2, the ACCC is to notify AGL in writing of its decision referred to in condition 1(g) of Part 1 of Schedule 2.
- (i) The ACCC may extend the period within which it will provide notice of the decision described in condition 1(h) of Part 1 of Schedule 2 by notifying AGL in writing of the extension within 10 Business Days of the occurrence of the relevant event referred to in condition 1(f) of Part 1 of Schedule 2.
- (j) AGL must immediately notify the ACCC in the event that the Approved Independent Auditor resigns or otherwise stops acting as the Approved Independent Auditor prior to the end of the Liquidity Obligation Term.
- (k) If the circumstances in condition 1(j) of Part 1 of Schedule 2 occur, AGL must commence the process described in this Part 1 of Schedule 2 relating to the approval of the Approved Independent Auditor within five Business Days after the relevant event occurs and this Part 1 of Schedule 2 (other than condition(a)) will apply to the appointment of a new Approved Independent Auditor.

2. **PART 2 – TERMS OF APPOINTMENT**

- (a) After receiving notice from the ACCC of its decision about the approval to appoint an Independent Auditor in accordance with Part 1 of Schedule 2, AGL must, within two Business Days:
  - (i) appoint the person approved by the ACCC as the Approved Independent Auditor on the terms of appointment that include the terms set out in this Part 2 of Schedule 2; and
  - (ii) forward to the ACCC a copy of the executed terms of appointment within one Business Day of execution.
- (b) AGL must procure that the terms of appointment for the Approved Independent Auditor include obligations on the Approved Independent Auditor to:
  - (i) maintain his or her independence from AGL, apart from appointment to the role of Approved Independent Auditor, including not form any relationship of the types described in part 2(c) of Part 4 of Schedule 2 with AGL for the period of his or her appointment;
  - (ii) conduct compliance auditing according to the Approved Audit Plan;
  - (iii) provide the following reports directly to the ACCC:
    - (A) a scheduled written Audit Report; and
    - (B) an immediate report of any issues that arise in respect of the performance of his or her functions as Approved Independent Auditor or in relation to AGL's compliance with the Offer Condition or the Negotiation Condition;
  - (iv) acknowledge that Approved Independent Auditor will require access to confidential information of AGL in performing his or her functions as Approved Independent Auditor;
  - (v) execute and provide to AGL, prior to the performance of any services, a confidentiality deed poll, which will:
    - (A) require the Approved Independent Auditor to keep any information received from AGL in the performance of its functions as Approved Independent Auditor confidential;
    - (B) require the Approved Independent Auditor to return any information received from AGL in the performance of its functions as Approved Independent Auditor at the end of his or her term as Approved Independent Auditor;
    - (C) prohibit the Approved Independent Auditor from using any information received from AGL in the performance of its functions as Approved Independent Auditor for any purpose other than the provision of an Audit Report; and
    - (D) prohibit the Approved Independent Auditor from disclosing any information received from AGL in the performance of its functions as Approved Independent Auditor; and
    - (E) survive the termination of the appointment of the Approved Independent Auditor.

- (c) AGL must procure that the terms of appointment for the Approved Independent Auditor give the Approved Independent Auditor authority to:
  - (i) access the facilities, sites or operations of AGL as required by the Approved Independent Auditor;
  - (ii) access any information or documents that the Approved Independent Auditor considers necessary for carrying out his or her functions as the Approved Independent Auditor; and
  - (iii) engage any external expertise, assistance or advice required by the Approved Independent Auditor to perform his or her functions as the Approved Independent Auditor.
- (d) AGL must procure that the terms of appointment for the Approved Independent Auditor permit the Approved Independent Auditor to:
  - (i) provide to the ACCC information in the time and in the form requested by the ACCC;
  - (ii) provide to the ACCC documents and materials within the Approved Independent Auditor's custody, power or control in the time and in the form requested by the ACCC; and
  - (iii) attend the ACCC at a time and place appointed by the ACCC to answer any questions the ACCC (its Commissioners, its staff or its agents) may have, relevant to the subject matter of the Approved Audit Plan or Audit Report.

### 3. **PART 3 - COMPLIANCE AUDIT**

- (a) AGL must procure that the Approved Independent Auditor conducts an audit and prepares a detailed report (**Audit Report**) that includes:
  - (i) the Approved Independent Auditor's procedures in conducting the audit, or any change to audit procedures since the previous Audit Report;
  - (ii) to the extent feasible, a thorough audit of AGL's compliance with the Offer Condition and the Negotiation Condition;
  - (iii) all of the reasons for the conclusions reached in the Audit Report;
  - (iv) any qualifications made by the Approved Independent Auditor in forming his or her views;
  - (v) any recommendations by the Approved Independent Auditor to improve:
    - (A) the Approved Audit Plan;
    - (B) the integrity of the auditing process;
    - (C) AGL's processes or reporting systems in relation to AGL's compliance with the Offer Condition and the Negotiation Condition; and
    - (D) AGL's compliance with the Offer Condition and the Negotiation Condition; and
  - (vi) the implementation and outcome of any prior recommendations by the Approved Independent Auditor.



- (b) AGL must procure that the Approved Independent Auditor ensures that the Audit Report does not include any information that identifies:
  - (i) any Eligible Participant with which AGL has entered into a Product other than as a member of a class of Eligible Participants; or
  - (ii) the Quantity the subject of a Product.
- (c) AGL must procure that the Approved Independent Auditor provides an Audit Report to the ACCC and AGL at the following times:
  - (i) within 20 Business Days after the end of the first Quarter occurring after the start of the Liquidity Obligation Term, at which time the Audit Report is to include the results of the initial audit and any recommended changes to the Approved Audit Plan, including the Approved Independent Auditor's procedures in conducting the audit (**Establishment Audit**);
  - (ii) within 20 Business Days after the end of every subsequent Quarter falling in the Liquidity Obligation Term, after the date that the Audit Report for the Establishment Audit is provided, during the Liquidity Obligation Term; and
  - (iii) a final report three months after the expiry of the Liquidity Obligation Term.
- (d) For the purpose of complying with the Independent Audit Condition, AGL must implement any recommendations of the Approved Independent Auditor made in the Audit Report, and notify the ACCC of the implementation of the recommendations, within 10 Business Days after receiving the Audit Report.

4. **PART 4 - PROPOSED INDEPENDENT AUDITOR NOTICE**

**INFORMATION REQUIRED**

AGL must provide the following information to the ACCC in order for it to assess the Proposed Independent Auditor.

**1) Proposed Independent Auditor Details**

<b>Name of the Proposed Independent Auditor</b>	
<b>Name of the Proposed Independent Auditor's employer and contact details</b>	Address:
	Contact name:
	Telephone number:
	Other contact details:

**2) Submission containing the following:**

a. <b>Details of the Proposed Independent Auditor's qualifications and experience relevant to his or her</b>	
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<b>proposed role</b>	
<b>b. Names of the owner/s and the directors (delete any that do not apply) of Proposed Independent Auditor's employer</b>	
<b>c. Details of any of the following types of relationships between AGL and the Proposed Independent Auditor or the Proposed Independent Auditor's employer or confirmation that no such relationship exists whether within Australia or outside of Australia:</b>	
i. AGL and the Proposed Independent Auditor's employer are Associated Entities	
ii. AGL is an Entity Connected with the Proposed Independent Auditor's employer	
iii. The Proposed Independent Auditor's employer is an Entity Connected with AGL	
iv. AGL and the Proposed Independent Auditor's employer are Related Entities	
v. AGL and the Proposed Independent Auditor's employer are Related Parties	
vi. Any Related Party, Related Entity or Entity Connected with AGL is a Related Party, Related Entity or Entity Connected with the Proposed Independent Auditor	
vii. AGL and the [Proposed Independent Auditor] or [the Proposed Independent Auditor's employer] have a contractual relationship or had one within the past three years, other than those attached to this form	
viii. the Proposed Independent Auditor's employer is a supplier of AGL or has been in the past three years	
ix. AGL is a supplier of the Proposed Independent	

Auditor's employer or has been in the past three years	
x. Any other relationship between AGL and the Proposed Independent Auditor or the Proposed Independent Auditor's employer that allows one to affect the business decisions of the other	

**3) A document outlining the terms of appointment for the Proposed Independent Auditor.**

In addition to the proposed terms of appointment for the Proposed Independent Auditor, AGL must procure that the Proposed Independent Auditor provides:

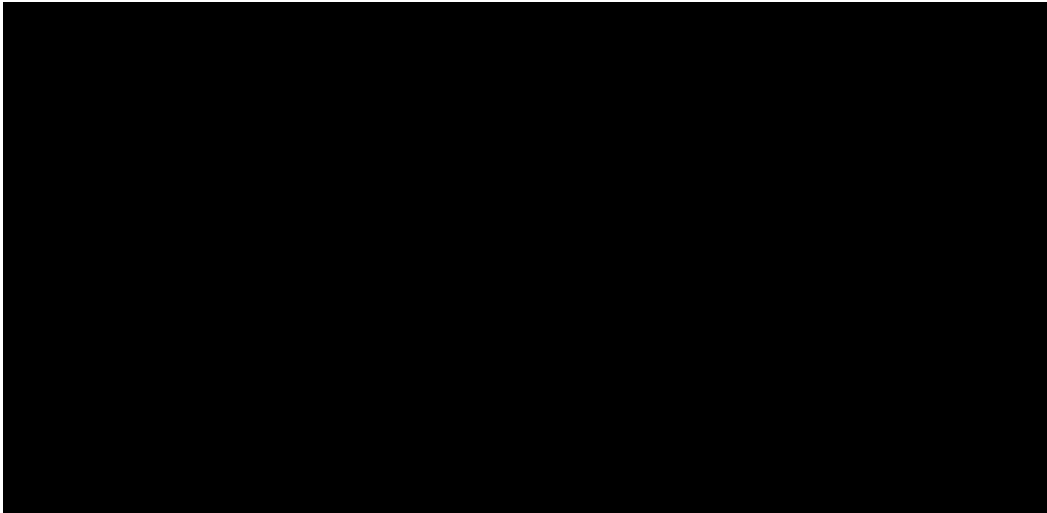
- (a) its finalised draft audit plan to be used to audit AGL's compliance with the Offer Condition and the Negotiation Condition; and
- (b) an outline (to the extent possible) of the Proposed Independent Auditor's plans in regard to the Establishment Audit and the Audit Report.

# **ANNEXURE 1 TO THE FIRST AND SECOND PROPOSED ORDERS AGL COUNTERPARTY TRADING ARRANGEMENTS**

## **COUNTERPARTY ACCESS TO TRADING**

The AGL Wholesale Energy Risk Management Policy sets, for wholesale electricity counterparties, the credit exposure and maturity limits based upon the credit rating of a counterparty. These limits allow for trading with sub-investment grade counterparties.

### **Credit exposure and maturity limits**



## **COUNTERPARTY TRADING APPROVAL ASSESSMENT**

AGL will assess the creditworthiness of all new counterparties prior to trading electricity derivative contracts with the counterparty (**Counterparty Trading Approval Assessment**).

For the purposes of the Counterparty Trading Approval Assessment:

- (a) If a credit rating is available from any of Standard & Poor's, Fitch Ratings or Moody's then AGL will accept this rating for the purposes of its counterparty credit assessment.
- (b) If a credit rating is not available from the abovementioned ratings agency then AGL will perform an internal counterparty credit assessment.

The AGL Risk Management Committee will review the credit review and credit rating of a counterparty and allocate them financial exposure and maturity limits for the counterparty's tier assigned by the Counterparty Trading Approval Assessment in accordance with the table set out above.

## **COUNTERPARTY CONTRACTUAL OBLIGATIONS**

AGL will only transact with new electricity counterparties following the negotiation and execution of an ISDA Master Agreement or where the transaction is subject to a condition to enter into an ISDA Master Agreement with AGL. The existence of an ISDA Master Agreement enables traders to proceed with transactions without needing to renegotiate contract legal clauses.

The ISDA Master Agreement between AGL and the Eligible Participant will:

- (a) establish each party's rights to request credit support under defined circumstances; and
- (b) include a credit support annex, which requires a party to provide a guarantee for the Credit Support Amount (via a Bank Guarantee for parties with less than an "A" credit rating) if their credit rating drops below investment grade or is below investment grade at the time of the Counterparty Trading Approval Assessment.

## **DEFINITIONS**

**AGL Risk Management Committee** means the executive committee as constituted by AGL's Wholesale Energy Risk Management Policy.

**Bank Benchmark Credit Rating** means:

- (a) an S&P rating of A-;
- (b) a Moody's rating of A3; and
- (c) a Fitch rating of A-,

provided that if the description or nomenclature of a Ratings Agency's ratings changes, or the manner in which that Ratings Agency's ratings are calculated or derived changes, that Ratings Agency's Bank Benchmark Credit Rating is the rating of that Ratings Agency which after the change most closely corresponds to the relevant rating specified in paragraph (a), (b) or (c) above.

**Bank Guarantee** means a guarantee from a bank with an office in Australia with a credit rating not less than the Bank Benchmark Credit Rating (as guarantor), in favour of AGL (as beneficiary), in respect of the obligations of the counterparty under the ISDA Master Agreement).

**Credit Support Amount** means the amount required to reduce the credit exposure to below the credit exposure limit plus a margin based upon a credit exposure change from a market price shift of not greater than \$5MWh.

**Fitch** means Fitch Inc, Fitch Ratings Ltd or Fitch Ratings Australia Pty Ltd or the successor of any of them.

**Moody's** means Moody's Investor Services or Moody's Investor Service Pty Ltd or the successor of either of them.

**Ratings Agency** means S&P, Moody's or Fitch.

**Standard & Poors** means Standard & Poor's (a division of McGraw-Hill Inc) or Standard & Poor's (Australia) Pty Ltd.

**Wholesale Energy Risk Management Policy** means the policy titled Wholesale Energy Risk Management Policy approved by AGL's board of directors as amended from time to time.

**ANNEXURE 2 TO THE  
FIRST AND SECOND PROPOSED ORDERS  
OVER THE COUNTER PRODUCTS**

<b>Over the Counter Product</b>	<b>Description for a 1MW Quantity of the Product</b>
Base Load Month	Firm Forward Swap for 48 calculation periods for all days in a calendar month for a notional quantity of 0.5MWh
Base Load Quarter	Firm Forward Swap for 48 calculation periods for all days in the quarter for a notional quantity of 0.5MWh
Base Load Calendar/Financial Year	Firm Forward Swap for 48 calculation periods for all days in the relevant year for a notional quantity of 0.5MWh