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4 September 2013

BY ELECTRONIC LODGEMENT

Company Announcements
ASX Limited
Exchange Centre
20 Bridge Street
Sydney NSW 2000

ashurst

AGL APG Holdings Pty Ltd ACN 081 834 826 (a wholly owned subsidiary of AGL Energy Limited (ASX: AGK)) – Takeover bid for Australian Power and Gas Company Limited (ASX: APK)

We act for AGL APG Holdings Pty Ltd ACN 081 834 826 (a wholly owned subsidiary of AGL Energy Limited) (**AGL Bidder**) in relation to its off-market takeover bid for all of the options issued by Australian Power and Gas Company Limited ABN 96 077 206 583 (**APK**).

On behalf of AGL Bidder and pursuant to item 8 of 633(1) of the *Corporations Act 2001* (Cth) (**Corporations Act**), we advise that AGL Bidder has today completed sending to APK optionholders the Bidder's Statement and Offer in relation to its off-market takeover bid for all of the options issued by APK. The Offer is dated 4 September 2013.

Pursuant to section 633(6) of the Corporations Act, we enclose a copy of the Bidder's Statement and Offer which has been sent to APK optionholders today.

Yours faithfully

Ashurst Australia

Ashurst Australia

AUSTRALIA BELGIUM CHINA FRANCE GERMANY HONG KONG SAR INDONESIA (ASSOCIATED OFFICE) ITALY JAPAN PAPUA NEW GUINEA
SAUDI ARABIA SINGAPORE SPAIN SWEDEN UNITED ARAB EMIRATES UNITED KINGDOM UNITED STATES OF AMERICA

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226395037.01

BIDDER'S STATEMENT



ACCEPT

RECOMMENDED CASH OPTION OFFER

by AGL APG Holdings Pty Limited ABN 72 081 834 826, a wholly owned subsidiary of AGL Energy Limited ABN 74 115 061 375

for all of your options in

**Australian Power and Gas Company Limited
ABN 96 077 206 583**

The Recommending Directors of Australian Power and Gas Company Limited unanimously recommend that you ACCEPT the Option Offer in the absence of a Superior Proposal and subject to the independent expert concluding the Option Offer is reasonable

Offer Information Line

Please call 1800 426 150 (or +61 1800 426 150 for overseas domiciled holders) if you require assistance with your acceptance

This document is important and requires your immediate attention. You should read this document in its entirety. If you are in any doubt as to how to deal with this document you should consult your legal, financial or other professional adviser as soon as possible.

Financial adviser

Deutsche Bank



Legal adviser

ashurst

This document is important and requires your immediate attention.

If you are in any doubt as to how to deal with this document you should consult your legal, financial or other professional adviser as soon as possible.

Important information and notices

(a) Bidder's Statement

This Bidder's Statement is given by AGL APG Holdings Pty Limited ABN 72 081 834 826 to Australian Power and Gas Company Limited ABN 96 077 206 583 under Part 6.5 of the Corporations Act and relates to the Option Offer. This Bidder's Statement is dated 27 August 2013 and includes in section 9 an Option Offer dated 4 September 2013 to acquire all Your APK Options.

(b) AGL and AGL Bidder

AGL APG Holdings Pty Limited ABN 72 081 834 826 is a wholly owned subsidiary of AGL Energy Limited ABN 74 115 061 375. Unless otherwise specified, in this document a reference to AGL Bidder is a reference to AGL APG Holdings Pty Limited and a reference to AGL is a reference to AGL Energy Limited.

(c) Australian Securities and Investments Commission

A copy of this Bidder's Statement was lodged with ASIC on 27 August 2013. Neither ASIC nor any of its officers takes any responsibility for the contents of this Bidder's Statement.

(d) Offers outside Australia

The distribution of this Bidder's Statement may, in some countries, be restricted by law or regulation. Accordingly, persons who come into possession of this Bidder's Statement should inform themselves of, and observe, those restrictions.

(e) Important notice to US shareholders

The Option Offer is made for the options of an Australian registered company. It is important that US shareholders understand that the Option Offer is subject to disclosure requirements in Australia that are quite different from those in the US.

You should be aware that, subject to the Corporations Act, AGL Bidder may purchase APK Options otherwise than under the Option Offer, such as through privately negotiated purchases.

(f) Disclosure regarding forward looking statements

This Bidder's Statement includes certain forward looking statements and statements of current intention (which include those in section 4). As such statements relate to future matters, they are subject to inherent risks and uncertainties. These risks and uncertainties include factors and risks specific to the industries in which AGL, AGL Bidder and APK operate as well as matters such as general economic conditions, many of which are outside the control of AGL, AGL Bidder and their respective Directors. These factors may cause the actual results, performance or achievements of AGL, AGL Bidder or APK to differ, perhaps materially, from the results, performance or achievements expressed or implied by those forecasts or forward looking statements. The past performance of AGL, AGL Bidder and APK is not a guarantee of future performance.

The forward looking statements do not constitute a representation that any such matter will be achieved in the amounts or by the dates indicated and are presented as a guide to assist you in assessing the Option Offer. The forward looking statements are based on information available to AGL and AGL Bidder at the date of this Bidder's Statement.

(g) Investment decisions

This Bidder's Statement does not take into account your individual investment objectives, financial or tax situation or particular needs. You should therefore seek your own financial and taxation advice before deciding whether or not to accept the Option Offer.

(h) Information on APK

All information in this Bidder's Statement relating to APK has been prepared by AGL Bidder using information included in public information about APK and a due diligence investigation conducted by AGL and AGL Bidder which involved reviewing certain non-public information about APK provided to AGL and AGL Bidder by APK. Subject to the Corporations Act, neither APK nor its Directors, nor AGL, AGL Bidder or their respective Directors makes any representation or warranty, express or implied, as to the accuracy or completeness of this information. The information on APK in this Bidder's Statement should not be considered comprehensive. In addition, the Corporations Act requires the Directors of APK to provide a Target's Statement to APK Optionholders in response to this Bidder's Statement, setting out certain material information concerning APK.

(i) Privacy

AGL Bidder has collected your information from the register of APK Optionholders for the purposes of making the Option Offer and, if accepted, administering your holding of APK Options. The Corporations Act requires the names and addresses of APK Optionholders to be held in a public register. Your information may be disclosed on a confidential basis to AGL's Related Bodies Corporate and external service providers, and may be required to be disclosed to regulators, such as ASIC. The registered office of AGL Bidder is Level 22, 120 Spencer Street, Melbourne, Victoria, 3000.

(j) Defined terms and interpretation

Unless otherwise noted, capitalised terms and certain abbreviations used in this Bidder's Statement are defined in the Glossary in section 10. That section also sets out certain rules of interpretation which apply to this Bidder's Statement.

How do I accept the Option Offer?

You may only accept the Option Offer for all of Your APK Options. Acceptances must be received before 7.00pm (AEST) on 11 October 2013 (unless extended).

To accept the Option Offer, complete the enclosed Acceptance Form in accordance with the instructions on it and return it in the enclosed envelope or to the address on the form so that it is received before 7.00pm (AEST) on 11 October 2013 (unless extended).

AGL Offer Information Line

If you have any questions in relation to this document, the Option Offer or how to accept the Option Offer, please call the AGL Offer Information Line on 1800 426 150 (toll free for calls made within Australia) or +61 1800 426 150 (for calls made from outside Australia) from Monday to Friday between 8.30am and 5.30pm (AEST). Please note that calls to these numbers may be recorded.

Key Dates

Bidder's Statement lodged with ASIC and the ASX	27 August 2013
Date of Option Offer	4 September 2013
Date of Option Offer conditions notice*	3 October 2013
Option Offer closes (unless extended)*	11 October 2013

* This date is indicative only and may be changed as permitted by the Corporations Act.

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- A BDO Valuation Report
- B ASIC Relief Instrument
- C Conditions of the Share Offer
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CHAIRMAN'S LETTER

Dear Australian Power and Gas Optionholder

I am pleased to enclose a Bidder's Statement, which contains an offer from AGL Bidder, a wholly owned subsidiary of AGL, to acquire all of Your APK Options, as well as information relevant to the Option Offer.

AGL Bidder is also making a separate offer of \$0.52 cash per APK Share to acquire all APK Shares that it does not already own (**Share Offer**). The Option Offer is conditional on the Share Offer becoming unconditional.

This offer for all of Your APK Options is made at the following cash prices for each class of APK Options:

Expiry Date	Number on Issue	Exercise Price	Option Offer Consideration
22/12/2014	2,500,000	\$0.40 (minimum of 40 cents or 30 day VWAP at time of exercise)	\$0.1479
31/12/2013	5,000,000	\$0.55	\$0.0440
31/03/2014	250,000	\$0.35	\$0.1772
1/10/2013	513,031	\$0.35	\$0.1647
30/10/2014	2,035,000	\$0.40	\$0.1592
30/10/2014	1,500,000	\$0.45	\$0.1303
30/10/2014	125,000	\$0.50	\$0.1060
1/10/2014	500,000	\$0.50	\$0.1028
30/10/2014	125,000	\$0.55	\$0.0859
1/10/2014	500,000	\$0.55	\$0.0826
30/10/2015	1,519,243	\$0.55	\$0.0928
31/12/2013	18,900,000	\$0.60	\$0.0289
30/10/2015	925,000	\$0.60	\$0.0757
01/07/2015	500,000	\$0.70	\$0.0421
30/10/2013	500,000	\$0.70	\$0.0052
30/10/2013	500,000	\$0.80	\$0.0013
1/7/2014	1,000,000	\$0.20	\$0.3174

The above consideration for Your APK Options is based on a valuation of the APK Options undertaken by BDO using the Black-Scholes methodology. A full copy of BDO's valuation report is set out in Annexure A.

The APK Directors who hold or control APK Options have stated that they intend to accept the Option Offer in respect of the APK Options they hold or control by no later than the business day after the Option Offer becomes free of Defeating Conditions, in the absence of a Superior Proposal.

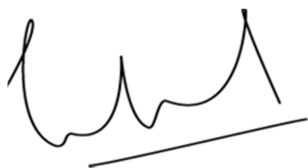
The Recommending Directors of APK unanimously recommend that you ACCEPT the Option Offer in the absence of a Superior Proposal and subject to the independent expert appointed by APK concluding the Option Offer is reasonable.

I encourage you to read this Bidder's Statement for more details about the Option Offer and about AGL Bidder. You may also request a copy of the bidder's statement for the Share Offer by contacting the AGL Offer Information Line. The Option Offer is open for your acceptance until 7.00pm (AEST) on 11 October 2013, unless extended. If you wish to accept the Option Offer, please complete and return the enclosed Acceptance Form so that it is received before the Option Offer closes. A summary of how to accept is also set out in section 1.2 of this Bidder's Statement.

If you have any questions in relation to the Option Offer, please contact your legal, financial or other professional adviser or call the AGL Offer Information Line on 1800 426 150 (or +61 1800 426 150 for overseas domiciled holders) between 8.30am and 5.30pm (AEST) Monday to Friday.

On behalf of the Board of AGL, I strongly recommend you accept the Option Offer for the reasons set out in this Bidder's Statement.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'J Maycock', written over a horizontal line.

Jeremy Maycock, Chairman

AGL Energy Limited

SUMMARY OF THE OPTION OFFER

This summary provides an overview of the Option Offer and is qualified by the detailed information contained in this Bidder's Statement. You should read the Bidder's Statement in full before deciding whether or not to accept the Option Offer.

The Bidder	AGL Bidder is a wholly owned subsidiary of AGL. AGL is one of Australia's major integrated energy companies with a market capitalisation of approximately \$8.3 billion as at the close of trading on the last Trading Day prior to the Announcement Date. Section 2 of this Bidder's Statement contains further information about AGL Bidder and AGL.
Option Offer	AGL Bidder is offering to acquire all of Your APK Options for the Option Offer Consideration by way of an off-market takeover bid. If you accept this Option Offer, you will have agreed to transfer all of Your APK Options to AGL Bidder.
Option Offer Consideration	The Option Offer Consideration is a cash sum set out in section 9.2. The Option Offer Consideration has been based on a valuation of the APK Options undertaken by BDO. A full copy of BDO's valuation report is set out in Annexure A.
Option Offer Period	The Option Offer closes at 7.00pm (AEST) on 11 October 2013, unless it is extended or withdrawn by AGL.
How to Accept and Payment Date	You may only accept the Option Offer for all of Your APK Options (unless section 9.5(b) applies to you). Acceptances must be received before the end of the Option Offer Period. To accept the Option Offer, complete and sign the enclosed Acceptance Form in accordance with the instructions on the form, and return it (together with all documents required by the instructions on it) in the enclosed envelope so that it is received at the address stated on the form before the end of the Option Offer Period. If you accept the Option Offer and the Option Offer becomes unconditional, AGL Bidder will pay you the consideration under the Option Offer by the earlier of: (a) 21 days after the end of the Option Offer Period; or (b) one month after the later of receipt of your valid acceptance and the date on which the Option Offer becomes unconditional.

Conditions

The conditions of the Option Offer are set out in full in section 9.8. These conditions are:

- **(Share Offer unconditional)** The Share Offer becomes unconditional;
- **(90% acceptances received by AGL Bidder under the Option Offer)** AGL Bidder acquiring more than 90% of the APK Options (by number) at the end of the Option Offer Period; and
- **(ASX Waiver related Condition)** The Rule 6.23.4 Waiver Conditions being satisfied (for more information see section 8.7 of this Bidder's Statement).

The conditions of the Share Offer are set out in full in Annexure C.

WHY YOU SHOULD ACCEPT THE OPTION OFFER

1. AGL BIDDER'S OPTION OFFER IS BASED ON BDO'S VALUATION REPORT

BDO, an accounting and professional services firm, has prepared a valuation report in relation to the APK Options. A full copy of BDO's report is set out in Annexure A. The Option Offer Consideration is based on the valuation BDO attributes to each class of APK Options.

BDO's valuation methodology utilises the Black-Scholes option valuation formula, which in most cases (but not necessarily for deep "in the money" options) is higher than the intrinsic value of the APK Options (that is, spot price less strike price). As a result, AGL Bidder is paying cash to acquire APK Options even if they are "out of the money" at the price offered under the Share Offer.

2. APK'S RECOMMENDING DIRECTORS UNANIMOUSLY RECOMMEND THAT YOU ACCEPT THE OPTION OFFER

The Recommending Directors unanimously recommend that you accept the Option Offer in the absence of a Superior Proposal and subject to the independent expert appointed by APK concluding the Option Offer is reasonable.

All APK Directors who hold or control APK Options have stated that they intend to accept the Option Offer in respect of all APK Options that they own or control by no later than the business day after the Option Offer becomes free of Defeating Conditions, in the absence of a Superior Proposal.

3. MAJOR APK OPTIONHOLDERS SUPPORT THE OFFER

Cobra Group and the Poole Interests, who hold or control 4.5 million and 5 million APK Options respectively, have stated that they intend to accept the Option Offer in respect of all APK Options they hold or control by no later than the business day after the Option Offer becomes free of Defeating Conditions, in the absence of a superior proposal.

Together with the APK Directors, holders of approximately 42% of the APK Options (by number) have therefore indicated that they intend to accept the Option Offer, in the absence of a superior proposal.

4. THE OPTION OFFER DELIVERS CERTAIN AND IMMEDIATE VALUE FOR YOUR APK OPTIONS

The value of Your APK Options is volatile, uncertain and leveraged to the movement in the underlying price of APK Shares. As described in paragraph 6 below, APK faces a number of industry, operational and financial risks which may affect the price of APK Shares and APK Options.

Furthermore, APK Options are not traded on an open market (such as the ASX) and are likely to be difficult to sell other than through the Option Offer.

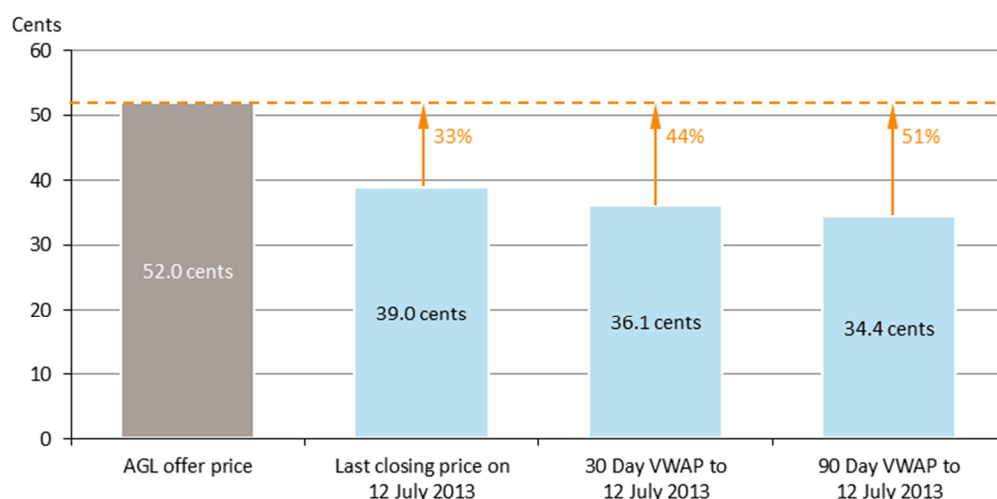
However, AGL Bidder is offering to acquire all of Your APK Options for cash. This gives APK Optionholders certainty about the value they will receive for their APK Options (subject to the Defeating Conditions being satisfied).

5. AGL BIDDER'S SHARE OFFER PRICE IS AT A SUBSTANTIAL PREMIUM TO RECENT TRADING, WHICH IS REFLECTED IN THE OPTION OFFER CONSIDERATION

As described in paragraph 1 above, the price being offered for Your APK Options under the Option Offer has been based on a valuation of the APK Options undertaken by BDO. A copy of BDO's valuation report is set out in Annexure A. This valuation reflects the Share Offer price of \$0.52 per APK Share, which is a substantial premium to APK's pre-announcement share price:

- a 33.3% premium to the closing price of 39 cents per APK Share on the ASX on the last Trading Day for APK Shares prior to the Announcement Date;
- a 44% premium to the 30 day VWAP of APK Shares on the ASX to the last Trading Day for APK Shares prior to the Announcement Date of 36.1 cents; and
- a 51.2% premium to the 90 day VWAP of APK Shares on the ASX to the last Trading Day for APK Shares prior to the Announcement Date of 34.4 cents.

Figure 1 – AGL Bidder's Share Offer price compared to APK Share prices



6. YOU WILL NO LONGER BE EXPOSED TO THE RISKS AND UNCERTAINTIES ASSOCIATED WITH HOLDING APK OPTIONS

The APK Options represent a leveraged exposure to the price of APK Shares, which may be impacted by a number of challenges and risks facing APK.

(a) Industry challenges

APK recently announced that it has been impacted by several factors affecting energy markets and this has significantly altered the expected result for the 2012-13 financial year. These factors include:

- the implementation of the carbon tax coinciding with high network price rises which saw retail prices rise up to 30%;
- reduced margins resulting from unfavourable pricing determinations in New South Wales and Queensland and increased wholesale energy costs; and
- increased competition among retailers for mass market customers.

(b) Funding risks

Several factors may impact APK's current funding position:

- APK has announced to the ASX that recent developments have placed a strain on APK's working capital, resulting in the APK Directors initiating a review of working capital requirements. APK's provision for overdue debt increased significantly in FY2013. Whilst APK has highlighted that it has been able to improve overdue debt levels since January 2013, it has noted that this has affected cash flow and bad debt provisioning has increased to 5.1% of revenue due to larger number of customers experiencing hardship in paying energy accounts.
- Hence, APK may need to secure additional equity and/or debt to fund ongoing operations and to achieve its stated objectives. In addition, any equity raising may dilute existing APK Shareholders and APK Optionholders.
- APK's need for further funding may be exacerbated by the industry challenges described above.

APK had a net debt of \$55.4 million outstanding as at 30 June 2013.

(c) Lack of scale

- APK has 353,990 customer accounts as at 30 June 2013, which is significantly less than a number of the major competitors in the sector.
- APK has also recently issued guidance that its current customer numbers may decrease in FY2014.

FREQUENTLY ASKED QUESTIONS

The table below answers some key questions that you may have about the Option Offer and should be read in conjunction with the remainder of this Bidder's Statement. You are strongly encouraged to read the entire Bidder's Statement before deciding how to deal with Your APK Options.

Question	Answer																																										
What is the Option Offer?	AGL Bidder is making the Option Offer to acquire all of Your APK Options by way of an off-market takeover bid. If you accept this Option Offer, you will have agreed to transfer Your APK Options to AGL Bidder.																																										
What if I hold Non-transferable Options?	When they were first issued, the terms of the following APK Options imposed restrictions which prevented those APK Options from being transferred: <table><tr><th>Expiry Date</th><th>Number on Issue</th><th>Exercise Price</th></tr><tr><td>1/10/2013</td><td>513,031</td><td>\$0.35</td></tr><tr><td>30/10/2014</td><td>2,035,000</td><td>\$0.40</td></tr><tr><td>30/10/2014</td><td>1,500,000</td><td>\$0.45</td></tr><tr><td>30/10/2014</td><td>125,000</td><td>\$0.50</td></tr><tr><td>1/10/2014</td><td>500,000</td><td>\$0.50</td></tr><tr><td>30/10/2014</td><td>125,000</td><td>\$0.55</td></tr><tr><td>1/10/2014</td><td>500,000</td><td>\$0.55</td></tr><tr><td>30/10/2015</td><td>1,519,243</td><td>\$0.55</td></tr><tr><td>30/10/2015</td><td>925,000</td><td>\$0.60</td></tr><tr><td>01/07/2015</td><td>500,000</td><td>\$0.70</td></tr><tr><td>30/10/2013</td><td>500,000</td><td>\$0.70</td></tr><tr><td>30/10/2013</td><td>500,000</td><td>\$0.80</td></tr><tr><td>1/7/2014</td><td>1,000,000</td><td>\$0.20</td></tr></table> These APK Options are referred to in this Bidder's Statement as being Non-transferable Options. AGL Bidder understands that on 20 August 2013 ASX granted APK a waiver from ASX Listing Rule 6.23.4 that permits APK to amend, without APK Shareholder approval, the terms and conditions of all APK Options which are Non-transferable Options to allow those APK Options to be transferred to AGL Bidder. The Rule 6.23.4 Waiver is conditional upon: the Share Offer becoming unconditional; and	Expiry Date	Number on Issue	Exercise Price	1/10/2013	513,031	\$0.35	30/10/2014	2,035,000	\$0.40	30/10/2014	1,500,000	\$0.45	30/10/2014	125,000	\$0.50	1/10/2014	500,000	\$0.50	30/10/2014	125,000	\$0.55	1/10/2014	500,000	\$0.55	30/10/2015	1,519,243	\$0.55	30/10/2015	925,000	\$0.60	01/07/2015	500,000	\$0.70	30/10/2013	500,000	\$0.70	30/10/2013	500,000	\$0.80	1/7/2014	1,000,000	\$0.20
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	• AGL obtaining voting power in APK of at least 50.1%. AGL Bidder further understands that the APK Board has resolved to amend the terms of the Non-transferable Options to permit all Non-transferable Options to be transferred. This amendment is subject to the Rule 6.23.4 Waiver Conditions being satisfied. The Defeating Conditions include a condition that the Rule 6.23.4 Waiver Conditions are satisfied. Accordingly, if this condition is satisfied the Non-transferable Options will become transferable and you will be entitled to accept this Option Offer for the Non-transferable Options. Alternatively, it is open to a holder of Non-transferable Options to exercise their Non-transferable Options (subject to the terms of the APK Options) and accept the Share Offer.
What is the Option Offer Consideration?	The Option Offer Consideration is a cash sum set out in section 9.2. The Option Offer Consideration has been based on a valuation of the APK Options undertaken by BDO. A full copy of BDO's valuation report is set out in Annexure A.
What is the Bidder's Statement?	This Bidder's Statement was prepared by AGL Bidder for distribution to APK Optionholders. The Bidder's Statement describes the terms of AGL Bidder's offer for Your APK Options and information relevant to your decision whether or not to accept the Option Offer. The Bidder's Statement is an important document. Should you have any doubt as to how to deal with this document, you should consult your financial, legal or other professional adviser.
Who are AGL Bidder and AGL?	AGL is the ultimate holding company of AGL Bidder (formerly AGL Utility Services Pty Limited). AGL is one of Australia's major integrated energy companies. It services a retail energy and dual fuel customer base which exceeds 3.5 million customer accounts. AGL has investments in upstream gas activities and electricity generation that complement wholesale energy contracts to support the retail customer base.
What interest does AGL currently have in APK Shares?	As at the date of this Bidder's Statement AGL has a relevant interest in 80,506,155 APK Shares which represents 42.03% of the total number of APK Shares on issue, comprising 38,113,795 APK shares acquired by AGL Bidder outright pursuant to Pre-Bid Acquisition Agreements entered into on the Announcement Date (representing 19.9% of all APK Shares) and 42,392,360 APK Shares (representing 22.13% of all APK Shares) which have been accepted into the Share Offer. As at the date immediately prior to the date of the Option Offer AGL has a relevant interest in 83,419,015 APK Shares which represents 43.55% of the total number of APK Shares on issue, comprising 38,113,795 APK shares acquired outright by AGL Bidder pursuant to Pre-Bid Acquisition Agreements entered into on the Announcement Date (representing 19.9% of all APK Shares) and 45,305,220 APK Shares (representing 23.65% of all APK Shares) which have been accepted into the Share Offer.

Do APK Directors support the Option Offer?	The Recommending Directors have unanimously recommended that APK Optionholders accept the Option Offer in the absence of a Superior Proposal and subject to the independent expert appointed by APK concluding the Option Offer is reasonable. The APK Directors have also stated their intention to accept the Option Offer for the APK Options that they hold or control by no later than the business day after the Option Offer is or becomes unconditional, in the absence of a Superior Proposal.
How do I accept the Option Offer?	To accept the Option Offer you should follow the instructions set out in section 1.2 and on the Acceptance Form. Your acceptance must be received before the Option Offer Period ends.
Are there any conditions of the Option Offer?	The conditions of the Option Offer are set out in full in section 9.8. These conditions are: • (Share Offer unconditional) The Share Offer becomes unconditional; • (90% acceptances) AGL Bidder acquiring more than 90% of the APK Options (by number) at the end of the Option Offer Period; and • (ASX Waiver related Condition) The Rule 6.23.4 Waiver Conditions being satisfied (for more information see section 8.7 of this Bidder's Statement). The conditions of the Share Offer are set out in full in Annexure C.
How long is the Option Offer open for?	The Option Offer opens on 4 September 2013 and is scheduled to close at 7.00pm (AEST) on 11 October 2013 (unless extended).
Do I have to pay any fees?	No brokerage, charges or stamp duty will be payable by you on the acceptance of the Option Offer.
What should I do?	To accept the Option Offer, you should: - read this Bidder's Statement in full; - read APK's Target's Statement in full (when issued); - consult your broker, legal, financial, tax or other professional adviser if you are in any doubt as to what action to take or how to accept the Option Offer; and - accept the Option Offer in the manner described in section 1.2 and on the Acceptance Form. If you have any queries about the Option Offer, you may also call the AGL Offer Information Line on 1800 426 150 (or +61 1800 426 150 for overseas domiciled holders) between 8.30am and 5.30pm (AEST) Monday to Friday.

What if I hold APK Shares?

AGL Bidder has made a separate offer to APK Shareholders to acquire 100% of their APK Shares. Further information about the Share Offer is set out in the Share Bidder's Statement. APK Optionholders can obtain a copy of the Share Bidder's Statement free of charge by calling the AGL Offer Information Line during the Option Offer Period. A copy of the Share Bidder's Statement is also available on the ASX website.

The Share Offer extends to APK Shares that come into existence during the offer period for the Share Offer through the exercise of APK Options. Therefore, you can either accept the Option Offer or exercise Your APK Options and accept the Share Offer.

There may be different tax consequences for you from accepting the Option Offer or exercising Your APK Options and accepting the Share Offer. You should consult with your own tax adviser regarding the consequences of accepting the Option Offer or exercising Your APK Options and accepting the Share Offer in light of current tax laws and your particular circumstances.

What choices do I have as an APK Optionholder?

As an APK Optionholder, you have the following choices in respect of Your APK Options:

- (a) accept the Option Offer;
- (b) exercise Your APK Options (subject to the terms of Your APK Options) and accept the Share Offer;
- (c) exercise Your APK Options (subject to the terms of Your APK Options) and not accept the Share Offer; or
- (d) do nothing.

If I accept the Option Offer, when will I receive consideration for my APK Options?

If you accept the Option Offer and the Option Offer becomes unconditional, AGL Bidder will pay you the consideration under the Option Offer by the earlier of:

- (a) 21 days after the end of the Option Offer Period; or
- (b) one month after the later of receipt of your valid acceptance and the date on which the Option Offer becomes unconditional.

What if I accept the Option Offer before my APK Options expire, but my APK Options expire before the Defeating Conditions are satisfied or waived?

If Your APK Options expire after you have accepted the Option Offer, but before all of the Defeating Conditions are satisfied or waived, you will still receive the applicable Option Offer Consideration for those APK Options if the Defeating Conditions are satisfied or waived by the end of the Option Offer Period. See section 9.7. However if Your APK Options expire before you accept the Option Offer, or the Defeating Conditions are not satisfied or waived by the end of the Option Offer Period, you will not receive any consideration for Your APK Options.

What happens if I accept the Option Offer?	Once you accept the Option Offer (even while it remains subject to Defeating Conditions) you will not be able to sell Your APK Options or otherwise deal with the Rights attaching to Your APK Options, subject to your limited statutory rights to withdraw your acceptance in certain circumstances.
What happens if I do not accept the Option Offer?	If you do not accept the Option Offer, you will remain an APK Optionholder and will not receive any Option Offer Consideration. However, if AGL Bidder becomes entitled to compulsorily acquire Your APK Options and Your APK Options have not expired, it intends to do so. If this occurs, you will receive consideration for Your APK Options but at a later date than you would have received it if you had accepted the Option Offer.
What are the tax implications of accepting the Option Offer?	A general description of the taxation treatment for certain Australian resident APK Optionholders accepting the Option Offer is set out in section 7. The description in section 7 is a general description only and is not advice. It does not take into account your particular circumstances or needs. You should not rely on that description as advice for your own affairs. You should consult your taxation adviser for detailed taxation advice before making a decision as to whether or not to accept the Option Offer for Your APK Options.

1. **OVERVIEW OF THE OPTION OFFER**

1.1 **Summary of Option Offer Terms**

AGL Bidder offers to acquire all of Your APK Options for the Offer Option Consideration on the terms of the Option Offer set out in section 9 of this Bidder's Statement.

Under the terms of the Option Offer, the amount of consideration you receive directly from AGL Bidder will be reduced by the amount or value of any Rights attaching to APK Options, on or after the Announcement Date, which AGL Bidder does not receive.

Option Offer Period

The Option Offer is scheduled to close at 7.00 pm on 11 October 2013 (but it may be extended or withdrawn in accordance with the Corporations Act).

Payment date

If you accept the Option Offer and the Option Offer becomes unconditional, AGL Bidder will pay you the consideration under the Option Offer by the earlier of:

- (a) 21 days after the end of the Option Offer Period; or
- (b) one month after the later of receipt of your valid acceptance and the date on which the Option Offer becomes unconditional.

Conditions

The Option Offer is subject to the Defeating Conditions set out in section 9.8.

1.2 **How to accept the Option Offer**

The Option Offer may only be accepted for all of Your APK Options (unless section 9.5(b) applies to you).

You will have been sent an Acceptance Form with this Bidder's Statement, which will be the Acceptance Form to be used in relation to Your APK Options.

To accept the Option Offer you must complete, sign and return the enclosed Acceptance Form in accordance with the instructions on it and return it to the address indicated on the form (and set out below) before the end of the Option Offer Period.

BY MAIL:

Link Market Services Limited
Australian Power and Gas Company Limited Takeover
Locked Bag A14
Sydney South NSW 1235

BY FAX:

+61 2 9287 0303

BY HAND:

Link Market Services Limited
Australian Power and Gas Company Limited Takeover
1A Homebush Bay Drive
Rhodes NSW 2138

For full details see section 9.4 of this Bidder's Statement.

2. INFORMATION ON AGL AND AGL BIDDER

2.1 Overview of AGL and AGL Bidder

AGL began trading on the ASX in October 2006 following the merger of The Australian Gas Light Company and Alinta Limited and the subsequent separation of AGL as a separate listed entity.

AGL and The Australian Gas Light Company have been in the Australian energy industry since 1837, beginning as a privately owned gas utility in New South Wales and since then building an extensive energy business across Australia. Today, AGL is one of Australia's largest energy retailers with over 3.5 million customers as at the Announcement Date. AGL is Australia's largest private owner, operator and developer of renewable energy generation assets and has a number of development opportunities that will help meet AGL's mandatory obligations in the future, and enhance its market position.

AGL has offices and businesses in every Australian state (excluding Western Australia and Tasmania) and in the Australian Capital Territory and as at the date of this Bidder's Statement has approximately 2,900 employees. AGL's head office is in Sydney.

AGL is an S&P/ASX 50 Index company with a market capitalisation of approximately \$8.3 billion as at the close of trading on the last Trading Day prior to the Announcement Date.

AGL Bidder is a wholly owned subsidiary of AGL. It has no significant activities other than conducting the Share Offer and the Option Offer.

2.2 AGL's principal activities

As at the date of this Bidder's Statement, AGL has the principal business groups described below.

The Retail Energy group is responsible for the sale and marketing of gas, electricity and related customer services to AGL's consumer customer base.

The Merchant Energy businesses are responsible for developing, operating and maintaining AGL's power generation portfolio of assets, developing AGL's carbon strategy, and managing the risks associated with the procurement and delivery of electricity for AGL's wholesale and retail portfolios and managing the short term elements of gas contract and portfolio management. The businesses use financial hedges, bilateral contracts and physical generation to achieve competitively priced supply.

AGL's Upstream Gas group focuses on opportunities to acquire direct investments in gas assets, including exploring for new gas resources and developing and operating gas production.

2.3 Directors of AGL and AGL Bidder

As at the date of this Bidder's Statement, the Directors of AGL are:

- Mr Jeremy Maycock (Chairman, Non-Executive Director)
- Mr Michael Fraser (Managing Director and Chief Executive Officer)
- Mr Leslie Hosking (Non-Executive Director)
- Mr Graeme Hunt (Non-Executive Director)
- Ms Belinda Hutchinson (Non-Executive Director)

- Ms Sandra McPhee (Non-Executive Director)
- Mr Bruce Phillips (Non-Executive Director)
- Mr John Stanhope (Non-Executive Director)

As at the date of this Bidder's Statement, the Directors of AGL Bidder are:

- Paul McWilliams (AGL Group Head of Corporate Support Services and Company Secretary)
- Stephen Mikkelsen (AGL Group General Manager - Retail Energy)
- Brett Redman (AGL Chief Financial Officer)

2.4 **Publicly available information**

AGL is a company listed on the ASX and is subject to the periodic and continuous disclosure requirements of the Corporations Act and the ASX Listing Rules. AGL's annual report for the year ended 30 June 2012 was given to the ASX on 17 September 2012. AGL's half-year report for the half-year ended 31 December 2012 was given to the ASX on 27 February 2013.

Information (including copies of financial statements) may also be obtained from AGL's website at www.agl.com.au.

3. INFORMATION ON APK

3.1 Profile of APK

APK is an Australian independent ASX-listed energy retailer. The company was founded in 2006 and was listed on the ASX in January 2007. APK has announced that it holds gas and electricity retail licences in Victoria, New South Wales, the Australian Capital Territory, South Australia and Queensland and has been approved to operate by AEMO, the Australian Energy Market Operator. Its customers are in the residential and commercial sectors and are located in Victoria, New South Wales and Queensland. As at 30 June 2013, APK reported that it had 353,990 customer accounts.

APK is listed on the ASX and, based on a closing price of 39.0 cents on the Trading Day immediately prior to the Announcement Date, had a market capitalisation of approximately \$75 million.

For the 12 months ended 30 June 2013, APK's revenue was up 32.6% year on year to \$483.6 million driven substantially due to the impact of the passing through of the carbon tax and distributor costs, however this was offset by continuing decline in average electricity usage. The number of customer accounts increased by 3.6% to 353,990, with growth experienced in Victoria and New South Wales, but a decrease in Queensland. The company's statutory loss increased to \$8.6 million, compared with the loss of \$3.9 million in FY12. Underlying after-tax profit¹ was down 281.4% to an \$11.1 million loss while underlying operating cash flow was down \$5.9 million to \$16.5 million. APK had net debt of \$55.4 million as at 30 June 2013.

For the 12 months ended 30 June 2013, APK sourced 71.4% of its revenues from electricity customers and 28.5% from gas customers. The company employs an outsourced business model, including an exclusive 10-year agreement with a subsidiary of Cobra Group, one of the world's largest direct marketing companies, as well as a business process services agreement with Serviceworks, a Computershare company.

Revenue per average customer account increased to \$1,391 (FY12: \$1,188). The company's statutory net loss after tax of \$8.6 million for FY13 included movements in the valuations of hedge and green obligations resulting in a gain of \$2.4 million. Removing this gain saw the company generate an underlying loss after tax of \$11.0 million. The result included a \$15.3 million increase in the bad debts provision due to larger numbers of customers experiencing hardship in paying energy accounts.

3.2 APK Directors

As at the date of this Bidder's Statement the APK Directors are:

- Mr Ian McGregor, Chairman
- Mr James Myatt, Managing Director
- Mr Michael Hogg, Non-Executive Director
- Mr Richard Davison, Alternate Director
- Mr Shinji Wada, Non-Executive Director

¹ Underlying result excludes impact of hedge valuations that relate to future periods.

3.3 Substantial shareholders

Based on publicly available information, each of the following persons had the following substantial shareholdings in the issued ordinary share capital of APK as at the date of this Bidder's Statement.

APK Shareholder	APK Shares	%
Nippon Gas (and its controlled entities)	33,000,370	17.23
Cobra Group	25,736,627	13.44
The Poole Interests	15,807,728	8.25
AGL Bidder	63,012,875	41.42

3.4 Publicly available information

The information in this section 3 has been prepared based on a review of publicly available information concerning APK. It has not been verified and AGL Bidder does not make any representation or warranty, express or implied, as to the accuracy or completeness of the information. The information should not be considered comprehensive.

Further information relating to APK's business and issued securities may be included in APK's Target's Statement in relation to the Share Offer and the Option Offer.

APK is a company listed on the ASX and is subject to periodic and continuous disclosure requirements of the Corporations Act and the ASX Listing Rules. For more information concerning the financial position and affairs of APK, you should refer to the full range of information that has been disclosed by APK pursuant to those obligations.

A copy of APK's annual report for the financial year ended 30 June 2012 was lodged with the ASX on 17 October 2012. APK's half-year report (including APK's last audited financial statements) for the half year ended 31 December 2012 was given to the ASX on 28 February 2013. APK's preliminary final report for the period ending 30 June 2013 was lodged with the ASX on 21 August 2013.

4. AGL AND AGL BIDDER'S INTENTIONS

4.1 Overview

This section 4 sets out AGL's intentions in relation to:

- (a) the continuation of the business of APK;
- (b) any major changes to the business of APK and any redeployment of the fixed assets of APK; and
- (c) the future employment of the present employees of APK.

AGL Bidder is a wholly owned subsidiary of AGL. Accordingly, the intentions, views, understanding and beliefs of AGL as set out in this Bidder's Statement are the same as those of AGL Bidder and are both collectively referred to as the intentions of AGL in this section 4.

These intentions are based on the information concerning APK, its business and the general business environment which is known to AGL at the time of preparation of this Bidder's Statement, which includes publicly available information and certain non-public due diligence materials provided by APK to AGL. AGL has also had the opportunity to have discussions with APK in relation to its business.

The statements set out in this section 4 are statements of current intention only and may vary as new information becomes available or circumstances change. Following the close of the Share Offer and the Option Offer, AGL will conduct a full review of APK's businesses, assets and employees.

Final decisions will only be reached following that review and in light of all material facts and circumstances. The statements in this section 4 should be read in this context.

4.2 Rationale for the Share Offer and the Option Offer

AGL believes that combining AGL's and APK's businesses represents an attractive opportunity for both companies. AGL intends to incorporate the functions, assets and core businesses of APK into AGL's existing businesses and functions rather than operate APK as an independent company. It is envisaged that this process will reduce costs by removing duplicative functions.

In particular, AGL believes that the following key strategic and financial benefits will arise from the successful acquisition of APK by AGL:

- the combination of AGL's and APK's businesses will improve the products and services offered to APK customers by the application of AGL's scale, systems, experience and financial strength;
- the acquisition will provide AGL with the opportunity for its position in the retail gas and electricity markets to grow through the combination of APK's gas and electricity customers with its own customers; and
- the achievement of costs savings and synergies by transferring APK's business to AGL's platform, including the ability to service APK's customers utilising AGL's lower cost to serve.

4.3 **Intentions for APK as a wholly owned subsidiary**

The intentions of AGL if APK becomes a wholly owned subsidiary of AGL are set out in this section 4.3.

(a) Corporate matters

(i) Compulsory acquisition

If AGL becomes entitled to do so, it intends to dispatch notices seeking the compulsory acquisition of all outstanding APK Shares in accordance with the provisions of Part 6A.1 of the Corporations Act.

If, as a result of the Share Offer and/or the Option Offer, AGL becomes entitled to compulsorily acquire outstanding APK Options under either Part 6A.1 or Part 6A.2 of the Corporations Act, AGL presently intends to proceed with the compulsory acquisition of APK Options in accordance with the relevant provisions of the Corporations Act.

(ii) ASX Listing

AGL intends to procure the removal of APK Shares from the Official List of the ASX at the conclusion of the compulsory acquisition process.

(iii) Directors

AGL intends to replace all members of the Board of APK, its subsidiaries and any company in respect of which APK has nominated directors, with its own nominees.

(iv) Head Office

AGL intends to fully integrate APK's head office functions into AGL's existing operations.

(b) APK's business and assets

Leading up to and following completion of the Share Offer and the Option Offer, AGL will conduct a full review of APK's businesses, assets and employees to determine the optimal integration of AGL and APK's respective businesses, systems, administrative procedures and customer platforms. AGL's current expectation is that the review will focus on identifying opportunities to realise costs savings and synergies by:

- reducing areas of duplication between AGL and APK;
- the cessation of functions (including functions provided under third party contractual arrangements) and activities that will be redundant when APK is incorporated into and operated as part of the AGL Group; and
- integrating certain functions and systems of APK into AGL's existing functions and systems.

It is expected that an outcome of this review will be the transfer of APK's customers to AGL's retail platform to realise the benefits of AGL's lower costs of serving customers.

To the extent that activities and functions presently carried out by APK and AGL will be duplicated or activities and functions of APK become redundant, those functions and activities of APK will be eliminated where it is economically efficient to do so. It is expected that the review will result in AGL disposing, liquidating, terminating or redeploying a large proportion of APK's assets, activities and functions.

(c) Employees

As a result of the implementation of the above intentions set out in section 4.3(b), it is expected that APK employees whose roles overlap with existing AGL employees will become redundant. A significant number of job losses will likely result and affected employees will receive benefits in accordance with their contractual and other legal entitlements. The incidence, extent and timing of such job losses cannot be predicted in advance of conducting the full review of APK's business described in this section.

4.4 Intentions for APK upon acquiring less than 90% of APK Shares

The Share Offer is subject to a minimum acceptance condition that AGL is able to acquire all remaining APK Shares. For it to do this AGL must have a relevant interest in 90% (by number) of all APK Shares then on issue and comprising at least 75% (by number) of all APK Shares subject to the Share Offer.

AGL reserves its right to declare the Share Offer free from the 90% minimum acceptance condition to the Share Offer.

AGL does not currently intend to waive this condition. If, however, AGL decides to declare the Share Offer free from the 90% minimum acceptance condition and APK becomes a controlled entity of AGL Group but AGL is not entitled to proceed to compulsory acquisition in accordance with Part 6A.1 of the Corporations Act, AGL's current intentions (subject to the level of AGL's shareholding in APK) are as follows.

(a) Corporate matters

After the end of the Share Offer Period and Option Offer Period, AGL intends, subject to the Corporations Act and the constitution of APK, to seek to replace some or all of the members of the APK Board. The majority would be replaced with nominees of AGL. Replacement board members have not yet been decided by AGL and their identity will depend on the circumstances at the relevant time.

AGL will seek, to the extent possible through its nominees on the APK Board, to implement the intentions detailed in section 4.3(a) where they are consistent with APK being a controlled entity of (but not wholly-owned by) AGL and are considered to be in the best interests of APK Shareholders as a whole, including minority shareholders.

If AGL obtains effective control of APK and there is limited spread or volume of APK Shareholders remaining at the end of the Share Offer Period, AGL may seek to procure the removal of APK from the Official List of the ASX.

If AGL acquires less than 90% of the APK Shares on issue under the Share Offer, then APK Shareholders should be aware that, in this circumstance, the liquidity of APK Shares may be materially decreased and they may become a "locked-in" minority after the end of the Share Offer if they do not accept the Share Offer.

Even if AGL is not entitled to proceed to compulsory acquisition of minority holdings of APK Shares after the end of the Share Offer Period under Part 6A.1 of the Corporations Act, it may subsequently become entitled to exercise rights of general compulsory acquisition under Part 6A.2 of the Corporations Act – for example, as a

result of acquisitions of APK Shares in reliance on the “3% creep” exception in item 9 of section 611 of the Corporations Act. If so, AGL intends to exercise those rights, including in relation to outstanding APK Options where it is entitled to do so.

(b) General operational review

After the end of the Share Offer Period and Option Offer Period, AGL, through its nominees on the APK Board, intends to propose to the APK Board that an immediate, broad based review of APK’s operations be conducted along similar lines to that described in section 4.3(b).

AGL intends, subject to the approval of the APK Board, to participate in this review. Following that review, AGL would seek to implement the intentions described in section 4.3 above to the extent that it is economically feasible and subject to the requirements of the Corporations Act and any other applicable laws or regulations including that these matters are considered to be in the best interests of APK shareholders as a whole. These intentions specifically include those in respect of APK’s business and assets, head office and employees and the proposed integration of APK’s business into AGL’s business.

(c) Limitations in giving effect to intentions

The extent to which AGL will be able to implement the intentions in relation to APK will be subject to:

- the Corporations Act and the ASX Listing Rules, in particular in relation to related party transactions and conflicts of interests;
- the legal obligations of the directors of APK to act for proper purposes and in the best interests of APK Shareholders as a whole; and
- the outcome of the review to be conducted by APK,

which may prevent the achievement of certain intentions set out above.

5. INFORMATION ON APK SECURITIES

5.1 Capital Structure of APK

According to the most recent Appendix 3B information lodged by APK with the ASX, the total number of securities in APK as at the date of this Bidder's Statement is as follows:

- (a) 191,526,610 APK Shares (of which 212,960 are listed as being in voluntary escrow in accordance with the terms of APK's ESP); and
- (b) 36,892,274 unlisted APK Options.

Based on information provided by APK to AGL Bidder, details of the APK Options are set out below.

Expiry Date	Number on Issue	Exercise Price	Transferable Options/ Non-transferable Options
22/12/2014	2,500,000	\$0.40 (minimum of 40 cents or 30 day VWAP at time of exercise)	Transferable
31/12/2013	5,000,000	\$0.55	Transferable
31/03/2014	250,000	\$0.35	Transferable
1/10/2013	513,031	\$0.35	Non-transferable
30/10/2014	2,035,000	\$0.40	Non-transferable
30/10/2014	1,500,000	\$0.45	Non-transferable
30/10/2014	125,000	\$0.50	Non-transferable
1/10/2014	500,000	\$0.50	Non-transferable
30/10/2014	125,000	\$0.55	Non-transferable
1/10/2014	500,000	\$0.55	Non-transferable
30/10/2015	1,519,243	\$0.55	Non-transferable
31/12/2013	18,900,000	\$0.60	Transferable
30/10/2015	925,000	\$0.60	Non-transferable
01/07/2015	500,000	\$0.70	Non-transferable
30/10/2013	500,000	\$0.70	Non-transferable
30/10/2013	500,000	\$0.80	Non-transferable
1/7/2014	1,000,000	\$0.20	Non-transferable

5.2 Election Rights

APK has granted Nippon Gas 6 million election rights (each, an **Election Right**) under the Nippon Gas Loan Agreement.

Each Election Right entitles Nippon Gas following exercise of that Election Right to receive the greater of:

- the 5 day VWAP of APK Shares ending on the day immediately before the date of an exercise notice in respect of that Election Right as noted on the Bloomberg page "SMR AU Equity VAP" (**Market Price**) less \$0.50; or
- zero,

(the **Cash Settlement Amount**).

Following the exercise of an Election Right, APK must pay Nippon Gas the Cash Settlement Amount for that Election Right on the date which is 7 business days after receiving notice from Nippon Gas that it has exercised the Election Right (**Cash Settlement Payment Date**).

Alternatively, APK may elect (subject to Nippon Gas' consent, which must not be unreasonably withheld) instead of paying the Cash Settlement Amount for Election Rights on a Cash Settlement Payment Date to issue to Nippon Gas the number of APK Shares equal to the aggregate of all Cash Settlement Amounts that would have been payable on the Cash Settlement Payment Date if APK had not elected to issue APK Shares, divided by the Market Price for the relevant Election Right.

The exercise period of the Election Rights expires on 11 April 2015.

AGL understands that Nippon Gas must not issue a notice to exercise the Election Rights in certain circumstances during the 14 business days immediately after APK has publicly announced that it has entered into discussions which may result in a change of control transaction or makes any other announcement in respect of a potential or proposed change of control transaction.

AGL understands that Nippon Gas has agreed with APK that it will not exercise the Election Rights during the period between the Announcement Date and the date that the payment is made to APK in consideration for the cancellation of the Election Rights (see section 8.3(c)).

AGL understands that APK has further agreed with Nippon Gas that, if the Share Offer becomes free of defeating conditions, then on the date which is 10 business days after the close of the Share Offer Period the Election Rights will be cancelled in consideration of a payment by APK to Nippon Gas of \$591,634 (exclusive of GST) in aggregate for the 6 million Election Rights held by Nippon Gas. See section 8.3(c) of this Bidder's Statement for further details.

5.3 Details of relevant interests in APK securities and voting power

As at the date of this Bidder's Statement:

- (a) AGL Bidder has a relevant interest in 80,506,155 APK Shares;
- (b) AGL Bidder has a relevant interest in zero APK Options; and
- (c) AGL Bidder has voting power in APK of 42.03%.

As at the date immediately prior to the date of the Option Offer:

- (a) AGL Bidder has a relevant interest in 83,419,015 APK Shares;
- (b) AGL Bidder has a relevant interest in zero APK Options; and
- (c) AGL Bidder has voting power in APK of 43.55%.

5.4 **Consideration provided for APK securities during previous 4 months**

Except as set out below or in connection with the Share Offer, AGL Bidder and its associates have not acquired or disposed of APK securities during the period of four months ending on the day immediately before the date of the Option Offer.

(a) Acquisition of APK Shares

On the Announcement Date, AGL Bidder entered into various Pre-Bid Acquisition Agreements with Nippon Gas, Cobra Group and the Poole Interests, to acquire an aggregate 38,113,795 APK Shares for \$0.52 cash per APK Share acquired under those agreements. The price paid under those Pre-Bid Acquisition Agreements is the same as the price offered for APK Shares under the Share Offer.

Further information in relation to these Pre-Bid Acquisition Agreements is set out in section 8.2 of this Bidder's Statement.

In addition, AGL Bidder has received acceptances in respect of:

- 42,392,360 APK Shares (representing 22.13% of all APK Shares) – as at the date of this Bidder's Statement; and
- 45,305,220 APK Shares (representing 23.65% of all APK Shares) – as at the date immediately prior to the date of the Option Offer.

As at the date of the Option Offer the Share Offer remains subject to defeating conditions.

(b) Election rights

Nippon Gas currently holds 6 million Election Rights. AGL understands that APK has agreed with Nippon Gas that, if the Share Offer becomes free of defeating conditions, then on the date which is 10 business days after the close of the Share Offer Period the Election Rights will be cancelled in consideration of a payment by APK to Nippon Gas of \$591,634 (exclusive of GST) in aggregate for the 6 million Election Rights held by Nippon Gas. Further details in relation to this agreement is set out in section 8.3(c) of this Bidder's Statement.

(c) APK Options

AGL Bidder has not agreed to provide any consideration for any APK Options during the period of four months ending on the day immediately before the date of the Option Offer.

5.5 **Inducing benefits given during previous 4 months**

Except as set out in this Bidder's Statement, and otherwise in connection with the Share Offer and the Option Offer, neither AGL Bidder nor any of its associates has, during the period of four months ending on the day immediately before the date of the Option Offer, offered or agreed to give a benefit to another person where the benefit was likely to induce the other person, or an associate, to:

(a) accept the Option Offer; or

(b) dispose of APK Options,

which benefit was not offered to all APK Optionholders under the Option Offer.

6. **FUNDING**

6.1 **Maximum cash consideration**

The maximum amount of cash that AGL Bidder would be required to pay under the Option Offer if acceptances are received in respect of all of the APK Options on issue as at the date of this Bidder's Statement would be approximately \$2,453,573.96 (**Maximum Cash Consideration**).

6.2 **AGL Bidder's internal funding arrangements**

AGL has agreed to provide, and will procure that its subsidiaries will provide, AGL Bidder with all amounts AGL Bidder is required to pay for the acquisition of APK Options pursuant to this Option Offer (as and when those payments are required to be made), as well as any associated costs incurred by AGL Bidder.

6.3 **AGL's funding arrangements**

The consideration for the acquisition of the APK Options to which the Option Offer relates will be obtained from AGL's existing debt facilities (described below) and AGL Group's existing cash reserves (namely, cash at bank).

In aggregate, the funds available from undrawn amounts under AGL's existing debt facilities and AGL Group's existing cash reserves materially exceed the Maximum Cash Consideration and all associated transaction costs.

Relevantly, AGL has existing debt and corporate bond facilities in excess of \$3.6 billion from a diverse range of funding sources (**Facilities**) including with major Australian and international banks. The amount of undrawn funds under the Facilities materially exceed the Maximum Cash Consideration. Drawdown under the Facilities (which will remain in place for so long as AGL has an outstanding obligation to make payments under the Option Offer) is either subject to no conditions precedent or subject to particular conditions precedent which AGL considers customary for facilities of this nature. AGL is not aware of any reason why any conditions precedent to drawdown from the Facilities will not be satisfied.

In addition, as at the date of this Bidder's Statement, AGL and its wholly owned subsidiaries have cash reserves on deposit with various financial institutions. AGL may elect to fund part of the Maximum Cash Consideration from its cash reserves. As noted above, the undrawn amount under the Facilities substantially exceeds the Maximum Cash Consideration and accordingly utilising the cash reserves is not necessary to fund the Offer.

6.4 **Payment of cash consideration**

Having regard to the matters set out above, AGL Bidder is of the opinion that it has a reasonable basis for forming, and it holds, the view that it will be able to pay the Maximum Cash Consideration required for the acquisition of APK Options pursuant to the Option Offer. AGL Bidder is also of the opinion that it will be able to pay the maximum consideration payable under the Share Offer from the funding sources disclosed above (further information about AGL Bidder's funding arrangements in relation to the Share Offer is set out in section 6 of the Share Bidder's Statement).

The Option Offer is not subject to any financing conditions.

7. **TAXATION IMPLICATIONS**

7.1 **Overview**

The following is a general description of the Australian income tax, GST and stamp duty consequences for APK Optionholders who accept the Option Offer.

This summary only applies to APK Optionholders that hold their APK Options on capital account for Australian income tax purposes. In particular, it does not apply to APK Optionholders in the following circumstances:

- (a) APK Optionholders who do not hold their APK Options solely on capital account for Australian income tax purposes (eg, APK Optionholders that buy and sell options in the ordinary course of business or who otherwise hold their APK Options on revenue account or as trading stock);
- (b) APK Optionholders who are subject to special taxation rules (eg, banks, insurance companies, tax exempt organisations, superannuation funds, dealers in securities);
- (c) APK Optionholders whose APK Options are subject to the "taxation of financial arrangements" (**TOFA**) rules in the Tax Act; and
- (d) non-Australian resident APK Optionholders who have held their APK Options at any time in carrying on a business at or through a permanent establishment in Australia.

This summary also does not apply to APK Optionholders who acquired their APK Options under an employee share or option scheme. If you acquired Your APK Options under an employee share or option scheme, the Australian income tax consequences of a disposal of Your APK Options will depend on a number of different factors. These factors include:

- whether you acquired Your APK Options before 1 July 2009 or on or after 1 July 2009;
- whether there was any "discount" (as determined under the applicable employee share scheme tax rules) in respect of the grant of Your APK Options; and
- whether or not you have been taxed in respect of any "discount" in relation to Your APK Options (either upfront or subsequently).

If you acquired Your APK Options under an employee share or option scheme you are strongly urged to obtain your own independent professional advice with respect to the Australian tax consequences of disposing of Your APK Options.

The information in this description is based upon Australian taxation law and practice in effect at the date of this Bidder's Statement. It is not intended to be an authoritative or comprehensive analysis of the taxation laws of Australia. The summary does not consider any specific facts or circumstances that may apply to particular APK Optionholders.

You are advised to seek independent professional advice regarding the Australian tax consequences of disposing of Your APK Options according to your own particular circumstances.

7.2 **APK Optionholders who are Australian residents for tax purposes**

(a) CGT consequences of accepting the Option Offer

If you are an Australian resident for Australian income tax purposes, acceptance of the Option Offer will constitute a capital gains tax (**CGT**) event for Your APK Options.

The time of the CGT event is when the contract resulting from your acceptance of the Option Offer is entered into, which should be the date that your acceptance of the Option Offer is complete. However, if the Defeating Conditions are not fulfilled or the Option Offer is withdrawn then no CGT event should happen to Your APK Options as a result of accepting the Option Offer.

The CGT event will give rise to a capital gain or loss equal to the difference between:

- (i) the capital proceeds received for the CGT event (ie, the cash received); and
- (ii) the cost base (or, in the case of a capital loss, reduced cost base) of the APK Options (which would generally include the amount paid to acquire the APK Options plus any incidental costs of acquisition, eg, brokerage fees and stamp duty).

You will need to consider the consequences of the CGT event for different parcels of APK Options that you own and which were acquired at different times. It may be possible that you have derived capital gains on some parcels of APK Options and capital losses on others.

Your net capital gain for the income year is included in your assessable income for the income year. Broadly, your net capital gain for an income year is the total of all of the capital gains derived during the income year less available capital losses realised in the income year and available net capital losses arising in previous income years. That amount may be reduced further by other concessions, particularly under the discount capital gains tax rules discussed below.

If you make a capital loss from the CGT event in respect of Your APK Options the capital loss may be used to offset capital gains derived in the same or subsequent years of income (subject to satisfying any applicable carry forward loss conditions) but cannot be offset against ordinary income, nor carried back to offset net capital gains arising in earlier income years.

(b) Discount capital gains

If you are an individual, trustee of a trust or a complying superannuation fund and have held Your APK Options for at least 12 months before the CGT event, the discount capital gain provisions should apply. This means that:

- (i) if you are an individual or trust, only one-half of the capital gain (without any allowance for indexation in the cost base of the APK Options) after offsetting any applicable capital losses will be taxable; or
- (ii) if you are a complying superannuation fund, only two-thirds of the capital gain (without any allowance for indexation in the cost base of the APK Options) after offsetting applicable capital losses will be taxable.

The discount capital gain provisions do not apply to companies.

If you are the trustee of a trust, the discount capital gains provisions may also apply to a distribution of the capital gain to beneficiaries in the trust (other than beneficiaries that are companies). The CGT provisions which apply to trustees and beneficiaries of trusts are complex and you should seek advice from your professional tax adviser in this regard.

Where the discount capital gains rules apply, any available capital loss will be applied to reduce the realised nominal capital gain before discounting the resulting net amount by either one-half or one-third (as applicable) to calculate the net capital gain that is included in assessable income.

7.3 **APK Optionholders who are not Australian residents for tax purposes**

CGT may apply to non-residents of Australia for CGT events in respect of shares and options in certain Australian companies.

However, if you are not a resident of Australia for Australian income tax purposes, you will generally not be subject to CGT in respect of Your APK Options unless you (together with your associates) hold, or are entitled to acquire, 10% or more of APK at the time of the CGT event in respect of Your APK Options (or throughout any 12 month period during the 24 months before the CGT event).

You should seek your own professional advice with respect to the CGT consequences of a CGT event in respect of Your APK Options.

7.4 **GST**

The disposal of Your APK Options in return for cash under the Option Offer will not attract GST. To the extent that you incur GST on acquisitions which you make in connection with the Option Offer (such as adviser fees) you may not be entitled to an input tax credit or only entitled to a reduced input tax credit for that GST, depending on your particular circumstances.

7.5 **Stamp Duty**

As a condition of the Option Offer, AGL Bidder has agreed to pay any stamp duty payable on the acquisition of Your APK Options.

8. **ADDITIONAL INFORMATION**

8.1 **Share Offer**

AGL Bidder is making the Share Offer to APK Shareholders to acquire 100% of their APK Shares for \$0.52 cash per APK Share. Full details of the Share Offer are set out in the Share Bidder's Statement.

APK Optionholders can obtain a copy of the Share Bidder's Statement free of charge by calling the AGL Offer Information Line during the Option Offer Period. A copy of the Share Bidder's Statement is also available on the ASX website.

The conditions of the Share Offer are set out in full in Annexure C of this Bidder's Statement.

8.2 **Pre-Bid Acquisition Agreements**

On the Announcement Date, AGL Bidder entered into separate pre-bid acquisition agreements (**Pre-Bid Acquisition Agreements**) with each of APK's three largest shareholders, Nippon Gas, Cobra Group and the Poole Interests. Under these Pre-Bid Acquisition Agreements AGL Bidder agreed to purchase a total of 38,113,795 APK Shares at \$0.52 cash per APK Share. The shares acquired were comprised of:

- Nippon Gas – 10,000,000 APK Shares;
- Cobra Group – 10,000,000 APK Shares; and
- Poole Interests – 18,113,795 APK Shares.

In total, the APK Shares acquired under the Pre-Bid Acquisition Agreements represent 19.9% of the total number of APK Shares on issue. AGL Bidder is now the registered holder of these APK Shares.

Complete copies of these Pre-Bid Acquisition Agreements were attached to a substantial holder notice in respect of APK lodged by AGL Bidder with the ASX on 16 July 2013.

In addition, each of Nippon Gas, Cobra Group and the Poole Interests announced their intention to accept the Share Offer in respect of all APK Shares they hold or control by no later than the next business day after the Share Offer becomes free of defeating conditions, in the absence of a superior proposal. This collectively accounts for an additional 38.9% of the total number of APK Shares on issue (in addition to the 19.9% now held by AGL Bidder). Subsequent to this announcement, Cobra Group has accepted the Share Offer in respect of 21,320,288 of the 25,736,627 APK Shares it holds.

8.3 **APK's agreements in relation to APK's material contracts**

At the request of AGL, APK has entered into agreements to amend the terms of, and in some cases terminate, certain existing agreements between APK and certain counterparties (**Termination Letters**). As a general matter, the Termination Letters relate to contractual arrangements that were in place as between APK and the relevant counterparty prior to the commencement of discussions between AGL and APK in relation to the Share Offer. The Termination Letters confer on APK benefits in the nature of a non-compete commencing from the time at which the Share Offer becomes free of defeating conditions. The letters also require payments to be made by APK to the applicable counterparty in accordance with the requirements of the underlying arrangements or in consideration for their early termination. A summary of AGL's understanding of each of these arrangements is set out in sections 8.3(a) to 8.3(d) of this Bidder's Statement.

(a) Agreement between APK and APK's Financial Advisers

AGL understands that Arthur Phillip and Finflex (**Financial Advisers**) have each been appointed by APK to act as advisers to APK in relation to corporate finance and strategic matters, including mergers and acquisitions, and takeovers. AGL understands that these arrangements were entered into by APK and Arthur Phillip on 4 October 2006 and between APK and Finflex on 23 April 2013.

Arthur Phillip, an entity ultimately owned by Richard and Amanda Poole, is a Poole Interest. As at the date of this Bidder's Statement the Poole Interests have a relevant interest in 8.25% of the total number of APK Shares currently on issue.

AGL understands that pursuant to the terms of engagement between APK and Arthur Phillip, Arthur Phillip is entitled to a success fee on completion of a takeover offer for APK. AGL further understands that in addition, under the terms of engagement between APK and Finflex, Finflex is entitled to a success fee in respect of a takeover offer for APK. AGL has been advised by APK that APK has clarified with each of the Financial Advisers that their entitlement to a success fee in respect of the Share Offer under their engagement letters will arise when the Share Offer becomes free of all defeating conditions and APK will pay the success fees to each Financial Adviser within 10 business days after the end of the Share Offer Period.

Each of the Financial Advisers are also entitled to a monthly retainer fee. AGL understands that APK has agreed with each Financial Adviser that their respective entitlements to receive a monthly retainer under their mandate will end:

- in the case of Arthur Phillip – in the month in which the Share Offer becomes free of defeating conditions; and
- in the case of Finflex – as if the entitlement to a monthly retainer expires in April 2014 (the monthly retainer was otherwise due to expire in September 2014).

AGL understands that APK has agreed with each Financial Adviser that the mandate with each Financial Adviser will terminate with effect from the date the applicable success fee in relation to the Share Offer is paid to that Financial Adviser.

AGL understands that during the 2 years from the date the Share Offer becomes free of defeating conditions, each of the Financial Advisers and their related entities have agreed with APK not to directly or indirectly hold an economic interest in any retail residential electricity or gas business in New South Wales, Victoria or Queensland (subject to some limited exceptions).

(b) Agreement between APK and Appco

On 7 September 2006, the APK Group entered into a Marketing Services Agreement (**MSA**) with Appco, a member of the Cobra Group. As at the date of this Bidder's Statement the Cobra Group has accepted the Share Offer in respect of 21,320,288 of the APK Shares it holds and AGL understands that Cobra Group remains the holder of 4,416,339 APK Shares (representing 2.31% of all APK Shares). Pursuant to the MSA, Appco agreed to exclusively supply APK with marketing and sales services to assist APK to acquire customers.

AGL understands that the MSA has an initial term of 10 years and can be terminated by either party providing not less than 12 months' notice to the other party.

AGL understands that APK has agreed with Appco that despite the 12 months' notice period, if the Share Offer becomes free of defeating conditions then APK will terminate the MSA between Appco and APK by:

- (i) giving Appco not less than one month's written notice of the termination of the MSA; and
- (ii) paying to Appco \$775,000 (exclusive of GST) on or before the date of termination of the MSA.

AGL understands that the payment referred to above was negotiated and agreed between APK and Appco on arm's length terms.

AGL also understands that during the 2 years from the date the Share Offer becomes free of defeating conditions, Appco and its related entities have agreed with APK not to directly or indirectly hold an economic interest in any retail residential electricity or gas business in New South Wales, Victoria or Queensland (subject to some limited exceptions).

(c) Agreement between APK and Nippon Gas

Nippon Gas has entered into the Nippon Gas Loan Agreement with APK which was announced to the ASX by APK on 5 April 2013. Under the Nippon Gas Loan Agreement, Nippon Gas:

- agreed to provide APK with unsecured loans for an aggregate amount equal to \$6 million, with each loan having a one year term; and
- was granted the Election Rights. Further details of the Election Rights are set out in section 5.2 of this Bidder's Statement.

AGL understands that APK has agreed with Nippon Gas that if the Share Offer becomes free from defeating conditions:

- (i) then on the date which is 10 business days after the close of the Share Offer Period the Election Rights will be cancelled in consideration of a payment to Nippon Gas by APK of an aggregate amount of \$591,634 (exclusive of GST) for Nippon Gas' 6,000,000 Election Rights (**Cancellation Payment**). The Cancellation Payment has been calculated on the same basis on which the consideration for the APK Options was calculated for the purposes of the Option Offer;
- (ii) if a loan is repaid or prepaid in whole or in part prior to the repayment date for that loan, APK is liable under the terms of the Loan Agreement to pay Nippon Gas interest that has accrued on the amount repaid or prepaid up to and including the date of repayment or prepayment plus interest that would have accrued up to the date which is 12 months after the loan is drawn down (being the **Make Whole Payment**). AGL understands that APK has agreed with Nippon Gas that the interest rate applicable to the Make Whole Payment will be less than the amount originally agreed under the Loan Agreement; and
- (iii) if AGL has acquired a relevant interest in at least 90% of the total number of APK Shares on issue, APK will, on the date which is 10 business days after the close of the Share Offer Period, repay to Nippon Gas the total amount of the loans outstanding and the agreed interest.

AGL further understands that Nippon Gas has agreed with APK that:

- (iv) it will not exercise the Election Rights during the period between the Announcement Date and date of payment of the Cancellation Payment for the Election Rights to Nippon Gas; and
- (v) it will not exercise any acceleration rights which may arise under the Nippon Gas Loan Agreement as a result of the Share Offer.

AGL understands that during the 2 years from the date the Share Offer becomes free of defeating conditions, Nippon Gas and its related entities have agreed with APK not to directly or indirectly hold an economic interest in any retail residential electricity or gas business in New South Wales, Victoria or Queensland (subject to some limited exceptions).

(d) Agreement between APK and James Myatt

Mr James Myatt is the Chief Executive Officer and Managing Director of APK. APK and James Myatt have an agreement in place whereby APK has agreed to lend money to Mr Myatt to assist him to satisfy his payment obligations for the exercise of APK Options. AGL understands that Mr Myatt has agreed with APK that he will not exercise any APK Options granted to him and will make no further requests for advances under the agreement. AGL understands that Mr Myatt has also agreed with APK to direct the payment of consideration he receives under the Share Offer for APK Shares acquired on the exercise of Mr Myatt's APK Options to the repayment of any amounts payable to APK under this agreement.

AGL understands that Mr Myatt has also agreed with APK that:

- (i) during the 12 months from the date the Share Offer becomes free of defeating conditions, Mr Myatt and his related entities have agreed not to directly or indirectly hold an economic interest in any retail residential electricity or gas business in New South Wales, Victoria or Queensland (subject to some limited exceptions); and
- (ii) he will accept this Option Offer on or before the next business day after the Option Offer becomes free of Defeating Conditions, in the absence of a superior proposal.

8.4 MBL deed of undertaking

MBL and APK are parties to the MBL Facilities Agreement. AGL and MBL have entered into a deed of undertaking pursuant to which:

- (a) AGL has agreed that if the Share Offer has become or is declared unconditional then it will procure that APK repays the borrowings under the MBL Facilities Agreement in full on the earlier of:
 - (i) 31 December 2013; or
 - (ii) the date which is 5 business days after the date that APK provides a notice to MBL of its intention to prepay the borrowings in full.
- (b) once the Share Offer has become or is declared unconditional, MBL has agreed to provide a waiver to APK of any past breaches or defaults that have occurred under the MBL Facilities Agreement and confirmation to APK that MBL will not allege that any potential event of default, event of default or breach has occurred under the MBL Facilities Agreement (in relation to the period prior to the date the Share Offer has become unconditional) on or before the date the borrowings are repaid in full. If the Share Offer has not become or been declared unconditional by the earlier to

occur of (i) 31 December 2013 and (ii) the date of the close of the Share Offer Period, then the waiver will terminate on that date.

8.5 **Bid Implementation Agreement with APK**

APK has entered into an agreement with AGL dated 15 July 2013 in respect of the Share Offer and the Option Offer (the **Bid Implementation Agreement**). A summary of certain key terms of that agreement is set out below. The summary does not purport to be exhaustive or constitute a definitive statement of the rights and liabilities of each of AGL and APK under the agreement. The full terms of the agreement can be viewed in the announcement made by APK on the ASX in connection with the Share Offer on the Announcement Date and is available at www.asx.com.au.

Key provisions of the Bid Implementation Agreement are summarised below:

Implementation and conduct of Share Offer

- (a) AGL has agreed to make the Share Offer to all APK Shareholders in respect of their APK Shares and to make the Option Offer to APK Optionholders.
- (b) The Recommending Directors have unanimously agreed to recommend that APK Shareholders accept the Share Offer in respect of their APK Shares and not change that recommendation, in the absence of a Superior Proposal and subject to the independent expert appointed by APK concluding that the Share Offer is reasonable.
- (c) APK must provide on a timely basis any assistance and information reasonably requested by AGL to assist in the preparation of the Share Bidder's Statement.
- (d) APK must provide AGL with a reasonable opportunity to review and comment on a draft of APK's Target's Statement for the Share Offer prior to lodgement of that Target's Statement with ASIC.
- (e) APK has consented, for the purposes of item 6 in Section 633(1) of the Corporations Act, to allow AGL to send the offers under the Share Offer to APK Shareholders on the same day on which the Share Bidder's Statement is sent to APK (or within 28 days thereafter).
- (f) APK covenants that it will, in the period between the date of the Bid Implementation Agreement and the earlier of the close of the Share Offer and termination of the Bid Implementation Agreement (including if the Bid Implementation Agreement is terminated if on 15 November 2013 the Share Offer remains subject to any defeating condition), conduct the business of APK in the ordinary course or as contemplated by the Bid Implementation Agreement or otherwise consented to by AGL.
- (g) APK and the APK Directors are obliged to take all actions necessary to ensure that:
 - (i) the nominees of AGL are appointed as directors of APK and APK Directors nominated by AGL resign such that AGL nominees represent a majority of the APK Board once AGL acquires a relevant interest in excess of 50% of the APK Shares and the Share Offer has become or is declared unconditional; and
 - (ii) all of the non-AGL nominees who are directors of APK resign as soon as practicable after AGL acquires a relevant interest in 90% or more of APK Shares and the Share Offer becomes or is declared unconditional.

- (h) Warranties typical of a transaction of this nature have been provided by each of AGL and APK.

Option Offer

APK and AGL have agreed that certain provisions of the Bid Implementation Agreement that relate to the Share Offer apply equally to the Option Offer, including the provisions summarised in paragraphs (b), (c), (d) and (e) above.

Termination

- (i) Either party may terminate the Bid Implementation Agreement (**Terminating Party**) at any time by notice to the other party if:
 - (i) the other party is in breach of the Bid Implementation Agreement, which breach is material in the context of the Share Offer;
 - (ii) the Terminating Party has given notice to the other party setting out full details of the material breach and stating an intention to terminate the Bid Implementation Agreement; and
 - (iii) the material breach has continued to exist for 5 business days from the time such notice was given.
- (j) AGL may terminate the Bid Implementation Agreement at any time by notice to APK if:
 - (i) a Competing Transaction is made or publicly announced for APK by a third party;
 - (ii) any Recommending Director does not recommend the Share Offer be accepted by APK Shareholders, or changes their recommendation that the Share Offer be accepted by APK Shareholders; or
 - (iii) a person other than AGL or one of its related bodies corporate obtains voting power in APK of 10% or more, or a person that has voting power in APK of 10% or more increases their voting power by more than 3%, and that person is not a funds manager, bare trustee or custodian (other than a bare trustee or custodian that is acting for or on behalf of a trade or strategic investor).
- (k) APK may terminate the Bid Implementation Agreement at any time by notice to AGL if the Recommending Directors or the APK Board (as the case may be) recommends a Competing Proposal.
- (l) Either party may also terminate the Bid Implementation Agreement at any time by notice in writing to the other party if AGL withdraws the Share Offer for any reason or the Share Offer lapses for any reason, including non-satisfaction of a defeating condition.
- (m) The Bid Implementation Agreement automatically terminates on the earlier of the date on which the Share Offer Period ends and 15 November 2013 if the Share Offer remains subject to defeating conditions at this time.

Exclusivity

- (n) The Bid Implementation Agreement contains certain provisions which provide that APK must not, without the prior written consent of AGL, for the period from the date of the Bid Implementation Agreement to the earlier of the end of the Share

Offer Period and the termination of the Bid Implementation Agreement (including if the Bid Implementation Agreement is terminated if on 15 November 2013 the Share Offer remains subject to any defeating condition) (**Exclusivity Period**):

- (i) (**No shop**) solicit any Competing Proposal, subject to limited exceptions;
 - (ii) (**No talk**) participate in discussions regarding, or which could be reasonably expected to lead to, a Competing Proposal; or
 - (iii) (**No due diligence**) make available, or permit any other person to receive, non-public information relating to APK in connection with the formulation of a Competing Proposal.
- (o) The restrictions set out under sections 8.5(n)(ii) and 8.5(n)(iii) and the notification right outlined in section 8.5(p)(ii) are subject to the fiduciary duties of the Recommending Directors or the APK Board.

Notification and Matching right

- (p) During the Exclusivity Period, APK must notify AGL if the fiduciary duties carve-out described in section 8.5(o) above applies and APK:
- (i) is proposing to take any action which would otherwise be prohibited by the 'No talk' or 'No due diligence' exception; or
 - (ii) enters into discussions with a party that has proposed (or may reasonably be expected to propose) a Competing Proposal.
- (q) If a Recommending Director proposes to change their recommendation to support a Competing Proposal, APK must give AGL a notice of such proposed change of recommendation (**Relevant Notice**).
- (r) During the period of two business days after receipt of the Relevant Notice, AGL has the right to amend the terms of the Share Offer to match the Competing Proposal.

Compensation

- (s) The Bid Implementation Agreement requires APK to pay a compensating amount to AGL in the following circumstances:
- (i) \$1,000,000 (excluding GST), if:
 - (A) a Competing Proposal is announced or made during the Exclusivity Period and is completed at any time prior to six months after the end of the Share Offer Period, as a result of which a person other than AGL or a related body corporate of AGL acquires an interest in or control of 50% or more of APK Shares or agrees to acquire the whole or a substantial part of APK's assets, business or property;
 - (B) APK accepts, or offers to accept, any agreement regarding a Competing Proposal, before the end of the Share Offer Period;
 - (C) any Recommending Director does not recommend the Share Offer or announces an intention to do this, other than in a circumstance where the opinion of the independent expert does not include an opinion that the Share Offer is reasonable;

- (D) any APK Director withdraws or adversely modifies an earlier recommendation (other than in a circumstance where the opinion of the independent expert does not include an opinion that the Share Offer is reasonable), approves or recommends or makes an announcement in support of a Competing Proposal, or announces an intention to do any of those acts; or
- (ii) the lesser of \$1,000,000 and AGL's bona fide external costs and expenses incurred in connection with the Share Offer (excluding GST), if AGL validly terminates the Bid Implementation Agreement for a breach of that agreement which is material in the context of the Share Offer.

8.6 ASIC modifications

AGL Bidder has obtained the following modifications from ASIC in respect of the Option Offer:

- (a) section 605(2), to allow AGL Bidder to treat the different classes of APK Options as one class for the purpose of the Option Offer; and
- (b) section 619(2), to allow AGL Bidder to offer different consideration for each class of APK Options under the Option Offer.

A copy of the relief instrument is attached as Annexure B.

AGL Bidder has also relied on the modification to section 636(3) of the Corporations Act set out in ASIC Class Order 13/521 "Takeover Bids" to include references to certain statements which are made or based on statements made in documents lodged with ASIC or the ASX. Pursuant to the Class Order, the consent of the relevant person is not required for the inclusion of such statements in this Bidder's Statement. As required by the Class Order, AGL Bidder will make available a copy of these documents (or of relevant extracts from these documents), free of charge, to you and other APK Shareholders who request it during the Option Offer Period. To obtain a copy of these documents (or the relevant extracts), you may telephone the AGL Offer Information Line on 1800 426 150 (toll-free for calls made within Australia) or +61 1800 426 150 (for calls made from outside Australia) from Monday to Friday between 8.30am and 5.30pm (AEST).

AGL Bidder may rely on class order relief granted by ASIC which applies generally to all persons, including AGL Bidder.

8.7 Rule 6.23.4 Waiver

AGL Bidder understands that on 20 August 2013 ASX granted APK a waiver from ASX Listing Rule 6.23.4 that permits APK to amend, without APK Shareholder approval, the terms and conditions of all APK Options which are Non-transferable Options to allow those APK Options to be transferred to AGL Bidder. The Rule 6.23.4 Waiver is conditional upon:

- (a) the Share Offer becoming unconditional; and
- (b) AGL obtaining voting power in APK of at least 50.1%.

(together, being the **Rule 6.23.4 Waiver Conditions**).

This waiver also has the consequence that the waiver to ASX Listing Rule 6.23 (which was contemplated as a condition to the Option Offer in the Bid Implementation Agreement) is not required.

8.8 Regulatory and legal matters

(a) *Autonomous Sanctions Regulations 2011 (Cth)*

The *Autonomous Sanctions Regulations 2011* (Cth) currently prohibit making an asset available to, or for the benefit of, a designated person or entity without authorisation from the Minister for Foreign Affairs or to use or deal with an asset owned or controlled by a designated person or entity without authorisation from the Minister for Foreign Affairs. Designated persons and entities include:

- (i) specified individuals associated with the former government of the Federal Republic of Yugoslavia;
- (ii) specified ministers and senior officials of the Government of Zimbabwe;
- (iii) specified individuals and entities associated with the Democratic People's Republic of Korea (North Korea); and
- (iv) several entities and individuals who contribute to Iran's proliferation activities not already listed by the UN Security Council.

(b) *Other Commonwealth legislation*

The *Charter of the United Nations Act 1945* (Cth) prohibits:

- (i) assets from being provided to proscribed persons or entities; and
- (ii) the use or dealing, and facilitation of such use or dealing, of certain assets owned or controlled by proscribed persons or entities,

in each case without the written consent of the Minister of Foreign Affairs.

Persons and entities from various countries have been proscribed under various Regulations made pursuant to the *Charter of the United Nations Act 1945* (Cth) including in relation to Côte d'Ivoire, Democratic Republic of the Congo, Iran, Iraq, Liberia, Sudan, Somalia and the Democratic People's Republic of Korea.

8.9 No escalation agreements

Neither AGL Bidder nor any Associate of AGL Bidder has entered into any escalation agreement in respect of APK Shares or APK Options that is prohibited by section 622 of the Corporations Act.

8.10 Consents

This Bidder's Statement contains statements made by, or statements based on statements made by, AGL, BDO, Ashurst, Link Market Services and Deutsche Bank AG. Each of AGL, BDO, Ashurst, Link Market Services and Deutsche Bank AG has given and has not, before lodgement of this Bidder's Statement with ASIC, withdrawn their consent to the inclusion of:

- (a) references to its name;
- (b) each statement it has made; and
- (c) each statement which is based on a statement it has made,

in this Bidder's Statement in the form and context in which those statements appear and to the maximum extent permitted by law expressly disclaims and takes no responsibility

for any part of this Bidder's Statement other than any statement which has been included in this Bidder's Statement with the consent of that party.

Each person who is named in this Bidder's Statement as acting in a professional capacity for AGL Bidder in relation to the Option Offer (including, without limitation, Ashurst, BDO, Deutsche Bank AG and Link Market Services):

- (a) does not make, or purport to make, any statement in this Bidder's Statement or any statement on which a statement in this Bidder's Statement is based, other than a statement included in this Bidder's Statement with the consent of that person; and
- (b) to the maximum extent permitted by law, expressly disclaims and takes no responsibility for any part of this Bidder's Statement, other than any statement which has been included in this Bidder's Statement with the consent of that party.

8.11 **No other material information**

There is no other information that:

- (a) is material to the making of the decision by a holder of APK Options whether or not to accept the Option Offer; and
- (b) which is known to AGL Bidder,
other than:
 - (c) as set out or referred to elsewhere in this Bidder's Statement; or
 - (d) information which it would be unreasonable to require AGL Bidder to disclose because the information has previously been disclosed to holders of APK Options.

9. THE OPTION OFFER

9.1 The Option Offer

- (a) AGL Bidder offers to acquire all of Your APK Options, together with all Rights attaching to them, on the terms and conditions of this Option Offer.
- (b) The consideration under the Option Offer is, subject to sections 9.6(m) and 9.6(n), set out in section 9.2 below.
- (c) Offers on terms and conditions identical to those contained in this Option Offer have been dispatched or will be dispatched to:
 - (i) all holders of APK Options registered as such in the Register on the Register Date; and
 - (ii) any person who becomes registered as the holder of APK Options during the period commencing on the Register Date and ending at the end of the Option Offer Period and which are on issue at the Register Date.
- (d) By accepting this Option Offer, you undertake to transfer to AGL Bidder not only the APK Options to which the Option Offer relates, but also all Rights attached to those APK Options (see sections 9.6(m) and 9.6(n) below).
- (e) This Option Offer is dated 4 September 2013.

9.2 Option Offer Consideration

Subject to the terms of this Option Offer, the consideration offered by AGL Bidder under the Option Offer in respect of each class of APK Option is set out below:

Expiry Date	Number on Issue	Exercise Price	Option Offer Consideration
22/12/2014	2,500,000	\$0.40 (minimum of 40 cents or 30 day VWAP at time of exercise)	\$0.1479
31/12/2013	5,000,000	\$0.55	\$0.0440
31/03/2014	250,000	\$0.35	\$0.1772
1/10/2013	513,031	\$0.35	\$0.1647
30/10/2014	2,035,000	\$0.40	\$0.1592
30/10/2014	1,500,000	\$0.45	\$0.1303
30/10/2014	125,000	\$0.50	\$0.1060
1/10/2014	500,000	\$0.50	\$0.1028
30/10/2014	125,000	\$0.55	\$0.0859
1/10/2014	500,000	\$0.55	\$0.0826
30/10/2015	1,519,243	\$0.55	\$0.0928

Expiry Date	Number on Issue	Exercise Price	Option Offer Consideration
31/12/2013	18,900,000	\$0.60	\$0.0289
30/10/2015	925,000	\$0.60	\$0.0757
01/07/2015	500,000	\$0.70	\$0.0421
30/10/2013	500,000	\$0.70	\$0.0052
30/10/2013	500,000	\$0.80	\$0.0013
1/7/2014	1,000,000	\$0.20	\$0.3174

If the Option Offer Consideration payable to you would otherwise be a fraction of a cent, the Option Offer Consideration payable to you will be rounded up to the nearest whole cent.

9.3 Option Offer Period

- (a) Unless the Option Offer Period is extended or the Option Offer is withdrawn, in either case in accordance with the requirements of the Corporations Act, this Option Offer will remain open for acceptance by you during the period commencing on the date of this Option Offer and ending at 7.00pm (AEST) on 11 October 2013 (**Option Offer Period**).
- (b) Subject to the Corporations Act, AGL Bidder may extend the Option Offer Period.
- (c) In addition, if, within the last seven days of the Option Offer Period:
 - (i) this Option Offer is varied to improve the consideration offered; or
 - (ii) AGL Bidder's voting power in APK increases to more than 50 per cent,
 then the Option Offer Period will be mandatorily extended in accordance with section 624(2) of the Corporations Act so that it ends 14 days after the relevant event.

9.4 Acceptance

- (a) Subject to section 9.5, you may accept this Option Offer only in respect of all of Your APK Options.
- (b) To accept this Option Offer in respect of Your APK Options, you must **complete** and **sign** the Acceptance Form enclosed with this Option Offer (which forms part of this Option Offer) in accordance with the instructions on it and return it together with all other documents required by those instructions (if any) to:

BY MAIL:

Link Market Services Limited
Australian Power and Gas Company Limited Takeover
Locked Bag A14
Sydney South NSW 1235

BY FAX:

+61 2 9287 0303

BY HAND:

Link Market Services Limited
Australian Power and Gas Company Limited Takeover
1A Homebush Bay Drive
Rhodes NSW 2138,

so that it is **received** at an address specified above by no later than the end of the Option Offer Period. A reply paid envelope, which is valid if sent from within Australia, is enclosed for your use.

If your Acceptance Form (including any documents required by the terms of this Option Offer and the instructions on the Acceptance Form) **is returned by facsimile**, it will be deemed to be received in time if the facsimile transmission is received (evidenced by a confirmation of successful transmission) before the end of the Option Offer Period, but you will not be entitled to receive the consideration under this Option Offer to which you are entitled until your original Acceptance Form (including any documents required by the terms of this Option Offer and the instructions on the Acceptance Form) is received at an address specified above.

- (c) An acceptance of this Option Offer under section 9.4(b) shall not be complete until the Acceptance Form, completed and signed in accordance with the instructions on it and all other documents required by those instructions, has been received at one of the addresses set out in section 9.4(b). Notwithstanding the foregoing provisions of this section 9.4, AGL Bidder may, in its absolute discretion, waive at any time prior to the end of the Option Offer Period all or any of the requirements specified in the Acceptance Form but payment of the consideration in accordance with this Option Offer will not be made until any irregularity has been resolved and such other documents as may be necessary to procure registration of the APK Options have been lodged with AGL Bidder.
- (d) The transmission of the Acceptance Form and other documents is at your own risk.
- (e) By following the procedures described in this section 9.4 you will be deemed to have agreed to the terms of the Option Offer and, subject to the conditions contained in section 9.8 of this Bidder's Statement being fulfilled or waived, agreed to transfer to AGL Bidder all of Your APK Options, including, in respect of Non-transferable Options, agreeing to vary the terms of Your APK Options to allow this transfer.

9.5 Entitlement to Option Offer

- (a) If at the time this Option Offer is made to you, or at any time during the Option Offer Period and before you accept this Option Offer, another person is, or is entitled to be, registered as the holder of, or is able to give good title to, some or all of Your APK Options (such an APK Option in this paragraph being called an

Entitlement Option) then, in accordance with section 653B(1)(a) of the Corporations Act:

- (i) a corresponding Option Offer shall be deemed to have been made at that time to that other person relating to the Entitlement Options;
 - (ii) a corresponding Option Offer shall be deemed to have been made at that time to you relating to Your APK Options other than the Entitlement Options; and
 - (iii) this Option Offer shall be deemed immediately after that time to have been withdrawn.
- (b) If at any time during the Option Offer Period and before the Option Offer is accepted, you hold APK Options on trust for, as nominee for, or on account of, another person or persons, then a separate and distinct Option Offer shall be deemed, in accordance with section 653B(1)(b) of the Corporations Act, to have been made to you in relation to each parcel of APK Options within Your APK Options. An acceptance by you of the Option Offer in respect of any such distinct portion of Your APK Options will be ineffective unless you have given AGL Bidder notice stating that Your APK Options consist of separate and distinct parcels and your acceptance specifies the number of APK Options in the distinct portions to which the acceptance relates. The notice must be given to AGL Bidder in writing.
- (c) Beneficial owners whose APK Options are registered in the name of a broker, investment dealer, bank, trust company or other nominee should contact that nominee for assistance in having this Option Offer accepted in respect of the APK Options which they beneficially own.

9.6 **Effect of acceptance**

By completing, signing and returning an Acceptance Form in accordance with section 9.4(b) you will, or will be deemed to, have:

- (a) subject to section 650E of the Corporations Act and section 9.5, irrevocably accepted this Option Offer in respect of all Your APK Options;
- (b) subject to this Option Offer being declared free from the Defeating Conditions or such conditions being fulfilled, agreed to transfer all of Your APK Options to AGL Bidder as well as any Rights attaching to those APK Options;
- (c) represented and warranted to AGL Bidder as a fundamental condition going to the root of the contract resulting from your acceptance of this Option Offer that, both at the time of acceptance of this Option Offer and at the time the transfer of Your APK Options to AGL Bidder is registered, all of Your APK Options are fully paid up and free from all mortgages, charges, liens and other Encumbrances of any kind and restrictions on transfer of any kind (subject, in the case of Non-transferable Options, to the satisfaction of the Rule 6.23.4 Waiver Conditions), that Your APK Options have not been exercised, lapsed, expired, terminated or otherwise ceased to exist (other than as a result of your acceptance of the Option Offer) and that you have full power and capacity (whether legal or equitable) to accept the Option Offer and to sell and transfer the legal and beneficial ownership of Your APK Options to AGL Bidder in accordance with the terms of the Option Offer, that you have obtained all consents and approvals necessary for the complete and effectual transfer of Your APK Options (including any Rights) in accordance with the terms of the Option Offer and to accept the Option Offer;
- (d) authorised AGL Bidder (by any of its directors, officers, servants or agents), if necessary, to complete on the Acceptance Form correct details of Your APK

Options, fill in any blanks remaining on the Acceptance Form and rectify any error in or omission from the Acceptance Form as may be necessary to make the Acceptance Form an effective acceptance of this Option Offer;

- (e) subject to the Defeating Conditions being satisfied or waived, covenanted in favour of AGL Bidder and APK, to give up, abandon, surrender, forfeit and forever waive any and all title to, and Rights to which you are entitled in respect of, Your APK Options;
- (f) agreed to fully indemnify AGL Bidder, and hold AGL Bidder harmless, in respect of any claim or action against it for any loss, damage or liability whatsoever incurred by it as a result of it not receiving from you the certificate(s) for Your APK Options (or other evidence reasonably acceptable to AGL Bidder of the holding of Your APK Options);
- (g) irrevocably authorised AGL Bidder (and any director, secretary or nominee of AGL Bidder) to apply for and do all things necessary to obtain certificate(s) in the name of AGL Bidder or any nominee of AGL Bidder for Your APK Options if AGL Bidder did not receive from you the certificate(s) for any or all of Your APK Options;
- (h) subject to all of the Defeating Conditions to the Option Offer being satisfied or waived by the end of the Option Offer Period, irrevocably authorised AGL Bidder and its nominees to do all things necessary to transfer Your APK Options to AGL Bidder (together with any Rights), even if AGL Bidder has not at that time paid or provided the consideration due to you under the Option Offer;
- (i) represented and warranted to AGL Bidder that, if you are the legal owner but not the beneficial owner of Your APK Options:
 - (i) the beneficial holder has not sent a separate acceptance of the Option Offer in respect of Your APK Options;
 - (ii) the number of APK Options you have specified as being the entire holding of APK Options you hold on behalf of the particular beneficial holder is in fact such entire holding; and
 - (iii) that you are irrevocably and unconditionally entitled to transfer Your APK Options (subject, in the case of the Non-transferable Options, to satisfaction of the Rule 6.23.4 Waiver Conditions), and to assign all of the beneficial interest therein to AGL Bidder;
- (j) irrevocably appointed AGL Bidder and each of its directors, secretaries and officers from time to time jointly and each of them severally as your true and lawful attorney, with effect from the date that any contract resulting from the acceptance of this Option Offer is declared free from all its Defeating Conditions or those conditions are fulfilled, with power to exercise all powers and rights which you could lawfully exercise as the registered holder of Your APK Options or in exercise of any right derived from the holding of Your APK Options, including, without limiting the generality of the foregoing, requesting APK to register Your APK Options in the name of AGL Bidder, signing any forms, notices or instruments relating to Your APK Options and doing all things incidental or ancillary to any of the foregoing. You will, or will be deemed to, have acknowledged and agreed that in exercising such powers the attorney may act in the interests of AGL Bidder as the intended registered holder of those APK Options. This appointment, being given for valuable consideration to secure the interest acquired in Your APK Options, is irrevocable and terminates upon registration of a transfer to AGL Bidder of Your APK Options;

- (k) agreed, with effect from the date that any contract resulting from the acceptance of this Option Offer is declared free from all its Defeating Conditions or those conditions are fulfilled, not to exercise or purport to exercise any of the powers conferred on AGL Bidder or its nominee in section 9.6(j);
- (l) where, at that time, you have a right to be registered as a holder of the APK Options the subject of your acceptance as the result of any purchase (but are not yet an APK Optionholder):
 - (i) agreed to use best endeavours to procure the delivery of the APK Options the subject of your acceptance to AGL Bidder in accordance with your acceptance (including giving AGL Bidder all documents necessary to vest those APK Options in AGL Bidder);
 - (ii) agreed not to do or omit to do anything which may frustrate your acceptance of this Option Offer, or otherwise obstruct registration of the transfer of the APK Options the subject of your acceptance to AGL Bidder;
 - (iii) irrevocably assigned to AGL Bidder all contractual rights and recourse against the vendor in respect of your purchase (which contractual rights and recourse may arise by reason of that person's failure to complete that trade);
 - (iv) agreed to assign to AGL Bidder (without any further action being required) all rights in respect of your purchase immediately on any failure by you to complete that trade, including irrevocably assigning to AGL Bidder the right to (at AGL Bidder's sole discretion) complete that trade on your behalf, and agreed that AGL Bidder may deduct from the consideration otherwise payable to you under this Option Offer any amount paid by AGL Bidder in order to settle that purchase on your behalf. If AGL Bidder does not, or cannot, make such a deduction, then you must pay such amount to AGL Bidder; and
 - (v) agreed that, if you are unable to assign to AGL Bidder any of the rights and recourse specified under sections 9.6(l)(iii) or (iv), you will assign such rights and recourse as soon as you are legally able to;
- (m) irrevocably authorised and directed APK to pay to AGL Bidder or to account to AGL Bidder for all Rights, subject, however, to any such Rights received by AGL Bidder being accounted for by AGL Bidder to you in the event that this Option Offer is withdrawn or avoided;
- (n) except where Rights have been paid or accounted for under section 9.6(m), irrevocably authorised AGL Bidder to deduct from the consideration payable in respect of Your APK Options, the value of any Rights paid to you (as reasonably assessed by AGL Bidder) together with the value of any franking credits attached to those Rights;
- (o) agreed that the contract formed by acceptance of the Option Offer will be governed by the laws of New South Wales and agreed to submit to the non-exclusive jurisdiction of the courts exercising discretion there;
- (p) represented and warranted to AGL Bidder that, unless you have notified it in accordance with section 9.5(b), Your APK Options do not consist of several parcels of APK Options; and
- (q) agreed to execute all such documents, transfers and assurances, and do all such other acts, matters and things that AGL Bidder considers necessary or desirable to

convey to AGL Bidder Your APK Options and any Rights attaching to Your APK Options.

9.7 **Expired APK Options**

- (a) If Your APK Options expire after you have accepted the Option Offer, but before the Defeating Conditions are satisfied or waived, provided that all Defeating Conditions are satisfied or waived before the end of the Option Offer Period, AGL Bidder will pay you the consideration for Your APK Options under this Option Offer in accordance with section 9.9.
- (b) No Option Offer Consideration shall be paid by AGL Bidder for Your APK Options if:
 - (i) your APK Options expire before you accept the Option Offer; or
 - (ii) any Defeating Condition remains unsatisfied and is not waived before the end of the Option Offer Period.

9.8 **Defeating Conditions**

This Option Offer and any contract resulting from acceptance of this Option Offer are subject to the fulfilment of the following Defeating Conditions:

(a) Minimum acceptance condition

Before the end of the Option Offer Period, AGL Bidder has a relevant interest in more than 90% (by number) of the APK Options on issue at that time.

(b) Share Offer unconditional

Before the end of the Option Offer Period, the Share Offer has become unconditional as a result of:

- (i) all conditions of the Share Offer (as set out in Annexure C of this Bidder's Statement) being fulfilled according to their terms; or
- (ii) AGL Bidder declaring the Share Offer unconditional.

(c) ASX Waiver related condition

Before the end of the Offer Period, the Rule 6.23.4 Waiver Conditions being satisfied.

Separate Defeating Conditions for benefit of AGL Bidder

Each of the Defeating Conditions:

- (a) is and must be construed as a separate condition; and
- (b) subject to the Corporations Act, operates only for the benefit of AGL Bidder and any breach or non-fulfilment of such condition may be relied upon only by AGL Bidder which may waive (generally or in respect of a particular event) the breach or non-fulfilment of that condition.

Nature of Defeating Conditions

None of the Defeating Conditions prevents a contract to sell Your APK Options resulting from your acceptance of this Option Offer but:

- (a) breach of any of the Defeating Conditions entitles AGL Bidder to rescind that contract by notice to you; and
- (b) non-fulfilment of any of the Defeating Conditions at the end of the Option Offer Period will have the consequences set out in this section 9.8.

Defeating Conditions apply to multiple events

Where an event occurs that would mean at the time the event occurs a Defeating Condition to which this Option Offer or the contract resulting from your acceptance of this Option Offer is then subject would not be fulfilled, each Defeating Condition affected by that event becomes two separate Defeating Conditions on identical terms except that:

- (a) one of them relates solely to that event; and
- (b) the other specifically excludes that event.

AGL Bidder may declare the Option Offer free under this section 9.8 from either of those Defeating Conditions without declaring it free from the other and may do so at different times. This section may apply any number of times to a particular Defeating Condition (including a Defeating Condition arising from a previous operation of this section).

Notice declaring Option Offers free of Defeating Conditions

Subject to the Corporations Act, AGL Bidder may declare this Option Offer and any contract resulting from acceptance of this Option Offer free from any of the Defeating Conditions by giving written notice to APK not less than 7 days before the last day of the Option Offer Period.

Notice of status of Defeating Conditions

The date for giving the notice on the status of the Defeating Conditions as required by section 630(1) of the Corporations Act is 3 October 2013 (subject to extension in accordance with the Corporations Act if the Option Offer Period is extended).

Contract void if Defeating Conditions not fulfilled

Your acceptance or the contract resulting from your acceptance of this Option Offer is void if:

- (a) at the end of the Option Offer Period any of the Defeating Conditions in section 9.8 is not fulfilled; and
- (b) AGL Bidder has not declared this Option Offer and any contract resulting from the acceptance of it free of that Defeating Condition in accordance with this section 9.8.

9.9 Obligations of AGL Bidder

- (a) Subject to this section 9.9 and the Corporations Act, if you accept the Option Offer and the Defeating Conditions are satisfied or waived, AGL Bidder will provide the consideration for Your APK Options by the end of whichever of the following periods ends earlier:

- (i) one month after the Option Offer is accepted or, if the Option Offer is subject to a Defeating Condition when accepted, within one month after the Option Offer becomes unconditional; or
- (ii) 21 days after the end of the Option Offer Period.

Under no circumstances will interest be paid on the consideration for Your APK Options under this Option Offer, regardless of any delay in making payment or any extension of this Option Offer.

- (b) Where the Acceptance Form requires an additional document to be given with your acceptance (such as a power of attorney):
 - (i) if that document is given with your acceptance, AGL Bidder will provide the consideration in accordance with paragraph (a);
 - (ii) if that document is given after your acceptance and before the end of the Option Offer Period while the Option Offer is subject to a Defeating Condition, AGL Bidder will provide the consideration by the end of whichever of the following periods ends earlier:
 - (A) one month after the Option Offer becomes unconditional; or
 - (B) 21 days after the end of the Option Offer Period;
 - (iii) if the document is given after your acceptance and before the end of the Option Offer Period while the Option Offer is not subject to a Defeating Condition, AGL Bidder will provide the consideration by the end of whichever of the following periods ends earlier:
 - (A) one month after the document is received; or
 - (B) 21 days after the end of the Option Offer Period; or
 - (iv) if that document is received after the end of the Option Offer Period and the Option Offer is not subject to a Defeating Condition, AGL Bidder will provide the consideration within 21 days after that document is received.
- (c) Payment of any cash amount to which you are entitled will be made by cheque drawn in Australian currency in your favour. The cheque will be sent to you, at your risk, by ordinary mail (or, in the case of APK Optionholders with addresses outside Australia, by airmail) to the address for you last notified to APK by you. Payment will be deemed to have been made at the time the cheque is delivered to Australia Post for delivery or placed in an Australia Post postal box.
- (d) If, at the time of acceptance of this Option Offer, or provision of any consideration under it, any authority or clearance of the Department of Foreign Affairs and Trade or of the ATO is required for you to receive any consideration under this Option Offer or you are a resident in or a resident of a place to which, or you are a person to whom:
 - (i) the *Autonomous Sanctions Regulations 2011* (Cth);
 - (ii) the *Charter of the United Nations (Sanctions – Al-Qaida) Regulations 2008* (Cth);
 - (iii) the *Charter of the United Nations (Dealing with Assets) Regulations 2008* (Cth); or

- (iv) any law of Australia or elsewhere that would make it unlawful for AGL Bidder to provide the consideration payable under the Option Offers,

applies, then acceptance of this Option Offer will not create or transfer to you any right (contractual or contingent) to receive the consideration specified in this Option Offer unless and until all requisite authorities or clearances have been obtained by AGL Bidder. Please refer to section 8.8 for information as to whether this restriction applies to you.

9.10 **Withdrawal**

- (a) AGL Bidder may withdraw this Option Offer at any time with the written consent of ASIC which consent may be given subject to such conditions (if any) as are specified in the consent. Notice of any withdrawal will be given to the ASX and APK and AGL Bidder will comply with any other conditions imposed by ASIC.
- (b) If AGL Bidder withdraws this Option Offer, any contract resulting from its acceptance will automatically be void.

9.11 **Variation**

AGL Bidder may at any time, and from time to time, vary this Option Offer subject to, and in accordance with, the Corporations Act.

9.12 **Costs, expenses and stamp duty**

All costs and expenses of the preparation of this Bidder's Statement and of the preparation and circulation of this Option Offer, and any stamp duty payable on the transfer of any APK Options to AGL Bidder under the Option Offer will be paid by AGL Bidder. No GST is payable by you as a consequence of acceptance of the Option Offer.

9.13 **Notices**

- (a) Any notices to be given by AGL Bidder to APK under the Option Offer may be given to APK by leaving them at, or sending them by prepaid ordinary post to, the registered office of APK or by sending them by facsimile transmission to APK at its registered office.
- (b) Any notices to be given to AGL Bidder by you or by APK under the Option Offer may be given to AGL Bidder by leaving them at or sending them by prepaid ordinary post to AGL Bidder at one of the addresses referred to in section 9.4(b).
- (c) Any notices to be given by AGL Bidder to you under the Option Offer may be given to you by sending them by prepaid ordinary post or by courier or if your address is outside Australia by pre-paid airmail or by courier, to your address as shown in the Register.

9.14 **Governing law**

This Option Offer and any contract that results from your acceptance of this Option Offer are governed by the laws in force in New South Wales.

10. **GLOSSARY AND INTERPRETATION**

10.1 **Glossary**

The following definitions apply in interpreting this Bidder's Statement and the Acceptance Form, except where the context makes it clear that a definition is not intended to apply:

"ACCC" means the Australian Competition and Consumer Commission.

"Acceptance Form" means the acceptance form enclosed with this Option Offer and the Bidder's Statement or, as the context requires, any replacement or substitute acceptance form provided by or on behalf of AGL Bidder.

"AEST" means Australian Eastern Standard Time.

"AGL" means AGL Energy Limited ABN 74 115 061 375.

"AGL Bidder" means AGL APG Holdings Pty Limited ACN 081 834 826, a wholly owned subsidiary of AGL.

"AGL Group" means AGL and each of its related bodies corporate.

"Announcement Date" means 15 July 2013.

"APK" means Australian Power and Gas Company Limited ABN 96 077 206 583.

"APK Board" means the APK Directors acting together as a board of APK.

"APK Director" means a current director of APK.

"APK Options" means options to acquire APK Shares that have been granted by APK.

"APK Optionholder" means a person who is registered as the holder of APK Options in the Register.

"APK Shareholder" means a person who is registered as the holder of APK Shares in the Register.

"APK Shares" means fully paid ordinary shares in APK.

"Appco" means Appco Group Energy Pty Ltd (formerly known as Appco Energy Direct Pty Limited) ACN 095 538 248.

"Arthur Phillip" means Arthur Phillip Pty Ltd ACN 100 908 101.

"ASIC" means the Australian Securities and Investments Commission.

"Associate" has the meaning given to that term in section 12 of the Corporations Act.

"ASX" means ASX Limited ABN 98 008 624 691.

"ASX Listing Rules" means the listing rules of ASX.

"BDO" means BDO East Coast Partnership.

"Bid Implementation Agreement" means the Bid Implementation Agreement between AGL and APK dated 15 July 2013.

"Bidder's Statement" means this document, being the statement made by AGL Bidder under Part 6.5 Division 2 of the Corporations Act relating to the Option Offer.

"CGT" has the meaning given to that term in section 7.2(a).

"Cobra Group" means The Cobra Group Pty Ltd ACN 068 819 456, Cobra Investment BV and Barton Holdings Limited.

"Competing Proposal" means any proposal, transaction, arrangement or offer (whether from a person with whom APK has previously been in discussions or not) that:

- (a) would, if completed substantially in accordance with its terms, result in any person or persons other than AGL:
 - (i) acquiring:
 - (A) directly or indirectly, an interest in all or a substantial part of the assets of APK; or
 - (B) a relevant interest in more than 10% of the voting shares of APK or otherwise acquire control of APK within the meaning of section 50AA of the Corporations Act; or
 - (ii) otherwise acquiring or merging with APK whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy back, sale or purchase of assets, joint venture, reverse takeover, dual listed company structure or other synthetic merger or any other transaction or arrangement; or
- (b) may materially reduce the likelihood of success of the Share Offer.

"Computershare" means Computershare Limited ACN 005 485 825.

"Corporations Act" means the *Corporations Act 2001* (Cth) as modified by any relevant exemption or declaration by ASIC.

"Defeating Condition" means each condition to the Option Offer set out in section 9.8.

"EBITDA" means earnings before interest, tax, depreciation and amortisation.

"Election Right" has the meaning given to that term in the Nippon Gas Loan Agreement and as summarised in section 5.2.

"Encumbrance" means:

- (a) a PPS Security Interest;
- (b) any other mortgage, charge, pledge or lien;
- (c) an easement, restrictive covenant, caveat or similar restriction over property;
- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (including a right to set off or withhold payment of a deposit or other money);
- (e) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (f) any other thing that prevents, restricts or delays the exercise of a right over property, the use of property or the registration of an interest in or dealing with property; or

(g) an agreement to create anything referred to above or to allow any of them to exist.

"Entitlement Option" has the meaning given to that term in section 9.5(a).

"ESOP" means the Australian Power and Gas Company Limited Employee Share Option Plan adopted by the APK Board on 23 January 2007, as amended by the APK Board from time to time.

"ESP" means the Australian Power and Gas Company Limited Employee Share Scheme.

"Exclusivity Period" has the meaning given in the Bid Implementation Agreement, as summarised in section 8.5(n).

"Finflex" means Finflex Pty Ltd ACN 162 975 466.

"FY" means financial year.

"GST" has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

"MBL" means Macquarie Bank Limited.

"MBL Facilities Agreement" means the facility agreement dated 30 August 2012 between, among others, Australian Power and Gas Pty Limited, APK and MBL.

"Nippon Gas" means Nippon Gas Co., Ltd.

"Nippon Gas Loan Agreement" means the Loan Facility Agreement dated 4 April 2013 between Nippon Gas and APK.

"Non-transferable Options" means APK Options that are not transferable under their terms.

"Option Offer" means, as the context requires, the offer for APK Options contained in section 9, or the off-market takeover bid constituted by that offer, and **"Option Offers"** means the several like offers which together constitute the takeover bid, as varied in accordance with the Corporations Act.

"Option Offer Consideration" means the consideration for the APK Options set out in section 9.2, at which the Option Offer is made for each class of APK Options.

"Option Offer Period" means the period referred to in section 9.3 of this Bidder's Statement.

"Poole Interests" means Fontelina Pty Ltd, Richard Poole, Arthur Phillip, Arthur Phillip Nominees Pty Ltd, Amanda Poole and Haxby Pty Ltd.

"PPS Security Interest" means a security interest that is subject to the PPSA.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Pre-Bid Acquisition Agreements" has the meaning given to that term in section 8.2 of this Bidder's Statement.

"Public Authority" means any federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, administrative, statutory or judicial entity, arbitral body, commission, board, bureau or authority or agency.

"Recommending Directors" means those directors of APK who comprise the independent subcommittee of the APK Board appointed to consider the Share Offer and the Option Offer, being James Myatt and Ian McGregor.

"Register" means the register of APK Optionholders and APK Shareholders (as the case may be) maintained by APK in accordance with the Corporations Act.

"Register Date" means 7.00 pm AEST on 27 August 2013.

"Related Body Corporate" has the meaning given to it in section 50 of the Corporations Act.

"Rights" means all accretions, rights, causes of action or benefits of whatever kind attaching to or arising from or in respect of APK Options, whether directly or indirectly, including without limitation all rights to exercise the APK Options, to receive dividends (and any attaching franking credit), to receive or subscribe for shares, units, notes, options or other securities and to receive all other distributions or other entitlements declared, paid, made or issued by APK or any subsidiary of APK after the Announcement Date.

"Rule 6.23.4 Waiver" the waiver obtained on 20 August 2013 by APK from ASX in respect of ASX Listing Rule 6.23.4 and referred to in section 8.7, a copy of which is set out in Annexure D.

"Rule 6.23.4 Waiver Conditions" has the meaning given to that term in section 8.7.

"S&P/ASX 50 Index" means the index of that name published by Standard & Poor's (or any successor of or replacement for that index).

"Serviceworks" means Serviceworks Management Pty Ltd ACN 090 155 445.

"Share Bidder's Statement" means the bidder's statement of AGL Bidder relating to the Share Offer, dated 24 July 2013 and dispatched to APK Shareholders on 8 August 2013.

"Share Condition Period" means the period beginning on the Announcement Date and ending at the end of the Share Offer Period.

"Share Offer" means, as the context requires, the offer for APK Shares made by AGL Bidder or the off-market takeover bid constituted by that offer and each other offer by AGL Bidder for APK Shares in the form of that offer, including in each case as varied in accordance with the Corporations Act.

"Share Offer Period" means the period during which the Share Offer is open for acceptance.

"SME" means small and medium sized enterprises.

"Superior Proposal" means a Competing Proposal received by APK after the date of the Bid Implementation Agreement but during the Exclusivity Period which:

- (a) is bona fide and in writing and, in the determination of the Recommending Directors acting in good faith, is reasonably capable of being valued and completed, taking into account all aspects of the Competing Proposal (including its terms and conditions and the identity of the person or persons making it); and
- (b) in the determination of the Recommending Directors acting in good faith and reasonably in order to satisfy what the Recommending Directors consider to be their fiduciary or statutory duties (based on specific legal and any other appropriate advice), would, if substantially completed in accordance with its terms, be more

favourable to APK shareholders than the Share Offer, taking into account all aspects of the Competing Proposal.

"Target's Statement" means the target's statement issued by APK in response to this Bidder's Statement in accordance with Part 6.5 Division 3 of the Corporations Act.

"Tax Act" means the *Income Tax Assessment Act 1936* (Cth) and the *Income Tax Assessment Act 1997* (Cth), jointly as applicable.

"Trading Day" has the meaning given to it in the ASX Listing Rules.

"Transferable Options" means APK Options that are transferable to AGL Bidder under their terms.

"VWAP" means volume weighted average price.

"Your APK Options" means, subject to section 9.5(a) and 9.5(b):

- (a) the APK Options in respect of which you are registered or entitled to be registered as holder in the Register on the Register Date, and in respect of which no other person becomes registered or entitled to be registered as a holder before you accept the Option Offer; and
- (b) any other APK Options to which you are able to give good title at the time you accept the Option Offer during the Option Offer Period.

10.2 Interpretation

- (a) Annexures to the Bidder's Statement form part of this Bidder's Statement.
- (b) Words and phrases to which a meaning is given by the Corporations Act, the ASX Listing Rules or ASX Settlement Operating Rules have the same meaning in this Bidder's Statement and the Acceptance Form unless that meaning is inconsistent with the context in which the word or phrase is used.
- (c) Headings are for convenience only, and do not affect interpretation of this Bidder's Statement.
- (d) The following rules also apply in interpreting this Bidder's Statement and the Acceptance Form, except where the context makes it clear that a rule is not intended to apply:
 - (i) a singular word includes the plural, and vice versa;
 - (ii) a word which suggests one gender includes the other genders;
 - (iii) if a word is defined, another part of speech has a corresponding meaning;
 - (iv) unless otherwise stated references in this Bidder's Statement to sections, paragraphs and sub-paragraphs are to sections, paragraphs and sub-paragraphs of this Bidder's Statement;
 - (v) a reference to a person includes a body corporate; and
 - (vi) a reference to \$ is to the lawful currency in Australia unless otherwise stated.
- (e) A reference to a business day is a day (other than Saturday, Sunday or a public holiday) on which banks are open for general banking business in Sydney.

- (f) References to time are references to time in Sydney, Australia on the relevant date, unless stated otherwise.

11. **APPROVAL OF BIDDER'S STATEMENT**

This Bidder's Statement has been approved by a resolution of the Directors of AGL APG Holdings Pty Limited ACN 081 834 826.

Dated 27 August 2013

Signed on behalf of AGL APG Holdings Pty Limited ACN 081 834 826 by:

A handwritten signature in black ink, appearing to read 'P. McWilliams', is positioned above a horizontal line.

Paul McWilliams

Director

ANNEXURE A

BDO Valuation Report



AGL ENERGY LIMITED

Valuation of share options and Election
Rights in Australian Power and Gas
Company Limited

14 July 2013

The Directors
AGL Energy Limited
Level 22
101 Miller St
NORTH SYDNEY NSW 2060

14 July 2013

Dear Sirs

VALUATION OF AUSTRALIAN POWER AND GAS COMPANY LIMITED

In accordance with our engagement letter dated 26 June 2013, BDO East Coast Partnership (BDO, we or us) has prepared a valuation report setting out our opinion as to the value of certain options and Election Rights (the Derivatives) in Australian Power and Gas Company Limited (APK).

We have prepared this valuation report (the Report) for the purposes of assisting the directors (the Directors) of AGL Energy Limited (AGL) in their consideration of an offer price for the Derivatives. This report may be included in any Bidder's Statement that is issued by AGL in relation to the Options, and may be used/referred to in other transaction documents issued by AGL in relation to the Options. This report should not be used for any other purpose without our prior written consent.

This valuation is based on information made available to us at the date of this Report. We reserve the right to amend the conclusions drawn in the Report should information subsequently become available to us which may have a material effect on the matters considered in this Report.

This letter should be read in conjunction with the 'Declarations and disclosures' section of the report.

BDO has relied upon information provided by AGL, which BDO understands has been provided to it by APK. AGL has reviewed a draft version of this report and confirmed that the information provided to us and as presented in this report accurately represents the information that AGL has received from APK, and that no significant information provided to AGL by APK which is essential to our report has been withheld

Yours faithfully
BDO EAST COAST PARTNERSHIP



Sebastian Stevens
Partner



DEFINITIONS, ABBREVIATIONS AND GLOSSARY OF TERMS

Abbreviation	Meaning
AGL	AGL Energy Limited
APK	Australian Power and Gas Company Limited
ASX	Australian Securities Exchange
BDO, we or us	BDO East Coast Partnership
Derivatives	Outstanding options and Election Rights in APK
Directors	Directors of AGL
EBITDA	Earnings before interest, tax, depreciation and amortisation
FYXX	Financial year ended 30 June 20XX
Management	Management of AGL
NPAT	Net profit after tax
Proposed Transaction	The proposed acquisition by AGL of equity and equity derivatives in APK
Report	This report, being the report prepared by BDO which sets out the valuation of the Derivatives
Tranche XX	Tranche XX of the Derivatives as per BDO's categorisation
Valuation Date	12 July 2013
VWAP	Volume-weighted average price
WIP	Work in progress

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1. EXECUTIVE SUMMARY

This Report has been prepared solely for AGL for the purpose of valuing 36,892,274 share options (which excludes those options which are due to be cancelled) and 6,000,000 Election Rights in APK that are outstanding as at the date of this Report (the Derivatives).

APK is engaged in the sale and distribution of electricity and gas to over 350,000 households in the eastern states of Australia: being predominantly in Queensland, Victoria and New South Wales.

The value of the Derivatives will be used for the purpose of determining an offer price for these instruments, which it is proposed will be offered by AGL to holders of the Derivatives as part of the proposed acquisition of APK (the Proposed Transaction).

The valuation of the Derivatives was completed using the Black-Scholes Option Pricing Model. The Black-Scholes Option Pricing Model is widely accepted and it is our assessment that it will provide an appropriate fair value of the Derivatives.

A summary of our valuation is provided below. We have performed this valuation with reference to an offer price of \$0.52 per underlying share in APK.

	Strike price (\$)	Expiry date	Option value (\$)	Total values (\$)
Tranche 1	0.35	1/10/2013	0.1647	84,505
Tranche 2	0.70	30/10/2013	0.0052	2,575
Tranche 3	0.80	30/10/2013	0.0013	644
Tranche 4	0.55	31/12/2013	0.0440	220,104
Tranche 5	0.60	31/12/2013	0.0289	546,763
Tranche 6	0.35	31/03/2014	0.1772	44,298
Tranche 7	0.20	1/07/2014	0.3174	317,409
Tranche 8	0.50	1/10/2014	0.1028	51,402
Tranche 9	0.55	1/10/2014	0.0826	41,277
Tranche 10	0.40	30/10/2014	0.1592	323,955
Tranche 11	0.45	30/10/2014	0.1303	195,468
Tranche 12	0.50	30/10/2014	0.1060	13,252
Tranche 13	0.55	30/10/2014	0.0859	10,734
Tranche 14	0.40	22/12/2014	0.1479	369,690
Tranche 15	0.50	11/04/2015	0.0986	591,634
Tranche 16	0.70	1/07/2015	0.0421	21,074
Tranche 17	0.55	30/10/2015	0.0928	140,914
Tranche 18	0.60	30/10/2015	0.0757	70,008
Total value of the Derivatives				3,045,709

In performing our analysis, we have assumed an annual dividend of 0.8 cents per share is expected to be paid (in line with the dividend declared for FY12).

Under these assumptions, we estimate the value of the Derivatives to be \$3.05 million.

2. OVERVIEW OF APK

2.1. Background

APK is engaged in the sale and distribution of electricity and gas to over 350,000 households in the eastern states of Australia: being predominantly in Queensland, Victoria and New South Wales.

APK began trading as a residential retail energy company in 2007.

The legal entity which became APK was already in existence as a media company, Microview Limited, which was already listed on the ASX at the time it changed business activity to become APK.

A change in business activity was effected in order to capitalise on deregulation in the Australian retail energy market by rapidly creating value through building a customer base.

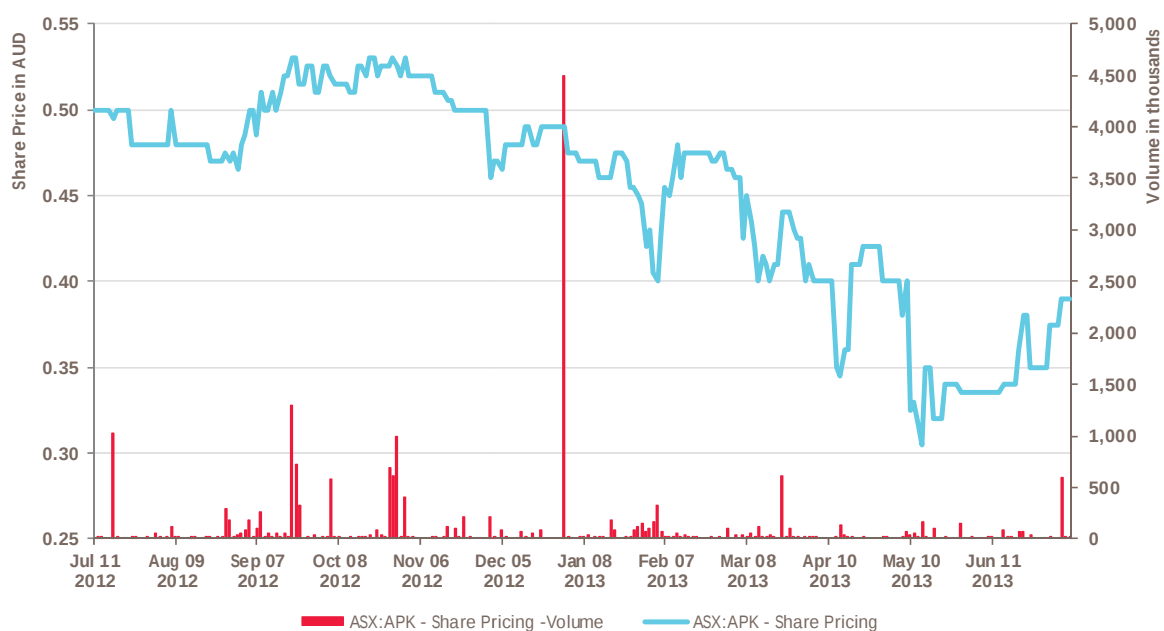
APK operates as a reseller, buying energy from the traded market at wholesale rates and then paying the network companies to transport it to customers.

In May 2013, APK announced that it had exceeded 350,000 retail accounts for the first time.

However, APK announced at the same time that challenging market conditions had caused it to revise its FY14 guidance down to an expected underlying net loss after tax of \$3m - \$5m.

2.2. Trading History of APK Shares

As at the Valuation Date, APK had approximately 191.5 million shares on issue. Historical prices and trading volumes of APK shares over the most recent twelve-month period are summarised on a daily basis below.



Source: CapitalIQ

2.3. Current Performance

The table opposite presents headline financial information for APK, including forecast earnings for the six-month period ended 30 June 2013, and details as to historical dividends paid.

We also note that APK had declared an annual dividend of \$0.005 per share in FY11.

A substantial difference often exists between the underlying NPAT as identified by APK and the NPAT as presented on a statutory basis. This is because APK has held hedging instruments in place to manage wholesale electricity costs.

In their May 2013 announcement, APK have identified a \$6m increase in the value of their bad debt provision as the key driver for the poor underlying performance in the first half of FY13, due to an unexpected growth in the number of customers on hardship programs in the last months of FY12.

Factors that are cited by APK as affecting the market include:

- Retail price rises of 30% due to the implementation of the carbon tax and high network price rises
- Intense retail competition, particularly in Victoria, although this is now reported by APK to be moderating
- A sunny summer has increased the effect of the impact of solar schemes, both in respect of demand from retail customers, and the knock-on effect on APK's hedging requirements as these had been taken out against greater demand forecasts.

2.4. Financial information

Australian Power and Gas Company Ltd	Actual 6m ended 31-Dec-11	Actual 6m ended 30-Jun-12	Actual 6m ended 31-Dec-12	Forecast 6m ended 30-Jun-13
Revenue	174,810	189,988	248,289	235,000
EBITDA	12,546	20,828	17,373	7,500
Statutory NPAT	925	(4,817)	3,122	N/A
Underlying NPAT*	1,003	5,069	(2,016)	(2,000)
Dividends paid per share (\$)	-	0.008	-	Yet to be declared

*- excludes the impact of changes in the valuation of hedging instruments

Source: ASX announcements. 30 June 2013 data is a mid-point, as these were originally presented as a range.

3. BASIS OF PREPARATION AND METHODOLOGY

3.1. Basis of Preparation

This Report has been prepared solely for AGL for the purpose of valuing the Derivatives, as listed in Appendix 1 to this Report.

The value of the Derivatives will be used for the purpose of determining an offer price for the Derivatives in APK to be offered by AGL as part of the Proposed Transaction.

Additional sources of information are listed in Appendix 2. The scope of our work was different to that of an audit and, consequently no assurance is expressed.

3.2. Valuation Methodology for Derivatives

The valuation of an option is a function of:

- The price of the underlying share to which the option may convert;
- The remaining life of the option;
- The exercise price;

- Interest rates;
- Volatility; and
- The anticipated dividend yield on the underlying share.

The price of an option is the sum of its intrinsic value and its time value.

Intrinsic value is the difference between an option's exercise price and the current price of the underlying share.

Time value is derived from the expected value of potential future gains in value of the underlying instrument.

An option can either be American style or European style, or a hybrid of the two (Bermudean style):

- American style options can be exercised by the holder at any time from the date of purchase up until (and including) expiry date.
- European style options can be exercised by the holder only on the specified expiry date.
- Bermudean style options can be exercised by the holder only within a specified range of dates over the life of the option.

Methodologies commonly used for valuing options are detailed below.

3.2.1. Black-Scholes Option Pricing Model

The Black-Scholes Option Pricing Model is a formulaic approach which assumes that the options are European and considers the following variables:

- Exercise price of the option;
- Current price of the underlying stock;
- Volatility of the price of the underlying stock;
- Time to expiry of the option; and
- Risk free rate of return.

3.2.2. Binomial/Trinomial Option Pricing Models

These option valuation techniques involve plotting possible paths that might be followed by the price of the underlying stock over the life of the option. The outcomes of the movements in the security price are discounted back to present value using the risk free rate. The model has the capability of valuing American Style Options.

3.2.3. Underlying Assumptions

The Black-Scholes Option Pricing Model and the Binomial/Trinomial Option Pricing Models make the following assumptions which in reality do not necessarily apply:

- Hedging an option bears no transaction costs and can be achieved on a continuous basis;
- The asset price is log normally distributed;
- The risk free interest rate is known and constant; and
- The volatility is known and constant.

3.2.4. Adopted Valuation Methodology

The valuation of the Derivatives was completed using the Black-Scholes Option Pricing Model. The Black-Scholes Option Pricing Model is widely accepted and it is our assessment that it will provide an appropriate fair value of the Derivatives.

We note that we have also considered the Binomial Option Pricing Model and the fair value determined is not materially different from the Black-Scholes Option Pricing Model.

4. OVERVIEW OF THE DERIVATIVES

4.1. Overview

As at the date of this report, APK had 42,952,274 unexpired Derivatives on issue over shares in the company. Of these, 60,000 are to be cancelled. We have accordingly valued the remaining 42,892,274 Derivatives in issue.

Included within this total are 6 million 'Election Rights'. These are derivative instruments which may be settled either in cash or with equity, providing the holder of the Election Right with an amount equivalent to that which would have been received had an equivalent equity-settled instrument been exercised and then immediately sold.

The decision as to whether the Election Rights are settled in cash or with equity is at the sole determination of APK.

For valuation purposes, the Election Rights are fundamentally the same as a share option.

A summary of the Derivatives is provided in Appendix 1 to this Report.

We have categorised the total number of Derivatives into 18 tranches. Derivatives within each tranche have the same:

- Expiry date; and
- Exercise (strike) price.

For the purpose of our valuation approach, we have assumed that all Derivatives with performance conditions attached will vest.

The table below presents our summary of option tranches for valuation.

Performance Hurdles / Vesting Conditions - APK Derivatives	Strike price	Expiry date	Days to expiry	Quantity
Tranche 1	\$0.35	1/10/2013	96	513,031
Tranche 2	\$0.70	30/10/2013	125	500,000
Tranche 3	\$0.80	30/10/2013	125	500,000
Tranche 4	\$0.55	31/12/2013	187	5,000,000
Tranche 5	\$0.60	31/12/2013	187	18,900,000
Tranche 6	\$0.35	31/03/2014	277	250,000
Tranche 7	\$0.20	1/07/2014	369	1,000,000
Tranche 8	\$0.50	1/10/2014	461	500,000
Tranche 9	\$0.55	1/10/2014	461	500,000
Tranche 10	\$0.40	30/10/2014	490	2,035,000
Tranche 11	\$0.45	30/10/2014	490	1,500,000
Tranche 12	\$0.50	30/10/2014	490	125,000
Tranche 13	\$0.55	30/10/2014	490	125,000
Tranche 14	\$0.40	22/12/2014	543	2,500,000
Tranche 15	\$0.50	11/04/2015	653	6,000,000
Tranche 16	\$0.70	1/07/2015	734	500,000
Tranche 17	\$0.55	30/10/2015	855	1,519,243
Tranche 18	\$0.60	30/10/2015	855	925,000
				42,892,274

Note that the table above excludes 60,000 Derivatives which would otherwise be included within Tranche 17, on the basis that these Derivatives had been identified as being due to be cancelled.

5. VALUATION OF THE DERIVATIVES

5.1. Valuation Approach

As previously noted in this Report, we have adopted a Black-Scholes methodology in valuing the Derivatives.

5.2. Spot Price

The spot price used in valuing the Derivatives is the offer price of \$0.52 per share.

This includes the premium for control offered by AGL, thus ensuring that the optionholders benefit from the premium for control offered to existing shareholders.

5.3. Exercise prices

We have valued the Derivatives with reference to the exercise prices as specified in the information provided to us by Management.

With regard to the Derivatives categorised as Tranche 14 in our analysis (Tranche 14), we note that these options can be exercised at the lower of the 30-day VWAP of APK's share price and \$0.40.

We have performed our valuation of Tranche 14 under the assumption that the exercise price is \$0.40. This is because Tranche 14 would have minimal value if the exercise price was set only at the 30-day VWAP of APK's share price, as this exercise price would not be expected to be materially different to the price of a share at expiry.

5.4. Volatility

We have calculated volatility for one- and two-year periods (based on historical data). The volatility for each tranche has been selected based on the period to expiry.

We have considered the volatility of share prices in comparable companies in our analysis, as well as the volatility for APK itself. The comparable companies identified are:

- AGL
- Origin Energy Limited
- ERM Power Limited

A summary of our volatility observations is presented in the table below:

Company Name	1 Year	2 Years
Australian Power and Gas Company Limited	40.5%	30.9%
AGL Energy Limited	17.0%	17.7%
Origin Energy Limited	23.0%	23.2%
ERM Power Limited	28.8%	32.9%
Volatility selected	40.5%	30.9%

The closest comparable companies are substantially larger than APK, with market capitalisations between \$0.5bn and \$13.7bn. Because these companies are so much larger, this makes them less comparable as shares in larger companies would typically be less volatile. Accordingly, we have referred to the historical annualised volatility of share prices in APK as the basis for our volatility estimate.

5.5. Dividends

We have incorporated expected dividend yields using a discrete dividend model, which incorporates the timing of dividend payments, instead of applying a simplifying assumption using an annual yield.

This approach has been adopted as we consider that the short remaining lives of the Derivatives mean that the timing of expected future dividend payments could have a material impact on value.

We have assumed that an annual dividend of 0.8 cents per share, which is equal to the amount distributed with regard to APK's FY12 earnings, may be made.

5.6. Risk-free rate

We have applied a risk-free rate of 2.64% in our valuation of the Derivatives, being the return on 2-year Australian Government debt.

5.7. Valuation date

We have performed our valuation as at 12 July 2013, being the intended announcement date of the Proposed Transaction.

The inputs that have been used with regard to the risk-free rate and share price volatility were taken as at 1 July 2013.

5.8. Performance conditions

We have assumed that all performance conditions for vesting (which are all non-market based) will be achieved.

5.9. Cash-settled / equity-settled share based payments

We note that the derivatives listed as Tranche 15 in our analysis can be settled upon exercise with either equity or cash at the issuer's discretion, whereby the holder is entitled to a cash sum on exercise equivalent to the 5-day VWAP immediately prior to exercise, less the cost of exercise.

As the nature of settlement is at APK's discretion we have assumed the Derivatives convert to shares. No premium or discount has been applied to these Derivatives.

5.10. Application of Marketability Discounts

Management have advised that many of the Derivatives are not publicly tradeable, which means that there is no liquid market prior to exercise.

The Derivatives convert to tradable shares if exercised. Therefore the securities are only illiquid until the exercise date. Due to the limited period of illiquidity we have not applied an illiquidity discount.

5.11. Valuation

We have presented our findings in the table below.

The aggregate value for all of the Derivatives under the assumptions used is **\$3.05 million**.

	Strike price (\$)	Expiry date	Days to expiry	Volatility	Risk-free rate	Option value (\$)	Quantity	Total
Tranche 1	0.35	1/10/2013	81	40.5%	2.64%	0.1647	513,031	84,505
Tranche 2	0.70	30/10/2013	110	40.5%	2.64%	0.0052	500,000	2,575
Tranche 3	0.80	30/10/2013	110	40.5%	2.64%	0.0013	500,000	644
Tranche 4	0.55	31/12/2013	172	40.5%	2.64%	0.0440	5,000,000	220,104
Tranche 5	0.60	31/12/2013	172	40.5%	2.64%	0.0289	18,900,000	546,763
Tranche 6	0.35	31/03/2014	262	40.5%	2.64%	0.1772	250,000	44,298
Tranche 7	0.20	1/07/2014	354	40.5%	2.64%	0.3174	1,000,000	317,409
Tranche 8	0.50	1/10/2014	446	40.5%	2.64%	0.1028	500,000	51,402
Tranche 9	0.55	1/10/2014	446	40.5%	2.64%	0.0826	500,000	41,277
Tranche 10	0.40	30/10/2014	475	40.5%	2.64%	0.1592	2,035,000	323,955
Tranche 11	0.45	30/10/2014	475	40.5%	2.64%	0.1303	1,500,000	195,468
Tranche 12	0.50	30/10/2014	475	40.5%	2.64%	0.1060	125,000	13,252
Tranche 13	0.55	30/10/2014	475	40.5%	2.64%	0.0859	125,000	10,734
Tranche 14	0.40	22/12/2014	528	30.9%	2.64%	0.1479	2,500,000	369,690
Tranche 15	0.50	11/04/2015	638	30.9%	2.64%	0.0986	6,000,000	591,634
Tranche 16	0.70	1/07/2015	719	30.9%	2.64%	0.0421	500,000	21,074
Tranche 17	0.55	30/10/2015	840	30.9%	2.64%	0.0928	1,519,243	140,914
Tranche 18	0.60	30/10/2015	840	30.9%	2.64%	0.0757	925,000	70,008
							42,892,274	3,045,709

Source: BDO analysis



Appendix 2: Sources of information

- Schedule of share options and Election Rights provided by Management
- Financial and other information publicly sourced from Capital IQ
- Hoadley Trading and Investment Tools



Appendix 3: Declarations and Disclosures

PURPOSE

We have prepared this valuation report (the Report) for the purposes of assisting the directors (the Directors) of AGL Energy Limited (AGL) in their consideration of an offer price for the Derivatives. Accordingly this report should not be used for any other purpose without our prior written consent.

DEFINITION OF VALUE

The market value is based on what a hypothetical knowledgeable, willing but not anxious buyer would pay to a hypothetical knowledgeable, willing but not anxious seller for the relevant asset.

The valuation of an option is a function of the price of the underlying share to which the option may convert the remaining life of the option, the exercise price, medium term interest rates and the anticipated yield of the underlying share.

SCOPE AND LIMITATIONS

This report has been prepared in accordance with APES 225 – Valuation Services issued by the Accounting Professional & Ethical Standards Board.

By its very nature the formulation of a valuation assessment necessarily contains significant uncertainties and the conclusions arrived at in many cases will be subjective and dependant on the exercise of individual judgement. There is therefore no indisputable value, and we normally express our opinion as falling within a likely range. In the absence of any other factors, we normally recommend the mid-point value of our valuation range if a single value is required

INDEPENDENCE

We have performed this valuation independently and have no reason to believe that any threat exists to our independence. We have received a fee for the preparation of this valuation, which was not contingent on the outcome.

QUALIFICATIONS

Mr Sebastian Stevens, BBus, CPA and ACA, is a partner of BDO East Coast Partnership. Mr Stevens has been responsible for the review of this Report.

Mr Stevens has over 20 years experience all aspects of corporate advisory including mergers and acquisitions, valuations and transaction advisory services. Accordingly, Mr Stevens is considered to have the appropriate experience and professional qualifications to provide the advice offered.

Mr David McCourt, BBus, CA, is a partner of BDO East Coast Partnership.

Mr McCourt is the partner responsible for the preparation of this Report. Mr McCourt has over 14 years experience in a number of specialist corporate advisory activities including company valuations, financial modelling, preparation and review of business feasibility studies, accounting, advising on mergers and acquisitions and advising on independent expert reports. Accordingly, Mr McCourt is considered to have the appropriate experience and professional qualifications to provide the advice offered.



RELIANCE ON INFORMATION

Our report was prepared solely for use of the Directors of AGL, and the purpose set out above. We do not accept any responsibility for its use outside this purpose. Except in accordance with the stated purpose, no extract, quote, or copy of our report, in whole or in part, should be reproduced without our written consent, as to the form and context in which it may appear.

Our procedures in the preparation of this report involved an analysis of financial information and accounting records. This did not include verification work nor constitute an audit or assurance engagement in accordance with International Auditing and Assurance Standards. Accordingly we do not warrant that our inquiries have identified or verified all of the matters which an audit, extensive examination or 'due diligence' investigation might disclose.

We have relied on information provided by Management. We have not undertaken any verification of the financial or other information provided by Management as set out in this report. We believe the information provided to be reliable, complete and not misleading and have no reason to believe that any material facts have been withheld. The information provided was evaluated through analysis, inquiry and review for the purpose of satisfying ourselves that there were reasonable grounds for believing that the information was appropriate for use by us in forming our opinion. Where we have relied on the views and judgement of Management, the information was also evaluated through analysis, inquiry and review to the extent practical. However, such information is often not capable of external verification or validation.

AGL has agreed to indemnify BDO East Coast Partnership and its partners, directors, employees, officers and agents (as applicable) against any claim, liability, loss or expense, costs or damage, arising out of reliance on any information or documentation provided by Management which is false and misleading or omits any material particulars, or arising from failure to supply relevant documentation or information.

CURRENT MARKET CONDITIONS

Our opinion is based on economic, market and other conditions prevailing at the Valuation Date. Such conditions can change significantly over relatively short periods of time.

Accordingly changes in those conditions may result in the valuation becoming quickly outdated and in need of revision. We reserve the right to revise any valuation, or other opinion, in the light of material information existing at the Valuation Date that subsequently becomes known to us.

ANNEXURE B

ASIC Relief Instrument

**Australian Securities and Investments Commission
Corporations Act 2001 – Paragraph 655A(1)(b) – Declaration**

Enabling legislation

1. The Australian Securities and Investments Commission (**ASIC**) makes this instrument under paragraph 655A(1)(b) of the *Corporations Act 2001 (Act)*.

Title

2. This instrument is ASIC Instrument 13-1057.

Commencement

3. This instrument commences on 22 August 2013.

Declaration

4. Chapter 6 of the Act applies to AGL APG Holdings Pty Limited ACN 081 834 826 (**Bidder**) as if:

(a) subsection 605(2) of the Act was modified or varied by:

- (i) deleting “or” at the end of paragraph (a);
- (ii) deleting “.” at the end of paragraph (b) and replacing it with “; or”; and
- (iii) inserting the following new paragraph after paragraph (b):

“(c) they are options, the terms of exercise of which differ.”;

(b) subsection 619(2) was modified or varied by:

- (i) deleting “.” at the end of paragraph (e) and replacing it with “; and”; and
- (ii) inserting the following paragraph after paragraph (e):

“(f) any differences in the offers attributable to the fact that the offers relate to options which have different exercises prices or different exercise dates.”.

Where this instrument applies

5. This instrument applies where the Bidder makes an off-market bid for 17 tranches totalling approximately 36,892,274 options (**Option Offer**), being options over unissued ordinary shares in Australian Power and Gas Company Limited ACN 077 206 583 (**Target**) in respect of which a bidder’s statement will be lodged with ASIC on or about 27 August 2013.

Dated this 22nd day of August 2013


Signed by Jerry Pearson
as a delegate of the Australian Securities and Investments Commission

ANNEXURE C

Conditions of the Share Offer

1.1 Conditions of Share Offer

The Share Offer, and any contract resulting from acceptance of the Share Offer, is subject to the fulfilment of the following conditions.

(a) Minimum acceptance condition

At the end of the Share Offer Period, AGL Bidder has a relevant interest in more than 90% (by number) of the APK Shares on issue at that time.

(b) ACCC Approval

Before the end of the Share Offer Period, none of the following events happening:

- (i) the ACCC having given notice in writing to AGL Bidder or APK that it has decided to oppose the acquisition of the APK Shares under the Share Offer;
- (ii) the ACCC notifying AGL Bidder or APK in writing that it will not approve the acquisition of the APK Shares under the Share Offer unless AGL Bidder agrees to conditions or undertaking and those conditions or undertaking are not acceptable to AGL Bidder (acting reasonably);
- (iii) the ACCC taking action or give notice to AGL Bidder or APK in writing of its intention to take action, to prevent or restrain the acquisition of the APK Shares under the Share Offer; or
- (iv) the ACCC commencing legal proceedings seeking orders to prevent or restrain the acquisition of APK Shares under the Share Offer.

(c) No prescribed occurrences

Between the date the Share Bidder's Statement is given to APK and the end of the Share Offer Period none of the following events happen:

- (i) APK converts all or any of its shares into a larger or smaller number of shares;
- (ii) APK or a subsidiary of APK resolves to reduce its share capital in any way;
- (iii) APK or a subsidiary of APK:
 - (A) enters into a buy-back agreement; or
 - (B) resolves to approve the terms of a buy-back agreement under Section 257C(1) or 257D(1) of the Corporations Act;
- (iv) APK or a subsidiary of APK issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, other than pursuant to the vesting under the ESOP or ESP of any existing APK Shares or APK Options or as agreed by AGL Bidder in writing prior to the Announcement Date;
- (v) APK or a subsidiary of APK issues, or agrees to issue, convertible notes;

- (vi) APK or a subsidiary of APK disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (vii) APK or a subsidiary of APK grants, or agrees to grant, a security interest in the whole, or a substantial part, of its business or property;
- (viii) APK or a subsidiary of APK resolves to be wound up;
- (ix) the appointment of a liquidator or provisional liquidator of APK or of a subsidiary of APK;
- (x) a court makes an order for the winding up of APK or of a subsidiary of APK;
- (xi) an administrator of APK, or of a subsidiary of APK, is appointed under Section 436A, 436B or 436C of the Corporations Act;
- (xii) APK or a subsidiary of APK executes a deed of company arrangement; or
- (xiii) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of APK or of a subsidiary of APK.

(d) **No prescribed occurrences between announcement and service**

None of the events listed in sub-paragraphs (i) to (xiii) of paragraph 1.1(c) happens during the period beginning on the Announcement Date and ending at the end of the day before the Share Bidder's Statement is given to APK.

(e) **No action by Public Authority adversely affecting the Share Offer**

During the Share Condition Period:

- (i) there is not in effect any preliminary or final decision, order or decree issued by a Public Authority (excluding the ACCC);
- (ii) no action or investigation is instituted, or threatened by any Public Authority (excluding the ACCC) with respect to APK or any subsidiary of APK; or
- (iii) no application is made to any Public Authority (excluding the ACCC) (other than an application by AGL Bidder or any company within the AGL Group, an application under Section 657G of the Corporations Act, or an application commenced by a person specified in Section 659B(1) of the Corporations Act in relation to the Share Offer),

in consequence of, or in connection with, the Share Offer, which restrains or prohibits or threatens to restrain or prohibit, or may otherwise materially adversely impact upon, the making of the Share Offer or seeks to require the divestiture by AGL of any APK Shares, or the divestiture of any assets by APK or by any subsidiary of APK or by any company within the AGL Group.

(f) **Non-existence of certain rights under agreements or instruments**

During the Share Condition Period, there is no person entitled to exercise, exercising or purporting to exercise, stating an intention to exercise (whether or not that intention is stated to be a final or determined decision of that person), or asserting a right to exercise, any rights under any provision of any agreement or other instrument to which APK or any of its subsidiaries is a party, or by or to which APK or any of its subsidiaries or any of its assets or businesses may be bound or be subject, which results, or could result, to an extent which is material in the context of APK and its subsidiaries taken as a whole in:

- (i) any moneys borrowed by APK or any of its subsidiaries being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (ii) any such agreement or other such instrument being terminated or modified or any action taken or arising thereunder (including the acceleration of the performance of any obligations thereunder);
- (iii) any assets, shares or business of APK or any of its subsidiaries being sold, transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions; or
- (iv) the business of APK or any of its subsidiaries with any other person being adversely affected,

other than in relation to any agreement or instrument:

- (v) previously disclosed before the Announcement Date by APK in a public filing with the ASX;
- (vi) disclosed in writing by APK to AGL or AGL Bidder before the Announcement Date,

provided in each case such agreement or instrument and such entitlement to exercise, actual or purported exercise, intention to exercise or assertion was fully, fairly and accurately disclosed, and such disclosure was not misleading or deceptive in any material respect (including by omission).

(g) **Conduct of APK's business**

During the Share Condition Period, none of APK, or any body corporate which is or becomes a subsidiary of APK, without the prior written consent of AGL Bidder (such consent, in the case of sub-paragraphs 1.1(g)(iv) – 1.1(g)(xvi), 1.1(g)(xx) and 1.1(g)(xxii), not to be unreasonably withheld or delayed):

- (i) announces, makes, declares, distributes or pays any distribution (whether by way of dividend, bonus, capital reduction or otherwise and whether in cash or in specie);
- (ii) issues or grants options over, or agrees to issue or grant options over, or otherwise makes any commitments regarding any shares or other securities, or alters its capital structure or the rights attached to any of its shares or other securities, or issues or agrees to issue any convertible notes or any other securities that are convertible into shares;
- (iii) makes any changes in its constitution or passes any special resolution;
- (iv) enters into, amends or agrees to enter into or amend, any contract, commitment or other arrangement with a related party of APK or issues a notice of termination, terminates or agrees to terminate, waives or otherwise foregoes any rights under any such arrangement;
- (v) enters into, amends or agrees to enter into or amend, any contract, commitment or other arrangement where:

- (A) the term of the contract, commitment or arrangement is greater than 12 months; or
- (B) the contract, commitment or arrangement involves APK or a subsidiary of APK incurring expenditure or being entitled to receive revenue (or additional expenditure or revenue in the case of an amendment) in excess of \$100,000 per annum,

other than:

- a mass market or SME customer contract on materially the same terms as the current pro-forma standard form customer contracts which have been disclosed by APK in writing to AGL or AGL Bidder before the Announcement Date; or
 - any financial instruments to manage market movements in the electricity and gas markets in accordance with any facility agreement disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date, any financial instrument or trading contract to manage APK's (or a subsidiary of APK's) renewable energy target obligations or the extension of any gas supply agreements disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date, provided that:
 - the financial instrument or trading contract is on arm's length terms; and
 - AGL is offered a last right of refusal to provide the financial instrument or trading contract on the same terms and conditions as APK proposes to enter into with the third party and AGL has not accepted that offer in respect of a gas contract within 3 business days or in the case of an electricity contract within 1 business day, of the offer being received and if AGL has not accepted the offer, APK enters into the financial instrument or trading contract with the third party on terms and conditions that are identical to those offered to AGL;
- (vi) terminates, agrees to terminate, waives, foregoes any rights, assigns, disposes of, encumbers or otherwise deals with any rights under any contract, commitment or other arrangement, or gives its consent to any other party or parties to terminate, waive, forego any rights, assign, dispose of, encumber or otherwise deal with their respective rights under any contract, commitment or other arrangement where:
- (A) the term of the contract, commitment or arrangement is greater than 12 months; or
 - (B) the contract, commitment or arrangement involves APK or a subsidiary of APK incurring expenditure or being entitled to receive revenue (or additional expenditure or revenue in the case of an amendment) in excess of \$100,000 per annum,

other than:

- a valid termination of a mass market or SME customer contract;
or
 - the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amount owing of over 180 days past due) from a customer under customer contracts;
- (vii) settles or compromises any claim, proceeding, demand or investigation or consents to any orders being made against APK or a subsidiary of APK other than in respect of a claim involving a mass market customer where the settlement or compromise to be paid by APK does not exceed \$10,000 for any individual claim and the total amount paid for all claims does not exceed \$250,000;
- (viii) changes (by agreement or unilaterally) the services, service levels, service level credits, products to be sold or provided or territories that apply under any existing agreement, arrangement or undertaking under which the counterparty is providing services to APK or a subsidiary of APK such that the change (taken with any other such previous change) which would result in APK or a subsidiary of APK incurring additional expenditure or a reduction in revenue in excess of \$100,000 per annum;
- (ix) enters into a contract or commitment restraining it from competing with any person or conducting activities in any market;
- (x) acquires or disposes of, or enters into, agrees to enter into or announces any agreement for the acquisition or disposal of, any company, asset or business in excess of \$100,000, other than the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amounts owing of over 180 days past due) from a customer under customer contracts;
- (xi) voluntarily changes any accounting policy applied by it to report its financial position;
- (xii) gives or agrees to give any Encumbrance over any of its assets otherwise than in the ordinary course of business other than as contemplated under any facility agreement disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date, in relation to any "repos" provided to an existing lender disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date; or any guarantee or borrowing required for APK (or a subsidiary of APK) to comply with prudential requirements of the electricity market, the gas market, under a gas supply agreement as disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date, or use of system, distribution or transportation agreement disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date;
- (xiii) borrows or agrees to borrow any money (except for temporary borrowing from its financiers in the ordinary course of business) or prepays or seeks to prepay any amounts under, or amends or agrees to amend any contract, commitment or other arrangement in connection with the existing facility or borrowing arrangements between APK or a subsidiary of APK and the financiers, other than, where first consented to in writing by AGL Bidder (such consent not to be unreasonably withheld or delayed), any guarantee (other than a guarantee provided to the Australian Energy Market Operator

to comply with prudential requirements) or borrowing required for APK (or a subsidiary of APK) to comply with prudential requirements of the electricity market, the gas market, under a gas supply agreement as disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date, or use of system, distribution or transportation agreement disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date;

- (xiv) gives or agrees to give financial accommodation in excess of \$100,000 other than to other members of the APK Group;
- (xv) releases, discharges or modifies any substantial obligation to it of any person, firm or corporation or agrees to do so;
- (xvi) has appointed any additional director to its board of directors whether to fill a casual vacancy or otherwise;
- (xvii) increases the remuneration of or otherwise varies the employment arrangements with any of the APK Directors or any of the employees of the APK Group (collectively, **Relevant Employees**);
- (xviii) other than for bonuses accrued in APK's balance sheet as at 31 May 2013 as disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date, pays any bonus to a Relevant Employee where the aggregate amount of all such bonuses exceeds \$250,000;
- (xix) pays any of the Relevant Employees termination or retention payments (other than to the extent disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date);
- (xx) enters into any new employment arrangements with an existing or potential employee other than to replace staff or fill any vacant positions and where the total annual remuneration and other benefits of such replacement employee under the employment arrangement is less than \$100,000 per annum;
- (xxi) conducts its business otherwise than in the ordinary course;
- (xxii) has threatened or commenced against it any material claims or proceedings in any court or tribunal (including a petition for winding up or an application for appointment of a receiver or receiver and manager), other than as fully, fairly and accurately disclosed by APK or its advisers in writing to AGL or AGL Bidder or its advisers before the Announcement Date, and such disclosure was not misleading or deceptive in any material respect (including by omission);
- (xxiii) executes a deed of company arrangement or passes any resolution for liquidation, or has appointed or becomes susceptible to the appointment of an administrator, a receiver, a receiver and manager or a liquidator, or becomes subject to investigation under the *Australian Securities and Investments Commission Act 2001* (Cth) or any corresponding legislation; or
- (xxiv) agrees to do any of the matters set out in sub-paragraphs 1.1(g)(i) to 1.1(g)(xxiii) above.

(h) **No material adverse change**

- (i) During the Share Condition Period no event, matter or thing occurs or information is disclosed by APK concerning any event, matter or thing which will or is reasonably likely to have a material adverse effect on the assets and liabilities, financial position and performance, profitability or prospects of APK and its subsidiaries, including any event, matter or thing which will or is reasonably likely to:

- (A) have the effect of diminishing the consolidated net assets of the APK Group as set out in its consolidated balance sheet of APK at 31 May 2013 as disclosed by APK in writing to AGL or AGL Bidder prior to the Announcement Date by at least \$2,500,000; or
- (B) reduces or adversely affects the EBITDA of the APK Group for any 12 month period by at least \$1,500,000,

except it does not include any event, change, condition, matter or thing which:

- (C) was fully, fairly and accurately disclosed by APK before the Announcement Date in a public filing with the ASX or fully, fairly and accurately disclosed by APK in writing to AGL or AGL Bidder before the Announcement Date, provided that in each case such disclosure was not misleading or deceptive in any material respect (including by omission);
- (D) is required by the Bid Implementation Agreement or is expressly consented to in writing by AGL or AGL Bidder for the purposes of this condition; or
- (E) is, results from or is attributable to:
- (1) any change or movement in exchange rates;
 - (2) a reduction in consumption of gas or electricity by APK's customers due to prevailing weather conditions;
 - (3) mark to market movements of financial instruments as a result of changes in the electricity or gas markets; or
 - (4) projects or the establishment of any new business or new places of business by a competitor of the APK Group or the entry of a new entrant in any market in which the APK Group operates.

- (ii) The Target's Statement for the Share Offer contains a statement expressed to be made with the approval of the APK Board, which confirms to the best of the knowledge and belief of the APK Board after having made due enquiry, that the number of APK's retail customer accounts is not less than 340,500 (**Customer Confirmation**).

- (iii) The Target's Statement for the Share Offer contains a statement that the APK Board will issue a supplementary Target's Statement if the Customer Confirmation ceases to be correct at any time prior to the close of the Share Offer and no supplementary Target's Statement that varies, qualifies or revokes the Customer Confirmation is issued by the APK Board during the Share Condition Period.

ANNEXURE D

Rule 6.23.4 Waiver



ASX Compliance Pty Limited
ABN 26 087 780 489
20 Bridge Street
Sydney NSW 2000
PO Box H224
Australia Square NSW 1215

Telephone 61 2 9227 0441
Facsimile 61 2 9227 0440
www.asx.com.au

20 August 2013

Mr Andrew Lumsden
Partner
Corrs Chambers Westgarth
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000

By email: andrew.lumsden@corrs.com.au

Dear Andrew,

Request for Listing Rule Waiver – Australia Power and Gas Company Limited (the “Company”)

I refer to your letter dated 2 August 2013 applying on behalf of the Company for a waiver from Listing Rule 6.23.4.

I am pleased to advise that ASX Limited (ASX) has decided to grant the waiver you have requested. ASX's decision is as follows.

“DECISION

1. *Based solely on the information provided, ASX Limited (“ASX”) grants Australian Power and Gas Limited (the “Company”) a waiver from listing rule 6.23.4 to the extent necessary to permit the Company to amend, without shareholder approval, the terms and conditions of the 10,242,274 options which are on their terms incapable of transfer (the “Non-Transferable Options”), to permit the transfer to AGL APG Holdings Pty Ltd (“AGL Bidder”) on the following conditions.*
 - 1.1. *The off market takeover bid from the AGL Bidder for all the Company's shares being declared unconditional.*
 - 1.2. *The AGL Bidder and its associates obtain voting power of at least 50.1% in the Company.*
2. *ASX has considered listing rules 6.23.4 only and makes no statement as to the Company's compliance with other listing rules.*

BASIS FOR DECISION

LISTING RULE 6.23.4

Underlying Policy

3. *This rule sets out the circumstances in which option terms can be changed. Some terms can be changed with the approval of holders of issued ordinary securities. This ensures that an appropriate balance is maintained between the rights of holders of issued ordinary securities and option holders.*

Facts and Reasons for Granting the Waiver

4. *The Company is subject to a takeover bid. The unquoted Non-Transferable Options granted by the Company have terms that they are not to be transferred. Shareholders will not be disadvantaged by the transfer of the Non-Transferable Options as the consideration for the transfer of the Non-Transferable Options is to be provided by the AGL Bidder. The waiver is granted on the basis that the AGL Bidder has obtained greater than 50% of the voting power and the takeover offer is declared unconditional. A requirement for the Company to obtain security holder approval for amendment of the Non-Transferable Options terms to permit the transfer of the Non-Transferable Options for consideration is superfluous."*

As you will see, the waiver is subject to certain conditions. Under Listing Rule 18.1.1, these conditions must be complied with for the waiver to be effective.

It should be noted that under ASX Listing Rule 18.3, ASX may vary or revoke this waiver at any time.

If you have any further enquiries in relation to this matter, please feel free to contact me on 02 9227 0441 or at anthony.ingegneri@asx.com.au.

Yours sincerely,

[Sent electronically without signature]

Anthony Ingegneri
Senior Adviser, Listings Compliance (Sydney)

Corporate Directory

AGL APG Holdings Pty Limited

ABN 72 081 834 826

Registered office

'AGL' Level 22
120 Spencer Street
Melbourne VIC 3000

AGL Energy Limited

ABN 74 115 061 375

Level 22
101 Miller Street
North Sydney NSW 2060
Telephone +61 2 9921 2999
Facsimile +61 2 9921 2552
Website www.agl.com.au

Postal address

Locked Bag 1837
St Leonards NSW 2065

Legal Adviser

Ashurst Australia
Level 36
Grosvenor Place
225 George Street
Sydney NSW 2000

Financial Adviser

Deutsche Bank AG
ABN 13 064 165 162
Level 16, Deutsche Bank Place
Corner of Hunter and Phillip Streets
Sydney NSW 2000

Share Registry for Option Offer

Link Market Services Limited
Australian Power and Gas Company Limited Takeover
1A Homebush Bay Drive
Rhodes NSW 2138

AGL Offer Information Line

1800 426 150 (toll-free for calls made within Australia) or +61 1800 426 150 (for calls made from outside Australia) Monday to Friday between 8.30am and 5.30pm (AEST)



AGL APG Holdings Pty Limited
ABN 72 081 834 826



Need help?

Contact AGL Offer Information Line

Phone 1800 426 150 (from within Australia)

Phone +61 1800 426 150 (from outside Australia)

A Your name

SAMPLE NAME 1
SAMPLE NAME 2
<SAMPLE A/C>
SAMPLE ADDRESS 1
SAMPLE ADDRESS 2

Your holding

Securityholder Reference Number: I12345678910

Number of APK Options held	Expiry Date	Option Offer Consideration
Total		\$

If your holding has changed between the Register Date and time of acceptance, then write your current holding here. Your acceptance will be granted over your updated holding.

This is an important document. If you are in doubt as to how to complete this form, please consult your financial or other professional adviser immediately.

Acceptance Form

This is a personalised form for the sole use of the holder and holding recorded above.

B You must give your instructions to accept the Option Offer

If you correctly sign and return this form you will be deemed to have accepted the Option Offer in respect of ALL of your APK Options (even if different from the number of APK Options stated on this Acceptance Form). Your form must be received by the end of the Option Offer Period.

Offer Consideration: Please refer to the table in the top right hand corner of this form for payment details.

C Contact details

Please provide your contact name and telephone number in case we need to speak to you about this Acceptance Form.

Telephone Number where you can be contacted during business hours

Contact Name (PRINT)

D You must sign this form for your instructions in this Acceptance Form to be executed

I/We, the person(s) named above:

- accept the Option Offer and each variation of the Option Offer (if any) in respect of all my/our APK Options in accordance with the terms and conditions of the Option Offer as set out in the Bidder's Statement;
- agree to transfer to AGL APG Holdings Pty Limited (**AGL Bidder**) all of my/our APK Options for the consideration specified in the Option Offer;
- agree to give up and forever waive any and all title to, and Rights to which I/we are entitled under, my/our APK Options; and
- agree to otherwise be bound by the terms and conditions of the Option Offer (including the instructions as to the acceptance of the Option Offer on the back of this form).

Optionholder 1 (Individual)

Sole Director & Sole Company Secretary

Optionholder 2 (Individual)

Director/Secretary (delete one)

Optionholder 3 (Individual)

Director

Please refer overleaf for further important instructions

REGISTRY USE ONLY



SRN



Holding

APKT TKO003



Further Important Instructions

To accept the Option Offer, you must complete and return this Acceptance Form in accordance with the instructions below.

Please refer to the Bidder's Statement dated 27 August 2013 which accompanies this Acceptance Form. Unless otherwise specified, capitalised terms are defined in the Bidder's Statement and have the same meaning in this Acceptance Form.

Completion instructions

- A**
- The APK Options are currently registered in the name(s) printed on this form. Amendments to your name can only be processed by Australian Power and Gas Company Limited.
 - Please note** your consideration will be issued in the names as they appear on the Australian Power and Gas Company Limited register.
- D**
- Please sign this Acceptance Form** in the places for signature(s) on the front page and in accordance with the following instructions:
 - Joint APK Optionholders:** If your APK Options are held in the names of more than one person, all of those persons must sign this Acceptance Form.
 - Corporations:** This Acceptance Form must be signed by either two directors or a director and a company secretary. Alternatively, where the company has a sole director and, pursuant to the Corporations Act, there is no company secretary, or where the sole director is also the sole company secretary, that director may sign alone. Alternatively, a duly appointed attorney may sign.
 - Powers of attorney:** If this Acceptance Form is signed under a power of attorney, please attach a certified copy of the power of attorney to this Acceptance Form when you return it. If this Acceptance Form is signed under power of attorney, the attorney declares that he/she has no notice of revocation of the power of attorney.
 - Deceased Estates:** All the executors and administrators must sign this Acceptance Form. When you return this Acceptance Form, please attach a certified copy of probate, letters of administration or certificate of grant accompanied (where required by law for the purpose of transfer) by a certificate of payment of death or succession duties and (if necessary) a statement in terms of Section 1071B(9)(b)(iii) of the Corporations Act.

If you sign and return this Acceptance Form in accordance with these instructions you represent and warrant to AGL Bidder (and authorise AGL Bidder to warrant on your behalf) that you have full legal and beneficial ownership of the APK Options, and that (subject, in the case of the Non-transferable Options, to satisfaction of the Rule 6.23.4 Waiver Conditions) AGL Bidder will acquire them free from all mortgages, charges, liens, encumbrances (whether legal or equitable), restrictions on transfer of any kind and free from any third party rights and confirm the covenants in the Acceptance Form.

Information you supply on this Acceptance Form will be used by AGL Bidder and Link Market Services Limited for the primary purpose of processing your acceptance of the Option Offer and to provide you with the consideration payable under the Option Offer. This information may be disclosed to AGL Bidder's related bodies corporate, professional advisers, securities brokers, printing and mailing providers and other third parties in connection with the Option Offer. If you fail to supply this information, your acceptance may not be processed and you may not receive the consideration payable. You have rights to obtain access to the personal information which you have supplied. Please see Link Market Services Limited's privacy policy on its website www.linkmarketservices.com.au.

Lodgement instructions

- Mail or deliver completed Acceptance Form and any other documents required by the above instructions to:

Mailing Address

Link Market Services Limited
Australian Power and Gas Company Limited Takeover
Locked Bag A14
SYDNEY SOUTH NSW 1235

or

Hand Delivery

Link Market Services Limited
Australian Power and Gas Company Limited Takeover
1A Homebush Bay Drive
RHODES NSW 2138

- A reply paid envelope is enclosed for use within Australia.

Your acceptance must be received by no later than the end of the Option Offer Period, which is 7:00pm (AEST) on the last day of the Option Offer Period.

If you have any questions about the terms of the Option Offer or how to accept, please call the AGL Offer Information Line on the following numbers:

within Australia: 1800 426 150
outside Australia: +61 1800 426 150