



Committee Secretary
Senate Standing Committee on Environment & Communications
PO Box 6100
Parliament House
Canberra ACT 2600

By email: ec.sen@aph.gov.au

19 April 2012

Dear Committee Secretary,

Re: Submission on the Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012

AGL Energy Ltd ("**AGL**") welcomes the opportunity to make a submission on the *Environment Protection and Biodiversity Conservation Amendment (Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Development) Bill 2012* ("**the Bill**").

AGL is Australia's leading renewable energy company with the largest privately owned and operated renewable portfolio in the country. AGL is also one of Australia's largest retailers of gas and electricity with more than 3 million customers in Victoria, New South Wales ("**NSW**"), South Australia and Queensland. AGL operates across the supply chain with investments in energy retailing, coal-fired electricity generation, gas fired electricity generation, renewable and upstream gas exploration and production projects. The diversity of AGL's portfolio has enabled AGL to develop a detailed understanding of the risks and opportunities presented by coal seam gas ("**CSG**") and the broader energy sector.

Overview of AGL Operations

AGL's Upstream Gas business was established to create a portfolio of equity gas investments that will provide AGL with a more flexible, self-supply option to fill the gap between wholesale gas contract positions and AGL customer gas demand. This will ensure that AGL remains a cost competitive and reliable supplier of natural gas into the future.

AGL has invested more than \$700 million in the NSW CSG industry and more than \$350 million in the Queensland CSG industry. AGL wholly owns and operates NSW's largest CSG production facility at Camden, south-west Sydney, which could supply 6% of NSW's gas demand. The company is also exploring for and developing new CSG resources at Gloucester and in the Hunter Valley; and also proposes to invest approximately \$300 million in a gas storage facility at Tomago near Newcastle.

AGL is committed to ensuring that its gas exploration and production activities have a low impact on the environment and the community, and can comfortably co-exist with other land uses, including agricultural, pastoral, residential and industrial development. AGL stands by its record of co-operative engagement with stakeholders.

- > Being selected as a member of the Dow Jones Sustainability Index 2006/07
- > Gaining accreditation under the National GreenPower Accreditation Program for AGL Green Energy®, AGL Green Living® and AGL Green Spirit
- > Being selected as a constituent of the FTSE4Good Index Series



AGL currently operates three wholly-owned CSG exploration and production projects in NSW which are located in Camden, Gloucester and the Hunter Valley; none are within the Murray Darling Basin, and all are wholly located within coastal catchments.

Camden Gas Project (PPLs 1, 2, 4, 5 and 6)

AGL's Camden Gas Project is located in the Camden, Campbelltown and Wollondilly Local Government Areas on the south-western outskirts of Sydney and currently consists of:

1. 80 producing gas wells (out of 138 drilled wells);
2. 100 km of gas gathering lines and associated infrastructure; and
3. the Rosalind Park Gas Plant.

Further expansion is proposed in the northern area around Narellan-Denham Court (possibly an extra 72 individual wells at 12 surface locations).

Gloucester Gas Project (PEL 285)

In February 2011, the NSW Planning Assessment Commission ("**the PAC**") approved the Gloucester Gas Project under Part 3A of the *Environmental Planning and Assessment Act 1979 (NSW)*. This project is located in PEL 285, approximately 100 km north of Newcastle, and represents a \$400 million investment to date by AGL in the NSW gas industry, with a further \$300 million expenditure to be incurred during project development. The terms of the approval issued by the PAC require AGL to finance the construction of the project within the next five years.

The Gloucester Gas Project includes:

1. the Stage 1 gas field development area, including 110 gas wells and associated infrastructure;
2. a central processing facility to treat gas and water;
3. a proposed 15MW gas fired power generation facility;
4. a gas transmission pipeline between the central processing facility and the existing gas supply network at Hexham; and
5. a delivery station at Hexham to connect the transported gas to the existing Sydney-Newcastle trunk pipeline.

Hunter Gas Project (PELs 4 and 267)

The Hunter Gas Project, located in the Hunter Valley between Cessnock and Scone, is still in the exploration stage. In the Hunter AGL has:

1. obtained approximately 300 km of seismic data;
2. flow tested two pilot wells; and
3. drilled 16 core holes and 6 stratigraphic holes.

Exploration activities for the Hunter Gas Project are expected to continue for at least another three to five years, pending a decision to proceed to development.

The Moranbah Gas Project:

The Moranbah Gas Project is located in Queensland in the Bowen Basin region, and is already one of the largest operating CSG projects in Australia. The Moranbah Gas Project

is one of the largest operating CSG projects in Australia. Total production for the year ended 30 June 2010 was 17.32 PJ, a 13 percent increase compared to the prior year.

AGL has a 50% interest in the Moranbah Gas Project which it operates under a joint venture arrangement with Arrow Energy.

AGL is also currently carrying out exploration activity in the Galilee Basin and the Cooper Basin in QLD.

AGL's Submission on the EPBC Bill

The Bill proposes that a number of amendments be made to the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* ("**the EPBC Act**") in relation to the proposed Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Developments ("**IESC**").

AGL supports a robust and scientifically based assessment of all projects, including CSG projects. However, there are a number of issues with the Bill as drafted which AGL submits should be addressed before the Bill is finalised:

1. EPBC Context

AGL notes that, unlike the other Committees established under the EPBC Act, only two of the IESC's functions relate to the operation of the EPBC Act. The remaining seven specific functions of the IESC do not relate at all to the operation of the EPBC Act. Accordingly, AGL questions whether the EPBC Act is the most appropriate legislative vehicle to establish the IESC.

2. Definition

AGL is uncomfortable with the current definition in the Bill of "coal seam gas development". AGL believes that the definition of "coal seam gas development" should be amended to apply to CSG production projects only and to exclude CSG exploration. This would align the definition with that of "large coal mining development" which is limited to "coal mining" and so does not apply to coal exploration.

AGL also submits that the definition of "coal seam gas development" should be amended to remove the reference to "significant impact on water resources".

This is because this requirement:

- (A) duplicates the opinion formed by the Minister under section 131AB (see point 3 below for details); and
- (B) gives rise to a jurisdictional fact which will need to be determined based on the information submitted as part of the EPBC Act assessment process. This information is likely to be limited given that "water" is not a matter of national environmental significance protected under the EPBC Act.

3. Uncertainty

The proposed new section 131AB, as drafted, requires the Minister for Sustainability, Environment, Water, Population and Communities ("**the Minister**") to obtain advice from the IESC before proceeding to determine whether or not to approve controlled actions if:

- (1) The controlled action involves "coal seam gas development" or "large coal mining development"; and
- (2) *"the Minister believes that the taking of the action:*
 - (i) *is likely to have a significant impact on water resources; and*
 - (ii) *may have an adverse impact on a matter protected by a provision of Part 3."*

Accordingly, before section 131AB(2) will apply to a particular CSG project, it is necessary for each of the following requirements to have been met:

- (1) The CSG project must be a controlled action which is “likely to have a significant impact” on a matter protected by a provision of Part 3 of the EPBC Act. Whether or not this requirement is met is a jurisdictional fact.
- (2) The CSG project must be “likely to have a significant impact on water resources” such that it comes within the definition of being “coal seam gas development”. Again, whether or not this requirement is met will be a jurisdictional fact.
- (3) The Minister to form the belief that the carrying out of the project “*is likely to have a significant impact on water resources*” and “*may have an adverse impact on a matter protected by a provision of Part 3*”.

AGL believes that the level of duplication and the differing standards which apply to each of these requirements is likely to cause significant uncertainty as to the application of section 131AB and to result in litigation. AGL submits that the requisite belief which the Minister be required to form under section 131AB(1) should be amended to a belief that:

“... the taking of action:

- (i) *is likely to have a significant impact on water resources; and*
- (ii) *that the water impacts of the action are likely to have a significant impact on a matter protected by a provision of Part 3.”*

Without this amendment being made, AGL believes the provision:

- (1) does not link the likely “significant water impacts” to the controlling provision under which the action is a controlled action and so, arguably, exceeds the constitutional basis of the EPBC Act;
- (2) unnecessarily duplicates the provisions of the EPBC Act which make the action a controlled action in the first place; and
- (3) imposes an additional, inconsistent test, of “may have an adverse impact” on a matter protected by a provision of Part 3. This test is not used elsewhere in the EPBC Act and there are currently no guidelines to aid in its interpretation and application.

4. Relevant Advice

The proposed new section 136(2)(fa) requires the Minister to, when determining whether or not to approve the taking of a controlled action, to take into account “any relevant advice obtained by the Minister from the IESC on Coal Seam Gas and Large Coal Mining Development in accordance with section 131AB” in considering the mandatory considerations of:

- (1) matters relevant to any matter protected by a provision of Part 3 that the Minister has decided is a controlling provision for the action; and
- (2) economic and social matters.

The Explanatory Memorandum states that:

“For the purposes of the Minister’s decision on approval, relevant advice is considered to be any part of the Committee’s advice that relates to matters protected by the controlling provisions.”

AGL submits that a new definition of “Relevant Advice” should be included in the EPBC Act which reflects the explanation given in the Explanatory Memorandum. In the absence of such a definition, there is likely to be considerable uncertainty as to which portions of the advice received from the IESC are relevant matters which may be taken into account by the Minister.



5. *'Stop the clock'*

This section operates to “stop the clock” for the purposes of the provisions on the timing of decisions for a period commencing on the day the Minister requests the IESC’s advice until the day on which the Minister obtains that advice.

AGL is strongly opposed to the inclusion of this provision in the Bill. Section 130(5) of the EPBC Act already enables the Minister to extend the time allocated for determining applications in the event that the Minister, having formed the view on reasonable grounds that he or she does not have enough information to make an informed decision whether or not to approve for the purposes of a controlling provision the taking of an action, requests further information in relation to a controlled action. Given this, the proposed section 130(4)(a) is unnecessary, and likely to cause increased delays which will prevent timely decision making.

As a minimum, AGL submits that section 130(4)(a) should be amended to make it clear that the clock will recommence if, for whatever reason, the IESC has not provided its advice within the 2 month time period specified in the Bill.

Conclusion

AGL thanks the Committee for the opportunity to provide a submission. AGL is committed to the sustainable development of CSG, which has been recognised by Federal and State governments as an important resource for Australia. While operating with the highest operational and environmental standards, AGL is also committed to positively engaging and supporting the communities in which it operates.

Yours sincerely,

Mike Moraza
Group GM Upstream Gas