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24 July 2013

BY ELECTRONIC LODGEMENT

Company Announcements
ASX Limited
Exchange Centre
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Sydney NSW 2000

ashurst

AGL APG Holdings Pty Limited 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 Limited ACN 081 834 826 (a wholly owned subsidiary of AGL Energy Limited (ASX: AGK)) (**AGL Bidder**) in relation to its off-market takeover bid for all of the ordinary shares in Australian Power and Gas Company Limited ABN 96 077 206 583 (**APK**) that AGL Bidder does not already hold (**Takeover Offer**).

On behalf of AGL Bidder and pursuant to item 5 of section 633(1) of the *Corporations Act 2001* (Cth) (**Act**), we **attach** a copy of the bidder's statement (including the terms of the offer) dated 24 July 2013 in respect of the Takeover Offer (**Bidder's Statement**).

We note, for the purposes of section 633(4) of the Act, that AGL Bidder has set 7.00pm on 24 July 2013 (AEST) as the time and date for determining those persons to whom information is to be sent under items 6 and 12 of section 633(1) of the Act. This is specified in the Bidder's Statement.

The Bidder's Statement has today been lodged with the Australian Securities and Investments Commission and sent to APK.

Yours faithfully

Ashurst Australia

Ashurst Australia

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

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Bidder's Statement

ACCEPT RECOMMENDED CASH 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

to acquire all of your ordinary shares in
Australian Power and Gas Company Limited
ABN 96 077 206 583

for \$0.52 cash for each APK Share

The Recommending Directors of Australian Power and Gas Company Limited unanimously recommend that you

ACCEPT THE OFFER

in the absence of a superior proposal and subject to the independent expert concluding the 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

Energy in
action.[®]

AGL

Deutsche Bank 
Financial adviser

ashurst
Legal adviser

Important Notices

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 Offer. This Bidder's Statement is dated 24 July 2013 and includes in Section 9 an Offer dated [insert date] to acquire all Your APK Shares.

(b) AGL APG Holdings Pty Limited

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 AGL APG Holdings Pty Limited ABN 72 081 834 826 is referred to as AGL Bidder and AGL Energy Limited ABN 74 115 061 375 is referred to as AGL.

(c) Australian Securities and Investments Commission

A copy of this Bidder's Statement was lodged with ASIC on 24 July 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 Offer is made for the shares of an Australian registered company. It is important that US shareholders understand that the 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 Shares otherwise than under the Offer, such as in open market or 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 below). 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 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 Offer. The forward looking statements are based on information available to 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 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 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 Shareholders 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 Shareholders for the purposes of making the Offer and, if accepted, administering your holding of APK Shares. The Corporations Act requires the names and addresses of APK Shareholders to be held in a public register. Your information may be disclosed on a confidential basis to AGL Bidder'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 "AGL" Level 22, 120 Spencer Street, Melbourne, Victoria, 3000.

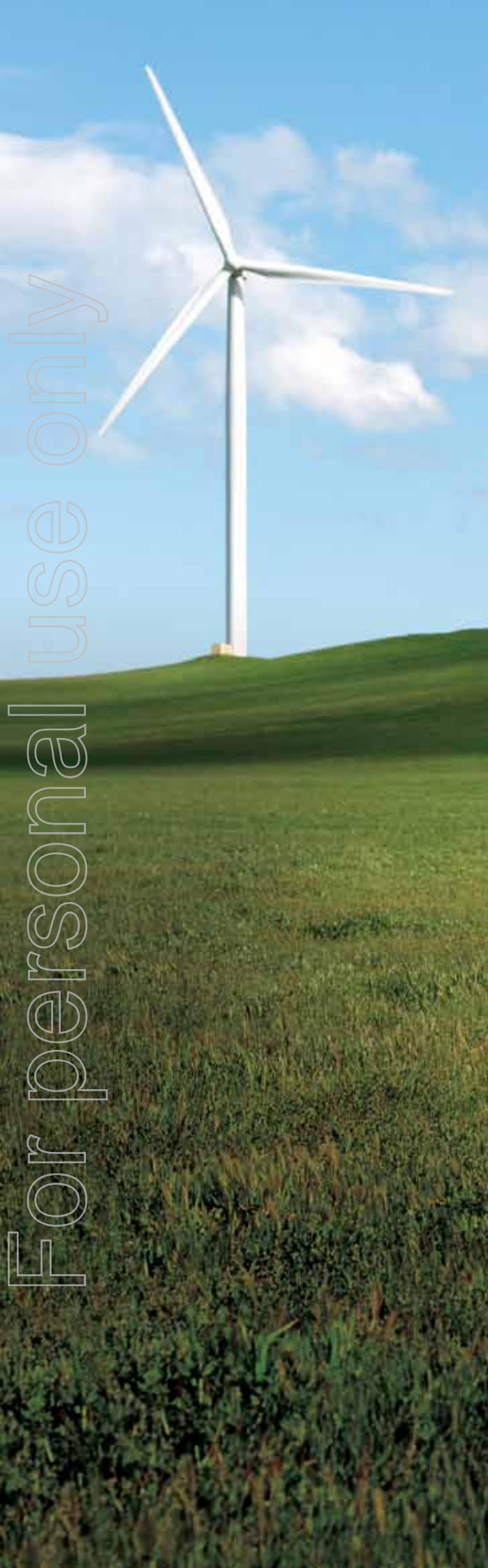
(j) Defined terms and interpretation

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.

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How do I accept the Offer?

You may only accept the Offer for all of Your APK Shares. Acceptances must be received before 7:00 pm (AEST) on [insert date] (unless extended).

For Issuer Sponsored Holdings of APK Shares (Securityholder Reference Number beginning with "I")

To accept the Offer, complete the enclosed Issuer Acceptance Form in accordance with the instructions on it and return it in the enclosed envelope or to the address on the Issuer Acceptance Form so that it is received before 7:00 pm (AEST) on [insert date] (unless extended).

For CHESS Holdings of APK Shares (Holder Identification Number beginning with "X")

To accept the Offer, either contact your Controlling Participant (usually your Broker) and instruct them to accept the Offer on your behalf, or complete the enclosed CHESS Acceptance Form in accordance with the instructions on it and return it in the enclosed envelope or to the address on the CHESS Acceptance Form.

AGL Offer Information Line

If you have any questions in relation to this document, the Offer or how to accept the 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 8:30 am and 5:30 pm (AEST). Please note that calls to these numbers may be recorded.

Key Dates

Event	Date
Bidder's Statement lodged with ASIC and the ASX	24 July 2013
Date of Offer	[insert date]
Date of Offer conditions notice*	[insert date]
Offer closes (unless extended)*	[insert date]

Note:

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



Dear Australian Power and Gas Shareholder,

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 the issued ordinary shares of APK not already owned by it, as well as information relevant to the Offer. AGL Bidder is offering \$0.52 cash for every APK Share.

This all-cash Offer represents:

- a 33.3% premium to the closing price of 39.0 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% 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.

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

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

AGL Bidder recently acquired 19.9% of APK from APK's three largest shareholders – Nippon Gas, Cobra Group and the Poole Interests.

In addition, Nippon Gas, Cobra Group and the Poole Interests have announced their intention to accept the Offer in respect of all APK Shares they hold or control by no later than the next business day after the Offer becomes free of Defeating Conditions, in the absence of a superior proposal. This collectively accounts for 38.9% of the total number of APK Shares on issue (in addition to the 19.9% already held by AGL).

AGL Bidder's Offer provides you with certainty of value at a substantial premium for Your APK Shares and removes the industry, funding and operational risks associated with owning APK Shares. In addition, prior to the Announcement Date APK has been a stock with relatively low trading liquidity. Accordingly the Offer allows you to sell all of your shareholding in APK for cash.

I encourage you to read this Bidder's Statement for more details about the Offer and about both AGL and AGL Bidder. The Offer is open for your acceptance until 7:00 pm (AEST) on [insert date], unless extended. If you wish to accept the Offer, please complete and return the enclosed Acceptance Form so that it is received before the 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 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 8:30 am and 5:30 pm (AEST) Monday to Friday.

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

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Jeremy Maycock', written over a horizontal line.

Jeremy Maycock, Chairman
AGL Energy Limited

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Summary of the Offer

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

Offer

The Offer consideration is \$0.52 cash per APK Share. AGL Bidder is offering to acquire all of Your APK Shares by way of an off-market takeover bid.

The Offer relates to all APK Shares on issue on the Register Date together with those which are issued following the exercise of APK Options prior to the close of the Offer Period.

Offer Period

The Offer closes at 7:00 pm (AEST) on [insert date], unless it is extended or withdrawn by AGL Bidder.

How to Accept and Payment Date

To accept the Offer you should follow the instructions set out in Section 1.2 and on the Acceptance Form. Your acceptance must be received before the Offer Period ends.

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

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

Conditions

The conditions of the Offer are set out in full in Section 9.8 below. These conditions include:

- **(90% acceptances)** AGL Bidder acquiring a relevant interest in more than 90% of the APK Shares at the end of the Offer Period;
- **(ACCC no objection)** AGL Bidder not receiving written notification before the end of the Offer Period that the ACCC objects to the acquisition of the APK Shares under the Offer;
- **(Material Adverse Change)** no material adverse change occurs during the Condition Period;
- **(Customers)** the Target's Statement contains confirmation from APK that the number of APK's retail customer accounts is not less than 340,500 (and this statement does not change during the Offer Period);
- **(No prescribed occurrences)** no prescribed occurrence occurs during the Condition Period; and
- **(No regulatory action)** no Public Authority (excluding the ACCC) takes any action during the Condition Period which has, or which may, materially adversely impact upon the Offer, or requires divestiture of any assets by APK or by any subsidiary of APK.

Broker fees

There are no brokerage costs in accepting the Offer. If you sell Your APK Shares on the ASX you will need to pay brokerage.

Why you should accept the AGL Offer

Why you should accept the AGL Offer

1 Substantial premium to recent APK Share price

AGL Bidder's Offer of \$0.52 cash per APK Share represents a substantial premium to APK's pre-announcement share price:

- a 33.3% premium to the closing price of 39.0 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.

2 The Recommending Directors unanimously recommend that you accept the Offer

The Recommending Directors unanimously recommend that you accept the Offer in the absence of a superior proposal and subject to the independent expert appointed by APK concluding that the Offer is reasonable. All APK Directors who own APK Shares have stated their intention to accept the Offer in respect of all APK Shares that they hold or control by not later than the next business day after the Offer becomes free of Defeating Conditions, in the absence of a superior proposal.

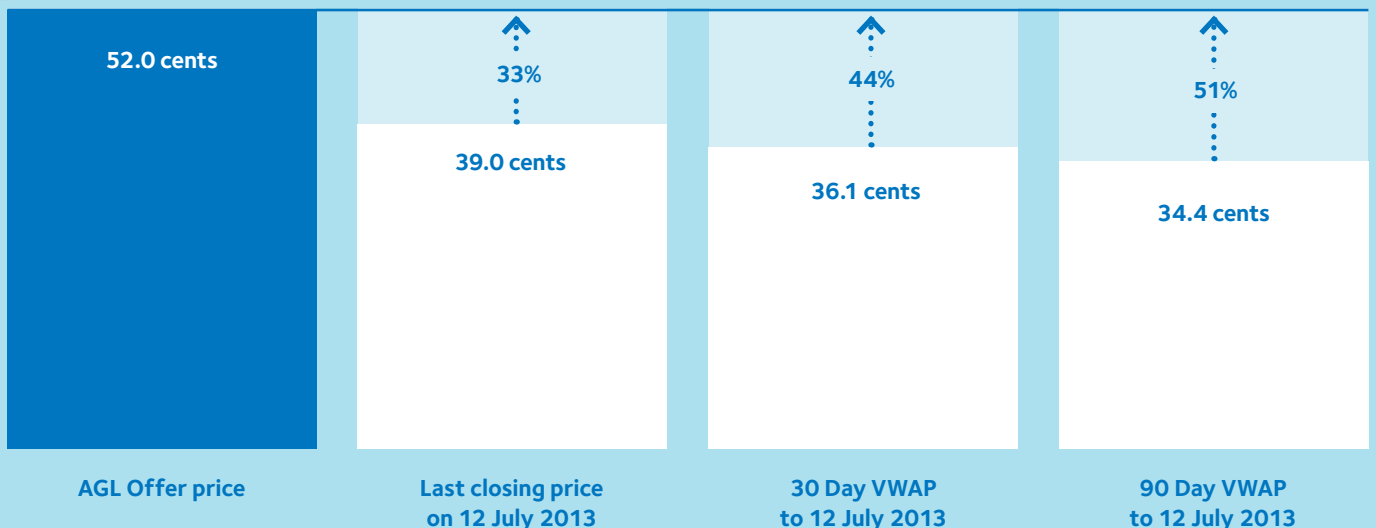
3 Major shareholder support

AGL Bidder recently acquired a 19.9% interest in APK from APK's three largest shareholders – Nippon Gas (~5.2%), Cobra Group (~5.2%) and the Poole Interests (~9.5%). As a result, AGL currently holds 19.9% of the total number of APK Shares on issue.

In addition, Nippon Gas, Cobra Group and the Poole Interests have announced their intention to accept the Offer in respect of all APK Shares they hold or control by no later than the next business day after the Offer becomes free of Defeating Conditions, in the absence of a superior proposal. This collectively accounts for 38.9% of the total number of APK Shares on issue (in addition to the 19.9% already held by AGL).

For further information on the arrangements described above please refer to Section 8.2.

Figure 1 – AGL Offer price compared to APK Share prices



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Why you should accept the AGL Offer

4 100% cash consideration: Certain and immediate value for Your APK Shares

AGL Bidder is offering to acquire all of Your APK Shares for cash. This gives APK Shareholders certainty about the value of the consideration being offered (subject to the Defeating Conditions being satisfied). This may be particularly attractive for APK Shareholders given the risks associated with APK's business and the risks associated with owning shares in a listed company.

AGL Bidder's all-cash Offer will be funded from a combination of the AGL Group's current cash resources and available debt facilities.

5 You will no longer be exposed to the risks and uncertainties associated with owning APK Shares

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.

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 the first half of 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 will result in an increased provision affecting the FY2013 results;

- 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's need for further funding may be exacerbated by the industry challenges described above.

APK had an estimated net debt of \$55 million outstanding as at 30 June 2013 (estimated as at the Announcement Date).

Lack of scale:

- APK currently has approximately 354,000 customers as at 30 June 2013, which is significantly less than the major competitors in the sector.
- APK has also recently issued guidance that its current customer numbers may decrease in FY2014.

The table below answers some key questions that you may have about the 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 Shares.

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Frequently asked questions

Question	Answer
What is the Offer?	AGL Bidder is making an Offer to acquire all of Your APK Shares. The Offer consideration is \$0.52 cash per APK Share.
What is the Bidder's Statement?	<p>This Bidder's Statement was prepared by AGL Bidder for distribution to APK Shareholders. The Bidder's Statement describes the terms of AGL Bidder's Offer for Your APK Shares and information relevant to your decision whether or not to accept the Offer.</p> <p>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.</p>
Who are AGL Bidder and AGL?	AGL is the ultimate holding company of AGL Bidder (formerly AGL Utility Services Pty Ltd). 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?	<p>Through interests acquired pursuant to various Pre-Bid Acquisition Agreements entered into on the Announcement Date with Nippon Gas, Cobra Group and the Poole Interests, AGL Bidder is the registered holder of 38,113,795 APK Shares which represents 19.9% of the total number of APK Shares on issue.</p> <p>Further information on these arrangements is set out in Section 8.2 of this Bidder's Statement.</p> <p>In addition, each of Nippon Gas, Cobra Group and the Poole Interests have announced their intention to accept the Offer in respect of all APK Shares they hold or control by no later than the next business day after the 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).</p>
Do APK Directors support the Offer?	<p>Yes, the Recommending Directors have unanimously recommended that APK Shareholders accept the Offer, in the absence of a superior proposal and subject to the independent expert appointed by APK concluding that the Offer is reasonable.</p> <p>All APK Directors have stated their intention to accept the Offer in respect of all APK Shares that they hold or control by no later than the next business day after the Offer becomes free of Defeating Conditions, in the absence of a superior proposal.</p>
Why aren't all of the APK Directors providing a recommendation?	<p>The APK Directors who are not Recommending Directors, being Michael Hogg and Shinji Wada, have determined that they do not consider it is appropriate to give a recommendation to the APK Shareholders in connection with the Offer.</p> <p>Mr Michael Hogg was nominated to the APK Board by Cobra Group which holds a relevant interest in 13.44% of the total number of APK Shares on issue.</p> <p>Mr Shinji Wada was nominated to the APK board by Nippon Gas which holds a relevant interest in 17.23% of the total number of APK Shares on issue.</p> <p>All APK Directors, including Mr Hogg and Mr Wada, who own or control APK Shares have stated their intention to accept the Offer in respect of all APK Shares that they hold or control by no later than the next business day after the Offer becomes free of Defeating Conditions, in the absence of a superior proposal.</p> <p>In addition, Cobra Group and Nippon Gas have announced their intention to accept the Offer in respect of all APK Shares they hold or control by no later than the next business day after the Offer becomes free of Defeating Conditions, in the absence of a superior proposal.</p>

Question	Answer
How do I accept the Offer?	To accept the Offer you should follow the instructions set out in Section 1.2 and on the Acceptance Form. Your acceptance must be received before the Offer Period ends.
Are there any conditions of the Offer?	<p>The conditions of the Offer are set out in full in Section 9.8. These conditions include:</p> <ul style="list-style-type: none"> – (90% acceptances) AGL Bidder acquiring a relevant interest in more than 90% of the APK Shares at the end of the Offer Period; – (ACCC no objection) AGL Bidder not receiving written notification before the end of the Offer Period that the ACCC objects to the acquisition of the APK Shares under the Offer; – (Material Adverse Change) no material adverse change occurs during the Condition Period; – (Customers) the Target's Statement contains confirmation from APK that the number of APK's retail customer accounts is not less than 340,500 (and this statement does not change during the Offer Period); – (No prescribed occurrences) no prescribed occurrence occurs during the Condition Period; and – (No regulatory action) no Public Authority (excluding the ACCC) takes any action during the Condition Period which has, or which may, materially adversely impact upon the Offer, or requires divestiture of any assets by APK or by any subsidiary of APK.
How long is the Offer open for?	The Offer opens on [insert date] and is scheduled to close at 7:00 pm (AEST) on [insert date] (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 Offer. You may incur brokerage costs, including GST on those costs, if you choose to sell Your APK Shares on the ASX.
What should I do?	<p>To accept the Offer, you should:</p> <ol style="list-style-type: none"> (a) read this Bidder's Statement in full; (b) read APK's Target's Statement in full (when issued); (c) 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 Offer; and (d) accept the Offer in the manner described in Section 1.2 and on the Acceptance Form. <p>If you have any queries about the Offer, you may also call the AGL Offer Information Line on 1800 426 150 (or +61 1800 426 150 for overseas domiciled holders) between 8:30 am and 5:30 pm (AEST) Monday to Friday.</p>
What choices do I have as an APK Shareholder?	<p>As an APK Shareholder, you have the following choices in respect of Your APK Shares:</p> <ol style="list-style-type: none"> (a) accept the Offer; (b) sell Your APK Shares on the ASX (unless you have previously accepted the Offer for Your APK Shares); or (c) do nothing.

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Question	Answer
If I accept the Offer, when will I receive consideration for my APK Shares?	<p>If you accept the Offer and the Offer becomes unconditional, AGL Bidder will pay you the consideration under the Offer by the earlier of:</p> <p>(a) 21 days after the end of the Offer Period; or</p> <p>(b) one month after the later of receipt of your valid acceptance and the date on which the Offer becomes unconditional.</p>
What happens if I accept the Offer?	<p>Once you accept the Offer (even while it remains subject to Defeating Conditions) you will not be able to sell Your APK Shares or otherwise deal with the Rights attaching to Your APK Shares, subject to your limited statutory rights to withdraw your acceptance in certain circumstances.</p>
What happens if I do not accept the Offer?	<p>If you do not accept the Offer and you do not sell Your APK Shares on the ASX, you will remain an APK Shareholder and will not receive any cash consideration.</p> <p>However, if AGL Bidder becomes entitled to compulsorily acquire Your APK Shares, it intends to do so. If this occurs, you will still receive the cash consideration but at a later date than you would have received it if you had accepted the Offer.</p>
What are the tax implications of accepting the Offer?	<p>A general description of the taxation treatment for certain Australian resident APK Shareholders accepting the Offer is set out in Section 7.</p> <p>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.</p> <p>You should consult your taxation adviser for detailed taxation advice before making a decision as to whether or not to accept the Offer for Your APK shares.</p>
What is the effect of the Offer on APK Options?	<p>AGL Bidder proposes to make a takeover offer to APK Optionholders to acquire 100% of their APK Options (Option Offer) subject to obtaining regulatory relief that is necessary to make the proposed Option Offer. The price which AGL bidder proposes to offer to APK Optionholders under the Option Offer is in accordance with an independent valuation prepared for AGL by BDO. Each APK Director, Cobra Group and the Poole Interests have stated that they intend to accept the Option Offer in respect of all APK Options held or controlled by them by no later than the next business day after the Option Offer becomes free of conditions, in the absence of a superior proposal.</p> <p>Further information about the proposed Option Offer is set out in Section 8.3 and will be set out in the bidder’s statement for the Option Offer.</p> <p>The Offer also applies to APK Shares which are issued following the exercise of APK Options prior to the close of the Offer Period. Therefore APK Optionholders can either accept the Option Offer or exercise their APK Options, be issued with APK Shares and accept the Offer in respect of those APK Shares or do nothing.</p>

1

Overview of the Offer

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1.1 Summary of Offer Terms

AGL Bidder offers to acquire all of Your APK Shares for \$0.52 cash per APK Share on the terms of the Offer set out in Section 9 of this Bidder's Statement.

The Offer relates to APK Shares that exist as at the Register Date.

The Offer also extends to all APK Shares that are issued between that date and the end of the Offer Period as a result of the exercise of APK Options.

Under the terms of the 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 Shares, on or after the Announcement Date, which AGL Bidder does not receive.

Offer Period

The Offer is scheduled to close at 7:00 pm (AEST) on [insert date] (but it may be extended or withdrawn in accordance with the Corporations Act).

Payment date

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

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

Conditions

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

1.2 How to accept the Offer

The Offer may only be accepted for all of Your APK Shares.

How you accept the Offer depends on whether Your APK Shares are in an Issuer Sponsored Holding or a CHESS Holding. You will have been sent an Acceptance Form with this Bidder's Statement (an Issuer Acceptance Form or a CHESS Acceptance Form), which will be the Acceptance Form to be used in relation to Your APK Shares:

- (a) If you hold Your APK Shares in an Issuer Sponsored Holding (your SRN starts with an "I"), to accept the Offer you must complete, sign and return the enclosed Issuer 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 Offer Period.
- (b) If you hold Your APK Shares in a CHESS Holding (your HIN starts with an "X"), to accept the Offer you must either:
 - (i) instruct your Controlling Participant (for example, your Broker) to initiate acceptance of the Offer before the end of the Offer Period; or
 - (ii) complete the accompanying CHESS Acceptance Form and send the completed CHESS Acceptance Form (together with all other documents required by the instructions on the form) directly to your Broker or other Controlling

Participant in sufficient time for the Offer to be accepted before the end of the Offer Period with instructions to initiate acceptance of the Offer on your behalf before the end of the Offer Period; or

- (iii) complete, sign and return the CHESS Acceptance Form in accordance with the instructions on it and lodge it by returning it to the address indicated on the form (and set out below) so that your acceptance is received before 7:00 pm (AEST) on the second-last day of the Offer Period. This will authorise AGL to instruct your Broker or other Controlling Participant to initiate acceptance of the Offer on your behalf.

- (c) If you are a Controlling Participant (usually, a Broker or a bank, custodian or other nominee), to accept the Offer you must initiate acceptance in accordance with the requirements of the ASX Settlement Operating Rules before the end of the Offer Period.

You must complete and sign your Acceptance Form 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:

In Sydney between 8:30 am and 5:00 pm (AEST)

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 the terms of the Offer in this Bidder's Statement.

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Information on AGL and AGL Bidder

2

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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 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)
- Anthony Fowler (AGL Group General Manager Merchant 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.

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Information on APK

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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. In May 2013 APK announced that it had approximately 350,000 retail 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 2012, APK’s revenue was up 59% year on year to \$364.8 million driven by strong growth in customer numbers. The number of customer accounts increased by 25% to 341,000, with growth experienced in all eastern seaboard states. The company’s statutory loss reduced to \$3.9 million, compared with the loss of \$9.5 million in FY11 as the benefits of scale started to flow through. Underlying after-tax profit¹ was up 63% to \$6.1 million while underlying cash flow was up \$20.5 million to \$22.2 million. APK had an estimated net debt of \$55 million as at 30 June 2013 (estimated as at the Announcement Date).

For the 12 months ended 30 June 2012, APK sourced 72% of its revenues from electricity customers and 28% 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.

For the six months ended 31 December 2012, APK’s revenue increased by 42% to \$248.3 million (1H12: \$174.8 million). This increase included the impact of the passing through of distributor cost increases and the Federal Government’s carbon tax. Annualised average revenue per account increased to \$726 (1H12: \$587). The company’s statutory result for 1H13 benefited from a \$5.1 million after tax gain on the increased value of hedges in place to manage wholesale electricity costs. Removing this gain saw the company generate an underlying loss after tax of \$2 million. The result included a \$6 million increase in the bad debts provision due to an unexpected growth in the number of customers on hardship programs that occurred in the last months of 2012.

3.2 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

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 on the Announcement Date.

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
OC Funds Management Limited ACN 092 872 056	11,106,995	5.89
AGL Bidder	38,113,795	19.9

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 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.

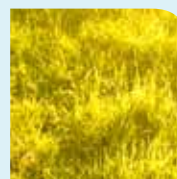
¹ Underlying result excludes impact of hedge valuations that relate to future periods.

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AGL's intentions

4



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 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 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 Offer and the Option Offer, AGL becomes entitled to compulsorily acquire outstanding Options under either Part 6A.1 or Part 6A.2 of the Corporations Act, AGL presently intends to proceed with the compulsory acquisition of those convertible securities 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 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.

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(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

This 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 Offer.

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

AGL does not currently intend to waive this condition. If, however, AGL decides to declare the 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 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 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, 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 Offer if they do not accept the Offer.

Even if AGL is not entitled to proceed to compulsory acquisition of minority holdings after the end of the 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 Options where it is entitled to do so.

(b) General operational review

After the end of the 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.

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Information on APK Securities

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Section 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
22/12/14	2,500,000	\$0.40 (minimum of 40 cents or 30 day VWAP at time of exercise)
31/12/13	5,000,000	\$0.55
31/03/14	250,000	\$0.35
31/10/13	513,031	\$0.35
30/10/14	2,035,000	\$0.40
30/10/14	1,500,000	\$0.45
30/10/14	125,000	\$0.50
1/10/14	500,000	\$0.50
30/10/14	125,000	\$0.55
1/10/14	500,000	\$0.55
30/10/15	1,519,243	\$0.55
31/12/13	18,900,000	\$0.60
30/10/15	925,000	\$0.60
1/07/15	500,000	\$0.70
30/10/13	500,000	\$0.70
30/10/13	500,000	\$0.80
1/07/14	1,000,000	\$0.20

AGL Bidder proposes to make a takeover offer to APK Optionholders to acquire 100% of their APK Options subject to obtaining regulatory relief that is necessary to make the proposed Option Offer. The price which AGL Bidder proposes to offer to APK Optionholders under the Option Offer is in accordance with an independent valuation prepared for AGL by BDO. Each of the APK Directors, Cobra Group and the Poole Interests has stated that they intend to accept the Option Offer by no later than the next business day after the Option Offer becomes free of conditions, in the absence of a superior proposal.

Further information about the proposed Option Offer is set out in Section 8.3 and will be set out in the bidder's statement for the Option Offer.

This Offer also applies to APK Shares which are issued following the exercise of APK Options prior to the close of the Offer Period. Therefore APK Optionholders can either accept the Option Offer or exercise their APK Options, be issued with APK Shares and accept the Offer in respect of those APK Shares or do nothing.

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 8.4(c)).

AGL understands that APK has further agreed with Nippon Gas that, if the Offer becomes free of Defeating Conditions, then on the date which is 10 business days after the close of the 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 8.4(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 38,113,795 APK Shares;
- (b) AGL Bidder has a relevant interest in 0 APK Options; and
- (c) AGL Bidder has voting power in APK of 19.9%.

5.4 Consideration provided for APK securities during previous 4 months

Except as set out below, 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 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 Your APK Shares under the Offer.

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

(b) Options

AGL Bidder has not agreed to provide any consideration for any APK Options during the four months before the date of this Bidder's Statement.

AGL Bidder proposes to make a takeover offer to APK Optionholders to acquire 100% of their APK Options subject to obtaining regulatory relief that is necessary to make the proposed Option Offer. The price which AGL Bidder proposes to offer to APK Optionholders under the Option Offer is in accordance with an independent valuation prepared for AGL by BDO. Further information about the proposed Option Offer is contained in Section 8.3 and will be set out in the bidder's statement for the Option Offer.

(c) Election rights

Nippon Gas currently holds 6 million Election Rights. AGL understands that APK has agreed with Nippon Gas that, if the Offer becomes free of Defeating Conditions, then on the date which is 10 business days after the close of the 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 8.4(c) of this Bidder's Statement.

5.5 Inducing benefits given during previous 4 months

Except as set out in this Bidder's Statement, and otherwise in connection with 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 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 Offer; or
- (b) dispose of APK Shares,

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

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Funding

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6.1 Maximum cash consideration

Based on the number of APK Shares on issue as at the date of this Bidder’s Statement, and as AGL Bidder is the registered holder of 38,113,795 APK Shares as at the date of this Bidder’s Statement, the maximum amount of cash that would be payable by AGL Bidder under the Offer if acceptances were received for all APK Shares that AGL Bidder does not already own is approximately \$79,774,663.80.

In addition, if the holders of all of the 36,892,274 APK Options currently on issue exercise those options and accept the Offer in respect of the APK Shares issued to them, an additional amount of \$19,183,982.48 will be payable by AGL Bidder under the Offer.

Accordingly, the maximum cash amount which may be required by AGL Bidder to settle acceptances under the Offer is \$98,958,646.28 (**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 Shares (including APK Shares which are issued as a result of the exercise of any APK Options) pursuant to the 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 funds required by AGL to fund AGL Bidder to pay the Maximum Cash Consideration 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 exceeds 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 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

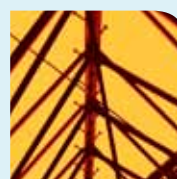
Having regard to the matters set out above, AGL Bidder is of the opinion that it has a reasonable basis for forming, and it holds, the view that it will be able to pay the Maximum Cash Consideration required for the acquisition of APK Shares pursuant to the Offer.

The Offer is not subject to any financing conditions.

Taxation implications

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The following is a general description of the Australian income tax, GST and stamp duty consequences for APK Shareholders of disposing of their APK Shares in return for cash under the Offer.

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

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

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 Shareholders.

APK Shareholders are advised to seek independent professional advice regarding the Australian tax consequences of disposing of Your APK Shares according to each APK Shareholder’s particular circumstances.

7.1 APK Shareholders who are Australian residents for tax purposes

(a) CGT consequences of accepting the Offer

If you are an Australian resident for Australian income tax purposes, the disposal of Your APK Shares pursuant to the Offer will constitute a capital gains tax (CGT) event.

The time of the CGT event is when you dispose of Your APK Shares for CGT purposes. You should be taken to have disposed of Your APK Shares for CGT purposes when the contract to sell Your APK Shares comes into existence. This should be the date that you accept the Offer to dispose of Your APK Shares. However, if you do not ultimately dispose of Your APK Shares (eg, if the Defeating Conditions are not fulfilled or the Offer is withdrawn) then no CGT event should happen to Your APK Shares.

The disposal of Your APK Shares will give rise to a capital gain or loss equal to the difference between:

- (i) the capital proceeds received for the disposal of Your APK Shares (ie, the cash received under the Offer); and
- (ii) the cost base (or, in the case of a capital loss, reduced cost base) of Your APK Shares (which would generally

include the amount paid to acquire the APK Shares plus any incidental costs of acquisition, eg, brokerage fees and stamp duty).

You will need to consider the consequences of the disposal of different parcels of Your APK Shares and which were acquired at different times. It may be possible that you have derived capital gains on some parcels of Your APK Shares 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 disposal of Your APK Shares 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) Indexation

If Your APK Shares were acquired at or before 11:45 am (ACT time) on 21 September 1999, for the purpose of calculating a capital gain (but not a capital loss), you may choose that the cost base of those shares be indexed for inflation to 30 September 1999 (which would only be of any practical effect if the shares were acquired prior to 1 July 1999).

If you choose the indexation option, capital losses are applied after calculating the capital gain using the indexed cost base.

The “choice” to apply indexation rather than the discount capital gain provisions must be made by you on or before the day you lodge your income tax return for the income year in which the disposal occurs. The manner in which you complete your income tax return is generally sufficient evidence of your making of a choice.

Alternatively, provided you have held Your APK Shares for at least 12 months, and you do not choose to apply indexation, the discount capital gain provisions may apply (as discussed further below).

(c) Discount capital gains

If you are an individual, trustee of a trust or a complying superannuation fund and have held Your APK Shares for at least 12 months before disposal, 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 shares) 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 shares) 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.

7.2 APK Shareholders who are not Australian residents for tax purposes

If you are not a resident of Australia for Australian income tax purposes, you will generally not be subject to CGT on the disposal of Your APK Shares unless both of these conditions apply to you:

- (a) you (together with your associates) owned at least 10% of the total number of APK Shares on issue either at the time you disposed of Your APK Shares or for at least 12 months during the 24 months before you disposed of Your APK Shares; and
- (b) 50% or more of the value of APK is represented, directly or indirectly, by real property in Australia (which for these purposes includes mining rights and leases located in Australia).

If you either alone or together with your associates hold 10% or more of the total number of APK Shares on issue you should seek your own professional advice with respect to the CGT consequences of disposing of Your APK Shares.

7.3 GST

The disposal of Your APK Shares in return for cash under the Offer will not attract GST. To the extent that you incur GST on acquisitions which you make in connection with the 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.

7.4 Stamp Duty

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

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Additional information

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8.1 Offer conditions

The Defeating Conditions of the Offer are set out in Section 9.8.

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 have announced their intention to accept the Offer in respect of all APK Shares they hold or control by no later than the next business day after the 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).

8.3 Option Offer

AGL Bidder proposes to make a takeover offer to APK Optionholders to acquire 100% of their APK Options subject to obtaining regulatory relief that is necessary to make the proposed Option Offer. The price which AGL Bidder proposes to offer to APK Optionholders under the Option Offer is in accordance with an independent valuation prepared for AGL by BDO.

Each of the APK Directors, Cobra Group and the Poole Interests have stated that they intend to accept the Option Offer by no later than the next business day after the Option Offer becomes free of conditions, in the absence of a superior proposal.

AGL Bidder also understands that Finflex and its related entities have stated to APK that they intend to accept the Option Offer on or before the next business day after the Option Offer becomes free of conditions, in the absence of a superior proposal.

Further information about the proposed Option Offer will be set out in the bidder's statement for the Option Offer.

This Offer also applies to APK Shares which are issued following the exercise of APK Options prior to the close of the Offer Period. Therefore APK Optionholders can either accept the Option Offer or exercise their APK Options, be issued with APK Shares and accept the Offer in respect of those APK Shares or do nothing.

8.4 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 Offer. The Termination Letters confer on APK benefits in the nature of a non-compete commencing from the time at which the 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 8.4(a) to 8.4(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 Offer under their engagement letters will arise when the 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 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 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 of the Financial Advisers that the mandate with each Financial Adviser will terminate with effect from the date the applicable success fee in relation to the Offer is paid to that Financial Adviser.

AGL understands that during the 2 years from the date the 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 Cobra Group. As at the date of this Bidder's Statement Cobra Group has a relevant interest in 13.44% of the total number of APK Shares currently on issue. 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 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 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 Offer becomes free from Defeating Conditions:

- (i) then on the date which is 10 business days after the close of the 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 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 Offer.

AGL understands that during the 2 years from the date the 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 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 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 the Option Offer on or before the next business day after the Option Offer becomes free of conditions, in the absence of a superior proposal.

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8.5 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 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 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 Offer has become unconditional) on or before the date the borrowings are repaid in full. If the 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 Offer Period, then the waiver will terminate on that date.

8.6 Bid Implementation Agreement with APK

APK has entered into an agreement with AGL dated 15 July 2013 in respect of the 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 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 Offer

- (a) AGL has agreed to make the Offer to all APK Shareholders in respect of their APK Shares.
- (b) The Recommending Directors have unanimously agreed to recommend that APK Shareholders accept the 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 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 its 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 prior to lodgement of the 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 Offer to APK Shareholders on the same day on which this 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 Offer and termination of the Bid Implementation Agreement (including if the Bid Implementation Agreement is terminated if on 15 November 2013 the 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 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 Offer becomes or is declared unconditional.
- (h) Warranties typical of a transaction of this nature have been provided by each of AGL and APK.

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 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 Offer be accepted by APK Shareholders, or changes their recommendation that the 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 Offer for any reason or the 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 Offer Period ends and 15 November 2013 if the 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 Offer Period and the termination of the Bid Implementation Agreement (including if the Bid Implementation Agreement is terminated if on 15 November 2013 the 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 8.6(n)(ii) and 8.6(n)(iii) and the notification right outlined in Section 8.6(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 8.6(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 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 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 Offer Period;
 - (C) any Recommending Director does not recommend the 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 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 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 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 Offer.

8.7 ASIC modifications

AGL Bidder has 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 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 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 8:30 am and 5:30 pm (AEST).

AGL Bidder has not obtained from ASIC any modifications of or exemptions from the Corporations Act in relation to the Offer. However, AGL Bidder proposes to seek the following modifications from ASIC in respect of the Option Offer:

- 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;
- section 619(2), to allow AGL Bidder to offer different consideration to each class of APK Options under the Option Offer; and
- section 618(1) and Chapter 6A, to allow AGL Bidder to cancel non-transferable APK Options under the Option Offer and as part of the compulsory acquisition process.

A copy of the relief instrument will be attached to the bidder’s statement for the Option Offer.

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

8.8 ACCC

One of the Defeating Conditions effectively requires AGL Bidder to obtain confirmation from the ACCC that it has no objections to the Offer. If such ACCC notification is expressed to be subject to conditions, those conditions must be acceptable to AGL Bidder (acting reasonably).

AGL Bidder has lodged an application with the ACCC requesting a statement from the ACCC that it has no objections to the acquisition of APK under or pursuant to the Offer. AGL Bidder is not aware of any reason why this notification will not be provided before the end of the Offer Period (as extended if applicable).

8.9 Offer extends to new APK Shares

For the purposes of Section 633(2) of the Corporations Act, the date for determining the persons to whom information is to be sent in items 6 and 12 of Section 633(1) of the Corporations Act is the Register Date (being 7:00 pm (AEST) on 24 July 2013).

The Offer extends to persons who become registered, or entitled to be registered, as the holder of APK Shares during the Offer Period due to the conversion of, or exercise of rights attached to, securities convertible into APK Shares (being APK Options) which are on issue on the Register Date.

8.10 Broker commissions

AGL Bidder may offer to pay a commission to Brokers who solicit acceptances of the Offer from their clients, but it has made no final decision in relation to the matter at this stage.

Any commission payments will be paid only in respect of parcels of APK Shares held by retail shareholders who accept the Offer.

If a commission is offered, commission payments will not exceed 0.75% of the value of the consideration payable to a retail shareholder who accepts the Offer, and will be subject to minimum payments (not exceeding \$50) and maximum payments (not exceeding \$300) for each acceptance.

If a commission is offered, it will be payable only to Brokers and will be subject to the condition that no part of the fee will be able to be passed on or paid to APK Shareholders.

It is AGL Bidder's intention that, if and when an offer of commission has been made to any Broker by AGL Bidder, the commission arrangement will remain in place for the balance of the Offer Period and the amount of the commission offered will not be increased during the Offer Period.

8.11 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 Democratic People's Republic of Korea.

8.12 No escalation agreements

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

8.13 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 Offer (including, without limitation, Ashurst, 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.

8.14 No other material information

There is no other information that:

- (a) is material to the making of the decision by a holder of APK Shares whether or not to accept the 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 Shares.

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The Offer

9



9.1 The Offer

- (a) AGL Bidder offers to acquire from you on the terms and conditions of this Offer all of Your APK Shares together with all Rights attaching to them.
- (b) This Offer extends to all APK Shares in respect of which you become registered or in respect of which you become entitled to be registered as the holder prior to the end of the Offer Period as a result of the conversion of, or the exercise of rights attached to, other securities convertible into APK Shares (being APK Options) and which are on issue at the Register Date.
- (c) Offers on terms and conditions identical to those contained in this Offer have been dispatched or will be dispatched to:
- all holders of APK Shares registered as such in the Register on the Register Date; and
 - any person who becomes registered as the holder of APK Shares during the period commencing on the Register Date and ending at the end of the Offer Period due to the conversion of, or exercise of rights attached to, other securities convertible into APK Shares (being APK Options) and which are on issue at the Register Date.
- (d) This Offer is dated [insert date].

9.2 Consideration for the Offer

Subject to the terms of this Offer, the consideration offered by AGL Bidder for the acquisition of Your APK Shares is \$0.52 cash per APK Share.

9.3 Offer Period

- (a) Unless the Offer Period is extended or the Offer is withdrawn, in either case in accordance with the requirements of the Corporations Act, this Offer will remain open for acceptance by you during the period commencing on the date of this Offer and ending at 7:00 pm (AEST) on [insert date] (**Offer Period**).
- (b) Subject to the Corporations Act, AGL Bidder may extend the Offer Period.
- (c) In addition, if, within the last seven days of the Offer Period:
- this Offer is varied to improve the consideration offered; or
 - AGL Bidder's voting power in APK increases to more than 50%,
- then the 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) You may accept this Offer only in respect of all of Your APK Shares.
- (b) Subject to Section 9.5, to accept this Offer in respect of APK Shares which, at the time of acceptance, are registered in your name in the issuer sponsored subregister operated by APK (in which case Your APK Shares are not in a CHESS Holding and your Securityholder Reference Number will commence with "I"), you must **complete** and **sign** the Issuer Acceptance Form enclosed with this Offer (which forms part of this 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; or

BY HAND:

In Sydney between 8:30 am and 5:00 pm (AEST)

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 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 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 Offer Period, but you will not be entitled to receive the consideration under this Offer to which you are entitled until your original Acceptance Form (including any documents required by the terms of this Offer and the instructions on the Acceptance Form) is received at an address specified above.

- (c) To accept this Offer in respect of APK Shares which, at the time of acceptance, are held by you in a CHESS Holding (in which case your Holder Identification Number will commence with "X"), you must comply with the ASX Settlement Operating Rules. To accept this Offer in accordance with the ASX Settlement Operating Rules:
- if you are the Controlling Participant, you must initiate acceptance of this Offer in accordance with Rule 14.14 of the ASX Settlement Operating Rules before the end of the Offer Period; or
 - if you are not the Controlling Participant, you may either:
 - instruct** your Controlling Participant, in accordance with the sponsorship agreement between you and the Controlling Participant, to initiate acceptance of this Offer in accordance with Rule 14.14 of the ASX Settlement Operating Rules, such initiation to occur before the end of the Offer Period. If you choose to accept this Offer in this way, your Controlling Participant will be obliged by Rule 14.14.1 of the ASX Settlement Operating Rules to initiate the acceptance within the following timeframes:
 - if you specify a time when or by which this Offer must be accepted, in accordance with those instructions; or
 - otherwise, by End of Day (as defined in the ASX Settlement Operating Rules) on the date that you instruct the Controlling Participant to accept this Offer or, if the Offer Period ends on the day you

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provide those instructions, before the end of the Offer Period; or

- (B) otherwise, **complete** and **sign** the enclosed CHES Acceptance Form in accordance with the instructions on the CHES Acceptance Form and return it (using the enclosed reply paid envelope, which is valid if sent from within Australia) together with all other documents required by those instructions to one of the addresses indicated on the CHES Acceptance Form and as such authorise AGL Bidder to instruct your Controlling Participant to initiate acceptance of this Offer on your behalf in accordance with Rule 14.14 of the ASX Settlement Operating Rules. For return of the CHES Acceptance Form to be an effective acceptance of the Offer under this Section 9.4(c)(ii)(B), it must be received by AGL Bidder in time for AGL Bidder to give instructions to your Controlling Participant, and your Controlling Participant to carry out those instructions, before the end of the Offer Period.

- (d) To accept this Offer in respect of APK Shares in respect of which, at the time of acceptance, you are entitled to be registered but are not registered as a result of the conversion of, or exercise of rights attached to, securities convertible into APK Shares (being APK Options), you must **complete** and **sign** the Issuer Acceptance Form enclosed with this Offer in accordance with the instructions on it and return it together with all other documents required by those instructions to one of the addresses referred to in paragraph (b) so that it is received by no later than the end of the Offer Period.

- (e) An acceptance of this Offer under Section 9.4(b), (c)(ii)(B) or (d) 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 Offer Period all or any of the requirements specified in the Acceptance Form but payment of the consideration in accordance with this 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 Shares have been lodged with AGL Bidder.

- (f) The transmission of the Acceptance Form and other documents is at your own risk.

9.5 Entitlement to Offer

- (a) If at the time this Offer is made to you, or at any time during the Offer Period and before you accept this 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 Shares (such an APK Share in this paragraph being called an **Entitlement Share**) then, in accordance with Section 653B(1)(a) of the Corporations Act:

- (i) a corresponding Offer shall be deemed to have been made at that time to that other person relating to the Entitlement Shares;

- (ii) a corresponding Offer shall be deemed to have been made at that time to you relating to Your APK Shares other than the Entitlement Shares; and

- (iii) this Offer shall be deemed immediately after that time to have been withdrawn.

- (b) If at any time during the Offer Period and before the Offer is accepted, you hold APK Shares on trust for, as nominee for, or on account of, another person or persons, then a separate and distinct 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 Shares within Your APK Shares. An acceptance by you of the Offer in respect of any such distinct portion of Your APK Shares will be ineffective unless you have given AGL Bidder notice stating that Your APK Shares consist of separate and distinct parcels and your acceptance specifies the number of APK Shares in the distinct portions to which the acceptance relates. If Your APK Shares are in a CHES Holding, the notice may be transmitted in an electronic form approved by the ASX Settlement Operating Rules. Otherwise, the notice must be given to AGL Bidder in writing.

- (c) Beneficial owners whose APK Shares 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 Offer accepted in respect of the APK Shares which they beneficially own.

9.6 Effect of acceptance

- (a) By:

- (i) completing, signing and returning an Acceptance Form in accordance with Section 9.4(b), (c)(ii)(B) or (d); or
- (ii) causing this Offer to be accepted in accordance with the ASX Settlement Operating Rules if Your APK Shares are in a CHES Holding,

you will, or will be deemed to, have:

- (i) subject to Section 650E of the Corporations Act and Section 9.5, irrevocably accepted this Offer in respect of all Your APK Shares;
- (ii) subject to this Offer being declared free from the Defeating Conditions or such conditions being fulfilled, agreed to transfer Your APK Shares to AGL Bidder;
- (iii) represented and warranted to AGL Bidder as a fundamental condition going to the root of the contract resulting from your acceptance of this Offer that, both at the time of acceptance of this Offer and at the time the transfer of Your APK Shares to AGL Bidder is registered, all of Your APK Shares are and will upon registration be fully paid up and free from all mortgages, charges, liens and other encumbrances of any kind and restrictions on transfer of any kind, and that you have full power and capacity (whether legal or equitable) to sell and transfer such APK Shares and that you have paid all amounts which at the time of acceptance have fallen due for payment in respect of those APK Shares;
- (iv) 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 Shares, 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 Offer;

- (v) 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 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 Shares or in exercise of any right derived from the holding of Your APK Shares, including, without limiting the generality of the foregoing, requesting APK to register Your APK Shares in the name of AGL Bidder, attending and voting at any meeting of APK Shareholders, demanding a poll for any vote taken at or proposing or seconding any resolutions to be considered at any meeting of APK Shareholders, requisitioning any meeting of APK Shareholders, signing any forms, notices or instruments relating to Your APK Shares 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 Shares. This appointment, being given for valuable consideration to secure the interest acquired in Your APK Shares, is irrevocable and terminates upon registration of a transfer to AGL Bidder of Your APK Shares;
- (vi) agreed, with effect from the date that any contract resulting from the acceptance of this Offer is declared free from all its Defeating Conditions or those conditions are fulfilled, and in the absence of a prior waiver of this requirement by AGL Bidder, not to attend or vote in person at any meeting of APK Shareholders or to exercise or purport to exercise any of the powers conferred on AGL Bidder or its nominee in Section 9.6(a)(v);
- (vii) 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 Offer is withdrawn or avoided;
- (viii) except where Rights have been paid or accounted for under Section 9.6(a)(vii), irrevocably authorised AGL Bidder to deduct from the consideration payable in respect of Your APK Shares, the value of any Rights paid to you which, where the Rights take a non-cash form, will be the value of those Rights as reasonably assessed by the Chairman of the ASX or his or her nominee;
- (ix) if, at the time of acceptance of this Offer, Your APK Shares are in a CHESS Holding, with effect from the date that either this Offer or any contract resulting from the acceptance of this Offer is declared free from all its Defeating Conditions or those conditions are fulfilled, irrevocably authorised AGL Bidder to cause a message to be transmitted in accordance with ASX Settlement Operating

Rule 14.17.1 (and at a time permitted by ASX Settlement Operating Rule 14.17.1(b)) so as to transfer Your APK Shares to AGL Bidder’s takeover transferee holding. AGL Bidder shall be so authorised even though at the time of such transfer it has not paid the consideration due to you under this Offer;

- (x) agreed to indemnify AGL Bidder in respect of any claim or action against it or any loss, damage or liability whatsoever incurred by it as a result of you not producing your Holder Identification Number or in consequence of the transfer of Your APK Shares being registered by APK without production of your Holder Identification Number for Your APK Shares;
- (xi) represented and warranted to AGL Bidder that, unless you have notified it in accordance with Section 9.5(b), Your APK Shares do not consist of several parcels of APK Shares; and
- (xii) agreed to execute all such documents, transfers and assurances that may be necessary or desirable to convey Your APK Shares and any Rights to AGL Bidder.
- (b) If Your APK Shares are in a CHESS Holding and you complete, sign and return the Acceptance Form in accordance with Section 9.4(c)(ii)(B) (which you are not bound, but are requested, to do), you will be deemed to have irrevocably authorised AGL Bidder and any of its directors, secretaries or officers to:
- (i) instruct your Controlling Participant to initiate acceptance of this Offer in respect of Your APK Shares which are in a CHESS Holding, in accordance with Rule 14.14 of the ASX Settlement Operating Rules if you have not already done so; and
- (ii) give any other instructions in relation to Your APK Shares to your Controlling Participant on your behalf under the sponsorship agreement between you and that Controlling Participant.

9.7 Dividends and other entitlements

- (a) AGL Bidder will be entitled to all Rights declared, paid, made, or which arise or accrue on or after the Announcement Date in respect of APK Shares that it acquires pursuant to this Offer.
- (b) If any Rights are declared, paid, made or arise or accrue in cash after the Announcement Date to the holders of APK Shares, AGL Bidder will (provided the same has not been paid to AGL Bidder) be entitled to reduce the consideration specified in Section 9.2 and payable by it to accepting holders of APK Shares by an amount equal to the value of such Rights.
- (c) If any non-cash Rights are issued or made or arise or accrue after the Announcement Date to the holders of APK Shares, AGL Bidder will (provided the same has not been issued to AGL Bidder) be entitled to reduce the consideration specified in Section 9.2 and payable by it to accepting holders of APK Shares by an amount equal to the value (as reasonably assessed by the Chairman of the ASX or his or her nominee) of such non-cash Rights.

9.8 Defeating Conditions

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

(a) Minimum acceptance condition

At the end of the 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 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 Offer;
- (ii) the ACCC notifying AGL Bidder or APK in writing that it will not approve the acquisition of the APK Shares under the 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 Offer; or
- (iv) the ACCC commencing legal proceedings seeking orders to prevent or restrain the acquisition of APK Shares under the Offer.

(c) No prescribed occurrences

Between the date the Bidder's Statement is given to APK and the end of the 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 9.8(c) happens during the period beginning on the Announcement Date and ending at the end of the day before the Bidder's Statement is given to APK.

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

During the 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 Offer),

in consequence of, or in connection with, the Offer, which restrains or prohibits or threatens to restrain or prohibit, or may otherwise materially adversely impact upon, the making of the 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 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 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 9.8(g)(iv) – 9.8(g)(xvi), 9.8(g)(xx) and 9.8(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 of 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 subparagraphs 9.8(g)(i) to 9.8(g)(xxiii) above.

(h) **No material adverse change**

- (i) During the 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 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 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 Offer and no supplementary Target’s Statement that varies, qualifies or revokes the Customer Confirmation is issued by the APK Board during the Condition Period.

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 Shares resulting from your acceptance of this 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 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 Offer or the contract resulting from your acceptance of this 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 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 Offers free of Defeating Conditions

Subject to the Corporations Act, AGL Bidder may declare this Offer and any contract resulting from acceptance of this 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 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 [insert date] (subject to extension in accordance with the Corporations Act if the Offer Period is extended).

Contract void if Defeating Conditions not fulfilled

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

- (a) at the end of the Offer Period any of the Defeating Conditions in this Section 9.8 is not fulfilled; and
- (b) AGL Bidder has not declared this 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, AGL Bidder will provide the consideration for Your APK Shares by the end of whichever of the following periods ends earlier:
 - (i) one month after the Offer is accepted or, if the Offer is subject to a Defeating Condition when accepted, within one month after the Offer becomes unconditional; or
 - (ii) 21 days after the end of the Offer Period.

Under no circumstances will interest be paid on the consideration for Your APK Shares under this Offer, regardless of any delay in making payment or any extension of this 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 Offer Period while the 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 Offer becomes unconditional; or
- (B) 21 days after the end of the Offer Period;

- (iii) if the document is given after your acceptance and before the end of the Offer Period while the 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 Offer Period; or

- (iv) if that document is received after the end of the Offer Period and the Offer is not subject to a Defeating Condition, AGL Bidder will provide the consideration within 21 days after that document is received. However, if, at the time that document is received, this Offer is still subject to a Defeating Condition that relates to a circumstance or event specified in Section 9.8(c), AGL Bidder will provide the consideration within 21 days after the Offer becomes, or is declared, unconditional.

(c) If, at the time of acceptance of this 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 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 Offers,

applies, then acceptance of this Offer will not create or transfer to you any right (contractual or contingent) to receive the consideration specified in this Offer unless and until all requisite authorities or clearances have been obtained by AGL Bidder. Please refer to Section 8.11 for information as to whether this restriction applies to you.

9.10 Withdrawal

- (a) AGL Bidder may withdraw this 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 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 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 Offer, and any stamp duty payable on the disposal of APK Shares pursuant to the Offer, will be paid by AGL Bidder. No GST is payable by you as a consequence of acceptance of the Offer.

9.13 Notices

- (a) Any notices to be given by AGL Bidder to APK under the Offer may be given to APK by leaving them at, or sending them by prepaid ordinary post to, the registered office of APK.
- (b) Any notices to be given to AGL Bidder by you or by APK under the 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 Offer may be given to you by sending them by prepaid ordinary post or if your address is outside Australia, by prepaid airmail, to your address as shown in the Register.

9.14 Governing law

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

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Glossary and interpretation

10



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 form of acceptance of the Offer enclosed with this 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 (and includes, to avoid doubt, both the Issuer Acceptance Form and the CHES Acceptance Form).

"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 any 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 the ASX.

"ASX Settlement" means ASX Settlement Pty Limited ABN 49 008 504 532.

"ASX Settlement Operating Rules" means the operating rules of the ASX Settlement.

"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 Offer.

"Broker" means a person who is a share broker and participant in CHES.

"CGT" has the meaning given to that term in Section 7.1(a).

"CHES" means the Clearing House Electronic Subregister System operated by the ASX Settlement, which provides for the electronic transfer, settlement and registration of securities.

"CHES Holding" means a holding of shares on the CHES Subregister of APK.

"CHES Subregister" has the meaning set out in the ASX Settlement Operating Rules.

"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 Bidder:
 - (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 Offer.

"Computershare" means Computershare Limited ACN 005 485 825.

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

"Controlling Participant" has the meaning set out in the ASX Settlement Operating Rules.

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

"Defeating Condition" means each condition 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 Share**” 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 8.6(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).

“**Issuer Sponsored Holding**” means a holding of APK Shares on APK’s issuer sponsored subregister.

“**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.

“**Offer**”, “**AGL Offer**” or “**AGL Bidder’s Offer**” means, as the context requires, the offer for APK Shares contained in Section 9, or the off-market takeover bid constituted by that offer, and **Offers** means the several like offers which together constitute the takeover bid, as varied in accordance with the Corporations Act.

“**Offer Period**” means the period referred to in Section 9.3 of this Bidder’s Statement.

“**Option Offer**” means, as the context requires, the offer for APK Options made by AGL Bidder concurrently with the Offer contained in Section 9, or the off-market takeover bid constituted by that offer and each other offer by AGL Bidder for APK Options in the form of that offer, and **Offers** means the several like offers which together constitute the takeover offer, as varied in accordance with the Corporations Act.

“**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 Agreement**” 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 AGL Bidder’s Offer, being James Myatt and Ian McGregor.

“**Register**” means the register of APK Shareholders and APK Optionholders maintained by APK in accordance with the Corporations Act.

“**Register Date**” means 7:00 pm AEST on 24 July 2013.

“**Rights**” means all accretions, rights or benefits of whatever kind attaching to or arising from or in respect of APK Shares, whether directly or indirectly, including without limitation all rights 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.

“**Securityholder Reference Number**” or “**SRN**” means the number allocated by APK to identify an APK Shareholder on its issuer sponsored subregister.

“**Serviceworks**” means Serviceworks Management Pty Ltd ACN 090 155 445.

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“Share Registry” means Link Market Services.

“S&P” means Standard & Poor’s (Australia) Pty Ltd ACN 007 324 852.

“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).

“SME” means small and medium sized enterprises.

“Superior Proposal” means a bona fide, Competing Proposal received by APK after the date of the Bid Implementation Agreement which the APK Directors determine, acting both in good faith and reasonably:

- (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 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.

“TOFA” has the meaning given to that term in Section 7(d).

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

“VWAP” means volume weighted average price.

“Your APK Shares” means, subject to Section 9.5(a) and 9.5(b), the APK Shares in respect of which you are registered or entitled to be registered as holder in the Register on the Register Date and any new APK Shares of which you are registered or entitled to be registered as the holder in the Register on the Register Date to the end of the Offer Period as a result of the conversion of, or exercise, of rights attached to securities convertible into APK Shares (being APK Options) which are on issue at 7:00 pm on the Register Date, and to which you are able to give good title at the time you accept the Offer during the Offer Period.

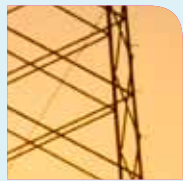
10.2 Interpretation

- (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 the 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

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Section 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 ABN 72 081 834 826.

Dated 24 July 2013

Signed on behalf of AGL APG Holdings Pty Limited
ABN 72 081 834 826 by:



Paul McWilliams
Director

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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

Registered office

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 the Offer

Link Market Services

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 8:30 am and 5:00 pm (AEST).

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Further Important Instructions

Your Australian Power and Gas Company Limited Shares are in an Issuer Sponsored Holding. To accept the Offer, you must complete and return this Acceptance Form in accordance with the instructions below.

Please refer to the Bidder's Statement dated 24 July 2013 which accompanies this Acceptance Form. Terms are defined in the Bidder's Statement and have the same meaning in this Acceptance Form.

Completion instructions

- A**
- **Please check the front page** to ensure that your name and address are correct. If incorrect, please write your correct details and initial the amendments. 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) out on the front page and in accordance with the following instructions:
 - **Joint Shareholders:** If your Australian Power and Gas Company Limited Shares 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 it to 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.

Information you supply on this Acceptance Form will be used by AGL APG Holdings Pty Limited and Link Market Services Limited for the primary purpose of processing your acceptance of the Offer and to provide you with the consideration payable under the Offer. This information may be disclosed to AGL APG Holdings Pty Limited's related bodies corporate, professional advisers, securities brokers, printing and mailing providers and other third parties in connection with the 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(s) 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 Offer Period, which is 7:00pm (AEST) on the last day of the Offer Period.

If you have any questions about the terms of the 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**



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

Holder Identification Number: X12345678910
Australian Power and Gas Company Limited
Shares held as at [Register Date] 99,999,999
If your holding has changed between the Register Date and time of acceptance, then write your current holding here.

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.

Controlling Participant's Name *Broker's Name and telephone printed here*

Advisor Name:	Contact Number:
---------------	-----------------

Transfer and Acceptance Form – CHESS Subregister

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

B You must give your instructions to your controlling participant to accept the Offer

If you correctly sign and return this form you will be deemed to have accepted the Offer in respect of **ALL** of your Australian Power and Gas Company Limited Shares.

Offer Consideration – Cash offer of \$0.52 for every Australian Power and Gas Company Limited (APK) fully paid ordinary share held.

To accept the Offer you may either:

- directly instruct your Controlling Participant to accept the Offer on your behalf; or
- sign and return this Acceptance Form to the address shown overleaf so the Bidder can contact your Controlling Participant on your behalf and relay your instructions.

If your Controlling Participant acts on your instruction CHESS will send you a confirmation notice.

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 Offer in respect of all my/our Australian Power and Gas Company Limited Shares and hereby agree to transfer to AGL APG Holdings Pty Limited all my/our Australian Power and Gas Company Limited Shares for the consideration specified in the Offer, and on the terms and conditions of the Offer as set out in the Bidder's Statement.

Shareholder 1 (Individual)

Sole Director & Sole Company Secretary

Shareholder 2 (Individual)

Secretary/Director (delete one)

Shareholder 3 (Individual)

Director

Please refer overleaf for further important instructions

REGISTRY USE ONLY



HIN



Broker PID



Holding

APK TKO002



Further Important Instructions

Your Australian Power and Gas Company Limited Shares are in a CHESS Holding, you do not need to complete and return this Acceptance Form to the registry to accept the Offer. You can instead contact your Controlling Participant and instruct them to accept the Offer on your behalf in sufficient time before the end of the Offer Period to enable your Controlling Participant to give effect to your acceptance of the Offer on CHESS during business hours. If you decide to use this Acceptance Form to authorise us to contact your Controlling Participant on your behalf, follow the instructions below. You should allow Link Market Services Limited ("Link") sufficient time for the delivery of the Acceptance Form to your Controlling Participant on your behalf. Neither AGL APG Holdings Pty Limited, nor Link will be responsible for any delays incurred by this process.

Please refer to the Bidder's Statement dated 24 July 2013 which accompanies this Acceptance Form. Terms are defined in the Bidder's Statement and have the same meaning in this Acceptance Form.

Completion instructions

- A**
- **Please check the front page** to ensure that your name and address are correct. If incorrect, please write your correct details and initial the amendments. Amendments to your name or address can only be processed by your Controlling Participant.
 - **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) out on the front page and in accordance with the following instructions:
 - **Joint Shareholders:** If your Australian Power and Gas Company Limited Shares 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 it to 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.

Information you supply on this Acceptance Form will be used by AGL APG Holdings Pty Limited and Link Market Services Limited for the primary purpose of processing your acceptance of the Offer and to provide you with the consideration payable under the Offer. This information may be disclosed to AGL APG Holdings Pty Limited's related bodies corporate, professional advisers, securities brokers, printing and mailing providers and other third parties in connection with the 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(s) and any other documents required by the above instructions to:

Mailing Address	or	Hand Delivery
Link Market Services Limited		Link Market Services Limited
Australian Power and Gas Company Limited Takeover		Australian Power and Gas Company Limited Takeover
Locked Bag A14		1A Homebush Bay Drive
SYDNEY SOUTH NSW 1235		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 Offer Period, which is 7:00pm (AEST) on the last day of the Offer Period.

If you have any questions about the terms of the 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