



27 March 2013

Major Project Development Assessment Processes
Productivity Commission
Locked Bag 2, Collins St East
Melbourne VIC 8003

By email: major.projects@pc.gov.au

Dear Sir/Madam

Major Project Development Assessment Processes – Issues Paper

AGL Energy (**AGL**) welcomes the opportunity to make a submission to the Productivity Commission (**Commission**) on its Issues Paper regarding major project development assessment processes (**Issues Paper**).

AGL is Australia's leading renewable energy company with the largest privately owned and operated renewable portfolio in the country. AGL operates across the supply chain with investments in energy retailing, coal-fired electricity generation, gas-fired electricity generation, renewable-energy electricity generation, and upstream gas exploration and production projects. **AGL is also one of Australia's largest retailers of gas and electricity,** with more than three million customers in Victoria, New South Wales, South Australia and Queensland.

AGL is an experienced developer and operator of a range of major projects, in particular, coal seam gas exploration and development projects, and various forms of power generation projects spanning coal-fired and gas-fired power stations, and renewable energy generation projects such as wind farms and hydro-electric electricity generation facilities. Accordingly, AGL is well placed to provide feedback on the matters raised in the **Commission's Issues Paper**.

AGL acknowledges the breadth of the types of major projects that could potentially form **part of the Commission's study, and** accordingly the wide variety of development assessment and approvals (**DAA**) processes that may fall within the Commission's consideration. AGL sees benefit in limiting the types of major projects referred to in this submission so as to provide the Commission with specific examples to support its arguments. **AGL's views** are based on its experiences with the DAA processes for electricity generation facilities (specifically, wind farms), and extractive process projects such as coal seam gas production and exploration developments.

AGL considers the Commission's study in this area to be very timely given how topical these issues currently are in the context of coal seam gas projects and wind farm developments. The approach that is taken to DAA processes by state and federal governments and regulators is of critical importance to the Australian economy, and when poorly handled have far reaching repercussions **on issues such as Australia's energy security, levels of investment, and perceptions of investor certainty.**

Approvals and assessment processes

AGL supports the proposed assessment criteria that the Commission has identified in its Issues Paper to evaluate whether jurisdictional DAA processes are consistent with commonly-used principles of good governance and regulatory design. Some additional

measures that the Commission should consider incorporating are to ensure that DAA processes:

- are performed in a timely manner, and in accordance with mandated timeframes where these exist; and
- require that decision-making bodies give reasons for their decisions on the relevant assessment or approvals process, which, subject to any confidentiality claims by project proponents, are publicly available.

We acknowledge that these issues may be implicit within some of the individual criteria listed by the Commission, however AGL sees them as being important enough issues to warrant specific consideration.

Scope for improvement to current arrangements

Essential and immediate reform is required to the way in which DAA processes operate in relation to such areas as coal seam gas developments and wind farm approvals.

Broad problem areas in this regard are:

- **Arbitrary policies unsupported by evidence**

Policies underpinning legislation that contain DAA processes are being developed or changed in an arbitrary manner, without evidence or a scientific basis to support the policy or the policy change. Policy-makers appear to be taking a short term approach to these changes, and not paying appropriate regard to the significant impact such changes are having on project proponents, or of the long term impact of a reduction in project developments as a result.

For example, a 2km set back requirement has been imposed on wind farms in Victoria, and is being proposed by the New South Wales government in respect of coal seam gas exploration and development projects.

AGL recognises that setback proposals attempt to address community concerns around the potential for health impacts caused by close proximity to wind farms and coal seam gas exploration sites. AGL absolutely supports community consultation and engagement on issues which have the potential to impact upon local community issues, health, services or amenities. Accordingly, AGL ensures that appropriate community consultation occurs as a standard part of its development processes, and community concerns addressed to the greatest extent possible.

However, attempting to appease a certain group within the community should not be the basis upon which significant policy changes are made in the absence of robust, verifiable evidence to support the community sentiment. This is particularly the case where such policy changes would have significant repercussions upon the project proponents who have, in good faith, followed the relevant processes to seek development approval. Furthermore, the repercussions on the broader community of such policies need to be considered. If all forms of new energy production are prohibited, it is impossible to have a secure domestic energy supply – an absolute necessity for a modern economy.

A mandatory 2km set back requirement appears to be unsupported by any particular empirical data. Further, AGL is not aware of any independent scientific findings that support the principle of a setback area around a wind turbine as being necessary to protect against health and noise impacts. AGL opposes the application of arbitrary setbacks for any major infrastructure projects. An objective, merit-based approach should be used for all major industries and infrastructure projects, based on a rigorous quantitative and qualitative assessment of impacts.

We also refer the Commission to the recent decision by the Commonwealth Government to intervene in coal seam gas approvals processes by imposing additional environmental requirements dealing with the impact of the development on groundwater supply. This was in direct contradiction to earlier statements by the federal government that such an intervention would be inappropriate.

AGL accepts, of course, that there needs to be flexibility to accommodate changes in public policy positions in light of robust evidence to support such a change in view. However, the federal government offered no evidence or scientific rationale to support its decision to intervene in the coal seam gas exploration approvals process in such a way as to substantially increase regulatory compliance requirements for project proponents impacted by the decision. Further, as discussed later, such environmental considerations form part of the state government approvals process that proponents need to complete, and therefore appear to be unnecessary and duplicative.

- **Politicisation of vital areas of public policy**

The occurrence of arbitrary policy-making hampering significant project approvals has caused many in the business community considerable concern. This led to the recent release of a joint appeal to state and federal governments by the Australian Industry Group, the Energy Supply Association of Australia, the Clean Energy Council, and the Australian Petroleum Production and Exploration Association (APPEA) to avoid making short-sighted policies when faced with community concerns about coal seam gas and wind farms. The joint statement expressed concern about the spread of restrictions on new energy sources, and reiterated that short-sighted policies continue to undermine the development of energy projects within Australia.

Representatives of the groups that made the joint statement indicated that non-evidence-based-policies towards new energy sources were risking higher power prices and energy shortages. A copy of the statement can be found at: <http://www.aglblog.com.au/wp-content/uploads/2013/03/Final-Statement.pdf>

- **Inconsistency and duplication in processes required by different levels of government**

The recent Commonwealth Government intervention in the coal seam gas environmental approvals process relating to water impacts is an unnecessary expansion of the Commonwealth's **jurisdiction**. This is because it is additional to the state government's environmental approvals process that project proponents must adhere to. **It is AGL's view that** the impact of a coal seam gas development on groundwater falls within the New South Wales **Government's** approvals process.

There has been considerable concern amongst the business community about the impact of state and federal regulatory duplication on projects in Australia. APPEA recently released a report indicating that many overlapping state and federal regulations are applied to specific projects without any environmental benefit. **The report indicated that federal and state officials often repeated each other's work** to check on projects before approving them. The report warns that duplicate regulation may be holding back projects worth around \$200 billion.

The Business Council of Australia has reiterated these concerns, indicating the inefficiency caused by duplicated rules. It released a study in 2012 which found that resources projects cost 40% more to deliver in Australia than in the US.

Furthermore, there have been instances in which **proponents' development** projects have been stymied by inconsistencies between state and federal environmental DAA processes, which have lacked the ability to interface appropriately with each other.

This overlap of approvals at the state and federal level have obvious cost and delay consequences for proponents, and have the potential to undermine infrastructure and investor confidence.

Principles to improve existing shortcomings

AGL considers the following broad principles need to be adopted in DAA processes to address the shortcomings identified in this submission:

- There needs to be much greater clarity in, and streamlining of, DAA processes at both the state and federal level, so project proponents are fully aware of such issues as:

- o the approvals a particular project requires;
- o the level of government responsible for the project assessment or approval;
- o the legislative basis for such assessment or approval; and
- o the rationale for the application of the particular DAA processes to the project.

Approvals processes should be consolidated to as small a number of individual processes as possible to avoid requiring project proponents to comply with numerous standalone DAA processes.

- Changes to significant policies underpinning the DAA process, or major changes to the processes themselves, should only be made on the basis of robust, verifiable, scientific or other evidence-based information emerging that justifies the change. To the greatest extent possible, there should be public consultation about such changes prior to their implementation. In addition, the impact of the change on project proponents and the broader economy and society needs to be considered in determining whether the change is justified, as well as the long term impact of the change on the likely number of projects being established and obtaining approval.

For example, a significant reduction in coal seam gas exploration will have a **dramatic impact on Australia's energy security**, as gas shortages will be likely to start to occur on the East Coast as current gas production facilities start exporting gas upon the expiry of their long term domestic contracts. Similarly, unnecessary or inefficient DAA processes associated with wind farms may lead to a reduction in their development or at least their cost effectiveness. This in turn would be likely to increase the cost for electricity retailers to satisfy federal government Renewable Energy Target obligations, which may in turn drive up electricity prices for consumers.

These long term consequences should be weighed up against the likelihood and magnitude of the benefits that the changes in the DAA processes would deliver, in determining whether the changes should be made.

- Duplication in state and federal DAA processes in respect of the same approvals or assessment criteria should be avoided, while still maintaining environmental integrity. For example, a project should not be required to obtain both state and federal environmental approvals which assess the same environmental impacts.

Concluding remarks

There is often an inherent tension between developing rigorous and comprehensive criteria for quantifying the externalities likely to be caused by a major project, and the need for business certainty in order to drive the benefits that high levels of investment and project activity in Australia will deliver. Accordingly it is of great importance to the health of the Australian economy that major project DAA processes are set at an appropriate level so as to deliver good regulatory and environmental outcomes for the community, while also supporting a stable economic environment which encourages investment certainty.

AGL would be happy to provide further information to the Commission should this be helpful.

Yours sincerely,

Tim Nelson
Head of Economic Policy and Sustainability