

7th August 2012

Mr. Matthew Schroder
General Manager
Fuel, Transport, and Prices Oversight
ACCC
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Melbourne VIC 3001
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Dear Matthew

Variation to the Hunter Valley Coal Network Access Undertaking (HVAU)

Yancoal Australia Limited (Yancoal) was listed on 28 June 2012 following implementation of a scheme of arrangement between Gloucester Coal Limited and its shareholders. Yancoal operates five significant NSW coal mines, Ashton, Austar, Donaldson, Gloucester, and Moolarben.

Yancoal thanks the ARTC, the ACCC and Industry stakeholders for the rigor which they have applied to the review and consultation process undertaken in relation to the proposed section 4.17 variation of the HVAU (Variation). Yancoal makes no further submissions in relation to implementation of the Variation except as follows:

- (a) if the ACCC approves the Variation, Yancoal has no objection to its implementation being deferred till the beginning of 2013; and
- (b) if the Variation is to be implemented, further drafting clarification should be considered as explained below.

As we understand the outcome of the various submissions in relation to the operation of the Variation:

- (a) section 4.20 of the HVAU is to apply to the annual determination of Interim Access Charges and Initial Indicative Access Charges;
- (b) Initial Indicative Access Charges will be determined by reference to the principles applicable to indicative services in Section 4.14 of the HVAU; and
- (c) Interim Access Charges will be determined in accordance with the principles applicable to non-indicative services in section 4.15(a) of the HVAU.

We are concerned that the current drafting is not sufficiently clear that the annual process to determine both the Initial Indicative Access Charges and the Interim Access Charges will be run in parallel. We are particularly concerned in relation to the determination of the 2013 access charges.

Access Charges because:

- (a) Interim Access Charges are calculated under section 4.15 on the basis they are non-indicative services;**
- (b) section 4.17(c) now specifically refers to the determination of the Initial Indicative Access Charges for 2013 but not the determination of the Interim Access Charges for 2013; and**
- (c) the second sentence in new section 4.17(c) includes Interim Services with non-indicative services and simply refers to determination of these charges each calendar year having regard to available information.**

In our view, the drafting is ambiguous and must be clarified. We attach pages 44 and 45 of the marked up HVAU with suggested amendments for the purposes of such clarification.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Murray Bailey', with a stylized flourish at the end.

Murray Bailey
Chief Executive Officer

- (iii) select the Coal Train configuration which it considers will represent the most efficient utilisation of Coal Chain Capacity when compared to the other Coal Train configurations tested.
- (b) ARTC will consult with the HVCCC, Access Holders and Operators on the initial indicative service selected under subsection (a).
- (c) Within 5 months of the Commencement Date, and after having regard to submissions arising from the consultation at subsection (b), ARTC will:
- (i) submit to the ACCC:
 - (A) the characteristics of the initial indicative service selected as a result of the process described in subsection (a); and
 - (B) the indicative access charges for the initial indicative service; and
 - (ii) seek the approval of the ACCC to vary this Undertaking to provide for the adoption of the initial indicative service and indicative access charges applicable until ARTC develops and the ACCC accepts the indicative service and indicative charges under section 4.18.
- (a) Within 30 Business Days of receiving approval from the ACCC to vary the Undertaking to incorporate the Initial Indicative Services under subsection (e), ARTC will publish
- (i) the characteristics of the Initial Indicative Services; and
 - (ii) the 2012 Initial Indicative Access Charges and 2012 Charges for non-Indicative Services *set out in section 4.17(d)* (including those which were ~~are~~ Interim Indicative Services). These 2012 Charges are published for the sole purpose of providing guidance to an Access Holder(s) of the relative differentials between Initial Indicative Access Charges and Charges for non-Indicative Services in future years and will not be offered during the 2012 calendar year, and the annual process for the finalisation of Indicative Access Charges under section 4.204.18 will not apply to the determination of Indicative Access Charges for that year.
- (b) From ~~the~~ 1 January 2013 until the Final Indicative Services and Indicative Access Charges approved by the ACCC come into effect under section 4.18 ("Initial Period"), the characteristics set out in section 4.17(d) will apply as the Initial Indicative Services.
- (c) Indicative Access Charges applicable to the Initial Indicative Services ("Initial Indicative Access Charges") will until the expiry of the Initial Period be subject to annual review in accordance with section 4.14. *Subject to section 4.2* ~~Each~~ calendar year until the expiry of the Initial Period, ARTC will, using reasonable endeavours and having regard to available information, determine:
- (i) Initial Indicative Access Charges applicable to the Initial Indicative Services as described in section 4.17(d); and
 - (ii) Charges for other Services associated with Coal Access Rights applicable (including those which are Interim Services).

Final
 ARTC must determine the Initial Indicative Access Charges for the 2013 calendar year in accordance with section 4.14 with the objective of publishing determining the Initial Indicative Access Charges before, or as soon as possible after, the start of the calendar year.

and the Interim Access Charges

Land the final Interim Access Charges in accordance with section 4.20(9)

(d) The following Initial Indicative Services characteristics will apply during the Initial Period.

Segments	Non-TOP \$/kgtkm (ex GST)	TOP \$/kgtkm (ex GST)	Initial Indicative Service Characteristics
<u>In Pricing Zone 1*</u>			
<u>Initial Indicative Service 1</u>	<input type="checkbox"/>	<input type="checkbox"/>	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length section run times as per applicable Hunter Valley standard working timetable
<u>Initial Indicative Service 2</u>	<input type="checkbox"/>	<input type="checkbox"/>	25 tonne maximum axle load 80 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length section run times as per applicable Hunter Valley standard working timetable
<u>In Pricing Zone 2*</u>			
<u>Initial Indicative Service 1</u>	<input type="checkbox"/>	<input type="checkbox"/>	30 tonne maximum axle load 60 kph maximum speed (loaded) 80 kph maximum speed (empty) 96 wagon train length section run times as per applicable Hunter Valley standard working timetable
<u>In Pricing Zone 3*</u>			
<u>Initial Indicative Service 1</u>	<input type="checkbox"/>	<input type="checkbox"/>	25 tonne maximum axle load 80 kph maximum speed (loaded) 80 kph maximum speed (empty) 82 wagon train length section run times as per applicable Hunter Valley standard working timetable

*Pricing Zones contain Segments as specified at Schedule E