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Mr Anthony Wing
General Manager
Transport and General Prices Oversight
ACCC
GPO Box 520
MELBOURNE VIC 3001

Dear Mr Wing,

QR National Coal welcomes the opportunity to provide a response on the ARTC April 2011 Hunter Valley Access Undertaking (HVAU). QR National Coal recognises the importance of the HVAU in ensuring a balance between the interests of ARTC, service providers, customers and the public.

QR National Coal has chosen not to reiterate our position on issues raised in previous HVAU submissions (QR National Coal's Submission to the Hunter Valley Access Undertaking, 25 October 2010, QR National Coal Response to ACCC Issues Paper, 29 June 2009, and QR National Coal Submission on the Draft Decision on the HVAU, 30 March 2010). We refer you particularly to our submission of 25 October 2010, a copy of which is attached for your reference. Our response addresses relevant issues raised in the ACCC's consultation paper of 13 April 2011 and related matters of relevance to QR National Coal.

Term

QR National Coal notes that ARTC proposes a ten year term for the April 2011 HVAU, with a review of the effectiveness of the HVAU after five years. QR National Coal supports the proposed term and the amendments to expand the review process to include consultation with stakeholders, specified time limits and a commitment to publish its results.

The proposed HVAU includes a number of mechanisms for ARTC to seek ACCC approval to vary the HVAU, in which circumstances QR National Coal requests that ACCC include consultation with stakeholders.

Determination of the Indicative Service (efficient train configuration)

QR National Coal supports the proposed amendment to clause 4.17(b) providing for consultation with HVCCC, Access Holders and Operators on the characteristics of the Indicative Service and the review of whether Gross Tonne Kilometers (GTK) is the appropriate pricing unit to encourage efficient consumption of capacity. Operator views are an essential component of the process of determining the type and timing of all aspects of the Indicative Service.

QR National Coal notes that ARTC is yet to commit to a time to assess the Efficient Train Configuration and the review of GTK. We consider the time frame should be practical and should take into consideration the impact on market participants who have based planning and investment decisions on the information available during the several years over which the proposed HVAU has been developed.

In relation to this, QR National Coal notes that ARTC has included a grandfathering provision at Clause 4.15(a)(vii) to provide for the Interim Indicative Charges to apply to Interim Indicative Services until 31 December 2014.

QR National Coal considers that it is not appropriate to set the end date for grandfathering provisions before the date that the Indicative Service has been advised. Given that grandfathering is designed to allow the parties to transition to new arrangements, it seems unreasonable that the end date should be set before parties are able to commence transitioning to the new arrangements.

Grandfathering timeframes should be set to commence from the determination of the Indicative Service for a specified period (such as five years) to allow for transition, not as a fixed date such as by 31 December 2014.

QR National Coal notes ARTC's previous assurance to industry, in a letter dated 5 May 2009, that guaranteed it would maintain pricing consistency between the two primary types of services (Interim Indicative Services) from the commencement of the HVAU for a period of five years. ARTC also committed to apply a GTK rate to these services.

In the interests of providing regulatory certainty, QR National Coal considers ARTC's commitment should be reflected in the drafting of the HVAU.

Performance and accountability

QR National Coal supports amendments to Clause 13 to provide for separate TUT and non-TUT related ARTC performance incentives, including the provision to invite submissions from Access Holders and stakeholders. Similarly, we support the provision for a review of the system wide TUT after two years at Clause 13.4.

QR National Coal considers a review is likely to contribute to coal chain participants' understanding of consumption of capacity in the Hunter Valley Coal Network.

Capacity management

QR National Coal supports clarifications to the definitions in the HVAU of the Track Related System Assumptions and System Assumptions and the commitment to make the System Assumptions not agreed with HVCCC available on the ARTC website.

QR National Coal also notes amendments to 5.4(a)(ii) so that 'other than equitable' allocation of capacity shortfalls of less than five days are consistent with ensuring efficient utilisation of Capacity and Coal Chain Capacity and a commitment that ARTC will endeavor not to reduce the availability of contracted access rights from load points not affected by the shortfall.

QR National Coal considers these amendments clarify the relevant assumptions upon which Coal Chain Capacity is determined and provide for more efficient utilization of Coal Chain Capacity.

Operator Sub-Agreement

QR National Coal notes that the ACCC recommended adjustments to the HVAU to permit Operator involvement in the negotiation of the Operator Sub-Agreement (OSA) and in dispute resolution proceedings, with the consent of the Access Holder.

We note that ARTC has responded that it does not wish to strengthen the Operator's role to the extent that the Operator may negotiate the OSA without the Access Holder, because their interests should be aligned. Clause 3.4 (b) of the HVAU states ARTC will negotiate the terms of the OSA forming part of the Access Holder Agreement (AHA) with the Access Holder, or the relevant Operator where it has been appointed by the Access Holder as its agent for that purpose.

QR National Coal has previously stressed its support for the ACCC's preliminary view "that the HVAU should give greater recognition to the ability of the Operator to take part in negotiation of an Operator Sub-Agreement, and to utilize the dispute resolution and arbitration provisions of the HVAU in the event of a dispute".¹ QR National Coal is still concerned that the current drafting in the HVAU still implies that the OSA is negotiated predominantly by ARTC and the Access Holder and believes that the ACCC's preliminary view must be reflected in the HVAU.

We consider that Operator participation in the negotiation of Operator Sub-Agreement is necessary to ensure efficient use of the network. Operators are best placed to anticipate potential inefficiencies in the way Operators interface with the Network, particularly where operating restrictions may impose constraints that result in inefficient use of both Operator and Network resources.

¹ Hunter Valley Coal Network Access Undertaking Draft Decision, 5 March 2010 p 15

If you require clarification or have any queries, please feel free to contact David Hamblyn, Acting National Access Manager on telephone (07) 3235 7849.

Regards,



Marcus McAuliffe
Executive General Manager
QR National Coal

11 May 2011