

A few  
words.



**2 February 2017**

Mr Matthew Schroder  
General Manager  
Infrastructure & Transport – Access & Pricing Branch  
Australian Competition and Consumer Commission  
GPO Box 520  
Melbourne VIC 3001

Submitted via email [transport@accc.gov.au](mailto:transport@accc.gov.au)

Dear Mr Schroder,

**ARTC 2017 HVAU – ACCC Consultation Paper**

AGL welcomes the opportunity to comment on the Australian Competition and Consumer Commission (ACCC) Consultation Paper on the Australian Rail Track Corporation's (ARTC) proposed 2017 Hunter Valley Access Undertaking (2017 HVAU).

AGL is one of Australia's leading integrated energy companies and largest ASX listed owner, operator, and developer of renewable generation. Our diverse power generation portfolio includes base, peaking and intermediate generation plants, spread across traditional generation fuel sources as well as renewable sources. AGL is also a significant energy retailer, providing energy solutions to over 3.7 million customers throughout eastern Australia.

In the Hunter Valley, AGL's assets include the 2,640 MW Bayswater and 2,000 MW Liddell coal fired power stations, the 50 MW Hunter Valley gas turbines, and the Liddell solar thermal project. Together, these generators produce around thirty percent of New South Wales' (NSW) electricity needs, and provide employment to over 650 people, most of whom live locally.

**Term of the access undertaking**

AGL is concerned about the proposed 9.5-year term of the 2017 HVAU. Given the current HVAU was only approved in 2011, and several significant changes are now proposed, it may be more appropriate for the 2017 HVAU to have a shorter term of around five years. This would ensure key parameters and terms would be considered through the ACCC's regulatory process once again. AGL considers this would be preferable to the ARTC controlled mandatory review proposed in clause 2.3 of the 2017 HVAU.

**Spot basis purchase of spare capacity**

As the operator of the Bayswater and Liddell power stations, AGL is also the largest domestic buyer of NSW coal. This in turn makes ARTC's rail network an integral part of electricity generation in the state. The efficiency ideal in this context is for coal supply to match competitively priced haulage, haulage availability, rail access, and electricity market demand. However, related markets

to domestic coal have not achieved much recognition within the existing HVAU nor the 2017 HVAU.

In line with the objects of Part IIIA of the *Competition and Consumer Act 2010*, the 2017 HVAU should deliver sufficient flexibility to rail access holders, such that it is possible to effectively respond to conditions in related markets. Applying AGL's circumstances as an example, these markets include the coal spot market and the National Electricity Market (NEM).

For example, clause 16.4 of the AHA, dealing with the temporary trade of path usages (a Tier 2 negotiable provision for non-exporters), is the mechanism by which an access holder can trade for short term or one off capacity that would otherwise go unused. However, given the requirement in clause 16.4 to obtain a recommendation from the Hunter Valley Coal Chain Coordinator (HVCCC) and notify ARTC several days in advance of a trade, this trading mechanism does not allow an access holder to respond to faster paced market developments.

To address this issue, AGL considers that a workable process for obtaining 'last minute' spare capacity could be incorporated in the 2017 HVAU, particularly for non-export access holders, where port capacity need not be considered. In AGL's view, such an addition would be consistent with section 44AA(a) of the CCA, to promote the economically efficient operation of and use of infrastructure, and thereby promote effective competition in upstream and downstream markets.

A similar proposition was raised by Asciano in its submission on the 2016 HVAU.<sup>1</sup> AGL wholly endorses the points made by Asciano on purchasing coal on spot markets and asks that the ACCC reconsider this information in the context of the 2017 HVAU.

### **Negotiating the AHA term**

The standard rolling 10-year term of the access holder agreement (AHA) is a further concern to AGL, particularly considering the uncertain extent of coal based electricity production in years to come, and therefore the future volumes of domestic coal needed in NSW. The withdrawal of coal fired power stations is inevitable and consistent with AGL's announced policy to withdraw by 2050. However, there is clearly some uncertainty, domestically and internationally, as to the best means by which to deliver reductions in greenhouse gas emissions over the longer term. This has flow on impacts for the future generation output to be delivered by power stations such as Bayswater.

AGL appreciates that most users on ARTC's network are coal exporters and that longer term contracts are likely to suit such users, and provide ARTC with certainty that it will receive an appropriate return on its investment. However, such lengthy contracts are not currently the most appropriate option for electricity generators, and being locked into contracts for more rail access than may be needed, for a longer term than necessary, will undoubtedly have significant flow on effects to the prices customers pay for electricity.

AGL considers that significant efficiency improvements would be delivered by the 2017 HVAU embedding a minimum two-year short term AHA for non-exporters. This would provide the flexibility required by the domestic coal market to meet related market conditions. AGL further considers that any such additions or

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<sup>1</sup> Asciano, Submission to ACCC Consultation Paper on Australian Rail Track Corporation's 2016 Hunter Valley Access Undertaking, March 2016, p. 23.

modifications to the 2017 HVAU would be consistent with the efficiency object of Part IIIA, along with subsection 44ZZA(c), the interests of persons who may access the service, and subsection 44ZZA(b), the public interest – in this case, the public interest in a reliable and lowest cost electricity supply.

AGL would like to note that should a shorter term be considered for the 2017 HVAU than the proposed 9.5 years, its concerns about the corresponding length of the AHA may be somewhat addressed.

### **Operation of the renewal notice provisions**

AGL refers to clause 2.4 and clause 2.5 of the train path schedule (TPS) in the current and proposed 2017 AHA, which respectively deal with annual renewal of the TPS and extension of the schedule.

Clause 2.4 allows the access holder to renew the TPS for the year which is 10 years in advance of the current contract year. A failure to submit a renewal notice in the allotted time means the access holder forfeits the opportunity to extend the TPS and forfeits the future paths. The AHA does not allow for late submission of a renewal notice.

Clause 2.5 provides the access holder with a second chance to access the paths forfeited under clause 2.4, but only if another access seeker makes an application for the paths in the accordance clause 2.5.

AGL is concerned that these terms are unnecessarily onerous and can lead to a situation where paths go uncontracted and unused – that is, the original access holder has lost the right to future paths 10 years out, and no other access seekers have sought the paths. AGL considers such an outcome would be inefficient and not in accordance with the objects of Part IIIA.

AGL suggests that the 2017 HVAU be revised to close the loop on this issue and provide a mechanism for any access seeker, including the original access holder, to apply for the relevant paths. In making this suggestion AGL refers to the issues raised in relation to the 10 year AHA term, which is that a 10-year outlook is difficult to determine in the case of domestic coal designated for electricity generation.

AGL also notes that should shorter term AHA's be offered, the annual renewal would refer to the corresponding shorter period. This would also address AGL's concerns about planning coal volumes, haulage, and rail access requirements 10 years out.

### **Improving transparency**

AGL considers there is scope for the 2017 HVAU to provide access seekers with greater transparency regarding ARTC's management of the rail network and the priority afforded to different rail users.

AGL suggests that the Performance Measurements in Schedule D include a requirement on ARTC to report on the:

- rate of train cancellations for a service measured against the average rate of train cancellations for all users on the same section of track; and
- average run time for a service measured against the average run time of all trains along the same section of track.

AGL also considers that ARTC should report on the amount of spare (unused) capacity per segment on a weekly basis. This would allow access holders to

identify segments where it may be possible to acquire last minute spare capacity, thereby maximising overall efficiency. AGL additionally suggests that ARTC be required to report on the amount of spare capacity looking three months forward, to better allow for take up of that capacity.

AGL considers that if ARTC publishes spare capacity data, AGL and other rail users will be placed on a more even footing with members of the HVCCC. AGL understands that HVCCC members receive access to data, which the HVCCC obtains through its 'helicopter' view of the Hunter Valley coal chain, to which non-members are not privy. HVCCC membership is limited to coal producers and service providers. Embedding improved transparency in the 2017 HVAU would be an effective mechanism to overcome this information disadvantage.

Finally, AGL supports the inclusion of all coal access holders in the Rail Capacity Group, as this will allow more equitable and fulsome participation in decision making processes that impact rail users.

If you have any queries about this submission or require further information, please contact Liz Gharghori at [lgharghori@agl.com.au](mailto:lgharghori@agl.com.au) or on 03 8633 6723.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Simon Camroux'.

Simon Camroux  
Manager Wholesale Market Regulation