

ARTC HVAU / AHA amendments in response to industry comments

System Assumptions - commercial carve-out clause

ACCESS UNDERTAKING

5.1 CAPACITY MANAGEMENT

5.1 System Assumptions

- (a) ARTC will participate in the development of System Assumptions via the HVCCC and will use reasonable endeavours to agree System Assumptions with the HVCCC, the coal terminal operators at the Port of Newcastle and other relevant service providers. To avoid doubt, if a System Assumption is based on a subset of assumptions (which at the Commencement Date includes the Relevant System Assumptions), then ARTC will also use reasonable endeavours to agree those assumptions.
- (b) ARTC will base each Capacity Analysis carried out under **section 5.2** on the Relevant System Assumptions and ARTC will reflect the elements (f) to (j) of the Relevant System Assumptions in the Access Holder Agreements.
- (c) If ARTC does not agree with any assumption as detailed in the System Assumption Document as issued by the HVCCC from time to time (which to avoid doubt may include any Relevant System Assumption which is not agreed between the HVCCC and ARTC or an assumption detailed in the System Assumption Document that is based on a Relevant System Assumption which is not agreed between the HVCCC and ARTC), it must, within 20 Business Days of the publication of the System Assumption Document notify the HVCCC and the ACCC of, and publish on its website:
 - (i) the assumption with which ARTC does not agree;
 - (ii) the grounds on which ARTC does not agree with that assumption, together with supporting documentation for those grounds in reasonable detail;
 - (iii) the assumption which ARTC reasonably proposes should apply instead of the assumption referred to in **section 5.1(c)(i)** (and, if applicable, the Relevant System Assumptions on which that assumption should be based).
- (d) If ARTC disagrees with the assumption on the basis that it considers (acting reasonably) that the practical adoption of:
 - (i) ARTC's proposed assumption is necessary for reasons of safe operation of the Network or to prevent an adverse impact on the condition of the Network; or

- (ii) the HVCCC's assumption would have an adverse commercial implication for ARTC (provided that ARTC may not rely on this paragraph (ii) to the extent that the adverse commercial implication for ARTC would arise under the operation of system true up test under Schedule 2 of Access Holder Agreements entered into pursuant to the Undertaking),

then ARTC's notification under **section 5.1(c)** must state that this is the basis for the disagreement.

- (e) Within twenty 20 Business Days of receipt of the notice referred to in **section 5.1(c)**, the HVCCC may notify ARTC that it wishes to raise a dispute based on the reasoning provided by ARTC for not adopting the relevant assumption. The HVCCC is not permitted to raise a dispute if ARTC disagrees with an assumption on the basis of one of the grounds in **section 5.1(d)** but to avoid doubt, this does not prevent the HVCCC raising a dispute on whether ARTC has acted reasonably in relying on **section 5.1(d)**.
- (f) Within 10 Business Days of the HVCCC giving a dispute notice under **section 5.1(e)**, senior representatives from ARTC and the HVCCC will meet and use reasonable endeavours, acting in good faith, to resolve the dispute by joint discussions. If the dispute is not resolved, either party may notify a dispute with the ACCC for determination by arbitration in accordance with **section 3.15(f)(ii)**.
- (g) Upon receiving dispute notice under **section 5.1(f)**, the ACCC will determine whether the assumption referred to in **section 5.1(c)(i)** or the assumption referred to in **section 5.1(c)(iii)** is the more reasonable assumption taking into account:
 - (i) the context of the daily operations of the Hunter Valley Coal Chain at the time of the publication of the System Assumption Document (as applicable), including for the purposes of accurately determining Capacity;
 - (ii) the interests of:
 - (A) Access Holders with Coal Access Rights for export coal;
 - (B) Access Holders with Coal Access Rights for domestic coal;
 - (C) other users of the Network; and
 - (D) ARTC,

including whether ARTC or the parties referred to in paragraphs (A) to (C) will be materially disadvantaged, including in the context of, and basis upon, which ARTC or the party entered into the Access Agreement or Access Holder Agreement and, where applicable, in applying assumptions in the system true up test under Schedule 2 of the Access Holder Agreements which are different to those to which ARTC or the party has previously agreed and relied upon in entering the Access Agreement or Access Holder Agreement, provided that, in

considering whether ARTC or the parties referred to in paragraphs (A) to (C) are materially disadvantaged as a result of that difference, the ACCC must take account of the reasons for that difference at the applicable time.

- (h) If the ACCC reasonably considers that it requires additional information from ARTC to make a determination under **section 5.1(g)**, it may request that information from ARTC and, upon receipt of such a request, ARTC must use reasonable endeavours to provide that information to the ACCC as soon as reasonably practicable.
 - (i) Once the ACCC makes its determination under **section 5.1(g)** as to which assumption is the more reasonable assumption that assumption will be regarded as a System Assumption or (where applicable) a Relevant System Assumption for the purposes of the Undertaking.
 - (j) Until such time as the ACCC makes its determination, all calculations, assessments and determinations made by ARTC on the basis of the then applicable System Assumptions will be made on the basis of the assumption referred to in **section 5.1(c)(iii)**. If the determination of the ACCC is that the assumption referred to in **section 5.1(c)(i)** is to apply, that assumption will be regarded as a System Assumption or (where applicable) a Relevant System Assumption for the purposes of the Undertaking and ARTC will revise accordingly any calculations, amendments or determinations made on the basis of the assumption referred to in **section 5.1(c)(i)** in relation to the TOP rebates arising from the system true up test under clause 2.8 of Schedule 2 of Access Holder Agreements to the extent necessary.
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