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ARTC April 2011 HVAU Transitional Arrangements HRATF Proposal 18.5.11

Preamble

Following ARTC's letter to stakeholders on 10 December 2010, HRATF understands that

- virtually all Hunter coal producers (or their nominees/agents) have provided non-binding nominations to ARTC for Train Path Schedules from 2011
- ARTC has undertaken a general capacity review of the HVRN with the HVCCC as envisaged by the HVAU but this has not been published
- ARTC has provided indicative Train Path Schedules in response to the producer nominations
- some producers have been discussing the indicative Train Path Schedules with ARTC.

However, given the delay in achieving ACCC acceptance of the HVAU and the uncertainty regarding its final form, producers see the need to reiterate this process if and when the HVAU is accepted.

The parties are now striving to obtain acceptance of the HVAU by the ACCC by 9 June which would allow the HVAU to commence on 1 July 2011 although it is not clear whether these dates will be met.

The transitional arrangements set out below are directed at achieving clarity for all users of the Network, and are viewed by ARTC as consistent with the position set out in ARTC's letter of 10 December regarding proposed transition arrangements. The overview below proceeds on the basis that no coal users will have contracted "pre-HVAU". However, if that is not the case and there are "pre-HVAU" access agreements in place for coal in place under the NSWRAU, the HRATF endorses the position in ARTC's 10 December letter in relation to such agreements, including that those users will not avoid conditions relating to the construction of additional by being 'first to contract'.

Proposed Transitional Arrangements (from HVAU Commencement Date)

Within 30 Business Days Coal producers who wish to do so (or their nominees/agents) will submit nominations to ARTC for Train Path Schedules from [July] 2011 (these may vary from the earlier nominations), together with evidence of Network Exit Capability as per section 3.7(a)(ix)(A) of the HVAU. (For the purpose of these transitional arrangements, nominations may not be submitted in respect of capacity to which section 3.7(b) applies.) The nominations cannot be varied by producers once submitted, thereby assisting ARTC with its capacity analysis. However, as set out below, indicative Train Path Schedules prepared by ARTC in response to the producer nominations will be negotiable, and nominations/Access Applications which are submitted can subsequently be withdrawn and/or producers can choose to terminate negotiations with ARTC.

Producers may, but are not required to, submit other information which is required for an Access Application or a precondition to a negotiation under the HVAU.

Within 60 Business Days ARTC will provide indicative Train Path Schedules in response to the producer nominations.

ARTC will publish its general capacity review of the HVRN – ie, a statement of:

- the capacity of the Network for 2011 and for the next 10 years as recommended by the ACCC in its December Position Paper;
- how much capacity (in aggregate terms) is conditional on the various expansion projects identified in ARTC's most recent Corridor Capacity Strategy (and any new projects and/or accelerated projects which ARTC considers to be necessary in

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the context of the nominations submitted and its assessment of other demand for the Network from non-coal users, as per ARTC's 10 December letter); and

- ***[other- to consider what more the industry wants to see beyond the matters what is included in the Corridor Capacity Strategy, and to specify that here.]***

ARTC and producers will negotiate Train Path Schedules.

Producers will submit any additional information required for an Access Application in accordance with section 3.7 of the HVAU, to the extent not already provided.

At 60 Business Days

Indicative nominations for Train Paths (reflecting negotiations as at that date, and unless withdrawn by the relevant producer) will be deemed and acknowledged in accordance with section 3.8 of the HVAU by ARTC to be Access Applications unless producers advise otherwise. (An Access Application is not a binding obligation and a producer may withdraw it at any time.)

All deemed Access Applications referred to above (***Transition Process Applications***) will be treated equitably and transparently in the sense that:

- ARTC will give equal priority and opportunity to each applicant in the negotiation of Access Agreements based on Transition Process Applications
- as per ARTC's 10 December letter, no applicant which has submitted a Transition Process Application will avoid the conditions associated with future expansions by being 'first to contract'
- where there is not sufficient capacity in particular periods to meet all capacity sought under the Transition Process Applications in that period, the available capacity will be allocated on a pro rata basis, as will the additional capacity to satisfy those Transition Process Applications as it is delivered (subject in each case to each applicant concluding the negotiation of an Access Agreement with ARTC in relation to the capacity sought by it)

*ie, if a new project is required to meet demand from two or more applicants for capacity in (eg) 2013, the capacity created by that project will be allocated pro rata amongst those applicants when the project is delivered (whether in 2013 or subsequently) **[Note that no distinction is drawn here between applications for 10 year Access Agreements and applications for Access Agreements with shorter terms]***

- [any Access Applications which are submitted later than as provided for in the timetable outlined above will be assessed and negotiated in accordance with the HVAU but will not be treated as Transition Process Applications for the purpose of these transitional arrangements and will not be afforded equal priority with the Transition Process Applications

ie, if a later Access Application is made which also seeks capacity in (eg) 2013, the pro rata allocation of available capacity in 2013 will not be extended to that later Access Application, and nor will the capacity created by the project referred to above to the extent it is not sufficient to meet the

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*capacity sought by the Transition Process Applications and that later Access Application – that is, the capacity sought under that later Access Application will, to the extent that it cannot be met without reducing the capacity to be granted to applicants under the Transition Process Applications, all be treated as Additional Capacity for the purposes of the HVAU and dealt with accordingly through additional projects etc separately endorsed by the RCG.] **[To confirm that HRATF is happy with this principle.]***

- ARTC will advise the following in relation to the remainder of 2011
- Maintenance Months, Maintenance Losses and Network Path Capability (clause 3.2 AHA)
 - Monthly Tolerance Cap (clause 3.3 AHA)

Subsequently

Producers and ARTC will negotiate and enter into Access Agreements, based on the Transition Process Applications, under the terms of the HVAU.

Equitable treatment of all Transition Process Applications will be maintained throughout this period as set out above. If an Access Agreement has not been entered into pursuant to a Transition Process Application after three months (or such longer period as is reasonably proposed by ARTC based on the general status of all negotiations pursuant to Transition Process Applications, including whether the finalisation of any negotiations depend on the negotiation of a user funding agreement and those negotiations have not been concluded):

- ARTC, acting reasonably and after giving a further 30 Business Days notice to the affected applicant, may cease to treat the Access Application as a Transition Process Application for the purpose of these transitional arrangements; and
- if ARTC does cease to treat the Access Application as a Transition Process Application for the purpose of these transitional arrangements, ARTC will recalculate what additional capacity it can, as a result, make available pursuant to other Transition Process Applications where there had not been sufficient capacity in particular periods to meet all capacity sought under those other Transition Process Applications and the Access Application which is no longer treated as a Transition Process Application, and ARTC will offer to negotiate Access Agreements with the relevant applicants which made those other Transition Process Applications on the basis of that additional capacity being allocated between them on a pro rata basis.