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8 March 2016

{by e-mail}

Mr Matthew Schroder
General Manager
Fuel, Transport and Prices Oversight Branch
Australian Competition and Consumer Commission
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Melbourne Vic 3001

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Dear Matthew

Whitehaven Coal Response to ACCC Consultation Paper on ARTC's draft 2016 Hunter Valley Access Undertaking

Introduction

The Australian Competition and Consumer Commission (**ACCC**) has provided a Consultation Paper on the draft Hunter Valley Access Undertaking (HVAU) submitted by ARTC.

As one of the largest Access Holders in the Hunter Valley, Whitehaven Coal believes the HVAU is essential to the continued stability of the Hunter Valley coal supply chain.

Whitehaven Coal is a member of the Hunter Valley Rail Access Taskforce (HVRATF). This access user group comprised of nine coal producers will be providing a comprehensive submission to ACCC on the draft HVAU. Whitehaven Coal supports the HVRATF position in all areas not outlined in this submission.

Whitehaven Coal requests ACCC does not accept the HVAU in its current form and takes into consideration the material concerns outlined in both the HVRATF and this Whitehaven submission.

Remaining Mine Life (RML)

The RML assumption is a key commercial principle in the HVAU as it is used to calculate the depreciation rate of the Rail Asset Base component in the Access Holder pricing. ARTC have proposed an RML of 16 years commencing July 2016 with all Pricing Zones subject to the same RML.

The draft HVAU is inconsistent in its treatment of RML versus other sections of the HVAU. ARTC utilises the concept of Pricing Zones and Constrained/Unconstrained Networks throughout the draft HVAU to allow differentiation of a number of key commercial principles including :

- Application of Loss Capitalisation and Revenue Allocation
- Rail Asset Base calculations
- Ceiling and Floor Limit Calculations
- Service Envelop specifications
- Maintenance cost allocations
- Network Overhead allocations
- Unders and Overs Accounting

ARTC considered the removal of Pricing Zones from the draft HVAU but concluded “the structure of existing Access Holder Agreements would make the removal of Pricing Zones cumbersome to achieve”.[1]

In Appendix B of the Explanatory Guide in the draft HVAU, ARTC offers no explanation as to why RML is a single calculation for the Hunter Valley network rather than based on Pricing Zones or Constrained/Unconstrained Network sections. Through discussions with ARTC it is understood asset stranding risk is a major concern. As the draft HVAU includes a provision for review of the RML in 5 years, it seems reasonable that any significant changes to the RML (eg mine closures) would be captured by the 5 year review and negate any stranding risk for ARTC.

Whitehaven considers the reduction of the RML below that which results from the weighted average production divided by market reserves lowers ARTC’s risk profile. Therefore if adopted this should be reflected in a lower WACC outcome.

Also, calculating a different RML for sections of the network with different market reserves will reduce the asset stranding risk rather than increase it.

It is to be noted that an RML result consistent with the original 2009 assessment that provides only 16 years from 2016 does not take into consideration the material increase in the mine reserves of the Unconstrained Network over this period.

[1] ARTC Explanatory Guide December 2015 Pg 12

Utilising the formula proposed in the HVRATF submission, latest production information (calendar 2015) and the Unconstrained Mines outlined on Page 31 of the ARTC Explanatory Guide the resulting RML is :

Mine	Mine Reserves	Est Production
Boggabri	137	**8.0**
Maules Creek	350	**7.5**
Narrabri	208	**8.0**
Rocglen (Belmont)	4.4	**1.3**
Tarrawonga	41	**2.2**
Werris Creek	18	**2.4**
Vickery (Prospective)	180	**6.0**
Watermark (Prospective)	100	**3.3**

Remaining Mine Life =	30.20

Given the key commercial principles of the draft HVAU outlined above, it would follow that the RML should also be calculated at a Constrained/Unconstrained Network level giving a result of 30.2 years from 2016 for the Unconstrained Network (assuming a maximum 30 year life for prospective mines). Note exclusion of prospective mines does not materially impact this result but as a principle Whitehaven believes prospective mines should be included in some form.

Loss Capitalisation

The draft HVAU submitted by ARTC includes provisions for Loss Capitalisation. As outlined in previous submissions, as an Unconstrained Network user Whitehaven believes the requirement for Loss Capitalisation is required for the new HVAU.

Unlike all other commercial provisions within the HVAU, the payback period for Loss Capitalisation is not defined and is at the discretion of ARTC. To provide transparency to all access holders Whitehaven believes the mechanism for payback of Loss Capitalisation in the Unconstrained Network should be defined in the HVAU.

Given Loss Capitalisation provides a mechanism for payback of major capital infrastructure required for expansion of production for relatively new coal regions (Unconstrained Networks) it follows that the period for payback of this should be aligned to RML. A payback period of less than the Unconstrained Network's RML artificially inflates access pricing and results in mines that commence production during the HVAU period contribute to less of the significant capital costs to set up the Unconstrained Network.

Path Based Pricing and Revenue Allocation

The ACCC is currently drafting a determination for the 2013 Compliance Test. It is understood that while ever the Ceiling Test for a zone is not met, there will be a requirement for Revenue Allocation therefore this concept is required in the new HVAU.

The draft HVAU proposes a transition from pricing per gross tonne kilometres to Path Based Pricing primarily to simplify the existing pricing mechanisms and facilitate the transition from Indicative Services to Service Envelop.

As per previous submissions, Zone 3 producers are currently limited to 8,000 tonne trains due to constraints on the ARTC rail infrastructure. Whitehaven argues a producer should not be negatively impacted in any pricing zone when they are operating at the most efficient level. Path Based Pricing negatively impacts a Zone 3 producer in Zone 1 by increasing the access price per tonne for 8,000 tonne trains.

Path Based Pricing would lead to a fair and equitable outcome in the event the HVAU provides for either :

- Adjustment to Zone 3 path rates to provide a similar rate per tonne to an efficient Zone 1 train; or

- Removal of the three Zone concept and provide a Single Pricing Zone which uses a single RAB for the entire Hunter Valley coal network.

Without one of the two options above, the existing gross tonne kilometre method should apply.

The second option above would remove the need for Loss Capitalisation and Revenue Allocation from the HVAU. It should be considered if the final HVAU is determined to include only a single WACC & RML, rather than Zone specific or Constrained/Unconstrained specific measurements. Although more complicated to establish, Whitehaven believes this option should be strongly considered by ACCC to better align pricing to other commercial arrangements.

With regards to Revenue Allocation, as it has been highlighted through a number of producer submissions there is a need for transparency of this process. Whitehaven proposes that the new HVAU provides a mechanism for the Revenue Allocation calculation. This mechanism should include a list of cost components and the percentage weightings to be used for the incremental cost calculations of users of an Unconstrained Network operating in a section of the Constrained Network.

RCG and voting rights

As all access holders contribute to the revenue for ARTC, Whitehaven believes RCG membership should be open to all access holders. The inclusion of Coal Chain service providers at RCG meetings should be at the discretion of the access holders.

The draft HVAU proposes the transition from Gross Tonne Kilometres to Path Based Pricing thereby using Train Kilometres to derive the access pricing and ARTC revenue. In the event Path Based Pricing is adopted, voting rights within the RCG should also be calculated based on Train Kilometres rather than Gross Tonne Kilometres.

Summary

Whitehaven confirms its agreement to all positions included in the separate HVRATF submission unless outlined above.

As the key commercial principles in the draft HVAU are determined by Zone or Constrained/Unconstrained definitions it follows that the Remaining Mine Life calculation should also be on the same basis. This derives an RML of 30 years (commencing July 2016) for the Unconstrained Network.

It also follows that the payback period for the remaining Loss Capitalisation amount for the Unconstrained Network should be defined within the HVAU and be in line with the Remaining Mine Life.

To ensure transparency, the Revenue Allocation calculation should be clearly defined in the HVAU. Due to the inherent rail infrastructure limitations, the migration to Path Based Pricing should include either an adjustment for Zone 3 producers or a movement to a single pricing zone concept.

Please contact me if you would like further clarification on the above.

Yours sincerely,

Keiron Rochester

GENERAL MANAGER – INFRASTRUCTURE