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{by e-mail}

Mr Matthew Schroder
General Manager
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Australian Competition and Consumer Commission
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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 2017 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 (HRATF). This access user group comprised of nine coal producers will be providing a comprehensive submission to ACCC on the draft 2017 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 HRATF and this Whitehaven submission.

Rate of Return

Whitehaven reaffirms the methodology outlined within the HRATF submission which uses an orthodox approach to determining the cost of capital parameters. Using these parameters and updating the WACC to reflect the end of June 2016 averaging period, the appropriate pre-tax real WACC result is 4.9%.

For transparency and consistency, this WACC result should be adjusted during the proposed mandatory review process by utilising the same methodology as used to calculate the 4.9% pre-tax result.

Remaining Mine Life (RML) and Depreciation

ARTC have also sought to move away from the agreed methodology of the 2011 HVAU (utilising the most recent publicly available production and market reserve information). The new assumptions ARTC have included in the draft HVAU have the single goal of reducing RML and increasing ARTC's cashflows through higher depreciation charges. These should be rejected with the proven 2011 HVAU principles to prevail.

ARTC have introduced an argument that no further license renewals will be granted in the Hunter Valley therefore JORC reserves should be discounted. ARTC have also introduced a concept that mines on care and maintenance should not be included in the calculation despite examples of such mines recommencing production in the past year. Both assumptions seek to reduce the numerator of the RML calculation.

ARTC have also proposed to use the greater of historic production or future contract levels. This is based on an assumption that producers may deliberately under contract capacity. It is not plausible that a significant group of producers (required to materially influence the RML calculation) would increase the risk of losing sales by adopting this strategy given there is a 10 year lag from when this decision is made to when contracted tonnes can be reduced.

Whitehaven also highlights the potential for different RML results across Pricing Zones. The methodology used by the HRATF results in similar RML's for all three Pricing Zones. Under the ARTC proposed Network wide RML any determination by ACCC which significantly reduces the weighted average mine life in one or more Pricing Zones will have the effect of negatively impacting all Pricing Zones. Based on the premise that RML reflects asset stranding risk for ARTC, Whitehaven believes that any methodology that leads to a large variation of RML's between Pricing Zones should be viewed in conjunction with a move for the Network wide RML to be replaced by zone specific RML's for each zonal RAB.

Mandatory Review of Undertaking

The draft HVAU requires a mandatory review of the requirement for a separate RAB methodology for Pricing Zone 3. There is no explanation as to the requirement for this mandatory review and given ARTC have the ability under the draft HVAU to review any sections of the HVAU, Whitehaven believes this clause 2.3 a) iii) should be deleted.

Path Based Pricing and Incremental Cost Principles

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.

Whitehaven continues to affirm that producers should be charged a similar rate per tonne provided they are utilizing each train path to the maximum that the current infrastructure allows. Path Based Pricing in Zone 1 leads to higher charges for Zone 3 producers despite the fact they are operating the most efficient allowed in Zone 3.

Whilst Whitehaven believes Path Based Pricing should be adjusted to equalize costs per tonne (subject to the minimum Service Envelop for the journey is met), we believe that the Revenue Allocation drafting proposed by ARTC provides a reasonable and balanced position for all users of the Hunter Valley Coal Chain and would therefore endorse the Path Based Pricing concept as drafted.

With regard to the concept of Incremental Maintenance Cost being viewed as those costs avoided in the long run, Whitehaven has concerns that the volume of work required to calculate this may jeopardise the completion of the Opex Mechanism for the commencement of the new HVAU. Whitehaven also has concerns that the annual ARTC budget process and ACCC compliance review process may also become both time and cost prohibitive. Whitehaven requests ACCC consider this in their determination.

Network Performance

Whitehaven believes the efficient operation of the Network requires all participants to meet minimum performance levels. The draft HVAU seems to move some way towards this with the inclusion of Network Key Result Areas (Schedule D).

To ensure an efficient Network, Whitehaven believes the HVAU and related agreements should require ARTC to ensure all service providers meet the NKRA's and provide ARTC with the ability to act in the event service providers are not meeting the NKRA's.

Structure of Charges – Non-Coal Access Rights

Given the high competition for train paths in Pricing Zone 3, Whitehaven believes Charges should be structured accordingly.

Specific to Pricing Zone 3, Non-Coal Access Holders have the ability to utilize a high proportion of the total available train paths (up to 30%) although this is not reflected in the revenue contributed by these Access Holders.

Whitehaven would propose Non-Coal Access Holders pricing be based on a minimum charge equal to the Incremental Cost of operating the number of train paths allocated to these Access Holders in Pricing Zone 3. Through this mechanism ARTC would be able to reduce these Access Holder's charges by reducing the number of train paths they are allocated.

Summary

ARTC's draft HVAU has sought to significantly alter the methodology behind the calculations of the major commercial indices (WACC and RML) that underpin the rates charged to Access Holders. These alterations should not be considered by ACCC.

Whitehaven also highlights potential issues with the application of Incremental Maintenance Costs, the effectiveness of the Network Performance Areas, and the Structure of Charges for Non-Coal Access Holders.

Whitehaven has submitted an extensive joint submission on a number of issues with the draft HVAU as a member of the HRATF and requests ACCC consider all issues raised in both this submission and the HRATF submission.

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

Yours sincerely,

Keiron Rochester

GENERAL MANAGER – INFRASTRUCTURE