

Tuesday, 20 June 2017

Mr Matthew Schroder
General Manager
Infrastructure & Transport – Access & Pricing Branch
ACCC
GPO Box 520
Melbourne Vic 3001

By Email: transport@acc.gov.au

Dear Mr Schroder

Pacific National Response to the ARTC Application to the ACCC to Extend and Vary the ARTC 2011 Hunter Valley Access Undertaking

1. Background

Pacific National welcomes the opportunity to respond to the Australian Competition and Consumer Commission (ACCC) on the Australian Rail Track Corporation (ARTC) proposed variations to the 2011 Hunter Valley Access Undertaking (2011 HVAU).

Pacific National is a major operator of coal trains in the Hunter Valley coal rail network. Pacific National does not currently hold rail access rights¹ or pay access charges in the Hunter Valley coal rail network, however Pacific National recognises that rail access regulation and rail access pricing provide strong incentives to access holders (and hence to operators) as to how train operations should be managed on the Hunter Valley coal rail network. Thus Pacific National has a strong interest in ensuring that efficient and effective access regulation and pricing is in place which provides strong incentives for efficient and effective train operations in the Hunter Valley rail network. In particular Pacific National strongly supports access regulation and pricing which encourages more efficient consumption of capacity in the Hunter Valley coal rail network.

As you are aware, in June 2011 the ACCC accepted the 2011 HVAU from ARTC. The 2011 HVAU was originally planned to expire in 2016 but has since been extended such that it will expire on June 30 2017. In December 2015, ARTC submitted a proposed 2016 HVAU to the ACCC. This proposed 2016 HVAU was withdrawn in June 2016. In December 2016 ARTC then submitted a proposed 2017 HVAU to the ACCC. This proposed 2017 HVAU was withdrawn in May 2017.

In June 2017 ARTC applied to vary the term and some of the commercial components of the 2011 HVAU. The ARTC application seeks to vary the 2011 HVAU in numerous ways including:

- extend the term of the 2011 HVAU to 31 December 2021;
- vary several pricing inputs including the rate of return and remaining mine life;
- vary the corporate overhead allocation methodology; and
- oblige ARTC to submit a further variation within six months relating to path based pricing and incremental costing methodology.

¹ Pacific National holds access rights through the Hunter Valley rail system for non-coal trains and access rights for ancillary train services (for example wagon movements) which serve the coal industry but which do not haul coal.

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This Pacific National submission focuses on the ARTC June 2017 application to vary the term and some of the commercial components of the 2011 HVAU.

This submission is public

2. Pacific National Concerns

Pacific National has several concerns regarding the ARTC application to vary the 2011 HVAU. These concerns are outlined below.

It should be noted that as Pacific National does not hold coal access agreements under the 2011 HVAU, Pacific National will not comment on the proposed ARTC variations relating to rate of return, mine life and compliance assessment as these variations relate primarily to access pricing.

2.1 Regulatory Process

Pacific National is disappointed in the regulatory process which has effectively resulted in the potential for a major change to the Hunter Valley rail access framework, with only two weeks of consultation with stakeholders prior to the potential major change occurring. Further to this point Pacific National understands that given time constraint the ACCC will be required to forgo the Draft Decision step of the regulatory process and move directly to a Final Decision. Pacific National believes that the compressed time frames required in the current regulatory process are not conducive to optimal decision making.

Pacific National's understanding of the regulatory situation is that:

1. if the ACCC approves the ARTC variation of the 2011 HVAU then the access conditions applying to the Hunter Valley coal rail network over the next 4 years will be substantially different to those put forward in the ACCC in its April 2017 Draft Decision on the 2017 HVAU; or
2. if the ACCC does not approve the ARTC variation of the 2011 HVAU then the regulation of access to the Hunter Valley coal rail network will revert to the NSW rail access regulator (IPART) under the NSW rail access regime. Pacific National understands that the NSW rail access regime has not been certified by the National Competition Commission and so this may allow access holders and / or access seekers to pursue access via alternate pathways.

Pacific National believes that neither of these options is optimal and believes that following the ACCC Final Decision the regulatory process should be reviewed in order to identify improvements that could be made to limit the possibility of the current situation occurring in the future.

2.2 ARTC Consultation

In making its application to vary the 2011 HVAU the ARTC has indicated that they have the support of the majority of Hunter Valley coal producers, thus indicating that ARTC has been consulting with the coal producers prior to the application. Pacific National has no concerns with ARTC consulting with stakeholders regarding the variation, but is concerned that ARTC appears to be only consulting with access holders and not other participants in the coal supply chain.

Pacific National understands that ARTC has not consulted any train operators regarding ARTC's current proposal. Pacific National believes that as the train operators are the stakeholders which physically interface with the ARTC Hunter Valley coal rail network then these train operators

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should be included in consultations on matters which impact the operation and performance of the network and which provide incentives to access holders (and hence to operators) as to how train operations should be managed on the network. Furthermore given that elements of the Hunter Valley coal network access pricing are designed to provide incentives and disincentives for certain types of train operations it is reasonable that the ARTC consult train operators in relation to potential changes in access charges and access and operations terms and conditions.

Overall Pacific National is concerned that ARTC has based its proposed 2011 variation on input and consultation with some stakeholders but has not consulted with all major stakeholders, including train operators.

2.3 Pacific National Position on the 2011 HVAU Extension

In previous submissions Pacific National has supported the extension of the 2011 HVAU Access Undertaking in order to ensure the ongoing certainty of regulated rail access on the Hunter Valley coal network.

However, in relation to the current extension Pacific National is concerned that the length of the proposed extension (over 4 years) effectively continues regulatory approaches which Pacific National believes should be reviewed within a shorter time frame.

In considering whether to support the proposed extension Pacific National is effectively required to consider whether it wants the certainty of a sub-optimal but known regulatory regime for 4 years or whether it wants the potential uncertainty of a new regulatory regime.

Given this choice Pacific National reluctantly supports the proposed extension to the 2011 HVAU as ultimately Pacific National supports regulatory certainty for the Hunter Valley coal network.

2.4 Pacific National Position on the 2011 HVAU Variations

Pacific National has several concerns regarding several of the ARTC's proposed variations including:

Path Based Pricing – Pacific National notes that the proposed section 2.3 d) of the 2011 HVAU states that

ARTC will engage in good faith negotiations with Access Holders and, by no later than 31 December 2017 or such later date as agreed with the ACCC in writing, lodge a variation application with the ACCC under section 44ZZA(7) of the CCA to vary this Undertaking to ...incorporate path based pricing

Pacific National believes that in this process ARTC should also engage in good faith negotiations with other relevant stakeholders such as train operators. (Pacific National understands that the variation lodged with the ACCC will be subject to the ACCC's normal consultation processes).

As per previous Pacific National submissions, Pacific National supports path based pricing, as path based pricing provides incentives for larger and higher payload trains which result in more efficient use of capacity in the network as larger trains allow more coal to be moved through the network. However, Pacific National believes that it is important that consultation be undertaken on matters such as access pricing structure so all stakeholders can put forward their views.

Cost Allocation Approach – The new Schedule I of the 2011 HVAU outlines methodology of allocating corporate overhead costs between the Hunter Valley corridor and other ARTC corridors.

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Pacific National is concerned that the impact of this allocation approach on other ARTC corridors has not been quantified in the proposed variation or the supporting application. In particular Pacific National is concerned that by approving this approach the corporate cost allocations to apply in the ARTC Interstate Access Undertaking (IAU) have already been determined prior to any consultation on the IAU commencing.

Pacific National believes that the impact of the ARTC's corporate cost allocation methodology on other ARTC corridors should be clarified in order to ensure the allocations are both cost reflective and reasonable.

3. Conclusion

Overall Pacific National has concerns with the regulatory process which has effectively resulted in the potential for a major change to the Hunter Valley rail access framework with only two weeks on consultation with stakeholders prior to the potential major change occurring. In addition Pacific National has concerns that in relation to regulatory changes ARTC appears to be only consulting with access holders and not other participants in the coal supply chain.

In considering whether to support the proposed extension and variations Pacific National is effectively required to consider whether it wants the certainty of a sub-optimal but known regulatory regime for 4 years or whether it wants the potential uncertainty of a new regulatory regime. Given this choice Pacific National reluctantly supports the proposed extension of the 2011 HVAU.

If you wish to discuss this submission please contact me on 02 8484 8056

Yours Sincerely

Stuart Ronan
Manager Access and Regulation
Pacific National

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