

# Application by ARTC to vary the Hunter Valley Access Undertaking to extend term

6 June 2017

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## 1 Application

### 1.1 Background

This is an application to the ACCC for consent to vary the Hunter Valley Coal Network Access Undertaking 2011 (**HVAU**) under section 44ZZA(7) of the *Competition and Consumer Act 2010* (Cth) (**CCA**).

The HVAU was accepted by the ACCC on 29 June 2011 with a Commencement Date of 1 July 2011 and an expiry date of 1 July 2016. It has been extended twice as ARTC has sought to negotiate a replacement undertaking with Hunter Valley producers and stakeholders for approval by the ACCC:

- Following the approval by the ACCC of an initial extension application on 22 June 2016, an expiry date of 31 December 2016 was given (**Extension 1**).
- Subsequently, the ACCC approved a further extension application on 23 November 2016, bringing the expiry date to 30 June 2017 (**Expiry Date**) (**Extension 2**).

ARTC now seeks a further extension of the 2011 HVAU of 4.5 years, varying the Expiry Date to 31 December 2021 (**Extension 3**) (together, Extensions 1, 2 and 3 are the **Extension Period**).

### 1.2 Proposed terms of Extension 3

This application seeks to vary the HVAU to:

- extend the term of the HVAU to 31 December 2021;
- specify a real pre-tax rate of return of 5.38% and nominal pre-tax rate of return of 7.91% to apply for the period Extension Period (including the “backdating” period of 1 July 2016 to 30 June 2017);
- specify a remaining mine life of 23 years from 1 July 2016;
- amend the objectives in the preamble to include a greater focus on efficiency;
- provide a revised methodology for corporate overhead allocators;
- include a right for the ACCC to obtain information from ARTC in relation to the undertaking (updated for the ACCC’s comments made in the Draft Decision on the proposed 2017 HVAU);
- include an obligation on ARTC to submit a further variation within 6 months of approval of Extension 3 to reflect the following:
  - incorporation of path based pricing; and
  - application of an incremental costs methodology such that:
    - Pricing Zone 3 Customers to contribute incremental costs for the duration of the term;

- incremental maintenance costs to be allocated on actual usage and incremental capital costs to be allocated on contracted capacity;
  - take or pay charges to include incremental capital costs based on contracted capacity;
  - a dual ceiling limit; and
- make consequential changes to the HVAU with respect to transitional arrangements for the compliance assessment to apply for the calendar 2016 year.

The proposed amendments to the HVAU are detailed in section 2 of this application.

### 1.3 Benefits

ARTC considers that this proposal meets the ACCC and stakeholders' requirements and is consistent with the Part IIIA criteria for variations for the following reasons:

- ARTC acknowledges that without the support of the Hunter Valley producers, the ACCC will not be able to accept Extension 3 given the short time available in which to accept it before the expiry of the HVAU.
- It provides medium term regulatory certainty to ARTC and access holders.
- It provides medium term pricing certainty to ARTC and access holders.
- It avoids the uncertainty and need for backdating which would be required if ARTC had sought another short term extension while it sought to obtain approval for a replacement undertaking.
- It accelerates a true up to the producers of amounts relating to the 1 July 2016 to 31 December 2016 portion of the backdating period, in which prices were based on higher interim commercial parameters than those proposed in Extension 3.
- If this extension application is not accepted by the ACCC, the HVAU will expire on 1 July 2017. Economic regulation of the Hunter Valley Coal Network will revert to IPART under the NSW Rail Access Undertaking. A transition to regulation by IPART is likely to involve complexity and cost to both ARTC and producers. Neither ARTC nor producers consider this desirable.
- The obligation on ARTC to make a variation application on the matters outlined above will ensure that the HVAU will be updated to include the various matters on which there was previously general agreement between ARTC and the majority of stakeholders. The timeframe of 6 months to provide this variation will ensure a considered review of the impacts and drafting.

ARTC considers it appropriate for the ACCC to consent to ARTC's proposed variation for the reasons set out above. Further rationale on the individual changes is included in Section 2.

### 1.4 Summary of key changes

By way of summary, ARTC has proposed the following key changes:

#### (a) Rate of return and mine life

ARTC is unable to accept the ACCC's recommended WACC approach in its Draft Decision due to the inconsistent application of market determined and forward looking parameters. Resolution of these matters is unable to be achieved in the timeframe. ARTC has therefore offered a compromise position in negotiations with producers to provide regulatory certainty over the defined term which is reflected in the proposed pre-tax, real WACC of 5.38%

ARTC notes that the ACCC defined a likely range of remaining mine life (**RML**) outcomes of 20-32 years with a point estimate of 23 years. This proposed range is exclusive of the ACIL-

Allen supported ARTC argument for an appropriate allocation of relicensing risk, and therefore this is not a decision that ARTC can support. Resolution of these matters is unable to be achieved in the timeframe. ARTC has therefore offered a compromise position in negotiations with Producers, adopting the ACCC's point estimate for an average of 23 years to apply from 1 July 2016. This approach is aimed at providing regulatory certainty over the Extension Period.

ARTC will revise the 2017 H2 pricing in line with the new commercial parameters to provide a price reduction immediately to producers. ARTC is still formulating that pricing and accordingly the prices have not been included in the attached revised HVAU. ARTC will provide that pricing to the ACCC shortly in sufficient time to meet its decision requirements.

#### **(b) Corporate overhead allocators**

ARTC has proposed amendments to the cost allocation methodology in the HVAU to specify in greater detail how corporate overheads are allocated. The allocations set out in the new Schedule I arise out of work done by an independent consultant in the context of discussions with producers in relation to the finalisation of mechanisms associated with the proposed 2017 HVAU.

The amendments specify a methodology of allocating corporate overhead costs between the Hunter Valley corridor, other ARTC corridors and system wide and the further allocation of those amounts to the Hunter Valley coal network.

#### **(c) Obligation to submit a variation**

Consistent with discussions with producers, ARTC has included an obligation in the HVAU to prepare and submit a variation to the HVAU within 6 months of the ACCC's acceptance of Extension 3. The obligation requires inclusion of the following in the variation:

- incorporation of path based pricing – this approach was proposed in the 2017 HVAU with the support of the majority of producers. In its Draft Decision, the ACCC considered it did not have sufficient information to determine whether the proposal would encourage economically efficient use of the Network.
- application of an incremental costs methodology comprising the elements set out in section 1.2. In the proposed 2017 HVAU, ARTC proposed a number of amendments to address the consequences of the ACCC's final determination on the 2013 Compliance Assessment. The primary aim of the changes was to provide greater certainty on Pricing Zone 3 producers' contribution to costs of using Pricing Zone 1 and certainty to ARTC about the recovery of such costs. These changes were explained in section 2.5.1 of ARTC's Explanatory Guide (December 2016) accompanying the 2017 HVAU. In its Draft Decision, the ACCC sought further information on the impacts of these changes and worked examples from ARTC.

ARTC considers the 6 month timeframe will allow good faith negotiations with the producers to continue after the acceptance of Extension 3 and to prepare and provide further information.

#### **(d) Compliance assessments**

The compliance assessments over the 2016 – 2021 calendar years will be conducted as follows:

- **(2016 calendar year compliance assessment)** A single compliance assessment for 2016 will be undertaken following finalisation of the 2015 compliance assessment, with non-capital costs calculated on an annual basis and calculations for RAB, RAB Floor Limit, depreciation and Rate of Return calculated for each half year period in the 2016 calendar year. 2016 H1 will be based on the original rate of return and mine life, whilst 2016 H2 will be based on the rate of return and mine life specified in this Extension 3.

- **(2017 calendar year – 2021 calendar year +)** From 2017 onwards, ARTC proposes to undertake an annual compliance assessment per calendar year as it has done previously.

ARTC considers that its approach provides the following benefits to access holders:

- The approach brings forward access holders' rebates for 2016 H2 compared with a scenario where the two halves of the year are assessed separately, in which case access holders would need to wait until the 2016 H1 compliance assessment was complete for ARTC to lodge the next compliance assessment and for producers to receive a rebate.
- The approach maintains continuity of compliance assessments being on a calendar year cycle and consistency with the annual reconciliation for take or pay rebates and ad hoc charge rebates.

## **1.5 Criteria for approving variation**

Pursuant to section 2.3 of the HVAU and section 44ZZA(7) of Division 6 of Part IIIA of the CCA, ARTC may vary the HVAU at any time with the ACCC's consent.

The ACCC may only consent to a variation if it considers it appropriate to do so having regard to the matters set out in section 44ZZA(3) of the CCA. These matters include:

- (a) the objects of Part IIIA of the CCA;
- (b) the pricing principles specified in section 44ZZCA;
- (c) the legitimate business interests of ARTC;
- (d) the public interest, including the public interest in having competition in markets;
- (e) the interests of Access Holders and Operators; and
- (f) any other matters that the ACCC thinks are relevant.

For the reasons above, and subject to support from the majority of producers, ARTC considers it is appropriate for the ACCC to accept this variation and extension request.

## 2 Proposed variation

The table below sets out a consolidated list of the amendments proposed to the HVAU as part of this extension application. ARTC has prepared a mark-up of the HVAU to reflect the proposed amendments set out in the table below, attached as Annexure 1. A clean version of the HVAU is also attached as Annexure 2.

ARTC has also prepared a mark-up of the IAHA to reflect the proposed amendments to clauses 4.4, 4.10(g) and 4.22, attached as Annexure 3. A clean version of the IAHA is attached as Annexure 4.

Section	Proposed change	Reason for proposed change
<p><b>Amend section 1.1</b></p>	<p>(d) The predominant usage of the Network is for rail services to the Hunter Valley coal markets. <del>S</del>subject to legislative requirements in relation to other traffic, and in particular ARTC's obligations to provide and maintain priority for passenger services under the <i>Transport Administration Act 1988</i> (NSW). ARTC recognises that the operation, <u>maintenance</u>, and investment in the development of, the Network is primarily to improve utilisation and performance of such rail services and to optimise coal export throughput in the Hunter Valley. ARTC also recognises that non-coal users of the Network require certainty of access and that the views of non-coal users are to be considered and taken into account in making future decisions to invest in new Capacity on the Network.</p> <p>(h) <u>ARTC acknowledges that there is a Hunter Valley coal industry objective to ensure that Coal Chain Capacity is maintained, developed and utilised efficiently. ARTC will, subject to confidentiality obligations, work cooperatively with coal producers, the HVCCC and other parties as required to achieve this objective.</u></p> <p>(i) As an access provider, maintenance of, and investment in, the Network and Associated Facilities is a large component of ARTC's current cost structure. These services are either outsourced, and managed under contracts entered into on commercial terms as a result of a competitive tender process, or, in ARTC's view, otherwise managed on an efficient basis. ARTC has adopted this practice with a view to ensuring that <u>the management, operation and maintenance of the Network and Associated Facilities by ARTC and</u> ARTC's cost structure is Efficient.</p>	<p>Changes to clarify the efficiency objective and as recommended in the ACCC Draft Decision of 20 April 2017.</p>
<p><b>New section 1.2(d)(ii)(B)</b></p>	<p>(i) the interest of the public, including:</p> <p>(A) increasing competition and ensuring efficient use of resources; <del>and</del></p> <p><u>(B) identifying improvements to the Network and Associated Facilities to facilitate optimal performance of the Hunter Valley Coal Chain; and</u></p> <p><del>(B)</del><u>(C)</u> the promotion of economically efficient investment, use and operation of the Network, being an element of the Hunter Valley Coal</p>	<p>Changes to clarify the objectives and as recommended in the ACCC Draft Decision of 20 April 2017.</p>

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<b>New section 1.5</b>	<p><b>1.5 <u>Request for information</u></b></p> <p><u>(a) The ACCC may, by written notice to ARTC, require ARTC to provide information or documents that are required by the ACCC to enable it to exercise its powers or functions in relation to a material obligation, right or process under this Undertaking.</u></p> <p><u>(b) The written notice must set out:</u></p> <p><u>(i) in reasonable detail:</u></p> <p><u>(A) the information or documents required by the ACCC; and</u></p> <p><u>(B) the reasons why the ACCC requires the information or documents.</u></p> <p><u>(ii) the form in which the information or documents must be provided; and</u></p> <p><u>(iii) the deadline for ARTC to provide the information or documents, which must be no less than 14 days from the date of ARTC's receipt of the notice.</u></p> <p><u>(c) ARTC is not required to provide information or documents:</u></p> <p><u>(i) that ARTC considers, acting reasonably, would be onerous or oppressive to provide;</u></p> <p><u>(ii) not within ARTC's possession or control;</u></p> <p><u>(iii) that are the subject of a legitimate claim of privilege; or</u></p> <p><u>(iv) that are not necessary for the ACCC to exercise its power or functions in relation to a material obligation, right or process under this Undertaking including, but not limited to, information or documents related to the matters specified in <b>section 2.1(c).</b></u></p> <p><u>(d) If ARTC receives a request for information or documents to which ARTC considers <b>section 1.5(c)(i)</b> or <b>section 1.5(c)(iv)</b> applies, ARTC must advise the ACCC by notice in writing no less than 7 days from the date of ARTC's receipt of the notice of:</u></p> <p><u>(i) the reasons why ARTC considers those sections apply; and,</u></p> <p><u>(ii) how the request may be modified to address ARTC's concerns in respect to those sections.</u></p>	<p>Change to include a right for the ACCC to obtain information from ARTC in relation to the undertaking as requested by the ACCC, updated in accordance with the comments in the ACCC Draft Decision of 20 April 2017.</p>

<p><b>Amend section 2.2(b)</b></p>	<p>Subject to <del>section 2.3(b) s 4.10(g), 4.10(h) and 4.10(i)</del>, the Undertaking will continue until the earlier to occur of:</p> <p>(i) <del>31 December 2021</del><del>30 June 2017</del>; or</p> <p>(ii) the withdrawal of this Undertaking in accordance with the CCA,</p> <p>being, the Term of the Undertaking, with the period from 1 July 2016 to <del>31 December 2021</del><del>30 June 2017</del>, being the "Extension Period".</p>	<p>To extend the operation of the current Hunter Valley Access Undertaking until 31 December 2021 and include the backdating period for the commercial settings.</p>
<p><b>New section 2.3(b)</b></p>	<p><del>(b)</del> <u>Subject to section 2.3(c) the variation to this Undertaking approved in June 2017 ("Varied Undertaking"),</u></p> <p><u>(i) takes effect twenty one (21) days after the ACCC has published its decision to accept the Varied Undertaking under section 44ZZA(3) of the CCA ("Variation Effective Date"); and</u></p> <p><u>(ii) on and from the Variation Effective Date, all provisions of the Varied Undertaking are taken to have commenced operation on 1 July 2017 ("Variation Commencement Date").</u></p> <p><del>(c)</del> <u>If a person applies to the Australian Competition Tribunal under section 44ZZBF(1) of the CCA within the 21 day period referred to in section 2.3(b)(i) for a review of the ACCC's decision to accept the Varied Undertaking and the Tribunal affirms the ACCC's decision, then the Variation Effective Date and the Variation Commencement Date will be the time of the Tribunal's decision.</u></p> <p><u>(b) ARTC will engage in good faith negotiations with Access Holders and, by no later than 31 December 2017, lodge a variation application with the ACCC under section 44ZZA(7) of the CCA to vary this Undertaking to:</u></p> <p><u>(i) incorporate path based pricing; and</u></p> <p><u>(ii) apply an incremental costs methodology such that:</u></p> <p><u>(A) Pricing Zone 3 Access Holders contribute incremental costs for the remaining term of the Undertaking;</u></p> <p><u>(B) incremental maintenance costs are allocated on the basis of actual usage and incremental capital costs are allocated on the basis of contracted capacity;</u></p> <p><u>(C) take or pay charges include incremental capital based on contracted capacity; and</u></p> <p><del>(A)</del><u>(D) a dual ceiling limit applies.</u></p>	<p>New section to impose an obligation on ARTC to lodge a variation to HVAU within 6 months of acceptance of Extension 3.</p>
<p><b>Amend section 2.6(a)</b></p>	<p>(i) Australian Rail Track Corporation Limited</p> <p><u>20 Newton Street</u> <u>BROADMEADOW NSW 2292</u><del>Ground Floor</del> <del>Off Sir Donald Bradman Drive</del></p>	<p>Changes to reflect updated contact details of ARTC.</p>

	<p><del>Passenger Rail Terminal Road</del> <del>MILE END SA 5034</del></p> <p>Attention: <a href="#">Executive General Manager Hunter Valley</a> <del>Chief Executive Officer</del> Telephone: <a href="#">(02) 4941 9707</a> <del>(08) 8217 4366</del> Facsimile: <a href="#">(02) 4952 0353</a> <del>(08) 8217 4578</del></p> <p>(ii) Australian Rail Track Corporation Limited</p> <p><a href="#">Locked Bag 1</a> <a href="#">BROADMEADOW NSW 2292</a> <del>PO Box 10343</del> <del>Gouger Street</del> <del>ADELAIDE SA 5000</del></p> <p><a href="mailto:hvauenquiries@artc.com.au">hvauenquiries@artc.com.au</a> <del>secretary@artc.com.au</del></p>	
<p><b>Amend section 4.4(a)(ii) – definition of Out-turn Revenue</b></p>	<p>Out-turn Revenue<sub>t-1</sub> is the total Access revenue earned by ARTC in the preceding calendar year (t-1) but will not include:</p> <ul style="list-style-type: none"> <li>(i) a Capital Contribution received from an Applicant or an Access Holder; or</li> <li>(ii) Access revenue returned to a Contributor as a result of the operation of a user funding agreement between the Contributor and ARTC.</li> </ul> <p><a href="#">Any one off adjustment to the revenue for Pricing Zone 3 Access Holders in respect of the backdating period 1 July 2016 to 30 June 2017 will be offset against Out-turn Revenue in the relevant calendar year for the purposes of this clause.</a></p>	<p>Change to allow ARTC's commitment to make a one off adjustment for Pricing Zone 3 Customers in respect of the backdating period.</p>
<p><b>Amend section 4.6</b></p>	<p>(a) For the purposes of <b>section 4.5</b>, Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets will be allocated to Segments in accordance with the following principles:</p> <ul style="list-style-type: none"> <li>(i) <del>where possible,</del> costs will be directly attributed to a Segment;</li> <li>(ii) <a href="#">where attribution under clause 4.6(a)(i) is not possible,</a> Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets will be <a href="#">allocated identified with the Hunter Valley corridor, other ARTC corridors or identified as system wide</a> in accordance with <a href="#">Schedule I</a>;</li> <li><del>(iii) Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets identified with the Hunter Valley corridor or other ARTC corridors, or identified as system wide, will be allocated to those parts of Segments in the Hunter Valley corridor or in other ARTC corridors, or, where identified as system wide, to Segments owned, leased or licensed by ARTC respectively, in proportion to:</del> <ul style="list-style-type: none"> <li><del>(A) gtkm with respect to Non-Segment Specific Costs and depreciation of, and return on, Non-Segment Specific Assets associated with track maintenance; and</del></li> <li><del>(B)(A) Train kilometres with respect to Non-Segment Specific Costs and depreciation</del></li> </ul> </li> </ul>	<p>Changes to specify the method of allocation of corporate overheads between the Hunter Valley corridor, other ARTC corridors or identified as system wide as well as to the Hunter Valley Network.</p>



		<del>of, and return on, Non-Segment Specific Assets not associated with track maintenance.</del>
<b>Amend section 4.7</b>	<p>(a) The useful life of a Segment or group of Segments is to be determined having regard to:</p> <p>(i) the average remaining mine life of coal mines utilising the Pricing Zone of which that Segment or group of Segments forms part;</p> <p>(ii) average mine production levels anticipated during the Term having regard to Coal Chain Capacity at any time; and</p> <p>(iii) marketable coal reserves estimated for each mine existing at the time of the determination or expected to commence during the 5 year period following the time of the determination.</p> <p>The average remaining mine life of coal mines utilising a Pricing Zone may vary between Pricing Zones as approved by the ACCC.</p> <p>(b) <a href="#">For the Extension Period, the useful life of a Segment or group of Segments is deemed to be 23 years commencing 1 July 2016.</a></p>	ARTC has offered a compromise position in negotiations with Producers, aimed at providing regulatory certainty over the defined Extension Period, for an average RML of 23 years to apply from 1 July 2016.
<b>Amend section 4.8</b>	<p>(a) Subject to paragraph (b), for the Term of the Undertaking <del>until 1 July 2016</del>, the real pre-tax Rate of Return is 9.10% and the nominal pre-tax Rate of Return is 11.83%.</p> <p>(b) For the Extension Period <del>of the Undertaking, and subject to subsequent adjustment in respect of the Extension Period as contemplated in section 4.10(h)</del>, the real pre-tax Rate of Return is <del>5.38</del>6.74% and the nominal pre-tax Rate of Return is <del>7.91</del>8.50% <del>(“Interim ROR”)</del>.</p>	ARTC proposes to use a single rate of return for the entire 4.5 year Extension Period. This also addresses the backdating issue.
<b>Amend 4.10(g)</b>	<p>(g) For the purpose of carrying out ARTC’s annual compliance assessment for the 2016 calendar year, <b>sections 4.9 and 4.10 and Schedule G</b> will apply as follows:</p> <p>(i) <a href="#">a single annual compliance assessment will be undertaken with non-capital costs calculated on an annual basis and calculations for RAB, RAB Floor Limit, depreciation and Rate of Return calculated for each half year period in the 2016 calendar year, being:</a></p> <p><a href="#">(A) the period commencing on 1 January 2016 and ending on 30 June 2016 (“Initial 2016 Period”); and</a></p> <p><a href="#">(B) the period commencing on 1 July 2016 and ending on 31 December 2016 (“Extension 1 Period”),</a></p> <p><a href="#">(each a “Review Period”) to take into account the different Rates of Return and average remaining mine life applying in each Review Period and, unless specified in this section</a></p>	<p>The amendments to this clause are designed to clarify the approach to undertaking the compliance assessment for the 2016 calendar year.</p> <p>Accordingly, if the term of the 2011 HVAU is extended to 31 December 2021, ARTC proposes that a single compliance assessment will be undertaken for the 2016 calendar year based on the:</p> <ul style="list-style-type: none"> <li>existing rate of return and average remaining mine life for the first 6 months of</li> </ul>

	<p><u>4.10(g)</u> relevant references to the “previous calendar year”, “preceding calendar year”, “calendar year” and items referable to, or matters to be determined on, an annual basis in the Undertaking will be interpreted accordingly:</p> <p>(ii) <u>ARTC will submit to the ACCC documentation in accordance with requirements of <b>section 4.10</b> and <b>Schedule G</b> in respect of the 2016 calendar year and each Review Period as applicable by four months after the ACCC determination for the compliance assessment for the 2015 calendar year;</u></p> <p>(iii) <u>the ACCC will make a determination under <b>sections 4.10(d)</b> and <b>4.10(e)</b> in respect of the:</u></p> <p>(A) <u>Initial 2016 Period – based on the Rate of Return specified in <b>section 4.8(a)</b> and the average remaining mine life determined by the ACCC in its final decision on the Undertaking of 29 June 2011; and</u></p> <p>(B) <u>Extension 1 Period – based on the Rate of Return specified in <b>section 4.8(b)</b> and the average remaining mine life in <b>section 4.7(c)</b>;</u></p> <p>(iv) <u>for the purpose of <b>section 4.10(f)</b>, the TUT Audit will continue to be done on a full calendar year basis for the 2016 calendar year; and</u></p> <p>(v) <u>in applying <b>section 4.9(b)(vi)</b> in reconciling the Constrained Coal Customer Accounts, ARTC may do so on an aggregate basis for both Review Periods.</u></p> <p><del>(i) — assessment for the Initial 2016 Period.</del></p> <p><del>(ii) — in respect of the period commencing on 1 January 2016 and ending on 30 June 2016 (“Initial 2016 Period”), ARTC will submit to the ACCC by 30 April 2017 documentation in accordance with <b>sections 4.9</b> and <b>4.10</b> to enable the ACCC to carry out the compliance assessment for the Initial 2016 Period using the Rate of Return, and subject to paragraph (v), relevant references to the “previous calendar year”, “preceding calendar year”, “calendar year” and items referable to, or matters to be determined on, an annual basis in the Undertaking will be interpreted on a half-yearly basis; and</del></p> <p><del>(iii) — in respect of the period from 1 July 2016 to 31 December 2016, the compliance assessment will be undertaken as part of the compliance assessment process for the entire Extension Period in accordance with <b>section 4.10(h)</b>;</del></p> <p><del>(iv) — ARTC will submit to the ACCC documentation in accordance with requirements of <b>section 4.10</b> and <b>Schedule G</b> in respect of the Initial 2016 Period;</del></p> <p><del>(v) — the ACCC will make a determination under <b>sections 4.10(d)</b> and <b>4.10(e)</b> in respect of the</del></p>	<p>2016; and</p> <ul style="list-style-type: none"> <li>new rate of return and remaining mine life of 23 years for the second 6 months of 2016.</li> </ul>
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	<p><del>Initial 2016 Period based on the Rate of Return and existing average remaining mine life; and</del></p> <p><del>for the purpose of <b>section 4.10(f)</b>, the TUT Audit will continue to be done on a full calendar year basis for the 2016 calendar year and the Final Audit Report for 2016 will form part of the compliance assessment for the Initial 2016 Period.</del></p>	
<p><b>Delete 4.10(h)-(j)</b></p>	<p><del>(h) — Unless an alternative method of providing for the ex post adjustment of tariffs in respect of the Extension Period is approved by the ACCC as part of an undertaking which replaces this Undertaking, for the purpose of carrying out ARTC's annual compliance assessment for the Extension Period, <b>sections 4.9 and 4.10 and Schedule G</b> will apply as follows:</del></p> <p><del>(i) — ARTC will submit to the ACCC by 31 October 2017 documentation in accordance with <b>sections 4.9 and 4.10</b> of this Undertaking to enable the ACCC to carry out the compliance assessment for the Extension Period;</del></p> <p><del>(ii) — ARTC will submit to the ACCC documentation in accordance with requirements of <b>section 4.10 and Schedule G</b> in respect of the Extension Period;</del></p> <p><del>(iii) — the ACCC will make a determination under <b>sections 4.10(d) and 4.10(e)</b> for the Extension Period based on the revised rate of return and average remaining mine life approved by the ACCC under the new access undertaking approved by the ACCC for the Hunter Valley Rail Network commencing operation on 1 July 2017 ("<b>New Undertaking</b>");</del></p> <p><del>(iv) — the outcome of the ACCC's determination under <b>section 4.10(d)(ii)</b> will be passed through to Constrained Coal Customers through unders and overs accounting pursuant to <b>section 4.9</b>; and</del></p> <p><del>(v) — for the purpose of <b>section 4.10(f)</b>, the TUT Audit will continue to be done on a full calendar year basis for the 2017 calendar year under and in accordance with the terms of the New Undertaking. For the avoidance of doubt, the Final Audit Report for 2017 will not form part of the compliance assessment for the Extension Period.</del></p> <p><del>(i) — <b>Sections 4.9 and 4.10 and Schedule G</b> and such other sections of the Undertaking as required to give effect to <b>section 4.10(h)</b> survive termination of this Undertaking or expiry of the Term and to avoid doubt, include any obligations to perform any actions on a date after the expiry of this Undertaking.</del></p> <p><del>(j)(h) Without limitation to <b>section 4.10(i)</b>, ARTC will ensure that any new access undertaking for the Network which it submits to replace this Undertaking is consistent with, and gives effect to, the transitional arrangements contemplated by <b>section 4.10(h)</b>.</del></p>	<p>The purpose of these clauses was to provide the annual compliance assessment for the backdating period (1 July 2016 to 30 June 2017) which altered the usual annual compliance process. Once compliance assessment is back in line with calendar years in 2016, these clauses are no longer required.</p>

<p><b>Clause 4.22</b></p>	<p><b>4.22 Extension Period Access Charges</b></p> <p>The following Indicative Access Charges will apply for the <a href="#">period 1 July 2017 to 31 December 2017</a> <del>Extension Period</del> (and, to avoid doubt, such charges constitute charges published and determined by ARTC in accordance with the Undertaking for the purposes of clause 4(b)(i) of Schedule 3 of the Access Holder Agreements):</p> <p><b>ARTC 2017 <del>H2H4</del>-Hunter Valley Access Charges</b></p> <p>The following 2017 <del>H2H4</del>-Initial Indicative Access Charges, Interim Access Charges and Charges for non-Indicative Services apply from <del>1 July 1 January</del> 2017 to <del>31 December 2017</del> <a href="#">30 June 2017</a>.</p>	<p>There will be new pricing for 2017 H2 to reflect the new commercial settings.</p>
<p><b>Clause 4.23(c)</b></p>	<p>(c) Clause 5.4 of the Access Holder Agreements has been amended pursuant to a variation to the Undertaking approved by the ACCC in June 2016, <del>and a further variation approved by the ACCC by</del> December 2016 <del>and June 2017</del> for the purpose of calculating ad hoc rebates and applying the system wide true up test under the Access Holder Agreements where there are two sets of pricing during the 2016 calendar year.</p>	<p>Change to reflect the fact of this extension.</p>
<p><b>Amend definitions</b></p>	<p>The following definitions will need to be amended:</p> <p><b>“Rate of Return”</b> has the meaning given in <b>section 4.8(a)</b>;</p>	<p>Amendment to definitions for completeness.</p>
<p><b>Delete definitions</b></p>	<p>The following definitions will need to be deleted:</p> <p><del>“Interim ROR” has the meaning given in section 4.8(b);</del></p> <p><del>“New Undertaking” has the meaning given in section 4.10(h)(iii);</del></p>	<p>Deletion of unused definitions.</p>
<p><b>New definitions</b></p>	<p>The following new definitions will need to be added to section 14 (Definitions):</p> <p><a href="#">“Extension 1 Period” has the meaning given in section 4.10(g)(ii);</a></p> <p><a href="#">“Review Period” has the meaning given in section 4.10(g)(i);</a></p> <p><a href="#">“Variation Commencement Date” has the meaning described in section 2.3(b)(ii);</a></p> <p><a href="#">“Variation Effective Date” has the meaning described in section 2.3(b)(i);</a></p> <p><a href="#">“Varied Undertaking” has the meaning described in section 2.3(b);</a></p>	<p>Inclusion of new definitions for completeness.</p>
<p><b>New Schedule I</b></p>	<p>A new Schedule I has been included, as referred to in section 4.6, setting out the overhead cost allocation methodology.</p>	<p>Schedule I specifies details of how overhead costs are allocated between the Hunter Valley Network and other ARTC networks as well as within the Hunter Valley Network itself. A schedule has been included to avoid lengthy in-text clauses.</p>
<p><b>Amend IAHA</b></p>	<p>(i) Subject to <b>clause 5.4(j)</b>, in calculating the average Ad Hoc Charges under <b>clause 5.4(b)</b> and the Aggregate Train Path TOP Charges under <b>clause</b></p>	<p>This addresses the operation of the system</p>

<p><b>clause 5.4</b></p>	<p><b>5.4(c):</b></p> <p>(i) for the 2016 Contract Year (“<b>Original 2016 Rebates</b>”), for the purposes of the period from 1 July 2016 to 31 December 2016 (“<b>Second 2016 Period</b>”), the Ad Hoc Charges and Train Path TOP Charges (as applicable) will be calculated based on <a href="#">rate of return</a> <del>Interim ROR</del> and existing average remaining mine life applicable to the Extension Period under the Access Undertaking; and</p> <p>(ii) for the 2017 Contract Year (“<b>2017 Rebate Process</b>”), for the purposes of the period from 1 January 2017 to 30 June 2017, the Ad Hoc Charges and Train Path TOP Charges (as applicable) will be calculated based on the <del>revised R</del>rate of <del>Return</del><a href="#">return</a> (“<b>New ROR</b>”) and average remaining mine life <a href="#">applicable to the Extension Period under the Access Undertaking</a>.</p> <p>(j) Subject to <b>clause 5.4(k)</b>, as part of the 2017 Rebate Process, ARTC agrees to recalculate the Original 2016 Rebates by replacing:</p> <p>(i) the <a href="#">rate of return that applied under the Access Undertaking until 1 July 2016</a> <del>Interim ROR</del> with the <a href="#">rate of return applicable to the Extension Period under the Access Undertaking</a> <del>New ROR</del>; and</p> <p>(ii) the average remaining mine life that applied under the Access Undertaking until 1 July 2016 with the average remaining mine life applicable to the Extension Period under the Access Undertaking,</p> <p>The following definitions will need to be deleted:  <del>Interim ROR has the meaning given in the Access Undertaking;</del></p>	<p>wide true up test and ad hoc rebates given the different pricing applicable during the 2016 calendar year.</p>
<p><b>Amend clause 20.3</b></p>	<p>Name: Australian Rail Track Corporation Limited</p> <p>Address: <a href="#">20 Newton Street BROADMEADOW NSW 2292</a> <del>Ground Floor ARTC Building off Sir Donald Bradman Drive Passenger Rail Terminal Road MILE END SA 5034</del></p> <p>Attention: <a href="#">Executive General Manager Hunter Valley</a> <del>Chief Executive Officer</del></p> <p>Facsimile: <a href="#">(02) 4952 0353</a> <del>(08) 8247 4578</del></p> <p><a href="#">Email:</a></p>	<p>Changes to reflect updated contact details of ARTC.</p>

	<a href="mailto:hvauenquiries@artc.com.au">hvauenquiries@artc.com.au</a>	
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# **Application by ARTC to vary the Hunter Valley Access Undertaking to extend term**

## **Annexure 1**

Mark-up of the HVAU to reflect proposed variation amendments

# **Application by ARTC to vary the Hunter Valley Access Undertaking to extend term Annexure 2**

Clean version of the HVAU incorporating proposed variation amendment



# **Application by ARTC to vary the Hunter Valley Access Undertaking to extend term**

## **Annexure 3**

Mark-up of the IAHA to reflect proposed variation amendments

# **Application by ARTC to vary the Hunter Valley Access Undertaking to extend term Annexure 4**

Clean version of the IAHA incorporating proposed variation amendment