

19 October 2018

By email

Mr Matthew Schroder
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Dear Mr Schroder

HRATF supplementary submission – September HVAU Variation

The Hunter Rail Access Taskforce (**HRATF**) welcomes this opportunity to respond to the re-submitted variation to vary the 2011 HVAU (**September Variation**), submitted by ARTC on 28 September 2018.

The HRATF has worked with ARTC in relation to the design of the modified RCG approval process for capital allocation decisions, which is the most material element in the September Variation that was not part of the original 'package' of changes proposed as part of the variation submitted by ARTC in December 2017 (**December Variation**) and subsequently withdrawn. Subject to a small number of comments, addressed below, the September Variation reflects an approach to the RCG process and drafting that has been agreed with HRATF.

The HRATF therefore supports the September Variation and, given the considerable consultation and engagement that has already occurred in relation to the December Variation, we would welcome the ACCC moving directly to a final decision to accept it in order to provide ARTC with the certainty required in order to reflect the amendments in 2019 tariffs.

This submission supplements the comments that HRATF has already made in response to the December Variation. We have not sought to repeat earlier submissions.

HRATF notes and supports the inclusion of clause 2.3(d) sought by it and the ACCC (in the draft decision) to make clear that the approach taken to any economic ceiling model (and all other aspects of the current pricing structure) will be a matter reviewed by ARTC in the course of the 2022 HVAU process, having regard to the loss capitalisation position in Pricing Zone 3 at that time.

In relation to the changes to the RCG process that have been proposed, HRATF makes the following specific comments:

1. HRATF accepts the rationale for adopting a different approach to the endorsement by the RCG of capital allocation proposed in relation to Sustaining and Expansion Capital. In relation to Sustaining Capital, any objections by RCG members can continue to be raised with the ACCC through the annual compliance process.
2. HRATF supports the new process and timeframes proposed for escalating any disputes by an RCG member in relation to cost allocation (for Expansion Capital), which has been developed with the involvement of HRATF members and they consider it appropriately balances the interests of RCG members and ARTC.
3. HRATF notes amendments made to the RCG process in clause 9.9(j)-(l) to address the costs of the ACCC in resolving any disputes. This is the only aspect of the drafting proposed by ARTC in relation to the modified RCG process that was not settled with HRATF. While HRATF understands and accepts the need to address ACCC costs, HRATF notes that it expects the default position (where ARTC bears these costs and can capitalise them in its RAB) to be the position adopted in all but exceptional circumstances.

HRATF considers that, provided an objection raised by a producer is genuine and not vexatious, it is not appropriate for the producer to be required to bear any of the ACCC costs of managing and resolving a dispute even if the producer is ultimately unsuccessful in relation to a dispute. This includes because:

- the ACCC considers objections to capital investment and allocation decisions today as part of the annual compliance process (and this is not something for which its costs are recovered directly from individual producers). The modified dispute process simply brings forward the ACCC's consideration of the cost allocation in some cases in relation to Expansion Capital, avoiding the need for this to be re-assessed by the ACCC as part of a future annual compliance process; and
- making producers share the ACCC costs in resolving objections is likely to provide a disincentive for producers to raise concerns, which would undermine the policy intent of the process. This may also disadvantage smaller producers.

HRATF therefore supports the September Variation as proposed by ARTC and would welcome the ACCC moving quickly to a decision to approve it, without the need for further consultation.

Please direct any correspondence in relation to the issues raised in this submission to me, copying our HRATF advisers, Alex Sundakov (Alex.Sundakov@castalia-advisors.com) and Simon Muys (smuys@gtlaw.com.au).

Yours Sincerely,

Craig Forster
Chair – Hunter Rail Access Taskforce