

25 October 2010

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{sent by e-mail}

Submission Re: ARTC 2010 Hunter Valley Access Undertaking (2010 HVAU)

The Hunter Valley Coal Chain Coordinator Limited (HVCCC) is an independent company established to plan and coordinate the co-operative daily operation and long term capacity alignment of the Hunter Valley Coal Chain. Membership of HVCCC, a company limited by guarantee, consists of all current Hunter Valley Coal Producers and major Service Providers. The HVCCC membership agreement includes appropriate confidentiality arrangements and information sharing protocols. HVCCC is uniquely placed to have a complete helicopter view of the Hunter Valley Coal Chain, including current and future:

- i. Contracted volumes with all Service Providers;
- ii. Producer demand by region and load-point; and
- iii. Coal Chain system capacity.

HVCCC appreciates the opportunity to provide a response to the proposed 2010 HVAU. HVCCC's response is limited to those areas of the proposed 2010 HVAU that are directly related to the planning and coordinating function of HVCCC. This letter contains no confidential information and ARTC may publish this letter to inform other stakeholders of HVCCC's response to the proposed 2010 HVAU.

The following response is to be read in conjunction with the ACCC proposed 2010 HVAU, Consultation Paper, dated 16 September 2010:

2.1 – 2.4: Not directly related to HVCCC.

2.5 Determination of the efficient train configuration, indicative service description and indicative access charges:

ARTC's commitment to consult with HVCCC on the proposed characteristics of an indicative service is appropriate and HVCCC supports the process for the determination of the efficient train configuration

2.6: Not directly related to HVCCC.

2.7 Capacity Management

ARTC's commitment to participate in the development of System Assumptions via the HVCCC {Clause 5.1} is appropriate.

ARTC's commitment to consult with HVCCC as part of undertaking its capacity analysis and the proposed process {Clause 5.2 (d)} is appropriate.

ARTC's commitment to consult with HVCCC with the objective of coordinating its response to a shortfall in existing Capacity {Clause 5.4 (a)} and ARTC's commitment to promptly inform HVCCC of the result of the allocation of Capacity {Clauses 5.5, 5.6 and 5.7} is appropriate.

ARTC's commitment to consult with HVCCC, within 12 months, on the process for allocating losses of Capacity caused by Access Holders and their Operators and potential incentive mechanisms to minimise such losses where they have a material impact on Coal Chain Capacity or the Capacity entitlements of Access Holders {Clause 5.9} is appropriate.

2.8 Additional Capacity

ARTC's commitment to consult with HVCCC, and take in to account HVCCC comments in accordance with **section 5.2(d)**, in assessing any impact of proposed Network Connections or requests for Additional Capacity {Clauses 6.1 and 6.2} is appropriate.

ARTC's commitment to cooperate with HVCCC in planning expansions of Coal Chain Capacity and proposed process for consenting to the provision of Additional Capacity recommended by HVCCC {Clause 6.3} is appropriate.

ARTC's commitment that HVCCC would be a non-voting member of the RCG {Clause 6.4 (b)} is appropriate.

ARTC's commitment to meet with HVCCC and relevant coal terminal operators at the Port of Newcastle, to align planned expansions to the Network with expansions at coal terminals, as part of developing a Hunter Valley corridor capacity strategy {Clause 6.4 (c)} is appropriate.

2.9 Performance measurement and incentives

As part of its planning and coordinating function, HVCCC is accountable for monitoring and reporting to stakeholders in the Coal Chain, including Producers and Service Providers, on planned vs. actual coal chain performance, utilisation of Coal Chain capacity and progress against Coal Chain planned capacity expansion works. The HVCCC Membership Agreement includes appropriate confidentiality arrangements and information sharing protocols to ensure HVCCC obtains the relevant information for stakeholder reporting. Therefore, with the above as context, the clauses in relation to Performance Indicators and Incentives in the proposed 2010 HVAU are not directly related to HVCCC.

2.10 System Assumptions

HVCCC is of the view that the incorporation of System Assumptions in the proposed 2010 HVAU is mandatory and therefore the proposed clauses referencing the Systems Assumptions are appropriate.

2.11 HVCCC consultation

The principles setting out the process by which ARTC will consult with HVCCC {Schedule F} are appropriate and are likely to ensure effective consultation between ARTC and HVCCC.

2.12 Access rights under the Indicative Access Holder Agreement (IAHA)

HVCCC supports the alignment of tolerances and caps to available Coal Chain peaking capacity. The amount of available peaking capacity will vary from to time, and location to location, as additional capacity is brought on line throughout the Coal Chain. The level of tolerances and caps is a commercial matter between Producers and ARTC. ARTC should ensure, through consultation with HVCCC, that there is sufficient peaking capacity to meet the agreed tolerances and cap.

HVCCC supports the alignment of Access Holder allocation periods with terminal allocation at the Port of Newcastle {Clause 3.5 of the IAHA}.

2.13: Not directly related to HVCCC.

2.14 Accountability for performance measures

Clause 11.5 of the IAHA 'Non-Compliant Services' is not directly related to HVCCC.

Clause 11.6 of the IAHA 'Cancellation of services' provides that, if in the reasonable opinion of HVCCC cancellations assigned to the Access Holder have had an impact on Coal Chain capacity, ARTC may treat the path as a Path Usage even though the path was not physically used. This is appropriate as the path was planned for that Access Holder and as such was not available to any other Access Holder.

2.15 Assignment and trading

Clauses 16.1, 16.2, 16.3, 16.5 and 16.7 of the IAHA are not directly related to HVCCC.

Clause 16.4 of the IAHA ('Temporary trade of Path Usages') provides that:

- An access holder (Former Access Holder) may trade a Path Usage to another access holder (New Access Holder) without ARTC's consent if the New Access Holder's load point is closer to the Port of Newcastle than the Former Access Holders load point; and

- If the above condition is not met (ie: the New Access Holder's load point is not closer to the Port of Newcastle) ARTC will not unreasonably refuse its consent provided ARTC is able to ascertain that the trade will not have an impact on Coal Chain Capacity and Capacity entitlements of other Access Holders.

Clause 16.6 (c) of the IAHA ('Capacity Transfer System (CTS) Administrator and HVCCC') provides that ARTC will consider in good faith, and is entitled to rely on, recommendations by the HVCCC as to the impact of the Trade on Coal Chain Capacity and Capacity entitlements of other Access Holders.

Development of long term commercial arrangements to underpin future investment in track, train and terminal infrastructure in the Hunter Valley Coal Chain is a complex process that has been the focus of industry attention for some time now. As part of the contractual alignment process an industry working group was established to develop a CTS Protocol to be applied from 1 January 2010. The CTS Protocol comprises the CTS Clearing house rules and the Transfer Approval Process for both Long-term transfers (an application for transfer submitted no later than 21 days before the start of the month for which the transfer applies and Short-term transfers (all other transfers). The CTS Protocol sets out the appointment of HVCCC as CTS Administrator and also sets out the maximum time period for assessing a transfer and the prescribed forms and process for applying for a transfer. HVCCC provides monthly CTS Administrator updates to its Members. More recently HVCCC advised its Board of Directors that there were some potential compliance issues with the CTS. The Board of HVCCC resolved that HVCCC Management consult with ARTC representatives with the aim of resolving the compliance issue through ARTC contractual arrangements with Producers (ie: through the HVAU or IAHA).

HVCCC Management has discussed the industry compliance issue with ARTC representatives and the benefits of ensuring **all** applications for the transfer of rail paths between Access Holders are assessed in accordance with the CTS Protocols. Furthermore, HVCCC submits that it cannot be automatically assumed that transfer of contractual entitlement to a load point closer to the Port of Newcastle will not impact on Coal Chain Capacity and contractual entitlements of other Access Holders; be it contractual entitlement with ARTC, rail haulage providers or with terminals at the Port of Newcastle. Load points often share track access to the network. These branch lines, such as the Whittingham branch line in the Lower Hunter Valley, can often be congested due to timing of demand from a number of load points. A transfer of contractual entitlement to a load point that is located closer to the Port of Newcastle can adversely impact the Capacity entitlements of other Access Holders, particularly those on the same branch line.

Clause 16.4 (a) of the IAHA should be amended to provide that no Trade of Path Usage can be made without ARTC consent in accordance with Clause 16.4 (d) and Clause 16.6 (c). This amendment could be achieved by incorporating a further requirement in 16.4 (a) (iv) whereby both the Former and New Access Holders must produce evidence of HVCCC acceptance of the trade as part of their warranty to ARTC. HVCCC would assess the trade in accordance with the CTS Protocols.

It follows that for other trades that do require ARTC to consider whether a temporary trade of a Path Usage will have an impact on Coal Chain Capacity and Capacity entitlements of other Access Holders, it is mandatory that ARTC consider recommendations by HVCCC. Again HVCCC would assess these trades in accordance with the CTS Protocols.

Therefore, the principles proposed in Clause 16.6 (c) of the IAHA could be tightened up to make it clear that ARTC will seek HVCCC's assessment on the impact of the Trade on Coal Chain Capacity and Capacity entitlements of other access holders.

2.16 – 2.18 Not directly related to HVCCC.

Should you have any questions with regard to the content of this submission please feel free to contact me directly on (02) 4907 3361.

Regards



Jonathan Vandervoort
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Hunter Valley Coal Chain Coordinator