

NEW SOUTH WALES MINERALS COUNCIL LTD

MINERALS DIVISION

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13 June 2011

Mr Anthony Wing
General Manager
Transport and General Prices Oversight Branch
Australian Competition and Consumer Commission
GPO Box 520
MELBOURNE VIC 3001

Email: transport@accg.gov.au

Dear Mr Wing

ARTC Hunter Valley Rail Network Access Undertaking

The NSW Minerals Council (NSWMC) refers to its submission to the Australian Competition and Consumer Commission (ACCC) of 20 May 2011 in which NSWMC responded in relation to:

- (a) The ACCC's 13 April 2011 Consultation Paper inviting submissions on Australian Rail Track Corporation Limited's (ARTC) revised 7 September 2010 Hunter Valley Coal Network Access Undertaking (the "April 2011 HVAU")
- (b) The revised versions of certain sections of the April 2011 HVAU posted on the ACCC website on 18 May 2011 ("Revised April 2011 HVAU").

NSWMC is making this further submission on behalf of the Hunter Rail Access Task Force (HRATF), an associated group comprising all 14 Hunter coal producers using ARTC's Hunter Valley Rail Network.

Subsequent Negotiations with ARTC

NSWMC wishes to confirm that the HRATF has subsequently had further negotiations with ARTC in relation to the position set out in the NSWMC submission of 20 May 2011 and the Transitional Arrangements proposed by ARTC in its draft letter to Stakeholders dated 3 June 2011. As a result of these negotiations, ARTC has advised the HRATF that ARTC is willing to:

- (a) Amend the term of the HVAU to **five** years
- (b) Amend section 5.1(d)(ii) & (g) of the Revised April 2011 HVAU as set out in Attachment 1 to this submission
- (c) Issue a letter to stakeholders specifying the Transitional Arrangements as set out in Attachment 2 to this submission before the ACCC issues its final decision.

In view of ARTC's willingness to make these further amendments to the Revised April 2011 HVAU and to issue these Transitional Arrangements, NSWMC writes to amend its position in relation to the Revised April 2011 HVAU.

Amended NSWMC Position

NSWMC appreciates the efforts of ARTC to progress the issues raised in the NSWMC submission of 20 May 2011 during the further round of negotiations, and wishes to see the HVAU finalised as quickly as possible to bring certainty to all industry participants.



Notwithstanding this progress, NSWMC still has reservations about the Revised April 2011 HVAU and the Transitional Arrangements and whether they will provide adequate certainty to, and adequately protect the interests of, the participants in the Hunter Valley coal industry. Nevertheless, there is recognition among industry participants of a need to move the HVAU process forward and to achieve at least some of the goals sought by industry in the implementation of the HVAU.

Accordingly, NSWMC is willing to support the ACCC's acceptance of the Revised April 2011 HVAU subject to the:

- (a) HVAU having a term of **five** years only
- (b) Amendments to s5.1(d)(ii) & (g) as set out in Attachment 1 to this submission being made
- (c) Issue by ARTC to stakeholders, before the ACCC issues its final decision on the HVAU, of a letter specifying out the Transitional Arrangements as set out in Attachment 2 to this submission.

If these amendments are made and the Transitional Arrangements letter issued, NSWMC is willing to support the higher real pre-tax WACC of 9.10% proposed by ARTC in the April 2011 HVAU.

For further information, please contact Mr Geoff Andrews on (02) 9386 9957 or via email at an53696@bigpond.net.au.

Yours sincerely



Dr Nicole B Williams
CHIEF EXECUTIVE OFFICER

Cc NSW Minerals Council Executive Committee
Mr P O'Grady, Chair, Hunter Rail Access Task Force

