

27th September 2012

Mr. Matthew Schroder
General Manager
Fuel, Transport and Prices Oversight
ACCC
GPO Box 520
Melbourne VIC 3001
Email transport@accc.gov.au

Dear Sir,

Re ARTC HVAU Variation - Non TUT Related Performance Incentive Mechanism

Xstrata Coal is pleased to provide a submission into the above application by ARTC to vary the Hunter Valley Access Undertaking to introduce an incentive mechanism.

In principle Xstrata is not against the introduction of an incentive scheme for ARTC to extract additional capacity from existing infrastructure. It is far too easy for the ARTC as the network "owner" to simply push the case for additional capital expenditure (and on charge Industry users) rather than to attain additional capacity through operational improvements. However it is premature to consider such a scheme at a time when there is insufficient network capacity to meet the tonnages already contracted by ARTC.

Xstrata considers the existing rate of return for ARTC is more than sufficient reward for the risk taken by ARTC in operating the network. This return should be adequate to ensure ARTC seeks cost, safety and operational improvements without further incentive. Xstrata supported an increase in ARTC's return at the time of the Undertaking submission in exchange for amendments to reinforce contract alignment with coal chain capacity. It has now become apparent the obligations required by these amendments have subsequently been ignored by ARTC leading to the current situation of over contracting by ARTC.

Whilst Xstrata concedes ARTC has obligations under clause 13.3 to present such a scheme for consideration, we consider that the development of such a scheme is a distraction for the ARTC at a time when their resources should be solely focused on delivering commercial and operational solutions to the current track capacity crisis.

Accordingly we would encourage the rejection of the variation at this time with the potential to revisit the introduction of such a scheme at a more appropriate time.

If a scheme was to be introduced in the future it should exhibit the following characteristics:

- ARTC cannot be further rewarded for simply performing their current obligations. The scheme should reward ARTC for generating sustainable and predictable additional capacity which can be practically used by its customers. Retrospective discovery of reduced losses by ARTC for example is not of practical use to a customer as there needs to be awareness of the availability of definite sustainable capacity in the future, not in the

past. Incremental mining production cannot be generated at short notice, the certainty of capacity must exist before a mine invests to ramps up production.

- If there is to be a scheme to reward over performance then the scheme should also penalize under performance and non compliance. Current penalties for under performance by ARTC are inadequate.
- For ARTC to seek further rewards above the current Undertaking they should perform above their current obligations, this includes opening themselves up for further independent scrutiny. Any performance incentive must only be paid upon the independent verification of the additional capacity generated. Independent verification of all capital projects would be required to ensure there was no understatement in capacity generated from the projects with subsequent over performance rewarded under the incentive scheme.

Yours sincerely



Brett Harris
Commercial Manager

