Distribution of quarterly allocations

The Administrator will determine Annual Loading Allocation for each Producer as follows;

- if the Producer accepts its Annual Pro-rata Allocation, then its Annual Loading Allocation will be equal to its Pro-rata Allocation;
- if the Producer participates in the Demand Reduction Auction then its Annual Loading Allocation will be determined as described above.

The Administrator will determine Quarterly Loading Allocations for each producer which seek to match both the capacity profile and individual producers' demand profiles.

4.5 Step 4 - Management of allocations

Distribution of increases or decreases in capacity

As with the existing Short Term CDS, the proposed medium term solution also incorporates a method of distributing any increases in coal chain capacity. If PWCS determines that there has been any increase in capacity, then the appropriate additional allocation will be distributed on a *pro rata* basis according to loading allocations for the relevant period at the time of the increase. Any *pro rata* increase will only be distributed to producers who are willing to accept additional tonnes, as take or pay obligations will attach to those additional tonnes.

If there is a decrease in available capacity (eg as a result of equipment failures or unscheduled maintenance), then all producers' allocations will be decreased on a *pro rata* basis according to loading allocations for the relevant period at the time of the decrease. Take or pay obligations on those tonnes will also be withdrawn.

New entrants

New entrants will not be required to accept allocation with the associated take or pay obligations until their mine has commenced, but will be accommodated on the same basis as all other producers once production has started.

New entrants will be asked to provide a demand forecast and will subsequently be required to give at least one quarter's notice prior to the commencement of loading at the Port. PWCS believes that this is a reasonable notice requirement having regard to investment and planning requirements in the industry.

Demand nominations by new entrants will be subject to an independent audit. New entrants will not participate in the auction.

New entrants will be required to demonstrate their ability to use allocation before taking up allocation and its associated obligations.

New entrants' demand nominations are pro-rata adjusted using a revised capacity reduction factor which accounts for the additional demand. All other producers will experience a pro rata reduction (according to their allocation for the relevant period) to release allocation to be distributed to the new entrant.

Accordingly, the proposed medium term solution will not create any barriers to entry or expansion. To the contrary, it facilitates new entry as existing participants are effectively required to "give way" to new entrants and new entrants are not required to accept a take or pay obligation until their operations commence.

Allocation transfer and exchange

As is the case under the existing Short Term CDS, producers will be entitled, following the auction, to transfer or exchange their loading allocations (producers who choose not to accept the Arbiter's determination may only increase, not decrease, their annual loading allocation through transfers and swaps). Transfers and exchanges enable the redistribution of allocations to match demand and reduce the likelihood of unused allocation. They also facilitate the efficient allocation of loading capacity and optimal utilisation of the Port.

The Administrator will facilitate transfers and exchanges, including on an anonymous basis to promote liquidity in allocation trading (eg via an on-line marketplace to enable anonymous posting of bids and offers for allocation). Producers will also be able to engage in bi-lateral trades. As with the current Short Term CDS, the Administrator will not be a party to any commercial arrangements between producers.

PWCS will not accept any Application for Coal Handling Services from a Producer that exceeds the available Loading Allocation for that producer.

4.6 Unused allocation

In order to ensure that producers use (or redistribute) their loading allocations and, therefore, that there is no decrease in the volume of exports, the Proposed Medium Term CDS imposes a number of safeguards in addition to those introduced in the Short Term CDS. In particular, subject to any force majeure events, producers who have unused allocation beyond their flexibility limits at the end of a quarter:

- will be required to pay the coal handling services fee (the take or pay charge) on the unused tonnes;
- will have an equivalent volume of unused tonnes (beyond their flexibility limits) deducted from their loading allocation in the following quarter. For producers who have chosen to reject the Arbiter's Determined Amount, this deduction will only be applicable to under use of allocation (beyond flexibility limits) which exceeds Arbiter's Adjustment; and

- will be subject to the financial compensation payment outlined earlier in relation to unused tonnes (beyond flexibility limits at the end of the quarter) if they have also chosen to reject the Arbiter's Determined Amount.

Producers will only be exempted from physical compensation if they notify the Administrator prior to the start of the quarter of their inability to use the allocation. However, those required to pay financial compensation will only be released from this commitment if the allocation can be redistributed to other participants.

It is important that the Proposed Medium Term CDS operate for more than one calendar year for the consequences listed above; for unused allocation beyond flexibility limits to be realised and to be an effective measure to ensure that all producers use their allocation. Use of allocations is important to ensure that demand is maintained and a high coal chain throughput is realised. The operation of the Proposed Medium Term CDS for this period will also ensure that adequate time is given to invest in the infrastructure necessary to establish the long term solution.

5 The Medium Term CDS will not have a significant impact on competition and will deliver substantial public benefits

5.1 Introduction

The Proposed Medium Term CDS has been structured to build upon the proven logistical efficiency elements of the Short Term CDS, which have lead to increased capacity and decreased demurrage at the Port of Newcastle. At the same time, the Proposed Medium Term CDS incorporates important enhancements to further improve efficiency, such as:

- up to date demand and supply nominations (which are re-set each year) to deal with producers expanding capacity or changes in demand and supply;
- enhanced transparency and accountability through an audit review process, take or pay and an independently administered auction process, which together ensure the accuracy of producer nominations; and
- further inbuilt safeguards such that an adjustment to the original nominations only applies where demand exceeds estimated available capacity by 3 million tonnes.

The addition of the "enhancements" is intended by PWCS to deal with the concerns put forward by various industry participants about the Short Term CDS, as well as the suggestions that were made through the consultation process for the medium term solution that was commenced earlier this year.

The enhancements are also intended to address the issues raised by the Commission in relation to the Short Term Authorisation so that the Commission has greater comfort:

- in the accuracy of production and supply nominations through 2005 and a mechanism for 2006-2007; and
- that the incentives to return unused capacity to those with greater demand will guard against hoarding of allocation and ultimately the under-use of capacity.

PWCS hopes that given the considerable work undertaken by PWCS on the Proposed Medium Term CDS, as well as the industry dialogue on the Proposed Long Term Solution, there will be greater acceptance that while it is in all parties' interest to move to an appropriate long term solution, there is considerable investment and work required across a number of areas such that a medium term solution is required until the long term solution can come into operation.

PWCS further believes that the considerable work undertaken by Accenture in seeking to design a system based on industry comments and suggestions and in particular the "enhancements" to the Short Term CDS that the Commission previously authorised, results in a position where the public benefits clearly outweigh the detriment (if any), associated with the Proposed Medium Term CDS.

5.2 Background to Short Term CDS

In the previous authorisation, the Commission formed the view that the Short Term CDS would lead to a reduction of exports of approximately 1% (based on unused allocation within the flexibility provisions designed into the scheme at the end of the June 2004 quarter), and that was a public detriment. That detriment was balanced as against the substantial public benefits associated with the reduction in vessel queuing and therefore reduced demurrage across the Hunter Valley coal producers.

PWCS notes that capacity allocations under the system administered by Accenture, were always slightly above estimated capacity at the Port. In addition, the "unused" allocated capacity of 1% is theoretical in the practical sense that it was never "unused" as there was always a vessel queue and coal loading occurring. Unused capacity physically or factually only occurs when there is no vessel queue and empty berths for sufficient time for railing operations to be affected. For the actual capacity allocations and usage, see Confidential Attachment I.

PWCS also believes that the "supply chain discipline" created by the Short Term CDS as it applied to vessel arrivals and turnarounds led to an improved view of coal exports from Newcastle (and Australia in general), from Japanese coal purchasers and in terms of the logistics and commercial drivers which allowed the Port to operate more efficiently which together with other improvements contributed to an increase in capacity at the Port to 80 million tonnes, which is beyond what PWCS believes that the Port would have achieved in the absence of the Short Term CDS. Accordingly, PWCS believes that the "loss" of unused allocation of approximately 1% is a theoretical loss, which is outweighed by the:

- reduction in demurrage of approximately US$173.5 million to the end of 2004;
- increase in the competitiveness of Newcastle and Australian coal in general; and
- additional capacity obtained through the supply chain / commercial discipline associated with vessel arrival dates, queuing and turnaround under the Short Term CDS.

Leaving aside these additional factors, even if the Commission were not to accept the theoretical nature of the unused 1% reduction in exports associated with the Short Term CDS, in relation to the Proposed Medium Term CDS, the verifiable producer nominations, appointment of an independent Auditor, take or pay and the auction process administered by an independent Administrator, provide substantial enhancements and incentives for any potentially unused capacity to be returned to those with additional demand or more efficient producers. Accordingly, if the Proposed Medium Term CDS were to have any public detriment, it would be much less than the already authorised Short Term CDS and any such public detriment would again be outweighed by the public benefits, in particular the estimated demurrage savings of at least US$163 million in 2005.

The annual producer nomination mechanisms provide a very reliable guide as to demand conditions and the annual re-set mechanism allows the allocation based on proposed production, not historical production (hence dealing with producers' past criticisms where they are increasing capacity). The addition of new producers when they come on stream also addresses concerns with increased capacity. Nonetheless, the Proposed Medium Term CDS may not satisfy everyone. Some producers may take the view that they would have somehow (which remains unexplained to PWCS) exported all of their production and some larger producers may argue that their logistics operations could also have achieved the export of all of their production of coal. Even if this were the case (and PWCS remains of the view that this is highly, highly unlikely), it would have flow on effects to others who would have vessels delayed further in the queue. Accordingly, there is still a broader public benefit notwithstanding any theoretical impact on individual producers. In these circumstances, having regard to estimated savings of US$173.5 million in 2004 (with no assumption of queue length) and the increased estimated savings of US$163 million in demurrage in 2005 if the queue length is 56 vessels, the public benefits associated with the Proposed Medium Term CDS should clearly outweigh any detriment.

5.3 Background to Proposed Medium Term CDS

The industry consultation process for the Proposed Medium Term Solution has had the benefit of confirming that even if PWCS expended considerable sums on upgrading coal loading capacity at the Port, the rail logistics / interface with the Port would still create effectively the same bottleneck. In these circumstances, a solution of some manner is broadly acknowledged as being necessary. That solution has been worked on by highly sophisticated logistics teams from throughout the industry - as well as by Accenture. A coal berth auction system was considered and it was not progressed as it would have created a secondary market which was not aligned to the coal supply chain incentives and would not have resulted in broad industry support. The Proposed Medium Term CDS does have broad industry support and importantly, allows a transition to more aligned commercial drivers in the long term.

Attachment D contains a set of the various PowerPoint presentations given by PWCS and Accenture to the industry explaining the proposals, obtaining feedback and making modifications to the Proposed Medium Term CDS.

5.4 How the Proposed Medium Term CDS improves upon and deals with issues raised in relation to the Short Term CDS

In the Commission's authorisation of the Short Term CDS, it comprehensively dealt with the various issues raised by parties with the Short Term CDS and possible public detriments. PWCS believes that it has taken on board the issues raised by the Commission and "enhanced" the capacity distribution proposal accordingly. The various issues are now considered.

In the Short Term Authorisation the Commission was reluctant to extend the authorisation beyond 31 December 2004 because of the uncertainty as to vessel arrivals in 2005 based upon the difficulty in forecasting demand and supply conditions for coal and coal from the Hunter Valley in particular.

In order to deal with this uncertainty, PWCS sought informal producer estimates and then definitive estimates for coal production and supply by individual producers, noting that those nominations would be subject to the audit, take or pay and auction processes if the Proposed Medium Term CDS was implemented. Those confidential nominations have been included with this submission at Confidential Attachment C. The Commission will note that total demand and supply for 2005 is significantly greater than 2004, as is 2006 and 2007, each of which are more than the capacity of the Port of Newcastle.

These current producer nominations, coupled with the proposed means of ensuring accuracy, should give the Commission comfort that demand will exceed supply in 2005. This level of capacity, together with public announcements from parties such as BHP as to future production in the Hunter Valley included in Attachment B, should also give the Commission additional comfort that demand will continue to be very strong in 2005. In addition, as the various producers have noted on their respective websites, demand from China as well as many others countries is still expected to be strong.

As to the Commission's concerns with the accuracy of the forecasts, the Proposed Medium Term CDS includes various mechanisms to deal with inaccuracy in individual producer nominations.

The proposed medium term solution incorporates three key controls or accountability measures to ensure that accuracy of producers' demand nominations -- namely:

- **Audit:** an ability for individual demand nominations to be audited by an independent Auditor and checked by an independent Arbiter, which process enhances accuracy and accountability;
- **Transparency:** the publication of demand nominations (at a producer level) to all producers who submitted a demand nomination; and
- **Take or pay:** demand nominations by producers will attract a take or pay obligation, payable to PWCS, which also enhances accountability.

Each of those measures is now described in more detail.

Audit process improves accountability and accuracy

Demand nominations by producers may, subject to the factors listed below, be subject to an audit to confirm the producer's capacity and intent to export the volume of coal nominated. The identity of the Auditor and Arbiter to review disputes, together with the appropriate "triggers" for an audit, will be determined by PWCS in consultation with producers. A meeting of producer representatives will be facilitated to determine the criteria for the establishment of an audit.

The Auditor may take into account the following matters:

- whether the producer has obtained the appropriate authorisations (eg mining lease and development consent);
- the capacity of the producer's plant and equipment (eg wash plant, stockpile capacity etc);
- mine plans and budgets;
- the number of employees and shifts in the producer's budget plans;
- the producer's train contracts and loading point capacity;
- the producer's plans for export and domestic production; and
- historical exports.

In all cases, an independent Arbiter determines the appropriate quantities and none of the information provided to the Arbiter will be made available to PWCS or the Administrator.

If the amount determined by the Arbiter is less than the producer's nomination, the producer can choose either to:

- accept the Arbiter's view as the starting point for the calculation of any allocation; or
- retain its nominated demand as the starting point for the calculation of any allocation, with the following consequences:
    - the producer will not be entitled to participate in any demand auction (beyond any necessary *pro rata* decrease) and accordingly, they will not be able to sell any allocation at the auction;
    - the producer will not be entitled to engage in any one-way trades or gifts of its allocation throughout the year which result in a net decrease in their aggregate demand nomination; and

- if the producer does not use its nominated allocation on a quarterly basis (outside the flexibility provisions), it will be required to financially compensate other producers for the "lost" allocation up to the Arbiter's Adjustment Amount (defined to be the difference between the demand nomination and the Arbiter's Determined Amount) at a rate relating to the value attached to that allocation by producers.

The audit mechanisms coupled with the review by the Arbiter and an auction process should ensure that the producer nomination has a high degree of accuracy.

Transparency

In order to increase confidence in the initial demand nominations, the Administrator will also make each producer's aggregate demand nomination available for inspection by other producers prior to any audits. Given that individual mine sales may be commercially sensitive, that data will only be made publicly available on an aggregate basis for each producer.

Take or pay

The purpose of the take or pay obligation is to provide a significant financial incentive for producers to nominate demand only in line with their capability and intent to export coal, and to exchange loading allocations early if capacity cannot be used. The take or pay obligation will also assist in sending the correct investment signals concerning capacity and efficiency upgrades. The take or pay price will be the coal handling fee charged by PWCS in accordance with the CHSA.

If producers exchange or otherwise transfer their loading allocations, the take or pay obligation will transfer with that allocation.

Only once the transparent audit preview mechanisms have tested these nominations (and producers are accountable for them because of the take or pay process), is there an assessment of overall demand and supply and a demand adjustment made. These mechanisms together should lead to increased transparency, accountability and accuracy in the demand and supply nominations.

The Auction Process

Additional safeguards for the Proposed Medium Term CDS are built in through the auction process.

The proposed auction process provides a mechanism for producers who have not accepted a *pro rata* decrease to submit a bid either to *reduce* or *increase* their loading allocation below or above what they would receive under a *pro rata* allocation.

As a market based system, the auction process is an economically efficient mechanism to allow those who place a higher value on coal loading allocation to acquire it from those who place a lower value on loading allocation.

Traders

As with the Short Term CDS, the Proposed Medium Term CDS allocates capacity to producers. Accordingly, the same issues apply to traders and the same discussion on the impact on traders and the coal market applies as occurred with the Short Term Authorisation. In particular, although not provided an initial allocation (as they are not producers and there is no certainty they would ever use such allocations), traders are not impeded from operating in the coal industry by purchasing from producers or using producer allocation for traded coal, as demonstrated by the healthy volumes which actually occurred with the Short Term CDS.

Further flexibility is also involved as subject to the restrictions outlined above, traders can engage in trading or supply arrangements with producers at any time after the auction to ensure the most efficient and operationally effective allocation of loading capacity of the Port.

5.5 Distribution of increases or decreases in capacity

As with the existing Short Term CDS, the Proposed Medium Term CDS also incorporates a method of distributing any increases in coal chain capacity. If PWCS determines that there has been any increase in capacity, then the appropriate additional allocation will be distributed on a *pro rata* basis according to loading allocations for the relevant period at the time of the increase. Any *pro rata* increase will only be distributed to producers who are willing to accept additional tonnes, as take or pay obligations will attach to those additional tonnes.

If there is a decrease in available capacity (eg as a result of equipment failures or unscheduled maintenance), then all producers' allocations will be decreased on a *pro rata* basis according to post-auction allocations. Take or pay obligations on those tonnes will also be withdrawn.

5.6 New entrants

The Proposed Medium Term CDS accommodates new entrants (or new mine developments) in the same way as the existing Short Term CDS. That is:

- new entrants will be required to give at least one quarter's notice prior to the commencement of loading at the port. PWCS believes that this is a reasonable notice requirement having regard to investment and planning requirements in the industry; and

- demand nominations by new entrants will be subject to an independent technical audit.

Accordingly, the proposed medium term solution will not create any substantive barriers to entry or expansion, the only provisions included are intended to ensure the new entrant's projection are verifiable given the reduction such entry causes to allocation for other producers. To the contrary, it facilitates new entry as existing participants are effectively required to "give way" to new entrants, who are not required to accept a take or pay obligation until their production commences. It is also consistent with the common-user requirements in PWCS' lease.

5.7 Unused allocation

In order to ensure that producers use (or redistribute) their loading allocations and, therefore, that there is no decrease in the volume of exports, the proposed medium term solution imposes a number of safeguards. In particular, subject to any force majeure events, producers who have unused allocation beyond their flexibility limits at the end of a quarter:

- will be required to pay the coal handling services fee (the take or pay charge) on the unused tonnes;
- will have an equivalent volume of unused tonnes (beyond their flexibility limits) deducted from their loading allocation in the following quarter; and
- for producers who have chosen to reject the Arbiter's Determined Amount, under-use will be subject to a financial compensation payment as outlined earlier.

Producers will only be exempted from compensation if they notify the Administrator prior to the start of the quarter of their inability to use the allocation. However, those required to pay financial compensation will only be released from this commitment if the allocation can be redistributed to other participants.

In addition, producers who have elected to use their original nomination as a starting point (rather than accept the Auditor's decision) will be required to pay the compensation as referred to in Section 4.9. Producers subject to this financial compensation will not be subject to the physical adjustment if they provide appropriate notification to the Administrator of their inability to use Allocation. It is important that the Proposed Medium Term CDS operates for longer than one calendar year in order to ensure the veracity of the threat of the consequences of under use of an allocation by producers.

In these circumstances, the various enhancements to the Short Term Authorisation should ensure that the past concerns and possible detriments of the capacity distribution system are minimised.

5.8 No significant impact on competition

In summary, the Proposed Medium Term CDS involves only a limited impact on competition because:

- as with short term solution, the Proposed Medium Term CDS will not have any impact on the total volume of coal shipped through the Port - PWCS and the Hunter Valley rail infrastructure will continue to operate at full capacity;
- to the extent of any unused allocation, that unused allocation is likely to only come through the operation of the CDS In any event, such as theoretical reduction is likely to be for less than the 1% approximation on the Short Term CDS because of the additional enhancements and incentives to return capacity;

- coal exporters will continue to compete against each other for overseas and domestic customers - as they do now and did before the Short Term Authorisation. The medium term solution is arguably pro-competitive because of the way the allocation/auction system is designed to encourage producers to choose and compete amongst themselves to achieve optimum allocations and avoid/minimise unused allocations; and

- it is the most efficient, transparent and equitable solution available in the medium term - all producers are able to participate equally according to their needs/demand, such that it is a level playing field and does not discriminate or favour larger producers over small producers.

5.9 Substantial public benefits

The benefits of the Proposed Medium Term CDS have been largely set out in Section 3. In summary, PWCS believes that the Proposed Medium Term CDS will involve a number of very substantial benefits to the Australian public and Australian economy. These public benefits have been set out earlier in this submission and in detail in the Short Term Authorisation, so this section will not provide substantive commentary, but the public benefits include:

- it is essentially a market-based solution, so it is the most efficient way to allocate scarce resources;

- pro-rata allocation was appropriate for an urgent / short term solution, but it is administrative in nature and does not necessarily maximise efficiency by resulting in an economically efficient allocation. Although it is equitable, it is an across the board reduction irrespective of the individual producer's requirements/efficiencies;

- the medium term solution allows flexibility for producers to trade according to their requirements in an equitable and transparent manner which is transparent because of the external Auditor, and is flexible as it is organised through an independent Administrator to ensure the system works and is priced optimally (both at the take-or-pay level and auction level) and has accountability through the combination of audit, take or pay and auction processes;

- will continue to help ensure the queue operates at a more efficient level;

- provides certainty - in annual share of coal chain capacity, loading times and therefore when to order and schedule ships / when buyers send ships (and avoid producers having to pay higher spot market prices). This certainty or logistics "discipline" will enable producers to make more efficient business decisions and manage their production more efficiently. It also results in certainty in annual allocations;

- improve international reputation of the Port and the Hunter Valley and Australian coal industry's competitiveness in general. PWCS believes long vessel queues cause harm to the Port's, and the Hunter Valley coal industry's, international reputations;

- demurrage cost savings. The Proposed Medium Term CDS will help keep demurrage (and therefore costs to producers and associated dead weight loss) low and improves economic efficiency. Demurrage cost savings are estimated at US$163 million in 2005;

- reduces coal stockpiling costs;

- facilitates investment decisions by participants in the Hunter Valley coal industry by more clearly aligning commercial incentives;

- efficiency in turn improves international competitiveness of Hunter Valley coal exporters;

- increases incentives for coal producers to invest in the Hunter Valley coal production and handling facilities;

- facilitate potential re-investment in the Australian coal industry and especially the Hunter Valley coal industry;

- the auction system provides an indication of the value of capacity traded in the auction; and

- allows a transition to the long term solution for the Hunter Valley Coal logistics operations, a process which is complex and involves a number of parties and will take several years.

5.10 Conclusion

In summary, PWCS believes that the Proposed Medium Term CDS:

- will prevent the previous extent of vessel queues at the Port of Newcastle and will allow PWCS to operate the Port at an efficient vessel queue of approximately 10 vessels;

- will have the benefit of greater aggregate reduction in demurrage (estimated to be at least US$163 million in 2005) as the expected vessel queues in 2005 will be greater than in 2004, and as demand is anticipated to be far greater;

- will not have a significant impact on competition in any relevant market or create any public detriment that is not *de minimis*. Certainly, the detriment from the Short Term CDS, although very small, will be even less under the Proposed Medium Term CDS as it provides greater incentives to return capacity to producers with higher demand and the auction system operates to the benefit of low cost producers;

- has in-built safeguards through auditing, take or pay and auction processes to ensure increased transparency, accountability and flexibility over the Short Term CDS that was previously authorised;
- involves a number of very substantial benefits to the Australian public and the competitiveness of the Australian economy that greatly outweighs any detriment; and
- allows a transition to a long term solution that is complex and involves a number of industry participants.

6 Conclusion

6.1 Introduction

The Proposed Medium Term CDS has the benefit of updated demand/production forecasts for every producer in the Hunter Valley, which should give the Commission confidence in the estimation that demand will exceed available capacity at the Port of Newcastle on a yearly basis until at least 2007. Against the context of public statements of high demand and supply from various companies, including companies that previously had concerns with the level of global demand for Hunter Valley coal continuing to be high in 2005, there appears to be little doubt that an extensive vessel queue will otherwise return in 2005.

6.2 Substantial public benefits and minimal impact on competition

Given the balancing process and findings made by the Commission in relation to the Short Term CDS, and as outlined in section 5.10 above, PWCS submits that the detriment is even lower and the public benefit even higher with the Proposed Medium Term CDS. PWCS therefore submits that the Commission should grant the authorisations requested under section 88(1) and 88(7) of the TPA.

6.3 Request for interim authorisation

Having regard to the factors set out in Section 2 above, PWCS requests the Commission to grant an interim authorisation so that PWCS can begin the tasks necessary to implement the Proposed Medium Term Solution at 1 January 2005. In particular, conducting the auction in late October 2004 and allowing parties to take steps based on that auction as the first part of the interim authorisation, with the second part being the commencement of the Proposed Medium Term CDS on 1 January 2005.

6.4 Duration of authorisation

For the reasons set out in this application, PWCS requests that the final authorisation granted by the Commission in relation to the Proposed Medium Term Solution should continue for a period of at least 3 years and up to 5 years to allow the proposed long term solution to come into operation, particularly given that:

- the Proposed Medium Term CDS has automatic resets in each calendar year which will mean an adjustment will only apply when proposed demand for capacity exceeds supply by 3 million tonnes; and
- there are stringent checks and balances in the system to ensure the veracity of producer nominations through audit processes by an independent Auditor, and an auction process administered by an independent Administrator in Accenture.

As such, it is very difficult to see any substantive detriment in the Proposed Medium Term CDS, compared with substantial public benefits in the reduction of demurrage estimated to be at least US$163 million in 2005, the enhancement of exports and Australia's international competitiveness and the facilitation of a transition to an efficient long run solution.

6.5 Further assistance

If you have any questions, or would like any further information, PWCS would be pleased to assist.

Port Waratah Coal Services Limited
1 October 2004