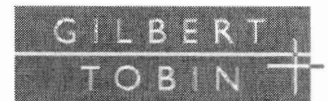


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LAWYERS

19 December 2007

By email

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Dear Mr Gregson

Newcastle Port Corporation - Applications for authorisation (A91072-A91074)

We act for Newcastle Port Corporation (**NPC**).

I refer to the application for authorisation lodged by NPC on 3 December 2007 (application numbers A91072-A91074) and NPC's letter dated 17 December 2007 requesting amendments to some provisions of the Proposed System.

As you know, NPC has been engaged in discussions with Port Waratah Coal Services Limited (**PWCS**) and coal producers about the Proposed System.

NPC has been advised by PWCS management that the Proposed System would require one further amendment to address certain transition and implementation issues that would arise for PWCS in implementing the Proposed System in the event that the Commission grants an interim authorisation.

NPC is willing to amend its application in order to address the issues raised by PWCS management. The amendment involves the introduction of a new clause 9.4 into Part A of the Proposed System.

The additional clause is virtually identical to clause 9.3 of Part A of the existing Capacity Balancing System (**CBS**) and has already been considered by the Commission in the context of its previous determination authorising the CBS.

The requested amendment is set out below:

*"9.4 In respect of the period from 1 January 2008 until the time of implementation of the Scheme in 2008 in accordance with the Coal Handling Services Agreement ("**transitional period**"), the Administrator will make decisions regarding the transitional operational arrangements to give effect to the Scheme consistent with the Objectives. This will include the following transitional arrangements:*

- (a) *So as to enable each Producer to manage use of Loading Allocation in the transitional period, as soon as reasonably possible, the Administrator will calculate and notify each Producer of its estimated Monthly Loading Allocation or Quarterly Loading Allocation, whichever is appropriate in the context.*
- (b) *Subject to this clause 9.4, each Producer's maximum usage of Loading Allocation in accordance with clause 3.8 of Annexure 4E is limited to the amount of Loading Allocation that the Producer would otherwise have held, as determined under Annexure 4E, if a Scheme did not apply.*

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- (c) *Once a Producer's final Loading Allocation is determined in accordance with Schedule 5 of this Annexure 4F, that Loading Allocation shall apply retrospectively from 1 January 2008.*
- (d) *For the avoidance of doubt, any overuse of Loading Allocation by a Producer arising from the application of the interim arrangement in clause 9.4(b) will be deducted from the Loading Allocation of the Producer in the next Relevant Period of 2008".*

NPC does not consider the requested amendment raises any substantive issues.

Further, as the proposed clause is virtually identical to that which exists in the CBS, the clause is known to, and is readily understood by, the industry and does not, in NPC's view, necessitate an additional round of public consultation.

Please do not hesitate to contact us if you have any questions.

Yours sincerely



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