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**From:** Tony Page [mailto:TPage@frl.com.au]  
**Sent:** Monday, 21 September 2009 4:26 PM  
**To:** Martin, Jaime  
**Cc:** Brian Flannery; Goran Stamenkovic  
**Subject:** RE: Hunter Valley coal - amendments to the applications for authorisation

Dear Jamie,

Further to the revised Capacity Framework Arrangement document jointly submitted by PWCS, NCIG and NPC to the ACCC on 14/9/2009, we thank you for the opportunity to comment and provide the following for your consideration :-

- As previously indicated, Felix Resources (FRL) supports the general thrust of the document and the overarching philosophy of long term SOP contracts to ensure timely Coal Chain infrastructure expansion to meet future demand requirements
- There are, however, two operational changes that are being promoted in this revised document that we do not believe are in the spirit of the Implementation Memorandum (and which have been raised in previous submissions to the ACCC)
- The two issues relate to :-
  - Cl 2 (A) (k) (i) .... P11 'Periodic Load Point Allocation and Tolerance'

The revised document now quantifies monthly and quarterly tonnage allocation periods based on a producer's PWCS throughput tonnage. The current arrangements classify the four major Producers as 'large' producers (on monthly allocation tonnages) and all others as 'small' producers (on quarterly allocations). This system has worked reasonably well in recent past and has recognised that smaller producers with limited sales tonnage and a smaller Customer base require some relief/flexibility in the form of quarterly allocation periods.

PWCS have recently argued that a tonnage benchmark was required to define large and small shippers and this was initially set at 3.0Mt and then, following industry protest, was adjusted to 5.0Mt. However PWCS have advised that the 5.0Mt tonnage limit would only be in place up to 1/1/2012 and thereafter a 3.0Mt limit would be applied.

A joint communiqué was recently sent to PWCS from a number of Producers advising PWCS that this proposed change to 3.0Mt from 1/1/2012 was unacceptable.

FRL's view is that the 5.0Mt is a reasonable benchmark to start with (ie. large shippers with PWCS throughput of >5.0Mt will have tonnage allocations on a monthly basis and those shippers with < 5.0Mt on quarterly allocations) on the proviso that modeling of the impact of this 5.0Mt criteria should be undertaken and results analysed prior to any decision by PWCS to unilaterally vary this 5.0Mt limit.

*On this basis we suggest that the definition of Allocation Period contained within the Dictionary*

*should delete the reference "From 1 January 2012 onwards ..... to 3 Mtpa; a quarter".*

- Cl 9 (e) (i +ii) .... P 40 - Vessel Queue

We are concerned re the inclusion of this clause and the lack of clarity as to how it will be applied in the new operating environment post 1/1/2010.

The 'turn of arrival' approach for determining vessel's order of loading is the current (and only) system in place and, in our view, provides a transparent , non-discriminatory method of prioritizing vessels.

PWCS has recently promoted the introduction of a Vessel Sequencing System (VSS) which proposes to differentiate vessel nominations between 'VSS' applications and 'Turn of Arrival' applications. This PWCS proposal has also been the subject of a joint memo from a number of concerned Producers. The Producers position is simply that the new operating environment from 1/1/2010 is expected to see significant change in the traditional nomination, planning and scheduling of cargoes/vessels. On this basis Producers have requested that a review of the new operating environment be undertaken and modeling performed during the course of next year to ascertain **IF** the modeling outcomes support a trial of a VSS system. As yet PWCS have not responded to this correspondence.

It appears inequitable to incorporate in this document terms that potentially penalise 'Turn of Arrival' Producers when there is no other alternative 'system' in place.

On this basis we suggest that Clause 9 (e) (i) delete reference to 'Turn of Arrival' vessels and be amended as follows :-

*"If at any time an excessive vessel queue arises, or is forecast to arise, which PWCS reasonably determines is due to the unutilized PWCS Capacity arising from the random nature of vessel arrivals, PWCS may make one or more downward adjustments on a pro rata basis to the Load Point Allocations of all Producers in a manner that reasonably reflects the lost capacity of the Terminals."*

Regards

Tony Page  
(for Brian Flannery)

Felix Resources Limited