



Austar Coal Mine Pty Ltd
A.B.N. 67 111 910 822

Mine Office
Middle Road,
Paxton, NSW.
Locked Bag 806,
Cessnock NSW 2325,
Australia.
PHONE: +61 2 4993 7200
FAX: +61 2 4993 7302

21 September 2009

Mr David Hatfield and Ms Jaime Martin
Adjudication Branch
Australian Competition and Consumer Commission
23 Marcus Clarke St
CANBERRA. ACT. 3001

Dear Mr Hatfield and Ms Martin,

Re: Port Waratah Coal Services Ltd, Newcastle Coal Infrastructure Group and Newcastle Port Corporation Applications for Authorisation (A91147 – A91149 and A91168 – A91169) – Amendments to Proposed Conduct

I refer to the current applications before the ACCC in respect to the Long Term Solution and thank you for the opportunity to provide a submission on the amended Capacity Framework Arrangement as submitted to you 14 September 2009.

Austar is concerned with the short notice in which to prepare this submission and so will confine our comments only to the changes proposed in the 14 September 2009 version.

The Applicants submit that the proposed changes from the 29 June 2009 document are largely two stated criteria –

1. Clarifications and practical changes necessary to give effect to the long term solution for capacity expansions for the export of coal from the Port of Newcastle, and
2. Variation to the mechanics of the relevant arrangements, or are intended to address certain practical issues.

Austar submits that as the principles incorporated in the Implementation Memorandum are enacted into system rules and operating practices, there are adverse impacts emerging that are fundamentally unnecessary in achieving the Applicant's stated criteria. The following two points represent the most critical areas of our concern:

- 1) Clause 9 (e) – **Vessel queue**
- 2) Part C – Dictionary – **Allocation Period**

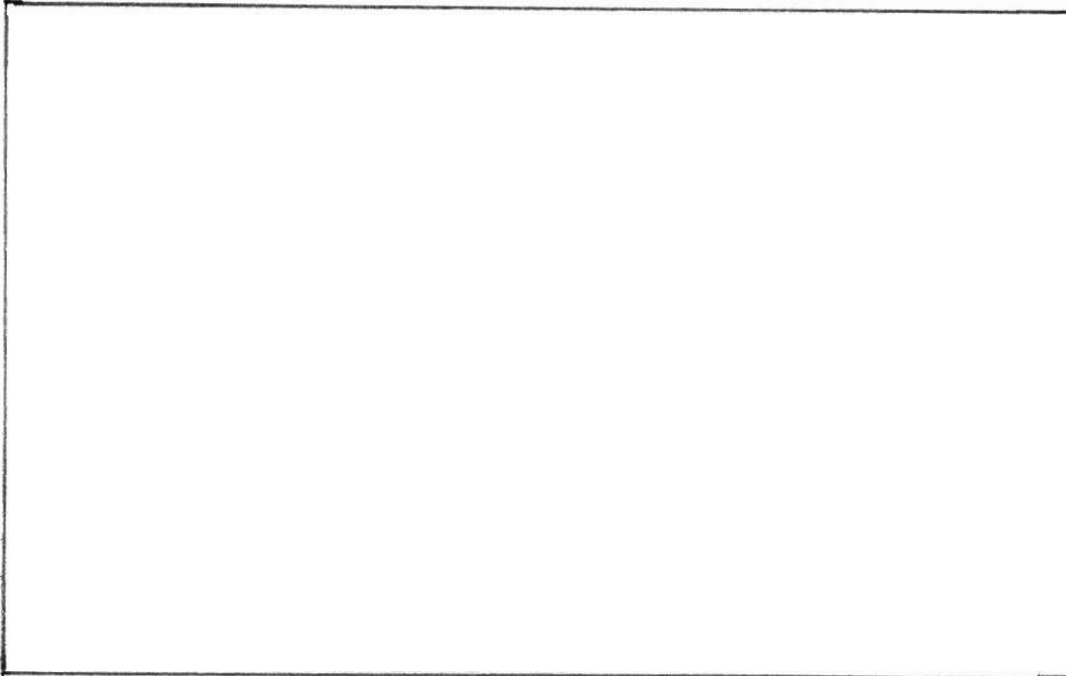
Furthermore, these proposed changes have been the subject of recent meetings and correspondence between PWCS and Producers as recent as 11 September 2009. Austar has indicated to PWCS that without detailed analysis, modelling and consultation that demonstrate benefits to the whole Hunter Coal Chain it cannot support the introduction of these changes at this time. This viewpoint and position is shared amongst a significant number of other Producers, not just Austar.

Specific Comment

Clause 9 (e) – Vessel Queue

The proposed clause in the 14 September submission is as follows:

(e) Vessel queue:



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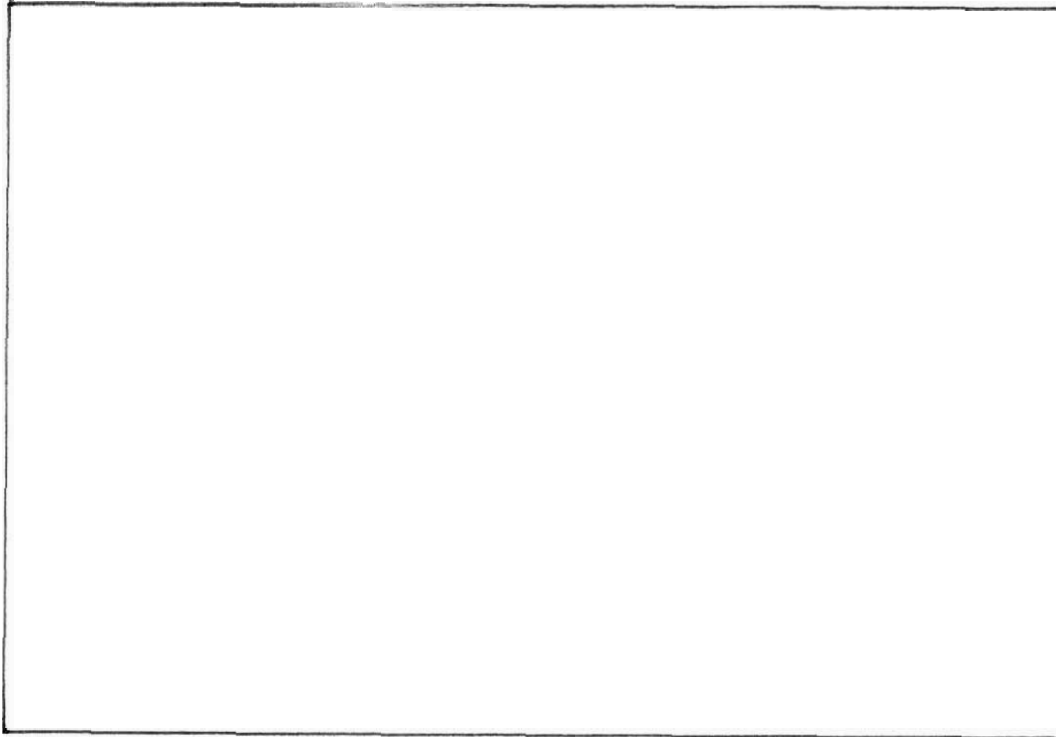
The current protocol which determines the order in which vessels load at PWCS is "turn of arrival". The clause, as drafted, suggests that there may be circumstances where Producers using the "turn of arrival" system will be compressed while Producers using a yet to be defined system will not.

An alternative model for sequencing vessels could potentially discriminate against those producers (those with allocation periods of less than or equal to 5 Mtpa) that are unable to nominate vessels early and thus could be expected to suffer the brunt of demurrage costs.

Clearly this clause as drafted is not required to satisfy the criteria raised in the Applicants' submission and should be modified.

Austar suggests that the following amended clause would be sufficient for the Applicants and would be acceptable to Austar.

et Vessel queue:



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Part C – Dictionary – Allocation Period

The proposed wording in the 14 September submission is as follows:

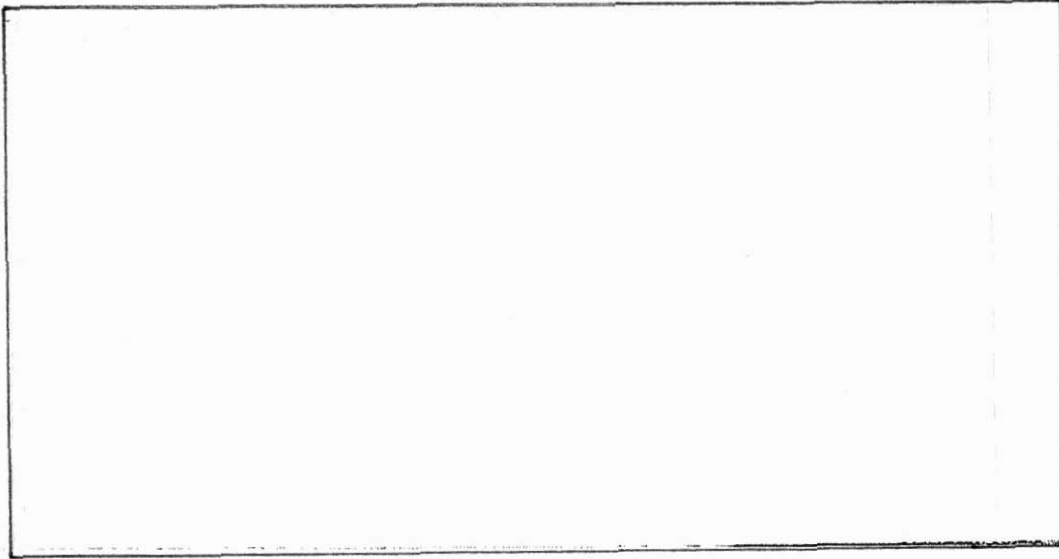


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Austar is of the belief that the current status quo should be maintained, i.e. that a Producer's Allocation Period be 1 month for Producers with aggregate Load Point Allocations greater than 5 Mtpa and quarterly for the remainder.

Clearly this clause as drafted is not required to satisfy the criteria raised in the Applicants' submission and should be modified.

Austar suggests that the following amended clause would be sufficient for the Applicants' and would be acceptable to Austar.



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Austar urges the ACCC review this submission by the Applicants' in respect to the above mentioned issues.

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Francis Fulham', written over the typed name below.

Francis Fulham
General Manager
Austar Coal Mine Pty Ltd