



AUSTRALIAN RAIL TRACK CORPORATION LTD

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PORT WARATAH COAL SERVICES (PWCS), NEWCASTLE INFRASTRUCTURE GROUP (NCIG) AND NEWCASTLE PORT CORPORATION (NPC) APPLICATION FOR AUTHORISATION A91147 – A91149

ARTC COMMENTS ON ACCC DRAFT DECISION

Australian Rail Track Corporation (ARTC) welcomes the opportunity to comment on the ACCC's Draft Decision to grant authorisation to the Capacity Framework Arrangements (CFA) proposed by PWCS, NCIG and NPC until 30 June 2020, to apply at the Port of Newcastle.

ARTC is proposing to put in place long term track access agreements with coal producers and other access seekers to commence on 1 January 2010. These agreements which will underwrite long term investment in track capacity depend on coal producers having in place long term capacity commitments with terminal operators. The negotiation and agreement of long term ship or pay contracts between terminal operators and coal producers is therefore critical to ARTC's timetable. A delay in the negotiation of such agreements will delay capacity

expansion not just at the Port of Newcastle but at all levels of the Hunter Valley coal chain. Accordingly, ARTC has supported the applications for interim authorisations in its previous submissions to the ACCC.

Support for contractual alignment

ARTC recognises and supports the need for contractual alignment across the Hunter Valley coal chain which will assist in increasing certainty of access for coal users and promote efficient investment in capacity expansion. To this end, ARTC has:

- participated, together with other service providers, in the development of Contractual Alignment Principles which formed part of the PWCS/NCIG/NPC initial application (Schedule 5);
- in finalising its Hunter Valley Access Undertaking (HVAU) for submission to the ACCC in April 2009, engaged in extensive consultation with all Hunter Valley stakeholders over the preceding 9 months with a key objective being to ensure reasonable alignment with intended terminal principles, despite the detail not having been finalised at the time;
- submitted the HVAU to the ACCC in April 2009, at around the same time as the CFA were being finalised for submission to the ACCC, with the stated intention of giving the ACCC the opportunity to assess both the CFA and HVAU simultaneously and in the context of achieving alignment across the coal chain;
- engaged in consultation with PWCS in relation to assessing the extent of alignment, where applicable, in related to the more detailed provisions of the HVAU and CFA; and
- participated in a working group established to develop a framework for trading capacity.

ARTC believes it is important to recognise that achieving contractual alignment does not necessarily mean the contractual arrangements need to be uniform across

agreements with different service providers. Doing so may unnecessarily constrain flexibility needed in relation to the provision of access by a service provider. In developing the detailed arrangements for capacity allocation, management and investment in the HVAU, ARTC has sought to maintain sufficient flexibility to cater for the access and capacity arrangements that may be sought by other service providers. In doing so, ARTC is seeking to enable working alignment and consistent access arrangements between providers of different types of infrastructure and services, rather than uniform arrangements.

Following its consultation with PWCS, ARTC and PWCS issued a document detailing perspectives on the areas where contractual alignment has been sought. This document is attached at Table 1 to this submission.

The general conclusion by both ARTC and PWCS in the document is that there was sufficient flexibility in the arrangements proposed in the HVAU and CFA in order for working alignment to be achieved in most areas. ARTC and PWCS have sought to address the areas that still needed further refinement. To this end, ARTC has made a number of adjustments to certain parts of the HVAU, and specifically the proposed Indicative Access Agreement (AHA). These revisions have recently been put to industry stakeholders and include key revisions as follows.

- Recognition and incorporation of coal chain system assumptions in definition of capacity on the network.
- Broad alignment of the term of access holder agreements with PWCS agreements.
- Recognition of the quarterly capacity allocation needs of small producers.
- Involvement of the HVCCC and terminals in the monthly path allocation process with the objective of aligning terminals and track entitlements.
- Incorporation of elective rights for ARTC to deal with persistent breaches of Service Assumptions.
- Stronger commitment to participation in the Capacity Transfer System Working Group.
- Reduction in period of notice for safe harbour trading of capacity.

Concerns with development of Hunter Valley Coal Industry Access Arrangements

As stated earlier, it had been ARTC's intention in lodging its HVAU in April, at around the same time the CFA were being finalised for submission to the ACCC, that the two proposals could be considered side by side by the ACCC in the context of achieving alignment across the coal chain. This was stated to the ACCC at the time.

Since this time both the HVAU and CFA have been considered by the ACCC, and the terminals have developed a number of more detailed protocols and commercial agreements intended to underpin the broader Capacity Framework Arrangements.

The detail of ARTC's proposals in relation to the HVAU and AHA has been known by the industry since July 2008. ARTC actively consulted, in good faith, with stakeholders including producers and other coal chain service providers on the HVAU and AHA prior to lodging with the ACCC in April.

Since April, however, the further development and review of terminal and track arrangements seem to have diverged somewhat, possibly due to the different expectation of the industry and wider community.

For example, and despite having been lodged at around the same time, the ACCC approval process in relation to the terminal arrangements seems to be far more advanced than those for the track, despite there being what ARTC would consider to be a similar level of complexity in the respective arrangements. The ACCC seems to be moving towards 10 year authorisation of the terminal arrangements in December 2009, yet despite there being a round of stakeholder consultation being conducted several months ago, ARTC (and the industry) is yet to receive any formal advice in respect of the ACCC's position on any of the important non-price issues where there is some divergence between ARTC views and those of some industry stakeholders.

Interim authorisation of the CFA was seen unanimously as being fundamental to the timely development and finalisation of commercial arrangements between

stakeholders. Receiving early advice with regard to the ACCC's position in relation to important non-pricing issues in the HVAU would have similarly enabled ARTC and customers to proceed more confidently towards finalisation of track arrangements in an aligned manner. Both ARTC and customers understand the risks associated with committing to long term agreements ahead of a regulatory determination, which may impact on those agreements. As such it is critical that stakeholders receive ACCC advice on, at least, non-pricing issues in the HVAU as soon as possible.

Of further concern to ARTC is that this has permitted the terminals and its customers to quickly lock in detailed arrangements for access to the terminals. It is not clear to ARTC that the negotiations that led to the development and finalisation of these arrangements, involving only terminal stakeholders, will necessarily achieve an appropriate balance between the reasonable commercial interests of an access provider and access seeker.

Despite ARTC's transparency and timely advice in development and lodging of its HVAU, the divergence in the development and review process that has occurred over the last 6 months has left ARTC in a unfortunate position where the industry is now seeking to adjust ARTC's positions and approach in relation to a number of areas in order to more closely align to the now firm terminal arrangements.

Despite ARTC's view that there is sufficient flexibility in its proposed arrangements in order to achieve working alignment with the terminals, this view is not held by all stakeholders. ARTC continues to work with stakeholder to finalise arrangements in a timely manner, despite the uncertain environment described above. This has, to date, resulted in the revisions to ARTC's proposals described above.

Nevertheless, ARTC expects the industry to continue to push, through negotiation and through the ACCC process, for further revision of the track arrangements in pursuit of alignment.

In this regard, ARTC has indicated to the ACCC previously that whilst it supports achieving alignment of contractual arrangements across the coal chain, it recognises that:

- there are fundamental differences in the services provided by different service providers to the coal chain necessitating difference access arrangements; and
- the benefits of alignment to service providers are small compared to those of the producers, and ARTC cannot act outside its own reasonable commercial interests in pursuit of alignment.

It is critical to ARTC and stakeholders that the ACCC make available advice at the earliest opportunity regarding its position in relation to contractual alignment as addressed under the CFA, and HVAU, as well as other non-pricing issues in the HVAU. This will provide for a more certain environment in which ARTC and its customers can finalise arrangements ahead of 1 January 2010.

This submission contains no information considered 'commercial-in-confidence'.

If you have any queries regarding this submission, please do not hesitate to contact me on (08) 8217 4314, sormsby@artc.com.au or Mr. Glenn Edwards, Research and Planning Manager (08) 8217 4292, gedwards@artc.com.au.

Yours sincerely



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Attachment A - Hunter Valley - Analysis of Terminal and Track Contractual Alignment Issues

Purpose

This paper sets out the outcomes from discussions between ARTC and PWCS on 10 August and 24 August 2009 regarding contractual alignment issues between ARTC's Hunter Valley access documents and the long term capacity arrangements at PWCS.

Summary

The key issue is that it is not necessary for the track and terminal arrangements to have identical capacity mechanisms (which is not possible given the different nature of the infrastructure) provided that the two regimes have sufficient flexibility and transparency so that they can operate consistently and provide for practical outcomes.

ARTC and PWCS consider that the current and proposed PWCS and ARTC arrangements already provide a large degree of working alignment in key areas identified by industry which are discussed in the table following

| PWCS Policy | ARTC Policy | Potential Concerns | Clarification/ Resolution |
|---|--|---|---|
| <p>Issue 1: Contracting Expansion Capacity</p> <ul style="list-style-type: none"> PWCS is obliged to contract for these nominations and expand (with several exceptions) Start date may be varied in some circumstances Nominations are satisfied in the order prescribed by the Nomination and Allocation Procedure No requirement to prove track or train capacity when nominating for PWCS capacity | <ul style="list-style-type: none"> There are two primary ways that expansion will occur being: <ul style="list-style-type: none"> (i) capacity sought and endorsed through the HVCCC, and (ii) capacity sought by an Applicant In the case of (i) commercial viability will normally be based upon endorsement by the RCG and sufficient TOP commitments, and in the case of (ii) where capacity is requested by an individual or group there are a number of mechanisms that can be agreed to fund the expansion (s 6.2 and 6.3 of the | <ul style="list-style-type: none"> If a producer receives terminal capacity, there is no guarantee it will receive track capacity. This may leave producers with misaligned contracts. No certainty regarding delivery date of ARTC expansion capacity. ARTC should commit to making best efforts to satisfy 'mutually exclusive' applications, even if one or more of the applications may need to have a delayed start date. | <p>Track expansion commitment process</p> <ul style="list-style-type: none"> ARTC's policy is to carry out track expansion to meet planned terminal expansion so there is always sufficient track access rights. The preparation of the HV Coal Chain Master Plan as well as ARTC involvement in the HVCCC should provide ARTC with sufficient details to maintain adequate capacity to meet terminal capacity. Coal chain master planning will be an input into ARTC's Corridor Capacity Strategy which is updated annually and will give a forward program of works necessary to meet future demand. The RCG process in the HV AU, which incorporates the HRATF's comments, provides a mechanism by which producer representation endorse and are informed of each stage of a track expansion project through an "open book" |

| PWCS Policy | ARTC Policy | Potential Concerns | Clarification/ Resolution |
|-------------|---|--------------------|--|
| | <p>HVAU)</p> <ul style="list-style-type: none"> ARTC required to use its best endeavours to complete the projects by the Start date (see clause 6(b) of the Train Path Schedule) | | <p>process.</p> <p>Delivery of track expansions</p> <ul style="list-style-type: none"> ARTC is required under the AHA to use its “<i>best endeavours to complete the listed and new projects by the Start Date</i>” (see the Train Path Schedule). Like all large infrastructure projects, an expansion to track is subject to potential delays should unforeseen events occur. Similarly uncertainty exists at PWCS with regard to Start Date variation. Participants to recognise that a commitment to perfect alignment of expansion completion dates at PWCS and ARTC is not feasible. ARTC policy is to have track expansions in place ahead of terminal. See next row regarding under or late delivery. <p>Mutually exclusive applications</p> <ul style="list-style-type: none"> The policy on mutually exclusive applications (s 3.13 of the HVAU) relates to where two or more requests for access to <u>existing</u> capacity cannot both be met. ARTC’s policy is to meet all requests for capacity expansion provided it is commercially viable. The purpose of the ‘Initial Review’ is for ARTC (and other service providers) to provide the applicant with sufficient information to the HVCCC to enable the HVCCC to advise the applicant as to whether there is sufficient coal chain capacity to deliver the rights requested and the train paths required to satisfy the access request. The Indicative Access Proposal (IAP) provided to the applicant will outline the works required and the cost of such works (section 3.10(a)). The applicant then has the ability to contract for the delivery of that additional capacity subject to RCG endorsement or through some other agreed funding mechanism (eg for a producer specific expansion). There is no need for a best endeavours mechanism - ARTC is committed to providing the applicant with the relevant information for new capacity in the IAP and obliged to negotiate track expansion with the potential for binding arbitration. |

| PWCS Policy | ARTC Policy | Potential Concerns | Clarification/ Resolution |
|---|--|--|---|
| Issue 2: Under delivery of Expansion Capacity | | | |
| <ul style="list-style-type: none"> Limited compression of existing Large producers as per Terminal Access Protocols to provide capacity to the holders of expansion capacity in accordance with priority rules | <ul style="list-style-type: none"> Where there is a delay in the completion of Additional Capacity but some of the Additional Capacity becomes available, that capacity will be allocated among the access holders who have entitlements to the Additional Capacity on an equitable prorata basis. (s5.4 HVAU) Access rights to existing capacity will be unaffected | <ul style="list-style-type: none"> Potential for misalignment if there is partial compression at both PWCS and ARTC | <ul style="list-style-type: none"> Simultaneous unrelated events that cause partial compression at PWCS and delayed expansion at ARTC are extremely unlikely. In the situation that an event does occur, an access holder is required to have sufficient network exit capability (port capacity) before its entitlement to track access rights will arise (see cl 5a and 6a of the Train Path Schedule to the AHA) <p>See attached scenario analysis as to outcomes of track and terminal expansions coming on line at different times.</p> |
| Issue 3 Alignment requirements | | | |
| <ul style="list-style-type: none"> No requirement to show track/train entitlements when nominating for terminal allocation When producer applies to utilise contracted allocation for the loading of a particular vessel, PWCS will check whether contractual entitlements are in place for track and train. If these are not in place, application may be refused or a contract ETA will apply | <ul style="list-style-type: none"> Access seeker must hold sufficient Network Exit Capacity when applying for capacity. A copy of terminal contract may be required(s3.7(a)(ix)(A) HVAU) Application may be accepted if access seeker can prove they are in negotiation with a terminal for capacity (s3.7(b) HVAU). | <ul style="list-style-type: none"> It is likely (given the Nomination and Allocation process) that producers who have nominated for capacity with PWCS may not receive the nominated capacity and/or start date at the time requested. If in these instances ARTC provide capacity to the access seeker during negotiation, misalignment may occur. | <ul style="list-style-type: none"> In the instance that a producer has nominated with a terminal, ARTC will liaise with PWCS to confirm viability of producer's nomination. ARTC s3.7(b) was drafted to provide the access seeker some flexibility in terms of timing. This does not mean that an applicant can obtain track access rights without terminal capacity. PWCS to contract allocations in accordance with the PWCS Nomination and Allocation procedure. Negotiations with a producer will cease if the producer is unable to provide ARTC evidence of network exit capability (s3.12(b)(vi)) There is a condition precedent in the Train Path Schedule to the AHA that an applicant provide evidence of network exit capability before it is entitled to access rights (cl 5(a) and 6(a) in the Train Path Schedule) |
| Issue 4 Relinquishment | | | |
| <ul style="list-style-type: none"> No 'resumption' of contracts, | <ul style="list-style-type: none"> ARTC may resume paths where | <ul style="list-style-type: none"> If ARTC enacted its right to resume paths, | <ul style="list-style-type: none"> ARTC will only "resume" access rights where ARTC is able |

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| <p>but existing contracts may be compressed in the instance of Expansion Delay or Shortfall if usage is under 95% for 18 months</p> <ul style="list-style-type: none"> Decompression will apply when the Expansion Delay or Shortfall is resolved Producers are obliged to transfer unused allocations | <p>usage is below 90% for 3 months</p> | <p>misalignment between terminal and track contracts may occur</p> | <p>to obtain sufficient take or pay commitment from another producer for those access rights - and the other producer has the network exit capability (i.e. terminal capacity) to enable it to use those resumed access rights.</p> <ul style="list-style-type: none"> See scenario analysis in the Attachment regarding terminal compression and track response. |
| Issue 5: Unexpected Delays/ Constraints | | | |
| <ul style="list-style-type: none"> Where unanticipated capacity constraints occur, PWCS may make downward adjustments to allocations to reflect any lost capacity. Pro-rata, unless specific circumstances justify alternative approach (e.g. quarantining of allocations for not meeting assumptions or performance standards) | <ul style="list-style-type: none"> If less than 7 days, it is up to ARTC In this period ARTC is required to take into account its contractual obligations and the efficient utilisation of rail capacity and Coal Chain Capacity (s5.3(a) HV/AU) If greater than 7 days, ARTC will prorate on 'an equitable basis' (s5.3(b) HV/AU) | <ul style="list-style-type: none"> If compression due to unexpected constraints is not consistent between ARTC and PWCS, misalignment may occur. Users may end up with terminal allocation and no track allocation, and vice versa | <ul style="list-style-type: none"> Misalignment for short term events unlikely as ARTC is required to take into account the efficient utilisation of Coal Chain Capacity - as well as the Hunter Valley Network capacity and contractual obligations. In practice, ARTC will reference HVCCC to assess impacts on Coal Chain Capacity and the 7 day rule is to enable flexibility to manage shortfall to support system outcome. |
| Issue 6: Daily Planning | | | |
| <ul style="list-style-type: none"> Cargo assembly plan prepared by HVCCC Coal delivery schedule prepared by HVCCC or rail operators | <ul style="list-style-type: none"> AHA provides for daily planning to be carried out by ARTC ARTC required to have regard to any relevant input provided by the HVCCC as well as the Master Train Plan (which takes into account the Hunter Valley corridor capacity strategy) in preparing the daily plan (s7.2 HV/AU) | <ul style="list-style-type: none"> HVCCC should manage all planning and scheduling processes to ensure alignment and optimisation | <ul style="list-style-type: none"> HVCCC cannot manage all of ARTC's operations since ARTC's operations include non-coal services ARTC acknowledges HVCCC's input into the ARTC planning process in s7.2 of the HV/AU. |

| PWCS Policy | ARTC Policy | Potential Concerns | Clarification/ Resolution |
|---|---|--|---|
| Issue 7: Allocation Period and System Assumptions | | | |
| <ul style="list-style-type: none"> For 2010 and 2011: Monthly where aggregate allocation > 5 Mtpa Quarterly where aggregate allocation ≤ 5 Mtpa For 2012 onwards: Monthly where aggregate allocation > 3 Mtpa Quarterly where aggregate allocation ≤ 3 Mtpa | <ul style="list-style-type: none"> Monthly for all producers Months with planned maintenance will correspond with lower allocations, months with no maintenance will have higher allocations ARTC will consult with the HVCCC before determining the months when maintenance will take place and the number of paths lost due to maintenance on those months (cl 3.2 AHA)] | <ul style="list-style-type: none"> Misalignment due to planned maintenance adjustment. No mechanism to require ARTC and PWCS to use same System Assumptions Quarterly allocation at PWCS does not match monthly at ARTC | <p>Maintenance</p> <ul style="list-style-type: none"> PWCS will also sculpt periodic allocations to match maintenance and interaction in system components as per HVCCC system capacity modelling. ARTC will determine its annual maintenance schedule in consultation with HVCCC and PWCS. ARTC capacity cannot be completely adjusted to reflect terminal maintenance since not all ARTC access holders utilise terminal capacity. PWCS and ARTC of the view that tolerance and trading mechanisms should be sufficient to enable producers to manage TOP around mine maintenance. <p>System assumptions</p> <ul style="list-style-type: none"> Prior to receiving an application for access, ARTC is obligated to review system requirements with HVCCC, producer(s) and other service providers if requested, see section 3.6 of the HVAU ARTC contracts include track related system assumptions, ie expansionary investments, axle loads, train length, section run times and maximum speed. PWCS contracts contain relevant terminal system assumptions. PWCS contracts take into account load point assumptions. A producer is able to verify the outputs of the system review process with assumptions identified in the respective contracts <p>Monthly / Quarterly</p> <ul style="list-style-type: none"> ARTC's AHA provides for operational tolerance and additionally allows trading and utilisation of ad hoc paths if available This matter has been raised during the ACCC process. |

| PWCS Policy | ARTC Policy | Potential Concerns | Clarification/ Resolution |
|---|---|--|---|
| | | | <p>ARTC will consider the impact of alternate contractual models but notes that the existing rail infrastructure cannot support all producers with quarterly allocations at the terminal seeking to use “quarterly” committed paths within the one month <u>and</u> the monthly commitments to the other producers.</p> |
| Issue 8: Allocation Units | | | |
| <ul style="list-style-type: none"> Volume of coal handling services in tonnes of coal | <ul style="list-style-type: none"> Train Path Usages for each Train Path | <ul style="list-style-type: none"> Allocation usage is not necessarily aligned; that is, if a producers actually performance deviates from system assumptions, that producer may exhaust their PWCS allocation before their ARTC allocation. | <ul style="list-style-type: none"> It is the producer’s responsibility to ensure that sufficient train paths are contracted to service their capacity and that their above rail provider operates to nominated system assumptions. |
| Issue 9: Flex/Tolerance | | | |
| <ul style="list-style-type: none"> A vessel is permitted to slip two days into the next month and still have that quantity allocated to the previous month (provided the vessel is nominated in the month). If have >50% of allocation for the cargo, then can use allocation from the next period for the balance of the cargo. | <ul style="list-style-type: none"> 10% of monthly path usages or 13 path usages (per month), whichever is greater per zone for each Access Holder. | <ul style="list-style-type: none"> Are flex / tolerance mechanisms aligned? | <ul style="list-style-type: none"> ARTC’s tolerance system provides sufficient flexibility to meet potential Terminal variations. This assumes that producers agree a monthly tolerance cap for each zone which is large enough to accommodate PWCS flex mechanism. |
| Issue 10: Term | | | |
| <ul style="list-style-type: none"> 10 year evergreen contract Each year must extend the contract for a year to maintain evergreen rights If a Producer’s right to renew has expired, then any time up to and including the fifth year of the remaining term, the | <ul style="list-style-type: none"> 10 year evergreen contract May terminate on 5 years notice but notice cannot take effect until expiry of first 10 years. Parties can enter into shorter term or longer contracts. | <ul style="list-style-type: none"> Under ARTC HVAU contractual terms can be negotiated <p>In the event that this does not occur then there are a number of mechanisms through which this can be managed -</p> <ul style="list-style-type: none"> ARTC’s AHA provides for long term trades to be undertaken If track capacity is not being utilised then ARTC can resume this and relieve producer of TOP obligations if another producer is able to provide an equivalent TOP | |

| PWCS Policy | ARTC Policy | Potential Concerns | Clarification/ Resolution |
|--|--|--|--|
| <p>Producer may elect to extend the Load Point Allocation for a period of up to 3 years</p> <ul style="list-style-type: none"> Parties can enter into less than 10 year contracts where there is excess capacity. Shorter term contracts do not have renewal rights. PWCS allows for transfers and assignments of allocation | | | <p>commitments</p> |
| Issue 11: Trading | | | |
| <ul style="list-style-type: none"> Capacity Transfer System to be developed In accepting a transfer PWCS will have regard to and is entitled to rely on recommendations of the HVCCC in relation to the impact of the transfer on other Customers, System Assumptions and alignment of contractual entitlements for the delivery of coal to the Terminal Transfer must be submitted to PWCS within sufficient time to enable PWCS to assess the matters | <ul style="list-style-type: none"> Safe Harbour Principles: <ul style="list-style-type: none"> Two weeks notice Trades west to east Trading party retains commercial obligations Trading party warrants no impact on system capacity ARTC needs to be advised of the trade ARTC will act reasonably to consider a trade outside of these parameters These are the maximum bounds <ul style="list-style-type: none"> - ARTC is obliged to work with the HVCCC to come up with more flexible and timely trading mechanisms. | <ul style="list-style-type: none"> Ensure that trading mechanisms align | <p>ARTC will, via the Capacity Transfer System Working Group, input into the development of the Capacity Transfer System to be applied at the Terminal .</p> <p>There will also be HVCCC and Producer representation on the Capacity Transfer System Working Group</p> |

Attachment - Scenario analysis of expansion underdeliveries

| Scenario 1 | Scenario 2 | Scenario 3 |
|---|---|--|
| <p>Track expansion late - terminal expansion occurs first</p> <ul style="list-style-type: none"> • Track is the bottleneck so track allocation mechanism applies (see 5.4 of the HVAU). • Users whose track rights are relying on the expansion project do not obtain any additional track rights until project completed. That is, existing users' contracted track entitlements are not affected or compressed. • If project partially available, then that additional capacity is allocated pro rata among the expansion users. • Expansion users' TOP obligations to ARTC only apply on project commissioning or to the extent the additional capacity is made available. • RCG reporting process designed to ensure that producers aware at an early stage of delays so that shipping nominations can be managed. • Expansion users' will bear ship or pay obligations at terminal as terminal has made expansion capacity available even though not capable of use. Note producers may be able to trade that terminal capacity if there are other producers who can take advantage of it because they are unaffected by the project delay (eg closer in mine). | <p>Terminal expansion late - track expansion occurs first</p> <ul style="list-style-type: none"> • Terminal is the bottleneck so compression mechanism applies. • Existing users potentially compressed and expansion users given some terminal allocation. • Existing users and expansion users both have track entitlements but users only allocated paths by HVCCC to meet users' shipping nominations accepted by the terminal. That is, practically train paths will be allocated to follow terminal allocations. • Existing and expansion users' will bear full track take or pay obligations as ARTC has made contracted track capacity available for use to all users. | <p>Both track and terminal expansions are late</p> <ul style="list-style-type: none"> • For a potential misalignment to occur both terminal and track are simultaneously late and there is no additional track capacity available equivalent to the amount that existing terminal users could be compressed – this is an unlikely occurrence. • If the terminal compression mechanism is applied [ie 5%] then it could mean expansion users are provided with terminal capacity, without track capacity. • In order to address this the users that have been compressed could trade unused track capacity which would reduce their TOP obligations, or ARTC could sell paths on ad hoc basis to those with excess terminal capacity. |