

Port Waratah Coal Services
Limited and
Newcastle Port Corporation

Submission responding to ACCC
information request dated 16
November 2009

Dated 24 November 2009

Port Waratah Coal Services Limited and Newcastle Port Corporation

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1 Introduction

Port Waratah Coal Services Limited (“PWCS”) and Newcastle Port Corporation (“NPC”) make this submission in response to those matters in the ACCC’s letter dated 16 November 2009 that relate to PWCS.

2 Response to questions

1(i) Please provide an update on the progress of the development of the Capacity Transfer System, including the revised completion date for this project

The Capacity Transfer System (“CTS”) Working Group has made significant progress in developing the CTS system design.

The CTS Working Group has met on four occasions since October 2009 to progress the development of the CTS. Most recently, on 16 November 2009, the CTS Working Group conducted a workshop with Producers and services providers at which a number of recommendations for the implementation of the CTS were tabled and accepted.

The CTS will take the form of an online clearing house hosted by the Hunter Valley Coal Chain Co-ordinator Limited (“HVCCC”) as CTS Administrator and the system is proposed to be implemented in two phases:

- Phase 1 will be the establishment of an electronic marketplace for listing wanted and available allocation. The marketplace module will be supported by an interim paper / email based system co-ordinated by the CTS Administrator.
- Phase 2 will be a fully integrated system for managing the CTS.

Phase 1 of the implementation is planned to be delivered mid to late December 2009.

There will be two ways for Producers to give effect to a transfer under the CTS:

- (a) Producers can publish available or wanted allocation on the CTS on a confidential basis. The CTS Administrator, will put the relevant Producers in contact to enable them to give effect to the transfer; or
- (b) Producers can arrange a bi-lateral transfer which they must then register with the CTS.

HVCCC will review all transfers and make recommendations with respect to the impact that the transfer will have on other Producers, system capacity, planning and contractual alignment. Importantly, transfers of capacity are not mandatory. However, to the extent that Producers are able to transfer available allocation, there will be increased public benefits.

Recent progress on the CTS has focused on the development of the mechanics of the system and the operational aspects required for implementation. The recommendations arising from the recent workshop dealt with operational matters including:

- the information that should be visible to all Producers on the CTS system;
- how negotiations between Producers will be initialised;
- the process following agreement between Producers to initiate a transfer;
- how HVCCC will assess the impact of a transfer;
- documents that will be required to facilitate transfers;
- how the 5% cap on fees charged for a transfer will be policed.

NPC will administer those aspects of the CTS that relate to the Capacity Framework Arrangement requirements consistent with the New South Wales Government's emphasis on anti-hoarding.

The CTS Working Group has made significant progress towards finalising the CTS and will continue to develop the mechanics of the system so that it may be implemented before 1 January 2010.

1(ii) Please provide an update on the outcome of any further operational discussions between the terminal operators and the Australian Rail Track Corporation (ARTC) since the August meetings.

Since PWCS, NPC and Newcastle Coal Infrastructure Group Pty Limited ("NCIG") (together, the "Applicants") last updated the ACCC on the progress of contractual alignment¹, further constructive discussions have been held by the industry, including between ARTC and PWCS, in relation to the development and operational implementation of contractual alignment.

PWCS' discussions with ARTC have focussed on four key areas:

- Consistency in allocations
- Accountability for performance
- Certainty of capacity entitlements
- Consistency in contractual terms

The revised drafting of ARTC's HVAU has made significant steps in resolving a number of areas for potential misalignment. Discussions are continuing.

In its submission dated 17 November 2009, ARTC indicated that:

- *it has engaged in consultation with PWCS in relation to assessing the extent of alignment, where applicable, in relation to the more detailed provisions of the HVAU and CFA;*

¹ Submission from PWCS dated 27 August 2009

- *it has participated in a working group established to develop a framework for trading capacity;*
- *ARTC has made a number of adjustments to certain parts of the HVAU, and specifically the proposed Indicative Access Agreement.*

PWCS and ARTC will continue to hold discussions in order to progress the operational implementation of contractual alignment.

2(i) *ARTC has previously advised the ACCC that it is proposing to put in place long term track access agreements with coal producers, to commence on 1 January 2010. In the event that producers have not signed long term track access agreements with ARTC by that time, please explain how this would affect the operating protocols at the port and ultimately the achievement of contractual alignment in the Hunter Valley.*

ARTC has indicated in its submission dated 17 November 2009, that:

'it is proposing to put in place long term track access agreements with coal producers and other access seekers to commence on 1 January 2010.'

Under the Terminal Access Protocols, a failure to sign a long term track access agreement with ARTC will not prevent a Producer from obtaining a load point allocation. However, if at the time the Producer submits an application for coal handling services to use its load point allocation, PWCS may refuse the application if the Producer has insufficient track or train entitlements for the delivery of the coal to PWCS.

PWCS is working with ARTC to progress processes and systems in relation to the confirmation of track access entitlements in respect of vessels to be loaded from 1 January 2010.

There are incentives for a Producer to enter into long term track access arrangements to ensure it can use its long term load point allocation which is subject to a take or pay obligation.

PWCS has not been advised of the alternative arrangements that would be in place in the event that Producers do not sign long term track access agreements with ARTC to assess the impact. **3. *Please provide an update on the progress of the terminal operators' negotiation of long term ship or pay contracts with producers, including the anticipated completion date for signing contracts. If possible at this stage, please also provide an indication of the overall level of demand for contracted capacity at PWCS' terminals?***

Signed Long Term Ship or Pay Contracts ("LTSOP"), including acceptances of base tonnages and nominations, were submitted by Producers to PWCS by the due date of 30 October 2009. PWCS is currently working through the capacity assessment and allocation processes under the Terminal Access Protocol.

HVCCC capacity modelling is underway having regard to the load point demand and assumptions advised by Producers. PWCS is reviewing its expansion plans and timeframes having regard to the nominated tonnages and HVCCC modelling.

Under the Terminal Access Protocol, PWCS is required to contract load point allocations by 1 December 2009 and issue an updated Allocation Schedule with the

Producers' Load Point Allocation commitments to each Producer by 15 December 2009.

PWCS will provide an indication of the overall level of demand following completion of its nomination and allocation processes.

4. *Please explain:*
- (i) *the cause(s) for the forecast spike in the vessel queue; and*
 - (ii) *what steps PWCS has taken, or intends to take, under the Capacity Framework Arrangements to manage the forecast increase in the vessel queue.*

The forecast vessel queue for the end of November 2009 has reduced from previous estimates. Based on actual vessel nominations to PWCS and forecast shiploading for the month, the current forecast queue for the end of November 2009 is in the order of 40 vessels.

November is a period of high planned maintenance in the Coal Chain with outages for both track and terminal infrastructure. Timing of vessel arrivals for the quarter to date have not been in line with capacity. Lower vessel arrivals during October 2009 have been followed by higher vessel arrivals for November 2009.

PWCS has sought voluntary reductions of allocation from Producers for Quarter 4 2009. To reduce the queue down to a working level, PWCS also intends to have regard to the forecast vessel queue at the start of 2010 in determining the amount of PWCS capacity (above aggregate base allocations) that will be offered to all Producers on a pro-rata basis in the first quarter of 2010 under the Capacity Framework Arrangements.

PWCS is also continuing to work with rail service providers to refine processes in relation to the confirmation of rail entitlements for the delivery of coal to PWCS in respect of vessels to be loaded.

3 Further issues

If the Commission requires any further information, PWCS and NPC would be pleased to assist.

Port Waratah Coal Services Limited
Newcastle Port Corporation

24 November 2009