

Newcastle Coal Infrastructure
Group Pty Limited

Submission responding to ACCC
information request dated
16 November 2009 and draft
Determination issued on
28 October 2009

Dated 26 November 2009

Newcastle Coal Infrastructure Group Pty Limited

Submission responding to information request dated
16 November 2009 and draft Determination issued on
28 October 2009

1 Introduction

Newcastle Coal Infrastructure Group Pty Limited (NCIG) makes this submission in response to the ACCC's information request of 16 November 2009 and its draft Determination issued on 28 October 2009.

NCIG has reviewed the response and submission made by Port Waratah Coal Services Limited (PWCS) and Newcastle Port Corporation (NPC), submitted to the ACCC on 24 November 2009. NCIG's response focuses on those questions as they are relevant to NCIG or otherwise to clarify the response provided by PWCS and NPC.

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.

NCIG agrees with the PWCS and NPC response to this update request subject to the following clarification.

In relation to NCIG capacity, producers who arrange bilateral transfers of capacity are not obliged to register that transfer with the CTS. However, if they do not register the transfer with the CTS, then the relevant producer does not have protection from the anti-hoarding provisions set out in the Capacity Framework Arrangements.

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.

NCIG presented to ARTC in May 2009 on the NCIG arrangements. NCIG understands ARTC is comfortable that the NCIG arrangements are consistent with the ARTC's HVAU. NCIG and ARTC have had no further discussions.

Producers have ship or pay agreements with NCIG that set out monthly allocations with tolerance levels. This permits alignment with the ARTC's HVAU.

1(iii) Please provide further information about how NCIG will factor in the system assumptions and performance standards in entering into and managing nominations and contracts with producers.

NCIG has already entered into long term ship or pay agreements with producers for Stage 1.

NCIG has provided HVCCC with relevant terminal system assumptions and performance standards to enable it to develop its system modelling.

The management of the long term ship or pay contracts at NCIG is different from the position at PWCS. This is because operation of the NCIG terminal is different from that

of PWCS. Essentially, rail and shipping programs are delinked by using the stockyard to manage the delivery of coal from producers and the subsequent shipping of coal. The delivery of coal and subsequent shipping, therefore, is one for which producers are responsible, rather than NCIG.

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.*

NCIG understands that the producers are unlikely to have a contract with ARTC in place by 1 January 2010. From NCIG's perspective, 1 January 2010 is not a key date as Stage 1 is still under construction and is not expected to commence initial throughput until the end of the first quarter of 2010.

As noted above, NCIG has already entered into long term ship or pay agreements with producers for Stage 1. NCIG anticipates that producers will make interim arrangements with ARTC to enable them to deliver coal to the NCIG terminal in accordance with this long term ship or pay contracts. If there are producers who are unable to deliver coal to NCIG, this will not affect NCIG's operations.

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?*

NCIG has already entered into its Stage 1 long term ship or pay agreements with producers.

NCIG is currently in the process of finalising Stage 2 contracts with T Class Shippers. The T Class ship or pay agreements will be on substantially the same terms as the A and S Class ship or pay agreements.

3 Submission in response to the draft Determination issued on 28 October 2009

NCIG supports the views expressed by PWCS and NPC in its submission to the ACCC in response to the draft Determination issued on 28 October 2009 as they relate to the duration of the authorisation.

NCIG considers that the duration of the authorisation should be at least 15 years. The NCIG long term ship or pay agreements have an initial term that expires at the end of the financial year 10 years after mechanical completion date. The mechanical completion date is expected to be some 2+ years after financial close, and if it falls early in a financial year, the expiry of the initial term could be 13+ years from financial close. This extends well beyond the proposed 10.5 years duration of the authorisation.

NCIG considers that, having regard to the need for certainty for the bankability of expansion projects, a compelling case can be made for the authorisation to be for 20 years. The long term ship or pay contracts are intended to be evergreen and will be rolled over for periods beyond 2025. In the circumstances a 20 year term for the authorisation would be consistent with the long term nature of the arrangements and

underlying investments in the Hunter Valley coal supply chain. This would particularly assist NCIG in its planning for Stage 2.