

Newcastle Coal Infrastructure
Group Pty Limited

Response to ACCC's further
information request dated
1 December 2009

Dated 3 December 2009

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1 Introduction

Newcastle Coal Infrastructure Group Pty Limited (NCIG) provides this response to the ACCC's further information request to NCIG by email of 1 December 2009.

2 Response to questions

1. *After noting the requirements set out in paragraph 5.47 of the ACCC's Draft Determination and the conduct for which authorisation is sought under clause 9(b) of the Capacity Framework Arrangements, the ACCC then went on to note that consistent with those requirements, the ACCC's assessment of the proposed Capacity Framework Arrangements has been based on the understanding that both terminal operators will play an active role with regard to contractual alignment. However, during the discussion on 30 November 2009, NCIG appeared to be suggesting that it would not be playing an active role - with ensuring contractual alignment primarily being the responsibility of producers using the NCIG terminal.*

If this is accurate, please explain why it is necessary for PWCS to engage in the 'contractual alignment conduct' described at Clause 9(b) of the Capacity Framework Arrangements but it is not necessary for NCIG. I note that NCIG has previously stated that management of long term ship or pay contracts at NCIG is different from PWCS. NCIG submits this is because rail and shipping programs are delinked by using the stockyard to manage the delivery of coal from producers and the subsequent shipping of coal. Could you please provide further explanation of why this means NCIG does not propose to engage in the 'contractual alignment conduct' described at clause 9(b) of the Capacity Framework Arrangements.

The extent to which NCIG needs to engage in the conduct described in section 9(b) in order to achieve necessary and appropriate alignment of above and below rail arrangements with the arrangements at the NCIG terminal will reflect a number of factors. Firstly, the way in which the NCIG terminal will operate. Secondly, the shareholders' incentives to ensure that above and below rail arrangements are aligned with the shareholders' long term ship or pay contracts with NCIG. Thirdly, some of the obligations to which NCIG is subject in respect of Stage 2.

NCIG's terminal is not currently operating and NCIG's views on contractual alignment are based on its expectations.

NCIG considers that, at the day to day operational level, NCIG shippers have a powerful incentive (because of their obligations under the long term ship or pay agreements) to ensure that their above and below rail contracts are capable of delivering the coal to the NCIG terminal.

NCIG also considers that there is a "natural" alignment between the way in which its terminal will operate and the way in which above and below rail service providers wish to operate.

NCIG operations

The operation of NCIG's terminal is based on a dedicated stockpile model. NCIG allocates an area for a dedicated stockpile for each NCIG shipper based on its percentage of total throughput.

This means NCIG can operate an even and regular train schedule to fill these dedicated areas (say, the same number of trains per week). Each NCIG shipper can schedule an even train schedule to deliver coal for up to three weeks before its respective dedicated area is filled (if none of the coal stockpiled has been loaded onto a ship in that period).

The NCIG shipper has an annual throughput entitlement based on its ship or pay commitment. Its monthly shipping allocation is one twelfth of its annual entitlement subject to agreed tolerances.

Each NCIG shipper manages its own train schedule and can continue to deliver up to its dedicated stockyard area being full. The NCIG shipper arranges its shipping schedule so that coal is at the port prior to the vessel arriving.

It is the responsibility of the NCIG shipper to ensure that vessels arrive with sufficient frequency so as to prevent the stockyard from becoming full.

Therefore, the NCIG system provides for regular and even rail deliveries to the terminal allowing overall natural alignment of track and port for all the NCIG shippers without the need to strictly match rail deliveries with vessel arrival and loading.

PWCS operations

The PWCS operation, in contrast, is based on a cargo assembly model. Its schedules are based on the nomination of vessels and the estimated time of arrival of the vessel determines the stockyard allocation and train schedule.

Stockyard allocation is made for cargoes on vessels that arrive at the earliest date. Once a vessel is loaded the stockyard allocation is lost and the area is reallocated to the next available vessel.

The train schedule is based on delivering the coal between the time the stockyard is allocated and the time the vessel arrives.

Stage2: Allocation of 12Mtpa to non-NCIG producers

Under the Capacity Framework Arrangements NCIG is required to allocate 12 Mtpa at Stage 2 to non-NCIG producers. The Capacity Framework Arrangements summarises the process NCIG will follow to allocate that 12 Mtpa (see paragraph 3).

In order for nominations to be considered, non-NCIG producers that respond to the request for tender process (**Applicant**) must, among other things, meet certain mandatory criteria. Those criteria include a requirement that the Applicant must have a reasonable expectation of securing access to track infrastructure in order to transport the contracted tonnage by rail from its source mine to the NCIG terminal. That includes any necessary track access agreement to be negotiated with the rail track infrastructure provider or providers.

If an Applicant does not meet this (and other) criterion then its tender will be not be successful.

2. *In its recent submission, NCIG states that it 'has provided HVCCC with relevant terminal system assumptions and performance standards to enable it to develop its system modelling'. Please confirm whether this statement applies to both NCIG Stage 1 and Stage 2?*

NCIG has provided HVCCC with relevant terminal system assumptions and performance standards to enable it to develop its system modelling for Stage 1.

NCIG has not yet provided similar information to HVCCC for Stage 2. However, NCIG proposes to do so once it has finalised its plans for Stage 2.

NCIG is a member of HVCCC. As a member NCIG is required under paragraph 3, Schedule 2 of its Members Agreement to provide specified information to HVCCC to enable HVCCC to achieve its objects. The objects of HVCCC are, in summary, to plan and co-ordinate the co-operative operation and alignment of the coal chain in order to maximise the volume of coal transported through the coal chain.

3. *NCIG also stated during the meeting on 30 November 2009 that it would be entering into contracts for capacity from Stage 2 of its terminal based on system capacity and not the 'stand alone' capacity of its terminal infrastructure. Please describe where in the Capacity Framework Arrangements (or other relevant document) this commitment is made by NCIG, as well as the processes that NCIG will adopt to ensure this outcome.*

The approach NCIG took when preparing for Stage 1 was to commission an expert modeller to undertake a detailed analysis of the operation of the NCIG terminal as a component of the overall Hunter Valley coal chain. As part of this, NCIG and its modeller reviewed in detail the ARTC planning for provision of future track capacity. This was to enable NCIG to understand the requirements and limitations of the overall system in the context of its business plan. NCIG then used this study to inform it of the capacity to which it could build the terminal in Stage 1.

NCIG is taking this same approach when determining the appropriate capacity to which to build Stage 2. That is, it has (or will) commission an expert modeller to undertake a detailed analysis of existing and future system capacity. In doing so, NCIG's commissioned modeller may take into consideration system information provided by HVCCC.

Producers who wish to ship through NCIG also are likely to undertake their own system analysis. Indeed, NCIG is aware that a number of the producers did so before signing ship or pay agreements for Stage 1. Producers will want to ensure that the system is physically capable of shipping the amount for which the producer proposes to sign a ship or pay agreement. This is because the producer is obliged to pay the fee in full under its ship or pay agreement to NCIG whether or not it ships its allocation in full.

NCIG is owned and its decisions made by producers. Ultimately, therefore, the interests of NCIG and its shippers (both shareholder and non-shareholder) are aligned in seeking to satisfy themselves that the contracts they make (ie the ship or pay agreements) are consistent with the expected total system capacity. Shippers are unlikely to agree to sign ship or pay agreements for capacity in Stage 2 unless they have a very reasonable expectation that they are:

- able to secure the requisite rail services ; and
- there is sufficient alignment along the coal supply chain to ensure they are able to deliver their coal to their dedicated stockpile in full.