FELIX RESOURCES

F-2010-046

24th July 2009

Graham Davidson
General Manager
Port Waratah Coal Services
PO Box 57
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Via Email: graham.davidson@pwcs.com.au

Dear Graham,

RE: LONG TERM SOLUTION APPLICATION (A91147-A91149) - SUBJECT TO CURRENT ACCC REVIEW

SPECIFIC ISSUES WITH PROPOSED PWCS LONG TERM SHIP OR PAY AGREEMENT

I refer to the current application (A91147-A91149) before the ACCC in respect to the Long Term Solution and recent PWCS/producer consultation meetings where the details of PWCS' proposed Long Term Ship or Pay Agreements have been discussed.

We are concerned that the operating terms being promoted in these discussions and contained within the PWCS Long Term Ship or Pay Agreement are not in keeping with the spirit of the industry consensus reached during the review by Minister Tripodi and are a significant variation on the existing Coal Handling Service Agreement (CHSA) operating arrangements. Some of the new proposals are unacceptable and should have been tabled before the industry agreement was finalised.

Felix Resources has supported the concept and principle of Long Term Ship or Pay Contracts however we are concerned that, as the principles incorporated in the Implementation Memorandum are progressively converted into system rules and operating practices, there are adverse impacts emerging that were not previously envisaged.

The following issues represent the more critical areas of our concern:-

- PWCS has revised its definition of 'large' shippers to now include all producers with aggregate tonnage >3.0Mt. Large shippers are to be contracted to monthly SOP terms. The majority of producers under the previous PWCS CHSA were regarded as 'small' shippers and were contracted to quarterly SOP contracts. This proposed change from quarterly contracts to monthly contracts will have a significant impact on the 'smaller' producers endeavouring to effect shipments under a strict SOP monthly basis.

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We will continue to be small shipper at PWCS as we have been excluded from participating in the expansion of PWCS and as such need to have quarterly SOP tonnages as per existing arrangements.

- Under previous SOP contractual arrangements producers were afforded a 180K flexibility provision designed to assist producers in overcoming short-term imbalances in their offtake railing/shipping programs due to the numerous factors which are beyond individual shipper's control. PWCS is now proposing a 'zero' flexibility approach for monthly/quarterly loadpoint SOP offtake. We understand PWCS concerns re past use of flexibility tonnage leading to increased demand/off port vessel queues. However, we strongly believe that there needs to be a system of flexibility provisions that is 'controlled' and provides producers with some ability to meet a reasonable range of tonnage offtake within a month/quarter. Our Ashton mine which ships through PWCS is primarily a longwall operation and needs flexibility as a small shipper to cater for longwall change outs. The current arrangements meet our requirements and we have operated within our allocation.

- SOP Contract tonnage obligations will be based on Loadpoint allocations (obligations previously based on overall producer nomination tonnage). Whilst we understand the need for greater certainty in respect to individual loadpoint demand there needs to be some flexibility provided in the move from existing SOP obligations on an overall producer basis to the proposed SOP on individual loadpoints.

- The existing capacity trading scheme is simple and effective and relates simply to port tonnage. We understand the future Capacity Transfer System may involve trading of track, above rail and port contract tonnage allocation as a complete package. Under these arrangements it may well eventuate that only trades on a 'like for like' basis will emerge (ie. trades in same loading zone, using same above rail service provider and destined for the same port terminal). We are concerned that the complexity of the Capacity Transfer System rules/operating practices will ultimately discourage swaps/trades between Producers due to operating rules and financial disincentives. This will result in more inefficient use of system and lost sales.

- The traditional basis for determining vessel loadturn order at PWCS has been 'turn of arrival'. This system has worked reasonably well in the past here and in most multi user bulk terminals and provides a degree of transparency. PWCS' alternative model for sequencing of vessels based on the time a vessel nomination is received (as well as other factors such as loading zone demand) will create a less transparent system and will potentially discriminate against those shippers that are unable to nominate vessels early. We are concerned that the proposed system will also have a detrimental impact in respect to multi cargo shipments. This issue was raised in the early industry discussions and rejected. Why is it now proposed after we sign a tripartite agreement? It won't work and it is unacceptable.

  As regards the vessel queue we plan to take the port beyond 200mtpa of coal in the next few years. A vessel queue of 40 will be common place.

In the near term if we want to reduce the queue let's find out why shippers are accepting stems and putting vessels into the queue when the coal hasn't even been mined yet. Wet weather can sometime be a factor but I understand there are currently twelve vessels off the port which fall into the above mentioned category.

We are of the view that the proposed PWCS operational rules and a lack of flexibility provisions may well facilitate the emergence of unutilised rail and port terminal capacity (albeit with full SOP charges being applied by all industry service providers).

We understand and support the need to improve our planning regimes (short, medium and long term) including more stockpile allocation at PWCS for the distant shippers, however we are concerned that the current contract proposals by ARTC and PWCS in requiring a regulated 'even spread' movement of tonnage each and every month (with punitive penalties in place for non-conformance) does not take into account the various issues that confront the industry daily. Long wall change outs, geological faults, weather delays, equipment breakdowns, track outages etc, etc can adversely impact individual mine site operations. The vagaries of international shipping , vessel delays at overseas discharge ports and the predominance of FOB Sales contract tonnage exported through the Port of Newcastle can also affect Producers' ability to provide an 'even spread' movement of tonnage.

As mentioned previously we have actively supported the L/T SOP concept for the port allocations on a yearly basis with even spread. In fact we were one company that actively encouraged industry consensus some two years ago. There needs to be some balance in the flexibility arrangements that provides greater scope for Producers to meet both its PWCS contract tonnage obligations and the reasonable offtake requirements of its export Customers

We urge PWCS and the Implementation Committee to review their current position in respect to the above issues.

Brian Flannery
Managing Director

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