



神华沃特马克煤矿有限公司  
SHENHUA WATERMARK COAL PTY LIMITED

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Monday, 28<sup>th</sup> February 2011.

Mr David Hatfield

A/g General Manager  
Adjudication Branch  
ACCC  
GPO Box 520  
MELBOURNE VIC

Dear Mr Hatfield,

**Port Waratah Coal Services Limited (PWCS), Newcastle Coal Infrastructure Group (NCIG) and Newcastle Port Corporation (NPC) authorisation A91147-A91149 & A91168 & A91169 – request for review by Aston Resources**

#### Background

Shenhua Watermark Pty Limited refers to the letter of the Australian Competition & Consumer Commission (**ACCC**) dated 10 February 2011 inviting submissions (**Invitation**) in respect of any information that may be relevant to the ACCC's decision in respect of any review of the authorisation of the Capacity Framework Arrangements pursuant to section 91C(3) of the *Competition and Consumer Act 2010* (**Authorisation**).

Shenhua Watermark holds EL7223 (granted on October 22, 2008) having an area of 195 km<sup>2</sup>, approximately 35 km south of Gunnedah, NSW. Subject to obtaining environmental approvals, construction Shenhua Watermark anticipates that construction of its mine could start mid-2012, with mine production commencing in late 2013. It is anticipated that the mine will employ up to 600 employees during the construction phase, and 400 employees during the production phase.

#### **Matters in respect of which submissions are invited**

Shenhua Watermark notes that submissions are invited in respect of any information which may be relevant, including:

- Whether the Capacity Framework Arrangements are operating as intended;
- Whether there has been or is likely to be any undue delay in the delivery of further capacity at the Port of Newcastle; and
- Whether there is any evidence of capacity hoarding.

In this submission, Shenhua Watermark will make submissions in respect of each of these matters, and suggest information that may be relevant for the ACCC to consider in determining

whether or not there has been a material change of circumstances since the Authorisation was granted.

### **Are the Capacity Framework Arrangements operating as intended?**

On the information available to it, Shenhua Watermark considers that in broad terms the Capacity Framework Arrangements are operating in accordance with their design, and as such as they were intended to operate at the time of Authorisation (i.e. that they are operating as characterised in the Authorisation).

Whilst not relevant to this submission as such, in broad terms Shenhua Watermark is supportive of the Capacity Framework Arrangements, and recognises that they have provided a level of certainty for existing Producers, and that this is a beneficial outcome.

This said, there remains the challenge of affording access to sufficient capacity for new Producers on a certain and timely basis to enable them to develop new coal mines and to export coal, and in so doing realise the beneficial outcomes of increased employment (during both the development and operational phases of those coal mines) and the tax and royalty revenue streams to both Federal and State governments.

The availability of sufficient capacity for new Producers will be derived from increased capacity from existing infrastructure and new infrastructure. In the context of the Authorisation, Shenhua Watermark considers that it would be beneficial to review the Capacity Framework Arrangements to determine whether, given the lessons learned from the application of the Arrangements, it will be possible to make available for new Producers capacity from existing infrastructure.

Shenhua Watermark recognises that this is likely to prove challenging, not least because of the need to ensure that the application of the Capacity Framework Arrangements do not jeopardise existing contractual arrangements and for any capacity made available for new Producers to be capacity that is certain, sufficient and work able so as to allow final investment decisions to be made to develop new coal mines.

In this regard Shenhua Watermark notes the suggestions in respect of possible changes to the Capacity Framework Arrangements made by Aston Resources in its submission to the ACCC, and Shenhua Watermark is of the view that these suggestions are worthy of consideration by the ACCC. Further, in considering these suggestions, Shenhua Watermark is of the view that they should be reviewed by reference to whether any change to the Capacity Framework Arrangements would jeopardise existing contractual arrangements and would make available for new Producers capacity that is certain, sufficient and work able.

Given the scarcity of capacity, Shenhua Watermark considers that the Capacity Framework Arrangements should operate on a fully transparent basis (including by reference to actual use of capacity by existing Producers, and the reasons for under utilisation of capacity by existing Producers).

Shenhua Watermark believes that this approach will tend to discourage any activity that may give rise to hoarding of capacity and offers the best way of enabling an ongoing assessment of whether any capacity (being certain and sufficient and work able) can be made available to new Producers without jeopardising existing contractual arrangements, but in making this assessment doing so by reference to hard data.

Further, it may be that ongoing independent review of information arising from the operation of the Capacity Framework Arrangements on a fully transparent basis would offer a level of assurance on these matters.

**Has there been or is there likely to be any undue delay in the delivery of further capacity to the Port of Newcastle?**

On the information available to it, Shenhua Watermark does not consider that, as things stand at the date of this submission, there is evidence that there is likely to be undue delay in the delivery of further capacity to the Port of Newcastle as contemplated in the Authorisation.

This said, Shenhua Watermark considers that there is a broader question that needs to be considered, and that is whether the delivery of further capacity to the Port of Newcastle as contemplated in the Authorisation is sufficient for the capacity requirements as understood at the date of this submission.

It is undoubtedly the case that final investment decisions in respect of new coal mine developments by new Producers are not possible given the current capacity constraints at the Port of Newcastle.

Shenhua Watermark considers that it is legitimate for the ACCC to consider whether the effect of these constraints on new coal mine developments represents a material change of circumstances since the Authorisation was granted.

**Is there any evidence of hoarding?**

On the information available to it, Shenhua Watermark is not in a position to answer this question.

Given the constrained capacity at the Port of Newcastle, it may be that the Capacity Framework Arrangements do not provide provisions that are rigorous enough to discourage any activity that may give rise to hoarding.

In this regard, as noted above, Shenhua Watermark is in favour of the operation of the Capacity Framework Arrangements on a fully transparent basis, and the ongoing review by an independent entity of information arising from the operation of the Capacity Framework Arrangements on a fully transparent basis.

**Has there been a material change in circumstances?**

As noted above, Shenhua Watermark considers that consideration of whether there has been a material change in circumstances since the Authorisation was granted is key.

Shenhua Watermark has not reached a final conclusion on this point, and notes that in any event this is a matter for the ACCC.

This said, in the context of considering this issue, Shenhua Watermark considers that it is important to assess whether there has been a change in the number of proposed mine developments, and the proposed size and timing of those developments, from the number, size and timing of mine development contemplated at the end of 2009.

**In summary**

Shenhua Watermark supports the Capacity Framework Arrangements in principle, and would not be in favour of a material change to the terms of the Capacity Framework Arrangements, but considers that there is a basis for the review of the Capacity Framework Arrangements to determine whether they can be improved, in particular by:

- Consideration of the suggestions made by Aston Resources, assessed by reference to whether any change to the Capacity Framework Arrangements would jeopardise existing contractual arrangements and would make available for new Producers to be capacity that is certain, sufficient and work able;
- The operation of the Capacity Framework Arrangements on a fully transparent basis:

- to allow a clearer assessment of whether capacity (that is certain, sufficient and work able) can be made available for new Producers without jeopardising existing contractual arrangements;
- to discourage any activity that may give rise to hoarding of capacity,

and as such, to enable an independent entity to provide a level of assurance on these issues.

**Yours sincerely**



**Zhang Ziming**

**Chief Executive Officer**

**Shenhua Watermark Coal Pty Ltd**