



**SUBMISSION TO THE AUSTRALIAN COMPETITION & CONSUMER COMMISSION
RESPONSE TO MATTERS RAISED IN THE SUBMISSION BY ASTON RESOURCES
LIMITED DATED 15 DECEMBER 2010**

1. INTRODUCTION AND PURPOSE OF SUBMISSION

1.1 Introduction

This submission sets out PWCS' response to the matters raised in the submission by Aston Resources Limited ("**Aston**") to the Australian Competition & Consumer Commission ("**ACCC**") dated 15 December 2010.

The Capacity Framework Arrangements, as authorised by the ACCC in its determination dated 9 December 2009, are comprehensive and reflect two years of extensive negotiations between the NSW Government, Coal Producers and the Terminal Operators.

In PWCS' view:

- (a) the Capacity Framework Arrangements are operating as envisaged. Substantial public benefits are being achieved as a result of those arrangements providing certainty for producers by enabling them to enter into long term ship or pay contracts with the Terminal Operators. In turn, this has facilitated investment in the Hunter Valley Coal Chain in terms of above and below rail as well as coal export terminals;
- (b) the 2009 and 2010 nomination and allocation processes have been conducted in accordance with the Capacity Framework Arrangements;
- (c) consistent with the Capacity Framework Arrangements, PWCS has made significant progress in relation to T4. Indeed, T4 has been awarded Major Project Facilitation status by the Commonwealth Government on 15 December 2010;
- (d) there has been no change in circumstances to warrant a review of the continuation of the current ACCC authorisation; and
- (e) reopening the current ACCC authorisation, or intervening in the 2010 contractual process, as suggested by Aston, would likely result in significant public detriments in the form of market uncertainty and consequential impact on current and future investment.

A key function, and public benefit, of the Capacity Framework Arrangements is to provide increased contractual certainty for existing Producers, as well as the Terminals. This in turn, enables the Terminal Operators to make the financial commitments necessary to underwrite the



construction of additional capacity for new and expanding producers under a commercial framework.

The Capacity Framework Arrangements have facilitated growth and new entry and as a consequence of the nominations from Aston and other coal Producers, PWCS is obligated to undertake significant expansion to meet the aggregate contracted allocations. This includes the triggering of T4. Since the Capacity Framework Arrangements commenced:

- PWCS has approved a \$670 million expansion of its Kooragang Terminal which will increase PWCS' nameplate capacity to 133 Mtpa by the end of 2011;
- PWCS has been performing feasibility work on further expansion at Kooragang Terminal which will take PWCS to its operating consent limit of 145 Mtpa. Project 145 is expected to cost in the order of \$250-270 million and is planned for completion by the end of 2012;
- PWCS is progressing the development of Newcastle's fourth coal terminal (T4) which will, depending on final planning approvals, deliver up to another 90 Mtpa of terminal capacity;
- NCIG has approved the second stage of its terminal which will increase its capacity to 53 Mtpa; and
- Increased contractual certainty at the terminals has facilitated further investment in track infrastructure, additional trains, mine and load point developments and port infrastructure.

This degree of expansion and investment in the Hunter Valley coal chain would not have occurred at this time in the absence of the Capacity Framework Arrangements and the certainty provided by the ACCC authorisation of those arrangements.

2. 2009 AND 2010 NOMINATION AND ALLOCATION PROCESSES

PWCS has conducted the nomination and allocation processes in 2009 and 2010 in accordance with the provisions of its Terminal Access Protocol ("**TAP**") (which reflects the relevant Capacity Framework Arrangements as authorised by the ACCC). The allocation process is defined in the TAP and there is no discretion for PWCS to elect not to contract the allocations.

PWCS has established its own internal processes as part of the nomination and allocation process, including for:

- A probity officer to open and log the contents of all submissions received by PWCS from Producers for the nomination and allocation process;
- Independent technical review of the supporting information provided with each nomination relating to development status of the mines that will

utilise the allocation, timelines for coal production and marketable coal reserves in accordance with the JORC code;

- Independent review by an accounting firm of the allocations for consistency with the nomination data from Producers and the prioritisation rules in the Terminal Access Protocol; and
- Provision of information relating to the annual demand and capacity assessment to Newcastle Port Corporation in accordance with PWCS' lease obligations.

PWCS considers that the current protocols adopted to oversee the nomination and allocation process are appropriate, particularly when balanced against the confidential and commercially sensitive nature of the information provided to PWCS by Producers.

The Capacity Framework Arrangements have facilitated new entry with Aston being granted an allocation equal to its nominated tonnage, albeit not in line with its requested timing. The allocation start dates provided by PWCS to Aston are compliant with PWCS' obligation to issue start dates based on the required time for completion of the relevant PWCS expansion under its leases (ie two years from the date of the capacity shortfall for an expansion of an existing terminal and four years from the date of the capacity shortfall for the first stage(s) of a new terminal).

The Capacity Framework Arrangements clearly provide that existing load point allocations would not be diluted by new and expanding Producers nominating for additional capacity. This was a necessary part of the long term solution to provide certainty for existing Producers. New entrants are catered for by the expansion provisions, with new and expanding Producers waiting for the new terminal capacity to be built. Compression only applies where there was an expansion delay or shortfall. To do otherwise could see contracted allocations of existing producers cut back creating market uncertainty with potential loss of existing jobs resulting in public detriments.

The outcomes of the nomination and allocation processes conducted to date are consistent with the outcomes envisaged in the Capacity Framework Arrangements.

3. TERMINAL 4

PWCS has been working diligently over the past 12 months to progress T4. Key points of progress include:

- The purchase of a key parcel of land that will form part of the T4 footprint;
- Extensive pre-feasibility work being undertaken and due for completion by mid 2011;

- The Preliminary Environmental Assessment has been submitted to the New South Wales Department of Planning, with a planning focus meeting held on 9 December 2010;
- Extensive consultation with the community and a range of NSW and Commonwealth agencies has been undertaken with over 80 recorded meetings;
- On 15 December 2010 PWCS was granted Major Project Facilitation status for T4 by the Commonwealth Government;
- Establishment of a T4 management team; and
- Establishment of a PWCS Board sub-committee which includes five Producer representatives as required under the long term framework. The purpose of the sub-committee is to consult with Producers in respect of the design, construction and mode of operation of T4.

The T4 Agreement for Lease with the Newcastle Port Corporation contains a requirement for PWCS to lodge its development application by 30 November 2011. PWCS remains on track to meet this requirement.

The timeframes for expansion and construction of a new terminal in the leases were not based on definitive project plans and were intended to keep sufficient pressure on the terminals to expand in a timely manner. Whilst the current timeframe for the development of T4 falls outside the four year time for completion required under the lease, it is consistent with the timeframe for the development of the first stage of NCIG. The default timeframes do not have regard to the nature or complexities of a particular project and therefore provisions were included for the review of these timeframes in certain circumstances. The review is performed by the Reviewer (ie Newcastle Port Corporation or their appointed independent expert), meaning PWCS is accountable to, and required to justify any delays to, the Newcastle Port Corporation.

The Capacity Framework Arrangements clearly contemplate the review process and for a corresponding variation to the start date of allocations where an extension of time is granted.

PWCS has a demonstrated history of delivering terminal capacity ahead of schedule and delivering T4 in the quickest timeframe is PWCS' number one priority. However, if required, PWCS will apply to the Reviewer for an extension of the four year delivery period for T4. PWCS has advised Producers of this possibility so that Producers could make suitable contingencies in their own projects.

4. THE CAPACITY FRAMEWORK ARRANGEMENTS PROVIDE PROCESSES FOR TRANSFERS OF CAPACITY, COMPRESSION AND ANTI-HOARDING MECHANISMS

As envisaged by the Capacity Framework Arrangements, a capacity transfer system is in place as a means of handling unused allocation. PWCS' long term ship or pay agreements includes an obligation on Producers to seek to transfer any unused allocation and a limitation on the fee that can be charged for transfers.

The Capacity Framework Arrangements clearly specify that compression would only apply in the event of an expansion delay or shortfall (as defined). In the event that compression does apply, PWCS does not administer the compression provisions or determine the results of requests for exemptions from anti-hoarding compression. These provisions are administered by the Reviewer.

5. CONCLUSION

All Producers have entered into contractual arrangements with PWCS on the basis of the Capacity Framework Arrangements as authorised by the ACCC.

The outcomes seen to date are consistent with the Capacity Framework Arrangements, with substantial public benefits being achieved in the form of the considerable investment in the Hunter Valley Coal Chain stemming from the certainty provided by the Capacity Framework Arrangements.

There have been no material changes in circumstances to warrant a review of the authorisation granted in December 2009. To revisit the authorisation would result in public detriments arising from significant investment and operating uncertainty for Producers and the Terminals.

If the ACCC has any questions or requires further assistance, PWCS would be pleased to assist.

December 2010