

Friday, 3 February 2017

Rail Access – Draft Guidelines for Annual Compliance Reviews
Independent Pricing and Regulatory Tribunal
PO Box K35
Haymarket Post Shop NSW 1240

Submitted via IPART Online Submission Portal

Dear Sir or Madam

Pacific National Submission to IPART on the Guidelines for Compliance with the NSW Rail Access Undertaking

Introduction and Background

Pacific National welcomes the opportunity to comment on the Independent Pricing and Regulatory Tribunal (IPART) Review of its Guideline for Rail Access Compliance with the New South Wales Rail Access Undertaking.

Pacific National is a major freight rail operator in New South Wales, and is a major user of the rail infrastructure covered by the New South Wales Rail Access Undertaking.

Pacific National understands that each year IPART is required to determine whether rail infrastructure owners have complied with the Schedule 3 pricing principles in the Access Undertaking and that the guidelines currently being reviewed are intended to provide information in relation to these annual determinations. Of particular interest to Pacific National is the compliance of the RailCorp owned Hunter Valley Coal Network between Newstan Junction and Woodville Junction with the Access Undertaking.

This submission is public.

Pacific National Comment on the Guideline for Compliance with the New South Wales Rail Access Undertaking Under the NSW Rail Access Undertaking:

- Schedule 3 1 (l) requires a rail infrastructure owner to satisfy the ceiling test that “for any group of access seekers, access revenue must not exceed the Full Economic Costs of the Sectors which are required on a stand alone basis for the Access Seeker or group of Access Seekers”.
- Schedule 3 5(b) requires that IPART determine whether a rail infrastructure owners complies with this ceiling test; and
- Schedule 3 5(e) then requires the rail infrastructure owner to manage its unders and overs account in accordance with this IPART determination (noting that the unders and overs requirement is intended to manage variances from the ceiling test).

Pacific National has concerns with how the NSW Rail Access Undertaking ceiling test has been addressed in relation to the RailCorp owned Hunter Valley Coal Network between Newstan Junction and Woodville Junction. In submissions to IPART in recent years¹ Pacific National has raised concerns with RailCorp’s compliance with the ceiling test and the unders and overs requirements of the NSW Rail Access Undertaking

¹ See for example

- Asciano Submission to the IPART Review of RailCorp’s Compliance with the NSW Access Undertaking for the 2010 - 11 Financial year, 4 April 2013 (Note that at this time Pacific National was a subsidiary of Asciano).

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In summary these Pacific National concerns are:

- Railcorp submissions to IPART on the ceiling test and unders and overs account for the Hunter Valley Coal Network between Newstan Junction and Woodville Junction continue to use cost estimations and methodologies which IPART has previously rejected. For example RailCorp submissions from 2011/12 onwards² use a ceiling test methodology which IPART had previously found was not consistent with the NSW Rail Access Undertaking³. Such an approach seems to be inconsistent with the NSW Rail Access Undertaking requirement that rail infrastructure owners manage their unders and overs accounts in accordance with this IPART determination; and
- RailCorp submissions on the ceiling test use costs based on CPI escalations of previously allocated costs rather than an allocation of actual costs or efficient costs

Pacific National supports the current IPART position that the methodology used by RailCorp is not consistent with the NSW Rail Access Undertaking. Pacific National believes that the ceiling test should be assessed using the methodology used by IPART and the unders and overs account should be managed to be consistent with this ceiling test.

Pacific National recognises that IPART's scope to enforce its determinations is limited but Pacific National is seeking that the Guideline for Rail Access Compliance with the New South Wales Rail Access Undertaking be changed to the extent possible to allow IPART to enforce its own determinations. Pacific National recognises that other regulatory instruments would also need to be amended to allow IPART to enforce its decisions.

In addition to the above matters Pacific National also has broader concerns with New South Wales Rail Access Undertaking, as outlined in a previous submission to an ongoing Transport for New South Wales review of the New South Wales rail access regime⁴. Several of the broader concerns raised in this previous submission are relevant to the current review including the need for increased levels of transparency, including transparency of costs, relating to rail infrastructure providers and increased powers for regulators to monitor, audit and enforce access provisions. Pacific National believes that addressing these matters within the Access Undertaking itself will allow IPART to more easily enforce its determinations. To this end Pacific National is seeking that the ongoing Transport for New South Wales review of the New South Wales rail access regime be finalised in the near future.

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- Asciano Submission to the IPART Review of RailCorp's Compliance with the NSW Access Undertaking for the 2011-11 Financial Year and 2012-13 Financial Year, 21 March 2014 (Note that at this time Pacific National was a subsidiary of Asciano)
 - Asciano Submission to the IPART Review of RailCorp's Compliance with the NSW Access Undertaking for the 2013-14 Financial Year, 6 November 2015 (Note that at this time Pacific National was a subsidiary of Asciano)
 - Pacific National Submission to the IPART Review of RailCorp's Compliance with the NSW Access Undertaking for the 2014-15 Financial Year, 21 October 2016

² See for example

- RailCorp Submission to the Independent Pricing and Regulatory Tribunal Hunter Valley Roll Forward of Regulatory Asset Base, Ceiling Test and Unders and Over Account Financial Year 2011/12
- RailCorp Submission to the Independent Pricing and Regulatory Tribunal Hunter Valley Roll Forward of Regulatory Asset Base, Ceiling Test and Unders and Over Account Financial Year 2012/13
- RailCorp Submission to the Independent Pricing and Regulatory Tribunal Hunter Valley Roll Forward of Regulatory Asset Base, Ceiling Test and Unders and Over Account Financial Year 2013/14
- RailCorp Submission to the Independent Pricing and Regulatory Tribunal Hunter Valley Roll Forward of Regulatory Asset Base, Ceiling Test and Unders and Over Account Financial Year 2014/15

³ IPART Final Decision on RailCorp's compliance with the New South Wales Rail Access Undertaking (Undertaking) for the 2010/11 financial year in respect of the Sectors owned by RailCorp in the Hunter Valley Coal Network (HVCN) between Newstan Junction and Woodville Junction.

⁴ Asciano Submission to the Review of the NSW Rail Access Regime February 2013. (Note that in February 2013 Pacific National was a subsidiary of Asciano Limited).

Note that Pacific National has no specific concerns with the guidelines for the annual compliance reviews or concerns with the timeframes, consultation processes and time frames of the annual compliance reviews. Pacific National's primary concern is the current approach of RailCorp to the ceiling test and unders and overs account account for the Hunter Valley Coal Network between Newstan Junction and Woodville Junction.

Conclusion

Pacific National has no specific concerns with the general content of the guidelines for the IPART annual compliance reviews with the NSW Rail Access Undertaking but Pacific National is seeking that the Guideline for Rail Access Compliance with the New South Wales Rail Access Undertaking be changed to the extent possible to allow IPART to enforce its own determinations.

Pacific National is concerned with the current approach of RailCorp to these annual compliance reviews. Pacific National believes access pricing should be consistent with IPART decisions.

If you wish to discuss this submission please contact me on [REDACTED]

Yours Faithfully

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Stuart Ronan
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Pacific National