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24 January 2008

Chief Executive Officer
Independent Pricing and Regulatory Tribunal of NSW
PO Box Q290
QVB Post Office NSW 1230



Attention: Ms Julia Williams

Dear Ms Williams

IPART Review of ARTC Draft Unders and Overs Account Policy

Thank you for your email of 26 November seeking the NSW Minerals Council's (NSWMC) comments on the proposed approach to information disclosure that would apply to different classes of "Access Seeker" as outlined in section 3.3 and Annexure A of the Australian Rail Track Corporation ("ARTC") draft Unders and Overs Account Policy.

NSWMC's Submission on this matter is attached. In summary, NSWMC

- strongly supports the approach in the draft Policy of calculating the allocation of the unders and overs to each coal haul and informing each coal rail end-user who wishes to know, and its Access Contract Holder, of the allocation for each of that end-user's hauls
- requests inclusion in the draft Policy of some minor enhancements (set out in Section 5 of our Submission) which will facilitate the calculation and communication of the allocations for each coal haul to the respective coal rail end-users and Access Contract Holders.
- with these enhancements, NSWMC supports approval by IPART of the draft Policy.

The rationale for NSWMC's position is set out in the Submission. In essence

- the under or over for each coal haul is an integral part of the access charge for each coal haul
- knowledge of the access charge by the end-user is fundamental to obtaining the lowest possible access charges and effective competition in coal haulage
- with minor enhancements, the draft Policy provides an effective means of calculating and communicating the allocation for each coal haul
- the draft Policy is consistent and compatible with the NSW Rail Access Undertaking.

If you need further information on this matter, please contact Geoff Andrews of the NSWMC's Hunter Rail Access Task Force on 02 - 9386 9957 or an53696@bigpond.net.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Nicole Williams'.

Dr Nicole B Williams
CHIEF EXECUTIVE OFFICER



**NSW MINERALS COUNCIL
HUNTER RAIL ACCESS TASK FORCE**

**RESPONSE TO
INDEPENDENT PRICING AND
REGULATORY TRIBUNAL**

**REGARDING
AUSTRALIAN RAIL TRACK CORPORATION
DRAFT UNDERS AND OVERS ACCOUNT POLICY
FOR ITS HUNTER VALLEY COAL NETWORK**

January 2008

1. Role of NSWMC

The NSW Minerals Council ("**NSWMC**") welcomes the opportunity to make this submission to the Independent Pricing and Regulatory Tribunal ("**IPART**") regarding the Australian Rail Track Corporation ("**ARTC**") draft Unders and Overs Account Policy ("**Policy**") for its Hunter Valley Coal Network ("**Hunter Network**").

NSWMC's Hunter Rail Access Task Force ("**HRATF**") represents the Hunter coal producers who are the coal rail end-users of ARTC's Hunter Network which is part of the Hunter export and domestic coal logistics supply chain ("**Hunter Coal Chain**").

The Hunter coal producers use the rail service suppliers in the Hunter Coal Chain to rail coal from more than 30 mines/loadpoints to 4 major power stations in the region and/or the 3 export coal terminals (2 operating and 1 planned) in the port of Newcastle. They use the port service suppliers in the Hunter Coal Chain to assemble cargoes for, and load, over 900 ships per year.

The Hunter coal producers currently rail about 90 Mt per year of export coal worth \$7bn in export earnings and 5 Mt per year of domestic coal on the Hunter Network. Rail access charges for the Hunter coal traffic of the order of \$100M per year are around one third of ARTC's total revenues.

The Hunter coal producers operate in highly competitive domestic and international markets. For environmental and social reasons it is impracticable to transport most coal by road. Efficient rail haulage of coal on ARTC's Hunter Network is therefore fundamental to the efficient operation of the Hunter Coal Chain. Efficient operation of the Coal Chain and low rail charges are important determinants of the competitiveness and viability of existing coal mines and new projects.

The objective of NSWMC's HRATF is to obtain access arrangements which ensure the efficient use of the Hunter rail infrastructure and minimise the ongoing price of rail access and of rail haulage.

2. NSWMC Position

In pursuit of this objective, NSWMC's HRATF has participated in ARTC's consultations with stakeholders regarding the draft Policy. In regard to the two major areas of discussion during consultation, NSWMC

- is prepared to accept the methodology for allocation of unders and overs in the draft Policy
- strongly supports the approach in the draft Policy of calculating the allocation of the unders and overs to each coal haul and informing each coal rail end-user who wishes to know, and its Access Contract Holder, of the allocation for each of that end-user's hauls
- requests inclusion in the draft Policy of some minor enhancements (set out in Section 5 of this Submission) which will facilitate the calculation and communication of the allocations for each coal haul to the respective coal rail end-users and Access Contract Holders.

With these enhancements, NSWMC supports approval by IPART of the draft Policy.

This Submission sets out the reasons for NSWMC's position on the draft Policy in the process of commenting, as requested by IPART, on "the proposed approach to information disclosure that would apply to different classes of "Access Seeker" as outlined in Section 3.3 and Annexure A" of the draft Policy.

3. Rationale for NSWMC Position

NSWMC's HRATF has long argued that the objectives of efficient and minimum cost rail transport of coal on the Hunter Network will only be achieved where there is

- effective competition for the supply of above rail (haulage) services to coal end-users, and

- efficient, transparent pricing of rail access by the monopoly Rail Infrastructure Owner.

In pursuit of these conditions, the NSW Rail Access Undertaking provides that, as well as Rail Operators, Access Purchasers, who have "the capacity to secure and properly manage the services of a Rail Operator", may purchase access from the Rail Infrastructure Owner. An Access Purchaser has the direct ability to negotiate access prices, terms and conditions for its coal hauls and first-hand knowledge of the agreed access price, terms and conditions.

Under ARTC's draft Policy, this would include knowledge of the Access Purchaser's allocation (share) of the unders and overs (amount) determined annually by the Rail Infrastructure Owner, ARTC, for its Hunter Network and confirmed by IPART.

NSWMC believes that all coal end-users of the Hunter Network are prospective Access Purchasers as defined in the Undertaking. In most cases they have not become Access Purchasers because they believe that the Rail Operators they have contracted have, so far, obtained appropriate access prices, terms and conditions from ARTC and have accurately informed them of those prices, terms and conditions.

This has allowed the coal rail end-users to effectively compare the offers of haulage services from Rail Operators and competitively contract their haulage requirements. If the coal rail end-users do not get accurate information on access prices, terms and conditions, that process will be compromised and the key conditions for achieving efficient and minimum cost rail transport will be undermined.

Unders and Overs is an important retrospective amendment to the access prices for coal hauls on the Hunter Network each year. As such, it is just as necessary that the allocation of the unders and overs applying to each coal haul is determined and that each coal rail end-user who wishes to know is correctly informed of the allocation applying to each its coal hauls.

4. Proposed Information Disclosure is Necessary and Appropriate

NSWMC believes that the degree of information disclosure and the different levels of disclosure provided for in the ARTC draft Policy are both necessary and appropriate to achieve the objectives of efficient transparent access pricing and effective competition in the supply of rail haulage services.

Under Clause 3.3 of the draft Policy

- an annual allocation of the unders and overs will be determined by ARTC for each haul for which information is supplied
- IPART will confirm the calculation of the annual allocations in accordance with the Policy
- ARTC will advise
 - each applicable "Access Seeker for whom ARTC has established an Access Holder Account" (i.e. each Access Contract Holder including Rail Operators) with its Unders and Overs Account Details; and
 - each other "Access Seeker" of the allocation made to each applicable network loading point (i.e. each coal haul) where ARTC has been provided with sufficient information to calculate allocations to network loading points applicable to that Access Seeker"

An "Access Seeker" is defined in the NSW Rail Access Undertaking as, inter alia, "a prospective Access Purchaser who, in the opinion of the Rail Infrastructure Owner, has the capacity to secure and properly manage the services of a Rail Operator. As noted above, NSWMC believes that all coal rail end-users of the Hunter Network are prospective Access Purchasers as defined in the Undertaking and has strongly argued this case in its previous submissions to IPART in relation to the capital expenditure consultation process with stakeholders (25 May 2005, 12 June 2006 and 23 July 2007).

Therefore, as prospective Access Purchasers, all coal rail end-users of the Hunter Network are

"Access Seekers" as defined in the NSW Rail Access Undertaking and, under the ARTC Policy, each should be advised of the under or over allocation for each of its hauls.

5. Practical Application of the ARTC Policy

To ensure the ARTC's draft Policy works effectively in practice to allocate unders and overs to every coal haul and to eliminate the need for direct communication between ARTC and individual coal end-users, NSWMC believes the Policy should provide that

In Clause 3.2

- a) each Access Seeker for whom ARTC has established an Access Holder Account (i.e. each Access Contract Holder including Rail Operators) will be responsible for providing the necessary information to ARTC to enable it to calculate allocations to each of that Access Contract Holder's coal rail end-users' hauls
- b) to provide a firm and undisputed basis for ARTC's calculation, the necessary information supplied by the Access Seekers for whom ARTC has established Access Holder Accounts will be accompanied by a document from each coal rail end-user confirming that it agrees with the information supplied to ARTC in relation to its hauls.

In Clause 3.3

- c) IPART will post on its website the allocations for each individual haul calculated by ARTC that IPART confirms, consistent with IPART's policy of posting the total under or over amount that it confirms each year
- d) for each individual coal rail haul, IPART will give to ARTC a document formally stating the confirmed allocation for that haul which can be passed on to the relevant Access Seeker for whom ARTC has established an Access Holder Account and, in turn, passed on to the relevant coal rail end-user.

6. Support for NSWMC Position

In summary, NSWMC believes its position is supported by the following points

- the under or over for each coal haul is an integral part of the access charge for each coal haul
- knowledge of the access charge for each coal haul by the end-user is fundamental to obtaining the lowest possible access charges and effective competition in coal haulage
- with minor enhancements, the draft Policy provides an effective means of calculating and communicating the allocation for each coal haul to the coal rail end-user and the Access Contract Holder concerned
- the draft Policy is consistent and compatible with the NSW Rail Access Undertaking.

NSWMC believes arguments against the allocation of unders and overs to every coal haul and the communication of the allocation for each haul to its coal rail end-user and Access Contract Holder should not be accepted for the following reasons.

a) Communication of Unders & Overs Information is Consistent with the NSW Undertaking

The NSW Rail Access Undertaking does not preclude the communication of access charge information to coal rail end-users even though those parties do not directly pay the access charges to ARTC. In fact such communication is consistent with the treatment of coal rail end-users as Access Seekers.

As well, the Hunter Network operates as though the end-users directly pay the access charges to ARTC. Because of the volume of their railings, individual coal rail end-users, in effect, pay very large

access revenues to ARTC via the access payments made by their Rail Operators. In many cases also, the contracts between the Rail Operators and the coal rail end-users provide for the Rail Operator to advise the end-user of the access charge and any changes to the charge. They also provide for the access charge and any changes to it to be directly passed through to the end-user.

Further, by recognising prospective Access Purchasers as Access Seekers, the Undertaking recognises that the coal end-users are major users of rail capacity who will have a strong interest in knowing what the access charges are for their own hauls. The dissemination to the end-users of the changes to access charges resulting from allocation of unders and overs is clearly consistent and compatible with the processes whereby the access charge for every coal haul on the Hunter Network is re-determined each year and then adjusted at the end of each year by means of the unders and overs account.

b) The Policy Has Been Developed in Consultation with Access Seekers

As required under the NSW Rail Access Undertaking, the Rail Infrastructure Owner, ARTC, has developed the policy in consultation with Access Seekers including the many prospective Access Purchasers represented by the NSWMC's HRATF.

ARTC has responded to some of the views of the NSWMC's HRATF in developing the policy. In particular, NSWMC has strongly advocated the allocation of unders and overs to each haul and their communication to the individual coal end-users concerned and their Access Contract Holders.

c) There is Benefit in Providing the Information to Coal End-Users

As set out in Section 3 of this Submission, there are profound rail efficiency and cost benefits in informing individual coal rail end-users of the access charges, including the allocations of unders and overs, for their respective hauls.

While this disclosure does not represent the full transparency of access pricing that has long been sought by the Hunter coal rail end-users and supported by the major Rail Operators, the NSW Rail Access Undertaking goes substantially down that path in that stakeholders are consulted in relation to major factors determining the access revenues for each year (e.g. forecasts of capital expenditure, maintenance and railings) and access charges are redetermined for each haul each year. Calculating and communicating the allocation of unders and overs for each haul at least helps provide transparency to the individual coal rail end-users in relation to access charges for their own hauls.

d) Provision of the Information is Consistent with Existing Commercial Relationships

As noted above, many coal rail end-users have commercial relationships with their Rail Operators (who are the Access Contract Holders for their hauls) under which the Rail Operators inform, and pass through to, the end-users the changes in access charges. Provision of the allocation information and, where appropriate, pass through of the under or over to the coal rail end-user is entirely consistent with these relationships.

Even where this is not a provision of all of its commercial relationships with its coal rail end-users, the Access Contract Holder must be advised of the allocation for each of its end-users hauls if it is to know and be able to communicate the allocation for those hauls where it is commercially required to do so.

It should not be necessary for a coal rail end-user to have to become an Access Contract Holder simply to get accurate information as to the access charge set for its haul each year and any under or over adjustment to the charge each year.

e) The Information Will Not Cause Confusion

By requiring each Access Contract Holder to supply the information for all its hauls after agreeing the information with its end-users, there should be no potential for incorrect information being used in the allocation to individual coal rail end-users.

By requiring ARTC to supply each Access Contract Holder with the information on the allocations for each coal rail end-user relevant to that Access Contract Holder, the Access Contract Holder will be

able to communicate the information to its end-users in accordance with its commercial arrangements with its end-users.