

Application by ARTC to vary the Hunter Valley Access Undertaking to incorporate Gap to Turrawan Segments

1 Application

1.1 Application

This is an application to the ACCC for consent to vary the Hunter Valley Coal Network Access Undertaking (HVAU) under section 44ZZA(7) of the *Competition and Consumer Act 2010* (Cth) (CCA). The HVAU was accepted by the ACCC on 29 June 2011 with a Commencement Date of 1 July 2011, and subsequently varied with the ACCC's approval on 17 October 2012.

This application represents a revision to an earlier application to vary the HVAU to incorporate the Gap to Turrawan Segments made on 28 June 2013 and subsequently withdrawn on 20 January 2014 (Initial Application).

This application seeks:

- (a) to vary the HVAU to incorporate additional Segments in Pricing Zone 3 of the Network between Gap and Turrawan;
- (b) the ACCC's approval of the proposed initial value of the regulatory asset base (**RAB**) for the additional Segments between Gap and Turrawan in accordance with section 4.4(a)(ii) of the HVAU; and
- (c) the ACCC's approval of the Initial Indicative Access Charge for the extended Pricing Zone 3 for the 2014 calendar year.

The proposed Initial Indicative Access Charge for the 2014 calendar year for extended Pricing Zone 3 has been developed by ARTC in accordance with the pricing principles under the HVAU and finalised with relevant Access Holders in accordance with the annual process for finalising Indicative Access Charges under section 4.20 of the HVAU.

This application has been submitted following extensive consultation with relevant stakeholders (both directly and through the ACCC's consultation process) as well as with the ACCC following both formal and informal information requests and the release of a position paper by the ACCC (**Position Paper**). ARTC considers that it has addressed the issues and concerns raised by the ACCC and stakeholders during the assessment of the Initial Application.

ARTC considers it appropriate for the ACCC to consent to ARTC's proposed variation for the reasons set out above and in section 2.

A high level overview of how the proposed initial value of the RAB for the additional Segments between Gap and Turrawan is set out in section 3. The



Initial Indicative Access Charge for 2014 for the extended Pricing Zone 3 and is set out in section 4.

1.2 Criteria for approving variation

Pursuant to section 2.3 of the HVAU and section 44ZZA(7) of Division 6 of Part IIIA of the CCA, ARTC may vary the HVAU at any time with the ACCC's consent.

The ACCC may only consent to a variation if it considers it appropriate to do so having regard to the matters set out in section 44ZZA(3) of the CCA. These matters include:

- (a) the objects of Part IIIA of the CCA;
- (b) the pricing principles specified in section 44ZZCA;
- (c) the legitimate business interests of ARTC;
- (d) the public interest, including the public interest in having competition in markets;
- (e) the interests of Access Holders and Operators; and
- (f) any other matters that the ACCC thinks are relevant.

2 Proposed Gap to Turrawan Segments

ARTC proposes to extend Pricing Zone 3 of the Network to incorporate an additional four Segments from Gap to Turrawan as specified at Figure 1 (**Additional Segments**). The Additional Segments are north of the Gap and have a combined length of approximately 132.5 kilometres.

Figure 1

Additional Segments	Kilometre from	Kilometre to	Segment length
Gap to Watermark	416.0	447.1	31.1
Watermark to Gunnedah	447.1	480.1	33.0
Gunnedah to Boggabri	480.1	521.5	41.4
Boggabri to Turrawan	521.5	548.5	27.0



ARTC proposes to incorporate the Additional Segments into the existing Pricing Zone 3. The Additional Segments proposed to be incorporated into the HVAU are currently being utilised by Access Holders operating Train Paths in Pricing Zone 3. These Segments represent existing coal loading points at Gunnedah, Boggabri and Narrabri, and proposed developments at Watermark and Maules Creek.

Incorporating the Additional Segments into the existing Pricing Zone 3 will provide for a simpler pricing and performance management structure for both Access Holders and ARTC. Due to the existing utilisation of the Additional Segments by Access Holders operating in Pricing Zone 3, ARTC sees little benefit in creating a new Pricing Zone to incorporate the Additional Segments.

ARTC does not anticipate any difficulties under the HVAU or existing Access Holder Agreements arising as a result of incorporating the Additional Segments in the existing Pricing Zone 3.

ARTC understands from submissions to the ACCC's consultation on the Initial Application that the incorporation of the Additional Segments into the existing Pricing Zone 3 has the broad support of relevant stakeholders. ARTC also notes from the Position Paper (page 5) that it is the ACCC's preliminary view that inclusion of the Additional Segments into the existing Pricing Zone 3 is appropriate.

The Additional Segments north of Gap are currently governed by the NSW Rail Access Undertaking (NSWRAU). The NSWRAU's level of prescription and its practical application has lesser overall requirements than the HVAU. Incorporating the Additional Segments into the HVAU will ensure that regulatory principles governing the Hunter Valley Coal chain are consistently applied. ARTC considers that this will facilitate better co-ordination between Access Holders in Pricing Zone 3 and the Hunter Valley coal supply chain.

Further details are provided in the supporting submission provided at **Attachment B**.

3 Determination of initial value of the RAB

The proposed starting regulatory asset base valuation for the Additional Segments between Gap and Turrawan have been determined using the depreciated optimised replacement cost (**DORC**) method in accordance with section 4.4(a)(ii) of the HVAU. The optimised replacement cost means the cost of replacement by a commercially efficient application of best known current available technology based on existing capacity and performance characteristics of the assets.

A copy of the Gap to Turrawan DORC Valuation Report was provided to the ACCC as part of the Initial Application. Following consultation in relation to the Initial Application as described at section 1.1 above, ARTC has made a number of amendments to the DORC proposed as part of the Initial Application in order to address the concerns of relevant stakeholders and the ACCC.



With the support of the ACCC, ARTC has recently engaged in direct consultation with relevant Access Holders (being the key existing Gunnedah Basin coal producers) in relation to several remaining areas of concern including:

- (a) remaining asset life assumptions for assets to be replaced as part of the planned 30 tonne axle load capacity investment program over the next few years;
- (b) replacement cost and mark-up assumptions for specified assets;
- (c) the magnitude of proposed financing costs; and
- (d) maintenance adjustments in relation to non-MEERA assets.

Following consultation with existing Gunnedah Basin coal producers, ARTC has agreed further amendments to the asset valuation underpinning the Initial Application that addresses the remaining concerns of those relevant producers.

All proposed amendments are detailed in the supporting submission provided at **Attachment B**.

Following these amendments, the DORC asset value for each of the Additional Segments between Gap and Turrawan proposed by ARTC is shown in **Figure 2** below

Figure 2

Additional Segment (length)	Proposed DORC Asset Valuation* (\$m) (as at 1 January 2013)
Gap – Watermark (31.1km)	\$82.10
Watermark – Gunnedah (33.0km)	\$95.41
Gunnedah – Boggabri (41.4km)	\$87.38
Boggabri – Turrawan (27.0km)	\$58.48

^{*} Includes financing cost allocated to assets on the basis of optimised replacement cost and maintenance adjustments applied to relevant assets.

The proposed total DORC valuation for Gap to Turrawan is \$323.37m.

Subject to approval by the ACCC, the Initial RAB for each Additional Segment between Gap and Turrawan will be set at the DORC for that Segment as at 1 January 2013 (including IDC) and will be rolled forward to 1 January 2014 in accordance with the NSWRAU. This is consistent with ARTC's approach, as approved by the ACCC, in rolling forward the DORC asset value for the



Dartbrook to Gap Segments prior to the commencement of the HVAU on 1 July 2011.

Transparency of the DORC method to the ACCC is important to provide comfort to Access Holders and operators that each DORC determination process undertaken by ARTC is commercially efficient. Accordingly, further details were provided in the supporting submission at **Attachment B** to the Initial Application. In response to formal and informal information requests by the ACCC during, and stakeholder concerns arising out of, consultation on the Initial Application, ARTC has provided further information to the ACCC, which has been published by the ACCC where not confidential.

4 Initial Indicative Access Charge and Interim Access Charge for Pricing Zone 3

ARTC has determined the Initial Indicative Access Charge for the 2014 calendar year for the extended Pricing Zone 3 following consideration of the pricing objectives set out in section 4.13 of the HVAU and in accordance with the annual process for finalising Indicative Access Charges for the 2014 calendar year under 4.20 of the HVAU. The Initial Indicative Access Charge for the 2014 calendar year for the extended Pricing Zone 3 is set out in Figure 3 below.

Figure 3

Pricing Zone 3	Non-TOP \$/kgtkm (ex GST)	TOP \$/kgtkm (ex GST)
Initial Indicative Service 1	1.496	9.635

The charges set out in Figure 3 for the 2014 calendar year are based on forecasts of 2014 costs and contracted volumes in the extended Pricing Zone 3.

ARTC undertook the process of finalising the Initial Indicative Access Charge for the extended Pricing Zone 3 in accordance with the process set out in section 4.20 of the HVAU for Pricing Zones 1, 2 and 3, in particular ARTC:

- (a) notified relevant Access Holders of the Initial Indicative Access Charge in the extended Pricing Zone 3 at the same time ARTC notified Access Holders of Charges in accordance with section 4.20(d);
- (b) in parallel with the section 4.20 process, consulted with Access Holders holding contracted gtkm for the Initial Indicative Service in the extended



Pricing Zone 3 in relation to the Initial Indicative Access Charge for the extended Pricing Zone 3; and

(c) after consultation with Access Holders in the extended Pricing Zone 3 and after the expiry of the dispute period, finalised the Initial Indicative Access Charge for the extended Pricing Zone 3.

In support of the Pricing Zone 3 Initial Indicative Access Charge for the 2014 calendar year, the submission provided at **Attachment B** sets out the process used by ARTC to develop and determine this charge, the Interim Access Charge and Charges for non-Indicative Services for the extended Pricing Zone 3. ARTC is providing confidential financial modelling underpinning these charges to the ACCC.

5 Other Key Revisions to the Initial Application

To address issues raised by the ACCC in its Position Paper on the Initial Application, stakeholders in their submissions, and following further recent consultation, ARTC proposes to make the following key amendments to the Initial Application:

5.1 Operation of HVAU provisions from 1 January 2014

The Initial Application was submitted to the ACCC on 28 June 2013. At the time, ARTC's intention was to obtain the ACCC's approval prior to 31 December 2013 to enable the provisions of the HVAU to become operative in respect of the Additional Segments from 1 January 2014. If the variation of the HVAU to incorporate additional Segments in Pricing Zone 3 is effective from 1 January 2014 the following significant benefits accrue to both ARTC and Access Holders. A 1 January commencement date:

- (a) aligns to ARTC's obligations under the HVAU in relation to pricing, performance reporting, annual compliance assessment and Access Holder entitlements, which are undertaken on a calendar year basis.
- (b) reduces the regulatory burden on ARTC in relation to the annual compliance assessment, RAB and RAB Floor Limit roll forward (including the application of loss capitalisation) and unders and overs accounting for the Additional Segments which are undertaken on a calendar year basis. An earlier or later operational date would result in a complex part year application of these provisions.
- (c) results in simpler application of commercial arrangements with Access Holders including the system wide true-up test and annual TOP rebate reconciliation which are undertaken on a calendar year basis.



It should be noted that loss capitalisation as it relates to the Additional Segments will apply from 1 January 2014 under the varied HVAU.

In the Position Paper (page 15) the ACCC advised that it considered it unlikely that the Initial Application would be accepted for inclusion in the scope of the HVAU by 1 January 2014. It advised that ARTC needed to consider how this transition would be managed in order to ensure certainty for access seekers.

Following further consultation with the ACCC, ARTC proposes to make amendments to the HVAU, at section 2.2(a)(iii) to provide for the provisions of the HVAU to apply to the Additional Segments on and from 1 January 2014. The proposed amendments are detail at **Attachment A**.

5.2 Additional transparency during annual Indicative Access Charge determination

In the Position Paper (page 33), the ACCC advised that given that ARTC has discretion to set charges at a level that does not recover full Economic Cost in Pricing Zone 3 and to improve transparency around the charges that Access Holders in the extended Pricing Zone 3 would likely face over time, ARTC could provide an estimate of the likely losses to be capitalised to Access Holders during the annual process for finalisation of Access Charges.

To address this, ARTC proposes to amend section 4.20(d) of the HVAU to require ARTC to provide Access Holders in Pricing Zone 3 with a forecast of the RAB for the extended Pricing Zone 3 at the start of, and at the end of that year, during the determination of the Initial Indicative Access Charge. This information will enable Access Holders in Pricing Zone 3 to be able to determine an estimate of the likely amount to be capitalised each calendar year, being the difference between the starting and ending RAB in each year.

The proposed amendments are detailed at **Attachment A**.



Attachment A

Proposed variation

Figure 4 below sets out a consolidated list of amendments to ARTC's proposed variation of the Hunter Valley Access Undertaking and Indicative Access Holder Agreement. For convenience, ARTC has prepared a mark-up of the HVAU to reflect the proposed amendments set out in Figure 4. The mark-up is attached as **Annex 1** and for convenience a clean version is attached as **Annex 2**. In addition, a mark-up and clean of the Indicative Access Holder Agreement (IAHA) is attached as **Annex 3** and **Annex 4** respectively.

Figure 4

CONSOLIDATED LIST OF PROPOSED AMENDMENTS				
Section	Proposed change	Reason for proposed change		
2.2(a)(iii)	(iii) to the extent that the provisions of the Undertaking are applicable to the New Segments, such provisions are taken to have commenced operation on the New Segments Commencement Date.	To enable the provisions of the HVAU to become operative in respect of the Additional Segments on and from 1 January 2014. This will result in a more efficient transition of the regulation of the Additional Segments from the NSWRAU to the HVAU.		
4.4(a)(ii)	In relation to the Segments identified as forming part of Pricing Zone 3 in Schedule E, the RAB will be rolled forward annually according to the following methodology: RAB _{t start} =RAB _{t-1 end} = (1 + RoR) x RAB _{t-1 start} - Out-turn Revenue _{t-1} + Out-turn Opex _{t-1} + Net Capex _{t-1} x (1 + 0.5 x RoR) where: RAB _{t start} is RAB at the start of the relevant calendar year (t) (which, for the first year following the Commencement Date or the New Segments Commencement Date (as applicable), would be the Initial RAB).	To clarify that the starting RAB for the purpose of the RAB Floor Limit roll forward for Gap to Turrawan Segments will be that approved as at 1 January 2014.		



	AUSTRALIAN KAIL TRACK CORPORATION LTD	
	RAB _{t-1 end} is the RAB at the end of the preceding calendar year (t-1).	
	$RAB_{t-1 \text{ start}}$ is the RAB at the start of the preceding calendar year (t-1).	
	RoR is the nominal pre tax Rate of Return.	
	Out-turn Revenue _{t-1} is the total Access revenue earned by ARTC in the preceding calendar year (t-1) but will not include:	
	(i) a Capital Contribution received from an Applicant or an Access Holder; or	
	(ii) Access revenue returned to a Contributor as a result of the operation of a user funding agreement between the Contributor and ARTC.	
	Out-turn Opex _{t-1} is the total operating expenditure incurred by ARTC in the preceding calendar year (t-1), on an Efficient basis, determined in accordance with sections 4.5(a)(i), (iv) and (vii) and 4.5(b).	
	Net Capex _{t-1} is the net additions to the RAB in the preceding calendar year (t-1), that is out turn Capital Expenditure by ARTC less the written down value of any disposals during the preceding calendar year (t-1) on a Prudent basis, including interest cost incurred during construction up until 1 July in the calendar year the asset was commissioned, capitalised in the year the asset was commissioned and determined by reference to the relevant form of the Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include Capital Contributions.	
4.4(b)	The RAB Floor Limit for a Segment or group of Segments will be: (i) as at the Commencement Date or the New Segments Commencement Date (as applicable), the Initial PAP:	To clarify that the starting RAB for the purpose of the RAB Floor Limit roll forward for Gap to Turrawan
	Initial RAB; (ii) rolled forward annually according to the following methodology	Segments will be that approved as at 1 January 2014.
	RAB Floor Limit _{t start} = RAB Floor Limit _{t-1 end} =	



	$(1 + \text{CPI}_{t-1}) \times \text{RAB Floor Limit}_{t-1 \text{ start}} + \text{Net Capex}_{t-1} - \text{Depreciation}_{t-1}$	
	where:	
	RAB Floor Limit _{t start} is the RAB Floor Limit at the start of the relevant calendar year (t) (which, for the first year following the Commencement Date or the New Segments Commencement Date (as applicable), would be the Initial RAB).	
	RAB Floor Limit _{t-1} end is the RAB Floor Limit at the end of the preceding calendar year (t-1).	
	RAB Floor Limit _{t-1} start is the RAB Floor Limit at the start of the preceding calendar year (t-1).	
	CPI _{t-1} is the inflation rate for the preceding calendar year (t-1), determined by reference to the CPI for the September quarter of that year.	
	Net Capex _{t-1} is the net additions to the RAB Floor Limit in the preceding calendar year (t-1) that is out-turn Capital Expenditure by ARTC less the written down value of any disposals during the preceding calendar year (t-1) on a Prudent basis, including interest cost incurred during construction up until 1 July in the calendar year the asset was commissioned, capitalised in the year the asset was commissioned and determined by reference to the relevant form of the Rate of Return (to the extent that Capital Expenditure is incurred on a Prudent basis, including interest cost), but will not include Capital Contributions.	
	Depreciation _{t-1} is Depreciation applicable to the RAB Floor Limit in the preceding calendar year (t-1).	
4.13(a)(ii)	(a) In determining Charges, ARTC will have regard to separate cost elements as follows:	To clarify the pricing objective with respect to the New Segments.
	(ii) fixed component of costs ("FCC") being fixed operating costs and Depreciation of, and return on, assets existing as at the Commencement Date and the New Segments Commencement Date (as applicable); and	
4.17(d)	*Pricing Zones contain Segments as specified at Schedule E as at the Commencement Date	To clarify that the Pricing Zones applicable to prescribed Initial



		Indicative Access
		Charges do not include
		the New Segments.
4.17(d1)	(d1) The following Initial Indicative Access Charge for the Initial Indicative Service in Pricing Zone 3 will apply on and from the New Segments Commencement Date:	To prescribe the Initial Indicative Access Charges for Pricing Zone 3 for the 2014
	In Non- TOP \$/kgtkm	calendar year, approved by the ACCC.
	(loaded) 80 kph maximum speed (empty) 82 wagon train length 1350 metres maximum train length section run times as per applicable Hunter Valley standard working timetable	
	*Pricing Zone 3 contains Segments as specified at Schedule E as at the New Commencement Date	
4.19(c)	*Pricing Zones contain Segments as specified at Schedule E as at the Commencement Date	To clarify that the Pricing Zones applicable to prescribed Interim Access Charges do not include the New Segments.
4.20(d)	(d) Subject to sub-section (e), ARTC will notify by 1 November of each calendar year:	To provide greater transparency in relation to determining the
	(i) the aggregate coal volumes which will include reasonably expected contracted coal volumes, ARTC's annual forecast costs as determined under sub-section (b) to those Access Holder holding Coal Access Rights in each Pricing Zone; and	Indicative Access Charge for Pricing Zone 3, ARTC will provide an estimate of the forecast loss to be capitalised in Pricing Zone 3 for the
	(ii) the Indicative Access Charges to those Access Holders holding Coal Access Rights for Indicative Services; and	relevant year.
	(iii) ARTC's forecast RAB value of the aggregate of	



13.1(b)	Segments in Pricing Zone 3 as at both the start and the end of the next calendar year to those Access Holders holding Coal Access Rights in Pricing Zone 3. by 1 November of each calendar year. (b) ARTC's obligation to report performance under this section 13 will not arise until the completion of the	To clarify that ARTC's quarterly and annual		
	first full period in respect of which performance is measured, this means that: (i) ARTC will not report quarterly performance until the completion of the first full quarter after the Commencement Date or New Segments Commencement Date in respect of the New Segments (as applicable); and	reporting obligations with respect to the extended Pricing Zone 3 and Network will apply from 1 January 2014.		
	(ii) ARTC will not report annual performance until the completion of the first full calendar year after the Commencement Date or New Segments Commencement Date in respect of the New Segments (as applicable).			
14.1	"Initial Indicative Access Charges" has the meaning given to it in section 4.17(c) and for the first calendar year of the Initial Period will be as set out in section 4.17(d) and for the calendar year containing the New Segments Commencement Date will be as set out in section 4.17(d1); "Interim Access Charges" has the meaning given to it in section 4.19(a) and for the calendar year containing the Commencement Date will be as set out in section 4.19(c); "New Segments" means the following Segments in Pricing Zone 3 as specified in Schedule E: (a) Gap – Watermark;			
	(b) Watermark- Gunnedah;			
	(c) Gunnedah – Boggabri; and			
	(d) Boggabri – Turrawan; "New Segments Commencement Date" means 1 January 2014;			
Schedule B of HVAU and	Insertion of the following new Item 7: 7. Gap 416.000 km to Turrawan 548.465 km	To incorporate the railway line between Gap to Turrawan into		



Schedule 1					the Network and
of IAHA				prescribe the extent of	
					that railway line.
Annexure 1	The man reni	esents the	e railway lines described	l at	To clarify that the map
to Schedule			ew Segments Commence		at Annexure 1 to
В			hange over the Term. A		Schedule B represents
			s website for an up to da	* *	the railway lines
	the railway li	nes descr	ibed at Schedule B.	_	described at Schedule B,
					including Gap to
			Turrawan Segments.		
Schedule E	Insertion of the following new Segments and amendment of the existing Pricing Zone 3 Segments				To prescribe the four additional Segments from Gap to Turrawan
	Pricing Zone	Segment	<u>Description</u>	Length	*
	<u>3</u>	<u>0968</u>	Boggabri – Turrawan Jct	<u>27.0</u>	in Pricing Zone 3.
	<u>3</u>	<u>0966</u>	<u>Gap – Watermark</u>	<u>31.1</u>	
	<u>3</u>	<u>0988</u>	Watermark – Gunnedah	<u>33.0</u>	Amendment of the
	3	<u>0967</u>	Gunnedah – Boggabri	<u>41.4</u>	existing Pricing Zone 3
	3	0965	Werris Creek – Gap	<u>5.2</u>	Segments is to align to a
	3	0964 0963	Murulla – Werris Creek	<u>71.4</u>	historical classification
	<u>3</u>	0963 0401	<u>Dartbrook Jct – Murulla</u> Dartbrook - Werris Creek	42.9 114.3	in their description.
	3	0401 0402	Werris Creek - Gap	<u>114.3</u> <u>5.2</u>	P



Mark-up of the HVAU to reflect proposed variation amendments



Clean version of the HVAU incorporating proposed variation amendments



Mark-up of the IAHA to reflect proposed amendment



Clean version of the IAHA incorporating proposed amendment



Attachment B

ARTC supporting documentation