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{by e-mail}

Mr Matthew Schroder
General Manager
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Australian Competition and Consumer Commission
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Dear Matthew

Whitehaven Submission on ACCC's Preliminary Views in relation to ARTC's proposed variation to include the Gap to Turrawan

I am writing in response to ACCC's paper dated 12 December 2013 which invites submissions in relation to the ACCC's preliminary views on the appropriateness of ARTC's proposed variation of the Hunter Valley Access Undertaking (HVAU) to include the Gap to Turrawan.

Background

On 20 August 2013 Whitehaven provided a public submission in relation to ACCC's assessment of ARTC's proposed variation of the Hunter Valley Access Undertaking (HVAU) to include the Gap to Turrawan.

The 20 August 2013 submission included:

1. Background on Whitehaven Coal and our understanding of the ARTC proposed Asset Values, recent and forecast capital expenditure on track infrastructure; and
2. Whitehaven's response to ACCC Questions for comment

In the 20 August 2013 submission Whitehaven considered that it could not make an informed response on some elements of the DORC Valuation without conducting a detailed technical review.

The ACCC has subsequently engaged Marsden Jacob Associates (MJA) to conduct an independent review of the proposed DORC valuation. Whitehaven appreciates the opportunity to provide further comment following publication of the ACCC's preliminary views and the MJA review.

Whitehaven's Comments on ACCC Preliminary View

ASSETS INCLUDED IN THE DORC VALUATION

1.1 Assets for hauling coal

"The ACCC is of the preliminary view that the inclusion of the 12 sidings and passing loops set out above in the DORC valuation is not likely to be appropriate under subsection 44ZZA(3) as it would not be in the interests of coal producers who are seeking to use these parts of the Network. In particular, the inclusion of these assets in the initial RAB for the Gap to Turrawan Segments would likely result in higher access charges for coal producers for those Segments compared to a valuation which included only those assets required for coal haulage."

- ***Whitehaven fully supports the ACCC's preliminary view that the inclusion of assets that are not required for hauling of coal is not likely to be appropriate***
- ***The MJA Review indicates that the value attributed to the 12 sidings and passing loops is in the order of $8.3 million which should be deducted from the DORC***

1.2 Allocation of network control centre costs

"MJA was of the view that the placing of the network control centre costs in the Gap to Turrawan DORC valuation seemed reasonable, and it did not appear that they were being over-recovered. Although high in comparison to the Dartbrook to Gap Segments, MJA do not consider that any changes to the allocation would materially impact the DORC valuation given that the difference is only around 0.1%."

- ***In Whitehaven's 20 August 2013 submission we expressed concern that the methodology did not reflect the use of those assets***
- ***Whitehaven is still of the view that the methodology for allocation of network control costs could be improved***
- ***However, given that MJA are of the view that any change would not materially impact the DORC valuation, Whitehaven supports the ACCC's preliminary view that the allocation of network control centre costs proposed by ARTC is likely to be appropriate***

BENCHMARK REPLACEMENT COSTS

1.3 Cost Comparisons

- ***In Whitehaven's 20 August 2013 submission we were unable to make an informed response on approach to determining the replacement costs without conducting a detailed technical review***
- ***The subsequent MJA Review, commissioned by the ACCC, found that some component costs are higher than comparable costs***
- ***The MJA Review indicates that after taking into account cost comparisons of similar engineering projects (for ballast, sleepers, rail and signalling) the DORC value should be reduced by between $9.5 and $16.4 million***
- ***Whitehaven believes that the cost comparison discrepancies between the ARTC valuation and the MJA Review need to be considered by the ACCC as part of the ACCC's overall review of ARTC's proposed variation to the HVAU***

1.4 Mark-ups on direct costs

"The ACCC's preliminary view is that the E&P mark-ups for the components of the DORC valuation identified by MJA as being comparatively high (i.e. ballast, sleepers, rail and signalling costs) are too high and therefore of themselves are unlikely to be appropriate. The mark-ups for these components may be appropriate if they are reduced to reflect the total cost identified by MJA as being reasonable having regard to comparable benchmark costs or if further information is provided to support the proposed mark-ups."

- ***In Whitehaven's 20 August 2013 submission we expressed concern that the mark-ups are excessive and not appropriate***
- ***Whitehaven fully supports the ACCC's preliminary view that the magnitude of the mark-ups on direct costs (as a means of calculating indirect costs) is not likely to be appropriate as they appear to be high compared to relevant benchmark costs***

OPTIMISATION

1.5 Optimisation Assumptions

"The ACCC is aware that the issue of maximum axle loads is currently being reviewed by ARTC and industry, and the ACCC considers that at this time it is unclear whether a 25 or 30 tonne axle load is optimal from a whole of coal supply chain perspective."

- ***The relevant producers, through the RCG approval process, have approved the track infrastructure upgrade to 30 tonne axle load to meet contracted demand***
- ***ARTC has advised that Stage 1 of the 30 tonne axle load infrastructure upgrades are forecast to be complete by the end of 2014 and that it is expected that 30 tonne axle load operations in Zone 3/4 will commence from 1 January 2015***
- ***In Whitehaven's 20 August 2013 submission we expressed concern that:***
  - ***the assumptions do not appear to make an allowance for the removal of existing infrastructure and that existing rail track will need to be removed as part of the upgrade to 30tn axle load; and***
  - ***whether the modern equivalent rail asset would have 30tn axle load capacity***
- ***Whitehaven remains concerned that some assets included in the DORC valuation will have a very limited life and if not valued appropriately Access Holders will have to bear the cost of writing those asset values off over the next couple of years***

1.6 Operating and maintenance cost savings associated with the modern equivalent asset

"the ACCC is of the preliminary view that differentials in operating and maintenance expenditure between existing assets and modern equivalent assets over their expected remaining life should be reflected in the initial asset valuation by deducting the present value of any such costs savings from the proposed DORC value. The ACCC considers that ARTC's proposal to reflect operating and maintenance expenditure differentials in the annual compliance assessment until the asset is replaced is unlikely to be appropriate."

- ***Whitehaven supports the ACCC's preliminary view that the present value of cost savings associated with a new and modern asset should be included in the DORC valuation up-front and it is not likely to be appropriate for these costs to be reflected in the annual compliance assessment***

DEPRECIATION

1.7 Remaining Life of Assets

"The ACCC considers that it is important for the assumptions regarding the remaining life of particular assets to be reasonable, as these assumptions have a material impact on the overall DORC valuation. Accordingly, the ACCC is of the preliminary view that in order for the DORC valuation of the Gap to Turrawan assets to be appropriate, it should be adjusted to reflect the revised remaining life assumptions proposed by MJA. The net effect of these adjustments is likely to decrease the DORC by $6.1 million."

- ***Whitehaven supports the ACCC's preliminary view that several remaining asset life assumptions underpinning the proposed DORC valuation are unlikely to be appropriate***
- ***The ACCC's preliminary view is consistent with the MJA Review that the net effect of these adjustments is to reduce the DORC by $6.1 million***

MODELLING

1.8 Modelling inconsistencies

"the modelling underpinning the proposed DORC valuation contains a number of errors and is unlikely to be appropriate."

- ***Whitehaven is not in a position to comment on modelling inconsistencies***

INDICATIVE SERVICE AND INDICATIVE ACCESS CHARGES

1.9 Proposed variation

"ARTC has advised that once the 2014 volumes are finalised it will resubmit a finalised Initial Indicative Access Charge for Pricing Zone 3 for the ACCC's approval."

- ***In Whitehaven's 20 August 2013 submission we considered ARTC's proposed pricing (at that time) to be fair and appropriate. However, it was unclear what, if any, impact the new valuation will have on capitalised losses and when losses will be recouped by ARTC***
- ***ARTC have subsequently published the 2014 pricing schedule for all zones in the Hunter Valley network***
- ***The latest 2014 pricing represents a significant increase over the 2014 Zone 3 proposed pricing in the initial ARTC submission, however:***
    - ***the TOP pricing component is consistent with Whitehaven expectations; whilst***
    - ***there has been a significant percentage increase in the non-TOP component, which was beyond Whitehaven's expectations***
- ***Whitehaven has clarified the pricing changes with ARTC and the overall cost increase in 2014 pricing is now slightly more than what, in Whitehaven's opinion, is fair and appropriate***
- ***Whitehaven supports the ACCC's preliminary view that it may be appropriate for ARTC to provide additional transparency to access seekers regarding the extent of capitalised losses***

Thank you for the opportunity to submit comment on this matter. Please contact me if you would like further clarification on the above.

Yours sincerely,

Jonathan Vandervoort
EXECUTIVE GENERAL MANAGER - INFRASTRUCTURE