



1 June 2018

Mr Charles Millstead
Chief Executive Officer
Queensland Competition Authority
Level 27 / 145 Ann Street
BRISBANE QLD 4000

Dear Mr Millstead,

New Acland Coal Pty Ltd (NAC) welcomes the opportunity to provide a submission in relation to Queensland Rail's Review Event July 2018 application. The Queensland Rail Access Undertaking 1 (AU1) provides for Review Events where there is a material change in circumstances, other than a change to a Network Capacity Constraint, that Queensland Rail can reasonably demonstrate may give rise to a need to vary the relevant Reference Tariff. It is however, NAC's assessment that:

- (i) no review event has occurred; or
- (ii) even if the QCA came to a view that the purported review event met the Review Event criteria, it would be contrary to the public interest for the West Moreton Reference Tariff to be varied.

In summary we have reached this conclusion based on the below.

The Purported Review Event

In its application Queensland Rail (QR) states that:

Queensland Rail considers that the decrease in contracted paths from New Acland to Fisherman Islands to be a material change in circumstances that gives rise to a Review Event for the purpose of clause 5.1(a)(ii) (A), Schedule D.

QR does not however explain why it considers this to be a material change in circumstances. Unfortunately this lack of detail has meant that NAC is unable to provide a fulsome response to QR's assertion, however, it is NAC's view that these circumstances (being the potential for a reduction in contracted paths) could have and should have been foreseen by QR and raised during the lengthy Draft Access Undertaking (DAU) process.

In any event, the potential value of reduced contracted paths, in NAC's view, is not of a sufficient magnitude in the context of QR's expected revenue to meet the materiality threshold.

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Circumstances that were known prior to AU1 being finalised

(a) Coal volume was known to be uncertain.

During the AU1 submission process, the QCA received a number of submissions which addressed potential coal volume fluctuation. This culminated in the QCA stating that, "There was significant uncertainty about coal and non-coal volumes on the West Moreton network" (refer paragraph 8.10 of its June 2016 decision on QR's DAU). A fluctuation in volume was expressly contemplated by stakeholders and resulted in the inclusion of the Endorsed Variation Event mechanism in the DAU. The inclusion by the QCA of the Endorsed Variation Event trigger was the result of lengthy discussion with stakeholders on volume risk and the decision to make the trigger sensitive only to additional contract paths (and not decreases in contract paths) indicates that the QCA considered that any decrease volume risk should remain with QR.

(b) Contract term dates were known

QR as the contracting party of all access agreements was aware of the end dates of its contractual arrangements. As a sophisticated contracting party, QR would also have been aware that such arrangements had the potential to either not be renewed or be renewed on different terms.

NAC considers that the above circumstances have not arisen since AU1 was finalized rather they were within QR's knowledge during the AU1 process and therefore no material change in circumstances has occurred.

However, in the event that the QCA holds a contrary view that circumstances have changed, NAC submits that any such change does not meet the requisite materiality threshold, as demonstrated below.

Changes do not meet materiality threshold

(a) Forecast

NAC notes that QR's submission contains a significant amount of redactions which has impeded NAC's ability to assess whether the figures submitted are accurate and reflective of forecast tonnage, NAC as such relies upon the QCA to conduct a full review and assessment of the appropriateness of QR's claims. It is worth noting that since executing the agreement NAC has requested the same number, or more, paths than it had contracted previously.

(b) Value to QR

The value of paths even if not replaced by ad hoc paths is at a level which is not material in the context of QR revenue.

In summary, NAC considers that no Review Event has occurred. In the event that the QCA holds a different view, NAC submits that the West Moreton Reference Tariff should not be varied because it would be contrary to the public interest and inconsistent with the objectives of Part 5 of the Queensland Competition Authority Act 1997 (Qld) (QCA Act), for the reasons set out below.

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Public Interest

In determining whether to approve a variation of the relevant Reference Tariff, the QCA must be satisfied that it is consistent with the undertaking and appropriate having regard to the QCA Act, including the factors listed in section 138(2). In NAC's view a decision to vary the Reference Tariff due to a reduction in contracted services during the term of an access undertaking is contrary to public interest as it introduces uncertainty of price which has a potentially chilling effect on,

- (i) investment in coal mines in the West Moreton region;
- (ii) demand for coal tenements in the region; and
- (iii) future demand for coal handling services at the Port of Brisbane.

If the West Moreton Reference Tariff is varied as proposed by QR, it will establish an unacceptable precedent whereby an access holder who has executed an access agreement risks bearing a significant and unforeseeable increase in the magnitude of its obligations, including take or pay, as it will be at the mercy of other access holders' contracting actions over which it has no control, thereby introducing an unacceptable level of regulatory and contractual uncertainty. In contrast the Endorsed Variation Event mechanism applies only where there is an increase in contracted paths, triggering an automatic reduction in the Reference Tariff. This mechanism as noted earlier in this submission was the result of lengthy discussion on volume risk and the QCA's decision not to include a reciprocal trigger of a reduction in contracted paths indicates that the QCA considered this volume risk should remain with QR. A move away from, and that is inconsistent with, the position determined by the QCA would in NAC's view undermine public confidence in the AU1 and regulatory framework and would be contrary to the public interest.

Summary

The regulatory approval process of access undertakings is a lengthy and robust one, with risks carefully considered and apportioned by stakeholders and the rail regulator. It is NAC's view that the circumstances outlined by QR do not constitute a Review Event, and that a variation of the West Moreton Reference Tariff in such circumstances would, in any event, be contrary to the public interest. On this basis NAC submits that QR's application should be refused.

If the QCA is minded to accept QR's application, NAC, given the very limited information provided by QR, relies on the QCA to undertake a thorough assessment of the application to ensure that the proposed Reference Tariff accurately reflects the real cost impact on QR.

If the QCA has any further questions on this submission please do not hesitate to contact Sam Fisher of New Acland Coal Pty Ltd on (07) 3108 3668.

Yours faithfully,
NEW HOPE CORPORATION LIMITED

Sam Fisher
General Manager Marketing & Logistics

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