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Mr Malcolm Roberts
Chief Executive Officer
Queensland Competition Authority
GPO Box 2257
Brisbane Qld 4001

Dear Mr Roberts

Peabody Energy Australia Pty Ltd Submission to the Queensland Competition Authority – Queensland Rail’s Draft Access Undertaking 1.

In response to the Queensland Competition Authority’s request for submissions in relation to Queensland Rail’s Draft Access Undertaking 1, we enclose Peabody’s submission.

If you have any questions in relation to this submission please contact me on (07) 3333 5628

Regards

Mark Smith
Manager - Infrastructure

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1. Introduction

In February 2013, Queensland Rail (“QRail”) submitted to the Queensland Competition Authority (“QCA”) the Draft Access Undertaking 1 (“DAU”) as amended from that previously submitted and subsequently withdrawn in 2012.

Peabody Energy Australia Pty Ltd (“Peabody”) as owner of the Wilkie Creek Coal Mine (“Wilkie”) is a user on the West Moreton System to which this DAU relates; and accordingly Peabody welcomes the opportunity to submit this updated submission in response to the proposed DAU.

2. Position of Peabody

Peabody notes that this draft DAU is essentially unchanged from the previous 2012 submission. The areas which were outlined by Peabody and industry as requiring further discussion and evaluation have not been addressed and Peabody submits that this DAU should not be approved in its present form.

Peabody will however work collaboratively with both QRail and the QCA in reviewing the issues identified in order to reach a mutually agreed outcome.

The issues outlined in this submission are not exhaustive and some areas may remain unchanged from those previously raised in 2012.

3. System master planning

Peabody maintains that the WMS is a constrained supply chain with limited capacity to satisfy the requirements of existing and potential system users.

Peabody considers that one of the key fundamentals for any supply chain is the ability to determine the capacity of that supply chain. Within the WMC, a transparent master plan would quantify the existing capacity of the WMS and allow capacity expansion options to be developed to facilitate network growth, while maintaining the preservation of the commuter system and ensuring that any capacity analysis undertaken for expansions is not completed in isolation or on an arbitrary basis.

Peabody believes that master planning should be incorporated into Part 4 Network Management Principles of DAU and subsequently in reference to Available Capacity and Capacity Analysis with reference to the operation of the WMS. Peabody also believes that the initial master plan should be completed promptly to complement the undertaking and be updated on an annual basis to ensure continuity with the Network Management Principles contained in Schedule B of the DAU.

4. Commercial Operation of the DAU

4.1. Extensions to the Network

Section 1.4 of the DAU details circumstances surrounding the extension of the network. Principally QRail seeks to maintain absolute discretion to fund an extension; however

where an access seeker agrees to fund an extension, QRail without obligation, may construct but bears no cost or risk in relation to the provision of the extension.

Peabody considers that while the DAU covers a range of supply chains and while there may be the opportunity to find a commercially viable outcome in which QRail will fund an extension, it is appropriate to provide risk mitigation strategies and appropriate alternatives to those access seekers that are willing to or have to provide financial commitment for a network extension to be completed.

Appropriate inclusions to Section 1.4 of the undertaking would be the ability of an end user financial provider to employ an independent project manager or management team to ensure that QRail is undertaking an extension in the most efficient and prudent manner.

Alternatively, and depending on the scope and type of project being funded, the end user should have the ability to construct the extension with appropriate QRail supervision to ensure the extension is able to be connected to the network and ultimately handed over to QRail for ongoing management and support.

QRail should not be able to dictate that it must construct each extension and subsequently, where QRail constructs the Extension with end user financial capacity it should bear risk for issues of negligence and/or non-delivery of an extension within a commercial agreeable timeframe.

Peabody proposes that QRail consider the inclusion of a voluntary investment framework to outline the types and scale of investment scenarios' that may be funded by QRail and those that may be required to be funded by end user's. Incorporated into this investment framework would be the addition of a commercial framework for both QRail and user funded options in support of Network growth.

To support this outcome, Peabody is willing to working with QRail to develop an appropriate outcome.

4.2. Renewal of Access Rights

Section 2.7.3 of the DAU does not provide sufficient guarantee of the continuation of access rights or a clear process of renewal for end users of the network.

Peabody submits that this renewal process be developed with access holders and end users of the network to ensure a mutually accepted outcome.

5. Obligation to Maintain the Network

Peabody considers that QRail should incorporate a specific obligation into the DAU to maintain the Network to sufficient standard to allow continued safe operation of the Network and sufficient Capacity to support the Access Agreements in place at any time.

6. System Reference Tariff's

Peabody notes that a review of the reference tariffs for the West Moreton System has not been included in this DAU. Subsequently this undertaking should not be approved until tariffs are submitted and discussed with industry in an open and transparent manner to ensure that the pricing framework incorporates competitive pricing which promotes long sustainability of both QRail and the coal industry.

7. Standard Access Agreement

7.1. Access Agreement and End User Relationship

Peabody submits that as the nature of the undertaking is largely directed at the end user of access, that the Access Holder Agreement be amended to allow the end user to hold the access rights directly but utilized by an approved Rail Transport Operator.

In relation to the West Moreton System, some of the circumstances where this would be desirable is where an extension has been funded by an end user and the end user would like the quantifiable rights of capacity associated with that extension; when an extension has been funded and an appropriate Rail Transport Operator has not been selected; to allow a quantifiable right to access but continue to allow an approved Rail Transport Operator to manage those rights on the end users behalf.

7.2. Reduction of Access Rights

The Reduction of Access Rights outlined in Section 19.1 is not acceptable to Peabody due to the lack of consultation and review of any underutilized Access and the review assumptions proposed are not compatible with WMS operations.

Peabody notes that any potential reduction in Access Rights has to be handled in a reasonable commercial manner to ensure that the holder or end user of Access Rights has had the opportunity to facilitate the use of the Access Rights and can demonstrate the requirement to maintain the contracted level of Access Rights.

8. Management of information on QRail's Website

Peabody is supportive of the ability of QRail to reduce administrative overheads and reduce the complexity of the DAU by placing items such as network diagrams on its website; however, QRail must ensure that all users and potential users of the network are able to be alerted to any change or amendment to those items placed on the network and where there is a material change to an item that will cause among other things a review of safety interface practices that QRail consult with affected customers and end users prior to any formal amendment.

9. Summary

The QRail DAU as submitted is a positive step forward for QRail to provide an appropriate undertaking to support the environment for which QRail operates. While Peabody generally supports the principles based approach of the DAU, the DAU as presented should not be approved as there are specific areas of concern that would need to be addressed such as;

- The inclusion of a master plan to outline base line capacity and options for capacity expansion;
- Additional options and risk mitigation strategies in the development of options for network extensions;
- Provision of proposed pricing mechanisms.
- Revision of the access agreement to support the end user contracting the access rights with an approved rail transport operator managing those rights accordingly;
- Increased information management and awareness for items no longer referred to in the undertaking but where that information can have impact to a end users or Access Holders operation;
- A review of the methods under which Access Rights may be reduced by QRail.

While Peabody does not support the DAU as submitted it remains committed to working with QRail to ensure that an appropriate outcome is reached in a reasonable period.