

14<sup>th</sup> March 2016

Mr John Hindmarsh  
Chief Executive Officer  
Queensland Competition Authority  
Level 27,  
145 Ann Street BRISBANE QLD 4000

Dear Mr Hindmarsh

### **Yancoal submission on Queensland Rail 2015 Draft Access Undertaking**

Thank you for the opportunity to provide a further submission with regard to Queensland Rail's (**QR's**) 2015 Draft Access Undertaking (**DAU**) and the Queensland Competition Authority's (**QCA's**) related Draft Decision (the **Draft Decision**) following the publication of the QCA's Request for Comments Paper (the **Paper**) and other stakeholders December submissions on the DAU.

An appropriate regulatory framework for QR, particularly in respect of pricing of access on the West Moreton network, remains of vital concern to the economic viability of, and prospects of future investment in, the remaining coal industry which utilises QR's rail network. The costs of access to the West Moreton network are already excessive, both as a proportion of the price of coal and by comparison with the price of access to other Australian coal rail networks. If the positions QR proposes in its latest submission were accepted, those costs would substantially increase again. This would be likely to cause irreversible damage to the economic viability of Yancoal's Cameby Downs mine (and in turn the remainder of the industry) and jeopardise the economic benefits the West Moreton coal industry brings.

This letter provides Yancoal's responses to the issues raised in the Paper and responses to a number of other issues raised in QR's December 2015 submissions. It should be read in conjunction with all of Yancoal's previous submissions on the DAU and Draft Decision, which contain positions Yancoal continues to support.

Yancoal continues to support the QCA's decision to refuse to approve the DAU and largely supports the decisions that make up the Draft Decision.

#### **1 QCA Request for Comments Paper**

- (a) **Allocation of common costs to coal services – train path constraints through the Metropolitan network:** QR's new assertions that the number of coal train paths through the Metropolitan network is uncapped is completely inconsistent with their practice to date, their previous submissions in this process, the political realities in relation to the extent of coal services which would be permitted by QR and their relevant Minister, and the continued preservation of paths for passenger and other non-coal services under section 266A of the *Transport Infrastructure Act 1994* (Qld). Yancoal has enclosed with this submission a number of documents that demonstrate QR's previous views on the existence of the cap. That cap has been in place at all times at which Yancoal has had to make investment and contracting decisions and even if the cap were theoretically to be removed it is clearly inappropriate to change the allocation of costs at this point.

- (b) **Allocation of common costs to coal services – allocation of fixed/common costs:** It is not appropriate to recover from the remaining two coal producers on the West Moreton network the fixed costs of all paths which at one point were contracted for coal haulage. Requiring Yancoal and New Hope to pay tariffs based on the maximum possible paths available for coal, rather than what they contract for, unfairly punishes them for Wilkie Creek's closure and for investment decisions QR has made in the past. Risks should be borne by the party best able to manage or mitigate them and coal users have no ability to manage the risks of a decline in use of the network by either other coal users, or non-coal users (both of which they would be highly exposed to under QR's proposed allocation principles). If such an approach were adopted, the asset base would need to be drastically optimised to reflect the deterioration in demand that has occurred with Wilkie Creek's closure, so that the impact of the 'death spiral' that would be created by the remaining coal producers being forced to absorb costs over which they have no control and no forewarning could be mitigated to at least some extent. Allocation of common costs should be based on the higher of contract or forecast paths as a proportion of total available paths. Further, as previously submitted, it is critical that the 'Endorsed Variation Event' the QCA proposed in the Draft Decision is included to allow the reference tariffs to be revised (and for that trigger to operate based on any of Cameby Downs or Acland expanding or Wilkie Creek reopening (i.e. on an individual origin basis).
- (c) **Adjustment amount – regulatory risk and investment impacts:** As previously submitted, Yancoal is strongly supportive of the need for an adjustment amount and is willing to accept it being paid as a discount to future charges. An adjustment amount is essential to preserve confidence in the regulatory regime, and to provide the certainty which (more than ever) is a pre-requisite for future investment. If QR is allowed to retain a substantial windfall gain from its own delay, after having led stakeholders to believe it would provide for an adjustment, it is difficult to see how stakeholders could retain any confidence in the rigour of the regulatory regime.
- (d) **Adjustment amount – methodology for calculation:** Yancoal supports the principles underpinning the methodology proposed by the QCA in the Draft Decision (subject to the comments on the 'east of Rosewood' issue noted below).. Yancoal is reliant on the QCA to ensure that the detailed calculations and modelling used to determine the adjustment amount are correct.
- (e) **Adjustment amount – east of Rosewood:** There is no justification for QR retaining the benefit of past excess charges for that part of the rail line which is east of Rosewood (which is the clear result of east of Rosewood revenue being excluded from calculation of the adjustment amount). All the factors which demonstrate that an adjustment amount is required in respect of the rail line west of Rosewood apply equally to that part of it east of Rosewood.
- (f) **West Moreton network capacity and volumes – available train paths:** Yancoal notes that the independent B&H report estimate 135 available train paths. Given the importance of the number of available paths, including in respect of pricing issues like the appropriate allocation of costs, it is critically important that the QCA scrutinises the difference between that estimate and QR's view of 112 available train paths and proceeds on the basis of an accurate estimate of available paths.
- (g) **West Moreton network capacity and volumes – demand forecasts:** Yancoal notes that since the Draft Decision its previous 1.4 mtpa rail haulage contract has been replaced with a rail haulage contract for 1.7

mtpa. The demand forecasts on which the reference tariffs are based should be revised to take into account this increase.

- (h) **Take or pay:** Yancoal continues to consider there is no justification for moving away from the current approach of take or pay being calculated as 80% of access charges (as an appropriate approximation of the proportion of charges which are fixed in nature). If QR were to collect greater than this percentage, it would not be an appropriate reflection of the variable costs incurred by QR when a service does not operate, and would result in a windfall gain to QR. As previously submitted, the drafting of the Standard Access Agreement schedule needs to be refined to reflect the QCA's proposal regarding capping (particularly in terms of relinquishment fees being taken into account).
- (i) **Metropolitan network – Metropolitan tariff:** Yancoal does not, in principle, oppose the use of a proxy cost derived from the costs assessed in relation to the rail line West of Rosewood as a mechanism for assessing the cost of coal carrying train services in the Metropolitan Network. However, Yancoal prefers the QCA basis for avoiding double-counting as it would not distort outcomes under rebate arrangements in relation to the Metropolitan network in the way that it appears QR's methodology would.
- (j) **Pricing principles – renewal rights:** Yancoal remains concerned that the ambit of the renewal rights is very restricted, particularly given that the current drafting permits QR to advise that there is insufficient capacity for a renewal despite the renewal seeker already contracting that capacity, and does not allow an access holder to seek renewal of part of its existing access rights. Yancoal supports renewing access holders having priority over access seekers in the queue (who do not have the same sunk costs as existing access holders). However, there needs to be greater flexibility in what is treated as a renewal. To provide flexibility (particularly in relation to volume and haulage provider controlled changes to the train service description), renewal should include existing access holders applying for *substantially* the same access rights.
- (k) **Standard Access Agreement:** In relation to some of the specific issues referred to in the Paper:
  - (i) **Allowable threshold:** there is no basis for QR to seek inclusion of a 10% threshold in respect of liability for non-provision of access. QR must be incentivised to manage the service it provides effectively and efficiently, including bearing the liability for non-provision of access (given that it is best placed to manage any relevant risks). In the current environment, Yancoal questions whether it remains appropriate to keep the 10% threshold in favour of QR before claims can be made for non-provision of access in an environment where Wilkie Creek's closure and the deterioration in non-coal traffic should have produced substantial spare capacity, such that QR's risk of non-provision of access, other than through its own underperformance, should have substantially decreased.
  - (ii) **Ad hoc services:** Services that are ordered on an ad-hoc basis should be counted toward an access holders take or pay requirement. However, given their nature as a service that will only operate if there is sufficient spare capacity, they should not attract take or pay obligations when they are not ultimately operated. Any new clause regarding Ad Hoc Train Services needs to be consistent with that approach.

## 2 Other issues from QR's Submissions

In addition to the issues raised in the QCA's Paper, Yancoal has provided some comments below on matters raised in QR's December 2015 submissions.

- (a) **Adjustment amount - appropriateness:** As outlined in previous submissions, Yancoal strongly supports the inclusion of an adjustment amount in the 2015 DAU, on the basis that its inclusion is consistent with previous draft access undertakings submitted by QR to replace the 2008 DAU, with existing regulatory practice (eg, in relation to Aurizon access undertakings), and is aligned with the expectations created by QR. Inclusion of an adjustment amount is both appropriate and necessary to prevent QR from making a windfall gain as a result of the cumulative delays associated with QR repeatedly submitting and withdrawing draft access undertakings. It is also appropriate having regard to the object of promoting efficient operation and use of the network, the public interest in efficiency and viability of the coal industry (due to the wider economic benefits arising from that industry) and the interests of access seekers and access holders. Given it is also only adjusting for excess returns it is not contrary to QR's legitimate business interests.
- (b) **Powers of the QCA:** QR raises a number of flawed arguments about why the QCA requiring an adjustment amount is allegedly beyond the power of the QCA. Yancoal's understanding is that each of those is legally incorrect. In particular:
- (i) the application of the adjustment amount as a deduction from future charges that only apply after the commencement of an approved undertaking is prospective not retrospective in nature;
  - (ii) the transfer notice (which applies the current access undertaking to QR) is similarly irrelevant as it will clearly have no application following the commencement of a new approved undertaking (and thereby cannot be inconsistent with the pricing methodology under the approved access undertaking);
  - (iii) the pricing principles (in section 168A) and the object of the QCA Act are merely two of the matters to be 'had regard to' under section 138(2) of the QCA Act. Accordingly they need to be considered as part of a balancing or weighing up exercise conducted by the QCA in determining the appropriate access undertaking. It is plainly evident from the wording of section 138(2) QCA Act that neither is somehow paramount over other factors which the QCA is also to have regard to; and
  - (iv) the adjustment amount is consistent with the pricing principle in section 168A(a) that QR relies on in any case, given that the adjustment amount is effectively designed to ensure that QR still recovers its efficient costs and a reasonable return on investments (measured across the current and next regulatory period);
- (c) **Prudence of QR costs and network planning:** Yancoal continues to have concerns with the extremely high costs QR is claiming. Yancoal is necessarily reliant on the QCA to determine the prudence of the costs claims, but in light of the adverse findings of the review of QR's draft undertaking by B&H Strategic Services, QR's operating and maintenance costs and capital plans should be carefully scrutinised to ensure that access holders are not paying for QR's inefficiency or

lack of planning. For the same reasons, Yancoal is supportive of the QCA's approach to network planning in the Draft Decision (and expects the results of that network planning to be considered by the QCA in assessing the prudence of costs and capital investments claimed by QR in future regulatory periods).

- (d) **Asset Valuation:** It is clear from the previous 2010 draft access undertaking process that the QCA ultimately approved a tariff for the West Moreton network without having accepted as appropriate the underlying methodology, including the appropriate approach to asset valuation. Consequently it is absolutely appropriate for the QCA to consider afresh the approach to asset valuation as part of the consideration of the DAU. Yancoal supports the appropriateness of not including a value in the regulatory asset base for life expired assets as QR has already earned a return on that investment, and if there is still considered to be value in those assets then past maintenance expenditure which was recovered from access holders immediately should have been treated as sustaining capital expenditure.
- (e) **Standard Access Agreement:** Yancoal supports the approach in the QCA's Draft Decision to seeking to re-balance the standard access agreement. Yancoal continues to support those aspects noted in previous submissions including a structure under which coal users can hold access rights and an appropriate KPI regime.
- (f) **Investment framework:** Yancoal supports the investment framework proposed by the QCA, subject to some refinements to clarify which provisions apply at the study stage and which apply at the development stage. QR's proposals would undermine the entire regime by providing QR with a myriad of excuses and discretions at multiple stages of the funding and extension process. QR's arguments about parts of the framework being beyond the powers of the QCA are flawed. In particular:
  - (i) section 119 of the QCA Act does not apply to the QCA's consideration of access undertakings;
  - (ii) the QCA clearly does have power to regulate extensions and funding. Section 138 of the QCA Act provides the QCA with a wide discretion as to what is appropriate in that regard, as demonstrated by the wide range of examples given in section 137 of the QCA Act;
  - (iii) the requirement of the QCA Act is to have regard to QR's legitimate business interest in determining whether to approve the access undertaking – the QCA Act in no way requires reference to QR's legitimate business interest (or for that matter any of the other section 138(2) factors) to be separately listed as a criteria for decisions to be made under the undertaking; and
  - (iv) the limit on the QCA refusing to approve an undertaking only on the basis of minor and inconsequential amendments does not mean that the QCA cannot make amendments that might be perceived as 'minor' in isolation where it is appropriately refusing to approve the DAU for other reasons.

### 3 Summary

The DAU continues to remain inappropriate, particularly in respect of the West Moreton network reference tariffs, and the QCA should refuse to approve it. Although Yancoal has noted some issues above with the Draft Decision, the Draft Decision generally provides a very solid foundation for identifying the amendments required in order to make the DAU appropriate.

Yancoal urges the QCA to carefully consider each of the matters highlighted in this submission, and seek to make a final decision quickly on the appropriateness of the DAU (followed by issuing a secondary undertaking notice requiring QR to make the appropriate amendments) to provide certainty to all stakeholders as soon as possible.

Yours sincerely

A handwritten signature in black ink, appearing to read 'M. Dodd', written in a cursive style.

Mike Dodd  
General Manager, Infrastructure  
Yancoal Australia Ltd