

AUSTRALIAN RAIL TRACK CORPORATION LTD

REVIEW OF SYSTEM WIDE TRUE-UP TEST

HUNTER VALLEY ACCESS UNDERTAKING



September 2014

INTRODUCTION

ARTC's Hunter Valley rail network is governed, in part, by the Hunter Valley Rail Access Undertaking (**HVAU**), which is regulated by the Australian Competition & Consumer Commission (**ACCC**). The HVAU and the associated Indicative Access Holder Agreement (**IAHA**) contain provisions relating to a system-wide True Up Test (**TUT**). The TUT is a test to determine whether ARTC has performed its contractual obligations, and if not, in certain circumstances, provide a mechanism that may ultimately result in the reimbursement of some charges to Access Holders.

HVAU section 13.4 requires ARTC to undertake a review of the TUT (**TUT Review**) after the completion of two full calendar years following the commencement of the HVAU. At the completion of the TUT Review, HVAU section 13.14(d)(i) requires ARTC to publish the resulting report on its website and the report must be submitted to the ACCC. Section 13.14(d)(i) also requires that the report detail ARTC's views on the operation and effectiveness of the TUT and ARTC's response to material concerns raised by Access Holders or stakeholders in the context of the TUT Review. As a result of the TUT Review, ARTC may choose to submit a proposed variation to the HVAU to accommodate any changes required to give effect to the review's conclusions. HVAU section 13.14(d)(ii) requires ARTC to specify its reasons for not submitting a variation application in the event that ARTC chooses not to submit a proposed variation to the HVAU. Section 13.4 is set out in full in Appendix 3.

A related section of the HVAU (section 13.5) requires ARTC to develop a TUT related ARTC performance incentive scheme either in parallel with, or following completion of, the TUT Review. Where ARTC decides to conduct the development of a TUT-related ARTC performance scheme after completion of the TUT Review, ARTC will complete development of a TUT-related ARTC performance scheme within 6 months of the completion of the TUT Review or such longer period as required to consider or address any variations that may be proposed or required by the ACCC.

ARTC has decided to conduct the development of a TUT-related ARTC performance scheme after completion of the TUT Review.

CONDUCT OF THE TUT REVIEW

In accordance with Section 13.4 of the HVAU, ARTC invited submissions on 7 March 2014 from Access Holders and other stakeholders in relation to the TUT Review.

The TUT is designed to determine whether ARTC has provided sufficient capacity in a period (either a month or quarter) to meet its contractual obligations, and if not, to provide an Accrued Rebate of Take or Pay (**TOP**) Charges to an Access Holder for the proportion of Capacity that was under-delivered. The IAHA that provides a template for all Access Holder

Agreements (**AHAs**) provides that ARTC will, within three weeks of the end of each period, publish the results of the TUT (with some exceptions) and advise an Access Holder of any Accrued Rebate resulting from the TUT (IAHA Schedule 2, clause 2.7).

In conformance with HVAU section 13.4(b), ARTC invited stakeholders to make submissions in relation to the TUT Review, in particular with respect to whether:

- having regard to the consequences of failing the TUT, the TUT provides appropriate incentives to make available Capacity for use either on a contracted or ad hoc basis; and
- the TUT provides appropriate incentives for ARTC having regard to:
 - the objectives in section 1.2;
 - the coal chain principles recognised in section 1.3; and
 - practical experience of Network and Hunter Valley Coal Chain operations and performance relevant to the operation of the TUT from the Commencement Date to the time of review.

A copy of the invitation for submissions is provided at **Attachment 1**.

Following a seven week consultation period ARTC received three submissions from stakeholders by, or around, the closing date for submissions from Access Holders Glencore and Idemitsu and another stakeholder, Asciano. Each stakeholder has agreed to make its submission non-confidential, and a copy of the submissions is provided at **Attachment 2**.

The stakeholder submissions were considered by ARTC in detail. ARTC's understanding of the queries and issues raised in the submissions have been entered into a summary matrix, provided at **Appendix 2**. This matrix seeks to categorise assigned stakeholder responses in accordance with the scope of the TUT Review and ARTC's response to the specific queries or issues raised.

This report and the matrix in Appendix 2 form the basis of the report on ARTC's TUT Review.

TUT REVIEW REPORT

The contractual arrangements under the AHAs require ARTC to make available a pool of paths (in effect slots in a train plan) to be scheduled amongst Access Holders of Coal Access Rights. These are scheduled by the Hunter Valley Coal Chain Coordinator (**HVCCC**) to allow the Access Holders to assemble coal cargos to meet the arrival of their ships at the Port of Newcastle.

The flexibility that this approach offers is critical to the operation of the Hunter Valley coal chain and the efficient assembly of coal cargos at the terminals. However, it introduces an element of complexity that requires the adoption of unusual measures to test whether the contracted service has been performed.

The TUT has been designed to provide a periodic (either monthly or quarterly, depending on the particular AHA) measure of ARTC's performance. The test measures firstly whether ARTC has provided to the coal chain as a whole (in each Pricing Zone) the number of paths that it has contracted collectively with all Access Holders to provide, after taking into account various other Network requirements and allowances for losses. Secondly, if it is found that ARTC has not provided sufficient paths at an aggregate level, the TUT allocates the shortfall in proportion to the shortfall in Base Path Usages (**BPU**s). BPUs are the primary unit of contracted monthly or quarterly capacity. The test also provides for the inclusion of Allowed Tolerance where applicable. The result is that an Accrued Rebate is assigned to individual Access Holders that takes into account both their individual shortfall and the collective shortfall.

The Accrued Rebate is not paid to an Access Holder immediately. Instead, the Accrued Rebates arising for each Access Holder as a result of the TUTs conducted through the year are aggregated and form one element of the Annual Reconciliation. If, as a result of the Annual Reconciliation, ARTC has not provided the Annual Contracted Paths, an actual rebate may be owing to the Access Holder. It must be understood that this extended process is required so that ARTC is able to provide the flexibility required by Access Holders and the coal chain as a whole, given the variability of shipping stems and the nature of the cargo assembly process.

Since the commencement of the HVAU, ARTC has passed the TUT in each period and has not been required to accumulate any rebates to date. A concern has been expressed that this demonstrates that the TUT is in some way deficient. However, it is ARTC's view that this view represents a misinterpretation of the complexity and inter-relatedness of the elements of the Hunter Valley coal chain such that the failure to provide trains when demanded is often seen as a failure on the part of ARTC when this may not actually be the case. Though incorrect, this opinion can be understood as a result of the fact that few coal chain participants have full access to information regarding all the component parts of a complex system. Nevertheless, ARTC does not accept the proposition that it must fail the test in order for the test to be an effective measure of performance.

The TUT is audited independently each year to ensure that ARTC conforms with its obligations under the IAHA. To date, the auditors have determined that ARTC has correctly carried out the TUT and that, in relation to the determination of the Network Path Capability (**NPC**) has carried out the calculation using a more onerous method than actually required under the IAHA. The NPC is discussed further below.

ARTC considers that the queries and issues raised by stakeholders in their submissions primarily relate to the origin and transparency of inputs into the TUT model itself and the publication of results. Although there were very few stakeholder responses to the TUT Review, in ARTC's opinion, those received reflect concern, queries and issues in respect of these aspects of the TUT model rather than the more fundamental purpose of the model.

After having completed its review and having due regard to the stakeholder submissions, ARTC maintains the position that, overall, the TUT has appropriate incentives in place and is operating as designed. Therefore, ARTC proposes no variation to the TUT requiring any modification to the HVAU or IAHA on the basis of this review. Notwithstanding this, ARTC will adopt a number of modest changes to elements of the TUT to respond to issues raised by stakeholders in their submissions, as outlined below.

The issues raised with regard to the publication of the TUT results at the end of each period are primarily related to timing and presentation of the results of the TUT. Due to audit requirements and the need to ensure accuracy ARTC is not in the position to alter the timeframes for publication of results at this time. Clause 2.7 of Schedule 2 of the AHA provides for TUT results to be published three weeks after the end of the relevant Period (month or quarter). ARTC does not consider this unreasonable where:

- operations in a Period are generally completed and recorded in various ARTC and third party systems some time after the end of the Period;
- operational performance is reviewed and analysed by the HVCCC and other service providers after the end of the Period;
- relevant inputs are required by ARTC from third parties including any claim for Allowable Tolerance which can occur up to five business days after the close of the period;
- TUT modelling needs to be reviewed and checked for accuracy by ARTC; and
- Results need to be approved internally by ARTC prior to their publication.

Stakeholder submissions raised certain issues regarding the presentation of the results of the TUT. Until now, the results of the TUT have been published in a graphical format that included the relevant data points. However, ARTC recognises that some users will prefer a separate tabular format for this data. Therefore, in future, ARTC will publish both the graphical representation and the related data table to allow greater ease of interpretation and increased transparency. An example of the revised format has been attached as Appendix 1. As clause 2.7 of Schedule 2 of the IAHA does not prescribe how the TUT results are to be presented, ARTC does not consider that there is any need to amend the IAHA or AHAs in this regard.

ARTC considers that queries and issues raised in stakeholder submissions regarding inputs into the TUT model are largely focussed on the methodology ARTC uses for calculating the NPC.

The determination of NPC is prescribed at Clause 2.3 of Schedule 2 (see Appendix 3).

The Final Audit Report provided to the ACCC as part of the annual compliance assessment process (in accordance with section 4.10(f)(x) of the HVAU) for the 2012 and 2013 calendar years¹ states:

“ARTC has complied, in all material respects, with Schedule 2 of the Access Holder Agreements under the HVAU” and that in fact “ARTC’s method to calculate Network Path Capability (NPC) was much more extensive than is required under the AHAs.”

The methodology that ARTC utilises to determine NPC annually includes a weighted demand profile in each Pricing Zone, as opposed to a single point for each Pricing Zone. In light of the above audit findings, it is ARTC’s intention to continue to utilise a weighted demand profile in each Pricing Zone for the determination of NPC.

Further, and notwithstanding the above, in response to queries and issues raised by stakeholders, ARTC proposes to review the published Relevant System Assumptions with a view to reflecting specific operational realities not related to ARTC but which are accepted by ARTC as on-going and appropriate to the nature of the operations. Refer to ARTC’s response AP1 at Appendix 2 for further detail. As the determination of NPC is required to be consistent with the Relevant System Assumptions (as applicable) (refer sub-clause (a)(i) above), ARTC considers that the above adjustment does not require a change to clause 2.3 of Schedule 2 of the AHA.

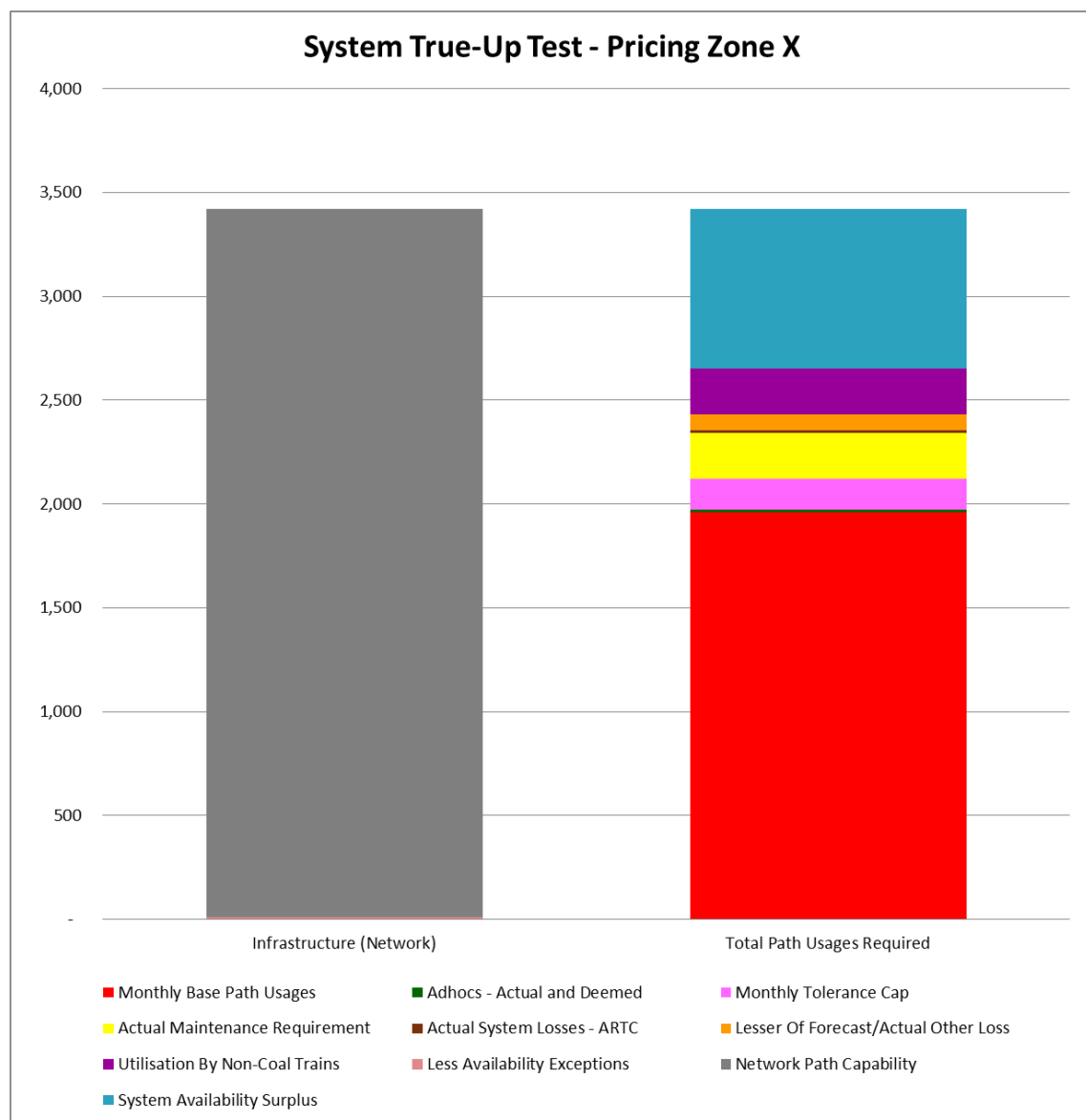
ARTC is of the view that these changes increase the risk of the occurrence of a System Availability Shortfall in a Period and therefore the potential for loss of revenue. This increased risk was not contemplated at the time of the approval of the current undertaking and is therefore not reflected in ARTC’s Rate of Return. Notwithstanding this, given the overall economic difficulties the industry is currently experiencing and for the reasons set out above, ARTC does not choose to submit an application to vary the HVAU as a result of the TUT Review at this time.

¹ The 2011 report did not report on this aspect as there were no AHAs in place for that year and ARTC was not required to perform the TUT under Schedule 2 clause 2.6(c).

APPENDIX 1 EXAMPLE OF PROPOSED TUT REPORT

The picture below illustrates the modified TUT results for an example Pricing Zone that ARTC will publish on its website at the end of each Period. The report now includes the components of the test in tabular form, as requested in the submissions. This does not represent a change in the actual test, it is merely the addition of the underlying data.

Pricing Zone X		
	Infrastructure (Network)	Total Path Usages Required
Monthly Base Path Usages		1,750
Ad hocs - Actual and Deemed		21
Monthly Tolerance Cap		137
Actual Maintenance Requirement		246
Actual System Losses – ARTC		8
Lesser Of Forecast/Actual Other Loss		82
Utilisation By Non-Coal Trains		201
Less Availability Exceptions	8	-
Network Path Capability	3,210	-
System Availability Surplus		773



APPENDIX 2: REVIEW OF STAKEHOLDER SUBMISSIONS

Stakeholder	IAHA Schedule 2 Clause	Issue	ARTC position
Glencore	2.2	<p>Network Path Capability is the measure of track capacity that is the basis of the TUT and is measured in 'Functional Coal Paths'. A Functional Coal Path is defined as any path that can be planned on the basis of certain Relevant System Assumptions. The most contentious of these assumptions is section run times and maximum train speed. The wording allows ARTC to include as usable capacity any train paths that can be planned assuming the trains move at maximum speed (and therefore meet section run times).</p> <p>This logic is denying reality in that in real time trains cannot meet section run times because of 'wait time' during trips because of network bottlenecks (i.e. insufficient capacity). ARTC ignores system capacity issues by simply assuming trains meet section run times and as a result overstates the real network capability.</p> <p>ARTC should instead ensure that Functional Coal Paths are paths that can be planned assuming current actual running times (or run times that can be realistically expected in the next relevant time period incorporating committed track improvements) not a theoretical measure ignoring capacity shortages.</p>	<p>AP1</p> <p>The NPC is a measure of functional coal paths, i.e. the maximum available train paths that the Network can provide, whilst conforming to the Relevant System Assumptions. NPC is not impacted by external factors such as system reliability events e.g. Load point, Train or Terminal failures - these failures are accounted for elsewhere in the TUT as a deduction from the NPC.</p> <p>The NPC calculation utilises the same Section Run Time data as the daily rail schedules. These times are devised with recognition that temporary speed restrictions are applied on occasion, with reviews undertaken to ensure train services are maintaining section run times within appropriate parameters. However, ARTC is cognisant that some above rail operations have resulted in recent changes to Network infrastructure to allow for related operational practices. For example the recent operational commissioning of Chilcott's Creek for Bank Engine operations will be included in the relevant System Assumptions, and the NPC calculation will take this above rail operational change into account.</p> <p>The HVCCC has previously recognised that the main cause of "Track Congestion" is system variability not related to Track Capacity. While track infrastructure may mitigate for such events the HVCCC has not identified track infrastructure as the cause.</p> <p>In addition to these measures ARTC has also undertaken improvement initiatives to enhance reliability such as a revised Maintenance program and in conjunction with other Service providers "Slot Management" in order to improve daily throughput.</p> <p>It is noted that Glencore's concern is raised in similar terms to concerns raised, and dismissed, during the approval process for the HVAU. The concern appears to stem from a view that the TUT should be based on a wholly different measure, i.e. some view of 'practical capacity'. At the time of the approval of the HVAU it was recognised that the adoption of a wider 'practical capacity' measure would inevitably introduce elements of the coal chain beyond ARTC's control and therefore would be inappropriate for inclusion in the HVAU.</p>

	Incentives	<p>If the TUT is failed (i.e. System Availability Shortfalls (SAS)>0) then ARTC becomes potentially liable for the TOP rebate to Access Holders. This rebate is payable at the TOP rate for each path not available/used or in other words simply a rebate of the TOP fee already paid by the Access Holder. A failure of ARTC to meet contracted capacity demands will result in the shortfall being socialised across potentially all Access Holders. The Access Holders will be faced with increased demurrage and ultimately potentially lost sales. The simple rebating of already paid TOP charges does not seem to be sufficient incentive for ARTC to supply capacity.</p> <p>A more rigorous penalty regime whereby financial penalties upon ARTC increased as sustained periods of shortfalls in capacity continued (until remedied) would be more motivational and reflect more accurately the damage inflicted upon the Access Holder.</p>	<p>AP2</p> <p>Any change to increase the risk of a payment of the TOP component would require consideration of a higher Rate Of Return to compensate. This issue was raised and considered extensively during earlier HVAU development and consultation and resulted in the inclusion of AHA Clause 13.3 - Mutual exclusion of Consequential Loss which specifically precludes liability for anything other than TOP charges. ARTC remains of the view that the rebate of Take or Pay charges are a significant and sufficient incentive for ARTC to provide contractual entitlements.</p>
	2.5	<p>The Allowed Tolerance mechanism in clause 2.5 of Schedule 2 provides a mechanism for Access Holders to seek rebate for 'short term' losses in paths but only if over the System Rebate Period the SAS is >0. If paths are not available when needed but are subsequently provided at a later time there is no 'compensation' available to the Access Holder.</p> <p>It is also unrealistic to apply the Allowed Tolerance mechanism in the HVCCC planning environment.</p>	<p>AP3</p> <p>Tolerance provides the Access Holder with flexibility as to when to use the Annual Coal Path during the year - i.e. the Access Holder is not rigidly tied to the BPU for each Month/Quarter. Tolerance does not give an Access Holder any contractual entitlement above the sum of the BPUs, (see AHA clause 3.1(c)). The sum of the BPUs over a year is the ACP.</p> <p>ARTC has an obligation to provide enough paths to satisfy the Monthly Tolerance Cap. The industry, via the Rail Capacity Group, has requested additional capacity up to the limit outlined within the HVAU to which ARTC has agreed. However Tolerance is not something that Access Holders are equally entitled to share every period; it is designed to address issues related to turn arrival at port and stockpile allocation in which particular Access Holders may require railings which alter from the constant demand profile.</p> <p>Nevertheless, Allowed Tolerance is a mechanism introduced in the AHA during HVAU development in response to an ACCC view expressed in its Position Paper in relation to ARTC's 2010 HVAU proposal in December 2010. To address industry concerns at the time, the ACCC sought revision of the TOP rebate mechanism in the IAHA to allow rebate accruals in a situation where an access holder seeks to rely on the provision of Tolerance to make up for an inability to use BPUs in a prior period, but Tolerance is not made available. In its revised 2010 HVAU, ARTC inserted 2.5 in Schedule 2 of the IAHA to provide a rebate for tolerance in certain circumstances. If the Access Holder can demonstrate that it was entitled to but did not receive tolerance (referred to as Allowed Tolerance), that Allowed Tolerance will be included in the Access Holder's individual shortfall for the purposes of determining its entitlement to a TOP rebate accrual for the relevant period.</p> <p>This revision to the HVAU was retained in the 2011 HVAU finally negotiated with industry and accepted by the ACCC.</p>

		For over 12 months ARTC has published TUT results monthly and to our knowledge there has been no instances of SAS. Interestingly over the same period it is a common perception amongst the industry that there is insufficient track capacity available to meet ARTC's contracted capacity. In some months this has not been obvious due to a simple case of contracted demand not materialising. However in other months there has been a shortfall in usable capacity with the TUT not reflecting this shortfall.	Refer AP1
Asciano	2.1(a)	Clarify how inter-zone transfers are taken into account in TUT calculations.	<p>AP4</p> <p>The trading of train paths occurs on a Pricing Zone (PZ) basis but taking into account the relative locations of the seller and recipient. For example, a path sold by a mine in PZ 2 to a mine in PZ 1 will require the seller to be deemed to have used a BPU in both PZ2 and PZ1. The recipient of the traded path will only acquire use of a PZ1 path. In the reciprocal situation with the PZ1 mine as the seller and PZ2 mine as recipient, the PZ1 mine would be counted as having used 1 BPU in PZ1 only but the recipient in PZ2 would have the use of a path in both PZ2 and PZ1.</p> <p>Any unused traded BPUs (i.e. those not used by the recipient) are returned to the seller, i.e. for the purposes of the TUT they are added back to the seller's unused BPU entitlement. This is not a requirement under the IAHA but is a concession by ARTC to assist customers to mitigate risk in managing their trades. The Trading process requires Access Holders to gain approval of HVCCC to ensure there is no impact to the entitlements of other Access Holders</p>
	2.1(b)	<p>Clarify the procedure as to how:</p> <ul style="list-style-type: none"> • BPU not made available due to Availability Exceptions • Actual System Losses – ARTC • Lesser of actual and forecast system losses – other parties <p>How are calculations made available to AH?</p> <p>How are paths prioritised? Diagram indicates ad hoc coal paths are prioritised ahead of non-coal paths. Does this reflect current network experience?</p>	<p>AP5</p> <p>The application & classification of System Losses is currently undertaken via the HVCCC process of "Daily Cancellations" in which all Service Provider participants are involved and receive detailed reports.</p> <p>Monthly System Loss reports to Access Holders are done via HVCCC reporting processes.</p> <p>Any calculations undertaken by ARTC in relation to the TUT are audited by the TUT Auditor, with the results forming part of annual compliance documentation. This serves to ensure that any aspects of the calculation that are not compliant with the HVAU are addressed and reconciled.</p> <p>The TUT diagrams are purely illustrative of the elements that are incorporated into the TUT and are not indicative of the prioritisation of pathing entitlements. The Categorisation of train paths is a post period methodology based on entitlements of the Access Holder.</p>
	2.2	Why is 'Network Management Principles' included as an Availability Exception for the TUT calculation. This seems too broad and should be qualified or restricted.	<p>AP6</p> <p>ARTC is of the view the Cancellation Process outlined in AP5 ensures transparent allocation of System Loss causation. ARTC considers it appropriate to include the application of approved Network Management Principles as an Availability Exception. Introducing financial implications around the application of the approved Network Management Principles may result in undesirable network management outcomes in terms of train operations and safety.</p>

	2.3	<p>NPC is based on theoretical assumption that Network is used solely by coal trains.</p> <p>Query whether assuming away non-coal trains is the best approach as these train impact on day to day operations.</p>	<p>AP7</p> <p>Non Coal traffic is included in the TUT and is subtracted from the NPC.</p>
	2.4	<p>Calculation of Rebate Accrual</p> <ul style="list-style-type: none"> When and how often is this calculated? Whether full calculation is made available to each AH or only if another AH details cannot be determined? If latter, how can AH determine if components such as Allowed Tolerance have been calculated correctly (particularly if they only have 5 days to make a claim). 	<p>AP8</p> <p>Calculation of the Rebate Accrual is undertaken for each Period the TUT is conducted. Schedule 2 clause 2.7 requires ARTC to notify an Access Holder of any rebate accrued in the period within 3 weeks of the close of the period. An accrual only eventuates in the event a shortfall occurs within the relevant Pricing Zone and the Access Holder has not received its BPUs plus any Allowed Tolerance for the period.</p> <p>In relation to underlying calculations, refer AP5.</p> <p>In relation to Allowed Tolerance refer AP3.</p>
Idemitsu	2.2	In determining NPC , should have a regular reality check of the ‘single track factor’ (65%) in view of significant projects due to be delivered.	<p>AP9</p> <p>ARTC uses to UIC406 methodology to calculated track capacity. This is a standard methodology for the determination of track capacity, published by the International Union of Railways (UIC). It is widely used and accepted around the world. The 65% utilisation rate referred to is used by ARTC to ascertain capacity consumption within single line sections of the Hunter Valley Network. This factor forms part of the UIC406 calculation methodology.</p> <p>ARTC has previously raised in RCG related meetings the potential of altering this occupation factor in specific circumstances where significant capital expenditure would be required to maintain consistency. Increasing the factor increases the risk of failure to achieve daily train schedules and exacerbates the consequences of performance failure whether train or track related. ARTC remains committed to ensuring our customers make informed decisions as to the resultant effect on train scheduling and robustness of operational effectiveness.</p>
	2.1	<p>Total Paths Required (TPR) – concerns about transparency and reporting of how components are determined. Some are available through separate ARTC and HVCCC reports but greater transparency around non-coal services (service type) is desired.</p> <p>Why is lesser of actual and forecast system losses used? Actual system losses should be available after the end of the month. Should be validated through HVCCC for consistency and transparency.</p>	<p>AP10</p> <p>ARTC is of the view that the proposed revised reporting format of providing information in a tabular format will allow Access Holders to ascertain non-coal service information</p> <p>System losses relate to losses caused by parties other than ARTC only (refer clause 2.2 of Schedule 2 of the IAHA). ARTC makes allowance in its planning for the Network for the annual forecast system losses as published by the HVCCC, and it is appropriate that ARTC should provide in the TUT for this allowance. Where actual losses are greater than forecast losses, it would be inappropriate to use actual losses in the TUT as ARTC would then be penalised for losses incurred by other parties. Where the actual losses are less than forecast losses, the use of forecast losses in the TUT would remove any disincentive to ARTC making the additional actual capacity available.</p> <p>HVCCC System Loss data is utilised within the TUT.</p>
	Incentives	TOP Rebate is welcome but it does not cover all of AH costs if a path is not made available. Review of a more equitable remedy would be appropriate.	Refer AP2.

	Time frame – IAHA Clause 5.4	Time frame for payment of TOP Rebate is unduly excessive. Up to 77 days after end of year plus an average 180 days in total. Time frames should be reduced.	<p>AP11</p> <p>As the Annual Reconciliation and TOP Rebate determination has regard for utilisation of Annual Contracted Paths (over the year) irrespective of rebates that are accrued throughout the year, the Annual Reconciliation and determination of TOP rebates cannot commence until conclusion of the Final TUT for a year (which occurs 3 weeks after year end). The fact that a rebate might be accrued during the year does not necessarily result in the Access Holder being entitled to a rebate once the Annual Reconciliation has occurred. The 20 Business Day time frame for TOP Rebate payment following Annual Reconciliation is an upper limit having regard to ARTC’s internal approval and accounting processes.</p> <p>While ARTC is cognisant of the Access Holder needs in this regard it does not consider such time frames as unreasonable.</p> <p>It should be noted that the TUT Review is a review of the operation and effectiveness of the TUT in Schedule 2 of the IAHA and does not extend to the Annual Reconciliation at IAHA clause 5.4.</p>
	2.7	<p>Reporting</p> <ul style="list-style-type: none"> • Publish report 10 Business Days after the end of a period. • Also include component path numbers in tabular format. • Include month by month breakdown of each component for the Contract Year as supplementary information. 	<p>AP12</p> <p>For accuracy, the reporting timeframe is reliant on individual Access Holder acceptance of monthly invoicing detail. ARTC has conducted a review of the processes involved and is unable to reduce this timeframe at this point in time. It is noted that the time frame for publishing of TUT results have no significant financial implications for Access Holders.</p> <p>ARTC is supportive of providing customers with TUT outcome data in a tabular format.</p>
	Coal Chain Principles – future certainty of access	Historical nature of TUT (reporting after period end) provides AH with very limited confidence in future certainty of access.	<p>AP13</p> <p>The nature of the TUT is that ARTC performance is measured against capacity entitlements that are contracted on a monthly or quarterly basis which necessitates testing and reporting after the month or quarter. There are other mechanisms within the HVAU & IAHA such as the Rail Capacity Group and requirement to consult with the HVCCC that provide avenues for Access Holders to increase confidence in certainty of access.</p>

APPENDIX 3: RELEVANT HVAU AND AHA CLAUSES²

HVAU section 13.4: Review of system wide TUT

- (a) *As soon as practicable after the completion of two full calendar years following the Commencement Date, ARTC will commence a review of the operation and effectiveness of the system wide true up test ("TUT") in Schedule 2 of the Indicative Access Holder Agreement ("TUT Review").*
- (b) *ARTC will invite submissions from Access Holders and other stakeholders, to be made within a specified timeframe (which must be not less than 6 weeks from the publication of a request for submissions), on whether:*
 - (i) *having regard to the consequences of failing the TUT, the TUT provides appropriate incentives to make available Capacity for use either on a contracted or ad hoc basis; and*
 - (ii) *the TUT provides appropriate incentives for ARTC having regard to the:*
 - (A) *the objectives in section 1.2;*
 - (B) *the coal chain principles recognised in section 1.3; and*
 - (C) *practical experience of Network and Hunter Valley Coal Chain operations and performance relevant to the operation of the TUT from the Commencement Date to the time of review.*
- (c) *ARTC will in good faith consider the submissions provided in accordance with section 13.4(b) and complete the TUT Review within 6 months of the commencement of the TUT Review.*
- (d) *At the completion of the TUT Review, ARTC:*
 - (i) *will publish a report on its website (subject to confidentiality restrictions), and provide a copy to the ACCC, setting out its view on the operation and effectiveness of the TUT and its response to any material concerns raised by Access Holders or stakeholders in the context of the TUT Review; and*
 - (ii) *may submit a proposed variation to the Undertaking as a result of the TUT Review to the ACCC for approval, or if it chooses not to, will set out in the report reasons why it is not submitting a variation application.*

² Schedule 2 of the IAHA is not included here. This schedule sets out the full details of the TUT. A copy of the IAHA, including Schedule 2 can be accessed through:
http://www.artc.com.au/library/AS_HV_Undertaking_Indicative%20Access%20Holder%20Agreement.pdf

HVAU section 13.5: Development of TUT-related ARTC performance incentives

- (a) *ARTC will either in parallel with, or following completion of, the TUT Review:*
- (i) *prepare and publish on its website options for a proposed performance incentive scheme which has the objectives of encouraging ARTC, through financial reward, to improve its performance in relation to making Capacity available for use either on a contracted or ad hoc basis and balancing the negative consequences of failing the system wide TUT, to be included in the Undertaking; and*
 - (ii) *invite submissions from Access Holders and other stakeholders on the proposed TUT-related performance incentive scheme, within a specified time (which must be not less than 6 weeks from the publication of the options).*
- (b) *ARTC will in good faith consider the submissions provided within the specified time and prepare a report addressing options for a proposed TUT-related performance incentive scheme having regard to the submissions and containing ARTC's proposed variation to the Undertaking to include its TUT-related proposed performance incentive scheme and:*
- (i) *provide that report to the ACCC; and*
 - (ii) *may lodge a variation application with the ACCC under **section 44ZZA(7)** of the CCA consistent with the report, or if it chooses not to, will set out in the report reasons why it is not submitting a variation,*
- at the same time as it submits the TUT Review report to the ACCC for approval under section 13.4(d) or as part of the TUT Review report.*
- (c) *If ARTC decides to conduct the development of a TUT-related ARTC performance scheme after completion of the TUT Review, ARTC will complete development of a TUT-related ARTC performance scheme within 6 months of the completion of the TUT Review or such longer period as required to consider or address any variations that may be proposed or required by the ACCC.*

AHA Schedule 2 Clause 2.3: Determination Of Network Path Capability

- (a) For each Contract Year subsequent to the first Contract Year, ARTC will determine the NPC for each Period in that Contract Year in accordance with the following steps:
- (i) Following consultation with the HVCCC on the expected Capacity of the Network Path Capacity due to above rail operator constraints where compensation in the form of rail infrastructure or altered, ARTC will use its best endeavours to publish by 30 September of the previous Contract Year, and in any event before the commencement of the Contract Year, the number of Functional Coal Paths that the Network operational controls have been adopted would be capable of providing in the Contract Year in each Pricing Zone in each Period on the theoretical assumption that the Network was only used by Coal Trains and which is consistent with the Relevant System Assumptions to the extent applicable (NPC).
 - (ii) The number of Functional Coal Paths available in each Pricing Zone in each Period (NPC) will be the number of Functional Coal Paths available as measured at the following points of the Network which are considered by ARTC. to broadly represent the Capacity of each Pricing Zone:
 - (A) For Pricing Zone 1, Whittingham Junction;
 - (B) For Pricing Zone 2, Ulan Junction; and
 - (C) For Pricing Zone 3, Werris Creek.
 - (iii) If a project creating Additional Capacity is identified in the Hunter Valley corridor capacity strategy as having the purpose of increasing the number of path usages for coal trains in a Pricing Zone, the number of Functional Coal Paths determined under subclause (b)(i) (the NPC), will reflect the Additional Capacity that is due to be commissioned prior to the commencement of that Period.
 - (iv) If the project to deliver Additional Capacity is delayed beyond the expected completion date, or the project delivers less Capacity than anticipated, then ARTC will, prior to the commencement of the Month when the Additional Capacity was due to be commissioned, advise the Access Holder by notice of any reduction in the NPC in those subsequent Months, which reductions will only reflect that delay to or the extent to which the project delivers less Capacity than anticipated.
 - (v) If amendments are agreed to the Relevant System Assumptions by ARTC and the HVCCC, ARTC will vary the NPC as appropriate to reflect the number of Functional Coal Paths that would be available on the application of the new Relevant System Assumptions.

- (b) For the purposes of this Schedule, a Functional Coal Path is one which is capable of being used by a Coal Train which complies with elements (f) - (j) of the Relevant System Assumptions.*
- (c) To avoid doubt the Network Path Capability of a Quarter will be equal to the sum of the Network Path Capability of each Month making up that Quarter.*

Attachment 1 – Letter to Stakeholders seeking submissions.



AUSTRALIAN RAIL TRACK CORPORATION LTD

7 March 2014

Dear Stakeholder

Section 13.4 of the ARTC Hunter Valley Access Undertaking (HVAU) - Review of system wide TUT

ARTC is commencing a review of the operation and effectiveness of the system wide true up test (TUT) as prescribed in Schedule 2 of the Indicative Access Holder Agreement in accordance with Section 13.4 of the HVAU.

To enable ARTC to incorporate stakeholder's input into this review, ARTC invites submissions on whether:-

- having regard to the consequences of failing the TUT, the TUT provides appropriate incentives to make available Capacity for use either on a contracted or ad hoc basis; and
- the TUT provides appropriate incentives for ARTC having regard to:
 - the objectives in **section 1.2** of the HVAU ;
 - the coal chain principles recognised in **section 1.3** the HVAU; and
 - the practical experience of Network and Hunter Valley Coal Chain operations and performance relevant to the operation of the TUT from the Commencement Date of the HVAU to the time of this review.

Submissions should be made no later than **5:00pm AEDT on 28th of April 2014** and should be addressed to:-

Mr Martin Jones
General Manager Operations and Logistics
Australian Rail Track Corporation
5/33 Newton Street
BROADMEADOW NSW 2292

Email: martin.jones@artc.com.au

Please note that it is ARTC's intention to provide submissions to the ACCC which may elect to publish received submissions on their website.

As such, when making a submission could stakeholders please advise any requirement not to have a submission made available to the ACCC, or published, or if it is required that a submission be only partially withheld than a version suitable for provision to the ACCC, or for publishing should be provided.

Please direct any enquiries to the above-mentioned email address.

Yours sincerely

A solid black rectangular box used to redact the signature of Kylie Gallasch.

Kylie Gallasch
General Manager Commercial Strategy & Growth

Attachment 2 – Submissions received from Stakeholders.



Monday, 28 April 2014

Martin Jones
General Manager, Operations and Logistics
Australian Rail Track Corporation
5 / 33 Newton Street
Broadmeadow, NSW 2292

By email: martinjones@artc.com.au

Dear Mr Jones

Review of System Wide True Up Test

Background

This submission is in response to the current Australian Rail Track Corporation (ARTC) review of the Hunter Valley true up test (TUT) in accordance with section 13.4 of the Hunter Valley Access Undertaking (HVAU) which states that the ARTC will review the operation and effectiveness of the TUT, focussing on:

- whether the TUT provides appropriate incentives to make capacity available; and
- whether the TUT provides appropriate incentives for ARTC having regard to the objectives of the HVAU, the Hunter Valley coal chain principles and practical experience on the Hunter Valley network.

Following this TUT review, section 13.5 of the HVAU requires ARTC prepare an incentive scheme which encourages ARTC to improve its performance in making capacity available.

Asciano's understanding is that under the TUT the ARTC determines if a system availability shortfall has occurred, and if such a shortfall has occurred then a take or pay rebate occurs.

Asciano General Comments

Asciano operates trains in the Hunter Valley via its subsidiary Pacific National, but Asciano is not a direct access holder in the Hunter Valley under the HVAU. Given this Asciano is not directly involved in the current TUT process.

Asciano believes that a major issue facing the Hunter Valley coal chain is lost coal chain capacity due to system congestion. This lost capacity results in lost revenue for all coal chain participants. Any incentive mechanism must provide incentives to minimise lost capacity and system congestion.

Asciano believes that the current TUT process is a necessary first step and supports the TUT, however the TUT does not provide sufficiently strong incentives for ARTC to address capacity availability. Consequently Asciano is seeking that the ARTC develop an incentive scheme which further encourages it to improve its performance in making capacity available (as required under section 13.5 of the HVAU).

Asciano recognises that in December 2011 and January 2012 ARTC consulted with stakeholders, including Asciano, on options for incentive mechanisms in the Hunter Valley.

Asciano believes that the ARTC should revisit the options put forward in this consultation process as a means of addressing the issues in section 13.5 of the HVAU. Asciano continues to support the positions which it put forward in February 2012 in relation to this consultation. In particular Asciano believes that a KPI regime focussed on issues such as transit times and path availability could be developed such that it increases incentives to provide capacity.

Asciano Detailed Comments on the TUT

Asciano believes that the various elements of the current TUT process and calculation should be clarified by the ARTC. Areas where additional clarity and detail would benefit stakeholders are outlined below.

- Clause 2.1 (a) of Schedule 2 of the IAHA notes that the TUT is carried out for each pricing zone. Asciano is seeking clarity from ARTC as to how inter zone transfers are taken into account in these calculations. For example, Asciano is seeking clarity as to how a situation where a Zone 3 path is transferred to a user in Zone 1 would be treated, including the identity of the recipient of any Take or Pay rebate and the identity of the party charged for the Zone 3 Take or Pay component.
- Clause 2.1 (b) of Schedule 2 of the IAHA includes a diagram which outlines how the TUT is carried out. Asciano is seeking clarity from ARTC on the procedure for calculating the following components of the diagram and the identity of the party which undertakes these calculations:
 - Path usages not made available due to Availability Exceptions
 - Actual system losses – ARTC
 - Lesser of actual v forecast system losses – other parties

In addition Asciano is seeking clarity from ARTC on:

- how these calculations are made available to access holders; and
- the prioritisation of paths in the diagram. The diagram appears to prioritise ad hoc paths relevant to coal trains above paths used by non-coal trains (presumably including contracted non-coal paths). Asciano queries if this reflects current network experience.
- Clause 2.2 of Schedule 2 of the IAHA outlines how Total Path Usages Required is adjusted for the Availability Exceptions (as outlined in clause 3.6 of the IAHA). The Availability Exceptions reduce ARTC's System Availability Shortfall exposure as pathing losses due to matters outside ARTC's control are subtracted from Total Path Usages Required. Asciano queries why "Network Management Principles" is included as an Availability Exception in clause 3.6 of the IAHA. Asciano believes that "Network Management Principles" may be too broad an exception and that this exception should be qualified or restricted.
- Clause 2.3 of Schedule 2 of the IAHA outlines how Network Path Capability (i.e. the number of Functional Coal Paths) is derived. Clause 2.3 (a) (i) of Schedule 2 of the IAHA states that the Network Path Capability is based on the theoretical assumption that the Network was only used by coal trains. However the diagram in clause 2.1 (b) shows that non-coal trains are a considerable proportion of train paths. Asciano



queries if the "assuming away" of non-coal trains is the best approach to such calculations as these trains are likely to have an impact in day to day operations.

- Clause 2.4 of Schedule 2 of the IAHA sets out the calculation of the TUT Take or Pay rebate accrual. Asciano is seeking clarity from ARTC on
 - when and how often this is calculated; and
 - whether the full calculation is made available to each access holder or if the calculation is only made available if it doesn't allow an access holder to then calculate another access holder's information. If the latter situation is the case, Asciano is seeking clarity from ARTC on how access holders can verify components such as the Allowed Tolerance (where the access holder only has 5 days to make a claim if they believe it has been calculated incorrectly).

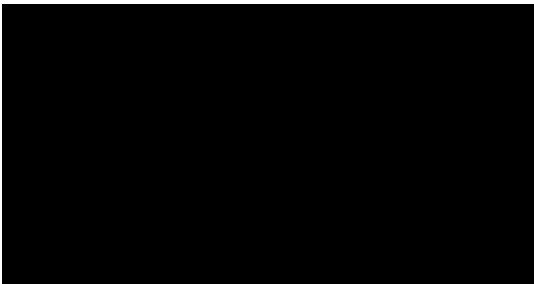
Conclusion

Overall Asciano supports any processes which provide an incentive for ARTC to make capacity available in the Hunter Valley, and consequently Asciano supports the TUT but believes that further incentive mechanisms are needed to ensure that stronger incentives exist for the ARTC to provide capacity in the Hunter Valley.

In addition, Asciano believes there are numerous issues related to the TUT which are unclear. Asciano is seeking that the ARTC provide further clarity on these issues.

Feel free to contact me on 02 8484 8056 to discuss this submission.

Yours sincerely,



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GLENCORE

23rd April 2014

Mr Martin Jones
General Manager Operations and Logistics
Australian Rail Track Corporation
5/33 Newton Street
BROADMEADOW NSW 2292

Dear Martin,
Re HVAU – review of System wide TUT

We are writing in response to ARTC's invitation for submissions (dated 7 March 2014) on the review of the system wide true up test.

The TUT and the associated rebate is a crucial aspect of the HVAU as it is the means by which ARTC is accountable to the Access Holders for providing their contracted capacity. As such the mechanism must be a true gauge of the actual 'usable' capacity that is available out on the track to be put to practical use. The capacity that ARTC has committed to provide must be usable and not just theoretical capacity on paper.

Glencore wishes to add the following comments;

- Network Path Capability is the measure of track capacity that is the basis of the TUT and is measured in 'Functional Coal Paths'. A Functional Coal Path is defined as any path that can be planned on the basis of certain Relevant System Assumptions. The most contentious of these assumptions is section run times and maximum train speed. The wording allows ARTC to include as usable capacity any train paths that can be planned assuming the trains move at maximum speed (and therefore meet section run times). This logic is denying reality in that in real time trains cannot meet section run times because of 'wait time' during trips because of network bottlenecks (i.e. insufficient capacity). ARTC ignores system capacity issues by simply assuming trains meet section run times and as a result overstates the real network capability.
ARTC should instead ensure that Functional Coal Paths are paths that can be planned assuming current actual running times (or run times that can be realistically expected in the next relevant time period incorporating committed track improvements) not a theoretical measure ignoring capacity shortages.
- If the TUT is failed (i.e. SAS>0) then ARTC becomes potentially liable for the TOP rebate to Access Holders. This rebate is payable at the TOP rate for each path not available/used or in other words simply a rebate of the TOP fee already paid by the Access Holder. A failure of ARTC to meet contracted capacity demands will result in the shortfall being socialised across potentially all Access Holders. The Access Holders will be faced with increased demurrage and ultimately potentially lost sales. The simple rebating of already paid TOP charges does not seem to be sufficient incentive for ARTC to supply capacity. A more rigorous penalty regime whereby financial penalties upon ARTC increased as

GLENCORE

sustained periods of shortfalls in capacity continued (until remedied) would be more motivational and reflect more accurately the damage inflicted upon the Access Holder.

- The Allowed Tolerance mechanism in clause 2.5 of Schedule 2 provides a mechanism for Access Holders to seek rebate for 'short term' losses in paths but only if over the System Rebate Period the SAS is >0 . If paths are not available when needed but are subsequently provided at a later time there is no 'compensation' available to the Access Holder. It is also unrealistic to apply the Allowed Tolerance mechanism in the HVCCC planning environment.
- For over 12 months the ARTC has published TUT results monthly and to our knowledge there has been no instances of System Availability Shortfalls (SAS). Interestingly over the same period it is a common perception amongst the industry that there is insufficient track capacity available to meet ARTC's contracted capacity. In some months this has not been obvious due to a simple case of contracted demand not materialising. However in other months there has been a shortfall in usable capacity with the TUT not reflecting this shortfall.



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28 April 2014

Mr Martin Jones
General Manager Operations and Logistics
Australian Rail Track Corporation
5/33 Newton Street
Newcastle NSW 2292

Email: Martin.Jones@artc.com.au

Dear Martin

Section 13.4 of the Hunter Valley Access Undertaking – Review of the System Wide TUT

Idemitsu Australia Resources Pty Ltd (**Idemitsu**) welcomes the opportunity to provide the following submission in relation to the review of the system wide true up test (**TUT**) being conducted by the Australian Rail Track Corporation (**ARTC**) in accordance with Section 13.4 of the Hunter Valley Access Undertaking (**HVAU**).

This submission considers the specific requirements of Section 13.4(b):

- (i) having regard to the consequences of failing the TUT, the TUT provides appropriate incentives to make available Capacity for use either on a contracted or ad hoc basis; and
- (ii) the TUT provides appropriate incentives for ARTC having regard to:
 - a. the objectives of Section 1.2 of the HVAU;
 - b. the coal chain principles recognised in Section 1.3 and
 - c. the practical experience of Network and Hunter Valley Coal Chain operations and performance relevant to the operation of the TUT from the Commencement Date to the time of the TUT review.

1. System Availability Shortfall

It is Idemitsu's understanding the fundamental purpose of the TUT is to determine any System Availability Shortfall (**SAS**) for the relevant period (considered as a month for the purposes of this submission) for a Pricing Zone by deducting the Total Path Usages Required (**TPR**) from the Network Path Capability (**NPC**). In instances where:

- $NPC < TPR$ then SAS
- $NPC \geq TPR$ then no SAS

Upon determining if SAS exists (SAS is greater than 0), then ARTC has failed to satisfy its contractual obligation and therefore Access Holder(s) will be entitled to a TOP Rebate which

is accrued on the individual Access Holder's account and settled annually in accordance with Section 2.4, 2.5, 2.6 and 2.8 of Schedule 2 of the Access Holder Agreement (**AHA**).

Idemitsu has considered a number of the components comprising the NPC and TPR.

- (i) **Network Path Capability (NPC)** – is defined as the capability of the Network, specified as the number of Functional Coal Paths made available in a period. Functional Coal Paths are considered to be a train path which is capable of being used by a Coal Train which complies with the following Relevant System Assumptions; section run times, maximum train length, maximum axle load maximum train speed and any other assumption reasonably determined by ARTC from time to time as necessary for determining Capacity.

Given the nature and importance of the NPC, Idemitsu supports the continued ARTC consultation with the HVCCC in determining the annual NPC. The HVCCC is appropriately placed to consider a number of the Relevant System Assumptions.

Idemitsu would also propose a regular "reality" review of the single track factor (65%) given the considerable number of infrastructure projects due to be delivered in the next couple of years and continued operational rollingstock improvements.

- (ii) **Total Path Usages Required (TPR)** – is depicted in Section 2.1 of Schedule 2 of the AHA as the sum of the following component (consumption of NPC):
- a. aggregate Base Path Usages for all Access Holders for the period;
 - b. aggregate ad hoc path usages for the period by coal trains;
 - c. monthly Tolerance Cap for the period;
 - d. aggregate path usages required by ARTC for maintenance in the period;
 - e. aggregate path usages unavailable in the period due to system losses arising from the ARTC;
 - f. aggregate path usages unavailable in the period due to either actual system losses arising from parties other than ARTC or aggregate path usages forecast by ARTC to be unavailable in the period due to system losses arising from parties other than ARTC (the lesser of); and
 - g. aggregate Path Usages not made available to Coal Trains due to use by Non Coal services in the period.

Less the aggregate Path Usages not available due to Availability Exceptions identified in clause 3.6 of the Access Holder Agreement (**AHA**).

Idemitsu has concerns regarding transparency on how a number of the above items are determined and reported to industry. Some items are available in separate reports such as the quarterly Key Performance Indicators and HVCCC reports, however greater transparency around Non Coal services would be appropriate (breakdown of service).

In regard to item f above, it is unclear to Idemitsu why the lesser of actual and forecast system losses is used when calculating the TUT due to this calculation being retrospective and actual system losses should be available. In any event, all forecasts and actual system losses should be validated through the HVCCC for consistency and transparency.

2. TOP Rebate

It is Idemitsu's understanding the TOP Rebate has been included in the TUT process as a means of incentivising ARTC to ensure its makes available to Access Holders the necessary

train paths to satisfy its contractual obligations. The value of the TOP Rebate is limited to the TOP Charges paid by the Access Holder relative to the SAS. Idemitsu would like to point out the recovery of the TOP Charge is welcomed, however it does not cover all of the Access Holders costs which are associated with any failure to make the necessary paths available. In the event ARTC are unable to provide the contracted paths for the period, the Access Holder is likely to incur other service provider take or pay costs and demurrage costs at the port. Clause 5.4(h) of the AHA identifies the TOP Rebate as the sole remedy for an Access Holder, however given the potential additional costs incurred by an Access Holder when paths are not available then a review of a more equitable remedy would be appropriate.

In regards to the actual payment of any TOP Rebate the current timeframe identified in clause 5.4 of the AHA and Section 4.10(f) of the HVAU are both unduly excessive in duration before any rebate is returned to the Access Holder. In the case of clause 5.4 it could be up to 77 days approx (after the calendar year) before a rebate is received by the Access Holder and under Section 4.10(f) as much as 180 days approx. In both instances this would seem unreasonable, particularly as these durations will increase subject to when the entitlement arose within the Contract Year (i.e. if the entitlement arose in June of the contract year then the TOP rebate for clause 5.4 would not be received for 257 days after the event and in the case of Section 4.10(f) 12 months after the event. In both instances the timing of the rebate is unreasonable and hence the timeframes should be reduced.

3. Exceptions and Limitations

In reference to Section 2.6(c) of Schedule 2 of the AHA, it is Idemitsu's view notwithstanding all Access Holders within a Pricing Zone using their full base path usages and there is no allowed tolerances, for completeness the TUT should be calculated and published for the benefit of all Access Holders.

4. Reporting

Idemitsu considers a number of improvements could be made with regard to the clarity of the TUT reporting format. In particular:

- (i) Section 1 of Schedule 2 of the AHA requires ARTC to issue a report of the TUT results within 15 business days of the end of each period. ARTC has generally been achieving this requirement, however Idemitsu would like to see this reduced to 10 business days.
- (ii) Currently the reports are presented in a graphical format, which at times can be extremely difficult to read and interpret, particularly in PZ3 the TPR's various components. Idemitsu recommends continuing with the graphical representation but for ARTC to include below the graph a table format of each component of the TPR (path numbers).
- (iii) As part of the table proposed in item 2, included should be a month by month breakdown of each TPR component for the Contract Year as supplementary information for Access Holders.

5. Pricing Zone 3 Extension

Idemitsu considers the single application of the TUT to the proposed extension of Pricing Zone 3 (**PZ3**) as beneficial and more efficient as it will provide a more complete understanding of coal chain Capacity for Gunnedah Basin Access Holders. It is noted the extension of PZ3 remains subject to ACCC approval.

6. Coal Chain Principles

One of the fundamental Coal Chain principles considered by the HVAU in Section 1.3 is producers requiring long term certainty from ARTC regarding contracted track Capacity. It is Idemitsu view the TUT only provides minimal confidence to producers with regard to track Capacity due to its historic nature. The TUT is calculated at the end of a period with results released to Access Holders a further three (3) weeks after the end of the period. This approach provides Access Holders with very limited confidence on ARTC's ability to make future paths available.

In conclusion, Idemitsu is supportive of the TUT concept (including the TOP Rebate) to ensure ARTC is held accountable for meeting its contractual obligations with respect to path availability in accordance with Schedule 2 of the AHA. Idemitsu has outlined a number of concerns in this submission which it would appreciate ARTC considering in the continued TUT review process.

Idemitsu welcomes the opportunity to participate in any future discussions or consultations regarding the TUT review.

Idemitsu provides its consent for this submission to be published on the ARTC website and provided to the ACCC.

If you have any queries please do not hesitate to contact me.

