

6 February 2015

Dear Stakeholder

ARTC HUNTER VALLEY COAL NETWORK ACCESS UNDERTAKING

DEVELOPMENT OF TUT-RELATED ARTC PERFORMANCE INCENTIVES - STAKEHOLDER CONSULTATION

In developing the 2011 Hunter Valley Coal Network Access Undertaking (HVAU), ARTC committed to work with industry to propose and assess a performance incentive scheme. Such a scheme is intended to achieve the objective 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 (**TUT PPIS**)

In accordance with Section 13.5 of the HVAU ARTC is required to publish options for a proposed TUT PPIS on its website and invite submissions from Access Holders and other stakeholders on the proposed TUT PPIS. Following conclusion of this consultation ARTC is required to provide a report to the ACCC and may seek a variation to the HVAU to incorporate a potential TUT PPIS.

Since the commencement of the HVAU, there has been relevant work undertaken by ARTC which is described below.

In 2012, in accordance with Section 13.3 of the HVAU, ARTC sought to vary the HVAU to incorporate a positive performance incentive scheme which had the objectives of encouraging ARTC, through financial reward, to improve operating, maintenance and capital expenditure efficiency, and achieve desirable safety performance (**non-TUT PPIS**), to be included in the HVAU. .

Under Section 13.3 of the HVAU, ARTC was similarly required to publish options for a proposed non-TUT PPIS on its website and invite submissions from Access Holders and other stakeholders on the proposed non-TUT PPIS. Options published for consultation included positive performance incentive mechanisms:

- to improve ARTC productivity;
- to improve performance directly linked to Network KPIs incorporated in the HVAU;
- to improve performance in relation to safety targets; and
- to encourage the use of innovation (soft assets) to achieve outcomes that could be more efficiently delivered in this way than through hard assets (infrastructure).

ARTC considered in good faith the submissions provided and prepared a report addressing options for the proposed non-TUT PPIS having regard to the submissions and containing a proposed variation to the HVAU to include the proposed non-TUT PPIS. ARTC submitted the report to the ACCC and lodged a variation application with the ACCC under section 44ZZA(7) of the *Competition and Consumer Act 2010* consistent with the report. The report and variation application proposed a non-TUT PPIS that incorporated the following positive performance incentive mechanisms:

- Network KPIs focused on controllable behaviour related to capacity and throughput
 - Coal Chain Losses – ARTC Cause; and
 - Transit Time – impact of temporary speed restrictions;
- Network KPIs focused on other controllable behaviour
 - Track condition measured by index;
- Innovation related performance incentive
 - Additional Capacity investment innovation incentive.

The variation application was subsequently withdrawn with the approval of the ACCC on the condition that the non-TUT PPIS would be developed and lodged by ARTC when developing the TUT PPIS under section 13.5 of the HVAU. The basis for withdrawing the variation application was that whilst stakeholders generally supported the principle of having positive performance incentive mechanisms to drive improved efficiency and increase capacity in the Hunter Valley coal chain they did not consider that applying resources to the development and finalisation of such mechanisms underpinning the variation to be appropriate at the time. ARTC recognised industry's desire to focus on coal chain capacity issues at the time and was willing to postpone its development of, and delay potential benefits arising from, a non-TUT PPIS.

As such, this consultation relates to options in relation to both a proposed non-TUT PPIS and a proposed TUT PPIS.

It should be noted that, despite ultimately withdrawing the variation application in relation to the non-TUT PPIS in 2012, stakeholder consultation undertaken both by ARTC separately and as part of the formal ACCC consultation process resulted in significant learning and experience that can inform this current consultation, notwithstanding that industry circumstances may have changed over the last 2 years. To this end, ARTC has published on its website a number of public documents from that earlier consultation including ARTC's initial consultation document, non-confidential stakeholder submissions, ARTC's application to vary the HVAU, and accompanying proposal. These documents are available for stakeholder reference and to assist in the preparation of submissions at the link below.

<http://www.artc.com.au/Content.aspx?p=314>

The website link also includes a stakeholder consultation document in relation to options for a TUT related Positive Performance Incentive Scheme as required under Section 13.5 of the HVAU.

A further option for stakeholder consideration in relation to the development of the TUT PPIS and non-TUT PPIS.

In accordance with Section 13.5 of the HVAU, ARTC is required to lodge a variation application in relation to a proposed TUT PPIS and non-TUT PPIS 6 months after completion of a TUT review as contemplated at Section 13.4 of the HVAU. This review was completed in September 2014, meaning the variation application is required to be submitted in March 2015. As such, whilst this timing may facilitate implementation of a non-TUT PPIS and/or TUT PPIS by say 1 January 2016, this is not certain having regard to reasonable requirements for the ACCC's assessment, and system development requirements needed ahead of implementation. It is likely that

commencement of any proposed scheme at the start of a calendar or contract year would deliver the most efficient outcome.

ARTC is committed to the consultation on, and development of, proposal for a non-TUT PPIS and TUT PPIS under the HVAU noting that the Term of the HVAU ends on 30 June 2016.

While the development and implementation of performance incentive scheme needs to be considered in light of the timing of expiry of the HVAU, ARTC considers that any work undertaken now will be valuable in the context of the current HVAU or as an input into any new regulatory arrangements.

ARTC invites submissions in relation to the options contained in the referenced documents, and in relation to the further option above, from Access Holders and stakeholders by 20 March 2015.

Submissions are requested to be in writing, in electronic format, and should be sent to Wayne Johnson, General Manager Customer Service & Operations Hunter Valley by email at WJohnson@ARTC.com.au.

ARTC intends to publish any stakeholder responses on its website and include them in a report to the ACCC unless they are marked confidential. Respondents are also requested to identify whether or not their submissions may be published and/or provided to the ACCC. Stakeholders are encouraged to make their submissions non-confidential in the interests of furthering the exchange of views amongst all Hunter Valley coal chain participants.

Yours sincerely

 Jonathan Vandervoort
Executive General Manager, Hunter Valley