

**31 JAN 2006****PEABODY ENERGY AUSTRALIA COAL**

DATE RECEIVED

31 January 2006

Queensland Competition Authority  
GPO Box 2257  
BRISBANE QLD 4001

Dear Sirs

**Dalrymple Bay Coal Terminal - Revised Draft of Access Undertaking  
Submission by Peabody Energy Australia Coal Pty Ltd.**

We refer to the revised draft of the access undertaking ("Access Undertaking") for the Dalrymple Bay Coal Terminal ("DBCT").

We also refer to the submission made in response to the Access Undertaking by the DBCT User Group. As noted in that submission, some individual Users wish to make their own submission in respect of a small number of provisions. Peabody Energy Australia Coal Pty Ltd are making this submission on that basis, a user of DBCT and member of the DBCT User Group. This submission is not made on behalf of the DBCT User Group.

Peabody Energy Australia Coal Pty Ltd broadly consent to the Access Undertaking, subject to the submissions made by the DBCT User Group and the three issues outlined below. Peabody Energy Australia Coal Pty Limited supports Anglo Coal's stance on the first two issues and submit our feelings on Point 3.

**1. Establishment and management of the Queue at the Commencement Date**

Clause 5.4 of the Access Undertaking provides a protocol for DBCT Management to follow if it has before it more than one Access Application and there is or will be insufficient Available Capacity to accommodate all of the Access Applications that are before DBCT Management. We note that the protocol proposed will work once the Access Undertaking has commenced and all current requests for additional capacity are met.

However, the protocol outlined does not establish a workable process for requests for additional capacity that may be in existence at the commencement of the Access Undertaking. We understand there are currently significantly more requests for additional capacity than plans for expansion before DBCT Management. We also understand that DBCT Management has already commenced the queue for that expanded capacity, despite the Access Undertaking not having commenced.

DBCT Management has attempted to address this early establishment of a queue in clause 5.4(h) by setting a deemed date for the Access Seeker's notice at 12 noon on the twentieth Business Day after the Commencement Date. It does not address how numerous notices deemed to be received at the same time will be placed in the queue. We understand that it is likely there will be more than one request for additional capacity that will be deemed to be received at 12 noon on the twentieth Business Day after the Commencement Date.

We suggest, as a solution that would satisfy all parties, the following amendments be made to the Access Undertaking:

- (a) within 5 Business Days after the Commencement Date, DBCT Management notifies all Access Seekers that will be deemed to have given notice at 12 noon on the twentieth Business Day after the Commencement Date, that their notice will be deemed accordingly provided the Access Seeker confirms prior to that time that its notice remains valid;
- (b) all Access Seekers (being those that have confirmed its notice remains valid and any other Access Seekers giving notice on or before the day 20 Business Days after the Commencement Date) be classified as "Initial Access Seekers";
- (c) a pro-rata allocation of capacity available as at or after 20 Business Days after the Commencement Date and each additional tranche of capacity that becomes available be made to the Initial Access Seekers, until those requests for access are satisfied;
- (d) the terms of clause 5.4 in respect of executing Access Agreements and provision of security apply to this process;
- (e) if an Initial Access Seeker cannot use the pro-rated capacity allocated to it (because the allocated capacity does not permit economic development of the relevant mine), that capacity be re-distributed among the remaining Initial Access Seekers. Any Initial Access Seeker that relinquishes capacity in this manner is included in any future pro-ratings of capacity until its request for capacity is satisfied; and
- (f) the proposed Queue forms behind the Initial Access Seekers.

We believe this approach allows a fair, transparent and competitive approach to the current lack of capacity at DBCT and the potential of multiple Access Seekers being allocated the same position in the Queue (which is the current logical outcome of clause 5.4(h)(1)).

## **2. Split of Revenue**

Peabody Energy Australia Coal Pty Limited notes that the QCA in issuing its final decision allowed for a single bullet payment as the basis for calculating the annual revenue requirement. As outlined in the DBCT Users submission this matter has been the subject of negotiations between the Users and DBCT Management. In the interest of reaching a conclusion it was agreed by some Users to split the revenue difference 50:50 between the Users and DBCT Management.

Peabody Energy Australia Coal Pty Limited does not support this approach and believes that while both Users and DBCT Management acknowledge and accept the calculation anomaly, it is appropriate that the QCA take this opportunity to correct this oversight and allow the full effect of the adjustment to be reflected in favour of the Users.

3. Schedule 2, Part B, Clause 3 gives a method for calculation of an excess charge for users shipping at more than 110% of contract. Peabody Energy Australia Coal Pty Limited believes that this is a foolish imposition to allowing the Terminal to achieve its maximum throughput by penalising those that are able to make up shipments when others are unable to meet their commitments. This is a disincentive to those users who can quickly get shipments to meet shortfalls by others who have problems.

This will ultimately mean that the Terminal will not achieve its monthly capacities and as the annual tonnage will be lower than capacity less revenue will be generated.

Yours faithfully

  
Ian S Craig  
Managing Director