

Rio Tinto

GLENCORE

Peabody
ENERGY

Friday, 17 February 2017

Professor Roy Green
Chair
Queensland Competition Authority
PO Box 2257
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pacific national



Dear Professor Green

Pacific National and Dalrymple Bay Coal Chain Coordinator Submission on Take or Pay Pooling¹

The purpose of this joint submission is to present to the Queensland Competition Authority (QCA) an alternative Take or Pay pooling mechanism for consideration as part of their 2017 Draft Access Undertaking (2017 DAU) final decision.

About the Dalrymple Bay Coal Chain Coordinator (DCCC)

In February 2014, Rio Tinto Coal Australia (Rio Tinto), Peabody Energy (Peabody) and Pacific National (PN) lodged an application to the ACCC seeking authorisation to coordinate coal transportation arrangements through the Dalrymple Bay Coal Terminal (DBCT). On 21 August 2014 the ACCC granted an authorisation to allow the parties to coordinate operational arrangements until 12 September 2019². A DCCC members' agreement and charter was implemented, which involves appointing a coordinator (currently PN) to act on behalf of all members in submitting orders to the port and the below rail operator. Membership is open to all producers and above-rail users of the DBCT. Initial members included Rio Tinto, Peabody and PN with Glencore subsequently joining (DCCC Members).

The initial goal of the DCCC was to seek greater throughput and efficiencies by reducing scheduling losses arising from inefficient interfaces between different components of the coal supply system being rail track infrastructure, train operators, port infrastructure and coal producers. A key foundation for achieving greater throughput and efficiency is the promotion of a process that enables a free flow of constrained rail track capacity and the associated commercial arrangements in a timely manner for Access Holders whilst at the same time increasing system throughput in the Goonyella coal system. This would be conducted without placing any unnecessary risks or costs on other Access Holders. The DCCC Members believe the alternative Take or Pay pooling mechanism as presented in this submission can further support and realise greater throughput and efficiencies in the Goonyella coal system.

¹ Capitalised terms, unless otherwise defined in this letter, have meaning as given to those terms in the Aurizon Network 2014 Access Undertaking.

² See ACCC Determination A91410-91411.

Background on Take or Pay Arrangements

Current Take or Pay arrangements in Access Agreements, whether they are executed under UT1, UT2, UT3 or UT4, are assessed on a specific 'origin to destination' pairing. This means that if an Access Holder operates in excess of their annual Train Service Entitlements (TSE) the excess TSEs can only be used to offset the Take or Pay liability of Train Service Entitlements with the exact same origin to destination pairing. Whilst this benefits Access Holders who have Access Rights with the same origin to destination pairing in one or more Access Agreements it does not serve any benefit or provide any flexibility beyond this. To illustrate the current restrictions a simplified example³ of the current Take or Pay arrangements is presented below.

Example 1 – Current Take or Pay Arrangements when System Take or Pay is Triggered

Origin-Destination	Contracted TSE	Actual TSE	Variance	Subject to Take or Pay
Mine A – Port 1	200	240	+40	No
Mine B – Port 2	200	160	-40	Yes
System Total	400	400	0	Yes

In the above example, Access Holder of Mine A – Port 1 operated 40 train services above their contracted TSE and will not be subject to Take or Pay for the year, whereas, the Access Holder of Mine B – Port 2 will be subject to Take or Pay for under-utilising their contracted TSEs by 40 train services even though the total contracted TSEs for the system was met. As per clause 3.3 of Schedule F of the 2014 Access Undertaking, Take or Pay is triggered for a system where the system gross tonne kilometres (Gtk) is less than the system forecast Gtk for the year and when Take or Pay is triggered for a system, Access Holders within that system are subject to Take or Pay liability for TSEs that they did not operate in that year. Note this is on the assumption that the revenue cap for that system was also not met.

As demonstrated by the above example, the current Take or Pay arrangements are restrictive and do not facilitate the efficient use of Access Rights. An alternative Take or Pay mechanism needs to be established to create more flexibility in the utilisation of Access Rights, which is presented in the following section.

Proposed Alternative Take or Pay Pooling Mechanism

DCCC Members seek to implement an alternative Take or Pay pooling mechanism which will facilitate more flexible and efficient use of Access Rights. Under the proposal, excess TSEs from one origin to destination pairing in an Access Agreement can be used to offset under utilised TSEs from a different origin to destination pairing. That is, any additional train services for one origin to destination pairing can be used to offset the Take or Pay liability of a different origin to destination pairing that has under-utilised its TSEs during the year.

³ The example does not account for Aurizon Network Causes, FM events and revenue recovery capping that Aurizon Network is subject to under a normal situation. It also assumes that all TSEs within the system is managed under one single access agreement which would not be the case under a normal situation. The example is presented for illustrative purposes only.

Building on Example 1, an illustrative example of this is presented below.

Example 2 – Proposed Take or Pay Arrangement when System Take or Pay is Triggered

Origin-Destination	Contracted TSE	Actual TSE	Variance	Take or Pay Offset	Variance	Subject to Take or Pay
Mine A – Port 1	200	240	+40	-40 (to Mine B – Port 2)	0	No
Mine B – Port 2	200	160	-40	+40 (from Mine A – Port 1)	0	No
System Total	400	400	0	-	0	Yes

As presented in Example 2, the ability to use excess train services from one origin to destination pairing to offset the Take or Pay liability of a different origin to destination pairing within the same Access Agreement would facilitate more flexible and efficient use of Access Rights. The excess TSEs from Mine A – Port 1 are used to offset the under-utilised TSEs of Mine B – Port 2 resulting in no Take or Pay being applicable to either of these origin to destination pairings.

With this approach Access Holders would be encouraged to work together to maximise system throughput in any given year which then reduces the Take or Pay liability borne by all users in the system under a socialised revenue cap regime. In addition it should be recognised that Aurizon Network still have the ability to recover the difference between System Allowable Revenue and Total Actual Revenue, thus they would not incur any financial disadvantage under this arrangement.

No Adverse Impact on Other Users and Aurizon Network

It is also proposed that the alternative Take or Pay pooling mechanism be managed by Access Agreements. That is, Take or Pay offsets between different origin to destination pairings are only allowed and managed within the Access Agreement that those origin to destination pairings are held (ie; within a single access agreement). This will allow any Take or Pay variances as a result of the Take or Pay pooling mechanism to be managed and confined within an Access Agreement where any Take or Pay liability variances are borne fairly amongst the beneficial holders of the Access Rights under that Access Agreement. This will ensure that system users, who choose not to adopt the Take or Pay pooling arrangement, are not impacted in any adverse way by those that do adopt the Take or Pay pooling arrangements. We believe this matter is particularly important as we do not wish this proposal to adversely impact on other rail network users.

It is also worth noting that any Take or Pay variances as a result of this Take or Pay pooling arrangement are expected to be minimal as of the three Take or Pay tariff components (i.e. AT2, AT3 and AT4) only AT3 is based on distance. AT2 and AT4 are levied on the train path and the net tonnes respectively meaning that there will be no difference in the revenue collected from these tariff components by Aurizon Network when compared to the current Take or Pay arrangements. This assumes a reference train consist is adopted for the train services of both the mine using more than its contracted TSEs and the mine using less than its contracted TSEs. Therefore it is expected that any Take or Pay variances will primarily occur in the Take or Pay collected by Aurizon Network from the AT3 Take or Pay component as it is levied on gross tonnes kilometres (e.g. the variance is due to the

difference in distance when a shorter haul offsets the Take or Pay of a longer haul). DCCC Members believe that the benefits gained by the implementation of this Take or Pay pooling mechanism would far outweigh this variation, and furthermore any such Take or Pay variances would be borne by the relevant Access Holders of the Access Agreement which Take or Pay pooling mechanism applies.

In considering this matter it should be recognised that it is just as likely that a longer haul offsets the Take or Pay of a shorter haul.

This issue aside, it is worthwhile noting that the same result can be achieved with a series of short term transfers throughout the year (ie; by year-end the take or pay position would be the same by adopting either the proposed take or pay pooling mechanism or short term transfers). The take or pay pooling mechanism aims to achieve the same result of short term transfers in a more efficient manner via a true-up at year end. The key benefit of the take or pay pooling mechanism reduces the administrative burden of having to conduct various short term transfers throughout the year. Instead, it allows the take or pay to be trued- up at the end of the year between origin – destination pairings.

The Take or Pay Pooling Mechanism is Supported by Schedule G's Scheduling Principles

The proposed alternative Take or Pay pooling mechanism is also supported by the current scheduling principles outlined in Schedule G, clause 8.3 of the current 2014 Access Undertaking. These principles allow an Access Holder to submit train orders for less than its TSEs for a particular origin to destination pairing and also submit train orders for a different origin to destination pairing in excess of its TSEs. This under / over ordering process in the scheduling environment is a precursor to the proposed Take or Pay pooling arrangement where Take or Pay offsetting is allowed between different origin to destination pairings. Access Holders would be encouraged to managed their Access Rights more efficiently by using this existing under / over ordering process (assuming under and over orders are offset). Additionally an Access Holder would have the ability to manage their Access Rights held within an Access Agreement more flexibly as a portfolio rather than in its separate 'origin to destination' pairs, which is inefficient.

Aurizon Network's Short Term Transfer Mechanism

DCCC Members believe that Schedule G of the 2014 Access Undertaking provides the basis for a mechanism which can facilitate short term transfers in a more streamline manner. Whist there has been significant improvements to the timeframe for Aurizon Network to confirm that a transfer has been reduced, the short term transfer process under clause 7.4.2 of the 2014 Access Undertaking remains overly cumbersome and resource intensive. It still contains overly complicated, time consuming and obscure procedures that are not necessary for a short term transfers to take effect. Because of this, the efficiency benefits that the short term transfer mechanism seek to achieve are eroded. Each and every time a short term transfer is required, the access process needs to be applied. The short term transfer mechanism has come a long way in improvements but still restricts the flexible usage of Access Rights and in many ways inhibits an Access Holder from using their Access

Rights more freely and efficiently.

DCCC Members believe the 2014 Access Undertaking contain an existing mechanism for short term transfers under Schedule G of the 2014 Access Undertaking. In particular, clause 8.3 of Schedule G of the 2014 Access Undertaking contains a contested train path principles process under clause (a) (iii) (A) and (B):

- A) *an Access Holder submits Train Orders for less than its Train Service Entitlement for a particular origin to destination pair for a Relevant Period (**First Entitlement**); and*
- B) *that Access Holder also submits Train Orders for a different Train Service Entitlement for a particular origin to destination pair for a Relevant Period in excess of its Train Service Entitlement for that origin destination pair (**Second Entitlement**),*

then the path will be allocated to the Second Entitlement in the manner requested by the Access Holder, and that allocation will be deemed to be scheduled and operated against the First Entitlement.

Under this existing mechanism Access Holders can under order on one set of TSEs (ie; one origin to destination pairing) and over order on another set of TSEs (ie; another different origin to destination pairing) thus allowing an operational transfer that occurs during the normal weekly scheduling process.

Conclusion

DCCC Members strongly support the alternative Take or Pay pooling mechanism as proposed in this submission. In summary, we seek that the QCA consider the proposed mechanism as part of the Aurizon Network 2017 DAU regulatory process.

In the event that this is not possible to approve the proposed mechanism as part of the 2017 DAU regulatory process DCCC Members urge the QCA and Aurizon Network to further consider the matter during the course of UT5 and ideally seek to introduce the issue into UT5 via a draft amending access undertaking. The alternative Take or Pay pooling mechanism being proposed consists of the following fundamental principles.

- a) Excess TSEs from one origin to destination pairing should be able to be used to offset and reduce the Take or Pay liability of a different origin to destination pairing;
- b) The alternative Take or Pay pooling mechanism is to be managed and confined by Access Agreements so that other system users that choose not to adopt this alternative Take or Pay pooling mechanism are not adversely impacted; and
- c) The Take or Pay pooling mechanism will support the current scheduling principles outlined in Schedule G of the 2014 Access Undertaking that encourage more flexible and efficient use of an Access Holder's Access Rights.

We seek that the QCA support this proposal.

If you wish to discuss this submission further please contact Ying Yeung on 07 3002 3726 in the first instance or alternatively either of us.

Yours faithfully,



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