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12th February 2018

Charles Milsteed
Chief Executive Officer
Queensland Competition Authority
Level 27
145 Ann Street
Brisbane City QLD 4000

Dear Mr Milsteed

Queensland Rail - Proposed QCA Levy 2017-18

Thank you for the opportunity to provide a submission regarding Queensland Rail's (***QR's***) submission seeking approval of the Queensland Competition Authority (***QCA***) Levy for 2017-18.

The proposed increase in the QCA Levy component of West Moreton network reference tariffs (including the retrospective adjustment component) is of concern to Yancoal, as manager of the Cameby Downs mine, both at a principled level and an economic one.

There are two primary issues with QR's proposed increases to the QCA Levy to be charged to West Moreton coal users:

1. The actual QCA fees incurred over the periods in question were exacerbated by QR's approach to the development of the now approved undertaking. It is inappropriate that QR is held harmless from those costs impacts – and rather appropriate that QR contribute to the costs through only part of the amounts levied by the QCA being passed through to customers; and

2. QR has not produced sufficient evidence to support the appropriateness of the proposed increase in the proportion of costs allocated to West Moreton coal traffics – with Yancoal having concerns with both the principles used to justify the allocations and what appears to be an inconsistent application of those principles in determining the allocations proposed.

Accordingly, we request that the QCA refuse to approve QR's proposal and, taking those issues into account, set the QCA Levy (and allocations between traffic types) for West Moreton coal traffics at a reduced and more appropriate level.

QR should not be entitled to full pass through of QCA fees for the periods 2014-15 and 2015-16:

Cause of additional costs

The QCA fee framework is set out in the Queensland Competition Authority Act ***(the Act)*** and in the Queensland Competition Authority Regulation (***the Regulation***), which entitles the QCA to recover payment of its reasonable costs for providing a service or performing a function set out in Schedule 1 of the Regulation.

While Yancoal does not have visibility of the fees collected by QR from all its customers, Yancoal does not doubt that the fees paid by QR to the QCA are more than the QCA Levy amounts that QR has received from its customers.

However, Yancoal considers that the excessive increases in costs incurred by the QCA for the periods 2010-11 to 2016-17 from those initially estimated by the QCA was not caused by poor estimated by the QCA. Rather it was principally caused by QR's approach to the development of the current undertaking.

During the drafting process, QR withdrew numerous draft access undertakings, and strategically changed its position on material issues (both from the previous undertaking and during the undertaking process itself).

Upon receipt of each draft, or each amended draft, the QCA took steps to progress review of the submission. On each of these occasions, the QCA incurred costs, much of which had to duplicated (or at least updated) again later in the QCA's consideration process. It is that additional work which is presumably reflected in the material discrepancy between the reasonable estimate of fees provided by the QCA for the periods 2014-15 and 2015-16 and the fees actually incurred.

QCA is not compelled (and should not provide) a pass through of all fees levied

Yancoal, as a user, is not able to control or mitigate the costs incurred by the QCA in a regulatory process. Rather, users (as the entities which pay the QCA Levy) are vulnerable to how QR determines to conduct itself in respect of the regulatory process, and can only respond in submissions.

Yancoal has no reason to doubt that the reasonable costs estimated by QCA for the periods 2014-15 and 2015-16 were probably a reasonable forecast for the reasonable costs that ought to have been incurred during those periods.

Importantly, given the cause of the additional costs described above, Yancoal considers that the legislative framework which allows the QCA to recover its reasonable costs incurred does not *require* that those costs be passed on to users in full.

The approved access undertaking does not include any provision which requires the QCA to approve a complete pass-through of these costs to users. Clause 3.7 only indicates that the QCA Levy is *'based on'* the fees levied by the QCA (which is not the same as equal to or to provide for complete recovery of) and that the fees are to be allocated 'in a manner approved by the QCA' (which suggests clear discretion on the QCA's part).

The QCA Fee Framework 2016-17 provides that 'all fees charged in respect of general regulatory services or functions *will be eligible* for pass-through to customers, via a QCA Levy, wherever the QCA has responsibility for these pass-throughs', while recognising that 'approval of a QCA Levy is the subject of a separate approval process triggered by an application from the regulated entity concerned.'

That is, the Fee Framework simply reiterates that costs levied on QR by the QCA are *eligible* for pass-through to users and that the QCA is empowered to exercise its discretion in determining whether it is appropriate for the QCA Levy to reflect all, or part, of any such eligible fees.

The QCA's discretion is the sole means of protecting users from wayward conduct of a regulated entity in carrying out its regulatory processes, and it is appropriate to exercise that discretion in this context to not approve a full pass through to QR's customers.

Inappropriate weighting of fee allocation:

Western System coal tariffs

QR has attempted to rationalise a near doubling of the fee allocation in 2013-14 (33.5%), being the proposed 63.8% in 2014-15 and 65.6% in 2015-16; and for the substantial increase in the periods 2016-17 (48.3%) and 2017-18 (45.7%), on the basis that consideration of the Western System coal tariffs was 'one of the most significant drivers of the costs underpinning the QCA Fee for the 2014-15 and 2015-16'.

That is not adequate substantiation for such excessive increases given that the QCA's prolonged consideration of the Western System coal tariffs was due to QR's approach on tariff issues, including:

- seeking Weighted Average Cost of Capital parameters which were largely inconsistent with the approach taken by the QCA and other economic regulators;
- altering its position on the payment of an adjustment amount late in the process; and
- seeking to alter aspects of the approach to tariffs which had formed part of the previous access undertaking decision.

Additionally, the costs incurred by the QCA in revising the Western System coal tariffs during the last undertaking process do not reflect the proportion of costs which are likely to be referrable to that matter in the future. The higher proportion of consideration afforded to that matter was a feature of this being QR's first independent access undertaking since the division from Aurizon Network, and the approach by QR described above.

Now that the QCA's deliberation of this matter has been finalised, consideration of the next undertaking will occur with existing knowledge of the QCA's views such that the future reasonable costs of the QCA attributable to coal, and the appropriate percentage recovery from West Moreton coal users, should reduce further than that proposed by QR.

Issues in the application of the 'beneficiary pays' principle

QR's submission on the appropriate allocation between traffics is principally sought to be justified by the 'beneficiary pays' principle, yet proposes to exempt users who benefit from the undertaking on the basis that those users operate services (grain and general freight) and on networks (South West, West and Central West Networks).

These users nevertheless benefit from the existence of the undertaking and nearly all the non-reference tariff rights in it. Yancoal considers that it is not consistent with the 'beneficiary pays' principle that QR relies on that despite these substantial benefits, QR has proposed to exempt these users from the fee allocation.

In any case, whether a pure 'beneficiary pays' principle is an appropriate methodology for fee allocation is questionable both considering the above and given that users (including Yancoal) are beneficiaries of the QCA's services, but are not able to materially influence the demands placed upon the QCA as regulator.

Whilst Yancoal is not able to determine an appropriate fee allocation methodology, it considers QR's current proposed allocation to West Moreton coal users is excessive, and that proportions in the range that have previously applied would be more appropriate.

If you have any queries in relation to this submission, please do not hesitate to contact me.

Yours sincerely

Mike Dodd
GM Infrastructure
Yancoal Australia Limited