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13th July 2012

Mr John Hall
Chief Executive Officer
Queensland Competition Authority
GPO Box 2257
Brisbane Qld 4001

Dear Mr Hall

**Peabody Energy Australia Pty Ltd Submission to the Queensland
Competition Authority – Queensland Rail’s Draft Access Undertaking 1.**

In response to the Queensland Competition Authority’s request for submissions in relation to Queensland Rail’s Draft Access Undertaking 1, we enclose Peabody’s submission.

If you have any questions in relation to this submission please contact me on (07) 3333 5628

Regards



Mark Smith
Manager - Infrastructure

Contents

1. Introduction
2. Peabody
 - 2.1. Introduction of Peabody
 - 2.2. Position of Peabody
3. System Master Planning
4. Commercial Operation of the DAU
 - 4.1. Extensions to the Network
 - 4.2. Negotiation Framework
 - 4.3. Contract Certainty
5. Obligation to Maintain the Network
6. System Reference Tariff's
7. Standard Access Agreements
 - 7.1. Access Agreement and End User Relationship
 - 7.2. Reduction of Access Rights
8. Management of Information on QRail's Website
9. Summary

1. Introduction

In March 2012, Queensland Rail ("QRail") submitted to the Queensland Competition Authority ("QCA") the Draft Access Undertaking 1 ("DAU") which is the first undertaking submitted by QRail following the separation from the former QR Ltd. This DAU seeks to replace the 2008 Undertaking to which QRail presently operates and allows for the provision of an undertaking that reflects the commercial and operational environment with which QRail now operates.

Peabody Energy Australia Pty Ltd ("Peabody") as owner of the Wilkie Creek Coal Mine ("Wilkie") is a user of the West Moreton System to which this DAU relates, and accordingly Peabody welcomes the opportunity to submit this submission in response to the proposed DAU.

2. Peabody

2.1. Introduction of Peabody

Peabody Energy Australia Pty Ltd ("Peabody") through its existing operations and recent acquisition of Macarthur Coal owns 11 coal mines in Australia with a total export capacity of over 30 Million tonnes per annum. Of these 11 operations, 1 operation, the Wilkie Creek Coal Mine is located on the West Moreton System ("WMS") and exports coal via the Queensland Bulk Handling ("QBH") facility at the Port of Brisbane.

2.2. Position of Peabody

Peabody welcomes the submission by Queensland Rail of their Draft Access Undertaking as a first step to become unconstrained by the current Undertaking that is primarily for Access in relation to the central Queensland coal region. The Draft Queensland Rail Access Undertaking is positive in terms of the principles based approach to which it seeks to adopt and Peabody agrees in principle with this approach given that this DAU covers the WMS as well as various other non-coal supply chains. However, as there are items which require further discussion and evaluation to ensure that this Undertaking is able to operate effectively and continue to operate into the future, the DAU as presented in its present form should not be approved.

Peabody's interests in the context of this DAU are presently constrained to the West Moreton System. This submission is aimed at addressing the issues of the Draft Queensland Rail Access Undertaking 1 ("DAU") in the context of the West Moreton System ("WMS").

3. System master planning

Peabody considers the WMS to be a constrained supply chain as there is presently limited Available Capacity to satisfy the future requirements of all existing and potential future users growth plans for coal export on the WMS.

Peabody considers that one of the key fundamentals for any supply chain is the ability to determine the capacity of that supply chain. Within the WMC, Peabody considers it essential that Queensland Rail consider the addition of a requirement to conduct a

System Master Plan to quantify the existing capacity of the WMS and capacity expansion options to facilitate network growth.

The benefits of a transparent System Master Plan are that it is able to determine a base line of capacity presently available, options for expansion (subject to commercial terms) and interaction with the Passenger Network. A System Master Plan outlines potential growth scenario's that may conflict, compete or compliment the Coal and other services on the WMC and without the existence of a transparent System Master Plan, Peabody deems that Available Capacity and any subsequent Capacity Analysis will be determined on an arbitrarily inefficient basis as it may be done in isolation or linked to incorrect strategies and without transparency and proper review.

As an example; In the West Moreton System, Passenger Trains maintain priority at all times and over a period of time there may be a requirement to increase the services made available to the general public. The consequence of these actions or proposed actions to the coal and non-coal users of the WMS is the lack of long term certainty that may be created, and the lack of available options in relation to potential expansion. A Transparent System Master Plan, however would provide a base line of capacity for current certainty, options and scenario's for expansion or impact from Passenger Train expansion as well as providing QRail the ability to make more informed decisions about the direction of the network.

Peabody believes that System Master Planning should be incorporated into Part 4 Network Management Principles of DAU and subsequently in reference to Available Capacity and Capacity Analysis with reference to the operation of the WMS. Peabody also believes that the initial System Master Plan should be completed as early as possible to complement the finalization of the undertaking and updated as required on an annual basis to ensure continuity with the Network Management Principles contained in Schedule B of the DAU.

4. Commercial Operation of the DAU

4.1. Extensions to the Network

Section 1.4 of the DAU details circumstances surrounding the extension of the Network. Principally QRail seeks to maintain absolute discretion to fund an extension; however where an Access Seeker agrees to fund an Extension, QRail is obliged to construct but bears no cost or risk in relation to the provision of the Extension.

Peabody considers that while the DAU covers a range of supply chains and there may be the opportunity to find a commercially viable outcome in which QRail will fund an Extension, it is appropriate to provide risk mitigation strategies and appropriate alternatives to those Access Seekers that are willing to or have to provide financial commitment for a Network Extension to be completed.

Appropriate inclusions to Section 1.4 of the undertaking would be the ability of an end user financial provider to employ an independent project manager or management team to ensure that QRail is undertaking an Extension in the most efficient and prudent manner.

In addition, and depending on the scope and type of project being funded, the end user should have the ability to construct the Extension with appropriate QRail supervision to

ensure the Extension is able to be connected to the Network and ultimately handed over to QRail for ongoing management and support.

QRail should not be able to dictate that it must construct each Extension and subsequently, where QRail constructs the Extension with end user financial capacity it should bear risk for issues of negligence and/or non-delivery of an Extension within a commercial agreeable timeframe.

Peabody proposes that QRail consider the inclusion of a voluntary investment framework to outline the types and scale of investment scenarios' that may be funded by QRail and those that may be required to be funded by end user's. Incorporated into this investment framework would be the addition of a commercial framework for both QRail and user funded options in support of Network growth.

To support this outcome, Peabody is willing to working with QRail to develop an appropriate outcome.

4.2. Negotiation framework of the DAU

Part 2 of the DAU deals with the provision of Access to the Network, and as with the structure of the DAU appears to be constructed to allow for commercial negotiation to facilitate access to a Network that covers both coal and non-coal commodities.

Peabody considers in relation to the WMS which it presently deems as a constrained supply chain, that additional mechanisms are put in place to ensure that all users are able to participate, if appropriate, in any potential expansion of capacity in the network. While the terms 'Willing and Able' in the undertaking represent strong commercial signals to users with the greatest financial ability to compensate QRail for Access, this does not create an open and transparent environment to which all users within the WMS operate.

Peabody submits that Part 2 of the undertaking should be expanded to include provisions of transparency, such that in the absence of a queuing mechanism, where one party formally lodges a request for Access that all other parties (expanding and potential) are aware that a request has been made and are afforded a reasonable time frame to lodge respective Access Requests.

While this may lead to continual cycles of Access Seekers, Peabody believes that with the addition of the System Master Plan, and a transparent Access process, that all expanding and potential Access Seekers are aware of the available capacity, and subject to network exit capability (port capacity relevant for exporting users), can enter into commercial negotiations accordingly, however not in complete secrecy, that this would seek to create a fair and reasonable process while maintaining the commercial process proposed in this DAU.

4.3. Contract Certainty

Peabody notes that in relation to the DAU and Draft Access Agreement that there are no clear provisions for contract certainty and contract renewal.

With particular reference to the WMS, it is understood that there is the existence of Passenger Priority, however there needs to be a clear commitment that Access can be maintained for the term of any agreement entered into, and subject to Passenger Priority there exist clear rights for renewal.

It is important in this regard to consider Master Planning and Extensions to the network to ensure that certainty is achievable on a constrained network where issues such as Passenger Priority coexist.

5. Obligation to Maintain the Network

Peabody considers that QRail should incorporate a specific obligation into the DAU to maintain the Network to sufficient standard to allow continued safe operation of the Network and sufficient Capacity to support the Access Agreements in place at any time.

6. System Reference Tariff's

Peabody in principle supports the position of the delay to the Review of Reference Tariff's prior to 30 June 2013 as it allows sufficient time for the principles of the DAU to be finalized prior to an industry specific review of the determination of reference prices for the West Moreton System.

7. Standard Access Agreement

7.1. Access Agreement and End User Relationship

As noted in the QCA Issues Paper on the DAU dated April 2012, the Standard Access Agreement submitted only applies to an Access Holder that is the rolling stock operator for the Train Services required.

Peabody submits, that given the commercial nature of the undertaking is largely directed at the end user of access, that QRail should amend the Access Holder Agreement to ensure that access can be held by the end user but operated by an approved Rail Transport Operator.

In relation to the West Moreton System, some of the circumstances where this would be desirable is where an Extension has been funded by an end user and that end user would like the quantifiable rights of capacity associated with that Extension, or when an Extension has been funded and an appropriate Rail Transport Operator has not been selected, or to allow a quantifiable right to access but continue to allow an approved Rail Transport Operator to manage those rights on the end users behalf.

Peabody deems that changes will be necessary to incorporate the end user of access due to the scope of the system, potential Extensions that may occur in the future and the open market for Rail Transport Operators.

7.2. Reduction of Access Rights

The Reduction of Access Rights outlined in Section 19.1 is not acceptable to Peabody due to the lack of consultation and review of any underutilized Access and the review assumptions proposed are not compatible with WMS operations.

Peabody notes that any potential reduction in Access Rights has to be handled in a reasonable commercial manner to ensure that the holder or end user of Access Rights has had the opportunity to facilitate the use of the Access Rights and can demonstrate the requirement to maintain the contracted level of Access Rights.

8. Management of information on QRail's Website

Peabody is supportive of the ability of QRail to reduce administrative overheads and reduce the complexity of the DAU by placing items such as network diagrams on its website; however, QRail must ensure that all users and potential users of the network are able to be alerted to any change or amendment to those items placed on the network and where there is a material change to an item that will cause among other things a review of safety interface practices that QRail consult with affected customers and end users prior to any formal amendment.

9. Summary

The QRail DAU as submitted is a positive step forward for QRail to provide an appropriate undertaking to support the environment for which QRail operates. While Peabody generally supports the principles based approach of the DAU, the DAU as presented should not be approved as there are specific areas of concern that would need to be addressed such as;

- The inclusion of a System Master Plan to outline capacity and options for capacity;
- Additional options and risk mitigation strategies in the development of options for Network Extensions;
- Increased Transparency in the negotiation of Access to the Network;
- Revision of the Access Agreement to support the end user contracting the Access Rights with an approved Rail Transport Operator managing those rights accordingly;
- Increased information management and awareness for items no longer referred to in the undertaking but where that information can have impact to a end users or Access Holders operation;
- And a review of the methods under which Access Rights may be reduced by QRail.

While Peabody does not support the DAU as submitted it remains committed to working with QRail to ensure that an appropriate outcome is reached in a reasonable period.