Australian Competition and Consumer Commission

Consultation Paper

in relation to Australian Rail Track Corporation's application to vary the Hunter Valley Access Undertaking – non-TUT-related performance incentive mechanism

4 September 2012

Contents

1 Introduction

The Australian Rail Track Corporation Limited (**ARTC**) has submitted a request to the Australian Competition and Consumer Commission (**ACCC**) to vary the Hunter Valley Access Undertaking that was accepted by the ACCC on 29 June 2011 (**the June 2011 HVAU**).

On 3 August 2012, ARTC formally submitted its proposed variation (**the Proposed Variation**) in accordance with subsection 44ZZA(7) of the *Competition and Consumer Act 2010* (Cth) (**the Act**), which allows an access provider to vary an accepted access undertaking with the consent of the ACCC. Should the ACCC consent to the variation, the Proposed Variation will vary the June 2011 HVAU in effect for the Hunter Valley Rail Network.

The Proposed Variation has been submitted by ARTC in order to comply with section 13.3 of the June 2011 HVAU. This application is the first of two potential variations that are envisaged under the June 2011 HVAU that relate to the development and inclusion of a positive performance incentive mechanism.

The current variation seeks to include a performance incentive scheme which 'has the objectives of encouraging ARTC, through financial reward, to improve operating, maintenance and capital expenditure efficiency, and achieve desirable safety performance' (**non-True Up Test (TUT) related performance incentives**).[1]

The subsequent variation will be developed in accordance with section 13.5 of the HVAU, after two full calendar years following commencement of the June 2011 HVAU. The HVAU requires that this variation will 'have the objectives 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 related performance incentives**).[2]

Details of the proposed non-TUT related performance incentives variation are discussed in section 2 of this Consultation Paper.

The ACCC is conducting a public consultation as part of its assessment of the Proposed Variation, and seeks submissions from interested parties by **2 October 2012**.

1.1 Proposed effect of the application

The following key amendments will be made to the June 2011 HVAU if the ACCC accepts ARTC's Proposed Variation:

- The Additional Capacity Investment Innovation Incentive (ACIII), designed to incentivise ARTC to implement projects that provide additional capacity as a

[1] Subsection 13.3(a)(i) of the June 2011 HVAU.
[2] Subsection 13.5(a)(i) of the June 2011 HVAU.

result of innovation rather than from capital expenditure on infrastructure, will be incorporated into section 2.2 of Schedule D of the June 2011 HVAU.

- To give effect to the ACIII:

  - Section 9 of the June 2011 HVAU will be varied to give the Rail Capacity Group (RCG) the ability to approve amounts under the ACIII as part of the project endorsement process.

  - Section 4 of the June 2011 HVAU will be varied to include the ACIII amount as a positive increment to the formulae for the determination of the regulatory asset base (RAB) and RAB floor limit. ARTC will receive an incentive payment in relation to the ACIII 'over the economic life of the Additional Capacity'.

- Schedule 5 of the Indicative Access Holder Agreement (IAHA) (at Annexure A to the HVAU) will be varied to set out the mechanics of determining the three Positive Performance Incentive Scheme (PPIS) Metrics. The metrics that will be included are:

  - PPIS Metric 1 is a measure of Coal Chain Losses caused by ARTC. This metric measures the percentage of paths (expressed in terms of tonnage) unavailable or cancelled due to ARTC cause with reference to total system planned tonnage.

  - PPIS Metric 2 is a measure of the impact of temporary speed restrictions on transit time measured by the minutes of transit time lost on the Network resulting from the imposition of these restrictions for a quarter.

  - PPIS Metric 3 is a measure of track quality index, which is an industry standard measure of average geometric alignment of the track across four perspectives.

- With regard to each of the three metrics, Schedule 5 will be varied to include:

  - a requirement that ARTC determine and issue reports, on a quarterly basis, in relation to PPIS metrics 1 to 3 and aggregate quarterly incentive amounts;

  - a definition of the metric and the mechanism for its calculation, target value and upper performance bound, and cap as to the incentive amount for each quarter; and

  - an annual determination at the end of the contract year of the total incentive amount for that year.

- New clause 5.4A will be included in the IAHA which sets out the mechanism by which the annual incentive amount the Access Holder is required to pay is determined. This clause will also include a dispute resolution provision in relation to calculation of the amount owed, and sets out that revenue obtained under the PPIS will not be included as revenue for the purpose of annual compliance.

- The June 2011 HVAU will also be varied to include: the PPIS Schedule in the IAHA as a Tier 1 provision in Schedule A:1; a reporting and review mechanism in relation to the PPIS metrics in sections 13.3 and 13.5; and a requirement in Schedule G that ARTC provide relevant information as part of annual compliance.

1.2 Background

1.2.1 Industry context

ARTC is a Commonwealth Government owned corporation, established in 1998 for the purpose of managing and providing access to the National Interstate Rail Network. ARTC is vertically separated, providing ‘below-rail’ track access services and not ‘above rail’ services such as haulage. The Interstate Rail Network is subject to an access undertaking accepted by the ACCC on 30 July 2008.[3]

The June 2011 HVAU regulates access to the Hunter Valley Rail Network operated by ARTC in New South Wales. ARTC leases the network from the New South Wales government under a 60 year lease granted on 5 September 2004.

The Hunter Valley rail network is predominantly used to transport coal from mines in the Hunter Valley region to the Port of Newcastle for export. Approximately 16 coal producers have either existing or planned operations in the region, and it has been estimated that the coal shipped on the network equates to around $9 billion worth of export earnings per annum.

Capacity management arrangements at the export coal loading terminals at the Port of Newcastle were authorised by the ACCC in December 2009, with the aim of improving overall supply chain performance and reducing ship queues forming off the coast of Newcastle. The aligned interaction between the rail network access undertaking and the authorised capacity arrangements at the port was a key issue during the assessment of the June 2011 and previous versions of the HVAU.

The Hunter Valley rail network is also used by non-coal traffic, including general and bulk freight services (such as grain) and passenger services. It is also used to ship coal from the region’s mines to domestic customers, such as power stations.

The Hunter Valley rail network was previously subject to an access regime administered by the NSW Independent Pricing and Regulatory Tribunal, but as a consequence of the decision to accept the June 2011 HVAU, access regulation is now governed by the ACCC and the HVAU.

1.2.2 The June 2011 HVAU

ARTC submitted the June 2011 HVAU to the ACCC on 23 June 2011 for assessment under Part IIIA of the Act.

Prior to that time ARTC had submitted to the ACCC two formal access undertaking applications in relation to the Hunter Valley Rail Network, one in April 2009 and

[3] See the ACCC website at http://www.accc.gov.au/content/index.phtml/itemId/789738 for further details.

another in September 2010. The ACCC considered that those applications were not appropriate to accept, and provided ARTC with extensive feedback on how those applications could be revised such that they would be likely to be accepted. The ACCC also conducted extensive consultation with stakeholders in relation to those prior applications.

The June 2011 HVAU incorporated revisions to accommodate the ACCC's views from those previous assessments. Accordingly, on 29 June 2011 the ACCC accepted the 2011 HVAU pursuant to subsection 44ZZA(3) of the Act.

1.2.3 Background to development of the performance incentive variations

Under the June 2011 HVAU, the sole mechanism by which ARTC is held accountable for its performance under contract – namely any failure to deliver contracted path usages – is under the TUT.[4]

The system-wide TUT is designed to incentivise ARTC to provide the path usages it has contracted to supply. Failure by ARTC to perform in a number of areas can result in negative financial consequences under the TUT. Such areas include: exceeding planned maintenance outages; over-contracting scheduled paths to coal or non-coal customers; selling ad-hoc capacity to coal or non-coal customers at the risk of not delivering contracted capacity, and under-maintaining the network.

During its assessment of the HVAU, the ACCC expressed concerns that the negative incentives within the June 2011 HVAU may result in ARTC adopting a minimum risk position in relation to its performance.

Coal stakeholders were supportive of the concept of ARTC having positive (i.e. reward-based, rather than penalty-based) incentives to perform under the HVAU, which would deliver better outcomes for the coal supply chain. The ACCC considered that it would be appropriate to accept the HVAU without an incentive scheme, provided that a suitable proposal would be developed in consultation with stakeholders and proposed for inclusion in the HVAU within an appropriate timeframe.

The June 2011 HVAU therefore requires the development of both TUT performance incentives and non TUT performance incentives. These proposed variations are related and when finalised, will collectively make up the performance incentive mechanism that will ultimately be included in the June 2011 HVAU.

The key rationale for requiring the inclusion of performance incentives in the June 2011 HVAU is to promote the efficient operation of, use of and investment in the Hunter Valley network (consistent with the objects of Part IIIA) and to help alleviate congestion, delays and network capacity shortfalls in the Hunter Valley coal chain. Reducing costs and improving productivity, consistent with the pricing principles in section 44ZZCA of the CCA, was also a significant consideration.

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[4] Provisions relating to the operation of the TUT are set out in Schedule 2 of the IAHA.

1.2.4 Performance incentive provisions in the June 2011 HVAU

As set out above, sections 13.3 and 13.5 of the June 2011 HVAU relate to the development of performance incentives.

Section 13.3 provides that within 6 months of the June 2011 HVAU's commencement date, ARTC will develop options for performance incentives which have the effect of encouraging ARTC, through financial reward, to improve operating, maintenance and capital expenditure, and achieve desirable safety outcomes. The provisions require ARTC to seek submissions from Access Holders and other stakeholders on their views of the proposed performance incentives.

Subsequently, ARTC must submit a variation to incorporate these performance incentives into the June 2011 HVAU no later than 12 months from the commencement date (30 June 2012).

On 15 June 2012, ARTC requested an extension of time to submit a variation to the ACCC by 31 July 2012. On 3 August 2012, ARTC formally submitted its Proposed Variation.

Section 13.5 provides that there will be additional TUT related performance incentives developed at a later date. This remains a separate process to the current Proposed Variation.

1.2.5 ARTC's December 2011 Consultation Document

In December 2011, ARTC published a consultation document and sought submissions from stakeholders, addressing potential options for a positive performance incentive mechanism (**Consultation Document**).[5] This process was required by subsection 13.3(a) of the June 2011 HVAU. Submissions were due on 20 February 2012, and three submissions were received by ARTC. These were not made publicly available at the time, but have now been attached to ARTC's current Proposed Variation.[6]

In its Consultation Document, ARTC listed several key matters which may impact on the development of a performance incentive scheme, some of which are applicable to performance incentive schemes that apply in other industries and some which are unique to the June 2011 HVAU.[7] The two matters specifically relevant to the Hunter Valley are:

The specific regulatory circumstances in the HVAU

The June 2011 HVAU contains a cap on the revenue that ARTC may earn for a given asset base (Ceiling). This prevents ARTC from earning additional revenue even if it provides additional capacity from that asset base.

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5 ARTC, *Options for Positive Performance Incentive Mechanisms – Consultation Document*, December 2011

6 Submissions were received from Asciano, Coal & Allied and Vale and are available on the ACCC's website: http://www.accc.gov.au/content/index.phtml/itemId/1068611

7 These matters are set out at ARTC, *Options for Positive Performance Incentive Mechanisms – Consultation Document*, December 2011, p. 4.

Any benefits in reducing operating costs are passed on to the access holders in a pricing reduction. ARTC argued that additionally, the application of a ceiling where prices are constrained incorporates little positive incentive for ARTC to improve its operating efficiency and increase contracted capacity.

The nature of the Hunter Valley coal chain

The Hunter Valley coal chain involves complex inter-relationships between service providers and coal producers for both the demand and supply of services. While performance incentives can be developed in relation to one part of the supply chain in isolation, it may be more difficult to identify clear, unambiguous performance incentives that will positively impact on the efficient operation of the entire coal chain.

ARTC set out four incentive mechanisms in its Consultation Document for possible inclusion in the June 2011 HVAU, suggesting that it may be appropriate to consider these mechanisms in combination, to achieve a comprehensive incentive mechanism. The four options put forward for consideration were:

- Option 1 – a positive performance incentive mechanism to improve ARTC’s productivity. This was based on encouraging ARTC to continuously seek improvements in productivity and reductions in the cost of service provision.

- Option 2 – a positive performance incentive mechanism directly linked to the Network Key Performance Indicators (KPIs) in the June 2011 HVAU.

- Option 3 – a positive performance incentive mechanism directly linked to the achievement of safety targets.

- Option 4 – a positive performance incentive mechanism focussed on encouraging the use of innovation (soft assets) to achieve outcomes that could also be delivered through investment in hard assets (infrastructure).

ARTC’s Proposed Variation follows on from the four options that were put forward in its Consultation Document, the submissions it received in response to its consultation process, consideration of QR Network Pty Ltd’s proposed incentive mechanism, and further consideration of the matters by ARTC.[8]

Further details of the proposed non-TUT related performance incentives variation are discussed in section 2 of this Consultation Paper.

1.3 ACCC assessment

The test the ACCC applies in deciding whether to consent to a variation of an accepted access undertaking is set out in subsections 44ZZA(7) and 44ZZA(3) of the

[8] QR Network’s proposed incentive mechanism is available on the Queensland Competition Authority’s website here: http://www.qca.org.au/rail/2010-DAUamend/PropIncentMech/

Act. Essentially, the ACCC may accept the Proposed Variation if it thinks it appropriate to do so, having regard to various matters. The full test is set out in section 3 of this document.

The ACCC is calling for submissions by interested parties on the Proposed Variation and has not yet formed a view on the appropriateness of ARTC's Proposed Variation.

1.4 Indicative timeline for assessment

Under subsection 44ZZBC(1) of the Act, the ACCC must make a decision in relation to an access undertaking application within the period of 180 days starting at the start of the day the application was received (referred to as 'the expected period').

ARTC formally lodged the Proposed Variation with the ACCC on 3 August 2012.

The Act provides for 'clock-stoppers', meaning that some days will not count towards the 180 days of the expected period in certain circumstances. In particular, the clock is stopped where:

- the ACCC publishes a notice inviting public submissions in relation to an undertaking application (subsection 44ZZBD(1));
- the ACCC gives a notice requesting information in relation to an application (subsection 44ZZBCA(1)); or
- the ACCC and the access provider agree in writing that certain days are to be disregarded for the purposes of calculating the expected period (subsection 44ZZBC(4)).[9]

The ACCC is requesting submissions on the Proposed Variation by **2 October 2012.** Under subsection 44ZZBD(1), this has the effect of extending the timeframe by which the ACCC is required to make a decision on the Proposed Variation.

Following this consultation period, the ACCC will be required to make a decision on the Proposed Variation by **28 February 2013**. However, the ACCC notes that in the case of the current Proposed Variation, a decision may be made well before this date.

1.5 Consultation

The ACCC published the Proposed Variation on its website for stakeholder consideration on 6 August 2013.

The Proposed Variation has been submitted by ARTC in order to comply with subsection 13.3 of the June 2011 HVAU. This application is the first of two potential variations that are envisaged under the June 2011 HVAU that relate to the development and inclusion of a positive performance incentive mechanism.

[9] See section 3 of this Consultation Paper for further information on these provisions of the Act.

Accordingly, the Proposed Variation relates primarily to the inclusion of a non-TUT related performance incentive mechanism in the HVAU and the IAHA. The variation also includes a number of ancillary amendments that aim to give effect to the proposed scheme.

Section 2 of the Consultation Paper highlights the main aspects of the Proposed Variation which differ from the accepted June 2011 HVAU. A table is provided at Appendix A that contains other proposed amendments to the HVAU and IAHA.

The ACCC requests that any submissions address the extent to which the proposed revisions appropriately address the requirements in section 13.3 of the June 2011 HVAU. It is also encouraged that submissions address the matters listed in subsection 44ZZA(3) of the Act.

The ACCC's current intention is that there will be a single round of consultation before the ACCC makes a final decision in relation to the Proposed Variation. However, the ACCC may consult further with industry if it considers there is a need to do so having regard to the submissions made in response to this Consultation Paper.

1.6 Making a submission

Submissions on ARTC's Proposed Variation should be addressed to:

Matthew Schroder
General Manager
Fuel, Transport& Prices Oversight Branch
Australian Competition and Consumer Commission

GPO Box 520
Melbourne Vic 3001

Email: transport@accc.gov.au

1.6.1 Due date for submissions

Submissions **must** be received by **2 October 2012**. It is in your interest that the submission be lodged by this date, as section 44ZZBD of the Act allows the ACCC to disregard any submission made after this date.

1.6.2 Confidentiality

The ACCC strongly encourages public submissions. Unless a submission, or part of a submission, is marked confidential, it will be published on the ACCC's website and may be made available to any person or organisation upon request.

Sections of submissions that are claimed to be confidential should be clearly identified. The ACCC will consider each claim of confidentiality on a case by case basis. If the ACCC refuses a request for confidentiality, the submitting party will be given the opportunity to withdraw the submission in whole or in part.

For further information about the collection, use and disclosure of information provided to the ACCC, please refer to the ACCC publication *"Australian Competition and Consumer Commission / Australian Energy Regulator Information Policy – the collection, use and disclosure of information"* available on the ACCC website.

1.7 Further Information

The Proposed Variation and other relevant material, including supporting submissions from ARTC and the currently accepted June 2011 HVAU, are available on the ACCC's website at the following link:

http://www.accc.gov.au/content/index.phtml/itemId/994049

Alternatively, go to the ACCC's homepage at www.accc.gov.au and follow the links to 'For regulated industries' and 'Rail' and 'ARTC Hunter Valley Access Undertaking 2011.'

Public submissions made during the current process will also be posted at this location.

Background information on the current process, including an overview of recent amendments to Part IIIA of the Act, is set out in section 3 of this document.

If you have any queries about any matters raised in this document, please contact:

Grant Kari
Assistant Director
Fuel, Transport & Prices Oversight Branch
Phone: +61 3 9290 1807
Email: grant.kari@accc.gov.au
Fax: +61 3 9663 3699

2 The Proposed Variation

The Proposed Variation seeks to implement the requirements contained in section 13.3 of the June 2011 HVAU. Subsections 13.3(a) and (b) requires that ARTC will conduct a consultation process within 6 months of the commencement of the June 2011 HVAU, after which:

(b) *ARTC will in good faith consider the submissions provided within the specified time and by no later than 12 months from the Commencement Date will:*

  (i) *prepare a report addressing options for a proposed performance incentive scheme having regard to the submissions and containing ARTC's proposed variation to the Undertaking to include its proposed performance incentive scheme;*

  (ii) *provide the report to the ACCC; and*

  (iii) *lodge a variation application with the ACCC under* ***section 44ZZA(7)*** *of the CCA consistent with the report.*

(c) *To avoid doubt, the performance incentive scheme under this* ***section 13.3*** *may be developed separately from the TUT-related performance incentive scheme to be developed under* ***section 13.5*** *and is not required to include performance incentives to the extent they would overlap with those to be developed under* ***section 13.5****.*

Section 13.4 requires that ARTC conduct a review of the operation and effectiveness of the system wide true up test after the completion of two full calendar years following the commencement of the June 2011 HVAU.

Subsection 13.5(a) requires that, either in parallel with, or following completion of, the review of the true up test, ARTC will:

  (i) *prepare and publish on its website options for a proposed performance incentives scheme which has the objectives 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, to be included in the Undertaking*

After this, ARTC will conduct a consultation on the proposed TUT-related performance incentive scheme, and then:

(b) *ARTC will in good faith consider the submissions provided within the specified time and prepare a report addressing options for a proposed TUT-related performance incentive scheme having regard to the submissions and containing ARTC's proposed variation to the Undertaking to include its TUT-related proposed performance incentive scheme and:*

...

(ii) *may lodge a variation application with the ACCC under* ***section 44ZZA(7)*** *of the CCA consistent with the report, or if it chooses not to, will set out in the report reasons why it is not submitting a variation.*

In this section of the Consultation Paper, the ACCC has highlighted those aspects of the Proposed Variation which differ from the accepted June 2011 HVAU.

2.1 Proposed Positive Performance Incentive Scheme

In its supporting submission to the Proposed Variation, ARTC states that while it recognises 'the importance placed by users on performance incentives that relate to network and system capacity and coal chain throughput', 'performance incentives that relate to capacity and throughput' will only be 'fully considered' under the review set out at section 13.5 of the HVAU.[10]

However, ARTC also notes that despite its view that 'consideration of performance and incentives intended to bring about improvement or reduce failure of the Hunter Valley coal chain 'system' is more a matter for ... a 'whole-of-coal-chain' forum', as part of the current variation, ARTC has:

> *proposed to incorporate performance incentives around Network KPIs that focus on encouraging* [ARTC] *controllable behaviours linked to capacity and throughput as an interim measure ahead of the more comprehensive development of these types of performances in the review*

set out in section 13.5, which will 'be more focussed on capacity utilisation'.[11]

2.1.1 A summary of the proposed Positive Performance Incentive Scheme

ARTC's proposed PPIS consists of substantive and consequential amendments to the June 2011 HVAU and IAHA.

A summary of the proposed metrics and incentive measures that make up the PPIS is provided in section 2 of Schedule D of the June 2011 HVAU. An expanded version of this table is set out below:

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10 ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 11.

11 ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 11.

Positive Performance Incentive Scheme	Description
Incentive Measures	
Additional Capacity Investment Innovation Incentive (ACIII)	The purpose of the ACIII is to provide an incentive for ARTC to identify, develop and implement projects intended to provide additional capacity which result wholly or partly from an innovation that has been identified and developed by ARTC, that has not resulted from the installation or replacement of infrastructure assets arising through capital expenditure. The ACIII is described in **section 2.2** of **Schedule D** and endorsed by the Rail Capacity Group (RCG) in accordance with **section 9** of the June 2011 HVAU.
Positive Performance Incentive Metrics	
PPIS Metric 1	PPIS Metric 1 is a measure of Coal Chain Losses caused by ARTC. This metric measures the percentage of paths (expressed in terms of tonnage) unavailable or cancelled due to ARTC cause with reference to total system planned tonnage. This is measured as a percentage of cancelled services for a quarter determined in accordance with **clause 2.1** of **Schedule 5** of the Indicative Access Holder Agreement.
PPIS Metric 2	PPIS Metric 2 is a measure of the impact of temporary speed restrictions on transit time. This is measured by determining the minutes of transit time lost on the Network resulting from the imposition of temporary speed restrictions for a quarter determined in accordance with **clause 2.2** of **Schedule 5** of the Indicative Access Holder Agreement.
PPIS Metric 3	PPIS Metric 3 is a measure of track quality index, which is an industry standard measure of average geometric alignment of the track across four perspectives. This track quality index is determined for a quarter in accordance with **clause 2.3** of **Schedule 5** of the Indicative Access Holder Agreement.

Additional Capacity Investment Innovation Incentive

The key amended proposals relating to the definition and operation of the ACIII are set out in new section 2 of Schedule D of the June 2011 HVAU.

Amendments are also proposed to section 9 of the June 2011 HVAU which give the RCG the ability to approve amounts under the ACIII as part of the project endorsement process.

Related amendments are also proposed to be made to section 4 of the HVAU, which deals with the Access Pricing Principles, to incorporate the ACIII amount into the RAB and RAB Floor limit.

This is achieved via the ACIII amount being included as a positive increment into the formulae in subsections 4.4(a) and (b) of the June 2011 HVAU. This means that the increment will flow automatically through the operation of the Ceiling Limit, loss capitalisation and unders and overs regime in section 4 of the June 2011 HVAU.[12]

Positive Performance Incentive Scheme - Metrics

The proposed PPIS metrics 1, 2 and 3 are defined in section 2 of Schedule D of the June 2011 HVAU.

The substantive provisions that set out the mechanics of determining the metrics are contained in new Schedule 5 of the IAHA. With regard to each of the three metrics, the Schedule includes:

- an obligation on ARTC to determine and issue reports, on a quarterly basis, in relation to PPIS metrics 1 to 3 and aggregate quarterly incentive amounts. This reporting obligation is also set out in revised section 13.3 of the June 2011 HVAU;

- a definition of the metric and the mechanism, target value and upper performance bound, and a cap as to the incentive amount for each quarter; and

- an annual determination at the end of the Contract Year of the total incentive amount for that year.[13]

Clause 5.4A of the IAHA has also been proposed which sets out the mechanism by which the annual incentive amount the Access Holder is required to pay is determined. The clause also allows access holders to dispute the amount required to be paid under the provision (cl. 5.4A(f)) and sets out that revenue obtained under the PPIS will not be included as revenue for the purpose of annual compliance.

Additional proposed amendments to the June 2011 HVAU include: the specification of the PPIS schedule in the IAHA as a Tier 1 provision in Schedule A:1; inclusion of reporting and review mechanisms in relation to the PPIS metrics in sections 13.3 and 13.5; and amendments to Schedule G, requiring ARTC to provide relevant information on the Innovation Incentive Amount (an element of the ACIII and PPIS) as part of the annual compliance regime.

PPIS metrics and incentive measures to be considered independently of one another

The individual performance measures are designed by ARTC to be independent of one another. Although ARTC originally sought views from industry in its

[12] Ceiling Limit is defined in sections 4.3 and 14.1 of the June 2011 HVAU.
[13] Contract Year is defined in clause 1.1 of the IAHA.

Consultation Document on the proposed measures in combination, including looking at the weightings that could be applied as part of a package, ARTC:

> *is not convinced that a performance incentive scheme should be based on a composite of individual measures (weighted or otherwise) ... To develop a composite approach is likely to water down or break the linkage between positive and negative incentives impacting on the effectiveness of the scheme in meeting stated objectives.*[14]

ARTC propose that the PPIS is to apply from the commencement of the calendar year following approval of the Proposed Variation.[15]

Questions for comment

- Is the combination of an Additional Capacity Investment Innovation Incentive and the Positive Performance Incentive Metrics likely to provide incentives for ARTC to perform to deliver better outcomes for the coal chain, as envisaged by industry during the assessment of the HVAU?
- What do you see as the benefits of the proposed Additional Capacity Investment Innovation Incentive and the Positive Performance Incentive Metrics that will flow through to the users of the Hunter Valley rail network?
- Is the combination of an Additional Capacity Investment Innovation Incentive and the Positive Performance Incentive Metrics likely to encourage ARTC to take appropriate risks?
- Are the oversight and auditing mechanisms relating to the development of, and measurement of, the relevant performance measures appropriate?

2.1.2 Performance incentive options not included in the PPIS that were identified in ARTC's Consultation Document

In its Consultation Document, ARTC flagged two options that have not been included in the current Proposed Variation: (i) a positive performance incentive mechanism to improve ARTC's productivity; and (ii) a positive performance incentive mechanism directly linked to the achievement of safety targets.[16]

With regard to the proposed productivity measure, ARTC submits that:

> *stakeholders do not favour a productivity incentive (or at least consider it less important than other incentives) ... Stakeholders would seem to value increased*

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[14] ARTC, *Options for Positive Performance Incentive Mechanisms – Consultation Document*, December 2011, p. 5; ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 13.

[15] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 32.

[16] ARTC, *Options for Positive Performance Incentive Mechanisms – Consultation Document*, December 2011, pp. 22 - 40 and pp. 45 - 49.

throughput as more important than cost of service ... ARTC recognises that the option put forward does raise concerns ... but is not aware of many other satisfactory mechanisms to achieve an outcome where a revenue ceiling exists. ARTC is concerned that the very nature of the Revenue Limits requiring costs to be 'Efficient' and rewards require outperformance of 'Efficient', will serve to work against incentives arising from attempting to obtain those rewards.

To this end, ARTC has decided not to incorporate a productivity related incentive mechanism at this time. [17]

In relation to the incentive mechanism raised as an option in ARTC's Consultation Document that was linked to safety targets, ARTC notes that it:

now agrees with the view held by some stakeholders that incentivising ARTC's safety performance through an economic model may not be appropriate where such incentives already exist through the application of other forms of regulation and ARTC's own corporate values and responsibilities. ARTC sees the possibility of unintended consequences arising where third parties are financially rewarding ARTC for performance in relation to safety.

[For this and other reasons] ... *ARTC no longer proposed to incorporate a positive incentive in relation to safety performance in the PPIS.* [18]

Questions for comment

- Do you have any comments on ARTC's proposal not to include the positive performance incentive mechanisms that were put forward as potential options in its Consultation Document in the Proposed Variation?

2.1.3 Additional Capacity Investment Innovation Incentive

The objective of the ACIII, as set out in clause 2 of Schedule D of the June 2011 HVAU, is to:

provide an incentive for ARTC to identify, develop and implement projects intended to provide Additional Capacity on the Network which result wholly or partly from an innovation that has been identified and/or developed by ARTC.

Characteristics of innovation may include (amongst other things) the creation or development of better or more effective products, processes, services, technologies, or ideas which assists or results in the creation of Additional Capacity on the Network that has not resulted from the installation or replacement of infrastructure assets arising through Capital Expenditure being incurred by ARTC or a third party.

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17 ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 12.

18 ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 12.

The proposed drafting in relation to the determination of the ACIII is set out in clause 2.2(c) to (e) of Schedule D of the IAHA:

(c) If ARTC demonstrates to the RCG that it has made available, or will make available, Additional Capacity which has:

(i) partially or fully arisen through the innovation of ARTC; and

*(ii) without Capital Expenditure being incurred, or a reduced Capital Expenditure amount being incurred (including where such Capital Expenditure is wholly or partially offset by increased operating expenditure) ("**Innovation Project**"),*

*the RCG may under **section 9** endorse for inclusion in the RAB an amount ("**Innovation Incentive Amount**") that will result in ARTC receiving an incentive payment over the economic life of the Additional Capacity.*

(d) The Innovation Incentive Amount for an Innovation Project will be calculated in accordance with the following formula (or as otherwise agreed by ARTC):

$$NPV\left(\sum_{i}^{L}(IRIA_i)\right) = 0.5 * NPV\left(\sum_{i}^{L}(ICHA_i - ICIA_i)\right)$$

Where:

***L** is the economic life in years of the Innovation Project.*

***$IRIA_i$** is the annual payment to ARTC arising from inclusion of Innovation Incentive Amount for the Innovation Project in the annual roll forward of the RAB Floor Limit as contemplated at Section 4.4(b), being applicable Depreciation and a return determined by applying a real, pre-tax Rate of Return in year i.*

***$ICHA_i$** is the capital cost of the Capital Expenditure that would have been incurred on a Prudent basis to initiate, develop and implement Additional Capacity on the Network that is equivalent to that arising from the Innovation Project without innovation in year i, and includes any incremental operating expenditure associated with that Additional Capacity. Where this is not able to be readily determined for the Innovation Project, this amount may be based on the average unit cost of Additional Capacity applying to the next creation of Additional Capacity where the existing level of Capacity is that level to which ARTC is proposing to increase through the Innovation Project. This may be determined having regard to the most recent Hunter Valley corridor capacity strategy and, where applicable, the most recent relevant and available cost of Additional Capacity endorsed by the RCG in accordance with **section 9**. The calculation may be undertaken by dividing the cost of the next creation of Additional Capacity by the amount of increased throughput (mT) arising from that Additional Capacity.*

$ICIA_i$ is the capital cost of the Capital Expenditure that will be incurred on a Prudent basis to initiate, develop and implement the Innovation Project, and includes incremental operating expenditure associated with the Innovation Project in year i.

(e) *The Innovation Incentive Amount must be endorsed by the RCG or ACCC in accordance with the industry consultation and endorsement process described in **section 9*** [of the HVAU].

The ACCC understands that under this proposed methodology, ARTC will be able to include an amount in the RAB (an Innovation Incentive Amount) provided:

- it relates to a particular project it identifies or develops (an Innovation Project) that has not incurred capital expenditure by ARTC (or has incurred less than might have otherwise been the case, even where partially offset by increased operating expenditure) that will make Additional Capacity available (that is, some or all of the Additional Capacity delivered arises through innovation rather than through incurring capital expenditure);

- it results in annual payments (depreciation and return) to ARTC with an NPV over the life of the Innovation Project equal to an amount up to half the net present value of the difference between the capital cost including any incremental operating expenditure impacts that ARTC would have incurred if ARTC had provided that Additional Capacity via capital expenditure only and the capital cost including any incremental operating expenditure impacts of the Innovation Project over the life of the Innovation Project;

- it is endorsed by the RCG (or by an independent expert or the ACCC if not approved by the RCG).

The ACCC notes that the above is a summary. ARTC has provided a detailed description of how the ACIII mechanism is intended to work in its supporting submission to the Proposed Variation.

It is proposed that the ACIII will be incorporated into the RAB and RAB Floor limit. The ACIII amount will be included as a positive increment into the formulae in sections 4.4(a) and (b) of the June 2011 HVAU as follows:

4.4(a) Determination of RAB

$RAB_{t\ start} = RAB_{t-1\ end} =$

$(1 + RoR) \times RAB_{t-1\ start} - \text{Out-turn Revenue}_{t-1} + \text{Out-turn Opex}_{t-1} + [(\text{Net Capex}_{t-1} + \mathbf{IIA_{t-1}}) \times (1 + 0.5 \times RoR)]$

where:

...

*IIA_{t-1} is the Innovation Incentive Amount payable to ARTC under section 2 of **Schedule D** during the preceding year (t-1) on a Prudent basis excluding Capital Contributions (as applicable).*

4.4(b) RAB Floor Limit

RAB Floor Limit$_{t\ start}$ = *RAB Floor Limit*$_{t-1\ end}$ =

(1 + *CPI*$_{t-1}$) x *RAB Floor Limit*$_{t-1\ start}$ + *Net Capex*$_{t-1}$ **+ *IIA*$_{t-1}$ –** *Depreciation*$_{t-1}$

where:

...

IIA$_{t-1}$ *is the Innovation Incentive Amount payable to ARTC under section 2 of* ***Schedule D*** *during the preceding year (t-1) on a Prudent basis excluding Capital Contributions (as applicable).*

These changes mean that the increment will flow automatically through the operation of the Ceiling limit, loss capitalisation and unders and overs regime.

The amendments to section 9 of the June 2011 HVAU, which relate to the industry consultation process on proposals for additional capacity, provides the RCG with the ability to approve amounts under the ACIII as part of the project endorsement process, endorsed by an independent expert, or by the ACCC.

Amounts under the ACIII for a project will be treated on a similar basis to Capital Expenditure for that project under the project development and endorsement mechanism in section 9 of the June 2011 HVAU.

Questions for comment

- Is the Additional Capacity Investment Innovation Incentive mechanism proposed by ARTC appropriate?
- Is it clear from the proposed drafting what type of 'innovation' will be captured under the Additional Capacity Investment Innovation Incentive?
- Is the role of the RCG / independent expert / ACCC in endorsing an Innovation Incentive Amount appropriate? Will this provide an effective check and balance?
- Is it appropriate that the Innovation Incentive Amount be included in the RAB that will result in ARTC receiving an incentive payment 'over the economic life of the Additional Capacity'? If this approach is not considered appropriate, what are alternative approaches?
- Are the circumstances in which ARTC is able to benefit from an Innovation Incentive Amount appropriate? For example, should ARTC be able to benefit from an Innovation Incentive Amount where it has not satisfied its contractual obligations regarding delivery of contracted paths?
- Is the formula for the calculation of the Innovation Incentive Amount appropriate?

2.1.4 The Positive Performance Incentive Scheme - Metrics

The proposed PPIS incorporates performance incentives around Network KPI's that focus on encouraging behaviours that are under ARTC's control, are linked to capacity, and that are intended to bring about improvements in the operation of, or reduce failure of, the Hunter Valley coal chain system.

ARTC has developed a data set of performance measures for the Network for each PPIS Metric. Target values are determined at the 50th percentile (expected outcome) and an upper performance band is established at the 75th percentile.[19]

Relevant definitions to the operation of the PPIS are included at clause 1.1 of Schedule 5 of the IAHA. The key definitions are:

> ***QIAC*** *means the applicable Quarterly Incentive Amount Cap determined by ARTC for each PPIS Metric.*
>
> ***Quarterly Incentive Amount*** *means the incentive amount for each PPIS Metric determined by ARTC each Quarter in accordance with* ***clause 1.3*** *of this* ***Schedule 5****.*
>
> ***Total Annual Incentive Amount*** *means for each Contract Year, the sum of the Total Quarterly Incentive Amounts (if any) for the PPIS Metrics in that year.*
>
> ***Total Quarterly Incentive Amount*** *means for each Quarter, the sum of the Quarterly Incentive Amounts (if any) for the PPIS Metrics in that Quarter.*
>
> ***TV*** *means the applicable target value for each PPIS Metric.*
>
> ***UB*** *means the applicable upper bound for each PPIS Metric.*

Proposed clauses 1.2 and 3 in Schedule 5 of the IAHA sets out how ARTC's performance under the PPIS will be measured and reported:

> ***1.2 Performance assessment***
>
> *(a) At the end of each Quarter, ARTC will determine:*
>
> *(i) the PPIS Metrics in that Quarter, as determined by ARTC having regard to the specific characteristics of each PPIS Metric set out in* ***clause 2*** *of this* ***Schedule 5****; and*
>
> *(ii) the Quarterly Incentive Amount for each of PPIS Metric 1, PPIS Metric 2 and PPIS Metric 3 calculated in accordance with* ***clause 1.3 of this*** *Schedule 5;*

[19] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 38-39.

(b) At the end of each Contract Year, ARTC will determine the Total Quarterly Incentive Amount for that year.

1.3 Determination of Quarterly Incentive Amount

The Quarterly Incentive Amount for each PPIS Metric is determined as follows:

(a) if the PPIS Metric for the Quarter is equal to or exceeds the TV for that PPIS Metric, the Quarterly Incentive Amount for that PPIS Metric will be deemed to be zero;

(b) if the PPIS Metric for the Quarter is less than or equal to the UB for that PPIS Metric, the Quarterly Incentive Amount for that PPIS Metric will be deemed to be the QIAC for that PPIS Metric; or

(c) if the PPIS Metric is less than the TV for that PPIS Metric and exceeds the UB for that PPIS Metric, the Quarterly Incentive Amount for that PPIS Metric will be calculated in accordance with the following formula:

(TV – PPIS Metric)/(TV – UB) x QIAC

...

3 Provision of PPIS information

(a) Within 40 Business Days of the end of each Quarter, ARTC will publish on ARTC's website a report setting out:

(i) Each PPIS Metric in that Quarter, as determined by ARTC in accordance with this ***Schedule 5****; and*

(ii) the Total Quarterly Incentive Amount for that Quarter.

(b) Within 40 Business Days at the end of each Contract Year ARTC will publish on ARTC's website the Total Annual Incentive Amount for that year.

Clause 5.4A of the IAHA has also been proposed which sets out the mechanism under which the access holder is required to pay the relevant proportion of the annual incentive amount:

5.4A Calculation of Performance Incentive Amount

(a) Within 45 Business Days of the end of each calendar year in which the Access Holder has an entitlement to Path Usages in a Train Path Schedule, ARTC will determine if there is an amount payable by the Access Holder under the Positive Performance Incentive Scheme set out in ***Schedule 5*** *to ARTC determined in accordance with the formulae in* ***clause 5.4A(b) ("Performance Incentive Amount").***

(b) If the Total Annual Incentive Amount > 0, then the Access Holder is liable to pay ARTC the Performance Incentive Amount calculated in accordance with the following formula:

TAIA x (AHPU /NPU)

Where:

TAIA or Total Annual Incentive Amount means for each Contract Year, the sum of the total quarterly incentive amounts calculated in accordance with **Schedule 5**.

AHPU means for each Contract Year, the sum of the Access Holder's total contracted GTK in that year based on the unconditional Annual Contracted Path Usages for all Train Paths specified in the **Train Path Schedules**.

NPU means for each Contract Year, the Network's total contracted GTK in that year based on the aggregate number of unconditional path usages contracted by all holders of coal access rights on the Network.

(c) Except as required under **clause 5.7**, the Access Holder is not required to pay any interest in relation to the Performance Incentive Amount.

(d) Within 20 Business Days of calculating the Performance Incentive Amount under **clause 5.4A(b)**, ARTC will issue to the Access Holder an invoice for the Performance Incentive Amount for the previous Contract Year.

(e) The Access Holder must pay the invoice by the later of:

(i) the 21st day of that Month; or

(ii) seven days from the date that the invoice was received.

(f) If the Access Holder disputes the amount of the Performance Incentive Amount, it must notify ARTC of that dispute under **clause 14** within two weeks of the date of the issue of the invoice and the dispute will be determined by expert determination in accordance with **clause 14.4**. If the Access Holder does not notify ARTC of a dispute within this time, it is deemed to have accepted the Performance Incentive Amount as accurate and waives any right to make a Claim in respect of the Performance Incentive Amount payable in the previous Contract Year.

(g) Any Performance Incentive Amount payable to ARTC under this **clause 5.4A** will not be deemed to be revenue received by ARTC and will not be included for the purpose of annual compliance with the pricing principles in the Access Undertaking.

Questions for comment

- Is the PPIS – Metrics mechanism proposed by ARTC appropriate?
- Does the drafting of clause 1.3 of Schedule 5 of the IAHA make it clear how the Target Value and Upper Bound for each PPIS Metric will interact with the determination of the Quarterly Incentive Amount?
- Is the formula for the calculation of the Quarterly Incentive Amount where the PPIS Metric is less than the Target Value, or exceeds the Upper Bound, for each particular metric clear and appropriate?
- Are the reporting requirements contained in clause 3 of Schedule 5 of the IAHA and reiterated in section 13.3 of the June 2011 HVAU, appropriate?
- Is the interaction between the provisions set out in Schedule 5 (regarding the determination of the Quarterly Incentive Amount) and clause 5.4A of the IAHA (relating to the calculation of the performance incentive amount payable by the access holder) clear and appropriate?
- Is the proposed dispute resolution provision in clause 5.4A(f) appropriate?

2.1.5 PPIS Metric 1 – Coal Chain Losses – ARTC Cause

PPIS Metric 1 is a measure of Coal Chain Losses caused by ARTC. This metric measures the percentage of paths (expressed in terms of tonnage) unavailable or cancelled due to ARTC cause with reference to total system planned tonnage. ARTC proposes to measure performance against this metric for the purpose of determining an incentive increment on a quarterly basis.

The proposed drafting in relation to PPIS Metric 1 is set out in clause 2.1 of Schedule 5 of the IAHA:

2.1 PPIS Metric 1 – Coal Chain Losses – ARTC cause

(a) PPIS Metric 1 will be determined by ARTC at the end of each Quarter in accordance with the following formula:

ACT/PT

Where:

ACT *(ARTC Cancelled Tonnes) means for each Quarter, the aggregate of the Assumed Tonnes for each ARTC Cancelled Service in that Quarter*

Assumed Tonnes *means:*

(a) if the ARTC Cancelled Service would have been unloaded if it had been operated on the Network, zero; or

(b) otherwise, the difference in tonnes between the loaded and unloaded weight specified in [column 6] ("Assumed GT per service") the relevant Train Path Schedule for the ARTC Cancelled Service

[Drafting Note: "Assumed GT per service" column reference to be inserted in accordance with the Access Holders Train Path Schedule]

***ARTC Cancelled Service** means a cancelled service assigned to, and accepted by, ARTC in the Quarter by the Live Run Superintendent Group, as collated and reported by the HVCCC, and which are directly attributable to an act or omission of ARTC and excludes any cancelled service attributable in whole or in part to:*

(a) an Availability Exception;

(b) an act or omission of an Access Holder or Operator; or

(c) an act or omission of an owner of rail infrastructure, other than ARTC, that is not related to or connected with the Network including track structures, over or under track structures, supports, tunnels, bridges, signalling systems, communication systems and associated plant, machinery and equipment.

***PT** (Planned Tonnes) means the aggregate of the HVCCC's monthly published total planned tonnage for that Quarter.*

(b) The following TV and UB will apply for PPIS Metric 1.

PPIS Metric 1	***TV***	***UB***
Network	*0.97%*	*0.58%*

(c) QIAC for PPIS Metric 1 will be determined by ARTC having regard to access revenue (based on an average coal haul and average Charge for coal access rights for the Network) that ARTC would have earned through the achievement of the difference in volume throughput between ARTC's performance at TV and performance at UB in respect of PPIS Metric 1.

ARTC submits that with respect to PPIS Metric 1, it 'developed a data set ... showing performance for the Network covering the period January 2010 to June 2012, and containing 30 observations.'[20]

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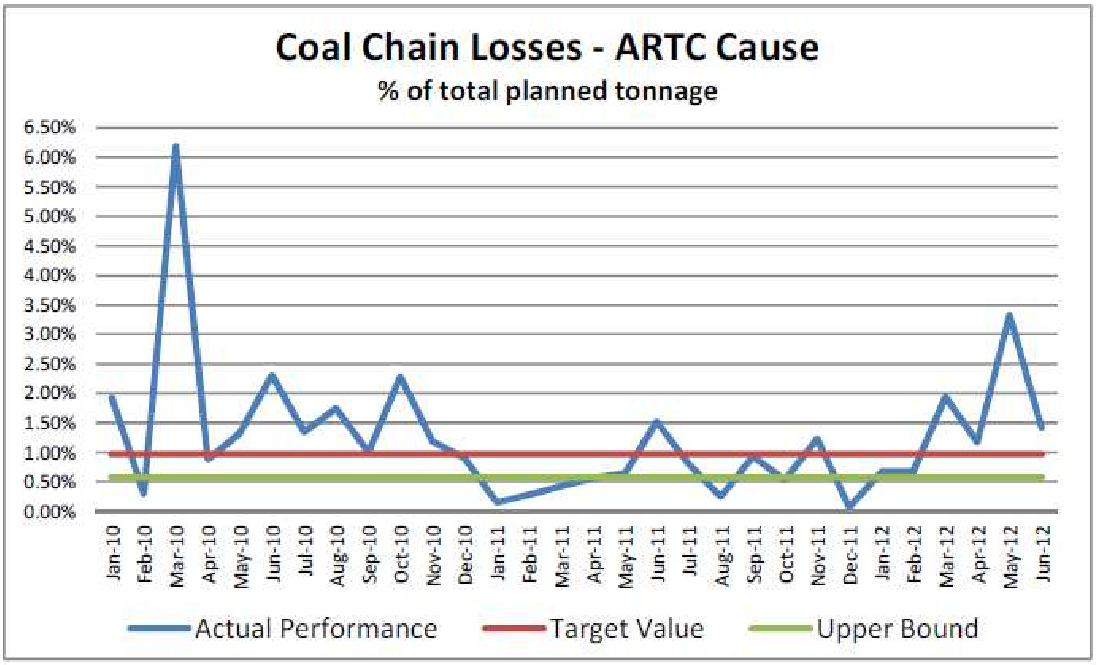
[20] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 38.

ARTC submits that it ‘has adopted an approach that is ... applied consistently across all proposed metrics’ which:

- *seeks to determine a range of outcomes that excludes outliers, and within the control of ARTC management at the margin (includes outcomes that are achievable without material investment or change in maintenance cost);*
- *targets values determined at the 50th percentile (expected outcome); and*
- *establishes an upper performance band at the 75th percentile.*[21]

The data set used to determine the target value and upper bound for PPIS Metric 1 is included in ARTC’s supporting submission, and is set out below:

Figure 1



It is ARTC’s view that this metric will act as a positive incentive to reduce system losses caused by ARTC to a level that not only ensures capacity is available to meet contractual entitlements, but results in capacity becoming available for other uses including ad hoc paths.[22]

Questions for comment

- Is ARTC’s proposed data set and method of measuring coal chain losses (ARTC cause) appropriate?

[21] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 39.

[22] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 37.

- Is the mechanism and formula by which PPIS Metric 1 is to be determined clear and appropriate?
- Is the Target Value and Upper Bound for PPIS Metric 1 appropriate, given the objective of PPIS Metric 1?
- Is the mechanism for determination of the Quarterly Incentive Amount Cap, and the cap itself, for PPIS Metric 1 appropriate?
- How will PPIS Metric 1 benefit ARTC and industry?

2.1.6 PPIS Metric 2 – Transit Time – Impact of Temporary Speed Restrictions

PPIS Metric 2 is a measure of the impact of temporary speed restrictions on transit time. The transit time impact of temporary speed restrictions (measured in minutes) is determined by applying the temporary speed restrictions in place on the Network to a simulation model designed to determine the total time lost by reference to Indicative Services subject to each temporary speed restriction.

The proposed drafting in relation to PPIS Metric 2 is set out in clause 2.2 of Schedule 5 of the IAHA:

2.2 PPIS Metric 2 – Transit Time – impact of temporary speed restrictions

(a) PPIS Metric 2 will be determined by ARTC at the end of each Quarter in accordance with the following:

(i) the average for the minutes of transit time lost due to Temporary Speed Restrictions in place on the last day of each month calculated by ARTC in that Quarter (being the average of 3 values for the Quarter); and

(ii) a simulated operation of a reference Indicative Service over the whole of the Network, (as if all parts of the Network were placed end to end) in accordance with the Network Key Performance Indicator, 'Transit Time – Infrastructure Practical Capability', set out in Schedule D of the Access Undertaking.

Where

Temporary Speed Restriction *means a speed restriction applied by ARTC to the Network during the Quarter, which is directly attributable to the state of repair of the Network, to minimise the risk of an incident or accident until the Network can be repaired. To avoid doubt the following will not be considered to be a Temporary Speed Restriction:*

(i) *a speed restriction that ARTC reasonably applies to reduce the risk of degradation or damage to the Network including but not limited to a temporary speed restriction imposed as a result of a Force Majeure event which allows services to recommence on the Network;*

(ii) *a speed restriction that ARTC reasonably applies in order to carry out major capital works on the Network;*

(iii) *a speed restriction that ARTC reasonably applies as a result of a structural condition arising from prior operation above original design capacity including but not limited to where a structure is beyond its economic life; and*

(iv) *a speed restriction that ARTC reasonably retains because the carrying out of works necessary to remove that speed restriction is not economic.*

(b) *The following TV and UB will apply for PPIS Metric 2.*

PPIS Metric 2	***TV***	***UB***
Network	*14.41 minutes*	*9.31 minutes*

(c) *The QIAC for PPIS Metric 2 will be determined by ARTC having regard to:*

(i) *a reasonable assessment of the impact that a reduction in transit time on the Network may have on the capability of the Network to accommodate increased train paths and volume throughput; and*

(ii) *access revenue (based on an average coal haul and average Charge for coal access rights for the Network) that ARTC would have earned through the achievement of the difference in volume throughput between ARTC's performance at TV and performance at UB in respect of PPIS Metric 2.*

ARTC submits that with respect to PPIS Metric 2, it has 'developed a data set ... showing performance for the Network covering the period March quarter 2009 to the June quarter 2012, and containing 14 observations.' ARTC also submits that to 'improve the validity of this assessment, ARTC intends to extend the data set to include more observations ahead of approval of the PPIS.' [23]

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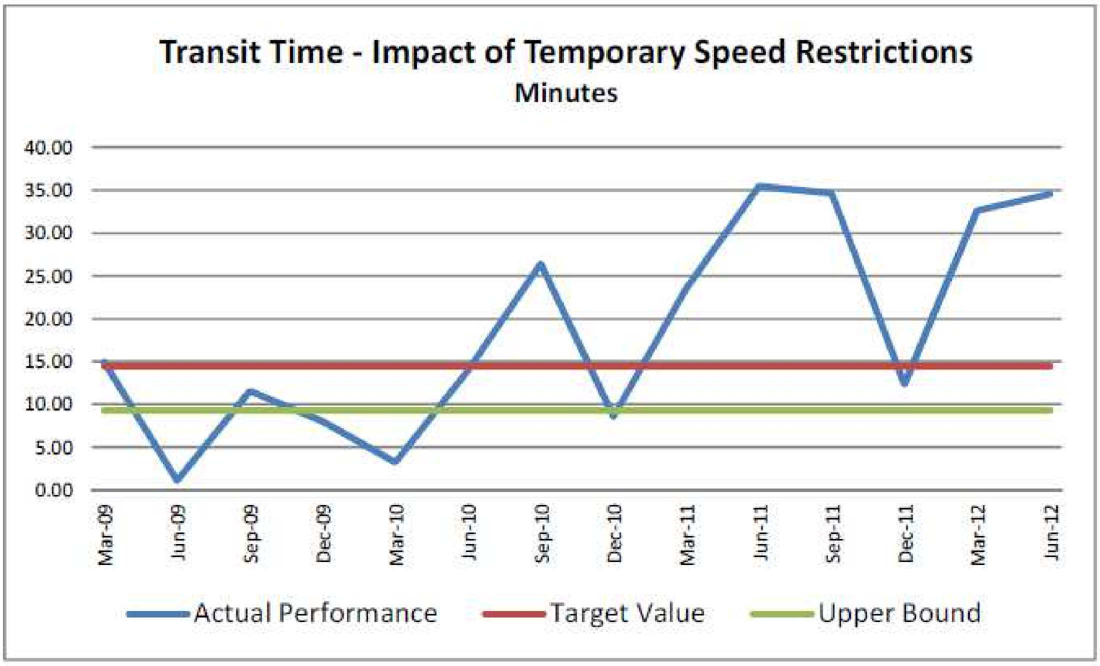
[23] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, pp. 42-43.

The data set used to determine the target value and upper bound for PPIS Metric 2 is included in ARTC's supporting submission, and is set out below:

Figure 2



It is ARTC's view that this metric will act as a positive incentive to reduce the impact of temporary speed restrictions on transit time over the Network to a level that not only ensures capacity is available to meet contractual entitlements, but results in capacity becoming available for other uses including ad hoc paths.[24]

The extent of speed restrictions is materially influenced by weather conditions that are not within ARTC's control. ARTC is yet to determine an appropriate approach and mechanism for adjusting this mechanism for weather conditions and will consider refinement ahead of any review of this metric that may take place under section 13.5 of the June 2011 HVAU.[25]

Questions for comment

- Is ARTC's proposed data set and method of measuring the impact of temporary speed restrictions appropriate?
- Is the mechanism by which PPIS Metric 2 is to be determined clear and appropriate?
- Is the Target Value and Upper Bound for PPIS Metric 2 appropriate, given the objective of PPIS Metric 2?

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[24] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 40.

[25] ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 41.

- Is the mechanism for determination of the Quarterly Incentive Amount Cap, and the cap itself, for PPIS Metric 2 appropriate?
- How will PPIS Metric 2 benefit ARTC and industry?

2.1.7 PPIS Metric 3 – Track Condition Measures by Index

PPIS Metric 3 is a measure of track quality index (TQI) an industry standard measure of average geometric alignment of the track across four perspectives. ARTC have expressed the view that the relationship between incentives to ensure track condition/alignment and incentives under the TUT are less tangible than those for the metrics detailed above, which relate more closely to network capacity and throughput.[26]

The proposed drafting in relation to PPIS Metric 3 is set out in clause 2.3 of Schedule 5 of the IAHA:

2.3 PPIS Metric 3 – Track condition measured by index

*(a) PPIS Metric 3 will be the track quality index (**TQI**) determined by ARTC at the end of each Quarter:*

(i) in accordance with the applicable key performance indicator, 'Track quality measured by index', set out in Schedule D of the Access Undertaking; and

(ii) will include TQI measurements on each part of the Network that have been taken from the most recent run of ARTC's AK car (or other similar equipment) during that Quarter.

(b) The following TV and UB will apply for PPIS Metric 3

PPIS Metric 3	***TV***	***UB***
Network	*23.07*	*22.42*

(c) The QIAC for PPIS Metric 3 will be determined by ARTC as one third of one percent of the aggregate access revenue in respect of all contracted coal access rights on the Network payable by access holders to ARTC.

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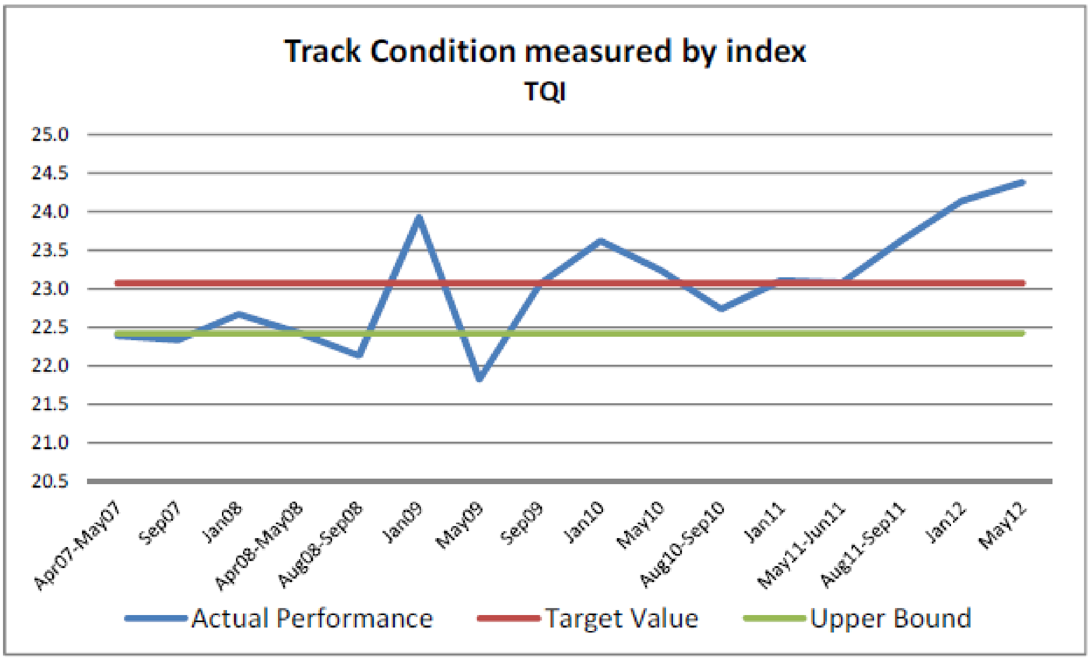
26 ARTC, O*ptions for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 44-45.

ARTC submits that with respect to PPIS Metric 3, it has 'developed a data set ... showing performance for the Network covering the period April/May 2007 to June 2012, and containing 16 observations.'[27]

ARTC also submits that it has 'taken the target value with respect to historical performance to represent a minimal minimum level of track condition/alignment to maintain capability, and the upper bound with respect to historical performance to represent a reasonable level of maintenance where maintenance to achieve a higher level of track condition/alignment is unnecessary (gold plating).' [28]

The data set used to determine the target value and upper bound for PPIS Metric 3 is included in ARTC's supporting submission, and is set out below:

Figure 3



ARTC notes that track condition/alignment can be materially influenced by weather conditions beyond its control. ARTC is yet to determine an appropriate mechanism for adjusting this mechanism for weather conditions and will consider refinement ahead of any review of this metric that may take place under Section 13.5 of the June 2011 HVAU. [29]

Questions for comment

- Is ARTC's proposed data set and method of measuring track condition by the Track Quality Index (TQI) appropriate?

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[27] ARTC, *Options for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 45.

[28] ARTC, *Options for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 46.

[29] ARTC, *Options for Positive Performance Incentive Mechanisms – Non True-Up Test – ARTC Report and Proposal*, July 2012, p. 45.

- Is the mechanism by which PPIS Metric 3 is to be determined clear and appropriate?
- Is the Target Value and Upper Bound for PPIS Metric 3 appropriate, given the objective of PPIS Metric 3?
- Is the mechanism for determination of the Quarterly Incentive Amount Cap, and the cap itself, for PPIS Metric 3 appropriate?
- How will PPIS Metric 3 benefit ARTC and industry?

2.1.8 Miscellaneous Amendments

The Proposed Variation revises the previous version of section 13.3 of the June 2011 HVAU as it relates to the development of the non-TUT performance incentive scheme. These amendments are proposed as the deleted parts of the existing provision will no longer be required if the Proposed Variation is accepted.

The proposed revisions to section 13.3 require ARTC to report publicly on each of the PPIS Metrics identified under the Positive Performance Incentive Scheme in section 2 of Schedule D and the Total Annual Incentive Amount. This is detailed below:

(a) ARTC will report on its website:

(i) each [of] *the PPIS Metrics under the Positive Performance Incentive Scheme set out in section 2 of* ***Schedule D****, within 40 Business Days of the end of each quarter in accordance with Schedule 5 of the Indicative Access Holder Agreement;*

(ii) within the 40 Business Days at the end of each calendar year the Total Annual Incentive Amount for that year;

(b) ARTC's obligation to report performance under this ***section 13.3*** *will not arise until the later of the first full quarter in respect of which performance is measured and the end of the first quarter in 2013, this means that:*

(i) ARTC will not report quarterly performance until 40 Business Days after the later of completion of the first full quarter in respect of which performance is measured and the end of the first quarter in 2013; and

(ii) ARTC will not report annual performance until 40 Business Days after the end of the 2013 calendar year.

Revisions to section 13.5 of the June 2011 HVAU also propose to incorporate a review of the PPIS, which are intended to occur simultaneously with the development of TUT-related performance incentives.

It is also proposed that Schedule G of the June 2011 HVAU be amended to require ARTC to provide relevant evidence of any Innovation Incentive Amount to assist the ACCC in performing its annual compliance assessment.

Finally, it is proposed that Schedule A:1 of the June 2011 HVAU be amended to clarify that the PPIS schedule (and the related amendments to clause 5.4A) be included as Tier 1 (mandatory) provisions for all Access Holder agreements for coal access rights.

Questions for comment

- Is the proposed reporting mechanism, and the associated publication obligations, appropriate?
- Are the proposed amendments to section 13.5, now covering the review of the PPIS <u>and</u> the development of the TUT-related performance incentives appropriate?
- Are the other consequential amendments (as set out in ARTC's Proposed Variation and summarised in Appendix A of this Consultation Paper) appropriate?

3 Background information

3.1 Legal test for accepting an access undertaking variation

Under paragraph 44ZZA(7)(b) of the Act, an access provider may withdraw or vary an access undertaking at any time after it has been accepted by the ACCC, but only with the consent of the ACCC.

If the ACCC consents to the variation, the provider is required to offer third party access in accordance with the varied access undertaking. An access undertaking is binding on the access provider and can be enforced in the Federal Court upon application by the ACCC.[30]

Subsection 44ZZA(7) allows the ACCC to consent to a variation of an accepted access undertaking if it thinks it appropriate to do so, having regard to the matters contained in subsection 44ZZA(3), which are:

- the objects of Part IIIA of the Act,[31] which are to:
  - promote the economically efficient operation of, use of and investment in the infrastructure by which services are provided, thereby promoting effective competition in upstream and downstream markets; and
  - provide a framework and guiding principles to encourage a consistent approach to access regulation in each industry;
- the pricing principles specified in section 44ZZCA of the Act;
- the legitimate business interests of the provider of the service;
- the public interest, including the public interest in having competition in markets (whether or not in Australia);
- the interest of persons who might want to access the service;
- whether the undertaking is in accordance with an access code that applies to the service; and
- any other matters that the ACCC thinks are relevant.

In relation to the pricing principles, section 44ZZCA of the Act provides that:

- regulated access prices should:

[30] Section 44ZZJ of the Act.
[31] Section 44AA of the Act.

  - be set so as to generate expected revenue for a regulated service that is at least sufficient to meet the efficient costs of providing access to the regulated service or services; and

  - include a return on investment commensurate with the regulatory and commercial risks involved; and

- access price structure should:

  - allow multi-part pricing and price discrimination when it aids efficiency; and

  - not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of downstream operations, except to the extent that the cost of providing access to the other operators is higher; and

- access pricing regimes should provide incentives to reduce costs or otherwise improve productivity.

3.2 Timelines for ACCC decisions

Subsection 44ZZBC(1) of the Act provides that the ACCC must make a decision on an access undertaking application within the period of 180 days starting at the start of the day the application is received (referred to as 'the expected period'). A request made to the ACCC for the withdrawal or variation of an access undertaking is an access undertaking application.

3.2.1 Information requests

Subsection 44ZZBCA(1) provides that the ACCC may give a person a written notice requesting the person give to the ACCC, within a specified period, information of a kind specified in the notice that the ACCC considers may be relevant to making a decision on an access undertaking application.

Appendix A:

Table of changes to HVAU/IAHA

June 2011 HVAU	
Original provision	**Proposed change**
4.4 Regulatory Asset Base **(a) Determination of RAB** $RAB_{t\ start} = RAB_{t-1\ end} =$ $(1 + RoR) \times RAB_{t-1\ start}$ – Out-turn $Revenue_{t-1}$ + Out-turn $Opex_{t-1}$ + (Net $Capex_{t-1}$) x (1 + 0.5 x RoR)]	**4.4 Regulatory Asset Base** **(a) Determination of RAB** $RAB_{t\ start} = RAB_{t-1\ end} =$ $(1 + RoR) \times RAB_{t-1\ start}$ – Out-turn $Revenue_{t-1}$ + Out-turn $Opex_{t-1}$ + [(Net $Capex_{t-1}$ + IIA_{t-1}) x (1 + 0.5 x RoR)] where: IIA_{t-1} is the Innovation Incentive Amount payable to ARTC under section 2 of **Schedule D** during the preceding year (t-1) on a Prudent basis excluding Capital Contributions (as applicable).
4.4 Regulatory Asset Base **(b) RAB Floor Limit** RAB Floor $Limit_{t\ start}$ = RAB Floor $Limit_{t-1\ end}$ = $(1 + CPI_{t-1})$ x RAB Floor $Limit_{t-1\ start}$ + Net $Capex_{t-1}$ – $Depreciation_{t-1}$	**4.4 Regulatory Asset Base** **(b) RAB Floor Limit** RAB Floor $Limit_{t\ start}$ = RAB Floor $Limit_{t-1\ end}$ = $(1 + CPI_{t-1})$ x RAB Floor $Limit_{t-1\ start}$ + Net $Capex_{t-1}$ + IIA_{t-1} – $Depreciation_{t-1}$ where: IIA_{t-1} is the Innovation Incentive Amount payable to ARTC under section 2 of **Schedule D** during the preceding year (t-1) on a Prudent basis excluding Capital Contributions (as applicable).
7.2 Overview of framework **(c) Under funding option**	**7.2 Overview of framework** **(c) User funding option**
8.1 Hunter Valley corridor capacity strategy (c) The Hunter Valley corridor capacity strategy will include capacity expansion options which: (iii) include a preliminary high level assessment of objectives, and an indicative cost estimate and benefits;	**8.1 Hunter Valley corridor capacity strategy** (c) The Hunter Valley corridor capacity strategy will include capacity expansion options which: (iii) include a preliminary high level assessment of objectives, and an indicative cost estimate, estimate of any Innovation Incentive Amount and indicative benefits;
9.1 Overview (a) If a Project to provide Additional	**9.1 Overview** (a) If a Project (including an

Capacity is initiated under **section 8** and proceeds to concept assessment, ARTC will undertake industry consultation in relation to the Project in accordance with this **section 9**. (c) The objectives of the consultation process are to: (iii) provide a process for the applicable industry participants to participate in the development and management of projects and to endorse Capital Expenditure incurred by ARTC in providing Additional Capacity or incurred in relation to the Network as Prudent. (d) The depth of analysis and documentation prepared at each stage of consultation will reflect the cost, benefits and risks of a project.	Innovation Project) to provide Additional Capacity is initiated under **section 8** and proceeds to concept assessment, ARTC will undertake industry consultation in relation to the Project in accordance with this **section 9**. (c) The objectives of the consultation process are to: (iii) provide a process for the applicable industry participants to participate in the development and management of projects and to endorse Capital Expenditure incurred by ARTC in providing Additional Capacity or incurred in relation to the Network as Prudent, and any Innovation Incentive Amount in providing Additional Capacity as Reasonable. (d) The depth of analysis and documentation prepared at each stage of consultation will reflect the cost, any Innovation Incentive Amount, benefits and risks associated with a project.
9.2 The RCG (a) ARTC will convene, and conduct, regular monthly meetings with the RCG for the purpose of consulting with applicable industry representatives and obtaining endorsement of Capital Expenditure associated with Additional Capacity or other Capital Expenditure on the Network. ARTC will prepare an agenda for meetings and provide a secretariat. ARTC may seek to consult or seek endorsement from the RCG outside of regular monthly meetings where ARTC considers this will assist project development and delivery. (h) ARTC may elect to continue to the next stage of project development without RCG endorsement. Where this occurs, ARTC may elect to seek endorsement of the expenditure from the ACCC in respect of project development and delivery to the extent not	**9.2 The RCG** (a) ARTC will convene, and conduct, regular monthly meetings with the RCG for the purpose of consulting with applicable industry representatives and obtaining endorsement of Capital Expenditure, and any Innovation Incentive Amount, associated with Additional Capacity or other Capital Expenditure on the Network. ARTC will prepare an agenda for meetings and provide a secretariat. ARTC may seek to consult or seek endorsement from the RCG outside of regular monthly meetings where ARTC considers this will assist project development and delivery. (h) ARTC may elect to continue to the next stage of project development

endorsed by the RCG. Expenditure incurred by ARTC on project development or delivery will be included in the RAB or expensed when incurred as endorsed by the ACCC. ARTC may seek the ACCC's endorsement in advance of, or subsequent to, incurring the expenditure.	without RCG endorsement. Where this occurs, ARTC may elect to seek endorsement of the expenditure from the ACCC in respect of project development and delivery, and any Innovation Incentive Amount in respect of project delivery, to the extent not endorsed by the RCG. Expenditure incurred by, and any Innovation Incentive Amount payable to, ARTC on project development or delivery will be included in the RAB or expensed when incurred as endorsed by the ACCC. ARTC may seek the ACCC's endorsement in advance of, or subsequent to, incurring the expenditure.
9.3 Concept assessment (b) The objective of the Concept Assessment Report will be to enable a preliminary assessment of the potential costs, benefits and risk involved and unless ARTC and the RCG, HVCCC or an Applicant (as applicable) agrees otherwise, will include an indicative assessment of: (i) project objectives; (ii) broad cost estimates and associated benefits; (iii) preliminary financial analysis; (iv) preliminary risk assessment; and (v) indicative timeframes for the development and the delivery of the project.	**9.3 Concept assessment** (b) The objective of the Concept Assessment Report will be to enable a preliminary assessment of the potential costs, any Innovation Incentive Amount, benefits and risk involved and unless ARTC and the RCG, HVCCC or an Applicant (as applicable) agrees otherwise, will include an indicative assessment of: (i) project objectives; (ii) broad cost estimates and associated benefits; (iii) broad estimate of any Innovation Incentive Amount; (iv) preliminary financial analysis; (v) preliminary risk assessment; and (vi) indicative timeframes for the development and the delivery of the project.
9.4 Project Feasibility (b) Unless ARTC and the RCG agree otherwise, the project feasibility report will include: (iii) identification of estimated project costs (with a +/-20% range)	**9.4 Project Feasibility** (b) Unless ARTC and the RCG agree otherwise, the project feasibility report will include: (iii) identification of estimated project costs and any Innovation Incentive

	Amount (with a +/-20% range)
9.5 Project Assessment (b) Unless ARTC and the RCG agree otherwise, the project assessment report will include: (iii) project schedule including time tolerances and project budget with a+/-10% margin or a larger margin where appropriate for larger projects, an estimate of contingency supported by risk assessment, cost analysis, and basis for contingency; (d) ARTC may seek formal endorsement from the RCG to proceed to project procurement. Endorsement to proceed to project procurement would include any variation between the endorsed estimated cost range identified during project assessment and the project budget identified during project feasibility and:	**9.5 Project Assessment** (b) Unless ARTC and the RCG agree otherwise, the project assessment report will include: (iii) project schedule including time tolerances and project budget (including any Innovation Incentive Amount) with a+/-10% margin or a larger margin where appropriate for larger projects, an estimate of contingency supported by risk assessment, cost analysis, and basis for contingency; (d) ARTC may seek formal endorsement from the RCG to proceed to project procurement. Endorsement to proceed to project procurement would include any variation between the endorsed estimated cost range and any Innovation Incentive Amount identified during project feasibility and the project budget and any Innovation Incentive Amount respectively identified during project assessment and:
9.6 Project implementation (a) **Procurement** (iii) Where a cost outside of the range, or contingency endorsed in the project assessment stage is confirmed ("**Cost Variation**") and/or there is a material variation from the project schedule ("**Schedule Variation**") under **section 9.4(b)(iii)**, ARTC will seek the endorsement of the RCG for those variations. (v) If the RCG endorses the Cost Variation and/or Schedule Variation, ARTC will proceed with project implementation. (vi) If the RCG endorses less than the Cost Variation, or does not endorse the Schedule Variation, ARTC may refer the matter to an agreed independent expert for a determination as to whether the Cost Variation is Prudent or whether the Schedule	**9.6 Project implementation** (a) **Procurement** (iii) Where a cost outside of the range, or contingency endorsed in the project assessment stage is confirmed ("**Cost Variation**") and/or there is a material variation from the project schedule (including a material variation to any Innovation Incentive Amount) ("**Schedule Variation**") under **section 9.4(b)(iii)**, ARTC will seek the endorsement of the RCG for those variations. (v) If the RCG endorses the Cost Variation and/or Schedule Variation, ARTC will proceed with project implementation. (vi) If the RCG endorses less than the Cost Variation, or does not endorse

Variation is reasonable (having regard to whether it arose from a matter outside of ARTC's reasonable control or which could not have been reasonably anticipated by ARTC), in accordance with **section 9.6(d)**. (vii) Upon the independent expert determining on the cost to be taken as Prudent in accordance with **sub section (vi)** (which, to avoid doubt, must take into account any change in project schedule which the independent expert considers reasonable), then subject to **sub-section (viii)**, ARTC will proceed with project implementation regardless of whether the independent expert determines the full amount of the Cost Variation as Prudent.	the Schedule Variation, ARTC may refer the matter to an agreed independent expert for a determination as to whether the Cost Variation is Prudent or whether the Schedule Variation is reasonable (having regard to whether it arose from a matter outside of ARTC's reasonable control or which could not have been reasonably anticipated by ARTC or in relation to any Innovation Incentive Amount if the variation is Reasonable), in accordance with **section 9.6(d)**. (vii) Upon the independent expert determining on the cost to be taken as Prudent or any Innovation Incentive Amount to be taken as Reasonable respectively in accordance with **sub section (vi)** (which, to avoid doubt, must take into account any change in project schedule which the independent expert considers reasonable), then subject to **sub-section (viii)**, ARTC will proceed with project implementation regardless of whether the independent expert determines the full amount of the Cost Variation as Prudent or the full amount of the Schedule Variation in relation to any Innovation Incentive Amount as Reasonable.
9.6 Project implementation (b) **Project management plan** (i) ARTC will: (A) finalise the project management plan developed during project assessment, including a contract management plan and operational readiness plan and provide the finalised project management plan and project schedule including time tolerances and project budget to the RCG for endorsement; and (ii) Endorsement of the finalised project management plan would include endorsement of the project budget and	**9.6 Project implementation** (b) **Project management plan** (i) ARTC will: (A) finalise the project management plan developed during project assessment, including a contract management plan and operational readiness plan and provide the finalised project management plan and project schedule including time tolerances and project budget (including any Innovation Incentive Amount) to the RCG for endorsement; and

schedule for project delivery to be included in the RAB or expensed in the year incurred.	(ii) Endorsement of the finalised project management plan would include endorsement of the project budget (including any Innovation Incentive Amount) and schedule for project delivery to be included in the RAB or expensed in the year incurred.
9.6 Project implementation (c) **Project delivery** (iii) Where a variation to the endorsed project budget or project schedule identified at **section 9.5(b)(iii)** including contingency or an endorsed variation at **section 9.6(a)(iii)** or approved by an independent expert at **section 9.6(a)(viii)**, arises the following will apply: (A) ARTC will submit a revised project schedule and/or costing to the RCG for endorsement having regard to the prudency of the revised costing and the reasonableness of the revised project schedule but will continue with project delivery while a decision in respect of the endorsement is pending; (B) the RCG may endorse all or part of the variation and where the RCG endorses all of the variation, ARTC will continue with project delivery; (C) where the RCG endorses less than the full variation and/or endorses a different project schedule, ARTC may refer the matter to an agreed independent expert for review in accordance with **section 9.6(d)**. ARTC will continue with project delivery while that expert determination is pending; (D) the review of the independent expert will have regard to whether the variation is Prudent and/or whether the variation to the project schedule is reasonable and arose from a matter outside of ARTC's reasonable	**9.6 Project implementation** (c) **Project delivery** (iii) Where a variation to the endorsed project budget or project schedule identified at **section 9.5(b)(iii)** including contingency or any endorsed Innovation Incentive Amount, or an endorsed variation at **section 9.6(a)(iii)** or approved by an independent expert at **section 9.6(a)(viii)**, arises the following will apply: (A) ARTC will submit a revised project schedule and/or costing (including any revised Innovation Incentive Amount) to the RCG for endorsement having regard to the prudency of the revised costing, the reasonableness of the revised project schedule and the Reasonableness of any revised Innovation Incentive Amount but will continue with project delivery while a decision in respect of the endorsement is pending; (B) the RCG may endorse all or part of the variation and where the RCG endorses all of the variation, ARTC will continue with project delivery; (C) if the RCG endorses less than the full variation and/or endorses a different project schedule (including where the RCG endorses less than the full amount of any revised

control or which could not have been reasonably anticipated by ARTC;	Innovation Incentive Amount), ARTC may refer the matter to an agreed independent expert for review in accordance with **section 9.6(d)**. ARTC will continue with project delivery while that expert determination is pending; (D) the review of the independent expert will have regard to whether the cost variation is Prudent and/or whether the variation to the project schedule is reasonable (having regard to whether it arose from a matter outside of ARTC's reasonable control or which could not have been reasonably anticipated by ARTC or in relation to any Innovation Incentive Amount if the variation is Reasonable);
9.7 Project close-out (a) Upon completion of project implementation, ARTC will provide a project close-out report for the RCG. Unless ARTC and the RCG agree otherwise, a project close-out report will include: (i) formal acceptance of works; (ii) outstanding works and if necessary a completion plan; (iii) cost report; and (iv) verification of benefits delivered. (b) Any Capital Expenditure incurred by ARTC in providing Additional Capacity that is within the cost range, including any contingency endorsed at the project assessment stage, or endorsed by the RCG or determined by the independent expert at the project implementation stage, will be taken as Prudent.	**9.7 Project close-out** (a) Upon completion of project implementation, ARTC will provide a project close-out report for the RCG. Unless ARTC and the RCG agree otherwise, a project close-out report will include: (i) formal acceptance of works; (ii) outstanding works and if necessary a completion plan; (iii) cost report; (iv) any Innovation Incentive Amount report; and (v) verification of benefits delivered. (b) Any Capital Expenditure incurred by ARTC in providing Additional Capacity that is within the cost range, including any contingency endorsed at the project assessment stage, or endorsed by the RCG or determined

	by the independent expert at the project implementation stage, will be taken as Prudent. (c) Any Innovation Incentive Amount associated with a project in providing Additional Capacity that is within the range endorsed at the project assessment stage, or endorsed by the RCG or determined by the independent expert at the project implementation stage, will be taken as Reasonable.
10.1 User funding option (c) Subject to ARTC's agreement, a Contributor may fund ARTC's costs of providing Additional Capacity: (ii) by the Contributor reimbursing the relevant costs as and when they are incurred by ARTC; or (d) In negotiating a user funding agreement, a Contributor may elect: (i) to seek to have some or all of the Project costs deemed as Prudent through the Project proceeding through the RCG or seeking ACCC endorsement of the Project costs as Prudent (in which case ARTC will provide reasonable cooperation to the Contributor at the Contributor's cost); and/or (ii) fund the Project without seeking to have some or all of the Project costs included into the RAB. (e) The Contributor will recover the capital cost associated with its funding, in accordance with the Capital Contribution Principles as set out in **section 10.2** and the mechanism for recovery will depend on the extent to which the Project costs are endorsed as Prudent either by the RCG or ACCC.	**10.1 User funding option** (c) Subject to ARTC's agreement, a Contributor may fund ARTC's costs and any Innovation Incentive Amount of providing Additional Capacity: (ii) by the Contributor reimbursing the relevant costs as and when they are incurred by ARTC and any Innovation Incentive Amount upon commissioning of the Project; or (d) In negotiating a user funding agreement, a Contributor may elect: (i) to seek to have some or all of the Project costs deemed as Prudent and any Innovation Incentive Amount deemed Reasonable through the Project proceeding through the RCG or seeking ACCC endorsement of the Project costs as Prudent and any Innovation Incentive Amount as Reasonable (in which case ARTC will provide reasonable cooperation to the Contributor at the Contributor's cost); and/or (ii) fund the Project without seeking to have some or all of the Project costs and any Innovation Incentive Amount included into the RAB. (e) The Contributor will recover the capital cost associated with its funding, in accordance with the Capital Contribution Principles as set

	out in **section 10.2** and the mechanism for recovery will depend on the extent to which the Project costs are endorsed as Prudent and any Innovation Incentive Amount endorsed as Reasonable either by the RCG or ACCC.
10.2 Capital Contribution Principles (a) The following principles will apply in relation to the negotiation of a user funding agreement between ARTC and a Contributor to achieve an equitable form of reconciliation under **section 10.1(f)**: (ii) In determining Charges for the relevant Pricing Zone, ARTC will have regard to: (C) the Contributor will not achieve recovery of capital cost associated with assets funded by a Capital Contribution (**“Contributed Assets”**) that exceeds the Rate of Return. (c) Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is Prudent in accordance with **section 9** of this Undertaking, or determined as Prudent by the ACCC: (d) Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is not Prudent in accordance with **section 9** of this Undertaking, or is not endorsed to be Prudent by the ACCC:	**10.2 Capital Contribution Principles** (a) The following principles will apply in relation to the negotiation of a user funding agreement between ARTC and a Contributor to achieve an equitable form of reconciliation under **section 10.1(f)**: (ii) In determining Charges for the relevant Pricing Zone, ARTC will have regard to: (C) the Contributor will not achieve recovery of capital cost associated with assets or any Innovation Incentive Amount funded by a Capital Contribution (**“Contributed Assets”**) that exceeds the Rate of Return. (c) Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is Prudent and any Innovation Amount is Reasonable in accordance with **section 9** of this Undertaking, or determined as Prudent or Reasonable by the ACCC respectively: (d) Where a Capital Contribution is made by the Contributor, to the extent that the related Capital Expenditure is not Prudent or any Innovation Amount is not Reasonable in accordance with **section 9** of this Undertaking, or is not endorsed to be Prudent or Reasonable by the ACCC respectively:
13.1 Network Key Performance Indicators (b) ARTC's obligation to report performance	**13.1 Network Key Performance Indicators** (b) ARTC's obligation to report

under this **section 13** will not arise until the completion of the first full period in respect of which performance is measured, this means that:	performance under this **section 13.1** will not arise until the completion of the first full period in respect of which performance is measured, this means that:
13.3 Development of non-TUT related ARTC performance incentives a) Within six months of the Commencement Date, ARTC will: (i) prepare and publish on its website options for a proposed performance incentive scheme which has the objectives of encouraging ARTC, through financial reward, to improve operating, maintenance and capital expenditure efficiency, and achieve desirable safety performance, to be included in the Undertaking; and (ii) invite submissions from Access Holders and other stakeholders on the proposed performance incentive scheme, within a specified time (which must be not less than 6 weeks from the publication of the options). (b) ARTC will in good faith consider the submissions provided within the specified time and by no later than 12 months from the Commencement Date will: (i) prepare a report addressing options for a proposed performance incentive scheme having regard to the submissions and containing ARTC's proposed variation to the Undertaking to include its proposed performance incentive scheme; (ii) provide the report to the ACCC; and (iii) lodge a variation application with the ACCC under **section 44ZZA(7)** of the CCA consistent with the report. (c) To avoid doubt, the performance incentive scheme under this **section 13.3** may be developed separately from the TUT-related performance incentive scheme to be developed under **section 13.5** and is not required to include performance incentives to the extent they would overlap with those	**13.3 ARTC positive performance incentive scheme** (a) ARTC will report on its website: (i) each the PPIS Metrics under the Positive Performance Incentive Scheme set out in section 2 of **Schedule D**, within 40 Business Days of the end of each quarter in accordance with Schedule 5 of the Indicative Access Holder Agreement; (ii) within the 40 Business Days at the end of each calendar year the Total Annual Incentive Amount for that year; (b) ARTC's obligation to report performance under this **section 13.3** will not arise until the later of the first full quarter in respect of which performance is measured and the end of the first quarter in 2013, this means that: (i) ARTC will not report quarterly performance until 40 Business Days after the later of completion of the first full quarter in respect of which performance is measured and the end of the first quarter in 2013; and (ii) ARTC will not report annual performance until 40 Business Days after the end of the 2013 calendar year.

to be developed under **section 13.5**.	
13.5 Development of TUT-related ARTC performance incentives (a) ARTC will either in parallel with, or following completion of, the TUT Review: (i) prepare and publish on its website options for a proposed performance incentive scheme which has the objectives 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, to be included in the Undertaking; and (ii) invite submissions from Access Holders and other stakeholders on the proposed TUT-related performance incentive scheme, within a specified time (which must be not less than 6 weeks from the publication of the options). (b) ARTC will in good faith consider the submissions provided within the specified time and prepare a report addressing options for a proposed TUT-related performance incentive scheme having regard to the submissions and containing ARTC's proposed variation to the Undertaking to include its TUT-related proposed performance incentive scheme and: (c) If ARTC decides to conduct the development of a TUT-related ARTC performance scheme after completion of the TUT Review, ARTC will complete developmentof a TUT-related ARTC performance scheme within 6 months of the completion of the TUT Review or such longer period as required to consider or address any variations that may be proposed or required by the ACCC.	**13.5 Review of the PPIS and development of TUT-related ARTC performance incentives** (a) ARTC will either in parallel with, or following completion of, the TUT Review: (i) prepare and publish on its website: (A) any proposed variation to the PPIS that would have the objective of balancing the overall PPIS in light of any additional proposed incentives and/or improving the overall effectiveness of the PPIS; (B) options for any additional proposed performance incentives which have the objectives 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, to be included in the Undertaking; and (ii) invite submissions from Access Holders and other stakeholders on any proposed variation to the PPIS and any options for additional proposed performance incentives, within a specified time (which must be not less than 6 weeks from the publication of the options). (b) ARTC will in good faith consider the submissions provided within the specified time and prepare a report setting out any proposed variation to the PPIS and addressing any options for additional proposed performance incentives having regard to the submissions and:

	(c) If ARTC decides to conduct a review under this **section 13.5** after completion of the TUT Review, ARTC will complete the review under this **section 13.5** within 6 months of the completion of the TUT Review or such longer period as required to consider or address any variations that may be proposed or required by the ACCC.
14.1 Definitions "**Capital Contribution**" means a direct payment other than by way of a Charge by an Applicant or Access Holder in connection with Capital Expenditure undertaken by ARTC, paid up-front or over a period of time. Where a Capital Contribution is to be paid over a period of more than one year, the value of the Capital Contribution may be represented as a single amount determined on a net present value basis by application of the relevant form of the Rate of Return;	**14.1 Definitions** "**Capital Contribution**" means a direct payment other than by way of a Charge by an Applicant or Access Holder in connection with Capital Expenditure undertaken by ARTC or any Innovation Incentive Amount, paid up-front or over a period of time. Where a Capital Contribution is to be paid over a period of more than one year, the value of the Capital Contribution may be represented as a single amount determined on a net present value basis by application of the relevant form of the Rate of Return;
No previous definitions.	"**Innovation Incentive Amount**" has the meaning given in **section 2.2** of **Schedule D**; "**Innovation Project**" has the meaning given in **section 2.2** of **Schedule D**; "**Positive Performance Incentive Scheme or PPIS**" means the positive performance incentive scheme described in **section 2.1** of **Schedule D**; "**PPIS Metric**" means each of PPIS Metric 1, PPIS Metric 2 and PPIS Metric 3 as defined in clause 2 of Schedule 5 of the Indicative Access Holder Agreement and included in **section 2** of **Schedule D**;
"**Prudent**" means in relation to Capital Expenditure, capital and renewals projects identified, and expenditure incurred, that is:	"**Prudent**" means (a) in relation to Capital Expenditure,

(a) taken as prudent in accordance with **section 9.7(b)**; and (b) otherwise, prudent having regard to: (i) need to meet market demand for Capacity and performance of the Network, or the need to extend the economic life of the Network; (ii) whether the scope of works is consistent with that identified in the Hunter Valley corridor capacity strategy, where applicable, current as at the Commencement Date or as varied from time to time; (iii) what is considered to represent an efficient means to achieve that demand or extend that economic life; (iv) what is consistent with existing standard and configuration of adjacent and/or existing infrastructure with similar utilisation and market requirements, or its modern engineering equivalent; (v) expenditure incurred efficiently in implementing the project, where efficient costs will reflect the costs incurred by a prudent service provider on an Efficient basis; (vi) adjustments in relation to the timing of commencement and/or commissioning of projects; (vii) the importance to the industry of anticipated timing for completion of projects having regard to the impact on Coal Chain Capacity and commercial arrangements; and (viii) where applicable, support by the relevant industry participants;	capital and renewals projects identified, and expenditure incurred, that is: (i) taken as prudent in accordance with **section 9.7(b)**; and (ii) otherwise, prudent having regard to: (A) need to meet market demand for Capacity and performance of the Network, or the need to extend the economic life of the Network; (B) whether the scope of works is consistent with that identified in the Hunter Valley corridor capacity strategy, where applicable, current as at the Commencement Date or as varied from time to time; (C) what is considered to represent an efficient means to achieve that demand or extend that economic life; (D) what is consistent with existing standard and configuration of adjacent and/or existing infrastructure with similar utilisation and market requirements, or its modern engineering equivalent; (E) expenditure incurred efficiently in implementing the project, where efficient costs will reflect the costs incurred by a prudent service provider on an Efficient basis; (F) adjustments in relation to the timing of commencement and/or commissioning of projects;

	(G) the importance to the industry of anticipated timing for completion of projects having regard to the impact on Coal Chain Capacity and commercial arrangements; and (H) where applicable, support by the relevant industry participants; and (b) in relation to an Innovation Incentive Amount under section 2 of **Schedule D**, an amount that is: (i) taken as reasonable in accordance with section 9.7(c); and (ii) otherwise, Reasonable.
No previous definitions	"**Reasonable**" means in relation to an Innovation Incentive Amount, an amount that is reasonable, having regard to (amongst other things): (a) the extent of any innovation that is attributed to ARTC, as opposed to other parties; (b) ICHA and ICIA contemplated in section 2 of **Schedule D** in the context of the extent of the role innovation played in delivering the benefits of the Additional Capacity created through an Innovation Project; and (c) the extent, considered at the time, to which the Additional Capacity created through the Innovation Project ICIA in accordance with section 2 of **Schedule D** may not be available for utilisation by the industry over the economic life of the Additional Capacity; and (d) the incentive to pursue innovation in light of reasonable development and implementation costs.

	“**Total Annual Incentive Amount** has the meaning given in Schedule 5 of the Indicative Access Holder Agreement;
SCHEDULE A:1 - Elements of Coal Access Agreements **Tier 1 (mandatory) provisions for all Access Holder Agreements for Coal Access Rights*:** 8 IAHA Clause 5.4: Calculation of TOP Rebate and Ad-Hoc Charge Rebate	**SCHEDULE A:1 - Elements of Coal Access Agreements** **Tier 1 (mandatory) provisions for all Access Holder Agreements for Coal Access Rights*:** 8 IAHA Clause 5.4: Calculation of TOP Rebate, Ad-Hoc Charge Rebate and Performance Incentive Amount
Not previously included	24 IAHA Schedule 5: Positive Performance Incentive Scheme

SCHEDULE D - Performance Measurement and Incentives

Not previously included

2. Positive Performance Incentive Scheme (“PPIS”)

2.1 Overview

The PPIS consists of the following metrics and incentive measures:

Positive Performance Incentive Scheme	**Description**
Positive Performance Incentive Metric	
PPIS Metric 1	The percentage of cancelled services for a quarter determined in accordance with clause 2.1 of Schedule 5 of the Indicative Access Holder Agreement.
PPIS Metric 2	The minutes of transit time lost on the Network resulting from the imposition of temporary speed restrictions for a quarter determined in accordance with clause 2.2 of Schedule 5 of the Indicative Access Holder Agreement.
PPIS Metric 3	The track quality index for a quarter determined in accordance with clause 2.3 of Schedule 5 of the Indicative Access Holder Agreement.
Incentive Measures	
Additional Capacity Investment Innovation Incentive	The Additional Capacity Investment Innovation Incentive described in **section 2.2** of this **Schedule D** and endorsed by the RCG in accordance with **section 9**.

2.2 Additional Capacity Investment Innovation Incentive

Overview

(a) The objective of the Additional Capacity Investment Innovation Incentive is to provide an incentive for ARTC to identify, develop and implement projects intended to provide Additional Capacity on the Network which result wholly or partly from an innovation that has been identified and/or developed by ARTC.

(b) Characteristics of innovation may include (amongst other things) the creation or development of better or more effective products, processes, services, technologies, or ideas which assists or results in the creation of Additional Capacity on the Network that has not resulted from the installation or replacement of infrastructure assets arising through Capital Expenditure being incurred by ARTC or a third party.

Determining the Innovation Incentive Amount

(c) If ARTC demonstrates to the RCG that it has made available, or will make available, Additional Capacity which has:

(i) partially or fully arisen through the innovation of ARTC; and

(ii) without Capital Expenditure being incurred, or a reduced Capital Expenditure amount being incurred (including where such Capital Expenditure is wholly or partially offset by increased operating expenditure) ("**Innovation Project**"),

the RCG may under **section 9** endorse for inclusion in the RAB an amount ("**Innovation Incentive Amount**") that will result in ARTC receiving an incentive payment over the economic life of the Additional Capacity.

(d) The Innovation Incentive Amount for an Innovation Project will be calculated in accordance with the following formula (or as otherwise agreed by ARTC):

$$NPV\left(\sum_{i}^{L}(IRIA_i)\right) = 0.5 * NPV\left(\sum_{i}^{L}(ICHA_i - ICIA_i)\right)$$

Where:

L is the economic life in years of the Innovation Project.

$IRIA_i$ is the annual payment to ARTC arising from inclusion of Innovation Incentive Amount for the Innovation Project in the annual roll forward of the RAB Floor Limit as contemplated at Section 4.4(b), being applicable Depreciation and a return determined by applying a real, pre-tax Rate of Return in year i.

$ICHA_i$ is the capital cost of the Capital Expenditure that would have been incurred on a Prudent basis to initiate, develop and implement Additional Capacity on the Network that is equivalent to that arising from the Innovation Project without innovation in year i, and includes any incremental operating expenditure associated with that Additional Capacity. Where this is not able to be readily determined for the Innovation Project, this amount may be based on the average unit cost of Additional Capacity applying to the next creation

<table>
<tr><td colspan="2">of Additional Capacity where the existing level of Capacity is that level to which ARTC is proposing to increase through the Innovation Project. This may be determined having regard to the most recent Hunter Valley corridor capacity strategy and, where applicable, the most recent relevant and available cost of Additional Capacity endorsed by the RCG in accordance with section 9. The calculation may be undertaken by dividing the cost of the next creation of Additional Capacity by the amount of increased throughput (mT) arising from that Additional Capacity.

$ICIA_i$ is the capital cost of the Capital Expenditure that will be incurred on a Prudent basis to initiate, develop and implement the Innovation Project, and includes incremental operating expenditure associated with the Innovation Project in year i.

(e)The Innovation Incentive Amount must be endorsed by the RCG or ACCC in accordance with the industry consultation and endorsement process described in section 9.</td></tr>
<tr><td>SCHEDULE G - Annual Compliance Assessment - information provision and timing

2. Information to be provided by ARTC

ARTC will provide the following information as a minimum to the ACCC in order for the ACCC to carry out its assessment under section 4.10 of this Undertaking:

(b) documentation demonstrating ARTC’s compliance with the annual RAB and RAB Floor
Limit roll forward as set out at section 4.4 of this Undertaking, including:

(iv) evidence of any endorsement by the RCG of any proposed Capital Expenditure where relevant;

(v) evidence of disposals value including any endorsement by the RCG of any proposed disposals, and where possible, appropriate references to the Booz Allen Hamilton DORC database which established the regulatory asset base value as at 1 July 1999, and any references to the depreciated optimised replacement cost in relation to assets in Segments not ascribed a regulatory asset value in accordance with the NSW Rail</td><td>SCHEDULE G - Annual Compliance Assessment - information provision and timing

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(v) evidence of any Innovation Incentive Amount in respect of any Innovation Project determined in accordance with section 2 of Schedule D;</td></tr>
</table>

Access Undertaking in force at the time immediately preceding the Commencement Date of this Undertaking, and approved by the ACCC from time to time, and demonstrating adjustments to derive the current value of disposals; (vi) the spreadsheet or other models underlying calculations (not for publication); (vii) the name, address, contact details (including email address) of stakeholders considered by ARTC to be relevant Applicants and Access Holders and other parties consulted regarding compliance matters. This is to include a contact at CEO/Executive level for the purpose of an ACCC letter and a regular operational contact for email notification. Where a stakeholder identified by ARTC is not a relevant Applicant or Access Holder, ARTC will indicate their relationship with ARTC and/or their interest in ARTC's compliance, for instance: end user, industry advocate, etc. This information is not provided for publication.	(vi) evidence of disposals value including any endorsement by the RCG of any proposed disposals, and where possible, appropriate references to the Booz Allen Hamilton DORC database which established the regulatory asset base value as at 1 July 1999, and any references to the depreciated optimised replacement cost in relation to assets in Segments not ascribed a regulatory asset value in accordance with the NSW Rail Access Undertaking in force at the time immediately preceding the Commencement Date of this Undertaking, and approved by the ACCC from time to time, and demonstrating adjustments to derive the current value of disposals; (vii) the spreadsheet or other models underlying calculations (not for publication); (viii) the name, address, contact details (including email address) of stakeholders considered by ARTC to be relevant Applicants and Access Holders and other parties consulted regarding compliance matters. This is to include a contact at CEO/Executive level for the purpose of an ACCC letter and a regular operational contact for email notification. Where a stakeholder identified by ARTC is not a relevant Applicant or Access Holder, ARTC will indicate their relationship with ARTC and/or their interest in ARTC's compliance, for instance: end user, industry advocate, etc. This information is not provided for publication.

IAHA	
Original provision	**Proposed change**
1 Definitions and Interpretation **1.1 Definitions** No previous definition	**1 Definitions and Interpretation** **1.1 Definitions** **Positive Performance Incentive Scheme** means the positive performance

	metrics included in **Schedule 5**;
TOP Charges means the take or pay charges for the Train Paths as determined under **clause 1.1** of **Schedule 3**; No previous definition	**TOP Charges** means the take or pay charges for the Train Paths as determined under **clause 3.1** of **Schedule 3**; **Total Quarterly Incentive Amount** has the meaning given in **Schedule 5**;
5 Charges and payment No previous provision	**5 Charges and payment** **5.4A Calculation of Performance Incentive Amount** (a) Within 45 Business Days of the end of each calendar year in which the Access Holder has an entitlement to Path Usages in a Train Path Schedule, ARTC will determine if there is an amount payable by the Access Holder under the Positive Performance Incentive Scheme set out in **Schedule 5** to ARTC determined in accordance with the formulae in **clause 5.4A(b)** (**"Performance Incentive Amount**"). (b) If the Total Annual Incentive Amount > 0, then the Access Holder is liable to pay ARTC the Performance Incentive Amount calculated in accordance with the following formula: TAIA x (AHPU /NPU) Where: **TAIA or Total Annual Incentive Amount** means for each Contract Year, the sum of the total quarterly incentive amounts calculated in accordance with **Schedule 5**. **AHPU** means for each Contract Year, the sum of the Access Holder's total contracted GTK in that year based on the unconditional Annual Contracted Path Usages for all Train Paths specified in the **Train Path Schedules**. **NPU** means for each Contract Year, the Network's total contracted GTK in that year based on the aggregate number of unconditional path usages contracted by

	all holders of coal access rights on the Network. (c) Except as required under **clause 5.7**, the Access Holder is not required to pay any interest in relation to the Performance Incentive Amount. (d) Within 20 Business Days of calculating the Performance Incentive Amount under **clause 5.4A(b)**, ARTC will issue to the Access Holder an invoice for the Performance Incentive Amount for the previous Contract Year. (e) The Access Holder must pay the invoice by the later of: (i) the 21st day of that Month; or (ii) seven days from the date that the invoice was received. (f) If the Access Holder disputes the amount of the Performance Incentive Amount, it must notify ARTC of that dispute under **clause 14** within two weeks of the date of the issue of the invoice and the dispute will be determined by expert determination in accordance with **clause 14.4**. If the Access Holder does not notify ARTC of a dispute within this time, it is deemed to have accepted the Performance Incentive Amount as accurate and waives any right to make a Claim in respect of the Performance Incentive Amount payable in the previous Contract Year. (g) Any Performance Incentive Amount payable to ARTC under this **clause 5.4A** will not be deemed to be revenue received by ARTC and will not be included for the purpose of annual compliance with the pricing principles in the Access Undertaking.
No Previous Provision **Schedule 5 - Positive Performance Incentive Scheme ("PPIS")**	

1 PPIS

1.1 Definitions

For the purpose of this Schedule:

PPIS Metric means each of PPIS Metric 1, PPIS Metric 2 and PPIS Metric 3 set out in **clause 2** of this **Schedule 5** and included in Schedule D of the Access Undertaking.

PPIS Metric 1 means the percentage of cancelled services for a Quarter determined by ARTC in accordance with **clause 2.1** of this **Schedule 5**.

PPIS Metric 2 means the minutes of transit time lost on the Network resulting from the imposition of temporary speed restrictions for a Quarter determined by ARTC in accordance with **clause 2.2** of this **Schedule 5**.

PPIS Metric 3 means the track quality index for a Quarter determined by ARTC in accordance with **clause 2.3** of this **Schedule 5**.

QIAC means the applicable Quarterly Incentive Amount Cap determined by ARTC for each PPIS Metric.

Quarterly Incentive Amount means the incentive amount for each PPIS Metric determined by ARTC each Quarter in accordance with **clause 1.3** of this **Schedule 5**.

Total Annual Incentive Amount means for each Contract Year, the sum of the Total Quarterly Incentive Amounts (if any) for the PPIS Metrics in that year.
Total Quarterly Incentive Amount means for each Quarter, the sum of the Quarterly Incentive Amounts (if any) for the PPIS Metrics in that Quarter.

TV means the applicable target value for each PPIS Metric.

UB means the applicable upper bound for each PPIS Metric.

1.2 Performance assessment

(a) At the end of each Quarter, ARTC will determine:

> (i) the PPIS Metrics in that Quarter, as determined by ARTC having regard to the specific characteristics of each PPIS Metric set out in **clause 2** of this **Schedule 5**; and
>
> (ii) the Quarterly Incentive Amount for each of PPIS Metric 1, PPIS Metric 2 and PPIS Metric 3 calculated in accordance with **clause 1.3** of this **Schedule 5**;

(b) At the end of each Contract Year, ARTC will determine the Total Quarterly Incentive Amount for that year.

1.3 Determination of Quarterly Incentive Amount

The Quarterly Incentive Amount for each PPIS Metric is determined as follows:

(a) if the PPIS Metric for the Quarter is equal to or exceeds the TV for that PPIS Metric, the Quarterly Incentive Amount for that PPIS Metric will be deemed to be zero;

(b) if the PPIS Metric for the Quarter is less than or equal to the UB for that PPIS Metric, the Quarterly Incentive Amount for that PPIS Metric will be deemed to be the QIAC for that PPIS Metric; or

(c) if the PPIS Metric is less than the TV for that PPIS Metric and exceeds the UB for that PPIS Metric, the Quarterly Incentive Amount for that PPIS Metric will be calculated in accordance with the following formula:

(TV – PPIS Metric)/(TV – UB) x QIAC

2 Determination of PPIS Metric

2.1 PPIS Metric 1 – Coal Chain Losses – ARTC cause

(a) PPIS Metric 1 will be determined by ARTC at the end of each Quarter in accordance with the following formula:

ACT/PT

Where:

ACT (ARTC Cancelled Tonnes) means for each Quarter, the aggregate of the Assumed Tonnes for each ARTC Cancelled Service in that Quarter
Assumed Tonnes means:

(a) if the ARTC Cancelled Service would have been unloaded if it had been operated on the Network, zero; or

(b) otherwise, the difference in tonnes between the loaded and unloaded weight specified in [column 6] (“Assumed GT per service”) the relevant Train Path Schedule for the ARTC Cancelled Service

[*Drafting Note: “Assumed GT per service” column reference to be inserted in accordance with the Access Holders Train Path Schedule]*

ARTC Cancelled Service means a cancelled service assigned to, and accepted by, ARTC in the Quarter by the Live Run Superintendent Group, as collated and reported by the HVCCC, and which are directly attributable to an act or omission of ARTC and excludes any cancelled service attributable in whole or in part to:

(a) an Availability Exception;

(b) an act or omission of an Access Holder or Operator; or

(c) an act or omission of an owner of rail infrastructure, other than ARTC, that is not related to or connected with the Network including track structures, over or under track structures, supports, tunnels, bridges, signalling systems, communication systems and associated plant, machinery and equipment.

PT (Planned Tonnes) means the aggregate of the HVCCC's monthly published total planned tonnage for that Quarter.

(b) The following TV and UB will apply for PPIS Metric 1.

PPIS Metric 1	TV	UB
Network	0.97%	0.58%

(c) QIAC for PPIS Metric 1 will be determined by ARTC having regard to access revenue (based on an average coal haul and average Charge for coal access rights for the Network) that ARTC would have earned through the achievement of the difference in volume throughput between ARTC's performance at TV and performance at UB in respect of PPIS Metric 1.

2.2 PPIS Metric 2 – Transit Time – impact of temporary speed restrictions

(a) PPIS Metric 2 will be determined by ARTC at the end of each Quarter in accordance with the following:

(i) the average for the minutes of transit time lost due to Temporary Speed Restrictions in place on the last day of each month calculated by ARTC in that Quarter (being the average of 3 values for the Quarter); and

(ii) a simulated operation of a reference Indicative Service over the whole of the Network, (as if all parts of the Network were placed end to end) in accordance with the Network Key Performance Indicator, 'Transit Time – Infrastructure Practical Capability', set out in Schedule D of the Access Undertaking.

Where

Temporary Speed Restriction means a speed restriction applied by ARTC to the Network during the Quarter, which is directly attributable to the state of repair of the Network, to minimise the risk of an incident or accident until the Network can be repaired. To avoid doubt the following will not be considered to be a Temporary Speed Restriction:

(i) a speed restriction that ARTC reasonably applies to reduce the risk of degradation or damage to the Network including but not limited to a temporary speed restriction imposed as a result of a Force Majeure event which allows services to recommence on the Network;

(ii) a speed restriction that ARTC reasonably applies in order to carry out major capital works on the Network;

(iii) a speed restriction that ARTC reasonably applies as a result of a structural condition arising from prior operation above original design capacity including but not limited to where a structure is beyond its economic life; and

(iv) a speed restriction that ARTC reasonably retains because the carrying out of works necessary to remove that speed restriction is not economic.

(b) The following TV and UB will apply for PPIS Metric 2.

PPIS Metric 2	**TV**	**UB**
Network	14.41 minutes	9.31 minutes

(c) The QIAC for PPIS Metric 2 will be determined by ARTC having regard to:

(i) a reasonable assessment of the impact that a reduction in transit time on the Network may have on the capability of the Network to accommodate increased train paths and volume throughput; and

(ii) access revenue (based on an average coal haul and average Charge for coal access rights for the Network) that ARTC would have earned through the achievement of the difference in volume throughput between ARTC's performance at TV and performance at UB in respect of PPIS Metric 2.

2.3 PPIS Metric 3 – Track condition measured by index

(a) PPIS Metric 3 will be the track quality index (**TQI**) determined by ARTC at the end of each Quarter:

(i) in accordance with the applicable key performance indicator, 'Track quality measured by index', set out in Schedule D of the Access Undertaking; and

(ii) will include TQI measurements on each part of the Network that have been taken from the most recent run of ARTC's AK car (or other similar equipment) during that Quarter.

(b) The following TV and UB will apply for PPIS Metric 2.

PPIS Metric 3	**TV**	**UB**
Network	23.07	22.42

(c) The QIAC for PPIS Metric 3 will be determined by ARTC as one third of one percent of the aggregate access revenue in respect of all contracted coal access rights on the Network payable by access holders to ARTC.

3 Provision of PPIS information

(a) Within 40 Business Days of the end of each Quarter, ARTC will publish on ARTC’s website a report setting out:

(i) each PPIS Metric in that Quarter, as determined by ARTC in accordance with this **Schedule 5**; and

(ii) the Total Quarterly Incentive Amount for that Quarter.

(b) Within 40 Business Days of the end of each Contract Year ARTC will publish on ARTC’s website the Total Annual Incentive Amount for that year.