

26 October 2005

AURORA PLACE 88 PHILLIP STREET SYDNEY
GPO BOX 521 SYDNEY NSW 2001 AUSTRALIA
DX 117 SYDNEY www.minterellison.com
TELEPHONE +61 2 9921 8888 FACSIMILE +61 2 9921 8123

Australian Energy Regulator
Level 11, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne VIC 3000

Attention: Paul Dunn

Dear Sir

Australian Rail Track Corporation Ltd (ARTC) - application for network service provider exemption (Exemption) in respect of part of the distribution network to which the exemption dated 15 June 2000 (RAC Exemption) granted to Rail Access Corporation (RAC) relates

1. Summary of request for Exemption

- 1.1 We refer to Paul Dunn's telephone discussion with Paul Wentworth of this office on 12 October. Reference is made to paragraph 3.2 of our letter to you dated 23 September 2005 and we advise that we have been instructed by ARTC to write to you on its behalf.
- 1.2 Accordingly, in this letter we are seeking on behalf of ARTC a full exemption from the requirement under the National Electricity Law and clause 2.5 of the National Electricity Rules for registration as a network service provider and the operation of Chapter 5 of those Rules. This exemption application is to cover the RIC owned electricity assets (defined more particularly below) that are to be leased to ARTC (and to which the RAC Exemption presently relates).
- 1.3 Subject to clarification of the description of the electricity network to which the exemption relates, ARTC submits that the Exemption should be a full exemption on substantially the same terms as the RAC Exemption.

2. Background on ARTC

- 2.1 In our letter of 23 September 2005 to you, we have requested on behalf of Rail Corporation New South Wales (**RailCorp**) and Rail Infrastructure Corporation (**RIC**) amendments to the RAC Exemption or a reissue of the RAC Exemption to each of them in respect of the electricity distribution network that RAC formerly owned and which they now own.
- 2.2 This application is related to those requests, particularly in relation to that part of the electricity distribution network (**non-metropolitan distribution system**) now owned by RIC servicing the rail infrastructure (signals, communications and depot lighting and facilities) outside the metropolitan rail area that have been leased to ARTC. The non-

metropolitan distribution system is as described in our letter of 23 September 2005 and the map annexed to that letter; for convenience we have attached the description of the elements of that distribution system.

- 2.3 By a Deed of Lease dated 4 June 2004 between ARTC, RIC and SRA, the interstate mainline and Hunter Valley freight rail network land and infrastructure owned by SRA and RIC has been leased to ARTC¹ except for the non-metropolitan distribution system. Under the Deed of Lease, ARTC has full operational and economic control of and responsibility for the leased infrastructure and RIC remains owner, but has no operational responsibility or control.
- 2.4 It is now proposed that the non-metropolitan distribution system will be leased to ARTC by a variation to the Deed of Lease. Accordingly, ARTC will take over full responsibility for the operation and maintenance of that distribution system when the variation of the Deed of Lease is effective. The use of the non-metropolitan distribution system has not changed since the RAC Exemption was granted. We are instructed that such use will not change under ARTC's control (subject to ARTC's intention to decommission it as indicated in paragraph 2.7 below).
- 2.5 Until the lease of the non-metropolitan distribution system takes effect, ARTC will continue to take from RIC/RailCorp an electricity supply for its signals, communications and lighting under a transitional services arrangement entered into at the commencement of the Deed of Lease. When ARTC takes over the non-metropolitan distribution system, those arrangements will cease and it will take its supply:
- (a) from RailCorp at Hamilton Substation (owned by RailCorp) for the network from Hamilton Substation to Port Waratah and Kooragang Island (11kV Feeders 611 and 613) and to Muswellbrook in the Hunter Valley (11kV Feeder 612 and related feeders) - ARTC and RailCorp will negotiate a connection and supply agreement for this supply;
 - (b) from EnergyAustralia at Sandgate (11kV Feeder 610) and at Liddell (11kV Feeder 692);
 - (c) from Integral Energy at Bylong (12.7kV SWER Feeder 293); and
 - (d) from Country Energy at Werris Creek (11kV Feeder 697).
- 2.6 Rail operator Pacific National takes a supply of electricity at approximately 6 points at Port Waratah and Kooragang Island (off Feeders 611/613) and Pacific National and RailCorp take a supply at Werris Creek (off Feeder 697). Pacific National has supply and connection contracts with RIC and it is proposed that these will be novated to ARTC.
- 2.7 ARTC will have the right to decommission the non-metropolitan distribution system. ARTC is planning to seek alternative arrangements for the supply of electricity for its signalling and communications needs and will decommission this non-metropolitan distribution system in the next 18 months or so. Pacific National's electricity supply needs for the facilities connected to the decommissioned assets will be addressed as part of this exercise.

¹ On the map provided with Minter Ellison's letter of 23 September, this is the non-metropolitan rail network owned by RIC and SRA and leased to ARTC which is depicted by the red lines.

3. Exemption Principles

The following provides information pertinent to the new circumstances on the eight principles detailed in the NECA guidelines for exemption. ARTC acknowledges that it must satisfy the principles to the extent they are applicable for the Exemption and any conditions in the Exemption.

Principle 1 - the relevant network should be wholly contained within premises owned or controlled by the applicant.

The majority of the non-metropolitan rail electricity distribution system is contained within the rail corridor or is very close to the rail corridor that has been leased to ARTC under the Deed of Lease. The only significant parts of the network distant from the rail corridor are the mains links described in paragraph 2.5 between the Country Energy, EnergyAustralia and Integral Energy network connections points and the rail corridor.

Principle 2 - the provision of the network (and any supply of electricity to other parties) must be incidental to the business of the applicant.

Supply to signalling, communications and lighting is the primary reason for ARTC to take over the operation of the non-metropolitan distribution system. Maintaining this electricity supply for itself and the other existing rail related customers is incidental to ARTC's main business of maintaining and operating the rail track and providing access to the rail track by rail operators such as Pacific National.

Principle 3 - Standards or other regulatory controls should be in place in respect to the relevant network.

The distribution system has been operated and maintained to a high standard in accordance with industry standards and electrical standards that are tailored to railway operations and have been developed by RAC and RIC. ARTC intends to continue operating the distribution system in accordance with all applicable laws, regulations and standards. In order to do this, ARTC is adopting RIC/RailCorp's network management and safety plans that have been lodged with the NSW Department of Energy, Utilities and Sustainability (DEUS) under the *Electricity Supply (Safety and Network Management) Regulations 2002* (NSW) as they apply to the non-metropolitan distribution system and ARTC will engage RailCorp as its trainer and compliance auditor. The Director-General of DEUS has indicated in writing that ARTC is not required to prepare and separately lodge prescribed plans under clause 5(5) of the Regulation on receipt of an undertaking from ARTC that:

- ARTC will obtain alternative electricity supply arrangements by 1 March 2007;
- ARTC will adopt and implement RailCorp's existing network safety plan;
- ARTC will engage RailCorp as trainer on compliance order;
- ARTC will implement any measures RailCorp considers necessary; and
- ARTC will provide any reports that DEUS considers necessary in relation to the matter.

Principle 4 - the granting of exemption should not unduly limit access of parties to the national electricity market contrary to the market objectives.

The lease of the non-metropolitan distribution system to ARTC does not affect existing connections to it. Statements made RAC in its original application would still apply, subject, of course, to the planned decommissioning of the distribution system in due course.

Principle 5 - the proposed charging regime(s) governing the NSP's network should balance the needs of the network provider and the end user.

ARTC will continue to charge Pacific National on the same basis as it is presently charged by RIC as that contract will be novated to ARTC. In the unlikely event that any other end users may be connected, ARTC will use the same principles previously used by RIC and RailCorp.

Principle 6 - an appropriate mechanism must exist for the setting of energy charges if users of the network cannot access retailers.

Leasing the non-metropolitan distribution system does not affect submissions previously made by RAC in support of the original RAC Exemption in relation to this matter.

Principle 7 - end users should have appropriate recourse in the event of disputes, so there is no need to use the dispute resolution arrangements contained in chapter 8 of the code.

ARTC will provide appropriate recourse in the event of disputes and will facilitate access to the Energy and Water Ombudsman scheme in NSW should any disputes arise (as required by the conditions to the RAC Exemptions).

Principle 8 - the applicant should have obtained, or have applied for exemption from relevant jurisdictional requirements.

ARTC will be an exempt distributor under the *Electricity Supply Act 1995* (NSW) because of clause 66 of the *Electricity Supply (General) Regulations 2001*.

We would be pleased to discuss this with you further, provide additional information or arrange for representatives of our client to do so if it would assist your consideration of this matter.

Yours faithfully
MINTER ELLISON



Paul Wentworth
Partner

Contact: Paul Wentworth Direct phone: +61 2 9921 4801 Direct fax: +61 2 9921 8374
Email: paul.wentworth@minterellison.com
Our reference: PRW 20-5048370

Copy: Nick Economos, ARTC
Tony Frazer, ARTC

**ANNEXURE TO LETTER TO AUSTRALIAN ENERGY REGULATOR
DESCRIPTION OF RIC HIGH VOLTAGE ELECTRICAL NETWORK**

Location	Feeder	Function
Hunter Valley	Hamilton-Port Waratah 11kV Feeders 611 and 613 (Ring Main)	Commercial-in-confidence not for publication
	Hamilton-Kooragang-Muswellbrook 11kV Feeder 612 (and related feeders)	
	Sandgate 11kV Feeder 610	
	Liddell 11kV Feeder 692	
Bylong	Bylong 12.7kV Feeder 293	
Werris Creek	Werris Creek 11kV Feeder 697	