

23 September 2005

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Australian Energy Regulator
Level 11, The Tower
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Attention: Paul Dunn

Dear Sir

Rail Access Corporation- request for amendment to network service provider exemption dated 15 June 2000 (Exemption)

1. Summary of request for variation to Exemption

- 1.1 We refer to Paul Dunn's telephone discussion with Paul Wentworth of this office this afternoon.
- 1.2 We confirm we have been instructed by Rail Corporation New South Wales (**RailCorp**) to write to you on its behalf and on behalf of Rail Infrastructure Corporation (**RIC**) in relation to the Exemption granted by NECA to Rail Access Corporation (**RAC**). A copy of RAC's original submission dated 28 March 2000 and the Exemption issued by NECA are attached for your reference.
- 1.3 The reason for this letter is to request variations to the Exemption because the New South Wales rail sector and entities that own and operate rail infrastructure in the State and the associated electricity distribution network have been restructured. RAC has been dissolved and replaced by RIC and RailCorp and the electricity distribution network formerly owned by RAC has been split into:
 - (a) an electricity distribution network now owned by RailCorp servicing the rail infrastructure (electrified track, stations, signals and communications) in the metropolitan rail area (**metropolitan rail electricity distribution system**); and
 - (b) an electricity distribution network now owned by RIC servicing the rail infrastructure (signals, communications and depot lighting and facilities) outside the metropolitan rail area (**non-metropolitan rail electricity distribution system**).

Please see paragraph 2.5 for more details.

1.4 An additional element of the restructuring is that the interstate mainline and Hunter Valley freight rail network has been leased to Australian Rail Track Corporation Limited (**ARTC**). To date the non-metropolitan rail electricity distribution system has not been leased to ARTC, but it is proposed that it will be and ARTC will take over full responsibility for it.

1.5 Due to this restructuring, we are instructed to seek AER's agreement that:

- (a) the Exemption be varied by deleting the reference to RAC;
- (b) the Exemption be varied to replace references to RAC with references to:
 - (i) RailCorp in respect of the electricity distribution network assets that are owned by RailCorp; and
 - (ii) RIC and ARTC in respect of the electricity distribution network assets that are owned by RIC and leased or to be leased to ARTC; and
- (c) as there are two distinct electricity distribution networks it is submitted that confirmation of the Exemption applying to them separately might be better addressed by AER issuing separate exemptions addressed to RailCorp, RIC and ARTC respectively.

1.6 The background and detailed reasons for the requested variations are set out in the following paragraphs.

2. **Background to the request for variation of the Exemption - restructuring of the New South Wales rail sector**

2.1 For your information the enclosed map shows:

- (a) the metropolitan rail network owned by RailCorp which is depicted by the black lines (**'Metropolitan Network'**) and the metropolitan rail electricity distribution system services this area;
- (b) the non-metropolitan rail network owned by RIC which is depicted by the red lines (**'Leased Network'**) and blue lines (**'Country Regional Network'**);
- (c) the non-metropolitan rail electricity distribution system which is depicted by the green lines (see paragraph 2.5 and the Annexure for a description).

2.2 Since the grant of the Exemption:

- (a) the New South Wales rail sector has been restructured on two occasions with the result that as a matter of statutory vestings of assets, rights and liabilities under the *Transport Administration Act 1988* (NSW) (**Act**):
 - (i) RAC no longer exists;
 - (ii) RIC has been established and now owns the rail infrastructure forming the Leased Network and the Country Regional Network; and
 - (iii) RailCorp has been established and owns and operates the rail infrastructure forming the Metropolitan Network; and

- (b) RIC has leased its rail infrastructure forming the Leased Network to ARTC and ARTC operates and maintains the Country Regional Network for RIC under an alliance contract.
- 2.3 The various stages of the restructuring (which has occurred by a series of amendments to the Act and vesting orders issued by the Minister for Transport under the Act) are summarised below:
- (a) RAC was amalgamated with Rail Services Corporation to form RIC on 1 January 2001 by operation of Section 89(1) of Schedule 7 of the Act. As a result of this amalgamation, all assets, rights and liabilities associated with the electricity distribution network, including the Exemption, were vested in RIC and RAC ceased to exist.
- (b) RailCorp was established under the Act on 1 January 2004 to take over the metropolitan rail functions and operations of the State Rail Authority of New South Wales and the rail infrastructure facilities (including the electricity distribution network and all associated assets rights and liabilities) in the metropolitan rail area (as defined in the Act) previously owned by RIC were vested under the legislation to RailCorp.
- (c) On the establishment of RailCorp, and following the vesting referred to in paragraph (b) above, RIC continued to own, operate and control the rail infrastructure (including the remaining parts of the electricity distribution network) located outside the metropolitan rail area.
- (d) Correspondingly, the Exemption which is a 'right' as defined in schedule 4 of the Act (which relates to statutory vesting of assets rights and liabilities) has been vested separately in RailCorp and RIC to the extent it relates to the part of the electricity distribution network that each of them now owns. Furthermore, under the Act references to RAC where necessary have been deemed to be replaced by references to RIC and RailCorp (clause 93 of Schedule 7 to the Act and clause 2B(2)(c) of Schedule 6A to the Act).
- 2.4 RailCorp owns controls and operates the vast majority of the electricity distribution network that is the subject of the Exemption. This network includes all the 1500V DC infrastructure used for traction power to electric trains in the Metropolitan Network and the high voltage AC feeders connected to EnergyAustralia's and Integral Energy's distribution networks at approximately 33 supply points. The prime purpose of the electricity distribution network is for RailCorp's own use for trains and signalling: 80% of the energy is consumed at 1500V DC to operating trains. In addition, this network is also used to supply low voltage to RailCorp's stations and to small private tenant shops and kiosks located at those stations.
- 2.5 RIC retained the non-metropolitan rail electricity distribution system which comprises high voltage feeders:
- (a) connected to RailCorp's Hamilton substation near Newcastle travelling up the Hunter Valley to Muswellbrook;
- (b) at Kooragang Island and Port Waratah;

- (c) connected to the local distributor's network at Bylong primarily for supply to signalling and communications installations; and
- (d) at Werris Creek for yard lighting and Werris Creek station.

See the Annexure at the end of this letter for a more detailed description. Rail operator Pacific National takes a supply at approximately 6 points at Port Waratah and Kooragang Island. Pacific National and RailCorp take a supply at Werris Creek.

- 2.6 The use of the electricity distribution network that is the subject of the Exemption has not changed since the Exemption was granted.
- 2.7 The final part of the restructuring is that RIC has leased its rail track and associated infrastructure for the interstate main line in New South Wales and Hunter Valley freight line to Port Waratah and Kooragang Island to ARTC for 60 years under a Deed of Lease dated 4 June 2004. Initially, the remaining part of the electricity distribution network vested in RIC was not leased to ARTC. However, the parties have since agreed to amend the Deed of Lease to include the electricity distribution network vested in RIC. That amendment has not yet occurred.
- 2.8 The result of the lease of non-metropolitan rail electricity distribution system is that although RIC will continue to own those assets they will come under the exclusive control and operation of ARTC. It is presently proposed that ARTC will be seeking alternative arrangements for the supply of electricity for its signalling and communications needs and will decommission this part the electricity distribution network in the next 18 months or so.

3. Variation of the Exemption

- 3.1 Having regard to the statements above we are instructed to request that:
- (a) References to RAC in the Exemption should be deleted because RAC no longer exists and the electricity distribution network to which it relates is now owned part by RailCorp and part by RIC. Accordingly, those references should be replaced by references to Rail Corp, RIC and Australian Rail Track Corporation Limited (ARTC) - see paragraphs (b) and (c) below.
 - (b) The Exemption is varied so that it applies separately to RailCorp in respect of the electricity distribution network assets that are owned by RailCorp.
 - (c) The Exemption is varied so that it applies separately to:
 - (i) RIC in respect of the electricity distribution network assets that are owned by RIC until those assets are leased to ARTC; and
 - (ii) ARTC as well as RIC on the lease of those assets to ARTC because although they remain owned by RIC, ARTC will have full possession and control over them.
 - (d) As there are two distinct electricity distribution networks it is submitted that confirmation of the Exemption applying to them separately might be better addressed by AER issuing separate exemptions addressed to RailCorp and RIC and ARTC respectively.

- 3.2 We understand that you will require an application to be lodged by or on behalf of ARTC in relation to the Exemption applying to it on the non-metropolitan rail electricity distribution system being leased to it. We will discuss with ARTC how this is to be done and will advise you in due course.
- 3.3 Meanwhile it would be appreciated if you could proceed with your consideration of the applications on behalf of RIC and RailCorp.

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

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**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	