

To: Utilities Commission of the Northern Territory

Re: 2023 Review of the Port Access and Pricing Regime – Draft Report

12 June 2023

Introduction

AMEC appreciates the opportunity to provide industry feedback on the 2023 review of the port access and pricing regime – draft report released following the previous consultation in late 2022. The current push for further resources growth in the Northern Territory will lead to greater shipping through the Port of Darwin. Providing a good and cost competitive service to port users is essential in exporting resources out of the top end.

About AMEC

The Association of Mining and Exploration Companies (AMEC) is a national peak industry body representing over 530 mining and mineral exploration companies across Australia. Our members are mineral explorers, emerging miners, producers, and a wide range of businesses working in and for the industry. Collectively, AMEC's member companies account for over \$100 billion of the mineral exploration and mining sector's capital value.

Mineral exploration and mining make a critical contribution to Australia's economy, directly employing over 274,000 people. In 2021/22 Industry generated a record high \$413 billion in resources exports, invested \$3.86 billion in exploration expenditure to discover the mines of the future, and collectively paid over \$63 billion in royalties and taxes.

General Remarks

As stated in the previous submission by AMEC the resources industry is vital to the economic success of the Northern Territory (NT). This was outlined in the 2020 Territory Economic Reconstruction Commission (TERC) report and in the recent Mineral Development Taskforce Final Report which outlined 28 recommendations on how the NT can better incentivise greater investment in the resources sector. The inevitable growth of the resources sector will drive greater exporting needs and it is essential that the Darwin Port Operations (DPO) provides a cost effective and competitive service in the absence of a competitor. The Darwin Port underpins the TERC Report, and it is vital it remains cost competitive.

AMEC is overall supportive of the recommendations outlined in the draft report and believes that it will have a positive outcome for all port users.

Draft recommendation 1:

AMEC agrees that there is a need for continued regulatory oversight in regard to the pricing of prescribed services provided by the DPO. Due to the substantial market power DPO holds, there is the potential for DPO to enforce this power to the disadvantage of port users. As stated in our

previous submission the potential investment from developing projects should outweigh the administrative and compliance costs.

Draft recommendation 2:

AMEC is supportive of continuing the current form of regulatory oversight for access to prescribed services provided by a private port operator (DPO). The negotiate/arbitrate framework does allow for greater leverage when negotiating with DPO. AMEC continues still believes the Commission should provide port users with greater guidance materials to help companies traverse the negotiate/arbitrate framework.

Draft recommendation 3, 4 and 5:

AMEC concurs with the recommendations to improve the negotiate/arbitrate framework by providing financial information on whether prices are consistent with the access and pricing principles. By providing further guidance on the negotiate/arbitrate framework for port users, this should result in better outcomes for both parties involved.

AMEC also agrees with the proposed amendments raised in recommendation 5, which outlines the process when a port user decides not to follow through with the access agreement. This protects the interests of DPO and doesn't allow port users to abuse the negotiate/arbitrate framework.

Draft recommendation 6, 7 and 8:

Whilst AMEC believes that price monitoring is the lowest form of regulatory oversight, from all accounts it has been successfully implemented to ensure that the DPO provide a competitive service and price in the absence of a market competitor.

AMEC is supportive of recommendation 7 and believes that weighted average cost of capital (WACC) should also be included in the financial accounts. This would add another layer of regulatory oversight to monitor whether DPO is enforcing excessive pricing through its monopoly.

AMEC supports the recommendation to increase the maximum timeframe that a price determination can be in effect from three to five years.

Draft recommendation 10:

This recommendation should provide port users with more consistency by preventing the DPO from including carve-outs in its access policy, which aligns with section 124 and 125 of the *Port Management Act*.

Draft recommendation 11a and b:

AMEC agrees with the points raised for the oversight of the classification of services and believes the commission should implement both these recommendations. As stated in the report, recommendations from the 2018 review indicated the need for certainty of access and pricing for the mining industry to secure financing for projects. With a range of mining projects on the cusp of construction and production, it is essential that certainty is provided to these companies.

Draft recommendation 12:

This recommendation will give the Utilities Commission of the Northern Territory power to conduct independent audits of both port operator's and pilotage provider's. This will provide another layer of regulatory oversight and power for the commission to ensure that both the port operator and pilotage provider are adhering to the regime. AMEC is supportive of this recommendation.

Draft recommendation 13a, b and c:

Similar to our last submission, it is AMEC's view that there should be a clear definition of what constitutes 'material instance of non-compliance', to ensure port operators and users both understand when non-compliance has occurred. As it currently operates there is no specific provisions in either the *Port Management Act or Regulations* that prohibit a third party from reporting any instances of non-compliance. As AMEC expressed in our last submission, further clarity around the ability for port users or third parties to report non-compliance to the commission should be available.

AMEC supports recommendation 13a, b and c.

Draft recommendation 14a and b:

AMEC supports both recommendations and due to the lack of competition with the DPO, it is crucial that the level of service is monitored to ensure that the NT industry has a competitive cost of egress. By requiring the DPO to report on a measure of service and the commission comparing this with the level of service provided each year, it will ensure that the DPO is maintaining a competitive level of service.

Final remarks

AMEC is pleased to provide feedback and consultation on this report, as the recommendations should have a positive effect on the mining and mineral exploration industry by further ensuring clarity and consistency for the industry moving forward. AMEC is happy to provide further consultation on matters which affect our industry.

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