

12 December 2012

Attention: Mr. R Khan

Attention: The Chief Operating Officer
The Ports Regulator of South Africa
11th Floor, The Marine
22 Dorothy Nyembe Street,
DURBAN

Dear Mr. Khan,

TRANSNET NATIONAL PORTS AUTHORITY ("TNPA") TARIFF APPLICATION FOR FINANCIAL YEAR 2013/14

We refer to the TNPA's tariff application to the Ports Regulator for the financial year 2013/14 ("FY 13/14"), as contained in its application of September 2012. BHP Billiton Energy Coal South Africa (Proprietary) Limited ("BECSA") hereby submits its comments on specifically the proposed Cargo Dues Tariff for Coal.

We wish from the outset to thank both the Port Regulator and the TNPA for its willingness to engage on the 2013/14 tariff application, including a meeting that took place at the TNPA on 12 December 2012. Whilst BECSA has not as yet received full clarification on the various questions raised the level of engagement has been constructive.

It is our reading of the tariff application that the TNPA is looking to raise revenue of **R10 275m** in the **FY13/14**. It is in part looking to raise a portion of this revenue via a minimum cargo due tariff for coal of **R6.00 per ton** which represents an increase of **R3.10 per ton** or **103.39%**. It is BECSA's comments and views that the proposed increase is unsubstantiated and should not be supported based on the following:

1. A lack of clarification as to how the cargo due minimum rate of R6.00 per ton was derived or calculated.
2. The additional revenue generated from the proposed coal cargo due rate will not be utilized in infrastructure development or asset replacement for the coal industry which gives immediate concerns around product and / or asset cross subsidization.
3. The lack of transparency and benchmarking on the proposed cargo due rate given statements in the tariff application that *"....coal tariffs as being far cheaper than the rest of the world"*.

1. The Proposed Rate off R6.00 per ton

It is still uncertain as to how the R6.00 per ton is calculated or derived. BECSA has now on numerous occasions requested clarification on this matter but with no adequate and detailed responses forthcoming. Furthermore, reference is made to the TNPA Pricing Strategy in the tariff application yet

and to our knowledge this strategy has not yet been made public to the coal industry for review and comment. It would thus, and without a detailed and logical review of the pricing strategy, seem as though the proposed cargo due rate for coal has simply been set at R6.00 per ton so as to balance out the required additional revenue of R10 275m.

2. Additional Revenue

At the proposed rate increase and assuming the rail performance by Transnet Freight Rail ("TFR") does not increase from its prior financial year of 68mt the additional revenue generated from coal by the TNPA would be in the region of R208m per annum. It is however our view that if TFR rail performance had in prior years not declined and performed at capacity and their performance improves going forward that the additional revenue TNPA is now looking for could already have been banked and would continue to flow into the TNPA coffers even at a fair market related increase. In order to demonstrate this, please refer to Table 1 below:

Table 1: Cargo Due Lost Revenue

Period (FY)	Terminal Capacity (tons)	TFR Railed Volumes (tons)	Cargo Due (R/t)	Lost Revenue (R)
02/03	72,000,000	67,017,927	R2.00	R9,964,146
03/04	72,000,000	67,214,572	R2.04	R9,762,273
04/05	72,000,000	65,719,516	R2.08	R13,063,407
05/06	72,000,000	70,695,517	R2.10	R2,739,414
06/07	72,000,000	64,910,100	R2.17	R15,385,083
07/08	72,000,000	64,182,692	R2.27	R17,745,289
08/09	72,000,000	62,687,861	R2.42	R22,535,376
09/10	76,000,000	62,433,159	R2.62	R35,545,123
10/11	80,000,000	62,291,962	R2.86	R50,644,989
11/12	91,000,000	67,980,035	R2.86	R65,837,100
12/13 (*)	91,000,000	68,000,000	R2.94	R67,620,000
Total				R310,752,200

Note: (*) The best estimate on TFR's performance for the FY12/13 is 68mt.

The above table clearly demonstrates the lost revenue opportunity for the TNPA due to declining TFR volumes. It is thus imperative that TFR improves its performance failing which the coal industry as a whole and its related supply chain including the TNPA, will incur massive revenue losses. It is BECSA's view that the coal industry cannot now be penalized with a substantial cargo due increase due to TFR's continued poor rail performance, which at this stage is not expected to be much better for FY12/13.

In addition BECSA would challenge the need for a substantial cargo due increase of around R208m per annum given, and as presented in the tariff application, no Capex spend is proposed on coal projects in 2013/14 (please refer to Table 12 of the tariff application). This again immediately raises a serious concern related to cross subsidization even though this is catered for in the Directive 23(1),

point f, which states "The avoidance of cross subsidizations save where cross subsidization is in the public interest". We are of the opinion that no public interest requires that the coal industry accepts and pays a 103.39% increase in cargo dues. Furthermore, as per Table 6 in the tariff application, it clearly states that the cargo dues are to recover the cargo contributions towards the provision and maintenance of basic port infrastructure. No further details or explanations are provided as to why in Richards Bay and from coal alone an increase of R208m is required for basic port infrastructure. In addition, the coal industry via RBCT, other than the direct quayside infrastructure continues to maintain and invest in the Richards Bay Terminal Coal and at the same time pay rental revenue to the TNPA, presently in the region of R90m per annum and for the last 10 years R396m (the latter excludes the 12/13 rental revenue). The shareholders of the Richards Bay Coal Terminal ("RBCT") have also invested in excess of R5.5bn in the provision of a world class facility within the port of Richards Bay and continue to provide further capital for the ongoing maintenance and in fact upgrades of this facility.

In our December 2010 submission we put forward the argument that the TNPA would, based on the then proposed increase of 149.62% (R2.62/t to R6.54/t), have a return on an investment of 31.46% which for a state owned company is excessive. The latest proposed cargo due increase would result in a return on investment of 24.42% plus (please refer to Table 2 below), which again is excessive for a state owned company specifically when compared to your Vanilla working cost of Capital of 8.33%. Furthermore, the life of the assets in which the TNPA invests on a direct basis (the quayside infrastructure alongside RBCT) has a life expectancy of 50 years.

Table 2: Basic ROI

Details	U.O.M	TNPA Proposal 103.39%	Indicative Market Rate Increase 10%
Exports (**)	Tons	77,000,000	77,000,000
Cargo Due	R/t	6.00	3.23
Investment	R	1,891,800,000	1,891,800,000
Berths	#	6	6
Cost per Berth (***)	R	315,300,000	315,300,000
Cargo Due Revenue	R	462,000,000	249,018,000
Return	%	24.42	13.16

Notes: (**) The volume forecast is based on TFR's draft long term agreement for FY13/14. (***) The cost of the berths is the current replacement cost based on Berth 306, as per the Phase V expansion, at 2010 rates.

3. Benchmarking

The TNPA in its tariff application makes the statement in 8.5 (Tariffing) that the outcome of the Authority's pricing strategy clearly indicates that "...other commodities particularly bulk commodities such as coal....need to increase. This is aligned with the Regulator who has recently been quoted citing iron ore and coal tariffs as being "cheaper than the rest of the world". These statements are unfortunately not substantiated by actual figures and with factual benchmark related comparisons. In fact our benchmarking exercise, along the lines of our 2010 submission, continues to indicate that South African supply chain costs, including cargo dues, are out of kilter with the international market when one compares the costs on a like for like (bulk volume, single product flow, equivalent services and related cost) basis. We would in this regard refer you to Graph 1 and Table 3 below.

Graph1

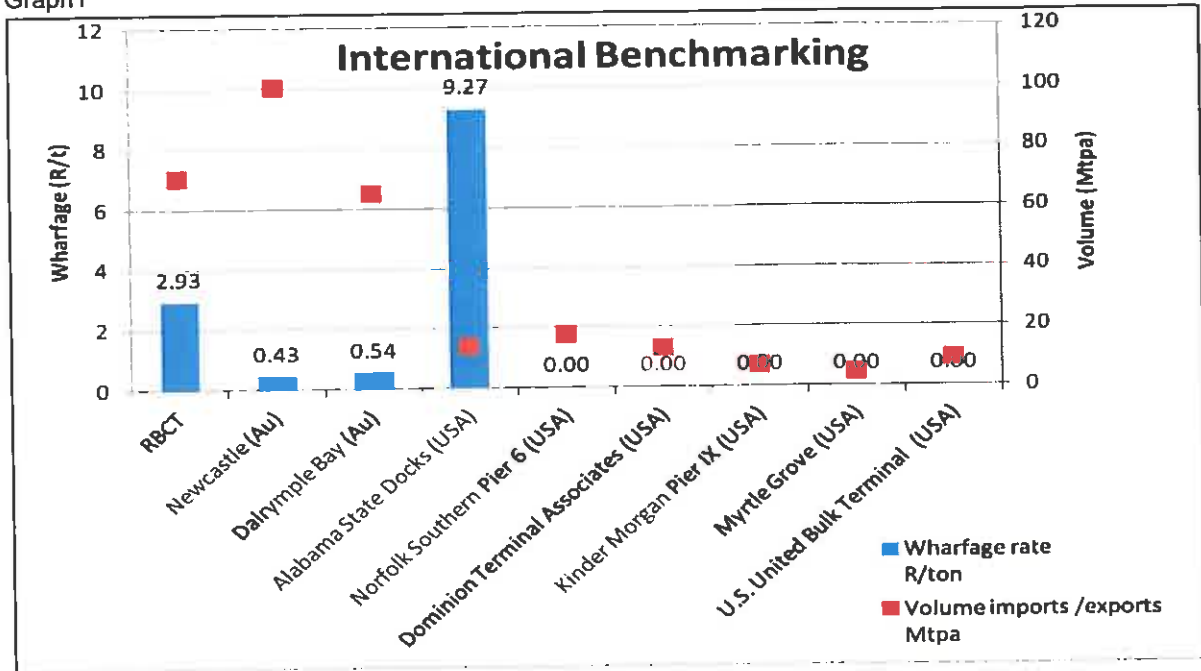


Table 3: International Benchmarking

Country	Port	Volumes (mt pa)	Wharfage (R/t)	Comments
South Africa	RBCT	70	2.93	Proposed R6.00/t
Australia	Newcastle	100	0.43	This rate includes pilot and tug services.
	Dalrymple Bay	65	0.54	This rate includes pilot and tug services.
USA	Alabama State Docks	14	9.27	Rate skewed by relatively low volumes plus an import and export service.
	Norfolk Southern Pier	17	0	No cargo due fee charged.
	Dominion Terminal Associates	13	0	No cargo due fee charged.
	Kinder Morgan Pier IX	7	0	No cargo due fee charged.
	Myrtle Grove	4.6	0	No cargo due fee charged.
	U.S. United Bulk Terminal	9	0	No information available

It is clear from the above that for terminals that operate on a scale similar to RBCT the "cargo due" tariff is substantially lower and these terminals receive additional services (pilot and tug service) at the lower tariffs. Pilot and tug service fees are in the case of South Africa charged additional to the cargo dues. We also wish to point out that BECSA was forced, without a negotiation, to accept a significant rail rate hike in FY11/12 (in excess of 30%) resulting in a substantially increased total supply chain cost. This increase, as demonstrated in the above, did not come with increased rail volumes.

We would based on the above benchmark details provided request that the Regulator or the TNPA makes available the benchmark studies it has at its disposal. This would allow BECSA the opportunity of reviewing these and understanding the reasons, if relevant, for the perception of cheaper tariffs in South Africa.

BECSA's submission clearly demonstrates that the TNPA proposed tariff increase is not commercially viable and hence not supported. The international coal economics further support this argument. We would on this basis request that the Regulator applies the necessary due diligence in its review of the tariff application, reject the proposal and put forward a market related Producer Price Index increase. Kindly note that we have in this submission not commented on the phased-in approach of attaining the R8.09 per ton tariff given our serious and grave concerns around the R6.00 per ton

We thank you for your consideration and confirm that we are available at short notice to meet with both the Regulator and the TNPA to continue the discussion on this matter which is of strategic importance to BECSA and the coal industry.

Yours faithfully,



B. Dalton
Regional Marketing Manager
BHP Billiton Energy Coal South Africa (Proprietary) Limited