

NZX Regulation Decision Pike River Coal Limited

Application for a Waiver from NZSX Listing Rule 9.2.1

Background

1. Pike River Coal Limited (“PRC”) is an NZX listed issuer (“Issuer”) with securities quoted on the NZSX Market.
2. PRC is party to two coal off-take agreements, one with Saurashtra Fuels Private Limited (“SFP”) and one with Gujarat NRE Coal (NSW) Pty Limited (“GNC”) (together the “Coal Offtake Agreements”), whereby SFP and GNC have agreed to purchase hard coking coal from PRC annually for the life of the mine.
3. Prices payable, and volumes to be supplied, under the Coal Offtake Agreements are negotiated annually between the parties to the respective agreement, prior to the start of each contract year.
4. SFP and GNC are Related Parties of PRC under Rule 9.2.3(c), by virtue of NZSX/ NZDX Listing Rule (“Rule”) 1.8 and both SFP and GNC being Substantial Security Holders of New Zealand Oil & Gas Limited (“NZO”), who is the holder of more than 10% of PRC ordinary shares.
5. Additionally, as Mr Arun Jagatramka is a director of both PRC and GNC, and Mr Dipak Agarwalla is a director of both SFP and PRC, both GNC and SFP are also Related Parties of PRC by virtue of Rules 9.2.3(c) and 1.8.
6. As each of the Coal Offtake Agreements will have an Aggregate Net Value in excess of 10% of the Average Market Capitalisation of PRC over the life of the agreements, each of the Coal Offtake Agreements is a Material Transaction under Rule 9.2.2(a).
7. As Rule 9.2.1 restricts an Issuer entering into a Material Transaction if a Related Party is, or is likely to become, a direct or indirect party to a Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part of, the annual renegotiation of the Offtake Agreements will require shareholder approval in the absence of a waiver.

Application

8. PRC has applied to NZX Regulation (“NZXR”) for a waiver from the requirement of Rule 9.2.1(a) to obtain shareholder approval in respect of the annual negotiation of the prices payable under each of the Coal Offtake Agreements for the supply year commencing 1 April 2009.
9. In support of its application PRC made the following submissions:

- (a) The price payable under the Coal Offtake Agreement with GNC for the supply year commencing 1 April 2009 was conditionally finalised on 30 June 2009 between Mr Stuart Nattrass, an independent director of PRC, and Mr Christopher Harvey, an independent director of GNC.
- (b) The price payable under the Coal Offtake Agreement with SFP for the supply year commencing 1 April 2009 was conditionally finalised on 18 June 2009 between Mr Stuart Nattrass, an independent director of PRC, and Mr Rajesh Desai, an independent director of SFP.
- (c) PRC has obtained an independent report dated 27 July 2009 from MinAxis Pty Limited, an independent coal marketing consultant, confirming that the prices payable under the Coal Offtake Agreements, are fair and reasonable to all parties to the contracts, and reflect similar levels for contracted prices between major parties for internationally traded premium grade hard coking coal.
- (d) The independent directors of PRC, have confirmed that the renegotiated prices under the Coal Offtake Agreements represent commercial and arm's length prices.
- (e) SFP and GNC have confirmed in writing that the Coal Offtake Agreements are conditional on shareholder approval or a waiver being obtained.

Rule 9.2.1

11. Rule 9.2.1 provides:

“Restriction: An Issuer shall not enter into a Material Transaction if a Related Party is, or is likely to become:

- (a) a direct or indirect party to the Material Transaction, or to at least one of a related series of transactions of which the Material Transaction forms part; or
- (b) in the case of a guarantee or other transaction of the nature referred to in paragraph (d) of the definition of Material Transaction, a direct or indirect beneficiary of such guarantee or other transaction,

unless that Material Transaction is approved by an Ordinary Resolution of the Issuer.”

Decision

12. On the basis that the information provided to NZXR is full and accurate in all material respects, NZXR grants PRC a waiver from Rule 9.2.1 in respect of the renegotiation of the price payable under the Coal Offtake Agreements for the supply year commencing 1 April 2009 on the condition that:

- (a) The MinAxis Report is released to the market upon the announcement of the renegotiated Coal Offtake Agreements becoming unconditional;

- (b) Details of the Coal Offtake Agreements are disclosed in any Offering Document or Prospectus PRC issues during the period it seeks to rely on this waiver; and
- (c) PRC disclose the details of the Coal Offtake Agreements and terms of the waiver in each of its annual reports for the period it seeks to rely on this waiver.

Reasons

13. In coming to the decision to grant PRC the ruling above, NZXR has considered that:

- (a) PRC has provided NZX with certification from the independent directors of PRC that the renegotiated prices under the Coal Offtake Agreements represent commercial and arm's length prices.
- (b) PRC has provided NZX with an independent report dated 27 July 2009 from MinAxis Pty Limited, an independent coal marketing consultant, confirming that the price payable under the Coal Offtake Agreements are fair and reasonable to all contract parties, and reflect typical levels for contract prices settled at arm's length between major parties for internationally traded premium grade hard coking coal. The conditions imposed by the waiver will ensure that all subsequent investors are aware of the arrangements regarding the Coal Offtake Agreements and can make fully informed investment decisions, including the contractual arrangements under Coal Offtake Agreements and their related party nature.
- (c) Disclosure of the Coal Offtake Agreements and MinAxis Report will provide sufficient transparency to enable shareholders to assess the annual prices paid under the Coal Offtake Agreements and therefore an opportunity to those who do not consider the prices to be in the best interests of shareholders to make alternative investments decisions.
- (d) Similar waivers were granted by NZX to Oyster Bay Marlborough Vineyards Limited ("OBV") in 2004 and 2005, and to Speirs Group Limited on 13 August 2004.

ENDS.