

2 May 2007

Mr E. J. Hall,
Chief Executive Officer
Queensland Competition Authority
GPO Box 2257
Brisbane QLD 4001

Dear John,

Please find attached QRC's submission in regard to QR's proposed amendments to the relinquishment fee provisions of the Access Undertaking as they relate to Access Agreements entered into on or after 1 July 2006.

The QRC considers that the proposed amendments are closely related to the matters currently being dealt with through QR's proposed amendments to Schedule F of the Undertaking, namely volume risk, take or pay and relinquishment fees.

The QRC supports the proposed amendments to the relinquishment fee provisions and considers these amendments to be consistent with the proposed move towards a hybrid revenue cap.

On behalf of QRC members, I would like to thank the Authority for its consideration of these amendments. I would also like to recognise the efforts of QR in considering the views of industry in regard to relinquishment fees, and in providing the voluntary draft amending undertaking in response to those views.

If you would like any further detail on this submission, please contact Andrew Barger on 3316 2502 or Gary Costello on 0408 743 363.

Yours sincerely

Michael Roche
Chief Executive

QRC submission

Working together for a shared future



**To the Queensland
Competition Authority**
2 May 2007

ABN 59 050 486 952
Level 13 133 Mary St Brisbane Queensland 4000
† 07 3295 9560 ‡ 07 3295 9570 € info@qrc.org.au

www.qrc.org.au



1. PREAMBLE

This document has been prepared by the Queensland Resources Council (QRC) in response to the Queensland Competition Authority's invitation to make submissions regarding Queensland Rail's proposed amendments to the relinquishment fee provisions of the 2006 Access Undertaking as they apply to Access Agreements entered into on or after 1 July 2006 ("UT2 Access Agreements").

The need for the proposed amendments was identified during the QRC's consideration of the proposed amendments to Schedule F. While matters such as volume risk, take or pay and relinquishment fees were clearly within the scope of the matters to be dealt with under the Schedule F amendments, both QR and the QRC were concerned that relinquishment fees as they apply to UT2 Access Agreements may be outside the scope of Clause 3, Part B of Schedule F of the undertaking. As a result, the proposed amendments were submitted by QR as a voluntary draft amending undertaking.

The QRC considers that the proposed amendments are closely related to the matters being dealt with under Clause 3, Part B of Schedule F, and views these amendments as a necessary element of the package of changes which reflects the proposed move towards a hybrid revenue cap.

2. QRC'S VIEWS

The QRC supports the proposed amendments on the basis that relinquishment fees for UT2 Access Agreements as set out in the current Undertaking:

- Are unnecessarily onerous, relative to UT1 relinquishment fees.
- Create a strong incentive to retain, rather than relinquish, excess contracted capacity.
- Create a potential impediment to the development of new mines, particularly for smaller operators, and;
- Were a response to QR's concerns regarding volume risk under the price cap, but are unnecessarily strong in the context of the proposed revenue cap.

The QRC considers that the proposed relinquishment fees will continue to achieve the objectives of strong relinquishment fee provisions, which include:

- To discourage the contracting of capacity beyond the reasonable expected needs of customers. The revised provisions would continue to expose Access Holders to substantial potential relinquishment fees and would remain significantly stronger than the UT1 provisions.
- To compensate 'the system' for the capital and operating costs of capacity which is provided to meet contracted capacity, but is then not required due to relinquishment. In regard to this item, we note that the payment of the full present value of take or pay over the remaining term of the relevant access agreement may, in some cases, tend to overcompensate for this cost, because 'excess' capacity arising from relinquishment may ultimately contribute some value to the system, in terms of possible reductions in cycle time, or improved ability of the system to recover from disruptions, or, if the capacity again becomes contracted in the future, through a contribution to common costs.



3. DISCUSSION

Relinquishment fees for UT2 Access Agreements are currently based on 100% of the present value of the access charge take or pay amount payable over the remaining term of the relevant Access Agreement. This represents a substantial strengthening of relinquishment fees relative to those applying under UT1 Access Agreements which are 40% of two years worth of access charges (subject to a Reduction Factor).

This substantial strengthening of relinquishment fees was introduced in the context of QR seeking to reduce its volume risk under the price cap arrangements by imposing stronger take or pay and relinquishment fee conditions. The proposed move to a revenue cap addresses QR's volume risk, as any shortfalls in revenue will now be addressed via a revenue adjustment mechanism. Under these arrangements, the cost of capacity (capital charges and fixed operating costs) which is relinquished and is not required by other users would, in the absence of relinquishment fees, largely be borne by the remaining users within the relevant system, in the form of higher Access Charges. As Access Charges are generally passed on by the operators to their customers (the mines), coal producers have taken a strong interest in the quantum of relinquishment fees.

In developing a preferred position on the quantum of relinquishment fees, coal producers have recognised that the existing UT2 relinquishment fees have the following advantages and disadvantages:

Advantages of existing UT2 relinquishment fees:

- provide a strong incentive against contracting for capacity which is not reasonably expected to be required, and therefore reduce the likelihood that unnecessary expansions will be triggered.

Disadvantages of existing UT2 relinquishment fees:

- are onerous relative to relinquishment fees under UT1 Access Agreements.
- create a disincentive to relinquish Access. Access Holders, faced with a significant relinquishment fee exposure, may tend to retain the capacity and pay take or pay payments.
- create a disincentive to the development of new mines, for both the mining companies involved and potential financiers (potential relinquishment fee exposures under a 10 year Access Agreement servicing a medium sized coal mine could exceed \$100m).
- may, in some cases, tend to 'over-compensate' the system for the cost of providing capacity which is relinquished, due to benefits which this capacity could later contribute to the system, particularly revenue (Access Charges) arising from possible future demand which emerges after the relevant period for assessing the Reduction Factor.

Following extensive discussions, the preferred industry position is that relinquishment fees should be capped at 50% of the present value of the take or pay on access charges over the remaining term of the Access Agreement. The QRC considers that this represents a reasonable balancing of the advantages and disadvantages of strong relinquishment fees.



The QRC therefore supports QR's proposed amendment, which would cap relinquishment fees collected at 50% of the present value of the take or pay on access charges over the remaining term of the Access Agreement.

We note that these proposed relinquishment fee arrangements for UT2 Access Agreements remain significantly stronger than those applying to UT1 Access Agreements. We therefore support QR's proposal to extend the timeframe for the payment of relinquishment fees under UT2 Access Agreements from six months to two years, as it is appropriate to provide a reasonable opportunity for alternative demand to emerge (and therefore for a Reduction Factor to apply) prior to levying these potentially substantial charges. We note that take or pay would remain payable during this two year period.