

QRC

submission

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Addendum to QRC's Submission in response to:
QR Network's 2010 Draft Access Undertaking – Schedule F

To the Queensland Competition Authority
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Addendum

The Queensland Resources Council (QRC) is a non-government organisation representing companies that have an interest in exploration, mining, minerals processing, gas and energy production. It is the resource industry's key policy-making body in Queensland, working with all levels of Government, interest groups and the community.

This addendum is provided to QRC's 7 May 2010 submission to the Queensland Competition Authority (QCA) regarding Schedule F of QR Network's 2010 voluntary draft access undertaking (UT3.2). This addendum seeks to address matters other than the direct elements of QR Network's tariff and system allowable revenue.

→ Background

QRC has a number of concerns regarding the proposed Schedule F and considers that the processes set out in Schedule F (as currently drafted) do not adequately promote:

- the economically efficient operation of, use of and investment in the QR Network infrastructure;
- the interests of access seekers; or
- the public interest.

Reasons for QRC's positions, and details of industry's proposed amendments to address those issues, are set out within this submission.



9. Schedule F – matters other than QR Network’s tariffs, costs and system allowable revenues

9.1. UT3.2 contains disincentives to adopt new form of agreement (Schedule F, Part B, 2.2.2 and 2.2.6 and Clause 7.3.7)

QRC has significant concerns regarding clause 7.3.7 of the DAU which deals with Customer Initiated Capacity Transfers and QRC, therefore, has similar concerns with the provisions dealing with this issue within Schedule F Part B.

Clause 7.3.7 allows a Customer to transfer Access Rights held for that Customer to an Access Seeker. Clause 7.3.7(a)(ii) ensures that, when such a transfer is made, the new Access Agreement will include the same take or pay and relinquishment fee provisions as the original agreement. The purpose of this is to ensure that Customers are not transitioned to more onerous take or pay provisions simply by virtue of transferring Access Rights. Put another way, the provisions ensure that take or pay and relinquishment fees do not create a disincentive to transferring the Access Rights.

QRC supports this principle. However, QRC has significant concerns in relation to QR Network’s proposed new caveat within this clause, (being “*unless it is a Capacity Access Agreement*”), which has the effect of triggering the loss of the original take or pay and relinquishment fee terms if the transfer is a transfer to a Capacity Access Agreement. The effect of this would be to provide a strong disincentive against customers moving to this form of agreement, and largely frustrate the ability of customers to move to the new form of agreement which QR Network commits to prepare under Clause 5.3(n).

The merits of the new form of contract were explained in the QRC’s submission of November 2008 and appear to be accepted by both QR Network and the QCA. QRC submits that Customers should not be disadvantaged by transitioning to the new form of agreement.

Therefore, if the QCA elects to release a draft decision which is limited to schedule F, or ultimately reaches a final decision in regard to Schedule F ahead of the remainder of the undertaking, this decision should:

- Require deletion of the words “*unless it is a Capacity Access Agreement*” within Schedule F; or
- Provide for review of this element of Schedule F based on the final decision regarding 7.3.7.

More generally, this item highlights the risk that final decisions regarding the remainder of the undertaking may require consequential amendments to Schedule F. QRC strongly recommends that the QCA reserves the right to require such consequential amendments to Schedule F (perhaps excluding amendments which would impact on first year tariffs).

9.2. UT3 take or pay should be linked to terms of future Access Undertakings (Schedule F, Part B, 2.2.3)

QRC’s 2008 submission suggested that the take or pay conditions of Access Agreements entered into during the UT3 period should be “*as set out in the approved undertaking from time to time*”, and will therefore not be locked in as occurred for previous ‘generations’ of take-or-pay. This is reflected in the new Standard Access Agreements.

QRC suggests that the principle should be reflected in Schedule F Part B Clause 2.2.3. As currently drafted, clause 2.2.3 appears to lock in a take or pay calculation for UT3 Access Agreements. This could lead to confusion. For example, the ‘deemed’ take or pay collection for UT3 Access Agreements should be based on the future take or pay rules (as applicable from time to time), in order to be consistent with the terms of the



UT3 Standard Access Agreement. As currently drafted, clause 2.2.3 may appear to specify a defined basis for the deemed take or pay collection.

9.3. Offsetting of take or pay should be extended to UT2 (Schedule F, Part B, 2.2.5):

Our understanding of this section is that it effectively allows a shortfall in the use of Train Service Entitlements, which would otherwise lead to a take or pay exposure under an Access Agreement, to be offset against excess railings under another Access Agreement, subject to:

- Each of the Access Agreements relating to the same End User (Customer); and
- Each of the Access Agreements being for the same origin/destination combination; and
- The Access Agreement for which a shortfall exists being a "UT3" Access Agreements (while the Access Agreement from which a "surplus" is credited can be any generation of Access Agreement). The limitation of the clause to UT3 agreements arises from the fact that only clause 2.2.3 (and not clause 2.2.2) is subject to clause 2.2.5.

In QRC's view, the ability to offset take or pay for an origin/destination combination is a sensible refinement to the application of take or pay rules. In the absence of this offset, there would be a strong disincentive against a Customer having two Access Agreements (including through operators) in regard to the origin/destination. For example, a Customer who has two above rail operators may face a pass-through take or pay cost as a result of variations in the paths used by each operator, despite the full contracted paths being used overall.

QRC has previously supported a set of take or pay rules for UT3 Access Agreements which are on the same terms as UT2 Access Agreements. In each case, the take or pay obligations are significantly stronger than those which applied under all previous generations of Access Agreements. QRC therefore considers that the ability to aggregate/offset should be extended to UT2 Access Agreements (ie. those to which 2.2.2(b)(ii) or (iii) applies) in order to:

- maintain consistency between take or pay terms for UT2 and UT3 agreements; and
- recognise the relatively strong take or pay which applies to these agreements and the need to avoid applying these strong take or pay provisions in a case where this is clearly not justified (ie. where the total contracted train paths were used).

QRC accepts that the take or pay rules under UT2 Access Agreements are documented in those agreements and cannot be varied through a subsequent undertaking. However, in this case, extending the relaxation of take or pay to UT2 agreements would not require amendments to the contracts. Rather, to give effect to this improvement:

- QR Network would commit (in the Undertaking) that it will not collect take or pay in these circumstances, notwithstanding that it may be entitled to under the terms of Access Agreements; and
- the revenue cap provisions would be amended to ensure that QR Network is not deemed to have collected the foregone revenue.

Under this proposal:

- the relevant Access Holders and their customers will be better off;
- QR Network will be no worse off due to the revenue cap mechanism; and
- other Customers may incur a marginal revenue cap adjustment increase. However, QRC accepts this outcome as it considers that collection of take or pay in these circumstances cannot be justified.



In regard to UT1 Access Agreements, QRC notes that:

- relaxation of UT1 take or pay terms would further disadvantage UT2 and UT3 Access Holders (through revenue cap effects) who already face significantly stronger provisions; and
- if any UT1 Access Holder considers that they would be better off under an Access Agreement which is based on UT3 terms, QR Network could facilitate a transfer of Access Rights into a replacement agreement (on UT3 terms).

9.4. Proposed Increment is insufficient and is not symmetrical (Schedule F, Part B, 3.3)

QRC considers that the 2% Increment (which can also be a decrement) is insufficient in terms of providing incentives for QR Network to optimise performance of the system. We note that this is intended to be addressed through the proposed process under Clause 2.6, which will create an alternative arrangement which is likely to apply only to the final two years of the undertaking.

In regard to the interim Increment set out in Schedule F, QRC is concerned with the lack of symmetry in the proposed arrangements, noting:

- a negative increment will apply only if the factors which trigger a negative increment cause a 4% loss of Total Actual Revenue; and
- a positive increment will apply if the factors which trigger a positive increment cause ANY excess of Total Actual Revenue over System Allowable Revenue; and
- the trigger for a positive increment, being initiatives by QR Network which increase the efficiency of the network, is not matched by the downside trigger, which is breach or negligence (rather than simply actions or inactions of QR Network which reduce the efficiency of the network).

9.5. Pricing of cross-system traffic

QRC supports the creation of a predictable and transparent approach to the pricing of cross system traffic and welcomes QR Network's proposal.

However, we also note that the proposal involves payment of the higher of the AT₃'s and AT₄'s for the two systems. QRC does not support this approach. Given that cross-system traffic will often originate close to the borders of two systems, it can be expected that the distance travelled within the origin system will often be quite low, and will involve sections of the origin system which are not heavily utilised. Therefore we do not see the logic, in the case where the AT₃ or AT₄ of the origin system is higher than the destination system, of applying this higher AT₃ and AT₄ for the entire journey.

QRC therefore suggests that:

- AT₃ be payable for the ntk's in the origin system, using the origin system rate, and for the ntk's in the destination system, using the destination system rate (ie. similar approach as is proposed for AT₁ and AT₅).
- AT₄ be payable based on the average of the AT₄'s of the origin and destination systems, weighted according to the relative distance travelled in the origin and destination systems.

We note that the QCA, in the draft decision, favoured QR's approach of applying the higher of the AT₃'s/AT₄'s from each system on the basis that this approach "*seeks to limit the increased utilisation of already heavily utilised sections of the network*". QRC considers that this justification is flawed because:

- Each system is currently fully utilised. This is evidenced by the existence of queues in each system and by the CRIMP.



- There is no need to 'protect' the Goonyella system from additional traffic via a pricing mechanism, as the Section 4 and Section 7 processes ensure that Available Capacity must exist before additional traffic is allowed into the system.
- A pricing mechanism which seeks to discourage additional growth in the lower cost system does not encourage the "*economically efficient operation of, use of and investment in the QR Network infrastructure*". QRC accepts that the proposed mechanism would encourage efficient use of and investment in the infrastructure IF any origin system was at risk of having spare capacity, but this is not the case.
- QCA's draft decision in regard to AT3 and AT4 is inconsistent with the decision in regard to AT5. Given the significant divergence between the Blackwater and Goonyella AT5's (following QR's decision to accept the draft decision to reject the amalgamation of AT5 tariffs), there is now a strong incentive to avoid the Blackwater AT5 by travelling 'cross system'. Yet in this case, QR proposes, and the QCA has supported, a methodology which is consistent with the QRC's proposal (ie. payment of the AT5 based on the egtk's travelled within each system). In reality, the financial incentive is largely overcome by practical considerations such as port and rail capacity constraints in the alternative destination system. QRC suggests that this is equally true in regard to AT3 and AT4 and that there is no basis for adopting an approach to AT3 and AT4 which is inconsistent with the approach taken for AT5.

9.6. Inclusion of Columboola within Part C of Schedule F

QR Network's submission states that Train Services from Columboola will pay the proposed Western System tariff, although this is not included within Schedule F. QRC considers that it would be prudent for this mine to be included within Part C as a Nominated Loading Facility.



9.7. UT3.2 should provide for consultation with access seekers and for the publication of QCA reasons for decisions

QRC submits that to achieve greater transparency and accountability:

- the obligations on the QCA to consult with access seekers should be strengthened and extended to require QCA to actively consider submissions made by access seekers; and
- the QCA should be required to provide reasons for its decisions at all times;

The following table identifies the clauses which the QRC submits require amendment.

	Clause	Issue	Proposed amendment
1	2.2.6(b)	The clause currently requires the QCA to publish details of QR Network's proposed variation of the relevant Reference Tariff and consult with stakeholders only where the QCA considers it appropriate. To increase transparency, the QCA should be required to publish and consult with stakeholders in respect of all proposed variations.	Replace with 'the QCA will publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation' For consistency and to achieve transparency, throughout Schedule F, the QCA should invite comment on any proposed variation of a relevant Reference Tariff.
2	2.2.8(b)	The clause currently requires QCA to publish details of QR Network's proposed variation of the relevant Reference Tariff only where QCA considers it to be appropriate. To improve transparency and accountability, the QCA should be required to publish details of QR Network's proposed variation on all occasions.	Replace with 'the QCA will publish details of QR Network's proposed variation of the relevant Reference Tariff and invite and consider comments from stakeholders regarding the proposed variation.'
3	2.3.4(b)	The clause currently requires the QCA to publish details of QR Network's submission of proposed Adjustment Charges where it considers it to be appropriate. To increase transparency, the QCA should be required publish QR Network's submission in respect of all proposed Adjustment Charges.	Replace with 'the QCA will publish details of QR Network's submission of proposed Adjustment Charges and invite and consider comments from stakeholders regarding the proposed variation'.
	Part B		
4	3.1.2(c)	The clause provides that the QCA will approve the revised System Forecast, System Allowable Revenues and Reference Tariffs for each Individual Coal System if it considers that the revised System Forecast is reasonable and the consequential adjustments to System Allowable Revenues and Reference Tariffs are calculated properly.	The QCA should be required to provide reasons for a decision that a revised System Forecast is reasonable and the consequential adjustments to System Allowable Revenues and Reference Tariffs are calculated properly.
5	3.2.10	The clause currently requires QCA to publish details of the Revenue Adjustment amounts and Increments and consult with stakeholders only where it considers it to be appropriate. To increase transparency, the QCA should be required to publish and consult with stakeholders in respect of all Revenue Adjustment amounts.	Amend to require the QCA to publish details of the Revenue Adjustment amounts and Increments and invite and consider comments from stakeholders in all circumstances, not only to the extent the QCA considers it appropriate.



9.8. Comments on drafting of Schedule F

QRC considers that Schedule F as currently drafted does not provide sufficient transparency, accountability and certainty. The QRC submits that in order to provide certainty, and to ensure the obligations of QR Network can be enforced, Schedule F should be amended so that where it imposes obligations on QR Network and the QCA, it should provide firm timeframes in which those obligations must be met.

An outline of our further specific proposed changes and reasons for those changes is set out below.

	Clause	Concern	Proposed amendment
	Part A		
1	1.3.2(a)	The current drafting is unclear.	The words 'comprised in Access' should be deleted.
2	2.2.1(b)	Item (a) of the new Review Event definition in the DAU relates to changes in maintenance practices. This seems to be covered under Item (iii) of the Endorsed Variation Event definition	Delete paragraph (a) of the definition of Review Event.
3	2.2.12(a)	The clause as currently drafted is too narrow.	Amend to read 'is consistent with the matters specified under Clause 2.2.5(a) and (c), 2.2.6(a) and (c), 2.2.7(a) and (c) or 2.2.8(a) and (c) (as applicable)'.
4	3.1	QRC considers that the current drafting of this clause is ambiguous.	Amend to read: 'A varied Access Charge shall apply to Train Services that vary from the Reference Train Service characteristics specified in Clause 1.3 or operate under terms and conditions with agreed variations from the requirements of clause 1.4, but otherwise satisfy the nominated Reference Train Service description. The varied Access charge may vary from the applicable Reference Tariff due to differences in cost or risk to QR Network of providing Access for that Train Service compared to the Reference Train Service.'
	Part B		
5	3.3.1(a)	The definition of "Entitled TAR" is unclear. The placement of the bracketed definition ("Entitled TAR") in 3.3.1(a)(ii) creates uncertainty regarding the definition. Our understanding is that the term relates to the Total Actual Revenue that QR Network would have been entitled to earn. Therefore the 96% statement is not part of the definition.	The term 'Entitled TAR' should be separately defined.
6	3.3.1(b)	There is a reference to clause 3.3(c). Clause 3.3.(c) does not exist.	Delete the words 'subject to clause 3.3(c)' or otherwise clarify what is intended.
	Part C		
7	1	The clause should refer to 'Commencing Date' in place of 1 July 2009 as 'Commencing Date' has been defined.	Replace 1 July 2009 with the 'Commencing Date'.