

Mr Paul Bilyk  
Director – Rail and Port  
Queensland Competition Authority

13 December 2013  
By Email

rail@qca.org.au

Dear Mr Bilyk

## Standard user funding agreements

We refer to your request for comments on the submissions which have been made by stakeholders' (including the Queensland Resources Council (**QRC**)) on the standard user funding agreements (**SUFA**) submitted by Aurizon Network Pty Ltd (**Aurizon Network**) to the Queensland Competition Authority on 22 July 2013.

We thank you for the opportunity to provide this submission. We confirm that this submission may be made public.

The QRC reiterates the comments made in its submission of 30 August that an effective user funding regime is an important part of the expansion process and expansion funding. An effective user funding arrangement can act as competition for Aurizon Network funding for some projects. Given the structure of SUFA and its inherent complexity and risks SUFA will only be a genuine alternative to Aurizon Network funding for some users (typically, highly creditworthy miners) and larger projects.

In its submission of 30 August, the QRC suggested that even with all of the amendments proposed by the QRC (or at least amendments addressing the issues underlining those amendments) SUFA was at its best:

- (a) a barely workable arrangement for a mining company to provide investment;
- (b) not capable of attracting third party equity or debt during the construction phase; and
- (c) capable of attracting some (but not a board spectrum) third party equity or debt during the operating phase (i.e. when construction risks had been removed).

Implicit in the assessment described above is the fact that SUFA as submitted by Aurizon Network is unworkable.

In the view of the QRC and its members SUFA as submitted by Aurizon Network could not be used by mining companies as a structure to invest. It simply presents too much complexity, uncertainty and risk for any prudent person to accept.

If mining companies could not tolerate the complexity, uncertainty and risks of Aurizon Network's SUFA there is little prospect of a third party equity or debt funder doing so. That is because mining companies are likely to have a higher risk appetite for such an investment given their degree of knowledge and familiarity with the rail access regime.

The views expressed above are supported by all of the QRC's financial, legal and tax advisers.

In the QRC's view, the issue is not whether SUFA is workable or not, but how can it be amended so as to be workable. The QRC has proposed some suggestions in its

submission of 30 August. Those suggestions are not the only means by which a solution could be achieved.

There are two core areas where SUFA requires significant amendment. Each core area has a multitude of issues. Those issues are not addressed in this submission (other than at this conceptual level), but are addressed in the QRC's submission of 30 August.

The first core issue relates to the construction phase. User funders bear the risk of cost overruns, late completion and an abandoned project (ie a project that never reaches completion). The typical mechanisms which a funder would have to control such risks are absent from SUFA.

The second relates to revenue certainty – that is, the certainty that rent will be received by the funders. This issue covers the rent calculation, payment processes, security interests and the risk of an Aurizon Network default. One impediment of SUFA is the fact that distributions from the Trust are to be made at the discretion of the Trustee. SUFA provides for distributions from the Trust to be at the discretion of the Trustee so as to address an accounting issue. If it is the case that that accounting issue exists irrespective of whether Trust distributions are discretionary, distributions should be made mandatory.

We welcome the opportunity to work collaboratively with the QCA and Aurizon Network to develop changes to SUFA to achieve an effective SUFA regime.

Yours sincerely

**David Rynne**  
Director Economics and Infrastructure  
Queensland Resources Council

cc Mr Sean McComish, Ms Carrie Haines