

2 November 2022

Mr George Passmore  
Queensland Competition Authority  
145 Ann Street  
Brisbane QLD 4000  
(Submitted via QCA Online Submission Form)

**Re: Aurizon Network Draft Amending Access Undertaking – GAPE and Newlands Pricing**

The Queensland Resources Council (**QRC**), on behalf of the QRC's Rail Working Group, welcomes the opportunity to comment on Aurizon Network's Draft Amending Access Undertaking – GAPE and Newlands Pricing (the DAAU).

**1. Introduction**

This submission will not seek to comment on the appropriateness of the DAAU nor of specific elements of the proposal. To do so is not possible given the lack of transparency which has characterised GAPE pricing and commercial issues for more than a decade. It is hoped that the recent engagement between Aurizon Network and Newlands/GAPE users has gone some way to addressing this issue for the relevant users, who we expect will be better positioned to comment on specific issues.

This submission therefore discusses issues which are highlighted by the GAPE/Newlands process and by the DAAU, and how these issues might be considered in future processes involving the remainder of the Central Queensland Coal Network (CQCN). For clarity:

- It is our understanding that the DAAU will have no impact on the Moura, Blackwater or Goonyella Systems.
- We do not consider that any decisions made in relation to GAPE/Newlands pricing (for example, a decision to approve or reject this DAAU) should have any 'precedent' effect for other systems, given the extent to which pricing proposals in these systems (including this DAAU) have been influenced by non-transparent commercial arrangements.

Despite the above comments, the DAAU and in particular Aurizon Network's supporting submission does highlight issues which ought to be considered in future regulatory processes, such as the development of UT6.

## 2. Transparency and information asymmetry

Aurizon Network's pricing submissions for GAPE and Newlands have been influenced by the interaction of commercial arrangements and regulatory pricing since the time of the first GAPE DAAU in 2012. Stakeholders, and the QCA, have been constrained in their ability to understand Aurizon Network's proposals by a lack of transparency. This has left stakeholders unable to fully understand not only Aurizon Network's motivations, but also the implications of various decisions as circumstances change into the future.

Based on the Newlands/GAPE experience, QRC suggests that:

- The existing UT5 provisions regarding the approval of Access Conditions (which were not in place at the time of the development of GAPE Deeds) must be preserved within UT6.
- Aurizon Network should prepare and provide a public version of its tariff models, showing the build-up of allowable revenues, the RAB over time and how the allowable revenue is recovered through reference tariffs. The model should extend beyond the current regulatory period (e.g. 20 years). We acknowledge Aurizon Network's comment that *"it was apparent to Aurizon Network that a customer's ability to develop and model particular scenarios over an evaluation period longer than one year was constrained by a lack of detail on asset depreciation profiles. Aurizon Network acknowledges this information limitation and will work with the broader industry to improve access to information"*<sup>1</sup>.

## 3. Role of the QCA

Information asymmetry places Aurizon Network in a superior position when customers are put in a position of needing to reach agreement with Aurizon Network, an experience which is becoming increasingly common as Aurizon Network seeks to move away from regulatory determination of contentious issues based on *"UT5 expectations of customer-centric regulation"*<sup>2</sup>.

QRC does not agree that the 2019 "UT5 DAAU" ought to signal a diminished role for the QCA, other than in respect of specific functions for which the UT5 DAAU changed the nature of the QCA's role. For example, we acknowledge that the QCA's role in reviewing maintenance claims under UT5 is relatively limited in respect of maintenance activities which are consistent with an approved MRSB. Beyond these specific amendments to the QCA's role, users of the network remain dependant on strong regulation. Aurizon Network remains a monopoly infrastructure provider, and engagement with customers remains inconsistent (for example, strong in regard to the MRSB and extremely poor in regard to electricity procurement). Customers cannot participate in effective negotiation with Aurizon Network unless all parties know that there is a timely and effective fallback to regulatory determination. The question of Newlands/GAPE pricing has been a source of frustration for a number of years, for both GAPE and Newlands customers, and a solution now seems to rely upon a voluntary DAAU prepared by Aurizon Network. To the extent that UT5 has constrained the QCA in determining these issues (such as capex allocations between systems), we will be

---

<sup>1</sup> Aurizon Network GAPE/Newlands DAAU supporting submission, page 25.

<sup>2</sup> Aurizon Network GAPE/Newlands DAAU supporting submission, page 3.

seeking reforms within UT6. Otherwise, we encourage the QCA to use its powers rather than allowing processes to drag on in the hope that customers will be able to negotiate acceptable outcomes.

#### **4. Take or pay reform and relinquishments**

QRC has, in numerous past submissions, supported the reform of take or pay, to avoid the socialisation of costs arising from under-utilised contracts. For example, the QRC's October 2013 submission on the 2013 Draft Undertaking stated *"The QRC seeks to move to full contractual accountability over time. The QRC will support the removal of the system trigger test and system ToP capping from future undertakings (which will be effective for UT3 and subsequent agreements) at the time when doing so will affect a significant majority of agreements. Implementing these changes prematurely (while a significant proportion of tonnage remains on UT1 and UT2 terms) would create new, substantial inequities"*.

The proposed reforms in the Newlands system, involving setting the Forecast GtK based on contracted train service entitlements, is consistent with the QRC's view on the direction which take or pay in the CQCN should be taking. For the remainder of the CQCN, we consider that additional options should be considered, such as removing the system trigger test entirely, and eliminating system capping. The question of whether forecasts should then be based on contract or on contract less an allowance for AN Cause would also need to be considered. We also suggest that, when reforming take or pay, it is appropriate to provide an opportunity for access holders to relinquish capacity, given the increase in take or pay exposures which may arise after reforms are implemented, however we note that some limits may need to be applied to relinquishments in order to ensure that large volumes are not relinquished, leading to significant increases in access charges. These comments relate to long term reform of take or pay generally throughout the network. Please note that:

- We make no comment on whether these reforms are appropriate in the Newlands system, given the complex issues to be considered in that system, and the lack of transparency.
- Implementing reforms elsewhere in the network will require extensive consultation and planning. QRC considers that there is merit in undertaking such consultation early in 2024, with a view to implementing reforms (if widely supported) during the term of UT5.
- If take or pay reform is implemented elsewhere in the CQCN using a different approach to an approach which has been implemented in Newlands, consideration could be given at the time to the merits of bringing the Newlands arrangements into line with the remainder of the CQCN.

#### **5. Allocation of Asset Replacement and Renewal Expenditure**

Clause 6.4.8(a) of UT5 requires that: *"Subject to clause 6.4.6(a), all Asset Replacement and Renewal Expenditure in respect of capital expenditure projects relating to a Coal System must only be included in the capital costs relevant to the calculation of the System Reference Tariff"*. The purpose of this approach seems to be to allocate costs in a way which brings the system reference tariff closer to the expansion tariff over time. This clause has been used by Aurizon Network to justify the existing approach to allocation of renewals located within the Newlands

System. The DAAU takes a different approach (as sought by a number of Newlands customers) in considering the extent to which renewals in Newlands are caused by GAPE traffic, and allocating a portion of such costs to GAPE. This may be necessary to ensure that Newlands customers are not put in a position of subsidising GAPE customers or being worse-off compared to a 'without GAPE' world, although testing that would require the use of modelling which, we understand, Aurizon Network has not prepared.

For UT6, we would suggest that clause 6.4.8(a) needs to be reviewed, to ensure that its application cannot lead to a subsidy in favour of an expansion. We consider that an expansion tariff should reflect at least the full incremental costs of the expansion, including any increase over time of renewals requirements.

## **6. Expensing of rerailling and ballast undercutting allocations to GAPE**

Aurizon Network proposes to expense the portion of rerailling and ballast undercutting costs which are allocated to GAPE, due to issues which Aurizon Network faces under the GAPE Deeds. Clearly it is not ideal to have inconstant regulatory arrangements across the CQCN to address issues which Aurizon Network has created under its commercial agreements. As a generally principal, QRC does not support the proposition that the QCA should allow the bending of regulatory arrangements to suit non-transparent commercial agreements. However, given the specific nature of this DAAU, QRC encourages the QCA to consider the views of affected customers on the expensing of rerailling and ballast undercutting.

## **7. QCA's role in determining allocations**

QRC is unclear on how Aurizon Network's decisions to allocate renewals costs to a particular system face any form of regulatory oversight, noting the QCA's statement<sup>3</sup> that "*our role in this matter, as it now stands, is limited under UT5 and the Queensland Competition Authority Act 1997 (Qld) (QCA Act) more generally. In particular, there is no scope for the QCA to determine cost allocations as part of the renewals strategy and budget process or upcoming capital expenditure claim and very limited scope during annual compliance processes thereafter*". QRC has not sought level advice on this question, but would obviously be concerned if it is the case that Aurizon Network can allocate renewals to whichever system it prefers, without regulatory oversight. We will review this question ahead of the UT6 process. We consider that the QCA should not approve capital expenditure for inclusion in the RAB without being able to specify which system RAB is relevant. Alternatively, the question could be addressed in the asset base roll-forward process.

Thank you for the opportunity to provide this submission.

Yours sincerely



Andrew Barger

**Queensland Resources Council**

---

<sup>3</sup> QCA's September 2021 Guidance Paper, page 3.