

Revised Clause 7A.5 – Concept Studies DAAU

Background

- 1 Terms used in this Draft Amending Access Undertaking have the same meaning as those terms have in the 2017 Aurizon Network Access Undertaking.
- 2 The current drafting of Clause 7A.5 of the Undertaking contemplates a number of steps by which:
 - (a) an Independent Expert was to identify any Existing Capacity Deficit in Coal Systems in the Initial Capacity Assessment Report (**ICAR**);
 - (b) if the Independent Expert identified specific causes of the Existing Capacity Deficit, the ICAR was to include those causes and any solutions which could effectively and efficiently address the Existing Capacity Deficit;
 - (c) Transitional Arrangements to address any Existing Capacity Deficits identified in the ICAR could be identified by Aurizon Network in a published preliminary report, including a response to any solutions identified by the Independent Expert;
 - (d) after consultation by Aurizon Network with End Users, Customers and Train Operators, Aurizon Network would publish a more detailed report (**Detailed Report**) showing Aurizon Network's analysis and consultation on Transitional Arrangements that could most effectively and efficiently address the Existing Capacity Deficit(s);
 - (e) If Aurizon Network and affected users could not reach agreement on the implementation of Transitional Arrangements, the Independent Expert would review the Transitional Arrangement(s) referred to in the Detailed Report and make recommendations for approval to the QCA on the most effective and efficient Transitional Arrangement(s) it considers would resolve an Existing Capacity Deficit;
 - (f) upon receiving the recommendation from the Independent Expert, the QCA determines which of the Transitional Arrangement(s) is considered to be the most efficient and effective to resolve an Existing Capacity Deficit;
 - (g) subject to specified qualifications, Aurizon Network is obliged to implement the Transitional Arrangement(s) determined by the QCA as the most efficient and effective resolution to an Existing Capacity Deficit;
 - (h) Aurizon Network is able to recover:
 - (i) the costs of any Transitional Arrangements that involve the implementation of operational changes to address the Existing Capacity Deficit, to the extent that those costs are reasonable and pre-approved by the QCA and are not otherwise recoverable under the Undertaking; and
 - (ii) the costs of a Transitional Arrangement constituting an Expansion:

- (A) agreed by Aurizon Network and affected End Users, where the End Users elect to rectify the Existing Capacity Deficit; or
 - (B) determined by the QCA as the most effective and efficient option to address the Existing Capacity Deficit,

subject to an assessment by the Independent Expert to approve the costs of the Expansion as efficient and prudent;
 - (i) where the Independent Expert does not approve the efficiency and prudence of the proposed Expansion costs as referred to in paragraph (h)(ii), Aurizon Network is obliged to submit an alternative proposal that either:
 - (A) Aurizon Network and the affected End Users have agreed will effectively and efficiently address the Existing Capacity Deficit; or
 - (B) if Aurizon Network and the affected End Users have not agreed as contemplated under paragraph (A), Aurizon Network determines will most effectively and efficiently address the Existing Capacity Deficit;
 - (j) the Independent Expert is to assess and approve the efficiency and prudence of the costs of an Expansion proposed in accordance with paragraph (i);
 - (k) Aurizon Network can only commence construction of an Expansion proposed under paragraphs (h) or (i) if the Independent Expert has first approved the efficiency and prudence of the costs of the Expansion. Once approved by the Independent Expert, the value of the Expansion will be included in the Regulatory Asset Base.
- 3 Following approval of the Undertaking by the QCA, a number of the steps outlined in paragraph 2 have occurred. In particular:
- (a) the Independent Expert published the ICAR which identified Existing Capacity Deficits in various Coal Systems and included proposed options that could mitigate the Existing Capacity Deficit;
 - (b) Aurizon Network provided its preliminary report on proposed options for effectively and efficiently addressing the Existing Capacity Deficits identified in the ICAR, including options proposed by the Independent Expert, to the QCA and the Chair of the Rail Industry Group;
 - (c) following consultation with End Users, Customers, Train Operators and the Independent Expert, Aurizon Network provided its Detailed Report on proposed Transitional Arrangements it considered would most effectively and efficiently address the Existing Capacity Deficits to the QCA and the Chair of the Rail Industry Group;
 - (d) the Independent Expert provided its recommendations to the QCA in response to the Detailed Report by a response dated 17 June 2022 (**Response Document**), noting that affected End Users and Aurizon Network had failed to agree on some of the Expansions proposed as solutions to the identified Existing Capacity Deficits.

- 4 The Detailed Report provided by Aurizon Network, amongst other matters, proposed that Concept Studies be carried out in relation to identified Expansions so as to help ensure, and enable affected End Users and the Independent Expert to make a fully informed assessment of, the effectiveness and efficiency of the relevant Expansions in addressing the Existing Capacity Deficits.
- 5 In the Response Document the Independent Expert:
 - (a) confirmed that the Independent Expert's recommendations in the Response Document were based on the Detailed Report;
 - (b) identified the specific steps the Independent Expert undertook in relation to the Transitional Arrangements proposed by Aurizon Network in its Detailed Report. The Response Document confirms that in all cases those steps included:
 - (i) engaging with Aurizon Network on expected capital costs, Concept Study costs and operating costs;
 - (ii) calculating the net present cost for each project;
 - (iii) consideration of "other factors" including "industry feedback";
 - (c) recommended that Concept Studies and a "Staged Review" process be adopted to the assessment, recommendation and if approved, implementation of Transitional Arrangements involving an Expansion as identified in the Response Document; and
 - (d) recommended that some of the Transitional Arrangements identified in the Response Document be implemented immediately.
- 6 The proposed Concept Studies and Staged Review process are not contemplated by the current definition of "Transitional Arrangements" in the Undertaking. As a consequence, if the QCA agrees with the Independent Expert's recommendations regarding Concept Studies and the Staged Review process outlined in the Response Document, a change to the Undertaking is required in order to cater for those matters and to allow Aurizon Network to recover the costs of the Concept Studies (and any associated Pre-feasibility Study and Feasibility Study).

Purpose of this DAAU

- 7 The purpose of this DAAU is to:
 - (a) simplify the drafting of clause 7A.5 of the Undertaking by replacing provisions that have been superseded by the actual steps that have occurred since the Undertaking was approved;
 - (b) include in a revised clause 7A.5 provisions that reflect what has factually occurred since the Undertaking was approved, including the fact that the Independent Expert has recommended various measures in its Response Document;
 - (c) recognise that if the QCA makes a determination that is consistent with the recommendations of the Independent Expert in the Response Document regarding the carrying out of Concept Studies Aurizon Network should carry out

- that Concept Study (and any associated Pre-feasibility Studies and Feasibility Studies considered necessary to refine the nature and cost of an Expansion)
- (d) amend the current drafting of clause 7A.5 of the Undertaking in order to allow Aurizon Network to recover its costs of those studies; and
 - (e) include provisions in the revised clause 7A.5 to reflect that more analysis and a structured process is required around the Staged Review approach proposed in the Response Document, assuming the QCA makes a determination that is consistent with the Independent Expert's recommendations in that regard.

Amendments to Undertaking

It is proposed that the current clause 7A.5 of the Undertaking be deleted and replaced with the following.

7A.5 Existing Capacity Deficit

- (a) On 28 October 2021 the Independent Expert provided the QCA and Aurizon Network with the Initial Capacity Assessment Report (**ICAR**) detailing the results of the IE Initial Capacity Assessment revealing the Deliverable Network Capacity Shortfall for each Coal System (**Existing Capacity Deficit**).
- (b) On 12 November 2021, Aurizon Network submitted to the QCA (and, without having an obligation to do so, also provided a copy to the Chair of the Rail Industry Group) its preliminary response to the ICAR setting Aurizon Network's preliminary views on options to address the Existing Capacity Deficits.
- (c) Following consultation by Aurizon Network with End Users, Customers, Access Holders and Train Operators affected by an Existing Capacity Deficit and the Independent Expert, Aurizon Network identified and considered a range of measures which might effectively and efficiently address the Existing Capacity Deficits.
- (d) On 14 March 2022, Aurizon Network submitted to the QCA, and (as required by the Undertaking at that time) the Chair of the Rail Industry Group and the Independent Expert, a detailed report (**Detailed Report**) showing the outcomes of its analysis and consultation on the identified measures to address the Existing Capacity Deficit including those which, in Aurizon Network's view, should be implemented to address the Existing Capacity Deficits.
- (e) In some cases, the Detailed Report concluded that a Concept Study ought to be undertaken to allow the Independent Expert to better assess whether an Expansion proposed as a measure would be effective and efficient to address an Existing Capacity Deficit (in whole or in part).
- (f) In a report dated 17 June 2022 (**Response Document**) the Independent Expert made recommendations to the QCA on the proposed Transitional Arrangements

the Independent Expert considered will (and/or may be likely to) most effectively and efficiently resolve the Existing Capacity Deficits.

- (g) The Response Document included recommendations that:
 - (i) a staged review approach be taken to the implementation of some Transitional Arrangements where the stages would include, for example, a review of initial modelling assumptions and modelling analysis and a review of the impact of other projects to determine if further work was required to address an Existing Capacity Deficit; and
 - (ii) Concept Studies be undertaken into various proposed Expansions before a fully informed view can be reached on whether or not the proposed Expansion is an effective and efficient way to address the Existing Capacity Deficit.
- (h) The Response Document confirmed that affected End Users and Aurizon Network had failed to reach agreement on all of the Expansion proposals.
- (i) The Response Document containing the Independent Expert's recommendations to the QCA for approval, and outlining the basis of the Independent Expert's assessment is attached as **Schedule L**.
- (j) Having received the Response Document, the QCA must make a determination as to which proposed Transitional Arrangements will most efficiently and effectively resolve the Existing Capacity Deficit, including with regard to which of the proposed Transitional Arrangements will result in the lowest net present cost applying the Discount Rate to all Access Holders:
 - (i) without prejudice to the reliability and performance (in the long and short term) of the Rail Infrastructure; and
 - (ii) provided that the QCA's determination must be consistent with the System Operating Parameters, except to the extent required to accommodate an operational change deemed prudent by the QCA for the purpose of rectifying the Existing Capacity Deficit.
- (k) Prior to making a determination on how to most effectively and efficiently address an Existing Capacity Deficit (or in the case of a determination having been made on how to effectively and efficiently address part, but not all, of an Existing Capacity Deficit, prior to making a determination on how to address the remaining part of the Existing Capacity Deficit), the QCA may:
 - (i) determine that a Concept Study be undertaken into a potential Expansion identified by the Independent Expert as a potential Transitional Arrangement; and
 - (ii) where the QCA has determined that a Concept Study is to be carried out for such a potential Expansion, make a determination that a Pre-feasibility Study or Feasibility Study for the Expansion to which the Concept Study relates also be carried out in order to refine the scope and/or the cost of the proposed Expansion,

where:

- (iii) in the case of a Concept Study or Pre-Feasibility Study:
 - (A) the Concept Study or Pre-Feasibility Study (as applicable) has been recommended by the Independent Expert (including in the Response Document); and
 - (B) if the Concept Study or Pre-Feasibility Study (as applicable) has not been proposed by Aurizon Network, the QCA has first consulted with Aurizon Network on whether or not the proposed Concept Study or Pre-Feasibility Study (as applicable) is justified in the circumstances; or
- (iv) in the case of a Feasibility Study, the Feasibility Study:
 - (A) has been proposed by Aurizon Network; and
 - (B) the QCA has first confirmed with the Independent Expert that the Independent Expert is not of either of the following views (in its sole discretion):
 - (1) the Expansion the subject of the Feasibility Study is not the most efficient and effective way to resolve the relevant Existing Capacity Deficit; or
 - (2) the Pre-Feasibility Study (or if no Pre-Feasibility Study has been completed, the Concept Study) for that Expansion was insufficient for the Independent Expert to form a view whether or not the Expansion is the most efficient and effective way to resolve the relevant Existing Capacity Deficit.
- (l) Where the QCA makes a determination that a Concept Study, Pre-Feasibility Study or Feasibility Study (**Relevant Study**) is to be undertaken into a proposed Expansion solution to an Existing Capacity Deficit, Aurizon Network's costs of the Relevant Study undertaken by Aurizon Network (**Study Costs**) will be treated as follows:
 - (i) where the Expansion to which the Relevant Study relates ultimately proceeds, Aurizon Network will be entitled to recover so much of its Study Costs as the Independent Expert assesses as prudent and efficient when assessing the prudence and efficiency of the Expansion. A separate assessment for approval of the Study Costs as prudent and efficient by the QCA will not be required where the Expansion ultimately proceeds following an assessment as to prudence and efficiency by the Independent Expert;
 - (ii) where the Expansion to which the Relevant Study relates does not ultimately proceed:
 - (A) details of the relevant Study Costs and a supporting submission:
 - (1) setting out why the Study Costs are considered to be prudent and efficient; and

- (2) detailing the proposed consequential changes to the Allowable Revenue (and associated Reference Tariffs) under clause 4.3 of Schedule F,

will be provided to the QCA by Aurizon Network for consideration. (For clarity, the QCA cannot refuse to approve the Study Costs as prudent and efficient on the basis that the Expansion does not ultimately proceed (other than by reason of Aurizon Network's failure to construct the Expansion in breach of a determination by the QCA under this clause 7A.5 determining that the Expansion is to be constructed));

- (B) within 15 days of the provision of the details and supporting submission (or such longer period as may be required by the QCA), the QCA will either:
 - (1) confirm in writing to Aurizon Network that the Study Costs are approved; or
 - (2) consult with Aurizon Network in relation to alternative Study Costs considered prudent and efficient, before notifying Aurizon Network in writing of the Study Costs that the QCA has approved;
- (iii) if the Expansion to which the Relevant Study relates does not ultimately proceed, the Study Costs approved by the QCA in accordance with clause 7A.5(l)(i)(B) are recoverable by Aurizon Network as a Revenue Adjustment under Schedule F, clause 4.3. The costs will be deemed additional to Aurizon Network's Non-Electric Operating Expenditure Allowance for the Allowable Revenues in the relevant Year; and
- (iv) if the Expansion to which the Relevant Study relates ultimately proceeds, the Study Costs approved by the Independent Expert as contemplated by clause 7A.5(l)(i) will be included in the value of the Regulatory Asset Base(s) to which the Study Costs relate (or where the Relevant Study relates to more than one Coal System, those Study Costs will be allocated amongst those Coal Systems (including allocations amongst Reference Tariffs) on a pro rata basis by reference to other Approved Capital Expenditure) and do not require separate approval.
- (m) If the QCA makes a determination that a Concept Study is to be undertaken, in the absence of a determination by the QCA that a required Concept Study is to include a Pre-feasibility Study execution plan, one is not required and will not be provided.
- (n) The following will apply where the QCA makes a determination requiring Aurizon Network to prepare a Relevant Study (alone or with other steps as part of a staged review process). After that Relevant Study is undertaken:

- (i) Aurizon Network must, promptly provide to the Independent Expert (copied to the QCA and the Chair of the Rail Industry Group) a copy of the Relevant Study, followed by, as soon as reasonably practicable having regard to the analysis needed to make an informed recommendation, a supplementary detailed report (**Supplementary Detailed Report**) making a recommendation as to whether one or more of the Expansions the subject of the Relevant Study should proceed to be implemented so as to address any Existing Capacity Deficit remaining after taking into account the extent to which any Transitional Arrangements already the subject of a QCA determination under clause 7A.5 have addressed, or will address the Existing Capacity Deficit (**Remaining Existing Capacity Deficit**);
- (ii) if Aurizon Network's recommendation in the Supplementary Detailed Report is that any one or more of the Expansions the subject of a Relevant Study should proceed, then the Supplementary Detailed Report must include Aurizon Network's views as to the timing at which (or any conditions which, in Aurizon Network's view, should be met before) each such Expansion should be undertaken;
- (iii) if Aurizon Network's recommendation in the Supplementary Detailed Report is that any one or more of the Expansions the subject of a Relevant Study should not proceed, the Supplementary Detailed Report must include Aurizon Network's recommendation on any alternative measures which could effectively and efficiently address any Remaining Existing Capacity Deficit unless all affected Access Holders and Customers have advised Aurizon Network in writing that they would prefer not to do anything to address the Remaining Existing Capacity Deficit;
- (iv) where a different Expansion has been proposed by Aurizon Network as an alternative measure to address the Remaining Existing Capacity Deficit in the Supplementary Detailed Report and it has not already been agreed by Aurizon Network and all of the affected End Users that no Concept Study is required for that Expansion, Aurizon Network may propose in the Supplementary Detailed Report that a Concept Study (and if relevant, an associated Pre-feasibility Study) be undertaken to assist the Independent Expert to make its recommendation to the QCA as to the most effective and efficient resolution to the Remaining Existing Capacity Deficit;
- (v) if:
 - (A) following the Supplementary Report, Aurizon Network and all of the affected End Users agree (with the End Users confirming their agreement in writing to Aurizon Network) that the Expansion (that is the subject of the Relevant Study) is required to address any Remaining Existing Capacity Deficit; or

- (B) Aurizon Network recommends an alternative Expansion to effectively and efficiently resolve the Remaining Existing Capacity Deficit in the Supplementary Detailed Report and all of the affected End Users agree with Aurizon Network's recommendation (with the affected End Users confirming their agreement in writing to Aurizon Network),

Aurizon Network:

- (C) is (for clarity), not obliged to follow the steps in this clause 7A.5(n)(ii) –(iv) inclusive (provided that if there will still be a part of the Remaining Existing Capacity Deficit that such Expansion will not address and that will not otherwise be addressed pursuant to clause 8.9.4 of the Undertaking (**Further Remaining Existing Capacity Deficit**) then the steps in this clause 7A.5(n) will apply but only for the Further Remaining Existing Capacity Deficit);
 - (D) will advise the QCA in writing (including a copy of the Relevant Study) with a copy to the Independent Expert and the Chair of the Rail Industry Group; and
 - (E) clause 7A.5(o) will apply to that Expansion;
- (vi) if Aurizon Network and the affected End Users do not agree with Aurizon Network's recommendation on the most efficient and effective measures in the Supplementary Detailed Report, or Aurizon Network recommends in the Supplementary Detailed Report that any one or more of the Expansions the subject of the Relevant Study should not proceed, the Independent Expert must review the Relevant Study and the Supplementary Detailed Report and promptly make a recommendation to the QCA with respect to which proposed Transitional Arrangements (which may include proposed Transitional Arrangements recommended by Aurizon Network) it considers will most effectively and efficiently resolve the Remaining Existing Capacity Deficit, including with regard to:
 - (A) whether the Expansion the subject of the Relevant Study would most effectively and efficiently resolve the Existing Capacity Deficit; and
 - (B) any Annual Capacity Assessment which the Independent Expert has undertaken or is undertaking pursuant to clause 7A.4.2;
 - (vii) Despite any other provision of this clause 7A.5, and without prejudice to Aurizon Network's right to recover the Study Costs associated with a Feasibility Study required by the QCA in the circumstances contemplated by this clause 7A.5 (as provided in clause 7A.5(l)):
 - (A) a Feasibility Study cannot be required by the QCA except pursuant to a determination made in accordance with clause 7A.5(k);

- (B) the Independent Expert is not entitled to require a Feasibility Study for the purposes of the Independent Expert making a recommendation referred to in clause 7A.5(n)(vi) or (q) (and the Independent Expert must not delay making any such recommendation to the QCA pending a Feasibility Study).
- (viii) Aurizon Network may delay making a recommendation under clause 7A.5(n)(i) and the Independent Expert may delay making the recommendation referred to in clause 7A.5(n)(vi) until both of the following have been satisfied:
- (A) any of:
 - (1) the Independent Expert reviews all Further Study(ies) that the QCA determines should be undertaken by Aurizon Network,
 - (2) the QCA has declined to make a determination requiring any Further Studies; or
 - (3) there are no Further Studies for the QCA to determine should be undertaken by Aurizon Network,

in respect of the proposed Expansion. (The term “Further Study(ies)” means a Pre-Feasibility following a Concept Study. There is no other type of Further Study.)
 - (B) to the extent relevant to those recommendations, any other staged review process step determined as appropriate by the QCA in its response to the Response Document;
- (ix) where Aurizon Network proposes an Expansion as an alternative measure to address the Existing Capacity Deficit or a Remaining Existing Capacity Deficit in the Supplementary Detailed Report, the Independent Expert may, before making a recommendation under clause 7A.5(n)(vi), make a recommendation to the QCA that Aurizon Network should be required to carry out a Concept Study and/or associated Further Study(ies) in relation to that Expansion.
- (x) within 15 days (or such longer period as may be required by the QCA) of receiving a recommendation from the Independent Expert referred to in clause 7A.5(n)(vi), the QCA will be responsible for determining whether a proposed Transitional Arrangement recommended by the Independent Expert is effective and efficient in addressing the Remaining Existing Capacity Deficit applying the same considerations referred to in clause 7A.5(j) adjusted as required to reflect the need to address a Remaining Existing Capacity Deficit.
- (o) If:
- (i) Aurizon Network and the affected End Users agree that an Expansion is the most effective and efficient option to address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable) and affected End Users notify Aurizon Network in

writing that they all elect to rectify the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable); or

- (ii) the QCA otherwise determines that an Expansion proposed by the Independent Expert as a Transitional Arrangement is the most effective and efficient option to address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable),

then Aurizon Network must submit the proposal for the Expansion to the Independent Expert for review under this clause 7A.5(o) and:

- (iii) the Independent Expert must review and approve the efficiency and prudence (including, for clarity, prudence as to cost) of the proposed Expansion prior to Aurizon Network incurring any construction expense in relation to the proposed Expansion
- (iv) where the Independent Expert does not approve the efficiency and prudence of the Expansion, Aurizon Network must submit an alternative proposal to the Independent Expert that:
 - (A) Aurizon Network and the affected End Users have agreed will address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable) for approval by the Independent Expert as being efficient and prudent (including, for clarity, as to cost); or
 - (B) (if Aurizon Network and the affected End Users have not agreed an alternative proposal within 20 Business Days after the Independent Expert decides not to approve the efficiency and prudence of the Expansion), Aurizon Network (acting reasonably) determines will address the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable);
- (v) unless and until the Independent Expert approves the efficiency and prudence of the proposed Expansion (as set out in any proposal required to be submitted by Aurizon Network in accordance with this clause 7A.5(o)), Aurizon Network must not incur any construction expenditure in relation to the proposed Expansion.

(p) Where an Expansion proposal has been submitted for approval by the Independent Expert as to efficiency and prudence under clause 7A.5(o) and the Independent Expert proposes to approve a lower cost under clause 7A.5(o) than that proposed by Aurizon Network, the Independent Expert must notify Aurizon Network and provide Aurizon Network with an opportunity to meet and make submissions to the Independent Expert as to the costs that should be approved as efficient and prudent. If Aurizon Network does not agree with the outcome of those discussions with the Independent Expert, Aurizon Network may:

- (i) elect to proceed to construct the Expansion for the cost approved by the Independent Expert as efficient and prudent;
- (ii) seek pre or post approval from the QCA for the difference between the cost approved by the Independent Expert and the cost

anticipated or actually incurred by Aurizon Network (as applicable) (for the avoidance of doubt, capital expenditure for the Expansion will not include any such difference for which QCA approval is not forthcoming); or

- (iii) submit a proposal for an alternate measure to address the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable, for consideration and approval in accordance with this clause 7A.5. For clarity, submission of any such proposal does not limit or exclude Aurizon Network's obligations under clause 7A.5(r) to implement the Expansion in compliance with the QCA's determination unless the QCA otherwise approves.

(q) Where the Independent Expert:

- (i) does not agree that; or
- (ii) considers (acting reasonably) that it does not have sufficient information / requires information as provided in the balance of this clause 7A.5(q) to form a view whether or not,

an Expansion (or, if the step in clause 7A.5(n)(iii) has applied, other measures) recommended in the Supplementary Detailed Report is the most effective and efficient option to address the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable, the Independent Expert may propose to Aurizon Network an alternative solution (**IE Alternative Solution**) for Aurizon Network's analysis whether it will most effectively and efficiently address the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable. Where this occurs Aurizon Network must, as soon as reasonably practicable having regard to:

- (iii) the analysis needed to make an informed recommendation; and
- (iv) any other analysis or work (including Relevant Studies) that Aurizon Network is already undertaking at that time in accordance with this clause 7A.5 in respect of the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable,

analyse the IE Alternative Solution and consult with affected End Users and respond to the Independent Expert in writing as to whether or not Aurizon Network considers the IE Alternative Solution will (and/or may be likely to) be a suitable alternative Transitional Arrangement (where "suitable" means that it will (or is likely) to efficiently and effectively address the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable and "not suitable" means it will not (or is unlikely) to do so).

Where Aurizon Network's view is that the IE Alternative Solution is not suitable to be an alternative Transitional Arrangement, Aurizon Network may submit an alternative proposal (**AN Alternative Solution**) to the Independent Expert.

In any case (for clarity, whether Aurizon Network's view is that the IE Alternative Solution is suitable or, that the IE Alternative Solution is not suitable and an AN

Alternative Solution is suitable), Aurizon Network's response must advise the Independent Expert whether:

- (v) Aurizon Network and the affected End Users have agreed that IE Alternative Solution or the AN Alternative Solution (as applicable) will address the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable for approval by the Independent Expert as being the most efficient and effective measure (including, for clarity, as to cost); or
- (vi) if Aurizon Network and the affected End Users have not so agreed, Aurizon Network (acting reasonably) remains of the view that the IE Alternative Solution or AN Alternative Solution (as applicable) will address the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable,

and, in the case of paragraph (v), clause 7A.5(o) will apply and, in the case of paragraph (vi) and provided the Independent Expert has not already made its recommendation for the Existing Capacity Deficit or Remaining Existing Capacity Deficit (as applicable) under clause 7A.5(n)(vi), if the Independent Expert nevertheless considers the IE Alternative Solution or the AN Alternative Solution (as applicable) to be the proposed Transitional Arrangement that will most effectively and efficiently address the Existing Capacity Deficit or Remaining Existing Capacity Deficit (as applicable), the Independent Expert may make a recommendation to the QCA accordingly.

- (r) Subject to the provisions of this clause 7A.5, Aurizon Network must comply with any determination made by the QCA under this clause 7A.5, including by doing everything reasonably necessary to implement the Transitional Arrangements determined by the QCA to most efficiently and effectively resolve the Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable):
 - (i) in compliance (to the extent reasonably feasible) with the QCA's proposed timing for implementation (if specified); or
 - (ii) if clause 7A.5(r)(i) does not apply, as soon as reasonably practicable, and in either case, taking into account:
 - (A) the nature and effort involved in implementing the relevant Transitional Arrangements;
 - (B) other relevant factors (such as a reasonable period to construct the relevant Expansion); and
 - (C) the impact of force majeure-type delays to construction.
- (s) Aurizon Network's obligation under clause 7A.5(r) to implement the Transitional Arrangements (other than Expansions) is limited to the extent that such Transitional Arrangements:
 - (i) are within the control of Aurizon Network;
 - (ii) would not place Aurizon Network in breach of any applicable Safeworking Procedures and Safety Standards; and

- (iii) would not place Aurizon Network in breach of its obligations under this Undertaking or any Access Agreement. In determining whether a Transitional Arrangement would put Aurizon Network in breach of an Access Agreement that determination would be made on the basis that any change in a System Operating Parameter had been reflected in the relevant Access Agreement as contemplated by clause 7A.12.
- (t) To the extent Aurizon Network is required to implement operational changes and, in doing so, incurs costs that it would not otherwise be entitled to recover in accordance with this Undertaking, Aurizon Network will be entitled to recover such costs (provided those costs are reasonable and pre-approved by the QCA).
- (u) Subject to clauses 7A.5(r) and 7A.5(v), Aurizon Network is obliged to promptly undertake and fund the Expansion at the Approved WACC applicable from time to time.
 - (v) Subject to clauses 7A.5(l)(iii) and 7A.5(n)(ix), the value of the Expansion will be included in the Regulatory Asset Base.
- (w) Aurizon Network will only be obliged to undertake and fund an Expansion up to an amount of \$300 million (in aggregate across all Expansions required in accordance with this clause).
- (x) For clarity, the pricing principles to apply to an Expansion are set out in Part 6 and Schedule F.
- (y) Aurizon Network acknowledges that an Existing Capacity Deficit (or Remaining Existing Capacity Deficit, as applicable) does not reduce an Access Holder's entitlement to Access Rights under an existing Access Agreement, except to the extent an Access Holder elects to voluntarily relinquish its Access Rights in accordance with the terms of any Transitional Arrangement.
- (z) Nothing in this clause 7A.5 affects or limits Aurizon Network's obligations or liabilities in respect of an Access Agreement or any other agreement entered into in accordance with this Undertaking.
- (aa) Despite clause 2.4(f) and anything contrary in an Access Agreement, where
 - (i) an Access Holder voluntarily elected to relinquish any of its Access Rights as part of the consultation process that resulted in the Detailed Report; and
 - (ii) an Access Holder confirms in writing to the QCA its willingness to relinquish any of its Access Rights (which confirmation may be stated to be on condition that it is able to do so on the basis provided in this clause 7A.5(aa)) and the QCA subsequently makes a determination, based on the recommendation by the Independent Expert, pursuant to this clause 7A.5 confirming that the Access Holder may do so (if it is entitled to do so under, and in accordance with, a relinquishment provision in its Access Agreement) without being required to pay a Relinquishment Fee that would otherwise be payable as a result of such relinquishment under its Access Agreement,

and that Access Holder relinquishes those Access Rights in accordance with a relinquishment provision of its Access Agreement, a Relinquishment Fee that would otherwise be payable under the Access Agreement is not payable and Aurizon Network will not collect, and will not be deemed to collect (for the purposes of the calculation of Total Allowable Revenue under Part 7A), any Relinquishment Fee. For clarity, there will be no relief from the obligation to pay a Relinquishment Fee payable under an Access Agreement if an Access Holder elects to relinquish Access Rights otherwise than as contemplated by this clause 7A.5(aa).

(bb) In recognition that the Independent Expert has recommended a staged review process, any recommendation by the Independent Expert, or any determination by the QCA, contemplated by this clause 7A.5 may be:

(i) a recommendation or determination (as applicable) not to address some or all of the Existing Capacity Deficit or Remaining Existing Capacity Deficit, as applicable (or not to do so until certain conditions arise); or

(ii) a solution comprising or otherwise including:

(A) more than one Transitional Arrangement (including more than one type); and/or

(B) implementation of one or more Transitional Arrangements in the future or at different times (including delayed implementation and/or a staged approach), with or without interim steps,

which may result in multiple recommendations and/or determinations (as applicable) being made at different times and, without limitation, may to some extent include recommendations or determinations (as applicable) contemplated by clause 7A.5(bb)(i) and/or (iii); or

(iii) a recommendation for, or a determination requiring, further work or analysis be done before the Independent Expert makes a further recommendation to the QCA, or the QCA makes a determination, on the most efficient and effective resolution.

(cc) Without limitation to clause 7A.5(bb) where the QCA makes a determination in relation to an Expansion (including while it is still unclear whether the QCA may make such a determination), the implementation of any other QCA determination relating to another Transitional Arrangement should not be delayed pending any matter relating to that Expansion (including any Concept Study or Further Study or construction of the Expansion).

The revised clause 7A.5 requires a number of consequential changes to other provisions of the Undertaking as follows:

8.3.1A Application

For clarity, the provisions of clause 8.3 (other than clause 8.3.4(d)) do not apply in the case of Expansions to be undertaken in accordance with clause 7A.5 to address any Existing Capacity Deficit.

8.3.4 General provisions

.....

- (d) The capital expenditure for an Expansion includes:
- (i) the cost of a Pre-feasibility Study or Feasibility Study relating to that Expansion; and
 - (ii) where a Concept Study was undertaken pursuant to a QCA determination under clause 7A.5, the cost of that Concept Study.

However, any amounts that are not:

- (iii) repaid or reimbursed (as applicable):
 - (A) for a Pre-feasibility Study (other than a Pre-feasibility Study carried out pursuant to clause 7A.5), under clause 8.4.4(b)(iii)(A); and
 - (B) for a Feasibility Study (other than a Feasibility Study carried out pursuant to clause 7A.5), under clause 8.4.4(b)(iii)(B); and
- (iv) in the case of a Relevant Study for an Expansion which proceeds under clause 7A.5, the Study Costs approved for that Relevant Study as contemplated by clause 7A.5(l),

will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.

8.4 Funding Concept Studies, Pre-feasibility Studies and Feasibility Studies

8.4.1A Application

For clarity, the provisions of this clause 8.4 (other than clause 8.4.1(a)(iii)) do not apply in the case of Expansions to be undertaken in accordance with clause 7A.5 to address any Existing Capacity Deficit.

8.4.1 Concept Studies

- (a) Aurizon Network must fund all Concept Studies except:
- (i) if an Access Seeker (or, as applicable, Customer), at its absolute discretion, agrees to fund the Concept Study;
 - (ii) clause 8.3.1(a)(ii) applies; or
 - (iii) where a Concept Study is required to be undertaken pursuant to clause 7A.5, to the extent the costs of that Concept Study are either recoverable by Aurizon Network as a Revenue Adjustment under Schedule F, clause 4 or will be included in the value of the Regulatory Asset Base(s) to which the Study Costs relate (as provided in clause 7A.5(l)(ii) or (iii) respectively).
- (b) If Aurizon Network does not fund a Concept Study, the funding party must not be provided with any rights that person would not otherwise be entitled to had they not funded the Concept Study. For clarity, this includes providing the funding Access Seeker (or, as applicable, Customer) with priority for the Expansion.

Clause 12, definitions

AN Alternative Solution has the meaning given in clause **7A.5(q)**.

AN Performance Breach

(a)...

(b) ...

(c)...

except to the extent that any act or omission of Aurizon Network under **paragraphs (a) - (c)** is directly attributable to:

(d) the proper performance, completion and/or implementation of any Transitional Arrangements agreed to or determined under clause **7A.5**;

(e) a delay to the implementation of any Transitional Arrangements on the basis that the QCA has not made any relevant determination, except to the extent that such delay is solely attributable to an act or omission by Aurizon Network;

(f) an agreement, recommendation or determination under clause **7A.5** not to address an Existing Capacity Deficit or Remaining Existing Capacity Deficit; or

(g) an election by the End Users to not rectify an Existing Capacity Deficit or a Remaining Existing Capacity Deficit.

Further Study has the meaning given in clause **7A.5(n)(ix)(A)**.

IE Alternative Solution has the meaning given in clause **7A.5(q)**.

Relevant Study has the meaning given in clause **7A.5(l)**.

Remaining Existing Capacity Deficit has the meaning given to that term in clause **7.A5(n)(i)**.

Study Costs has the meaning given in clause **7A.5(l)**.

Supplementary Detailed Report has the meaning given to that term in clause **7A.5(n)(i)**.

Transitional Arrangements means any one or more of the following:

- (a) changes that can be made to:
 - (i) the operation and maintenance practices for the Rail Infrastructure;
 - (ii) the operations of Rollingstock by Railway Operators; and/or
 - (iii) the operation and maintenance practices in respect of load-out facilities,

including in relation to interfaces with all facilities forming part of the relevant Supply Chains (as set out in the assumptions affecting Deliverable Network Capacity and included in the Initial Capacity Assessment Report) in order to increase the Deliverable Network Capacity of the relevant Coal System, provided that such changes would be consistent with the System Operating Parameters included in the IE Initial Capacity Assessment (and would not require an Access Holder to revert to the requirements in an Access Agreement where that Access Agreement has not been modified to make it consistent with the new System Operating Parameters);

- (b) voluntary relinquishments that any Access Holders offered to make of any of their Access Rights if entitled to do so under, and in accordance with, relinquishment provisions in their Access Agreements (without being required to pay a Relinquishment Fee to Aurizon Network where the offer was made by the Access Holder in the consultation process undertaken prior to Aurizon Network providing the Detailed Report responding to the ICAR, or is confirmed as being permitted on such basis by a QCA determination as referred to in clause 7A.5(aa)) with the relevant Access Holder to specify the maximum and minimum number of Access Rights that the Access Holder would be willing to relinquish; and
- (c) options for Expansions,

to the extent that one or more of the measures referred to in paragraphs (a), (b) and (c) are recommended by the Independent Expert to the QCA as a proposed solution to address an Existing Capacity Deficit or a Remaining Existing Capacity Deficit in accordance with the procedures in clause 7A.5 and subject to the limitations contained in clause 7A.5.

Schedule E, clause 2.2

- (l) Where Aurizon Network undertakes a Relevant Study pursuant to a QCA determination under clause 7A.5:
- (i) details of the relevant Study Costs and a supporting submission:
- (A) setting out why the Study Costs are considered to be prudent and efficient; and
 - (B) detailing the proposed consequential changes to the Allowable Revenue (and associated Reference Tariffs) under clause 4.3 of Schedule F,
- will be provided to the QCA by Aurizon Network for consideration. (For clarity, the QCA cannot refuse to approve the Study Costs as prudent and efficient on the basis that the Expansion did not ultimately proceed (other than by reason of Aurizon Network's failure to construct the Expansion in breach of a determination by the QCA under clause 7A.5 determining that the Expansion is to be constructed));
- (ii) within 15 days of the provision of the details and supporting submission (or such longer period as may be required by the QCA), the QCA will either:
- (A) confirm in writing to Aurizon Network that the Study Costs are approved; or
 - (B) consult with Aurizon Network in relation to alternative Study Costs considered prudent and efficient, before notifying Aurizon Network in writing of the Concept Study costs that the QCA has approved;
- (iii) if the Expansion to which the Relevant Study relates does not ultimately proceed, the Study Costs approved by the QCA in accordance with clause 7A.5(l)(i)(B) are recoverable by Aurizon Network as a Revenue Adjustment under Schedule F, clause 4.3. The costs will be deemed additional to Aurizon Network's Non-Electric Operating Expenditure Allowance for the Allowable Revenues in the relevant Year; and
- (iv) if the Expansion to which the Relevant Study relates ultimately proceeds, the Study Costs approved as contemplated by clause 7A.5(l) will be included in the value of the Regulatory Asset Base(s) to which the Study Costs relate[(or where the Relevant Study relates to more than one Coal System, those Study Costs will be allocated amongst those Coal Systems (including allocations amongst Reference Tariffs) on a pro rata basis by reference to the other Approved Capital Expenditure) and do not require separate approval

Schedule F, clause 4.3(c)

- (xi) the amount for Study Costs approved by the QCA as prudent and efficient in accordance with clause 7A.5(l) (in respect of an Expansion that does not ultimately proceed).