

Annexure E - QRC's Table of Omissions

Item	Clause reference (in the QRC's Mark-Up)	Description	Issue
Part 2: Intent and Scope			
1	2.3(e)	Rights of Aurizon Network under the QCA Act	Aurizon Network has not responded to the QRC's proposal to delete clause 2.3(e) regarding the effect of the undertaking on Aurizon Network's rights under the QCA Act.
2	2.4(a)(ii)	Terms and conditions of electricity supply	Aurizon Network has not responded to the QRC's proposal to include an obligation on Aurizon Network to supply electricity on 'reasonable terms and conditions', rather than on terms acceptable to Aurizon Network (i.e. an objective rather than a subjective standard).
3	2.4(b)	Transitional arrangements for electricity supply	Aurizon Network has not responded to the QRC's proposal to include a new clause 2.4(b) which provides transitional arrangements for Access Holders who are (and will be at the commencement of UT4) currently being supplied electricity by Aurizon Network. The transitional arrangements proposed provide for the supply to continue on the same terms and conditions as the Access Holder's existing arrangements.
4	2.4(e)	Disputes in relation to electricity supply	Aurizon Network has not responded to the QRC's proposal to include a new clause 2.4(e) which allows a party to refer a dispute arising under clause 2.4 for expert determination under Part 11.
Part 3: Ringfencing and Protections against conflicts			
5	The QRC provided a complete re-draft of Part 3 of UT4 in its Main Submission. Aurizon Network has not responded substantively to any of the QRC's proposed drafting in its Response to Industry.		

Part 4: Negotiation Framework

6	4.2(a), (b)	Initial enquiries for access	The QRC has reinstated some of the drafting that existed under UT3 in relation to initial enquiries for access. Aurizon Network has not responded to these changes.
7	4.2(d)	Obligation to update preliminary information	Aurizon Network has not responded to the QRC's proposal for Aurizon Network to be subject to a strict obligation to keep preliminary information current, rather than only using reasonable endeavours to do so.
8	4.3(b)	Negotiation cessation notice	Aurizon Network has not responded to the QRC's proposal to delete the last sentence of clause 4.3(b), regarding its ability to provide a negotiation cessation notice.
9	4.4	Obligation to act reasonably and in good faith	Aurizon Network has not responded to the QRC's proposal for it to be subject to an obligation to act reasonably and in good faith in relation to a number of its powers with regards to suspending negotiations.
10	4.7(c)	No notification of intent	Aurizon Network has not responded to the QRC's proposal that an access application and indicative access proposal should be taken to be withdrawn where an access seeker has not notified Aurizon Network of its intention to progress its access application, and the negotiating process has not otherwise been suspended.
11	4.7(b)	Suspending the negotiation process where multiple applications for the same access	<p>Where there are multiple applications for the same access, Aurizon Network has a right to suspend negotiations after the issue of an indicative access proposal, unless and until an operator is nominated by the customer. The QRC has proposed to remove this ability to suspend negotiations to facilitate competitive tenders.</p> <p>In its Response to Industry, Aurizon Network has proposed to clarify that it</p>

is still obliged to *issue an indicative access proposal* to multiple parties where there are multiple applications for the same access. However, Aurizon Network has not responded to the QRC's proposal with respect to continuing *negotiations* with multiple operators.

12	4.9(d), (e)	Train operators supported by customer	Aurizon Network has not responded to the QRC's proposal that UT4 should expressly restrict a rail haulage operator from applying for access, or holding access rights, unless this is done for a specified customer.
13	4.9	Train operators entering into train operations agreement	Aurizon Network has not responded to the QRC's proposal to expand clause 4.9 to incorporate rail haulage operators contracting under a standard access agreement (operator).
14	4.10.2(a)(ii)	Additional information and capacity information	Aurizon Network has not responded to the QRC's proposal for Aurizon Network to strictly ensure any additional information and capacity information provided to access seekers is the most current available, rather than only using reasonable endeavours to do so.
15	4.12(c)(iii)	Factors relevant to determining likelihood of access seeker fully utilising access rights	The QRC has proposed to remove the ability of Aurizon Network to consider an access seeker's or rail operator's facilities (including rollingstock, provisioning facilities, maintenance facilities and storage facilities) when determining the likelihood of access rights being fully utilised. Aurizon Network has responded to a similar proposed change under Part 7 of UT4 but has not responded to this issue with respect to Part 4.

Part 5: Access Agreements

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| 16 | <ul style="list-style-type: none"> The QRC did not suggest any amendments to Part 5 of UT4 in its Main Submission. The QRC has however supported some of the changes proposed by other members of industry as set out in the QRC's responses to Aurizon Network's Annexure A. The QRC provided a mark-up of the AHAA in its Main Submission. Aurizon Network responded to small portions of the QRC's mark-up in |
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Annexure B.1 of its Response to Industry. The QRC's response to Aurizon Network's Annexure B.1 is in Annexure B to this New Submission. However, given the magnitude of the task, the QRC has not undertaken the exercise of listing all the matters that Aurizon Network has not addressed in the QRC's mark-up of the AHAA. To ensure meaningful progress can be made on the content of the standard access agreements, the QRC invites Aurizon Network to prepare a mark-up in response to the QRC's drafting.

Part 6: Pricing Principles, Schedule E: Regulatory Asset Base and Schedule F: Reference Tariffs

- 17 Given the detailed Pricing Submission provided and that a significant amount of discussion in Aurizon's Response to Industry is at an in principle level, we have not attempted to identify all of the missing pricing matters.

Part 7: Available Capacity Allocation and Management

18	7.2	Capacity allocation	Aurizon Network has not responded to the QRC's proposal for Aurizon Network to be subject to a general obligation of good faith with respect to the allocation of capacity.
19	7.3(c)(iv)	Priority of a renewing access seeker lost where access agreement not finalised 12 months prior to expiry of existing access rights	The QRC proposed that a renewing access holder should not be at risk of losing its priority due to a failure to execute an access agreement at least 12 months prior to the expiry of the access rights, where that failure is caused by an act, omission or delay by Aurizon Network. Aurizon Network has failed to respond to this proposed amendment.
20	7.3(f)(i)	Obligation to execute an access agreement	Aurizon Network has not responded to the QRC's proposal to delete <i>"Nothing in this clause 7.3 obliges Aurizon Network to execute an Access Agreement for Renewal"</i> .
21	7.4.2(a)	Priority where transfers of access rights	Aurizon Network has not responded to the QRC's proposal with respect to the transfer of access rights under clause 7.4.2(a).

The QRC has proposed that if a transfer is for the same term of the existing access agreement, is submitted in the form of a standard access agreement and the transferee can demonstrate a reasonable likelihood of being able to fully utilise the relevant access rights, Aurizon Network should be required to execute an access agreement for available capacity with the transferee. This allows a transferee to have priority over other access seekers (other than renewing access seekers) to the extent of the access rights the subject of the transfer. For this reason, the QRC has also proposed that the consideration of other access applications should be removed to avoid confusion.

On the other hand, where a transferee makes an access application for the transferred access rights and ancillary access rights, and another access seeker is already in the process of negotiating with Aurizon Network, the transferee will not have priority and the mutually exclusive access applications mechanism will apply.

22	7.4.2(f)	Public notification of access holders indicating intention to transfer access rights	Aurizon Network has not responded to the QRC's proposal for Aurizon Network to maintain a register of access holders who have indicated an intention to transfer their access rights.
23	7.5.1(a)	Notification of mutually exclusive access applications	Aurizon Network has not responded to the QRC's proposal to place a strict obligation (rather than a reasonable endeavours obligation) on Aurizon Network to identify and advise access seekers of mutually exclusive access applications.
24	7.5.2(b)(v)	Term of a proposed access agreement where mutually exclusive access applications exist	Aurizon Network has not responded to the QRC's proposal that it should be required to negotiate with an access seeker, where mutually exclusive access applications exist, provided that the access seeker's proposed term is at least 10 years or " <i>the remaining life of the mine</i> ".
25	7.5.2(c)	Obligation of good faith regarding negotiations where mutually	Aurizon Network has not responded to the QRC's proposal that it should be subject to an obligation to act reasonably and in good faith in relation to its negotiations for access agreements, where mutually exclusive access

		exclusive access applications exist	applications exist.
26	7.6.3(c)	Public submissions on draft system rules	Aurizon Network has not responded to the QRC's proposal to allow the QCA to decide, at its discretion, to request and consider public submissions on Aurizon Network's draft system rules.
27	7.6.3(d)(ii)	Obligation to resubmit amended draft system rules to the QCA	Aurizon Network has not responded to the QRC's proposal to place an obligation, rather than merely a right, on Aurizon Network to resubmit draft system rules to the QCA (with amendments) where the QCA refuses to approve the first draft.
28	7.6.4	Proposed amendments to the system rules	Aurizon Network has not responded to the QRC's proposal that the systems rules may only be amended with the QCA's approval, and the QCA should have the right, at its discretion, to seek public submissions.
29	7.6.5(b), (c), (d)	Review of system rules	Aurizon Network has not responded to the QRC's proposal that any review of the system rules must be subject to the QCA approval, with the right for the QCA to seek public submissions.

Schedule H: Network Management Principles

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- The QRC did not suggest any amendments to Schedule H of UT4 in its Main Submission. The QRC has however supported some of the changes proposed by other members of industry as set out in the QRC's responses to Aurizon Network's Annexure A.

Part 8: Network Development and Expansion

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- The QRC has provided a mark-up of Aurizon Network's revised Part 8 draft in Annexure D. The QRC's proposed changes which remain

unanswered by Aurizon Network are reflected in that mark-up.

Part 9: Connecting Infrastructure

32	9.1(a)	Conditions to be met for entry into a Rail Connection Agreement	Aurizon Network has not responded to the QRC's proposal to amend various of the conditions for entry into a Rail Connection Agreement, including the conditions in relation to the proposed standard of connecting infrastructure, the impact of the connecting infrastructure on supply chain capacity and the recovery of Aurizon Network's costs.
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Part 10: Reporting and Audit

33	10.1.2(d)(x)	Reporting on compliance with training requirements	Aurizon Network has not responded to the QRC's proposal to insert an obligation on Aurizon Network to report on the number and percentage of Aurizon Group staff that have successfully undertaken the minimum training requirements under Part 3.
34	10.1.2(d)(xiv)	Reporting on errors in bills	Aurizon Network has not responded to the QRC's proposal to broaden the scope of Aurizon Network's obligation to report on errors in bills by deleting the word "materially" in clause 10.1.2(d)(xiv).
35	10.1.3(a), 10.1.6(a)	Format of reports	Aurizon Network has not responded to the QRC's proposal to include a requirement for the format of all reports required under UT4 to be approved by the QCA in advance.
36	10.1.5(a)(i)(B)	Content of operational data reports	Aurizon Network has not responded to the QRC's proposal to expand Aurizon Network's obligation to report on the number and percentage of Train Services that do not reach their destination within the Allotted Time

Threshold by deleting the word “solely” in clauses 10.1.5(a)(i)(B)(1) and (2).

37	10.1.5(a)(vii)(E)	Content of operational data reports	Aurizon Network has not responded to the QRC’s proposal to include an obligation on Aurizon Network to report on information reasonably requested by a Supply Chain Group in relation to a Coal System in its operational reports.
38	10.1.5(d)	Accuracy of information reported	Aurizon Network has not responded to the QRC’s proposal for Aurizon Network to be subject to a strict obligation to ensure that information contained in operational reports is accurate, rather than only using reasonable endeavours to do so.
39	10.2(b)	Exception to breach reporting	Aurizon Network has not responded to the QRC’s proposal to delete the exception to Aurizon Network providing a breach report to the QCA.
40	10.3.1(b), (c)	Disclosure of Access Agreements	Aurizon Network has not responded to the QRC’s proposal to reinstate the disclosure regime in UT3 which enabled the QCA to publish details of the “Below Rail” aspects of an Access Agreement other than for parts nominated by a party (and accepted by the QCA) as containing confidential information.
41	10.5(c)	Provision of expert advice	Aurizon Network has not responded to the QRC’s proposal to include an obligation on Aurizon Network to disclose any expert advice relied upon by its Executive Officer in providing a certification required under UT4 if requested to do so by the QCA.
42	10.8	Conflicts audit	Aurizon Network has not responded to the QRC’s proposal to include an annual audit of Aurizon Network’s compliance with its obligations under Part 3 of UT4. Aurizon Network has not responded in substance to the drafting proposed by the QRC in new clause 10.8.

43	10.9(b)(i), 10.9(f)(ii)	Independence of auditor	Aurizon Network has not responded to the QRC's proposal to include a requirement that the auditor be independent of Aurizon Network and all other Aurizon Parties.
44	10.9(c)	Costs of the auditor	Aurizon Network has not responded to the QRC's proposal for the costs of the auditor to be initially paid for by the QCA and recovered by the QCA through the QCA levy.

Part 11: Dispute Resolution and Decision Making

45	11.1.3(c)(ii)	Escalation of a dispute following referral to mediation	<p>Aurizon Network has not responded to the QRC's proposal to allow the escalation of a dispute from mediation on the earlier of any of the following occurring:</p> <ul style="list-style-type: none"> • the mediator considers the parties cannot achieve a mediated resolution; • the mediator considers that a party to the mediation fails to participate in good faith; or • the parties fail to resolve the dispute within 4 months of referral.
46	11.1.4(b)(iii)	Relationship of expert to the parties of a dispute	The QRC has proposed that a person should be prohibited from acting as an expert where it has provided services to any of the parties (or their related parties) within the previous 12 months. Aurizon Network has not responded to this proposed amendment.
47	11.1.5(b)	Determination by QCA	Aurizon Network has not responded to the QRC's proposal that any costs imposed by the safety regulator should be borne by the parties in the proportion determined by the QCA, rather than equally.
48	11.1.5(f)	Prejudice to the land or rail infrastructure tenure of Aurizon	Clause 11.1.5(f) is a new provision which seeks to prohibit the QCA from making a determination that could prejudice the land or rail infrastructure

		Network	tenure of Aurizon Network. The QRC proposed this clause should be removed, however, Aurizon Network has not responded to this proposal.
49	11.2(d), (e)	Prompt enforcement of a QCA decision	Aurizon Network has not responded to the QRC's proposal to place an obligation (with cost implications) on the parties to promptly enforce QCA decisions.