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GPO Box 2257
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Submitted via QCA's online submissions portal

Dear Ms Jones

Aurizon Network GAPE and Newlands Pricing Draft Amending Access Undertaking

- 1) The QCoal Group (**QCoal**) welcomes the opportunity to make a submission on Aurizon Network's (**Aurizon**) GAPE and Newlands Pricing Draft Amending Access Undertaking (**2022 DAAU**).
- 2) QCoal is a developer and owner of operating coal mines located in the northern Bowen Basin. QCoal is the holder of Newlands, GAPE and NAPE access rights.
- 3) In the 2022 DAAU Aurizon proposes a significant number of changes to the way the Newlands and GAPE reference tariffs are determined. These are:
 - a) applying an alternative methodology to the allocation of renewals expenditure between the Newlands and GAPE systems,
 - b) including approximately \$47 Million of deferred Newlands System Infrastructure Enhancement (**NSIE**) capex from the Newlands RAB Roll forward into the Newlands System Reference Tariff;
 - c) determination of the Newlands system reference tariff based on contracted volumes, not forecast usage;
 - d) introducing a specific NAPE System Premium;
 - e) removing the Byerwen (NAPE) capitalised interest component from the GAPE RAB;
 - f) for the GAPE system, changing the allocation of costs of the usage related to Rerailing and Ballast Undercutting in the shared network costs from being capitalised to being expensed as a Maintenance activity; and
 - g) a further opportunity for Newlands customers to relinquish access rights.
- 4) This submission will address each of the Aurizon proposals however a few general comments to set context are necessary.

General Comments

Use of the terms NSIE and NAPE Customer Costs

- 5) The 2022 DAAU and supporting Explanatory Paper imply, by its use of the term NAPE Capex or similar¹ that the “Newlands System Infrastructure Enhancement” or NSIE costs were solely caused by or are solely attributable to the NAPE Customers and the creation of the NAPE access rights. This is not the case. Aurizon has never identified the ‘incremental cost’, if any, relating solely to the creation of NAPE access rights over and above the creation of the GAPE access rights.
- 6) The use of the terms NAPE Costs, NAPE Customer Cost or NAPE Customer Share were first introduced in Aurizon’s original Draft Access Amending Undertaking-Goonyella to Abbot Point Reference Tariff (September 2012) (**Original GAPE DAAU**). The use of these terms is again misleading as they imply that they refer to the actual cost of the NAPE access rights which they do not.
- 7) Based on the above, it is worth considering what the GAPE Project Costs would have been if there had been no NAPE Customer. As Aurizon has never been able to identify the actual cost of the creation of the NAPE Access Rights, it is to be inferred that the GAPE Project Costs would have been the same with or without the NAPE customer. The GAPE Project intended the delivery of a 50Mtpa rail network to create coal chain alignment with the expansion of Abbot Point coal terminal to 50 Million tonnes. In this scenario, consistent with the PCnrt mechanism in the GAPE Deed, it is likely that all costs would have been allocated to GAPE customers except perhaps the \$40 Million attributed to the Newlands Reference Tariff (based on capex forecast to be spent in the Newlands system regardless of the GAPE Project) as originally proposed by Aurizon in the Original GAPE DAAU.²
- 8) The Original GAPE DAAU further stated Aurizon’s intention to add the value of the NAPE customer share (now the NSIE) to the Newlands System Capital indicator and for it to be incorporated into the Newlands Reference Tariff³. The QCA’s draft decision⁴ summarises Aurizon’s proposal showing the \$126 Million or 19% of the Total GAPE project costs being “socialisation’ costs⁵, with paragraph (c) stating that the 19% Newlands system capital expenditure is ‘socialised’.
- 9) Aurizon uses the term Newlands System Infrastructure Enhancements (NSIE) in its 26 February 2021 Annual review of Reference Tariffs (**FY21 ARRT**); the term “NAPE Customer Costs” or similar, used in the previous GAPE DAAU, is not used. At that time the terms NAPE Customer Costs and NSIE were one and the same in Aurizon’s nomenclature.
- 10) In its 2022 DAAU (and its recent Customer Consultation) Aurizon reintroduces the concept that NSIE costs were actually related to NAPE capex by using the terms “deferred NAPE

¹ Aurizon Network (2022) GAPE and Newlands Pricing Draft Amending Access Undertaking 2 September 2022 <https://www.qca.org.au/wp-content/uploads/2022/09/gape-and-newlands-pricing-daau-explanatory-paper.pdf>, 15, 21, 22 & 41

² Aurizon Network (2012) Draft Amending Access Undertaking – Goonyella to Abbot Point Reference Tariff, 5 September 2012, https://www.qca.org.au/wp-content/uploads/2019/06/9737_r-qnetwork-gape-submission-0912.pdf, 22.

³ Ibid., 23

⁴ Queensland Competition Authority (2013) Draft Decision Goonyella to Abbot Point Expansion Reference Tariff- Draft Amending Access Undertaking, Figure 2.1 and 11 paragraph (c)

⁵ Ibid, Figure 2.1 10, 11

Capex”⁶, “costs of NAPE Infrastructure”⁷ and ‘NAPE NSIE amounts’⁸ required for NAPE’. The use of these terms is again misleading for the reasons previously identified.

- 11) One of Aurizon’s justifications for its proposed NAPE System Premium is that it was supported by GAPE Customers. This support needs to be viewed through the proper lens. Firstly, it is clearly in GAPE customers’ financial interest to take that view. Secondly, there can be no doubt that Aurizon’s use of the term ‘NAPE Costs’, NAPE Customer share and NSIE imbed in the GAPE customer’s minds and others the idea that these costs were attributable to the creation of the NAPE access rights. This then forms the basis for the argument that the NAPE customer ought to pay a premium for these costs, including the costs of the deferral of the inclusion of the NSIE into the Newlands RAB. At no point does Aurizon say that the [REDACTED]
- 12) Aurizon have put this argument to the GAPE customers solely in the context of information Aurizon has provided, including the language it has used, and in the absence of any knowledge of the terms of the NAPE Deed and whether the NAPE Customer does, under the terms of the NAPE Deed already pay a ‘premium’, to Aurizon for obtaining access during (but not necessarily because of) the GAPE Project. This issue will be discussed in further detail in the section dealing with the NAPE System Premium.

Commencement of a New a Coal Carrying Train Service

- 13) QCoal notes and supports Aurizon’s comments regarding tariffs that may apply to new coal carrying train services. Specifically, QCoal supports the proposal that the reference tariff that applies to a new service is the reference tariff which is the highest on a \$n/tk basis. A new market entrant, that is obtaining the same level of service as all existing customers, should not be able to commence train services at a rate lower than an existing mine user particularly if that user has funded or is funding an expansion of that Coal System. This includes the GAPE and NAPE customers. In accordance with the Pricing Principles of Aurizon’s UT5 Access Undertaking (**UT5 Undertaking**)⁹ there should be no price differentiation between new coal carrying train services and existing train services, except as permitted in accordance with Part 6 of the UT5 Undertaking.
- 14) As Aurizon states “*is also necessary to ensure pricing does not unfairly differentiate between expansion funders and new mining projects over the life of the Expansion*”¹⁰. Therefore, in the QCoal’s view, the relevant tariff to apply to any new coal carrying service in the Newlands system should be at least the total tariff applying to the NAPE customer (which includes the NAPE Fee) and, should a NAPE System Premium be approved by the QCA, the NAPE System Premium.

⁶ Aurizon Network (n.1) 15 & 21

⁷ Ibid 22

⁸ Ibid. 41

⁹ Queensland Competition Authority, (2019) The 2017 Undertaking, Revised UT5 DAAU, <https://www.qca.org.au/wp-content/uploads/2019/05/aurizon-network-revised-ut5-daaU-clean-copy.pdf>, Part 6, clauses 6.2.1, 74.

¹⁰ Aurizon Network (n.1), 18

Comments on Aurizon Proposals

Asset Renewal expenditure Allocation

- 15) The submissions to the QCA on Aurizon's 2021-22 Annual Review of Reference Tariffs (FY22 ARRT) in June 2021 highlighted a number of issues associated with the apportionment of renewals expenditure between the Newlands and GAPE systems. Following those submissions, Aurizon commenced engagement with stakeholders on an alternative approach to the allocation. Aurizon took the opportunity to include as part of this engagement several other matters associated with GAPE and Newlands pricing, including the deferred NSIE referred to in the FY22ARRT. These matters are included in this 2022 DAAU.
- 16) During the consultation period Aurizon proposed an engineering-based usage related renewal approach to expenditure on assets in the shared corridor. This approach shares some costs between the users of those assets, i.e., Newlands and GAPE users, in proportion to their usage.
- 17) QCoal supports Aurizon's engineering-based methodology, as set out in the 2022 DAAU, for the allocation of asset renewal expenditure in the shared corridor.

Inclusion of deferred Newlands System Infrastructure Enhancement (NSIE) into the Newlands Reference Tariff

- 18) The Newlands system works undertaken as part of the GAPE Project, or the NSIE, were primarily done to enable the carrying of 50Mtpa of traffic over the Newlands rail system. Benefits from these works flowed to all users of this section of rail network, that is GAPE Users, NAPE Users and Newlands Users.¹¹ There was and is no differentiation in the service offering or level between the three groups utilising this section of the rail network. It should be noted however, that at the time of the Aurizon's discussions with Newlands Users about the GAPE Project, no detail was provided to Newlands Users as to how GAPE Project costs would be apportioned between the three groups of Users nor the costs that Newlands Users would incur because of the GAPE Project. It was not until 2012 that Newlands Users became aware of the costs Aurizon was proposing that they should incur.
- 19) In Aurizon's (formerly QR National) Original GAPE DAAU , Aurizon proposed to:
*'establish an independent GAPE System with its own Capital Indicator, and reflect the incremental NAPE customer share of capital costs as an increase in the existing Newlands Capital Indicator.'*¹²
- 20) As described above, the use of the phrase "NAPE customer share" was unfortunate as it carried the connotation that these costs were the incremental costs associated with providing NAPE services. However, Aurizon's intent regarding the allocation of these NSIE costs was clearly stated in the Original GAPE DAAU, and is consistent with NAPE Deed negotiations, that is, these costs were to be socialised and included in the Newlands Capital Indicator¹³. This position was later reiterated in the QCA Draft Decision;

¹¹ Aurizon Network, (n.2) 21

¹² Ibid¹³

¹³ Ibid 22

“a system premium will apply to all the Newlands customers starting in the next regulatory period [UT4]. 19% of the Newlands system capital expenditure is ‘socialised’ as part of this expenditure would have been required in the Newlands system even if the GAPE project did not proceed;”¹⁴

- 21) [REDACTED] the 2022 DAAU proposes that the depreciated value of the deferred NSIE (a value which has been included in the Newlands RAB roll-forward since 2012), be included into the Newlands Reference Tariff. Aurizon has determined this amount to be \$46.9 Million.
- 22) Whilst the QCA’s comment in its September 2021 Guidance Paper that “*Aurizon does not recover all the costs associated with NAPE*”¹⁵, may be correct from a regulatory pricing perspective, this statement is unlikely to be correct once Aurizon’s commercial arrangements with GAPE and NAPE customers are considered. This is acknowledged by Aurizon in the 2022 DAAU¹⁶. In fact, Aurizon has been recovering, and may have recovered more through the GAPE commercial arrangements than if the NSIE costs had been capitalised and incorporated into the Newlands Reference tariff upon commencement of GAPE in 2012.
- 23) Consistent with the Pricing Principles of Part 6 of Aurizon’s Access Undertaking¹⁷, in particular 6.2.3, the revenue Aurizon has earned, and will earn through the GAPE Deed and NAPE Deed (or any other commercial arrangements) must be taken into account when considering the appropriate GAPE Project related costs (including capitalised interest and deferral costs) Aurizon proposes to be included in both the Newlands, and the proposed new NAPE System Premium.
- 24) Provided the QCA’s review of the revenue actually recovered by Aurizon to date from GAPE customers is in fact less than what it would have recovered had the NSIE costs been capitalised and incorporated into the Newlands Reference tariff upon commencement of UT4, QCoal supports Aurizon’s proposal to include approximately \$46.9 Million of capital into the Newlands Reference Tariff, which Aurizon has stated excludes capitalised interest and accumulated depreciation.
- 25) This support is on the basis that it reflects Aurizon’s original intention to socialise NSIE costs and recognises the benefits that have flowed to Newlands customers, which have been extensively set out by Aurizon in the FY22ARRT¹⁸. This support does not however imply that QCoal agrees that the NSIE costs, as stated by Aurizon, are in fact the actual costs of the GAPE related Newlands capex to be apportioned to non-GAPE customers. Rather it is a recognition that some capex (identified by Aurizon as \$40 Million) would have been required to be spent in the Newlands system regardless of the GAPE project.

¹⁴ Queensland Competition Authority, (n.4) 11

¹⁵ Queensland Competition Authority (2021) “Pricing of shared infrastructure for the GAPE and Newlands systems” Guidance paper, September 2021, https://www.qca.org.au/wp-content/uploads/2021/09/an-gape_newlands-guidance-paper-final.pdf, 2.

¹⁶ Aurizon Network, (n.1) 42, and Appendix B 2 4, 5

¹⁷ Queensland Competition Authority, (n.9).75

¹⁸ Aurizon Network (2021) 2017 Access Undertaking, Annual Review of Reference Tariffs – FY2022, 26 February 2021, <https://www.qca.org.au/wp-content/uploads/2021/03/aurizon-network-annual-review-of-reference-tariffs-2021-22-letter-and-submission-redacted.pdf>, 30

Reference Tariff calculated based on Contract TSE

- 26) In its 2021 Initial Capacity Assessment,¹⁹ and confirmed in its 2022 Annual Capacity Assessment Report²⁰ the Independent Expert has determined that the Deliverable Network Capacity in the Newlands System is, on average (over 5 years from FY23 – FY27), 13.9Mtpa. With Committed Capacity being 21.4Mtpa there is a significant Exiting Capacity Deficit in the Newlands System of, on average 7.1Mtpa. Expressed another way only 66% of contracted capacity in the Newlands Systems is assessed as “Deliverable”. Under these circumstances, where customers have no likelihood of their contracted rail capacity being available for use, it is not appropriate that customers are charged based on that contracted capacity. Customers should not pay for access to a system that cannot be delivered.
- 27) Customers entered into their long-term agreements in the belief that capacity, both pre and post the GAPE Project, would be deliverable and that they would have the ability to access any contracted capacity. The risk that they cannot utilise that capacity due to rail related issues, is to some extent mitigated by the current traffic-based reference tariff setting regime which accounts for the risk of rail caused non-delivery of capacity.
- 28) Under the current method of Reference tariff calculation, that is one based on forecast traffic, although a system’s Reference Tariff would be higher than if it were calculated based on contract, this burden is largely borne²¹ by those Customers (users) who are able to rail and obtain the benefit of the rail network. This approach is consistent with both the principle of “User pays” and the current methodology throughout the CQCN.
- 29) QCoal does not support Aurizon’s proposal to calculate the Newlands Reference Tariff using contracted Train Service Entitlements not forecast usage.

NAPE System Premium

- 30) In its 2022 DAAU Aurizon is proposing to include an amount of \$13.8 Million of the deferred NSIE capex into the Newlands Pricing RAB which is to be recovered from NAPE customers only, through the establishment of a NAPE System Premium.
- 31) The proposed NAPE System Premium unfairly prejudices the minority NAPE customer and should be rejected by the QCA for the following reasons:
 - a) The existence of any unrecoverable costs of the NSIE (including through deferment) (if any) is a circumstance of Aurizon’s own making and can in no way be attributable to any conduct of the NAPE customers. Aurizon was the architect and the only party with total visibility of the NAPE and GAPE commercial arrangements and the risk allocation for the project. Aurizon was aware that there was a risk associated with the inclusion of the NSIE costs into the Newlands Reference Tariff and structured its commercial arrangements so that that any shortfall not recovered from non-GAPE customers would [REDACTED] If Aurizon wishes to

¹⁹ Coal Network Capacity Company (2021) , Central Qld Coal Network Initial Capacity Assessment Report, 21 October 2021, <https://www.qca.org.au/wp-content/uploads/2021/11/coal-network-capacity-co-initial-capacity-assessment-report-redacted.pdf>, 10

²⁰ Coal Network Capacity Company (2022), Annual Capacity assessment Report (ACAR) <https://www.qca.org.au/wp-content/uploads/2022/06/coal-network-capacity-co-annual-capacity-assessment-report-2022-redacted.pdf>, 10

²¹ When ToP in a system is triggered all Customers of the system that have not utilised their contracted capacity will share costs of any shortfall in revenue.

change those contractually arrangements, it should not be to the detriment of the NAPE customer.

- b) [REDACTED]
- c) Aurizon has not demonstrated that it incurred an incremental cost in creating the NAPE access rights over what was required to create the GAPE access rights. In those circumstances it cannot even be said that there is a cost which the NAPE customer ought to pay.
- d) Even if it can be established that these incremental costs exist Aurizon has not demonstrated that the revenue it has and will receive from the current NAPE, GAPE and Newlands arrangements is deficient.
- e) The NSIE has not in fact delivered the Access Rights under the NAPE Deed as there is a capacity deficit in the system. [REDACTED]

[REDACTED] In particular, the NAPE customer, unlike Newlands customers, is not being offered the opportunity to relinquish part of their Access Rights under the 2022 DAAU at no cost. This means that even under the current arrangements the NAPE customer will be paying for Access Rights [REDACTED] that Aurizon cannot deliver. Approval of an additional NAPE System Premium could only in those circumstances constitute a penalty.

- 32) Aurizon states that the amount of \$13.8 Million is the difference between the maximum amount it can include in a Newlands Reference Tariff (\$60.7 Million) and the \$46.9 Million it proposes to include in the Newlands Pricing RAB [REDACTED]

[REDACTED] It is fundamentally unfair for Aurizon to seek to:

- a) transfer a concept from a non-transparent commercial agreement, to a regulatory pricing environment, particularly more than 10 years after arrangement came into effect; and
- b) do so whilst at the same time failing to take into account revenue it has received under that same commercial arrangement.
- 33) Further, Aurizon's [REDACTED]

[REDACTED] Aurizon has not said whether 'the portion of Project Costs' is calculated on the original proportion of contracted paths under NAPE Deeds or the current contracted NAPE paths. Aurizon has also not said whether the value of the NSIE has been reduced by the Byerwen NAPE customer proportion which is now being recovered in the GAPE Asset base from

GAPE Customers, including Byerwen Coal. These are all relevant factors and should be considered by the QCA in assessing Aurizon's proposal.

- 34) By seeking to include this additional RAB amount into the Newlands RAB and seeking to recover the revenue solely from the NAPE Customer, Aurizon is seeking to unfairly transfer a current contractual liability from the many GAPE customers to the sole NAPE Customer who has no obligation to pay those costs under the existing commercial arrangements. It should be of no surprise therefore to the QCA that the GAPE customers have agreed to this arrangement notwithstanding the unfair detriment to the NAPE customer.
- 35) There is no cost basis for the transfer of the asset value [REDACTED] [REDACTED] There is no provision in the NAPE Deed or NAPE access agreements which enables any cost, including costs associated with a deferral of capital into a regulatory asset base, of the GAPE Project, to be recovered from NAPE customer. The transfer of these costs is therefore fundamentally unfair and prejudicial to the NAPE customer to the benefit of both Aurizon and the GAPE customers.
- 36) Although not clear in the 2022 DAAU, Aurizon appears to base its proposal on the proposition that *'Aurizon would be expected to earn revenue and the party to the NAPE Access Agreement would be expected to pay an access charge commensurate with the recovery of the full value of the deferred NSIE in the Newlands RAB Roll- forward inclusive of capitalised interest'*²⁴
- 37) Aurizon does not specify whose expectation this is, presumably Aurizon's. Aurizon's revenue expectations should however be based upon and consistent with the contractual terms of the GAPE and NAPE Deeds, as should their expectations in respect of the charges the party to the NAPE Access Agreement pays.
- 38) [REDACTED]
- 39) The structure of these arrangements evidence that Aurizon knew it may not recover the NSIE from non-GAPE customers and infers that there was in fact no incremental cost of creating the NAPE access rights. Aurizon should not be allowed to depart from those arrangements because it now suits it to do so.
- 40) To be clear, there was no expectation on the part of the party to the NAPE Deed, at the time the NAPE Deed was negotiated, that it would pay an access charge commensurate with the recovery of the full value of the deferred NSIE in the Newlands RAB Roll- Forward inclusive of capitalised interest". There was also no contemplation by the NAPE Customer that there would be a deferral of the inclusion of the NSIE into the Newlands RAB, a situation over which it had no control, unlike Aurizon.
- 41) In the 2022 DAAU Aurizon states that it considers the imposition of the NAPE System Premium is justified as it is an 'efficient price' and is 'equitable and fair' to the GAPE customers who have incurred the costs associated with the delayed inclusion of the NSIE

²⁴ Aurizon Network, (n.1) 45

into a Newlands Reference Tariff. There is no mention of the fairness or otherwise to the NAPE customer. In any event QCoal disagrees with Aurizon's statement. There is no doubt that the NAPE System Premium is to the GAPE customers' and Aurizon's financial benefit, but Aurizon has not established that it is either 'efficient' or 'fair and reasonable'.

42) It is true that GAPE Customers have borne the costs of 'deferred inclusion of NSIE costs into a Newlands reference tariff' however this is not a justification for transferring cost obligations from GAPE to NAPE Customers as:

- a) The GAPE Customers [REDACTED]
- b) The GAPE Customers entered into this arrangement in circumstances where they did not have any detailed knowledge of the when the NSIE costs would be recovered from non-GAPE customers, nor the commercial arrangements as to the charge Aurizon could obtain from non GAPE customers, including the NAPE customer, for that access or the timing of such access.
- c) The deferral of the inclusion of the NSIE costs into the Newlands Reference Tariff resulted in:
 - i) Aurizon earning from GAPE Customers a GAPE return on all GAPE Project Costs, including NSIE costs, including capitalised interest and depreciation on those assets;
 - ii) [REDACTED]
- d) The deferral occurred in circumstances where NAPE Customers did not:
 - i) propose or otherwise cause the deferral;
 - ii) intend nor anticipate that any costs associated with the deferral would be borne by GAPE Customers;
 - iii) obtain any financial benefit from GAPE Customers from the deferral;
 - iv) cause Aurizon to not recover costs and earn revenue on the NSIE assets.

43) If Aurizon is successful in obtaining the NAPE System Premium then the NAPE Customer will be paying:

- a) the increased Newlands Reference tariff which already includes a return on and of the NSIE costs,
- b) as a premium, [REDACTED] and [REDACTED]
- c) as a penalty, the NAPE System Premium being a cost transferred from the GAPE customers to the NAPE customer outside of the agreed contractual framework.

This is clearly not a fair and equitable pricing arrangement and seeks to use the regulatory framework to impose on the NAPE Customer a detriment, outside of the agreed contractual framework, in violation of the UT5 Pricing Principles.

- 44) In summary, the imposition of a NAPE System Premium is opposed by QCoal for the reasons set out above and on the following grounds:
- a) It is inconsistent with the primary fairness consideration for evaluating regulated pricing as set out in the QCA's discussion paper "Capacity Expansion and Access Pricing for Rail and Ports", which states where the *"proposed pricing arrangements are consistent with a reasonable understanding of how prices would be before sunk investments were made by either party"*.^{25, 26}
 - b) There is insufficient information is available to determine whether Aurizon has already recovered or will recover, those amounts it proposes to recover;
 - c) the party to the NAPE Deed did not cause the deferment of the inclusion of the NSIE assets into the Newlands RAB and had no control of that process;
 - d) the rationale for the quantification of the value of the deferred NSIE is not clear.

Deferment of NSIE

- 45) It may be useful to explore fairness pricing principles in more detail as they relate to the deferral of the inclusion of the NSIE into the Newlands RAB. There are at least three considerations:
- a) The party that has borne the cost of the deferral and the party that has benefitted (and the materiality of these benefits), (if any);
 - b) "user Pays' or "impactor pays" principle in the QCA's 2013 Statement of Regulatory Pricing Principles that *"the 'user pays' or 'impactor pays" principle is consistent with the proposition that it is fair for any given user of a service..... that causes costs to be incurred, to pay for the costs directly associated with their use or action"*.²⁷
 - c) The "Fairness" criteria as to whether the pricing arrangements are consistent with the reasonable expectations prior to investment in the GAPE Project.
- 46) Each of these considerations is discussed below.

Costs and benefits of deferral

- 47) GAPE Customers have, since 2012, been paying to Aurizon more than they otherwise would have had the NSIE costs been incorporated into the Newlands Reference tariff earlier. This amount is not known to QCoal [REDACTED]
- 48) Clearly, Aurizon has benefited from the deferment by obtaining more revenue from GAPE Customers than they otherwise would have had the NSIE costs been incorporated into the Newlands Reference tariff earlier. The extent of this extra revenue is uncertain. Aurizon has never stated the amount of revenue it has collected from GAPE Customers due to the deferral and compared this with the revenue that it may have obtained had the NSIE costs

²⁵ Queensland Competition Authority (2013) Capacity Expansion and Access Pricing for Rail and Ports: Discussion Paper, April 2013, https://www.qca.org.au/wp-content/uploads/2019/05/1920_CI-CapExpAccPRP-QCA-PricePaper-0413-1.pdf, 4,7.

²⁶ Aurizon Network, (n.1) 9-10

²⁷ Queensland Competition Authority (2013) Statement of Regulatory Pricing Principles, August 2013, https://www.qca.org.au/wp-content/uploads/2019/05/1918_X-QCA-Paper-PricingPaperFinalPosition-0813-1.pdf, 21

been included in the Newlands RAB when originally envisioned at the commencement of UT4.

- 49) The position of the NAPE customers is neutral. The NAPE customer has not paid nor received any benefit from the deferral. In the 2022 DAAU Aurizon states *“the party to the NAPE Deed may have avoided accumulated depreciation associated with the amounts that are included in the Newlands Reference Tariff from 1 July 2022 relative to the higher depreciation project costs which would have been included in a Newlands Reference Tariff with an earlier commencement date”*²⁸. This statement is vague, and Aurizon has provided no evidence to support it. Even if this were proven to be the case, it was not the result of any conduct on the part of the NAPE Customer.
- 50) Therefore, the QCA’s statement in its 2021 Guidance paper ²⁹:*[that] Aurizon Network does not recover all of the costs associated with the NAPE”* may be true when regulatory prices alone are considered but it is not true when Aurizon’s recovery of the NSIE costs under the GAPE or NAPE commercial arrangements is taken into account.
- 51) In accordance with the Undertaking’s Pricing Principles, this revenue should be taken into consideration by the QCA in any decision regarding recovery of NSIE costs through reference tariffs, including through a NAPE System Premium. This is especially relevant when Aurizon is basing its determination the NAPE System Premium amount on a mechanism [REDACTED]

User pays principle

- 52) In respect to the User pays principle, or in this case the party that caused the costs to be incurred, the follow observations are relevant:
- a) The GAPE Customers did not cause the deferral of the inclusion of the NSIE capital into the Newlands Pricing RAB;
 - b) The NAPE Customers did not cause the deferral of the inclusion of the NSIE capital into the Newlands Pricing RAB.
 - c) [REDACTED]
 - i) [REDACTED]
 - ii) [REDACTED]
 - iii) [REDACTED]
 - iv) there is in fact a significant capacity deficit in the system such that the NAPE Customer, like all other Newlands and GAPE Customers, is unlikely to be able to access its Access Rights in full.

²⁸ Aurizon Network, (n1) 46

²⁹ Queensland Competition Authority (n.15) 2

- d) Aurizon proposed (presumably consistent with its own commercial interests) and the QCA approved, the deferment of the inclusion of the NSIE capital into the Newlands Pricing RAB.

Prior reasonable expectations

- 53) The reasonable expectations of parties prior to investment in the GAPE Project is a critical aspect in consideration of 'fairness'³⁰.
- 54) Customers entered into their long-term agreements in the belief that their contracted capacity, both pre and post the GAPE Project, would be deliverable and that they would have the ability to access their contracted capacity. It is uncontroversial that there is a capacity deficit in the Newlands and GAPE system and that this expectation has not in fact eventuated.
- 55) During negotiations of the commercial arrangements associated with the GAPE Project, Aurizon was the only party with full visibility as they (separately) negotiated with all three relevant customer groups, the Newlands customers, the NAPE customer and the GAPE customers. The confidentiality provisions imposed by Aurizon meant that at no time (and in fact since) did the three customer groups meet jointly to discuss nor were they able to discuss with the other groups or the QCA, the commercial arrangements that applied to them. This situation would not occur now under the Expansion Principles and Access Condition provisions of the Undertaking, first introduced in UT4, after the GAPE Project negotiations. One must therefore be cautious when considering the appropriateness of "Expansion Pricing Principles" to the GAPE Project as they did not exist at the time and importantly the Expansion Process and Access Condition provisions allow significantly greater transparency and openness between parties, and the QCA, than what occurred during the GAPE Project³¹. One cannot simply apply Expansion Pricing Principles to GAPE/NAPE pricing without consideration of other elements of the Expansion principles or to the contractual arrangements created by the GAPE and NAPE Deeds. To this end the reasonable expectations of the parties prior to investment in the GAPE Project are important.
- 56) As Aurizon states in the 2022 DAAU the GAPE Deeds were to provide:
"commercial underwriting and commitments necessary to facilitate investment in the GAPE Project" ³²
- 57) The GAPE Deeds set out, in a detailed Schedule how the customers would 'underwrite' the costs of Aurizon's investment and how charges were to be calculated. Charges comprised both Regulated and unregulated elements. [REDACTED]
- 58) [REDACTED]
- 59) [REDACTED] As a result, Aurizon has been obtaining a GAPE WACC [REDACTED] on all GAPE Project

³⁰ Queensland Competition Authority (n.27) 2

³¹ New coal carrying service entrants from UT4 onwards however should be subject to the Expansion Pricing Principles.

³² Aurizon Network, (n.1) 8

costs, including the NSIE, from GAPE Customers. [REDACTED]

[REDACTED] Aurizon has continued to recover the NSIE through this mechanism since 2012. The NSIE assets have also been capitalised (and depreciated), as has been the interest, since they were included in the Newlands roll- forward RAB.

60)

[REDACTED]

providing access to the [REDACTED]

61) It should also be noted that the NAPE Deed and NAPE Access Agreement [REDACTED]

[REDACTED]

62) QCoal does not know what if any expectations the GAPE Customers (other than Byerwen Coal) had about the commencement of the NAPE access rights prior to the commencement of the GAPE project. [REDACTED]

[REDACTED]

63) The Aurizon proposed value of the NAPE System Premium of \$13.8 Million [REDACTED]

[REDACTED] QCoal therefore does not agree that Aurizon should recover the maximum amount it considers it is able to recover from a pricing mechanism in the GAPE Deed. In particular, Aurizon should not recover any difference between that maximum amount and the amount it intends to recover from increasing the Newlands Pricing RAB, from a NAPE Customer.

64) Furthermore, the QCoal does not agree that Aurizon should recover the capitalised interest and accumulated interest cost components of the non-Byerwen NSIE in any proposed NAPE System Premium. [REDACTED]

[REDACTED] Accordingly, the capitalised interest component of the NSIE assets roll forward which remains in Aurizon's regulatory accounts should be excluded.

65) If the QCA is minded to consider a NAPE System Premium, then QCoal considers that it must first assess and determine the incremental cost (if any) associated with providing the NAPE access rights (if any) together with the revenue, and composition of the revenue Aurizon has and will obtain from:

- a) the GAPE Customers under the GAPE Deed and GAPE Regulatory Pricing, and
- b) the NAPE Customer through the NAPE Fee which is calculated as a percentage of a Newlands system tariff which Aurizon proposes will include NSIE asset value.

66) It is necessary that this be done as under the Undertaking pricing principles Aurizon must take into consideration the revenue it earns from all commercial arrangements to ensure that it does not recover revenue for the same investment more than once.

[REDACTED]

- 67) QCoal contends that no NAPE System Premium, should be applied to Customers who have entered into a NAPE Deed (NAPE Customer), because:
- a) Consistent with the existing commercial arrangements, Aurizon is entitled to and is already being fully compensated and is earning a return on the value of the GAPE Project Costs (including the NSIE) through the operation of the GAPE and NAPE Deeds it is unfair that part of this liability by transferred to the NAPE customer outside of the contractual framework;
 - b) there was never an intention that a system premium, or special tariff be applied to any NAPE Customer;
 - c) [REDACTED]
 - d) there is nothing in the NAPE Deed of Access Agreement that imposes an additional cost on NAPE Customers [REDACTED]
 - e) Aurizon, as architect of the GAPE and NAPE commercial arrangements knew this when they decided to propose the deferral of the inclusion of the NSIE into the Newlands Pricing RAB.
 - f) the imposition of the system premium is a penalty particularly when there is a capacity deficit in the system and the NAPE Customer is prevented from relinquishing capacity;
 - g) even if the GAPE Customers have incurred extra costs associated with the deferral where they were unaware, due to a lack of transparency, of the consequences of that deferral on their GAPE charges, this was only to the benefit of Aurizon not the NAPE customer. Further the NAPE Customer was not responsible for the deferral and the cost of it should therefore not be transferred to them;
 - h) the imposition of the NAPE System Premium unfairly alters the terms of the commercial terms the NAPE customer agreed with Aurizon because it unfairly alters the risk allocation in the NAPE Deed and unfairly prejudices the NAPE customer who is in no way responsible for the predicament in which Aurizon finds itself with the GAPE customers; and
 - i) the NSIE assets are used to provide services to all users of that infrastructure, and there is no differentiation of service level between NAPE, Newlands and even GAPE Customers.

Removal of the capitalised interest portion of the Byerwen NAPE cost from the GAPE RAB

- 68) Prior to the transfer of the Byerwen proportion of the NSIE including capitalised interest and other interest (referred to in the 2022 DAAU as the Byerwen NAPE) to the Newlands RAB Roll- forward value, [REDACTED]
[REDACTED] When the Byerwen proportion of the NSIE was

[REDACTED]

transferred to GAPE the capitalised interest and accumulated interest components of the Byerwen NAPE were also included into the GAPE RAB.

- 69) Therefore, to avoid breaching pricing principles, in particular principle 6.2.3, Aurizon “*must exclude the costs components separately funded through the additional revenue*”³⁵. To do this Aurizon must exclude the value of any Byerwen NAPE capitalised interest and additional interest that it had included in the GAPE RAB or Newlands RAB Roll – forward between 2012 and the date that these assets were included in the GAPE RAB.
- 70) QCoal supports Aurizon’s proposal to remove the capitalised interest portion of the Byerwen NAPE costs from the GAPE RAB.

Reclassification of rerailling and ballast cleaning in the GAPE system

- 71) The QCA has determined, based on the rationale set out Aurizon’s 2022 DAAU³⁶, that both Re- raiiling and Ballast undercutting activities be classified as asset renewal (capital) activities, not maintenance activities. The underlying rationale for the QCA’s UT4 and UT5 decision regarding these activities has not changed, remains valid and is applied for all rail systems.
- 72) Although at the time of the negotiation of the GAPE Deeds the costs of these activities were classified as maintenance activities, Aurizon is, like Customers, exposed to regulatory risk and this is accounted for in their return, which in the case of GAPE is significantly higher than that obtained through regulatory pricing.
- 73) QCoal does not support Aurizon’s proposal to classify GAPE Re-railling and Ballast undercutting costs as maintenance expenses not a capital expense.

Further relinquishment opportunity for Newlands Customers

- 74) QCoal supports Aurizon’s proposal to offer Newlands Customers a further opportunity to relinquish TSE without incurring a relinquishment fee on the basis set out in the DAAU save for the nominated date of 28 October 2022 contained in the draft.
- 75) This date makes no sense in circumstances where there has been no decision by the QCA approving the 2022 DAAU prior to 28 October 2022. Users cannot be expected to make fully informed decisions about relinquishments when pricing in the system has not been determined. For this reason, QCoal has not lodged a notice in compliance with the proposed DAAU. It reserves the right to do so following the QCA determination if the QCA approves the proposed 3(g).

Conclusion

- 76) The 2022 DAAU proposes many amendments to the pricing for Newlands and GAPE systems. Acceptance of a proposal by a discrete majority group of stakeholders consistent with their own financial benefit particularly against a minority should not of itself form the basis for a decision on regulatory pricing.
- 77) Despite Aurizon’s consultation and information provision, there remains an information asymmetry between Aurizon and its customers in large part due to the confidentiality regime

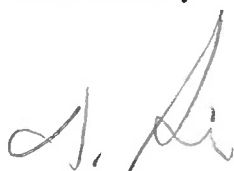
³⁵ Queensland Competition Authority, (n.9) 75

³⁶ Aurizon Network (n.1) 19

Aurizon imposes in its commercial agreements. Given this circumstance, the QCA must take and continue to take an active role in the determination of regulatory pricing, including taking into account all commercial arrangements whereby Aurizon is earning revenue from sources outside regulatory tariffs.

- 78) The process to arrive at the 2022 DAAU has highlighted that many of the pricing concerns and issues raised by stakeholders have arisen because of Aurizon's original lack of consultation, communication, and transparency during the development of the GAPE Project. Aurizon's isolation of each customer group, the absence of information to stakeholders, and the imbalance of information and power between stakeholders has led to inaccurate and at times inappropriate perceptions and conclusions being made.
- 79) In conclusion, QCoal for the reasons detailed in this submission:
- a) supports the proposals contained at paragraphs 3(a), (e) and (g);
 - b) conditionally supports the proposal at paragraph 3(b);
 - c) does not support, the proposals outlined at 3(c), (d) and (f).

Yours sincerely



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