Queensland Competition Authority

April 2023 GAPE and Newlands pricing DAAU

Final decision

November 2023

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Final decision

On 6 April 2023, Aurizon Network submitted its April 2023 GAPE and Newlands pricing draft amending access undertaking (April 2023 DAAU). The April 2023 DAAU proposed a range of amendments to the 2017 access undertaking (UT5) in seeking to address ongoing issues arising from the Goonyella to Abbot Point expansion (GAPE) project and change the application of private incremental cost (PIC) discounts.

Our final decision is to refuse to approve the April 2023 DAAU, having regard to the statutory criteria and stakeholder submissions we received.

We consider that Aurizon Network's proposal provides the foundations for a resolution to the ongoing issues that have impacted parties over an extended period. In particular, we see merit in Aurizon Network's proposal to:

- apply a causation-based approach to allocate asset replacement and renewals expenditure in the shared rail corridor[1] between the Newlands and GAPE systems
- recover revenue associated with the deferred Newlands system infrastructure enhancement (NSIE) capital through the inclusion of an amount equal to the value of $81.4 million (at 1 July 2023) in the Newlands pricing regulatory asset base (RAB). We consider this appropriate as it reflects the value of the NSIE, had it been included in the Newlands pricing RAB at the earliest reasonable opportunity.

However, we consider that the April 2023 DAAU as proposed does not promote efficient use of the central Queensland coal network (CQCN), nor does it appropriately balance the interests of Aurizon Network, access seekers and access holders.

The April 2023 DAAU provides for the continued deferment of NSIE capital equal to the value of $26.7 million (at 1 July 2023), without justification, in the case where existing commercial arrangements may dampen incentives that exist under the regulatory framework for Aurizon Network to recover deferred revenue at the earliest possible opportunity.

Further, amendments are proposed that could impact an access holder's ability to rail up to contract volumes in the current environment, where an existing capacity deficit (ECD) has been identified on the combined GAPE and Newlands system.

Finally, while there is merit in principle, we consider that narrowing the application of PIC discounts as proposed[2] will result in retrospective changes to discounts for previously approved PIC amounts,[3] in the absence of a change in circumstances. Such retrospective changes could increase uncertainty for future access seekers.

Further detail on our decision to refuse to approve the April 2023 DAAU is provided throughout this document.

[1] Between Newlands Junction and the Port of Abbot Point.
[2] By amending the definition of private infrastructure.
[3] In particular, the discount applied for Bravus.

Way forward

This decision constitutes a written notice for the purposes of section 142(3) of the *Queensland Competition Authority Act 1997* (QCA Act). It states the reasons for our decision and the way in which we consider it is appropriate to amend UT5.

Accordingly, this decision concludes our assessment of Aurizon Network's April 2023 DAAU. Should Aurizon Network submit a voluntary draft amending access undertaking that aligns with the positions set out in this decision, we will consider the DAAU in accordance with s. 142 of the QCA Act.

1 Background

On 6 April 2023, Aurizon Network submitted its April 2023 DAAU under s. 142 of the QCA Act.

The April 2023 DAAU deals with a range of matters, including:

- ongoing issues arising from the GAPE project (Box 1) – in particular:
  - the allocation of asset replacement and renewals expenditure in the shared rail corridor – to date, asset replacement and renewal expenditure in the shared rail corridor has been predominantly recovered from Newlands users,[4] despite GAPE users also railing through the corridor
  - the treatment of NSIE capital, which has remained deferred under the regulatory framework
- pricing arrangements to determine reference tariffs in the Newlands system and the transfer of access rights between the GAPE and Newlands systems
- the application of PIC discounts in determining access charges.

Aurizon Network stated that it had prepared the April 2023 DAAU having regard to the amendments that it considered best satisfied the statutory criteria. The proposed amendments have consequential impacts on the allowable revenues and reference tariffs applicable to the Newlands and GAPE systems.[5] Aurizon Network proposed that these amendments apply from 1 July 2023, with no retrospectivity.[6]

The circumstances under which the April 2023 DAAU was submitted are relevant when considering the proposed amendments. These circumstances include the:

- existence of commercial arrangements for capacity created by the GAPE project
- identification of an ECD on the combined Newlands and GAPE system[7]
- commencement of a new user on the Newlands system, whose PIC application was approved by us in December 2022.[8]

The April 2023 DAAU builds on previously completed regulatory processes during which we considered matters related to the ongoing issues arising from the GAPE project.[9] That said, we have considered the April 2023 DAAU afresh, in accordance with the requirements of the QCA Act.

[4] Expenditure has been allocated to the relevant coal system in which the asset financially resides.

[5] The April 2023 DAAU also includes amendments to Blackwater, Goonyella and Moura tariffs and allowable revenues. However, these amendments reflect the QCA's decision on Aurizon Network's reset Schedule F preliminary values. See QCA, *Aurizon Network's reset Schedule F preliminary values*, decision, May 2023. Amendments to the QCA levy and IE fee across all systems are the result of Aurizon Network's proposed contract-volume-based pricing in the Newlands system, which is discussed in section 2.3.

[6] Aurizon Network, sub. 1, p. 7.

[7] Related information is available on the QCA website at *Capacity assessment*.

[8] QCA, *Private incremental cost Carmichael rail loop and connecting infrastructure*, decision notice, December 2022.

[9] We initially published a guidance paper in September 2021, which encouraged Aurizon Network and affected stakeholders to work collaboratively to develop an agreed solution to the concerns being raised. Following this, Aurizon Network submitted its initial GAPE and Newlands pricing DAAU in September 2022, which was a package of amendments it considered most capable of acceptance by stakeholders. This DAAU was withdrawn following the publication of our preliminary considerations, which set out our view that it is not appropriate to make amendments to UT5 that intend to resolve outcomes arising under previously accepted commercial arrangements, in the absence of consensus.

Box 1: History of the GAPE project

The GAPE project connected the Newlands and Goonyella systems through the construction of the Northern Missing Link (NML). Infrastructure enhancements were also required to the existing Newlands and Goonyella systems.

Following completion of the GAPE project, the rail corridor between the Newlands Junction and the Port of Abbot Point (the shared rail corridor) has been utilised by:

- Newlands users, including:
  - legacy Newlands users, whose mines were operational or committed prior to negotiation of the GAPE project and connected directly to the existing Newlands system
  - Newlands to Abbot Point expansion (NAPE) users, who sought access as part of the GAPE project and connected directly to the existing Newlands system
  - post-GAPE Newlands users, who sought access following completion of the GAPE project and connected to the existing Newlands system through the unregulated Carmichael Rail Network
- GAPE users, who sought access as part of the GAPE project and connected to the existing Newlands system through the NML.

The capacity created by the GAPE project is subject to commercial arrangements[10] that were negotiated by Aurizon Network, GAPE and NAPE users outside of the regulatory framework. These arrangements provided the commercial underwriting and commitments necessary to facilitate investment in the GAPE project.

A new coal system – the GAPE system – was established under the regulatory framework for pricing and revenue cap purposes in 2013. The associated reference tariff recovers expansion costs related to the NML and Goonyella infrastructure enhancements from GAPE users, along with an allocation of NSIE expenditure based on the relative proportion of total contracted paths across GAPE and NAPE users.[11]

Stakeholder views

Aurizon Network stated that consensus agreement was unattainable on the matters dealt with in the April 2023 DAAU.[12]

[10] The Newlands to Abbot Point expansion deeds (NAPE deeds) and the Goonyella to Abbot Point expansion deeds (GAPE deeds).
[11] The remaining allocation of NSIE expenditure has been deferred.
[12] Aurizon Network, sub. 1, pp. 3–4.

Our assessment process provided two periods of consultation – one following the publication of Aurizon Network's April 2023 DAAU, and another following the publication of our draft decision on 24 August 2023.

We received 4 stakeholder submissions on Aurizon Network's April 2023 DAAU, from Bravus, Glencore, QCoal and Rio Tinto. We also received a submission from Aurizon Network, responding to stakeholder views.

There was some support for Aurizon Network's April 2023 DAAU – Rio Tinto supported the DAAU as a package, while all stakeholders[13] supported Aurizon Network's proposed approach to dealing with the ongoing issue of allocating asset replacement and renewals expenditure in the shared rail corridor.

However, stakeholders raised a range of concerns with other aspects of the April 2023 DAAU. Stakeholders emphasised the need for our involvement in resolving matters within the April 2023 DAAU[14] and stated that many of these matters have impacted parties for an extended period of time.[15]

Following publication our draft decision, we received 3 submissions, from Bravus, Glencore and Aurizon Network.

While supporting aspects of our draft decision, stakeholders raised some concerns with our proposed approach. In particular, stakeholders were of the view that:

- Aurizon Network should not be able to recover revenue associated with the deferred NSIE capital as though it had been included in the Newlands pricing RAB from the commencement of UT5, in the case where the NAPE user commenced railing in 2014[16]
- while it is appropriate to apply forecast volumes to determine Newlands system reference tariffs, these forecasts should be revised to more accurately reflect intended railings.[17]

Aurizon Network did not support aspects of our draft decision. In particular, it considered that our draft decision to reject amendments facilitating the transfer of GAPE access rights to Newlands users would unreasonably impact GAPE users. In relation to the PIC, Aurizon Network disagreed with our draft position that retrospective changes were not appropriate.[18]

We have considered the concerns of stakeholders and Aurizon Network in our assessment below.

[13] That is, those stakeholders who provided written submissions.
[14] See, for example, Glencore, sub. 3, p. 1; QCoal, sub. 4, p. 2; Rio Tinto, sub. 5, p. 1.
[15] Rio Tinto, sub. 5, p. 1.
[16] Bravus, sub. 2, pp. 5-6; Glencore, sub. 9, p. 2.
[17] Bravus, sub. 8, pp. 4, 8–9; Glencore, sub. 9, p. 3.
[18] Aurizon Network, sub. 7, pp. 2-6.

2 Assessment of the DAAU

We are required to consider the April 2023 DAAU and either approve or refuse to approve it[19] – having regard to the matters in s. 138(2) and other conditions in the QCA Act, including that the DAAU has been published and submissions have been sought and considered.[20]

If we refuse to approve the DAAU, we must provide our reasons and views on the way in which we consider it appropriate to amend UT5.[21]

Summary of our position

Our final decision is to refuse to approve the April 2023 DAAU.

We consider it appropriate for Aurizon Network to amend UT5, including the allowable revenues, reference tariffs and gross-tonne-kilometre forecasts to reflect the position summarised in this box and detailed in our assessment below.

We consider that the following aspects of Aurizon Network's proposal are appropriate:

- applying a causation-based approach to allocate future asset replacement and renewals expenditure in the shared rail corridor
- including $81.4 million (at 1 July 2023) of the deferred NSIE capital into the Newlands pricing RAB, using a staged approach.

However, we do not consider the following aspects of Aurizon Network's proposal appropriate:

- the continued deferral of NSIE capital equal to the value of $26.7 million (at 1 July 2023). We consider that this amount should be removed from Aurizon Network's RAB roll-forward models
- applying contract-volume-based pricing in the Newlands system. We consider that the existing forecast volumes[22] should be applied to determine Newlands system reference tariffs[23]
- amending the GAPE reference train service criteria to facilitate the transfer of GAPE access rights. We consider that the existing UT5 criteria should be retained
- narrowing the application of PIC discounts as proposed by amending the definition of private infrastructure. We consider that the existing UT5 definition should be retained at this time.

[19] QCA Act, s. 142(2).
[20] QCA Act, s. 143.

2.1 Allocation of asset replacement and renewal expenditure in the shared rail corridor

Aurizon Network proposed a causation-based approach to allocating future asset replacement and renewal expenditure in the shared rail corridor. This approach identifies expenditure that is variable with use and allocates it between the Newlands and GAPE systems according to relative use of the shared rail corridor.[24]

Our assessment

We consider that Aurizon Network's proposed approach to allocating future asset replacement and renewals expenditure is appropriate.

The causation-based approach recognises that utilisation contributes to the physical degradation of assets and the need for assets to be replaced/renewed. Accordingly, we consider that a causation-based approach will produce reference tariffs that reflect the incremental costs of providing access to the shared rail corridor,[25] thereby providing cost-reflective price signals and promoting economically efficient outcomes.

Stakeholders supported Aurizon Network's approach.[26]

To identify expenditure that is variable with use, Aurizon Network assigned variable allocators to each of its asset categories.[27, 28] These allocators signify how much utilisation contributes to the degradation of the asset.

We consider that Aurizon Network's approach for determining the variable allocators is pragmatic and the allocators themselves are reasonable, on the basis that they reflect:

- consideration of allocators applied in other jurisdictions – Aurizon Network's variable allocators are based on an assessment of incremental costs for the Hunter Valley Coal Network (HVCN), conducted by WIK Consulting for the Australian Competition and Consumer Commission (ACCC). This assessment reflects an independent expert's view on a rail network that has features similar to the CQCN
- Aurizon Network's own engineering judgement – where WIK Consulting's assessment did not provide a comparator or Aurizon Network's engineers formed views that differ from WIK Consulting's assessment, Aurizon Network justified the allocators to be applied, including

[21] QCA Act, s. 142(3).
[22] That is, those forecast volumes approved in our decision on Aurizon Network's reset schedule F values. QCA, *Aurizon Network's reset Schedule F values*, decision, October 2023, pp. 6–7.
[23] As a result, we do not consider the proposed fee-free relinquishments for Newlands users necessary and consider it appropriate to retain the existing UT5 relinquishment processes.
[24] The step-by-step process proposed by Aurizon Network is set out in its submission (Aurizon Network, sub. 1, p. 8)..
[25] This is consistent with the pricing principles in UT5. Clause 6.6.2 of UT5 states that access charges should be set at no less than the level that will recover the expected incremental cost of providing access to the user and no more than the level that will recover the expected standalone cost of providing access to the user.
[26] Bravus, sub. 2, p. 15; sub. 8, pp. 4, 9; Glencore, sub. 3, p. 1; sub. 9, p.1; QCoal, sub. 4, p. 4.
[27] See Aurizon Network, sub. 1, appendix A. Aurizon Network clarified it would apply higher-level asset category allocators to determine the capital indicator, given the exact composition of assets and expenditure is unknown at this stage. We consider that this approach is reasonable where the detailed asset category allocators (outlined in appendix A of Aurizon Network's submission) are to be applied in Aurizon Network's ex post capital expenditure claim, which is submitted to us for approval.
[28] Costs that are not identified as being variable with use will be allocated to the coal system in which the replaced asset currently resides.

through the identification of differences between the two rail networks and the assessment task at hand.

The proposed approach is to apply from 1 July 2023.[29]

We will continue to publish the annually approved RAB roll-forward on our website and do not consider that amendments requiring further transparency are necessary at this time, as suggested by Glencore.[30] Rather, we remain of the view that our continued role in approving the annual RAB roll-forward should provide confidence that the RAB will be appropriately maintained.[31] Aurizon Network's supporting submission to the April 2023 DAAU clearly sets out the approach to be adopted for allocating future asset replacement and renewals expenditure, which, as discussed above, we consider is appropriate.[32] We have checked the application of this approach as part of our assessment.

We consider it is appropriate that amendments to UT5 reflect the application of forecast gross tonne kilometres (gtks) as a reasonable metric for assessing usage of the shared rail corridor.[33]

2.2 Treatment of deferred Newlands system infrastructure enhancements

Aurizon Network proposed to recover revenue associated with the deferred NSIE capital through the Newlands reference tariff. It proposed to do this by including an amount equal to the value of $81.4 million (at 1 July 2023) for the deferred NSIE capital into the Newlands pricing RAB using a staged approach:[34]

- including an initial amount of $46.2 million from 1 July 2023
- including a subsequent amount of $32.7 million from 1 July 2024.

Based on its view that the full value of the deferred NSIE capital is $156 million (at 1 July 2023), Aurizon Network also proposed to deal with the residual value of the deferred NSIE capital by:

- continuing to defer $26.7 million (at 1 July 2023) of the deferred NSIE capital
- voluntarily excluding $47.9 million (at 1 July 2023) of the deferred NSIE capital from its RAB models.[35]

[29] Glencore said the approach must apply from 1 July 2023 at a minimum, though retrospective application should be considered, given the length of time it has taken for the issue to be resolved (Glencore, sub. 9, p. 1.). We consider application from 1 July 2023 reasonable, noting that Aurizon Network's proposal has the support of stakeholders.
[30] Glencore, sub. 3, pp. 3–4.
[31] QCA, GAPE and Newlands pricing DAAU, preliminary considerations, December 2022, p. 12.
[32] We note that proposed amendments to the *Newlands shared rail corridor replacement assets* definition and Schedule E, clause 1.3(c) state that the methodology to be applied is that set out in the April 2023 GAPE Newlands Pricing DAAU. However, we consider that the amendments should clarify that the methodology to be applied is that set out in Aurizon Network's supporting submission to the April 2023 GAPE Newlands Pricing DAAU, given the DAAU itself does not set out a methodology.
[33] This is consistent with the intent of Aurizon Network's proposal. Glencore found that the current drafting of Schedule F, 4.1(b)(vii)(G) does not align with the intended approach (Glencore, sub. 3, p. 4). We consider that even if contract-volume-based pricing was applied in the Newlands system, using forecast gtks is appropriate for the purpose of allocating future asset replacement and renewal expenditure. This will ensure a consistent metric is applied across the GAPE and Newlands systems when assessing relative use of the shared rail corridor.
[34] Aurizon Network, sub. 1, pp. 10–14.
[35] This amount will be removed from Aurizon Network's RAB roll-forward models and will not be included in the Newlands pricing RAB, which is used to set access charges.

Our assessment

We consider it appropriate to include an amount up to the value of $81.4 million (at 1 July 2023) for the deferred NSIE capital in the Newlands pricing RAB.

We see merit in Aurizon Network's proposed approach to socialise the deferred NSIE capital across the Newlands system, in that it accounts for the benefits received by all Newlands users and reflects the level of service provided to users. We understand that all Newlands users utilise and benefit from the NSIE,[36] such that there is no differentiation in the service offering or level of service between GAPE, NAPE and Newlands users[37]. The NSIE increased the:

- capacity of the Newlands system by increasing the number of train paths
- capability of train services by increasing tonne axle load (TAL) from 20 to 26.5 TAL and lengthening existing passing loops.[38]

On balance, we consider that Aurizon Network's proposal to include an amount equal to the value of $81.4 million (at 1 July 2023) for the deferred NSIE capital in the Newlands pricing RAB is reasonable. We have verified that this amount is consistent with the value of the deferred NSIE capital, had it been included in the Newlands pricing RAB from the commencement of UT5.[39]

In forming this view, we consider it relevant to have regard to the way in which commercial arrangements may affect the risks and incentives encountered by parties under the regulatory framework. Not doing so could lead us to make regulatory decisions that would not be appropriate, having regard to the statutory criteria. This is especially relevant where there may be adverse implications for access seekers and access holders who were not party to those arrangements.

In this instance, we consider that existing commercial arrangements may dampen the incentives under the regulatory framework for Aurizon Network to recover deferred revenue at the earliest possible opportunity.[40]

We consider that Aurizon Network is incentivised under the regulatory framework (and in the absence of commercial arrangements) to recover deferred revenue at the earliest possible opportunity. The deferment of capital is used to address initial periods of uncertainty around volumes in a way that allows Aurizon Network to recover the full costs of an expansion. Aurizon Network does not incur windfall gains or losses from a delay to the recovery of deferred revenue.[41] Rather, any delay to the recovery of deferred revenue may act to increase Aurizon Network's exposure to the risk of not recovering the full amount of deferred revenue. Indeed, Aurizon Network

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[36] Benefits have previously been identified as part of our annual review of reference tariffs, particularly in relation to the avoidance of longer-term costs to maintain the less productive 20 TAL assets. See QCA, *Annual review of reference tariffs 2021–22*, decision notice, 22 June 2021, p. 6.

[37] In this case, legacy and post-GAPE Newlands users. Aurizon Network considered socialisation consistent with the benefits accruing to all Newlands users, though it noted that differential pricing could be supported where it could be quantified and demonstrated that legacy users would be subject to a lower tariff without the Carmichael Rail Network volumes. Aurizon Network, sub. 7, p. 2.

[38] Aurizon Network, *GAPE and Newlands Pricing Draft Amending Access Undertaking*, 2 September 2022, p. 7.

[39] In other words, the $81.4 million amount corresponds to the deferred capital component of the NSIE being depreciated from 1 July 2017, with foregone returns capitalised until this date.

[40] Under the terms of the GAPE deed, Aurizon Network may recover revenue associated with the deferred NSIE capital. Where Aurizon Network is able to recover the full value of the NSIE amount (including the capitalisation of foregone returns) under the regulatory framework, these commercial arrangements may provide for Aurizon Network to benefit from additional revenue, the longer the NSIE amounts are deferred.

[41] The application of the revenue deferral mechanism is consistent with the principle of financial capital maintenance, which refers to the requirement that the present value of expected capital charges for an asset over its economic life should be equal to the initial asset value. Within a regulatory context, this means that investors of a regulated firm can expect to recover the opportunity cost of their capital and the nominal value of their initial investment over the life of the asset.

has identified such risks as part of past regulatory proposals to include deferred capital amounts into the RAB.[42]

Therefore, we consider it appropriate to include an amount for the deferred NSIE capital in the Newlands pricing RAB that corresponds to the value of the NSIE, had it been included in the RAB from the earliest reasonable opportunity.

We consider the commencement of UT5 (1 July 2017) represents the earliest reasonable opportunity for Aurizon Network to have sought to recover revenue associated with the deferred NSIE capital, under the regulatory framework.

Aurizon Network submitted that the commencement of UT5 represented the earliest practical date the deferred NSIE capital could have been reflected in the Newlands system reference tariff.[43]

Some stakeholders did not agree. Bravus said that Aurizon Network's proposal failed to allocate deferred NSIE amounts to stakeholders against the benefits enjoyed since 2012[44] and stated that the earliest practical date that the NAPE deed should have triggered was between 2012 and 2014, noting that publicly available information indicated the NAPE expansion mine commenced railing in 2014.[45] It considered that commercial drivers led to the NAPE deed not being triggered in 2014, and these drivers were outside the scope of the regulatory framework.[46]

Similarly, Glencore said we should recalculate the appropriate amount to be included in the Newlands pricing RAB based on the commencement of NAPE railings in 2014, which Aurizon Network should have been aware of.[47]

We acknowledge that information now available indicates that mining operations at the NAPE expansion mine had begun before UT5 commenced, in 2014–15.[48]

However, we note that the deferral of the NSIE capital was approved as part of the 2016 access undertaking (UT4) in October 2016.[49] At the time we considered that there was sufficient uncertainty surrounding the relevant volumes being railed by the NAPE user to justify the deferral of the NSIE capital until the commencement of UT5, particularly given the appropriate treatment of the NSIE capital was yet to be decided (that is, whether or not to socialise the NSIE capital).

Bravus acknowledged the UT4 decision to defer, but was concerned that the QCA's position relied upon Aurizon Network's submissions and was based on information that was incomplete in material respects at the time. Bravus considered that Aurizon Network should not be able to benefit from any delay in the recovery of revenue, to the extent such delay was the result of it providing incomplete information, and said we should investigate whether this had occurred.[50]

We note that Aurizon Network and stakeholders have a number of obligations and responsibilities when providing information to us, as part of our regulatory processes.[51]

We consider it reasonable that there would be a level of uncertainty regarding the extent of expected railings from the NAPE user in the initial years. This is particularly the case where the NAPE user was railing out of the Sonoma load point, which was also used by other mines. The uncertainty

[42] For instance, see Aurizon Network, *Submission on the 2017 Draft Access Undertaking (UT5)*, 30 November 2016, p. 129.
[43] Aurizon Network, sub. 1, pp. 10–11.
[44] Bravus, sub. 2, pp. 5–6.
[45] Bravus, sub. 2, pp. 5–6; sub.8, pp. 2–3, 5–8.
[46] Bravus, sub. 2, pp. 5–6.
[47] Glencore, sub. 9, p. 2.
[48] While Bravus's submission identified that the Jax and Sonoma mines had commenced railing at an earlier point in time, these mines are not the NAPE mine. Bravus, sub. 8, p. 6.
[49] QCA, *Aurizon Network 2014 draft access undertaking, Volume III – Pricing & tariffs*, final decision, April 2016, p. 124.
[50] Bravus, sub. 8, pp. 2–3, 5–8.
[51] QCA Act, ss. 230–233.

would have been especially relevant when the appropriate treatment of the NSIE capital was being considered.

Aurizon Network confirmed that at the time of our UT4 investigation, the NAPE user was railing out of the Sonoma load point,[52] and this limited its visibility around the volumes railed by the NAPE user. Aurizon Network provided evidence that the volumes being railed from the Sonoma load point were not unexpected and did not indicate any substantive contribution from the NAPE user's mine.[53]

Where consultation was required on the appropriate treatment of the NSIE capital, we consider that our assessment of Aurizon Network's 2017 DAU (which was submitted in November 2016) then represented a practical period for consultation on the proposed treatment of the deferred NSIE.[54]

Staged approach to including the NSIE amount

We consider it is reasonable to stage the inclusion of the amount relating to the deferred NSIE capital in the Newlands pricing RAB — with Aurizon Network spreading the amount across 2 years. Importantly, the total amount being proposed by Aurizon Network for inclusion in the Newlands pricing RAB is equal to the value of $81.4 million (at 1 July 2023).

In support of this approach, Aurizon Network acknowledged customer concerns regarding the subsequent increase in the allowable revenue without a corresponding increase in deliverable network capacity.[55] Aurizon Network said that the staged approach means the percentage increase in the Newlands system asset values used for pricing purposes is not expected to exceed the percentage increase in system capacity provided by the installation of remote control signalling (an approved transitional arrangement).

While we consider that the staged approach is reasonable, we do not consider it is necessary for the inclusion of the NSIE amount to be delayed until additional works are undertaken to increase deliverable network capacity, or until the ECD has been reduced.[56] Concerns regarding the existing capacity deficit in the Newlands system are best dealt with through the related processes, as provided in UT5.

Residual value of the deferred NSIE capital

We do not consider it appropriate for Aurizon Network to continue to defer NSIE capital equal to the value of $26.7 million (at 1 July 2023). Rather, we consider it appropriate for the residual value of the deferred NSIE capital to be excluded from Aurizon Network's RAB roll-forward models.[57]

Reflecting its views that the full value of the deferred NSIE capital is $156 million at 1 July 2023, Aurizon Network proposed to voluntarily exclude $47.9 million (at 1 July 2023) from its RAB roll-forward models but continue to defer $26.7 million (at 1 July 2023) of the NSIE capital. Aurizon

[52] Stakeholders also understood this to be the case (Bravus, sub. 8, p. 6; Glencore, sub. 9, p. 2).
[53] As part of our assessment of this DAAU, we sought information from Aurizon Network to understand why the commencement of UT5 was considered the earliest practical date to recover revenue associated with the deferred NSIE and not the date upon which the NAPE user commenced railing. This information was provided by Aurizon Network and was taken into account as part of our draft decision.
[54] Insofar as there was still some uncertainty as to the extent that the NAPE user was railing and the treatment of the deferred NSIE at this time, we would expect this would have reinforced the incentives for Aurizon Network (under the regulatory framework) to seek to recover this amount from the relevant parties.
[55] Aurizon Network, sub. 1, p. 11.
[56] Glencore requested that any additional NSIE amount only be included in the pricing RAB once the independent expert has determined that the installation of remote-control signalling has been effective in reducing the ECD as proposed (Glencore sub. 3, p. 2).
[57] Removing the possibility of Aurizon Network recovering revenue associated with this amount in the future.

Network stated that the allocation of the $26.7 million (between Newlands and GAPE systems) would be determined at a later date.[58]

Aurizon Network acknowledged that continued deferral of the residual NSIE capital would increase regulatory and commercial uncertainty but also noted that a true and full assessment of differences between regulatory and commercial asset values could only be considered at the expiry of commercial arrangements.[59]

Bravus stated there was no reasonable basis to permit the continued deferral of $26.7 million.[60]

In general, we consider it is appropriate for Aurizon Network to recover an amount equal to the full value of the deferred revenue, including the capitalisation of foregone returns, to compensate Aurizon Network for any such deferral.

However, it is our view that Aurizon Network has not provided sufficient justification as to why it would be reasonable for it to recover deferred revenue under the regulatory framework beyond that associated with including a value of $81.4 million into the Newlands pricing RAB. As outlined above, we consider it appropriate for Aurizon Network to include an amount for the deferred NSIE capital into the Newlands pricing RAB consistent with the value of the deferred NSIE capital had it been included from the commencement of UT5.

We have concerns with the continued deferral of NSIE capital, as it contributes to uncertainty under the regulatory framework.[61] We also do not consider it is the role of the regulatory framework to resolve outcomes under commercial arrangements.[62]

Double-recovery concerns raised by stakeholders

A number of stakeholders did not agree with including an amount for the deferred NSIE capital in the Newlands pricing RAB above $46.9 million (at 1 July 2023)[63] – the amount Aurizon Network proposed to include in the Newlands pricing RAB, as part of its initial GAPE and Newlands pricing DAAU.[64]

Stakeholders expressed concern that Aurizon Network could use the commercial arrangements to 'double recover' costs.[65] QCoal and Glencore submitted that the inclusion of $46.9 million in the Newlands pricing RAB had stakeholder support, with Aurizon Network previously stating that it determined this amount having regard to how these costs are accounted for in commercial arrangements.[66]

Glencore also raised concerns that Aurizon Network was using the lack of transparency around the non-regulatory agreements to extract greater value from customers via the interaction of regulatory and commercial arrangements.[67] Glencore was further of the view that our preliminary

[58] Aurizon Network, sub. 1, pp. 12–15.
[59] Aurizon Network, sub.1, p. 13.
[60] Bravus, sub. 8, p. 4.
[61] Our view is that the commencement of UT5 represented a reasonable time for Aurizon Network to have sought to recover revenue associated with the deferred NSIE capital.
[62] Doing so could harm certainty and predictability, both in relation to commercial arrangements and the regulatory framework. See QCA, *GAPE and Newlands pricing DAAU*, preliminary considerations, December 2022, p. 5.
[63] Glencore, sub. 3, p. 1; QCoal, sub. 4, pp. 1–2. Similarly, Bravus did not support including an amount above the depreciated historical cost of the NSIE (Bravus, sub. 2, pp. 5–6).
[64] Aurizon Network, *GAPE and Newlands Pricing Draft Amending Access Undertaking*, 2 September 2022.
[65] QCoal, sub. 4, p. 2; Glencore, sub. 3, p. 1; Rio Tinto, sub. 5, p. 1. Specifically, QCoal and Glencore did not consider it was appropriate for Aurizon Network to be compensated for the deferred NSIE amounts from Newlands system customers, where Aurizon Network has recovered these costs from GAPE customers and there is no associated cost to Aurizon Network as a result of the deferral.
[66] QCoal, sub. 4, p. 1; Glencore sub. 3, p. 1 and sub. 9, pp. 1–2.
[67] Glencore, sub. 3, p. 1.

considerations on the initial GAPE and Newlands pricing DAAU gave Aurizon Network permission to 'double recover' costs and move away from the previously agreed position.[68]

We acknowledge that our decision includes an amount greater than that previously agreed between Aurizon Network and stakeholders. However, this agreement was not maintained as part of the April 2023 DAAU.

We do not consider that including $81.4 million of the deferred NSIE capital in the Newlands pricing RAB will lead to a double recovery of revenue under the regulatory framework. The NSIE capital has remained deferred and has not been accounted for in the Newlands or GAPE system reference tariffs to date. To the extent Aurizon Network has recovered revenue through commercial arrangements, this is a matter that falls outside the scope of the regulatory framework. We do not consider it is appropriate to give weight to the potential outcomes occurring under commercially negotiated arrangements, as doing so could harm certainty and predictability, both in relation to commercial arrangements and the regulatory framework.[69]

2.3 Contract-volume-based pricing in the Newlands system

Aurizon Network proposed to apply contract-volume-based pricing in the Newlands system, which means reference tariffs would be determined using contract volumes. The contract volumes applied in the April 2023 DAAU were adjusted down for 'Aurizon Network cause'.[70]

Complementing this aspect of its proposal, Aurizon Network proposed to provide Newlands users with the opportunity to relinquish excess access rights without incurring a fee.[71]

Separately, Aurizon Network also proposed to remove barriers within the regulatory framework that prevent GAPE access rights being transferred to Newlands users.[72]

Our assessment

We generally consider that there is merit in contract-volume-based pricing[73] where users are able to manage their contract volumes. The allocation of costs under contract-volume-based pricing makes users more accountable for their contract volumes, which may improve price signals to users regarding the extent to which they value their consumption of contracted capacity. Where users are

[68] Glencore, sub. 9, pp. 1–2.
[69] Similarly, we do not consider that our preliminary considerations paper on the initial GAPE and Newlands pricing DAAU served as permission for Aurizon Network to 'double recover' costs for these reasons, which were detailed at the time. The paper stated that where there was agreement between Aurizon Network and stakeholders, we would take this into consideration, but recognised that Aurizon Network's proposal at the time was submitted as a package of arrangements, which did not have consensus support.
[70] The adjustment was considered necessary to ensure expected access revenue from access charges and take-or-pay would equate to the system allowable revenue (Aurizon Network, sub. 1, pp. 19–23).
[71] Subject to it being notified within a specified period of time. Aurizon Network also proposed that the relinquished access rights be available to access seekers, conditional on the ECD in the Newlands and GAPE systems being resolved (Aurizon Network, sub. 1, pp. 23–24).
[72] Currently, the GAPE reference train service criteria (in schedule F cl. 11.1(a) of UT5) require GAPE reference train services to operate in the GAPE system, which comprises the northern missing link (NML). The NML is not utilised by Newlands train services. Aurizon Network noted the proposed amendments were necessary, but not on their own sufficient, for GAPE access rights to be transferred to Newlands users, where there may be constraints under commercial arrangements (Aurizon Network, sub. 1, p. 26).
[73] Contract-volume-based pricing uses contract entitlements held by users to determine the reference tariff. In some cases, these contract entitlements may be in excess of expected demand.

able to manage their contract volumes, this may result in a more efficient allocation of system capacity.[74]

However, we consider it is appropriate to retain current pricing arrangements that use forecast volumes to determine Newlands system reference tariffs, in the current circumstances.

We note an ECD has been identified on the combined GAPE and Newlands system through the relevant UT5 processes, such that contract volumes may be above deliverable network capacity.

A number of stakeholders identified concerns relating to a user's ability to manage their contract volumes in the current environment (where an ECD remains), which they considered would increase the risk of users not being able to rail up to contracted levels.[75]

In this regard, we note:

- the GAPE and Newlands train services are scheduled and operated together, with both utilising the shared rail corridor between the Newlands Junction and the Port of Abbot Point. Where contract-volume-based pricing is only applied in the Newlands system, this could provide different incentives across the two systems to retain 'buffer capacity'[76] – Newlands users will have a financial incentive to relinquish 'buffer capacity', while GAPE users are more likely to maintain 'buffer capacity'
- where there are contested train paths, UT5 establishes the principles for prioritising/allocating capacity among access holders. Amongst other things, these principles give priority to users who are 'more behind' on contract volumes.

Separately, we note that a shift to contract-volume-based pricing would typically involve broader changes to the take-or-pay arrangements,[77]which has not occurred in the April 2023 DAAU.

Bravus considered that contract volumes are not a plausible predictor of current or future railings and raised concerns with the associated relinquishment process, which could increase access charges for remaining access holders.[78]

Following stakeholder concerns, Aurizon Network submitted it was agnostic as to the use of contract or forecast volumes as the basis for setting the Newlands reference tariffs and would accept a decision that rejected this aspect of the April 2023 DAAU.[79]

On balance, we consider it appropriate to use forecast volumes to determine reference tariffs, given stakeholders' concerns regarding the use of contract-volumes, and in-principle support for forecast volumes.[80]

Where contract-volume-based pricing is not applied, we do not consider that fee-free relinquishments are necessary for Newlands users to manage contract volumes.[81] To the extent that

[74] We note that Aurizon Network proposed fee-free relinquishments, which would assist users in managing contract volumes. To the extent users have signed up to commercial arrangements that prevent them from participating in relinquishment processes as suggested by QCoal, this is an outcome under commercial arrangements and should be dealt with through the relevant arrangements (QCoal, sub. 4, p. 3).

[75] Glencore, sub. 3, pp. 2–3; QCoal, sub. 4, pp. 3–4.

[76] Contract entitlements held above expected demand.

[77] Aurizon Network and stakeholders have previously identified that a shift to contract-volume-based pricing would typically involve broader changes to the take-or-pay arrangements. Aurizon Network stated that it would be taking on additional financial risks without such changes. See, for example, Aurizon Network, *GAPE and Newlands Pricing Draft Amending Access Undertaking*, 2 September 2022, p. 44; QRC, submission to the QCA, *Aurizon Network Draft Amending Access Undertaking – GAPE and Newlands Pricing*, 2 November 2022, p. 3.

[78] Bravus, sub. 2, pp. 8–9.

[79] Subject to its proposed fee-free relinquishments also being rejected (Aurizon Network, sub. 6, p. 2).

[80] Bravus, sub. 8, p. 8; Glencore, sub. 9, p. 2.

[81] This position is also relevant for the GAPE system, where Rio Tinto has suggested fee-free relinquishments should also apply (Rio Tinto, sub. 5, p. 1).

stakeholders consider fee-free relinquishments an appropriate mechanism to reduce the ECD,[82] these matters should be dealt with through the relevant processes.[83]

Forecast volume concerns raised by stakeholders

Stakeholders were concerned that the current forecast volumes did not accurately reflect intended railings – and requested that the forecast volumes be reviewed and revised as part of this assessment.[84]

Bravus submitted that the Newlands system has consistently exceeded its forecast rate to date for 2023–24, with Aurizon Network set to recover over 125% of its allowable revenue. It considered that revised forecasts would better align with an efficient price that promotes user pays principles and lower the 2023–24 tariffs to the benefit of all parties in the Newlands system.[85]

Glencore noted that where forecast railings did not reflect Bravus's intended railings, and a PIC discount was applied, this would result in other Newlands users subsiding additional PIC recovery.[86]

We are not requiring that Aurizon Network review and revise its Newlands forecast volumes at this time. The current forecast volumes were approved as recently as October 2023.[87] Should actual railings be above this forecast, UT5 provides for any over-recovery of revenue in a given year to be returned to users.[88] Importantly, the forecast volumes to be applied in future years will be reviewed and can be updated each year as part of the annual review of reference tariff process.[89]

GAPE reference train service criteria

We do not consider it appropriate to amend the GAPE reference train service criteria to facilitate the transfer of GAPE access rights to Newlands users in the presence of an ECD.

Stakeholders generally supported the removal of barriers that prevent the transfer of GAPE access rights to Newlands users where this can improve efficiency.[90] Rio Tinto noted that GAPE reference train services had the contracted right to utilise the full length of the journey to Abbot Point and therefore reference train service should be transferable to any point along it.[91]

However, in the current environment, where an ECD has been identified on the combined GAPE and Newlands system, some stakeholders had concerns about the ability of Newlands users being able to rail up to contract volumes. QCoal submitted that until the ECD in the Newlands system is significantly reduced, or eliminated, Aurizon Network's proposal has the potential to further compromise opportunities for access holders to be able to utilise their contracted capacity.[92] Glencore did not support amending the GAPE reference train service criteria but said it would reconsider its position once the ECD has been resolved.[93]

We note that the transfer of unused access rights to a Newlands user would enable such a user to obtain access rights beyond its current contract position. This may result in an increase in real demand in the Newlands system. In the current environment, where capacity is constrained, this

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[82] For example, QCoal, sub. 4, p. 4.
[83] See UT5, cl. 7A.5.
[84] Bravus, sub. 8, pp. 4, 8–9; Glencore, sub. 9, p. 3.
[85] Bravus, sub. 8, pp. 4, 8–9.
[86] Glencore, sub. 9, p. 3.
[87] QCA, *Aurizon Network's reset Schedule F values*, decision, October 2023, pp. 6-7.
[88] Further information is available on the QCA website at *Revenue adjustment*.
[89] Further information is available on the QCA website at *Annual reference tariff review*.
[90] QCoal, sub. 4, p. 4; Rio Tinto, sub. 5, p. 1; Bravus, sub. 2, p. 15.
[91] Rio Tinto, sub. 5, p. 1.
[92] QCoal, sub. 4, pp. 4.
[93] Glencore, sub. 9, p. 2.

could potentially impact how Newlands users' train services are prioritised – potentially impacting the ability of current system users to rail up to contract volumes.

Aurizon Network was of the view that restricting the transfer of GAPE access rights to Newlands users would unreasonably impact GAPE users. It considered that GAPE users would potentially be disadvantaged where a Newlands user was operating above contract levels (due to the aggregate underutilisation of access rights across the Newlands and GAPE systems) – as all revenue from ad hoc railings would accrue to the Newlands system. It also considered that the rights and interests of GAPE users to mitigate take or pay liabilities would be unreasonably constrained. Aurizon Network submitted that existing permissible transfers from GAPE and Newlands access holders[94] could increase real demand in the presence of the ECD, such that restricting the transfer of GAPE access rights to Newlands users would discriminate solely on the origin not being in the same system.[95]

We do not consider that retaining the existing arrangements[96] would unreasonably impact GAPE users.

While we acknowledge that certain access holders in the Newlands system are able to rail above their contracted access rights, this is a result of other Newlands and GAPE access holders under-utilising their access rights. Customers are only able to rail above contracted volumes on an ad hoc basis where capacity is available, with capacity prioritised for users that have not fulfilled contract volumes.

GAPE users have not had the option to transfer access rights to Newlands users to date. Rather, other arrangements in UT5 provide access holders with the opportunity to mitigate take or pay liabilities associated with under-railing. In this regard, we note that:

- GAPE users are able to transfer access rights to other relevant system users
- access holders were provided with an opportunity to voluntarily relinquish access rights as a means of addressing identified ECDs in the Newlands and GAPE systems.[97]

Accordingly, we do not consider that Aurizon Network's proposed amendments are appropriate to approve. We do not consider that there is an unreasonable impact on GAPE users under the existing arrangements and consider that facilitating the transfer of GAPE access rights to Newlands users could potentially impact the ability of current Newlands users to rail up to contract volumes.

Aurizon Network also considered that not providing for the transfer of GAPE access rights to Newlands users may incentivise inefficient third-party investment in order to obtain transferred access rights.[98] We have not seen any evidence that such investment is occurring in practice. As noted above, Newlands customers operating above contract levels have obtained additional railings on an ad hoc basis where capacity is available. Importantly, transitional arrangements also continue to be progressed in order to address the ECD identified in the GAPE and Newlands systems.

[94] A GAPE access holder is able to transfer access rights to an access seeker originating in the Goonyella system or another GAPE access holder, and a Newlands access holder is able to transfer access rights to another Newlands access holder.
[95] Aurizon Network, sub. 7, pp. 3–4.
[96] That is, not providing for the transfer of GAPE access rights to Newlands users.
[97] We understand that certain access holders may not have been permitted to voluntarily relinquish access rights under their access agreements. We do not consider it the role of the regulatory framework to resolve outcomes under commercial arrangements.
[98] For example, a GAPE access holder may transfer its unused access rights to a Newlands access seeker who could satisfy the current GAPE reference train description by utilising part of the Goonyella to Newlands connection (Aurizon Network, sub. 7, p. 4).

2.4 Application of PIC discounts

Aurizon Network proposed to amend the definition of private infrastructure so that it captures only rail transport infrastructure that does not form part of the declared service and is solely constructed to connect an access holder's or customer's loading facility to the CQCN.[99]

This proposed amendment has the effect of narrowing the application of PIC discounts provided to access holders and customers under UT5.[100] In particular, the PIC amount previously approved for Bravus[101] would no longer satisfy the requirements for consideration for a PIC discount under UT5. On that basis, Aurizon Network's reference tariff calculations do not apply a PIC discount to Bravus under the April 2023 DAAU.

Our assessment

UT5 provides for approved PIC amounts to be recognised in determining the access charge payable by train services operating on a private extension.[102] This is to ensure that end users are not commercially disadvantaged where they elect to privately construct and own mine-specific infrastructure, rather than having it constructed and owned by Aurizon Network.

To date, the provisions have been applied in the context of customer-specific network connections, spurs and balloon loops.

Aurizon Network said the intended objective of recognising PIC amounts when determining access charges was to promote competitive neutrality in the market for construction and ownership of mine-specific infrastructure. However, Aurizon Network considered the current definition of private infrastructure may lead to outcomes that are inconsistent with this intent.[103]

While we consider that there may be merit, in principle, to narrowing the application of PIC discounts, we do not consider Aurizon Network's proposed amendment appropriate.

Aurizon Network's proposed amendment to the definition of private infrastructure achieves the intended objective of recognising PIC amounts and appropriately narrows the scope of private infrastructure that is applicable for a PIC discount. In particular, it:

- continues to provide for end users to not be commercially disadvantaged for electing to privately construct and own mine-specific infrastructure
- should prevent an end user from obtaining a commercial advantage over other system users from electing to privately construct and own mine-specific infrastructure[104]

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[99] See Part 12 of Aurizon Network's April 2023 GAPE Newlands pricing DAAU.

[100] Under UT5 (cl. 6.3.2), the approval of a PIC amount is based on the QCA being satisfied that expenditure is for the prudent and efficient value of the assets that are used to provide train services over private infrastructure.

[101] On 15 December 2022, we approved a PIC amount of $44 million in respect of Bravus's Carmichael rail loop project and connecting infrastructure. At the time of approval, Bravus's PIC claim satisfied the requirements for consideration under the PIC provisions in UT5.

[102] Under UT5 (cls. 6.3.1 and 6.4.10), users of new train services using mine-specific infrastructure (that does not require an expansion) will pay the higher of the system reference tariff less a discount for any approved PIC and the minimum revenue contribution.

[103] Aurizon Network raised concerns about having the PIC provisions also apply more broadly, including where the nature and scale of the project may result in significant adverse impacts for other access holders (Aurizon Network, sub. 1, pp. 29–31).

[104] For instance, providing a PIC discount for multi-user infrastructure may provide a commercial advantage to the relevant access seeker who elects to privately construct and own mine-specific infrastructure and is able to also recover a portion of the PIC from third parties accessing that private infrastructure.

- potentially limits the extent to which a PIC discount would be provided for a project where the nature and scale of that private infrastructure leads to a PIC amount that results in a significant redistribution of system costs.[105]

However, we have concerns that Aurizon Network's proposed amendment would have retrospective impacts, as discussed below.

Implications for previously approved PIC amounts

Under UT5, we approved the prudent and efficient value of PIC amounts associated with private infrastructure related to 2 projects – the Sojitz Meteor Downs South rail and train loading project and Bravus's Carmichael rail loop and connecting infrastructure.[106]

The application of the approved Bravus PIC amount was to take effect from 1 July 2023.[107]

Under Aurizon Network's April 2023 DAAU, the previously approved Bravus PIC amount would no longer satisfy the requirements for consideration for a PIC discount. In this regard, Aurizon Network submitted that the Carmichael rail infrastructure:

- has not been constructed solely to connect the loading facility for the Carmichael mine to the declared service – with the proposed amendment to the definition of private infrastructure, a PIC amount would not be applicable to the calculation of access charges for train services entering and exiting the declared service to access Carmichael rail infrastructure
- has been developed as an open-access, multiuser railway, which is subject to an access policy approved by the State of Queensland.[108]

Bravus sought that the discount be applied in line with existing arrangements. It did not consider it appropriate for Aurizon Network to use the April 2023 DAAU process to reopen and retrospectively change an otherwise completed regulatory process.[109]

Aurizon Network on the other hand, was the view that retrospective changes were an unavoidable consequence of the timing, where the matters raised in the April 2023 DAAU were beyond the scope of the PIC approval process.[110]

We acknowledge timing complications in the case where concerns with the existing PIC arrangements were only identified upon Bravus's PIC application.[111] However, we do not consider it appropriate to retrospectively change the application of PIC discounts for previously approved PIC amounts following an access holder's investment in private infrastructure, unless circumstances change such that the arrangements are providing benefits beyond those benefits originally intended.[112]

Regardless of whether the PIC amount was inconsequential in respect to the total costs associated with constructing the Carmichael Rail Network (CRN),[113] Bravus's PIC claim qualified for consideration under the current UT5 provisions.

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[105] Whereas Aurizon Network has previously advised that the development and connection of a new coal mine would normally be expected to represent under 10% of the contracted system volume in large multi-user coal systems.
[106] Information on these assessments is available on our website at *Private incremental costs.*
[107] Aurizon Network, *2017 Access Undertaking–Updates to Reset Schedule F Preliminary Values*, February 2023, p. 25.
[108] Aurizon Network, sub. 1, pp. 30–31.
[109] Bravus, sub. 2, pp. 12–14.
[110] Aurizon Network, sub. 7, p. 5.
[111] Though we note that amendments to narrow the application of PIC discounts could have been submitted under s. 142 (1) of the QCA Act any time prior to Bravus's application.
[112] For instance, where a PIC discount results in an end user obtaining commercial advantage over other system users from electing to privately construct and own mine-specific infrastructure.
[113] Aurizon Network raised this as a relevant consideration (Aurizon Network, sub. 7, p. 5).

Furthermore, it is not apparent that applying the PIC provisions in current circumstances has resulted in Bravus obtaining a commercial advantage over other system users from electing to privately construct and own the associated infrastructure. In this regard, we note:

- Bravus is the only access holder that is currently utilising the Carmichael rail infrastructure
- the approved Bravus PIC amount related to infrastructure that could typically be associated with mine-specific infrastructure.

Bravus did not seek a PIC discount that included costs associated with the broader CRN.[114] Accordingly, we do not consider it to be the case that Bravus is recovering significantly more than intended through the PIC discount, as suggested by Glencore.[115] While Aurizon Network considered that the CRN balloon loop should be excluded from the PIC amount,[116] we do not consider that its inclusion has resulted in Bravus obtaining a commercial advantage over other system users where it is the only access holder utilising the CRN. As such, we do not consider a retrospective change to the approved PIC amount is appropriate.

Separately, we do not consider a comparison with the GAPE reference tariff is a relevant consideration in determining whether a PIC discount should be applicable for Bravus's train services (see Box 2).

More broadly, we consider that retrospective changes to the application of PIC discounts for previously approved PIC amounts in the absence of compelling evidence (such as a change in circumstances that mean the arrangements are providing benefits beyond those benefits originally intended) will increase uncertainty for future access seekers as to the level of access charges that will be applied, where investment in private infrastructure to connect to the CQCN is required.[117] This could also have implications for certainty more broadly across the regulatory framework.

Aurizon Network said that where our position on retrospective changes to the application of Bravus's PIC remains unchanged from our draft decision, its proposed amendment to the definition of private infrastructure should be deferred for consideration until the next regulatory period.[118]

We consider this is a reasonable approach. It avoids any unjustified retrospective changes to the application of Bravus's PIC and, as noted by Aurizon Network, will mean that the PIC provisions[119] can be considered in the context of broader pricing arrangements on risk and cost allocation between customers in the next regulatory period.

Accordingly, we do not consider it is appropriate to approve Aurizon Network's proposed amendment to the definition of private infrastructure at this time.

[114] QCA, *Private Incremental Cost–Carmichael rail loop and connecting infrastructure*, decision notice, 15 December 2022, p. 2.
[115] Glencore, sub. 9, p. 2.
[116] Aurizon Network said excluding the CRN balloon loop would not be inconsistent with existing arrangements as no other arrangements exist of mine specific infrastructure indirectly connecting to the CQCN via a private railway. Aurizon Network, sub. 7, p. 5.
[117] It is not clear that a future PIC discount would necessarily be inconsequential in a future access seekers decision-making process.
[118] Aurizon Network, sub. 7, p. 6.
[119] This could include proposed amendments to the definition of private infrastructure and further amendments to address concerns about unintended consequences arising from application of the term private infrastructure more broadly throughout UT5 (for example, Aurizon Network suggested drafting changes to include 'for the purposes of clause 6.3.2' in front of the revised definition – see Aurizon Network, sub. 7, p. 5) and to prevent retrospective changes to the application of Bravus's PIC discount in the current circumstances.

Box 2: Relevant reference tariff when applying the PIC discount

Bravus's access charges are calculated with respect to the Newlands system reference tariff.[120]

UT5 clearly, and separately, defines the Newlands system and the GAPE system. Access charges for access rights in the Newlands system are calculated with respect to the Newlands system reference tariff. Thus, we consider that any PIC discount is to be considered with respect to the applicable reference tariff for the relevant train services.

Aurizon Network considered that regard should be had to the extent to which Bravus train services receive an effective discount through the application of the Newlands system reference tariff, in comparison to the GAPE reference tariff.[121] Aurizon Network considered that:

- it can be inferred from clause 6.3.1(e) of UT5 that the Newlands system reference tariff and the GAPE system reference tariff apply in respect of access rights in the Newlands system, given that GAPE train services utilise the Newlands system. Thus, services operating in the Newlands system are subject to the GAPE reference tariff
- if the GAPE reference tariff had been implemented as an expansion tariff,[122] clause 6.3.1(e) of UT5 would have expressly required the access charges for new coal-carrying train services operating in the Newlands system to be calculated based on the GAPE reference tariff.[123]

Aurizon Network considered that determining an access charge with respect to the highest relevant reference tariff applicable to the operation of train services using the same rail infrastructure avoids discriminatory pricing effects.[124]

QCoal also considered that there is no differentiation in service offering between Newlands and GAPE services and that the PIC discount should apply to the higher GAPE reference tariff (on a $/ntk basis).[125]

The GAPE system was not established as an expansion tariff, but as an independent system with a separate reference tariff. Therefore, we do not consider that the application of clause 6.3.1 (e) is a relevant consideration as to whether a PIC discount should apply to train services operating in the Newlands system.

We do not consider that the application of the PIC discount in this instance results in discriminatory pricing effects. The UT5 price differentiation provisions are applied with respect to the system reference tariffs, which result in different access charges being applied to users depending on the specific coal system(s) they access. UT5 does not specifically limit price differentiation between users accessing different systems.

[120] Bravus, sub. 2, p. 12.

Bravus submitted that the application of the PIC discount only relates to the proportion of PIC associated with its Newlands contracted capacity and not any proposed expansion tonnage through the GAPE system.[126]

[121] Aurizon Network, sub. 1, p. 28.
[122] As opposed to be being established as an independent revenue and pricing system to quarantine costs and risks from Newlands system users.
[123] Aurizon Network, sub. 1, pp. 27–28.
[124] Aurizon Network considered the application of a PIC discount to new coal-carrying train services commencing after the completion of the NSIE would have a discriminatory price effect (Aurizon Network, sub. 1, pp. 27–29).
[125] QCoal, sub. 4, p. 5.
[126] Bravus, sub. 2, p. 13.

Submissions

We received the following submissions during our assessment of Aurizon Network's April 2023 GAPE and Newlands pricing DAAU, which are available on our website.[127] The submission numbers below are used in this decision for referencing purposes.

Stakeholder	Submission number	Submission	Date received
Aurizon Network	1	April 2023 GAPE Newlands pricing DAAU supporting submission	6 April 2023
	6	Additional submission on the April 2023 GAPE Newlands pricing DAAU	15 June 2023
	7	Submission in response to QCA draft decision	6 October 2023
Bravus	2	Submission on Aurizon Network's April 2023 GAPE Newlands pricing DAAU	25 May 2023
	8	Submission in response to QCA draft decision	6 October 2023
Glencore	3	Submission on Aurizon Network's April 2023 GAPE Newlands pricing DAAU	25 May 2023
	9	Submission in response to QCA draft decision	6 October 2023
QCoal	4	Submission on Aurizon Network's April 2023 GAPE Newlands pricing DAAU	25 May 2023
Rio Tinto	5	Submission on Aurizon Network's April 2023 GAPE Newlands pricing DAAU	24 May 2023

[127] QCA, GAPE Newlands pricing DAAU, QCA website, 2023.