

Request for Information 14 June 2019

Aurizon Network and industry responses 23 July 2019

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| <p>(1) Please provide an explanation for the proposed amendments to cl. 2.4(e). Does this change relate to the proposed amendment to cl. 7A.5(l) or does it have a broader application to cl. 7A.5? How does this clause interact with (if at all) the proposed cl. 7A.12 (Amendment to Access Agreements)?</p> | <p>The change to clause 2.4(e) has application to clause 7A.5 more broadly (i.e. not just to clause 7A.5(l)).</p> <p>Clause 7A.5 includes provisions which allow the QCA to make determinations that would require Aurizon Network to implement Transitional Arrangements that may require Aurizon Network to act in a way that is inconsistent with an Access Agreement - for example, see clauses 7A.5(e) and (f). For that reason, clause 2.4(e) which previously made clear that nothing in the Undertaking could require Aurizon Network or an Access Holder to vary or act in a way that is inconsistent with an Access Agreement is no longer correct. Clause 2.4(e) is therefore now subject to clause 7A.5.</p> <p>In addition, in the circumstances described in clause 7A.12 Aurizon Network will agree to amend any Access Agreement to effect changes requested by an Access Holder or End User to make the Access Agreement consistent with System Operating Parameters determined by the Independent Expert and the Undertaking.</p> |
| <p>(2) Cl. 3.1(a) does not contemplate ownership by any entity other than Aurizon Holdings, or if Network acquires shares in another company in another upstream or downstream market. What provisions are in place to ensure ring fencing provisions remain appropriate in these potential scenarios?</p> | <p>The ringfencing obligations continue to apply for so long as <u>any</u> shares in Aurizon Network are directly or indirectly owned by Aurizon Holdings or any Related Party of Aurizon Holdings. Those obligations are not dependent on full ownership by Aurizon Holdings. A small shareholding by Aurizon Holdings or any Related Party of Aurizon Holdings would mean that the entirety of Part 3 would continue to apply.</p> <p>If Aurizon Holdings and any Related Party of Aurizon Holdings cease to hold any shares (whether directly or indirectly) in Aurizon Network, Aurizon Network would no longer be related to the Aurizon above rail operator (provided that the ownership of the Aurizon above rail operator did not also change).</p> <p>In circumstances where Aurizon Holdings and any Related Party of Aurizon Holdings cease to hold any shares in Aurizon Network, a number of the ringfencing type obligations in Part 3 would cease to be relevant and the exceptions above do not apply. However, even in those circumstances, a number of the obligations in Part 3 would remain relevant (e.g. confidentiality obligations). Those obligations have been expressly preserved by clause 3.1(b).</p> <p>If Aurizon Network were to acquire an interest in a company in an upstream or downstream market, when:</p> <ul style="list-style-type: none"> • none of Aurizon Network's shares were held by Aurizon Holdings or any Related Party of Aurizon Holdings; and • neither the new owner of Aurizon Network nor any of its Related Parties held shares in the upstream/downstream market company, <p>Aurizon Network would not have any economic or other incentive to discriminate in favour of that company as it would not be related to that company. In those circumstances, there would no need for the ringfencing obligations other than those expressly preserved in clause 3.1(b) to continue.</p> |
| <p>(3) Please provide explanations and context as to why the following clauses have been deleted:</p> <p>(a) cl. 3.5(b)</p> <p>(b) cl. 3.6(d)</p> <p>(c) cl. 3.6(f)(i)</p> | <p>Clause 3.5(b)</p> <p>Aurizon Network did not consider it necessary in the DAAU to preserve for itself the rights under clause 3.5(b) of UT5.</p> <p>Clause 3.6(d)</p> |

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| (d) cl. 3.6(f)(ii) | <p>Clause 3.14 of the DAAU covers the same obligations with respect to the recording of employees' details in the Confidential Information Register as were previously covered in clause 3.6(d) of UT5.</p> <p>Clause 3.6(f)(i)</p> <p>Aurizon Network decided that the employment of a regulatory affairs advisor was no longer required given the undertaking to engage an independent observer on the board to participate in board meetings of Aurizon Network (as contemplated by clause 3.9(f)) and coupled with the ongoing role of the Compliance Officer (which Aurizon Network must employ) and the expanded compliance declaration requirements – for example see clause 3.19(b).</p> <p>Clause 3.6(f)(ii)</p> <p>The restriction in clause 3.6(f)(ii) was considered no longer relevant given the detailed restrictions and obligations set out in clause 3.4, 3.5 and 3.6 relating to the provision of below rail services by Aurizon Network and the restrictions on staff movements. In particular, clause 3.7(c) is relevant because it confirms even where there is a delegation or contracting out to a related operator, where that is expressly permitted by the Undertaking (under clause 3.7(b)(i)) Aurizon Network remains responsible for providing the below rail service in accordance with the Undertaking.</p> |
| (4) The proposed drafting of cl. 3.8 removes specifics in relation to the detail required on self-insurance for financial statements (previously set out under cl. 3.7.2(a) and (b)). Please provide an explanation for the revised drafting. | <p>Aurizon Network is still required to include details of Self-Insurance in the financial statements required to be submitted under clause 3.8(a) (Regulatory Financial Statements).</p> <p>The specific detail of what is reported under the Regulatory Financial Statements is better placed within the Costing Manual submitted in accordance with the Undertaking and Section 159 of the QCA Act. A revised Costing Manual will be required to be submitted after the approval of the DAAU which will include details in relation to the self-insurance reporting.</p> |
| (5) Please provide explanations for why cls. 3.9 (no waiver or exclusion of Undertaking by voluntary agreement) and 3.10 (Request for Aurizon Network to enter confidentiality agreement) have been removed? | <p>Clause 3.9</p> <p>It was considered that without limiting the general obligation of Aurizon Network not to disclose Confidential Information otherwise than as permitted by clause 3.11(a), the owner of the Confidential Information could allow Aurizon Network to disclose Confidential Information for a nominated purpose. That negotiated right, which operates for the benefit of all stakeholders, would be inconsistent with clause 3.9 of UT5 – with the result that clause 3.9 was no longer applicable and was therefore removed. The deletion of clause 3.9 of UT5 does not give Aurizon Network a right to require an Access Seeker, Access Holder or Train Operator to waive any requirement or obligation of Aurizon Network under Part 3. Nor does it give Aurizon Network a right to require a party to enter into a confidentiality agreement or deed or Access Agreement that reduces or derogates from the obligations imposed on Aurizon Network under Part 3.</p> <p>In addition, clause 3.11(g) makes clear that Aurizon Network can never disclose Confidential Information to a Related Operator, other than as expressly permitted by clause 3.11 or unless with the prior written consent of the QCA.</p> <p>Clause 3.10</p> <p>Clause 3.10 of UT5 allowed Access Seekers and Train Operators to require Aurizon Network to enter into a confidentiality agreement in the form of Schedule I, unless otherwise agreed. The DAAU incorporates more specific confidentiality obligations into the body of the Undertaking – see for example, new clause 3.10 and clause 3.11. The deletion of clause 3.10 does not prevent Access Seekers and Train Operators from requesting that Aurizon Network enter into a confidentiality agreement (whether in the form of Schedule I or some other form).</p> |

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| <p>(6) Cls. 3.11(f)(xiii) and(xiv) indicate that persons described at cls. 3.11(f)(x) and (xi) do not need to complete a formal confidentiality undertaking or complete confidential information training.</p> <p>(a) Please provide further context and explanation for specifying these exclusions.</p> <p>(b) What, if any, provisions (other than the process contemplated by cl. 3.11(f)(xii)) are contemplated to ensure appropriate handling of confidential information by these groups of persons identified at cls. 3.11(f)(x) and (xi)?</p> | <p>The persons identified in clauses 3.11(f)(x) and 3.11(f)(xi) are required, as part of their employment terms, to undertake confidentiality training and are subject to confidentiality obligations to the same effect as the requirements in the Undertaking. A separate obligation in the Undertaking for Aurizon Network to ensure that confidentiality agreements are entered into and separate training is undertaken is therefore not necessary.</p> |
| <p>(7) Please provide the rationale for removing cls. 3.14(c)(ii)(E) and 3.14(c)(iii) and (iv).</p> | <p>It was not considered relevant to retain clauses 3.14(c)(ii)(E), 3.14(c)(iii) and 3.14(c)(iv) in light of the inclusion of the provision in clause 3.13 confirming that Aurizon Network would be liable for any unauthorised use or disclosure by any person within the Aurizon Group as if that disclosure had been made by Aurizon Network and because of the inclusion of an obligation on Aurizon Network to ensure that each director, Senior AN Employee and Key AN Commercial Personnel execute an undertaking that they will comply with the requirements of confidentiality and other applicable requirements in Section D (Confidential Information) of Part 3 (not just a certificate of awareness) (clause 3.16). Such a compliance undertaking could only be signed if the relevant director, Senior AN Employee or Key AN Commercial Personnel was aware of its obligations.</p> |
| <p>(8) Please provide the rationale for removing the detailed requirements regarding Confidential Information training at cl. 3.15(b).</p> | <p>The obligations in clause 3.15(b) of UT5 as to the timing of provision of training sessions was unnecessarily prescriptive and in any event no longer as relevant because it has been replaced with a new and stronger obligation which holds Aurizon Network liable for any unauthorised disclosure by any employees within the Aurizon Group (see clause 3.13) and therefore Aurizon Network is incentivised to provide that training as soon as practicable after an employee joins Aurizon Network.</p> <p>The requirements to provide the training sessions and to keep a record of training attendances remain (see clauses 3.15(a) and 3.15(b) of the DAAU).</p> |
| <p>(9) Please provide the rationale for removing the High Risk Personnel Register requirements at cl. 3.16.</p> | <p>It was considered that the definition of “High Risk Personnel” in clause 3.16(b) was uncertain – for example, it was not clear who might be caught by the provision attaching to “someone who had capacity to determine the outcome of, or participate in, decisions of any Aurizon Group company that is not Aurizon Network”.</p> <p>To address that uncertainty, it was agreed that the confidentiality obligation in clause 3.16 should attach to any director of Aurizon Network, any Senior AN Employee or any Key AN Commercial Personnel (as those terms are defined in Part 12 with greater certainty than the previous “High Risk Personnel” definition).</p> |
| <p>(10) Please provide the rationale for removing cl. 3.18(e).</p> | <p>Clause 3.18(e) of UT5 was a deeming provision which provided that a person on secondment was to be considered as staff of the relevant Aurizon Party. The DAAU more expressly and with more particularity deals with secondees in clause 3.6. Therefore, clause 3.18(e) has been superseded.</p> |
| <p>(11) Please provide an explanation as to why cl. 4.8(d)(iii)(B) has been deleted.</p> | <p>Clause 4.8(d)(iii)(B) will be redrafted as follows to reflect that there can be disputes as to the terms of a User Funding Agreement but not as to what Expansion is required:</p> <p style="padding-left: 40px;">“(B) a determination of a Dispute as contemplated by clause 8.2.2(a)(iii)”.</p> <p>Please see the answer to Question # 54 in relation to the revised drafting for clause 8.2.2(a)(iii).</p> <p>Clause 4.8(d)(iii)(B) as drafted in UT5 has been deleted (and is proposed to be replaced as above) because, after the Initial Capacity Assessment Report is published, there will be no Disputes as to what Expansion is required to address an Existing Capacity Deficit given that after the Initial Capacity Assessment Report is published the need for Expansions to address</p> |

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| | Existing Capacity Deficits will either be agreed by Aurizon Network and the relevant affected End Users (clause 7A.5(i)) or required by the QCA (clause 7A.5(i)). |
| <p>(12) Cl. 4.6(e) seems to indicate that, once the initial capacity assessment report has been published, Aurizon Network will provide the IAP only after the independent expert completes a capacity assessment (as per (ii)), with the 20 business day timeframe for provision of the IAP under (i) not applying. However, cl. 4.11.1(d)(iv)(C) seems to indicate that Aurizon Network will provide the IAP within 20 business days as per (i) but that days spent awaiting the independent expert's capacity assessment will be added onto the negotiation period. Please clarify the interpretation of these clauses, particularly whether or not the IAP will be provided in advance of the independent expert's certification.</p> | <p>The intention of the clause is to create consistency with the agreed approach which contemplates that the Independent Expert, not Aurizon Network, is the entity that determines if there is Available Capacity.</p> <p>In circumstances where the Independent Expert has provided the Initial Capacity Assessment Report, the IAP will not be provided until the Independent Expert has certified that there is sufficient Available Capacity to meet Access Seeker's requested access or that an Expansion is required to meet that request. The timeframe for the provision of the IAP will be such period as may be required for the Independent Expert to confirm that there is Available Capacity.</p> <p>In the period prior to the publication of the Initial Capacity Assessment Report, the IAP will not be subject to the Independent Expert's certification.</p> |
| <p>(13) Please provide reasons for why cl. 4.8(d)(iii)(B) has been deleted.</p> | See our response to question 11 above. |
| <p>(14) Please provide further information explaining the purpose and effect of the amendments to cl. 5.1(e) (and cl. 5.3(e)). In particular, how will disputes over the terms of an access agreement (or train operations deed) in respect of an expansion under cl. 7A.5 or Part 8 be resolved?</p> | <p>At a high level, clauses 5.1(e) and 5.3(e) provide that a dispute about terms of an Access Agreement will be resolved by entering into an agreement on standard terms.</p> <p>This resolution is not appropriate for Access Agreements in respect of capacity expected to be created by an Expansion or Access Agreements that include Access Conditions (clause 6.13) because they are expected to include non-standard terms. In respect of those agreements, we agree that the drafting should be clarified so as to make it clear that a negotiation in respect of expansion access agreement can be disputed.</p> <p>The drafting we are proposing in this regard would amend clause 5.1(e) as follows:</p> <p>Subject to clause 6.13 and other than where an Expansion is agreed or determined to be required in accordance with clause 7A.5 or undertaken pursuant to Part 8, wWhere the terms of an Access Agreement cannot be agreed within the time set out in clause 4.11.1(d)(iv), any dispute will be resolved by =(and incorporating amendments agreed by Aurizon Network and the Access Seeker and in respect of which there is no dispute):</p> <p>(i) where Access is required for coal carrying services, the parties completing and entering into the Standard Access Agreement. In this circumstance and Part 11 does not apply; and</p> <p>(ii) where Access is required for non-coal carrying services, in accordance with the dispute resolution mechanism in Part 11, by the QCA or an expert, as applicable, completing an Access Agreement which is consistent with the Standard Access Agreement, amended to reflect the fact that the Access is for non-coal carrying services; <u>and</u></p> <p><u>(iii) where Access is:</u></p> <p>(A) <u>dependent on an Expansion (whether or not agreed under Part 8 or determined or agreed to be required in accordance with clause 7A.5); or</u></p> <p>(B) <u>is subject to proposed Access Conditions in accordance with clause 6.13,</u></p> <p><u>in accordance with the dispute resolution mechanism in Part 11, by the QCA or an expert, as applicable, completing or amending (as relevant) the relevant Access Agreement based on the Standard Access Agreement to the extent relevant.</u></p> <p>Clause 5.3(e) mirrors clause 5.1(e) but in respect of Train Operations Deeds. Equivalent drafting changes are proposed to be made to clause 5.3(e).</p> |

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| (15) Please provide reasons on why the reference to 'MTP' has been replaced with 'ITP'. | <p>Aurizon Network assumes this question relates to clause 5.1(f).</p> <p>Aurizon Network's obligation to provide a MTP ceases once the IE Initial Capacity Assessment Report is published (see clause 3.1(h) of Schedule G). Thereafter both an ITP and a Capability Train Plan will be published by Aurizon Network. Accordingly it was appropriate to replace the reference to MTP with ITP.</p> <p>The Capability Train Plan will be provided to End Users as, unlike the MTP, it more relevantly reflects the information that End Users rely upon to schedule their Train Services.</p> |
| (16) Cl. 5.3(e) contains drafting changes that provide for the incorporation of amendments agreed by Aurizon Network and a Train Operator when resolving a dispute about the terms of a train operations deed. While cl. 5.2(e) deals with the same subject matter (in the context of access agreements), the proposed changes are worded differently. Are these clauses intended to have the same operation and effect? In particular, please explain why cl. 5.3(e) includes a reference to amendments being incorporated 'into the Standard Train Operations Deed, or Train Operations Deed (as applicable)'. | <p>Aurizon Network assumes that the reference to clause 5.2(e) in the QCA question is intended to be a reference to clause 5.1(e).</p> <p>On this basis, clause 5.1(e) and clause 5.3(e) are not intended to be different in their operation. Aurizon Network proposes to clarify the drafting by making the drafting the same (other than clause 5.1(e) will refer to Access Agreements and clause 5.3(e) will refer to Train Operations Deeds).</p> <p>The reason that clause 5.3(e) includes a reference to amendments being incorporated 'into the Standard Train Operations Deed, or Train Operations Deed (as applicable)' is to ensure consistency with:</p> <ul style="list-style-type: none"> • clause 5.3(e)(i) which applies to Access for coal carrying services where the parties complete and enter into a <i>Standard Train Operations Deed</i>; and • clause 5.3(e)(ii) which applies to Access for non-coal carrying services where the parties complete and enter into a <i>Train Operations Deed</i>. |
| (17) Please provide the rationale for the amendments made under cl. 6.12. | <p>Under UT5, Aurizon Network may elect to not fund an expansion, fund an expansion at the Approved WACC or to fund the expansion with Access Conditions.</p> <p>Under the DAAU, Aurizon Network is making two separate funding commitments:</p> <ol style="list-style-type: none"> 1) up to \$30 million annually for expansions to create new capacity where it would benefit more than one Access Seeker, Customers or Access Holder (under clause 8.2.1(b)(ii)(D)); and 2) up to \$300 million to fund expansions to address any Existing Capacity Deficits identified in the Initial Capacity Assessment Report (under clause 7A.5(i)). <p>Aurizon Network's commitment to provide that funding was given on the basis of cost recovery through recognition of the value of the commitment in the Regulatory Asset Base which ensures that:</p> <ol style="list-style-type: none"> 1. the expenditure incurred by Aurizon Network under the funding commitment is not subject to the risk of being excluded from the Regulatory Asset Base; and 2. the expenditure incurred by Aurizon Network under the funding commitment is subject to inclusion in the system reference tariff and subject to the same pricing and risk as the value of the assets in the Regulatory Asset Base. |
| (18) In regards to cl. 6A.1, please clarify whether the QCA will be required to consult on the Reset Schedule F Values (see cl. 6A.1(c) and cl. 6A.7 (a)(ii)) | <p>At a high level, new Part 6A refers to 2 concepts:</p> <ol style="list-style-type: none"> 1) values (to be included in Schedule F – being Reference Tariffs, GtK Forecasts and Allowable Revenue); and 2) inputs (used to develop those values). <p>Clause 6A.1(c) refers to inputs.</p> |

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| | <p>Clause 6A.7(a)(ii) refers to values.</p> <p>Given that the inputs cannot be extricated from the values, the solution in clause 6A.7(b)(ii) is to require the QCA to approve the inputs when certain criteria was met.</p> <p>There are some inputs which will require the QCA to consult and there are others, for the reasons discussed below, which do not require consultation.</p> <p>The values listed in clause 6A.2(a) (defined as the "Reset Schedule F Preliminary Values") and 6A.5(a) (defined as the "Reset Schedule F Values") do require the QCA to consult.</p> <p>The following inputs (listed in clause 6A.1(c)) do not require consultation by the QCA because they will be developed using the same methodology as was approved by the QCA in UT5 and only reflect updated values:</p> <ol style="list-style-type: none"> 1) a revision of the Risk Free Rate; 2) a revision of the inflation rate; 3) a revision of the Debt Risk Premium; and 4) calculation of Tax Allowance. <p>In the event that a third party index or rate required to calculate any of the inputs is no longer published, Aurizon Network and End Users will propose the most appropriate alternative index or rate to the QCA and the QCA would be able to consult, if it chose to do so (see clause 6A.6(b)).</p> |
| <p>(19) Please explain why you have included '<i>without limiting any other rights or obligations under this Undertaking</i>' in cl. 7.1 (a)(i)? How does this reconcile with cl. 7.2.1 which uses the phrase '<i>Despite any other provision in this Undertaking</i>'?</p> | <p>The words at the start of clause 7.1(a)(i) were included to confirm that other provisions of the Undertaking grant rights to Aurizon Network in relation to an Access Seeker's utilisation of its Access Rights and that the right of Aurizon Network to refuse Access Rights in accordance with clause 7.2.1 should not limit its rights under those other provisions. For example, clause 8.2.1(r) allows Aurizon Network to refuse to fund, construct or permit an Expansion under Part 8 if it considers the need for the Expansion could be avoided by a resumption of Access Rights. Aurizon Network's rights to refuse Access Rights in accordance with clause 7.2.1 should not limit its rights to refuse to undertake an Expansion in accordance with clause 8.2.1.</p> <p>Conversely, the words "despite any other provision in this Undertaking" at the start of clause 7.2.1 are intended to have the effect that Aurizon Network can exercise its rights under clause 7.2.1 without being limited by any other clause of the Undertaking. The effect of the words at clause 7.2.1 would have the effect that Aurizon Network can refuse to grant Access Rights under clause 7.2.1 even though it has rights to resume under clause 8.2.1.</p> <p>While the words at the beginning of clause 7(a)(i) and clause 7.2.1 have slightly different consequences, the intended effect is the same – i.e. every provision in the Undertaking that gives Aurizon Network a right to reduce or refuse a request from an Access Seeker for further Access Rights should operate independently of each other.</p> |
| <p>(20) Broadly, it appears that amendments that refer to the definition of 'End User' will capture non-coal (for example, Rail Industry Group membership and voting rights). Please confirm this is intended to offer protection in the interests of non-coal Customers?</p> | <p>Non-coal Access Holders are "End Users" as defined (other than where the non-coal Access Holder holds the Access Rights for the purpose of providing Train Services for a Customer). Unless otherwise provided (for example, in the application of the Rebate), non-coal Access Holders have the same protections as coal Access Holders.</p> |
| <p>(21) For the purposes of Rail Industry Group membership is it intended that future access seekers (that are not Train Operators) can join, given the definition Customer.</p> | <p>The intention is that membership of the Rail Industry Group should be open to Access Holders (that are not Railway Operators), Access Seekers (that are not Railway Operators), Customers of Access Holders and Access Seekers and Railway Operators (that hold contractual rights to provide Train Services).</p> <p>We propose to amend the DAAU such that Railway Operators (that hold contractual rights to provide Train Services) and Access Seekers would have a standing invitation to attend and participate in Rail Industry Group meetings (and receive Rail</p> |

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| | <p>Industry Group information), but not hold voting rights in respect of matters to be determined by End Users in accordance with the Undertaking. The reason for limiting voting power to Access Holders (that are not Railway Operators) and Customers of Access Holders is that to grant voting power to Railway Operators, Access Seekers and Customers of Access Seekers would provide a disproportionate say to a group of stakeholders who may not utilise the network (in the case of Access Seekers) and or who are essentially holding Access Rights on behalf of Customers (in the case of Railway Operators). Railway Operators, Access Seekers and Customers of Access Seekers would however receive the benefit of information from their ability to participate in Rail Industry Group meetings.</p> <p>The drafting we are proposing in this regard would amend clause 7A.11.2(b) as follows:</p> <p>(b) TheRail Industry Group <u>membership will be comprised of as many open to all End Users, Access Seekers and Railway Operators as is reasonably possible with and:</u></p> <p style="padding-left: 40px;">(i) membership of the Rail Industry Group being open to any and all End Users, <u>Access Seekers and Railway Operators that hold contractual rights to provide Train Services will be invited to attend and participate in meetings of the Rail Industry Group; and</u></p> <p style="padding-left: 40px;">(ii) <u>End Users will be entitled to vote on matters to be determined by End Users in accordance with this Undertaking at meetings of the Rail Industry Group.</u></p> <p>Importantly, membership of the Rail Industry Group is not limited to parties whose Train Services carry (or are intended to carry) coal. Any party who meets the relevant criteria for Rail Industry Group membership will be a member of the Rail Industry Group, irrespective of what is carried (or intended to be carried) in their Train Services. It should also be noted that the membership of the Rail Industry Group would reflect Access Holders and Access Seekers at the relevant time. For example, new Access Holders would automatically become members of the Rail Industry Group.</p> <p>A separate paper on the Rail Industry Group is attached.</p> |
| <p>(22) Under cl. 7A.3.4, the costs of engaging the independent expert under Part 7A will be borne by the QCA and recoverable under the QCA Levy.</p> <p>(a) Does the 'costs of engaging the independent expert' mean only the initial costs of actually engaging the independent expert? Or is it meant to extent to all costs charged by the independent expert on an ongoing basis and, if so, does that only relate to functions under Part 7A or is it meant to capture all of its functions under the undertaking (such as capacity assessments under Part 8)?</p> <p>(b) Please confirm the proposal for the costs to be recovered under the QCA Levy is consistent with the definition of the 'QCA Levy', noting the current definition is "to cover the fees imposed by the QCA on beneficiaries of its regulatory services".</p> | <p>The 'costs of engaging the independent expert' means all of the costs charged by the Independent Expert in performing all of its functions under the Undertaking (and not just the initial costs). This would include capacity assessments, reporting and assessment of rebates.</p> <p>The definition of 'QCA Levy' in the Undertaking is broad enough to include recovery of the costs of the Independent Expert. Clause 7A.3.4 of the proposed DAAU clarifies that the QCA may recover the costs of the Independent Expert through the QCA Levy. The breadth of the definition of QCA Levy and clause 7A.3.4 makes it clear that the QCA has the power to recover the Independent Expert's costs through the QCA Levy.</p> <p>Non-coal Access Holders are not required to contribute to the QCA Levy, therefore they will not be required to contribute to the costs of the Independent Expert. However, non-coal Access Holders will still get the benefit of the Independent Expert's role and are therefore better off as a result of the DAAU.</p> |
| <p>(23) In regards to cl. 7A.4.1(b)(ii) (and cl. 7A.4.2(b)(ii)(C)):</p> <p>(a) Please provide further information on the rationale for this clause and how it is intended to be applied in practice. In particular: (i) how is it envisaged the system operating parameters could cause Aurizon Network to be in breach of its obligations under the undertaking or an access agreement?; and (ii) please explain the meaning of "assuming that any access</p> | <p>With respect to question 23(a), the System Operating Parameters developed by the Independent Expert as part of the Initial Capacity Assessment may, for example, prescribe a System Operating Parameter (such as Sectional Running Times) that may be inconsistent with the Sectional Running Times that are in an Access Agreement. The System Operating Parameter in this example would be within Aurizon Network's control.</p> <p>Clause 7A.4.1(b) seeks to ensure that, in setting the new System Operating Parameters, the Independent Expert does not set a parameter which would have the effect of placing Aurizon Network in breach of any Access Agreement. The clause</p> |

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| <p>agreement could be amended to reflect the system operating parameters in accordance with cl. 7A.12" in the context of this clause.</p> <p>(b) Does the standard access agreement to be approved as part of the DAAU accommodate the standard operating parameters set by the independent expert over time without causing a breach of the access agreement?</p> | <p>recognises that the Access Holder and Aurizon Network may agree to change the Access Agreement to reflect the new System Operating Parameter. The Access Holder is also given protection by clause 7A.12 by giving the Access Holder the right to require a change to the Access Agreement to reflect the new System Operating Parameter.</p> <p>With respect to question 23(b), the Standard Access Agreement, when entered into, will reflect the then current System Operating Parameters as determined by the Independent Expert. Any subsequent changes to the System Operating Parameters could be reflected in the Access Agreement (after the Access Agreement has been entered into) if the Access Holder requires the change through the clause 7A.12 process.</p> |
| <p>(24) In regards to system capacity assessments under cl. 7A.4.3:</p> <p>(a) please provide further information explaining the purpose of the system capacity assessment and how it differs from the annual capacity assessment process.</p> <p>(b) please provide reasons for why the annual capacity assessment is not provided to the QCA or made publicly available.</p> | <p>The purpose of the system capacity assessment is to provide Aurizon Network, Access Holders and Customers with an assessment of a Coal System's capacity for information purposes. It enables all stakeholders to gain a better understanding of how the Coal System as a whole is working. The system capacity assessment differs from the annual capacity assessment in two significant respects. The first respect is that the system capacity assessment is provided for information purposes only and it does not affect contracting for below rail capacity or any other matter. The second respect is that the system capacity assessment also considers the capacity and operations of each element of the Supply Chain (including loading facilities, load out facilities and coal export terminal facilities) and interfaces between the different Coal Systems (clause 7A.2(b)(ii)).</p> <p>Aurizon Network provides a copy of the initial and annual network capacity assessments to the QCA. Those assessments are also to be made public on a redacted basis. It was Aurizon Network's intention to provide the initial and annual system capacity assessment to the QCA on an unredacted basis and also for those assessments to be made public on a redacted basis.</p> <p>The system capacity assessment can be provided to the QCA on an unredacted basis, on the Aurizon website in a redacted form and for both to be provided for information purposes only.</p> |
| <p>(25) Cl. 7A.4.4(d) requires Aurizon Network to only have regard to the most recent capacity assessment undertaken by the independent expert, other than in the case of the IE initial capacity assessment. Please provide information on why this is the case; is it because of Aurizon Network's obligations arising from the IE initial capacity assessment in respect of existing capacity deficits?</p> | <p>Until the Independent Expert delivers the Initial Capacity Assessment Report, Aurizon Network continues to have responsibility for undertaking assessments of Capacity. For example, under clause 8.9.2, if the Initial Capacity Assessment Report has not yet been published, Aurizon Network must undertake an assessment of the Capacity Change that has arisen from the relevant Expansion being undertaken.</p> <p>Clause 7A.4.4(d) seeks to clarify that at all times after the Initial Capacity Assessment Report has been published, Aurizon Network no longer undertakes the assessments in relation to Capacity – instead, in carrying out its obligations with respect to Capacity, Aurizon Network must only have regard to the Independent Expert's most recent Capacity Assessment.</p> |
| <p>(26) In respect of Aurizon Network's report under cl. 7A.5(a)(iii):</p> <p>(a) Cl. 7A.5(a)(iii)(B)(3) provides that Aurizon Network can propose changes to operation and maintenance practices in respect of load-out facilities, provided they are consistent with the system operating parameters included in the IE initial capacity assessment "(and would not require an access holder to revert to the requirements in an access agreement where that access agreement has not been modified to make it consistent with the new system operating parameters)." Please provide further information explaining the meaning of this provision, particularly the quoted part above.</p> <p>(b) How is it envisaged these transitional arrangements, particularly changes to operational practices, will be proposed and implemented? Will they be system-wide changes or will they be changes for particular access holders/operators?</p> | <p>During the development of the DAAU industry requested that Aurizon Network agree that it could not suggest changes to the operations of the Rollingstock by Railway Operators (i.e. clause 7A.5(a)(iii)(B)(2)) if that change would require an Access Holder to revert to requirements in an Access Agreement where that relevant Access Holder had not agreed to change the Access Agreement to reflect updated System Operating Parameters. The particular example given by industry was where an Access Agreement specified a particular Reference Train Service but both Aurizon Network and the relevant Access Holder have been operating on the knowledge that the trains that the Access Holder operates do not meet the requirements of the Reference Train Service. In these circumstances, Aurizon Network agreed that it would not recommend that an Existing Capacity Deficit be rectified by the Access Holder changing its trains to meet the requirements of the Reference Train Service, unless that Access Holder agrees to change the Access Agreement to reflect the updated System Operating Parameters.</p> |

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| | <p>To clarify that the proviso attaches to each of clauses 7A.5(a)(iii)(B)(1), (2) and (3), the formatting of words commencing “including in relation to interfaces” could be modified so as not to be indented but rather returned to the margin to align with the commencing words of (B).</p> <p>In response to question 26(b), the Transitional Arrangement could affect one or more Access Holders.</p> |
| <p>(27) In respect of the independent expert’s recommendation (under cl. 7A.5(d)), and the QCA’s determination (under cl. 7A.5(e)):</p> <p>(a) If the independent expert and the QCA are to determine transitional arrangements, is it intended they will determine these arrangements on a system wide basis or for each individual end user?</p> <p>(b) for the independent expert’s recommendation under cl. 7A.5(d), is it expected the independent expert will consult with, or seek further information from, affected parties before making the recommendation or will it instead rely solely on the material contained in Aurizon Network’s report?</p> <p>(c) for the QCA’s determination under cl. 7A.5(e), noting the 15 day timeframe for the determination, is it intended the QCA will not consult or obtain further information from affected parties prior to making the determination? Does that also include where the QCA is considering whether implementing an operational change that is not consistent with the system operating parameters is deemed prudent? Is it expected the independent expert’s recommendation will cover all matters the QCA is to consider under cl. 7A.5(e)?</p> <p>(d) is it intended the QCA’s determination will only determine transitional arrangements to be implemented by Aurizon Network or will it also determine transitional arrangements to be implemented by an end user? If it is not to determine those implemented by end users, if an end user does not agree to implement transitional arrangements, how would the existing capacity deficit be treated going forward?</p> | <p>In relation to question 27(a), the transitional arrangements which are to be addressed under clause 7A.5(e) may be developed on a system wide basis (e.g. Expansions) or on an Access Holder basis (e.g. relinquishments).</p> <p>In relation to question 27(b), it is intended that the Independent Expert consider all matters that the Independent Expert regards as relevant when making a recommendation under clause 7A.5(d). The Independent Expert’s consideration is not confined to Aurizon Network’s report.</p> <p>In relation to question 27(c), it is intended that the Independent Expert’s report would be comprehensive and that in most circumstances the Independent Expert’s report would be sufficient for the QCA to make a decision. If the QCA wishes to consult, it is entitled to do so.</p> <p>In relation to question 27(d), clause 7A.5(e) provides that the QCA will determine the Transitional Arrangement (being either a relinquishment, change in operating and maintenance practices or an Expansion) which will most efficiently and effectively resolve the Existing Capacity Deficit. Clause 7A.5(f) obliges Aurizon Network to implement the QCA’s determination to the extent it is within Aurizon Network’s control to do so.</p> |
| <p>(28) Cl. 7A.5(h) provides for Aurizon Network to be entitled to recover costs in certain circumstances, provided those costs are reasonable and pre-approved by the QCA. Can you please provide any further information on the proposed process for that pre-approval? Would it be under an existing process (e.g. in Schedule F) or would it be done on an ad-hoc basis?</p> | <p>Any pre-approval of such costs would not take place under Schedule F. The pre-approval of these costs is a once-off process which applies only if a Transitional Arrangement involves Aurizon Network implementing operational changes. We anticipate that the QCA would publish Aurizon Network’s request and publish its decision. If the QCA pre-approval is required, Aurizon Network as part of the process under clause 7A.5(a)(iii)(B) will provide the QCA with a reasonable estimate of the cost of the operational change. Aurizon Network anticipates that the QCA would provide its pre-approval as part of that process.</p> |
| <p>(29) Please provide further information explaining the effect of cl 7A.5(k). Does it operate to preserve any rights an access holder may have for not being able to use their contracted access rights (due to the existing capacity deficit) under their access agreement</p> | <p>The QCA’s question provides one example of the type of rights that would be preserved by operation of clause 7A.5(k). This clause also, for example, preserves the rights of other parties under other agreements, such as Train Operations Deeds and Access Interface Deeds. It also, for example, preserves rights that a party may have for claims in respect of delays to train movements which have been caused or contributed to by an Existing Capacity Deficit.</p> |
| <p>(30) In regards to expansions arising under cl 7A.5 more generally:</p> <p>(a) Please confirm that, if the \$300m is expended and there are further expansions under cl 7A.5, will those expansions be able to be funded through other means under cl. 8.7 or</p> | <p>In respect of question 30(a), if there was one or more Expansions required to address an Existing Capacity Deficit at an aggregate cost of more than \$300 million, the additional cost would need to be funded by applying the options under the usual Expansion process as contemplated by clause 8.8. Clause 8.8 could be clarified to recognise that Access Holders (not just Access Seekers) may seek to rectify Existing Capacity Deficits under the clause 8.8 process.</p> |

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| <p>would those expansions have to commence afresh under Part 8 (and go through the various feasibility study stages etc), noting cl. 8.7.1A?</p> <p>(b) Please confirm that cl. 7A.5(i) operates in conjunction with cl. 7A.5(e), such that the independent expert be able to recommend, and the QCA determine, that an expansion should be undertaken and funded under clause (cl. 7A.5(i)(iv)), even if Aurizon Network or an affected end user does not agree to the expansion?</p> <p>(c) Cl. 8.2.1(c) provides that “notwithstanding any other provision of Part 7A or this Part 8, Aurizon Network is obliged to construct or permit an expansion only to the extent that” requirements outlined in (i) to (iv) are satisfied. Is the intention that these requirements will still need to be satisfied before an expansion provided for under cl 7A.5 can proceed?</p> | <p>In respect of question 30(b), Aurizon Network confirms that the QCA’s interpretation of clause 7A.5(i) is correct. The reference in clause 7A.5(i) to the “QCA otherwise determines that an Expansion is the most effective and efficient option” is effectively referring to the QCA’s determination under clause 7A.5(e).</p> <p>In respect of question 30(c), the QCA’s interpretation of clause 8.2.1(c) is correct.</p> |
| <p>(31) In cl. 7A.5(f), there is a reference to the QCA’s determination being made under cl 7A.5(d). Should that reference be to cl. 7A.5(e)?</p> | <p>We confirm that the correct cross reference should be to clause 7A.5(e).</p> |
| <p>(32) In regards to the rebate under cl. 7A.6, AN Performance Breach applies if, among other things, Aurizon Network has breached the terms of any access agreement. Would the 5% threshold of cancelled train services under the standard access agreement (e.g. cl 25.4(b)(v) of the Standard Access Agreement) have to be exceeded before Aurizon Network is held to be in breach of the access agreement for the purposes of the rebate? Or does cl. 5.4 of the DAAU mean that 5% threshold will not apply for the purposes of the rebate?</p> | <p>The 5% threshold of cancelled train services does not have to be exceeded for the Rebate to apply – see clause 5.4(b).</p> |
| <p>(33) How will cl. 7A.6 apply to access agreements, both existing and prospective? In particular: (a) will it apply to all access agreements automatically or will parties have to negotiate its inclusion into access agreements?; and (b) does the standard access agreement include the rebate provisions or will it be treated the same as access agreements under (a)?</p> | <p>Application of the Rebate does not require any amendment to Access Agreement – it is an entitlement under and in accordance with the Undertaking. Similarly, the Standard Access Agreement will not need to be amended as the Rebate will apply in accordance with the Undertaking.</p> |
| <p>(34) In regards to cl. 7A.6(b):</p> <p>(a) will Aurizon Network and/or an end user be given information about the independent expert’s assessment about whether a rebate is payable? For example, information about any AN performance shortfall, and the independent expert’s decisions about whether particular train services were determined to be an AN performance breach or not?</p> <p>(b) will Aurizon Network and/or an end user have the ability to dispute the independent expert’s assessments in relation to the rebate, including an assessment that no rebate is payable? If so, would this be a dispute under Part 11 of the undertaking?</p> | <p>Aurizon Network and the relevant End User will know the amount of the Rebate as Aurizon Network is obliged to issue a recipient created tax invoice and pay the affected End User the Rebate within a specified timeframe following the Independent Expert’s determination. It is expected that the Independent Expert will be required to provide reasons to the relevant End User for its determination as to whether and the extent to which a Rebate is payable.</p> <p>To the extent that the Independent Expert determines that:</p> <ul style="list-style-type: none"> • Aurizon Network is liable to pay a Rebate and Aurizon Network does not dispute that determination, but fails to pay the Rebate within the requisite timeframe; or • Aurizon Network failed to provide the information required for the Independent Expert to make a decision as to whether a Rebate is payable or determine the Performance Rebate Amount, <p>the affected End User may raise a dispute under Part 11.</p> |
| <p>(35) Staff are seeking clarification on the sequencing in regard to the written undertaking provided for under cl. 7A.6(c). Will an end user be able to enter into an undertaking on a case-by-case basis after it is first established a rebate is payable by the independent expert?</p> | <p>Clause 7A.6 expressly contemplates that the undertaking would be given on a case-by-case basis after it is first established that the Rebate is payable. The reference to ‘first undertaking’ in clause 7A.6(c)(ii), is a reference to the undertaking being required prior to Aurizon Network being required to pay the Rebate.</p> |
| <p>(36) In cl. 7A.6(c)(ii)(D), there is a reference to ‘wilful breach’ by Aurizon Network of any access agreement or the undertaking. Please provide further information explaining the usage of this</p> | <p>Clause 7A.6(c)(ii)(D) refers to a ‘wilful breach’ as more generally understood at common law.</p> |

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| <p>term and what breaches it is intended to capture. In particular, whether it is referring to the 'wilful breach' provisions included in the 2017 Undertaking (and the accompanying standard access agreement and train operations deed) (e.g. cl. 25.4(b) of the 2017 Undertaking Standard Access Agreement) or is the reference meant to capture wilful breaches more generally?</p> | <p>As the law currently stands the use of the term most likely refers to conduct by a person who knows that they are committing, and intending to commit a breach, or circumstances in which the person is acting recklessly in the sense of not caring whether or not they commit a breach.</p> |
| <p>(37) Will the rebate mechanism apply to non-coal access holders? If so, how will the rebate amount be determined in the DAAU?</p> | <p>The Rebate mechanism was not intended to, and does not apply to, non-coal Access Holders. The Performance Rebate Amount is linked to reference tariffs which are not relevant to non-coal Access Holders and consequently the Rebate mechanism does not apply on that basis.</p> <p>A Rebate was never applicable to any access holders prior to the proposed DAAU and consequently, non-coal Access Holders are not worse off (as compared to their current contractual entitlements) by the reason of the Rebate mechanism not applying to them.</p> <p>A coal Customer qualifies for a Rebate if:</p> <ol style="list-style-type: none"> 1) it fails to receive its contracted Train Service Entitlements; 2) the Independent Expert establishes that this failure resulted from an 'AN Performance Breach'; and 3) the coal Customer undertakes to release Aurizon Network from any liability arising whether under contract or tort or common law or in equity or under statute from that failure to receive the relevant Train Service Entitlements (other than for the stated exceptions). <p>While non-coal Access Holders cannot receive a Rebate, they have a right to pursue Aurizon Network for any failure to receive their Train Service Entitlements however that rights arises (ie whether under contract or tort or common law or in equity or under statute) without being limited to establishing an 'AN Performance Breach' and without having to give up any rights to make a claim against Aurizon Network in respect of the failure to provide the Train Service Entitlements.</p> <p>Clause 7A.1.2 of UT5 has been deleted in the DAAU. That clause of UT5 imposed a reasonable endeavours obligation on Aurizon Network to plan and implement Operational Constraints (including in relation to Maintenance Works) so as to minimise disruption to the operation of Train Services. While the 'reasonable endeavours' obligation in clause 7A.1.2 has been deleted, an expanded obligation has been included in clause 7A.8.3 by which Aurizon Network undertakes to use reasonable endeavours to cooperate and coordinate with all elements of the Supply Chain with a view to:</p> <ul style="list-style-type: none"> • maximising the efficiency and performance of the relevant Supply Chain; and • in planning and implementing Operational Constraints, to the extent practicable, minimising disruptions to the operation of the Train Services, including minimising disruption to Train Service Entitlements and Nominated Monthly Operational Rights. <p>The obligation in the new clause 7A.8.3 of the DAAU operates for the benefit of the non-coal and coal Customers who use the Rail Infrastructure. To further secure the protections for the benefit of non-coal users, we are proposing that clause 7A.8.3(a) will be amended as follows:</p> <ol style="list-style-type: none"> (a) Aurizon Network must, in respect of each Supply Chain use reasonable endeavours to cooperate and coordinate with all elements of a Supply Chain (<u>including non-coal users</u>), with a view to: <ol style="list-style-type: none"> (i) maximising efficiency (ii) in planning and implementing |

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| | <p>In addition, the DAAU operates to protect non-coal and coal traffic users of the Rail Infrastructure in numerous, more tangible ways, including:</p> <ul style="list-style-type: none"> • by providing for an independent and realistic expert assessment of Deliverable Network Capacity (being an assessment of the Train Paths that can be used in each Coal System by all users – coal and non-coal) – and which expressly require the Independent Expert to have regard to the extent of non-coal traffic on the Rail Infrastructure and the extent to which non-coal traffic takes priority over coal traffic, including by reason of Aurizon Network’s obligations to comply with Passenger Priority Obligations and Preserved Train Path Obligations – see clause 7A.2(a)(vi); • by requiring an IE Initial Capacity Assessment which will be carried out by an independent expert to identify any Existing Capacity Deficit (i.e. where the number of Train Paths is less than the number required to meet Train Service Entitlements without regard to exclusions in Access Agreements for the non-provision of Train Service Entitlements) and which may ultimately result in Transitional Arrangements (including potentially Expansions) for the benefit of non-coal and coal traffic users of the Rail Infrastructure; • by imposing direct obligations on Aurizon Network to carry out Maintenance Work (that will benefit both non-coal and coal traffic users of the Rail Infrastructure) in accordance with Approved Maintenance Strategies and Budgets that have been developed with input from non-coal and coal members of the Rail Industry Group; and • by preserving contractual rights under the terms of the Standard Access Agreement which operate to allow (both non-coal and coal parties) to pursue claims against Aurizon Network for the non-provision of Train Services at the Scheduled Time and by allowing (both non-coal and coal Access Holders and End Users) to require the protections of updated System Operating Parameters developed by the Independent Expert, and relevant provisions of the DAAU, to be reflected in an Access Agreement in specified circumstances. |
| <p>(38) In regards to the rebate review process (cl. 7A.6(f)-(n)):</p> <p>(a) please provide further information on the intended scope of that review, including the types of potential changes it is envisaged the QCA could make? For example, is it intended for the QCA to consider amendments to the circumstances in which the rebate could be payable (i.e. changes to the definition of AN Performance Breach)?</p> <p>(b) please explain what would happen if the QCA does not make a final decision prior to the reset date (1 July 2023) or if it does but the 90 day window for Aurizon Network to submit a DAAU does not end until after the reset date?</p> <p>(c) Please confirm the drafting of "so that the definition of 'Reset WACC' will effective from the Reset Date, be amended" is intended to operate as a backdating mechanism in the event a Reset WACC Reduction Event arises after the Reset Date passes.</p> | <p>The QCA can make recommendations in relation to the matters captured by the definition of “Rebate Objectives” in clause 7A.6(g) – for example, changes that would give greater transparency of information given to the Independent Expert to determine the Rebate. The QCA cannot make changes to the circumstances in which the Rebate would be payable (including the definition of AN Performance Breach) and cannot make changes to the calculation of the Rebate (including the definition of Performance Rebate Amount). However if the QCA identified a drafting error that enabled Aurizon Network to avoid the timely and effective provision on the Rebate to End Users then it is expected that the correction of the drafting error would be included in the recommended amendments.</p> <p>The drafting provides QCA a window from 13 January 2023 to 1 July 2023 to make the determination and recognises (in clause 7A.6(m)) that the Undertaking cannot oblige the QCA to make the decision within that timeframe – it is therefore effectively a target date. If the QCA does not meet the target date, the consequential actions to be taken under paragraph (k) and (n) will continue to apply and be deemed to have effect from the Reset Date.</p> <p>We confirm that the drafting referred to in paragraph (c) of the QCA’s question is intended to be a back-dating mechanism.</p> |
| <p>(39) In cl. 7A.6(e), reference is made to a ‘standard operating parameter’. Should that be a reference to ‘system operating parameter’?</p> | <p>We confirm that the reference should be to "System Operating Parameter".</p> |
| <p>(40) In cl. 7A.8.2(b)(i), there is a reference to cl. 6A.1.1(a)(i) and (v), which does not exist. Please confirm the correct cross-reference – is it meant to be cl. 7A.8.2(a)(i) and (v)?</p> | <p>We confirm that the correct cross references are clause 7A.8.2(a)(iv) and clause 7A.8.2(a)(v).</p> |

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| <p>(41) Cl. 7A.11.2(d) outlines how the Chair of the Rail Industry Group will be nominated and may be removed. Please provide detail on what constitutes a special majority of members of the Rail Industry Group and a simple majority of members of the Rail Industry Group?</p> | <p>A special majority of members of the Rail Industry Group (RIG) will be achieved by RIG members together holding voting rights in respect of more than [75%] of the total number of RIG members entitled to vote on the relevant matter in accordance with the charter of the Rail Industry Group (RIG Charter). The relevant percentage threshold for a special majority of members of the RIG is subject to confirmation in the final RIG Charter.</p> <p>A simple majority of members of the RIG will be achieved by RIG members together holding voting rights in respect of more than 50% of the total number of RIG members entitled to vote on the relevant matter in accordance with the RIG Charter.</p> <p>These voting thresholds will be specified in the RIG Charter. The RIG Charter will not form part of the Undertaking but will be available to all members of the RIG. The RIG Charter is intended to be a living document updated from time to time by the body of RIG members.</p> |
| <p>(42) Please explain whether the Maintenance Work provisions under cl. 7A.11 capture direct maintenance costs only or include indirect maintenance costs?</p> <p>Given depreciation costs were embedded in direct maintenance costs throughout the 2017 DAU process, please clarify how depreciation costs will be treated in the UT5 DAAU (i.e. is it intended that depreciation will continue to be embedded in direct maintenance costs and will these costs be captured under the cl. 7A.11 provisions?)?</p> | <p>The provisions under cl. 7A.11 will capture Direct Maintenance Costs only. This is appropriate because clause 7A.11 seeks to track and report Aurizon Network's actual maintenance costs against the direct costs referred to in the Approved Maintenance Strategy and Budget. This approach of reporting only direct maintenance costs is consistent with current practice.</p> <p>The Indirect Maintenance Cost Allowance is essentially fixed for the term as a return on the value of specified plant and inventory holdings. See 'Indirect Maintenance Cost Allowance' for FY18 to FY23 in Schedule K.</p> <p>Depreciation costs will continue to be embedded in direct maintenance costs and recovered through the Direct Maintenance Cost Allowance, as depreciation costs form part of the Plant Rates charged to each job that is executed. It is intended that these costs will be captured under the clause 7A.11 provisions.</p> <p>If the QCA agrees to the proposed approach to the recovery of the depreciation costs, paragraph (i) should be deleted from the definition of "Maintenance Strategy and Budget" (with the effect that the ballast undercutting depreciation costs are included in the "Maintenance Strategy and Budget").</p> |
| <p>(43) The QCA notes Aurizon Network has proposed ballast undercutting 'return of capital' (depreciation) and 'return on capital' costs are recovered annually through the Maintenance Allowance, while the operating costs are capitalised.</p> <p>Please step through any assessment/approval processes ballast-undercutting costs are required to go through in the UT5 DAAU proposal? In doing so, please make clear where (if any) depreciation and 'return on capital' costs are required to undergo different assessment/approval processes to the operating costs.</p> | <p>Return on and return of ballast undercutting costs for the financial years up to and including FY2021 have already been assessed and approved by the QCA in its 2018 Final Decision.</p> <p>The Direct Maintenance Costs and Indirect Maintenance Cost Allowance for FY2022 and FY2023 (as outlined in Schedule K) are derived from the QCA-approved amounts for FY2021 and therefore do not require a separate approval process. From FY2021, the actual direct costs incurred will be subject to an approval process as discussed below.</p> <p>Aurizon Network has used the QCA-approved maintenance cost model, to determine the split of ballast undercutting costs, which include:</p> <ul style="list-style-type: none"> - ballast undercutting operational costs: recoverable through the Capital Indicator with the actual costs assessed by the QCA through clause 7A.11.6; and - ballast undercutting non-operational costs: recoverable through the annual maintenance allowance as follows: <ul style="list-style-type: none"> (a) for depreciation (Direct Maintenance Cost), the actual costs as assessed by the QCA through clause 7A.11.5; (b) for return on plant and inventory (Indirect Maintenance Cost), those indirect costs assessed by the QCA under clause 4 of Schedule F. |

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| <p>(44) Cl. 7A.11.1 (a)(iii) sets out Maintenance Objectives. The definition for 'Maintenance Strategy and Budget', requires that the Maintenance Strategy and Budget be consistent with Aurizon Network's obligations under cls. 7A.11.1 (a)(iii)(A) and 7A.11.1 (a)(iii)(C).</p> <p>Please confirm the 'Maintenance Strategy and Budget' is required to outline how Committed Capacity will be delivered and is not subject to any other clause (for example, is not subject to being "viewed holistically and subject the Approved Maintenance Strategy and Budget applicable at that time", see cl. 7A.11.1 (a)(iii)).</p> | <p>The purpose of the Maintenance Strategy and Budget is, in broad terms, to document the scope of maintenance work and the budget for carrying that work. The Maintenance Strategy and Budget does not expressly outline how the Committed Capacity is to be delivered. However, in determining what the scope of maintenance work should be for the relevant Year, and in carrying out that work, Aurizon Network must seek to ensure that the Committed Capacity is delivered – see for, example, clause 7A.11.1(a)(iii)(A).</p> <p>Aurizon Network's obligation to seek to ensure that the Committed Capacity is delivered is also addressed in various other provisions of the Undertaking – for example, with respect to its obligations to fund Asset Replacement and Renewal Expenditure (see clause 7A.11.7(a)) and to fund Expansions where there is a Deliverable Network Capacity Shortfall (see clause 7A.5). In assessing those obligations there is no requirement to view obligations on a “holistic basis”.</p> <p>The process for approval of a Maintenance Strategy and Budget involves a review process by the Rail Industry Group, which can seek amendments to a draft Maintenance Strategy and Budget. This process gives the Rail Industry Group an opportunity to ensure that the Maintenance Strategy and Budget will not diminish Aurizon Network's obligation to seek to ensure that the Committed Capacity is delivered. Non-coal Access Holders (or Customers) can choose to participate as members of the RIG in considering and seeking to influence the contents and scope of the Maintenance Strategy and Budget.</p> <p>To ensure that Aurizon Network takes into account the interests of non-coal Access Holders (or Customers) in developing the Maintenance Strategy and Budget and the Renewals Strategy and Budget, Aurizon Network proposes the following amendments to the DAAU:</p> <ol style="list-style-type: none"> 1) Amend clause 7A.11.3(b) by including the words “and non-coal Access Holders and Customers” after the words “members of the Rail Industry Group” as they appear in line 3; and 2) Amend clause 7A.11.3(c) by including the words “and non-coal Access Holders and Customers” after the words “members of the Rail Industry Group” as those words appear in paragraphs 7A.11(3)(c)(ii), (iii) and (iv). <p>Further, if Aurizon Network fails to deliver the Committed Capacity:</p> <ul style="list-style-type: none"> • the DAAU now provides specific remedies – for example, the Rebate mechanism where Train Service Entitlements are not delivered in specified circumstances; and • non-coal Access Holders and Train Operators, and subject to the Rebate provisions, coal Access Holders, will continue to have a right of claim against Aurizon Network for a failure to deliver Access Rights and Operational Rights under their respective Access Agreements and Train Operation Deeds. <p>Clause 7A.11.1 does not require that the Maintenance Strategy and Budget to be “viewed holistically” to seek to ensure that the Committed Capacity is delivered; that requirement applies to the way in which the Maintenance Work is undertaken – see the opening words of clause 7A.11.1(a). That is appropriate because in carrying out the maintenance work it is in the interests of both Access Holders and Aurizon Network to ensure an appropriate balance is struck between cost, reliability and performance of the Rail Infrastructure.</p> |
| <p>(45) Cl. 7A.11.5(a) states that there will be no Maintenance Costs Claim for the Year ending 30 June 2018 (FY2018). Cl. 7A.11.5(b) requires the QCA to approve the lower of actual Direct Maintenance Costs incurred by Aurizon Network and the Direct Maintenance Cost allowance in the QCA's 2018 Decision for the Years ending 30 June 2019 (FY2019) and 30 June 2020 (FY2020).</p> <p>On the other hand, cl. 4.3 (c) of Schedule F, outlines the calculation of adjusted allowable revenue which includes the component relating to the recovery of Aurizon Network's maintenance costs,</p> | <p>Under clause 7A.11.5(a), Aurizon Network is not required to submit actual maintenance costs incurred during FY2018 to the QCA for approval. Accordingly, no ex-post approval process (such as that contemplated by 7A.11.5) will be necessary for FY2018 maintenance costs.</p> <p>For FY2018, the maintenance allowance provided in the QCA's 2018 Decision was lower than actual costs incurred. Furthermore, the detailed financial models provided in support of the UT5 DAAU retained the FY2018 maintenance</p> |

| Question | Answer |
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| <p>adjusted to reflect where actual maintenance costs are lower than the Maintenance Indicator for the Years commencing 1 July 2017 (FY2018), 1 July 2018 (FY2019) and 1 July 2019 (FY2020).</p> <p>Please clarify the intended approval process for maintenance costs in FY2018. Please confirm whether cl. 4.3(c)(ii) of Schedule F applies to direct maintenance costs only.</p> | <p>allowance as per the QCA's 2018 Decision. No adjustment will be required for this year under cl. 4.3(c)(ii) of Schedule F upon approval of the UT5 DAAU.</p> <p>Aurizon Network confirms that cl. 4.3(c)(ii) of Schedule F applies to direct maintenance costs only.</p> |
| <p>(46) The proposed UT5 DAAU removes public reporting requirements from Part 10 in relation to the maintenance matters.</p> <p>Is there any mechanism within cl. 7A.11 provisions or elsewhere in the Undertaking that provides transparency in relation to Aurizon Network's Maintenance Strategy and Budget and Maintenance Cost Claim for interested parties who are not part of the Rail Industry Group (for example, Train Operators)? Is there an expectation that the QCA will publish these?</p> | <p>Subject to compliance with confidentiality obligations, Aurizon Network is comfortable with the QCA publishing both the Approved Maintenance Strategy and Budget and the Maintenance Costs Claim on its website.</p> <p>Transparency to End Users is also provided through:</p> <ul style="list-style-type: none"> - clause 7A.11.5 (g), which provides that End Users may make submissions to the QCA in relation to material differences in actual maintenance costs incurred for a Year, relative to the Approved Maintenance Strategy and Budget; and - Annual review of Reference Tariffs (Schedule F, clause 4.1) which requires Aurizon Network submit the Approved Maintenance Strategy and Budget or the proposed final Maintenance Strategy and Budget to the QCA under clause 4.1(b)(iii) of Schedule F and the Approved Renewals Strategy and Budget and proposed final Renewals Strategy and Budget under clause 4.1(b)(iv) of Schedule F. |
| <p>(47) Cl. 7A.11.5 allows for submissions through cls. 7A.11.5(e) and (g).</p> <p>Please confirm that only End Users that are in the Rail Industry Group can make submissions through this process.</p> | <p>Aurizon Network confirms that clause 7A.11.5(e) requires the QCA to at least give End Users who are members of the Rail Industry Group a right to make submissions to the QCA in relation to the matters referred to in clauses 7A.11.5(e). The QCA may seek submissions from a broader group if it wishes to do so.</p> <p>The drafting we are proposing in this regard would amend clause 7A.11.5(e) by inserting the words "and other stakeholders" after the words "Rail Industry Group".</p> |
| <p>(48) Cl. 7A.11.6 allows for submissions under 7A.11.6(b)(ii). This clause specifically requires the QCA to allow reasonable opportunity for members of the Rail Industry Group to make submissions.</p> <p>Please confirm that only End Users that are in the Rail Industry Group can make submissions through this process.</p> | <p>Aurizon Network confirms that clause 7A.11.6(b)(ii) requires the QCA to at least give End Users who are members of the Rail Industry Group a right to make submissions to the QCA in relation to the matters referred to in clauses 7A.11.6(b)(ii). The QCA may seek submissions as part of its broader consultation process.</p> <p>The drafting we are proposing in this regard would amend clause 7A.11.6(b)(ii) by inserting the words "and other stakeholders" after the words "Rail Industry Group".</p> |
| <p>(49) Cl. 7A.11.6 (b)(iv) and (c) provide processes for the QCA to approve the renewals capex claim, where the claim is either different from the Approved Renewals Strategy and Budget or there is no Approved Renewals Strategy and Budget.</p> <p>Please confirm submissions are not required in this process.</p> | <p>The DAAU contemplates that the QCA must give the members of the Rail Industry Group a reasonable opportunity to make submissions to the QCA on the extent to which Renewals Capex Claim is inconsistent with the relevant Approved Renewals Strategy and Budget (see clause 7A.11.6(b)(ii)).</p> <p>However, where the Renewals Capex Claim is inconsistent with the relevant Approved Renewals Strategy and Budget, the QCA would also seek submissions from End Users in accordance with the process set out in clause 2.3(a)(i) of Schedule E.</p> <p>In circumstances where there is no Approved Renewals Strategy and Budget, clause 7A.11.6(c) provides that the QCA must assess for prudence and efficiency which would the QCA would do by applying the process in Schedule E.</p> |
| <p>(50) Cl. 7A.11.6 (a) requires Aurizon Network to submit a Renewals Capex Claim for the Year FY2020 onwards.</p> | <p>Yes.</p> <p>FY2018 is Capital Claim is currently with the QCA for approval</p> <p>FY2019 will be submitted by Aurizon Network for assessment under Schedule E by 31 October 2019</p> |

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| <p>For clarification, is it intended that any asset replacement and renewals expenditure that occurs in FY2018 and FY2019 will be assessed through the Capital Expenditure Approval provisions in Schedule E?</p> | <p>FY2020 will be submitted by Aurizon Network for QCA assessment under Schedule E by 31 October 2020 as no Renewals Strategy and Budget for this Financial Year will have been reviewed by the RIG prior to this submission due date.</p> |
| <p>(51) Please clarify the relationship between approving the Renewals Capex Claim under cl. 7A.11.6 and the approval of Capital Expenditure in cl. 2 of Schedule E.</p> <p>Is it the intention that the QCA's approval of the Renewals Capex Claim under cl. 7A.11.6 is a separate process to the approval of Capital Expenditure under cl. 2 of Schedule E, but that the approved Renewals Capex Claim will be a component of the approved Capital Expenditure under cl. 2 of Schedule E?</p> | <p>Please refer to the answer in relation to Question 49.</p> <p>To the extent that the Renewals Capex Claim is consistent with the relevant Approved Renewals Strategy and Budget, the approval by the QCA of Capital Expenditure under clause 2 of Schedule E will not be required.</p> |
| <p>(52) In regards to the reference to 'this undertaking' in cl. 7A.12, please confirm whether this clause will only allow amendments in connection with the system operating parameters or will it allow any amendments to reflect any part of the undertaking?</p> | <p>Access Holders and End Users can require Aurizon Network to agree to amendments that reflect the Undertaking and/or the System Operating Parameters determined by the Independent Expert.</p> |
| <p>(53) In regards to cl. 8.2.1(b)(ii)(F) and (G):</p> <p>(a) Please confirm whether or not the new provisions for QCA approvals for capital expenditure on an expansion (cl. 2.3(f)–(h) of Schedule E) apply to expansions connected with expansions funded via the committed expansion funding amount. If it does not apply, please provide reasons for why the amount of the committed expansion funding amount used by Aurizon Network to fund an expansion will not require approval for inclusion in the regulatory asset base.</p> <p>(b) Please provide reasons for why the amount of the committed expansion funding amount used by Aurizon Network to fund an expansion will be subject to socialisation to apply to all expansion stakeholders.</p> | <p>(a) See the response to Question 17 above.</p> <p>(b) The annualised funding commitment relative to the size of the Regulatory Asset Base is not material and must increase the capacity of a Coal System for the benefit of more than one Access Seeker, Customer or Access Holder. As such, it is appropriate that the Committed Expansion Funding Amount is subject to socialisation.</p> |
| <p>(54) Cl. 8.2.2(a)(iii) of the 2017 Undertaking, which states that the unsuccessful negotiation of a user funding agreement can be a dispute, has been deleted in the DAAU. However, cl. 8.8.1(a)(iv) includes language which contemplates a user funding agreement can be determined through dispute resolution.</p> <p>Please clarify whether parties will be able to raise a dispute under the undertaking if the terms of a user funding agreement cannot be negotiated. If parties are unable to raise a dispute, please provide reasons for this change?</p> | <p>Clause 8.2.2(a)(iii) of the 2017 Undertaking will be reinserted so that parties will have a right to raise a dispute with the QCA under Part 11.</p> |
| <p>(55) In regards to the new cl. 8.7.1(l), please provide information on whether those terms (to ensure Aurizon Network is in no better or worse taxation or accounting position) will always be included in Aurizon Network's reference user funding agreement, or whether those would need to be developed by Aurizon Network and expansion funders in future as necessary?</p> <p>Please confirm whether or not a party will have recourse to dispute resolution if those terms cannot be successfully negotiated</p> | <p>The principle reflected in clause 8.7.1(l) will need to be the subject of specific wording in a user funding agreement because the way to give effect to that principle will vary on a case by case basis depending on the particular funding methodology applicable to the relevant funding agreement.</p> <p>With respect to dispute resolution, please see our answer to item 54.</p> |

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| <p>(56) Cl. 8.8.1(a)(iii) of the 2017 Undertaking, which provides for an entity other than an access seeker or access holder to be the preference unit holder, has been removed in the DAAU. Please provide reasons for this amendment.</p> <p>Further, please provide any information on whether this change has any implications for cl. 8.7.1(e), which contemplates an access seeker may seek to fund an expansion itself or through a third party.</p> | <p>Preference Unit Holders were a particular concept relevant to SUFA. Preference Unit Holders will not always be relevant to a user funding agreement and therefore the clause is not relevant for inclusion in the DAAU.</p> <p>The deletion of clause 8.8.1(a)(iii) which referred to Preference Unit Holders does not prevent that mechanism from being used as a method of attracting third party funding in a competitive funding process pursuant to clause 8.7.1(e).</p> |
| <p>(57) Are the independent expert's reports under Part 8 processes able to be disputed under Part 11 of the undertaking?</p> | <p>We confirm that the Independent Expert's reports under Part 8 can be disputed in accordance with Part 11.</p> |
| <p>(58) In respect of the QCA's determination under cl. 8.9.4(g):</p> <p>(a) noting the 15 day timeframe for the determination, is it intended the QCA will not consult or obtain further information from affected parties prior to making the determination?</p> <p>(b) How is the QCA to determine whether the independent expert considers Aurizon Network has complied in all material respects with its relevant obligations? Is it intended the QCA will rely on the independent expert's expansion capacity assessment, such as details of any specific cause of the deficit the expert has identified (as per cl. 8.9.4(a)(iv)), or is it envisaged the QCA will specifically consult with and obtain the opinion of the independent expert on this matter?</p> <p>(c) How is the QCA to identify the expansion that it is to consider requiring Aurizon Network to undertake? Is it intended the QCA will rely on any possible expansions identified in the 'solutions' included as part of the independent expert's expansion capacity assessment or Aurizon Network's report under cl. 8.9.4(f), or is it envisaged the QCA will consult with affected parties? The QCA notes the Aurizon Network report under the existing capacity deficit process (cl. 7A.5(a)(iii)(C)) requires Aurizon Network's report in that process to include a shortlist of potential expansions and reasonable estimates of costs. Is a different approach intended for expansion capacity deficits?</p> <p>(d) Please provide examples of when the QCA could require Aurizon Network to undertake an expansion in accordance with this process (i.e. examples of not complying in all material respects with its relevant obligations)?</p> | <p>In response to question 58(a), the QCA may seek submissions from affected parties if it wishes to do so.</p> <p>In response to question 58(b), the QCA may specifically consult with and obtain the opinion of the Independent Expert if it wishes to do so, or it may rely on the Independent Expert's Expansion Capacity Assessment. The DAAU is not intended to restrict the QCA in respect of the method by which it makes its determination.</p> <p>In relation to question 58(c), it is intended that the QCA would rely on the details of the Expansions identified in the Independent Expert's Expansion Capacity Assessment (see clause 8.9.4(a)(vi)) together with the detailed report provided to the QCA by Aurizon Network which will detail solutions and implementation plans (see clause 8.9.4(f)).</p> <p>In relation to question 58(d), the QCA could require Aurizon Network to undertake an Expansion in any case where the Independent Expert's assessment shows that there is an Expansion Capacity Deficit resulting from Aurizon Network failing to comply in all material respects to create the Expansion in the manner that was agreed or determined. For example, if the Expansion required a specific scope of the Rail Infrastructure to be created and Aurizon Network failed to deliver that scope.</p> |
| <p>(59) In respect of cl. 8.9.4(h):</p> <p>(a) What would occur if the independent expert proposes alternative options for an expansion? Would the independent expert also approve the alternative under this clause?</p> <p>(b) Please provide any further information on how Part 8 will apply to the expansion in practice. For example, will the provisions on feasibility studies etc have to be followed for the expansion? How will the expansion be funded; will the parties have to negotiate again whether the expansion will be funded through the options under Part 8 (approved WACC, access conditions, user funded etc)?</p> | <p>In relation to question 59(a), if the Independent Expert proposes alternative options for an Expansion, the costs of that Expansion are subject to the QCA approval process in accordance with Schedule E and any costs that are not considered to be reasonable and prudent would be to Aurizon Network's account (see clause 8.9.4(h)(C)). The scope of the alternative Expansion would be identified by the Independent Expert when it proposes the alternative option (under clause 8.9.4(h)(A)), but the QCA would need to approve the prudence of the cost.</p> <p>In relation to question 59(b), all provisions in Part 8 will apply to the Expansion – see clause 8.9.4(h)(B) and the Expansion will be funded as specified in clause 8.9.4(h)(C).</p> |

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| (60) In cl. 8.9.4(g), there is a reference to cl. 7.6(e)(iii). Please confirm whether this cross reference is correct; should it refer to cl. 8.9.4(f)? | We confirm that the reference should be to clause 8.9.4(f). |
| (61) In cl. 8.9.4(h), there is a circular reference to cl. 8.9.4(h). Please confirm whether this is correct. | The correct cross reference should be clause 8.9.4(d). |
| (62) Please clarify whether there is a mechanism for a replacement Auditor for audits conducted under cl. 10.6.3(a)(ii), see cl. 10.6.4 (c)(v). | In respect of audits undertaken under clause 10.6.3(a)(ii), the Auditor is engaged for that specific audit – it is not an ongoing appointment and therefore does not need to be subject to a right of removal. |
| (63) Please explain how cl. 10.6.4 (n) will operate - For example, it is unclear who the explanations be provided to? | The explanations will be given to the QCA and the Chair of the Rail Industry Group so as to provide transparency as to which of the Auditor’s recommendations have been implemented by Aurizon Network. |
| (64) In cl. 10.6.4(m), there is reference to cl. 10.6.4(m) and cl. 10.6.4(n). Please confirm whether these cross references are correct; should these refer to cl. 10.6.4(l) and cl. 10.6.4(m) respectively? | We confirm that the QCA is correct. The cross references will need to be corrected. |
| (65) In cl 10.8.3, please confirm that the QCA would be able to publish a public version of the Monthly network performance report, or is there other mechanism within Part 10 or elsewhere in the Undertaking that provides transparency on such matters to parties not included in cl 10.8.3 (a), (d) (for example, access seekers)? | Aurizon Network has no issue with the monthly network performance report being published on a redacted basis and can provide separate confirmation to the QCA if that is considered necessary. |
| (66) Please confirm that clause 10.8.3 (c)(iv) is intended to include a requirement for the Independent Expert to include in the Monthly network performance report information regarding Aurizon Network's compliance with its obligations under cl 7A.3—Engagement of an Independent Expert? | Aurizon Network confirms clause 7A.3 is the correct cross reference and is intended to be a specific reference to clause 7A.3.1(a)(ii) under which Aurizon Network has to provide source data. |
| (67) Cl 10.8.4 (b)(ii) includes requirements for the Independent Expert to provide a root cause analysis of the underlying reasons for Train Services delayed, cancelled or not scheduled, having regard to the information provided under cls 10.8.2 (a)(iv) – 10.8.2 (a)(xii). Is it intended to be inconsistent with the root cause analysis conducted under cl 10.8.3 (c)(ii) that requires the Independent Expert to have regard to information provided under cl 10.8.2 (a)? | Clause 10.8.4(b)(ii) requires an individualised monthly report relevant to the relevant Access Holders Train Services and Ad Hoc Train Services. In contrast, clause 10.8.3(c)(ii) is an aggregated de-identified report for all Train Services and Ad Hoc Train Services. The provisions cover two different circumstances and accordingly there is no inconsistency. |
| (68) Please explain the operation of cl 10.8.5. | Aurizon Network understands that the Independent Expert, as a newly created entity, will not have the technical capability from the start of its engagement to be able to prepare the reports required under Part 10. Clause 10.8.5 was included to provide the Independent Expert with assistance from Aurizon Network for a transitional period of 12 months. As Aurizon Network will incur costs in providing such assistance, clause 10.8.5 includes a cost recovery mechanism for costs over and above those which it would ordinarily have incurred. |
| (69) In cl 10.8.3 (a), there is reference to 10.8.2 (b) and 10.8. 3(b). Please confirm whether this is correct; should it refer to cl 10.8.2 (a) and cl 10.8.3 (c) respectively? | Yes – the cross referencing will need to be corrected. |
| Part 12: Definitions and interpretation | |
| (70) In regards to the definition of "Approval Date" – is this definition intended to refer to the approval of the DAAU or the approval date of the 2017 Undertaking? Similarly, is the definition of "Initial Date" intended to be the date the DAAU was submitted for approval or the date the 2017 Undertaking was submitted for approval? | The Approval Date is a reference to the Approval Date of the DAAU. The reference to the “Initial Date” is a reference to the date on which the DAAU was submitted for approval ie 3 May 2019. |

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| (71) In regards to cl. 12.6, please provide examples of the types of amendments that could be the subject of an End User DAAU. | The DAAU is a result of extensive consultations between Aurizon Network and industry. The matters listed in clause 12.6(v) are matters which the parties agreed should not be subject to re-opening through the End User DAAU process. Any other matters which are affected by a material change in circumstances since the DAAU is approved can be the subject of an End User DAAU subject to the Special Majority and other special conditions set out in that clause. |
| (72) In cl 2.3(f), there are references to 'cl. 2.1(g)' and 'cl. 2.1(h)'. Can Aurizon Network confirm these cross references are correct? | Those cross references in cl. 2.3(f) of Schedule E are correct. |
| (73) Cl. 4.3(c)(iii) refers to "...a component relating to the recovery of Aurizon Network's Non-electric Operating Expenditure Allowance, excluding those costs referred to in clause 4.3(c)(i)..." However, cl. 4.3(c)(i) refers to the component to reflect differences between Approved WACC values. Is this reference correct? It is not clear how cl. 4.3(c)(i) is relevant to the NOEA Component. | The cross reference in clause 4.3(c)(iii) of Schedule F to clause 4.3(c)(i) should be replaced with a cross reference to clause 4.3(c)(ii). |
| (74) Does cl. 2(h) of Schedule G mean that there will no longer be a Strategic Train Plan, once the IE Initial Capacity Assessment Report is published? If so, please provide reasons for this. | Yes Aurizon Network's obligation to provide a Strategic Train Plan ceases once the IE Initial Capacity Assessment Report is published as the combination of the reports provided by the Independent Expert, the ITP and the newly introduced Capability Train Plan (which will be provided by Aurizon Network after the IE Initial Capacity Assessment Report is published) will provide Access Holders, Customers and Train Operators with all of the information they rely upon to schedule their Train Services. |
| (75) Does cl. 3.1(h) mean that that there will no longer be a Master Train Plan, once the IE Initial Capacity Assessment Report is published? If so, please provide reasons for this. | Yes Aurizon Network's obligation to provide a Master Train Plan ceases once the IE Initial Capacity Assessment Report is published as the combination of the reports provided by the Independent Expert, the ITP and the newly introduced Capability Train Plan (which will be provided by Aurizon Network after the IE Initial Capacity Assessment Report is published) will provide Access Holders, Customers and Train Operators with all of the information they rely upon to schedule their Train Services. The Capability Train Plan is considered to be more relevant to Customer requirements than the MTP. |
| (76) Please provide further information explaining the purpose and rationale of the new cl. 3A, including explaining the new Capability Train Plan and how it compares with the other train plans provided for under the undertaking? | See our responses to questions 74 and 75 above. |
| (77) In cl. 4(g), there is a reference to cl. 4(h) of Schedule G. Please confirm whether this cross reference is correct; should it continue to refer to cl. 4.2(g) instead? | This clause reference is incorrect - it should refer to clause 4(g) (not 4.2(g)). |
| (78) Several updated cross references to clauses within Schedule I prefix the clause number with "I" while other do not. Is this intentional? | No. The "I" prefix is unintentional and should be removed. |
| (79) Cl. 4(b)(v) contains a cross reference to cl. I3(d). Please confirm if this is correct. | This is an error. The correct cross reference is to clause 4(d) (of Schedule I). |
| (80) Cl. 4(c) contains a cross reference to cl. 3.10. Should this instead refer to cl. 3.11 which deals with the circumstances in which disclosure of Confidential Information is permitted? | Agreed. The correct cross reference is to clause 3.11 (of the Undertaking). |
| (81) Cls. 4(e) and 4(f) contain cross references to cl. I3(a). Should these instead refer to cl. 4(a) which deals with approval for disclosure of Confidential Information? | Agreed. The cross references in both of these clauses should be to clause 4(a) (of Schedule I). |

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| (82) In the definition of Defaulting Operator, reference to cl. 11.1(a) has been changed to cl. 0. Please confirm the correct cross-reference. | This is an error. The correct cross reference remains clause 11.1(a). |
| (83) In cl. 11.1(c)(i), reference to cl. 11.1(a) has been changed to cl. 0. Please confirm the correct cross reference. | This is an error. The correct cross reference remains clause 11.1(a). |
| (84) In cl. 11.1(c)(iii)(B), reference to cl. 11.1(c)(ii) has been changed to cl. 11.1(a)(ii). Please provide the reasons for this change. | This is an error. The correct cross reference remains clause 11.1(c)(ii). |
| (85) Please explain why the concept of wilful breach has been removed from the Standard Access Agreement, Train Operations Deed and Schedule F of the Undertaking (e.g. definitions of Wilful Breach, cl. 24.5(b) of the SAA, cl. 28.4(c) of the TOD and cl. 4.3(d)(iii) of the undertaking). | The “wilful breach” concept in Schedule F was included as part of UT5. The DAAU removes that concept from Schedule F because Aurizon Network and industry have agreed the rebate mechanism, which operates without prejudice to a right for users to pursue remedies for a wilful breach by Aurizon Network of any Access Agreement or the Undertaking (see clause 7A.6(c)(ii)(D)). To ensure consistency with the DAAU, it is also necessary to remove the concept from the Standard Form Access Agreement and Train Operations Deed. |
| (86) In regards to cl. 21.2 and its interaction with cl. 7A.11 of the DAAU: (a) Please describe whether cl. 21.2(a) will apply in respect of non-coal traffic and, if so, any safeguards for the interests of non-coal traffic that will apply in respect of Aurizon Network's obligations under cl. 21.2 and its interaction with cl. 7A.11 of the DAAU. (b) How will cl. 21.2 (and its interaction with cl. 7A.11) apply in relation to existing access agreements/train operations deeds? Is the intent that these arrangements will only apply to access agreements/train operations deeds entered into in future and that it will not have any impact on contractual rights under existing access agreements/train operations deeds? | (a) Clause 21.2(a) of the Train Operations Deed does apply in respect of non-coal traffic. As membership of the Rail Industry Group is open to non-coal Access Holders, their interests will be protected through their ability to receive information available to all Rail Industry Group members, their ability to participate in discussions of the Rail Industry Group in amending and approving the Maintenance Strategy and Budget and by the fact that the maintenance obligations operate for all users of the Rail Infrastructure. Non-coal users of the network will also have the ability to make submissions to the QCA where a Maintenance Strategy and Budget is subject to approval by the QCA as contemplated by clause 7A.11(k)(ii)(B). (b) The amended clause 21.2 will be included in all future Train Operations Deeds. For existing Train Operations Deeds, where an Access Holder or End User wishes to amend their Access Agreement to make it consistent with System Operating Parameters determined by the Independent Expert or to reflect the Undertaking, they can require that of Aurizon Network. Aurizon Network must comply with such a request provided that the corresponding Train Operations Deed is also amended in a consistent manner. For the reasons set out above, the inclusion of the amended clause 21.2 of the Standard Train Operations Deed and clause 7A.11 of the DAAU will not place non-coal Access Holders in a worse off position as compared to coal Access Holders. |
| (87) How does Aurizon Network's potential liability under cls. 28.4 and 28.5 for a breach of cl. 21.2(b)-(d) operate in light of cl. 21.2(a) (which makes Aurizon Network's obligations under cl. 21.2(b)-(d) subject to cl. 7A.11 of the undertaking)? | Aurizon Network's potential liability under clauses 28.4 and 28.5 of the proposed Train Operations Deed is not removed by operation of clause 21.2(a), (which applies to all of the obligations imposed on Aurizon Network under clause 21.2, including the obligations in clauses 21.2(c) and (d)). Rather, the obligations in clause 7A.11 (most relevantly 7A.11(a) of the DAAU) are additional to the maintenance obligations which Aurizon Network must satisfy under clause 21 of the proposed Train Operations Deed. The second sentence of clause 21.2(a) recognises that clause 7A.11 of the DAAU may be inconsistent with clauses 21.2(b), 21.2(c) or 21.2(d) of the Train Operations Deed given that both of these clauses cover the same type of obligation (ie. the obligation to perform maintenance work) and clarifies how the inconsistency is to be dealt with. |

Attachment 1

Non-Coal Users under DAAU

The QCA has asked for a view on whether or not non-coal users of the Rail Infrastructure will be worse off under the provisions of the DAAU.

The non-coal users will not be worse off as compared to their existing rights under UT5 and indeed will have enhanced rights under the DAAU as compared to their existing rights under UT5.

In particular, the non-coal users will not be worse off for a number of reasons including:

- by reason of amendments that Aurizon Network is proposing to the DAAU which require that Aurizon Network must:
 - give the non-coal Access Holders and Customers copies of the draft Maintenance Strategy and Budget and Renewals Strategy and Budget at the same time that these documents are provided to members of the Rail Industry Group;
 - engage in good faith discussions with non-coal Access Holders and Customers in relation to the draft Maintenance Strategy and Budget and Renewals Strategy and Budget;
 - provide updates to non-coal Access Holders and Customers in relation to the draft Maintenance Strategy and Budget and Renewals Strategy and Budget; and
 - provide proposed amendments to non-coal Access Holders and Customers in relation to the draft Maintenance Strategy and Budget and Renewals Strategy and Budget to reflect new information;
- non-coal users will also have rights to engage (as members of the Rail Industry Group) in the development and finalisation of the Maintenance Strategy and Budget and the Asset Renewals Strategy and Budget (if those non-coal users choose to participate);
- while non-coal access holders cannot receive a Rebate they have a right to pursue Aurizon Network for any failure to receive their Train Service Entitlements without being limited to establishing an 'AN Performance Breach' (pursuant to the Rebate mechanism clause), and without having to give up any rights to make a claim against Aurizon Network in respect of the failure to provide the Train Service Entitlements (as would be required for coal customers wishing to receive a Rebate);
- non-coal users will now have the benefit of an obligation on Aurizon Network to use reasonable endeavours to coordinate with other members of a Supply Chain (including by reason of amendments that Aurizon Network is proposing to the DAAU which require that Aurizon Network to expressly coordinate with non-coal users) to not only minimise disruptions when planning and implementing Operational Constraints, but also to seek to maximise the efficiency and performance of the relevant Supply Chain. In addition, non-coal access holders are involved in the process whereby a Supply Chain Proposal can be developed for an independent body to undertake functions relevant to Supply Chain coordination across the CQCN;
- the independent and realistic expert assessments of Deliverable Network Capacity, (being an assessment of the Train Paths that can be used in each Coal System by all users – coal and non-coal), expressly requires the Independent Expert to have regard to the extent of non-coal traffic on the Rail Infrastructure, and the extent to which non-coal traffic takes priority over coal traffic, including by reason of Aurizon Network's obligations to comply with Passenger Priority Obligations and Preserved Train Path Obligations; and
- any Existing Capacity Deficit (i.e. where the number of Train Paths is less than the number required to meet Train Service Entitlements, without regard to exclusions in Access Agreements for the non-provision of Train Service Entitlements), identified by the Independent Expert, may ultimately result in Transitional Arrangements (including potentially Expansions) for the benefit of non-coal and coal traffic users of the Rail Infrastructure.

**Attachment 2
Rail Industry Group**

Overview

The draft amending access undertaking submitted by Aurizon Network Pty Ltd to the Queensland Competition Authority (**QCA**) on 3 May 2019 (**UT5 DAAU**) refers, in a number of provisions, to the 'Rail Industry Group'.

This document provides further information in relation to the Rail Industry Group and is submitted to the QCA for the purpose of assisting the QCA with its review of the UT5 DAAU.

Capitalised terms which are not otherwise defined in this document have the meaning given in the UT5 DAAU.

What is the Rail Industry Group?

The Rail Industry Group (**RIG**) is a forum for addressing the matters in the UT5 DAAU for which RIG members are responsible, such as considering proposed Maintenance Strategies and Budgets and proposed Renewals Strategies and Budgets.

Meetings of RIG members will give members an opportunity to discuss relevant issues, make enquiries and share their views on a confidential basis with other RIG members.

Details of RIG meeting procedures, RIG voting procedures (including votes to be determined by a certain threshold of End Users) and the process for electing the Chair of the RIG will be set out in a non-binding charter (**RIG Charter**) that will be made available to all RIG members. The RIG Charter will not form part of the Undertaking.

The RIG is not a separate legal body or entity.

RIG membership

Under the RIG Charter, parties in each of the following categories will automatically become a RIG member and will continue to be a RIG member for so long as they satisfy the relevant definition in the UT5 DAAU:

1. Access Holders (other than Access Holders that hold Access Rights for the purpose of providing Train Services for a Customer);
2. Access Seekers (other than Access Seekers that seek to hold Access Rights for the purpose of providing Train Services for a Customer);
3. Customers, being:
 - a. each person in respect of which an Access Holder is using, or is intending to¹ use, Access Rights to provide Train Services for that person (in the Access Holder's capacity as a Railway Operator); and
 - b. each person in respect of which an Access Seeker is intending to² use Access Rights to provide Train Services for that person (in the Access Seeker's capacity as a Railway Operator); and
4. Railway Operators that hold contractual rights to provide Train Services.

Membership of the RIG is not limited to parties whose Train Services carry (or are intended to carry) coal. Any party who meets the relevant criteria for RIG membership will be a member of the RIG, irrespective of what is carried (or intended to be carried) in their Train Services.

Only the RIG members that are Access Holders (referred to in paragraph 1 above) or Customers of Access Holders (referred to in paragraph 3a above) will have voting rights. The RIG members that are Access Seekers (referred to in paragraph 2), Customers of Access Seekers (referred to in paragraph 3b) or Railway Operators (referred to in paragraph (d)) will not have voting rights but will have a right to attend and participate in RIG meetings.

A party that is taken to be a RIG member may elect not to attend or participate in RIG meetings and may (if they hold voting rights) elect not to vote on RIG-related matters. There is no contractual or other mechanism which obliges RIG members to do such things.

In addition, membership of the RIG is not limited to persons who are members of the RIG as at the date the UT5 DAAU is approved by the QCA. Rather, membership of the RIG will change over time as new parties satisfy the relevant definition in the UT5 DAAU and existing members cease to satisfy the relevant definition.

The RIG Charter will provide that each RIG member must nominate, by notice in writing to the Chair from time to time, a representative and two alternate representatives for the purposes of attending meetings of the RIG on behalf of the member.

What are the responsibilities of RIG members?

The responsibilities of the RIG members include:

5. selecting the Chair or replacement Secretary (if any) of the RIG;
6. discussing relevant issues, making enquiries and sharing views on a confidential basis;
7. considering and commenting on matters referred to in the Undertaking including proposed Maintenance Strategies and Budgets and proposed Renewals Strategies and Budgets; and

¹ The reference to an Access Holder 'intending to use' Access Rights is a reference to an Access Agreement in respect of which Access Rights have not, as at the relevant date, commenced.

² The reference to an Access Seeker 'intending to use' Access Rights is a reference to Access Rights that have been sought in an Access Application.

8. if they hold voting rights, voting on matters referred to in the Undertaking including proposed Maintenance Strategies and Budgets and proposed Renewals Strategies and Budgets.

Chair of the RIG

The Chair of the RIG will be nominated at the initial meeting of RIG members (and thereafter annually) by a special majority of the RIG members.

A special majority of members of the RIG will be achieved by RIG members together holding voting rights in respect of more than [75]% of the total number of RIG members entitled to vote on the relevant matter in accordance with the RIG Charter. The relevant percentage threshold for a special majority of members of the RIG is subject to confirmation in the final RIG Charter.

The Chair may be a representative of a RIG member or an independent person.

The Chair may be removed by a simple majority of RIG members. A simple majority of members of the RIG will be achieved by RIG members together holding voting rights in respect of more than 50% of the total number of RIG members entitled to vote on the relevant matter in accordance with the RIG Charter.

These voting thresholds will also be specified in the RIG Charter.

The Chair will be responsible for:

9. convening and conducting meetings of the RIG;
10. conducting votes of the members of the RIG including with respect to matters arising under the Undertaking and matters internal to the RIG;
11. procuring the Returning Officer to conduct votes of End Users in respect of matters which are required to be determined under the Undertaking, including matters in respect of which the agreement of a certain threshold of End Users is required; and
12. matters specified in the Undertaking as matters for which the Chair of the RIG is responsible, including communicating with Aurizon Network on behalf of the members of the RIG.

The Chair will be required to be bound by obligations of confidentiality with respect to matters coming to its knowledge in its role as Chair.

Secretary of the RIG

The initial Secretary of the RIG will be identified in the RIG Charter.

If the position of the Secretary becomes vacant then a replacement Secretary will be nominated at a meeting of RIG members (and thereafter annually) by a special majority of RIG members. The replacement Secretary will be appointed for a one year term, unless approved otherwise by a special majority of RIG members.

The Secretary may be removed by a simple majority of RIG members.

The Chair may delegate functions and responsibilities of the Chair to the Secretary.

The Secretary will be required to be bound by obligations of confidentiality with respect to matters coming to its knowledge in its role as Secretary.

Returning Officer

The Returning Officer will be a representative from a law firm.

The Chair will procure the Returning Officer to conduct certain votes in accordance with the RIG Charter.

The Returning Officer will be required to be bound by obligations of confidentiality with respect to matters coming to its knowledge in its role as Returning Officer.

Attachment 3
AN and industry proposed revised Rebate drafting

1. **Clause 7A.6(b)**

Amend clause 7A.6(b) as follows:

“From the Report Date, the Independent Expert must identify if there has been any AN Performance Shortfall resulting from an AN Performance Breach in that Relevant Year. If there has been an AN Performance Shortfall resulting from an AN Performance Breach, the Independent Expert must determine the Performance Rebate Amount that Aurizon Network, must, subject to **clause 7A.6(c)** and **clause 7A.6(e)**, pay an affected End User (**Rebate**). In determining the Performance Rebate Amount for the Year in which the Report Date occurs, the Independent Expert will only have regard to any AN Performance Shortfall resulting from an AN Performance Breach that occurred between the Report Date and the end of that Year. In subsequent Years following the Year in which the Report Date occurs, the Independent Expert will have regard to AN Performance Shortfalls resulting from an AN Performance Breach for all of the Relevant Year.”

2. **Definition of “AN Performance Shortfall”**

Amend the definition of “AN Performance Shortfall” as follows

“(a) In respect of the period between the Report Date and the implementation of any Transitional Arrangements to address any Existing Capacity Deficit, in respect of each origin and destination combination specified in an Access Holder’s Access Agreement and each Relevant Year for that period:

- ~~(a)~~ (i) the aggregate number of Train Service Entitlements ~~specified in the relevant Access Agreement~~ for the relevant origin and destination combination for that period that the Independent Expert determines could have been utilised by the Access Holder having regard to the IE Initial Capacity Assessment and any other Access Holders affected by the Existing Capacity Deficit (if any); the Relevant Year; less
- ~~(b)~~ (ii) the number of Train Service Entitlements for the relevant origin and destination combination that the Independent Expert determines were utilised by the Access Holder during the ~~Relevant Year~~ relevant period.

(b) For all Years following the implementation of the Transitional Arrangements, in respect of each origin and destination combination specified in an Access Holder’s Access Agreement and each Relevant Year:

- (i) the aggregate number of Train Service Entitlements specified in the relevant Access Agreement for the relevant origin and destination combination for the Relevant Year; less
- (ii) the number of Train Service Entitlements for the relevant origin and destination combination that the Independent Expert determines were utilised by the Access Holder during the Relevant Year.

Request for Information 28 June 2019 - Schedule F

Responses of Aurizon Network and HSF dated 23 July 2019

| Supplementary Question | Answer |
|--|---|
| <p>(88) Please provide an explanation as to the intended application of Schedule F, clause 4.1 (b)(vii)(F), with respect to the Tax Allowance process commencing 1 July 2018 and the interaction with Annual Review processes from February 2020. Please provide a worked example.</p> | <p>Schedule F, clause 4.1 (b)(vii)(F) allows for the fact that the Tax Allowance is a computation within the Post-Tax Revenue Model using the QCA UT5 approved rate of Tax (GAMMA) at 0.484.</p> <p>Where revenue building blocks are updated via the Annual Review processes it may impact the tax allowance. For example, any variation of the Capital Indicator under Schedule F, clause 4.1 (b)(vii)(E) arising from the Asset Renewals Strategy would have a direct impact on the tax allowance.</p> <p>Schedule F, clause 4.1 (b)(vii)(F) allows the Tax Allowance to be updated accordingly and flow thorough to Allowable Revenue and Reference Tariffs.</p> <p>Aurizon Network can take the QCA through a worked example within the financial models at a convenient time.</p> |
| <p>(89) Please provide an explanation as to the intended application of Schedule F, clause 4.3(e), with respect to 'Non-provision Percentage' that relates to clause 4.3(d)(iii). Please provide a worked example.</p> | <p>The intent of Schedule F, clause 4.3(e) is to prevent AN from being penalised twice for the same performance breach (relating to AN breach or negligence), i.e. once through the payment of the rebate, and again through the determination of Total Actual Revenue (TAR).</p> <p>Schedule F, clause 4.3(d)(iii) provides that when determining TAR, AN will be 'deemed' to have earned revenue (regardless of whether it was received), where AN is in breach of an Access Agreement or negligent in the provision of Below Rail Services and consequently fails to provide 5%</p> |

| Supplementary Question | Answer |
|--|---|
| | <p>or more TSEs for a single origin-destination pair. In such instances, AN cannot recover this revenue through any other means.</p> <p>Under the UT5 DAAU, an 'AN Performance Shortfall' resulting from an 'AN Performance Breach' will likely trigger a Rebate under 7A.6, thereby providing compensation to the End User directly.</p> <p>Schedule F, clause 4.3(e) essentially ensures that the trigger for 'deemed' revenue specified in Schedule F, clause 4.3(d)(iii), reflects the maximum of 5% or the Non-provision Percentage used for the purposes of a Rebate and not both so that there is no double counting.</p> <p>Consider the following examples:</p> <ol style="list-style-type: none"> 1. An event of breach or negligence results in an AN Performance Shortfall of 7% for an End User for a single origin destination pair: <ul style="list-style-type: none"> - A Rebate is paid to the End User on the 7% of TSEs not provided; and - the 5% threshold in clause 4.3(d)(iii) is taken to be increased to 7% for that origin-destination pair, being the Non-provision Percentage, so there is no further liability through Schedule F, clause 4.3(d)(iii). 2. An event of breach or negligence results in an AN Performance Shortfall of 3% for an End User for a single origin destination pair: <ul style="list-style-type: none"> - A Rebate is paid to the End User on the 3% of TSEs not provided; and - the 5% threshold in Schedule F, clause 4.3(d)(iii) has not been triggered so there is no amount that needs to be added to TAR. |
| <p>(90) Please provide an explanation as to the intended application of Schedule F, clause 4.3(i). Please provide examples of the calculations intended to apply with respect to Total Actual Revenue and Rebates.</p> | <p>Schedule F, clause 4.3(i) is intended to reduce the financial impact of performance rebates paid where AN provides additional capacity to Access Holders above their contractual entitlement which is actually</p> |

| Supplementary Question | Answer |
|------------------------|--|
| | <p>utilised by End Users i.e. they have been able to run ad hoc train services above their contractual entitlements.</p> <p>Except where otherwise permitted in this clause, the payment of Rebates will not be deducted from TAR. In practice, this means that where a Rebate is payable, TAR will be greater than the actual cashflow AN receives, which in turn reinforces the negative impact of the Rebate through the implications on the Revenue Adjustment Amounts (Revenue Cap) that may apply for each Coal System, i.e. AN cannot recover Rebate payments from other End Users indirectly through Revenue Adjustment Amounts.</p> <p>Where AN can deliver (and End Users can utilise) more than the Committed Capacity in a Coal System in a year, the Coal System (as a whole) benefits and the Rebates paid will be deducted from TAR. This has the following outcomes:</p> <ul style="list-style-type: none"> - the End User(s) who are entitled to a Rebate will continue to be compensated for an AN Performance Shortfall resulting from an AN Performance Breach; - the System as a whole (i.e. beneficiaries of the additional utilised capacity) will make a proportionally greater contribution toward any Revenue Adjustment Amount through future Reference Tariffs; and - for clarity, if the revenue AN earns as a result of delivering more than the Committed Capacity, is equal to or exceeds the value of Rebate payments in a given year, AN will only be entitled to recover the Allowable Revenue for that Year, i.e. AN will not earn regulatory revenue in excess of Allowable Revenue as a result of this mechanism. |

| Supplementary Question | Answer |
|---|---|
| (91) Please confirm cross-reference to clause 4.3(k), referred to in Schedule F, clause 4.3(n). Should this be clause 4.3(l)? | We confirm the correct cross reference should be to clause 4.3(l). |
| (92) Please confirm cross-reference to clause 4.3(j), referred to in Schedule F, clause 4.3(l). Should this be clause 4.3(k)? | We confirm the correct cross reference should be to clause 4.3(k). |
| (93) Please confirm cross-reference to clause 4.3(j), referred to in Schedule F, clause 4.3(o). Should this be clause 4.3(k)? | We confirm the correct cross reference should be to clause 4.3(k). |
| (94) Please confirm cross-reference to clause 4.3(m), referred to in Schedule F, clause 4.3(s). Should this be clause 4.3(n)? | We confirm the correct cross reference should be to clause 4.3(n). |
| (95) Please confirm cross-reference to clause 7A.11.6, referred to in Schedule F, clause 4.3(c)(ii)(B)(1). Should this be clause 7A.11.5? | We confirm the correct cross reference should be to clause 7A.11.5. |
| (96) Please confirm cross-reference to clause 4.3(n), referred to in Schedule F, clause 4.3(s)(i). | We confirm the correct cross reference should be to clause 4.3(o). |

Request for Information 26 July 2019 – Responses of Aurizon Network and HSF dated 1 August 2019

| QCA Question | Response |
|--|---|
| <p>(1) The independent expert is to be appointed jointly by Aurizon Network, a Majority of End Users and the QCA (cl. 7A.3.1(a)). To determine whether there is a 'Majority of End Users' requires meeting a prescribed threshold based on the 'End User Voting Rights (Network)'. However, the definition of 'End User Voting Rights (Network)' states that the independent expert will determine the relevant voting rights using a formula set out in the definition. Given the independent expert will not have been appointed yet, can you explain how the relevant voting rights for the appointment of the independent expert will be determined?</p> | <p>Aurizon Network will determine whether the threshold of a 'Majority of End Users' has been reached for the purposes of appointing the initial Independent Expert.</p> <p>Aurizon Network and industry propose to address this issue by including a new clause 7A.3.5 as follows:</p> <p style="padding-left: 40px;"><u>“For the purpose of appointing the initial Independent Expert under clause 7A.3.1(a), a determination as to whether the thresholds in the definition of a “Majority of End Users” have been met will be made by Aurizon Network.”</u></p> |
| <p>(2) Cl. 7A.3.1 states the Aurizon Network, a Majority of End Users and the QCA will use their best endeavours to jointly appoint an independent expert. However, cl. 7A.3.1(d) states that if a Majority of End Users and Aurizon Network cannot agree on the appointment of the independent expert, then the QCA will appoint an independent expert.</p> <p>Please confirm that the QCA is obliged to accept the nomination of an independent expert that Aurizon Network and a Majority of End Users have agreed?</p> | <p>We confirm that the QCA is obliged to accept the nomination where Aurizon Network and a Majority of End Users agree on the identity of the Independent Expert. Where Aurizon Network and a Majority of End Users cannot agree on the nomination of the Independent Expert, the QCA has the right to select the Independent Expert.</p> |

| QCA Question | Response |
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| <p>(3) In respect of the 15 day timeframe for the QCA’s determination under cls. 7A.5(e) and 8.9.4(g), please confirm the consequences if the QCA did not meet the timeframe. In particular whether failure to meet the timeframe would mean that the QCA cannot then make the relevant determination.</p> | <p>Aurizon Network and industry propose to amend clauses 7A.5(e) and 8.9.4(g) to provide the QCA with more time if needed. The drafting would read as follows:</p> <p style="padding-left: 40px;"><u>“ Within 15 days (or such longer period as may be required by the QCA) ... “</u></p> |
| <p>(4) In respect of cl. 7A.5(i)(i), please provide further information explaining:</p> <p>(a) What are the consequences of the independent expert's approval of the efficiency and prudence of the expansion? Does this mean the expansion will be included in the RAB? (i.e. a form of pre-approval)</p> <p>(b) What are the consequences if the independent expert does not approve the efficiency and prudence of the expansion? Will the expansion no longer proceed?</p> | <p>In relation to question 4(a), once the proposed expenditure on the Expansion is approved as efficient and prudent by the Independent Expert, that value will be included in the RAB as contemplated by clause 7A.5(i)(iii). Please also see response to question 17 in the 14 June Request for Information with respect to the reference in clause 6.12 to clause 7A.5(i)(iii).</p> <p>In relation to question 4(b) it will be necessary for Aurizon Network to provide a proposed Expansion which can be approved as being prudent and efficient by the Independent Expert in order for clause 7A.5(i)(i) to be satisfied. Where the Independent Expert does not approve the efficiency and prudence of the proposed costs, it will be necessary for Aurizon Network to provide an amended proposed Expansion that <u>Aurizon Network and the affected Access Holders or affected Access Seekers have agreed will address the Existing Capacity Deficit</u> that is capable of approval.</p> <p>The drafting we propose to address this issue is as follows:</p> <p style="padding-left: 40px;">(i) ... <u>Where the Independent Expert does not approve the efficiency and prudence of the</u></p> |

| QCA Question | Response |
|--|---|
| | <p><u>Expansion, Aurizon Network must submit an alternative proposal that Aurizon Network and the affected Access Holders or affected Access Seekers have agreed will address the Existing Capacity Deficit for approval.</u></p> |
| <p>(5) In respect of cl 2.4(e) and your response to Question 1 of the 14 June Request for Information, you state that cl 7A.5(e) and (f) could result in Aurizon Network being required to act in a way that is inconsistent with an access agreement.</p> <p>(a) Can you provide further information explaining how that position applies in light of cl. 7A.5(g)(iii)?</p> <p>(b) Does cl. 2.4(e) also mean that an access holder could be required to vary or act in a way that is inconsistent with an access agreement?</p> | <p>To address your questions, we propose to amend clause 2.4(e) as follows:</p> <p>“Subject to clause 7A.5, Nothing in this Undertaking can require Aurizon Network or any other party to an Access Agreement, executed before the Approval Date to:</p> <p style="padding-left: 40px;">(a) <u>subject to clause 7A.12</u>, vary that Agreement; or</p> <p style="padding-left: 40px;">(b) <u>subject to clauses 7A.5(f), 7A.5(g) and 7A.5(l)</u>, to act in a way that is inconsistent with the relevant Agreement.</p> <p><u>By way of explanation, Aurizon Network may be required under clause 7A.5(f) to implement Transitional Arrangements that are inconsistent with an Access Agreement provided that the conditions in clause 7A.5(g) are satisfied. In addition, Aurizon Network will be required to act in a way that is inconsistent with an Access Agreement where it is required to waive its rights to collect a Relinquishment Fee in accordance with clause 7A.5(l).</u></p> <p>We also propose to clarify the drafting of clause 7A.5(g)(iii) as follows:</p> <p>(iii) would not place Aurizon Network in breach of its obligations under this Undertaking or any Access Agreement.</p> |

| QCA Question | Response |
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| | <p>(assuming that any Access Agreement could be amended to reflect the System Operating Parameters in accordance with clause 7A.12). <u>In determining whether a Transitional Arrangement would put Aurizon Network in breach of an Access Agreement, that determination would be made on the basis that any change in a System Operating Parameter had been reflected in the relevant Access Agreement as contemplated by clause 7A.12.</u></p> <p><u>In response to question 5(b), clause 2.4(e) does not mean that an Access Holder can be required to vary or act in a way that is inconsistent with an Access Agreement.</u></p> |
| <p>(6) In respect of cl. 4.8(d)(iii)(B) and your response to Question 11 of the 14 June Request for Information, you proposed this clause will be redrafted to refer to cl. 8.2.2(a)(iii) to reflect that there can be disputes as to the terms of a user funding agreement but not as to what expansion is required because after the initial capacity assessment report is published, there will be no disputes as to what expansion is required to address an existing capacity deficit. Can you please provide further a further explanation as to:</p> <p>(a) whether or not there is a need for cl. 4.8(d)(iii)(B) to refer to cl. 8.2.2(a) (as opposed to cl. 8.2.2(a)(iii) as per your proposed amendments), given that cl. 8.2.2(a) appears to list other circumstances in which there may be a dispute concerning an expansion and which may not necessarily be expansions in response to an existing capacity deficit.</p> <p>(b) if there is no need for cl. 4.8(d)(iii)(B) to refer to cl. 8.2.2(a), why is cl. 4.8(d)(iii)(B) of the 2017 Undertaking not retained until the</p> | <p>In response to question 6(a), Aurizon Network and industry agree to refer to clause 8.2.2(a) rather than clause 8.2.2(a)(iii). On this basis, we do not consider that any other changes to clause 4.8(d)(iii)(B) are required.</p> |

| QCA Question | Response |
|---|---|
| <p>period up to the publishing of the initial capacity assessment report (i.e. transitional provision)?</p> | |
| <p>(7) In respect of your answer to Question 27(d) of the 14 June Request for Information, can you please confirm that the DAAU does not oblige any other party than Aurizon Network to implement a transitional arrangement determined by the QCA.</p> | <p>Aurizon Network and industry confirm that the DAAU does not oblige any party other than Aurizon Network to implement a Transitional Arrangement determined by the QCA.</p> |
| <p>(8) In respect of cl. 8.9.1, please provide further information explaining the reasons for the amendments that exempt renewing access seekers from the requirements under this clause.</p> | <p>A Renewal by a Renewing Access Seeker is carved out of clause 8.9.1 as its rights are not dependent on an Expansion given that it is renewing existing Access Rights (i.e. not seeking additional access).</p> |
| <p>(9) In light of your responses that state an intention for the decisions of the independent expert to be able to be disputed under Part 11 of the undertaking, do you consider this needs to be expressly stated in the undertaking, given the operation of cl. 11.1.1(a)(iii) of the undertaking?</p> | <p>Aurizon Network and industry propose to include a new clause 7A.6(o) to reflect the answer we provided in relation to QCA Question 34(b) of the 14 June Request for Information as follows:</p> <p><u>(o) To the extent that the Independent Expert determines that:</u></p> <p>(i) <u>Aurizon Network is liable to pay a Rebate and Aurizon Network does not dispute that determination within 20 Business Days after the Independent Expert makes its determination but fails to pay the Rebate within the timeframe required by clause 7A.6(d); or</u></p> <p>(ii) <u>Aurizon Network failed to provide the information required for the Independent Expert to make a decision as to whether a Rebate is payable or to determine the Performance Rebate Amount,</u></p> <p><u>the affected End User may raise a dispute under Part 11.”</u></p> |

| QCA Question | Response |
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| | <p>Aurizon Network and industry consider that no change is required to the DAAU to reflect the answer we provided in relation to QCA Question 57 of the 14 June Request for Information as clause 8.2.2 already provides that any dispute in relation to a matter that may arise under Part 8 (subject to a stated exception) may be referred to the QCA for determination in accordance with Part 11.</p> |
| <p>(10) Schedule F contains the following proposed clause at 5.2(d) contemplating changes in electric operating expenditure be treated as a discrete Endorsed Variation Event:</p> <p style="padding-left: 40px;"><i>Any change in Electric Operating Expenditure Allowance as contemplated in clause 4.1(c)(ii).</i></p> <p>(a) Can Aurizon Network please clarify the intent of clause 5.2(d) and describe how this clause is intended operate in practice. Specifically, in referring to any 'change' in EOEА is the intent for this clause to capture differences between the EOEА for the purposes of setting Reference Tariffs, and actual EOEА in a given year, or; a prospective/anticipated change in EOEА costs?</p> <p>(b) Can Aurizon Network also please comment on the distinction between the intended purposes of new cl. 5.2(d) and the existing cl. 5.2(b), which appears to provide similar scope for a forward-looking adjustment for such costs, albeit subject to a materiality threshold.</p> <p>(c) We also note that the DAAU retains Schedule F, cl. 4.3(c)(iv), which provides for an ex-post adjustment to allowable</p> | <p>In response to question 10(a), over 99% of the Electric Operating Expenditure Allowance relates to the Connection and TUOS charges levied by Transmission Network Service Providers (TNSP). Aurizon Network recovers these charges on a pass-through basis. While TNSPs do notify Aurizon Network of price changes prior to the commencement of each financial year, this typically occurs after 28 February (the due date for the Annual Review of Reference Tariffs).</p> <p>This clause is intended to allow for prospective change in Electric Operating Expenditure Allowance costs for a relevant year (and hence, prospective Reference Tariffs for that year) to reflect the latest TNSP price notifications (as per the current practice).</p> <p>In response to question 10(b), Aurizon Network proposes to delete clause 5.2(d) and amend the start of clause 5.2(b) to specifically include “<u>any change in the Electric Operating Expenditure Allowance as contemplated in clause 4.1(c)(ii) including....</u>”</p> <p>In response to question 10(c), as mentioned in (a) above, 99% of the Electric Operating Expenditure Allowance relate to the</p> |

| QCA Question | Response |
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| <p>revenues to reflect differences between forecast and actual costs associated with connection to the electricity transmission and distribution networks. For clarity, can Aurizon Network please confirm that this clause refers to the same costs described elsewhere as 'Electric Operating Expenditure Allowance' and that this cl. 4.3(c)(iv) would be applied annually in the context of those costs?</p> | <p>Connection and TUOS charges levied by TNSP. Aurizon Network confirms that this clause allows for the reconciliation of forecast TNSP costs vs actual TNSP cost for a year as part of the annual Revenue Adjustment Amount (Rev Cap) process.</p> |

Request for Information – 1 August 2019 - UT5 DAAU

Aurizon Network and industry responses 9 August 2019

| Question | Answer |
|--|---|
| <p>(1) We note Aurizon Network’s response to Question 2 (14 June 2019 questions) regarding the application of Part 3 in the event of a specific change in shareholding. We note Aurizon Network’s following response:</p> <p><i>If Aurizon Network were to acquire an interest in a company in an upstream or downstream market, when:</i></p> <ul style="list-style-type: none"> • <i>none of Aurizon Network’s shares were held by Aurizon Holdings or any Related Party of Aurizon Holdings; and</i> • <i>neither the new owner of Aurizon Network nor any of its Related Parties held shares in the upstream/downstream market company,</i> <p><i>Aurizon Network would not have any economic or other incentive to discriminate in favour of that company as it would not be related to that company. In those circumstances, there would no need for the ringfencing obligations other than those expressly preserved in clause 3.1(b) to continue.</i></p> <p>(a) Do the proposed amendments, and their consequential impacts, address the situation where the related party to Aurizon Network is not Aurizon Holdings/Group?</p> <p>(b) We note that under clause 3.1(b), if shares in Aurizon Network are no longer owned by Aurizon Holdings or any Related Party of Aurizon Holdings, clause 3.4(a) would fall</p> | <p>In response to question 1(a), the proposed amendments to clause 3.1 provide that:</p> <ul style="list-style-type: none"> • the entirety of Part 3 continues to apply where any shares in Aurizon Network are held by Aurizon Holdings or any Related Party of Aurizon Holdings; • important sections of Part 3 (particularly those relating to confidentiality obligations) continue to apply even in circumstances where the related party to Aurizon Network is not Aurizon Holdings or any Related Party of Aurizon Holdings; and • other parts of Part 3 would not be relevant in circumstances where Aurizon Network is no longer in the Aurizon Group – for example, the provisions relating to accounting separation, the restrictions on transfers and secondments and the detailed provisions for independent governance. <p>In addition (and in relation to questions 1(b) and 1(c)), Aurizon Network and industry consider that the provisions of the <i>Queensland Competition Authority Act 1997 (Qld) (QCA Act)</i> provide sufficient protections, even in circumstances where a related party to Aurizon Network is not Aurizon Holdings or any Related Party of Aurizon Holdings.</p> <p>For example, the QCA Act:</p> <ul style="list-style-type: none"> • prohibits Aurizon Network and any related body corporate of Aurizon |

| Question | Answer |
|---|--|
| <p>away. This implies that Aurizon Network could, in theory, undertake above-rail services itself, or through a subsidiary, while no longer being subject to a range of relevant ringfencing obligations. What protections does Aurizon Network propose to ensure that the ringfencing framework remains robust in a scenario such as this?</p> <p>(c) Can Aurizon Network please comment on how the DAAU contemplates a scenario where the new owner of Aurizon Network <u>does</u> hold an interest in an upstream or downstream business (for example, providing above-rail services)? What protections does Aurizon Network propose to ensure that the ringfencing framework remains robust in a scenario such as this?</p> | <p>Network from engaging in conduct for the purpose of preventing or hindering an Access Seeker's or Access Holder's Access;</p> <ul style="list-style-type: none"> deems certain types of specified conduct to constitute conduct that prevents or hinders an Access Seeker's or Access Holder's Access, particularly where Aurizon Network provides Access to itself or a related body corporate of itself on more favourable times; requires Aurizon Network to negotiate in good faith with Access Seekers to reach an Access Agreement; and <p>obliges Aurizon Network in such negotiations not to unfairly differentiate between Access Seekers in a way that materially adversely affects the ability of one or more Access Seekers to compete with other Access Seekers.</p> <p>Further, in the event that Aurizon Network is no longer part of the Aurizon Group and either itself or a Related Body Corporate proposes to become the owner or owner of an upstream or downstream entity, any such transaction would require ACCC clearance or authorisation. Any such clearance or authorisation would likely require Aurizon Network or the relevant Related Body Corporate to provide an access undertaking with appropriate ring fencing obligations.</p> |
| <p>(2) We note Aurizon Network's response to question 3(d) (14 June 2019 questions) in regard to clause 3.6(f)(ii). Based on the response, it remains unclear as to the intent and implications of removing this clause. In its response, Aurizon Network pointed to clause 3.7(c).</p> <p>Our original question related to the outsourcing of 'regulatory functions' contemplated by clause 3.6(f)(ii). It is not clear that clause 3.7(c) and the remaining provisions relating to the responsibility to provide 'below-rail services' capture these regulatory functions.</p> <p>Previously, clause 3.6(f)(ii) precluded Aurizon Network from</p> | <p>Clause 3.6(f)(ii) and the reference to "regulatory functions" were introduced by the QCA in its draft decision of 30 June 2015 in relation to the 2014 DAU and adopted by Aurizon Network in order to obtain regulatory approval for that DAU.</p> <p>Aurizon Network has worked on the basis that the reference to 'regulatory functions' was a reference to matters related to the provision of Below Rail Services. Those matters are now defined by an inclusive list in clause 3.4(c) and include, for example:</p> <ul style="list-style-type: none"> supply of the declared service as contemplated by section 250(1)(a) of the QCA Act; |

| Question | Answer | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|---|---|------------|------------|------------|------------|------------|---|--|--|--|--|---|---|-----|-----|----|----|---|------------------------|-----|-----|-----|-----|---|-------------------------|-----|----|-----|----|---|----------------------|----|------|----|------|---|--|--|--|--|--|---|-------------------|-----|----|----|----|----|---|----|----|-----|----|----|--|--|--|--|--|----|---------------------------|-----|----|-----|----|----|--|--|--|--|
| <p>outsourcing regulatory functions to any Aurizon Party. Can Aurizon Network please clarify:</p> <ul style="list-style-type: none"> - What is the specific nature of these functions, providing examples; and - Is the intention of the DAAU amendment that Aurizon Network would become able to outsource these functions to another Aurizon Party? | <ul style="list-style-type: none"> • negotiating Access Agreements with Access Seekers; and • receiving, assessing and responding to Access Applications. <p>The Below Rail Services cannot be transferred, delegated or contracted out to a Related Operator of Aurizon Network other than as permitted by clause 3.7.</p> | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| <p>(3) Can you please clarify your response to Questions 49 and 51 of the 14 June Request for Information. Is it intended that where Aurizon Network’s renewals capex claim either departs from the approved renewals strategy and budget, or no renewals strategy and budget exists, the QCA will assess the renewals capex claim under Schedule E?</p> <p>Where Aurizon Network’s renewals capex claim departs from the approved renewals strategy and budget, cl. 7A.11.6 (b)(iv)(A) and (B) requires the QCA determine and approve ‘additional costs’ in the renewals capex claim that are prudent and efficient.</p> <p>(a) Is it intended the QCA’s assessment will only be made to ‘additional costs’ that are above the approved renewals budget? Please provide actual examples to clarify.</p> <p>(b) For clarity, can the QCA approve a renewals capex claim that is lower than the approved renewals strategy and budget (and capital indicator) if these costs are considered prudent and efficient?</p> | <p>Aurizon Network confirms that:</p> <ul style="list-style-type: none"> • clause 7A.11.6(b)(iv) provides that if the Renewals Capex Claim departs from the Approved Renewals Strategy and Budget then the QCA must determine whether the additional costs are prudent and efficient in accordance with Schedule E; and • clause 7A.11.6(c) provides that if there is no Approved Renewals Strategy and Budget then the QCA must determine if the Renewals Capex Claim is prudent and efficient in accordance with Schedule E. <table border="1" data-bbox="1104 999 2047 1257"> <thead> <tr> <th></th> <th>Scenario 1</th> <th>Scenario 2</th> <th>Scenario 3</th> <th>Scenario 4</th> </tr> </thead> <tbody> <tr> <td>3</td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>4</td> <td>Does approved Renewals Strategy and Budget exist?</td> <td>Yes</td> <td>Yes</td> <td>No</td> <td>No</td> </tr> <tr> <td>5</td> <td>Capital Indicator (\$)</td> <td>100</td> <td>100</td> <td>100</td> <td>100</td> </tr> <tr> <td>6</td> <td>Actual Expenditure (\$)</td> <td>120</td> <td>75</td> <td>120</td> <td>75</td> </tr> <tr> <td>7</td> <td>Over / (Under) Spend</td> <td>20</td> <td>(25)</td> <td>20</td> <td>(25)</td> </tr> <tr> <td>8</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>9</td> <td>QCA will approve:</td> <td>100</td> <td>75</td> <td>--</td> <td>--</td> </tr> <tr> <td>10</td> <td>QCA to assess prudence and efficiency of:</td> <td>20</td> <td>--</td> <td>120</td> <td>75</td> </tr> <tr> <td>11</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>12</td> <td>Amount to include in RAB*</td> <td>120</td> <td>75</td> <td>120</td> <td>75</td> </tr> <tr> <td>14</td> <td colspan="4">* assuming the amounts in row 10 are deemed by the QCA to be prudent and efficient</td> </tr> </tbody> </table> <p>In relation to question 3(b), where Aurizon Network’s Renewal Capex Claim is consistent with the Approved Renewals Strategy and Budget but it has incurred lower costs in carrying out the relevant works, as illustrated in Scenario 2 above,</p> | | Scenario 1 | Scenario 2 | Scenario 3 | Scenario 4 | 3 | | | | | 4 | Does approved Renewals Strategy and Budget exist? | Yes | Yes | No | No | 5 | Capital Indicator (\$) | 100 | 100 | 100 | 100 | 6 | Actual Expenditure (\$) | 120 | 75 | 120 | 75 | 7 | Over / (Under) Spend | 20 | (25) | 20 | (25) | 8 | | | | | | 9 | QCA will approve: | 100 | 75 | -- | -- | 10 | QCA to assess prudence and efficiency of: | 20 | -- | 120 | 75 | 11 | | | | | | 12 | Amount to include in RAB* | 120 | 75 | 120 | 75 | 14 | * assuming the amounts in row 10 are deemed by the QCA to be prudent and efficient | | | |
| | Scenario 1 | Scenario 2 | Scenario 3 | Scenario 4 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 3 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 4 | Does approved Renewals Strategy and Budget exist? | Yes | Yes | No | No | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 5 | Capital Indicator (\$) | 100 | 100 | 100 | 100 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 6 | Actual Expenditure (\$) | 120 | 75 | 120 | 75 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 7 | Over / (Under) Spend | 20 | (25) | 20 | (25) | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 8 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 9 | QCA will approve: | 100 | 75 | -- | -- | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 10 | QCA to assess prudence and efficiency of: | 20 | -- | 120 | 75 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 11 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 12 | Amount to include in RAB* | 120 | 75 | 120 | 75 | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| 14 | * assuming the amounts in row 10 are deemed by the QCA to be prudent and efficient | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

| Question | Answer |
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| | <p>then:</p> <p>(a) these lower costs will be reflected in the actual Asset Replacement and Renewal Expenditure for the relevant Year that is submitted to the QCA under clause 7A.11.6(b); and</p> <p>(b) the QCA will approve the Renewals Capex Claim in accordance with clause 7A.11.6(b)(iii).</p> |
| <p>(4) Clause 6A.7 (b)(i)(A) requires the QCA to approve the preliminary limited update inputs in its calculation of the reset schedule F preliminary values, to the extent the QCA is satisfied these have been ‘calculated correctly and used in accordance with this undertaking’.</p> <p>The QCA notes that the reset WACC is a preliminary limited update input (cls. 6A.2 (b)(i)) and the reset debt risk premium is required to calculate the reset WACC.</p> <p>The UT5 DAAU definition for reset debt risk premium requires Aurizon Network apply the methodology referred to in Appendix F of the QCA’s 2018 Decision for BBB+ rated corporate bonds. It does not specify the selection of bond to be included in the sample.</p> <p>(a) Can you please confirm that in determining whether the preliminary limited update inputs have been ‘calculated correctly’, the QCA is able to assess whether the appropriate selection of bonds has been included in the sample. Further, please confirm the QCA can refuse to approve the reset schedule F preliminary values if it does not consider the appropriate selection of bonds has been used.</p> <p>(b) Please confirm this is also the case when determining if limited update inputs have been ‘calculated correctly and used in</p> | <p>The objective of estimating the debt risk premium (DRP) is not to establish the cost of debt. Rather it is to establish the required variation to the WACC to reflect the differential between the DRP calculated in the 2017 Access Undertaking with the DRP calculated at the Reset Date by applying the same methodology as applied in the QCA’s 2018 Decision, Appendix F (as set out below). It is necessarily intended to be a mechanistic approach applying the following methods and inputs:</p> <p><i>The QCA’s 2018 Decision considered that a bond sample based on the PwC selection criteria is appropriate, noting that Aurizon Network has proposed to use the PwC methodology to estimate its debt risk premium: (FD, App F, p. 143). The PWC selection criteria is:</i></p> <ul style="list-style-type: none"> • <i>Australian issuance by an Australian entity,</i> • <i>investment grade credit rating by Standard and Poors,</i> • <i>the issuing entity is not a financial entity,</i> • <i>the corporate bond is senior (i.e. not subordinated),</i> • <i>standard corporate bonds without special features such as call options attached,</i> • <i>a term to maturity greater than one year, and</i> • <i>yields reported by either Bloomberg or UBS.</i> <p><i>The QCA agrees with Incenta’s interpretation of the PwC selection criteria (FD, App F, p. 143):</i></p> |

| Question | Answer |
|---|---|
| <p>accordance with this undertaking’.</p> | <ul style="list-style-type: none"> • <i>includes real estate businesses in the bond sample</i> • <i>excludes outliers from the sample.</i> <p><i>The bond sample will be inclusive of bonds meeting these criteria from the following ratings:</i></p> <ul style="list-style-type: none"> • <i>A- bonds</i> • <i>BBB+ bonds</i> • <i>BBB bonds</i> <p><i>The QCA’s 2018 Decision considered that the dummy variables regression provides an appropriate estimate of Aurizon Network’s DRP for the proposed averaging period (FD, App F, pp. 152-155). The DRP will be estimated using dummy variable method with a linear functional form.</i></p> <p>Where Aurizon Network includes or excludes a bond from the sample in a manner inconsistent with the selection criteria outlined above then Aurizon Network will not have been consistent with the QCA’s 2018 Decision and therefore the DRP will not have been calculated correctly.</p> <p>With respect to question 4 in particular, the QCA can refuse to approve the Preliminary Limited Update Inputs and Limited Update Inputs, if they have not been calculated correctly using the methodologies of the QCA’s 2018 Decision (clause 6A.7(b)(i)(A) and (B)) or where relevant with alternative indices or inputs in compliance with 6A.6(b). Under clause 6A.6(b), the QCA can consider and determine the most appropriate alternative third party index or rate to be used for the purpose of clause 6A.2(b) or clause 6A.5(b).</p> <p>With respect to the Schedule F Preliminary Values, if there is an error in the calculation of the Preliminary Limited Update Inputs then this will flow through to the Reset Schedule F Preliminary Values (see clause 6A.2(b)).</p> |

| Question | Answer |
|---|---|
| <p>(5) In relation to your answer to Question 9 of the 26 July Request for Information, please confirm that it is now proposed that Aurizon Network (but not an end user) will have the ability to dispute a rebate determined by the independent expert.</p> | <p>An End User may raise a Part 11 dispute as contemplated under the new clause 7A.6(o) (as provided in our answer to Question 9 of the 26 July Request for Information). Aurizon Network and End Users do not have any other rights to raise a Part 11 dispute in relation to the Rebate provisions.</p> |
| <p>(6) With regard to clause 8.2.1(l), please provide reasons for the proposed amendments to the arrangements for developing the design of an expansion, specifically the removal of the provisions relating to the costs that Aurizon Network can recover for this work, as well as the option for another party to perform this work.</p> | <p>The deleted clauses 8.2.1(l)(i)(A) and (B) created rules for determining who would be responsible for investigating and designing Expansions.</p> <p>As a result of discussions with industry, the parties agreed that the DAAU would give the responsibility for developing the design and considering the scope of work for an Expansion to deliver the required Capacity to Aurizon Network.</p> <p>Investigations are no longer relevant because the Independent Expert is now given the role of determining whether Aurizon Network’s design will deliver the required Capacity.</p> <p>The costs incurred by Aurizon Network in developing and designing the scope of work to deliver the Capacity for the required Access Rights will be subject to a cost claim to be assessed by the QCA to determine the efficiency and prudence in the normal way under clause 2 of Schedule E.</p> |

Request for Information 22 August 2019

Aurizon Network and industry responses 27 August 2019

| Question | Response |
|--|---|
| <p>(1) In relation to the independent observer and its report that is to be published on Aurizon Network's website (cl. 3.9(e)), it is unclear as to the expectations of the QCA once it also receives a copy of the public report. Could you please clarify the intention of this clause?</p> | <p>Aurizon Network and industry agree that publication of the independent observer's report on Aurizon Network's website is adequate to ensure that stakeholders are aware of Aurizon Network's compliance with the independent governance obligations in clause 3.9 of the Undertaking.</p> <p>In view of that, Aurizon Network and industry agree that there is no expectation on the QCA with respect to that report and that, given that the QCA can view the report once published on Aurizon Network's website, there is no need for the report to be separately sent to the QCA.</p> <p>Clause 3.9(e) of the DAAU will be amended to remove the requirement for the independent observer's report to be sent to the QCA.</p> |
| <p>(2) Under cl. 7A.3.4, the costs of engaging the independent expert under Part 7A will be borne by the QCA and recoverable under the QCA Levy. Given the limits that apply in respect of the QCA's ability to recover costs through the QCA fee under the relevant QCA Regulation, would it be appropriate that these costs be incurred by</p> | <p>We appreciate the QCA's proposed solution. However, Aurizon Network cannot, through the Undertaking, impose on Access Holders the costs of the Independent Expert's engagement; it could only do that through amendment of the existing and future Access Agreements.</p> <p>Consequently, Aurizon Network and industry have agreed that the DAAU will be amended to remove the existing drafting in</p> |

| Question | Response |
|---|---|
| <p>Aurizon Network but recovered via a reference tariff component?</p> <p>For example, if the explicit intention is for these costs to be recovered on a \$/net tonne basis within access charges, the definition and title of the 'QCA Levy' reference tariff component could be amended to also include the costs of the Independent Expert (that is, 'QCA Levy and Independent Expert Costs' with corresponding amendments to the definition?)</p> | <p>clause 7A.3.4 and to replace it with an acknowledgement that RIG members must pay the Independent Expert's costs as part consideration for access. The Independent Expert will then levy costs directly on RIG members with Aurizon Network to advise the Independent Expert of the appropriate split of charges based on tonnages.</p> |
| <p>(3) While cl. 7A.11.5(f) provides guidance on the materiality of any differences to be considered by the QCA in the event that the Maintenance Cost Claim is consistent with the Approved Maintenance Strategy and Budget, there is no corresponding guidance in cl. 7A.11.5(h).</p> <p>Are you able to provide explicit guidance as to how the materiality of any differences with costs incurred or activities performed will be determined under cl. 7A.11.5(h), or are there reasons for there not being any explicit guidance/thresholds?</p> | <p>Clauses 7A.11.5(f)(ii)(B)(2) - (4) provide guidance as to when a Maintenance Cost Claim will materially differ from the Approved Maintenance Strategy and Budget.</p> <p>To further clarify the drafting, Aurizon Network and industry will amend clause 7A.11.5(h) as follows:</p> <p style="text-align: center;">(h) To the extent in a material respect <u>(on the basis of the differences referred to in clauses 7A.11.5(f)(ii)(B)(2) - (4))</u> to the Approved ...</p> |

Request for Information – 11, 16 and 18 September 2019 - UT5 DAAU
 Aurizon Network and industry responses 17 and 18 September 2019

| Question | Answer |
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| <p>Please identify where responses to previous information requests have changed in relation to the appointment process for the Independent Expert and cost recovery of these costs. (11 September 2019)</p> | <p>The responses to the following information requests will have changed as a result of the revised DAAU’s position with respect to the recovery of the Independent Expert’s costs:</p> <ul style="list-style-type: none"> • Appointment of IE process <ul style="list-style-type: none"> • Request for Information 26 July 2019 – Responses of Aurizon Network and HSF dated 1 August 2019 – Question 2 • IE Cost recovery <ul style="list-style-type: none"> • Request for Information 22 August 2019 - Aurizon Network and industry responses 27 August 2019 – Question 2 • Request for Information 14 June 2019 - Aurizon Network and industry responses 23 July 2019 - Question 22 |
| <p>Please provide an explanation for the revisions to clause 7A.5(c). In particular, the practical intent of “on the terms of the Expansion proposal” – this is not clear to QCA staff. (16 September 2019)</p> | <p>Where Aurizon Network and Access Holders agree that an the affected End Users jointly agree that an Expansion is the most effective and efficient option to address the Existing Capacity Deficit and on the terms of that Expansion, the precise nature of the Expansion (including cost and standard) must be assessed by the Independent Expert for efficiency and prudence under clause 7A.5(i). The words you refer to in your question are a reference to all the terms the Independent Expert would need to assess when considering the efficiency and prudence of the proposed Expansion.</p> |
| <p>Please provide an explanation for changes to the definition of ‘End user IE Voting Rights’ – to determine voting rights, rather than using ‘net tonne kilometres’, it is now proposed to use ‘contracted tonnes’. (11 September 2019)</p> | <p>In the UT5 DAAU submitted on 3 May, these voting rights were calculated on an ntk basis whereas the other types of voting rights (e.g. “End User Voting Rights (Network)”) were calculated on a contracted tonnage basis.</p> <p>To ensure consistency with the method for calculating the other voting rights, Aurizon Network and industry have agreed to amend the definition of “End User IE Voting Rights” to refer to the contracted tonnage of each End User.</p> |

Please provide an explanation for changes to clause 7A.11.5(b)(i) – relating to the determination of direct maintenance costs for FY19. (11 September 2019)

As part of the UT5 DAAU submitted on 3 May, we agreed that the QCA must approve the lower of actual Direct Maintenance Costs incurred by Aurizon Network and the Direct Maintenance Cost Allowance provided by the QCA under the QCA's 2018 Decision for FY19 and FY20.

In reviewing the DAAU and the supporting models that calculate Schedules F and K in order to provide the QCA with a revised UT5 DAAU, Aurizon Network noted that the current drafting of clause 7A.11.5(b) required Aurizon Network to break down the actual Direct Maintenance Costs incurred for each coal system and compare that to the Direct Maintenance Cost Allowance for each coal system in order to determine what the QCA must approve for FY19.

While Aurizon Network has no issue in doing this for each coal system for FY20 and beyond, it is difficult to do it on a coal system basis for FY19 as Aurizon Network did not operate its maintenance costs on that basis. While the maintenance costs have been managed in line with the Direct Maintenance Cost Allowance approved by the QCA under the UT5 Final Decision, the maintenance scope and budgets were prioritised and managed on the basis of where the maintenance need was greater in the CQCN ie by using the aggregate CQCN approach that has been used historically.

In keeping with the spirit of the UT5 DAAU, we believe that the QCA will need to approve the Direct Maintenance Cost Allowance amount for FY19 however we do not think it is reasonable to do it on an individual coal system basis for the reasons above.

Clause 7A.11.5(b) in the UT5 DAAU drafting submitted on 3 May causes a potential issue for FY19 in light of the volume reset approved by the QCA within the Reference Tariff Variation DAAU on 24 June.

The Reference Tariff DAAU reduced the variable maintenance tariff and the AT1 allowance due to fewer gtk's being forecast/railed. Due to this, Aurizon Network ended up spending slightly over the CQCN Direct Maintenance Allowance, i.e. the actual Direct Maintenance Costs incurred by Aurizon Network were higher than the Direct Maintenance Cost Allowance.

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| <p>In relation to the response provided on the new cl. 7A.5(c) above:</p> <p>Thank you for confirming that “on terms of the Expansion proposal” as it would apply to cl. 7A.5(c)(ii) only relates to things required for the Independent Expert to assess when considering the efficiency and prudence – specifically, being the cost, scope and standard of works.</p> <p>It is now clear that this doesn’t include any other ‘terms’, such as capacity allocation, for example. This clarifies what ‘terms’ Aurizon Network will be able to submit to the Independent Expert when there is no agreement with affected End Users and Independent Expert’s task of assessing them.</p> <p>Please advise if our understanding is incorrect. (18 September 2019)</p> | <p>It is confirmed that your understanding in relation to the phrase “on terms of the Expansion proposal” in clause 7A.5(c) of the revised DAAU is correct. (18 September 2019)</p> |
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Request for Information 7 November 2019

Aurizon and industry response 11 November 2019

| <u>QCA Question</u> | <u>Aurizon and industry response</u> |
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| <p>(1) Clause. 10.6.4 (b) states that if Aurizon Network and members of the <u>Rail Industry Group</u> have not agreed to the appointment of an auditor under clause 10.6.4(a)(i), the QCA must appoint a suitably qualified auditor.</p> <p>However, clause 10.6.4(a)(i) requires Aurizon Network and an <u>audit majority of end users</u> to jointly appoint a suitably qualified auditor.</p> <p>Please confirm whether reference to members of the Rail Industry Group in cl. 10.6.4 (b), should actually refer to an audit majority of end users?</p> | <p>We confirm that the reference to "members of the Rail Industry Group" in clause 10.6.4(b) should be deleted and the clause should be amended to read " If Aurizon Network and an Audit Majority of End Users have not agreed to the appointment of an auditor under clause 10.6.4(a)(i)".</p> |
| <p>(2) Clause 10.6.3 (e) states that costs incurred by the auditor in conducting an audit requested under cl. 10.6.3 will be borne by the QCA in the event that it requests the audit.</p> <p>Please confirm our understanding that such costs will be recovered through the QCA Levy.</p> | <p>If the audit identifies a material non-compliance, the costs of the Auditor will be borne by Aurizon Network.</p> <p>However, if the audit does not identify a material non-compliance, the QCA will bear the costs of the audit directly and such costs will not be recovered through the QCA Levy.</p> |
| <p>(3) In cl. 7A.4.4(b) there is a reference to cl. 7A.3.1(e).</p> <p>Please confirm whether this cross reference is correct; should it refer to cl. 7A.3.1(f)?</p> | <p>While the DAAU that was submitted by Aurizon Network on 17 September does not contain a clause numbered 7A.3.1(f), we understand that the QCA is referring to the draft UT5 DAAU attached to its Position Paper dated 24 September. If that is the case, then the cross reference should be to clause 7A.3.1(f).</p> |
| <p>(4) In cl. 7A.4.4(c) there is a reference to cl. 7A.3.1(e).</p> <p>Please confirm whether this cross reference is correct; should it refer to cl. 7A.3.1(f)?</p> | <p>We confirm that the correct cross reference is clause 7A.3.1(f).</p> |

| <u>QCA Question</u> | <u>Aurizon and industry response</u> |
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| <p>(5) Please confirm whether the cross references in Schedule E cl. 2.3 (g) and cl. 2.3(h) are correct.</p> | <p>We confirm that the references to clause 2.1(f) should be replaced with clause 2.3(f) and the references to clause 2.1(g)(i) should be replaced with clause 2.3(g)(i).</p> |
| <p>(6) In reference to the proposed amendments in the Herbert Smith Freehills correspondence to replace a ‘majority of end users’ voting threshold with a ‘special majority of end users’ voting threshold for certain votes in respect of the independent expert, please confirm it is intentional that a ‘majority of end users’ voting threshold is retained in:</p> <p>a) Clause 7A.3.1(d)</p> <p>b) Clause 7A.3.1(e)</p> <p>c) Clause 7A.3.5</p> | <p>The references in clauses 7.A.3.1(d), 7A.3.1(e) and 7.A.3.5 to ‘Majority of End Users’ should be to ‘Special Majority of End Users’. This is because each of these clauses are referring to the vote under 7.A.3.5(a), which is proposed to be changed to a ‘Special Majority of End Users’.</p> |
| <p>(7) For completeness, in reference to Attachment 2 of the Herbert Smith Freehills submission, the End User decisions table (Table 1) does not include cl. 7A.6 (k)(ii)(B).</p> <p>Please confirm that the ‘majority of end users’ voting threshold still applies for cl. 7A.6 (k)(ii)(B), that is, Aurizon Network may submit a draft amending access undertaking that is in a form that has been agreed by Aurizon Network and a <u>Majority of End Users</u>, which must include all End Users that requested the QCA undertake the Review.</p> | <p>We confirm that no change is sought to clause 7A.6(k)(ii) and that a ‘Majority of End Users’ (including those that requested the QCA to undertake the review) remains the applicable threshold.</p> |
| <p>(8) In reference to Attachment 2 of the Herbert Smith Freehills submission, the End User decisions table (Table 1) does not include cl. 3.6(c)(i).</p> <p>Please confirm that the ‘majority of end users’ voting threshold applies for cl. 3.6(c)(i).</p> | <p>We confirm that the voting threshold in clause 3.6(c)(i) should be modified to a ‘Majority of End Users’ vote. This is because clause 3.6(c)(i) is referring to the vote under clause 3.6(b) which is proposed to be changed to a ‘Majority of End Users’.</p> |

| <u>QCA Question</u> | <u>Aurizon and industry response</u> |
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| <p>(9) In cl. 5.3(g) there is reference to cl. 1.1.1(a). Please confirm the correct cross reference; should it refer to cl. 5.3(e)?</p> | <p>We confirm that the correct cross reference is clause 5.3(e).</p> |
| <p>(10) With reference to cls. 7A.3.1(d) and 10.6.4(b) - is it considered that 30 days will provide sufficient time for these matters to be resolved by Aurizon Network and relevant end users?</p> | <p>In respect of the appointment of the Independent Expert, Aurizon Network and industry are well progressed in the establishment of the newly created body that will be the Independent Expert. In this respect, Aurizon Network and industry confirm that the 30 day period in clauses 7A.3.1(d) is sufficient.</p> <p>In respect of clause 10.6.4(b), the Auditor under that provision only undertakes an audit when requested by the QCA or the Chair of the Rail Industry Group (on behalf of an Audit Majority of End Users) pursuant to clause 10.6.3(a)(ii) - any such audit is not related to the timing of the Approval Date. Accordingly, Aurizon Network and industry propose to amend the timeframe in clause 10.6.4(b) to delete the reference to the Approval Date and refer to:</p> <p><i>"30 Business Days after the date of the request by the QCA or the Chair of the Rail Industry Group pursuant to clause 10.6.3(a)(ii)"</i></p> |

Request for Information 12 November 2019

[Aurizon Network and industry response 14 November 2019](#)

Staff are considering matters raised by Pacific National's submission, in particular its comments regarding the renewal of an access agreement for non-coal train services and the use of the new System Operating Parameters in the renewed agreement.

We refer to your answer to Question 23(b) on the list of responses to QCA staff requests for information (as provided in Appendix 2 of the QCA's Position Paper), extracted below:

"With respect to question 23(b), the Standard Access Agreement, when entered into, will reflect the then current System Operating Parameters as determined by the Independent Expert. Any subsequent changes to the System Operating Parameters could be reflected in the Access Agreement (after the Access Agreement has been entered into) if the Access Holder requires the change through the clause 7A.12 process."

1. If an access agreement were to be entered into in future, is it proposed to be a requirement of the undertaking or standard access agreement for an access agreement to reflect the current System Operating Parameters as determined by the Independent Expert or will this be able to be negotiated between Aurizon Network and the access seeker? We require you to identify all relevant clauses within the undertaking and/or standard agreements, where applicable.

[The Standard Access Agreement and Standard Train Operations Deed contain a number of blank items in Schedule 2, some of which comprise System Operating Parameters; in particular, for example, unload times, load times, Sectional Running Times and Dwell Times. Not all System Operating Parameters are relevant to the matters that need to be completed in a Standard Access Agreement and Standard Train Operations Deed schedule, for example, Aurizon Network's assumptions on seasonal variations and live run losses.](#)

[As a matter of practice, when a new Access Agreement is being entered into, Aurizon Network completes those blank items on the basis of the then current and applicable System Operating Parameters. That practice will continue with the relevant System Operating Parameters being those determined by the Independent Expert. Aurizon Network and the relevant Access Seeker will not negotiate these inputs.](#)

[If the QCA remains concerned about this issue, Aurizon Network and industry would be prepared to include a provision in the Undertaking which reflects the process described above.](#)

2. Please advise if this answer is different for coal and non-coal carrying services? We require you to identify all relevant clauses within the undertaking and/or standard agreements, where applicable.

[The process followed by Aurizon Network described above is the same and will continue to be the same for coal and non-carrying services, although the System Operating Parameters applicable and to be included in the relevant Access Agreement and Train Operations Deed may vary depending on the type of freight.](#)