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NEW HOPE SUBMISSION TO QCA QUEENSLAND RAIL'S 2013 DRAFT ACCESS UNDERTAKING NEW HOPE CORPORATION SUBMISSION

Thank you for the opportunity to provide this submission on Queensland Rail's Draft Access Undertaking of February 2013.

New Hope notes that the Authority has extended the date for submissions regarding certain matters to 3rd May 2013, and intends to facilitate a series of forums on these matters over the coming weeks. These matters include:

- (a) Above-rail operational issues;
- (b) Western System pricing;
- (c) Aspects of the proposed standard access agreement;
- (d) Mount Isa pricing; and
- (e) Investment framework matters.

New Hope welcomes this approach.

In providing this submission regarding matters not listed above, we note the linkages between various issues and that consultation regarding the deferred matters may raise further issues in regard to the matters discussed in this submission.

Our initial comments on the Draft Access Undertaking are provided below:

Part 1: Application and Scope

- 1.1: Duration

New Hope considers, as was set out in our July 2012 submission, that the term of the undertaking should be no more than four years from 1 July 2013 (or slightly longer than four years if approved prior to 1 July 2013). That is, the expiry date should be 30 June 2017. This is based on the fact that the draft undertaking proposes a light-handed approach to regulation, and that QR's approach to applying the undertaking is untested.

DOCUMENT1

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- 1.4: Extensions: We assume that this is to be dealt with under the “Investment Framework” consultation.

Part 2: Negotiation Process

- 2.7.2 Access Seekers competing for Access Rights

New Hope continues to have strong concerns regarding the process for allocating capacity between competing Access Applications. New Hope’s July 2012 submission stated:

“The process for allocating additional capacity should be clear and equitable and the ability to allocate capacity based on QR’s commercial interests should be subject to certain limitations. In particular, where competing access applications both involve coal-carrying train services which would pay reference tariffs or tariffs derived from reference tariffs, the revenue arising from different origins/destinations should not be a differentiating factor (ie. clause 2.7.2(iv)(A) and (B) should not apply). This is because the process of considering QR’s commercial interests should take place during the setting of reference tariffs. It is not appropriate to discriminate against a particular mine on the basis that the tariff proposed by QR and approved by the QCA is considered less attractive by QR than the approved tariff for another origin/destination. Instead, competing applications should be assessed based on the extent to which each applicant is ready and able to use the paths sought (i.e. has the necessary production capacity, approvals and network exit capability). In the event that two Access Seekers are equally “ready and able”, would both pay tariffs based on reference tariffs, and are not materially differentiated based on contract term or credit risk, then we would expect that the first of these parties to apply for access should be the first to be allocated capacity.”

QR’s latest Draft Access Undertaking continues to propose a test based on “*how favourable an Access Agreement is likely to be to Queensland Rail as assessed by Queensland Rail in its absolute discretion*”. Given this right, it appears that QR would not be obliged to apply the criteria set out in 2.7.2(b).

New Hope considers that some level of transparency and certainty is required in regard to capacity allocation, and that the proposed level of discretion for QR is not appropriate. We therefore consider that competing “ready and able” Access Applications which would pay reference tariffs should be prioritised based on the date of Access Applications, unless one Access Application is materially differentiated in terms of risk to QR.

- 2.7.3 Renewals

This clause appears to seek to create a renewal right in respect of Train Services for

which there is an applicable Reference Tariff. A renewal right for Train Services involving coal haulage is important due to the long term nature of mining investments. We consider that this clause should be amended:

- To include a process under which QR notifies the Access Holder of the need (and right) to renew, a reasonable period ahead of the expiry of this right. This is, it should not be necessary that a competing application exist in order to trigger a notification to the Access Holder. As currently drafted, it appears that the renewal right will be lost if there is no competing application received more than 2 years ahead of the expiry of the existing Access Rights. It would not seem to be an onerous requirement for QR to notify Access Holders and their Customers before such a critical right is lost (as Aurizon Network is required to do).
- To provide a renewal right for coal-carrying train services operating under a negotiated access charge, such as Colton (ie. the current drafting would not provide a renewal right because there is no applicable Reference Tariff).
- To clarify the intent of item (e). While it is accepted that a Renewal Access Seeker must satisfy the normal requirements for gaining access and must enter into an Access Agreement based on the standard terms at the relevant time, this clause as drafted seems to go further. This is particularly a concern when this clause is read in conjunction with Clause 2.7.4, which states that QR is not obliged to enter into an Access Agreement if the network does not have sufficient Available Capacity. We do not consider that this clause should apply to Renewal Applications. This is, an Access Holder should retain the right to renew despite any shortage of Available Capacity (which may have arisen from a loss of system capacity or over-contracting by QR).
- 2.8 New Standard Access Agreements
This clause allows the QCA to give QR a notice requiring QR to submit a proposed standard access agreement for a specified type of Train Service not covered by a Standard Access Agreement. New Hope considers that the clause should be widened to allow the QCA to require QR to submit a proposed form of access agreement in which the rights and obligations of above-rail operators are separated from those relating to capacity and payment obligations (end-user access agreement). While New Hope does not see an immediate need for this form of agreement, and understands that there are potential efficiencies in deferring this issue until an end-user agreement is approved for Central Queensland, we consider that the QCA should reserve the right to request this during the term of UT1 if required.

Part 3: Pricing Principles

We assume that consultation on this section, in regard to the Western System, will occur as part of the deferred process (i.e. as part of “Western System Pricing”).

Part 4: Network Management Principles and Operating Requirements Manual

We assume that consultation on this section will occur as part of the deferred process (i.e. as part of “Above Rail Operational Issues”).

Parts 5, 6 and 7

No comments at this stage.

Schedule A: Deferred as part of “Western System Pricing” and “Standard Access Agreements”.

Schedule B: Deferred as part of “Above Rail Operational Issues”.

Schedule C: Deferred as part of “Standard Access Agreements”.

Schedule D: Feedback form for Unsuccessful Access Application:

New Hope considers that the proposed feedback form will provide insufficient information in regard to the cause of an Access Application being unsuccessful. A detailed explanation (subject to confidentiality constraints) should be provided, rather than a ticked box, because detailed information would:

- Allow the Access Seeker to seek to address the cause of rejection in a future application.
- Provide some transparency and assurance that the Access Undertaking has been followed.

In addition, Access Seekers should be able to request that similar information, but including confidential information, be provided to the QCA.

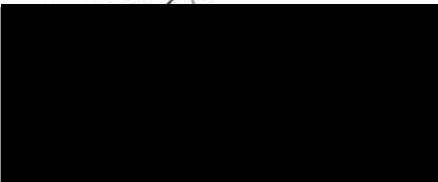
Other matters not dealt with in draft undertaking:

New Hope has previously submitted that the Undertaking should recognise the role of the Access Holder’s (and Access Seeker’s) customer. In respect of coal carrying train services, Access Rights are generally held by train operators for use by specific customers (mines). The undertaking should recognise the interests of these customers, and the undertaking and Standard Access Agreement should provide specific rights for customers. QR has addressed this in the current draft in regard to renewal rights, however, New Hope continues to seek further changes in regard to the rights of the customer:

- A requirement that each Access Agreement entered into for coal carrying train services note the identity of the customer would assist in ensuring that any provisions which seek to provide a right to customers (such as the renewal right) are effective.
- Requirement that transfers of Access Rights to a different origin/destination cannot proceed without the consent of the customer.
- A right for the customer, without the consent of the Access Holder, to trigger a transfer of Access Rights to an alternative Access Holder (for example, if the customer is changing above-rail operators or wishes to hold the Access Rights itself).
- A right for the customer (ahead of any other Access Seeker), to enter into a new Access Agreement (including through a new operator) in circumstances where an Access Agreement is terminated by QR due to default by the operator or is terminated by the operator due to default by QR (replacement Access Agreement).

Yours faithfully,

NEW HOPE CORPORATION LIMITED



Shane Stephan
Chief Financial Officer