

5 March 2013

Queensland Competition Authority
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Standard Rail Connection Agreement

We refer to the Decision of the Authority of December 2012 regarding Aurizon Network's proposed Standard Rail Connection Agreement ("SRCA"), and the submission by Aurizon Network on 14 February of a SRCA which does not comply with the Decision.

Comment on process

The submission by Aurizon Network of a SRCA which does not comply with the Decision of the Authority introduces further delay in the finalisation of the SRCA.

The need for the SRCA was identified during the development of the current Access Undertaking in 2010, and the proposed SRCA was submitted by Aurizon in June of 2011. The Authority's Decision was published in late 2012, following extensive consultation which involved submissions on Aurizon's proposed SRCA and on the draft decision (including an amended SRCA) of the Authority.

The QRC is disappointed that Aurizon has been unwilling to accept the Decision and has instead chosen to introduce further delay through its proposed amendments. While QRC does agree with some of the amendments, none, in our view, were of sufficient importance to justify causing further delays to this process.

We understand that the Authority may now prepare its own SRCA and must consult on that document. We encourage the Authority to conduct an expedited consultation process given the extensive consultation already undertaken. To the extent that the next draft SRCA reflects the version which was included in the Authority's Decision, the QRC will accept that version, will not raise any issues and will not seek to revisit any issues previously raised.

Comment on proposed amendments

The QRC's preference was for Aurizon to accept the final decision and avoid further delay. This is now not possible. QRC remains willing to support a SRCA as set out in the Authority's Decision, however, given that the process of approving a SRCA must now re-commence with the preparation of a further proposed SRCA, we understand that the Authority may wish to consider the merits of the changes proposed by Aurizon. We have provided comments on each of the proposed changes in the attachment.

Yours sincerely



David Rynne
Director Economics and Infrastructure
Queensland Resources Council

QRC Comments on Aurizon February 2013 draft of SRCA

Issue	Clause	Description	QRC Comments
Definition of design	Clause 1.1	The definition of Design proposed by the QCA has been amended to refer to Connecting Infrastructure without the additional words 'built by or on behalf of the Owner.'	The QRC supports this change.
Charges, invoicing and payment	Clause 3.1(b)	Aurizon has inserted 'or reinstatement' in paragraph 3.1(b).	The QRC supports this change.
	Clause 3.1(d)	Aurizon has reinstated paragraph (d) of clause 3.1 with some additional drafting. This allows Aurizon to recover the costs of providing any other services it is required to provide under the SRCA excluding costs otherwise recovered through access charges.	Paragraph (d) is not consistent with the QCA's Decision and should not be included in a new SRCA. Given that the SRCA deals with charges for all services provided under the SRCA (ie. design, construction, commissioning, operations, maintenance, decommissioning), it is not clear what "other services" this clause is intended to cover. In the event that the Authority identifies "other services" which are not covered by existing charges under the SRCA or through Access Charges, we would support the insertion of the proposed 3.1(d), subject to its application being limited to the reasonable costs of those specific services.
Aurizon's consideration and approval of a design	Clause 6.2	Aurizon has inserted additional paragraphs (b)(i) and (c) which effectively allow Aurizon to take advantage of an extended timeframe to consider a submitted design. The QCA's drafting required Aurizon to approve	The QRC accepts this change. The reference in clause 6.2(c) to "clause 6.2(b)" should be to "clause 6.2(b)(i)".

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		<p>or reject a design submitted by an owner within 10 business days of submission. Aurizon has amended this to allow itself to provide notice to the Owner that more time is required to consider the design after the expiration of the 10 Business Day period. In such circumstances, Aurizon is then only required to provide notice of approval or rejection of the design after a further 20 business days. This effectively allows Aurizon up to 30 business days to provide notice of approval or rejection of a design.</p>	
Train Services Plan	Clause 1.1, Clause 15, Schedule 4	<p>Aurizon have included a proforma Train Services Plan as Schedule 4 and reinstated the definition Train Services Plan.</p> <p>Clause 15 requires the Owner to provide a Train Services Plan in the form contained in Schedule 4 and the Owner must update that plan over time.</p>	<p>The QRC does <u>not</u> support these changes. The Train Services Plan seems unnecessary. Train service information will be included in any access agreement. Train service information does not seem relevant to construction activities and to the extent that it is this can be sufficiently dealt with through the scope of work. To the extent that there is any information regarding train operations which is relevant to maintenance and which is not available to Aurizon through the processes which lead to development of Access Agreements, this is unlikely to be material and would become clear to Aurizon over time, allowing maintenance plans to be adjusted if necessary. In addition, the Owner is likely to be willing to provide such information. Therefore we do not see any merit in creating another administrative hurdle which may lead to requests for information which exceed what is genuinely required for the stated purpose.</p>
Aurizon's rights and obligations	Clause 6.5	<p>Aurizon has amended the drafting so that it is permitted to encumber, transfer or dispose of the</p>	<p>The QRC accept these changes provided that any person to whom the Connecting</p>

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regarding connecting infrastructure		connecting infrastructure in cases where Aurizon's Network is similarly encumbered, transferred or disposed of (to the same party).	Infrastructure is transferred or disposed to also receive a novation of the Connection Agreement. Therefore the obligation in clause 6.6 on Aurizon Network to use best endeavours to novate the Connection Agreement should be replaced with an absolute obligation.
	Clause 6.6	Aurizon has inserted an obligation to use best endeavours to procure an assignment of its obligations under the SRCA to the transferee where Aurizon transfers or disposes the connecting infrastructure (as above).	Please refer to our comments on clause 6.5 above.
	Clause 6.9	Aurizon has added an obligation on itself to replace or reinstate connecting infrastructure that is damaged or destroyed to allow for connection to the private infrastructure.	The QRC supports this change.
Treatment of connecting infrastructure at the end of the term	Clause 19.4	Aurizon has adopted the QCA's drafting to allow for the transfer of ownership of the connecting infrastructure at termination. However, Aurizon has amended this drafting to require the Owner to enter into an agreement with Aurizon as to the terms and conditions upon which the connecting infrastructure will remain connected.	The QRC agrees with this in concept. However, the drafting proposed by Aurizon Network provides Aurizon Network with too much power – in particular, that ownership only transfers if the parties have entered into a new agreement. The clause should be recast so that the parties are obliged to enter into good faith negotiations to enter into an agreement which reflects the intended use of the Connecting Infrastructure at the relevant time, and if the parties fail to reach an agreement then either party may refer the matter to the QCA for the QCA to determine the terms of the agreement (which terms the parties must sign up to).

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Interface Risk Assessment and Emergency Response Plan	clause 11.7	<p>Aurizon's amendments shift the responsibility for the overall coordination and management of a response to an incident from itself to the Rail Infrastructure Manager arising from the Private Infrastructure.</p> <p>There is an obligation on the Owner to use reasonable endeavours to assist Aurizon to restore the connecting infrastructure and the Network to normal operation.</p>	<p>The QRC is supportive of these changes on the condition that a reciprocal clause is inserted into the agreement in relation to incidents on the Network that affect the Connecting Infrastructure.</p>
	clause 11.8	<p>Aurizon has removed the threshold criteria for incidents on Private Infrastructure for which Aurizon will determine who will conduct an investigation into an incident and how it will be conducted.</p> <p>Clause 11.8 now requires the Owner to procure that all investigations are conducted by the Rail Infrastructure Manager for Private Infrastructure (unless it is Aurizon).</p> <p>Paragraph (e) requires the Owner to provide Aurizon with a copy of any investigation report.</p>	<p>As for our comments on clause 11.7.</p>
Ability to enter private land in the case of an incident occurring on that land	clause 27.5	<p>Aurizon has amended the right of either party to enter land owned or controlled by the other so that this may only occur as permitted by and in accordance with the Interface Risk Management Plan and the Emergency Response Plan.</p>	<p>The QRC sees no difficulty with the language set out in the Authority's Decision and does not support this change.</p>
	clause 27.6	<p>Aurizon has inserted a requirement that any party entering land in accordance with the above must</p>	<p>As above.</p>

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		comply with the terms of the Interface Risk Management Plan and the Emergency Response Plan.	
Confidentiality	clause 25.1(c)	Aurizon has inserted a requirement for any Rail Infrastructure Manager to execute a Confidentiality Deed.	The QRC does not object to this change.
	clause 25.4	Obligation of confidence survives termination and remains binding for a period of 30 years from termination.	The QRC sees no difficulty with the language set out in the Authority's Decision and does not support this change.
	Schedule 7 – Confidentiality Deed	Aurizon has inserted additional drafting in the Confidentiality Deed which provides that any obligation of confidence under the deed survives termination and remains binding for a period of 30 years from termination, and waiver must be in writing and signed.	As above.
Insurance	Schedule 3	<p>The required owner insurances have been expanded to require insurance which covers obligations of the Rail Infrastructure Manager for the Private Infrastructure where the Owner is not the Rail Infrastructure Manager.</p> <p>The following have been removed from the list of types of insurance required to be held by the Owner:</p> <ul style="list-style-type: none"> • third party property insurance; 	<p>The QRC supports all of the changes to Schedule 3 other than in one respect. Public liability insurance policies typically do not cover losses of third parties arising from rollingstock using infrastructure. The public liability policy that both parties are obliged to obtain under the Connection Agreement should also expressly apply to a loss suffered by a third party which results from the operation of rollingstock.</p> <p>The QRC suggest that the following be inserted</p>

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		<ul style="list-style-type: none"> employees insurance; and public liability insurance to cover a haulage operator's rail operations and associated activities. 	<p>into Schedule 3 as an additional dot point in respect of both Aurizon's and the Owner's public liability insurance:</p> <p><i>"injury to or death of any person or damage to any property other than property owned by the insured, arising from rail haulage operations"</i></p>
		<p>The following have been removed from the list of types of insurance required to be held by Aurizon:</p> <ul style="list-style-type: none"> third party property insurance; employees insurance; public liability insurance to cover a haulage operator's rail operations and associated activities; and property damage insurance. 	

28 February 2013