



Submission to the Queensland Competition Authority

**Response to the Draft Decision on the Draft Capricornia System Rules**

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## 1 Introduction and executive summary

Anglo American Metallurgical Coal Pty Limited (**Anglo American**) welcomes the opportunity to make submissions on the Queensland Competition Authority's (**QCA**) draft decision on Aurizon Network Pty Ltd's (**Aurizon Network**) draft Capricornia System Rules (**CSR**) (**The Draft Decision**).

Anglo American notes that the CSR contain many important concepts that will be replicated in other System Rules across the Central Queensland Coal Network (**CQCN**), including the Northern Bowen Basin System Rules or the Goonyella System Rules.

Anglo American supports the Draft Decision of the QCA to refuse to approve the proposed CSR and supports the changes required by the QCA in the Draft Decision. In particular, Anglo American supports the follow requirements:

- (a) that Aurizon Network must provide a train graph of the Capricornia rail network in a manner consistent with the Network Management Principles;
- (b) particularly in respect of the reporting requirements on how above and below rail delays affect dispatch intervals, the number and proportion of reference and non-reference trains that have operated and how the use of reference and non-reference trains has increased/decreased the number of system paths available in the Capricornia coal chain;
- (c) increased transparency in respect of the scheduling constraint summary, the maintenance multiplier and the circumstances in which a TSE is deemed by Aurizon Network to be consumed;
- (d) that Aurizon Network does not have the scope to change activities included in the 21-day maintenance lock-down period unless this is allowed by the Network Management Principles;
- (e) the CSR are amended to allow for the Alternative Access Agreements; and
- (f) an access holder's cancelled system path in the day of operation will not be recorded as TSE consumption against that access holder if another access holder is able to order and use the below-rail network path that was associated with the original system path.

In addition to those matters dealt with in the Draft Decision, Anglo American considers that the following points should be considered by the QCA:

- (g) the exclusions in the definition of a 'network cause' in the CSR are broader than the currently QCA-approved definition contained in UT3. This limits Aurizon Network's liability for delays further than should be reasonably allowed and increases the burden on users, even in instances where Aurizon Network also added to the impact of a delay. Anglo American does not believe that Aurizon Network should be allowed to broaden an approved definition except through altering the appropriate Access Undertaking;
- (h) there is a distinct lack of clarity or power in the amendment process that allows users to object to amendments to the CSR. Aurizon Network may implement unilateral changes to the CSR and users can only object using the lengthy dispute resolution process contained in UT3, without any timely recourse or consideration of their objection. Further, operators have no right to object at all. Whilst this might be consistent with the requirements of UT3, at the time that UT3 was approved there was no thought that the system rules would affect the legal rights and obligations of the coal producers. In light of the importance of the system rules and the impact on users, this process needs to be rectified so that the essential entities involved in the operation of the Capricornia System can play a part in dynamic developments to the CSR; and

- (i) the CSR have no ability to deal with connections to the Capricornia System that have significant impacts on the capacity and scheduling of the system. This is particularly important for the Moura Line as it will potentially have to deal with increased capacity flowing from the Wiggins Island Coal Export Terminal (**WICET**) and the Surat Basin Rail (**SBR**). Anglo American suggests developing a protocol where an established calculable increase in capacity triggers a consultative review process, allowing users and operators to contribute to the operation of the Capricornia System if capacity is significantly different from when the CSR are approved.

Underlying Anglo American's major concerns with the CSR is a distinct lack of transparency or clarity as to how the CSR will be applied. Parts of the CSR are derived from the currently applicable and QCA-approved UT3, others from proposed aspects of UT4 and some rules are new to any form of regulation in Queensland.

## 2 Changing definitions under the CSR

Anglo American accepts the majority of definitions proposed by Aurizon Network under the CSR. Anglo American does not, however, accept the definition of 'network cause'. The definition of network cause proposed by Aurizon Network in the CSR expands the concept of a network cause beyond that which has been approved by the QCA in UT3 and applies as part of the existing infrastructure regulation.

Anglo American understands that Aurizon Network has proposed a similarly broad definition for a network cause within UT4 and Anglo American intends to make similar objections to the proposed definition there. Importantly, however, the CSR have been proposed under the current regulatory framework of UT3 and should apply the existing acknowledged and approved principles rather than attempting to impose a new concept that should not be dealt with until the finalisation of UT4.

Anglo American submits that the QCA should not underestimate the importance of the breadth of application of the definition of an Aurizon Network cause. Whether or not loss or delay is a network cause is a vital concept to determining liability for errors, the implications of which may stretch into hundreds of thousands of dollars in lost profit. With such an expensive outcome at stake, whether loss is borne by Aurizon Network or the individual user is an integral part of the regulatory framework. As such, it should reflect that regulatory framework.

Anglo American is particularly concerned with two additions that have been made to the definition of network cause. It acknowledges that Aurizon Network is required to, and consistently has, complied with its Passenger Priority Obligations under the *Transport Infrastructure Act 1994* (Qld). As such, Anglo American does not object to timetabling passenger services before resource services and, thus, supports its exclusion from the definition of network cause. On the other hand, Anglo American does object to Aurizon Network excluding liability where inability to meet contracted capacity for users is the result of:

- (a) unavailability or cancellation of train services on adjoining networks; or
- (b) unavailability of loading or unloading facilities not meeting performance parameters detailed in the user's Access Agreement.

As Aurizon Network is the operator and owner of many of the adjoining networks referred to by the first change, Anglo American does not believe that Aurizon Network should be shielded from liability for loss of capacity simply because that loss has come from one of its other systems. With the connection of the Goonyella to Abbot Point Expansion (**GAPE**) and the Northern Missing Link (**NML**) there is likely to be significant cross system transfers and this should not protect Aurizon Network from ensuring that cross-system traffic is adequately catered for. The same

principle will need to apply if the SBR is connected to the Moura Line and, therefore, subject to the CSR.

Further, the extension of exclusions to a network cause include any issues arising from loading and unloading. Loading and unloading is operated in an extremely wide variety of manners, including operation by the miner, the train operator and Aurizon Network depending on the terms of the individual Access Agreement or other separate contractual documents. As such, excluding all loading and unloading issues (as the network cause definition in the CSR attempts to do) places a much greater burden on users, even in situations where Aurizon Network may have control of the operation of loading or unloading facilities.

More importantly, this definition does not reflect the current QCA-approved definition contained in UT3. Anglo American acknowledges that Aurizon Network has included a similarly broad definition in its proposed UT4, however, negotiations with industry and the QCA have not been completed on UT4 and it is not an approved regulatory undertaking. Approving a broader definition under the CSR, which was always intended to be (and Aurizon Network assures everyone that it will be) a scheduling document is completely inappropriate. The CSR is not intended to implement substantive changes that affect the liability of parties when those substantive changes are not reflected in properly certified or approved regulation. While the CSR are implemented under the operation of UT3 regulation, Aurizon Network should not be allowed to implement changes that do not reflect the applicable undertaking.

As such Anglo American cannot support the definition of 'network cause' as it operates without an approved regulatory base or user consultation.

### **3 Maintenance multiplier**

Anglo American agrees with the conclusion of the QCA that the operation of Aurizon Network's maintenance multiplier lacks clarity.

This is a significant issue as an access holders' TSEs are fundamentally the service which is being acquired by the access holder under the relevant Access Agreement. Therefore, to have unclear processes in place which impact upon the TSEs fundamentally undermines certainty around the extent and nature of the access which has been obtained.

Anglo American supports the concept of a maintenance multiplier as the fundamental purpose of the maintenance multiplier is to assist access holders to obtain their contracted monthly TSE, even where there are 'missed paths' because of maintenance activities. Anglo American supports the Draft Decision to the extent that it requires a higher degree of transparency around how the maintenance multiplier will be applied to nominal weekly TSEs and the assumptions underlying the calculation of the maintenance multiplier.

### **4 Lack of an adequate amendment process**

Anglo American is concerned that the user amendment process contained in the CSR is completely inefficient and unacceptable when dealing with such an important operational document.

Anglo American understands that the amendment process in the CSR (see section 1.1) is reflective of the plan alterations process contained in schedule G of UT3.

Importantly, Anglo American is concerned that Aurizon Network has a broad and unfettered ability to make amendments, deletions or additions to the CSR, as it is considered a purely operational document. However, this assumption is not correct and the CSR can affect fundamentally important issues such as the consumption of TSEs. Anglo American submits that a more

considered approach should be applied, including a compulsory consultation and submission process for certain amendments.

Although in section 1.1 Aurizon Network has an obligation to notify all relevant parties when changes to the CSR are proposed, there is no obligation to incorporate objections or developments from consultation into the amended CSR. The only restriction on Aurizon Network is that it must have regard to the equitable operation of the CSR. Therefore, as long as all users are equally disadvantaged by an amendment, there will be no avenue to object under the CSR.

If a user does wish to lodge an objection to an equitably applied amendment, it will have to do so by utilising the dispute resolution process under UT3. This dispute process can stretch to extended periods of time and end without achieving a result for the user in relation to its objection. With an important operational document like the CSR, the inability of the document to create a fast and effective dispute resolution process and deal with important objections in a short space of time will simply not translate into effective operability of the CSR. Anglo American requests that the QCA consider implementing, or asking Aurizon Network to implement, a short timeframe dispute resolution process that can see users' objections considered and dealt with before the operation of the system is detrimentally effected.

## **5 Flexibility of the CSR for future developments**

Anglo American fully supports the valid concerns raised by RTCA as to how the CSR would deal with increased capacity from WICET. With the possibility of both WICET and SBR being brought online in the term of the CSR, Anglo American agrees with RTCA that the CSR does not adequately provide for the inclusion of such incremental increases to capacity. Although the QCA's independent reviewer, Femol International, regards the CSR as a live document to be updated accordingly when further capacity is brought online, Anglo American does not believe this is possible. As discussed above, due to the lack of an adequate amendment process in the CSR, once current submissions close and the CSR is operational there will be little to no chance that users or operators on the Capricornia System will be able to apply for an amendment to the CSR.

As such, if significant increases to capacity such as WICET or SBR are not considered in the current round of submissions, users and operators will have no input to how decreased spare capacity or increased total capacity will be managed on the Capricornia System. The CSR will become a changeable regulatory tool used by Aurizon Network to fully control capacity on the Moura Line.

Even with the inclusion of an effective dispute resolution or amendment process, Anglo American submits that there should be clauses included which trigger a review of the operation of the CSR in the event of significant capacity changes. If this were the case, users would have the ability to voice concerns about the operational procedures being implemented by Aurizon Network in the situation of a significant growth in capacity. This could be phrased to only trigger in an instance where the capacity change was above 'X'Mtpa to the system. Therefore, if WICET or SBR prove to have minimal effect on the system, they will not trigger reviews. Otherwise, users will have another opportunity to be involved in developing System Rules drafted in light of the significant implication on capacity.