

Part 2: Intent and Scope

[Note: This mark-up does not deal with the QRC's Associated Services submission.]

2.1 Duration

- (a) Subject to **clause 2.1(b)**, this Undertaking is effective from the Approval Date to the Terminating Date.
- (b) The Reference Tariffs, as approved in this Undertaking on the Approval Date, apply retrospectively and are effective from the Commencing Date.

2.2 Intent

The intent of this Undertaking is to:

- (a) facilitate the negotiation of access agreements by Aurizon Network and Access Seekers;
- (b) apply the provisions of the Act through:
 - (i) the establishment of processes for Access negotiations and the utilisation of Capacity that are expeditious, efficient, timely, commercial and non-discriminatory;
 - (ii) the establishment of processes and principles to provide guidance in relation to the pricing, and the terms and conditions, of Access; and
 - (iii) the establishment of processes and principles for the planning and development of Expansions and the framework for the negotiation of terms for the funding of Pre-feasibility Studies, Feasibility Studies and Expansions.
- (c) provide an efficient, effective and binding Dispute resolution process;
- (d) provide that actions pursuant to this Undertaking are consistent with the objectives for rail under section 2(2)(d) of the TIA and that such actions and this Undertaking are also consistent with the objectives and provisions of the Act; and
- (e) achieve an appropriate balance between:
 - (i) the legitimate business interests of Aurizon Network;
 - (ii) the public interest, including the public interest in having competition in markets;
 - (iii) the interests of Access Seekers, including in being:
 - (A) treated in a fair, consistent and non-discriminatory manner; and
 - (B) provided Access on reasonable commercial terms;

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- (iv) cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains; and
- (v) to the extent applicable, the pricing principles set out in section 168A of the Act.

2.3 Scope

- (a) ~~Except as provided for in this Undertaking, this Undertaking~~ provides only for the negotiation and provision of Access and is not applicable to the negotiation or provision of services other than Access.
- (b) Access Holders are responsible for:
 - (i) the provision of any services other than Access, including Above Rail Services, required for the operation of Train Services; and
 - (ii) the necessary approvals from the owners of the land upon which the Rail Infrastructure is situated if it is not owned by Aurizon Network and Aurizon Network does not have an existing legal right to authorise Access Holders to access that land. ~~If Aurizon Network is not the owner of the land and does not have an existing legal right to authorise an Access Holder to access the land, Aurizon Network must promptly notify the Access Holder in writing. [Note: Aurizon Network should be obliged to advise an Access Holder if it does not have an existing legal right to authorise access to the land.]~~
- (c) Nothing in this Undertaking can require Aurizon Network to act in a way that is inconsistent with its Passenger Priority Obligations or Preserved Train Path Obligations.
- (d) Nothing in this Undertaking can require Aurizon Network or any other party to an Access Agreement or a train operations agreement or a Train Operations Agreement, executed before the Approval Date, to vary that Access Agreement, train operations agreement or Train Operations Agreement or to act in a way that is inconsistent with the relevant Access Agreement, train operations agreement or Train Operations Agreement.
- (e) ~~This Undertaking will not apply to the extent that it is inconsistent with an Access Agreement or a Train Operations Agreement.~~

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2.4 Electricity supply

- (a) ~~Subject to clause 2.4(b),~~ Aurizon Network will supply electric energy to Access Holders and, where applicable, Train Operators wishing to acquire it for the purpose of running Train Services subject to:
 - (i) Aurizon Network having the legal ability to supply that electric energy; and

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(ii) Aurizon Network agreeing to supply the electric energy on reasonable terms and conditions, having regard to the terms on which that electric energy could be supplied by alternative sources.

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(b) If Aurizon Network supplies electric energy to an Access Holder as at the Commencing Date of this Undertaking, then Aurizon Network must continue to provide the electric energy to the Access Holder on the same terms and conditions as those applying prior to the Commencing Date, until either:

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(i) revised terms and conditions are agreed upon by Aurizon Network and the Access Holder under clause 2.4(a); or

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(ii) the revised terms and conditions are resolved through dispute resolution in accordance with clause 2.4(e).

(c) It is acknowledged that:

(i) the supply of electric energy by Aurizon Network is not a supply of Access Rights or otherwise governed by this Undertaking (except to the extent that any Reference Tariff includes EC and except as provided for in this clause 2.4); and

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(ii) nothing in this **clause 2.4** prevents an Access Holder or, where applicable, a Train Operator acquiring electric energy for its Train Services from a third party, subject to:

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(A) compliance with Aurizon Network's safety and technical requirements for the connection of that electric energy to the Rail Infrastructure; and

(B) the Access Holder or, where applicable, the Train Operator obtaining the prior written consent of Aurizon Network for connection of that third party's electric energy, which may not be unreasonably withheld.

(d) Schedule G sets out the principles which will govern the arrangements for pricing of electric traction services in the Blackwater System, and recovery by Aurizon Network of electric system costs.

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(e) If a Dispute arises under this clause 2.4 regarding a refusal by Aurizon Network to supply electric energy or the proposed terms and conditions on which Aurizon Network offers to supply electric energy, either party may refer the matter to an expert under clause 11.1.4 for resolution as a dispute.

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