

Part 7: Available Capacity allocation and management

7.1 Application

(a) This **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular under its provisions:

(i) Aurizon Network may (acting reasonably and in good faith) refuse to grant Access Rights if the relevant Access Seeker has not demonstrated that it can fully utilise those Access Rights. **(Clause 7.2)**

(ii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances. **(Clause 7.3)**

(iii) Standard Access Agreements will include provisions allowing an Access Holder to relinquish Access Rights for a Transfer. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer. **(Clause 7.4.2)**

(iv) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications. **(Clause 7.5.1)**

(v) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will prioritise the granting of Access Rights having regard to a series of specified criteria. **(Clause 7.5.2)**

However, these provisions for Mutually Exclusive Access Applications do not apply where the allocation occurs under **Part 8**, providing however that in determining the priority of one Access Seeker over another it is not relevant to consider whether an Expansion will be funded by Aurizon Network or a Customer **(Clause 7.5.2(a))**

(vi) Subject to the provisions of the relevant Access Agreement, scheduling and Train Control will be performed by Aurizon Network consistently with the Network Management Principles (including the System Rules). Aurizon Network has various rights and obligations in relation to amending System Rules. **(Clause 7.6)**

(b) To the extent that there is any inconsistency between any of:

(i) **clause 7.2** (General requirement for allocation);

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- (ii) **clause 7.3** (Renewals);
- (iii) **clause 7.4.2** (Transfers); and
- (iv) **clause 7.5** (Mutually Exclusive Access Applications),

those provisions will apply in that order of precedence (from highest to lowest) to determine which of them prevails to the extent of the inconsistency.

- (c) For the purposes of the Act, the treatment of Access Seekers differently as a result of, or in accordance with, **clause 7.3, 7.4.2 or 7.5.2** is permitted and to that extent does not offend the Act.
- (d) Nothing in **clauses 7.3, 7.4.2 or 7.5.2** obliges Aurizon Network to grant Access Rights if there is insufficient Available Capacity to provide those Access Rights.

7.2 General requirement for allocation

Despite any other provision in this Undertaking, Aurizon Network may refuse to allocate Available Capacity in respect of an Access Application if the Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that the Access Seeker can fully utilise the Access Rights requested. An Access Seeker can fully utilise the Access rights if it has:

- (a) Supply Chain Rights;
- (b) a reasonable likelihood of obtaining a contract for rail haulage utilising the relevant Capacity by the time the Access Rights are to commence;
- (c) where the relevant Capacity will be used to transport the output of a mine, sufficient anticipated output from the mine to support full utilisation of the relevant Capacity; and
- (d) if relevant, rights from other providers of infrastructure (for example, unloading facility operators and other Railway Managers) to use infrastructure necessary for the Access Seeker's Train Services to enter and exit the Rail Infrastructure.

It is acknowledged that at the time of allocating Available Capacity it is not necessary for paragraphs (a) to (d) to have been complied with, and that it is sufficient for the Access Seeker to have a reasonable likelihood of satisfying paragraphs (a) to (d) by the time that the Access Rights are to commence.

7.3 Renewals

- (a) This **clause 7.3** sets out provisions that apply where all or any part of an Access Holder's existing Access Rights will expire and:
 - (i) that Access Holder (where the Access Holder has no Customer); or

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- (ii) the person nominated by the Access Holder's Customer in writing to Aurizon Network (and, for clarity, that Customer may nominate itself),

(Renewing Access Seeker) wishes to hold or to continue to hold (as applicable) equivalent Access Rights (being the Access Rights held immediately before expiry) for a further term commencing immediately after those existing Access Rights will expire (that is, a **Renewal**). For clarification:

(iii) a Renewing Access Seeker may (to the extent it otherwise qualifies with **clause 7.3(a)**) be a party who has received Access Rights as a result of a Transfer; and

(iv) equivalent Access Rights may include Access Rights for a Replacement Mine.

[Note: The following definition of "Replacement Mine" should be included in Part 12 - Replacement Mine means a mine:

(1) That the Customer or Access Holder which is the same as the Customer or Access Holder (as applicable) for the existing mine receiving the benefit of the relevant Access Rights;

(2) that is in the same geographic area as the existing mine referred to above such that Train Services for that mine use substantially the same Train paths as Train Services for the existing mine; and

(3) that is producing a volume of coal substantially equivalent to a reduction in existing volume from the existing mine.]

(b) For clarity, where a Renewing Access Seeker chooses to Renew only part of their existing Access Rights, the balance of those Access Rights not Renewed will become Available Capacity on the expiry of those existing Access Rights.

(c) Despite any provision in **Part 4**, Aurizon Network:

- (i) is not obliged to negotiate the provision of Access that will use Capacity that will become Available Capacity on the expiry of an existing Access Right; and
- (ii) must not enter into an Access Agreement in relation to such Capacity,

with a person other than the relevant Renewing Access Seeker unless and until:

- (iii) the end user (that is, the Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer) has notified Aurizon Network that the end user does not intend to seek a Renewal; or
- (iv) the Renewing Access Seeker has not (other than as a result of an act or omission or delay by Aurizon Network) executed

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an Access Agreement for that Capacity with Aurizon Network under this **clause 7.3** at least 12 months prior to the expiry of the Access Rights.

- (d) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than three years prior to the expiry of the Access Rights. Aurizon Network must promptly negotiate with a Renewing Access Seeker that provides a valid Renewal notice. A Renewing Access Seeker is not required to submit a new Access Application.
- (e) A Renewing Access Seeker has a priority right to renew its Access Agreement on the terms listed in **clause 7.3(f)**. For clarification, that means that a Renewing Access Seeker who submits a valid Renewal notice on its existing Access will, Subject to **Clause 4.11(c)**, have a right to receive that Access without resubmitting an Access Application or joining a queue.
- (f) If a Renewing Access Seeker gives a Renewal notice in accordance with **clause 7.3(d)**, then:
- (i) the term of an Access Agreement relating to the Renewal must be:
- (A) for coal carrying Train Services, the lesser of 10 years and the remaining life of the relevant mine (as evidenced to Aurizon Network's reasonable satisfaction by the Renewal Access Seeker); or
- (B) for other Train Services, the lesser of 10 years and the same length of time as the term of the relevant current Access Agreement; and
- (ii) nothing in this **clause 7.3** obliges Aurizon Network to enter into an Access Agreement for a Renewal on the same terms as the relevant Access Holder's Access Agreement for the existing Access Rights.
- (g) For clarity, once a Renewing Access Seeker has lodged a valid Renewal, the negotiation for those Access Rights will be conducted in accordance with **Part 4** including the Negotiation Cessation Notice provisions under **clause 4.11** and negotiations being based on any applicable Standard Access Agreement.

7.4 Dealing with Access Rights

7.4.1 Assignments

Subject to **clause 7.4.2**, an Access Holder may only assign, novate or otherwise transfer the Access Holder's interest in an Access Agreement to a third party in accordance with the terms of that Access Agreement.

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<#>the Renewing Access Seeker does not agree to an Access Agreement for, ¶ a term referred in **clause 7.3(e)(i)**, then the Renewing Access Seeker's Access Application will not be treated as an Access Application for a Renewal under this **clause 7.3**.

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7.4.2 Transfers

(a) If an Access Holder intends to undertake a Transfer, then despite any other provision in this Undertaking:

(i) subject to **clause 7.4.2(a)(ii)**, Aurizon Network will negotiate exclusively **and expeditiously** with the Transferee in relation to the grant of the Transferred Access Rights and, if applicable, Ancillary Access Rights;

(ii) that exclusivity of negotiation does not apply to any other Access Rights, if any, sought by the Access Seeker (for example, Access Rights that require an Expansion or Customer Specific Branch Line).

[Drafting note: the consideration of other Access Applications has been removed to avoid confusion as Transferees should get priority over other Access Seekers who are already negotiating with Aurizon Network to the extent of the Access Rights the subject of the Transfer.]

(iii) if a Transfer is:

(A) for the correct term of the existing Access Agreement;

(B) submitted in the form of a Standard Access Agreement; and

(C) the Transferee satisfies **clause 4.11(c)**,

Aurizon Network is required to execute an Access Agreement for Available Capacity the subject of the Access Rights; and

(iv) where:

(A) an Access Application by a Transferee for Transferred Access Rights and Ancillary Access Rights;

(B) **another Access Seeker is already in the process of negotiating an Access Agreement with Aurizon Network, and that Access Seeker has demonstrated to Aurizon Network's reasonable satisfaction that the Access Seeker can fully utilise the proposed Access Rights having regard to the matters listed in clause 4.11(c); and**

(C) the Access Applications are Mutually Exclusive Access Applications,

clause 7.5 will apply to those Access Applications and will not otherwise apply to that Transferee's Access Application in respect of any other Access Seekers.

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(b) A Transferee must complete and submit an Access Application for the Transferred Access Rights and, if applicable, Ancillary Access Rights and subject to this **Part 7**, (which shall prevail to the extent of any inconsistency), the negotiation for those Transferred Access Rights and, if applicable, Ancillary Access Rights will be conducted in accordance with **Part 4**.

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(c) This **clause 7.4.2** ceases to apply in respect of a Transfer if the Access Holder for that Transfer fails to comply with the provisions of the Access Holder's Access Agreement relevant to that Transfer. Aurizon Network may:

- (i) require provisions in an Access Agreement with a Transferee making that Access Agreement subject to; or
- (ii) delay execution of an Access Agreement with the Transferee until,

the Access Holder's full and proper compliance with the provisions of the Access Holder's Access Agreement relevant to that Transfer. For example, Aurizon Network may include provisions providing for the termination of the Transferee's Access Agreement where the Access Holder does not fully comply.

(d) For clarity, a change in the nomination of a Train Operator by an End User does not constitute a Transfer.

(e) It is acknowledged that in respect of Transfers:

(i) despite the timeframes set out in **clause 4**, Aurizon Network will act as expeditiously as is possible and in any event with a view to achieving the timing of the proposed Transfer;

(ii) Aurizon Network will complete steps provided for in clause 4 in shorter timeframes than is provided for in **clause 4**; and

(iii) in respect of short-term Transfers (being Transfers of less than a Month), Aurizon Network must apply an abbreviated process for **clause 4**.

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(f) Aurizon Network must maintain on the Website a register of Access Holders that have indicated to Aurizon Network that they are considering effecting a Transfer. Proposed Transfers should only be placed on this register when the Access Holder requests, otherwise Aurizon network is required to maintain confidentiality of proposed Transfers. Such register should include such level of detail as is specified by the Access Holder is to be made publicly available.

7.5 Mutually Exclusive Access Applications

7.5.1 Notification and assistance

(a) Aurizon Network will identify Access Applications that are or have become Mutually Exclusive Access Applications and will notify an Access Seeker as soon as practical after Aurizon Network identifies

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that the Access Seeker's Access Application is or has become a Mutually Exclusive Access Application.

- (b) Aurizon Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is not a Mutually Exclusive Access Application.

7.5.2 Capacity allocation for Mutually Exclusive Access Applications

- (a) This **clause 7.5.2** does not apply where the allocation of Capacity to Access Seekers occurs under **Part 8** and does not affect the operation of **Part 8**.
- (b) If Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity, then Aurizon Network will enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, a Connection Agreement) for the Available Capacity for those Access Applications that meet the following criteria prior to considering any of the other Access Applications:
 - (i) the Access Application is for coal carrying Train Service;
 - (ii) the Access Seeker has satisfied Aurizon Network (acting reasonably) that the Access Seeker will be able to use the Access Rights at the level sought giving consideration to the factors in **clause 4.11(c)**;
 - (iii) the grant of the Access Rights is not subject to any Expansion ~~or Customer Specific Branch Line~~; **[Note: The deleted words are too broad.]**
 - (iv) the Access Rights requested could be used without adversely affecting the ability of existing Access Holders to use their Access Rights;
 - (v) the Access Agreement's proposed term is at least 10 years ~~or the remaining life of the mine~~; and
 - (vi) where the grant of Access Rights requires Existing Capacity that will become Available Capacity, Aurizon Network is satisfied (acting reasonably) that the Access Seeker will be able to use that Existing Capacity on the date when it becomes Available Capacity.
- (c) Subject to **clauses 7.5.2(d)** and **(e)**:
 - (i) if:
 - (A) Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity; and
 - (B) after applying **clause 7.5.2(b)** there are remaining Mutually Exclusive Access Applications and remaining Available Capacity; or

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- (ii) if none of the relevant Mutually Exclusive Access Applications satisfy the criteria under **clause 7.5.2(b)**, then Aurizon Network will **(acting reasonably and in good faith)** enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, Rail Connection Agreement) with those Access Seekers whose **application** for Access Rights best meet **the criteria set out in clause 7.5.2(d)**.
- (d) **Where clause 7.5.2(c) applies:**
- (i) Aurizon Network will consider:
- an objective of promoting** efficient use of the Rail Infrastructure having regard to:
- (A) the expected duration of the facility or business whose inputs or outputs will be transported on the Rail Infrastructure (for example, the mine production life);
 - (B) the quality and saleability of the product proposed to be transported on the Rail Infrastructure;
 - (C) the capital efficiency of rail infrastructure and the density of network utilisation;
 - (D) the contribution of the Access Rights sought to the long-term demand for Access; and
 - (E) the current and future competitiveness of the relevant supply chain; and
- (ii) unless Aurizon Network decides otherwise, Aurizon Network **must** treat a proposed Access Agreement for a coal carrying Train Service as **having a higher priority** than a proposed Access Agreement for a non-coal carrying Train Service, except to the extent that the allocation of Available Capacity to that coal carrying Train Service would constitute a breach by Aurizon Network of its obligations under any Law – for example, under Aurizon Network’s Preserved Train Path Obligations.
- (e) In making a decision under **clause 7.5.2(c)**, Aurizon Network **must** have no regard to whether an Access Seeker is a Related Operator.
- (f) If:
- (i) in Aurizon Network’s **reasonable** opinion it is not practical to determine, as between two or more Access Seekers with Mutually Exclusive Access Applications, which of those Access Seekers to enter into an Access Agreement with under **clause 7.5.2(c)**; and

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(ii) Aurizon Network and each of those Access Seekers have negotiated the terms of an Access Agreement (including all agreements to allow Access Rights to be exercised or created – for example, Rail Connection Agreement) which the parties are willing to execute, ~~[Note: Deletion made as User Funding is not a relevant scenario – that is, it is covered in Part 8.]~~

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then Aurizon Network may elect to prioritise the execution of Access Agreements with those Access Seekers in date order – that date being for each Access Seeker the date on which that Access Seeker was issued an Acknowledgement Notice for its Access Application, under clause 4.4.

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(g) Where Aurizon Network has allocated Available Capacity under this clause 7.5.2 and none of the remaining Access Seekers can be granted the Access Rights sought as there is insufficient Available Capacity to do so, then negotiations with those remaining Access Seekers are suspended and clause 4.4(c) will apply.

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7.6 Network Management Principles

7.6.1 Compliance with Network Management Principles

Aurizon Network ~~must~~ comply with the Network Management Principles.

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7.6.2 Nature of the System Rules

(a) The System Rules specify in greater detail the way in which Aurizon Network will plan, schedule and control the operation of Train Services on a single or combination of Coal Systems in accordance with the Network Management Principles.

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(b) The System Rules will be published on the Website.

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7.6.3 Making the initial System Rules for a Coal System

(a) Where System Rules do not already exist for a Coal System, Aurizon Network ~~must promptly~~ develop the initial System Rules for that Coal System. ~~In doing so, it will consult with Access Holders, Railway Operators and Access Seekers whose Train Services will be affected by the System Rules, and any affected Infrastructure Service Providers, in relation to the introduction of the System Rules.~~

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(b) After consulting under clause 7.6.3(a), Aurizon Network will:

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(i) prepare the proposed System Rules (**Draft System Rules**) having regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements;

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(ii) in preparing the Draft System Rules, seek to ensure that they do not conflict with the Network Management Principles or any provision of this Undertaking; and

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- (iii) submit the Draft System Rules to the QCA for approval.
- (c) Where Aurizon Network has submitted Draft System Rules to the QCA, the QCA must consider the Draft System Rules and notify Aurizon Network that it either approves or refuses to approve the Draft System Rules. The QCA may decide, at its own discretion, to request and consider public submissions on Aurizon Network's Draft System Rules.
- (d) If the QCA refuses to approve the Draft System Rules, then:
 - (i) the QCA will set out its reasons for doing so in any notice to Aurizon Network of that decision; and
 - (ii) Aurizon Network must resubmit the Draft System Rules amended to address the matters in QCA's reasons without having to further consult under clause 7.6.3(a).

7.6.4 Amending the System Rules

- (a) In amending the System Rules, Aurizon Network must:
 - (i) notify:
 - (A) Access Holders and Access Seekers whose Train Services will be affected by the amendments and their Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) (**Affected Persons**);
 - (B) affected infrastructure providers for infrastructure forming part of the relevant supply chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);
 - (C) affected Infrastructure Service Providers; and
 - (D) affected Railway Operators.
 - of Aurizon Network's intention to amend the System Rules and provide a copy of the proposed amendments (**Proposed Amendments**) to those persons;
 - (ii) consult with the persons notified under **clause 7.6.4(a)(i)(A) to (D)**;
 - (iii) have regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders) and the terms of Access Agreements; and

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- (iv) seek to ensure that the amendments do not conflict with the Network Management Principles or any provision of this Undertaking.

(b) After consulting under clause 7.6.4(a) Aurizon Network will submit its Proposed Amendments to the QCA for approval.

(c) Where Aurizon Network has submitted Proposed Amendments the QCA must consider the Proposed Amendments and notify Aurizon Network that it either approves or refuses to approve the Proposed Amendments. The QCA may decide, at its own discretion, to request and consider public submissions on Aurizon Network's Proposed Amendments.

(d) Any relevant party (including stakeholders, Access Holders, End Users or possible future Access Seekers) may object to any Proposed Amendment submitted by Aurizon Network. An objection may be made in writing to the QCA.

(e) If the QCA receives a written objection to a Proposed Amendment it must request and consider public submissions.

(f) If the QCA refuses to approve the Proposed Amendments, then:

- (i) the QCA will set out its reasons for doing so in any notice to Aurizon Network of that decision; and
- (ii) Aurizon Network must resubmit the Proposed Amendments amended to address the matters in QCA's reasons without having to further consult under clause 7.6.4.

(g) For the purposes of this clause 7.6:

- (i) the amending of System Rules includes replacing or removing System Rules; and
- (ii) Proposed Amendments includes a proposed replacement of System Rules or a proposal to remove System Rules.

7.6.5 Compulsory review of the System Rules

(a) In instances where:

- (i) system capacity increases by greater than 30% of the existing capacity;
- (ii) an expansion is required to increase system capacity by greater than 30% of the existing capacity; or
- (iii) 60% of the Access Holders in a Coal System formally request a review by written notice to Aurizon Network,

Aurizon Network is required to commence a review of the relevant System Rules for the affected system.

(b) Aurizon Network is required to submit a reviewed copy of the System Rules to the QCA for approval in accordance with this clause 7.6.

Deleted: <#>If an Affected Person considers that the Proposed Amendments:¶ <#>would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders); or¶ <#>are materially inconsistent with the terms of an Access Agreement, ¶ then the Affected Person may provide a written submission to Aurizon Network, within 20 Business Days after being given a notice under **clause 7.6.4(a)(i)**, identifying why the Proposed Amendments would have any of the effects referred to in **paragraphs (i) or (ii)** and Aurizon Network will consider each submission provided to it under this **clause 7.6.4(b)**. ¶ <#>After considering each submission under **clause 7.6.4(b)**, Aurizon Network will notify the submitters whether it intends to vary the Proposed Amendments. If Aurizon Network varies the Proposed Amendments, then Aurizon Network will notify the persons referred to in **clause 7.6.4(a)** of the variation and the reasons for the variation.¶ <#>If, within 15 Business Days after Aurizon Network has given the notices required under **clause 7.6.4(c)**, an Affected Person considers that the Proposed Amendments (including any variations) would have any of the effects referred to in **clause 7.6.4(b)(i) or (ii)**, then that Affected Person may refer the matter to dispute resolution under **clause 11.1**.¶

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(c) Aurizon Network is required to notify Access Holders, End Users and Train Operators who will be affected by the increased capacity.

(d) In making its decision to approve or reject the reviewed System Rules, the QCA is required to request and consider any submissions received from a person notified under **clause 7.6.5(c)**.

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sufficient facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable the Access Seeker to utilise the relevant Capacity;

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