
QUEENSLAND RAIL'S 2015 DAU – REQUEST FOR COMMENT – FOLLOWING SUBMISSIONS ON DRAFT DECISION

Disclaimer: This material has been prepared by QCA staff and does not bind, nor does it represent, the views of the QCA. The material is to inform the QCA in its investigation and it follows that this paper should not be read as if any decision has been made by the QCA on the matters raised.

Background

Queensland Rail is a statutory authority that owns and operates a 7,000 kilometre rail network, including the commuter lines in south east Queensland, the West Moreton network and the Mount Isa and north coast lines. It also operates the state's suburban and long-distance passenger services.

The services provided by Queensland Rail's intra-state rail network have been declared by regulation since 1997, making the services subject to the third-party access provisions of the *Queensland Competition Authority Act 1997* (the QCA Act). As a result of this declaration, Queensland Rail, access seekers and access holders gained rights and obligations relating to the negotiation of the terms and conditions of access to Queensland Rail's network.

On 5 May 2015, Queensland Rail submitted a draft access undertaking (the 2015 DAU), which proposed terms and conditions under which Queensland Rail would provide access to its rail infrastructure. It also set out processes for an access seeker to negotiate access to the infrastructure and for resolving any disputes in relation to access.

2015 DAU

On 8 October 2015, the QCA released its Draft Decision on Queensland Rail's 2015 DAU, seeking submissions by 24 December 2015. Five submissions were received and are available on the QCA's website.

On 15 January 2016, the QCA invited all stakeholders to make further submissions in light of the submissions received in December. While this 'submissions on submissions' process provides stakeholders an opportunity to again comment on any matter contained in the Draft Decision, the QCA is particularly interested in the views of stakeholders on new matters contained in those submissions.

QCA staff have developed the requests for further stakeholder comments to inform the QCA on matters relevant to its investigation of the 2015 DAU proposed by Queensland Rail. It is for stakeholders to choose how to comment—in some cases the request is directed to a point of difference or a new argument or position that has arisen in or from the submissions for the first time, in other cases elaboration of a submission already made might assist in informing the QCA. Where a comment is made, please attach supporting documentation if available and relevant.

In addition, while these requests for further stakeholder comments highlight some matters related to the DAU and submissions on the Draft Decision, they are not intended to be comprehensive. Hence, interested parties should rely on their own analysis to determine whether there are additional matters on which they wish to comment.

Further submissions are due by 5 February 2016.

Allocation of common costs

Train path constraints through the Metropolitan Network

The Draft Decision said '[w]e propose to cap coal traffics' share of fixed costs (such as common network assets, fixed maintenance and operating costs) based on contracting restrictions associated with the Metropolitan network' (QCA Draft Decision, p. 143). In response, Queensland Rail said that there was no legally binding train constraint of 87 paths through the Metropolitan network for coal services (Queensland Rail, Annexure 8).¹

Stakeholders are requested to make further comments on this matter.

Allocation of fixed/common costs

New Hope (vol. 2, pp. 7-9), Aurizon (pp. 24-25) and Queensland Rail (pp. 39-43) had differing views on the treatment of fixed costs (i.e. fixed operating and maintenance costs) of the West Moreton network.

Stakeholders are requested to comment on these submissions.

Adjustment amount

Regulatory risk and investment impacts

Aurizon (pp. 11-12), New Hope (vol. 1, pp. 5-6; vol. 2, pp. 20-23) and Yancoal (p.1) said that Queensland Rail's changed position on an adjustment amount created regulatory risks. Among other things, they said this could impact on investment in the future. In this context, Yancoal said that 'if an adjustment amount is not ultimately provided for that will be such a substantial and unwarranted change to the regulatory framework (and Yancoal's expectations of how it would operate based on ... QR's previous representations) that the resulting regulatory uncertainty will necessarily be taken into account when Yancoal and its shareholders are considering future investment in Cameby Downs ...' (Yancoal, p. 1).

In contrast, Queensland Rail said that stakeholders would have been aware that a voluntary draft access undertaking could be withdrawn at any time and provisions could be changed (Queensland Rail, p. 14).

Stakeholder are requested to make further comments on this matter.

Methodology for calculation

Stakeholders including Aurizon (p. 12) and Queensland Rail (p. 19) said the Draft Decision lacked details about the methodology for calculating the adjustment amount. Staff have now prepared and attached at Appendix 1 a brief document outlining the calculation methodology for the adjustment amount.

Stakeholders are requested to make further comments on the methodology for calculating the adjustment amount.

East of Rosewood

The adjustment amount in the Draft Decision was calculated for Queensland Rail's network West of Rosewood (QCA Draft Decision, p. 206, footnote 630). New Hope (vol. 1, p. 6; vol. 2, p. 22) and Yancoal (p. 1) said the adjustment amount should also be calculated for the Metropolitan network (i.e. also include an East of Rosewood adjustment amount).

¹ Unless otherwise specified, all document references are to the named stakeholder's December 2015 submission on the QCA's October 2015 Draft Decision.

The QCA has not made a decision on whether the 2015 DAU proposed by Queensland Rail should provide for an adjustment amount. However, stakeholders are requested to make further comments on the submissions made that an adjustment amount should also be calculated for the Metropolitan network.

West Moreton Network capacity and volumes

Available train paths

The Draft Decision was made on the basis of 112 paths on the West Moreton Network, but noted B&H's report which estimated West Moreton capacity to be in the order of 135 paths (QCA Draft Decision, p. 156, footnote 426). Stakeholders had different views on what is the appropriate number of available train paths on the West Moreton Network. New Hope (vol. 2, p. 16) and Yancoal (p. 2) said the number of paths should be 135. In contrast, Queensland Rail has said the number of paths should be 112 (Queensland Rail, Annexure 9, p. 8).

Stakeholders are requested to make further comments on these submissions.

Demand forecasts

Queensland Rail said it was exposed if access holders relied solely to contract (if the tariff was based on a forecast greater than contract). Queensland Rail said that given the QCA's proposed tariff approach, a volume 'forecast based on contracted tonnes would be appropriate' (Queensland Rail, pp. 52-54). Other stakeholders had different views and considered forecasts should be higher than Queensland Rail's proposed forecasts (Aurizon, p. 24; New Hope, vol. 2, pp. 9-10; Yancoal, pp. 2-3).

Stakeholders are requested to make further comments on these submissions.

Take-or-pay

The Draft Decision proposed that Queensland Rail's West Moreton and Metropolitan network take-or-pay revenue from coal services be capped at the total revenue allocated to coal services in assessing coal tariffs, and that take-or-pay obligations be 100 per cent of access charges (QCA Draft Decision, p. 198).

Stakeholders had different views on take-or-pay provisions. New Hope (vol. 2, p. 18) and Yancoal (p. 2) said take-or-pay should be set at 80 per cent to reflect the fact that some costs were avoidable if trains did not run. Aurizon (p. 25) also said take-or-pay should reflect avoidable costs. In contrast, Queensland Rail said 100 per cent take-or-pay provided increased downside revenue protection, but that the 'downside exposure' remained for a number of reasons, including where take-or-pay was not payable during a force majeure event. Queensland Rail also considered that increasing its 'downside exposure' by suspending take-or-pay in the event of a force majeure event was not appropriate given the price cap model (Queensland Rail, pp. 52-54).

Stakeholders are requested to make further comments on these submissions.

Metropolitan Network

Coal trains beyond 2032

The Draft Decision noted a statement in Queensland Rail's submission which indicated that coal trains will not continue through the Metropolitan network beyond 2032 and observed that Queensland Rail's capital and maintenance programs did not recognise this 2032 embargo on coal trains.

Although B&H's primary analysis was on the basis of coal transport continuing beyond 2032, B&H's analysis suggested a 12 per cent reduction in Queensland Rail's capital program for the scenario where

coal transport ceased in 2032. However, the Draft Decision noted that ‘... our preliminary view, subject to stakeholders’ further comments, is to assess Queensland Rail’s proposed capital program on the basis that coal transport will continue beyond 2032 (QCA Draft Decision, pp. 186-187).’

Stakeholders are requested to comment on this matter.

Metropolitan tariff

New Hope agreed with the QCA’s proposed approach for addressing the issue of double counting capital spending between the West Moreton and Metropolitan networks (New Hope, vol. 2, pp. 19-20). Queensland Rail disagreed but proposed to remove the incremental Metropolitan capital expenditure incurred since 2002 (Queensland Rail, pp. 46-47). New Hope also asked how the Metropolitan tariff would be calculated in future undertaking periods (New Hope, vol. 2, pp. 19-20).

Stakeholders are requested to make further comments on these submissions.

Pricing Principles

Renewal rights

The Draft Decision proposed that the pricing methodology, rates and other inputs for access charges would only vary at renewal for changes in cost or risk (QCA Draft Decision, pp. 60-63). Aurizon said mineral customers would benefit from long-term price certainty but the QCA’s proposed drafting was ‘overly restrictive’ (Aurizon, pp. 20-21). Glencore also questioned locking in the existing tariff approach at renewal and proposed an alternative renewal regime (Glencore, pp. 1–3). Queensland Rail said the QCA’s proposal had the effect of locking in the same price for an access holder that kept renewing its access (Queensland Rail, p. 61).

Stakeholders also wanted flexibility in non-price terms at renewal to allow, for example, innovation in train service description, a different origin or destination, or a different amount of access rights (Aurizon, pp. 20-21; Yancoal, p. 4; Glencore, p. 3; New Hope, vol. 3, p. 10).

Stakeholders are requested to make further comments on these submissions.

Standard Access Agreement

Stakeholders have raised issues and proposed a number of changes and additional amendments to the SAA. Particular issues on which stakeholders are requested to make further comments are outlined in Appendix 2.

APPENDIX 1: ADJUSTMENT AMOUNT METHODOLOGY

The \$26.3 million adjustment amount for West Moreton network in the Draft Decision was calculated as the difference between:

- (1) The total actual revenues (post-tax) received by Queensland Rail from coal traffic during 2013-14 to 2014-15, and
- (2) The total maximum allowable revenues (MAR) for coal traffic during 2013-14 to 2014-15 estimated by the QCA.

Both total values were as at 1 July 2015.²

Actual revenue

The actual revenue:

- (1) related to the coal services only for the West Moreton network that spanned Rosewood to Columboola
- (2) was the sum of four revenue sources: fixed access revenue (levied on train paths), variable access revenue (levied on gross tonne kilometres), take or pay revenue and relinquishment fees.

The revenue data provided by Queensland Rail were assumed to be before tax.

Tax payments were then estimated using the QCA's tariff model parameters (e.g. tax depreciation, interest payment on debt, maintenance and operating costs, and the gamma adjusted tax rate), which were deducted from the before-tax revenue to calculate the revenue net of tax for 2013-14 and 2014-15.

The 2013-14 net of tax revenue (an end-year cash flow at 30 June 2014) was escalated one year by WACC of 6.93% to a value at 1 July 2015. The sum of this 2013-14 escalated revenue and the 2014-15 revenue gave the total value of actual revenues at 1 July 2015.

Maximum allowable revenue (MAR)

The MAR:

- (1) related to the coal services only for the West Moreton network that spanned Rosewood to Columboola
- (2) was the sum of:
 - (a) capital charges for the coal regulatory asset base (i.e. return on capital *plus* return of capital (depreciation) *less* inflation)
 - (b) coal-allocated maintenance allowance and
 - (c) coal-allocated operating cost allowance (including working capital allowance).

The capital charges were based on:

- the asset values and asset lives as proposed in the October 2015 Draft Decision
- a WACC of 6.93% (for calculating the return on capital)
- an actual inflation rate of 3.22% (2013-14) and an assumed inflation rate of 2.5% (2014-15 onwards).

² To arrive at 1 July 2015 values, the 2013-14 actual revenue and MAR were escalated one year by WACC to reflect time value of money. The 2014-15 amounts needed no adjustment.

The coal-allocated maintenance and operating cost allowances were as proposed in the QCA's 2014 Draft Decision. Working capital allowance was calculated as 0.3% of the before-tax actual revenue and was added to operating cost allowance.

The 2013-14 MAR (an end-year cash flow at 30 June 2014) was escalated one year by WACC of 6.93% to a value at 1 July 2015. The sum of this 2013-14 escalated MAR and the 2014-15 MAR gave the total value of MAR at 1 July 2015.

The adjustment amount was then calculated as the difference between the total actual revenues and the total MAR as at 1 July 2015.

APPENDIX 2: STANDARD ACCESS AGREEMENT

Standard Access Agreement

SAA proposals

Stakeholders have noted issues, or proposed changes, to the SAA, including:

- (a) Changes to 2.9.4 of the DAU to provide that Queensland Rail should substantiate reasons why an access seeker's request for access cannot be achieved through altering the terms and conditions of the standard access agreement (see Aurizon, p. 34).
- (b) Changes to the SAA to include an obligation on Queensland Rail, during the term of an access agreement, to negotiate productivity variations (or variations to train service descriptions) in good faith subject to no financial disadvantage to Queensland Rail (see Aurizon, p. 34; New Hope, vol. 4, p. 6 & cl. 4.2 of New Hope's SAA).
- (c) Removing the interim take-or-pay notices provisions or making these provisions subject to an annual true up (New Hope, vol. 4, p. 6; Aurizon, pp. 49-50).
- (d) Clarifying which party is responsible for take or pay if more than one operator is nominated. This could include, for example, making the access holder liable for all access charges and leaving the payment obligations as between an operator and access holder to the relevant haulage agreement (Queensland Rail, p. 95).
- (e) Including an obligation on Queensland Rail to consult with operators in relation to changes to the Interface Standards (Aurizon, p. 45).
- (f) Queensland Rail submits that it is not feasible for an operator to retain the intellectual property collected by Queensland Rail's train control systems (Queensland Rail, p.97).
- (g) Changes to provide that operators only bear the direct cost of noise mitigation where the most efficient mitigation method is on the train, or where an unusual feature of a particular operator's train triggers the need for mitigation. Otherwise, for mitigation methods which require investment by Queensland Rail (e.g. trackside sound barriers), Queensland Rail to bear the direct cost and recover the cost over time from the relevant train services only (New Hope, vol. 4, p. 7).
- (h) Amendments to cls. 12.1(a),(b) & (c) to limit the scope of liabilities to the same scope as the benefits which each party receives under the agreement (see New Hope's SAA, cl. 12.1).
- (i) Queensland Rail submits that if the indemnity for carriage of dangerous goods is deleted, Queensland Rail will be obliged to factor the increased risk into the access charges (Queensland Rail, p. 99).
- (j) Removing the 10% threshold in respect of liability for non-provision of access (New Hope's SAA cl. 13.6(d); Glencore, p. 4; Yancoal, p. 4.)
- (k) Aurizon has submitted a proposed revision to the Insurance provisions (Aurizon, pp. 56-58).
- (l) Changes to provide that the material change clauses should only apply to non-reference tariff train services (or otherwise be subject to QCA approval) (New Hope, vol. 4, pp. 6-7).
- (m) Changes to the material change clause so that it only permits a review of access charges for a change in government funding where the access charge is below the revenue floor limit. Also, Queensland Rail to provide an access holder of the term of relevant TSC funding and an access

holder should be able to terminate the access agreement where changes to access charges due to a material change make the agreement uneconomic (see Aurizon, pp. 48-49).

- (n) New Hope has proposed amendments to cl. 21 which it consider better reflect the way that the Western System operates (including ABCD scheduling) (New Hope's SAA, cl. 21.1(a)(i)).
- (o) Changes to provide that, where an operator is seeking to implement certain operational efficiencies, relinquishment fees associated with a variance to train service entitlements and rolling stock configurations should be capped to the variation to access revenue arising from that change (Aurizon, pp. 34-35).
- (p) Queensland Rail has submitted that reference to a BBB- S&P rating in the definition of "Acceptable Credit Rating" is not a suitable minimum (Queensland Rail, p. 102).
- (q) Queensland Rail has proposed to insert a new clause into the Standard Access Agreement headed "Ad Hoc Train Services" (cl. 7.3 of Queensland Rail's SAA (Annexure 5 to Queensland Rail's December submission)).

Further stakeholder comments are invited on these matters.