

1 November 2012

Mr John Hall
Chief Executive Officer
Queensland Competition Authority

Email: rail@qca.org.au

Dear Mr Hall

Standard connection agreement

We refer to our submission in relation to the standard connection agreement.

Funding and construction of Connecting Infrastructure

In our submissions of September 2012, the QRC expressed its concern that the standard connection agreement did not adequately deal with the terms on which 'Connecting Infrastructure' was to be constructed.

We were concerned that absent a standard set of construction terms and conditions that there was a potential for delay and also for QR Network to take advantage of its monopoly position.

The QRC proposed that the key terms and conditions on which QR Network would construct the Connecting Infrastructure be set out in a schedule to the standard connection agreement. Please see section 9 of the QRC's submission.

The QRC remains of the view that the standard connection agreement should set out key principles for a construction agreement (where QR Network is to construct the Connecting Infrastructure). A means by which this could be achieved is to require QR Network and the Owner to negotiate a construction agreement on terms consistent with specified principles (where QR Network is to undertake construction unless the parties otherwise agree). Those key principles would include:

- QR Network undertaking or procuring the undertaking of the works diligently and within a reasonable time;
- The Owner reimbursing (without mark-up) the costs reasonably and properly incurred by QR Network in undertaking such works. QR Network should be obliged to provide reasonable substantiation of such costs and is not permitted to contract work to QR Network related entities without the approval of the Owner;
- QR Network constructing to a standard of work which is consistent with the network, relevant laws and the private infrastructure;
- The construction agreement including a schedule and cost estimate for the works. QR Network should be obliged to provide monthly updates on progress (against cost and schedule) and to notify the Owner of any material adverse change in the works;
- QR Network and the Owner will coordinate any interface works;
- QR Network will not materially vary the works without notifying the Owner.

Scope of Connecting Infrastructure

Having discussed the definition of 'Connecting Infrastructure' further with some of industry and with QR Network we suggest that greater guidance on what is and is not connecting infrastructure is warranted. The QRC is concerned that the definition of 'Connecting Infrastructure' is very broad and may be difficult to apply. It would be helpful if an example were developed that explained the intent of 'Connecting Infrastructure'.

We attach a draft diagram which we invite the QCA to consider. In the diagram:

- all connecting infrastructure within the boundary of the QR Network lease is 'Connecting Infrastructure'. The QRC recognises that in limited circumstances it may be necessary for the track outside of the QR Network lease boundary to be 'Connecting Infrastructure' – for example, where the existing QR Network track is very close to the boundary of the lease;
- the signals and some of the overheads which are within one train length from the connection point is also 'Connecting Infrastructure'; and
- all other infrastructure, including track outside of the QR Network boundary lease (with limited exceptions) and signals further than one train length away and overheads further than one train length away (and more likely including additional overheads) is 'Private Infrastructure'.

Section 7 of the QR Network submission – Interface agreement

We note that in section 7 of QR Network's submission, QR Network suggests that a separate interface agreement is necessary where an Owner engages a third party to provide RIM services for the private infrastructure.

The QRC is opposed to the concept of an interface agreement. In the QRC's view:

- An interface agreement is unnecessary and a further impediment to an efficient agreement;
- QR Network is adequately protected by obligations of confidence and intellectual property provisions in the connection agreement. As a result of those obligations, to the extent that a contractor or the Owner breaches the connection agreement confidentiality and intellectual property obligations, QR Network will have a right against the Owner.

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The QRC is happy for this letter to be made public.

Please let us know if you would like further clarification.

Yours sincerely



Gary Costello
Queensland Resources Council

