

Queensland Competition Authority

File Ref: 550900

3 June 2013

Mr Jim Benstead
Acting Chief Executive Officer
Queensland Rail Ltd
GPO Box 1429
BRISBANE QLD 4001

Dear Mr Benstead

FINAL APPROVAL - QUEENSLAND RAIL'S DRAFT AMENDING ACCESS UNDERTAKING – EXTENSION OF TERMINATION DATE

On 28 May 2013, the Authority made its final decision to approve Queensland Rail's draft amending access undertaking to extend the term of the 2008 access undertaking (the Extension DAAU).

Context

Queensland Rail's current 2008 access undertaking was due to expire on 30 June 2013. On 25 February 2013, Queensland Rail submitted a voluntary draft access undertaking (the 2013 DAU) to replace its current undertaking.

While the Authority's consideration of Queensland Rail's 2013 DAU is well-advanced, a replacement undertaking will not be approved by the Authority before 30 June 2013.

On 8 May 2013, the Authority received from Queensland Rail, under section 142 of the *Queensland Competition Authority Act 1997* (QCA Act), a DAAU seeking to extend the termination date of its current 2008 undertaking by six months to 31 December 2013. The Extension DAAU seeks to provide regulatory certainty by ensuring that an access undertaking is in operation until a replacement is approved by the Authority.

As a consequence the terms of the 2008 undertaking will continue to apply after 30 June 2013.

In particular, the reference tariffs for West Moreton coal-carrying train services will continue to apply beyond the anticipated expiry date of the 2008 undertaking (i.e. 30 June 2013). In this respect, Queensland Rail has proposed that the finalised tariffs, as contained in a replacement undertaking, will apply retrospectively from 1 July 2013. Any over (or under) recovered revenue, due to variations between interim and final tariffs, will be recovered from (or returned to) access holders through an adjustment charge mechanism.

These matters will be considered by the Authority in its assessment of the 2013 DAU.

Stakeholder Consultation

On 8 May 2013, the Authority published the Extension DAAU on its website and invited stakeholders to comment. In response, the Authority received submissions from Aurizon Holdings and New Hope Corporation.

While Aurizon Holdings and New Hope both accepted the need to extend the operation of the current 2008 undertaking, they were concerned about extending the existing West Moreton reference tariff as they considered that the tariff should decline from 1 July 2013.

New Hope Corporation was disappointed that Queensland Rail's proposed interim tariff did not incorporate known factors that would contribute towards a reduction. Similarly, Aurizon Holdings noted that a tariff decline could be expected given increases in coal volumes, expected decreases in the weighted average cost of capital (WACC) and net effects of depreciation relative to capital expenditure.

Stakeholders were also concerned that Queensland Rail has:

- (a) now sought to extend the expiry date of its 2008 undertaking on three occasions since its separation from the central Queensland coal network on 30 June 2010; and
- (b) yet to provide its Western System tariff proposal and supporting information for the consideration of interested parties and the Authority.

Stakeholders also encouraged Queensland Rail to expedite the Authority's consideration of the tariff and develop interim prices until a replacement tariff is ultimately approved by the Authority.

The Authority's approach

In considering this issue, the Authority has had regard to its statutory assessment criteria, Queensland Rail's submission, and stakeholders' submissions. The Authority gave particular attention to whether the proposed DAAU appropriately balanced the interests of Queensland Rail, access seekers and users (sections 138(2)(b) and (e)) and provided parties with regulatory certainty (section 138(2)(h)). Also, the Authority noted that there were no applicable access codes or rulings in effect under division 7A of Part 5 of the QCA Act, which it is required to take into consideration when making this decision.

Having had regard to all factors required to be considered, the Authority approved the Extension DAAU on 28 May 2013. Accordingly, the 2008 undertaking now terminates on 31 December 2013.

The Authority also notes that proposed extension date is consistent with its current views on the time required for the Authority to finalise the 2013 DAU assessment process.

In taking this approach, the Authority is mindful that Queensland Rail intends to recover (or return) the difference between interim tariffs and the final approved tariffs through an adjustment charge mechanism. The Authority will consider this matter as part of its 2013 DAU assessment process or, if required, other related process to develop a replacement reference tariff.

In this context, the Authority acknowledges stakeholder concerns that Queensland Rail is yet to formally propose a Western System tariff to apply from 1 July 2013. The Authority also notes Queensland Rail has yet to resolve key aspects of its proposal with its customers. This is disappointing given the significant additional time that Queensland Rail has had to resolve this, and other outstanding matters, with its customers.

The Authority would welcome Queensland Rail considering approaches, including those proposed by stakeholders, to expedite the assessment of the tariff proposal or develop interim prices. In the event Queensland Rail does not provide its proposal by 30 June 2013, the Authority will proceed to develop a replacement West Moreton coal reference tariff as part of the assessment of the 2013 draft access undertaking.

Copies of the Authority's final decision, the DAAU and related documents are available on the Authority's website at <http://www.qca.org.au/rail/QLDRail/May13Ext/>.

Yours sincerely



Malcolm Roberts
Chairman