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13 July 2012

Queensland Competition Authority
Level 19, 12 Creek Street
Brisbane, Queensland
Australia 4000

Attention Mr John Hall

Dear John

Queensland Rail's 2012 Draft Access Undertaking New Hope Corporation submission

Thank-you for the opportunity to provide this submission on Queensland Rail's 2012 Draft Access Undertaking.

New Hope is the largest coal producer in Queensland Rail's West Moreton System. In addition, New Hope is developing the Colton project, which will rail coal to Gladstone using rail infrastructure which is predominantly managed by Queensland Rail. New Hope is pursuing growth opportunities across its portfolio and seeks regulatory arrangements which promote efficient supply chain performance, reasonable and predictable charges for use of the infrastructure, and a practical pathway to expansion.

New Hope notes that the draft undertaking proposes a relatively 'light handed' regulatory arrangement, with substantial discretions available to QR in a range of key areas. New Hope considers that this is acceptable for the term of UT1, and should be reassessed for UT2 taking into account the extent to which QR has applied these discretions on a reasonable basis.

New Hope has participated in the development of the Queensland Resources Council's submission on the QR draft undertaking and, subject to the specific comments set out below, supports the QRC submission.

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- **Term of undertaking:** Given that the draft undertaking proposes a light-handed approach to regulation, and that QR's approach to applying the undertaking is untested, New Hope considers that the term of this undertaking should be limited to four years. However, we understand that a 30 June expiry date is preferred and therefore would support a term of up to 4.5 years (to 30 June 2017) if the undertaking becomes effective later than 1 January 2012, or a term of up to 3.5 years (to 30 June 2016) if the undertaking becomes effective during 2012.
- **Tariffs:**
 - QR should seek to develop and put in place a transparent, repeatable methodology for the development of reference tariffs as soon as possible. New Hope considers that July 1 2013 is a reasonable date for the revised tariffs to take effect. In order to achieve this, QR should commit to submit (or be deemed to have submitted) its proposed reference tariffs no later than 31 March 2013. Clearly the currently proposed commitment, to submit reference tariffs for approval by as late as 30 June 2013, is not consistent with approval by 1 July 2013. New Hope accepts the extension of current tariffs in the interim period.
 - New Hope considers that the existing tariff structure (ie. a 'per path' plus a 'per gtk' element) is appropriate and that this structure should be retained in the reference tariffs to be proposed by QR in 2013.
 - New Hope considers that the form of regulation should provide appropriate incentives to QR without allowing QR to retain an unreasonably level of benefit where tonnages substantially exceed the levels on which reference tariffs are based. A 'price cap' arrangement with mid-term review mechanisms is therefore preferred over a revenue cap form of regulation.
- **Capacity Allocation and Queuing:** The process for allocating additional capacity should be clear and equitable and the ability to allocate capacity based on QR's commercial interests should be subject to certain limitations. In particular, where competing access applications both involve coal-carrying train services which would pay reference tariffs or tariffs derived from reference tariffs, the revenue arising from different origins/destinations should not be a differentiating factor (ie. clause 2.7.2(iv)(A) and (B) should not apply). This is because the process of considering QR's commercial interests should take place during the setting of reference tariffs. It is not appropriate to discriminate against a particular mine on the basis that the tariff proposed by QR and approved by the QCA is considered less attractive by QR than the approved tariff for another origin/destination. Instead, competing applications should be assessed based on the extent to which each applicant is ready and able to use the paths sought (ie. has the necessary production capacity, approvals and network exit capability). In the event that two Access Seekers are equally "ready and able", would both pay tariffs based on reference tariffs, and are not materially differentiated based on contract term or credit risk, then we would expect that the first of these parties to apply for access should be the first to be allocated capacity.
- **Investment Framework:** QR proposes an Investment Framework in which QR will have no obligation to invest in the network and will face no limitations on the terms sought from expanding customers in return for QR offering to finance expansions. New Hope is prepared to accept a relatively 'light handed' regulatory arrangement for QR for the period of the first undertaking, and will seek more prescriptive arrangements in the event that this

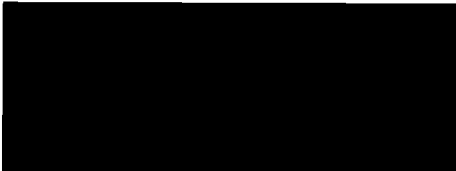
flexibility is used inappropriately. However, we do consider that there is a need, in UT1, for greater clarity regarding QR's obligation of offer a 'user funding' option and for this option to represent a credible alternative to QR funding. In particular,

- It is not appropriate that QR should have a right, "in its absolute discretion", to refuse to construct an Extension in the circumstances set out in 1.4.1(a)(iv). The clause should be amended to provide that QR must state the reasons for its objection and set out the changes to the proposed project which would be required to address the stated concerns. Dispute resolution should apply to ensure that the objections raised have a reasonable basis. In addition, the test in part F (that the project does not adversely affect QR's legitimate business interests) should be clarified to ensure that the loss by QR of the opportunity to seek Access Conditions cannot be deemed to adversely affect QR's legitimate business interests. That is, the test of an adverse effect should be that QR is no worse off than had the project not been undertaken, rather than no worse off than had the Access Conditions been accepted.
- We do not consider that it is necessary, in all cases, that Access Agreements be in place for all of the Additional Capacity (1.4.1(a)(v)). For example, if a user funds a project which creates a level of uncontracted capacity, but QR is not worse off as a result of this situation (eg. because the volume forecasts upon which reference tariffs are based exclude the space capacity or because rebates to the user-funder are limited to the contracted tonnes), then the requirement in this section is not an appropriate basis on which QR should refuse to undertake the project.
- The undertaking should provide that the QCA may, during the term of UT1, require QR to submit a more detailed set of arrangements for user funding for approval (and that the QCA may develop these if not provided by QR or if the proposed arrangements are not approved). The undertaking should set out the high level principles for these arrangements, including that they should be tax effective for user funders and should impose no material costs on QR and should not require QR to provide funding. We do not propose that QR should commit to develop more detailed user funding arrangements at this time, as (i) there is not a clear need for this mechanism at present and (ii) if required, we would hope that QR would first seek to voluntarily develop such a framework.
- **Renewal Rights:** Clause 2.7.2(b) to (d) appears to seek to create a renewal right in respect of Train Services for which there is an applicable Reference Tariff. A renewal right for Train Services involving coal haulage is important due to the long term nature of mining investments. We consider that this clause should be amended:
 - to include a process under which QR notifies the Access Holder of the need (and right) to renew a reasonable period ahead of the expiry of this right. This is, it should not be necessary that a competing application exist in order to trigger a notification to the Access Holder.
 - To provide a renewal right for carry-carrying train services operating under a negotiated access charge, such as Colton (ie. the current drafting would not provide a renewal right because there is no applicable Reference Tariff).

- **Recognition of 'Customers':** In respect of coal carrying train services, Access Rights are generally held by train operators for use by specific customers (mines). The undertaking should recognise the interests of these customers, and the undertaking and Standard Access Agreement should provide specific rights for customers. This should include:
 - A requirement that each Access Agreement entered into for coal carrying train services note the identity of the customer.
 - That the renewal right applies to the nominee of the customer rather than to the current Access Holder (ie. the Customer should elect whether to exercise the renewal right itself, through the current Access Holder, or through an alternative operator).
 - That transfers of Access Rights to a different origin/destination cannot proceed without the consent of the customer.
 - That the customer may itself, without the consent of the Access Holder, trigger a transfer of Access Rights to an alternative Access Holder (for example, if the customer is changing above-rail operators or wishes to hold the Access Rights itself).
 - That the customer will have a right (ahead of any other Access Seeker), to enter into a new Access Agreement (including through a new operator) in circumstances where an Access Agreement is terminated by QR due to default by the operator or is terminated by the operator due to default by QR.
- **New Standard Access Agreements:** Clause 2.8 allows the QCA to give QR a notice requiring QR to submit a proposed standard access agreement for a specified type of Train Service not covered by a Standard Access Agreement. New Hope considers that the clause should be widened to allow the QCA to require QR to submit a proposed form of access agreement in which the rights and obligations of above-rail operators are separated from those relating to capacity and payment obligations (end-user access agreement). While New Hope does not see an immediate need for this form of agreement, and understands that there are potential efficiencies in deferring this issue until an end-user agreement is approved for Central Queensland, we consider that the QCA should reserve the right to request this during the term of UT1 if required.
- **Reduction of Access Rights:** The proposed trigger for the reduction in access rights (clause 19 of the standard access agreement) is not appropriate. The test of a failure to use 7 in 12 paths is too short a period in which to trigger consequences which are extremely serious for customers. In addition, the drafting does not provide any process for the access holder to retain the paths by demonstrating that the failure will not be sustained or that there is a long term need for the paths, nor is there any right for customers to be informed of the issue, to remedy the situation or to take over the paths (eg. through an alternative operator) in the case where the failure was the fault of the operator. Permanent loss of train paths could have serious consequences for the customer, and should only apply in extreme cases of sustained underutilisation, particularly given that the proposed take or pay arrangements provide strong protection to QR against any resulting reduction in revenue.

- **Access Charges Escalation:** Schedule 3 of the proposed standard access agreement should clarify that CPI escalation should not apply to Access Charges in circumstances where Access Charges are derived from reference tariffs which are themselves escalated, or which the QCA has determined should not be escalated (eg. because they have been determined taking inflation into account).

Yours faithfully,
NEW HOPE GROUP



Gavan Clarke
Manager Coal Logistics