

1. EXECUTIVE SUMMARY

This Executive Summary of the QCA's Final Decision on QR's Draft Undertaking regarding third-party access to its rail-transport infrastructure is an overview of Volume 2 only. Its main purpose is to identify the most significant changes made to the positions taken by the QCA in its Draft Decision regarding amendments to QR's Draft Undertaking.

1.1 Introduction

On 23 January 1999, QR submitted a Draft Undertaking to the QCA on third-party access to its rail-transportation infrastructure (below-rail). An Explanatory Guide clarifying the intent of the selected provisions accompanied it.

The format of Volume 2 follows that of the Draft Decision as far as possible, including the same chapter headings and sections within chapters, to reflect the fact that they are integrated documents and should be read as such. The discussion in the Draft Decision and this document under the heading 'QCA's Analysis' provides an explanatory guide to the QCA's position on each issue.

The QCA has adopted the following framework:

- changes to the Draft Decision have been made where an error has been identified;
- changes to the Draft Decision have been made where the QCA has accepted stakeholder' suggestions that it considers improve a position; and
- no change to the Draft Decision has been made where the QCA considers its position to be reasonable, notwithstanding stakeholder suggestions to the contrary.

1.2 Scope and Administration of the Undertaking

The QCA has proposed that the term of the Undertaking should commence on the date of its approval and conclude on 30 June 2005.

1.3 Ring-fencing Arrangements

The QCA's primary objective with regard to QR's ring-fencing arrangements has been to ensure that given the importance of ring-fencing to the integrity of the above-rail market, and the intensity of the interface inherent in rail operations, enforceable obligations are in place that adequately protect the interests of access seekers.

The QCA has made a number of changes to the Draft Decision's proposed amendments to lessen the regulatory burden on QR and to address concerns that more rigorous procedures were proposed to protect access seekers' confidential information compared to QR's confidential information. However, the QCA considers the changes made are consistent with the overriding objective of ensuring QR has enforceable ring-fencing obligations.

Since the release of the Draft Decision, QR has decided to reassign the operational management of train control as part of an organisational re-structure (with the exception of the Brisbane Metropolitan region) in accordance with the QCA's proposal in the Draft Decision.

The QCA has proposed further amendments to the definition of confidential information in the Draft Undertaking. The QCA has also proposed that the confidentiality deed between Network Access and third-party operators be an absolute requirement as this provides a mechanism to

enforce liquidated damages for QR breaching its ring-fencing obligations. The QCA has also amended the threshold for liquidated damages to \$50,000 to reflect stakeholder concerns.

The QCA has also proposed amendments to the procedures governing the release of both QR's and access seeker's confidential information to external advisers. These amendments are designed to address stakeholder concerns about an imbalance in the QCA's proposals and, as such, it provides for greater symmetry between the requirements on QR and access seekers with regard to the handling of confidential information in these circumstances.

In the Draft Decision, the QCA proposed a restriction on legal advisers in Network Access who subsequently moved on to work for a QR above-rail business group becoming involved on a matter linked to an access seeker that person dealt with whilst advising Network Access. The QCA has removed this proposed amendment in the Final Decision. Instead, the QCA has proposed the Undertaking should provide that Network Access' personnel at management levels 2, 3 and 4 should not be able to work on a matter they were involved in while with Network Access for a period of three months after joining the above-rail group. This more tightly focussed proposed amendment recognises the significant potential for a conflict of interest for QR staff in these positions.

QR's suggestion that it choose the auditor for ring-fencing compliance audits is inappropriate. If that were to be the case there may at least be a perception a QR-appointed auditor may not be as rigorous as a QCA-appointed auditor. Nevertheless, given QR will pay for the audits, the QCA considers it is possible to have a process that allows QR a greater role in the selection of an auditor. This would be subject to the QCA overseeing the selection of the auditor and the matters the auditor will address and that the primary obligation of the auditor would be to the QCA.

The QCA has proposed in the Final Decision that the Undertaking require that QR disclose both its internal and external coal access agreements. This mechanism would deliver blanket public disclosure through the QCA being provided a copy of the internal and external coal access agreements once signed and the QCA would subsequently place the signed agreements on a public register.

1.4 Negotiation Framework

The QCA has made a relatively small number of refinements to the Draft Decision's proposed amendments to address practical problems identified by QR. In response to stakeholder queries, the QCA has also clarified the scope of the declared services.

In recognition that it would be impractical for QR to fulfil its ring-fencing obligations regarding the protection of confidential information flows associated with access to stations and platforms, the QCA has proposed a partial exemption from this element of the Undertaking's ring-fencing obligations for access negotiations regarding passenger services that would utilise stations and platforms.

In regard to the Draft Undertaking's dispute resolution process, QR proposed that the Chief Executive could appoint a nominee to take his place in the 'first-tier' of the dispute resolution process. The QCA has accepted QR's position, subject to the access seeker having a right to go to arbitration if QR puts forward a nominee that is unacceptable.

1.5 Pricing Principles

The QCA has refined a number of its proposed amendments in the Draft Decision that relate to the limits on price differentiation and the rate review process. The QCA has clarified its approach to requiring QR to submit additional reference tariffs and how it will assess them.

The QCA has amended the market test establishing the limits of price differentiation to refer to a traffic in a geographic area and has proposed a change in market circumstances, in addition to cost and risk differences, as the only allowable basis for price differentiation between operators serving the same end market. The onus is on QR to justify these price differences.

The QCA has accepted a proposal by QR to supplement the limits on price differentiation with an obligation not to distort competition in an above-rail or end user market or hinder access within a market.

The QCA has proposed the Undertaking give operators the option of rate review arrangements in their access agreements. QR's proposal that rate review arrangements should be symmetrical (ie. a potential for both rate increases and decreases) has been accepted, subject to the entitlement to a 'like train path' adjustment being recognised. The 'like train path' arrangements proposed in the Draft Decision have been retained. QR should also be subject to an obligation to ensure its above-rail operators pay access charges that are as high as apply to third-party operators for similar traffics (unless a difference can be justified on cost or risk grounds).

In response to QR's concerns, the QCA has clarified its position that, in requesting QR to submit further reference tariffs, the QCA would need to be satisfied that the benefits in terms of increased pricing transparency justify the intrusion into QR's operational autonomy. The QCA is to have regard to whether the reference tariffs are likely to distort competition in an above-rail market and whether the reference tariffs are likely to hinder access.

The process for external audits of QR's compliance with its Costing Manual will be the same as the process for ring-fencing compliance audits. Adoption of that will allow QR a greater role in the selection of the auditor than envisaged in the Draft Decision.

A number of revisions have been made to the key performance indicators proposed in the Draft Decision to reflect the change the QCA has made to its definition of a 'healthy train' to make it consistent with the definition adopted by ARTC and other industry participants. The QCA has accepted QR's proposal for quarterly, rather than monthly, reports of the key performance indicators.

1.6 Capacity Management

The overriding objective of the QCA's proposed amendments relating to QR's capacity management has been to improve the transparency of its capacity management procedures and to more clearly establish the roles and obligations of QR, third-party operators and other interested parties within the scheduling and train control framework.

The QCA has made a number of refinements to the Scheduling and Train Control Principles in response to suggestions from QR and its stakeholders. Amongst other things, the QCA has proposed a role for other infrastructure service providers in the development of the master and daily train plans and has changed the QCA's concept of a 'healthy train' into line with that used by ARTC.

The QCA has proposed in more detail the nature of capacity information that QR should make available to access seekers in order for them to make their own capacity assessments. To this end, once an access seeker has lodged an access application, it should be supplied with the relevant daily train plans and train control diagrams. QR is entitled to recover its reasonable costs of provision of the train control diagrams.

The QCA's proposed amendments regarding capacity resumption in the Draft Decision have been refined to include a test for alternative demand that should be incorporated in the

Undertaking, such that an independent expert must decide which party has the greater likelihood of use of the capacity subject to dispute.

With respect to relinquishment of access rights, the QCA has accepted QR's proposal in its submission that for coal traffics, the relinquishment fee would be equivalent to two years payment of the take-or-pay component of the rail operator's access charge. QR proposed for non-coal traffics, the relinquishment fee would be the amount that would be achieved over two years from the contribution the traffic makes to the fixed costs of operating the rail infrastructure. The QCA has also accepted this proposal.

With respect to the test to apply where QR assigns surrendered capacity to the next access seeker that seeks consistent rights, the QCA considers consistency is principally determined by the specification of the relevant capacity entitlement. Consequently, the threshold for consistency in access rights for cyclic traffics is likely to be far lower than that for timetabled traffics.

The QCA also considers that secondary trading should be allowed within each of the central Queensland coal systems, but not across these systems, subject to the overriding requirement that QR is not made worse off financially. Secondary trading should be allowed across different non-coal traffics, subject to the same overriding requirement.

1.7 Interface Considerations

The overriding objective of the QCA's proposed amendments to the interface provisions of QR's Draft Undertaking has been to ensure the consistency of those provisions with the safety and environmental regulatory frameworks that exist in Queensland, including recognising the role of regulatory bodies on safety and environmental bodies. The QCA has made some relatively minor refinements to address concerns raised by QR regarding its obligations under the relevant legislation.

QR has accepted a shift away from QR-prescribed rollingstock interface standards and a separate safety risk assessment, towards one 'interface risk management process', involving an interface risk assessment that culminates in an interface risk management plan (IRMP).

The QCA agrees with QR that this approach would entail QR and an access seeker jointly undertaking the interface risk assessment for the purpose of assessing the risks (relating to all safety and rollingstock interfaces) of an operation on QR's infrastructure, and agreeing the controls for those risks. The controls will include rollingstock interface standards, safe working standards and safety standards and any other operational standards. The IRMP will become a schedule to the relevant access agreement.

The QCA has made a number of changes to its proposed amendment in the Draft Decision to clarify the respective roles of QR and RSAU in the authorisation of a third-party operator's rollingstock. The proposed amendment now reads QR should have a right both to seek a certificate(s) of compliance and associated test results from a third-party operator in order to confirm that the rollingstock/rollingstock configurations are as agreed and to provide input to RSAU regarding the authorisation of the third-party operator's rollingstock.

With respect to QR's auditing rights regarding the IRMP, the QCA considers that the Undertaking should explicitly recognise that the Rail Safety Accreditation Unit of QT is the body responsible for safety compliance audits under Queensland's rail safety regulatory framework.

The QCA has made a number of changes to the Draft Decision's proposed environmental amendments to clarify the process for assessment and management of environmental risks prior to, and after the commencement of, a third-party operator's train services.

This includes that an environmental risk investigation and risk management report (EIRMR) should be prepared for the third-party operator by a suitably qualified, not necessarily independent, person reasonably acceptable to both parties. QR should have a right to seek confirmation from the third-party operator regarding the adequacy of the EIRMR and/or its compliance with it.

Nevertheless, the QCA maintains its concerns about the nature of QR's proposed contractual termination and suspension rights on environmental grounds. Consequently, the QCA has proposed Schedule E principles regarding these matters to protect the interests of third-party operators.

1.8 Schedule E – Summary of Standard Access Agreement

The QCA has not made significant changes to the Draft Decision's proposed Schedule E principles, which remain a set of broad principles. However, development of some new principles and removal and clarification of existing principles has been undertaken.

The QCA has also clarified what it considers to be Schedule E's two key roles. First, prior to the establishment of a standard access agreement, it provides a basis against which an arbitrator can assess the fairness and reasonableness of an access agreement in the context of an arbitration. Second, to guide the process of establishing a standard access agreement.

1.9 Development of reference tariffs

On the basis of the QCA's proposed reference tariffs and Asia Pacific Coal Service's (APCS') conservative coal growth forecasts, QR's access revenues from the coal network are expected to average approximately \$256 million per annum. This excludes the revenues from electric traction charges over the initial regulatory period to 30 June 2005. Those charges are expected to raise a further \$44 million bringing the total revenue to an expected \$300 million.

The forecast access revenues have been determined by applying QR's proposed revenue formula given in section 5.2.4 of the Draft Undertaking. The resulting reference tariffs, if applied for the full evaluation period, would provide QR with the required total revenue. However, by applying these reference tariffs for only the regulatory period, QR will under-recover revenues by approximately \$30 million as at 30 June 2005. This is chiefly caused by the application of straight-line depreciation in the financial modelling framework adopted. It is proposed that the under-recovery will be amortised over the remainder of the evaluation period.

Figures 1-9 depict the reference tariff-net tonne relationship for each cluster and show how the access charge varies with haulage distance. Incremental capacity costs are yet to be determined for the Moura and Newlands corridors.

Figure 1: Moura reference tariff

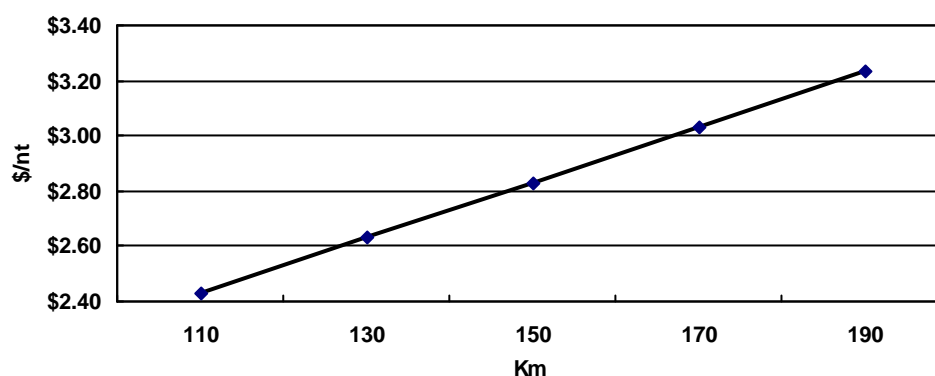


Figure 2: Newlands reference tariff

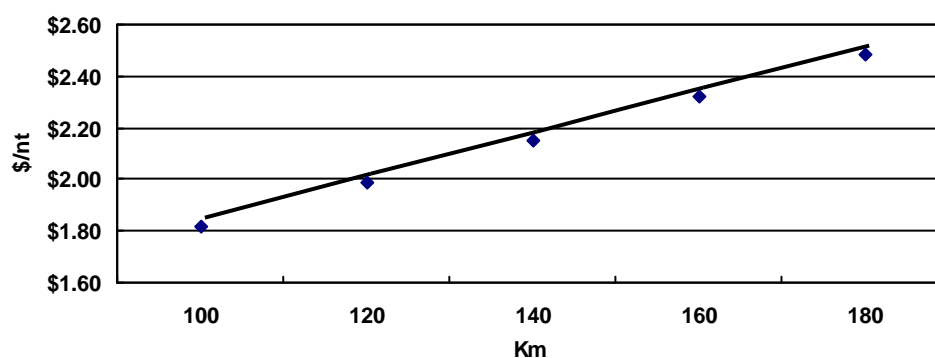


Figure 3: Central Blackwater reference tariff

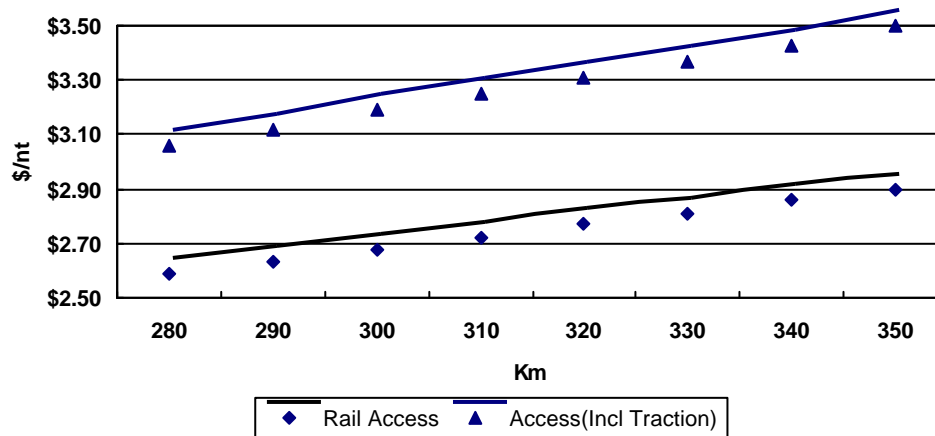


Figure 4: Stanwell reference tariff

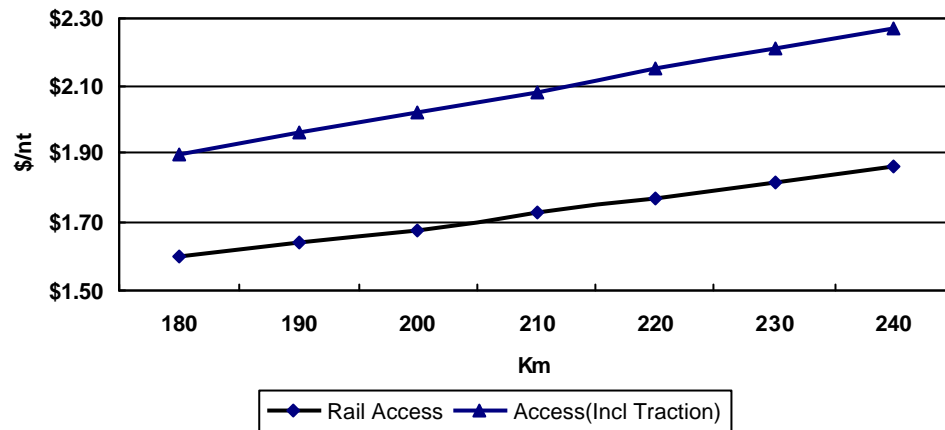


Figure 5: Gregory via Blackwater reference tariff

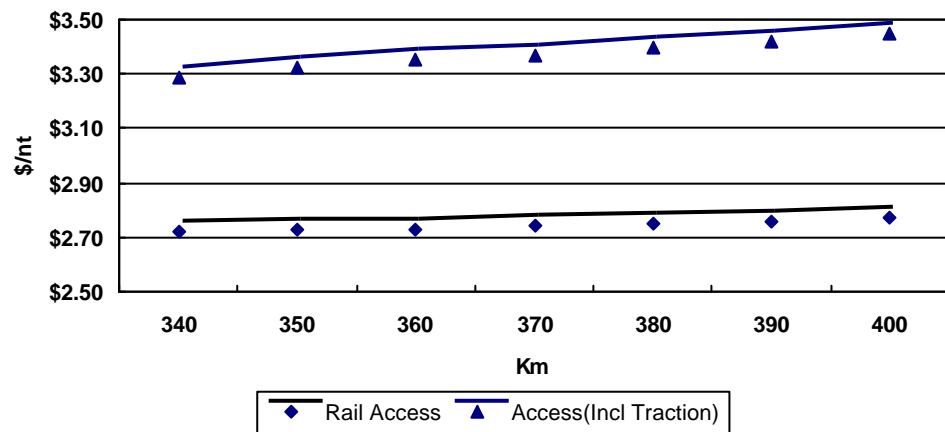


Figure 6: Gregory via Goonyella reference tariff

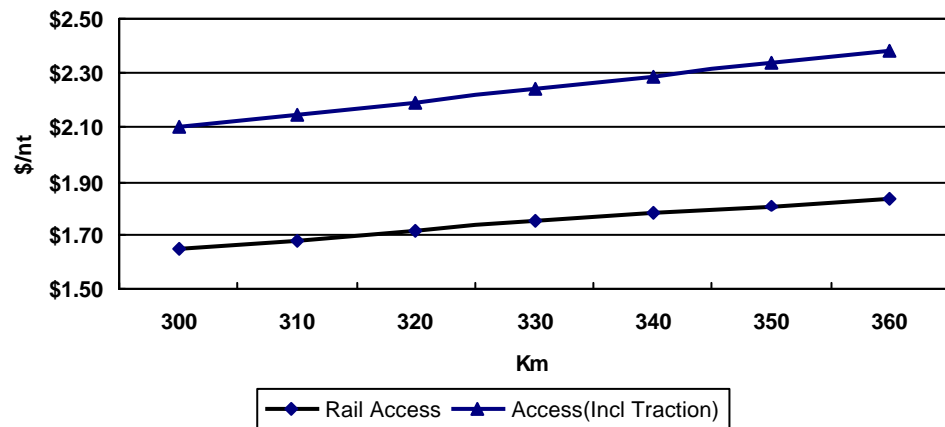


Figure 7: Goonyella South reference tariff

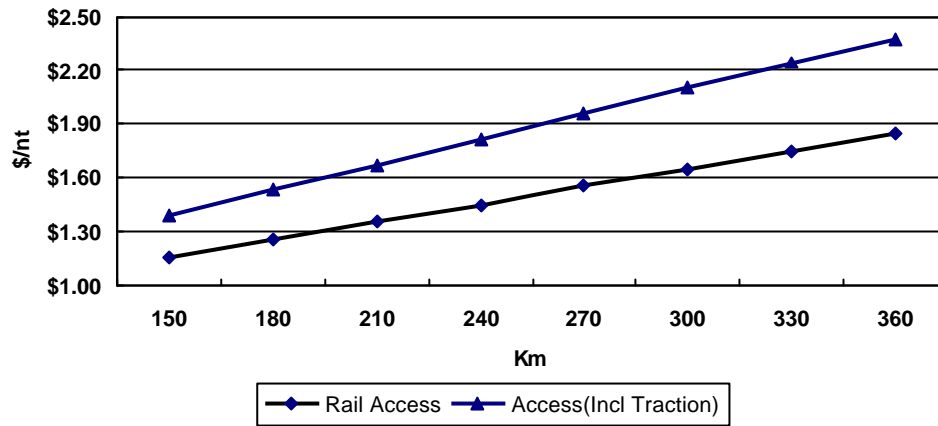


Figure 8: Goonyella West reference tariff

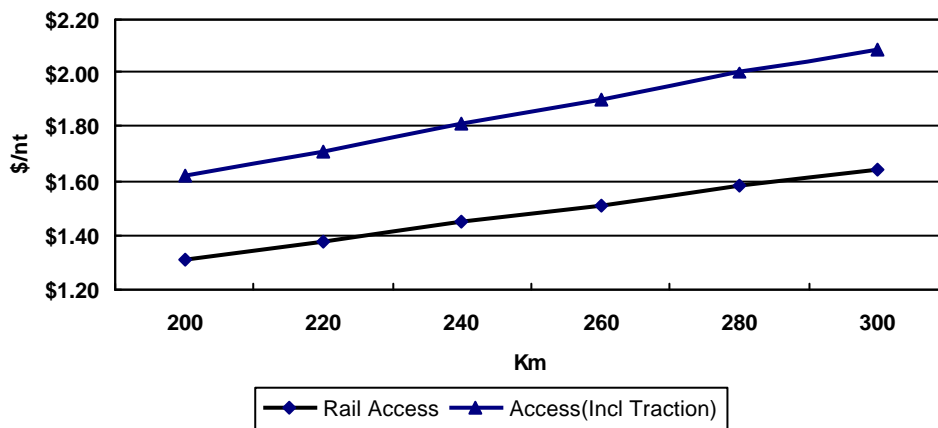
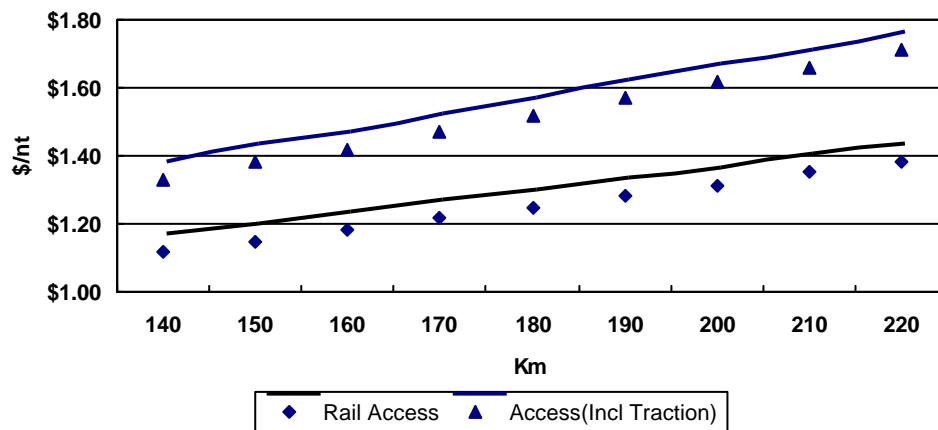


Figure 9: Goonyella North reference tariff



The QCA has rejected QR's revised demand forecasts and has adopted the most conservative forecasts provided by APCS. Hence, as part of the regulatory arrangements, the Authority proposes to offer QR a choice between:

- a price cap based upon the demand forecasts adopted by the QCA; and
- a revenue cap.

Should QR opt for a revenue cap, the reference tariffs proposed by the QCA will apply for 2001-02, with appropriate adjustments to account for any under- or over-recovery of revenues. QR will be required to make the choice between a price and revenue cap as part of any approved Undertaking.

The pricing model requires four distinct measures of the forecast traffic volume facing each of the four coal corridors, namely net tonne kilometres, gross tonne kilometres, number of train paths required and net tonnes. These forecasts were based on APCS' tonnage forecasts using individual mine-by-mine trip lengths and reference train configurations.

The total gross replacement value (GRV) of assets is \$2.85 billion, which includes \$508 million of electrical overhead infrastructure. The QCA accepted QR's GRV, however, staging costs valued at \$15 million were excluded in accordance with QR's submission.

The opening asset values, as at 01/07/2001, used in the calculation of reference tariffs, is \$1.76 billion for below-rail assets (including track, signals and earthworks) and \$267 million for electric traction assets or \$2.03 billion in total, expressed in 2001 dollars. As a result there has been no change in the overall value of assets from the Draft Decision.

The calculation of terminal values used the same depreciation rates/asset lives as those used to calculate the opening asset values. The forecast terminal values used in the calculation of reference tariffs is \$1.9 billion for below-rail assets and \$224.4 million for electric traction assets or \$2.12 billion in total, expressed in 2009 dollars.

The risk-free rate, based upon the 10-year Commonwealth Government bond yield averaged over 20 trading days commencing 22 May, is 5.97%. The post-tax nominal rate of return is 8.68%.