

3 February 2023

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(Submitted via QCA Online Submission Form)

Review of Rebate mechanism

The Queensland Resources Council (**QRC**), on behalf of the QRC's Rail Working Group, welcomes the opportunity to respond to the Queensland Competition Authority's (**QCA's**) invitation to make a submission on the review of the Rebate mechanism under the Central Queensland coal network access undertaking (**Undertaking**).

Clause 7A.6(f) of the Undertaking provides that if requested by an End User the QCA must consider whether the 'Rebate' mechanism as described in clause 7A.6 is achieving the 'Rebate Objectives'. The QRC understands that prior to 12 December 2022 a number of End Users notified the QCA that they wished the QCA to undertake the Rebate review.

What is the Rebate mechanism as described in clause 7A.6

Clause 7A.6(b) of the Undertaking provides that from the 'Report Date' the 'Independent Expert' is to determine whether there has been an 'AN Performance Shortfall resulting from an AN Performance Breach in that Relevant Year'. An 'AN Performance Shortfall' and 'AN Performance Breach' are defined in clause 12.1 of the Undertaking.

Clause 7A.6(b) further provides that if 'there has been an AN Performance Shortfall resulting from an AN Performance Breach, the Independent Expert must determine the Performance Rebate Amount that Aurizon Network must, subject to clause 7A.6(c) and clause 7A.6(e), pay an affected End User'.

It is clear from clause 7A.6 that:

- The 'Rebate' is to be determined by the Independent Expert.
- The Rebate is to be assessed on an End User by End User basis.
- The Rebate is to be assessed each year (with the first year commencing from the Report Date).

It is further clear from clause 7A.6 and the definitions of 'AN Performance Shortfall' and 'AN Performance Breach' that the Rebate is triggered to the extent:

- The aggregate number of 'Train Service Entitlements' that an Access Holder could have utilised in the relevant period exceeds the aggregate number of Train Service Entitlements that were utilised by the Access Holder in the relevant period; and
- The reason for the shortfall described above, or for any part of the shortfall, is a breach by Aurizon Network of the Undertaking or the relevant 'Access Agreement', Aurizon Network acting inconsistently with the 'Maintenance or Renewals Strategy or Budget', the 'Approach to Maintenance' (other than where permitted) or acting inconsistently with the 'System Operating Parameters' (other than where out of Aurizon Network's control).

Purpose of the Rebate mechanism

The purpose of the Rebate mechanism is evident from the Rebate section in the Undertaking. That is, it is a means of compensating End User's for non-provision of services by Aurizon Network. In an Australian Stock Exchange release dated 3 May 2019 Aurizon Network described the Rebate mechanism as follows:

'A Rebate payable to customers where Aurizon performs below target levels.'

Rebate Objectives

The 'Rebate Objectives' are defined in clause 7A.6(g) as follows:

- (i) provision of comprehensive and transparent information, and support by Aurizon Network for the Independent Expert's work in relation to the determination of the Rebate;
- (ii) accurate, reliable and timely root cause analysis of the reasons why an End User's Train Service Entitlements are unable to be ordered, are ordered but not provided, or are not utilised; and
- (iii) timely and effective provision of an individual Rebate to End Users calculated in accordance with clause 7A.6(b) in circumstances where an End User has received less than their Train Service Entitlements in a Year due to an AN Performance Breach.

For the reasons explained further below, the QRC consider that paragraphs (i) and (ii) of the definition of 'Rebate Objectives' are not being met.

Provision of comprehensive and transparent information, and support by Aurizon Network for the Independent Expert's work (Rebate Objective (i))

Information gaps

The Rebate mechanism involves a significant forensic factual exercise. That is, to assess the Rebate a significant volume of information is required. Based on our knowledge of

how the coal chain currently operates there are material weaknesses in the fact set which is available generally and to the Independent Expert. For example, we understand that there is not a clear record of End User demand such that the Independent Expert is therefore unable to determine if End User Train Service Entitlements were unable to be ordered or ordered but not provided. Limitations of information arise because processes, reporting and information gathering has not been developed with the Rebate in mind. Weaknesses in the data which is needed to assess the Rebate undermines both the effectiveness of the Rebate and the first Rebate Objective (paragraph (i)). To the extent that there are information gaps, it necessarily follows that there has been a failure to achieve the 'provision of comprehensive and transparent information'.

Quality and format of information

While the QRC does not have access to the body of information held by Aurizon Network we assume based on our understanding of the coal chain that information held by Aurizon Network is not held in a format or structure which is suitable for the assessment of Rebates. Again, the reason for this shortfall is a failure to generate or adapt information for the purpose of the Rebate. The format and structure of information will impact on the usability of that information. Provision of information which is not usable, or which is difficult to use fails to achieve the objectives of 'comprehensive and transparent information' and 'support by Aurizon Network'.

Timeliness of information

The QRC also queries whether information is being provided to the Independent Expert in a timely manner. Providing the Independent Expert with an information dump at the end of a relevant year is unlikely to enable the Independent Expert to undertake the exercise which is required of it. Given that the Rebate requires an assessment End User by End User there is merit in information being available to the Independent Expert contemporaneously. Having accessible and contemporaneous information will enable the Independent Expert to make a clearer assessment of cause. A failure to provide or make available information in a timely way is not consistent with 'support by Aurizon Network' as contemplated in paragraph (i) of the Rebate Objectives and 'timely root cause analysis' in paragraph (ii) of the Rebate Objectives.

Rebate Objective (i) not being met

In the QRC's view based on the information available to the QRC and its members, paragraph (i) of the Rebate Objectives is not being met. The QRC suggest that consideration be given to developing a protocol that clearly specifies the scope, quality and timing of information gathered by Aurizon Network and provided to the Independent Expert. It is likely preferable that the Independent Expert be provided direct access to information (ie at the source) or that steps be put in place to provide that information directly to the Independent Expert. This would improve the quality of the assessment and reduce the administrative burden on Aurizon Network. There is no reason for example why End User demand information is not provided directly by End Users to the Independent Expert in a format developed by the Independent Expert.

Accurate, reliable and timely root cause analysis (Rebate Objective (ii))

Considering the Rebate process just completed, it is clear that understanding the cause of any losses was not able to be undertaken contemporaneously with the relevant events. It may also be the case that given constraints in information availability there is doubt as to the accuracy of the analysis. Both Aurizon Network and the Independent Expert would have needed to make a number of assumptions to fill gaps in the analysis. The Rebate review was included in the Undertaking in recognition of the difficulty of the task and that the process could be optimised once the principles had been put into practice and lessons learned. Given the scope of the Rebate exercise it is no surprise that changes would be needed to make the process achieve the Rebate Objectives. Making changes to make the Rebate mechanism more closely achieve the Rebate Objectives is in no way a criticism of the Independent Expert or Aurizon Network and simply a recognition of the inevitable need to (in light of the Rebate Objectives) refine the process after undertaking a highly complex exercise for the first time.

Weaknesses in information affect the ability to undertake a root cause analysis. For example, we understand that a large proportion of delays (which may result in cancellation of services) are categorised as 'other' and therefore not attributed to any particular party. Where information is categorised in a general or miscellaneous way it prevents or hinders causation analysis. The absence of root cause analysis prevents the Independent Expert from calculating the Rebate in accordance with the Undertaking.

In the QRC's views, in order to achieve paragraph (ii) of the Rebate Objectives changes are needed to the Rebate process, and information available to undertake the assessment.

Underloaded trains (empty wagons)

Whilst not explicit in Rebate Objectives, End Users would like to highlight the unintended consequence of the Rebate mechanism of underloading of trains due to empty wagons. Aurizon Network, due to the Rebate calculation mechanism, are incentivised to continue to dispatch trains, even if significantly delayed (often due to Aurizon Network cause) to ensure the End Users Train Service Entitlements have been utilised. Once these services arrive at the load points, they are required to leave early without loading all wagons, to meet the required departure time slot. Whilst in some cases it is in the End User's interest to still run these trains to move at least some coal to port (or domestic customers), there is no Aurizon Network accountability for losses due to empty wagons. These Train Service Entitlements are considered "utilised", but not necessarily in accordance with System Operating Parameters or Access Agreements with respect to time allowed for loading. End Users query whether the utilisation of Train Service Entitlements in such circumstances should be treated as only partially satisfied given that they do not satisfy the loading time allowances provided under the System Operating Parameters or Access Agreements.

How QCA should approach the Rebate review

The 'Rebate' review is a unique process. Stakeholders have limited ability to assess the information held by Aurizon Network and the information provided to the Independent Expert. End Users and the Independent Expert typically do not participate in the

detailed planning processes or live run environment, so often have to triangulate information from varying sources to attempt to determine causation. Consideration of stakeholder submissions will not enable the QCA to sufficiently determine whether the Rebate mechanism is achieving the Rebate Objectives. Accordingly, we strongly encourage the QCA to undertake steps to investigate the scope, quality and timing of information collected by Aurizon Network and provided to the Independent Expert in respect of the Rebate. The QRC also strongly encourage the QCA to seek the views of the Independent Expert to determine the best process to obtain the information it requires to more fulsomely meet the Rebate Objectives.

Conclusions

While the QRC does not have complete visibility of the information available to Aurizon Network and the Independent Expert, it is clear that the Rebate mechanism is a significant factual undertaking. In order to achieve paragraphs (i) and (ii) of the Rebate Objectives it is clear that the Independent Expert needs timely provision of quality information. In the QRC's view that is best achieved by the information being directly accessible by the Independent Expert contemporaneously, and for the required information to be embedded into coal chain processes by way of amendments to the Undertaking. Without this sort of change it is not possible for paragraphs (i) and (ii) of the Rebate Objectives to be achieved.

Thank you for the opportunity to provide this submission.

Lastly, we wish to thank the Independent Expert and Aurizon Network for the effort which has gone into the Rebate process to date.

Yours sincerely



Andrew Barger

Queensland Resource Council