
QUEENSLAND RAIL'S 2015 DAU – REQUEST FOR COMMENTS

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Background

Queensland Rail is a statutory authority that owns and operates a 7,000 kilometre rail network, including the commuter lines in south east Queensland, as well as the western system and the Mount Isa and north coast lines. It also operates the state's suburban and long-distance passenger services.

The services provided by Queensland Rail's intra-state rail network have been declared by regulation since 1997, making the services subject to the third-party access provisions of the *Queensland Competition Authority Act 1997* (the QCA Act). As a result of this declaration, Queensland Rail, access seekers and access holders gained rights and obligations relating to the negotiation of the terms and conditions of access to Queensland Rail's network.

The declared below-rail (track) network is subject to the 2008 access undertaking (2008 undertaking) the QCA approved for the then QR Network, as amended in June 2010 to include new tariffs and tariff-setting rules, under a Queensland Government Transfer Notice.

2015 DAU

On 5 May 2015, Queensland Rail submitted a draft access undertaking (the 2015 DAU) to the QCA in response to an Initial Undertaking Notice issued by the QCA under s. 133 of the QCA Act.

This DAU sets out how Queensland Rail proposes to provide access to its network, including processes for negotiating contracts, scheduling and controlling trains, setting prices and settling disputes. Among other things, the DAU proposes to give effect to new western system reference tariffs from the date the QCA approves the access undertaking.

On 6 May 2015, the QCA issued a Notice of Investigation on the 2015 DAU, seeking submissions by 5 June 2015.

The QCA will consider the 2015 DAU in accordance with the requirements of the QCA Act. The QCA Act provides that the QCA may approve a draft access undertaking only if it considers it appropriate to do so having regard to each listed matter in s. 138(2).

The timely consideration of Queensland Rail's 2015 DAU is a priority for us. QCA staff are publishing this paper to assist stakeholders with any submissions they may make as part of the 2015 DAU consultation process. This will assist the QCA in addressing any stakeholder submissions as part of its draft decision on the 2015 DAU, making for early participation and efficiency in the decision-making process.

Adjustment of Tariffs

Queensland Rail and its predecessors have applied for, and received or paid, adjustment charge payments in the past through approved access undertakings to reflect the difference between interim (extended) and approved tariffs. This method of addressing delays in finalising tariffs in an approved replacement undertaking has been used both when the adjustments were in the rail companies' favour and when they favoured access holders. These adjustments were applied in:

- (a) 2006, to refund to customers the difference between interim tariffs from July 2005 to June 2006 and those approved for that period by the QCA in QR Ltd's 2006 undertaking¹
- (b) 2010, to recoup from customers the difference between interim tariffs from July 2009 to June 2010 and those approved for that period by the QCA in June 2010 amendments to QR Network's 2008 undertaking. The adjustment was applied both by QR Network for tariffs in the central Queensland coal network and Queensland Rail for western system coal tariffs.²

Queensland Rail proposed to continue with an adjustment charge approach in all its (now withdrawn) voluntary DAUs to replace the 2008 undertaking – each of Queensland Rail's March 2012, February 2013 and June 2013 DAUs provided for applying the tariffs with effect from 1 July 2013 by means of an adjustment charge mechanism.³

These provisions in the voluntary DAUs were further confirmed by Queensland Rail's letters accompanying its May 2013, November 2013 and May 2014 extension draft amending access undertakings (DAAUs), each of which said it intended to apply its tariffs from 1 July 2013 through adjustment charge provisions in its replacement DAU.⁴

Request for Comments

The QCA notes that Queensland Rail's 2015 DAU proposes to apply the western system tariff from the date the QCA approves the new undertaking for Queensland Rail. It therefore does not propose to apply the tariff approved by the QCA with effect from 1 July 2013, as it proposed in its previous voluntary DAUs.

Given that the proposed treatment of the western system tariff in the 2015 DAU differs from that which Queensland Rail previously proposed, QCA staff are seeking responses to the questions below as part of the submissions process for Queensland Rail's 2015 DAU.

Staff Questions

- (1) In relation to the Western System, did stakeholders expect there would be an adjustment in a replacement access undertaking to reflect the difference between: (a) tariffs paid or payable since 1 July 2013 and (b) tariffs, if different, that would have been paid or payable since 1 July 2013, if those tariffs were effective from that date?
- (2) If so,
 - (a) What was the basis for that expectation?
 - (b) Did stakeholders rely on that expectation and, if yes, in what way?

¹ The 2006 undertaking specified in clause 2.3(b) that 'Reference Tariffs as approved in this Undertaking will be applied retrospectively from 1 July 2005.'

² The tariff adjustments in 2010 were approved by the QCA for both rail companies under the adjustment charge provisions in Schedule F, Part A, cl. 2.3 of the 2008 undertaking, as amended in June 2010. The undertaking specified in cl. 2.3(e) that 'The reference Tariffs for the 2009/10 Year apply retrospectively and are effective from and including 1 July 2009.'

³ Each of the three DAUs specified in cl. 3.4.2(b)(iii)(C) that 'after new Reference Tariffs are approved by the QCA in accordance with this clause 3.4.2(b) this Undertaking will apply as though it were amended to replace the reference tariffs with those new Reference Tariffs with effect on and from 1 July 2013.' They also included adjustment charge provisions in Schedule A, cl. 6.

⁴ See <http://www.qca.org.au/getattachment/bf593b6c-d7e0-4e31-82f5-6ef1325c03b2/QRail-%E2%80%93-Letter-re-2008-DAAU-Extension-of-Terminati.aspx>; <http://www.qca.org.au/getattachment/346fc682-d121-4ae4-a440-e92d8d4e1a97/QRail-Letter-re-2008-DAAU-Extension-of-Termination.aspx>; <http://www.qca.org.au/getattachment/5a5f9697-ad9d-486c-beab-8aa7d17b372c/QRail-%E2%80%93-Letter-Re-2008-DAAU-Extension-of-Terminate.aspx>.

- (3) What impact does Queensland Rail's proposal not to apply the new reference tariff from 1 July 2013 in its 2015 DAU have on stakeholders including, for example, impacts on regulatory certainty?
- (4) Are there a range of stakeholders (both upstream and downstream) that may be affected? Are there stakeholders whose future decisions may be affected?
- (5) If there are impacts arising from Queensland Rail's proposal not to apply the new reference tariff from 1 July 2013 in its 2015 DAU, what might the consequences be during the term of the access undertaking and beyond? Are those consequences (if any) material and are they a relevant matter for the QCA to consider under s. 138(2)? If so, which aspects of s. 138(2) are relevant and how?

SUBMISSIONS

Closing date for submissions: 5 June 2015

Public involvement is an important element of the decision-making processes of the Queensland Competition Authority (QCA). Therefore submissions are invited from interested parties concerning its assessment of Queensland Rail's 2015 draft access undertaking. The QCA will take account of all submissions received by the closing date.

Submissions, comments or inquiries regarding this paper should be directed to:

Queensland Competition Authority
GPO Box 2257
Brisbane Q 4001
Tel (07) 3222 0533
Fax (07) 3222 0599
www.qca.org.au/submissions

Confidentiality

In the interests of transparency and to promote informed discussion, the QCA would prefer submissions to be made publicly available wherever this is reasonable. However, if a person making a submission does not want that submission to be public, that person should claim confidentiality in respect of the document (or any part of the document). Claims for confidentiality should be clearly noted on the front page of the submission and the relevant sections of the submission should be marked as confidential, so that the remainder of the document can be made publicly available. It would also be appreciated if two copies of each version of these submissions (i.e. the complete version and another excising confidential information) could be provided. Where it is unclear why a submission has been marked 'confidential', the status of the submission will be discussed with the person making the submission.

While the QCA will endeavour to identify and protect material claimed as confidential as well as exempt information and information disclosure of which would be contrary to the public interest (within the meaning of the *Right to Information Act 2009* (RTI)), it cannot guarantee that submissions will not be made publicly available. As stated in section 187 of the *Queensland Competition Authority Act 1997*, the QCA must take all reasonable steps to ensure the information is not disclosed without the person's consent, provided the QCA believes that disclosure of the information would be likely to damage the person's commercial activities and that the disclosure of the information would not be in the public interest. Notwithstanding this, there is a possibility that the QCA may be required to reveal confidential information as a result of a RTI request.

Public access to submissions

Subject to any confidentiality constraints, submissions will be available for public inspection at the Brisbane office, or on the website at www.qca.org.au. If you experience any difficulty gaining access to documents please contact us on (07) 3222 0555.