

Part 7: Available Capacity allocation and management

7.1 Application

- (a) This ~~Part 7~~ **Part 7** addresses the allocation and management of Capacity, including in circumstances where there is insufficient Available Capacity to satisfy all of the Access Applications submitted to Aurizon Network. In particular under its provisions:
- (i) Aurizon Network may refuse to grant Access Rights if the relevant Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that it can fully utilise those Access Rights. (**Clause ~~7.27-2~~**)
 - (ii) Aurizon Network will be obliged to give priority to the granting of Access Rights to a Renewing Access Seeker in respect of a Renewal in certain circumstances. (**Clause ~~7.37-3~~**)
 - (iii) Standard Access Agreements will include provisions allowing an Access Holder to relinquish Access Rights for a Transfer. Aurizon Network has obligations in relation to the allocation of Capacity to facilitate a Transfer. (**Clause ~~7.4.27-4.2~~**)
 - (iv) Aurizon Network will notify Access Seekers if their Access Applications are Mutually Exclusive Access Applications and assist them to modify their Access Applications to seek to avoid them being Mutually Exclusive Access Applications. (**Clause ~~7.5.17-5.1~~**)
 - (v) Where Aurizon Network has received Mutually Exclusive Access Applications, Aurizon Network will prioritise the granting of Access Rights having regard to a series of specified criteria. (**Clause ~~7.5.27-5.2~~**)

However, these provisions for Mutually Exclusive Access Applications do not apply where the allocation occurs under **Part 8**. (**Clause 7.5.2(a)**)
 - (vi) Subject to the provisions of the relevant Access Agreement, scheduling and Network Control [Services](#) will be performed by Aurizon Network consistently with the Network Management Principles (including the System Rules). Aurizon Network has various rights and obligations in relation to amending System Rules. (**Clause ~~Error!~~**
~~Reference source not found.7-6~~)
- (b) A diagrammatic representation of the capacity allocation process for Mutually Exclusive Access Applications is set out in **schedule H**.
- (c) To the extent that there is any inconsistency between any of:

- (i) **clause 7.27.2** (General requirement for allocation);
- (ii) **clause 7.37.3** (Renewals);
- (iii) **clause 7.4.27.4.2** (Transfers); and
- (iv) **clause 7.57.5** (Mutually Exclusive Access Applications),

those provisions will apply in that order of precedence (from highest to lowest) to determine which of them prevails to the extent of the inconsistency.

- (d) For the purposes of the Act, the treatment of Access Seekers differently as a result of, or in accordance with, **clause 7.37.3**, **7.4.27.4.2** or **7.5.27.5.2** is permitted and to that extent does not offend the Act.
- (e) Except where otherwise expressly provided in this **Part 7** and without limitation to **clause 7.1(d)**, Aurizon Network will not discriminate in the performance of its obligations, and the exercise of its rights, ~~under~~ in this **Part 7** as between Access Seekers (or as applicable, Customers) on the basis of the identity of the funder of ~~who is funding~~ a Pre-Feasibility Study, a Feasibility Study or an Expansion. For example, Aurizon Network will not provide an Access Seeker (or as applicable, Customer) with priority in the allocation of Capacity in respect of an Expansion on the basis that Aurizon Network is providing funding for the Expansion, over another Access Seeker (or as applicable, Customer) with a different source of funding.
- (f) Nothing in ~~clauses 7.3~~, **7.4.27.4.2** or **7.5.27.5.2** obliges to Aurizon Network to grant Access Rights if there is insufficient Available Capacity to provide those Access Rights.

7.2 General requirement for allocation

Despite any other provision in this Undertaking, Aurizon Network may refuse to allocate Available Capacity in respect of an Access Application if the Access Seeker has not demonstrated to Aurizon Network's satisfaction (acting reasonably and in good faith) that the Access Seeker has a reasonable likelihood of being able to fully utilise the Access Rights requested from the time when the Access Rights are proposed to commence, including considering:

- ~~(a) — holding Supply Chain Rights;~~
- ~~(b) — having a contract for rail haulage utilising the relevant Capacity;~~
- ~~(c) — having sufficient facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable the Access Seeker to utilise the relevant Capacity;~~
- ~~(d) — where the Access Seeker is seeking Access Rights that will be used for a person other than the Access Seeker (that is, a person who will be a Customer), having or being likely to have a Customer for those Access Rights; and~~

- (a) where the relevant Capacity will be used to transport the output of a mine, there being sufficient anticipated output from the mine to support full utilisation of the relevant Capacity, whether the Access Seeker has secured, or is reasonably likely to secure, Supply Chain Rights;
- (b) whether the Access Seeker has secured, or is reasonably likely to secure, a rail haulage agreement for the operation of the Train Services the subject of the Access Application;
- (c) whether the Access Seeker or its Railway Operator is reasonably likely to have sufficient access to facilities (including Rollingstock, provisioning facilities, maintenance facilities and storage facilities) to enable it to run Train Services to fully utilise the Access Rights sought; and
~~where the Access Rights are sought to transport the output of a mine, whether the anticipated output of the mine is sufficient to support full utilisation of the Access Rights sought and all relevant existing Access Rights are relevant to that mine; and~~
- ~~(e)~~(d) where the Access Rights sought require a Customer Specific Branch Line Private Infrastructure for the relevant Train Services, whether that Customer Specific Branch Line Private Infrastructure has been constructed and commissioned or is reasonably likely to be constructed and commissioned prior to the date on which the relevant Train Services are to commence.

7.3 Renewals

- (a) This **clause 7.3** sets out provisions that apply where all or any part of an Access Holder's existing Access Rights will expire and:
 - (i) that Access Holder (where the Access Holder has no Customer); or
 - (ii) the person nominated by the Access Holder's Customer in writing to Aurizon Network (and, for clarity, that Customer may nominate itself),

(Renewing Access Seeker) wishes to hold or to continue to hold (as applicable) equivalent Access Rights (based on the Access Holder's Access Rights immediately prior to that expiry), subject to **clause 7.3(b)7.3(b)**, for a further term commencing immediately after those existing Access Rights will expire (that is, a **Renewal**).
- (b) For the purpose of **clause 7.3(a)7.3(a)**, where the relevant Access Rights relate to coal carrying Train Services, Aurizon Network will disregard any change to the origin ~~or destination~~ of the relevant Train Services in considering whether the relevant Access Rights are equivalent Access Rights so long as the Train Services for the Renewal:

- (i) continue to have the same requirement for Mainline Paths as the existing Train Services; and
- (ii) the origin of the Train Services for the Renewal and the origin of the Train Services under the existing Access Rights relating to the Renewal are located in the same Track Segment.

(c) For clarity:-

(i) a Renewing Access Seeker may elect to renew only part of their existing Access Rights; and

~~(e)~~(ii) where a Renewing Access Seeker chooses to Renew only part of their existing Access Rights, the balance of those Access Rights not Renewed will become Available Capacity on the expiry of those existing Access Rights.

(d) Despite any provision in **Part 4**, Aurizon Network:

- (i) is not obliged to negotiate the provision of Access that will use Capacity that will become Available Capacity on the expiry of an existing Access Right; and
- (ii) must not enter into an Access Agreement in relation to such Capacity,

with a person other than the relevant Renewing Access Seeker unless and until:

- (iii) the end user (that is, the Access Holder, where the Access Holder has no Customer, or otherwise the relevant Access Holder's Customer) has notified Aurizon Network that the end user does not intend to seek a Renewal; or
- (iv) the Renewing Access Seeker has not (other than because of a breach of this Undertaking by Aurizon Network) executed an Access Agreement for that Capacity with Aurizon Network under this **clause 7.3** at least 12 months prior to the expiry of the Access Rights (or such lesser time prior to the expiry of the Access Rights as may be agreed by Aurizon Network).

(e) Aurizon Network may refuse to negotiate, or to enter into, an Access Agreement with a Renewing Access Seeker for a Renewal more than three years prior to the expiry of the Access Rights.

(f) If a Renewing Access Seeker is seeking a Renewal at least 12 months (or such later date as agreed by Aurizon Network) (but no more than 36 months (or such earlier date as agreed by Aurizon Network) prior to the expiry of the relevant Access Rights, then:

- (i) the term of an Access Agreement relating to the Renewal must be:

- (A) for coal carrying Train Services, the lesser of ~~10~~ 5 years and the remaining life of the relevant mine (as evidenced to Aurizon Network's reasonable satisfaction by the Renewing Access Seeker); or
 - (B) for other Train Services, the lesser of ~~10~~ 5 years and the same length of time as the term of the relevant current Access Agreement; and
- (ii) if:
- (A) the Renewing Access Seeker's Access Application is not seeking a Renewal for; or
 - (B) the Renewing Access Seeker does not agree to an Access Agreement for,
- a term referred in **clause 7.3(f)(i)**, then the Renewing Access Seeker's Access Application will not be treated as an Access Application for a Renewal under this **clause 7.3**.
[Anglo drafting note: Whilst Anglo understand that 10 years is needed to underpin new investment in the network, Renewals should not need to be for a term longer than 5 years. This will also assist in producers being able to align rail and port contracts.]
- (g) While this **clause 7.3** sets out how Aurizon Network will differentiate in the treatment of a Renewing Access Seeker as compared to other Access Seekers, nothing in this clause 7.3 obliges Aurizon Network to enter into an Access Agreement for a Renewal on the same terms as the relevant Access Holder's Access Agreement for the existing Access Rights (however Aurizon Network will, subject to Part 4, be obliged to enter into an Access Agreement on the terms of the relevant Standard Access Agreement).: [Anglo drafting note: Renewals should not be required to be a new access application and forced on to a new SAA.]
- (i) ~~does not affect the rights and obligations of the Renewing Access Seeker or Aurizon Network under Part 4 or Part 5 or the remaining provisions of this Part 7 except as set out in this clause 7.3; or~~
 - (ii) ~~oblige Aurizon Network to enter into an Access Agreement for a Renewal on the same terms as the relevant Access Holder's Access Agreement for the existing Access Rights.~~
- (h) For clarity, once a Renewing Access Seeker has completed and submitted an Access Application for the Access Rights it is seeking to renew, subject to this Part 7Part-7, the negotiations for those Access Rights will be conducted in accordance with Part 4 and Part 5 including:

- ~~(i)~~ a Renewing Access Seeker must complete and submit an Access Application for Access Rights it is seeking to renew; and
- ~~(ii)~~ subject to this **Part 7**, the negotiations for those Access Rights will be conducted in accordance with **Part 4** and **Part 5** including:
 - ~~(A)~~(i) the Negotiation Cessation Notice provisions under **clause 4.12**;
 - ~~(B)~~(ii) the Renewing Access Seeker and Aurizon Network beginning negotiations as soon as reasonably possible once the relevant Negotiation Period has commenced under **clause 4.10.1(a)4.10.1(b)**; and
 - (iii) both the Renewing Access Seeker and Aurizon Network negotiating the terms of the relevant Access Agreement for the Renewal acting reasonably and in good faith under **clause 5.1(c)**.

~~(C)~~ Aurizon Network acknowledges that any provision under **Part 4** which allows Aurizon Network to treat an Access Application as being withdrawn or to issue a Negotiation Cessation Notice because there is insufficient Available Capacity, does not apply in respect of a Renewal.

7.4 Dealing with Access Rights

[QRC Note: Please refer to the QRC's separate note on transfers. Section 7.4 should be modified to reflect the proposed new transfer process.]

7.4.1 Assignments

An Access Holder may only assign, novate or otherwise transfer the Access Holder's interest in an Access Agreement to a third party in accordance with the terms of that Access Agreement.

7.4.2 Transfers

- (a) If an Access Holder intends to undertake a Transfer, then despite any other provision in this Undertaking:
 - (i) subject to **clause 7.4.2(a)(ii)7.4.2(a)(ii)**, Aurizon Network will negotiate exclusively with the Transferee in relation to the grant of the Transferred Access Rights and, if applicable, Ancillary Access Rights;
 - (ii) that exclusivity of negotiation does not:
 - (A) apply to any other Access Rights, if any, sought by the Access Seeker (for example, Access Rights that require an Expansion or Customer Specific Branch Line); or

- (B) affect Aurizon Network's negotiations with another Access Seeker where **clause 7.4.2(a)(iv)** applies;
- (iii) nothing in this **clause 7.4.2(a)** obliges Aurizon Network to execute an Access Agreement with the Transferee; and
- (iv) where:
 - (A) an Access Application by a Transferee is for Transferred Access Rights and Ancillary Access Rights;
 - (B) Aurizon Network and another Access Seeker are already in the process of negotiating an Access Agreement and that other Access Seeker has demonstrated to Aurizon Network's reasonable satisfaction that the Access Seeker can fully utilise its requested Access Rights having regard to the matters listed in **clause 4.12(c)** and in particular, that it holds Supply Chain Rights in respect of its requested Access Rights; and
 - (C) the Transferee's Access Application and that other Access Seeker's Access Application are Mutually Exclusive Access Applications [in relation to the Ancillary Access Rights sought under the Transferee's Access Application¹](#),
clause 7.57-5 will apply to those Access Applications and will not otherwise apply to that Transferee's Access Application in respect of any other Access Seekers.
- (b) A Transferee must complete and submit an Access Application for the Transferred Access Rights and, if applicable, Ancillary Access Rights and subject to this **Part 7** (which shall prevail to the extent of any inconsistency), the negotiation [process](#) for those Transferred Access Rights and, if applicable, Ancillary Access Rights will be conducted in accordance with **Part 4**. [For clarity and without limiting the provisions of Part 4 that will apply to that Access Application, nothing in this clause 7.4.2 affects the application of clauses 4.3\(f\) and 4.12\(a\)\(ii\) to the Access Application.](#)
- (c) This **clause 7.4.2** ceases to apply in respect of a Transfer if the Access Holder for that Transfer fails to comply with the provisions of the Access Holder's Access Agreement relevant to that Transfer. Aurizon Network may:

¹ ~~Clause 7.4.2(a)(iv)(C) is applied by considering whether the relevant Access Applications are Mutually Exclusive Access Applications to the extent of the Ancillary Access Rights under the Transferee's Access Application. Clause 7.4.2(a)(iv)(C) is not satisfied where the Transferee's Access Application and the Access Seeker's Access Application are Mutually Exclusive Access Applications in relation to the Transferred Access Rights but not in relation to the Ancillary Access Rights.~~

- (i) require provisions in an Access Agreement with a Transferee making that Access Agreement subject to; or
- (ii) delay execution of an Access Agreement with the Transferee until,

the Access Holder's full and proper compliance with the provisions of the Access Holder's Access Agreement relevant to that Transfer. For example, Aurizon Network may include provisions providing for the termination of the Transferee's Access Agreement where the Access Holder does not fully comply.

- (d) For clarity, a change in the nomination of a Train Operator by an End User does not constitute a Transfer.

7.5 Mutually Exclusive Access Applications

7.5.1 Notification and assistance

- (a) Aurizon Network will identify Access Applications that are or have become Mutually Exclusive Access Applications and will notify an Access Seeker as soon as practical after Aurizon Network identifies that the Access Seeker's Access Application is or has become a Mutually Exclusive Access Application.
- (b) Aurizon Network will, if requested, provide reasonable assistance to an Access Seeker to identify whether its Access Application can be modified so that it is not a Mutually Exclusive Access Application.

[Anglo drafting note: Anglo American believes that the entire operation of clause 7.5.2 of UT4.2 is fundamentally flawed. Under the current drafting, clause 7.5.2 will never be engaged as Access Applications which are Mutually Exclusive Access Applications because they cannot both be fulfilled under existing Capacity will, by their very nature, require an Expansion. Anglo American believes that this entire process should be removed and the queuing provisions, including a first in time presumption should be reinserted as they were drafted in UT3. Anglo American has expanded on this concept further in its accompanying submission.]

7.5.2 Capacity allocation for Mutually Exclusive Access Applications

- (a) This **clause 7.5.27-5.2** does not apply:
 - (i) as between two or more Access Seekers with Access Applications that can only be granted Access Rights subject to an Expansion creating additional Available Capacity and Aurizon Network is not required to complete an Expansion under Part 8 of this Undertaking,– the Expansion process in **Part 8** will apply instead; or
 - (ii) in relation to the allocation of Available Capacity that:
 - (A) is subject to a Provisional Capacity Allocation under **Part 8** (including a Provisional Capacity Allocation arising from a reallocation under **Part 8**– for example, under **clauses 8.5(t) and (w)**);

- (B) is or was subject to Provisional Capacity Allocation that Aurizon Network, in accordance with **Part 8**, is seeking to reallocate following a withdrawal of that Provisional Capacity Allocation; or
 - (C) is or was subject to a Provisional Capacity Allocation in respect of which the relevant Access Seeker has signed an Access Agreement, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.
- (b) Without limitation to **clause 7.5.2(a)7.5.2(a)**, where a circumstance under **clause 7.5.2(a)(ii)(A)7.5.2(a)(ii)(A)**, **(B)(B)** or **(C)(C)** exists the relevant Available Capacity will not be available for allocation under this **Part 7Part 7** and, for clarity, a reference to “Available Capacity” in this **Part 7Part 7** does not include that relevant Available Capacity.
- (c) If Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity, then Aurizon Network will enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, a Connection Agreement) for the Available Capacity for those Access Applications that meet the following criteria prior to considering any of the other Access Applications:
- (i) ~~where Aurizon Network is obliged to allocate the Available Capacity in accordance with a Law (other than the Act or this Undertaking) such as in accordance with Passenger Priority Obligations or Preserved Train Path Obligations,~~ the allocation in relation to the Access Application is necessary for Aurizon Network to comply with that obligation any Law (other than the Act or this Undertaking), such as in accordance with Passenger Priority Obligations or Preserved Train Path Obligations, that obliges Aurizon Network to allocate the Available Capacity in accordance with that Law; or
 - (ii) to the extent that **clause 7.5.2(c)(i)7.5.2(c)(i)** does not apply:
 - (A) the Access Application is for coal carrying Train Services;
 - (B) the Access Seeker has satisfied Aurizon Network (acting reasonably) that the Access Seeker will be able to use the Access Rights at the level sought giving consideration to the factors in **clause 4.12(c)**;
 - (C) the grant of the Access Rights is not subject to any Expansion or Customer Specific Branch Line or to any other works or expenditure by Aurizon Network to increase or otherwise enhance Capacity;

- (D) the Access Rights requested could be used without adversely affecting the ability of existing Access Holders to use their Access Rights;
 - (E) the Access Agreement's proposed term is at least ~~10.5~~ years or the remaining life of the relevant mine (as evidenced by the relevant Access Seeker to Aurizon Network's satisfaction, acting reasonably); and
 - (F) where the grant of Access Rights requires Existing Capacity that will become Available Capacity, Aurizon Network is satisfied (acting reasonably) that the Access Seeker will be able to use that Existing Capacity on the date when it becomes Available Capacity.
- (d) Subject to **clauses 7.5.2(e)7.5.2(e)** and **(f)(f)** if Aurizon Network has received Mutually Exclusive Access Applications for Available Capacity and:
- (i) after applying **clause 7.5.2(c)7.5.2(e)** there are remaining Mutually Exclusive Access Applications and remaining Available Capacity; or
 - (ii) none of the relevant Mutually Exclusive Access Applications satisfy the criteria under **clause 7.5.2(c)7.5.2(e)**,
- then Aurizon Network will (acting reasonably and in good faith) enter into negotiations for Access Agreements (including any agreements to allow Access Rights to be exercised or created – for example, Rail Connection Agreement) with those Access Seekers whose requested Access Rights ~~are considered by Aurizon Network to~~ best meet the following objectives:
- ~~(iii)~~ the matters referred to in clauses 7.5.2(c)(ii)(A)7.5.2(e)(ii)(A) to (F)(F):
~~(iii)~~ to ensure Aurizon Network's revenue adequacy (as described in clause 6.4.2); [QRC note: This is unnecessary in light of the revenue cap.]
 - ~~(iv)~~ satisfies community amenity concerns or requirements;
 - ~~(v)~~(iv) complies with and addresses environment, health or safety related matters, standards or requirements (whether or not greater than the minimum environment, health or safety requirements under required under any environment, health or safety related Law); and
 - ~~(vi)~~ provides commercial certainty for Aurizon Network having regard to the length of term for which Access Rights are

sought; and **[QRC note: this is unnecessary in light of (ii)(E) above]**

- ~~(vii) to promote efficient investment in and use of the Rail Infrastructure having regard to:
 - ~~(A) the expected duration and commercial viability of the facility or business whose inputs or outputs will be transported on the Rail Infrastructure (for example, the mine production life);~~
 - ~~(B) the quality and saleability of the product proposed to be transported on the Rail Infrastructure;~~
 - ~~(C) the capital efficiency of rail infrastructure and the density of network utilisation;~~
 - ~~(D) the contribution of the Access Rights sought to the long-term demand for Access; and~~
 - ~~(E) the current and future competitiveness of the relevant supply chain.~~~~

(e) Subject to **clause 7.5.2(c)7.5.2(e)** but despite **clause 7.5.2(d)7.5.2(d)**, unless Aurizon Network decides otherwise, Aurizon Network ~~may~~will prioritise a proposed Access Agreement for a coal carrying Train Service ahead of a proposed Access Agreement for a non-coal carrying Train Service.

(f) In making a decision under **clause 7.5.2(d)7.5.2(d)**, Aurizon Network must have no regard to whether an Access Seeker is a Related Operator.

(g) If:

- (i) in Aurizon Network's opinion (~~acting reasonably and in good faith~~)and in good faith it is not practical to determine, as between two or more Access Seekers with Mutually Exclusive Access Applications, which of those Access Seekers to enter into an Access Agreement with under **clause 7.5.2(d)7.5.2(d)**; and
- (ii) Aurizon Network and each of those Access Seekers have negotiated the terms of an Access Agreement (including all agreements to allow Access Rights to be exercised or created – for example, a Rail Connection Agreement) which the parties are willing to execute,

then Aurizon Network ~~may elect to~~will prioritise the execution of Access Agreements with those Access Seekers in accordance with the following principles:

(iii) Access Seekers in respect of which negotiations are currently suspended in accordance with this Undertaking will be prioritised after other Access Seekers; and

~~(iv)~~ subject to **clause 7.5.2(g)(iii)**~~7.5.2(g)(iii)~~, the Access Seekers will be prioritised in date order based on the later of the following dates on which for each Access Seeker:

(A) the date on which the Access Seeker was issued an Acknowledgement Notice for its Access Application, under **clause 4.4**; and

(B) where:

(1) there has been a variation to the Access Seeker's Access Application that materially altered the Access Rights requested by the relevant Access Seeker;

(2) a revised IAP has been issued in relation to the Access Application under **clause 4.10.3**; and

(3) negotiations are proceeding based on that revised IAP.

~~(iv)~~the date on which the Access Seeker notified Aurizon Network under **clause 4.10.3(b)(ii)(A)** that it was prepared to continue with the relevant variation.

~~(h)~~ Where Aurizon Network has allocated Available Capacity under this **clause 7.5.27.5.2** and none of the remaining Access Seekers can be granted the Access Rights sought as there is insufficient Available Capacity to do so, then negotiations with those remaining Access Seekers are suspended and **clause 4.4(c)** will apply.

7.6 Network Management Principles

7.6.1 *Compliance with Network Management Principles*

- ~~(a) Aurizon Network will act in accordance with the Network Management Principles:~~
- ~~(i) perform scheduling, Network Control and associated services; and~~
 - ~~(ii) provide capacity related information to Access Holders and an End User's Train Operator;~~
- ~~in accordance with the Network Management Principles.~~
- ~~(b) Any dispute between an Access Holder and Aurizon Network in relation to compliance with the Network Management Principles will be dealt with in accordance with the dispute resolution process set out in the relevant Access Agreement.~~

7.6.2 *Nature of the System Rules*

- (a) The System Rules specify in greater detail the way in which Aurizon Network will plan, schedule and control the operation of Train Services on a single or combination of Coal Systems in accordance with the Network Management Principles.
- ~~(b) The System Rules will be published on the Website.~~
- ~~(c) Aurizon Network will ensure System Rules which have been approved by the QCA exist, at all times, for each Coal System (either individually or together with other Coal Systems).~~

~~7.6.3 *Making the initial System Rules for a Coal System*~~

~~(a) *Where:*~~

- ~~(i) System Rules do not already exist for a Coal System (whether individually or together with other Coal Systems); and~~
- ~~(ii) where the Access Holders for at least 60% of the affected Train Paths in relation to the relevant Coal System (as determined in accordance with **clause 7.6.5**) notify Aurizon Network that they wish to have System Rules for that Coal System;~~
- ~~Aurizon Network will:~~
- ~~(iii) develop the initial System Rules for that Coal System including, where Aurizon Network elects to do so:
 - ~~(A) together with one or more other Coal Systems; or~~
 - ~~(B) by way of amending existing System Rules to apply in relation to that Coal System; and~~~~
 - ~~(iv) consult with Access Holders, Railway Operators and Access Seekers whose Train Services will be affected by the System Rules or amended System Rules, as applicable, and any affected Infrastructure Service Providers, in relation to the introduction of the System Rules or amended System Rules, as applicable.~~
- ~~(b) After consulting under **clause 7.6.3(a)**, Aurizon Network will:~~
- ~~(i) prepare the proposed System Rules or amended System Rules, as applicable, (**Draft System Rules**) having regard to the equitable operation of the Draft System Rules across Access Holders and Access Seekers (should they become Access Holders) and their Customers and the terms of Access Agreements;~~

- (ii) ~~in preparing the Draft System Rules, seek to ensure that they do not conflict with the Network Management Principles or any provision of this Undertaking; and~~
- (iii) ~~submit the Draft System Rules to the QCA for approval.~~
- (c) ~~Where Aurizon Network has submitted Draft System Rules to the QCA, the QCA must consider the Draft System Rules and notify Aurizon Network that it either approves or refuses to approve the Draft System Rules. The QCA may decide, at its own discretion, to request and consider public submissions on the Draft System Rules.~~
- (d) ~~The QCA will accept the Draft System Rules unless the QCA determines that those Draft System Rules:~~
 - (i) ~~would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders); or~~
 - (ii) ~~are inconsistent with this Undertaking (including the Network Management Principles).~~
- (e) ~~If the QCA refuses to approve the Draft System Rules, then:~~
 - (i) ~~the QCA will set out its reasons for doing so in relation to the matters under **clause 7.6.3(d)(i)** or **(ii)** in any notice to Aurizon Network of that decision; and~~
 - (ii) ~~Aurizon Network will resubmit the Draft System Rules either amended, or with additional information, to address the matters in QCA's reasons in relation to the matters under **clause 7.6.3(d)(i)** or **(ii)** without having to further consult under **clause 7.6.3(a)**.~~
- (f) ~~**Clauses 7.6.3(c) to (e)** will:~~
 - (i) ~~apply to any Draft System Rules resubmitted to the QCA under **clause 7.6.3(d)(ii)**;~~
 - (ii) ~~apply to any additional information submitted to the QCA under **clause 7.6.3(e)(ii)**, including where the Draft System Rules are not amended as though Aurizon Network were resubmitting the same Draft System Rules but with the additional information; and~~
 - (iii) ~~continue to apply until the QCA approves Draft System Rules for the relevant Coal System.~~
- (g) ~~If the QCA approves the Draft System Rules, then the relevant System Rules take effect on the date of the approval or such later date as specified in the System Rules or the approval.~~

7.6.47.6.3 *Reviewing and amending the System Rules*

- (a) ~~This **clause 7.6.4** does not apply to an amendment of System Rules referred to under **clause 7.6.3**.~~
- (b) ~~Aurizon Network will review the System Rules:~~
 - (i) ~~at least once per Year; and~~
 - (ii) ~~After reviewing the System Rules in accordance with **clause 7.6.3(a)**, where the Access Holders for at least 60% of the affected Train Paths in relation to the relevant Coal System (as determined in accordance with **clause 7.6.5**) notify Aurizon Network:~~
 - (A) ~~that they wish to have a review of the System Rules for that Coal System; and~~

- ~~(B) of the matters in respect of which such a review is required.~~
- ~~(c) If Aurizon Network has reviewed the System Rules and wishes to amend the System Rules, then Aurizon Network must:~~
- ~~(b) Notify the QCA in writing (for each System Rules):~~
- ~~(i) of the amendments Aurizon Network proposes to make to the System Rules; or~~
- ~~(ii) that Aurizon Network does not intend to amend the System Rules, including reasons for that decision (**Aurizon Network's Proposal**).~~
- ~~(c) The QCA will publish Aurizon Network's Proposal on its website and undertake public consultation.~~
- ~~(d) The QCA will consider:~~
- ~~(i) Aurizon Network's Proposal; and~~
- ~~(ii) any public submissions it receives in accordance with **clause 7.6.3(c)**.~~
- ~~(i) and will notify Aurizon Network:~~
- ~~:~~
- ~~(iii) that it approves Aurizon Network's Proposal; or~~
- ~~(ii) of the amendments (if any) that the QCA considers should be made to the System Rules.; or~~
- ~~(iv)~~
- ~~(e) Aurizon Network must amend the System Rules in accordance with the QCA's decision under **clause 7.6.3(d)**.~~
- ~~(iii) The System Rules may only be amended in accordance with this **clause 7.6.3**.~~
- ~~(A) Access Holders and Access Seekers whose Train Services will be affected by the amendments and their Customers (but only to the extent that the Access Holder or Access Seeker has given Aurizon Network those Customer contact details) (**Affected Persons**);~~
- ~~(B) affected infrastructure providers for infrastructure forming part of the relevant supply chain (including, for example, the unloading facility operator that is the destination of Train Services operating in the relevant Coal System);~~
- ~~(C) affected Infrastructure Service Providers;~~
- ~~(D) affected Railway Operators; and~~
- ~~(E) the QCA,~~
- ~~of Aurizon Network's intention to amend the System Rules and provide a copy of the proposed amendments (**Proposed Amendments**) to these persons;~~
- ~~(iv) consult with the persons notified under **clause 7.6.4(c)(i)(A)** to (A);~~
- ~~(v) have regard to the equitable operation of the System Rules across Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders) and the terms of Access Agreements; and~~
- ~~(vi) seek to ensure that the amendments do not conflict with the Network Management Principles or any provision of this Undertaking.~~
- ~~(d) If an Affected Person considers (acting reasonably and in good faith) that the Proposed Amendments:~~

- ~~(i) — would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders); or~~
- ~~(ii) — are inconsistent with this Undertaking (including the Network Management Principles);~~
- ~~(e) — then the Affected Person may provide a written submission to Aurizon Network, within 20 Business Days after being given a notice under **clause 7.6.4(c)(i)**, identifying why the Proposed Amendments would have any of the effects referred to in **paragraphs (i) to (ii)**.~~
- ~~(f) — If Aurizon Network does not receive any submissions from Affected Persons within the time period under **clause 7.1.1(a)**, then:~~
 - ~~(i) — the Proposed Amendments are taken to have been made; and~~
 - ~~(ii) — Aurizon Network will notify all of the persons mentioned in **clause 7.6.4(c)(i)** that the Proposed Amendments have been made.~~
- ~~(g) — If Aurizon Network receives any submissions from Affected Persons within the time period under **clause 7.1.1(a)**, then Aurizon Network will:~~
 - ~~(i) — notify all of the persons mentioned in **clause 7.6.4(c)(i)** that the Proposed Amendments are being referred to the QCA for acceptance; and~~
 - ~~(ii) — in notifying the QCA:~~
 - ~~(A) — provide to the QCA:~~
 - ~~(i) — the Proposed Amendments for approval;~~
 - ~~(ii) — all submissions from Affected Persons provided to Aurizon Network within the time period under **clause 7.1.1(a)**;~~
 - ~~(iii) — an assessment of those submissions by Aurizon Network; and~~
 - ~~(iv) — any variations to the Proposed Amendments that Aurizon Network proposes to make after taking into account the submissions (**Variations**); and~~
 - ~~(B) — request the QCA's approval of the Proposed Amendments (including the Variations, if any).~~
 - ~~(h) — The QCA will consider:~~
 - ~~(i) — the Proposed Amendments (including the Variations, if any);~~
 - ~~(ii) — the submissions from Affected Persons provided to Aurizon Network within the time period under **clause 7.1.1(a)**; and~~
 - ~~(iii) — any other matters that the QCA considers relevant,~~
- ~~— and will accept those Proposed Amendments and Variations unless the QCA determines that those Proposed Amendments and Variations:~~
 - ~~(iv) — would not, as a whole, operate equitably amongst Access Holders and Access Seekers (should they become Access Holders) and the Customers of the Access Holders and Access Seekers (should they become Access Holders); or~~
- ~~(v) — are inconsistent with this Undertaking (including the Network Management Principles).~~
- ~~(i) — If the QCA accepts the Proposed Amendments and Variations, then the relevant System Rules are taken to have been amended in accordance with the Proposed Amendments and Variations.~~
- ~~(j) — If the QCA refuses to accept the Proposed Amendments and Variations, then the relevant System Rules are not amended.~~

- ~~(k) — Nothing in **clauses 7.6.4(f) to (i)** prevents Aurizon Network from seeking subsequent amendments to any System Rules even if the QCA has previously refused to accept Proposed Amendments in relation to those System Rules.~~
- ~~(l) — For the purposes of this **clause 7.6:**~~
- ~~(i) — the amending of System Rules includes replacing or removing System Rules; and~~
- ~~(ii) — Proposed Amendments includes a proposed replacement of System Rules or a proposal to remove System Rules.~~

~~**7.6.5** — Weighting of Access Holder requests~~

~~— Aurizon Network must determine affected Train Paths for the purpose of **clause 7.6.3(a)(ii) or 7.6.4(b)(ii)** (as applicable) in a manner consistent with the following principles:~~

- ~~(a) — the affected Train Paths for an Access Holder are the Access Holder's Train Paths for the relevant Coal System where a Train Service using that Train Path would be subject to the System Rules if made or if reviewed and amended (as applicable);~~
- ~~(b) — the affected Train Paths must be calculated as at the date on which~~
- ~~(c) — Aurizon Network receives a notice under **clause 7.6.3(a)(ii) or**~~
- ~~(d) — **7.6.4(b)(ii)** (as applicable) (**Notice Date**);~~
- ~~(e) — the affected Train Paths must be determined (based on the Access Rights specified in the relevant Access Agreements) for a 12 month period starting on the Notice Date or if the relevant Access Agreement(s) is due to expire less than 12 months after the Notice Date, for that lesser period.~~

~~(f) —~~

System Rules

Rules specifying the way in which Aurizon Network will plan, schedule and control the operation of Train Services on a one or combination of Coal Systems, in greater detail than under **schedule ~~Error! Reference source not found.~~G**:

- ~~(a) — which have been approved by the QCA; and:~~
- ~~(i) — are approved for a Coal System under **clause ~~Error! Reference source not found.~~**; or~~
- ~~(ii) — existed under the 2010 Undertaking immediately prior to the Approval Date;~~
- ~~(a) — as amended from time to time under **clause ~~Error! Reference source not found.~~**; and~~
- (a) which may include, for example:
 - (i) the declaration of System Paths for a Coal System;
 - (ii) the procedures for Access Holders to submit Train Orders and for Aurizon Network to schedule Train Services in the ITP;
 - (iii) the procedures for Aurizon Network to schedule the DTP from the ITP, provided that these procedures must be consistent with the matters referred to in **clauses 7.2 and 7.3(c)(i) to (vi) of**

~~schedule G~~~~Error! Reference source not found.~~
~~and~~ ~~Error! Reference source not found.~~ ~~to~~
~~Error! Reference source not found.~~ ~~of~~
~~schedule~~ ~~Error! Reference source not found.~~;

- (iv) the relevant critical objectives for Train Services operating in one or a combination of Coal Systems to assist decision-making for Network Control under **clause** ~~Error! Reference source not found.~~9 of ~~schedule G~~~~schedule~~ ~~Error!~~ ~~Reference source not found.~~;

a methodology for defining path availability/use for the purpose of calculating take-or-pay charges; and

(v)

- (vi) the identification of any circumstances where a full Initial Capacity Assessment or Capacity Analysis is not required for the purposes of **clause** ~~4.6(b)(iii)~~ or ~~clause 4.10.2(a)(v)~~~~clause~~ ~~Error!~~ ~~Reference source not found.~~ or ~~clause~~ ~~Error!~~ ~~Reference source not found.~~.