

## Part 8: Network development and Expansions

### 8.1 Overview

This **Part 8** sets out various provisions relating to the creation of new Rail Infrastructure and supply chain coordination – in particular:

- (a) **clause 8.2** sets out general principles regarding limitations on Aurizon Network's rights and obligations to fund, construct or permit the creation of new Rail Infrastructure;
- (b) **clause 8.3** sets out principles in relation to Aurizon Network's undertaking of Concept Studies;
- (c) **clauses 8.4 and 8.5** set out principles in relation to the way in which Pre-feasibility Studies and Feasibility Studies are to be funded;
- (d) **clause 8.8** sets out general principles in relation to the funding of Expansions;
- (e) **clause 8.9** describes how Users may fund all or part of an Expansion;
- (f) **clause 8.10** sets out provisions in relation to Capacity Shortfalls and Access Agreements being conditional on Expansions;
- (g) **clause 8.11** confirms that Aurizon Network will participate in supply chain coordination including processes in relation to the review of System Operating Parameters;
- (h) **clause 8.12** describes Aurizon Network's obligations in relation to its proposed Network Development Plan; and
- (i) **clause 8.13** sets out a voting process that Aurizon Network may apply in relation to certain matters concerning capital expenditure projects.

### 8.2 General principles

#### 8.2.1 *Rights and obligations to fund, construct or permit the creation of new Rail Infrastructure*

- (a) Subject to **clauses 8.2.1(b), 8.2.1(c), 8.2.1(d), 8.8(c)** and **Part 9**, nothing in this Undertaking:
  - (i) obliges Aurizon Network to fund, construct or permit an Expansion, or to agree to do so; or
  - (ii) prevents Aurizon Network from agreeing (in its absolute discretion), or deciding itself, to fund, construct or permit an Expansion, or any part thereof.
- (b) Aurizon Network may, at its discretion, fund all or part of the construction of any Expansion without requiring Commercial Terms. **[Anglo note: The definition of "Commercial Terms" is insufficient. It is narrower than the concept of Access Conditions in UT3. Suggest deleting the word "requiring" and inserting the word "including".]** Where Aurizon Network exercises its discretion to fund all or part of an Expansion without requiring Commercial Terms, it will provide written notice

of that decision (including details of the amount of funding) to the parties requesting the Expansion. **Anglo note: There needs to be a timeframe by which Aurizon Network informs the users that it intends to fund without Commercial Terms. If there is no timeframe then the "investment hold-up" will continue as Aurizon Network will continue to say that they might fund and by the time they inform users that they will not fund there will be no time left by to agree to there Commercial Terms.** The delivery of that notice by Aurizon Network will create a funding obligation on Aurizon Network to provide the relevant funding for the purposes of this Undertaking.

- (c) Aurizon Network will undertake and fund all Expansions that:
- (i) are needed to provide Access Holders whose Access Rights are conditional on the completion of an Expansion with additional Access Rights where the Expansion did not result in sufficient Capacity to satisfy all Access Holders with conditional rights (including where Aurizon Network and a user or users have entered into a SUFA and it has failed to deliver the committed Access Rights);
  - (ii) are needed to reduce a deficit between Capacity and Committed Capacity, including by way of example, a deficit caused by a change in System Operating Parameters or System Rules, or an Expansion in another System which impacts cross-system traffic;
  - (iii) are needed to maintain sufficient flexibility in Capacity to allow for proper and practical utilisation of Committed Capacity, specifically in light of cargo assembly terminals and the generally unattainable concept of even railings; or
  - (iii) are required to create sufficient Available Capacity to provide Access Rights sought by an Access Seeker unless an Expansion is:
    - (A) a Customer Specific Branch Line;
    - (B) greater than \$400 million (adjusted annually for inflation);
    - (C) the subject of a User Funding Agreement.
- (d) Notwithstanding any other provision of this **Part 8**, Aurizon Network is obliged to construct or permit an Expansion only to the extent that:
- (i) Aurizon Network is satisfied (acting reasonably and in good faith) that the Expansion is technically and economically feasible and consistent with the safe and reliable operation of the Rail Infrastructure, and has provided independent expert reports supporting its opinion.

However where Aurizon Network has not, prior to the expiration of 10 Business Days after entry into a relevant Feasibility Study Agreement for that Expansion, provided written notice to the Access Seekers selected to utilise an Expansion in accordance with the terms of this **Part 8** that the Expansion is not technically or economically feasible, or is inconsistent with the safe and reliable operation of the Rail Infrastructure, the proposed Expansion will, subject to **clause 8.2.1(c)(iii)(A)** be deemed to have satisfied those requirements. **[Anglo note: Is this timeframe reasonable? Will Aurizon Network know before the Study has been completed?]**

The deemed satisfaction of requirements under this clause 8.2.1(c)(ii) shall not apply where, since the date referred to in that clause there has been a material change in circumstances (~~such as restricted to a change in Aurizon Network's obligations under relevant legislation and externally imposed safety or maintenance requirements for example, a change in safety requirements~~) so that the proposed Expansion is no longer technically or economically feasible or consistent with the safe and reliable operation of the Rail Infrastructure. In such a case Aurizon Network will notify the relevant Access Seekers of the change in circumstances and the basis of its decision not to construct or permit the Expansion;

- (ii) the Expansion is fully funded through one of the following means:
  - (A) Aurizon Network is obliged by this Undertaking to fund the Expansion or, where Aurizon Network is not obliged by this Undertaking, it agrees (at its discretion) to fund the Expansion without any Commercial Terms, or otherwise on reasonable terms approved by the QCA;
  - (B) Funding Users agree to fund the Expansion in accordance with a User Funding Agreement for the Expansion;
  - (C) Funding Users partially funding the Expansion under a User Funding Agreement and the remainder of the funding is provided by Aurizon Network;
- (iv) Where Aurizon Network is not obliged to fund the Expansion under clause 8.2.1(c), Aurizon Network and all other relevant parties have entered into User Funding Agreements, a Commercial Terms document and/or an Access Agreement (as the case may be) and such agreements are or have become unconditional in accordance with their terms **[Anglo note: This may not work as the Access Agreements are usually conditional on the capacity being built]**; and

- (v) Unless otherwise agreed by Aurizon Network the Expansion (whether or not funded in whole or part by a person other than Aurizon Network) is or will be leased from the State, an Authority or a trustee as contemplated by SUFA or owned, and in either case operated, by Aurizon Network.
- (e) Where Aurizon Network is required to complete an Expansion by operation of clauses 8.2.1(c) or 8.2.1(d) and the Expansion will be funded by users' Access Charges, Aurizon Network is required to fund the Expansion at the WACC, unless it can prove that the Expansion involves higher risk than the risk associated with the CQCN and a higher WACC is approved by the QCA.
- (f) If Aurizon Network refuses to comply with clauses 8.2.1(c), (d) or (e), any Access Holder may refer the dispute to the QCA under the dispute referral process in Part 11.
- (g) Notwithstanding any other provision of this **Part 8**, to the extent that Aurizon Network is obliged to undertake asset replacement works in order to meet its obligations under an Access Agreement, Aurizon Network will be responsible for the funding of Asset Replacement and Renewal Expenditure as well as undertaking or procuring the undertaking of the asset replacement covered by that funding. (Aurizon Network's obligations to provide that funding and to undertake or procure the asset replacement will be governed by the terms of the Access Agreement).
- (h) Aurizon Network is not obliged to fund or construct a Customer Specific Branch Line (subject to its obligations in relation to Connecting Infrastructure). However, nothing in this Undertaking prevents Aurizon Network from doing so at its discretion by agreement with the Customer seeking to have the Customer Specific Branch Line constructed. Where Aurizon Network has not agreed to undertake investment in a Customer Specific Branch Line and an Access Seeker or their Customer intends to undertake such investment, Aurizon Network must permit such investment by the relevant Access Seeker or their Customer by:
- (i) providing reasonable access to land for the relevant Access Seeker (or Customer) who is proposing to construct the Customer Specific Branch Line to the extent that access to land is incidental to and essential for construction and ongoing operation of the Customer Specific Branch Line, provided that:
- (A) the land is owned by Aurizon Network, or Aurizon Network has, through a lease, licence or other arrangement with the owners of the land or pursuant to the TIA, the authority to authorise access to that land; and
- (B) the access is not consistent with the terms of any lease, licence or other arrangement to which Aurizon Network is party in respect of the land;

~~(ii) entering into a Rail Connection Agreement with the relevant Access Seeker or Customer in relation to the relevant Customer Specific Branch Line; and~~

~~(iii) notifying the Access Seeker or Customer of the interface standards required by Aurizon Network.~~

(i) In this **Part 8**, Aurizon Network's "legitimate business interests" include, for example, the following matters:

~~(i) community amenity concerns or requirements (for example, a grade separation requirement in response to community concerns);~~

~~(ii) environment, health or safety related matters, standards or requirements whether or not greater than the minimum environment, health or safety requirements under any environment, health or safety related Law;~~

~~(iii) the operational performance standards or requirements designed to ensure the Rail Infrastructure comprising or affected by the Expansion is robust and reliable;~~

~~(iv) the maintenance standards or requirements designed to ensure the Rail Infrastructure comprising or affected by the Expansion can be maintained and repaired efficiently and economically by Aurizon Network;~~

~~(v) the requirements of any Law (including any Act of Parliament or regulation which has been enacted but has not yet commenced);~~

~~(vi) the operational and technical requirements necessary for the safe and reliable operation of the Rail Infrastructure.~~

~~(vii) the economically efficient operation of the Rail Infrastructure; and~~

~~(viii) any material adverse consequences an Expansion may have on the efficient operation of, or Access to, any Rail Infrastructure.~~

(j) In making a determination of a dispute referred to the QCA under any of **clauses 8.4(i), 8.5(f), 8.5(o), 8.7(c), 8.9.2 and 8.10.1**, the QCA, in addition to having regard to the matters contained in any submissions made to it by parties to the dispute, will have regard to:

(i) the object of part 5 of the Act;

(ii) Aurizon Network's legitimate business interests;

(iii) the legitimate business interests of the relevant Access Seekers; and

(iv) the public interest, including the benefit to the public in having competitive markets.

(k) Where the QCA intends to appoint an expert to assist the QCA in making a determination of a dispute under any of **clauses 8.4(i), 8.5(f), 8.5(o), 8.7(c), 8.9.2 and 8.10.1**, it will provide the parties to that

dispute with an opportunity to be consulted over the identity of the expert to be appointed.

- (l) Aurizon Network's obligations in respect of Connecting Infrastructure are set out in **Part 9** and nothing in this **Part 8** limits Aurizon Network's obligations under **Part 9**.
- (m) Aurizon Network will not unnecessarily or unreasonably delay any Expansion that it is obliged to construct in accordance with this Undertaking provided that after any relevant agreement with any Access Seeker, Access Holder, Customer or User Funder (as applicable) including any relevant User Funding Agreement is executed for that Expansion then Aurizon Network's obligations in relation to any delay are solely governed by that agreement.
- (n) Aurizon Network must, in accordance with **Part 5**, enter into Access Agreements with relevant Access Seekers for capacity to be created by an Expansion.
- (o) It is acknowledged that:
  - (i) Aurizon Network and an Access Seeker (or, as applicable, Customer) may agree (in each party's absolute discretion) to enter into arrangements relating to or in connection with funding, constructing or permitting an Expansion ~~or Customer Specific Branch Line~~ necessary to provide additional Capacity required to grant Access Rights requested by that Access Seeker (or, as applicable, Customer); ~~and~~
  - ~~(ii) Aurizon Network may elect to fund and construct Customer Specific Branch Lines and otherwise invest in the Rail Infrastructure on its own account,~~provided that any such agreement or election must not:
  - (iii) in any way unfairly prejudice or unfairly disadvantage another Access Seeker (or, as applicable, Customer) who is seeking Capacity to be created by an Expansion ~~or Customer Specific Branch Line~~ under this **Part 8**;
  - (iv) affect the priority of allocation of capacity between Access Seekers that would otherwise apply under **clause 8.5**; or
  - ~~(v) impose a WACC above the WACC approved by the QCA unless a higher WACC is otherwise approved by the QCA.~~
- (p) To the extent that this Undertaking is inconsistent with a User Funding Agreement, Rail Connection Agreement or a Studies Funding Agreement for a Pre-feasibility Study or a Feasibility Study, the User Funding Agreement, Rail Connection Agreement or Studies Funding Agreement (as applicable) will prevail to the extent of that inconsistency (but only as between Aurizon Network and the other parties to those agreements, any relevant Access Seeker (if its Customer is one of those parties) and any relevant Customer (if its Access Seeker is one of those parties)).
- (q) Subject to the requirements of this **Part 8**, the person responsible for the investigation and design of any Expansion that is necessary in

order to provide any Access Rights requested by an Access Seeker must be Aurizon Network.

(r) If Aurizon Network refuses to fund all or part of an Expansion on the basis that the total cost will be greater than \$400 million, it must:

(i) provide the QCA with a statement setting out the reasons for the decision; or

(ii) where the refusal to fund is a consequence of a decision by the Ultimate Holding Company, procure from its Ultimate Holding Company a statement setting out the reasons for its decision,

which, in either case, the QCA must publish on its website.

(s) In this **Part 8** where an Access Seeker has submitted two or more Access Applications which differ in respect of origins/destinations, quantum of capacity, commencement dates or other capacity requirements in relation to a particular Expansion, Aurizon Network will treat each Access Application as a separate Access Application and as if each were lodged by a separate Access Seeker.

(t) **Clause 8.2.1(c)** and **clauses 8.2.3 to 8.10** apply only to Expansions for the purpose of providing additional Access to coal carrying Train Services and do not govern the process by which Aurizon Network may fund, construct or permit an Expansion for the purpose of providing additional Access to non-coal carrying Train Services.

(u) Except where otherwise expressly provided in this Part 8, Aurizon Network will not discriminate in the performance of its obligations and the exercise of its rights in this **Part 8** as between Access Seekers (or as applicable, Customers) on the basis of the identity of the funder of 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.

(v) In this **Part 8**, where the outcome of a dispute referred to the QCA or an expert is intended to bind more parties than the Access Seeker (or Customer) or proposed access seeker initially involved in the dispute:

(i) Aurizon Network will ~~use its best endeavours to~~ promptly identify all other parties that should be bound by the outcome of the dispute and provide those parties with written notice of the existence of the dispute including an outline of the matters in dispute, the identity of the initial parties to the dispute and whether an expert or the QCA has been appointed to resolve the dispute;

(ii) the expert or the QCA, as applicable, will be provided with a list of the parties to whom notice of the dispute has been given under **clause 8.2.1(w)(i)**; and

(iii) the parties receiving notice of the dispute under **clause**

**8.2.1(w)(i)** may contact the expert or the QCA, as applicable, to seek to be heard on the dispute and will in any case be bound by the decision, rules and procedures determined by the expert or the QCA, as applicable, in relation to that request to be heard, in relation to the dispute resolution process and by the determination of the expert or QCA in relation to the dispute.

## **8.2.2 Interdependent and sequential nature of Expansions**

- (a) The following principles relate to the interdependent and sequential nature of Expansions:
- (i) for any Coal System there may be multiple Expansions that incrementally build on each other in sequence to increase the Capacity of that Coal System;
  - (ii) as the Expansions are sequential, Expansions later in the sequence will assume the satisfactory completion of, and delivery of outcomes for Expansions earlier in the sequence;  
**[Anglo note: This concept of sequential Expansions only works where Aurizon Network has been required to fund any short fall in expansion capacity in the same way as it is required to fund if there is a shortfall in SUFA funded expansions.]**
  - (iii) to the extent that events or circumstances affect an Expansion in the sequence (for example, by it being delayed, not progressing or not delivering the expected outcomes), then Expansions later in the sequence may also be affected and will need to be reviewed to take into account the effect of those events or circumstances;
  - (iv) similarly, to the extent that any Coal Systems overlap, Expansions on one Coal System may affect Expansions on another Coal System; and
  - (v) subject to **clause 8.2.2(b)**, until:
    - (A) the Access Seekers (or, as applicable, their Customers) for any earlier Expansion in a sequence of Expansions have entered into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Earlier Expansion Agreements**) in respect of that earlier Expansion; and
    - (B) such agreements are or have become unconditional,

Aurizon Network and Access Seekers (or, as applicable, their Customers) for any later Expansion in a sequence of Expansions must not enter into Access Agreements, Commercial Terms or User Funding Agreements, as applicable, (**Later Expansion Agreements**) in respect of that later Expansion except where conditional on the requirements in **clauses 8.2.2(a)(v)(A) and (B)** being satisfied for the Later Expansion Agreement to come into full effect.



(b) Where:

- (i) different Access Seekers will be provided with Access through an interdependent sequence of Expansions (**Expansion Sequence**); and
- (ii) an Expansion Re-sequence Event- has occurred in relation to any Access Seekers (**Affected Access Seekers**),

Aurizon Network may, or if notified under clause 8.2.2(c) of circumstances it considers qualify as an Expansion Re-sequence Event must, acting reasonably and in good faith re-allocate the Affected Access Seekers to a later Expansion in the Expansion Sequence and reallocate other Access Seekers from a later Expansion to an earlier Expansion in the Expansion Sequence.

~~(b) Where different Access Seekers have been identified to be provided with Access through sequential proposed Expansions and either:~~

- ~~(i) an Access Seeker for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions and has advised Aurizon Network that it will have an Access Agreement, Commercial Terms or a User Funding Agreement which Aurizon Network assesses is likely to become unconditional at a date at least 90 days earlier than that date on which the proposed Access Agreement, Commercial Terms or User Funding Agreement, as applicable, of an Access Seeker allocated to a proposed Expansion earlier in the sequence is likely to become unconditional; or~~
- ~~(ii) there has been a delay in the expected date on which an Access Seeker allocated to a proposed Expansion earlier in the sequence can fully utilise the relevant Access Rights sought to be provided by that proposed Expansion (in accordance with the matters in **clauses 8.5(b)(ii)(A) to (D)**) and another Access Seeker for whom Capacity is proposed to be created by a proposed Expansion later in the sequence of Expansions is expected to be able to fully utilise those Access Rights at a date at least 90 days earlier than the delayed Access Seeker,~~

~~Aurizon Network may, acting reasonably and in good faith, reallocate between those Access Seekers the Capacity proposed to be created by the sequential Expansions.~~

- (c) If Aurizon Network intends to reprioritise Access Seekers under **clause 8.2.2(b)**, it must give prior written notice to each Access Seeker affected by the reprioritisation, including the grounds for and all details of the intended reprioritisation.
- (d) Within 10 Business Days after receiving a written notice under **clause 8.2.2(c)**, an Access Seeker may refer (by written notice to the QCA and Aurizon Network) the proposed reprioritisation to the QCA for determination under **clause 11.1.5** and the QCA will determine

whether Aurizon Network may proceed with the reprioritisation by:

- (i) assessing whether the circumstances described in **clause 8.2.2(b)** exist; and
- (ii) if so, determining whether Aurizon Network has acted reasonably and in good faith in deciding to reprioritise the Access Seekers; and
- (iii) if it determines that Aurizon Network has not acted reasonably or in good faith, the QCA may determine that the reprioritisation should be different that the reprioritisation set out in the notice.

The determination of the QCA under this **clause 8.2.2(e)** will be binding on Aurizon Network and all of the Access Seekers affected by the reprioritisation.

- (e) Aurizon Network must not proceed with an intended reprioritisation under **clause 8.2.2(b)** until:
  - (i) the period under **clause 8.2.2(d)** for referring the reprioritisation to the QCA has expired and the reprioritisation has not been referred to the QCA; or
  - (ii) the QCA has determined that Aurizon Network may proceed with the reprioritisation.
- (f) If the majority of Access Seekers in a later Expansion in a sequence (by reference to the number of Train Paths sought by those Access Seekers), consider that the circumstances described in **clause 8.2.2(b)(i)** or **clause 8.2.2(b)(ii)** exist, those Access Seekers may notify Aurizon Network of that belief and the grounds for that belief. On receipt of a notice under this **clause 8.2.2(f)**, Aurizon Network must reasonably consider whether a reprioritisation should be made under **clause 8.2.2(b)**.
- (g) If Aurizon Network decides not to undertake a reprioritisation after receiving written notice under **clause 8.2.2(f)**, the relevant Access Seekers may (by written notice to the QCA and Aurizon Network) refer the matter to the QCA for determination under **clause 11.1.5** and the QCA will determine whether Aurizon Network should undertake a reprioritisation by:
  - (i) assessing whether the circumstances described in **clause 8.2.2(b)(i)** or **clause 8.2.2(b)(ii)** exist; and
  - (ii) if so, determining whether it is reasonable for the Access Seekers to be reprioritised.

The determination of the QCA under this **clause 8.2.2(g)** will be binding on Aurizon Network and all of the Access Seekers who will be affected by the reprioritisation.

- (h) If the QCA determines that an intended reprioritisation may not proceed:
  - (i) subject to clause 8.2.2(h)(ii), Aurizon Network is not prevented from giving a new notice under clause 8.2.2(c) in relation to the relevant Expansion Sequence, however, the new notice must

be based on different evidence for re-allocation to the initial notice; or

(ii) where the QCA determines that Aurizon Network's proposed reprioritisation should be different, Aurizon Network must adopt the reprioritisation determined by the QCA.

### 8.2.3 **Determination of sufficient demand for an Expansion**

(a) Without limiting Aurizon Network's ability to conduct a Demand Assessment for an Expansion on its own volition, Aurizon Network will promptly (and in any case within 10 Business Days of the relevant event referred to in **paragraphs (i), (ii) or (iii)**) below) commence a Demand Assessment for an Expansion where:

- (i) the operator of an existing or proposed coal terminal formally advises Aurizon Network that it has commenced a process to expand an existing coal terminal or to build a new coal terminal which is likely to create demand for additional below rail capacity; or
- (ii) an Access Seeker submits an Access Application for Access that Aurizon Network concludes cannot be satisfied without Aurizon Network undertaking an Expansion and that Access Seeker requests in writing that Aurizon Network carry out a Concept Study for that Expansion; or
- (iii) an Access Seeker makes a written request to Aurizon Network for it to conduct a Demand Assessment,

provided that, where applicable, the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker and Aurizon Network must make reasonable inquiries as to the identity of the Customer(s) in accordance with **clause 8.6(b)**.

(b) Where Aurizon Network undertakes a Demand Assessment for an Expansion it will do so using the most appropriate means and any information it considers relevant (in each case acting reasonably and in good faith) in the circumstances, including as follows:

- (i) the Access Applications it has received;
- ~~(ii) its own market intelligence;~~
- (iii) any Expression of Interest process conducted by Aurizon Network and approved by the QCA;
- (iv) liaison and consultation with participants in coal supply chains and Supply Chain Groups relating to the relevant Coal System, and any other Coal System affected by the Expansion;
- (v) any reports or expert papers submitted by participants in coal supply chains evidencing demand and / or capacity information; and
- (vi) analysis or advice from relevantly experienced expert advisors.

Aurizon Network agrees not to seek information from Access Seekers or potential access seekers under this **clause 8.2.3(b)** which is not

reasonably required for a prudent and sound Demand Assessment.

- (c) An Access Seeker may dispute whether Aurizon Network has acted reasonably and in good faith in determining the means and information to be used for its Demand Assessment or the information sought under **clause 8.2.3(b)** or under **clause 8.2.3(f)**. Unless otherwise settled, disputes notified in accordance with this clause must be referred by Aurizon Network or a disputing party to the QCA for determination in accordance with the process in **clause 11.1.5**. The QCA will determine whether Aurizon Network has acted reasonably and in good faith having regard to the matters listed in **clause 8.2.3(b)** and **clause 8.2.3(f)**. The QCA's determination will be binding on all of the Access Seekers the subject of the relevant Demand Assessment and Aurizon Network.
- (d) Subject to **clause 8.2.3(e)**, where a Demand Assessment is triggered by one of the circumstances referred to in **clauses 8.2.3(a)(i)**, **(a)(ii)** or **(a)(iii)**, Aurizon Network will promptly conduct, complete and prepare a detailed report of the results of its Demand Assessment:
- (i) if the Demand Assessment is carried out by means of an Expression of Interest process, within 40 Business Days of the commencement of the assessment study; or
  - (ii) in all other cases, within 20 Business Days of the commencement of the assessment study,
- provided that where the Demand Assessment is the subject of a dispute under **clause 8.2.3(c)**, the relevant period will be extended by the number of Business Days between (and including) the day on which the dispute is referred to the QCA and the day on which the QCA's determination is published. ~~The QCA and each Access Seeker that was the subject of the Demand Assessment will be provided with a copy of the completed Demand Assessment report. Any completed report prepared as a result of Aurizon Network's Demand Assessment will be made publically available on both Aurizon Network's and the QCA's websites.~~
- (e) The Demand Assessment report will not identify individual Access Seekers or potential access seekers by name or, to the extent practicable, precise origins or destinations for trains utilising the potential Expansion.
- (f) In order to carry out a Demand Assessment Aurizon Network may (acting reasonably and in good faith) request the following information from Access Seekers and potential access seekers identified by Aurizon Network, or voluntarily nominated by the Access Seeker itself, as potential users of the potential Expansion:
- (i) status of coal reserves or of coal resources, as is appropriate having regard to the status and level of development of the mine (including the status and the quantity of such reserves or resources, as applicable);
  - (ii) status of project development and anticipated commencement of coal production;
  - (iii) current project development program;
  - (iv) status of mining tenure and key approvals; and

(v) status of out-loading capacity assets or rights.

Aurizon Network agrees not to seek information from Access Seekers or potential access seekers under this **clause 8.2.3(f)** which is not reasonably required for a prudent and sound Demand Assessment. Information provided under this clause 8.2.3(f) will only be provided or published where the relevant information is sufficiently aggregated or de-identified so that it cannot be associated with a particular Access Holder or Access Seeker.

**[Anglo note: In light of the above significant mining information to be provided to Aurizon Network it is very important that now that Aurizon Network has interest in mines that there are clear ring-fencing arrangements in place in respect of this information.]**

(g) Once a Demand Assessment report has been ~~provided~~published, Access Seekers wishing to dispute the outcome of a Demand Assessment must notify Aurizon Network and the QCA within 20 Business Days of the ~~provision~~publication of the Demand Assessment report ~~to them~~.

(h) Unless otherwise settled, disputes notified in accordance with **clause 8.2.3(g)** must be referred by Aurizon Network or a disputing party to an expert for determination in accordance with the process in **clause 11.1.4**. The expert (who will, failing agreement, be appointed under **clause 11.1.4(c)(i)(B)**) will determine whether the Demand Assessment report published by Aurizon Network was reasonable and if not, what Demand Assessment conclusions should apply. Aurizon Network will promptly provide to the QCA and publish on its own website each Access Seeker that was the subject of the relevant Demand Assessment:

- (i) where the expert decides that the Demand Assessment conclusions should differ from those originally proposed by Aurizon Network, a ~~final~~corrected Demand Assessment report reflecting the expert's preferred conclusions; or
- (ii) where the expert confirms the Demand Assessment conclusions reached by Aurizon Network in its Demand Assessment report, confirmation of that fact will be provided to the QCA and published on the QCA's and Aurizon Network's websites-relevant Access Seekers.

The expert's determination will, subject to **clause 11.1.4(e)**, be binding on all of the relevant Access Seekers and Aurizon Network.

(i) Each Access Seeker that was the subject of the Demand Assessment will be notified promptly by Aurizon Network if a dispute has been referred to an expert under **clause 8.2.3(h)**. Each Access Seeker wishing to make a written submission to the expert on its view as to how the dispute should be resolved will have 10 Business Days from the date of notification to do so. [ The costs of engaging the expert will be borne by such party or parties as determined by the expert.] **[Anglo note: This should be dealt with in clause 11.1.4. Also 11.1.4 should provide a timeframe for decisions. Alternatively this clause should provide a short timeframe as the issue is simple.]**

#### 8.2.4 **Participation of Customers**

- (a) Without limitation to **clauses 8.4 to 8.9**, if a Customer wishes to fund the cost of:
- (i) a Pre-feasibility Study, as a Pre-feasibility Funder under **clause 8.4**;
  - (ii) a Feasibility Study, as a Feasibility Funder under **clause 8.5**;  
or
  - (iii) an Expansion, as a User under **clause 8.9**,
- as applicable, then the Customer must give a notice to Aurizon Network that it wishes to do so and agrees to be bound by the provisions of this Undertaking in relation to such matters. Nothing in this **clause 8.2.4(a)** obliges a Customer to give a funding notice earlier than the time required under the relevant part of this **Part 8**.
- (b) Where Aurizon Network does not receive a notice from a Customer under **clause 8.2.4(a)** in respect of a proposed Pre-feasibility Study, Feasibility Study or Expansion (as applicable), then Aurizon Network may refuse to negotiate agreements in relation to such matters with that Customer or to otherwise treat that Customer as a proposed Pre-feasibility Funder or Feasibility Funder.
- (c) Where Aurizon Network considers, acting reasonably and in good faith, that a Customer has materially failed to comply with any provision of this Undertaking relating to the funding of the cost of a Pre-feasibility Study, Feasibility Study or an Expansion (as applicable), then Aurizon Network may, without prejudice to any other rights it may have, do either or both of the following:
- (i) give a written Negotiation Cessation Notice to the Customer or its Access Seeker (as applicable) under **clause 4.12**; and
  - (ii) cease any other relevant negotiations with that Customer in relation to the funding of the cost of the Pre-feasibility Study, Feasibility Study or an Expansion (as applicable) by giving written notice to that Customer.
- (d) Where Aurizon Network is to conduct a Demand Assessment or any other process in relation to an Expansion or proposed Expansion, and in doing so Aurizon Network is seeking further information, it must invite all relevant Customers, that Aurizon Network is aware of or ought reasonably to be aware of, to provide the information being sought. ~~It is acknowledged that for the purpose of determining the relevant Customers where the Demand Assessment relates to a terminal Expansion, relevant Customers are the relevant participants in the terminal Expansion (to the extent known to Aurizon Network).~~ **[Anglo note: it is inappropriate to determine ALL relevant users by reference to a port expansion as it is quite likely that an Expansion relates to a System that supports more users than those involved in the relevant port expansion - eg. WICET users were not the only ones impacted by the System Expansions required]**

#### 8.2.5 **Compliance with obligations**

Aurizon Network must meet its obligations under this **Part 8** in respect

of Pre-feasibility Studies, Feasibility Studies and Expansions, despite any resource constraints on Aurizon Network.

### 8.3 Concept Studies

- (a) Aurizon Network must promptly undertake a Concept Study (whether in connection with the Network Development Plan or otherwise) for capacity that is consistent with the capacity identified in the relevant Demand Assessment report finalised under **clause 8.2.3** following completion of the final Demand Assessment. However, this obligation will not apply where a further Concept Study is not required because a sufficient Concept Study for the relevant Expansion is already underway or completed.
- (b) Aurizon Network will publish to relevant Access Seekers (and, where applicable, their Customers) and any Access Holders that may be impacted by the potential Expansion general details of:
  - (i) each Concept Study it is undertaking promptly after commencement of work on the Concept Study; and
  - (ii) the project configuration alternatives appropriate for Pre-feasibility Study consideration and the preliminary scope, cost and program details of those alternatives.

regardless of whether or not the Concept Study is funded by Aurizon Network or an Access Seeker (or, as applicable, Customer).

(c) Aurizon Network will promptly following completion of a Concept Study publish on its website, and provide to the QCA for the purposes of publication on the QCA website, comprehensive details of the proposed scope of works, procurement methodology and costs and schedule information in respect of the scope. The information must provide sufficient detail to:

- (i) understand the scope of the Concept Study;
- (ii) understand the scope of the intended works; and
- (iii) understand the costs involved and how those costs are calculated so that Access Seekers and potential Access Seekers can identify the risks that they may be exposed to.

- (c) Aurizon Network must fund all Concept Studies except where an Access Seeker (or, as applicable, Customer) agrees to fund the Concept Study at its absolute discretion. As a result of that agreement Aurizon Network must not afford the funding Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled to had they not funded the Concept Study. For the avoidance of doubt, this includes providing the funding Access Seeker (or, as applicable, Customer) with priority for the Expansion relevant to that Access Seeker (or, as applicable, Customer).
- (d) Where an Access Seeker wishes to fund a Concept Study, the Access Seeker must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the Access Seeker.

## 8.4 Pre-feasibility Studies

- (a) Following a Concept Study, Aurizon Network must promptly undertake and complete scoping, planning, an evaluation of alternatives or other preliminary studies or assessments for that Expansion (**Pre-feasibility Study**), if:
- (i) one or more Potential Pre-feasibility Funders choose to fund the Pre-feasibility Study by requiring Aurizon Network to enter into a Studies Funding Agreement (on the terms of the Standard Studies Funding Agreement or such other terms as are agreed);
  - (ii) subject to **clause 8.4(d)**, the Potential Pre-feasibility Funders and Aurizon Network agree that Aurizon Network should fund the Pre-feasibility Study; or
  - (iii) subject to **clause 8.4(d)**, Aurizon Network chooses, at its discretion, to fund the Pre-feasibility Study itself in circumstances where no unconditional Studies Funding Agreement comes into effect as contemplated by **clause 8.4(a)(i)**:
    - (A) within 40 Business Days after the date of a communication referred to in **clause 8.4(d)(ii)** if no dispute has been commenced under **clause 8.4(e)**; or
    - (B) where a dispute has been commenced under **clause 8.4(e)**, within 15 Business Days after the expert determination.

(A Pre-feasibility Study does not include a Concept Study).

- (b) Subject to **clause 8.4(c)**, if all of the relevant Studies Funding Agreements for a Pre-feasibility Study terminate prior to completion of the Pre-feasibility Study, then Aurizon Network may (in its discretion) elect to continue to undertake and complete the Pre-feasibility Study.

If Aurizon Network funds the Pre-feasibility Study in accordance with **clause 8.4(a)(ii)** or **8.4(a)(iii)**, or elects to continue to undertake and complete a Pre-feasibility Study under **clause 8.4(b)**, Aurizon Network must not afford an Access Seeker (or, as applicable, Customer) any rights that Access Seeker (or, as applicable, Customer) would not otherwise be entitled had Aurizon Network not funded the Pre-feasibility Study.

- (c) Where Aurizon Network elects to continue to undertake and complete a Pre-feasibility Study in accordance with **clause 8.4(b)**, it may not pass any of the cost through to Access Holders, Access Seekers or Customers except where the work undertaken due to the Pre-feasibility Study becomes part of a utilised Expansion.

For the avoidance of doubt, this means that the cost of a Pre-feasibility Study that is continued by Aurizon Network under **clause 8.4(b)** cannot be included in the RAB or received through an increase to a tariff except where that Pre-feasibility Study is used for the development of a utilised Expansion.



- (d) The Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Pre-feasibility Study under **clause 8.4(a)(i)** for an Expansion, as proposed Pre-feasibility Funders, will be:
- (i) where Aurizon Network knows that a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers); and
  - (ii) each of the Access Seekers (or, as applicable, their Customers) who Aurizon Network considers, acting reasonably and in good faith, satisfy the following requirements:
    - (A) is participating in a process for the acquisition or development of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or otherwise has a reasonable likelihood of obtaining out-loading capacity, in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;
    - (B) ~~where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:~~
    - (B) has at least an Exploration Permit for Coal under the *Mineral Resources Act 1989* (Qld);
      - ~~(2) — has a credible program for the development of its mine or mine-expansion on a basis that is consistent with its Access Application;~~
      - ~~(3) — is diligently developing its mine or mine-expansion in accordance with the development program referred to in paragraph (2);~~
    - (C) where the relevant Access Seeker (or, as applicable, their Customer) is not a producer of coal but is a consumer of coal: **Anglo note: a new entrant may not be a consumer of coal.**
      - (1) has or is reasonably likely to obtain the licences, approvals, consents, permits and other permissions (if any) necessary to evaluate the feasibility of the business or activity for which Access Rights are required;
      - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure a source of fuel (e.g. coal) necessary for

that business or activity; and

(3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in **paragraph (2)**; and

(D) where applicable, has the ability to meet the funding obligation under the terms of the relevant Studies Funding Agreement. For the avoidance of doubt, an acknowledgement by the Access Seeker that it is willing to provide a bank guarantee as required under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion,

provided that where the relevant Access Seeker intends to utilise any Access Rights sought to be provided by a proposed Expansion for the benefit of a Customer, it must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the relevant Access Seeker. Aurizon Network must make reasonable inquiries as to the identity of that Customer in accordance with **clause 8.6(b)**.

- (d) Following a decision under **clause 8.4(c)**, Aurizon Network will advise:
- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Pre-feasibility Study of that fact; and
  - (ii) each Access Seeker (or, as applicable, Customer) who was selected to fund the Pre-feasibility Study of that fact and of the Access Rights for which it has been selected to participate in the funding of the Pre-feasibility Study.
- (e) Any Access Seeker (or, as applicable, Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.4(d)** may, within 10 Business Days of that communication require Aurizon Network to refer the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will either confirm Aurizon Network's original decision or substitute its own decision by determining the Access Seekers (or, as applicable, Customers) who best meet the criteria set out under **clause 8.4(c)**. The QCA's decision will be binding on all Potential Pre-feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (f) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Pre-Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to the QCA under **clause 8.4(e)**. Each Access Seeker (or, as applicable, its Customer) wishing to make a written submission to the QCA on its view as to how the dispute should be resolved will have 10 Business Days from the date of notification to do so.
- (g) Unless otherwise agreed by Aurizon Network and relevant Potential Pre-feasibility Funder, a Studies Funding Agreement for a Pre-

feasibility Study will be in the form of the Standard Studies Funding Agreement. A Potential Pre-Feasibility Funder may require that such funding be provided in accordance with the Standard Studies Funding Agreement.

- (h) Aurizon Network must consult with the relevant proposed Potential Pre- feasibility Funders in relation to the scope of the Pre-feasibility Study and reasonably consider the Potential Pre-feasibility Funders' comments. Aurizon Network will provide the Potential Pre-feasibility Funders with written reasons where it rejects a suggestion of the Pre-feasibility Funder.
- (i) If Aurizon Network and the ~~Potential-relevant-proposed~~ Pre-feasibility Funders do not reach agreement on:
  - (i) the scope of the Pre-feasibility Study; or
  - (ii) the completion of schedules in a Studies Funding Agreement ~~as set out in the form of~~ the Standard Studies Funding Agreement,within:
  - (iii) 20 Business Days of a communication referred to in **clause 8.4(d)(ii)**; or
  - (iv) if a decision communicated in accordance with **clause 8.4(d)** is referred for dispute resolution as contemplated by **clause 8.4(e)**, within 5 Business Days following the QCA's decision,then, any of those persons may , within 10 Business Days after the expiration of the relevant period referred to in **clause 8.4(i)(iii)** or **clause 8.4(i)(iv)**, as applicable, require Aurizon Network to refer the issue of scope and/or the schedules to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA shall determine the scope or the information in the schedules to the Pre-feasibility Funding Agreement (as applicable) to be included.
- (j) ~~In the absence of a manifest error,~~The determination of a dispute under **clause 8.4(i)** will be binding on all ~~proposed~~ Potential-Pre-feasibility Funders and Aurizon Network (and any relevant Related Parties). Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (k) If the Pre-feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Pre-feasibility SFA**), then:
  - (i) as a condition of any Studies Funding Agreements for a Feasibility Study (**Feasibility SFA**) in relation to that Expansion, the relevant Feasibility Funders will be required to include in the funding provided to Aurizon Network under their Feasibility SFAs amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.4(k)(ii)**; and
  - (ii) after those Feasibility SFAs become unconditional, Aurizon Network will, in accordance with each relevant Pre-feasibility SFA, repay or reimburse (as applicable) the funding provided by the Pre-feasibility Funder under that Pre- feasibility SFA.

- (l) The capital expenditure for an Expansion includes the cost of a Pre-feasibility Study relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.4(k)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (m) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion or to undertake a Feasibility Study, merely because Aurizon Network undertakes or funds any Pre-feasibility Study relating to that Expansion.
- (n) Aurizon Network will publish ~~to relevant Access Seekers (and, where applicable, their Customers)~~on its website general details of each multi-user Pre- feasibility Study it is undertaking promptly after commencement of work on the Pre-feasibility Study. The publication will not identify individual Access Seekers by name, precise details of origins and destinations (to the extent possible) or any other confidential information.

## **8.5 Target Capacity for Feasibility Studies**

(a) Where Aurizon Network:

- (i) has completed a Pre-feasibility Study in respect of a potential Expansion; and
- (ii) is proposing that a Feasibility Study should be commenced, prior to applying the provisions in clause 8.6.

Aurizon Network will notify all relevant Access Seekers that it is proposing that a Feasibility Study should be commenced and the targeted amount of Capacity for the potential Expansion (**Target Capacity**).

(b) Aurizon Network will (acting reasonably and in good faith) determine the Target Capacity having regard to:

- (i) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under clause 8.6(c);
- (ii) the potential scope of the proposed Expansion;
- (iii) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and
- (iv) any potential staging of Expansions.

(c) At the same time as providing a notice under clause 8.5(a), Aurizon Network must provide detailed information in order for Access Seekers and potential Access Seekers to be able to determine whether the calculation of Target Capacity is correct. Information provided by Aurizon Network must include (but is not limited to):

- (i) any expert reports obtained as part of the Pre-feasibility Study;

- (ii) Aurizon Network's own calculations of network or system capacity; and
- (iii) data showing the number of Access Seekers or potential Access Seekers requesting the Concept or Pre-feasibility Studies.
- (d) An Access Seeker may, within 10 Business Days after being given a notice under clause 8.5(a), dispute the Target Capacity for the proposed Feasibility Study by referring the matter to the QCA (or its nominated expert) for dispute resolution in accordance with **clause 11**. The QCA must either confirm the Target Capacity or determine the appropriate Target Capacity, unless Aurizon Network has not provided the QCA with enough information to make a finding one way or the other. In that instance, Aurizon Network is required to provide the QCA with any requested information, although Aurizon Network may insist on the information provided being confidential to the QCA. The QCA's determination will be binding on all Access Seekers notified under clause 8.5(a) and Aurizon Network as to the Target Capacity.
- (e) Aurizon Network will not seek to commence a Feasibility Study until:
  - (i) the period under clause 8.5(d) for referring the Target Capacity to the QCA has expired; or
  - (ii) if the Target Capacity has been referred to the QCA under clause 8.5(d), the QCA either confirms the Target Capacity or determines the appropriate Target Capacity.

## 8.6 Feasibility Studies

- (a) Subject to first complying with clause 8.5, following a Pre-Feasibility Study, Aurizon Network must promptly undertake and complete the detailed scoping, design and definition of the preferred option selected in the relevant Pre-feasibility Study for that Expansion, including planning and preparation for procurement and construction (**Feasibility Study**), if one or more of the Potential Feasibility Funders agree with Aurizon Network to fund the Feasibility Study by entering into a Studies Funding Agreement (on the terms of the Standard Studies Funding Agreement or such other terms as are agreed).
- (b) If all of the relevant Studies Funding Agreements for a Feasibility Study terminate prior to completion of the Feasibility Study, then Aurizon Network may elect to continue to undertake and complete the Feasibility Study. Where Aurizon Network elects to do so, it may not pass any of the cost through to Access Holders or Customers except where the work undertaken after the Studies Funding Agreements terminate becomes part of a constructed Expansion.
- (c) Subject to **clauses 8.6(d)** and **(i)**, the Access Seekers (or, as applicable, Customers) to be given an opportunity to fund a Feasibility Study under **clause 8.6(a)** for an Expansion, as proposed Feasibility

Funders, will be:

- (i) firstly, where ~~Aurizon Network knows that~~ a Capacity Shortfall exists and the proposed Expansion could create Capacity that would reduce or remove the Capacity Shortfall, Access Seekers with Capacity Shortfall Access Applications to which that Capacity Shortfall relates (or, as applicable, their Customers) other than any of them who (or whose Customer) were offered an opportunity to fund the Pre- feasibility Study for the Expansion but did not become a Pre- feasibility Funder for that Pre-feasibility Study, unless that Access Seeker (or its Customer) had a Capacity Shortfall Access Application lodged at the time that Pre-feasibility Funder status was offered **[Anglo note: If there is a shortfall then there should be mandatory obligation to fund both the expansion and the SFA]**; and
- (ii) secondly, subject to **clause 8.6(d)**, those Access Seekers (or, as applicable, their Customers) who ~~in Aurizon Network decides (acting reasonably)~~ satisfy all of the following requirements, namely an Access Seeker (or, as applicable, their Customer) who:
  - (A) is participating in a process for the acquisition or development of out-loading capacity (such as an expression of interest process or study funding process in relation to a coal export terminal or a domestic power station or similar out-loading facility) or who Aurizon Network considers (acting reasonably and in good faith) otherwise has a reasonable likelihood of obtaining out-loading capacity in either case, in a timeframe and having an out-loading capacity entitlement that are consistent with the Access Seeker's Access Application;
  - (B) where the relevant Access Seeker (or, as applicable, their Customer) is a producer of coal:
  - (C) has at least a Mineral Development Licence under the *Mineral Resources Act 1989* (Qld);
  - (D) has a credible program for the development of its mine or mine expansion on a basis that is consistent with its Access Application;
  - (E) is ~~diligently~~ developing its mine or mine expansion in accordance with the development program referred to in paragraph (2);
  - (F) has Marketable Coal Reserves (as defined by the JORC Code) equal to at least 10 times the annual capacity for which Access is required (as determined by reference to the Access Seeker's Access Application), following ramp up;
  - (G) where the relevant Access Seeker (or, as applicable,

their Customer) is not a producer of coal but is a consumer of coal:

- (1) has or will obtain all licences, approvals, consents, permits and other permissions necessary for the business or activity for which Access Rights are required;
  - (2) has a credible program for the development of any infrastructure or other facilities and has or is likely to secure a source of fuel (e.g. coal) necessary for that business or activity;
  - (3) is diligently developing any infrastructure or other facilities in accordance with the development program referred to in **paragraph (2)**; and
  - (4) has or is reasonably likely to obtain a supplier or suppliers of coal in connection with the business or activity for amounts of coal consistent with the Access Rights requested; and
- (H) where applicable, has the ability to meet the funding obligation under the terms of the proposed Studies Funding Agreement. For the avoidance of doubt, an acknowledgement by the Access Seeker that it is willing to provide a bank guarantee under the relevant Standard Studies Funding Agreement will be deemed to satisfy this criterion,

provided that where the relevant Access Seeker intends to utilise any Access Rights sought to be provided by a proposed Expansion for the benefit of a Customer, it must be acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the relevant Access Seeker. Aurizon Network must make reasonable inquiries as to the identity of that Customer in accordance with **clause 8.6(c)**.

- (d) For the purposes of **clause 8.6(c)**:
- (i) where the Access Seeker has a Customer (the identity and details of which has been notified to Aurizon Network by the Access Seeker):
    - (A) Aurizon Network will notify the Customer that it is identifying Potential Feasibility Funders for the relevant Feasibility Study; and
    - (B) the Customer must notify Aurizon Network within 10 Business Days after receiving that notice:
      - (1) that the Customer should be considered for an opportunity to fund the Feasibility Study (rather than the Access Seeker) (**Customer Nomination**); or

- (2) that the Access Seeker (and, where there are two or more Access Seekers seeking the same Access Rights, which of the Access Seekers) should be considered for an opportunity to fund the Feasibility Study (rather than the Customer or any other of those Access Seekers) (**Access Seeker Nomination**);
  - (ii) where Aurizon Network is given:
    - (A) a Customer Nomination under **clause 8.5(c)(i)(B)(1)**, only the Customer can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Access Seeker(s) for the Customer); or
    - (B) an Access Seeker Nomination under **clause 8.5(c)(i)(B)(2)**, only the nominated Access Seeker can be eligible for an opportunity to fund the relevant Feasibility Study (and not the Customer or any other relevant Access Seeker for the Customer); and
  - (iii) where the Customer does not give Aurizon Network a Customer Nomination or an Access Seeker Nomination under **clause 8.5(c)(i)(B)**, neither that Customer nor that Customer's Access Seeker(s) can be eligible for an opportunity to fund the relevant Feasibility Study.
- ~~(e) Aurizon Network will (acting reasonably and in good faith) determine the target amount of Capacity for the proposed Expansion (Target Capacity) having regard to the factors noted in clause 8.5:~~
- ~~(i) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.5**;~~
  - ~~(ii) the potential scope of the proposed Expansion;~~
  - ~~(iii) the capacity of the port or other unloading facility relevant to the use of the proposed Expansion; and~~
  - ~~(iv) any potential staging of Expansions.~~
- (e) Aurizon Network will notify all the relevant Access Seekers of:
    - (i) the Target Capacity for the potential Expansion determined under **clause 8.5(d)**;
    - (ii) the total indicative demand for Capacity from all the relevant Access Seekers that satisfy the requirements under **clause 8.6(c)(ii)**; and
    - (iii) if the total demand under **clause 8.6(f)(ii)** is more than the Target Capacity under **clause 8.6(f)(i)**, the reasons why a higher Target Capacity has not been proposed.
  - (f) Within 10 Business Days after being given a notice under **clause 8.6(e)**, an Access Seeker may dispute Aurizon Network's determination of the Target Capacity by referring the matter to the



QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will determine the Target Capacity having regard to the matters listed in **clause 8.5**.

Any determination by the QCA will be binding on Aurizon Network and all Access Seekers notified under **clause 8.6(f)**.

- (g) Aurizon Network must not make a decision under **clause 8.6(h)** until:
- (i) if Aurizon Network's decision has not been referred to an expert under **clause 8.6(g)**, the period specified under that **clause 8.6(g)** has expired; or
  - (ii) if Aurizon Network's decision has been referred to the QCA under **clause 8.6(e)**, the QCA has made its determination.
- (h) Subject to **clause 8.6(g)**, if the Target Capacity to be created by the proposed Expansion as determined under **clause 8.6(d)** by Aurizon Network, or (if applicable) as determined by the QCA under **clause 8.6(g)(iii)**, is expected to be insufficient Capacity for all the relevant Access Seekers that satisfy the requirements under **clause 8.6(c)(ii)**, then ~~Aurizon Network will decide (acting reasonably and in good faith) as between those particular Access Seekers (or, as applicable, their Customers) which will be given an opportunity to fund the particular Feasibility Study by Aurizon Network; priority will be given to Access Seekers or Customers having regard to the following criteria (in order of priority):~~
- ~~(i) those Access Seekers who meet the requirements set out in **clause 8.6(c)(ii)** to a greater extent than other Access Seekers;~~
  - (i) the Access Seekers who funded the Pre-feasibility Study;
  - (ii) maximisation of ~~the allocation of capacity ability to meet~~ contracted Access Rights when compressed pro rata across Access Holders that hold conditional Access (without discrimination against mines because of long-haul or short-haul status); and
  - ~~(iii) those Access Seekers who meet the requirements set out in clause 8.6(c) to a greater extent than other Access Seekers.~~
  - ~~(iv) maximisation of the duration of the expected Access having regard to:~~
    - ~~(A) the ratio of coal reserves to the Access capacity sought; and~~
    - ~~(B) the likelihood of continuing to extract such coal reserves over time.~~

For clarity, the assessment under this **clause 8.6(h)** will be undertaken to ensure that the aggregate of requested capacity of the proposed Feasibility Funders is not more than (and wherever possible equals) the Target Capacity for which the Feasibility Study is being conducted.

- (i) Following a decision under **clause 8.6(j)**, Aurizon Network will notify:
- (i) each Access Seeker (or, as applicable, Customer) who was not selected to fund the Feasibility Study of that fact; and
  - (ii) each Access Seeker (or, as applicable, Customer) who was

selected to fund the Feasibility Study of:

- (A) that fact;
  - (B) the Access Rights for which the Access Seeker has been selected to participate in the funding of the Feasibility Study; and
  - (C) the date by which Aurizon Network anticipates that an Access Agreement, Commercial Terms or a User Funding Agreement, as applicable, in respect of the funding and construction of the Expansion the subject of the Feasibility Study would become unconditional.
- (j) Any Access Seeker (or, as applicable, its Customer) that disagrees with the outcome of Aurizon Network's selection process as communicated to it under **clause 8.5(i)** may, within 10 Business Days of that communication require Aurizon Network to refer the matter to the QCA for dispute resolution in accordance with **clause 11.1.5**. The QCA will either confirm Aurizon Network's original decision or substitute its own decision by determining the Access Seekers (or, as applicable, Customers) who best meet the criteria set out under **clause 8.6(c)** and, if applicable, **clause 8.5(i)**. The QCA's decision will be binding on all potential Feasibility Funders (and their Customers) and Aurizon Network as to the issues in dispute.
- (k) Each Access Seeker (or where applicable, Customer) that was given an opportunity to fund the relevant Feasibility Study will be notified promptly by Aurizon Network if a dispute has been referred to the QCA under **clause 8.5(k)** and, if the Access Seeker (or, as applicable, its Customer) wishes to do so, has 10 Business Days from the date of notification to make a written submission to the QCA on its view as to how the dispute should be resolved.
- (l) Aurizon Network will provide details to each relevant Access Seeker (or, as applicable, Customer) of Aurizon Network's assessment of that Access Seeker's case against the requirements and criteria in **clause 8.6(c).5(b)(ii)**.
- (m) Subject to **clause 8.4(k)(i)**, unless otherwise agreed by Aurizon Network and the relevant Proposed Feasibility Funder a Studies Funding Agreement for a Feasibility Study will be in the form of the Standard Studies Funding Agreement. Each Access Seeker (or, as applicable, Customer) given an opportunity to fund a Feasibility Study may require that such funding be provided in accordance with the Standard Studies Funding Agreement.
- (n) Aurizon Network must consult with the relevant proposed Feasibility Funders in relation to the scope of the Feasibility Study and reasonably consider the Feasibility Funders' comments. Aurizon Network will provide the Feasibility Funders with detailed written reasons for its position on the scope of the Feasibility Study where it rejects a suggestion of a Feasibility Funder.
- (o) If Aurizon Network and the relevant Proposed Feasibility Funders do not reach agreement on:
- (i) the scope of the Feasibility Study; or

- (ii) the completion of schedules in the Studies Funding Agreements ~~as required by in the form of~~ the Standard Studies Funding Agreement,

within:

- (iii) 20 Business Days of the communication referred to in **clause 8.5(i)(ii)**; or
- (iv) if the decision communicated in accordance with **clause 8.56 (i)** is referred for dispute resolution as contemplated by **clause 8.65(j)**, within 5 Business Days following the QCA's decision,

then any of those persons may, within 10 Business Days after the expiration of the relevant period referred to in **clause 8.65(o)(ii)** or **clause 8.56 (o)(iv)**, as applicable, require Aurizon Network to refer the matter to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA shall determine the scope or the information in the schedules to the ~~Feasibility Studies~~ Funding Agreement (as applicable) to be included.

- (p) ~~In the absence of manifest error,~~ The determination of a dispute under **clause 8.56 (o)** will be binding on all ~~Potential proposed~~ Feasibility Funders and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination.
- (q) Where the scope of a Feasibility Study and the Schedules of the Studies Funding Agreement for that Study have been:
  - (i) agreed by Aurizon Network with all of the ~~Potential proposed~~ Feasibility Funders of the Study; or
  - (ii) the subject of a QCA determination as contemplated by **clause 8.56 (o)**,

Aurizon Network will, within 5 Business Days of that agreement being reached or publication to Aurizon Network of the ~~expert-QCA~~ determination, as applicable, send to each of the ~~Potential~~ Feasibility Funders an executable copy of the Studies Funding Agreement with completed Schedules reflecting the agreement reached or the QCA's determination, as applicable.

- (r) Within 20 Business Days after a Studies Funding Agreement for a Feasibility Study becoming unconditional, Aurizon Network will:
  - (i) issue an IAP (or if one has previously been provided, a revised IAP) to the relevant Access Seeker who is, or whose Customer is, funding the Feasibility Study; and
  - (ii) subject to **clauses 8.56 (s)** and **8.56 (t)**, grant that Access Seeker a provisional allocation of the capacity detailed in the Train Service Description included in the Studies Funding Agreement (**Provisional Capacity Allocation**).
- (s) If an Access Seeker intends to progress its Access Application under the negotiation process set out in this Undertaking on the basis of the arrangements outlined in an IAP or revised IAP issued under **clause 8.56 (r)(i)**, that Access Seeker must notify Aurizon Network of that

intention in writing within 20 Business Days after Aurizon Network gives a relevant notice under **clause 8.8(c)**.

- (t) Subject to **clause 8.56(u)**, all or part of a Provisional Capacity Allocation may be withdrawn by Aurizon Network acting reasonably and in good faith, where:
- (i) the relevant Access Seeker's circumstances change in a substantial way so that the Access Seeker ceases to satisfy all of the requirements in **clause 8.56 (b)(ii)** ~~or meets one or more of those requirements to a substantially lesser extent than when the assessment was originally made by Aurizon Network under that clause~~;
  - (ii) (other than due to any ~~default or negligent~~ act or omission of Aurizon Network) the relevant mine or out-loading facility (including an expansion of a mine or out-loading facility) will be delayed by 12 months or more as compared to the timeframe that was proposed when Aurizon Network made the original assessment;
  - (iii) Aurizon Network exercises a right to lawfully terminate the Feasibility Funder's Studies Funding Agreement; or
  - (iv) Aurizon Network and the relevant Access Seeker (or, as applicable, its Customer) do not execute an Access Agreement or an agreement in relation to the funding and/or construction of the Expansion within 120 Business Days (or such longer period as agreed by Aurizon Network acting reasonably and in good faith) after the Feasibility Study is completed (provided that to the extent that the Access Seeker, or its Customer, is a party to a dispute under **clause 8.9.2** or a dispute concerning the negotiation of an Access Agreement or User Funding Agreement, then the time from when that dispute is notified for the purpose of **clause 11.1.4** or **clause 11.1.5** (as applicable), to the determination of that dispute by the expert or the QCA (as applicable), is excluded from that period).

For clarity, where a Provisional Capacity Allocation is withdrawn under this **clause 8.56 (t)**, Aurizon Network must seek to reallocate that Provisional Capacity Allocation in accordance with **clause 8.56 (w)**.

- (u) If Aurizon Network intends exercising its rights under **clause 8.56 (t)** to withdraw all or a part of a Provisional Capacity Allocation, it must give the relevant Feasibility Funder written notice and a reasonable opportunity (for a period of at least 10 Business Days) to explain why Aurizon Network should not exercise its rights in the way proposed. If having considered any explanation provided by the Access Seeker Aurizon Network (acting reasonably) withdraws all or part of the Provisional Capacity Allocation it must give the relevant Access Seeker written notice, including reasons for its decision.
- (v) An affected Feasibility Funder may within 10 Business Days of receiving notice of Aurizon Network's decision to withdraw Provisional Capacity Allocation under **clause 8.56 (t)** refer the matter to the QCA as a dispute for resolution under **clause 11.1.5**. The QCA will

determine whether the Provisional Capacity Allocation should be withdrawn having regard to the matters listed in **clause 8.56(t)**.

The QCA's determination will, subject to **clause 11.1.5**, be binding on the parties to the dispute.

- (w) Subject to the terms of the relevant Studies Funding Agreements, where a Provisional Capacity Allocation is withdrawn under **clause 8.56 (t)**, Aurizon Network must to the extent feasible (and provided that other Access Seekers will not be materially delayed) seek a replacement Access Seeker (or, as applicable, Customer) (**Replacement**) for all or some of that Capacity who:
- (i) will be selected using the criteria set out in **clause 8.56 (b)** and subject to **clause 8.56(d)**; and
  - (ii) is willing to enter into a Studies Funding Agreement as a Feasibility Funder on substantially the same terms as the Feasibility Funder being replaced (except for necessary amendments due to changes in timing, cost or scope as considered below) for the relevant Feasibility Study,
- subject to that Replacement and the other relevant Feasibility Funders agreeing with Aurizon Network any relevant amendments relating to scope, timing and cost of the Feasibility Study in respect of the Studies Funding Agreement for that Feasibility Study.
- For clarity, if a proposed replacement Feasibility Funder enters into a Studies Funding Agreement in respect of the relevant Feasibility Study, then **clauses 8.56 (r) to 8.56 (v)** apply to that Rreplacement Feasibility Funder.
- (x) A Provisional Capacity Allocation will automatically cease to apply upon the Access Seeker to which that Provisional Access Allocation applies signing an Access Agreement, Commercial Terms or User Funding Agreement relating to corresponding Access Rights.
- (y) If the Feasibility Study for an Expansion is funded under one or more Studies Funding Agreements (**Feasibility SFA**), then:
- (i) where there will be a User Funding Agreement for that Expansion, as a condition of that User Funding Agreement the relevant Funding Users will be required to include in the funding provided to Aurizon Network under their User Funding Agreement amounts that in aggregate equal the amount to be repaid or reimbursed by Aurizon Network under **clause 8.56 (y)(ii)**; and
  - (ii) where:
    - (A) the agreements with Access Seekers (or their Customers) for the funding and construction of that Expansion or the Access Agreement for utilisation of that Expansion have been executed and have become unconditional **Anglo note: They don't become unconditional until after construction.**; and
    - (B) a Feasibility Funder is a party to those agreements and will use Access Rights granted as a result of the Capacity to be created by that Expansion; or

(C) where the funding is included in the Regulatory Asset Base.

Aurizon Network will, in accordance with the relevant Feasibility SFA for that Feasibility Funder, repay or reimburse to the Feasibility Funder (as applicable) the funding provided by the Feasibility Funder under that Feasibility SFA.

- (z) The capital expenditure for an Expansion includes the cost of Feasibility Studies relating to that Expansion. However, any amounts that are not repaid or reimbursed (as applicable) under **clause 8.56 (y)** will not be treated as capital expenditure and will not be included in the Regulatory Asset Base.
- (aa) Without limiting any provision of this Undertaking, Aurizon Network is not obliged to construct, fund or permit an Expansion merely because Aurizon Network undertakes or funds any Feasibility Study relating to that Expansion.
- (bb) Aurizon Network will publish on its website general details of each Feasibility Study it is undertaking promptly to relevant Access Seekers (and, where applicable, their Customers) after commencement of work on the Feasibility Study. The publication will not identify individual Access Seekers by name or, to the extent possible, precise details of origins and destinations.

## **8.7 Failure to enter into agreements**

- (a) If a Proposed Pre-feasibility Funder or Proposed Feasibility Funder considers that Aurizon Network has failed to enter, or unreasonably delayed entering, into a Studies Funding Agreement in accordance with this Undertaking, then the Proposed Pre-feasibility Funder or Proposed Feasibility Funder (as applicable) may refer the matter to the QCA for dispute resolution in accordance with clause 11. The QCA's decision will be binding on all proposed Pre- feasibility Funders or Proposed Feasibility Funders (and their Customers) for the relevant Expansion and Aurizon Network as to the issues in dispute.
- (b) If the QCA determines that Aurizon Network has unreasonably delayed entering into a Studies Funding Agreement in accordance with this Undertaking, then Aurizon Network must enter into that Studies Funding Agreement within 10 Business Days and the QCA shall determine any cost or scope detriment caused by Aurizon Network's unreasonable delay. Aurizon Network will be liable to fund the Studies Funding Agreement to the extent of the cost or scope detriment and will not be entitled to reimbursement for that cost or to roll that cost into the Regulated Asset Base.

## **8.8 Funding of Studies**

- (a) Feasibility Studies must be funded by Access Seekers and/or, as applicable, Customers and must not be funded by a Railway Operator acting as an Access Seeker, other than where a specifically identified Customer has made an Access Seeker Nomination under clause 8.5(c)(i)(B)(2) in favour of that Railway

Operator.

~~(i) Aurizon Network; or~~

~~(ii) a Railway Operator acting as an Access Seeker, other than where a specifically identified Customer has made an Access Seeker Nomination under **clause 8.5(c)(i)(B)(2)** in favour of that Railway Operator.~~

(b) Where this **Part 8** provides that a Railway Operator (acting as an Access Seeker) cannot act other than on behalf of an identified Customer:

(i) that Railway Operator must notify Aurizon Network of the identity and details of the Customer on whose behalf it is purporting to act; and

(ii) Aurizon Network must make reasonable inquiries to verify the identity of that Customer and confirm that the Customer agrees to the Railway Operator acting on its behalf.

## 8.9 Step-in where Aurizon Network fail to deliver enter into Studies Funding Agreement or delay doing so

(a) If:

(i) either:

(A) Aurizon Network fails to commence or deliver a Concept Study, Pre-Feasibility Study or Feasibility Study within 20 Business Days after entering into a Studies Funding Agreement in accordance with this Undertaking; or

~~(1) fails to enter into a Studies Funding Agreement in accordance with this Undertaking or unreasonably delays doing so, after all relevant Access Seekers (or, if applicable, their Customers) have done so; or~~

~~(2) fails to forward to all relevant Access Seeker an executable form of the Studies Funding Agreement containing the provisions previously agreed with those Access Seekers or in a form consistent with the terms of a final, binding determination made in accordance with the terms of this Undertaking, within 10 Business Days after that agreement being reached or that determination becoming final and binding; or~~

(B) there is a reasonable expectation that the relevant Pre-Feasibility Study or Feasibility Study (as applicable) cannot be completed by Aurizon Network prior to the date (**Completion Date**) that is 60 Business Days after the target date specified (including as amended, extended or otherwise varied from time to time) in accordance with the

Studies Funding Agreement (**Performance Delay**);

- (ii) a relevant affected Access Seeker (or, as applicable, Customer) who is a ~~proposed party or~~ party to the relevant Studies Funding Agreement has given written notice to Aurizon Network's Chief Executive Officer identifying the alleged delay or Performance Delay; and
  - ~~(A) identifying the alleged failure, unreasonable delay or Performance Delay; and~~
  - ~~(B) in the case of the circumstance referred to in **clause 8.9(a)(i)(A)(2)**, (under the hand of a person with authority to bind the Access Seeker and who warrants that he or she has that authority when giving the notice), confirming that the Access Seeker is ready, willing and able to execute a Studies Funding Agreement as previously agreed or as determined by a final, binding determination in accordance with the provisions of this Undertaking;~~
- ~~(iii) where the failure or unreasonable delay is that referred to in **clause 8.7(a)(i)(A)(1)**, Aurizon Network fails to enter into the Studies Funding Agreement within 10 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**; and~~
- (iii) where there is an alleged Performance Delay referred to in **clause 8.7(a)(i)(B)**, Aurizon Network:
  - (A) fails to prepare and provide to the relevant affected Access Seeker (or, as applicable, Customer), within ~~20~~ 5 Business Days after receiving the relevant notice under **clause 8.7(a)(ii)**, a response confirming that Aurizon Network will complete the study by the Completion Date supported by reasonable particulars demonstrating how completion will be achieved; or
  - (B) after preparing and providing such a response to the relevant affected Access Seeker (or, as applicable, Customer), materially fails, due to its own acts or omissions, to comply with any aspect of that response,

a relevant affected Access Seeker (or, as applicable, Customer) may refer the matter to resolution as a dispute under **clause 11.1.4**.

- (b) If the QCA determines that Aurizon Network:
  - (i) is obliged to commence a Concept Study, Pre-Feasibility Study or Feasibility Study in accordance with **clause 8.9(a)(i)**~~enter into a Studies Funding Agreement and, subject to **clause 8.9(a)(iii)**,~~ has failed unreasonably to do so or unreasonably delayed doing so; or
  - ~~(ii) has failed to forward the executable form of Studies Funding Agreement within the time limit specified by~~



~~clause 8.9(a)(i)(A)(2);~~

- (iii) has:
  - (A) been the cause of a Performance Delay (as described in **clause 8.9(a)(i)(B)**); and
  - (B) either:
    - (1) failed to provide a response within the time specified in **clause 8.7(a)(iv)(A)**; or
    - (2) has failed to comply with the steps detailed in the response provided under **clause 8.7(a)(iv)(A)**,

the QCA may ~~(with the approval of all relevant Access Seekers and Customers)~~ determine that the relevant study be undertaken by an appropriately qualified and experienced nominee of all relevant Customers.

- (c) If the QCA determines that the relevant study is to be undertaken by the nominee of all relevant Customers:
  - (i) Aurizon Network must comply with that determination;
  - (ii) Aurizon Network must provide the nominee with all information that can be lawfully provided by Aurizon Network<sup>1</sup> which is reasonably required by the nominee to undertake the applicable study (provided however that the nominee must only use such information in connection with the performance of the study); and
  - (iii) Aurizon Network must use the relevant study output for the purposes for which it was provided.
- (d) If a study is undertaken by a nominee of all relevant Customers as contemplated by **clause 8.7(b)** Aurizon Network will implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement, except to the extent that Aurizon Network successfully seeks a review of the scope (which may include the standard of work) of the Expansion referred to in the study by means of a QCA determination. Aurizon Network:
  - (i) may refer the matter for QCA determination in accordance with **clause 11.1.5** within 20 Business Days following publication to Aurizon Network of the study by the nominee;
  - (ii) will provide written notice of its dispute to the relevant Access Seekers, each of whom shall have a right to make submissions to the QCA in respect of the dispute; and
  - (iii) will provide written submissions to the QCA, with copies to each of the relevant Access Seekers, detailing why, in Aurizon Network's view, the scope decided by the nominee is not appropriate and how it should be amended.

The QCA shall determine what the appropriate scope should be. **Anglo**

<sup>1</sup> For example, Aurizon Network's confidentiality or ringfencing obligations under this Undertaking, ~~at law or under any agreements may limit or prevent the provision of information.~~

**note: concern that Aurizon Network is incentivised to delay in order to force expert determination, and then Aurizon Network will attempt to absolve itself of any risk arising from the relevant Feasibility Study]**

- (e) ~~In the absence of manifest error,~~ The determination of a dispute under **clause 8.7(c)** will be binding on all relevant Access Seekers and Aurizon Network. Aurizon Network does not breach this Undertaking in doing anything necessary to comply with that determination and will, subject to the terms of this **Part 8**, implement the output of the study for completion of the applicable Feasibility Study, User Funding Agreement or Access Agreement.

## 8.10 Funding an Expansion - general

- (a) Subject to this ~~clause 8.8-8.10~~ and ~~clause 8.9-8.11~~, an Access Seeker may fund its relevant portion of the cost of an Expansion that is necessary to create additional Capacity so that Access Rights may be granted to Access Seekers but only if Aurizon Network:
- (i) is not obliged under this Undertaking to do so; ~~and~~
  - ~~(ii) either:~~
  - (ii) is not willing to do so (as notified or deemed notified under **clause 8.10(c)**); or
  - (iii) is only willing to do so subject to Commercial Terms that are unacceptable to the Access Seeker,

provided that where the relevant Access Seeker intends to utilise any Access Rights sought to be provided by the proposed Expansion for the benefit of a Customer, it may only fund the cost of an Expansion if it is acting on behalf of a Customer or Customers identified to Aurizon Network for all of the Access Rights sought by the relevant Access Seeker. Aurizon Network must make reasonable inquiries as to the identity of that Customer in accordance with **clause 8.6(b)**.

- (b) For clarity, any obligation on Aurizon Network to construct or permit an Expansion is subject to **clauses 8.2.1(c)** and **(f)**.
- (c) Aurizon Network will notify, where an Expansion is subject to a Feasibility Study that:

~~(i) has been funded under Studies Funding Agreements~~ the Feasibility Funders within ~~40~~ 20 Business Days **[Anglo note: why would it take 2 months to notify Access Seekers of the unconditional nature of the agreements? This appears to be unnecessary delay]** after the relevant Studies Funding Agreements become unconditional; ~~or~~

~~(ii) has not been funded under Studies Funding Agreements, all relevant Access Seekers within 20 Business Days of the agreement under clause 8.6(a)(iii) being made, as applicable,~~ **[Anglo note: otherwise this provision does not provide for an instance where there is no Study Funding Agreement, creating uncertainty]**

whether:

- (iii) Aurizon Network is not willing to fund the Expansion; or
  - (iv) Aurizon Network requires Commercial Terms to be agreed in relation to the funding of the Expansion (and, if so, the details of the conditions that will comprise Commercial Terms).
- (d) If Aurizon Network has not given a notice under **clause 8.10(c)** or **clause 8.2.1(d)**, then (for the purpose of Access Seekers commencing the processes under **clause 8.11.1(a)**) Aurizon Network is taken to not be willing to fund the Expansion.
- (e) If Aurizon Network has given a notice under **clause 8.10(c)(ii)** and the relevant Access Seeker is willing to negotiate, then Aurizon Network and the relevant Access Seeker will negotiate in good faith the proposed Commercial Terms on which Aurizon Network will be willing to fund the Expansion.
- (f) Where Aurizon Network has given a notice under **clause 8.10(c)(iv)** that it requires Commercial Terms an Access Seeker may require Aurizon Network to negotiate a User Funding Agreement for all or part of an Expansion in parallel to negotiations in relation to the Commercial Terms.
- (g) **Clause 8.10(c)** does not prevent Aurizon Network from subsequently notifying relevant parties of whether Aurizon Network is willing to fund the Expansion with or without Commercial Terms. Any notice under this **clause 8.10(g)** does not prevent Access Seekers from pursuing User Funding in preference to the proposal from Aurizon Network for it to fund the Expansion (even if Aurizon Network's proposal is to fund without Commercial Terms).
- (h) Where Aurizon Network is obliged under this Undertaking to fund an Expansion, Aurizon Network must negotiate an Access Agreement in accordance with this Undertaking with those Access Seekers that may will utilise the Expansion.
- (i) Where Aurizon Network is negotiating under **clause 8.10(h)** and the Expansion was previously subject to a Study Funding Agreement(s), Aurizon Network must reasonably and in good faith negotiate with Pre-Feasibility and Feasibility Study Funders before any new Access Seekers.
- (j) It is acknowledged that an Expansion may be funded partly by Funding Users and partly by Aurizon Network.
- (k) Where an Expansion is not fully funded and is not required under either **clause 8.2.1(b)** or **8.2.1(c)(i)** of this Undertaking, Aurizon Network will be obliged to construct and partially fund the Expansion where the gap in funding is less than \$400 million.
- (l) Where Aurizon Network is:
- (i) granting a Provisional Capacity Allocation under **clause 8.5(r)**; or
  - (ii) negotiating or entering into an Access Agreement,
- Aurizon Network will not have regard to whether any relevant

Expansion is or may be a User Funded Expansion or is or may be funded by Aurizon Network.

## Part 8:

### 8.11 Coal supply chain coordination

#### 8.11.1 Supply chain coordination

- (a) Aurizon Network will ~~use reasonable endeavours~~ to participate:
- (i) in a Supply Chain Group in relation to:
    - (A) the coordination and effective performance of a relevant coal supply chain; and
    - (B) if applicable, the development of a Supply Chain Master Plan; and
  - ~~(ii)~~ in discussions with other service providers and participants in the coal supply chain, on request, with a view to the coordination of maintenance activities in the relevant supply chain; ~~and-~~
  - ~~(iii)~~ in activities which maximise (in order of priority):
    - ~~(A)~~ delivery of contracted coal supply chain capacity;  
and
    - ~~(ii)(B)~~ throughput in each supply chain in accordance with the Supply Chain Group Plan.
- (b) Subject to the terms of this Undertaking, Aurizon Network will seek to act in a way that facilitates an appropriate balance between cooperation between all elements of coal supply chains (in respect of which Access forms a part) to seek to maximise the performance of those supply chains and the other matters set out in **clause 2.2(g)**.
- ~~(c)~~ Aurizon Network will:
- ~~(i)~~ where there is a cost to Aurizon Network which is not recoverable under this Undertaking, not be obliged to make any binding commitment or to take any action as a result of its participation and discussions referred to in **clause 8.11.1(a)8.11.1(a)8.11.1(a)8.11.1(a)**; ~~and-~~
  - ~~(e)(ii)~~ provided there is no cost to Aurizon Network which is not recoverable under this Undertaking, will be obliged to comply with the decision reached by a Supply Chain Group, even if Aurizon Network has elected not to participate in a Supply Chain Group discussion.

#### 8.11.2 System Operating Parameters

- ~~(a)~~ Upon commencement of this Undertaking, Aurizon Network will immediately prepare System Operating Parameters for each System.
- ~~(b)~~ Aurizon Network is required to submit:

- (i) its initial System Operating Parameters; and
- (ii) any reviewed System Operating Parameters (including where no amendments have been made),

to the QCA for approval. The QCA may, in its discretion, call for public consultation on the terms of the initial or reviewed System Operating Parameters.

- (c) After receiving the initial or reviewed System Operating Parameters from Aurizon Network and conducting any public consultation that it believes is necessary, the QCA will either:

- (i) approve Aurizon Network's submitted System Operating Parameters;
- (ii) approve Aurizon Network's submitted System Operating Parameters subject to amendments to be made before they become operational;
- (iii) reject Aurizon Network's submitted System Operating Parameters, and provide amendments that it requires Aurizon Network to complete before resubmission; or
- (iv) reject Aurizon Network's System Operating Parameters, and draft and impose its own System Operating Parameters.

- ~~(a)~~(d) In reviewing the System Operating Parameters for a Coal System, Aurizon Network will:

- (i) notify the applicable Access Holders (and their Customers where applicable) and Supply Chain Group (if any) and the QCA of the relevant System Operating Parameters and the time in which to make submissions;
- (ii) consider any submissions from those Access Holders or their Customers and the Supply Chain Group in respect of the proposed System Operating Parameters or whether any variation of the System Operating Parameters is required (as applicable); and
- (iii) respond to any such submissions as soon as reasonably practicable within 10 Business Days including whether and, if so, how Aurizon Network has varied the proposed or existing System Operating Parameters (as applicable) in response to those submissions. [Anglo American note: the System Operating Parameters and System Rules are essential to ensuring that Capacity is quickly and appropriately allocated between Access Holders and Customers. Leaving an undefined or open-ended timeframe for responding to submissions on the SOPs reduces the effectiveness of the process and does not acknowledge the need for fast and accurate amendments to the SOPs]

- (e) Without limitation to ~~clause 8.11.2(a)8.11.2(a)8.11.2(a)8.11.2(a)~~, Aurizon Network will review the System Operating Parameters for a Coal System as soon as practical after Aurizon Network becomes aware that any ~~permanent-sustained~~ change has occurred, or will occur, to that Coal System that materially ~~adversely~~ affects the System Operating Parameters.
- ~~(b)(f)~~ Without limitation to ~~clause 8.11.2(h)8.11.2(e)~~, Aurizon Network will, ~~on request from an Access Holder,~~ make the outcomes of a review of the System Operating Parameters available to ~~that all relevant~~ Access Holders promptly after completing the review ~~(provided that Aurizon Network is not required to disclose any information that is confidential or which, if made available, would give rise to a breach by Aurizon Network of a confidentiality obligation).~~ ***Note: The outcomes should be made available promptly (and not on request). It is not clear what confidentiality obligations would prevent disclosure of the SOP. In order for Access Holders to have any ability to meaningfully comment on Capacity it is crucial that the SOP is wholly disclosed.***
- (g) Nothing in this ~~clause 8.11.28.11.28.11.2~~ obliges Aurizon Network to vary the System Operating Parameters. Aurizon Network will automatically review the System Operating Parameters in the event of:
- (i) the connection of a new coal basin or port terminal;
  - (ii) the completion of a major Expansion;
  - (iii) a 30% increase in system capacity; or
  - ~~(e)(iv)~~ where requested by Access Holders holding at least 60% of the Train Paths on the relevant System.
- ~~(d)(h)~~ Aurizon Network will keep its most current System Operating Parameters available on the Website (including with the redaction of any information that is confidential or which, if so published, would give rise to a breach by Aurizon Network of a confidentiality obligation).
- ~~(e)(i)~~ Aurizon Network will ensure that the System Operating Parameters are consistent with Good Engineering Practices.
- ~~(f)(j)~~ On, or as soon as reasonably practicable after, the Approval Date, Aurizon Network will make available to each Access Holder the System Operating Parameters (as at the Approval Date) relevant to that Access Holder.

### 8.11.3 **Capacity Review Assessment**

- (a) Aurizon Network will undertake a Capacity assessment-Review for a Coal System if:

- (i) ~~\_\_\_\_\_~~ the System Operating Parameters are varied as a result of a review under **clause 8.11.2(c) or 8.11.2(f) 8.11.2(e)8.11.2(b)8.11.2(b)8.11.2(b)** or are otherwise varied in a way that Aurizon Network considers (acting reasonably) can be expected to materially ~~change~~decreases the Existing Capacity in that Coal System; or
- (ii) ~~\_\_\_\_\_~~ Aurizon Network knows of any Below Rail change which:
- (A) ~~\_\_\_\_\_~~ is not directly or indirectly reflected in the System Operating Parameters; and
- (B) ~~\_\_\_\_\_~~ is reasonably expected to result in a material and sustained change to the Existing Capacity in that Coal System.
- ~~(a)~~ For clarity, **clause 8.11.3(a)(ii)** does not apply to circumstances that would result in ~~short-term, temporary or transient~~ changes to Existing Capacity for less than three (3) months (including, for example, circumstances such as Force Majeure Events, Network Incidents and the construction, maintenance or renewal of Rail Infrastructure).
- (b) Without limitation to **clause 8.11.3(a)8.11.3(a)8.11.3(a)8.11.3(a)**, Aurizon Network will undertake a Capacity Reviewassessment for a Coal System at intervals of no more than 12 months.
- (c) A Capacity Reviewassessment for a Coal System ~~under this clause 8.11.3 (Capacity Assessment)~~ must include (without limitation):
- (i) consultation by Aurizon Network with Access Holders for Train Services operating in that Coal System in relation to that Capacity Reviewassessment; and
- ~~(ii)~~ consultation with any Supply Chain Group for the relevant Coal System; and
- ~~(iii)~~ consideration of the following factors:
- ~~(ii)(A)~~ Operational Constraints relating to that Coal System;
- ~~(A)(B)~~ the terms of Access Agreements relating to Train Services operating in that Coal System; and
- ~~(C)~~ the interfaces between the Rail Infrastructure and other facilities forming part of, or affecting, the relevant supply chain; and
- ~~(B)(iv)~~ all other matters consistent with Good Engineering Practices.
- (d) Aurizon Network will promptly make the ~~outcomes of a~~ Capacity Assessment-Review Outcomes available to Access Holders, Access Seekers and, if applicable, their Customers.



(e) If, within ~~20-30~~ Business Days after Aurizon Network makes the ~~outcomes of a~~ Capacity ~~Review Outcomes~~Assessment available in accordance with **clause 8.11.3(d)**, the Access Holders ~~(or their Customers)~~ for at least 60% of the Train Paths in relation to a Coal System (as determined in accordance with **clause 8.11.3(l)8.11.3(k)8.11.3(k)8.11.3(g)**) notify Aurizon Network that they wish to have ~~at the~~ Capacity ~~Review Outcomes~~Assessment in relation to that Coal System reviewed by an independent expert, then:

(i) \_\_\_\_\_ Aurizon Network will (acting reasonably and in good faith) engage an ~~appropriately qualified and experienced~~ expert approved by the QCA to determine (subject to **clause 8.11.3(g)**) the Capacity Review Outcome, giving reasons for its determination::

~~\_\_\_\_\_~~ (1) \_\_\_\_\_ whether Aurizon Network has undertaken review the Capacity Review in accordance with Good Engineering PracticesAssessment; and

\_\_\_\_\_ whether the Capacity Review Outcomes are within the range of those that may arise from a Capacity Review undertaken in accordance with Good Engineering Practices; and

~~\_\_\_\_\_~~ to the extent that the expert determines that the Capacity Review Outcomes are not within the range of those that may arise from a Capacity Review undertaken in accordance with Good Engineering Practices;

~~\_\_\_\_\_~~ whether and, if applicable, how the Capacity Review Outcomes should be amended to bring them within the range of those that may arise from a Capacity Review undertaken in accordance with Good Engineering Practices; and

(i) \_\_\_\_\_ the reasons for those decisions;

(ii) \_\_\_\_\_ the expert must:

(A) \_\_\_\_\_ act independently;

(B) \_\_\_\_\_ not be an employee of Aurizon Network or a Related Party of Aurizon Network;

~~(iii)~~(C) \_\_\_\_\_ have no interest or duty which conflicts or may conflict with their function as expert (which must be fully disclosed in writing before their appointment);

- (D) without limitation to ~~clause 8.11.3(e)(ii)~~, the expert must not be an employee of Aurizon Network or a Related Party of Aurizon Network; acknowledge a duty to Aurizon Network and the Access Seekers and Access Holders to act independently and in accordance with this Undertaking;
  - (E) have appropriate qualifications and practical experience;
  - (F) have regard to this Undertaking and consider all submissions by Aurizon Network and any Access Seeker or Access Holder (or their Customer);
  - (G) provide a report in relation to the expert's review setting out reasonable details of the expert's review within a reasonable time after their appointment (but not disclosing any confidential information including Protected Information); and
  - (H) will be required to give an enforceable undertaking to keep confidential, and not use for another purpose, all information and other matters coming to their knowledge by reason of their appointment and performance of their review which if on-disclosed or used for another purpose could constitute a breach of Aurizon Network's ~~confidentiality obligations (including confidentiality obligations under Part 3) or right to confidentiality;~~
- (iii) subject to **clause 8.11.3(f)**, Aurizon Network will, at the reasonable request of the expert, provide to the expert information (including all applicable Operating Plans and the relevant aspects of all applicable Access Agreements) and assistance as reasonably necessary to assist the expert to properly determine any of the matters referred to under ~~clause 5.1.1(a)(i)(A)5.1.1(a)(i)(A)8.11.3(e)(i)(A)~~ and **(A)**;  
and
- (iv) Aurizon Network will promptly provide the expert's report to the **QCA and** relevant Access Seekers and Access Holders (or their Customers where applicable) after receiving the expert's report.
- (f) Aurizon Network is not required to provide, or make available, to the expert:
- (i) the capacity analysis model (but Aurizon Network will run a range of scenarios in the relevant capacity analysis model, as requested by the expert (acting reasonably)). ~~It will not be unreasonable for the expert to request dynamic modelling of~~

paths in order to consider the practical operation of each System;

(ii) information, materials or other things that are not in Aurizon Network's possession ~~or control~~;

(iii) information, materials or other things if doing so would cause or contribute to Aurizon Network failing to comply with its obligations to another person or under a Law (but without limiting Aurizon Network's obligation to provide, or make available, to the expert all applicable Operating Plans and the relevant aspects of all applicable Access Agreements); or

(iv) any information, materials or other things prior to the expert giving to Aurizon Network an enforceable undertaking in accordance with **clause 8.11.3(e)(ii)(H)** on terms satisfactory to Aurizon Network (acting reasonably **and in good faith**).

(g) The expert's determination of a matter under **clause 008.11.3(e)(i)(A)(2)** or **clause 5.1.1(a)(i)(A)** must:

(i) include a review of the System Operating Parameters as to whether the System Operating Parameters used:

(A) are consistent with existing Access Agreements including Operating Plans accepted by Aurizon Network under Access Agreements; and

(B) for assumptions in respect of matters not derived from Access Agreements or Operating Plans accepted by Aurizon Network, are **within the range of those that may be made or used in accordance with Good Engineering Practices** appropriate; **and**

(ii) be consistent with any positions that Aurizon Network has adopted for the purpose of complying with obligations, duties, requirements, undertakings, commitments or things that Aurizon Network is legally obliged to comply with including under: **[Anglo American note: this provision does not appropriately prevent Aurizon Network from agreeing a position that is otherwise extraordinary or unrealistic]**

(A) any Rail Connection Agreement, User Funding Agreement or any other agreement, deed or enforceable document;

(B) any Laws (including the Rail Safety Act); and

(C) the Undertaking; and

- (iii) not be such that it may cause or contribute to a breach of any of the obligations or other matters referred to in **clause 8.11.3(g)(ii)** if that determination was complied with by Aurizon Network.
- ~~(iv)(h)~~ If the expert determines under **clause 5.1.1(a)(i)(A)** that the Capacity Review Outcomes should be amended, then the Capacity Review Outcomes are taken to be amended as determined by the expert.
- (i) If ~~at~~ the Capacity Review Outcomes Assessment reveals that there is a deficit in the Capacity for a Coal System at a particular point in time (**Deficit**), then Aurizon Network will:
  - ~~(i) assess the effect of the Deficit (if any) on existing Access Rights and identify potential solutions to address the Deficit; and~~
  - ~~(ii) where Aurizon Network is obliged by this Undertaking to rectify the Deficit, Aurizon Network will do so (including by completing any required Expansions) have regard to that Deficit prior to executing an Access Agreement that would increase the size of that Deficit and prior to constructing any relevant Expansion for that Coal System; and/or~~
  - ~~(iii) where Aurizon Network is not obliged by this Undertaking to rectify the Deficit, it will:~~
    - ~~(A) elect to rectify the Deficit itself and notify the Access Seeker of this election in writing within 10 Business Days of Aurizon Network receiving the Capacity Review Outcomes;~~
    - ~~(B) inform the relevant Access Seeker in writing within 10 Business Days of Aurizon Network receiving the Capacity Review Outcomes that an Expansion is required prior to signing an unconditional Access Agreement; or~~
    - ~~(C) where Aurizon Network and the relevant Access Seeker do not wish to complete the required Expansion to rectify the Deficit, Aurizon Network will be prohibited from entering into an unconditional Access Agreement with that Access Seeker to the extent of the Deficit.~~
- ~~(j) assess the affects of the Deficit (if any) on existing Access Rights and identify potential solutions to address the Deficit. This **clause 8.11.3(i)**:~~
  - ~~(i) does not give Aurizon Network the right to compress existing Access Holders' (or their Customers') Access Rights; and~~

(ii) any compression required between Conditional Access Holders because of an Expansion or series of Expansions under this Part 8 will be in order from Conditional Access Holders for the last Expansion first and operate on a last-in first-out basis.

~~(f)~~(k) Nothing in this clause 8.11.3 affects or limits the application of clause 8.10.3 which sets out how Capacity Shortfalls will be addressed or affects Aurizon Network's obligations or liabilities under an Access Agreement or other agreement.

~~(g)~~(l) For the purpose of **clause 8.11.3(e)8.11.3(e)8.11.3(e)8.11.3(e)**, the relevant Train Paths must be determined in a manner consistent with the following principles:

~~(i)~~ the Train Paths for an Access Holder only include those Train Paths for the Access Holder relating solely to the relevant Coal System; [Anglo American note: this clause ignores the possible impacts of cross-system traffic]

~~(ii)~~(i) the Train Paths must be calculated as at the date on which Aurizon Network receives a notice under **clause 8.11.3(e)8.11.3(e)8.11.3(e)8.11.3(e) (Notice Date)**, and will include any Conditional Access Holder Train Paths which might impact on the Capacity of the Coal System in question;

~~(iii)~~(ii) subject to **clause 8.11.3(l)(iii) 8.11.3(l)(iii)8.11.3(k)(iv)8.11.3(k)(iv)8.11.3(g)(iv)**, the Train Paths must be determined (based on the Access Rights specified in that Access Agreement) for a 12 month period starting on the Notice Date; and

~~(iv)~~(iii) where:

- (A) the Access Agreement is due to expire less than 12 months after the Notice Date; and
- (B) there has been a Renewal in relation to the relevant Access Rights under that Access Agreement,

the 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.

~~(h)~~(m) Any obligation on Aurizon Network to provide or make available any information in accordance with this **clause 8.11.3** is subject to:

- (i) Aurizon Network being reasonably able to do so without causing or contributing to a breach of Aurizon Network's obligations under **Part 3**, or an Access Agreement ~~or any relevant confidentiality agreement~~; and

(ii) if it is possible to do so, for the purpose of avoiding a breach of the type referred to in **clause 8.11.3(m)(i) 8.11.3(m)(i)8.11.3(l)(i)8.11.3(l)(i)8.11.3(h)(i)**, Aurizon Network may redact any information that is confidential or which, if published, would give rise to such a breach or do or refrain from doing anything else reasonably necessary to avoid a breach of the type referred to in **clause 8.11.3(m)(i) 8.11.3(m)(i)8.11.3(l)(i)8.11.3(l)(i)8.11.3(h)(i)**.

(ii) unless such information can reasonably be aggregated or de-identified as envisaged under the relevant ring-fencing obligations in Part 3 of this Undertaking.

## 8.12 Network Development Plan

(a) Aurizon Network will develop a Network Development Plan and keep its most current Network Development Plan available on the Website.

(b) The Network Development Plan will:

- (i) comply with the Network Management Principles;
- (ii) align with any System Operating Parameters;
- (iii) align with any Supply Chain Master Plan;
- (iv) if applicable, consider any supply chain model; and
- (v) will be based on a concept level of study.

(a)(c) The Network Development Plan's objective is to identify a selection of medium to long-term alternatives that could potentially be implemented to satisfy potential future demand for Access in each Coal System, and will include options for otherwise developing or improving a Coal System's performance.

(b)(d) The Network Development Plan will contain (as a minimum) the following information:

- (i) an detailed assessment of the nameplate capacity by Track Segment for each Coal System;
- (ii) a detailed assessment of capacity broken down by Existing Capacity, Committed Capacity and Available Capacity (and not taking into account Operational Constraints or removing those operationa and maintenance components considered in the definition of Existing Capacity);
- (iii) a review of the details of Operational Constraints, including details fo the impact of Operational Constraints on Existing Capacity and Available Capacity;the Existing Capacity and Operational Constraints;
- (iv) the System Operating Parameters upon which the Network Development Plan is based;

- (v) the aggregated contracted Train Paths by Track Segment for each Coal System for coal-carrying Train Services (both with and without the impact of Operational Constraints);
- ~~(i)~~(vi) any capacity planning scenarios employed by Aurizon Network;
- ~~(ii)~~(vii) an overview of opportunities for increasing Existing Capacity including, to the extent Aurizon Network has the necessary skills, knowledge and experience, opportunities comprised of actions known to Aurizon Network, or proposed to Aurizon Network by any Supply Chain Group, other than Expansions or other Below Rail actions<sup>1</sup> (Non-Below Rail Alternatives);
- ~~(iii)~~(viii) a comparison of opportunities for increasing Existing Capacity for each Coal System including indicative timeframes and indicative costs provided that for Non-Below Rail Alternatives only to the extent Aurizon Network has the necessary skills, knowledge and experience to comment on possible timeframes or costs; and
- ~~(iv)~~(ix) the studies and investigations that Aurizon Network expects to undertake to inform the next review and update of the Network Development Plan.

(e) Aurizon Network will review and update the Network Development Plan annually or more frequently as it considers necessary (acting reasonably); including if circumstances change in a way that Aurizon Network expects will materially adversely affect the Network Development Plan; (but not limited to:

- (i) the connection of a new coal basin or port terminal;
- (ii) the completion of a major Expansion;
- (iii) a 30% increase in System Capacity;
- (iv) where requested by 60% of Access Holders (or their Customers as applicable) on the relevant System; or

~~(e)~~(v) if circumstances change in a way that Aurizon Network expects (acting reasonably and in good faith) will materially adversely affect the Network Management Principles, the Network Development Plan, or the System Operating Parameters.

~~(d)~~(f) In developing or reviewing the Network Development Plan, Aurizon Network:

- (i) will from time to time, inform and otherwise consult with, and consider submissions from, Access Holders and their

<sup>1</sup> For example, Above Rail actions or other actions upstream or downstream of Below Rail actions in the supply chain such as changes to mine loading or terminal unloading facilities or to supply chain operating modes.

Customers where applicable, Access Seekers and their Customers where applicable, and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan; and

(ii) will have regard to:

(A) Good Engineering Practices;

~~(A)(B)~~ forecast changes in demand for Queensland coal exports;

~~(B)(C)~~ any Expression of Interest submissions;

~~(C)(D)~~ any relevant Access Applications;

(E) any Expansion costing less than \$400 million that Aurizon Network is required to complete under this Part 8;

~~(D)(F)~~ any relevant port terminal developments or development of other out-loading facilities;

~~(E)(G)~~ any relevant previous or current studies undertaken by Aurizon Network;

(H) any supply chain master plan;

~~(F)(I)~~ the Network Management Principles;

~~(G)(J)~~ relevant System Operating Parameters, System Rules and maintenance plans; and

(K) other developments or circumstances which in Aurizon Network's opinion are relevant to the Network Development Plan.

(g) The Network Development Plan will include information on the scope, standard and preliminary costs of proposed Expansion projects including information that:

(i) identifies, by individual Coal System, capacity analysis information, reasons for the Expansion, identification of projects that will be required to provide increased capacity to meet increased demand, and estimated timing and volume trigger points for each project;

(ii) identifies for each specific project the scope of the project and describes the general standard of works, the additional capacity to be delivered by the Expansion, the potential risks, and preliminary cost information which includes potential impact on the Reference Train Tariff;

(iii) quantifies the impact on Capacity during construction and measures for ameliorating this impact; and



- (iv) outlines alternatives considered and assessed during the evaluation and the reasons that these will not be progressed.
- (h) Without limitation to **clause 8.12(f)(i) 8-12(e)(i)**, as part of developing or reviewing a Network Development Plan and Aurizon Network's final stage of consultation with Access Holders, Access Seekers and other interested parties identified by Aurizon Network in relation to the proposed Network Development Plan, Aurizon Network will:
  - (i) make available to those persons and the QCA a draft Network Development Plan; and
  - ~~(H)~~(ii) give those persons **+20** Business Days to respond to that draft, and will consider responses from those persons received within that time, prior to finalising the Network Development Plan for publication on the Website.
- (i) Neither anything in this **clause 8.12** nor the development, review or notification of a Network Development Plan gives rise to any commitment, representation or obligation in relation to funding, constructing, permitting or otherwise implementing any aspect of the Network Development Plan.
- (j) If, prior to a draft Network Development Plan being made in available under **clause 8.12(h)(i)8-12(f)(i)**, the Access Holders in relation to a Coal System notify Aurizon Network that they wish to have a peer review of Aurizon Network's capacity planning inputs and processes and capacity model outputs to the extent relevant to the preparation or review (as applicable) of the Network Development Plan by a consultant as part of Aurizon Network's consultation under **clause 8.12(h)(i)8-12(e)(i)**, then Aurizon Network will:
  - (i) use reasonable endeavours to cooperate with a consultant jointly appointed by, and at the cost of, the Access Holders for the Coal System for such a peer review; and
  - (ii) run a range of scenarios in the relevant capacity model, as requested by that consultant (acting reasonably).
- ~~(e)~~ Aurizon Network's obligations under this **clause 8.12(j) 8-12(h)** do not include any obligation to provide the consultant with access to the capacity analysis model, confidential information or any other information or thing in respect of which Aurizon Network has any intellectual property<sup>2</sup>. Aurizon Network is not obliged to cooperate with more than one consultant for a review contemplated by this **clause 8.12(j)8-12(h)**.

### 8.13 Acceptance of capital expenditure projects by Interested Participants **Note: The QRC reserves comment on this clause**

<sup>2</sup> Intellectual property includes any intellectual and industrial property rights conferred or recognised by any law anywhere throughout the world, including rights in relation to copyright, trade marks, trade secrets and patent rights (including the right to apply for registration of any such rights) and know-how that is confidential.

until after review of the proposed Expansion pre-approval process which is contemplated as a part of the QCA's SUFA discussion paper]

#### 8.13.1 Purpose

- (a) This **clause 8.13** sets out a voting process for relevant Access Holders, Customers and Access Seekers to accept the prudence of scope of a capital expenditure project.
- (b) The voting process is an alternative to seeking acceptance of those matters by the QCA under **clause 3** of **schedule E** (as applicable). However, an unsuccessful vote does not prevent Aurizon Network from seeking the QCA's acceptance on the same matter or a future vote.
- (c) A capital expenditure project referred to in relation to this **clause 8.13** includes all projects of any kind that involve capital expenditure including capital expenditure projects required for safety reasons or for Expansions.

#### 8.13.2 Application

- (a) This **clause 8.13** applies where Aurizon Network seeks acceptance of:
  - (i) the scope of a capital expenditure project; or
  - (ii) a change to the scope of a capital expenditure project where:
    - (A) Aurizon Network previously obtained the acceptance of Interested Participants for that scope; and
    - (B) that change is a material change, **(Voting Proposal)** by a vote of Interested Participants under this **clause 8.13**.
- (b) Aurizon Network must notify the QCA of the outcome of a vote under this **clause 8.13**.
- (c) Nothing in this **clause 8.13**:
  - (i) obliges Aurizon Network to seek acceptance of the scope of a capital expenditure project under this **clause 8.13**; or
  - (ii) prevents Aurizon Network from seeking the QCA's acceptance of the scope of a capital expenditure project, even if a vote seeking the acceptance of the same under this **clause 8.13** has been unsuccessful.

~~(d) Aurizon Network does not have an obligation to construct or fund a capital expenditure project as a result of seeking or obtaining any~~

~~acceptance of the scope of a capital expenditure project under this clause 8.13.~~

~~(d) Where Aurizon Network seeks approval of a capital expenditure project under this clause 8.13:~~

~~(i) where it receives approval by stakeholders through the voting process, it must design and construct the capital expenditure project as it was put to stakeholders;~~

~~unless~~

~~(ii) within 20 Business Days of receiving the approval considered in clause 8.13(d)(i). Aurizon Network puts to the same group of stakeholders that approved the capital expenditure project that the capital expenditure project is no longer required, or is no longer technically or economically feasible and receives approval not to construct the capital expenditure project.~~

~~(e) Unless Aurizon Network receives approval under clause 8.13(d)(ii), it must commence a capital expenditure project within 40 Business Days of receiving the approval considered under clause 8.13(d)(i). The timeframe will commence on the first Business Day after the day on which the vote occurs.~~

~~(e)(f) This clause 8.13 must be read in conjunction with clauses 2.2(h) and (i) of schedule E (as though those provisions were part of this clause 8.138.138.138.13) to the extent that those provisions refer to this clause 8.138.138.138.13.~~

### 8.13.3 Identification of Interested Participants

(a) For a vote called by Aurizon Network regarding the acceptance of the scope of that capital expenditure project, the persons eligible to participate in that vote (referred to as **Interested Participants** in respect of that vote) are Customers, and Access Holders and Access Seekers without Customers, where the Access Charges (or likely Access Charges) relevant to the person:

(i) are (or will be) determined by reference to a Reference Tariff; and

~~(ii) would be affected by including the amount of capital expenditure for a capital expenditure project into the Regulatory Asset Base;~~

~~(ii) or:~~

~~(iii) where that person's contracted Capacity or Train Paths would be impacted in some way by the capital expenditure project, including by way of example where a capital expenditure project increases cross-system traffic and subsequently reduces surge capacity within another System.~~

- (b) A Customer who is an Interested Participant may notify Aurizon Network nominating its Access Seeker or Access Holder, as applicable, (**Nominee**) to vote on its behalf. If Aurizon Network receives such a nomination, then:
- (i) the Nominee is taken to be the Customer's agent for the purposes of the vote; and
  - (ii) where the Customer requests it, Aurizon Network will provide the Customer with a copy of notices given to the Nominee under this ~~clause 8.138.138.138.13~~ contemporaneously with the giving of that notice to the Nominee.
- (c) Despite ~~clause 8.13.3(a)8.13.3(a)8.13.3(a)8.13.3(a)~~:
- (i) Aurizon Network will not identify any person as an Interested Participant if that would result in any 'double counting' of votes – for example, where two Access Seekers are competing to provide rail haulage services to a prospective Customer that Customer will not be treated as a Customer for each Access Seeker thereby effectively doubling its Affected Train Paths and consequential voting power; and
  - (ii) if:
    - (A) a person has not been invited to participate as an Interested Participant; and
    - (B) that person believes that it is entitled to participate, then:
      - (C) that person may request to be allowed to participate by notifying the QCA that it believes that it is an Interested Participant Aurizon Network including setting out reasons why it should be allowed to ~~participate do so~~; and
      - (D) the QCA will determine, with regard to the factors outlined in clause 8.13.3(a), whether the person is an Interested Participant. Aurizon Network will use its reasonable endeavours to accommodate that request if it is appropriate to do so.
      - (D) Aurizon Network and the person seeking to be an Interested Participant will be bound by the QCA's determination.

#### 8.13.4 **Voting rights**

- (a) In this ~~clause 8.13.48.13.48.13.48.13.4~~, **Affected Train Path** means a Train Path where, either:
- (i) the applicable Reference Tariff for a Train Service using that Train Path would be affected by including the amount of

capital expenditure for the relevant capital expenditure project into the Regulatory Asset Base; or-

~~(a)(ii)~~ the number of Train Paths impacted by the reduction in contracted Capacity or Train Paths by the proposed capital expenditure project.

(b) Each Interested Participant's vote will be weighted by multiplying its vote by the number of Affected Train Paths for that Interested Participant as determined by Aurizon Network based on the relevant Access Rights (whether under an Access Agreement or the subject of an Access Application) in accordance with the principles under **clause 8.13.4(c)**~~8.13.4(c)~~~~8.13.4(c)~~~~8.13.4(c)~~.

(c) Aurizon Network must determine Affected Train Paths for the purpose of **clause 8.13.4(b)**~~8.13.4(b)~~~~8.13.4(b)~~~~8.13.4(b)~~ in a manner consistent with the following principles:

- (i) where the Access Agreement in relation to that Interested Participant:
  - (A) will be in force at the time that is five years after acceptance is sought under this **clause 8.13**; or
  - (B) is subject to a legally binding commitment (even if conditional on the completion of an Expansion or Customer Specific Branch Line or other conditions which are Aurizon Network's responsibility to satisfy or can be waived by Aurizon Network),

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**;

- (ii) where:
  - (A) the Access Agreement is due to expire within five years after acceptance is sought under this **clause 8.13**; and
  - (B) Aurizon Network reasonably expects that a Renewal will occur in relation to the relevant Access Rights under that Access Agreement,

the Affected Train Paths must be determined based on the Access Rights specified in that Access Agreement for the last period of 12 months of that Access Agreement;

- (iii) to the extent that the Interested Participant is (or is also) an Access Seeker or an Access Seeker's Customer:
  - (A) where the Available Capacity, plus the Capacity expected to be created by the capital expenditure

project, that may potentially be used for Affected Train Paths (**Total Available Capacity**) is less than that needed by Aurizon Network to provide all of the Access Rights sought by Access Seekers (who, or whose Customers, are Interested Participants) for Affected Train Paths (**Requested Capacity**), the Affected Train Paths must be calculated as the Access Seeker's proportion of the Total Available Capacity calculated on a pro rated basis by reference the Access Seeker's proportion of the Requested Capacity; or

- (B) where the Total Available Capacity is greater than the Requested Capacity, the Affected Train Paths sought by the Access Seeker,

in either case, for a 12 month period starting five years after the first day of the month in which acceptance is sought under this **clause 8.13**; and

- (iv) if more than one of **clauses 8.13.4(c)(i)**~~8.13.4(c)(i)~~~~8.13.4(c)(i)~~~~8.13.4(c)(i)~~ to ~~(iii)~~~~(iii)~~~~(iii)~~~~(iii)~~ apply in respect of an Interested Participant, then the Affected Train Paths calculated under those clauses will be aggregated for that Interested Participant.

#### **8.13.5 Acceptance process**

- (a) If Aurizon Network seeks a vote from Interested Participants on a Voting Proposal, then Aurizon Network will:
- (i) identify the Interested Participants and notify each identified Interested Participant of the vote; and
  - (ii) make available all information (other than information that Aurizon Network is required to keep confidential under this Undertaking) relevant to the Voting Proposal and the voting process to those Interested Participants, including comprehensive details of the proposed Expansion and the anticipated effect on Access Charges of that Expansion.
- (b) The period within which the vote will occur (**Voting Period**) will be:
- (i) the period specified in the notice under **clause 8.13.5(a)(i)**~~8.13.5(a)(i)~~~~8.13.5(a)(i)~~~~8.13.5(a)(i)~~, being at least six weeks-30 Business Days after the notice is given, but not greater than 50 Business Days after the notice is given; or
  - (ii) where the Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants notify Aurizon Network requesting a specified extension to the period specified in the notice under **clause 8.13.5(a)(i)**~~8.13.5(a)(i)~~~~8.13.5(a)(i)~~~~8.13.5(a)(i)~~, the

extended period as requested by those Interested Participants.

(c) During the Voting Period:

(i) Aurizon Network will ~~use reasonable endeavours to~~ provide information, forums and engage in discussions with Interested Participants in relation to the relevant Voting Proposal if it chooses to do so or if reasonably requested by any Interested Participants; and

~~(ii)~~ Interested Participants are to notify Aurizon Network of whether they accept or do not accept the Voting Proposal by voting 'yes' or 'no'.

~~(d)~~ Prior to 10 Business Days before the end of the Voting Period, an Interested Participant may issue Aurizon Network with a written notice requesting further information regarding the capital expenditure project. Aurizon Network is required to:

~~(i)~~ provide the further requested information; or

~~(ii)~~ provide detailed reasons as to why it cannot provide the further requested information,

prior to 5 Business Days before the end of the Voting Period.

~~(ii)(e)~~ If Aurizon Network fails to comply with a written notice presented to it under **clause 8.13.5(d)**, an Interested Participant is entitled to vote 'no' and acknowledge that its reason for the 'no' vote is Aurizon Network's failure to provide further requested information.

~~(d)(f)~~ If an Interested Participant votes 'no' it is not required to give reasons on the basis that the capital expenditure project:

~~(i)~~ is not technically and/or economically feasible or is inconsistent with the safe and reliable operation of the Rail Infrastructure;

~~(ii)~~ would materially adversely affect the Interested Participant's access rights, providing evidence of how those rights would be affected; or

~~(iii)~~ is inefficient, including having regard to the System Operating Parameters referred to by Aurizon Network,

then that 'no' vote must be accompanied by detailed reasons in relation to those matters. For clarity, **clause 8.13.5(d)(i) to (iii)(iii)** do not prevent a 'no' vote from being made on a different basis— although, any such vote must still be accompanied by detailed reasons.

~~(e)(g)~~ If an Interested Participant does not respond within the Voting Period or does not respond in a way that is a clear 'yes' or 'no' vote, then the

Interested Participant is deemed to have ~~accepted the relevant Voting Proposal—that is, voted ‘yes’ or ‘no’.~~

- ~~(f) If an Interested Participant responds with a ‘no’ vote, but:~~
- ~~(i) that vote does not comply with **clause 8.13.5(d)** ~~8.13.5(d)~~; or~~
  - ~~(ii) the reasons provided with that vote cannot reasonably be regarded as appropriate grounds for, or as relevant to, such a vote,~~

~~then Aurizon Network may exclude that Interested Participant’s vote.~~

~~(g) When determining whether to exclude an Interested Participant’s vote under **clause 8.13.5(f)** Aurizon Network may will seek the QCA’s approval to exclude any votes on the basis set out in **clause 8.13.5(f)**. The QCA will consult with the Interested Participant (including where **clause 8.13.3(b)** ~~8.13.3(b)~~ applies, both the relevant Nominee and Customer) in reaching a decision. The QCA will advise Aurizon Network and the Interested Participant of its decision within two weeks after receiving the request from Aurizon Network. If the QCA approves the exclusion of an Interested Participant’s vote, then Aurizon Network is taken to have complied with **clause 8.13.5(f)** if it excludes that Interested Participant’s vote.~~

- (h) The Interested Participants will be deemed to have accepted the relevant Voting Proposal if Interested Participants for at least 60% of the aggregated Affected Train Paths for all Interested Participants ~~(other than those excluded under **clause 8.13.5(f)** ~~8.13.5(f)~~)~~ have, or are deemed to have, voted ‘yes’.
- (i) Aurizon Network will notify each of those Interested Participants of the results of the vote within five Business Days after Aurizon Network has determined those results.

### **8.13.6 Information and materials relating to acceptance votes**

- (a) Aurizon Network will make available information, when (acting reasonably) it considers it relevant, prudent or necessary to do so, to participants in the coal supply chains relating to Coal Systems (as well as the QCA, Queensland Rail Limited and the DTMR) relating to proposed capital expenditure projects relevant to Coal Systems.
- (b) If a capital expenditure project, the scope of which is being voted on by Interested Participants under ~~**clause 8.13.58.13.58.13.58.13.5**~~, is a General Expansion Capital Expenditure project, then Aurizon Network will use reasonable endeavours to cooperate with a consultant jointly appointed by, and at the cost of, those Interested Participants for a peer review of Aurizon Network’s capacity planning inputs and processes and capacity model outputs in respect of the capital expenditure project. Aurizon Network will run a range of scenarios in that model (including static and dynamic modelling), as requested by that consultant (acting reasonably). Aurizon Network’s obligations



under this ~~clause 8.13.6(b)8.13.6(b)8.13.6(b)8.13.6(b)~~ do not include any obligation to provide the consultant with access to ~~the capacity analysis model~~, confidential information ~~(unless the consultant agrees to execute a confidentiality agreement reasonably acceptable to Aurizon Network) or any other information or thing in respect of which Aurizon Network has any intellectual property~~<sup>3</sup>.

- (c) Aurizon Network will make available to Interested Participants ~~comprehensive~~ information on the capital expansion project where those Interested Participants have been asked to vote on the scope of that capital expenditure project, including a working paper the requirements for which are referred to in ~~clauses 8.13.6(d)8.13.6(d)8.13.6(d)8.13.6(d)~~. For clarity, a working paper may relate to more than one capital expenditure project.
- (d) A working paper relating to a capital expenditure project's proposed scope as developed in the Feasibility Study will set out the following information in relation to that capital expenditure project:
- (i) ~~comprehensive~~ information on the following:
- (A) the reason for the project including relevant capacity planning information;
  - ~~(B)~~ (B) the project's scope and general standard of works;
  - ~~(B)(C)~~ (C) ~~the baseline System capacity and the Available Capacity of the relevant System without the proposed project;~~
  - ~~(C)(D)~~ (D) the additional capacity expected to be delivered by the project;
  - ~~(D)(E)~~ (E) the project's ~~preliminary estimated~~ cost;
  - ~~(E)(F)~~ (F) the potential impact of project construction on Existing Capacity;
  - ~~(F)(G)~~ (G) the relevant System Operating Parameters;
  - ~~(G)(H)~~ (H) the aggregated contracted Train Paths for Train Services on the relevant Rail Infrastructure; and
  - ~~(H)(I)~~ (I) rationale for the choice of scope for the project with reference to the Pre-feasibility Study and the Network Development Plan (where relevant); and
- (ii) where the project's scope has materially varied since a vote of Interested Participants accepting the scope:
- (A) the scope variations and the reasons for them; and

<sup>3</sup> ~~Intellectual property includes any intellectual and industrial property rights conferred or recognised by any law anywhere throughout the world, including rights in relation to copyright, trade marks, trade secrets and patent rights (including the right to apply for registration of any such rights) and know-how that is confidential.~~

- (B) the relevant changes in the working paper compared to the working paper made available to Interested Participants for the previous vote.
- (e) Without limitation to **clause 8.13.6(a)**~~8.13.6(a)8.13.6(a)8.13.6(a)~~, Aurizon Network will also provide to Interested Participants information that is relevant to the capital expenditure project's scope being voted on and is reasonably available to Aurizon Network, as soon as reasonably practical after receiving a written request from an Interested Participant for that information. ~~However, Aurizon Network is not obliged to provide that information if doing so would result in Aurizon Network failing to comply with this Undertaking or any contractual or other obligation to keep that information confidential.~~

### 8.13.7 Compliance

- (a) Any person who is an Interested Participant, or is entitled to be an Interested Participant, in respect of a proposed vote to be conducted under this **clause 8.13** who has any concerns about Aurizon Network's compliance with this **clause 8.13** in respect of the proposed vote may notify Aurizon Network of those concerns in writing including providing reasons or other information in support of those concerns prior to the end of the Voting Period.
  - (b) Aurizon Network may take whatever action is reasonably required to address any concerns notified to it under **clause 8.13.7(a)**~~8.13.7(a)8.13.7(a)8.13.7(a)~~ to achieve substantial compliance with this **clause 8.13**. Aurizon Network is not obliged to repeat a vote process where a valid concern is raised:
    - (i) if remedying the concern would not be expected to change the outcome of the vote; or
    - (ii) if it can remedy the concern in a way that achieves substantial compliance.<sup>4</sup>
  - (c) An audit of Aurizon Network's compliance this **clause 8.13** in relation to a vote will be procured by ~~Aurizon Network~~**the QCA**:
    - (i) prior to Aurizon Network relying on that vote for the purposes of the QCA's acceptance of prudence of scope of capital expenditure project; and
    - (ii) subject to **clauses 8.13.7(d)**~~8.13.7(d)8.13.7(d)8.13.7(d)~~ to **(g)(f)(f)(f)**, in accordance with **clauses 10.9**~~10.9(a) to (d) and 10.9(g) to (j)~~.
- (d) Where an Interested Participant believes that Aurizon Network has failed to comply with any aspect of this **clause 8.13**, it may refer that

<sup>4</sup> For example, if a person notifies Aurizon Network that it should be Interested Participant but the Voting Period has already commenced, then one remedy might be for Aurizon Network to provide all of the relevant notices, information and other material already provided to the other Interested Participants to that person and allow that person an extension of the Voting Period so that person can participate in the vote.

complaint to the QCA. If the QCA finds that Aurizon Network has not complied with this **clause 8.13** in any way, the QCA may:

- (i) require Aurizon Network to repeat the voting process, regardless of **clause 8.13.7(b)**;
- (ii) take any action to rectify the vote in any way that will achieve substantial compliance with this **clause 8.13**;
- (iii) commence an audit of Aurizon Network's compliance with this **clause 8.13**, including requiring Aurizon Network to produce all information outlined in **clause 8.13.7(e)**; or
- (iv) take any other action that the QCA deems right to rectify Aurizon Network's non-compliance.

~~(d)~~(e) Where an audit is required under **clause 8.13.7(c)**~~8.13.7(e)~~~~8.13.7(e)~~~~8.13.7(e)~~:

- (i) Aurizon Network must provide to the auditor copies of all concerns notified to it under **clause 8.13.7(a)**~~8.13.7(a)~~~~8.13.7(a)~~~~8.13.7(a)~~ in relation to the relevant vote for the purpose of the audit certificate's preparation; and
- (ii) the auditor will compile an audit report identifying:
  - (A) whether Aurizon Network has complied in all material respects with this **clause 8.13** and, if not, details as to the relevant non-compliance; and
  - (B) the process adopted for the conduct of the audit.

~~(e)~~(f) If, in preparing an audit certificate, the auditor identifies flaws in the calculation of the Access Train Paths, then:

- (i) Aurizon Network may recalculate the Access Train Paths and recount the votes in a manner consistent with the auditor's findings;
- (ii) the auditor will take that recalculation and recount into account in preparing the audit certificate; and
- (iii) to the extent that the Aurizon Network has already notified Interested Participants of the outcome of the vote, Aurizon Network will notify the Interested Participants as soon as reasonably practical of the recounted vote.

~~(f)~~(g) If:

- (i) in preparing an audit certificate, the auditor identifies a flaw in a vote of Interested Participants under this **clause 8.13**; and
- ~~(ii)~~ ~~either:~~

~~(iii)~~(ii) Aurizon Network cannot remedy the flaw in a way that achieves substantial compliance with this **clause 8.13** (for example, as referred to under **clauses 8.13.7(b)** or **(f)(e)**);  
or

~~(A)~~ the flaw would be expected to change the outcome of the vote;

then the vote will be invalid and ineffective and Aurizon Network is obliged to re-run the voting process.:

~~the vote will be invalid and ineffective; and~~

~~Aurizon Network may, but is not obliged to, re-run the voting process.~~

~~(g)~~(h) In this **clause 8.13.7** substantial compliance occurs where, viewed objectively:

(i) Aurizon Network's acts or omissions in relation to a vote under this **clause 8.13** do not strictly comply with this **clause 8.13**; and

(ii) that non-compliance could not ~~cannot reasonably be taken to~~ have changed the outcome of the vote under **clause 8.13.5(h)**~~8.13.5(f)~~~~8.13.5(h)~~~~8.13.5(h)~~ from that which would ~~could reasonably~~ have been the case had there been strict compliance.

## Part 12: Definitions and Interpretation

<b><u>Capacity Review</u></b>	<u>A review by Aurizon Network under <b>clause 8.11.3</b> of the Capacity of, and the difference between the Capacity and the Committed Capacity for, a Coal System.</u>
<b><u>Capacity Review Outcomes</u></b>	<u>The outcomes of a Capacity Review, including the specification of Capacity, differences between Committed Capacity and Capacity and the reasons for each of the above.</u>
<b>Existing Capacity</b>	<p>The existing capability of Rail Infrastructure (in the absence of any Expansion that has not been constructed and completed) to accommodate Train Services, after taking into account:</p> <ul style="list-style-type: none"><li>(a) Aurizon Network’s reasonable requirements for the exclusive or partial utilisation of that Rail Infrastructure for the purposes of performing activities associated with the maintenance, repair, construction or other enhancement of Rail Infrastructure (including Expansions and Customer Specific Branch Lines), including the operation of work Trains; and</li><li>(b) Aurizon network’s allowances for “day of operations” losses, speed restrictions and other operational losses or restrictions applicable to the Rail Infrastructure <u>as set out in</u> the System Operating Parameters.</li></ul>
<b>Interested Participant</b>	The meaning given to the term in <b>clauses <del>8.13.3(a)8.13.3(a)8.13.3(a)8.13.3(a)</del> and (a)</b> , as applicable.
<b>System Operating Parameters</b>	<p>Aurizon Network’s assumptions on the operation of each element of the coal supply chain and the interfaces between those elements including:</p> <ul style="list-style-type: none"><li>(a) <u>the operating parameters specified in Access Agreements and in Operating Plans; and</u></li><li>(b) <u>assumptions about Aurizon Network’s asset management and maintenance, Operational Constraints and in relation to the supply chain operating mode</u>, seasonal variations <del>and live run losses</del>.</li></ul>

# Schedule E

## Regulatory Asset Base

### 3 Prudency of scope

#### 3.3 Excluded capital expenditure

(a) If:

- (i) the capital expenditure for a capital expenditure project has been incurred; and
- (ii) the QCA, in assessing the prudency of scope of that capital expenditure project for the purposes of **clause 3.2(c)**, determines that the scope of the capital expenditure project is in excess of that needed to accommodate Reasonable Demand,

the QCA may also determine the element of the prudent costs of the capital expenditure project that was not needed to meet Reasonable Demand and was not otherwise needed taking into account the matters referred to in **clause 3.2(d)** (excluding **clauses 3.2(d)(i), (iii) and (vii)**) (**Excluded Capital Expenditure**). For clarity, this **clause ~~3.33.33.33.3~~** does not apply where:

- (iii) the QCA has already accepted the scope of the capital expenditure project as prudent;
- (iv) the QCA accepts the scope of the capital expenditure project as prudent in accordance with **clause 3.2(a)**; or

(v) the following are satisfied:

(A) the scope of the capital expenditure project has been accepted as prudent by Interested Participants by a vote in accordance with **clause ~~8.138.138.138.13~~** of this Undertaking; and

(B) an audit certificate has been provided to the QCA indicating the conduct of that vote was in all material respects compliant with **clause ~~8.138.138.138.13~~** of this Undertaking; and

(C) either:

- (1) prior to incurring any material capital expenditure or commencing construction for the relevant capital expenditure project, Aurizon Network has entered into User Funding Agreements, Access Agreements or other agreements such that the Capacity to be created

by the capital expenditure project is in all material respects allocated to be used by specified Access Seekers, Access Holders or their Customers; or

(v)(2) a new Expansion Tariff will be introduced as a result of the relevant capital expenditure project.

- (b) If the QCA has determined Excluded Capital Expenditure in respect of a capital expenditure project:
- (i) that Excluded Capital Expenditure will be set aside and escalated at the rate of the Approved WACC from the date of commissioning of the capital expenditure project until the full scope of the capital expenditure project is accepted by the QCA as required to meet Reasonable Demand (whether on one occasion or in parts over time); and
  - (ii) when the QCA accepts that all or part of the Excluded Capital Expenditure is required to meet Reasonable Demand:
    - (A) the QCA will accept all or the relevant part of the Excluded Capital Expenditure into the Regulatory Asset Base at its escalated value; and
    - (B) if only part of the Excluded Capital Expenditure is included in the Regulatory Asset Base, **clause ~~3.3(b)(i)3.3(b)(i)3.3(b)(i)3.3(b)(i)~~** will continue to apply to the remainder.