



12th February 2018

Mr Charles Millstead
Chief Executive Officer
Queensland Competition Authority
Level 27
145 Ann Street
BRISBANE QLD 4000

Queensland Rail's proposed QCA Levy for 2017-18

Dear Mr Millstead,

Thank you for the opportunity to provide comments on Queensland Rail's (QR's) submission which seeks approval of the QCA Levy for 2017-18 (including a request for a retrospective adjustment for past QCA fees).

The New Hope Group (NHG) appreciates the opportunity to provide comments.

Summary of NHG submission:

In summary, NHG considers the extent of the proposed increase to the QCA Levy sought to be imposed on West Moreton coal users is not appropriate for the following reasons:

- QR should absorb a portion of the AU1 cost: The dramatic increase in the QCA's costs during 2014-15 and 2015-16 was largely due to QR's inappropriate approach to the development of the current undertaking (AU1). It is not appropriate for QR to seek to recover all of these costs from customers.
- Revised weightings are not appropriate: We have concerns regarding the appropriateness of the proposed changes to the weightings applied to traffic types, and consider QR has allocated too high a proportion of the costs to West Moreton coal traffics.
- Flat rate per tonne applied to coal producers is not appropriate: Given the proposed 'beneficiary pays' approach, it is not appropriate for the QCA Levy to continue to be recovered from coal producers on a flat per tonne basis. Rather, the levy should be applied on a distance basis, as is the practice in regard to the QCA Levies for freight and minerals and passengers.
- Adjustment should be spread over time: Recovery of a seven-year adjustment in a single year is unreasonable. Most of the proposed charge relates to the development of AU1. A beneficiary pays approach would, at a minimum, recover this cost over the term of AU1.

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CONTACT DETAILS

DOCUMENT INFO

Page 1 of 5
A394293

1. QR should absorb part of the AU1 cost.

The provisions of the Queensland Competition Authority Act and Regulations that allow the QCA to require payment of its reasonable costs incurred in providing services or performing a function, including the preparation or approval of a draft access undertaking (*DAU*), do not require that those costs should be passed on to users.

In addition there is nothing in QR's existing access undertaking which requires the QCA to approve a complete pass through of such costs to users. In particular, clause 3.7 of QR's access undertaking only refers to the QCA Levy being 'based on' the fees levied by the QCA and allocated 'in a manner approved by the QCA'.

While NHG acknowledges that the most recent QCA Fee Framework (2016/17) provides that: 'All fees charged in respect of general regulatory services or functions will be eligible for pass-through to customers, via a QCA Levy, wherever the QCA has responsibility for these pass-throughs' the framework also recognises that 'Approval of a QCA Levy is the subject of a separate approval process triggered by an application from the regulated entity concerned'.

NHG considers the Fee Framework establishes simply that all costs charged by the QCA to QR are *eligible* for pass-through, but the QCA needs to exercise a separate discretion in determining whether it is appropriate for the QCA levy to reflect all or part of such eligible fees.

Relevantly to determining what percentage of these costs QR ought to bear, is consideration of the two-million-dollar cost adjustment for the 2010-11 to 2016-17 period which resulted from extraordinary costs incurred by the QCA in assessing QR's various drafts of AU1 during 2014-15 and 2015-16. The costs were significantly increased by the withdrawal of numerous draft undertakings by QR, and by the need to deal with a range of significant departures from previous practice proposed by QR without material consultation, claims which NHG regards as ambit claims, and strategic changes in position by QR. On each occasion, the QCA had already progressed its review(s) by seeking submissions and, with respect to the June 2013 DAU particularly, the QCA had obtained an independent economic expert report assessing the asset valuation methodologies, and had published its draft decision.

QR did not appropriately consult with users to make the process more efficient and assist in keeping regulatory costs low.

Customers cannot control how a regulated infrastructure provider conducts such regulatory processes, and considers it creates the wrong incentive for regulated infrastructure providers to make them immune to the economic outcomes of such conduct.

In these circumstances, it is unreasonable for QR to seek to pass all of the fees levied by the QCA on to its customers.

2. Revised weightings are not appropriate:

NHG considers that QR has produced insufficient evidence to support an increase in the existing allocation from 33.5% in 2013/14 to the proposed dramatically higher levels (63.8%, 65.6%, 48.3% and 45.7% in the 4 years concerned), particularly in circumstances where the increase is retrospective.

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DOCUMENT INFO

Page 2 of 5
A394293

NHG accepts that a reasonable portion of the additional costs incurred in 2014-15 and 2015-16 related to the QCA's consideration of coal-specific matters under AU1, such as the Western System coal tariffs. However, this was due to QR's approach to that matter including:

- seeking WACC parameters that bore little resemblance to the QCA's and recent regulatory approaches;
- changing its position on the payment of an adjustment amount;
- changing approaches to the asset base that formed part of the previous access undertaking decision;
- submission and withdrawal of multiple draft access undertakings; and
- lack of consultation with users to make the process more efficient.

Similar to the issues noted above, QR's approach to the Western System coal tariffs during the undertaking consideration process raises questions about whether a pure 'beneficiary pays' approach is actually an appropriate mechanism in this context. In that regard the QCA's services are quite different to that provided by some government agencies in that the 'beneficiaries' of regulation (the users) are not the principal influencer of the demands placed on the QCA as a regulator. That stands in contrast to regulators that assess applications or requests directly from users who thereby directly drive the costs of the regulator in which a pure beneficiary pays model is more appropriate.

We also note that:

- There appear to be inconsistencies within QR's submission. The percentage allocations shown in Table 6 for 2014-15, 2015-16 and 2016-17 do not match the 'revised allocations' shown in Attachment 3. Also, the 'prior year's adjustments' shown in Attachment 3 do not match the cost adjustments shown in Attachment 1.
- QR's submission is contradictory. QR states that it *"does not propose to allocate the recovery of QCA Fees to other Train Services such as movement of grain on the South West, West and Central West Networks and the movement of general freight on the Central West Network. These Train Services are heavily contestable with road, with limited ability to pass through the costs"*. QR's submission supports the 'beneficiary pays' principle, yet these customers clearly benefit from the existence of the undertaking. For example, Part 2 provides a clear process for negotiating and securing Access Rights, while Part 4 provides clarity regarding network management principles and operating requirements. Exempting these customers from a contribution to the QCA's costs in spite of the promulgation of a 'beneficiary pays' principle, and transferring the costs to coal producers is not appropriate.

In addition, NHG considers that the amount of the QCA's attention applied to determining Western System coal tariffs during the last undertaking process is not reflective of the proportion of their attention that issue will generally get in the future. The higher proportion of attention it received during the recent review occurred because it was such a step-change from the simpler approach in the previous undertaking(s). Whereas, by contrast, consideration of the next undertaking will occur with the benefit of the QCA's thinking from the recent review, such that the future percentage recovery from coal should drop further than is proposed.

NHG is not in a position to determine the exact appropriate allocation, but considers the issues raised above suggest the proposed allocation to West Moreton system coal users is excessive.

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DOCUMENT INFO

Page 3 of 5
A394293

3. Flat \$/t recovery from coal producers is not appropriate:

Given the proposed 'beneficiary pays' approach, it is not appropriate for the QCA Levy to continue to be recovered from coal producers on a flat per tonne basis. Rather, the levy should be applied on a distance basis, as is the practice in regard to the QCA Levies for freight and minerals and passengers. The QCA's assessment of AU1 required consideration of asset values, asset condition, maintenance and capex requirements for the sections of track between Rosewood and Jondaryn (used by all current coal customers) and the section between Jondaryn and Columboola (not used by New Hope). As both sections are of similar length, it could be expected that approximately half of the cost incurred in relation to these tasks related to the section which is not used by New Hope. Recovery on a per gtk basis would better reflect the basis on which costs are incurred, and is more consistent with a beneficiary pays approach.

4. Adjustment should be spread over time:

Recovery of a seven-year adjustment in a single year is unreasonable. Most of the proposed charge relates to the development of AU1. The benefits of AU1 will be received over the term of the undertaking, and beyond this period, as future undertaking processes will benefit from the existence of a base document and from the analysis previously conducted by the QCA (despite the requirement to consider matters 'afresh'). A beneficiary pays approach would, at a minimum, recover this cost over the term of AU1. We note that the proposal to recover the cost over the 2017-18 year is in fact likely to result in recovery within a single quarter or possibly within a single month, given that most of the year will have passed before the revised tariff becomes effective. QR's customers were not advised that a charge dating back to 2010 was coming until relatively recently, therefore there has been no opportunity to budget for this significant cost.

Thank-you for your consideration of our submission.

Yours sincerely



Sam Fisher

General Manager Marketing & Logistics

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Page 4 of 5
A394293