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24 March 2015

### **SA Rail Access Regime Review**

Dear Stuart,

Aurizon welcomes the opportunity to make a submission to the Essential Services Commission of South Australia's (ESCOSA) review of whether the South Australian Rail Access Regime (SARAR) should continue to apply to relevant services.

Aurizon transports more than 250 million tonnes of Australian commodities, connecting miners, primary producers, and industry with International and domestic markets. It provides customers with integrated freight and logistics solutions across an extensive national rail and road network, traversing Australia. As such Aurizon is well placed to offer competitive rail services to promote efficiency and the interests of businesses and consumers within South Australia.

Presently, Aurizon's operations within South Australia are limited to interstate freight operations on the Australian Rail Track Corporation managed interstate rail network. Notwithstanding, Aurizon envisages that it could become an access seeker with the objective of providing intrastate rail services within South Australia given the appropriate commercial circumstances and an access regime which supported a viable and effective rail haulage tender.

Consistent with Aurizon's comments to the Competition Policy Review, access regulation should be restricted to those brownfield assets already subject to an open access obligation but applied with a renewed focus on innovation and further productivity improvements.

Aurizon considers that it can make a contribution to improving the competitiveness and efficiency of rail freight services within South Australia in market segments where those benefits support the continuation of the SARAR. However, to achieve this would require amendments to the SARAR which are outside of the scope of this review.



In relation to the review, Aurizon considers:

- the review provides an opportunity to assess whether the objectives of the SARAR are being achieved;
- a range of services and markets reliant on rail infrastructure in South Australia might benefit from increased competition;
- the analysis should have regard to the requirements of the Competition Principles Agreement to ensure ongoing consistency with the SARAR certification;
- the review would benefit from ESCOSA using its powers to obtain relevant information from access providers necessary to conduct the costs and benefits analysis; and
- the SARAR possesses a range of impediments which constrain the facilitation of effective competition in the rail haulage market; and
- the scope and coverage of the SARAR can be made clearer and more transparent.

***The review is an important opportunity to review whether the objectives of the SARAR are being achieved...***

The scope of the review is limited to whether the SARAR should continue to apply to those services which were initially covered at the commencement of the regime by way of proclamation in 1998.

Aurizon understands that the requirements to review the continuation of the regime to these services arise from legislative amendments made in response to the National Competition Council's concerns that an effective regime requires that any right to negotiate access should include a date after which the right would lapse unless reviewed and subsequently extended.<sup>1</sup>


This review is the first substantive consideration of a railway subject to a state based access regime whose initial coverage decision occurred by way of Ministerial declaration or by way of regulation.

Assessing the ongoing coverage of the regime should be subject to the same robust consideration that would be applied to a decision to initially cover an asset. Therefore, Aurizon commends ESCOSA on its intentions to apply a cost benefit analysis in its assessment.

As ESCOSA has noted the SARAR has not been effectively utilised or tested. Accordingly, it will be difficult to determine costs and benefits of a regime which has not been used. In considering the costs and benefits, ESCOSA will most likely need to infer what the costs and benefits would be where access is provided in a competitive downstream rail haulage market.

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<sup>1</sup> Clause 6.4(d) Competition Principle Agreement.



***The assessment criteria should be consistent with the Competition Principles Agreement...***

The SARAR was certified as an effective regime in July 2011. In order to ensure the SARAR remains an effective regime it would appear necessary to ensure that the regime remains consistent with the Competition Principles Agreement (CPA) and ESCOSA's review consider these additional matters.

The issues paper notes in undertaking the review ESCOSA will have regard to the matters in section 6 of the *Essential Services Commission Act 2002*. Aurizon considers the matters relevant to the review should also include the matters of the section 6.3 of the CPA that requires that a state based regime only applies to services provided by significant infrastructure which:

- would not be uneconomically feasible to duplicate; and
- should be subject to access in order to permit effective competition in a downstream or upstream market.


As a cost benefit analysis necessarily requires some subjective estimation of cost and benefits the final conclusions may be subject to a wide range of possible values for the net benefit. In weighing the costs and benefits, any decision to remove these facilities from the scope of the regime should be subject to a compelling conclusion of a material net public benefit, noting that the decision to maintain coverage does not increase the regulatory risk to the current owner of these facilities given the assets were acquired subject to their coverage under the SARAR.

***Ensuring the assessment considers all relevant information...***

Assessing whether continued rights to negotiate access to facilities currently covered by the regime does, or could, promote effective competition in a downstream market requires assessment of the current and likely demand.

As there is very limited third party access to these facilities, stakeholders may not be sufficiently informed to assist ESCOSA in undertaking its assessment. In order to determine whether effective competition is feasible, economically desirable and whether the market is of sufficient scale to sustain competition it is likely ESCOSA may need to procure, using its monitoring powers under Part 7 of the *Railways (Operations and Access) Act 1997*, all relevant information from GWA. It is expected that relevant information would include:

- the current costs of providing the below rail services;
- the current revenue earned by both above and below rail services;
- current and forecast level of utilisation;
- capacity assessments and investment plans; and
- details of any requests made for access, including enquiries made by users of railway services who have sought to undertake a competitive tender for rail haulage.



Aurizon notes that the application for certification of the SARAR included information demonstrating that the services covered by the regime were appropriate. Aurizon suggests that the assessment should also make a comparison of any relevant change in circumstances as to why that initial assessment, and the NCCs acceptance, is no longer applicable.

***A number of rail services might benefit from effective competition...***

Aurizon considers a range of services which utilizes the railway infrastructure subject to this review could be candidate services for effective above rail competition. However, in order for that to occur requires both:

- a willingness of producers and end-users to contest those services; and
- a regulatory framework which effectively supports how those parties can market test those services.

In undertaking this review, ESCOSA should canvass the views of those parties who might benefit from increased competition in the market for railway haulage in order to determine whether the benefits of competition could be realised.

***The SARAR includes a range of impediments to permitting effective competition...***

The services most likely to benefit from competition are the higher valued minerals commodities where prices are likely to allow for the full economic costs of providing the above rail service and meeting the relevant and avoidable below rail costs.

However, the process by which a mineral producer could undertake a viable competitive tender process for above rail services is not adequately enabled under the SARAR. The regime generally contemplates a rail operator<sup>2</sup> identifying a market opportunity and seeking access.


In contrast, to facilitate an effective competitive tender on rail haulage it might be necessary to determine an indicative price for access for the appropriate below rail service which would be applied to the vertically integrated operator and any access seeker which met the condition of that price. This would permit customers to evaluate comparative rail haulage prices (as opposed to a bundled price). The disclosure of above rail prices to the customer and the regulator would also allow ESCOSA to assess whether the incumbent's pricing proposals are consistent with promoting the objectives of the SARAR.

ESCOSA has noted that:

*To date, the Commission has never been referred a dispute arising from an unsuccessful negotiation under the ROA Act. This does not mean that the Access Regime has been successful, as it could be that access seekers are unaware of its presence or are unwilling to test it.*

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<sup>2</sup> The ROA Act identifies access as being obtained by an industry participant which must be an operator, or a person who proposes to operate railway rolling stock on a railway network.



A key factor in relation to the absence of disputes is not likely to be whether access seekers are willing to test it, but that the regime does not provide the supportive framework to allow access seekers to be in a position where they may test it.

Even in circumstances where it could be tested, matters relating to price are unlikely to be disputed given the general implications of the wide interval between floor and ceiling. The ability to price up to ceiling amounts on services which do not cover the full economic costs of both above rail and below rail generally precludes third party entry even though that party might be able to provide more efficient above rail services.

***The scope of the current regime could be clearer...***

Aurizon notes that the current scope of the SARAR was proclaimed by Gazette on 9 May 1998. Whilst the SARAR identifies what infrastructure the regime applies, it is unclear the full scope of the SARAR at a granular or line segment level. For example, it is common under most rail access regimes within Australia that the provider of the service publishes line diagrams or network maps which provide more detailed information to potential access seekers of the rail infrastructure to which they could obtain access.

Based on the information in the SARAR, the covered services include the Genesee and Wyoming (GWA) lines in the Murray-Mallee, Mid-North and Eyre Peninsula. However, GWA does not publish details of rail infrastructure subject to the SARAR. Nor do they acknowledge or inform on their website that the infrastructure is covered by the regime.

Whatever the outcomes from the Commission's review of the SARAR the effectiveness of the access regime would be improved through increased clarity on the rail infrastructure which is subject to an obligation to negotiate access.

***Transfer of access functions to the national access rules is not desirable...***

ESCOSA has asked whether alternatives such as, adoption of the national access rules would be suitable. Aurizon considers that application of regulation under the national access rules is unlikely to realise any substantive benefits relative to retention of the SARAR. This is particularly so, as ESCOSA is likely to retain regulatory functions for the Australasia Railway Code, there would not appear to be any significant benefits for the transfer of the SARAR to the national access regime.

Aurizon looks forward to participating in the review of the regime by ESCOSA. Should you have any questions in relation to this submission please contact me by phone on (07) 3019 2055 or via email at [Dean.Gannaway@Aurizon.com.au](mailto:Dean.Gannaway@Aurizon.com.au).

Yours sincerely,

[Original Signed]

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