

Mr Jeremy Threlfall
Assistant Director - Rail
Economic Regulation Authority
Level 4, Albert Facey House
469-489 Wellington Street
PERTH WA 6000

Aurizon submission on the Roy Hill Infrastructure proposed Standard Access Provisions

6 March 2025

Dear Jeremy,

Aurizon welcomes the opportunity to provide a submission to the Economic Regulation Authority (**ERA**) in response to the Roy Hill Infrastructure (**RHI**) proposed Standard Access Provisions.

Aurizon is Australia's largest rail operator, with its operations throughout Western Australia (**WA**) and across Australia, including the large scale bulk haulage of iron ore and coal, integrated supply chain services for other bulk products and inter-city containerised freight services. Aurizon has strong ambitions to grow its containerised freight and bulk supply chains, which can only be achieved by driving new freight volumes to rail. Accordingly, the ability to efficiently access rail networks is crucial to Aurizon's ability to offer attractive rail haulage services to its customers.

While Aurizon has no plan to seek access to the RHI railway, we note that this is the first statement of Standard Access Provisions submitted to the ERA under section 47A of the *Railways (Access) Code 2000* (**Code**). Accordingly, we have reviewed RHI's Standard Access Provisions in the context of their potential to establish positions that may subsequently be claimed as relevant precedent for the ERA's consideration of Standard Access Provisions from other WA railway managers. In this regard, we have two key concerns with RHI's submitted provisions, as outlined below.

Insufficient level of detail

Section 47A(2)(b) requires that the standard access provisions submitted by a railway owner must be "sufficiently detailed and complete to form the basis of a commercially workable access agreement". The document submitted by RHI is a highly abbreviated summary of standard access principles and, in Aurizon's view, is not sufficiently detailed to comply with the requirements of section 47A(2)(b).

Aurizon considers that the requirement to be “sufficiently detailed and complete” requires that the standard access provisions set out the railway manager’s proposed approach in a way that allows an access seeker to fully understand the nature of its expected rights and obligations and clearly enunciates the risks that the railway manager expects will be borne by each party to the agreement.

In Aurizon’s view, section 47A(2)(b) will be most effectively complied with through a long form standard access agreement, similar in its level of detail to the standard access agreements approved in other Australian rail regulatory frameworks.¹ Even with agreement around the high level principles that should be addressed in an access agreement, there is inevitably a broad drafting scope available and the nature of the rights, obligations and risks for each party could vary substantially depending on the final drafting adopted. As a result, in the absence of standard contract drafting, a high level statement of Standard Access Provisions is unlikely to be effective in clearly setting out the expected rights, obligations and risks for each party to the access agreement, and will therefore not be sufficiently detailed to form the basis of a commercially workable access agreement.

In the case of RHI, where the likelihood of third party access seekers requesting access to the railway (either within or outside of the Code) is low, it may be reasonable for the ERA to accept a two stage approach, where:

- the initially approved Standard Access Provisions may be established at a principle level to meet the requirements under s47A(1) of the Code; and
- in the event that the ERA considers it likely that a party may seek access to the RHI railway, the ERA may direct RHI under section 47A(7) to develop a long form standard access agreement that provides a comprehensive understanding of the intended rights, obligations and risks for each party.

Balanced approach to contracting for access

A key issue in assessing the reasonableness of the Standard Access Provisions, as required by section 47A(2)(a), is that they provide a balanced approach to establishing the rights, obligations and risks of each party. From our initial review of RHI’s proposed Standard Access Provisions, we are concerned that they do not reflect a reasonably balanced approach. Some examples include:

- the summary provides for a range of obligations to be applied solely to the access holder, which, in Aurizon’s experience, are normally established on a reciprocal basis. These include, for example, item 9 covering safety and accreditation; item 15 in relation to insurances; item 20 covering audits and inspections; and item 22 addressing assignment; and
- while there is very little detail in the principles around most aspects of the service that RHI will provide, item 6 specifies that the access holder will be allocated a specific, timetabled route. This is notwithstanding that large scale bulk services typically operate on a cyclic basis, with schedules established on a rolling basis so as to maximise asset utilisation and throughput. The reasonableness of timetabled services will depend on the broader scheduling and operating framework within the services will operate, which is not detailed in the summary.

¹ See Australian Competition and Consumer Commission (ARTC Interstate Access Undertaking, ARTC Hunter Valley Access Undertaking) and the Queensland Competition Authority (Aurizon Network Access Undertaking, Queensland Rail Access Undertaking)

Regardless of the level of detail that the ERA determines is required for RHI's Standard Access Provisions under s47A of the Code, Aurizon asks the ERA to carefully examine the proposed terms to ensure that they reflect a balanced assignment of rights, obligations and risk having regard to our concerns raised in this letter.

In addition, Aurizon requests that the ERA consider the need for Standard Access Provisions from Railway Managers for which there are multiple Access Seekers (either within or outside of the Code) to be in the form of a long-form standard access agreement. This is to ensure that the submissions are detailed enough to actually form the basis of a commercially workable access agreement and for the ERA to assess their reasonableness on that basis.

This letter contains no confidential information and is in a form suitable for publication by the ERA. Should you have any questions or require further information, please do not hesitate to contact Gayle Andrews at Gayle.Andrews@aurizon.com.au.

Kind regards,

A handwritten signature in black ink, appearing to read 'D Steele'.

David Steele
Head of Customers and Growth, Bulk