



TRAIN PATH POLICY

Submitted: April 2012
Approved: {MONTH YEAR}

INTRODUCTION.....	3
<i>Background</i>	<i>3</i>
<i>Goals of Train Path Policy</i>	<i>3</i>
ALLOCATION OF TRAIN PATHS.....	3
<i>Purpose of Guidelines for Allocation of Train Paths.....</i>	<i>3</i>
<i>Guidelines for Allocating Train Paths in Access Agreements.....</i>	<i>4</i>
<i>Disputes regarding Train Path allocation</i>	<i>5</i>
PROVISION OF ACCESS TO UNDERUTILISED TRAIN PATHS	5
<i>Identification of an underutilised Train Path</i>	<i>5</i>
<i>Consequences of a confirmed underutilised Train Path.....</i>	<i>6</i>
PROVISION OF ACCESS TO UNUTILISED INSTANCES OF A TRAIN PATH	Error!
Bookmark not defined.	
ALLOCATION OF TRAIN PATHS TO BROOKFIELD RAIL.....	Error! Bookmark not defined.
EXCLUSIVE ACCESS TO INFRASTRUCTURE	Error! Bookmark not defined.
COMPLIANCE AND REVIEW	6
DEFINITIONS	7

INTRODUCTION

Background

1. Section 44(2) of the Code requires each Railway Owner to prepare and submit to the Regulator a statement of policy ("Train Path Policy") "that it will apply in:
 - a) the allocation of train paths; and
 - b) the provision of access to train paths that have ceased to be used"in relation to the provision of capacity on the railway Network it owns.
2. This Train Path Policy (TPP) is that policy which Brookfield Rail will apply whilst performing its Access Related Functions as a Railway Owner with regard to (a) and (b) above. The Network is defined as those routes listed in Schedule 2 of the Code which Brookfield Rail controls and to which Brookfield Rail has a right to grant Access to Operators.
3. As stipulated in Section 4A of the Code, the TPP will only be employed when Brookfield Rail is negotiating to provide Access, or is providing Access, to an Operator under an Access Agreement.

Goals of Train Path Policy

4. The TPP is designed to ensure that the safe and efficient allocation of Network capacity (i.e. Train Paths) is undertaken in a manner that encourages and facilitates:
 - a) fairness of treatment between Operators, while acknowledging contractual rights and obligations created under Access Agreements; and
 - b) maximum use of the Network.

ALLOCATION OF TRAIN PATHS

Purpose of Guidelines for Allocation of Train Paths

5. In accordance with Section 16(1) of the Code, in negotiation of Access Agreements, the Railway Owner must not unfairly discriminate between the proposed rail operations of a proponent and the rail operations of another proponent.
6. In accordance with Section 16(2) of the Code, in negotiation of Access Agreements, the Railway Owner must not unfairly discriminate between the proposed rail operations of a proponent and the rail operations of the Railway Owner.
7. In accordance with Section 44(1) of the Code, in negotiation and making of an Access Agreement the allocation of Train Paths and the provision of Access to Train Paths that have ceased to be used will be dealt with in accordance with the TPP.

8. In accordance with Section 36(2)(c) of the Code, an Access Agreement must not grant to an entity the exclusive rights to use or occupy any Route.
9. Brookfield Rail recognises that a set of approved guidelines are needed in the event that there are competing interests for use of the same Network capacity.

Guidelines for Allocating Train Paths in Access Agreements

10. Section 8 of the Code outlines the steps an entity must take when making a proposal for Access to the Network. On receipt of the proposal, Brookfield Rail must act in accordance with Sections 9 and 10 of the Code, and Part 3 of the Code details various requirements on both parties during negotiations.
11. In the event that the proposal and negotiations are conducted in accordance with the relevant sections of the Code, Brookfield Rail and the entity may be in a position to detail Train Path allocation in an Access Agreement.
12. If there is a competing demand for Network capacity at the time of proposal and negotiation, then in order to determine which entity receives an entitlement to Train Paths, Brookfield Rail will compare the relative compliance of the entities to the requirements in the Code with regard to the proposal and negotiation process and will determine the allocation of Train Paths to entities in such a way that:
 - a) is fair, given the competing demand for limited Network capacity;
 - b) maximises use of the Network; and
 - c) satisfies Brookfield Rail's commercial objectives.
13. In addition, Brookfield Rail may also consider the following aspects of each proposal/entity:
 - a) arrangements or planned arrangements for the operation of freight or passenger Services;
 - b) details of anticipated increased demand (which justifies the operations detailed in the proposal), including because of:
 - i. an upgrade or expansion of production capacity with confirmation that it will progress (e.g. funding approved, public announcements etc);
 - ii. estimated market growth based; or
 - iii. committed new projects with agreed funding;
 - c) historical use of the Train Paths;
 - d) seasonal demand for a seasonal path based on the production or market characteristics of the freight;

- e) need for surge capacity based on demand or other constraints such as shipping;
- f) other relevant information as it is made available to Brookfield Rail.

Disputes regarding Train Path allocation

- 14. If a proposal has been made by an entity, and in the event that the entity believes that Brookfield Rail has not sufficiently addressed the above requirements, this may constitute a dispute between the entity and Brookfield Rail under Section 25 of the Code, and that entity may seek to have the matter arbitrated as a dispute in accordance with Section 26(1) of the Code. Section 29(3) of the Code stipulates that the matters to be taken into account by the arbitrator include, among other things, the Code and the Train Path Policy.

PROVISION OF ACCESS TO UNDERUTILISED TRAIN PATHS

- 15. Access Agreements will include clauses which provide for the implementation of sections 16 to 18 of the TPP.

Identification of an underutilised Train Path

- 16. In general, Access Agreements will entitle Operators to use a Train Path on a regular and recurring basis. If an Operator has failed to utilise such a Train Path as prescribed in an Access Agreement, that Train Path may be classified as underutilised. The process for identifying and confirming whether a Train Path is underutilised is as follows:
 - a) Brookfield Rail will monitor the Train Path over a three month period (**Monitoring Period**);
 - b) If the Train Path is not utilised as prescribed in the Access Agreement at any time during the Monitoring Period (provided that the failure to utilise the Train Path is not as a consequence of a Force Majeure event or Brookfield Rail not making the Train Path available), Brookfield Rail will issue the Operator with a written notice that this Train Path has been identified as underutilised;
 - c) If the Operator fails to utilise the Train Path as prescribed in the Access Agreement more than 6 times in aggregate in a six month period from the date of the notice (**Utilisation Period**), Brookfield Rail will issue the Operator with a written notice confirming the Train Path as underutilised at the end of this period, provided that the failure to utilise the Train Path is not as a consequence of a Force Majeure event or Brookfield Rail not making the Network available;
 - d) If the failure by the Operator to utilise a Train Path during the Monitoring Period or the Utilisation Period, as the case may be, is the consequence of a Force Majeure event or of Brookfield Rail not making the Train Path available,

then the Monitoring Period or the Utilisation Period, as the case may be, will be extended by such period as is required for Brookfield Rail to make available to the Operator the number of Train Paths that were not utilised for those reasons.

Consequences of a confirmed underutilised Train Path

17. Once a Train Path has been confirmed as being underutilised and the relevant Operator is notified as such, then Brookfield Rail may withdraw the contractual entitlement of the Operator to utilise the Train Path.

COMPLIANCE AND REVIEW

18. Stakeholders have the ability to express any concern to the Regulator which may arise at any time and the Regulator will investigate such claims.
19. The Regulator has the power under the Code to amend the TPP at any time and the public can at any time request the Regulator to consider amendments.
20. While Brookfield Rail is providing Access under an Access Agreement, or while Brookfield Rail is considering proposals for Access, the Regulator will monitor Brookfield Rail's compliance with the TPP and where it believes there is reason to do so, the Regulator may request an audit be conducted into Brookfield Rail's implementation of the TPP, and such audit will be carried out as follows:
 - a) The scope of the audit will be determined by the Regulator;
 - b) The audit will be conducted internally by Brookfield Rail in the first instance, with the Regulator to be provided with the audit findings and associated evidence; and
 - c) In the event that the Regulator is not satisfied with the internal audit conducted by Brookfield Rail, it may request that Brookfield Rail engage an independent auditor approved by the Regulator, with Brookfield Rail managing and funding the audit. The independent audit will investigate the application of the TPP with regard to the allocation of Train Paths and the final audit report will be provided to the Regulator.

DEFINITIONS

Access	<p><i>Has the same meaning assigned to “access” in Section 3 of the Code; “means —</i></p> <ul style="list-style-type: none"> a) the use of railway infrastructure; and b) where applicable, includes the exercise of other rights of the kind described in section 3A(1) of the Act”.
Access Agreement	<p><i>Has the same meaning assigned to “access agreement” in Section 3 of the Code; “means an agreement in writing under the Code between the railway owner and an entity for access by that entity”.</i></p>
Access Related Function	<p><i>Has the same meaning assigned to “access-related functions” in Schedule 4, Clause 1 of the Code; “means the functions involved in arranging the provision of access to railway infrastructure under the Code”</i></p>
Act	<p><i>Has the same meaning assigned to “Act” in Section 3 of the Code; “means the Railways (Access) Act 1998”.</i></p>
Brookfield Rail	Means Brookfield Rail Pty Ltd.
Code	Means the “Railways (Access) Code 2000” established under the Act.
Force Majeure	<p>means any cause, event or circumstance (or combination of causes, events or circumstances) beyond the reasonable control of the party claiming Force Majeure, including the following causes, events and circumstances:</p> <ul style="list-style-type: none"> a) an act of God, lightning, storm, flood, bush fire or fire, earthquake or explosion, cyclone, tidal wave, landslide, heat (including speed restrictions due to the impact of heat or other atmospheric conditions) or adverse weather conditions; b) any regional, statewide or nationwide industrial dispute not caused by or contributed to by the party claiming Force Majeure; c) an act of public enemy, war (declared or undeclared), sabotage, blockade, revolution, riot, insurrection, civil commotion or epidemic; d) the effect of any applicable laws, rules, regulations, orders, judgments, rulings, decisions, decrees or enforcement actions of any court, government, tribunal or other administrative authority which occur after the date of the Agreement and which could not reasonably have been foreseen by the party claiming Force Majeure; e) embargo or power shortage; or f) the catastrophic failure of, or the breakdown of or accident or other damage to plant, machinery or infrastructure, <p>but does not include:</p> <ul style="list-style-type: none"> g) lack of funds;

	<ul style="list-style-type: none"> h) financial hardship; i) loss of customers or loss of market share; or j) the catastrophic failure of, or the breakdown of or accident or other damage to plant, machinery or infrastructure as a result of a lack of maintenance where such maintenance would have been undertaken by a reasonable and prudent person or where the cause of the event has been the plant, machinery or infrastructure not being operated or maintained in accordance with good industry practices.
Network	<p><i>Has the same meaning assigned to “railways network” in Section 3 of the Code; “means —</i></p> <ul style="list-style-type: none"> a) all the railways that were Government railways when the Act received the Royal Assent; b) all the railways that are on land that is corridor land as defined in the Rail Freight System Act 2000; c) the railway constructed pursuant to the TPI Railway and Port Agreement; and d) any railway declared under section 3(2) of the Act to be part of the railways network;” <p>but in the context of this document is restricted to those items above listed in Schedule 2 of the Code which are controlled by Brookfield Rail and to which Brookfield Rail has a right to grant Access.</p>
Operator	<p><i>Has the same meaning assigned to “operator” in Section 3 of the Code; “means an entity to which access is provided under an access agreement”.</i></p>
Railway Owner	<p><i>Has the same meaning assigned to “railway owner” in Section 3 of the Code; “means the person having the management and control of the use of the railway infrastructure concerned”, but in the context of this Train Path Policy refers specifically to Brookfield Rail.</i></p>
Regulator	<p><i>Has the same meaning assigned to “Regulator” in Section 3(1) of the Act; “means the Economic Regulation Authority established by the Economic Regulation Authority Act 2003”.</i></p>
Route	<p>Means the routes to which the Code applies, as identified in Schedule 1 of the Code.</p>
Service	<p>Means a Train run by the Operator using the Network by which the Operator provides railway freight or passenger service.</p>
Train	<p>Means a locomotive and with or without wagons used to operate Services.</p>
Train Path	<p>Means an entitlement granted to an Operator by Brookfield Rail to operate a Service on the Network by reference to the day of the week and to departure, transit and arrival times between entry and exit points on the Network. In the case of an ad-hoc, irregular or eccentric Train Path, this definition may also include specific calendar dates on</p>

	which the entitlement is granted.
Train Path Policy (TPP)	Means Brookfield Rail's Train Path Policy, the current statement of policy referenced in Section 44(2) and approved in accordance with Section 44(3) of the Code. This document is Brookfield Rail's Train Path Policy.