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Dear Leonie

Invitation for Public Submissions – Brookfield Rail's Proposed Train Management Guidelines and Train Path Policy

BHP Billiton Worsley Alumina Pty Ltd (**Worsley**) refers to the Economic Regulation Authority (**Regulator**) invitation for submissions from interested parties on Brookfield Rail's proposed Train Management Guidelines (**TMG**) and Train Path Policy (**TPP**).

Summary

In Worsley's view, Brookfield' Rail's proposed amendments to the TMG and TPP are substantial and result in the TMG and TPP merely repeating various sections of the Railways (Access) Code 2000 (**Code**).

The effect of this is to greatly reduce the ability of both the Regulator and access seekers and users of train paths in Western Australia to ensure that:

- (a) the allocation of train paths and provisions of access to train paths; and
- (b) the principles, rules and practices which will be applied in the management of services, are fair and equitable.

Other than amendments which are required to correct inconsistencies in typography and references, Worsley submits that the proposed amendments should be refused by the Regulator.

TMG

Definition of Access Agreement and paragraphs 1.1.3 and 1.1.4

A key change to the TMG is that:

- (a) the definition of Access Agreement now only includes those access agreements negotiated under the Code;
- (b) Brookfield Rail “will only apply the TMG to operations on the Network which exist pursuant to an Access Agreement” (paragraph 1.1.3); and
- (c) Brookfield Rail may “at its absolute discretion apply the TMG to access agreements other than Access Agreements” (paragraph 1.1.4).

The existing TMG deals with the physical operation of trains regardless of whether those trains are operated inside or outside the Code. It is not practical or consistent with an open and fair access regime to have one set of rules for entities who elect access under the Code, and potentially another set for entities who elect access outside the Code.

Worsley understands that there are no existing or planned access arrangements under the Code. The proposed changes are therefore unworkable and Worsley submits that they should be refused by the Regulator.

Compliance and Review

The existing TMG grants the Regulator a regular right of review of the TMG and a regular right to audit Brookfield Rail’s compliance with the TMG.

The proposed amendments to the TMG will remove the Regulator’s review rights and restrict the Regulator’s audit rights to circumstances when an entity seeks access inside the Code or where access is provided inside the Code.

As noted above, Worsley understands there are no existing or planned access arrangements inside the Code. As a result of the proposed changes, the ability of the Regulator to carry out its intended functions would therefore be severely restricted. Worsley submits that the proposed amendments should be refused by the Regulator.

TPP

Definition of Access Agreement and paragraph 3

A key change to the TPP is that:

- (a) the definition of Access Agreement now only includes those access agreements negotiated under the Code; and
- (b) 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”.

The existing TPP deals with the allocation of train paths and the provision of access to train paths regardless of whether the train paths are, or will be, used pursuant to an agreement inside or outside the Code.

It is not practical or consistent with an open and fair access regime to have one set of rules for entities who use train paths under the Code, and potentially another set for entities who use train paths outside the Code.

Worsley understands that there are no existing or planned access arrangements under the Code. The proposed changes are therefore unworkable and Worsley submits that they should be refused by the Regulator.

Paragraphs 5 - 13

Worsley is concerned that Brookfield Rail is proposing to replace specific obligations in the existing TPP with vague statements such as “may be in a position” or “may also consider”. In Worsley’s view, the Regulator should be similarly concerned with this proposal.

The existing TPP provides a clear process for allocating and providing access to train paths during the negotiation period between Brookfield Rail and an access seeker. Worsley submits that there is no need to modify the process.

Worsley is also concerned with the proposed introduction of a test for the allocation of train paths based on satisfying “*Brookfield Rail’s commercial objectives*”.

It is logical to assume that a key commercial objective for Brookfield Rail will be to maximise profits. If access to train paths is to be allocated so as to maximise Brookfield Rail’s profits, then the access seeker willing to pay the most for access is more likely to be allocated a train path. With access rates on many routes having a large differential between floor and ceiling prices, there is a wide range of rates that can be paid and those with deepest pockets will be best able to satisfy Brookfield Rail’s commercial objective in this regard.

In Worsley’s view, determining train path allocation with reference to Brookfield Rail’s commercial objectives is not consistent with the Code’s objective to ensure that train paths are fairly allocated. Worsley submits that these proposed changes should be refused by the Regulator.

Compliance and Review

Currently, the Regulator has a regular right of review of the TMG and a regular right to audit Brookfield Rail’s compliance with the TMG.

The proposed changes to the TMG will effectively restrict the Regulator’s audit rights to those circumstances when an entity seeks access under the Code or where access is provided under the Code.

As noted above, Worsley understands there are no existing or planned access arrangements under the Code. As a result, the ability of the Regulator to carry out its intended functions is severely restricted. Worsley submits that the proposed changes should be refused by the Regulator.

General

The existing TMG and TPP contain a number of safeguards and processes which ensure a fairness and balance between Brookfield Rail and access seekers and users of train paths in Western Australia. The proposed changes to the TMG and TPP realign the commercial balance of the TMG and TPP in favour of Brookfield Rail. Worsley's submits that the proposed changes should be refused by the Regulator.

If you would like any further information in relation to this submission, please let Worsley know.

Yours sincerely

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Steve Harling
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BHP Billiton Worsley Alumina Pty Ltd