

Friday, 7 September 2012

Lyndon Rowe
Chairman
Economic Regulation Authority
PO Box 8469,
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WA 6849

Attention: Leonie Browner, Principal Regulatory Analyst

By email publicsubmissions@erawa.com.au

Dear Sir

Asciano Comments on the ERA Draft Determinations on the Brookfield Rail Revised Train Management Guidelines and Train Path Policy

Introduction

This letter is being submitted to the Economic Regulation Authority (ERA) in response to the ERA Draft Determination on the revised Brookfield Rail Train Management Guidelines (TMG) and the ERA Draft Determination on the revised Brookfield Rail Train Path Policy (TPP).

Asciano welcomes the opportunity to respond to the ERA's Draft Determinations on both the TMG and TPP. Asciano, through its subsidiary Pacific National, operates on the Brookfield Rail network between Kalgoorlie and Perth.

Comments on the ERA Draft Determination on the Revised Brookfield Rail Train Management Guidelines

Asciano generally supports the ERA's Draft Determination although Asciano does have a remaining specific concern as outlined below:

Application of the TMG to Access Agreements Made Outside the Code

Asciano recognises that rail access legislation allows Brookfield Rail to negotiate access agreements outside the Code and that potentially the TMG may not necessarily apply to these access agreements negotiated outside the Code. However, as the ERA note in their Draft Determination this may create safety issues. As such Asciano is seeking that Brookfield Rail clarify how the TMG will be applied to any access agreements outside the Code.

Requirement for Brookfield Rail to Consult with Operators Prior to Performing Repairs or Taking Possession of the Network

In its previous submission Asciano identified concerns with the proposed TMG clause 3.5.1 which dealt with Brookfield Rail performing repairs or taking possession of the network with potentially no consultation with operators. Asciano's concerns with this clause in the proposed TPP have been largely addressed by the required ERA amendments.

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Audit of Brookfield Rail Compliance

In its previous submission Asciano identified concerns with the proposed TMG clause 4.1.2 which restricted the number of ERA audits of Brookfield Rail's compliance to one every two years. Asciano's concerns with this clause in the proposed TPP have been largely addressed by the required ERA amendments.

Comments on the ERA Draft Determination on the Revised Brookfield Rail Train Path Policy

Asciano generally supports the ERA's Draft Determination although Asciano does have remaining specific concerns as outlined below:

Application of the TPP to Access Agreements Made Outside the Code

Asciano recognises that rail access legislation allows Brookfield Rail to negotiate access agreements outside the Code and that the TPP does not necessarily apply to these access agreements negotiated outside the Code.

However, Asciano has concerns as to the practicality of allocating train paths via two separate, and potentially inconsistent, processes. As such Asciano is seeking that Brookfield Rail clarify how the allocation of paths under two potentially separate regimes will operate in practice.

Identification of Underutilised Train Paths

In its previous submission Asciano identified concerns with the proposed TPP clauses 16 and 17 which dealt with the identification of underutilised train paths and actions following from that identification. Asciano's concerns with these clauses in the proposed TPP have been largely addressed by the required ERA amendments.

Audit of Brookfield Rail Compliance

Clause 20 deals with an audit of Brookfield Rail's compliance with the TPP. The ERA proposes that the audit be held every two years. Asciano believes that the ERA should not be constrained by limiting the number of audits which may occur in a set time period. If the ERA believes a further audit is required such an audit should not be prevented by the fact that an audit has occurred in the previous two years. Asciano had previously raised this issue in relation to the TMG. Asciano notes that the ERA is requiring an amendment of the TMG to allow special audits at any time where assurance is required; Asciano believes that a similar requirement should be included in the TPP.

If you wish to discuss this response please contact me on (02) 8484 8056.

Yours faithfully



Stuart Ronan
Manager Access and Regulation

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