

Public Submissions – Draft Determination on Brookfield Rail’s Proposed Train Path Policy

Co-operative Bulk Handling Limited (**CBH**) makes the following submissions in relation to the Economic Regulation Authority’s (**Authority**) Draft Determination on Brookfield Rail’s proposed revised Train Path Policy (**TPP**).

These submissions adopt the defined terms used by the Authority in its draft determination.

Paragraphs 1- 4 - Background / Goals of Train Path Policy

CBH notes the submissions received by the Authority from QRN, DAF, Alcoa and Worsley raising their concerns regarding the application of the proposed TPP to access arrangements inside the Code rather than to all access arrangements inside or outside the Code.

The Authority provides at paragraph 37 of the draft determination that any change to the Code to address this concern is outside of the scope of this review, and has not been addressed by the Authority.

Further, the Authority states at paragraphs 40 and 41 of the draft determination that section 4A of the Code does not oblige Brookfield Rail to extend the TPP to all track access arrangements, including arrangements made outside of the Code.

CBH understands that the Authority is currently reviewing the proposed TPP and not the Code. However, the similar concerns raised by the majority of the submissions regarding the application of the TPP to access agreements inside and outside of the Code can only be addressed by reconsidering section 4A of the Code. It appears that this TPP review process has only now awakened rail participants to the consequences of the insertion of section 4A of the Code back in June 2009.

CBH requests that the shared concerns raised by CBH, QRN, DAF, Alcoa and Worsley be looked into further by the Authority using its powers under section 49 of the Code.

Paragraphs 10- 14 – Guidelines for Allocating Train Paths in Access Agreements / Disputes Regarding Train Path Allocation

The Authority has assessed that Brookfield Rail’s proposed TPP should be amended to either provide a complete categorisation of all train path types, or to delete the categorisation of train paths altogether.

CBH strongly opposes the deletion and removal of the references to, and definition of, Condition Train Paths.

CBH refers to pages 3 and 4 of its original submissions which provides:

“During the review of the TPP in 2006, and without any CBH input, the Regulator’s Draft Determination on the Proposed TPP dated 10 May 2006 (at paragraph 70) provided:

“The Authority understands that the traffic specific concept has specific application in the transport of bulk commodities. With the expected increase in the transport of bulk commodities through expansions in the alumina industry and the expected development in iron ore projects in the mid-west

region of the state there may be a future requirement for traffic specific capacity within the context of conditional train paths. The Authority agrees with PN, that with the introduction of this type of train path greater competition in the "above rail" market will be encouraged. As one of the objectives of the WA Rail Access Regime is to promote competition in the "above rail" market, the Authority believes that traffic specific capacity should be introduced as part of the conditional train path process."

Again, without any CBH input, the Regulator's Final Determination and Approval of the Proposed TPP dated 28 August 2006 (at paragraphs 45 to 47) provided:

"45. The Authority supports the draft recommendation for traffic specific capacity where rail lines carry a single type of bulk commodity displaying multiple source single destination route characteristics. However, the Authority recognises that these characteristics do not exist in the existing freight network except for the grain lines which are under-utilised. The Authority considers that while this may be the current situation, the expected development of new iron ore projects in the mid-west region of the state may cause a future requirement for traffic specific capacity within the context of conditional train paths.

46. Having considered the issues raised in the submissions from DPI, WNR and Worsley, the Authority is of the view that making provision for traffic specific capacity in the proposed TPP is premature at this stage. The Authority will monitor the situation and should the need arise the Authority has the ability under section 9 of the TPP to require an appropriate change to this document. "

Significant changes to the West Australian economy have occurred since 2006. Led by the mining boom and overseas demand for West Australian resources (namely iron ore), exports at the main ports have grown drastically.

For example, from the Geraldton Port Authority's website (<http://www.gpa.wa.gov.au/>):

"Trade growth has seen Geraldton port move from a five million tonne per annum port five years ago to reach 10 million tonnes for the first time last financial year. Strong growth is set to turn into stronger growth as iron ore ramps up in 2012. Today's ten million tonne port will be 2014's fifteen million tonne port. With the addition of Oakajee to the GPA portfolio, the Ports of Geraldton & Oakajee become the Mid West's sixty million tonne gateway to opportunity."

And from page 14 of the 2011 Annual Report published by the Esperance Ports Sea & Land:

"Esperance Port has embarked on a process to investigate the potential development of a multi user iron ore export facility to provide an additional 20 million tonnes a year export capacity. The Port's current operating license approves the export of 11.5 million tonnes a year. Increasingly, potential iron ore exporters from the Yilgarn Region have indicated that they wish to export from Esperance."

Further, at page 17 of the 2011 Annual Report:

“Iron ore exports have progressively risen from 2.5 million tonnes in 2001 to the current levels of 8.8 million tonnes in 2010-11 with only minor improvements being made to plant and equipment.”

With the drastic increase in iron ore exports, train path capacity to ports such as Geraldton and Esperance are already fully utilised. This has been to the detriment of grain which is being marginalised and squeezed out from accessing the ports by rail as train paths are allocated to the miners.

Given the seasonal nature of grain, it is difficult for any rail transporter of grain to ensure that “concentric” or “eccentric” train paths are utilised in full from year to year. In a drought season, even if a “concentric” or “eccentric” grain path is allocated to a grain transporter, there is a real risk that the grain transporter will fail to meet the standard utilisation tests and lose its train path.

A means to ensuring greater competition in the “above rail” market; ensuring that other product types (other than iron ore) have access to constrained train path capacity at the ports; and to account for the seasonality of grain is to codify the conditional train path concept process.

As the Authority has previously flagged in 2006, the expected development of new iron ore projects may cause a requirement for traffic specific capacity within the context of conditional train paths. Given the significant developments of the West Australian mining industry since 2006 (only part of which is summarised above), CBH submits that the Authority should act consistent with its previous statements and use its powers to amend the proposed TPP to include conditional train paths for grain. In doing so, the Authority’s recommendation to remove the categorisation and definition for conditional train paths should be revoked.

Deleted Sections – Rights to Sell a Train Path

CBH recognises and agrees with the Authority’s recommendation that section 4 of the current TPP, which allows an operator to on sell a Train Path to another operator, remain in the proposed TPP.

However, CBH does not consider that this on sell right should only be included in the absence of provisions allowing for surge capacity (or for that matter, reduced capacity, such as during periods of drought). As discussed above, CBH strongly contends that the conditional train path concept should remain and be enhanced in light of the constraints the mining sector has placed on train path availability. The on sell rights ought to supplement a conditional train path regime not replace it.

While CBH is supportive of retaining the on sell rights, there is a fundamental problem with this process if the proposed TPP is solely to apply to access agreements made under the Code.

If the proposed TPP is accepted in its current form, the TPP will *not* apply to access agreements made outside of the Code, meaning that the section 4 regime will not apply to train paths allocated under these agreements. If this is the case, CBH does not understand how the section 4 on sell/trading process will work practically as it will require, at a minimum, the operator wishing to sell a train path to have its access agreements made under the Code.

As the Authority is aware, since the introduction of the Code, there are currently no access arrangements made under the Code. Therefore all train paths so far have been allocated outside of the Code.

A practical example may better explain this conundrum. If a current operator wishes to on sell or trade a train path, that operator will not be able to use the section 4 process under the proposed TPP (assuming there is no on sell/trade provision in their access agreement). The on sell /trade process in the proposed TPP would only work in the very limited circumstance where an operator has obtained access under the Code and then wishes to sell or trade its train path.

The on sell/trade process does not work as proposed by the Authority and, in the absence of any provisions allowing for surge capacity, provides little protection to those operators seeking to use another operator's train paths.

CBH appreciates the opportunity to comment on the draft determination.