



Mr Jeremy Threlfall
Assistant Director Rail
Economic Regulatory Authority
PO Box 8469
PERTH BC
WA 6849

11 June 2013

Dear Mr Threlfall,

Aurizon welcomes the opportunity to make this public submission regarding the Economic Regulatory Authority's (ERA) determination on The Pilbara Infrastructure Pty Ltd (TPI) floor and ceiling costs.

Aurizon is Australia's largest rail freight company with services operating across five states. In 2011/12, Aurizon transported more than 250 million tonnes of freight including coal, iron ore, other minerals, agricultural products and general freight. The company also operates and manages the 2,670 kilometre Central Queensland Coal Network that links mines to coal ports at Bowen, Mackay and Gladstone. Previously known as QR National, Aurizon has more than 147 years of rail freight industry experience.

Aurizon has a significant interest in Western Australia, both as an operator on the network managed by Brookfield Rail and as a potential provider in the Pilbara through the Pilbara Independent Rail Alliance with Brockman Mining Limited and Atlas Iron Ltd. This Alliance is currently evaluating the integration of a new, independent, multi-user railway connecting iron ore mines in the East Pilbara with the proposed North West Infrastructure port development in South West Creek at Port Hedland. Aurizon also continues to investigate opportunities within its existing operating footprint in Western Australia.

Aurizon notes that, whilst there are two pathways under the Code¹ by which the ERA may make a determination on a railway owner's floor and ceiling costs², this determination is to be made in accordance with schedule 4, clause 10. As such, Aurizon acknowledges that the ERA is not required to invite submissions relating to this determination of costs and therefore welcomes the transparency provided by the ERA's approach.

1. Confidentiality of cost information

TPI has requested that its proposed floor and ceiling costs remain confidential and the ERA has agreed to this request under section 50(3) of the Code. Aurizon acknowledges that it is necessary, on occasion, for confidentiality to be maintained in otherwise public regulatory processes. However, of interest to Aurizon is whether there are in fact elements of TPI's initial determination of costs that can now be provided publicly through

the regulatory process, the disclosure of which will aid the transparent assessment by the ERA of the issues at hand.

For example, section 48 of the Code requires the railway owner to provide the floor and ceiling costs together with costs for each route section to any proponent within 7 days of the receipt of the proposal. Through this mechanism, on the 30 May 2013, the West Australian newspaper published a ceiling cost of \$576M and a floor cost of \$73.4M.

Recommendation: ERA to assess whether all elements of TPI's initial determination are confidential, particularly given the operation of section 48.

2. Assessing the reasonableness of cost inputs

As the railway manager of the Central Queensland Coal network and a railway operator with operations spanning seven network providers, five access undertakings and five access statutes, Aurizon has significant expertise in both developing and assessing efficient access prices.

With this background, Aurizon is concerned that what is essentially the first determination by the ERA on TPI's floor and ceiling costs, may become a precedent for future access pricing in circumstances where interested parties have not had the opportunity to review and comment on either compliance with the costing principles or the reasonableness of the inputs.

This is a particular risk with regard to TPI as, unlike Brookfield Rail's network, the ERA did not make a clause 9 determination of floor and ceiling costs when the Act and the Code first applied³, nor has TPI been required to publish a public version the costing model applicable to TPI⁴.

The ERA has previously expressed the view that it “envisages only limited circumstances under which a railway owner would choose to submit an initial determination which coincides with an earlier determination for the purposes of meeting the requirements of section 10 or 9 of the Code”⁵. Aurizon is of the view that given the cost associated with establishing the modern equivalent asset value, it is unlikely that the railway owner would commission an independent review in the short to medium term unless there is a material change in circumstances. As such, future determinations in the short to medium term will likely be based on the initial determination of asset value. Indeed TPI's Costing Principles include a provision to allow indexation of the floor and ceiling costs “to reflect a reasonable return to TPI over the five year period without requiring TPI or the ERA to redetermine costs over that period.”⁶

Aurizon acknowledges the legislated timeframes available to the ERA in making a determination on TPI's floor and ceiling costs and is conscious that a delay in the regulatory process may have a significant commercial impact on Brockman Mining. As such, Aurizon considers that its concerns with regard to the current process and transparency of the floor and ceiling costs may be met by the commencement of a separate clause 9 determination of TPI's floor and ceiling costs. This process would align with the ERA's accepted process of requiring an initial determination when the Code first applies to a railway network. In addition, under a clause 9 determination the ERA only has to consider it likely that a proposal will be made to the railway owner – in recent times there has been considerable publicity with regard to the possibility of further access proposals by both Flinders Mines and Winmar Resources⁷ that may justify such a review and potentially reduce delays to the process.

Recommendation: ERA to consider a parallel clause 9 determination of TPI floor and ceiling costs.

For further information with regard to this submission please contact Rachel Martin, Senior Regulatory Strategist on (07) 3019 5476.

Yours faithfully,



Mr Samuel McSkimming
Manager Regulatory Strategy
National Policy

¹ Railways (Access) Code 2000

² Schedule 4 of the Code provides for either a clause 9 determination if the regulator considers that it is likely that an access proposal will be made to the railway owner in respect of a route or a clause 10 determination where an access proposal has been made and the regulator has not exercised its rights under clause 9.

³ ERA, Final Decision, Review of the Requirements for Railway Owners to Submit Floor and Ceiling Costs, August 2011, page 4. The ERA stated that item 26, that the review was suspended on the basis of the need for costs associated with the operating the Cloudbreak to Port Hedland route to be re-assessed as a result of a subsequent expansion.

⁴ Indeed the ERA stated in the final review of the requirements for Railway Owners to Submit Floor and Ceiling Costs that the most useful component of existing determinations is the railway owner's costing model (item 73).

⁵ ERA, Final Decision, Review of the Requirements for Railway Owners to Submit Floor and Ceiling Costs, August 2011, page 11.

⁶ The Pilbara Infrastructure Pty Ltd, Railways (Access) Code 2000 Costing Principles, May 2013, page 18.

⁷ Matthew Hope, Credit Suisse, Fortescue Metals Group Company Update, 27 May 2013, page 13