

Roy Hill Infrastructure Pty Ltd proposed Train Management Guidelines

Draft Decision

March 2017

Economic Regulation Authority

WESTERN AUSTRALIA

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Invitation to make submissions

Interested parties are invited to make submissions on the Draft Decision by 21 April 2017 via:

Online portal: <https://www.erawa.com.au/consultation>
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CONFIDENTIALITY

In general, all submissions from interested parties will be treated as being in the public domain and placed on the Authority's website. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed, and specify in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the provisions of Section 55 of the *Economic Regulation Authority Act 2003*.

The publication of a submission on the Authority's website shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority.

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Introduction

1. Sections of the *Railways (Access) Code 2000 (Code)* that are relevant to the establishment of a railway owner's Train Management Guidelines are:
 - Section 43 of the Code requires a railway owner to prepare and submit to the regulator a statement of the principles, rules and practices (the **Train Management Guidelines**) that are to be followed by the railway owner in relation to a part of the railways network to which the Code applies when the railway owner is performing its functions in relation to that part.
 - Section 45 of the Code requires the Regulator to call for submissions on any statement prepared by a railway owner under section 43.
 - Section 16(2) of the Code requires that in the negotiation of access arrangements, the railway owner must not discriminate between the proposed rail operations of the proponent and the rail operations of the railway owner, including in relation to the allocation of train paths, the management of train control, and operating standards.
2. On 11 October 2016, Roy Hill Infrastructure (**RHI**) submitted Train Management Guidelines for the Authority's approval. The Authority published RHI's proposed Train Management Guidelines and called for submissions on 25 October 2016.
3. The Pilbara Infrastructure Pty Ltd was the sole submission received and is very brief. It expresses support for all of the regulatory instruments proposed by RHI without providing specific comment on any provisions of the proposals.

Draft Decision

4. This document:
 - Summarises each part of RHI's proposed Train Management Guidelines, relates these to the relevant provisions of the Code, and compares each part with the provisions of other railway owners' approved Train Management Guidelines where relevant;
 - Provides the Authority's assessment of relevant issues; and
 - Specifies the Authority's required amendments where appropriate.

Part 1 - Introduction

5. Part 1 of the proposed Train Management Guidelines provides background, a purpose statement, and some notes on the application and amendment of the Train Management Guidelines.
6. Parts 1.1(a) and 1.1(b) of the proposed Train Management Guidelines are similar to 1.1 of TPI's Train Management Guidelines, describing the railway and the obligations on the railway owner to prepare and submit Train Management Guidelines.

7. Parts 1.1(c) and 1.1(e) proposes a “run-when-ready” philosophy, and defines that to mean the alignment of scheduling to optimally meet RHIO’s¹ production requirements.
8. Part 1.1(d) of the proposed Train Management Guidelines states that the operational planning and execution of all activity will be at the discretion of the RHI train control team.
9. Part 1.2 of the proposed Train Management Guidelines outlines the purpose the Guidelines. This part is equivalent and similar to part 1.2 of TPI’s Train Management Guidelines except that the RHI proposed Guidelines:
 - asserts the priority of the RH Requirements² and the RHI “run when ready” philosophy over the Train Management Guidelines;
 - does not refer to the purpose of the Train Management Guidelines as providing a framework to resolve conflicts between Operators;
 - does not refer to Section 16 of the Code regarding non-discrimination.³
10. Part 1.3 of the proposed Train Management Guidelines outlines that the guidelines apply to all operators who receive “Services”⁴ on the RHI railway. Part 1.3, taken together with Part 2.1 of the proposed Train Management Guidelines is equivalent and similar to Part 1.3 of TPI’s Train Management Guidelines dealing with “pre-conditions” for operating a service, except in the following respects:
 - The word “Service”⁵ is defined differently in the RHI and TPI documents; and
 - RHI’s proposed Train Management Guidelines do not refer to provision of an Operator’s Train Manifest.⁶
11. Part 1.4 of RHI’s proposed Train Management Guidelines allows RHI at its reasonable discretion to amend the Train Management Guidelines in accordance with the “Access Regime”⁷ where the Access Regime is applicable, or otherwise subject to an Operators Access Agreement.

Authority Assessment

12. Train Management Guidelines cannot be made subservient to the operating requirements of a customer of RHI’s own above-rail operation.

¹ Undefined in the document, but presumed to mean Roy Hill Iron Ore.

² The RH Requirements are defined as the technical performance and operational standards in connection with any aspect of the Roy Hill Project, including the RH Financier Assumptions.

³ In particular s.16(2)(b) which includes “the railway owner must not unfairly discriminate between the proposed rail operations of a proponent and the rail operations of the railway owner including in relation to the management of train control”.

⁴ “Services” is defined as meaning access to the RHI railway and other facilities as agreed to in an access agreement.

⁵ “Service” is defined in both the BR and TPI Train Management Guidelines as a train run by the Operator using the railway network by which the Operator provides freight or passenger services, which is the usual industry use of the word.

⁶ Document describing or itemising the freight being hauled.

⁷ “Access Regime” means any regime under a statute governing the provision of access to Services on the RHI Railway, including (a) the Act and the Code; or (b) an Access undertaking under the *Competition and Consumer Act 2010*.

13. The Train Management Guidelines must acknowledge the non-discrimination provisions of Section 16 of the Code.
14. In respect of RHI's definition of the term "Service", it is not useful to have terms defined differently in railway owners' regulatory instruments, especially when it is an industry-standardised term. RHI has defined the term "Service" to mean "access" and the term is therefore redundant.
15. The Train Management Guidelines should refer to a Train Manifest, as this is an industry standard practice for the purposes of train control and capacity management.
16. In respect of Part 1.4, the WA Rail Access Regime⁸ alone is relevant to the amendment of documents approved under the Regime. Further, an Operator is by (Code) definition party to an Access Agreement (as defined correctly by RHI as an agreement in writing under the Code for access) and therefore the Train Management Guidelines may only be amended in accordance with the relevant provisions of the Code.

Required Amendment 1

Part 1 of RHI's proposed Train Management Guidelines should be amended such that:

- Parts 1.1(c) and (e) are deleted.
- Parts 1.2 and 1.3 are deleted and replaced with text equivalent to Parts 1.2 and 1.3 of TPI's Train Management Guidelines dealing with the purpose and pre-conditions of the Train Management Guidelines.
- Part 1.4 is deleted.

Part 2 – Contractual Arrangements

17. Part 2 of RHI's proposed Train Management Guidelines provides further background to the proposed Train Management Guidelines in relation to access agreements.
18. Part 2 in its various sections refers to Operators' rights to "Services",⁹ the limitation on the rights of an Operator under an access agreement, the predominance of an access agreement over the Train Management Guidelines, and the predominance of the Train Path Policy over the Train Management Guidelines.

Authority Assessment

19. It is not appropriate for the Train Management Guidelines to assert the predominance of the Train Path Policy over the Train Management Guidelines. The purpose of the Train Path Policy is to inform the negotiation and making of an access agreement.

⁸ As the Act and the Code are commonly referred to as being in the WA Jurisdiction.

⁹ Notwithstanding the industry-standard use of the term Service meaning a train providing freight or passenger services.

Once an access agreement has been made, the principles of the Train Path Policy will be reflected in the allocation of train paths in the agreement.

20. The purposes of the Train Path Policy and the Train Management Guidelines are quite separate with neither predominant over the other, and an access agreement does not have predominance over either.
21. Further to paragraph 14, the use of the word “service” by RHI is not appropriate in the context of Part 2 of the proposed guidelines. Part 2.1 states that “a person must have an Access Agreement to receive Services from RHI”. If ‘Services’ is taken to mean access to the railway, then this statement is not correct, as ‘access agreement’ is a Code-defined term meaning an agreement under the Code for access. Further, access may also be provided outside the Code, that is, not under an access agreement.
22. The reference to the access agreement between the railway owner and the Operator, as outlined in Part 1.3 of TPI’s Train Management Guidelines (referred to in Required Amendment 1) would be sufficient for the purposes of RHI’s Train Management Guidelines.

Required Amendment 2

Part 2 of RHI’s proposed Train Management Guidelines should be deleted.

Part 3 – Scheduling Principles

23. Part 3 of RHI’s proposed Train Management Guidelines provides for the forecasting of train path requirements and the making of weekly, quarterly and annual schedules.
24. Part 3.1 outlines the Operators’ responsibilities to provide periodic forecasts. The forecasts are proposed to be made in terms of “Services” and “Service Requirements”, and to be made subject to “Disclosed Requirements”.¹⁰
25. Part 3.2 outlines the making of annual, quarterly and weekly schedules by RHI. The Schedules are proposed to be made in terms of “Reference Trains” nominated by RHI.¹¹
26. Part 3.3 details the proposed protocol for finalisation of 72 hour plans.¹² Part 3.3(b) contains provisions for RHI to depart from the 72 hour plan “in accordance with the RH Requirements and RHI’s run when ready operational philosophy”.

Authority Assessment

¹⁰ “Disclosed Requirements” is not effectively defined in the Train Management Guidelines. Disclosed Requirements are defined in RHI’s proposed Train Path Policy (Part 4.8(a)) as those RH requirements which are disclosed to the Operator.

¹¹ “Reference Trains” are not defined in the proposed Guidelines.

¹² RHI has proposed that it will on each day finalise a plan (72 Hour Plan) for a portion of the Weekly Schedule for the next 72 hours of operations across the RHI Railway and provide to each Operator that portion so far as it relates to the Operator.

27. The form of planning and scheduling in the proposed Train Management Guidelines is different to the BR and TPI Train Management Guidelines which use the concept of a “Master Train Plan”. The Master Train Plan concept is the industry standard means of planning to accommodate a train configuration nominated by an operator, as detailed in the operator’s “Train Manifest”.
28. The prospect of RHI scheduling services based on a ‘reference train’ rather than on the operator’s actual consist¹³ as specified in its Train Manifest is divergent from the form of Train Management Guidelines approved for other railway owners in WA. This form of scheduling would provide less certainty to Operators in their running of services and associated operations planning, such as train maintenance and supply chain considerations.
29. In order for Part 3 of RHI’s proposed Train Management Guidelines to be accepted, the Authority would require inclusion of further detail on the operation of a capacity management scheme based on a ‘reference train’ concept. Further details would include a definition of the ‘reference train’ and a description of the application of the reference train in a Traffic Management Matrix or Master Train Plan context.
30. RHI’s proposal that the forecasting and scheduling protocols outlined in this part be subservient to “RH Requirements” or “Disclosed Requirements” is not accepted.
31. Part 3 of RHI’s proposed Train Management Guidelines in its current form is not accepted.

¹³ The components in sequence that make up a train.

Required Amendment 3

Part 3 of RHI's proposed Train Management Guidelines should be deleted and replaced with text equivalent to Part 2 of TPI's Train Management Guidelines;

Or

Part 3 of RHI's proposed Train Management Guidelines should be amended such that:

- all references to "RH requirements", "Disclosed Requirements", "RHI's run when ready operational philosophy" and "RHI's run when ready operational strategy" are removed,
- the word "service" is replaced with "train path" or "entitlement to a run service",
- a definition of "reference train" is provided, and sufficient detail on the relevance of the reference train in the context of established capacity management techniques is included.

Part 4 – Day of operations management

32. Part 4 of RHI's proposed Train Management Guidelines provides protocols for real time ("Day of Operation") management of services.
33. Parts 4.1 - 4.5 address similar matters to those addressed in Part 3 of the TPI Train Management Guidelines; that is, early and late trains, and the issuing of instructions.
34. Parts 4.6 - 4.8 address matters including possessions¹⁴ for network repairs, management of emergencies, network blockages and disputes, which are similar to matters addressed in Part 4 of the TPI approved Train Management Guidelines.
35. Part 4 of RHI's proposed Guidelines do not address some matters such network blockages and disputes, as dealt with in Part 4 of TPI's Train Management Guidelines.
36. Parts 4.9 and 4.10 of the proposed Guidelines outlines the application of "RH Requirements" and the disclosure of requirements to Operators.

Authority Assessment

37. The provisions of Part 4 of RHI's Train Management Guidelines are accepted with the following qualifications:
 - The provisions of the Train Management Guidelines may not be made subservient to "RH Requirements" or "Disclosed Requirements"; and
 - The use of the word "service" is problematic and may be confusing, for example in Part 4.7(a)(ii) wherein the following words are used "Operators whose Services

¹⁴ Possession is defined in the Train Management Guidelines as the closure, occupation, use or other removal from service by RHI or its workers of part of the RHI Railway for the purposes of carrying out maintenance, enhancement, or other work on or near the RHI Railway, which does or is reasonably likely to Disrupt or otherwise adversely impact on the provision of Services.

are or may be affected by a possession". It is not clear whether the operator's train itself or the train path is affected.

38. Further detail is required to address the matters of network blockages and disputes.

Required Amendment 4

Part 4 of RHI's proposed Train Management Guidelines should be amended such that:

- All references to "RH requirements" and "Disclosed Requirements" are removed.
- The word "service" is replaced with "train path" or "entitlement to run a service".
- Parts 4.9 and 4.10 are removed.
- Text equivalent to Parts 4.2, - 4.5 of TPI's Train Management Guidelines are included.

Appendix 1 Summary of Required Amendments

Required Amendment 1

Part 1 of RHI's proposed Train Management Guidelines should be amended such that:

- Parts 1.1(c) and (e) are deleted.
- Parts 1.2 and 1.3 are deleted and replaced with text equivalent to Parts 1.2 and 1.3 of TPI's Train Management Guidelines dealing with the purpose and pre-conditions of the Train Management Guidelines.
- Part 1.4 is deleted.

Required Amendment 2

Part 2 of RHI's proposed Train Management Guidelines should be deleted.

Required Amendment 3

Part 3 of RHI's proposed Train Management Guidelines should be deleted and replaced with text equivalent to Part 2 of TPI's Train Management Guidelines;

Or

Part 3 of RHI's proposed Train Management Guidelines should be amended such that:

- all references to "RH requirements", "Disclosed Requirements", "RHI's run when ready operational philosophy" and "RHI's run when ready operational strategy" are removed,
- the word "service" is replaced with "train path" or "entitlement to run service",
- a definition of "reference train" is provided, and sufficient detail on the relevance of the reference train in the context of established capacity management techniques is included.

Required Amendment 4

Part 4 of RHI's proposed Train Management Guidelines should be amended such that:

- All references to "RH requirements" and "Disclosed Requirements" are removed.
- The word "service" is replaced with "train path" or "entitlement to run a service".
- Parts 4.9 and 4.10 are removed.
- Text equivalent to Parts 4.2, - 4.5 of TPI's Train Management Guidelines are included.