

# Roy Hill Infrastructure Pty Ltd Proposed Over-payment Rules

Final Decision

June 2017

Economic Regulation Authority

WESTERN AUSTRALIA

## Economic Regulation Authority

4<sup>th</sup> Floor Albert Facey House  
469 Wellington Street, Perth

**Mail to:**

Perth BC, PO Box 8469  
PERTH WA 6849

**T:** 08 6557 7900

**F:** 08 6557 7999

**E:** [records@erawa.com.au](mailto:records@erawa.com.au)

**W:** [www.erawa.com.au](http://www.erawa.com.au)

National Relay Service TTY: 13 36 77  
(to assist people with hearing and voice impairment)

We can deliver this report in an alternative format for those with a vision impairment.

© 2017 Economic Regulation Authority. All rights reserved. This material may be reproduced in whole or in part provided the source is acknowledged.

## Contents

<b>Introduction</b>	<b>1</b>
<b>Part 2 – Basis of Over-payment Rules</b>	<b>2</b>
<b>Part 3 – Allocation of an Over-payment</b>	<b>6</b>
<b>Part 4 - The Over-payment Rules</b>	<b>7</b>
<b>Part 5 – Application of the Over-payment Rules</b>	<b>11</b>

## Introduction

1. The *Railways (Access) Code 2000* (**Code**) establishes the need for a railway owner to prepare and submit to the Regulator (the Economic Regulation Authority (**Authority**)) a statement of the rules (**Over-payment Rules**) that are to apply where breaches of clause 8 of Schedule 4 occur on the part of the railway owner that could not reasonably be avoided. Clause 8 of Schedule 4 sets out the maximum amount of the total costs attributable to a route that the railway owner is allowed to recover.
2. The Code requires that the Over-payment Rules must give effect to the following basic requirements:<sup>1</sup>
  - the excess referred to in clause 8(4) of Schedule 4 in respect of an operator or group of operators must at all times be within a limit, being a percentage of the relevant costs, from time to time notified in writing to the railway owner by the Regulator;
  - at the expiry of each successive period of 3 years from the commencement of access by an operator or group of operators there must be no such excess in respect of that operator or group of operators.
3. Clause 8 of Schedule 4 to the Code requires, among other things, that the total of all payments to the railway owner and the revenue attributable to its own operations on the route, must not be more than the total costs attributable to the route.
4. The Code does not contain any provisions relating to consultation associated with the Regulator's approval of Over-payment Rules. The Code also provides for amendment or replacement of the Over-payment Rules by the railway owner or the Regulator.<sup>2</sup>
5. On 11 October 2016, Roy Hill Infrastructure (**RHI**) submitted Overpayment Rules for the Authority's approval. The Authority published a draft decision in respect of the proposed rules and called for submissions on 24 March 2017.
6. A submission was received from RHI. That submission has been published on the ERA website.

## Final Decision

7. This document:
  - Summarises issues and required amendments identified by the Authority in each part of RHI's proposed Over-payment Rules;
  - Summarises responses from RHI to each of these issues, as laid out in RHI's submission; and
  - Specifies the Authority's final required amendments where appropriate.

---

<sup>1</sup> Section 47 (2) of the *Railways (Access) Code 2000*.

<sup>2</sup> Section 47 (4) of the *Railways (Access) Code 2000*.

## Part 2 – Basis of Over-payment Rules

### References to “Regime” and “non-Regime”

8. Part 2 of RHI’s proposed Over-payment Rules is identical in layout and substantially identical to the Over-payment Rules in place for Brookfield Rail (**BR**) and The Pilbara Infrastructure (**TPI**), except for the conflation of the terms “Regime Revenue”/“Non-Regime Revenue” in RHI’s proposed instrument with “Access Revenue”/“Non-Access Revenue” used in BR’s and TPI’s Over-payment Rules.
9. The terms “regime” and “non-regime” in the BR and TPI Over-payment Rules are used in order to distinguish between payments made by operators<sup>3</sup> and by other entities in respect of the ‘Ceiling Price Test’ at Clause 8 of Schedule 4 to the Code. At subclause 8(3), it becomes a requirement that the sum of payments to the railway owner by (i) all operators, and (ii) all other entities, including the railway owner in respect of its own operations, must not be more than Total Costs.
10. The use of the terms “regime” and “non-regime” to distinguish between operations “inside and outside the Code” is not required, and does not add clarity to the proposed Over-payment Rules. Further, the Code does not define these terms.
11. The Code defines the term ‘Operator’ as an entity to which access is provided under an access agreement. For the purposes of the Over-payment Rules, “other entities” are entities (including the railway owner in respect of its own operations) which undertake operations on the railway owner’s network otherwise than under an access agreement. This distinction is not clear in Section 47 of the Code (“Over-payment Rules”) but is made clear in subclause 8(3) (“Ceiling Price Test”) of Schedule 4 to the Code.
12. In view of the distinction provided by the Code, and notwithstanding the approval of BR’s and TPI’s Over-payment Rules, the Authority considers that the use of the term “regime” and “non-regime” is redundant in RHI’s proposed Over-payment Rules, and that an adequate distinction may be made between entities provided with access inside and outside the “regime” by using the Code-defined terms “operator” and “entity”.
13. “Access” is a code-defined term and means “the use of railway infrastructure”. The use of the term “access” is not confined to access under the Code, and may be applied to use of the railway infrastructure by operators, or by entities who have negotiated access outside the Code.<sup>4</sup>
14. The terms “access” and “non-access” appear in other railway owners’ Over-payment rules. BR first proposed the use of these terms to allow for consideration of capital contributions made by operators as part of access agreements, and also by the government, principally by Main Roads WA for level crossings on the SW freight network.
15. That consideration was initially, in BR’s case, a means of incorporating capital contributions in respect of a route section as annualised revenue, rather than requiring

---

<sup>3</sup> Operators defined in the Code as “an entity to which access is provided under an access agreement”.

<sup>4</sup> The term “access agreement” however, is a Code-defined term which means “an agreement in writing under this Code between the railway owner and an entity for access by that entity” and cannot be used in conjunction with access negotiated outside the Code by entities other than operators.

the subtraction of the capital amounts from the Gross Replacement Value of the route for the purposes of determining the total cost referred to in the Ceiling price test (clause 8 of Schedule 4 to the Code).

16. The Authority considers that the use of any terms which are not Code-defined should be consistent across railway owners' instruments, and that if RHI is to use the terms "access/non-access" in relation to payments or revenue, then they should be used in a manner consistent with BR and TPI in their Over-payment Rules.
17. In its Draft Decision, the Authority required that the words "Regime Revenue"/"Non-Regime Revenue" are replaced with "Access Revenue"/"Non-Access Revenue" in 2.3(a) and 2.3(b).
18. In its submission, RHI stated:
 

*The reason why RHI used the terms "Regime Revenue/Non Regime Revenue" is because these terms better reflect the revenue referred to – for example, in the Over-payment Rules approved by the Authority for the Pilbara Infrastructure (TPI) and Brookfield Rail (BR) the term "Non Access Revenue" refers to revenue paid to the railway owner for access to the railway, but outside the railway access regime. It is confusing to define non-Access revenue to be revenue derived from granting access to the railway. Therefore RHI considered that the terms Regime Revenue and Non Regime Revenue were preferable.*
19. The above statement is incorrect and contradicts the detailed explanation of the origin of the term "Access Revenue" and "Non-Access Revenue" provided by the Authority at paragraph 28-30 of the Draft Decision.<sup>5</sup>
20. The Authority confirms its requirement that the words "Regime Revenue"/"Non-Regime Revenue" are replaced with "Access Revenue"/"Non-Access Revenue" in 2.3(a) and 2.3(b).

#### **Use of the term "operators"**

21. Part 2.3(b) of RHI's proposed Over-payment Rules refers to "Regime Revenue" as being all income from provision of access to Operators. Part 2.3(b) describes non-regime revenue as including "private and government contributions in accordance with the ERA's approved set of Costing Principles to apply to RHI". Part 2.3(b) of RHI's proposed Over-payment Rules is worded closely to equivalent passages in BR's and TPI's Over-payment Rules, which both refer to "access revenue" in place of "regime revenue".
22. In the context of "access revenue", the use of the word Operator is not appropriate as access is defined in the Code as the use of the railway infrastructure. An operator is an entity to which access is provided under an access agreement. It is therefore not appropriate to qualify the term access revenue with "provision of access to the RHI railway to Operators" as "access revenue" includes revenue from operators and from entities with access outside the Code.
23. In addition, Part 2.3(b) refers to RHI's Costing Principles provisions with respect to private and government contributions. The object of railway owners' Costing Principles is to determine costs, not to prescribe means of recovering costs. There

---

<sup>5</sup> And repeated at paragraphs 14-16 of this Final Decision.

are no provisions in RHI's proposed Costing Principles relating to private and government contributions.

24. In its Draft Decision, the Authority required that the words "to Operators" and "in accordance with the ERA's approved set of Costing Principles to apply to RHI" are deleted from 2.3(b).
25. In its submission RHI did not accept the requirement to delete the reference to "operators" from Part 2.3(b). RHI stated "regime revenue" (which the Authority has requested to be renamed Access Revenue) is all income received by RHI for provision of access to the RHI railway only from Operators. Consistent with the reasoning shown in paragraph 22 of this decision, this statement is incorrect and based on RHI's erroneous construction of the terms "Access Revenue/Non-Access Revenue".
26. In its submission, RHI did not accept the requirement to delete reference to private and government contributions being paid "in accordance with the Costing Principles". RHI submitted that these words appear in BR's Over-payment Rules, and therefore RHI is not aware of any reason why the words should not be permitted in the RHI Over-payment Rules.
27. The Authority acknowledges that the words "in accordance with the ERA's approved set of Costing Principles to apply to WestNet" appear in part 2.3 of BR's Over-payment Rules. These words serve no purpose as payments in respect of any contributed assets are not made in accordance with the Costing Principles. The Authority notes that the text required to be deleted does not appear in the TPI Over-payment Rules.
28. The Authority confirms its requirement that the words "to Operators" and "in accordance with the ERA's approved set of Costing Principles to apply to RHI" are deleted from 2.3(b).

#### References to "Non-regime operators"

29. Part 2.3(c) of RHI's proposed Over-payment Rules refers to "Non-regime Operators". Consistent with the reasoning in paragraphs 9 - 12 of this decision (and paragraphs 21 - 24 of the Draft Decision) the use of the term "non-regime" is redundant and, notwithstanding the use of this term in BR and TPI Over-payment Rules, is not accepted as the Code adequately defines terms to describe access provided to entities outside the Code. The Authority does not accept the term "non-regime Operators" as appears in Part 2.3(c) of RHI's proposed Over-payment Rules, because an operator is defined in the Code as "an entity to which access is provided under an access agreement", and because an access agreement is an agreement under the Code.
30. The Authority, in its Draft Decision, required Part 2.3(c) to be replaced with the words  
*Revenue from entities who have negotiated access outside the Code, and revenues attributable to RHI's own operations on the route, will be included in evaluating RHI's compliance with the Ceiling Price Test and in assessing the extent of Over-payments under Section 47 of the Code. The Code does not provide these entities with a legal entitlement to a refund of any Over-payment.*
31. In its submission, RHI claimed that Part 2.3(c) as proposed correctly outlines certain aspects of the calculation of Over-payments, including a reference to "revenue received from users who have negotiated access agreements outside the Code".

32. The Code defines “access agreement” to mean “an agreement in writing under this Code between the railway owner and an entity for access by that entity”. Therefore, an access agreement cannot be negotiated outside the Code. The Authority confirms its requirement as outlined in paragraph 30 of this Final Decision.

#### **Qualification of the term Access Agreement**

33. Part 2.4(c) of RHI’s proposed Over-payment Rules refers to “Access Agreements with Operators under the Code”. The qualification “with Operators under the Code” is not required as the Code defines access agreements as “an agreement in writing under this Code between the railway owner and an entity for access by that entity”
34. In its Draft Decision, the Authority required that the words “and if RHI has Access Agreements with Operators under the Code” is replaced with “and if Access Agreements are in place” in 2.4(c).
35. In its submission, RHI agreed with this requirement. The Authority confirms the requirement in this Final Decision.

#### **The three year over-payment period prescribed in the Code**

36. Part 2.5(c) of RHI’s proposed Over-payment Rules ascribes the three year period for netting out of “overs and unders” to a “determination of the ERA”, whereas the period is prescribed in section 47(2)(b) of the Code.
37. In its Draft Decision, the Authority required that the words “The ERA has determined that” are deleted from 2.5(c). RHI agreed with this requirement in its submission. The Authority confirms the requirement in this Final Decision.

#### **References to “Non-regime”**

38. Consistent with paragraphs 21-30 of the Authority’s Draft Decision<sup>6</sup> the Authority required, that references to “non-regime” should be removed from the title and body of Part 2.7.
39. In its submission, RHI dismissed this requirement, citing its earlier arguments relating to the origins and meanings of the terms “access revenue” and “non-access revenue”, which are not correct.
40. The Authority confirms its requirement is relation to Part 2.7.

---

<sup>6</sup> Which are reflect in paragraphs 9-16 of this document.



## Required Amendment 1

Part 2 of RHI's proposed Over-payment Rules should be amended such that:

- The words "Regime Revenue"/"Non-Regime Revenue" are replaced with "Access Revenue"/"Non-Access Revenue" in 2.3(a) and 2.3(b).
- The words "to Operators" and "in accordance with the ERA's approved set of Costing Principles to apply to RHI" are deleted from 2.3(b).
- Part 2.3(c) is replaced with "Revenue from entities who have negotiated access outside the Code, and revenues attributable to RHI's own operations on the route, will be included in evaluating RHI's compliance with the Ceiling Price Test and in assessing the extent of Over-payments under Section 47 of the Code. The Code does not provide these entities with a legal entitlement to a refund of any Over-payment".
- The words "and if RHI has Access Agreements with Operators under the Code" are replaced with "and if Access Agreements are in place" in 2.4(c).
- The words "The ERA has determined that" are deleted from 2.5(c).
- The title of Part 2.7 be changed to "Allocation of Non-Access Revenue" and all references to "non-regime" be changed to "non-access" in that part.

## Part 3 – Allocation of an Over-payment

### Use of the word Operator, and references to "non-regime"

41. Part 3 of RHI's proposed Over-payment Rules describes the allocation of over-payments. Part 3(a) states that all operators are entitled to a share in over-payments refunds, which is consistent with Section 47(2a) of the Code.
42. Part 3(b) describes the over-payments refund due to each operator as a function of each operator's share in all operators' "regime and non-regime revenue".
43. The wording of Part 3 of RHI's proposed Over-payment Rules is identical to Part 2.8 of TPI's Over-payment Rules and substantially identical to Part 2.8 of BR's Overpayment Rules except for the use of the terms "regime/non-regime" in place of "Access/Non-Access" throughout.
44. In relation to Part 3(a), the term "operator" is a Code-defined term meaning an entity to which access is provided under an access agreement. It is not required that the term operator be qualified with the words "who have negotiated their access agreements inside the Code", as that qualification serves to suggest that there are operators who have agreements outside the Code, which is not possible.
45. The term "operator" is similarly qualified in the TPI and BR Over-payment Rules, and that term is applied to both operators (as defined in the Code) and to entities who have negotiated access outside the Code in those instruments.

46. Operators, as defined in the Code, are entities with access agreements, and therefore do not make “non-regime” payments to the railway owner. The use of the term “non-regime” for payments made by operators is not correct.
47. In its Draft Decision, the Authority required that Part 3 of RHI’s proposed Over-payment Rules should be amended such that:
  - The words “who have negotiated their access agreements inside the Code” in 3(a) are deleted
  - The words “Regime Revenue and Non-Regime Revenue above the floor accumulated on a route section divided by the aggregate of all Operators’ Regime Revenue and Non Regime Revenue” in 3(b) is replaced with the words “all revenues received”.
48. In its submission, RHI agreed with the Authority’s requirements in relation to Part 3. The Authority confirms these requirements in this Final Decision.

## Required Amendment 2

Part 3 of RHI’s proposed Over-payment Rules should be amended such that:

- The words “who have negotiated their access agreements inside the Code” in 3(a) are deleted.
- The words “Regime Revenue and Non Regime revenue above the floor accumulated on a route section divided by the aggregate of all Operators’ Regime Revenue and Non Regime Revenue” in 3(b) is replaced with the words “all revenues received”.

## Part 4 - The Over-payment Rules

### Nominating a commencement date for the Over-payment Rules

49. Part 4(a) of RHI’s proposed Over-payment Rules nominates a commencement date for the Over-payment Rules.
50. The commencement date for the Over-payment Rules is the date of approval by the Authority.
51. In its draft decision, the Authority required the removal of Part 4(a).
52. In its submission RHI accepted this requirement.
53. The Authority confirms this requirement that Part 4(a) be removed from RHI’s proposed Over-payment Rules.

### Reference to “The 10 per cent amount”

54. Part 4(e) of RHI’s proposed Over-payment Rules refers to “the ten per cent amount”, which is a limit by which payments to the railway owner may exceed costs attributable to a route without triggering the Over-payment Rules.

55. Section 47(2)(a) of the Code provides that the limit may “from time to time be notified in writing to the railway owner by the Regulator”.
56. In its draft decision, the Authority required that the words “the 10 per cent amount” be replaced with “a 10 per cent amount” in Part 4(e).
57. In its submission RHI accepted this requirement.
58. The Authority confirms this requirement that words “the 10 per cent amount” be replaced with “a 10 per cent amount” in Part 4(e).

### **Qualifying the term “Operator”**

59. Part 4(f) of RHI’s proposed Over-payment Rules refers to “Operators (who have negotiated their Access Agreement inside the Code)”. It is not necessary to qualify “Operator” with the words “who have negotiated their Access Agreement inside the Code” as operators are defined in the Code as “entities to which access is provided under an access agreement” and access agreement is defined as “an agreement in writing under this Code between the railway owner and an entity for access by that entity”.
60. Similarly, Part 4(o) contains the words “Operators with Access Agreements under the Regime”, and 4(q) contains “Operators with Access Agreements negotiated inside the Code”.
61. In its draft decision, the Authority required that the words “(who have negotiated their Access Agreement inside the Code)” in Part 4(f) are removed. The Authority also required that the words “with Access Agreements under the Regime” are deleted from 4(o) and “with Access Agreements negotiated inside the Code” are deleted from 4(q).
62. In its submission RHI accepted the requirements in relation to Parts 4(f) and 4(q), but did not comment on the requirement in relation to 4(o).
63. The Authority confirms its requirements that the following words be removed:
  - “(who have negotiated their Access Agreement inside the Code)” in Part 4(f)
  - “Operators with Access Agreements under the Regime” in Part 4(o)
  - “Operators with Access Agreements negotiated inside the Code” in Part 4(q)

### **Formula showing how over-payments will be apportioned**

64. Part 4(f) of RHI’s Over-payment Rules provides a formula showing the apportionment of overpayments to operators. The formula is largely identical to that shown in the TPI and BR Over-payment Rules except for the re-specification of the terms “Regime/Non-regime” proposed by RHI, which has not been accepted by the Authority.
65. The use of terminology such as “annual Regime Revenue above the Floor Price by each Operator” in 4(f) is not consistent with the Code, and is confusing. Terminology consistent with established practice and with the Code would include references to

(1) access and non-access<sup>7</sup> payments by each operator and by all entities who have negotiated access, and (2) incremental costs associated with each operator's operations, and (3) the total of the incremental costs resulting from the combined operations on the route of all operators and other entities and the railway owner.<sup>8</sup>

66. In its draft decision, the Authority required that the formula shown at Part 4(f) is changed to the following (shown at paragraph 47 of the Draft Decision):

The operator's (i) annual access payments above the operator's incremental cost plus (ii) annual non-access payments for the route section	÷	Total of all entities' (i) annual access payments above the total incremental cost of the combined operations on the route of all entities plus (ii) annual non-access payments for the route section
--	---	---

67. In its submission, RHI agreed with this requirement.
68. The Authority confirms its requirement that the formula shown at Part 4(f) is changed to reflect the words shown in paragraph 47 of the Draft Decision and repeated above in paragraph 66.

#### Footnotes under the Over-payment allocation formula

69. The notes appearing under the formula shown in Part 4(f) of RHI's proposed Over-payment Rules are redundant, or are stated elsewhere or refer to access negotiated outside the Code, to which none of the provisions of the Code (including these Over-payment Rules) apply.<sup>9</sup> The Authority provided this reasoning at paragraph 57 of the Draft Decision.
70. In its Draft Decision, the Authority required that the three footnotes appearing under the formula in Part 4(f) are deleted.
71. In its submission, RHI stated that "the three notes should not be deleted as they assist the interpretation and application of the formula". RHI did not address the Authority's reasoning at paragraph 57 of the Draft Decision. RHI did not address its acceptance that the wording in the formula should be altered, and therefore that the footnotes would not relate to the revised wording.
72. RHI also noted that the three notes are included in the BR Over-payment Rules. The Authority notes that the three footnotes do not appear in the TPI Over-payment Rules.
73. The Authority confirms its requirement that the three footnotes appearing under the formula in Part 4(f) are deleted.

<sup>7</sup> As established in BR's Over-payment Rules but not reflected in the provisions of the Code.

<sup>8</sup> This terminology consistent with the form of words used in clause 7(2)(b) of Schedule 4 to the Code "Floor price test".

<sup>9</sup> In accordance with Section 4A of the Code.

**No provision for an efficient interest rate to apply to the Over-payment Account**

74. In Part 4(j) of its proposed Over-payment Rules, RHI refers to “any interest actually paid on the amount standing to the credit of the over-payment account”, as being the interest which will be credited to operators.
75. The Authority considers that an efficient interest rate should be nominated for this purpose. The 10 year long term bond rate, as nominated by both BR and TPI, is considered an appropriate rate by the Authority.
76. In its Draft Decision, the Authority required that Part 4(j) makes provision for an interest rate equivalent to the long-term bond rate to be applied to the over-payment account.
77. In its submission, RHI acknowledged that both the TPI and BR Over-payment Rules require that interest at the rate equal to the 10 year long term bond rate be credited to the over-payment account. RHI stated that the inconsistency between its proposed Over-payment Rules and other railway owners’ Over-payment Rules “are quite deliberate”.
78. RHI stated that “it is clear that the interest actually paid on the over-payment account should be the amount credited to the account and paid on the account, rather than the interest calculated at an arbitrary rate”.
79. The Authority does not agree that it is clear that the interest actually paid on the over payment account should be the amount credited to the account and, moreover, does not agree that the long term bond rate is an “arbitrary amount”.
80. The (10 year) long term bond rate is considered by the Authority to be an appropriate interest rate for this purpose.
81. The Authority confirms its requirement that Part 4(j) makes provision for an interest rate associated with the long-term bond rate to be applied to the over-payment account.

**Further unnecessary statements**

82. The provisions of Part 4(k) of RHI’s proposed Over-payment Rules reflect the formula shown in 4(f). The assurance provided by 4(k) is therefore not required, and does not add clarity.
83. Part 4(m) of RHI’s proposed Over-payment Rules refers to over-payment provisions in respect of access negotiated outside the Code, to which none of the provisions of the Code (including these Over-payment Rules) apply. Therefore the clause is not an appropriate inclusion in the Over-payment Rules.
84. In its Draft Decision, the Authority required that 4(k) and 4(m) be deleted.
85. In its submission, RHI agreed with the requirement that 4(k) be deleted. RHI also submitted that 4(m) was not strictly necessary, but also that 4(m) deals with distributions to users of the railway infrastructure who have negotiated access outside the Code, and that 4(m) should be retained.

86. RHI did not address the Authority’s reasoning that 4(m) deals with distributions to users of the railway infrastructure who have negotiated access outside the Code (refer to paragraph 83), and should therefore be deleted.
87. The Authority confirms its requirement that 4(k) and 4(m) be deleted.

### Required Amendment 3

Part 4 of RHI’s proposed Over-payment Rules should be amended such that:

- Part 4(a) is deleted.
- The words “the 10 per cent amount” in 4(e) should be replaced with “a 10 per cent amount”.
- The words “(who have negotiated their Access Agreement inside the Code)” in 4(f) are deleted
- The formula shown at 4(f) is altered to reflect the wording suggested at paragraph 66 of this decision, or words to that effect.
- The three notes appearing under the formula shown at 4(f) are deleted.
- 4(j) makes provision for an interest rate associated with the long term bond rate be applied to the over-payment account.
- 4(k) and 4(m) be deleted.
- The words “with Access Agreements under the Regime” are deleted from 4(o).
- The words “with Access Agreements negotiated inside the Code” are deleted from 4(q).

## Part 5 – Application of the Over-payment Rules

### Reference to “non-regime operators”

88. Part 5(d) refers to “Non-regime Operators”. This is not appropriate as operators are defined in the Code as “entities to which access is provided under an access agreement” and access agreement is defined as “an agreement in writing under this Code between the railway owner and an entity for access by that entity”.
89. In its Draft Decision, the Authority required that, in 5(d), the words “Non-regime Operator” are replaced with “entity”, “Regime” is replaced with “Code” and “that Route Section comprised only Non-Regime Operators” are replaced with “no access to that Route Section was provided under an access agreement”.
90. In its submission, RHI agreed with this requirement.
91. The Authority confirms Required Amendment 4 of the Draft Decision, as below.

### Required Amendment 4

Part 5 of RHI's proposed Over-payment Rules should be amended such that the words "Non-Regime Operator" are replaced with "entity", "Regime" is replaced with "Code" and "that Route Section comprised only Non-Regime Operators" are replaced with "no access to that Route Section was provided under an access agreement" in Part 5(d).

## Part 7 – Definitions

### Lack of clarity

92. The Authority considers that there is a lack of clarity in RHI's use of the terms "RHI Railway". The definition provided by RHI for "RHI Railway" appears to be incomplete and tautological, as it states:
 

*means the Railway and Railway Infrastructure owned and controlled by RHI to which access has or can be*
93. RHI has included a definition of "Railway Infrastructure" which aligns appropriately with the definition provided in the Code.
94. The Authority requires RHI to provide a definition of "RHI Railway" which is consistent with the definition of "railway infrastructure" in the Code.

### Required Amendment 5

- Part 5 of RHI's proposed Over-payment Rules should be amended such that a definition of "RHI Railway" is provided which is consistent with the definition of "railway infrastructure" in the Code.