

Roy Hill Infrastructure Pty Ltd Proposed Train Management Guidelines

Final Decision

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Economic Regulation Authority

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Contents

Introduction	1
Part 1 - Introduction	2
Part 2 – Contractual Arrangements	4
Part 3 – Scheduling Principles	5
Part 4 – Day of operations management	7
Part 5 – Interpretation	8

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 a draft decision in respect of the proposed guidelines on RHI's proposed Train Management Guidelines and called for submissions on 24 March 2017.
3. A submission was received from RHI. That submission has been published on the ERA website.

Final Decision

4. This document:
 - Summarises issues and required amendments identified by the Authority in each part of RHI's proposed Train Management Guidelines;
 - 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.

Part 1 - Introduction

Conformance with provisions in the Code relating to unfair discrimination

5. In Part 1.1(c) and 1.1(e) of its proposed Train Management Guidelines, RHI outlined that a user's train running times would be scheduled to optimally meet RHIO's¹ production requirements. The proposed guidelines did not refer to section 16(2) of the Code, which requires that the railway owner, in the management of train control, does not unfairly discriminate between the rail operations of the railway owner and other rail operations.
6. In its draft decision, the Authority identified that RHI's Train Management Guidelines may not be made subject to the operating requirements of a customer of RHI's own above-rail operation, and required that Parts 1.1(c) and 1.1(e) be deleted.
7. The Authority required also that text equivalent to Part 1.2 of The Pilbara Infrastructure's (TPI) Train Management Guidelines be included in Part 1 of RHI's Guidelines (see paragraph 14 of this document). Part 1.2 of TPI's Train Management Guidelines incorporates acknowledgement of the non-discrimination provisions of section 16 of the Code.
8. In its submission, RHI stated that parts 1.1(c) and 1.1(e) should not be deleted, and that Part 1.1(c) sets out the rules on which the railway will be managed. RHI submitted that compliance with section 16 of the Code must be in the context of optimising the requirements of RHIO.
9. RHI did not address the Authority's concerns in respect of parts 1.1(c) and 1.1(e) of its proposed Train Management Guidelines.² RHI did not provide a reason that adherence to section 16 of the Code should be qualified in application to its railway infrastructure.
10. The Authority confirms its requirement that Parts 1.1(c) and 1.1(e) of RHI's proposed Train Management Guidelines be deleted.

Conformance with industry-standard usage of the term "Service" and "Train Manifest"

11. Part 1.3 of RHI's proposed Train Management Guidelines refers to operators receiving "Services" on the RHI railway infrastructure. Service (its Services) is defined as "Access to RHI's Railway and any other services or facilities agreed to be provided by RHI to the Operator as set out in the Operator's Access Agreement".
12. In its draft decision, the Authority noted that RHI's use of the term "Service" is not consistent with the industry standard use of the term. A "Service" is usually taken to mean a train run by an operator by which the operator provides a freight or passenger service.

¹ RHIO is not defined in RHI's proposed Train Management Guidelines, but is defined in RHI's proposed Train Path Policy as Roy Hill Iron Ore, or the "Foundation User". The Authority considers such a definition misleading, as RHIO is not understood to be a "user" of the below-rail infrastructure, but a customer of RHI's above-rail operation. RHI's above-rail operation is a "user" of the below-rail infrastructure.

² Paragraphs 12 and 13 of the Draft Decision.

13. Brookfield Rail (BR) uses the term “train path” and TPI uses the term “Service Entitlement” to describe a contract to run a service.
14. In its Draft Determination, the Authority required the deletion of Part 1.3 of RHI’s proposed Train Management Guidelines. The Authority also required the deletion of Part 1.2 as this part did not adequately reflect the purpose of the Train Management Guidelines, and did not refer to a “Train Manifest” which is a description of the train an operator proposes to run, and is considered the starting point for analysing the operator’s capacity requirements. The Authority required that Parts 1.2 and 1.3 of RHI’s proposed Train Management Guidelines be replaced with text equivalent to Parts 1.2 and 1.3 of TPI’s approved Train Management Guidelines.
15. In its submission responding to the draft decision, RHI agreed to the replacement of Parts 1.2 and 1.3 of its proposed Train Management Guidelines with text equivalent to the corresponding parts of TPI’s document, and provided suggested text. The suggested text is largely identical to Parts 1.2 and 1.3 of TPI’s Train Management Guidelines, except for references to the “RHIO production requirements” in Part 1.1(c) of the proposed guidelines.
16. The replacement text suggested by RHI in its submission employs the term “service” in the industry-standard way,³ and replaces the term “Train Manifest” as it appears in Part 1.3(b) of TPI’s Train Management Guidelines with “such details of Trains and Services as are requested by RHI”.
17. The Authority does not consider that operators should be required to provide RHI with any details of its trains or logistics operations further than those contained in a normal train manifest, as those details are sufficient for management and safety purposes.
18. The Authority confirms Required Amendment 1 of the draft decision that Parts 1.2 and 1.3 of RHI’s proposed Train Management Guidelines are replaced with text equivalent to Parts 1.2 and 1.3 of TPI’s Train Management Guidelines. Except for the references to “RHIO production requirements”, the text referred to in paragraph 15 above would be adequate for this purpose.

Amendment of the Train Management Guidelines at the owner’s discretion without reference to the Code

19. RHI, at Part 1.4 of its proposed Train Management Guidelines, allows RHI to amend the Train Management Guidelines at its discretion if the WA Rail Access Regime does not apply to the Train Management Guidelines.
20. In its draft decision, the Authority explained that the approved documents are only relevant within the context of the *Railways (Access) Act 1998* and the Code (collectively referred to as the Access Regime). Therefore, the draft decision required that Part 1.4 be removed from RHI’s proposed Train Management Guidelines.
21. In its submission, RHI stated that Part 1.4 does not need to be removed from its Train Management Guidelines, as that part states “that if the Access Regime (namely the Act and the Code) applies to the amendment of the Guidelines, they may be amended in accordance with the Access Regime”. RHI states that this conclusion addresses the concerns expressed by the Authority in paragraph 16 of

³ That is, at odds with the use of the term in the remainder of RHI’s proposed Train Management Guidelines.

the draft decision. In other words, if the Access Regime does not apply to the TMG, the TMG may be amended by RHI "... in its reasonable discretion".

22. RHI's conclusion above is not consistent with paragraph 16 of the draft decision,⁴ which states that the WA regime alone is relevant to documents approved under the Regime. RHI's conclusion appears to rest on the premise that there may be more than one Train Management Guidelines and that the Code may not apply to all of them. There is only one Train Management Guidelines document which is approved under the Code.⁵
23. The Authority confirms its requirement (Required Amendment 1 of the draft decision) that Part 1.4 is deleted from RHI's proposed Train Management Guidelines. The RHI response to the Authority's Draft Decision has not adequately addressed this requirement.
24. Further, the Authority has noted that the term "Access Regime" is defined in RHI's proposed Train Management Guidelines as including "an Access undertaking under the *Competition and Consumer Act 2010*. For the purpose of the Train Management Guidelines, which is an instrument required by Part 5 of the Code, references to unrelated statutes or laws are not appropriate.⁶

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

The predominance of an Access Agreement and Train Path Policy over Train Management Guidelines

25. In Part 2 of its proposed Train Management Guidelines, RHI states that in the event of an inconsistency between the Train Management Guidelines and an Access

⁴ In order for these positions to be consistent, each entity operating services on the RHI railway infrastructure would be provided with individual Train Management Guidelines.

⁵ RHI is not prohibited from applying the Train Management Guidelines to all traffic (inside and outside the Code), and this may be advisable to ensure safe running on the network. The instrument would nonetheless remain a Code instrument in such circumstances.

⁶ Section 4A of the Code states that "a Part 5 instrument as defined in section 40(3) is not to be taken into account in determining the rights, powers, duties and remedies of parties to negotiations carried on or an agreement made otherwise than under this Code". Further, an "Access undertaking under the Competition and Consumer Act 2010" is not relevant to the acceptance of a haulage undertaking referred to in clauses 15(1)(g) and 15(6)(b) of Schedule 1 to the *Railway (Roy Hill Infrastructure Pty Ltd) Agreement Act 2010*.

- Agreement or the Train Path Policy, the Access Agreement or the Train Path Policy prevails.
26. In its draft decision, the Authority explained the different functions of the Train Path Policy and the Train Management Guidelines, and that neither predominates the other.⁷
 27. Further, any access agreement – being an agreement under the Code – must comply with all Code instruments, and so there cannot be an inconsistency between the Train Management Guidelines and an access agreement.
 28. In its submission, RHI stated that Part 2 of its proposed Train Management Guidelines should be retained. RHI did not address the concerns of the Authority expressed in paragraphs 19 and 20 of the Draft Decision, which have been repeated above (paragraphs 26 and 27).
 29. The Authority's confirms Required Amendment 2 of the draft decision that Part 2 is deleted from RHI's proposed Train Management Guidelines.

Required Amendment 2

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

Part 3 – Scheduling Principles

Industry-standard concepts of Train Manifests and Master Train Plans

30. In Part 3 of its proposed Train Management Guidelines, RHI provides for the forecasting of “service requirements” and the making of weekly, quarterly and annual schedules.
31. Service requirements are proposed to be made subject to “disclosed requirements” and are proposed to be made in terms of “reference trains” nominated by RHI.⁸
32. In its draft decision, the Authority indicated that the proposed Train Management Guidelines did not provide adequate detail on how trains would be scheduled on a day-to-day basis, how the “service entitlements” contracted in each operator's access agreement⁹ would be accommodated in those daily plans, and how schedules for operators' actual train consists¹⁰ might be made in terms of reference trains.
33. In its draft decision, the Authority required that Part 3 of RHI's proposed Train Management Guidelines should be deleted and replaced with text equivalent to Part 2 of TPI's approved Train Management Guidelines, or (alternatively) that a

⁷ Paragraphs 19-20 of the draft decision.

⁸ “disclosed requirements” and “reference trains” are not defined in the proposed Train Management Guidelines.

⁹ That is, train paths allocated in accordance with the approved train path policy.

¹⁰ What a train consists of

definition of “reference train” is provided, and that the relevance of the reference train in the context of industry-accepted capacity management techniques is adequately explained.

34. The Authority’s draft decision also required the removal of references in this part to “RH requirements” and other statements relating to the optimisation of RHIO production requirements. In its submission, RHI repeated its claim that RH requirements¹¹ and disclosed requirements must be retained in its Train Management Guidelines. RHI has not reconciled this claim with the Code requirement to avoid unfair discrimination in section 16 of the Code.
35. In its submission, RHI did not address the Authority’s concern with the inadequate specification of ‘reference train’ for the purpose of describing a scheme for day to day capacity management.¹²
36. In its submission, RHI stated that Part 2 of TPI’s Train Management Guidelines is not appropriate for RHI, as RHI does not intend to run any “Timetabled Traffic”.¹³
37. TPI does not currently run any timetabled traffics for FMG haulage, and the three monthly and fortnightly scheduling referred to in paragraph 2.2 of the TPI Train Management Guidelines only applies to Cyclic Traffic not Timetabled Traffic.
38. TPI’s Train Management Guidelines allow for timetabled train paths to be allocated to operators, if these may be accommodated within the capacity constraints presented by TPI’s own cyclic (run when ready) traffic for FMG haulage. Allowance for timetabled traffics does not require that TPI timetable its own train paths.
39. The Authority considers that RHI’s Train Management Guidelines must be capable of accommodating operators who propose timetabled traffic.
40. The Authority confirms Required Amendment 3 of the draft decision that RHI explain the means by which a reference train-based scheme of capacity management would be reflected in forecasting and scheduling analysis, or replace its Part 3 with a scheme equivalent to that provided for by TPI in Part 2 of its Train Management Guidelines.

¹¹ Various referred to as RH requirements, or RHIO requirements.

¹² Paragraph 28 of the Draft Decision.

¹³ Part 2 of TPI’s Train Management Guidelines uses the concepts of “Timetabled Traffic” and “Cyclic Traffic” as a means of allowing a run-when-ready schedule to be adopted where appropriate. A distinction between these traffic types was introduced by TPI to enable shipping schedules for all operators to be optimised. The BR Train Management Guidelines employs a similar concept of “ad hoc” train paths, principally to accommodate uncertainty in Co-operative Bulk Handling’s shipping schedules.

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

Network blockages and disputes.

41. Part 4 of RHI's proposed Train Management Guidelines contains references to "RH Requirements", "Disclosed Requirements" and non-standard use of the term "Service".
42. In its draft decision, the Authority considered Part 4 to be appropriate apart from these references and a lack of detail on resolution of network blockages and disputes. The Authority required the inclusion of text equivalent to Parts 4.2-4.5 of TPI's Train Management Guidelines.
43. In its submission, RHI agreed with the requirement to include the additional detail referred to in the Authority's draft decision.
44. Consistent with the previous paragraph the Authority confirms Required Amendment 4 of the draft decision in order for RHI's proposed Train Management Guidelines to be acceptable.

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.

Part 5 – Interpretation

Inappropriate definitions

45. Part 5.1 of the proposed Train Management Guidelines refers to “the Access Regime” in an inappropriate way, as outlined in paragraph 24 of this document. The Authority requires the removal of Part 5.1(a).
46. The Authority considers that there is a lack of clarity associated with RHI's use of the terms “RHI Railway”. The definition provided by RHI for “RHI Railway” refers to railway infrastructure which is not covered under the definition of railway infrastructure in section 3 of the *Railways (Access) Act 1998*.
47. In fact, all railway infrastructure is included in the definition of railway infrastructure. The definition of railway infrastructure in both the Act and the Code excludes rolling stock and all associated facilities.
48. RHI also refers to “the rail network” in Part 1(b)(i) of its proposed Train Management Guidelines. The Code defines “railways network” to mean all railways subject to the Act and the Code, including the BR and TPI railways. “Rail network” is not defined in Part 5 of RHI's proposed Train Management Guidelines.
49. Section 43 of the Code states:

s.43(1) Subsection (2) applies to the railway owner in relation to a part of the railways network and associated infrastructure to which this Code applies when that owner is performing its functions in relation to that part.

s.43(2) The railway owner is to comply with the Train Management Guidelines for the time being approved or determined by the Regulator under this section.
50. Part 1.1(b)(i) of RHI's proposed Train Management Guidelines states that the Train Management Guidelines is a statement of the principles, rules and practices that are to be applied and followed by RHI but only in relation to:

The performance of its functions in relation to the rail network and associated infrastructure to which the Code applies.
51. The Authority requires RHI to replace Part 1.1(b)(i) with “the performance of its functions in relation to the RHI Railway”

52. The Authority requires RHI to provide a definition of “RHI Railway” which is consistent with or refers to the definition of “railway infrastructure” in the Code.

Required Amendment 5

- Part 5 of RHI’s proposed Train Management Guidelines must be amended such that Part 5.1(a) is removed.
- Part 1.1(b)(i) of RHI’s proposed Train Management Guidelines is replaced with:
“the performance of its functions in relation to the RHI Railway”.
- Part 5 of RHI’s proposed Train Management Guidelines should be amended such that a definition of “RHI Railway” is provided which is consistent with or refers to the definition of “railway infrastructure” in the Code.