



2-10 Adams Drive
Welshpool WA 6106
GPO Box S1422
PERTH WA 6845
Telephone 08 9212 2501
Facsimile 08 9212 2920
WestNet Rail Pty Ltd ABN 42 094 721 301

Mr. Lyndon Rowe
Chairman
Economic Regulation Authority
6th Floor, Governor Stirling Tower
197 St Georges Terrace
PERTH WA 6000

5 August 2005

Dear Mr. Rowe,

Review of the Western Australian Railways (Access) Code

We refer to the Authority's Draft Report [the "Report"] for the Review of the Railways Access Code [the "Code"], dated 1 July 2005, in relation to the review of the *Railways (Access) Code* currently being undertaken by the Authority.

Westnet Rail (**WNR**) appreciates the requirement that the Access Code must be reviewed in accordance with the Act, and believes that review has been competently done.

WNR believes, however, that it has faithfully adhered to the present requirements of the Code which have generally been effective for the purposes for which they were conceived, and does not concur in the assertions made by various applicants during the review process to the contrary. WNR reserves that right to make further submissions to counter any further proposals, which may emanate as the result of additional submissions founded upon those assertions.

WNR makes the following comments in regard to the Report and in particular the two Preliminary Views and five Recommendations.

Preliminary View 1

WNR supports the Authority's preliminary view that there should not be a change to the Code that requires the Standard Access Agreement to be approved by the Authority as a new Part 5 instrument. Introducing such a change would inevitably add inflexibility and cost to the access arrangements and it is not evident that the present arrangements have prevented any party from gaining access.

Preliminary View 2

WNR understands that the Authority's wording of Preliminary View 2 implies that change may be required to the Overpayment Rules, but only in regard to the treatment of Government Contributions and the revenue allocation principles thereof.

WNR believes that the current Overpayment Rules are efficient and equitable and that no material changes will be required to them in the forthcoming review of those rules.

Recommendation 1

WNR has no objections to this proposed change to the Code.

Recommendation 2

WNR supports the changes to the Code recommended by the Authority to provide a ceiling and floor price on the proviso that:

- The ceiling and floor price only act as a guide to what an Access Seeker might pay for access for a train operating over the relevant path and in the same carriage market as the reference train; and
- The ceiling price would not act as a cap on access prices as the Ceiling Price test under the Overpayment Rules ensures that the annual revenue caps by line are not breached by WNR.

Should Access Seekers require more than a guide as to what they might pay for access, they can currently under the Code obtain an indicative access price from WNR within 14 days of initiating an access enquiry.

WNR seeks further dialogue with the Authority as to how the ceiling and floor prices would be calculated.

Recommendation 3

WNR supports the recommendation of the Authority for WNR to produce an Internet based Information Package of the information that it already provides manually to potential Access Seekers, although this will impose additional costs on WNR that will need to be recovered.

With regard to this Information Package containing a Capacity Register, WNR stated in its submission that:

“Capacity is difficult to measure as it is based on current operations remaining constant and measuring remaining capacity in a common unit of measure.”

“Capacity can often be increased through additional crossing loops or extensions of crossing loops. Exactly what is required to increase capacity or meet a new Access Seekers requirements needs to be considered on a case by case basis and at a particular point in time.”

Capacity is also dependent on cycle times, which are affected by customers loading and unloading capabilities and constraints.

As a result WNR cannot measure capacity in a meaningful way without specific information being provided by Access Seekers and believes it would be useful to potential Access Seekers to ascertain capacity through WNR reporting an annual Key Performance Indicator on traffic density by line. (Total number of train movements by direction, by line)

Should Access Seekers require more than a guide as to what capacity constraints they might face, they can currently under the Code obtain specific train path availability from WNR within 14 days of initiating an access enquiry.

WNR seeks further dialogue with the Authority on the issue of provision of capacity information.

WNR would not be prepared to publish a summary of future upgrading and capital works, as this is confidential to WNR and may be confidential to prospective Access Seekers. Such forecasts are subject to change, and their disclosure may jeopardize the legitimate business interests of the railway owner.

Recommendation 4

In the event of a Section 21 request, WNR has no objection to providing relevant information to the Authority about the internal prices charged to its related entities where:

- third party entities are seeking access for an existing task of the related entity; or
- there is a new task for which third party entities and the related entity are both seeking access.

This would support the ability of the Authority to validate whether WNR is adhering to clauses 13(a) and 13(b) of Schedule 4 of the Code as outlined below:

In the negotiation of prices for the provision of access, the railway owner is to implement the following guidelines —

(a) there should be consistency in the application of pricing principles to rail operations carried on or proposed to be carried on in respect of a route whether by the railway owner or an associate or by another entity;

(b) the consistency referred to in paragraph (a) requires that if the access of different entities relates to the same market, any difference between the respective prices to be paid by them for access must only reflect a difference between them in the costs or risks associated with the provision of the access;

In any event, it must be recognised that these clauses in the Code are intended to be guidelines and not inflexible and also admit of price variations reflecting differences in cost and risk.

In the event of a Section 21 request for a new task, WNR would be able to provide information regarding similar transport tasks in similar markets for similar routes, for which it charges access.

However it must be recognised that price differentials may exist (between similar but not the same markets) which will limit their relevance to the Authority expressing a Section 21 opinion. Also those hauls may have different cost and risk profiles to that of a newly proposed task, which may limit their relevance. WNR would expect that the Code would continue to ensure that any arbitration proceedings would be obliged to recognise and reflect this.

In either event, any information provided by WNR to the Authority under Section 21 must remain confidential. WNR suggests that a formal legal instrument recognising this confidentiality be implemented between WNR and the Authority.

WNR stresses that Section 21 only allows the Authority to express an opinion on the consistency of prices sought with those charged to related entities of the Railway Owner and is not a mechanism that allows the Authority to opine on the reasonableness of access prices more generally. The Code should continue to require that the reasonableness or viability of access prices must be considered, if required, by an Arbitrator, appointed in accordance with the Code.

Recommendation 5

WNR has no objection to the recommendation of the Authority that the cost sharing arrangements of an expansion or extension to the Network is set equitably between all users on a combination of relative current usage and economic benefits.

WNR supports the recommendation on the proviso that all of the following principles are met:

- only users that stand to benefit economically immediately following the expansion or extension should share in the costs;
- that the sharing of costs be pro-rated between those users based on the size of their comparative net economic benefits (recognising expansion of other users could also create costs for existing users) immediately post the expansion or extension being completed;
- that all users must have the capacity to pay their share of the costs; and
- that if WNR does not have contractual mechanisms to recover a user's share of the costs on the above basis that the Authority would do so on WNR's behalf.

Any unrecoverable "gap" of costs that remains should not be the responsibility of WNR.

The Code would have to make allowance for that "gap" to be met by:

- the user that has declared the need for the expansion or extension of the network to meet its business objectives; or
- another entity with a commercial reason to meet those costs.

Quite clearly, WNR should not be encumbered with the cost of such a "gap" as clause 13(f) of Schedule 4 of the Code says:

In the negotiation of prices for the provision of access, the railway owner is to implement the following guidelines —

(f) prices should allow a railway owner to recover over the economic life of the railway infrastructure concerned the costs of the owner in respect of any extension or expansion to accommodate the requirements of an operator.

It is important to reflect that economic life reflects usage, not merely decay over time, and that investment in infrastructure for the benefit of a use of relatively short duration must be recovered over that duration to avoid inefficient investment and ensure that capital employment and capital recovery are correctly aligned. To do otherwise is to impose on the owner a real risk of constructing a stranded asset resulting in a transfer of economic benefits from the below rail, to the above rail operator.

In summary, WNR generally supports the Authority's recommendations in the draft Report, provided that they do not result in WNR bearing additional costs.

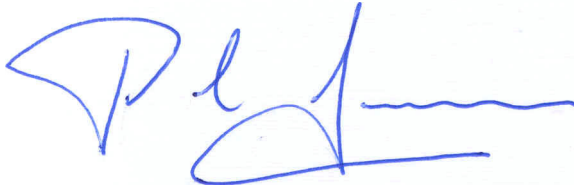
This submission is intended to highlight some the practical issues that will need to be addressed in the implementation of the recommendations in the Report.

WNR also faces some potential real cost increases as a result of these recommendations. WNR seeks to discuss with the Authority how any real cost increases will be recovered as simply adding them to the revenue ceiling does not

automatically imply recovery for WNR, given that WNR actual access revenues are generally significantly below the revenue ceilings.

WNR would be pleased to meet with the Authority should it wish to discuss anything in this submission.

Best Regards,

A handwritten signature in blue ink, appearing to read 'Paul Larsen', is centered on the page. The signature is fluid and cursive, with a large initial 'P' and a long horizontal stroke at the end.

Paul Larsen
Acting General Manager

cc Russell Dumas (Director- Gas & Rail Access)
cc Mike Jansen (Manager Projects)