

## **1. PRIORITY OF DOCUMENTS**

In the introduction the Regulator refers to the priority of documents that were suggested by WestNet Rail.

The proposed order of precedence was;

- (i) Train Path Allocation Policy
- (ii) Train Management Guidelines
- (iii) Access Agreements

However, WestNet also proposed a qualification to this which it believes should be included in the policy.

That qualification is that the Access Agreement could vary the Train Management Guidelines insofar as it effects only that Operators trains and only to the extent that it does not effect the rights of any other Operator.

An example may be that if an Operator with two trains may wish to give priority to one over the other which may be consistent with the Train Management Guidelines but which will not impact on any other Operators trains.

## **2. ALLOCATION AND CANCELLATION OF TRAIN PATHS**

### **(a) Review of Train Path**

Westnet proposes to review train paths to ensure that the train can actually operate on them and the access agreement requires the parties to negotiate in good faith if the performance varies from the train path in ‘material aspects’.

WestNet proposes to define material aspects as follows;

- (i) the train is unable to meet its schedule because;
  - the equipment used by the Operator is inadequate (eg. Insufficient horsepower to maintain required speed) or;
  - the time allowed for proposed loading and unloading is not sufficient; but
  - not because the infrastructure is not maintained properly to allow the train to meet its schedule.
- (ii) because the train is regularly late and effecting other train paths.

**(b) Process for Negotiating New Train Paths Prior to an Access Agreement**

The process for allocation of train paths as part of the negotiation process for access will be;

- (i) The Operator will request the train path(s)
- (ii) WestNet Rail will refer to the Master Train Control Diagram and determine if;
  - The path(s) are available; or
  - Seek changes to or the deletion of owned paths allocated to other Operators to create the paths; or
  - Advise the Operator the paths as requested are not available and suggest alternatives that may be available.
- (iii) At all times maintain dialogue with the Operator to ensure all alternatives are explored.
- (iv) If the Operator is seeking paths currently used for the same purpose under another agreement and the new agreement is likely to supersede the existing one then WestNet will commit to transfer the existing paths.

**(c) Process for Negotiating New or Changed Train Paths Prior Under an Existing Access Agreement**

This process is detailed in the Access Agreements but essentially follows the same principles in (b) above.

**(d) Guidelines for whether a request is warranted for a Train Path**

The Regulator has indicated that if WestNet has a ‘first come first served’ basis for allocation of train paths it also needs guidelines so that a request for paths can be demonstrated to be needed.

WestNet will apply these guidelines to changes requested to existing paths or additional paths under an access agreement; or when a new applicant has applied for a train path but there is no agreement signed.

The proposed guidelines are;

“WestNet will negotiate to provide train paths or additional train where the Operator or potential Operator meets the following criteria;

Scheduled Train Paths (Passenger) and (Freight); or Flexible Scheduled Train Paths.

- (i) the Operator can demonstrate a contractual commitment to operate trains or deliver passengers or freight;
- (ii) the Operator provides details of anticipated increased demand because of;

- (a) an upgrade or expansion of production capacity with confirmation that it will progress (eg. Funding approved, public announcements etc); or
  - (b) market growth based on trend data.
- (iii) the Operator can demonstrate a committed new project with agreed training.

**Conditional Paths**

- (i) the Operator can demonstrate historical need or the planned use of an optional direction path; or
- (ii) where the Operator can demonstrate seasonal demand for a seasonal path based on the production or market characteristics of the freight; or
- (iii) the Operator can demonstrate the need for surge capacity based on demand or other constraints such as shipping.

In applying these criteria the following process will apply;

- (i) WestNet Rail will seek sufficient documentation from the Operator to assess the request;
- (ii) if WestNet does not believe the information supports the request it will seek further information.
- (iii) if WestNet does not believe the request meets the criteria it will advise the Operator and
  - if it is a request relating to an existing Access Agreement the dispute will be resolved under the terms of the agreement; or
  - if it is a new request the dispute will be resolved in accordance with Division 3 of the Access Code.

**(e) Cancellation of Train Paths**

WestNet proposes that the following policy apply to the circumstances where an Operator may cancel a train path. The details applying to each Operator will be in the Access Agreement.

“An Operator may cancel an individual train path under the following circumstances (but only if the occurrence of these circumstances is beyond the reasonable control of the Operator);

- (i) where public holidays effect the operation of the train path;
- (ii) for each Fixed Scheduled Train Path (Passenger or Freight) 5 times per year commencing from the date the path was first approved.
- (iii) there are mechanical difficulties with the rolling stock used or operated by the Operator;

- (iv) there is a failure of any part of the Operator's equipment used or to be used in connection with a service;
- (v) repair, maintenance or upgrading of the network is being carried out or there is some other event which materially affects the Operator's use of all or any part of the network (including, without limitation, derailment, collision or later running trains) which occurs in Western Australia;
- (vi) the Operator is unable to load trains because of a lack of product at terminals or is unable to unload product at terminals or ports because of insufficient storage space or because of mechanical difficulties with the loading or unloading equipment at terminals or ports.

**(f) Withdrawal of Train Paths**

The Regulator has indicated the need for a more definitive policy related to when WestNet would withdraw a train path.

If WestNet proposes to withdraw a train path because of lack of use it will only do so when;

- (a) there has been a request for use of the path from another Operator; or
- (b) it would allow better management of other train paths and encourages efficient use of the network; or
- (c) the Operator agrees to its withdrawal.