Overpayment Rules

The Pilbara Infrastructure Pty Ltd

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Draft Over-payment Rules

1 Introduction

These Over-payment Rules are prepared to meet the requirements of section 47 of the Railways (Access) Code 2000 (the Code), which requires that the Railway Owner will submit to the Regulator a statement of rules ('the over-payment rules') that are to apply where breaches of the Ceiling Price Test occur that could not be reasonably avoided.

The Ceiling Price Test is defined in clause 8 of Schedule 4 of the Code. This provides that an Operator, or a combination of Operators, provided with access to a Route and associated railway infrastructure must not pay more for access than the Total Costs attributable to that Route and that infrastructure. The Code provides that this provision will not be breached where payments exceed Total Costs if these Over-Payment Rules are complied with.

These Over-payment Rules give effect to the requirements in the Code that

- 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 by the Railway Owner to the Regulator; and
- at the end of each successive 3 year period 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.

TPI's Over-payment Rules provide a mechanism to:

- calculate the amount by which Total Revenue earned on a particular Route Section exceeds the Total Costs attributable to the Route Section and infrastructure; and
- reimburse Operators who are provided with access under the Code to that Route Section in the event of an over-payment.

2 Basis of the Over-payment Rules

2.1.1 Definition of Route Sections

In accordance with the Code, the railway network is divided into sections (Route Sections) for management and costing purposes.

It is proposed that the railway constructed by TPI from Cloud Break to Port Hedland form one route section.

2.1.2 Regulatory Ceiling

A Route Section has a regulatory Ceiling that will apply to all Operators when negotiating access prices and will be the basis of determining whether Total Revenue earned on the Route Section has exceeded the Total Costs.

These Total Costs will be calculated by TPI using methods set out in TPI's Costing Principles, as approved by the ERA.

2.1.3 Revenue for the purposes of the Ceiling Price Test

In determining the extent of over-payments, all Access Revenue and Non-access Revenue received by TPI for a Route Section, or part of a Route Section, and associated railway infrastructure will be included to calculate the Total Revenue attributable to that Route Section of the network.

Revenue earned from non-regime operators will also be included in evaluating TPIs compliance with Floor and Ceiling Price Test. It will also be included in assessing the extent of over-payment. However, the access regime will not provide non-regime operators with a legal entitlement to any refund for any over-payment, so such over-payments will be retained by TPI, unless otherwise specified in the access agreement with the Operator.

2.1.4 Breaches of the Ceiling Price Test

TPI will assess revenues earned on particular Route Sections on a periodic basis to determine whether there is likely to be a breach of the Ceiling Price Test. Where it is possible to forecast potential over-payment, TPI will seek to negotiate new access prices with affected Operators to ensure that Total Revenue remains within the Ceiling.

If, despite efforts to reasonably avoid breaches of the Ceiling Price Test, a breach/breaches occur, then TPI will advise the ERA of the circumstances and will follow the procedure set out in these over-payment rules to deal with such over-payments.

2.1.5 Over-payments and under-recoveries

Over-payment is defined as the amount of Total Revenue received by TPI for a Route Section that exceeds the Total Costs attributed to the Route Section for a one-year period.

Under-recovery is the shortfall of Total Revenue to the Railway Owner on a Route Section for a one year period relative to the Total Costs attributed to that Route Section.

Net over-payments will be assessed over a successive three year period, during which over-payments in a particular year may be balanced out by under-recoveries in a subsequent year. Net over-payment at the end of a three year period will be paid back to Operators according to these Over-payment Rules.

Conversely, net under-recoveries at the end of a three year period will be paid by Operators to the Railway Owner according to these Rules.

However, where a net under-recovery occurs in a particular 3 year period, there are circumstances in which TPI will be allowed to carry-over this net under-recovery as an "accounting balance" into the subsequent 3 year period, which may be used to offset over-payments in that subsequent three year period. This particular case is outlined below:

Carry-over of under-recovery

An under-recovery may be carried over where, as a result of having to reimburse Operators during the three year period because the breach is greater than 10% of the Ceiling, there are insufficient funds in the over-payment account for TPI to recoup an under-recovery that has occurred during the same three year period. In this case, TPI will put a case to the ERA to carry the under-recovery credits over to the next three years up to the amount TPI has been required to refund to Operators as a result of exceeding the 10% limit. If allowed, the carry-over will only apply for that one additional successive three year period.

2.1.6 Allocation of Access Revenue

The ceiling price provided by TPI to access seekers under section 9(1)(c)(i) of the Code will apply from the origin to the destination of the Route proposed by the access seeker, potentially traversing multiple Route Sections. As Total Costs are allocated on a Route Section basis, it is necessary to distribute Access Revenue earned over a particular route to individual Route Sections. This will be done in accordance with the following rules:

1. Access Revenue derived from a Route can only be allocated to the Route Sections on that Route.
2. TPI will allocate Access Revenue to cover the costs attributed to the applicable Route Section in the following order:
    a. Incremental Costs against all applicable Route Sections;
    b. up to the Ceiling on all applicable branch or feeder (dedicated) Route Sections; and
    c. up to the Ceiling on all applicable shared Route Sections.

The above principles ensure that there will be no cross-subsidisation between Route Sections. Access Revenue allocated to each Route Section must at least cover the Incremental Cost.

2.1.7 Allocation of Non-access Revenue

For TPI's operations, Non-Access Revenue will consist of contributed capital. The allocation of Non-Access Revenue will only be allocated to the Route Section for which the contribution was received. Where a capital contribution is made, the value of the contribution to be used in the Ceiling Price Test is to be expressed as an annualised amount taking into account the total cost, expected life and Weighted Average Cost of Capital (WACC) determined by the ERA. Where capital expenditure occurs over multiple Route Sections the actual expenditure will be allocated to each Route Section at the time the expenditure is incurred. The above allocation principles for Access Revenue do not apply to Non-Access Revenue.

2.1.8 Allocation of an over-payment

Where an over-payment on a Route Section occurs as a result of a breach of the Ceiling Price Test, all Operators [who have negotiated their access agreement inside the Code] who have contributed to the total revenue on that Route Section will be entitled to receive a share of the over-payment. The proportion of over-payment to be paid to each Operator will be determined by each Operator's annual Access Revenue and Non-Access Revenue above the floor recorded on the Route Section over the preceding 12 month period from July to June. An Operator paying only the Incremental Cost on the Route will not be eligible to receive any refund.

3 Over-payment rules

These Over-payment Rules apply where breaches of the ceiling could not reasonably be avoided.

1. TPI will calculate over-payments in respect of each Route Section for a financial year.

2. Where an over-payment is greater than the 10% allowed for breaches of the Ceiling for that Route Section for the financial year, TPI must reimburse the Operators on that Route Section of the amount of over-payment, calculated on a pro-rata basis according to the formula in rule 3 below, within 3 months of the end of the financial year.

3. Payments to Operators will be allocated based on the total annual Access Revenue above the Floor by each Operator on the Route, in accordance with the following formula:

$$\frac{\text{An Operators annual Access Revenue above the Floor, plus Non-Access Revenue (received from that Operator) for the Route Section} \;*\; \text{Amount of Net Overpayment plus interest accrued for the Route section}}{\text{Total Annual Access Revenue above the Floor, plus total Non Access Revenue, for the Route Section}}$$

4. TPI is to establish an Over-payment account.

5. The Over-payment account is to be credited with all over-payments that are equal to or less than the 10% amount allowable for breaches of the Ceiling level for the financial year.

6. Any over-payment for the previous financial year shall be calculated by 31 July of each year and credited to the over-payment account. The over-payment will be treated as if it were credited to the Over-payment account on 1 July of each year.

7. TPI will credit interest to the Over-payment account, calculated daily on the balance in the account, using a rate equal to the 10 year long term bond rate as at 30 June each year.

8. At the end of the initial three year period (from the commencement date of these Rules) and the end of each subsequent three year period, TPI will distribute the funds in the Over-payment account to Operators who have negotiated inside the regime in accordance with the formula in Rule 3.

9. Over-payments to non-regime Operators will be retained by TPI, subject to the terms of any Access Agreement providing otherwise.

10. The ERA must approve any payments from the Over-payment account prior to disbursement.

11. The Over-payment account will be audited each year, completed by 31 August, by an independent auditor appointed by TPI, at TPI's expense. The audit will ensure each amount credited to the account is correct and that the interest credited and payment of amounts to Operators from the account is correct and consistent with these Rules. The auditor will provide its report to ERA on completion and the ERA will confirm the audit report.

12. If there is a discrepancy between the audited and confirmed over-payment and that calculated by TPI, an adjustment is to be made to the Over-payment account as if it occurred on 31 July.

13. TPI must include in access agreements for those inside the regime provisions that give effect to these Over-payment Rules [and guarantees in event of liquidation? – see schedule to WNR]

4 Compliance

TPI's compliance with the Over-payment Rules will be subject to an annual independent external audit. The ERA will:

- select and manage the auditor, with costs paid by TPI;
- approve the scope of the audit;

The final audit report will be made available to the ERA and access proponents.

In accordance with section 47 of the Code, the Over-payment rules may be amended or replaced by the Railway Owner with the approval of the ERA. The ERA may also direct the Railway Owner to amend the Over-payment rules or replace them with rules determined by the ERA.

5 Definitions

Access Revenue	All income received by TPI for the provision of track access to Operators
Act	Railways (Access) Act 1998
Ceiling	Means the sum of costs equal to Total Costs
Ceiling Price Test	Means the Ceiling Price Test ass defined in Clause 8, Schedule 4 of the Code
Code	Means the Railways (Access) Code 2000
Costing Principles	Means the principles, rules and practices determined by the ERA in accordance with section 46 of the Code
ERA	Economic Regulation Authority
Floor	Means the sum equal to the total of Incremental Costs
Floor Price Test	Means the Floor Price Test as defined in Clause 7, Schedule 4 of the Code
Incremental Cost	Means Incremental costs as defined in Clause 1, Schedule 4 of the Code
Non-access Revenue	Means revenue received by FMG that may include private and government contributions in accordance with the ERA's approved Costing Principles to apply to WNR
Operator	Means an entity to which access is provided under an access agreement
Railway Owner	Means the person having the management and control of the use of the railway infrastructure
Route	Means those parts of the railways network and associated infrastructure to which the Code applies, and includes part of a route
Route section	Refers to the sections of the railway network as divided for management and costing purposes
Total Cost	Means Total Cost as defined in Clause 1, Schedule 4 of the Code
Total Revenue	The sum of Access Revenue and Non-Access Revenue