



Mr Russell Dumas
Director, Gas and Rail
Economic Regulation Authority
PO Box 8469
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Dear Mr Dumas,

SUBMISSION ON THE TPI SEGREGATION ARRANGEMENTS

Oakajee Port and Rail Pty Ltd (OPR) has reviewed the Economic Regulation Authority's Draft Determination on The Pilbara Infrastructure's (TPI) proposed Segregation Arrangements. OPR has prepared a submission outlining areas of interest which is attached.

There are provisions contained in four amendments which OPR believes can be less intrusive without mitigating the intent of the amendments particularly as the TPI rail network is a developing rail network.

The submission is not confidential and can be made available on the Economic Regulation Authority's website.

If you have any queries raised in the submission, do not hesitate to contact Mr Mike Jansen, Infrastructure Access Manager, on (08) 9483 0538.

Yours sincerely

CHRISTOPHER EVES
CHIEF EXECUTIVE OFFICER



OAKAJEE PORT AND RAIL SUBMISSION ON DRAFT DETERMINATION OF THE PILBARA INFRASTRUCTURE SEGREGATION ARRANGEMENTS

Introduction

Oakajee Port and Rail Pty Ltd (OPR) has reviewed the Economic Regulation Authority's (ERA) Draft Determination of The Pilbara Infrastructure Pty Ltd (TPI) proposed Segregation Arrangements. OPR has comments on some of the proposed amendments outlined in the Draft Determination.

OPR notes that the ERA has benchmarked the TPI proposed Segregation Arrangements, on the advice of its consultant PricewaterhouseCoopers (PwC), against the WestNet Rail (WNR) Segregation Arrangements approved by the Rail Access Regulator in 2003. There are, however, some important differences between WNR and TPI which make this comparison problematic.

WNR is a mature rail infrastructure provider with multiple existing rail users, a couple of rail operators and the owner of a rail network that has not been extended since the former WA Government Railways commercial freight network was privatised and the WA Rail Access Regime took effect in September 2001. WNR is also a stand alone rail infrastructure provider with separate ownership of the ports that the rail network connects to and not all of the rail users utilise the port facilities. The WNR rail network also supports a range of traffics from bulk commodities to containerised traffic.

TPI, on the other hand, is undertaking a new development. TPI is a greenfields rail and port infrastructure provider transporting a single product- iron ore. As a greenfields, multi-user, rail infrastructure provider, which only commenced operations in July 2008, there will be a need to extend the TPI rail line to the mines of other iron ore producers and there is substantial risk in undertaking this new role.

Comments on Draft Determination

OPR comments on four of the proposed amendments that it has issues with and does not have any comment on the other proposed amendments.

The amendments have been summarised in the interests of brevity and the individual requirements numbered for ease of cross reference in the comments.

Amendment 11

TPI's proposed Segregation Arrangements are required to include the following additional measures to control access to TPI's hard copy confidential information:

- 1) Confidential information to be stored in a secured compactus or similar facility within the access management area of TPI's premises.
- 2) The access management area should be locked when not attended by TPI staff.
- 3) TPI staff involved in access related functions within the access management area of TPI's premises should be located in a separate secured area.
- 4) Train control centres should be secured with entry controlled by TPI.
- 5) Entry to the access management area should only be available to TPI staff who have signed TPI's Segregation Awareness Statement.

- 6) Entry to the access management area should only be available to TPI staff approved by TPI's General Manager.

OPR Comment

This Amendment has been established using the 2003 WNR Segregation Arrangements as a benchmark as the provisions in the TPI proposed Arrangements are similar.

OPR has concerns with the first three requirements of this amendment. OPR recognises that requirements 1-3 are contained in the 2003 WNR Segregation Arrangements, but understands that WNR did not in fact carry out the requirements as specified in its Segregation Arrangements at that time.

These provisions may be unnecessarily constricting, particularly for the TPI rail network that will need to be extended to the mines of other iron ore producers. OPR is of the view that non access management staff will need access to confidential information particularly for the purposes of the capacity management functions as outlined in section 2 of the proposed TPI Segregation Arrangements. This is to ensure there is consistency of equipment and operations between the branchlines to the individual mines and the TPI mainline. In the event that other mining companies use the TPI shipping facilities, TPI non access management staff will need to be involved to ensure that the port and rail systems are operated as an efficient iron ore logistics chain which will be a requirement to minimise demurrage costs to the companies which can be a significant cost if the logistics chain is not operated efficiently. In this regard, TPI port related staff will need access to confidential information about the mining companies operations and rail transport requirements to ensure ship presentation and scheduling is optimised with train scheduling.

OPR agrees that confidential information should be stored in a secure compactus or similar facility but should be available to all TPI staff on the basis that they sign Segregation Awareness Statements. And the TPI General Manager has given approval. OPR contends that the requirements outlined in (5) and (6) would obviate the need to have the access management area secured as required under (2) and (3).

OPR is concerned that requirement (4) does not comprehend a position where TPI engages an operator by contract to manage train control centres separately. Provision should be made for this possibility.

Amendment 12

TPI's proposed Segregation Arrangements are required to include the following additional measures to control access to TPI's electronic confidential information:

- 1) The access of users, logging onto TPI/FMG's computer network, to shared files, information systems, email and the ability to generate reports should be automatically restricted to information relating to that user's company, functional area and section.
- 2) The arrangements for the generation and management of user ID's and passwords within TPI need to be detailed. The authority to allocate passwords within TPI should reside with the TPI General Manager.
- 3) TPI should store its electronic confidential information on a dedicated and stand alone computer file server, separate from both FMG and TPI's non-access related functions.

- 4) Access to TPI's electronic confidential information system should be controlled by ensuring that access to this information can only be given by the TPI General Manager and will only be given to persons who have signed TPI's Segregation Awareness Statement.
- 5) Further restrictions, beyond those listed above for the TPI/FMG computer network, should apply to users of the computer network who require access to the TPI's electronic confidential system. The restrictions should ensure that users accessing the electronic confidential information system are automatically restricted in the functions available to them and the information they can access and report on according to their user ID and the approval of the TPI General Manager to the level of access sought.
- 6) In regard to TPI's electronic data on rail operations (such as train movements and tonnages) as proposed to be contained in its Operations Management System, this system should have appropriate controls on the data to ensure the protection of confidential data.
- 7) Access to TPI's electronic confidential data held in its Operations Management System should be controlled by ensuring that access to this confidential data can only be given by the TPI General Manager and will only be given to persons who have signed TPI's Segregation Awareness Statement.
- 8) Further restrictions, beyond those listed above for the TPI/FMG computer network, should apply to users for this computer network who require access to the TPI's electronic confidential data held in its Operations Management System. These restrictions should ensure that users accessing the confidential data in the functions available to them and the information they can access and report on according to their user ID and the approval of the TPI General Manager to the level of access sought.
- 9) The process of granting access and usage to TPI's electronic confidential information system and confidential data in its Operations Management System should be capable of being audited.

OPR Comment

The provisions in this Amendment are similar to those contained in the 2003 WNR Segregation Arrangements.

OPR has concerns with item (3) above, where there is a requirement for a separate server for non-access related functions. This requirement goes beyond that contained in section 4 of the 2003 WNR Segregation Arrangements where WNR were only required to have a separate server to the Australian Railroad Group (ARG). In the 2003 review, the Rail Access Regulator stipulated that this was an adequate requirement and considered it represented a balance of interests, in accordance with section 20(4) of the Railways (Access) Act 1998, between rail users and WNR. The requirement to have a separate server for non-access related functions would skew the balance of interests in favour of rail users and represents an un-necessary cost impost on TPI as the other requirements above would provide adequate security of access to confidential information on the TPI server.

Amendment 16

TPI's proposed Segregation Arrangements are required to include the following measures in relation to Avoidance of Conflict of Interest:

- 1) Insert the statement “TPI will manage its access related functions so that, for relevant officers, no conflicts of interest exist”.
- 2) Train scheduling and train control functions are required to be undertaken by TPI staff who have signed TPI’s Segregation Awareness Statement.
- 3) Operators may prepare amendments to daily or weekly plans for services which experience variable demand or variable destinations provided that they do not interfere with other operators rights and subject to TPI having ultimate control of such changes and that this process will be covered by a procedure in the Segregation Manual.
- 4) Common membership of the TPI and FMG boards should be minimised to the extent possible in order to avoid potential conflicts of interest.
- 5) TPI to also make appropriate changes to this section consistent with those other amendments in the draft determination relevant to this section.

OPR Comment

In regard to the requirement identified in item (3) above, it is not clear to OPR whether this requirement should be part of the Segregation Arrangements as it relates to train path issues and may be better placed to be included in the Train Path Policy review currently being undertaken by the ERA as required under Part 5 of the Railways (Access) Code 2000. OPR’s view is that this requirement is better placed in the Train Path Policy as it has greater relevance to changes to train scheduling and train paths.

The implication of item (4) is that the Boards of FMG and TPI should not have common membership or at the very least minimal common membership. OPR considers that this requirement will be difficult to achieve as a company with common ownership with FMG. OPR is of the view that common director’s obligations as board members, required under Corporations Law, coupled with the requirement for board members to sign Segregation Awareness Statements as outlined in Amendment 10 will obviate the need for this requirement to be included in Amendment 16.

Amendment 19

TPI’s proposed Segregation Arrangements are required to include the following measures in relation to preparation of a Segregation Manual:

- 1) An outline of the Segregation Manual document, in terms of major headings.
- 2) A list of the documents and processes governed by the Segregation Manual, and the relationship of those to the Segregation Manual (i.e. whether they are part of the Segregation Manual or maintained under a separate, defined process).
- 3) A list of the information to be included in the Segregation Manual, which is to be similar to the equivalent list in WNR’s 2003 Segregation Arrangements, including the following:
 - a) Copy of the register for recipients of confidential information.
 - b) Copy of the Segregation Awareness Statement including the Confidentiality Agreement.
 - c) A description of each position in TPI’s organisational structure, the classification of these positions according to whether they perform access related functions or other functions and the physical location of these positions.
 - d) The procedures to ensure that billing related confidential information is protected.

- e) The measures and commitments in relation to the protection of confidential information, the types of behaviour which breach the segregation arrangements, the appropriate corrective action for each breach and notification and reporting procedures for breaches.
 - f) The information required to be included in TPI's Segregation Manual as set out under Amendments 9, 10, 15, 16 and 18 of the draft determination.
- 4) Acknowledgement that TPI's Segregation Manual and Segregation Arrangements are both required to be submitted to the ERA in order for the ERA to assess TPI's compliance with the segregation requirements of the Act.
 - 5) Acknowledgement that the ERA will undertake public consultation on TPI's Segregation Manual prior to making a final determination according to section 29(1) of the Act.

OPR Comment

OPR has a concern with the requirement outlined in item (5) above as the ERA has gone beyond what was approved under the 2003 WNR Segregation Arrangements where the Rail Access Regulator approved the WNR Segregation Manual without resorting to public consultation and is therefore not a public document. OPR also notes that PwC has not advocated (PwC Recommendation 19) that public consultation on the Segregation Manual be undertaken during the review of the Segregation Manual by the ERA. OPR does not support the Segregation Manual being a public document as the Manual would outline detailed operational procedures which would be considered confidential.

Conclusion

OPR has noted that the ERA has benchmarked the proposed TPI Segregation Arrangements against the 2003 WNR Segregation Arrangements during the review. OPR has also outlined some differences between the WNR and TPI rail networks which may make direct comparisons problematic.

OPR is also aware that Atlas Iron, a small scale Pilbara iron ore miner, has entered into a haulage agreement with TPI for the transport of Atlas iron ore to Port Hedland and the use of the TPI port facilities to ship its products. If the other prospective iron ore miners who would need access to TPI's rail line also enter into haulage agreements, which is likely due to the scale of their operations, it would obviate the need for detailed and intrusive Segregation Arrangements.

OPR has identified some of the Amendments where the ERA can take a less intrusive position until such time as there is a breach of the Segregation Arrangements by TPI or multiple users have signed up to access agreements and not haulage agreements as the ERA has the flexibility to review the Segregation Arrangements anytime in the future.