



Economic Regulation Authority

WESTERN AUSTRALIA

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NOTICE

DRAFT DETERMINATION

The Pilbara Infrastructure's Proposed Train Path Policy

The Economic Regulation Authority today issued its draft determination on the proposed Train Path Policy (TPP) submitted by The Pilbara Infrastructure (TPI) on 27 February 2009 for its Pilbara railway network.

TPI's proposed TPP of 27 February revised an earlier version submitted on 19 September 2008.

The draft determination is to approve the proposed TPP subject to 15 amendments.

TPI's railway became subject to the *Railways (Access) Act 1998* and the *Railways (Access) Code 2000* on 1 July 2008, when Part Three of the *Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004* was proclaimed.

The Authority's [draft determination](#), TPI's [proposed TPP](#) and the [public submissions](#) received on TPI's proposal are available on the Authority's web site.

The Authority commissioned a consultant, PricewaterhouseCoopers (PwC), to provide advice on TPI's proposed TPP and the public submissions, to help the Authority prepare its draft determination. The PwC report is available on the Authority's [web site](#).

Key Issues

TPI's proposed TPP indicated that consideration would be given to its overall supply chain in the context of maximising the efficient utilisation of its railway network. Concerns were expressed in public submissions about the appropriateness of the proposed TPP including references to TPI's overall supply chain and the potentially adverse impact on the company's railway priorities in the event of it having conflicting priorities at its port.

The Authority agreed that it was not appropriate for such references to be included and required their removal under Amendment 1.

The proposed TPP also included an approach to allocating capacity which was based on applications which were most favourable to TPI, or on a commercial basis. Submissions outlined concerns about the transparency and fairness of this approach.

The Authority considered that access seekers were entitled to be dealt with on a basis consistent with the requirements of the access code. The Authority required changes to TPI's proposed TPP in this area under Amendment 5.

Submissions also raised a number of matters which were not included in TPI's proposed TPP. These included the rights of an operator to on-sell a train path, the rights of an operator to cancel train services without penalty and compliance and review issues.

The Authority has dealt with these additional matters in its draft determination under the heading 'Additional Issues' and has required a number of amendments to the proposed TPP to deal with them (Amendments 11 to 15).

The Authority has noted in its draft determination that in assessing the proposed TPP, it referred to WestNet Rail's current TPP which was approved by the Authority in 2006.

Public Submissions

Submissions are invited from interested parties on the Authority's draft determination. All submissions should be in both electronic and hard copy form and must be received **by 4:00pm WST, Friday 8 May 2009.**

Written submissions should be mailed to:

Mr Jeremy Threlfall
Assistant Director Rail
Economic Regulation Authority
PO Box 8469
Perth BC WA 6849

Electronic submissions should be made to: railnetworks@era.wa.gov.au

In general, submissions made to the Authority will be treated as in the public domain and placed on the Authority's web site. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed and specify in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the provisions of Section 50 of the access code.

The publication of a submission on the Authority's web site shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or part contains information of a confidential nature and no duty of confidence will arise for the Authority.

For further information contact:

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LYNDON ROWE

CHAIRMAN

27 March 2009