



UNITED MINERALS  
CORPORATION NL

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Mr Jeremy Threlfall  
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Economic Regulation Authority  
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Dear Jeremy

**DRAFT DETERMINATION: The Pilbara Infrastructure's Proposed Train Path Policy**

United Minerals Corporation NL (UMC) is supportive of the Authority's Draft Determination to bring The Pilbara Infrastructure (TPI) Train Path Policy (TPP) more into line with the WestNet Rail (WNR) 2006 TPP and to ensure coverage of the TPI TPP by the Railways (Access) Code 2000 (Code). However UMC does have some concerns as to the application of sections 7 and 16(2) of the Code and the ability of the access seeker to meet its obligations under section 15 of the Code with regard to the amended wording of the TPI TPP as it now stands.

*1. Concerns with regard to Amendment 1 of the TPI TPP*

UMC's previous submission to the Authority's Issues Paper was concerned with transparency of the regime and section 16(2) of the Code (for the railway owner not to unfairly discriminate against access seekers) and considered that a more robust way to achieve such was that all access agreements whether negotiated inside or outside the Code have coverage under the Code.

Previous treatment of this issue by the Office of the Rail Access Regulator (ORAR) was that the ORAR in the August 2002 Draft Determination of the WNR TPP stated that "...the TPP needs to be consistent and applicable for each allocated train path regardless of whether access applications are made inside or outside the Code". In such circumstances WNR included both Code and non-Code agreements under the TPP.

UMC remains of the view that the application of the TPP to both Code and non-Code agreements is one way that section 16(2) of the Code is made enforceable, that the regime is transparent and the objectives of the Act are achieved. Accordingly UMC would request the Authority to reconsider this aspect. In the event the Authority remains of the view that non-Code agreements be excluded from TPP coverage then the following comments with regard to Amendments 4 and 14 are of even greater concern.

## *2. Comment and concern with regard to Amendment 3 of the TPI TPP*

In relation to the concerns expressed below with regard to Amendment 4, that the Authority requires the capacity analysis to be transparent, the obligations of the access seeker under section 15 and the obligations of the owner under section 16(2) of the Code, UMC would comment that an integral part of capacity analysis is an understanding of the operational regime. UMC notes that the Authority in the Draft Determination paragraph 80, in relation to the three points raised by the North West Iron Ore Alliance regarding the inclusion of operational aspects in the 'service entitlement' in order to provide transparency, that the Authority considers these matters to be covered by section 7 of the Code or the Train Management Guidelines.

The UMC submission proposing the use of GTK to measure capacity as well as train paths was based on the strategy of the Australian Rail Track Corporation (ARTC) for the Hunter Valley coal chain<sup>1</sup> which is a similar network to what the TPI railway network will be in an operational sense with capacity constraints when junior miners commence operations and when the expansion plans of Fortescue Metals Group commence.

The ARTC GTK and train path approach is that, for a given mix of train types, the design payload of those train paths is calculated to properly reflect the capacity of the section of line. The benefit of such an approach is that it can readily demonstrate to all stakeholders what bottlenecks exist and what extensions and expansions are needed so that network capacity is optimised to the benefit of all operators and there is a basis of justification of the capital works program to the Australian Competition and Consumer Commission as the ARTC Regulatory Authority.

Under the ARTC system train configurations are taken into account by estimating the average capacity per train based on the average number of wagon rakes per train. Average train speed of the network is also calculated and the calculation of theoretical daily capacity is adjusted by a factor of what a section of line can practically carry in an operational sense to calculate practical capacity.

UMC would request the Authority to review the decision not to include the GTK approach in the TPI TPP as it provides a more accurate definition of capacity by including both the train path plus the capacity that the trains can carry as defined by the network infrastructure and standards. This approach also helps to alleviate manipulations of capacity by manipulation of train paths.

The capacity calculation needs to reflect the design capacity of the iron ore wagons as this is a single purpose railway dedicated to the haulage of iron ore. UMC would therefore submit that the Hunter Valley network is a more suitable comparator to the TPI railway network than the WestNet network where there are various train types and therefore only train paths is used to measure capacity.

## *3. Concerns with regard to the Draft Determination amendment 4 to the TPI TPP*

UMC is concerned that the Draft Determination Amendment 4, requiring TPI to incorporate into section 2.2.3 wording similar to section 2.2.2 of the WNR TPP, that such wording is not providing the transparency in the capacity analysis that the second dot point of the Amendment requires. Whilst the access seeker under section 7 of the Code can request information with regard to the network and working time tables for the route, the procedural

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<sup>1</sup> Australian Rail Track Corporation, Hunter Valley Corridor 2007-2012 Capacity Strategy

basis of the proposed section 2.2.3 does not reflect the application of section 7 of the Code. In effect the proposed section 2.2.3 requires TPI to refer to the Master Control Diagram (MCD) to analyse if the proposed train path can be accommodated and advise the access seeker accordingly, whereas section 7(C) implies the MCD should be available to the access seeker to determine if the proposed train path is suitable before formal application. The wording as it now stands is not prefaced with the requirement that the owner provide the access seeker with information that section 7 of the Code requires the owner to provide upon request.

Under section 15 the proponent is required to show the railway owner that the proposed train path can be accommodated on the route or if not, provide the railway owner with a preliminary assessment, based on information reasonably available to the proponent, showing that the proposed extension or expansion can be carried out in a technically and economically feasible way and will be consistent with the carrying on of safe and reliable rail operations on the route. This requirement is difficult to achieve if the procedure of the wording of the section 2.2.2 is adopted without clarification.

UMC would submit that at the time of intent by the access seeker to apply for access that the MCD or the daily working timetables be made available to the access seeker in order to ensure that there is transparency to the analysis. If this were not to be the case it would be extremely improbable for the access seeker to be able to calculate if an extension or expansion was required or if what type of extension or expansion was needed to best suit the network at an optimised economic cost.

A further point to this concern is the demonstrability of the railway owner meeting its obligations of section 16(2).

### *3. Concern with regard to Amendment 14 of the TPI TPP*

UMC notes in paragraph 224 of the Draft Determination, with regard to Compliance and Review issues, that "the Authority has recently undertaken a review of the compliance requirements of the code". The Authority does not detail how it intends to monitor section 16(2) of the Code (although the Authority may have an audit procedure to do so) UMC is concerned, particularly if non-Code agreements do not have TPP coverage, with the issue of how can section 16(2) be monitored and enforced and would request that the intent of section 16(2) be incorporated into the proposed section 4.5 of the TPP.

Regards,

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CEO / Executive Director