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Mr Jeremy Threlfall  
Assistant Director Rail  
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PO Box 8469  
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Dear Jeremy

**DRAFT DETERMINATION: THE PILBARA INFRASTRUCTURE PROPOSED TRAIN  
MANAGEMENT GUIDELINES**

The North West Iron Ore Alliance (NWIOA) is please to respond to the Economic Regulation Authority's (Authority) Draft Determination on The Pilbara Infrastructure (TPI) Proposed Train Management Guidelines (TMG) under the Railways (Access) Act 1998 as one of the Part 5 Instruments of the Railways (Access) Code 2000 (Code).

**1.0 Section 1.3 Pre-conditions: *Non-Code access agreements are outside the Railway (Access) Code 2000***

The NWIOA notes that in the TPI TMG Draft Determination the Authority considers the Code does not imply an obligation on the Authority to apply the TMG to access agreements negotiated outside the Code. The NWIOA adopted a different view in its submission to the Authority on the TPI Train Path Policy (TPP) Draft Determination and submits that those same comments also apply to the TPI TMG.

**2.0 Amendment 4 – Section 2.1 Master Train Plan (MTP): *Transparency of the Regime***

As was also noted in the NWIOA's submission to the Authority on the TPI TPP Draft Determination, the exclusion of non-Code agreements inevitably reduces transparency. If the Authority remains of the view that the Code does not imply an obligation on the Authority to apply the TMG to access agreements negotiated outside the Code then there are other transparency issues that the NWIOA considers should be addressed.

The NWIOA was supportive of the TPP Draft Determination Amendment 4 requiring TPI to take account of the need for the capacity analysis process to be transparent. However, the NWIOA remains concerned that a procedural basis be established so that this direction is achieved and summarises below firstly, the concerns detailed in the NWIOA TPP submission and then secondly, provides submissions with regard to the TMG Draft Determination.

Under section 15 of the Code the proponent is required to show that the proposed train path can be accommodated on the route. The TPI TPP Draft Determination Amendment 4 requires TPI to incorporate into section 2.2.3 of the TPI TPP wording that is similar to section 2.2.2 of the

WestNet Rail (WNR) 2006 TPP. The NWIOA TPP submission highlighted that the above procedure wording was less specific than the wording of section 7 (c) of the Code and was not transparent or visibly demonstrating any capacity analysis calculations. The NWIOA therefore requested that the Amendment include the requirement that TPI make available to the proponent the Master Control Diagram at the time of the capacity analysis or as a minimum, in accordance with section 7 (c), the daily working timetables at the time of the capacity analysis (and now, following this Draft Determination, this should also include the fortnightly and quarterly timetabled traffic plan) in order to ensure that there is transparency to the analysis. In addition such information was considered to:

- Be critical for the proponent to meet the requirements of section 15 of the Code; and
- Assist the Authority in ensuring the railway owner meets the obligation of section 16 (2) for the railway owner not to unfairly discriminate against access seekers under the Code.

The NWIOA TPP Draft Determination response also requested that the **operating regime** be transparent and noted that the Authority considered these matters to be covered either by section 7 of the Code or the TMG.

With respect to the TMG Draft Determination, the NWIOA has previously submitted (in the TMG Issues Paper response) that in order to give greater transparency on what services the operators might conceivably be able to operate on the TPI railway network, the MTP Scheduling Principles need to include the following:

- Train operating pattern regime e.g. Fuel trains operated each week on a Monday night.
- Train operating priorities regime e.g. Loaded trains have priority pathing.
- Track maintenance possession regime.
- Network infrastructure constraints e.g. axle loads.
- Network operating constraints e.g. train lengths.
- Safe working methods of the network e.g. interfaces to two methods.

The NWIOA notes the Authority has agreed with its consultants, PricewaterhouseCoopers (PwC), who advised the Authority "...that this information (as above) could be expected to be covered by the information which a railway owner must provide to an entity seeking access under section 7 of the Code"<sup>1</sup> and that the Amendment also requires the definition of the MTP to be made clearer.

The NWIOA's purpose, in requesting the above information be included in the Scheduling Principles, is that:

1. Firstly, this information is both preliminary information (to assist transparent capacity analysis and to see if the train path can be accommodated on the route) and on-going information in operations and changes to train paths.
2. Secondly, section 7 does not specifically state that such information is to be provided and, if interpreted literally, is not required to be made available (except that under 7 (3) the railway owner is to provide information that affects the design of rolling stock, such as axle loads).

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<sup>1</sup> The Pilbara Infrastructure Pty Ltd, Draft Determination on the Proposed (Revised) Train Management Guidelines, para 79.

3. With regard to the last three dot points (immediately above) the NWIOA requests the Authority consider the Australian Rail Track Corporation (ARTC) document TA02, ARTC Network Interface and Co-ordination Plan<sup>2</sup>. This document provides more network information than section 7 of the Code requires and includes Committed Capacity diagrams for sections of line which exclude the name of the train path owner (refer Attachment A).
4. Thirdly, to assist in ensuring the railway owner meets its obligations under section 16 (2).

The TMG Draft Determination addresses the third dot point above regarding the maintenance possession regime by Amendment 9 requiring notification of track possession from 6 hour to greater than 48 hour possessions with such notification ranging from 2 days to 6 months.

The NWIOA regards the operating pattern and operating priorities regime as vital to the logistical interface between mining operations and train operations. Clear operational and priority parameters facilitate compliance with the Code by all operators and will assist in resolving train instruction and contested path issues.

The ARTC Hunter Valley network is a very similar comparator to the TPI railway network with take or pay operator haulage contracts on a capacity constrained network. The ARTC emphasis is in providing information on operational matters with forward maintenance and enhancement plans to enable operator planning in order to optimise the network operation. The NWIOA therefore submits that a Network Interface and Co-ordination Plan similar to the ARTC document incorporating the above six dot point elements would be beneficial in achieving the objectives of the Act and the Code rather than just a clearer definition of the MTP.

### **3.0 Amendment 9 – Section 4.1 Network repairs, Maintenance and Upgrades: *Planning The Railway Network***

The NWIOA submitted four suggested procedures regarding communication to operators of possession of the TPI railway network for necessary work under section 2.1 of the TPI TMG Issues Paper. The Authority considered these suggested procedures should be considered under this section although the NWIOA would submit that item 3 below remains a consideration of section 2.1 of the TPI TMG.

The context and the suggested procedures were:

“Rather than a subjective statement of ‘best endeavours’ the Alliance requests a regime whereby Operators are continuously updated on the competing needs to access the Network including possessions by;

1. Preparing and providing an annual track planned maintenance, enhancement and expansion plan for the network.
2. Preparing and reviewing with the Operators a rolling three month possession plan for all planned maintenance.
3. Preparing and reviewing with the Operators a weekly report on planned possessions for the following three weeks (including a review of the performance of planned possessions for the previous week).
4. Notifying the Operators immediately in writing of changes to the planned possessions”<sup>3</sup>

<sup>2</sup> [artc.com.au/Access Seeker/Network Configuration & Description](http://artc.com.au/Access Seeker/Network Configuration & Description).

<sup>3</sup> [www.era.gov.au/3/674/48the\\_pilbara\\_inf.pm](http://www.era.gov.au/3/674/48the_pilbara_inf.pm) - Public Submission North West Iron Ore Alliance.

PwC advice to the Authority was that "... these suggestions (as above) go beyond the commitments to operators outlined in WNR's 2006 TMG and there did not appear to be a strong case for such commitments to be broadened under TPI's TMG<sup>4</sup>. In the same paragraph PwC advised that there was merit in considering point 4 which the Authority has addressed.

The purpose of suggesting the above procedures 1-3 was with regard to optimising and planning the rail network. This also has a further implication in that the planning and review process of maintenance with the operators can provide the Authority with a basis to assist in the determination that the capital and major periodic maintenance spend was prudent.

Whilst the NWIOA appreciates the Authority and its consultants use of the WNR 2006 TMG as a template to determining the TPI TMG there are some important differences between the two railways networks that require "... consideration of going beyond the commitments to operators outlined in the WNR 2006 TMG"<sup>5</sup>. Such consideration particularly relates to optimising the capacity of the network and meeting shipping schedules.

At least three factors persuasively demonstrate the WNR network being a relevant comparator with the TPI network:

1. Both the Federal Treasury Secretary and the Governor of the Reserve Bank of Australia are predicting economic recovery in relation to demand for minerals from Australia and to this extent there are plain and obvious moves by Chinese Trading Corporations and steel mills to invest in iron ore mining companies in the Pilbara.
2. Fortescue Metals Group (FMG) is planning a production expansion financed by Chinese steel mills.
3. With the continued stalling of rail access regarding the BHP Billiton and Rio Tinto railway networks, NWIOA members must now plan to build rail spurs to the TPI railway network as the only option to bring their mines into operation within required timeframes.

These factors indicate that the TPI railway network will be exporting in excess of 100 million tonnes of product in a short timeframe in similar circumstances to the Hunter Valley coal network which will require similar planning and logistics by both the railway owner and all operators. By comparison, the WNR railway network exports 8 million tonnes of iron ore from Esperance and 12 million tonnes of mainly alumina from Bunbury. This haulage task is from companies that can plan stockpiles without competing mineral haulers on the same section of line over a network whose owner is not a competitor in the same business. The TPI railway network is therefore a different network and will be a capacity constrained network requiring enhancements in passing loops and signalling. In turn this will necessitate a broader and more complex commitment from the owner to operators than is the case with WNR.

Heavy haulage networks such as ARTC and Queensland Rail have five year asset management plans in place and regulators in other jurisdictions require such plans to be in place in support of the pricing regime. The objective should be to have some longer term planning in place rather than an ad hoc six month notice of major works.

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<sup>4</sup> The Pilbara Infrastructure Pty Ltd, Draft Determination on the Proposed (Revised) Train Management Guidelines, para 198.

<sup>5</sup> The Pilbara Infrastructure Pty Ltd, Draft Determination on the Proposed (Revised) Train Management Guidelines, para 198.

The NWIOA requests the Authority to reconsider the above points and to consider incorporating the planned maintenance, enhancement and expansion plans into:

- The fortnightly train plan.
- The three month preliminary train plan prepared and reviewed in conjunction with the operators.
- An overarching 12 month plan. (Alternatively, to make an 'in principle' decision in support of a 12 month plan with the latter to be implemented following the first regime review by the Authority).

#### **4.0 Amendment 17 – Additional Issue 2: *Protocols for Consultation with Operators***

The NWIOA seeks confirmation from the Authority that this Amendment applies to section 4.4 Issues affecting daily operations.

#### **5.0 Amendment 19 – Section 4.9 Compliance and Review**

The NWIOA notes the Authority's Draft Determination under Additional Issue 4: Compliance and Review that the Authority's monitoring functions include monitoring a railway owner's compliance with the Act and the Code and that the Authority will undertake two yearly reviews.

The NWIOA is supportive of the Authority's Draft Determination to have shorter review periods than those proposed in the Issue Paper submissions and the Authority's requirement for a Compliance and Review section (4.9). However, the NWIOA remains concerned with the issue of how section 16 (2) can be monitored and enforced, particularly if non-Code agreements are treated as being outside the Code in which case the NWIOA re-submits that the intent of section 16 (2) be incorporated into the proposed section 4.9 of the TPP.

In closing, the NWIOA extends its thanks to the Authority for preparing and issuing their Draft Determination on TPI's Proposed Train Management Guidelines. We appreciate the opportunity to provide comment and look forward to the Authority's recommendations for the remaining Part 5 instruments.

Yours sincerely

Dr Justin Walawski FCPA  
Deputy Chairman & Chief Executive

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ARTC Network interface and Co-ordination Plan: Committed Capacity Diagrams

