



The Pilbara Infrastructure Pty Ltd

ACN: 103 096 340
87 Adelaide Terrace East Perth
Western Australia 6004
PO Box 6915, East Perth, Western Australia 6892

Telephone: + 61 8 6218 8888
Facsimile: +61 8 6218 8880
Website: www.fmgl.com.au

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

RE: DRAFT DETERMINATION ON TRAIN MANAGEMENT GUIDELINES

Dear Jeremy

On 30 April 2009, the Economic Regulation Authority released a Draft Determination on the Train Management Guidelines that would apply to The Pilbara Infrastructure Pty Ltd's (TPI) railway from Cloud Break to Port Hedland.

Through this letter, TPI provides comment on the Draft Determination, as follows:

1. Recommended Amendment 5

TPI notes ERA's required deletion of the second last paragraph in Section 2.1, starting "At all times..." TPI appreciates this is on the basis that the ability to take possession of the network is addressed under other parts of the TMG (eg maintenance requirements in Section 4.1). The deletion is acceptable to TPI, excepting that it removes a safety based reason for taking possession of the network. To ensure that safety grounds remain as such acceptable reasons, if the above mentioned paragraph is deleted, TPI suggests that such grounds be included in Section 4.1.1.

The first sentence of Section 4.1.1 would then become:

TPI may perform repairs, maintenance or upgrading of the Network, or take possession of any part of the Network for the purpose of undertaking repairs, maintenance and upgrades, *including for reasons relating to safety*, at any time.

The added text is shown in italics.

2. Recommended Amendment 5

As above.

3. Recommended Amendment 9

The fifth bullet point effectively requires that TPI always gives at least six months notice prior to undertaking network repairs, maintenance and upgrades. It is TPI's position that it will give as much notice as it can to operators of relevant works. However, it cannot give an unequivocal guarantee that it will give at least six months notice. That is not practical when works may need to commence within six months of becoming evident.

4. Recommended Amendment 9

The sixth bullet point effectively requires that TPI place network repairs, maintenance and upgrades notices on its website. It is not the intention of TPI to establish a website and it cannot see what value this amendment provides for current and future operators on TPI's network.

The nature of heavy haul railways in the Pilbara is that the total number of operators will be relatively small. The very high cost of rolling stock, workshops and maintenance yards dictate that any operator must be of a minimum size (in terms of tonnages hauled) to be commercial. That will ensure that the number of operators and Access Seekers will never be so large that TPI will need to rely upon a website to communicate with relevant parties. Indeed, TPI will contact such parties directly to ensure they are aware of interruptions to the network. Thus, there are no other parties who have a need to know about network possessions and would be reliant upon a website to obtain such information.

5. Recommended Amendment 11

TPI agrees to the suggested additional text, however believes that a further clarifier should be added which refers to the overall impact on the railway network.

Below is the original paragraph in Section 4.3, with ERA's suggested text added, plus text to address the above matter shown in italics.

"Following a major delay which has impacted the passage of Services on the Network, then, subject to each Operator's Service Entitlement, TPI will ensure that trains resume service in the order that they were scheduled to run prior to the event causing the delay, if practical, subject *to the overall impact on the network* and in consultation with Operators as to their positions and needs including factors such as crewing arrangements, sensitive freight and shipping or production requirements."

6. Recommended Amendment 19

ERA has required that a new section, headed "Compliance and Review" be added. TPI does not oppose the inclusion of this section. However, it notes that the ERA has required the inclusion of text as follows:

- “The ERA will review the TMG, through a public consultation process...”; and
- “the ERA will monitor TPI’s compliance with the TMG, through an audit...”

The TMG, along with other instruments under Part 5 of the Code and the segregation arrangements under Section 29 of the Act, represent company commitments. However, TPI cannot include a commitment in this TMG that compels the ERA to undertake any actions, as it does not have that authority.

TPI suggests a modification of relevant text as follows:

- “TPI agrees to a review of the TMG, by the ERA...”; and
- “TPI agrees to monitoring of its compliance with the TMG, by the ERA...”

TPI trusts that these comments are helpful and looks forward to an opportunity to discuss key issues with the ERA. Please contact the undersigned if you need any additional information or clarification of comments provided.

Yours sincerely

FORTESCUE METALS GROUP LTD

Greg Dellar
Government Relations

for

The Pilbara Infrastructure Pty Ltd