UNITED MINERALS
CORPORATION NL

9 June 2009

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

Dear Jeremy

**UMC DRAFT RESPONSE TO THE ERA REGARDING:**

**THE PILBARA INFRASTRUCTURE (TPI) PROPOSED TRAIN MANAGEMENT GUIDELINES**

United Minerals Corporation NL (UMC) is supportive of the Authority's Draft Determination of The Pilbara Infrastructure (TPI) Train Management Guidelines (TMG) with regard to the Railways (Access) Code 2000 (Code) and which brings the TPI TMG more into line with the WestNet Rail (WNR) 2006 TMG. However, UMC does have some concerns as to some aspects of the Draft Determination which are detailed below.

**Section 1.3 Pre-conditions**

UMC's previous submission to the Authority's Draft Determination of the TPI Train Path Policy (TPP) 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 and would refer the Authority to the UMC TPP submission[1] regarding Amendment 1 of the TPI TPP Draft Determination.

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.

**Amendment 4 – Section 2.1 Master Train Plan (MTP)**

Again UMC would refer the Authority to the UMC submission regarding the TPI TPP Draft Determination in 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 sections 7 and 16(2) of the Code require transparent analysis and UMC would comment that an integral part of capacity analysis is an understanding of the operational regime. UMC notes that in the TMG Draft Determination at paragraph 79,

[1] www.era.gov.au/3/675/48the_pilbara_inf.pm - Public Submission United Minerals Corporation

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in relation to the points raised by the North West Iron Ore Alliance regarding the inclusion of operational aspects in the scheduling principles that Pricewaterhouse Coopers considers these matters to be covered by the information the railway owner must provide under section 7 of the Code or the TMG and the Authority agrees with this view.

UMC would express concern that section 7 of the Code does not expressly cover these operational aspects and nor does the TMG. UMC would submit that such aspects could only be beneficial to achieving the meeting of the obligations of both parties under sections 7, 15 and 16(2) of the Code. The inclusion of such matters would also assist in preparation of the fortnightly and quarterly train plans in conjunction with the operators and assist in achieving the Authority's objectives in the way contested train paths are resolved. Accordingly UMC would request the Authority to reconsider this matter.

Additionally whilst the WNR 2006 TMG does not contain similar principles the WNR network is a dissimilar network to the TPI network. The TPI network will be a capacity constrained network requiring similar management principles to the Hunter Valley coal chain and a clear understanding of the operational principles will be needed. On the other hand the WNR network only handles about 10 percent of the bulk mineral tonnage predicted for the TPI network and does not have to juggle competing operators with stockpile and shipping logistic concerns.

**Amendment 9 – Section 4.1 Network repairs, maintenance and upgrades**

UMC is very supportive of the Authority's Amendment 5 with regard to some longer term planning and the introduction of a fortnightly train plan prepared in conjunction with the operators and a three month preliminary plan moving with and following on from a firm fortnightly Train plan. UMC is also supportive of the Authority's changes to notifications of certain possession durations and posting of possession notices on the web site containing certain information required. However UMC is still concerned about the long term possession planning scenario and having periodic reviews of planned possessions at a joint forum.

The commitment of a six month notice for major maintenance is not quite the same as having a forward asset management plan. These six month notices are and can be ad hoc rather than sitting within the framework of a known plan. Heavy haul railways have long term asset management plans and regulators require such plans to justify the capital expenditure. In not having a known framework plan the potential to optimise the railway is reduced in relation to stockpile planning and mine planning. UMC would therefore propose that the principle of having a twelve month plan be put in place in this determination with the aim of developing such a plan over the next two years and implementing the plan after the next bi-annual review.

Part of the justification in rejecting the implementation of a twelve month plan would appear to be that the TPI is a greenfield network and more time is required in developing possession plans. However, if this is a valid case it even strengthens further the concept of having a rolling three month review of planned possessions together with the three month train plan.

With regard to the concept that the proposals put forward in the TMG Issues Paper submissions by UMC and the North West Iron Ore Alliance should be rejected because it requires a broadening of commitment to operators beyond those in the WNR 2006 TMG UMC would submit that the Authority should reconsider this concept as the WNR network and the TPI network are two different networks with different purposes.

As stated above the TPI network is expected to be a capacity constrained network with competing companies exporting the same product juxtaposing mine and port stockpiling. The WNR network has two bulk export commodity trades namely iron ore through Esperance and alumina/mineral sands through Bunbury in volumes that are significantly less than what the TPI network will haul.

These exports are by singular companies not competing with others on the same section of line and whilst iron ore exports are planned by other competing companies in the future through either Esperance or Kwinana they will still be of a lesser volume and not have the same competing tensions on a network of a railway owner who is not a competitor in the same business. Therefore UMC would submit that the TPI TMG needs to have a broader commitment to operators than the WNR TMG has.

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

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

**Amendment 19 – Additional Issue: Compliance and Review**

UMC notes in 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"[2]. 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 TMG 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 4.9 of the TMG.

Should you have any queries please contact the undersigned on (08) 9481 0911.

Regards,

Matthew Hogan
CEO / Executive Director

[2] The Pilbara Infrastructure Pty Ltd, Draft Determination on the Proposed (Revised) Train Management Guidelines, April 2008, para 295.

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