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Mr Jeremy Threlfall
Assistant Director Rail
Economic Regulation Authority
PO Box 8469
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Dear Jeremy

The Pilbara Infrastructure Pty Ltd’s Proposed Segregation Manual

The North West Iron Ore Alliance (NWIOA) is pleased to respond to the Economic Regulation Authority’s (Authority) invitation to make a submission on The Pilbara Infrastructure Pty Ltd’s (TPI) Proposed Segregation Manual (PSM).

In responding to the invitation, there are several important matters the NWIOA requests the Authority consider and these pertain to:

- **Required Amendment 5**

This Amendment requires TPI to remove all references to a staged approach to the implementation of its segregation arrangements. The NWIOA notes that reference to a staged approach remains overtly evident in the TPI PSM and is therefore inconsistent with the Required Amendment.

- **Required Amendment 9**

This Amendment requires TPI to “... include in its Segregation Manual a list of documents and other information ... that it would use to define how it distinguishes confidential information from information that is not specifically protected”.¹

The NWIOA believes the Amendment will benefit through the inclusion of three additional items to the Section 2.3 Table Matrix corresponding to items (ii), (iii) and (iv) of the WestNet Rail 2003 Segregation Arrangements Section 3, page 5. We also suggest that the first column heading of the Section 2.3 Table Matrix be titled “Document & Information Type”.

In view of the Authority’s Draft Determination on the TPI Train Management Guidelines we suggest the words “Weekly Train Plan” be substituted with “Fortnightly Train Plan” and similar amendment undertaken throughout the PSM (inclusive of the TPI “Procedures” documents).

¹ ERA, Draft Determination on TPI’s Segregation Arrangements, p.11: Required Amendment 9, last dot point.

▪ **Required Amendment 10**

The TPI PSM has not met the Authority’s requirements and in particular has not addressed the management of confidential information flows within the executive and board structures of TPI and FMG. The Authority’s Required Amendment 10 (2nd last dot point) prescribes control measures which, at a minimum, are the equivalent of measures within section 4 of WNR’s 2003 Segregation Arrangements (from p. 5 para 11 through to the end of section 4 p.6). The NWIOA urges the Authority to stipulate that TPI Procedure R-PR-RA-0005 “Rail Access - Provision of Information to the TPI or FMG Board/CEO/Senior Management” must at least:

- Detail the protection mechanisms in briefing the Boards and safeguarding confidential information; and
- Fully comply with the second last dot point and sub-points therein of Required Amendment 10.

▪ **Required Amendment 16**

Under this Amendment, TPI is required to manage access related functions such that, for relevant officers, no conflicts of interest exist. The NWIOA believes that proposed segregation arrangements should extend to both actual and perceived conflicts of interest. Accordingly it is supportive of Required Amendment 16 and particularly the first and fourth dot points which seek to address both actual and potential conflicts of interest. It follows then that:

- TPI Procedures R-PR-RA-004 “Rail Access - Preparation by Operators of Amendments to Daily or Weekly Plans for Variable Services” should apply to all operators and wording throughout R-PR-RA-004 reflect that the procedures apply to all operators using the TPI network.
- TPI Procedures R-PR-RA-0005 “Rail Access - Provision of Information to the TPI or FMG Board/CEO/Senior Management” (which has as its stated purpose, the description of procedures to manage “ ... provision of confidential information to senior management in TPI or FMG, to ensure compliance with obligations and approved segregation arrangements under the Railways (Access) Act 1998”) should address the fourth dot point of the Authority’s Required Amendment 16 i.e. articulate procedures to minimise common membership of the TPI and FMG boards to avoid potential conflicts of interest.

▪ **Required Amendment 18**

This Amendment addressed segregation arrangements pertaining to the preparation of financial accounts and records and, *inter alia*, prescribed that:

- TPI staff should control the data used to generate invoices for access customers.
- Financial information provided by TPI to FMG for normal internal reporting purposes should be aggregated to prevent disclosure of confidential information.
- Auditors given access to confidential information should be recorded on TPI’s register and should sign TPI’s Segregation Awareness Statement.

A review of the TPI PSM does not confirm (for the NWIOA) that the Authority’s Required Amendment 18 has been addressed satisfactorily. In summary:

- It is not clear whether TPI staff alone control the data used to generate invoices for access customers and the NWIOA requests the Authority seek to ensure strict compliance with the Amendment.
- The concept of aggregated financial information only being provided by TPI to FMG’s Finance Group is not apparent in the PSM and should at least be overtly stated within TPI Procedure R-PR-RA-0006 “Rail Access – Provisions to Ensure Protection of Information To Be Given To FMG Finance”.
- TPI Procedure R-PR-RA-0006 “Rail Access – Provisions to Ensure Protection of Information To Be Given To FMG Finance” should indicate that both Internal Auditors and External Auditors given access to confidential information should be recorded on TPI’s Register and should sign TPI’s Segregation Awareness Statement.

In closing, the NWIOA extends its thanks to the Authority for the opportunity to provide comment on TPI’s Proposed Segregation Manual. The NWIOA believes it is important and would appreciate further opportunity to comment on the Proposed Segregation Manual after the Authority has considered all submissions and requested any amendments to the Proposed Segregation Manual (or to the Draft Determination on Segregation Arrangements) and trusts the Authority will facilitate the opportunity to do so.

Yours faithfully

Dr Justin Walawski FCPA
Deputy Chairman & Chief Executive