



Economic Regulation Authority

 WESTERN AUSTRALIA

Level 6, Governor Stirling Tower
197 St Georges Terrace
Perth Western Australia 6000

GPO Box 8469
Perth Business Centre
Western Australia 6849

Telephone 61 8 9213 1900
Facsimile 61 8 9213 1999
Website www.era.wa.gov.au

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19 March 2009

Mr Paul Larsen
General Manager
WestNet Rail
2-10 Adams Drive
Welshpool WA 6106

Attention: Mr Allan Rose

Dear Mr Larsen

WestNet Rail's Compliance Monitoring Regime

The Authority has recently completed its review of WestNet Rail's (WestNet) compliance monitoring regime. I understand that WestNet has been involved in discussions during the course of this review.

As a result of this review, the Authority has decided to revise WestNet's current compliance arrangements. An outline of the new compliance arrangements which will apply to WestNet from 1 July 2009 is attached.

As noted in the attachment, the first audit under the new arrangements is required to be undertaken by WestNet at the end of the 2010/11 financial year.

In terms of implementing the new compliance arrangements, the Authority notes that these new arrangements will require changes to the relevant compliance sections in WestNet's current Segregation Arrangements and Part 5 Instruments.

The Authority understands that WestNet will be revising its Segregation Arrangements in the near future and it is anticipated that the required changes would be incorporated within WestNet's proposed revised Segregation Arrangements at that time.

In the case of WestNet's Part 5 Instruments, the Authority understands that WestNet will shortly be submitting to the Authority amendments to its current Instruments incorporating the changes required under the new compliance arrangements. The Authority will seek public comment on these amendments for a two week period prior to considering these amendments.

The Authority Secretariat will arrange a meeting with WestNet shortly to discuss the new compliance arrangements in more detail.

Should you have any queries in relation to the above, please contact Mr Russell Dumas, Director Gas and Rail, on 9213 1953.

Yours sincerely

LYNDON ROWE
CHAIRMAN

New Compliance Arrangements for WestNet Rail

Background

The Authority has decided, as a result of reviewing the compliance arrangements in place for WestNet, to revise these arrangements to more appropriately reflect the requirements of the rail access regime legislation (the *Railways (Access) Act 1998* (Act) and the *Railways (Access) Code 2000* (Code)).

These new arrangements will apply from 1 July 2009.

Current Compliance Arrangements

Under its current compliance arrangements, WestNet provides the Authority with annual Key Performance Indicator (KPI) information relating to its railway and undertakes annual audits, using an independent auditor, of specific parts of its Segregation Arrangements and Part 5 Instruments on an annual basis.

Key Performance Indicators

Following its review of the Act and the Code, the Authority's view is that while it may look at the operational performance of a railway owner's railway network in the course of performing its functions, it does not consider that this legislation provides it with a general function of monitoring the operational performance of this network. On this basis, the Authority has decided to remove the KPI reporting obligation from WestNet's future compliance requirements.

Legislative Requirements for the Monitoring Regime

Section 20(1) of Act requires the Authority to monitor and enforce compliance by railway owners with the Act and Code.

The Authority's monitoring regime needs to assess the compliance of a railway owner against the relevant areas within the Act and the Code where obligations are imposed on the railway owner. The relevant areas are as follows:

- Segregation Arrangements (Sections 28-34 of the Act) – requires railway owners to separate their access related functions from their other functions.
- Preliminary (Part 1 of the Code) - requires railway owners to make certain information available to potential access seekers.
- Proposals for Access (Part 2 of the Code) - specifies the obligations of railway owners in handling proposals for access under the Code.
- Negotiations (Part 3 of the Code) - specifies the obligations of railway owners in undertaking negotiations with proponents under the Code.
- Access Agreements (Part 4 of the Code) - specifies the obligations of railway owners in regards to access agreements governed by the Code.
- Part 5 Instruments (Part 5 of the Code) - requires railway owners to comply with approved train management guidelines, train path policies, costing principles and overpayment rules.

Audits

The Authority considers that the most appropriate way to monitor the above obligations imposed on WestNet by the Act and the Code, is through an independent audit process.

As noted above, WestNet is currently required to undertake an independent audit on an annual basis. In order to achieve consistency with the compliance processes in place in within other areas of its jurisdiction, the Authority has decided to extend the period between WestNet's audits from annually to every two years, except for the Over-payment Rules which will be audited every three years. In the case of the Over-payment Rules, WestNet will be required to submit to the Authority the results of its annual internal audit on its over-payment account.

In addition, the Authority has decided that those areas within the Act and the Code which impose obligations on the railway owner and which therefore need to be covered under the Authority's monitoring regime (as outlined above) should be audited. This extends the audit coverage compared to the current audits which deal only with WestNet's Segregation Arrangements and Part 5 Instruments.

The Appendix to this attachment provides an outline of the required audit framework under the new audit arrangements for WestNet.

Implementation of the New Compliance Arrangements

As noted above, it is intended that the new compliance arrangements will apply to WestNet from 1 July 2009. The existing audit arrangements will therefore apply for the 2008/09 financial year and WestNet would undertake its first audit under the new audit arrangements two years afterwards (at the end of the 2010/11 financial year). This audit would cover all the areas outlined in the Appendix to this attachment, apart from the Over-payment Rules. The first audit under the new arrangements for the Over-payment Rules would be undertaken by WestNet at the end of the 2011/12 financial year.

Appendix: New Compliance Audit Arrangements for WestNet Rail

Audit Framework for WestNet Rails					
Areas within the Railways (Access) Act 1998 and the Railways (Access) Code 2000 which require auditing					
Segregation arrangements (Sections 28-34 of the Act)	Preliminary Information (Part 1 of the Code)	Proposals for Access (Part 2 of the Code)	Negotiations (Part 3 of the Code)	Access Arrangements (Part 4 of the Code)	Part 5 Instruments (Part 5 of the Code)
1) Has the railway owner put into place all the requirements outlined in its approved segregation arrangements?	1) Does the railway owner have all the information specified under section 6 of the Code available for prospective proponents either in hard copy format or via its internet website?	1) Have any prospective proponents written to the railway owner seeking information under section 7 of the Code?	1) Has the railway owner received any proposals for access from proponents?	1) Does the railway owner have any access agreements in place under the Code with operators?	1) Has the railway owner put into place all the requirements outlined in its approved Part 5 instrument (train management guidelines, train path policy, costing principles and over-payment rules)?
2) Has the railway owner entered into negotiations with prospective proponents/proponents with the Code or does the railway owner have access agreements in place under the Code with operators?	2) If the answer to question 1 above is no, what is the nature of the breach in compliance, have these breaches in compliance been reported to the Authority and what steps have been taken by the railway owner to remedy these breaches in compliance?	2) If the answer to question 1 above is yes, has the railway owner met all its obligations in relation to the provision of information to each of the prospective proponents/proponents and the Authority, and maintained appropriate records as set out under sections 7 to 12 of the Code?	2) If the answer to question 1 above is yes, has the railway owner met all its obligations to negotiate with each of the proponents as set out under sections 13 to 21 of the Code? If the answer to question 1 above is no, what is the nature of the breach in compliance, have these breaches in compliance been reported to the Authority and what steps have been taken by the railway owner to remedy these breaches in compliance?	2) If the answer to question 1 above is yes, has the railway owner met its obligations in relation to the content of each of the access agreements and the provision of information to the Authority as set out under sections 36 to 39 of the Code?	2) If the answer to question 1 above is yes, has the railway owner complied with its approved Part 5 instrument (train management guidelines, train path policy, costing principles and over-payment rules) in its dealings with the prospective proponents/proponents and operators.
3) If the answer to question 2 above is yes, has the railway owner complied with its approved segregation arrangements in its dealings with the prospective proponents/proponents and operators.		3) If the answer to question 2 above is no, what is the nature of the breach in compliance, have these breaches in compliance been reported to the Authority and what steps have been taken by the railway owner to remedy these breaches in compliance?	3) Has the railway owner been advised by the Authority that a proponent has referred a dispute to arbitration under section 26(1) of the Code?	3) If the answer to question 2 above is no, what is the nature of the breach in compliance, have these breaches in compliance been reported to the Authority and what steps have been taken by the railway owner to remedy these breaches in compliance?	3) If the answer to question 2 above is no, what is the nature of the breach in compliance, have these breaches in compliance been reported to the Authority and what steps have been taken by the railway owner to remedy these breaches in compliance?
4) If the answer to question 3 above is no, what is the nature of the breach in compliance, have these breaches in compliance been reported to the Authority and what steps have been taken by the railway owner to remedy these breaches in compliance?			4) If the answer to question 3 above is yes, has the railway owner met all of its obligations under the arbitration of disputes provisions of the Code (sections 22 to 35)?		
			5) If the answer to question 4 above is no, what is the nature of the breach in compliance, have these breaches in compliance been reported to the Authority and what steps have been taken by the railway owner to remedy these breaches in compliance?		