


Economic Regulation Authority

 WESTERN AUSTRALIA

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19 October 2009

Mr Greg Dellar  
Agreement Acts Consultant  
The Pilbara Infrastructure Pty Ltd  
PO Box 6915  
East Perth WA 6892

Dear Mr Dellar

### **The Pilbara Infrastructure (TPI) Railway – Compliance Audits**

The Authority recently issued final determinations on TPI's segregation arrangements, train management guidelines and train path policy for TPI's railway. In these determinations, the Authority noted that it would be writing to TPI outlining the requirement for independent compliance audits to be undertaken by TPI relating to its obligations under the rail access legislation (*Railways (Access) Act 1998 (Act)* and *Railways (Access) Code 2000 (Code)*).

The obligations on railway owners under the legislation extend beyond the compliance arrangements determined by the Authority under the above final determinations. The additional requirements which require inclusion in TPI's independent audit, for compliance purposes, relate to Parts 2A, 2, 3 and 4 of the Code.

The attachment outlines the requirements of TPI's compliance audits in detail. The first of the compliance audits is required to be undertaken at the end of the 2011-12 financial year.

Should you have any queries in relation to the above, please contact Mr Jeremy Threlfall, Assistant Director Rail, on 9213 1967.

Yours sincerely

LYNDON ROWE  
CHAIRMAN

## **Compliance Audit Arrangements for TPI**

### **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.
- Publication of Information (Part 2A 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.

### **Compliance Audits**

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

In order to achieve consistency with the compliance processes in place in other areas of its jurisdiction, the Authority has decided that TPI's compliance audits should be conducted every two years, except for the Over-payment Rules which will be audited every three years. In the case of the Over-payment Rules, TPI will also be required to submit to the Authority the results of its annual internal audit on its over-payment account.

Page 3 of this attachment provides an outline of the required audit framework under the compliance audit arrangements for TPI's railway.

### **Implementation of the Compliance Arrangements**

The Authority anticipates that the regulatory process to put in place approved documents covering TPI's segregation arrangements, Part 5 instruments and floor and ceiling costs will be completed by around mid-2010.

On this basis, TPI's first two-yearly compliance audit will be required at the end of the 2011-12 financial year apart from the over-payment rules audit.

TPI's first over-payment rules compliance audit will be required at the end of the 2012-13 financial year. Annual internal audits of TPI's over-payment rules will be required to be provided to the Authority on an annual basis as noted above.

### **Independent Compliance Audits**

TPI's compliance audits are required to be carried out by an independent auditor approved by the Authority. TPI would manage and fund the audits. The scope of the audits would be determined by the Authority and would be consistent with the audit outline on page 3 of this attachment.

The compliance audits would be provided to the Authority when completed. The Authority will publish these audit reports on its web site (excluding information claimed by TPI, and accepted by the Authority, to be confidential).

## Compliance Audit Arrangements for The Pilbara Infrastructure Railway

<b>Audit Framework for The Pilbara Infrastructure Railway</b> [Pursuant to the <i>Railways (Access) Act 1998</i> and the <i>Railways (Access) Code 2000</i> ]					
Segregation arrangements (Sections 28-34 of the Act)	Publication of Information (Part 2A 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 available for prospective proponents in hard copy format all the required information as specified in section 7A of the Code and is the information up to date?	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?		