



Economic Regulation Authority

 WESTERN AUSTRALIA

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NOTICE

DRAFT DETERMINATION

The Pilbara Infrastructure's Over-payment Rules

The Authority today published its draft determination on Over-payment Rules proposed by The Pilbara Infrastructure (TPI) for its Pilbara rail network.

Over-payment Rules establish a basis for the railway owner to reimburse Operators in the event that total revenue earned on a particular route section exceeds total costs attributable to that route section. The Over-payment Rules apply only to Operators who are provided with access under the Railways (Access) Code 2000.

The draft determination is to approve the proposed Over-payment Rules subject to 15 amendments. The Authority's [draft determination](#), TPI's [proposed Over-payment Rules](#) and [public submissions](#) are available on the Authority's web site.

The Authority commissioned consultant PricewaterhouseCoopers (PwC) to provide advice on TPI's proposed Over-payment Rules and public submissions to assist the Authority in preparing its determination. The PwC report is available on the Authority's [web site](#).

Public consultation was conducted over a six-week period from 20 August 2008, following submission of the proposed Over-payment Rules by TPI. The Authority considered all submissions in preparing its final determination.

Key Issues

While the draft determination deals with a range of issues which arose from the assessment of TPI's proposal, the key issues are:

- The proposal allows for the Over-payment Rules to apply in circumstances which are foreseeable. The Code does not allow for this, and requires that the Over-payment Rules apply only in circumstances which are unavoidable.
- TPI has proposed that under-recoveries be reimbursed by Operators to TPI at the end of each accounting period. This is not allowable under the Code.
- The Code enables the Railway Owner and the Operator to negotiate any rules for reimbursement to the Operator, as an alternative to the Railway Owner's Over-payment Rules. TPI's proposal does not allow for alternative arrangements to be made.

Public Submissions

Interested parties are invited to make submissions on the Authority's draft determination. All submissions should be in both electronic and hard copy form and must be received **by 4.00pm WST on 25 February 2010**.

Written submissions should be mailed to:

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

Electronic submissions should be sent to: publicsubmissions@era.wa.gov.au

In general, submissions made to the Authority will be treated as in the public domain and placed on the Authority's web site. Where an interested party wishes to make a submission in confidence, it should clearly indicate the parts of the submission for which confidentiality is claimed and specify in reasonable detail the basis for the claim. Any claim of confidentiality will be considered in accordance with the provisions of Section 50 of the Railways (Access) Code 2000.

The publication of a submission on the Authority's web site shall not be taken as indicating that the Authority has knowledge either actual or constructive of the contents of a particular submission and, in particular, whether the submission in whole or in part contains information of a confidential nature and no duty of confidence shall arise for the Authority.

For further information contact:

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CHAIRMAN

15 January 2010