

28 January 2010

Mr. Lyndon Rowe
Chairman
Economic Regulation Authority
GPO Box 8469
Perth Business Centre
PERTH WA 6849

Dear Lyndon,

**PUBLIC SUBMISSION ON REVIEW OF THE RAILWAYS (ACCESS) CODE
2009 ISSUES PAPER OCTOBER 2009**

WestNet Rail welcomes the opportunity to contribute to the *Review of the Railways (Access) Code 2000* (the Code).

We note that the purpose of the review is to assess how effective the Code has been in meeting the objectives of the Competition Principles Agreement (“CPA”). In this regard WNR would expect changes to be made to the Code only where there is compelling evidence that the existing provisions are not effective in meeting CPA objectives.

WestNet Rail (WNR) has reviewed the Issues Paper dated October 2009, and provides the following submission on the issues raised in the paper:

- Whether the required information, specified under section 6(a) and 6(b), is sufficient for prospective access seekers to gain a preliminary understanding of the railway network characteristics and relevant route section infrastructure capability and traffic loads.

WestNet contends that the required information specified under sections 6(a) and 6(b) is sufficient for access seekers to gain a preliminary understanding of the sections of the rail network which they propose to use.

The required information covers the location and physical characteristics of the line as well as the operational standards and expected performance.

WNR also publishes gross tonnage information by line section and would support the inclusion of this requirement in Schedule 2 of the Code.

WNR strongly opposes any requirement to publish capacity information. It is not possible for the railway owner to publish capacity information for each line section given the highly dynamic nature of demand on the network.

WNR does not maintain, nor can it calculate the capacity of a line section unless the specific requirements of a customer are clearly defined. There is no metric (i.e. tonnes or train paths) which can be published on a website and provide meaningful information to access seekers.

The capacity of the network to provide train paths to a customer can only be derived once the railway owner has a full understanding of that customer’s requirements. The number of additional

train paths available between two points on the network is entirely dependent on train length, axle load, scheduling requirements, and most importantly, terminal capacity.

WNR regularly deals with these issues in access negotiations and can provide capacity information on a case by case basis for individual access seekers who have made an access request under the code.

- Whether the extent of information, which entities seeking access can request from the railway owner under section 7, is sufficient to allow such entities to properly prepare a proposal for access pursuant to section 8.

WNR contends that the information requirements under section 7 of the Code are sufficient to allow access seekers to properly prepare a proposal for access.

The requirements cover capacity, pricing, terms and conditions, current traffic as well as all technical and operational information required to prepare a proposal for access.

However, Section 7 of the code may not operate effectively where a proponent requests preliminary capacity information.

The proponent is not required to provide any information with the initial request for preliminary information. A railway owner is not able to make an assessment of capacity without some indicative information from the proponent on their proposed operations.

WNR proposes that the access seekers be required to provide indicative operational information as necessary to a railway owner to facilitate the provision of preliminary information outlined in section 7.

- Whether it may be of benefit, under section 7(1)(a)(i), for entities seeking access to also be provided with forecasts of available capacity over future years (up to three years ahead for example) in order to have a more complete indication of available capacity.

A railway owner cannot provide capacity information required under 7(1)(a)(i) unless an access seeker voluntarily provides the information required under section 8(3).

If an access seeker were to provide this information, a railway owner can provide detailed information relating to the ability of the network to deliver the capacity required.

A railway owner, cannot however, provide forecast capacity for the subsequent 3 years. At any one time a railway owner may have multiple requests for access to the network which may be outside or under the Code. Additionally, there may be other potential rail tasks which a railway owner is working on for which a firm access proposal has not yet been received. These tasks and proposals may be competing to utilise the remaining capacity of the network on a first come, first served basis. Even if a railway owner was able to provide meaningful capacity forecasts, to release the details of this capacity would breach the confidentiality requirements of those customers involved in those forecasts.

- Whether section 9 should allow for the railway owner to also provide floor and ceiling prices to a proponent for future upgrading to rail infrastructure to meet that proponent's proposed traffic requirements. This would require the GRV methodology under Schedule 4 to be amended to provide for forecast rail infrastructure upgrading expenditure to be taken into account.

WNR strongly opposes the inclusion of forecast capital expenditure in the three (or proposed five yearly) floor and ceiling price determinations.

The capital expenditure program of a railway owner cannot be forecast to a level of detail required for reliable floor and ceiling costs to be calculated. Furthermore, it is very likely that the actual capital works undertaken would differ significantly from any forecast over the three or five year period. This may lead to access pricing which does not reflect the regulated asset base.

Section 12 of the Code allows the regulator to carry out a review of the determined floor and ceiling costs where there is a material change in circumstances. WNR contends that a major upgrade for a specific customer constitutes such a circumstance. In that situation a railway owner or access seeker could request that the Regulator exercise those powers under section 12.

WNR does not support any changes to section 9 of the Code.

- Whether, under section 25, the circumstances which constitute "disputes" under the Code (and which can therefore be arbitrated under the Code) are appropriate or should be expanded to include disputes which may arise between the railway owner and an entity seeking access under other relevant parts of the Code.

WNR does not take issue with providing access seekers with the ability to trigger a dispute if the requirements of section 7, 8 and 9 are not complied with.

Section 25 should be expanded to clearly define the specific circumstances under which disputes can be triggered. WNR is unable to make specific comment on these expanded circumstances until such time as they are more explicitly defined.

Apart from those changes supported by WNR above, we consider that the Code is working well and effectively, meeting the needs of all stakeholders.

Yours sincerely

Paul Larsen 
General Manager
WestNet Rail