



ABN 25 117 240 007

Economic Regulation Authority  
Attention: Assistant Director Access  
PO Box 8469  
PERTH BC WA 6849

9 June 2011

Dear Mr Threlfall

**Re: Submission on the Review of the Requirements for Railway Owners  
to submit Floor and Ceiling Cost Proposals**

Oakajee Port and Rail Pty Ltd (**OPR**) has previously made two submissions on the Economic Regulation Authority's (**ERA**) review of the Railways (**Access**) Code 2000 (**Code**).

The ERA has recently released an issues paper entitled Review of the Requirements for Railway Owners to Submit Floor and Ceiling Cost Proposals and is seeking submissions from stakeholders on this issue.

OPR welcomes the opportunity to make this submission on the issues paper. OPR's submission is attached. In short, OPR welcomes the suggested change to ERA practice outlined in the issues paper.

The submission is not confidential and can be made available on the ERA website.

If you have any queries raised in regard to the submission, please don't hesitate to contact Mike Jansen on (08) 9486 0715.

Yours sincerely

Phil McKeiver  
General Counsel & Company Secretary  
Oakajee Port and Rail Pty Ltd

## Attachment: OPR Submission

### OPR's submission in summary

1. OPR welcomes the suggested change to ERA practice outlined in the issues paper that the ERA may not in future require railway owners to regularly submit floor and ceiling costs. OPR considers that requiring railway owners to submit floor and ceiling costs in the absence of an access proposal is a duplication of effort that places unnecessary compliance costs on railway owners.
2. OPR considers that a more efficient approach is for the floor and ceiling cost requirement to apply only when there is a proposal from an access seeker under the Code. There do not appear to be any significant costs accruing to access seekers by the ERA adopting the suggested change.

### Duplication of effort

3. OPR has reviewed the issues paper entitled Review of the Requirements for Railway Owners to Submit Floor and Ceiling Cost Proposals and provides comment on the impact on railway owners, access seekers and the ERA.
4. OPR agrees with the ERA's contention (paragraph 28) that the submission of floor and ceiling cost proposals by railways owners is a duplication of effort where there are no access seekers as it is deemed unnecessary.
5. OPR notes that the ERA has been required to undertake at least three floor and ceiling cost determinations for the WestNet Rail (**WNR**) network since the initial determination in 2003. OPR contends that, with no access under the Code, this requirement on WNR is unnecessary until such time as there is an access proposal under the Code. OPR considers that WNR would have incurred significant compliance costs, both direct and indirect, in consultant's fees and management time in preparing the floor and ceiling proposals, stakeholder consultation and in negotiations with the ERA before final determination by the ERA.
6. Similarly, the ERA would have incurred significant compliance costs associated with consultancy advice and management time in the review of WNR's proposals. Further, additional costs would have been incurred by stakeholders who have provided comments on the initial proposals and the ERA's draft decisions.
7. OPR considers, when compared to the significant quantifiable costs incurred by WNR, as the railway owner, the ERA and other stakeholders as outlined above, that the benefits of having floor and ceiling costs determined prior to access being sought is rather arbitrary. This is because there is no certainty that potential access seekers will seek access through the Code. As demonstrated by the WNR determinations, costs have been incurred with no perceived benefit as users of the WNR network have obtained access outside the Code mechanism.

8. OPR notes that The Pilbara Infrastructure (TPI), as the railway owner of the Cloudbreak to Port Hedland rail line, submitted its floor and ceiling cost proposal for the rail line in July 2010 in accordance with its approved Costing Principles despite there being no third party access on the rail line. The review by the ERA was suspended in April 2011, due to an additional route section being added to link the Christmas Creek mine to the Cloudbreak to Port Hedland rail line, when TPI was advised of this action as new floor and ceiling costs for the new route section would have to be determined.
9. OPR considers this action a duplication of effort and therefore inefficient. A more reasonable approach would be for the floor and ceiling requirement be delayed until there was an actual approach from an access seeker via the Code provisions.

### Reviews of floor and ceiling costs assisting railway owners

10. Railway owners are required to have the floor and ceiling costs of rail lines reviewed regularly (paragraphs 22 and 23). Under this process, approved floor and ceiling costs will be available in the ERA's final determination.
11. OPR contends that railway owners would also need to develop a tariff model which would include the calculation of floor and ceiling costs irrespective of whether there were access seekers who obtained access under the Code or outside the Code. This is because the need to calculate access charges based on a cost of service approach would establish the ceiling cost and hence there would be no incremental benefit in having the floor and ceiling costs instantly available via regular reviews.

### Advantage in having floor and ceiling costs available on ERA's website

12. The only arguable advantage of having determined floor and ceiling costs available on the ERA's website as opposed to discovering them via the access proposal process is that an access seeker would get this information more quickly. There may be some delay in having the floor and ceiling costs made available to access seekers via the proposal process due to the steps that need to be followed in the access application process.
13. However, OPR considers that such a delay would not be significant in the context of other work that an access seeker would need to do in preparing for a venture that requires access to rail. In any event OPR considers that the ongoing cost to railway owners, the ERA and other stakeholders in having pre-determined floor and ceiling determinations in place would be significantly greater, particularly when there is no certainty that any access seeker will seek access under the Code.

### Ability of access seekers to seek ERA instigated floor and ceiling cost determinations

14. It is unclear to OPR whether the availability of pre-determined floor and ceiling costs will increase the likelihood of access seekers approaching railway owners directly with an access proposal. In any event OPR considers that the operation of clause 10 may be preferred by a

railway owner and access seeker as more in keeping with the negotiation based approach of the Code. In addition, clause 10 does not appear to restrict the operation of clause 9.

#### **Timeline for review of floor and ceiling costs**

15. OPR understands that the Code does not prescribe any timelines for the review of proposed floor and ceiling costs. The timing for the review is determined by the ERA through the process followed with the release of the railway owner's proposed floor and ceiling costs, draft and final determinations and stakeholder consultation. The period also depends on the degree of information provision by railway owners at the initial submission of the proposed floor and ceiling costs and during the review by the ERA with additional information requests by the ERA.
16. As a consequence, it is difficult to make a judgement on whether the time taken by the ERA for the review is adequate. However, as noted above OPR considers that any such delays would not be significant in the context of other work that an access seeker would need to do in preparing for a venture that requires access to rail.