

PROPOSAL WHICH MAY AFFECT  
CAPACITY ON THE  
KALGOORLIE – ESPERANCE RAILWAY LINE

FINAL DETERMINATION OF  
THE INDEPENDENT RAIL ACCESS REGULATOR

IN ACCORDANCE WITH THE REQUIREMENTS OF  
SECTION 10 OF THE RAILWAYS (ACCESS) CODE 2000

8 MARCH 2002



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## 1. Background

In early November 2001, WestNet Rail, being the railway infrastructure owner, advised the Acting Rail Access Regulator that an access proposal had been received which, in their opinion, involved provision of access to the Kalgoorlie to Esperance railway line to an extent which may preclude other entities from access to that infrastructure.

The access proposal in question was made by Portman Iron Ore Ltd (PIOL). It involved train operations to carry 5.5 million tonnes per annum of iron ore from Koolyanobbing, located approximately 200 km west of Kalgoorlie, on the main interstate network to the Port of Esperance (Stage 1). Beyond 2003, train operations will increase in order to carry eight million tonnes per annum (Stage 2).

Under Section 10(1)(b) of the Railways (Access) Code (the Code), the Regulator's approval is required before negotiations can be entered into on a proposal where "the railway owner considers that it would involve the provision of access to railway infrastructure to an extent that may in effect preclude other entities from access to that infrastructure".

Upon receiving advice of the proposal, I advertised on Wednesday 21 November 2001 in *The West Australian* and *The Australian* newspapers that consideration was being given to this proposal and public comments were being sought. After an extension in the submission deadline, the closing date for submissions was Friday, 11 January 2002.

Ten public submissions were received, two of which came from WestNet Rail and PIOL. These submissions are available on the Office of the Rail Access Regulator's website ([www.railaccess.wa.gov.au](http://www.railaccess.wa.gov.au)).

## 2. Requirements under Section 10 of the Code

In making a determination under Section 10(1) as to whether the Regulator approves negotiations to commence between WestNet Rail and PIOL on the latter's proposal, Section 10(4)(b) of the Code requires that the Regulator must have regard to:

- a) any comments received in the public consultation process;
- b) any matters the Regulator considers to be in the public interest; and
- c) any other matters the Regulator considers relevant.

Since this is the first time a Section 10 determination has been requested, it is important to clarify the manner in which I have interpreted this section of the Code and the context in which I have arrived at my determination.

I am of the view that Section 10 is not about disallowing the negotiation of access to a route simply because its current configuration may not accommodate an access proposal.

The merit of Section 10 is in:

- a) informing the Regulator when there are potential constraint issues on the capacity of a route within the WA railway network;
- b) allowing interested parties an opportunity to bring their capacity constraint concerns to the Regulator and other stakeholders in a public forum for consideration prior to entering into negotiations;
- c) requiring the Regulator to independently assess the implications of such an access on the route taking into consideration the broadest perspective; and
- d) providing to the railway owner an appreciation of the public and stakeholders' concerns if capacity is constrained on the route, as well as an indication of the future needs for access on that route.

It should be noted that Section 10 provides for only two possible outcomes. The Regulator can either approve or not approve the negotiation of access. There are no provisions to enable the Regulator to give his approval subject to certain conditions being met.

As stated by WestNet Rail, the Regulator cannot rely on the potential for the capacity to be increased by negotiations under the Code or indeed on some predetermined view of the potential outcome of arbitration. While acknowledging this statement and in assessing the information presented to me, I must be very certain that it is technically not feasible to augment the capacity of the route and/or that, on balance, it is not in the public and stakeholders' interest not to approve the relevant parties entering into the negotiation of access.

### **3. Comments received from the Public Submission Process**

There were two opposing views in the comments received in the public submissions on this matter.

Some submissions expressed concern that the increased use of the line proposed by Portman may adversely impact their own investment decisions in the region. They noted that under the route's current capacity that PIOL's mine expansion would take up all the remaining capacity on the Kalgoorlie to Esperance rail route. Indeed those submissions questioned whether the existing route would have sufficient capacity to meet PIOL's Stage 1 mine expansion plans.

Other submissions argued that the need for Section 10 should only arise when it becomes technically not feasible to augment capacity on the route. The argument here is that capacity on the Kalgoorlie to Esperance rail line could be increased with the addition of crossing loops or the enhancement of the line. In supporting this view some submissions argued that this approach is consistent with section 6(4)(j) of the Competition Principles Agreement, which is included in Schedule 5 of the Code. This section states that an owner may be required to expand a facility, provided that it is technically and economically feasible to do.

#### **4. Findings and Deliberations**

As previously stated, prior to making a determination under Section 10(1) of the Code, the Regulator is required to have regard to the three elements contained in Section 10(4)(b) in that overall assessment. These elements are discussed below.

*i. Section 10(4)(b)(i)*

Section 10(4)(b)(i) of the Code states that the Regulator must have regard to any submissions relevant to the capacity issue being considered. Examination of the public submissions received leads me to conclude that significant additional demand for train paths, other than those associated with PIOL's proposal, for the Kalgoorlie to Esperance route has not been demonstrated.

*ii. Section 10(4)(b)(ii)*

Section 10(4)(b)(ii) of the Code states that, in determining whether to allow negotiations to commence on an access proposal that may preclude others from the infrastructure, the Regulator must have regard to matters, as determined by him, to be in the "public interest".

The rail link connecting the Port of Esperance with Kalgoorlie has played an important part in the development of the town of Esperance over the last 30 years and in maintaining that Region's export focus.

In 2000-01, export volumes from the Port of Esperance totalled 3.9 million tonnes, 2.5 million tonnes of which is iron ore from PIOL<sup>1</sup>. If PIOL proceeds with its phased mine expansion project to eight million tonnes per annum this would further enhance its position as the Port's largest customer.

The information I have received to date points to PIOL continuing to be the principal user of the Kalgoorlie to Esperance rail line and that it would not be in the public interest to frustrate its mine expansion plans. PIOL's proposed Koolyanobbing iron ore expansion (ie. Stages 1 and 2) would no doubt generate significant economic activity and employment opportunities in the region.

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<sup>1</sup> Esperance Port Authority website, Trade Statistics as of 1 March 2002.

For projects such as that proposed by PIOL which can demonstrate positive economic and regional benefits, it could be considered unreasonable, and not in the public interest, to prevent negotiations from commencing.

A decision to disallow negotiations to commence could convey the wrong signals to the investment community. This is particularly the case where the proposal can demonstrate positive economic and regional benefits but may have a capacity constraint associated with the current configuration of the route to accommodate it. It also detracts from the premise that access seekers and railway owners could negotiate outcomes that create a favourable situation to all the parties involved in the negotiation.

*iii. Section 10(4)(b)(iii)*

Section 10(4)(b)(iii) states that in making the assessment of whether to allow negotiations to commence between WestNet Rail and PIOL, the Regulator can consider any other matters relevant to this decision.

An examination of PIOL's proposal appears to indicate that the addition of various crossing loops on the Kalgoorlie to Esperance railway route could accommodate PIOL's proposed expansion. Further, the indications are that the construction of the Scadden Loop, which is located between Salmon Gums and Esperance, may be sufficient to meet PIOL's Stage 1 expansion plans. WestNet Rail is currently constructing the Scadden Loop<sup>2</sup>. I note, due to the timing of Portman's access application, that WestNet Rail had not considered the impact of the Scadden Loop on PIOL's proposal prior to referring this matter to me under Section 10 of the Code. In examining the capacity issue surrounding PIOL's proposal, and the potential for it to preclude others from having access to the Kalgoorlie to Esperance line, I have taken into consideration the impact of the Scadden Loop in this decision.

I recognise that in meeting the Stage 2 requirements of the proposal, in a practical sense, capacity on the route may be problematic. Additional crossing loops may be able to accommodate PIOL's Stage 2 expansion plans. If this were the case and another significant user was introduced then under this scenario the rail line may need to be enhanced to accommodate such developments. As previously noted, no evidence to this effect was stated in the public submissions received. Nonetheless, in line with this determination I would expect a negotiated outcome between the parties concerned to take into account both the interests of the access seeker and the railway owner.

Other alternatives could be considered in assessing capacity. I have however not examined the issue of whether the iron ore product could be shipped through the Port of Fremantle as I would presume that WestNet Rail and PIOL have already discussed these options or would consider this matter during the negotiation process.

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<sup>2</sup> The West Australian, 9 February 2002, page 62.

I also noted that the community is likely to express concern were PIOL to transport its iron ore product to the Port of Esperance by road. If this were to occur it would become a public interest issue.

## **5. Conclusion**

Given the comments I have made in respect of this issue, I do not see any merit in not allowing negotiations to commence between WestNet Rail and PIOL over the latter's proposal. Clearly, the Kalgoorlie to Esperance railway line is a significant piece of economic infrastructure, one that is important to the continued development of the region and, in particular, the Esperance area.

In reaching this conclusion I am mindful of the needs for an appropriate balance to be arrived at by the purchasers and providers of access. While the Code constrains me from placing any conditions on what should be discussed in the negotiation process, I would expect that during that process WestNet Rail and PIOL would examine all options to achieve an effective outcome, an outcome that is considered fair and reasonable to all concerned. Given the public interest in this issue through the public consultation process, I would also expect in deriving an effective outcome that WestNet Rail would also consult with other existing and potential users of the Kalgoorlie to Esperance railway line.

## **6. Determination**

In accordance with Section 10(1) of the Code, I approve WestNet Rail and PIOL entering into negotiations on the access proposal lodged by PIOL on 26 September 2001.

Ken Michael

**ACTING RAIL ACCESS REGULATOR**

8 March 2002