



# Over-payment Rules

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## 1. Introduction

- (a) Section 47(1) of the *Railways (Access) Code 2000* (WA) (**Code**) requires each Railway Owner to prepare and submit to the ERA a statement of the rules (**Over-payment Rules**) that are to apply where breaches of the Ceiling Price Test occur on the part of that Railway Owner that could not reasonably be avoided.
- (b) The expression “**Ceiling Price Test**” is used in clause 8 of Schedule 4 to the Code. There are two separate tests: a Ceiling Price Test that must be met for each Access Holder in isolation (clauses 8(1) and (2) of Schedule 4) as well as a combined Ceiling Price Test (which is the Ceiling Price Test referred to in clause 8(3) of Schedule 4).
- (c) Clause 8 of Schedule 4 states that the “**Total Revenue**” earned on a particular Route must not exceed the “**Total Costs**” attributable to that Route (or part of a Route).
- (d) If an Over-payment occurs, the Over-payment is deemed to be allowable within the Code provided the following applies:
  - (i) the Railway Owner can show that the Over-payment could not be reasonably avoided (section 47(1) of the Code);
  - (ii) the Over-payment is at all times within a percentage limit (section 47(2)(a) of the Code);
  - (iii) all Over-payments are reimbursed to Access Holders within each successive three year period (section 47C(2)(b) of the Code);
  - (iv) Over-payments arising as a result of a determination by the Regulator under section 47X(1)(b) of the Code are reimbursed within 60 business days of the determination being made (section 47C(2)(c) of the Code); and
  - (v) the method of reimbursing Access Holders follows the rules set out in these Over-payment Rules (section 47C(2a) of the Code).
- (e) This document outlines the Over-payment Rules that will apply to RHI. These Over-payment Rules set out a mechanism to:
  - (i) calculate the amount by which Total Revenue earned on a particular Route Section exceeds the Total Costs attributable to the Route Section; and
  - (ii) reimburse Access Holders who are provided with access under the Code to that Route Section in the event of an Over-payment.

## 2. Basis of Over-payment Rules

### 2.1 Definition of Route and Route Section

- (a) The Route Section is the basic unit to which the Over-payment Rules apply. A “**Route Section**” is a section of a Route on the railway network that has been divided for management and costing purposes.

- (b) The term “**Route**” referred to in this document has the meaning ascribed in the Code. A negotiated route (in an Access Agreement) could equate to a Route Section (or part thereof) or be a combination of several Route Sections.

### 2.2 One regulatory Ceiling

- (a) Each Route Section has one regulatory Ceiling that will apply to all Access Holders when negotiating access prices and will be the basis for determining whether Total Revenue earned on a particular Route Section has exceeded the Total Costs incurred on that Route Section.
- (b) Total Costs will be calculated by RHI using methods set out in the Costing Principles, and submitted for approval by the ERA as required by clauses 9 and 10 of Schedule 4 to the Code.

### 2.3 What constitutes revenue in the Ceiling Price Test under clause 8 of schedule 4 to the Code?

- (a) In assessing the extent of over-payments under section 47 and clause 8(1) of schedule 4 to the Code, all Access Revenue and Non-Access Revenue received by RHI for a Route Section, or part of a Route Section, and associated Railway Infrastructure will be included to calculate the Total Revenue attributable to that Route Section of the RHI Railway.
- (b) Total Revenue is the sum of Access Revenue and Non-Access Revenue. Access Revenue is all income received by RHI for the provision of access to the RHI Railway. Non-Access Revenue may include private and government contributions.
- (c) Revenue from entities who have negotiated access outside the Code, and revenues attributable to RHI’s own operations on the route will be included in evaluating RHI’s compliance with the Ceiling Price Test and in assessing the extent of Over-payments under section 47 of the Code. The Code does not provide these entities with a legal entitlement to a refund of any Over-payment.

### 2.4 Breaches of the Ceiling Price Test

- (a) Section 47(1) of the Code states that the Over-payment Rules are to apply where breaches occur on the part of the Railway Owner that could not reasonably be avoided.
- (b) RHI will assess Total Revenues earned on particular Route Sections on a periodic basis to determine whether or not there is likely to be a breach of the Ceiling Price Test. Where it is possible to forecast potential Over-payments, RHI will seek to negotiate new access prices with affected Access Holders to ensure that Revenue remains within the Ceiling.
- (c) If breaches of the Ceiling Price Test occur as a result of variations in traffic volume or revenues that are deemed to be temporary or unpredictable in nature, and if Access Agreements are in place, then RHI will advise the ERA of such circumstances and will follow the procedure set out in these rules to deal with such Over-payments.

- (d) If a determination is made by the Regulator under section 47X(1)(b) of the Code, then RHI follow the reimbursement rules set out in these Over-payment Rules to reimburse the Access Holders within 60 business days of the determination being made.

## 2.5 Over-payments and Under-recoveries

- (a) For the purposes of these rules, the expression “**Over-payment**” means the amount of Total Revenue received by RHI for a Route Section that exceeds the Total Costs attributed to the Route Section for a one-year period.
- (b) Conversely, the expression “**Under-recovery**” refers to a situation where the Total Revenues to the Railway Owner on a Route Section for a one-year period are less than the Total Costs attributed to that Route Section.
- (c) Net Over-payments will be assessed over a successive three-year period, during which Over-payments in a particular year may be balanced out by Under-recoveries in a subsequent year or preceding year within the three-year period. Net Over-payments in a three-year period will be paid back to Access Holders in accordance with these rules.
- (d) Conversely, where an Under-recovery occurs the Access Holder is not required to pay RHI compensation for such Under-recovery. However, where a net Under-recovery occurs in a particular 3 year period, there are circumstances under which RHI will be allowed to carry-over this net Under-recovery as an accounting balance into the subsequent three-year period, which may be used to offset Over-payments in that subsequent three-year period. The circumstances where this will be allowed to occur are set out in example 4 in section 5 of these rules.
- (e) Example 4 refers to a situation where, as a result of having to reimburse Access Holders during the three-year period because the Over-payment is greater than 10 per cent of the Ceiling (refer to the Over-payment Rule d in section 4), there are insufficient funds in the interest bearing account for RHI to recoup an Under-recovery that has occurred during the same three-year period. In this instance, RHI will put a case to the ERA to carry the Under-recovery credits over to the next three years up to the amount RHI has been required to refund to Access Holders as a result of exceeding the 10 per cent limit. If allowed, the carry forward will only apply for that one additional successive three-year period.

## 2.6 Allocation of Access Revenue

- (a) Under section 9(1)(b)(i) of the Code, RHI is only required to provide one Floor Price and one Ceiling Price for a proposed access to a Route (i.e. from origin to destination) even though the access proposal could traverse multiple Route Sections.
- (b) Since price is determined on a Route or multiple Route basis, and Total Costs are determined on a Route Section basis, it is necessary to distribute Total Revenue earned over one or more Routes to individual Route Sections. The distribution of such Total Revenue will be done according to the following rules:
  - (i) Total Revenue derived from a Route can only be allocated to the Route Sections on that Route; and

- (ii) RHI will allocate Total Revenue to cover the costs attributed to the applicable Route Sections in the following order:
  - A. incremental costs against all applicable Route Sections;
  - B. up to the Ceiling on all applicable branch or feeder (dedicated) Route Sections; andup to the Ceiling on all applicable shared Route Sections.
- (c) The justification for the ordering of the allocation process is based on the following economic principles:
  - (i) first, to avoid cross subsidisation between Route Sections, Total Revenue allocated to each Route Section must at least cover the incremental cost; and
  - (ii) second, recovery of capital costs on branch or feeder lines ranks ahead of shared lines on the basis that there is no other traffic on these lines to fund the dedicated infrastructure and unless those costs are covered the line may close.
- (d) If RHI and the Access Holders have reached agreement to a different Total Revenue allocation arrangement in an Access Agreement that arrangement will prevail.

### 2.7 Allocation of Non-Access Revenue

- (a) Non-Access Revenue (private or government contributions) will only be allocated to the Route Section for which the contribution was received.
- (b) Where a capital contribution is made whether it be private or government, the value of the contribution to be used in the Ceiling Price Test is to be expressed as an annualised amount taking into account the Total Cost, expected life and Weighted Average Cost of Capital determined by the ERA. Where capital is spent over multiple Route Sections, the actual expenditure will be allocated appropriately into each Route Section based on the actual expenditure on each individual Route Section at the time it was incurred. The allocation principles for Access Revenue do not apply to Non-Access Revenue.

## 3. Allocation of an Over-Payment

The following process will apply in the allocation of an Over-payment on a Route Section:

- (a) Where an Over-payment on a Route Section results from the Ceiling Price Test, all Access Holders who have contributed to the Total Revenue on that Route Section will be entitled to a share of the Over-payment.
- (b) The proportion of Over-payment due to each Access Holder will be determined by each Access Holder's annual contribution to all revenues received above the floor recorded on the Route Section over the preceding 12-month period from July 1 to June 30. An Access Holder paying only the incremental cost on the Route will not be considered for any refund as this would compromise the Floor Price Test in the Code.

## 4. The Over-payment Rules

- (a) These Over-payment Rules apply where breaches of the Ceiling could not reasonably be avoided.
- (b) RHI is to calculate Over-payments in respect of each Route Section for a financial year.
- (c) In these Over-payment Rules, a financial year is the year beginning on 1 July and ending on 30 June.
- (d) Where an Over-payment is greater than a 10 per cent amount allowable for breaches of the Ceiling for that Route Section for the financial year, RHI must reimburse the Access Holders on that Route Section for the amount of the Over-payment calculated according to the pro-rata formula in rule (f) by 30 September of the following financial year.
- (e) Where an Over-payment arises as a result of a determination by the Regulator under section 47X(1)(b) of the Code, RHI must reimburse the Access Holders within 60 days of the determination being made.
- (f) Payments to Access Holders will be apportioned based on the total annual Access Revenue above the Floor Price by each Access Holder on the Route. The following formula is to apply:

*The Access Holder's (i) annual access payments above the Access Holder's incremental cost plus (ii) annual non-access payments for the route section*

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*Total of all entities' (i) annual access payments above the total incremental cost of the combined operations on the route of all entities plus (ii) annual non-access payments for the route section*

- (g) RHI is to establish in its accounting records an account to be known as the "Over-payment Account".
- (h) The Over-payment Account is to be credited with all Over-payments that are equal to or less than the 10 per cent amount allowable for breaches of the Ceiling Price level for the financial year.
- (i) Any Over-payment for the previous financial year shall be calculated by 31 July of each year and credited to the Over-payment Account. The Over-payment will be treated as if were credited to the Over-payment Account on 1 July of each year.
- (j) RHI will also credit interest to the Over-payment Account, calculated daily on the balance in the account, using a rate equal to the 10 year long term bond rate calculated on 30 June each year, or if 30 June falls on a day which is not a business day, the rate published on the first business day after that date.
- (k) At the end of each three-year period the amount standing to the credit of the Over-payment Account (due to the Access Holders, refer to section 4) must be distributed by RHI to Access

Holders (who have negotiated inside the Code) for the amount of the Over-payment calculated according to the pro-rata formula in rule (f) by 30 September.

- (l) No payment is to be made from the Over-payment Account without the prior written approval of the ERA.
- (m) If there are Access Holders, then the Over-payment Accounts must be audited each year by an Independent Auditor appointed by RHI at RHI's expense. The audit must be completed by 31 August. The audit will ensure that each of the amounts credited to the Over-payment Account is correct and in respect of the audit for the year which is the end of the three-year period that the interest credited and payment of amounts from the Over-payment Account is appropriate and consistent with these Over-payment Rules. The auditor's report is to be provided to the ERA as soon as it is completed, and is to be confirmed by the ERA.
- (n) If the audited and confirmed Over-payment is different to that calculated by RHI in rule (i) or rule (j), an adjustment is to be made to the Over-payment Account as if it occurred on 31 July.
- (o) RHI must enter into a legally binding agreement with those Access Holders. That agreement should contain the provisions described in part 1 of schedule 1 to these Over-payment Rules. The agreement must remain in force and effect and bind the parties to the agreement so long as any amount remains standing to the credit of the Over-payment Account and has not been distributed in accordance with rule (k).

## 5. Application of the Over-payment Rules

- (a) The examples shown in Table 1 below demonstrate how the Over-payment Rules apply. Years 1, 2 and 3 show Over-payments and under-recoveries (denoted by a minus sign) for a Route Section. All Access Holders are also assumed to be in the Regime and have met their Floor Costs.
- (b) The annual interest rate assumed is 5% compounded which, given the deposit occurs annually, will only apply to Year 1 and Year 2 deposits. In the examples below, it is also assumed that the Ceiling Cost for the Route Section is \$100,000, and Over-payments in excess of \$10,000 are reimbursed immediately.
- (c) Example 4 refers to the one exception in which the carrying over of under-recovery credits to the next three- year period may apply. In this example, RHI incurred a breach of 20 per cent above the Ceiling in Year 1. At the end of Year 1, it has to reimburse to Access Holders \$10,000 and deposit \$10,000 into the interest bearing account. However, in Year 2, RHI incurred an Under-recovery of 15 per cent. Assuming that the revenue from access is exactly at the Ceiling in Year 3, there are now insufficient funds to compensate RHI in the interest bearing account for the three-year period. In this example, the ERA may approve a carry-over in under-recovery credits of \$5,000.
- (d) If an entity has negotiated access outside the Code then its share of the Over-payments would go to RHI. For instance, if in example 3 no access to that Route Section was provided

under an access agreement then the total accrued principal in the interest bearing account (i.e. \$15,000), and interest earned (i.e. \$1,275), would go to RHI.

**Table 1. Examples illustrating operation of the trust account**

	Example 1	Example 2	Example 3	Example 4
<i>Net annual over or <b>under</b> payment</i>				
Year 1	\$10,000	\$10,000	\$10,000	\$20,000
Year 2	<b>-\$10,000</b>	<b>-\$30,000</b>	\$5,000	<b>-\$15,000</b>
Year 3	\$0	\$0	<b>-\$10,000</b>	\$0
<i>Total of the three-year period</i>	\$0	<b>-\$20,000</b>	\$5,000	\$5,000
Reimbursed to Access Holders	\$0	\$0	\$0	\$10,000
<i>Accrued Principal in Trust</i>	\$10,000	\$10,000	\$15,000	\$10,000
<i>Accrued Interest in Trust</i>	\$1,025	\$1,025	\$1,275	\$1,025
<i>Refund to RHI.....</i>	\$10,000	\$10,000	\$10,000	\$10,000
<i>Refund to Access Holders</i>	\$1,025	\$1,025	\$6,275	\$1,025
<i>Carry forward of credit</i>	\$0	\$0	\$0	\$5,000

## 6. Compliance and review

- (a) Stakeholders have the ability to express any concern to the ERA which may arise at any time and the ERA will investigate such claims.
- (b) The ERA has the power under the Code to amend the Over-payment Rules at any time and Access Seekers and Access Holders can at any time request the ERA to consider amendments.
- (c) The ERA can also commission special audits to monitor RHI's compliance with the Over payment Rules at any time on any issue relating to these Over-payment Rules where it takes the view (acting reasonably) that additional assurance is required.

## 7. Definitions

In these Over-payment Rules the following terms have the following meanings:

<b>Access Agreement</b>	means an agreement in writing under the Code between RHI and an entity for access to the RHI Railway by that entity.
<b>Access Holder</b>	means an entity to which RHI provides access to the RHI Railway under an Access Agreement.
<b>Access Related Function</b>	means the functions involved in arranging the provision of access to Railway Infrastructure under the Code.
<b>Access Revenue</b>	means revenue received by RHI for the provision of track access from Access Holders and other entities.
<b>Access Seeker</b>	means a person seeking access to the RHI Railway.
<b>Act</b>	means the <i>Railways (Access) Act 1998 (WA)</i> as amended from time to time.
<b>Capital Costs</b>	means those costs which fall within the meaning of the term “Capital Costs” in section 2 of the Costing Principles.
<b>Ceiling</b>	means an amount equal to Total Costs.
<b>Ceiling Price</b>	has the same meaning as in clause 9(4) of the Code.
<b>Ceiling Price Test</b>	means the test in clause 8 of schedule 4 of the Code to determine the maximum price which may be paid by an Access Holder for access to a Route and associated railway infrastructure.
<b>Code</b>	means the <i>Railways (Access) Code 2000 (WA)</i> established under the Act and as amended from time to time.
<b>Costing Principles</b>	means the principles, rules and practices determined by the ERA in accordance with section 47H of the Code.
<b>Economic Regulation Authority (ERA)</b>	means the Economic Regulation Authority established by the <i>Economic Regulation Authority Act 2003 (WA)</i> .
<b>Floor</b>	means the sum equal to the total incremental costs.
<b>Floor Price</b>	has the same meaning as in clause 9(4) of the Code.
<b>Floor Price Test</b>	means the test set out in clause 7 of schedule 4 of the Code to determine the minimum price which may be paid by an Access Holder for access to a Route and associated railway infrastructure.
<b>incremental costs</b>	means incremental costs as defined in clause 1 of schedule 4 to the Code.
<b>Independent Auditor</b>	means an auditor independent of RHI approved by the ERA.
<b>Non-access Revenue</b>	means revenue received by RHI that may include private and government contributions in accordance with the ERA's approved Costing Principles to apply to RHI.

<b>Operating Costs</b>	means those costs which fall within the meaning of the term “Operating Costs” in section 3 of the Costing Principles.
<b>Overhead Costs</b>	means those costs which fall within the meaning of the term “Overhead Costs” in section 4 of the Costing Principles.
<b>Over-payment</b>	is defined in section 2.5(a) of these Over-payment Rules.
<b>Railway Infrastructure</b>	has the same meaning as in section 3 of the Code.
<b>Railway Owner</b>	means the person having the management and control of the use of the Railway Infrastructure.
<b>RHI</b>	means Roy Hill Infrastructure Pty Ltd ABN 60 130 249 633.
<b>RHI Railway</b>	means the Railway Infrastructure (as defined in the Code) owned and controlled by RHI to which access has or can be granted under an Access Agreement.
<b>Route</b>	is defined in section 2.1(b) of these Overpayment Rules.
<b>Route Section</b>	is defined in section 2.1(a) of these Overpayment Rules.
<b>Total Costs</b>	means, as defined in clause 1 of schedule 4 to the Code, the total of all: a) Operating Costs; b) Capital Costs; and c) Overhead Costs, attributable to the performance of the Railway Owner’s Access Related Functions incurred by either the Railway Owner or an associate.
<b>Total Revenue</b>	means Access Revenue and Non-Access Revenue.
<b>Under-recovery</b>	is defined in section 2.5(b) of these Over-payment Rules.

## Schedule 1

To be attached to RHI's track Access Agreement as a schedule for Access Holders who have negotiated an Access Agreement inside the Access Regime.

### Part 1 – Prescribed Provisions

#### 1. Establishment of Over-payments Account

Within seven (7) days of the date of this agreement RHI must, in accordance with rule (f) of the Over-payment Rules (section 4), establish within its books of account an account to be styled Over-payments Account and must maintain that account at all times during the continuation of this agreement.

#### 2. Operation of Over-payments Account

RHI must at all times operate the Over-payments Account in a manner consistent with the requirements of the Over-payment Rules and must make payments to the Access Holder in a manner and at the times contemplated by the Over-payment Rules.