



Enq: Rob Dickie
Direct Line: 9416 6313
Email: Rob.dickie@cbh.com.au
Our Ref: 1865283679-139751

Co-operative Bulk Handling Ltd
ABN 29 256 604 947
Level 6, 240 St Georges Terrace
Perth WA 6000 Australia
GPO Box L886
Perth WA 6842 Australia
Telephone
+61 8 9327 9600
Grower Service Centre
1800 199 083
cbh.com.au

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Economic Regulation Authority
Level 4, Albert Facey House
469 Wellington Street
PERTH WA 6000

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Roy Hill Infrastructure - Standard access provisions

Co-operative Bulk Handling Limited (**CBH**) applauds Roy Hill Infrastructure (**RHI**) as the first railway owner to submit standard access provisions to the ERA as required under Section 47A of the *Railways (Access) Code 2000* (WA) (the **Code**).

CBH is Australia's largest co-operative and is owned and controlled by around 3,500 Western Australian Grain Growers. CBH's core purpose is to create and return value to WA growers, both current and future. CBH operates a bulk handling supply chain which manages the complexities of accumulating, transporting and exporting grain from growers utilising both road and rail infrastructure. CBH's operations extend from Geraldton in the north, Albany and Esperance in the south and Southern Cross in the east.

CBH does not access, nor does it intend to seek access to, the RHI network.

CBH's interest in RHI's submission of standard access provisions (or Standard Access Principles as they are described in RHI's submission) (**Access Principles**) is only to the extent that the Access Principles might be considered to set a precedent for other rail network owners that submit standard access provisions to the ERA for approval, including those that CBH currently accesses or intends to access in the future. CBH submits that the ERA's approval of the Access Principles does not and should not set such a precedent.

On this basis, CBH's commentary on the Access Principles is high level, raising two overarching points for the ERA's consideration:

1. The requirement for Standard Access Provisions to be reasonable under Section 47A(1)(2)(a) of the Code.
 - CBH considers that for provisions to be considered 'reasonable' they must appropriately balance the interests of and provide appropriate protections to both access seekers and railway owners.
 - CBH considers that some of RHI's Access Principles lack reasonableness, such as where the principles lack reciprocity, are one-way in favour of the railway owner or permit the railway owner to unilaterally amend the terms of the access agreement.
 - For example, item 20 in the Access Principles articulates a one-way audit right in favour of the railway owner. CBH considers that this is unreasonable as access holders have as much interest as rail operators in auditing compliance with an access agreement.
 - Another example is, various items in the Access Principles enable the railway owner to unilaterally amend the terms of the access agreement. CBH considers that this is

unreasonable as such amendments may adversely affect access holders' rights under the access agreement.

- CBH considers that a lack of reciprocity and the presence of unilateral amendment rights may be indicators of lack of reasonableness.
2. The requirement that Standard Access Provisions are “sufficiently detailed and complete to form the basis of a commercially workable agreement” under Section 47A(1)(2)(b) of the Code.
- CBH considers the Code requires a “long form” statement of standard access provisions, albeit with placeholders for those provisions that are specific to the access being sought. While the Code merely requires “principles” in respect of costings, it requires the more fulsome “provisions” in respect of standard access. The latter is intended to mean “long form” in CBH’s view.
 - CBH considers the requirement to publish a long form set of standard access provisions is consistent with the legislative intent of the Code and ERA’s approach in other regulated markets such as in respect of the regulation of natural gas pipelines. It is also consistent with the approach adopted in the regulation of other rail networks in Australia, such as in respect of the ARTC Network.
 - CBH considers the Access Principles to be a “terms sheet” rather than a “long form” statement of standard access provisions as required by the Code. This may have been the intent because, as far as CBH is aware, no third parties currently access or intend to access the RHI network. CBH acknowledges, it may be unnecessarily onerous on RHI to produce a long form document given no third parties currently access or intend to access the RHI network. However, CBH considers this is a requirement under the Code.
 - One example of a lack of sufficient detail / completeness in the Access Principles is item 13 which states “The access holder acknowledges that the RHI railway will be periodically closed for maintenance shutdowns”. CBH considers this item to include insufficient detail in relation to the management of network closures. This is of critical importance to access holders, as the inability to use the rail network can significantly impact access holder’s operations and have broader economic consequences.

Please note, if CBH has not made a submission in respect of a principle in the Access Principles, that should not be interpreted to mean that CBH considers the principle is both reasonable and complete. As noted above, CBH does not access, nor does it intend to seek access to, the RHI network. Therefore, CBH’s commentary on the Access Principles is high level and for the purpose of ensuring that, when considering rail networks in respect of which CBH is a current or likely access holder, the ERA will ensure that the network’s standard access provisions are reasonable and are a “long form” statement of standard access provisions.

The establishment of Code-compliant, ERA approved Standard Access Provisions is important as they provide a set of independently reviewed and approved foundational terms and conditions for the purpose of supporting negotiations between railway owners and access seekers. Having sufficiently balanced and detailed terms is critical to supporting the achievement of the intended outcomes of the Code, with respect to transparency, certainty, and efficiency.

The opportunity to make a submission is greatly appreciated and we encourage you to contact CBH’s Network Planning Manager, Kristina Primus on 08 9237 9590 or kristina.primus@cbh.com.au, to discuss this matter further.

Yours sincerely,

For: Co-operative Bulk Handling Limited



Rob Dickie
Head of Government & Industry Relations