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15 October 2008

Mr Russell Dumas
Director, Gas and Rail Access
Economic Regulation Authority
Level 6, Governor Stirling Tower
197 St George's Terrace
PERTH WA 6000

Dear Russell

RAILWAYS (ACCESS) CODE 2000 – THE PILBARA INFRASTRUCTURE PTY LTD

On 3 July 2008, The Pilbara Infrastructure Pty Ltd (TPI) submitted to the ERA, its draft Train Management Guidelines and Train Path Policy, required under Sections 43 and 44 of the above Code. The ERA released the draft for public comment with 5 parties making comments.

The ERA has since agreed to TPI providing a response to the public comments.

Please find attached TPI's response to selected issues raised in public comments.

If you require additional information or clarification of comments, please do not hesitate to contact me.

Yours sincerely

FORTESCUE METALS GROUP LTD

GREG DELLAR
for
The Pilbara Infrastructure Pty Ltd

Train Management Guidelines

In accordance with its obligations under Clause 16(8) of the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement, on 3 July 2008, The Pilbara Infrastructure Pty Ltd (TPI) submitted its proposed train management guidelines to the Economic Regulation Authority (ERA) for approval. The ERA has released TPI's proposal for public comment.

TPI has reviewed the five public submissions made in response to the proposed Segregation Arrangements by the following organisations:

- Australian Rail Track Corporation (ARTC)
- Hancock Prospecting (HP)
- North West Iron Ore Alliance (NWIOA)
- United Minerals Corporation NL (UMC)
- Yilgarn Infrastructure.

Having reviewed the submissions by these organisations, TPI offers the following selected responses.

Real Time Management of Services

Comments received focussed on differences between TPI's proposed guidelines and those contained in Westnet's train management guidelines.

TPI's response:

It is not reasonable to assume that the networks managed by TPI and Westnet are sufficiently similar that equivalent processes should apply. The railway built by TPI, from Port Hedland to Cloud Break is inherently different to Westnet's rail network in respect of climate, terrain and ground conditions; and it will be carrying considerably larger tonnages of product per rake. It also needs reiterating that TPI is operating a greenfields railway.

All factors combine to create a very different environment for the respective rail systems and therefore it is necessary that greater time and operating allowances are in place for TPI's railway, than exist for Westnet.

Further; and for the above reasons, TPI uses the term reasonable endeavours regularly in the proposal guidelines given the uncertainties inherent with a greenfields railway in the Pilbara.

Contested Train Paths

Comments have been submitted on priorities to apply in the event of a contested train path, including reference to port operators.

TPI's response:

TPI rejects the assertion that the port operator can change path priorities without reference or regard to the Rail Access Agreements in place. The specific provision in the guidelines refers to contested paths, which by definition relates to a path that that more than one operator would like to run a train on. It would seem to be self evident that port delivery requirements should be a determinate of priorities in the event of a contested train path.

Network Blockages

Comments indicate a possible resistance by operators to assisting with clearing blockages on the network.

TPI's Response

An operator must assist in clearing the Network (as directed by the Train Controller) to ensure the minimum disruption to all operators. TPI rejects any suggestion that an operator does not need to provide any assistance when a train is failed/disabled in the section. In a multiple operator rail environment, it is contingent upon all users to take the necessary actions to reduce operational downtime on the network.

Once a failed train is cleared, it is then the responsibility of the operator of the failed train to make all necessary arrangements to get that service operating again. Any further assistance that one operator provides to another would come under commercial arrangements.

Train Path Policy

In accordance with its obligations under Clause 16(8) of the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement, on 3 July 2008, The Pilbara Infrastructure Pty Ltd (TPI) submitted its proposed train path policy to the Economic Regulation Authority (ERA) for approval. The ERA has released TPI's proposal for public comment.

TPI has reviewed the five public submissions made in response to the proposed Segregation Arrangements by the following organisations:

- Australian Rail Track Corporation (ARTC)
- Hancock Prospecting (HP)
- North West Iron Ore Alliance (NWIOA)
- United Minerals Corporation NL (UMC)
- Yilgarn Infrastructure.

Having reviewed the submissions by these organisations, TPI offers the following selected responses.

Cancellation of Services

Comments have requested an ability for operators to cancel train paths without penalty on certain grounds including, public holidays, mechanical difficulties with rolling stock, repairs and maintenance.

TPI's Response

Such matters are best dealt with in the Access Agreement. At first glance, some circumstances do seem to be capable on being managed by the operator and would not normally be included in Force Majeure events (eg public holidays).

TPI will negotiate with access seekers in good faith on such matters.

On-selling of Paths

Comments have suggested an ability for train paths to be on-sold by operators.

TPI's Response

TPI notes that Appendix 1 of Westnet's approved TPP (August 2006) provides criteria against which Westnet may withhold its approval for on-selling of train paths. As a general comment, TPI supports such criteria. However the circumstances of TPI's railway are so very different to the Westnet system

that the automatic copying of such provisions into the TPP requires considerable thought.

The most significant difference is the very strong likelihood for additional capacity to be added to the TPI network to provide a service for new access seekers. Such capacity increases will usually have onerous engineering, design, construction and approvals requirements. Under circumstances where one party indicates a reduced need for its contracted train paths, it may obviate the need for additional capacity to be installed for future users of the network.

TPI would seek an unfettered ability to withhold approval for on-selling of train paths in its TPP.

Contracts outside the Code

Comments provided make regular reference to rail operations inside and outside the Code.

TPI's Response

The legislation is quite clear in that it administers access to TPI's network, pursuant to access agreements negotiated under the Code. The option of negotiating access outside the Code is available to all potential operators and TPI will negotiate an access agreement, in good faith upon receipt of any such applications.

The TPP applies only to operators who have an access agreement negotiated under the Code.

Supply Chain/Interaction with Port Regime

Comments received have included statements on:

- TPI's standing as a subsidiary of Fortescue Metals Group Ltd ("Fortescue"); and
- The absence of the port regime in evaluation of TPI's rail access regime.

The ownership of TPI by Fortescue predates the time of execution and ratification the Railway and Port (The Pilbara Infrastructure Pty Ltd) Agreement Act 2004. In good faith, TPI and Fortescue negotiated and agreed the content of the State Agreement, including a requirement to fall under the jurisdiction of the Railways Access Act and Code. Subsequent debate and comments on the interaction of TPI and Fortescue are beyond the role of the Regulator, who is restricted to administering the legislation.

On a related theme, the above State Agreement has provisions to manage third party access to TPI's port facilities, which from a regulatory perspective, is clearly independent of rail access.

Specification and Analysis of Capacity

Comments include suggestions to utilise gross tonnes per kilometre (GTK) methodologies for capacity in preference to train paths.

TPI's Response

TPI is not aware of any Australian heavy haul railway that uses GTK as a method of calculating available network access, further it considers it unlikely that any Australian railway uses GTK.

GTK is an excellent method of determining wear rates of assets such as rail and rolling stock, and can be used in determining maintenance requirements and for other commercial purposes. However, it is highly unsuitable for capacity considerations as it very poorly accounts for train configurations and other key differences between operators.

Operating Safety Standards

Comments have suggested the Authority be involved in determining the reasonableness of safety standards that are applied by TPI.

TPI's Response

TPI will apply a common operating standard, including safety components, across the railway. Its application of this standard can be monitored during audits.