



Genesee & Wyoming Australia Pty Ltd

24 March 2015

Mr Stuart Peevor
Manager Pricing & Access
Essential Services Commission of South Australia
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By email: escosa@escosa.sa.gov.au

CC: Ashley Harbutt

Dear Stuart,

2015 South Australian Rail Access Regime Review: Issues Paper

Genesee & Wyoming Australia Pty Ltd (**GWA**), formerly Australia Southern Railroad Pty Ltd, is a wholly-owned subsidiary of Genesee & Wyoming Inc. (**GWI**). GWI acquired the South Australian intrastate rail assets of Australian National in November 1997.

GWA welcomes the opportunity to provide feedback to the Essential Services Commission of South Australia (the **Commission**) on the 2015 South Australian Rail Access Regime Review Issues Paper (**Issues Paper**). This letter contains our initial comments and GWA looks forward to being further involved in the process as the rail access regime review progresses.

GWA is a fully integrated rail operator and owner of rail rollingstock and rail infrastructure, running trains on its own maintained lines, the ARTC main line and, until recently, the broad gauge Adelaide Metro lines in order to access its tracks in the Barossa Valley to service Penrice Soda (now in administration).

Under the *Railways (Operations and Access) Act 1997 (SA)* (**the Act**) GWA is the access provider to rail lines on the Eyre Peninsula (narrow gauge), the mid-north of South Australia and the Barossa Valley (broad gauge), lines between Tailem Bend and Pinnaroo and Tailem Bend and Loxton (standard gauge), as well as standard gauge railway yards at Port Augusta, Port Pirie, Dry Creek, Port Adelaide and Tailem Bend.

GWA has focused its attention on the fundamental question of whether the current Access Regime should be maintained.

For the most part intrastate rail operates in a highly competitive transport environment. Due to the low tonnages and access to high quality road infrastructure, regional rail as a mode of transport within South Australia, both above and below, is a price taker and must vigorously compete with road transport operators for business on the basis of service.

Rail is often at a disadvantage to road due to the double handling required (road rail double movement versus single road movement). Compared against the ARTC mainlines and large volume bulk minerals networks intrastate rail lines often do not have the advantages that distance and/or volume brings over other transport alternatives. GWA has seen a significant modal volume shift from rail to road over the time of its stewardship of the SA intrastate freight rail network.

GWA faces significant concentration risk from its customers. In 2014 Penrice Soda Products entered into administration which resulted in the cessation of haulage of limestone feedstock from the Barossa Valley and currently the broad gauge line is without a customer requiring rail haulage.

A similar outcome is expected for the Mallee grain lines where the customer, in this case Viterra, is expected to divert traffic to road depriving the lines of their sole source of throughput.

Both of these changes will leave South Australia with valuable rail infrastructure available for use but without a dedicated customer. GWA's ability to absorb additional costs and deliver efficient services is greatly impacted by these events.

The SA intrastate rail freight network faces significant economic challenges in the near future with the real possibility of all intrastate lines being without a dedicated customer as tonnages switch to alternative transportation services. The yards themselves generate minimal access revenues and could suffer from a reduction from the economies of scale that the combined SA rail infrastructure business brings.

In light of this it is difficult for GWA to bear any additional costs that may be imposed by this review. GWA would point to the current successful operation of the regulatory regime since its inception as the best evidence to continue the status quo.

Section 1

GWA believes that it would be counterproductive to let the current Access Regime, which is cost effective to manage and encourages negotiated outcomes, to expire and go to a more prescriptive regime.

GWA does not believe that the access regimes in use under the *Competition and Consumer Act 2010 (Cth)* would suit a low volume environment. The SA rail network volumes are uncertain and exposed to seasonality volatility and customer concentration. In most sections of the network a single new rail customer could double traffic and require significant upgrades. Traditional socialisation of those additional costs is unfair upon existing users.

Published rates in a prescribed regime are unlikely to give potential investors in rail transport a reliable guide to future access costs. The risk to GWA is that if it is held to the rates it publishes it may be saddled with more of the risk for a new customer than is able to be justified by the returns or capital investment required. In these examples a case by case negotiated approach is preferable to allow for the asymmetric risks to be resolved. Arbitration, or preferably mediation by consent is the fall back solution for any disagreements. It is GWA's experience that the proponent, GWA and the public sector often all have a role to play in making these new customer projects a success.

Following the legislative amendments in 2010 to reduce the administrative burden GWA is supportive of the continued operation of the Access Regime in South Australia and does not see the need to request further changes.

Below GWA details our response to the specific questions raised by the Commission:

Section 2

Question 1:

Is there any evidence of misuse of market power by rail operators?

GWA Answer: Since 1997 GWA and its predecessor organisations have performed all of the access provider obligations in accordance with the legislative and regulatory requirements. At no time during GWA's tenure has there been evidence of any misuse of market power.

On an annual basis only a small number of requests are received for access to GWA railway infrastructure mainly yards and sidings. Each request is dealt with under the requirements of the Act, the ESCOSA guidelines provided via the Information Kit and the GWA Information Brochure. Logistics, customer concentration and low or erratic volume issues are usually the determining factors which preclude new investment into the non-mainline networks.

All GWA standard gauge yards are used by operators other than GWA, either on an ad hoc basis or through long term access agreements. In some yards it is usually operational requests and the need to first meet the requirements of current contracted customers that are the major impediment to new customers using a yard rather than any regulatory or economic factor.

Question 2:

Has the current Access Regime been successful? How could this success be measured?

GWA Answer: The current South Australian rail access regime has provided a cost efficient basis for negotiating access to GWA track and yards. The fact that the regime encourages negotiation is important. GWA endeavours to provide a basis for negotiation which has become accepted among main line operators as they have come to experience other access regimes. Less experienced operators and access seekers who have the intention of becoming operators at times do not recognise the expense of holding track assets and the need for capital investment to improve track to the standards that they require. In these cases lack of volume and/or certainty usually precludes investment in rail.

An arbitration under the Act has not been required during GWA's tenure despite a number of access requests being processed, some successful and some unsuccessful. GWA believes this is strong evidence the regime is working as intended.

An area where the effectiveness of the regime can be tested is the ability of new customers to access rail haulage services. This is an area that GWA shares the disappointment of the proponents particularly in the mining industry at the current inability to get new developments up and operating. Below rail costs have been mentioned as a factor however despite the best efforts of the above and below rail sides of the business the projects cannot provide the necessary certainty or bear the additional costs required to upgrade the line to the condition required.

This can include increasing axle loads, higher speeds and new connections. GWA has limited to no ability to share these costs to other users as traditionally there are only one or two existing users of each line with trucking providing a highly competitive alternative.

In these scenarios the miners themselves become the only party, apart from the public sector, that can bear the additional costs which play a part in the economic viability of these developments. GWA believes the lack of new developments is not evidence of the regime being unsuccessful but unfortunately of the current economic reality. Due to the very nature of regulated assets speculative investment is not within the business model of GWA's below rail business.

Question 3:

What are the benefits of retaining the current Access Regime? What would be the risks (if any) if it was to expire?

GWA Answer: The South Australian Access Regime is a good example of a fit for purpose regulatory regime giving access seekers sufficient comfort their interests will be protected whilst not burdening the access provider with a more complex and expensive regime.

GWA has publicly supported the Access Regime since its inception as being important in ensuring access seekers are protected against monopolistic behaviour. Practically it sets a framework which encourages participation and a settlement through negotiation. In a relatively low volume rail environment where some developments will be uneconomic and non-competitive, a set of rules that offer the option of arbitration and which set a framework for calculating a capital base is important.

If the Access Regime was allowed to expire the impact could be material. Any application of a national approach, driven by regulators that may not give the appropriate weighting to South Australian economic conditions, is likely to increase costs upon GWA as the access provider. This increase in costs cannot be shared to the end customers without impacting on the viability of regional rail in South Australia. The existing cost base needs to be lightened rather than burdened to ensure the longevity of regional rail in South Australia.

Like other state jurisdictions South Australia should retain control over its intrastate rail assets so as to be able to apply South Australian economic and regulatory policy to South Australian conditions.

Question 4:

What are the current costs of the Access Regime (e.g. costs of compliance and administration)?

GWA Answer: GWA in its accounts allocates costs for administration staff involved in access based upon a proportion of their roles in, managing access ledger accounts, preparing access accounts, billing access customers and collecting revenue as well as a proportion of the time of some operational management directly involved in managing and allocating train paths and agreeing to movements into and out of yards.

Question 5:

Are there alternative approaches to achieving the intent of the Access Regime that are appropriate at this time? For example, would adoption of the national access rules (under the Commonwealth Competition and Consumer Act 2010) be suitable?

GWA Answer: As mentioned above the current Access Regime is a low cost regime to manage. Most traffic is through Yards, but the regime gives the flexibility to evaluate main line developments and negotiate towards a possible successful rail solution. This regime is ideal in a low volume environment.

GWA believes that the more prescribed regimes administered under the *Competition and Consumer Act 2010 (Cth)*, where prices are publicly set by section and all changes to the regime including changes to track ownership and pricing have to go through a public review and approval process are far better suited to high volume and multiple user regimes. In high volume regimes the amount of traffic is unlikely to move by significant amounts year on year, and plans to recover costs and investment can be put in place with a reasonable chance of success.

In high volume systems the access provider has significant market power and the ability to share regulatory costs across a number of users without impacting upon the competitiveness of the underlying service.

On South Australian tracks subject to the current Access Regime one development could more than double volumes and create the need for significant capital investment. This sort of development could not be predicted with sufficient clarity for fixed prices to be a reliable method for predicting future access charges.

A public review and approval process may also be counterproductive in a low volume environment where any justification of prices may have to make public individual development parameters, which could be damaging to the proponent.

Access regimes under the Competition and Consumer Act 2010 (*Cth*) are time consuming to manage and come with significant additional internal and external costs. Labour input and costs to manage the regime would have to increase in an environment where volumes are difficult to maintain.

A change in the Access Regime in South Australia would be considered counterproductive and may discourage development rather than encourage it.

Question 6:

What are the intentions of rail service providers and their customers in the next 5 years? Are there any key industry developments in the foreseeable future that may impact the demand for these services?

GWA Answer: GWA is facing continual increased competition from road transport in moving grain on rail. Some capital investment may be required which current access rates available for grain movement make it difficult to justify.

GWA continues to provide access rates for small developments, which are economically marginal in the current environment due in part to low volumes, high costs and the need for large capital investment. GWA as a company also assists with the reworking of projects, which to date have not progressed because of economic constraints. GWA also continues to look for and work with many larger mineral developments of a volume sufficient to upgrade its current lines. This work is carried out in the hope that it will lead to an access request and future access revenue.

GWA continues to invest in the rail infrastructure. In particular the high volume (comparatively) areas of the network such as the line into Thevenard and the yards are receiving increased amounts of capital investment.

Question 7:

What other issues are relevant to the decision to continue or discontinue the current Access Regime?

GWA Answer: Negotiate arbitrate regulatory regimes are fit for purpose for low volume regional rail infrastructure where there is limited ability to share costs. A similar regime exists for the Tarcoola to Darwin railway, owned by another part of the Genesee & Wyoming Group. No formal disputes have been initiated on that line either further supporting the continued use of a negotiated arbitrate regulatory model.

Another factor to support the current regime continuing is the ability of the Commission to tailor its findings to the particular circumstances of South Australia. A national regulator dominated by the Eastern States is unlikely to place the same weight on regional themes and so risk unintentionally damaging the South Australian economy. All other states have retained their locally based rail access regimes and there is no compelling case for South Australia to do otherwise.

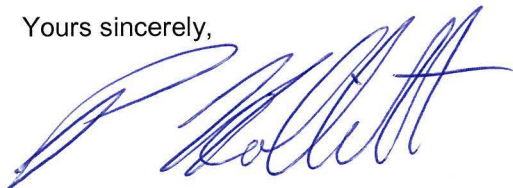
Question 8:

Are there any other matters that the Commission should consider as part of the Review?

GWA Answer: GWA wishes to thank the Commission for its role in facilitating the reduction in the regulatory burden via legislative amendments as part of the 2009 review and has no additional issues at this time.

Should you have any questions in relation to this submission please contact myself on (08) 8343 5441 in the first instance.

Yours sincerely,



Paul Hollitt
Property & Access Manager