

Our ref: LVP:WES008/3

24 March 2009

Mr Nathan Petruf
Essential Services Commission of SA
GPO Box 2605
Adelaide SA 5001

By email: escosa@escosa.sa.gov.au

Dear Sirs

Re: SA Rail Access Regime Inquiry Issues Paper – submission due by 27 March 2009.

We act for Western Plains Resources Ltd ('WPR') in respect of an Issues Paper released by the Essential Services Commission of SA ('ESCOSA') into the SA Rail Access Regime Inquiry. Please find enclosed copy of submission, which has also been provided by way of email, as requested.

We note that ESCOSA's draft report will be released for comment in May of 2009 and our client looks forward to providing input as an interested stakeholder in ensuring the fair operation of, and access to, rail infrastructure in South Australia.

Please consider these comments to be a preliminary response only.

Issues Paper – released 24 February 2009.

Firstly, we note the limitations of the operation of the Inquiry, being in respect of the operation of the rail access regime provided for under the *Railways (Operations and Access) Act, 1997 (SA)* ('the ROA Act') in terms of CIRA Principles. There is no review or requirement to comment upon the interaction with the *AustralAsia Railway (Third Party Access) Act, 1999* being a certified scheme under Part IIIA of the Trade Practices Act, 1974 ('TPA') however, we note the contextual reference within the Issues Paper.

Our client as a holder of major mining tenements and prospective exporter of iron ore from far north SA has, like all other mining entities in this State, an interest in ensuring smooth and appropriate control of freight infrastructure to permit export, including access thereto.

Any comprehensive review must consider access routes from a broad industry wide perspective. This necessarily requires a contextual element to the CIRA analysis being considered, if it is to provide meaningful input so as to promote better and fair access

for the mining industry. In this respect, it is hoped that the May Draft Report will provide further analysis/comment as to, amongst other matters:

- the likelihood of inclusion of further lines as services included within the scope of the access regime by way of proclamation,
- the synergies and/or consistent application of elements of the AustralAsia Act in respect of pricing and other matters (either in current form or as to future amendment), and
- mechanisms for ensuring timeliness of decisions by State regulators and importantly, in areas of discretion to suspend a merits review process, in light of huge delays nationally in finalising access disputes under the Commonwealth regime,

in order to truly reflect the Commission's primary objective¹, which is to protect long term interests of SA consumers in respect of price, quality and reliability of essential services.

WPR makes the following general preliminary comments:

- 1 strongly supports a considered review of pricing principles for access which are centred on commercial negotiation as a primary position and emphasising viability of both infrastructure operator and access seeker;
- 2 clarifying the basis for setting new floor and ceiling pricing principles under the ROA Act for a variety of ageing infrastructure. For example, taking into account that principles associated with construction of new infrastructure (such as the Tarcoola to Darwin rail link²), may vary in respect of service access provided by existing infrastructure and in light of incomplete regulation of the access sector when long haul road transport is not subject to such regulation;
- 3 reviewing the scope of information to be available upon access to services being sought, including what 'other information' is reasonable in addition to usual Information Brochure material;
- 4 promotion of conciliation as first vehicle to access disputes and a considered review of what may constitute a truly effective and timely arbitration process to resolve disputes; and
- 5 modification of the ROA Act including in respect of all procedural aspects, so as to create a scheme *capable of* certification under part IIIA of the TPA, with an analysis of those impediments in the Draft Report. Only then can industry debate the merits or otherwise, of inclusion as a certified scheme under Part IIIA.

¹ S6 of the Essential Service Commission Act, 2002.

² Being DORC evaluation

Please do not hesitate to contact the writer in respect of any of the above preliminary comments.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Leonie Paulson', with a stylized flourish at the end.

Leonie Paulson

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