



Penrice Soda Products Pty Ltd

A.C.N 008 206 942

A.B.N. 62 008 206 942

13th August 2009

Essential Services Commission of South Australia
Level 8, 50 Pirie Street
Adelaide
South Australia

Attention: Mr Peter Lim

2009 SA Rail Access Regime Inquiry: Draft Inquiry Report

Dear Peter,

Thank you for making the ESCOSA 2009 SA Rail Access Regime Inquiry draft report available to Penrice and for extending the period available to us to review the report and comment to the Commission.

Please find attached a further public submission from Penrice Soda Products Pty Ltd to the Essential Services Commission in relation to the Draft Inquiry Report issued in July.

I am available to answer any further questions related to our submission or our rail operations as they relate to this inquiry. I can be contacted on 08 8402 7216.

Yours Sincerely,

Andrew Cannon

General Manager Supply Chain

2009 SA Rail Access Regime Inquiry: Draft Inquiry Report

For the purposes of this submission, Penrice has responded directly to each of the "Draft Report Conclusions" listed in the ESCOSA Draft Inquiry Report. These are contained in the text in bold italics with the Penrice response in normal type.

3.2. Draft Report Conclusion

The Commission's draft finding is that the Access Regime is consistent with CIRA clause 2.2

Penrice agrees with the draft report conclusion that the access regime is consistent with CIRA Clause 2.2.

3.3. Draft Report Conclusion

The Commission's draft finding is that there is no case for price regulation, CIRA clause 2.3 is not applicable to the Access Regime at this stage.

Penrice does not agree with the draft report conclusion in relation to CIRA Clause 2.3

Penrice raised issues with the level of price transparency available and the bundling of above and below rail costs in contract rail haulage services. At that time, Penrice had no current experience in negotiating below rail access charges with our incumbent rail access provider Genesee and Wyoming Australia. Since that time Penrice has been supplied with an information kit outlining the required information.

Penrice notes that the rail access charges provided in the information kit provide a large range in the price quoted for "Approximate Floor Price" and Approximate Ceiling Price" of A\$0.18 to \$2.57 per net tonne.

At the time of drafting this response to ESCOSA Penrice has not been provided with further details on the pricing principles and calculations as they apply to the rail access charges for operating over the GWA owned railway from Penrice to Gawler.

Of concern to Penrice is the future mechanism for rail access pricing and the potential need for future regulation because:

- Penrice is concerned that the rail assets used by Penrice between the mine operation at Penrice (near Angaston) and Gawler may become "stranded" due to the gauge conversion activities planned for the TransAdelaide metropolitan services through to Gawler
- Significant capital may be required to be invested in the rail assets to convert the rail gauge from Penrice to Gawler.
- At this stage it is not clear who is going to be paying for this infrastructure change and:
- As a result Penrice has been given no clear view on the commercial terms and required payback period that a commercial operator would require to undertake this rail infrastructure development.

- There is the potential that a significant investment in rail infrastructure to convert the gauge of the rail line amortised over too short a time period may make rail delivery uneconomic against road transport for this task. This raises the prospect of 470-500,000 tonnes of chemical grade limestone being delivered to Osborne by road per annum. Clearly this is not a desirable situation from an environmental and social welfare perspective.

3.4. Draft Report Conclusion

The Commission recommends that the South Australian Government consider an amendment to section 3(c) of the ROA Act to provide the following object:

(b) to facilitate competitive markets in the provision of railway services, by promoting the economically efficient use of, operation of and investment in, railway services.

The Commission also recommends that the South Australian Government consider the addition of the following provisions to section 38(1) of the ROA Act:

The pricing principles relating to the price of access to a service are as follows:

- (n) that access prices should allow multi-part pricing and price discrimination when it aids efficiency;***
- (o) that access prices should not allow a vertically integrated access provider to set terms and conditions that discriminate in favour of its downstream operations, except to the extent that the cost of providing access to other operators is higher; and***
- (p) that access prices should provide incentives to reduce costs or otherwise improve productivity.***

Penrice agrees with this draft report conclusion and looks forward to receiving further information from the Commission on how this conclusion would be implemented and operate.

3.5. Draft Report Conclusion

The Commission recommends that the South Australian Government consider the insertion of a six-month time limit provision into the conciliation-arbitration framework set out under part 6 of the ROA Act to reflect clause 2.6.

Penrice agrees with this draft report conclusion and supports the insertion of a six month time limit.

3.6. Draft Report Conclusion

The Commission recommends that the South Australian Government commence the certification process at the earliest opportunity following necessary amendments to the ROA Act.

Penrice agrees with this draft report conclusion.

4.1.2 Draft Report Conclusion

The Commission recommends that coverage of the Access Regime to remain unchanged.

The Commission is not aware of any sidings that are not covered by the Access Regime, which should be brought within the scope of the Access Regime.

Penrice agrees with this draft report conclusion.

4.2.2 Draft Report Conclusion

The Commission has found no evidence to suggest that offers are being provided to access seekers in a non-transparent manner.

The Commission proposes to undertake a separate review of its Information Kit in parallel with this Inquiry to require an access provider to:

- Δ Unbundle access charges;*
- Δ Provide more explicit information on the level of service quality that it to be provided at that particular price; and*
- Δ Demonstrate how any proposed capital expenditure is linked to service requirements and how it is being incorporated into the access charges (either through capital contributions or tariffs)*

The Commission would welcome comments from stakeholders on the type of information that should be provided as part of the Information Brochure and throughout the negotiation process in order to facilitate successful negotiation.

The Commission would also welcome comments from stakeholders on the readability of its Information Kit, and whether or not it is considered sufficiently detailed to give readers an adequate understanding of the Access Regime and the Commission's role.

Penrice agrees with this draft report conclusion. In particular, Penrice supports initiatives aimed at:

- "Unbundling" access charges in a truly transparent and timely manner.
- Ensuring it is clear how proposed capital expenditure is linked to service requirements and how it is being incorporated into the access charges. Given Penrice's potential gauge conversion issue Penrice has a particular interest in this area and would like to promptly convene a discussion with ESCOSA on how they intend to achieve this objective.

4.3.2 Draft Report Conclusion

The Commission would prefer service quality and investment issues to be dealt with through commercial negotiation between access providers and access seekers.

Penrice understand the Commission's position "in principle". The issues are likely to arise as existing rail infrastructure assets come to the end of their useful lives and enter a period of significant capital re investment. In this commercial environment, the investment time horizons of the rail access provider and rail access seeker may not be aligned.

What mechanism will then exist for the commercial resolution of these issues and how effective will they be?

4.4 Draft Report Conclusion

The Commission recommends that the South Australian Government consider the insertion of a confidentiality provision into Part 5 of the ROA Act to prevent the disclosure of commercially sensitive information to any third party without the consent of that party provided the information or to which the information relates.

Penrice agrees with this draft report conclusion.

4.5.2 Draft Report Conclusion

The Commission recommends that an "advice and directions" provision be introduced into the ROA Act.

The Commission recommends that the South Australian Government consider the insertion of a six-month time limit provision into the conciliation-arbitration framework as set out under Part 6 of the ROA Act.

Penrice agrees with this draft report conclusion.

4.6 Draft Report Conclusion

The Commission recommends that the South Australian Government consider amending the definition of “access contract” under the ROA Act to a:

- Δ Contract giving access to railway services which:
 - Has an annual value to an operator of \$50,000 or more; or*
 - Is for a term longer than 2 months; or**

- Δ Contractual variation of an existing contract affecting access to railway services in a significant way or to a significant extent.*

Penrice does not believe the existing arrangements need to be modified.

4.7 Draft Report Conclusion

The Commission would welcome comments from stakeholders as to whether there is any real benefit in retaining section 21 of the ROA Act and, if so, what types of non-rail businesses should be specifically prohibited.

Penrice has not sought advice on section 21 of the ROA Act.