

27 September 2005

Mr Luke Wilson
Manager, Transport and Related Industries
Essential Services Commission of SA
GPO Box 2605
ADELAIDE SA 5001

Dear Luke,

SA Rail Access Regime : Proposed Changes to Regulator Components - Draft Decision

Pacific National has reviewed the *SA Rail Access Regime : Proposed Changes to Regulator Components - Draft Decision* ("the Draft Decision") and welcomes the opportunity to provide comment to the Commission in addition to those provided in our previous submission.

Pacific National recognises and understands that the Draft Decision is limited in scope and we support the Commission in suggesting possible improvements to the Government arising from the review process. Subsequently our comments below are not limited to the areas identified by the Commission as those on which they can currently act.

However the Commission does have the ability to improve the Regime, and Pacific National would urge the Commission to utilise to the full extent possible the latitude that does exist to modify the Regime to increase its effectiveness and to reduce its reliance on arbitration.

1. Pricing Principles

Pacific National supports the decision to retain Pricing Principles as it will provide some guidance to access seekers about potential access charges.

2. Information about access

Pacific National reiterates the need for transparency and non-discrimination in access prices to ensure the Access Regime is effective. Having reference tariffs set at

competitive levels (ie levels equivalent to the those paid by the incumbent rather than at the ceiling) is central to allowing competition on the network covered by the Access Regime. There are certain rail tasks around Australia that due to the density on the applicable network and the type of traffic will support a tariffs set at the ceiling rate of return. The two examples of this would be coal movements in the central Hunter Valley and some movements of coal in Queensland. Pacific National is not aware of any grain or intermodal freight tasks that can afford to pay an access charge anywhere near the ceiling.

Pacific National understands that there are obligations under the ROA Act for the access provider to “not discriminate unfairly between access applicants (s23)”. Access seekers need to be assured during the access seeking process that they will not be price discriminated against.

The ROA Act requires that an access seeker “Be provided with information about the terms and conditions on which railway services would be made available (s28)”. In conversation with the Commission it is understood that this means that ASR would be required to quote to an access seeker how much it is charging an existing customer for the combined above and below-rail service as well as providing a separate quote for below-rail access. This information taken together will provide some guidance as to the appropriateness of the access charge and whether a price squeeze is occurring. Access seekers will rely on this requirement being met to be assured (when seeking to win existing rail traffics) that access rates are non-discriminatory and not being set at a level which causes a price squeeze. However this requirement will not address the issue of a possible price squeeze for new business on the network. There is the possibility of seeking arbitration to determine the matter but this is a costly and time consuming process.

Pacific National seeks confirmation from the Commission as to the scope of the requirement in section 28 regarding access seekers being provided with information about the terms and conditions on which railway services would be made available.

Non-Price Information

Pacific National welcomes the decision regarding the additional track information that will be required to be provided ie:

- average transit times;
- minimum radius curves and ruling grades;
- estimated available capacity; and
- available train paths.

Price information

The publishing of floor and ceiling prices for significant services (nominated by the Commission) is welcome by Pacific National. This is particularly so if (as suggested) it will be accompanied by statements detailing how the floor and ceiling prices relate to the pricing principles including a rate of return. It is Pacific National’s view that there may

remain an opportunity for the access provider to “game” the result if they use artificially inflated cost figures or allocate costs to sections where Pacific National seeks access. Also as stated above it is Pacific National’s view that the ceiling cost while providing some level of price guidance is insufficient to produce a competitive access rate.

To partially address this issue the access provider could be required to publicly report the access charges currently charged to its above-rail operation.

3. Regulatory Information Requirements

Pacific National in its submission proposed an expanded role for the Commission with regular and more detailed information reporting requirements. The Draft Decision allows an avenue for seeking non-discriminatory rates however it appears to emphasise a reliance on arbitration to effect non-discriminatory rates. As mentioned above this approach will be accompanied by the usual legal costs and delays in obtaining an outcome.

By requiring more detailed reporting there would be a higher degree of transparency and in Pacific National’s view a corresponding reduction in the likelihood of arbitration.

4. Compliance

Pacific National understands that the ASR is already required to keep “regulatory accounts” which comprise a global Profit and Loss statement for the regulated network. The new requirements will result in ASR providing the regulatory accounts to ESCoSA along with a statement that it is in compliance with its reporting duties.

It is Pacific National’s view that although there is the possibility that the regulatory accounts will be of use to ESCoSA in some future arbitration it will only provide the most basic level of detail. The information that will be reported will not be split by network segments (however they may be defined) and will not be made public.

As the accounts are not split by segment it would allow an access provider in this Regime to reallocate costs between segments after an access seeker has applied for access and thereby quote a high access rate. The regular reporting of regulatory accounts on a network segment basis will limit the access provider’s ability to arbitrarily reallocate costs in such a manner.

The access provider will need to allocate costs by network segment to meaningfully quote any access price to a future access seeker. The task would not be an administrative burden upon the access provider because it is likely to already produce internal accounts in that form.

Pacific National is also unaware of any factor that would inhibit an access provider reporting its regulatory accounts publicly.

Conclusion

The relevance of a regime regulating access to below-rail services can be measured by the extent competition or the threat of competition in above-rail services exists. It is Pacific National's assessment that the current form of the SA Rail Access Regime is limited in its ability to facilitate this competition and notes that currently there are no third-party operators on the network. The changes proposed in the Draft Determination will assist in moving towards facilitating competition but only to a limited extent. Pacific National would commend any changes the Commission can make to the Regime to increase transparency and ensure non-discrimination in pricing.

Yours sincerely

Peter Miller
Access Regulatory Manager