



MINERALS COUNCIL OF AUSTRALIA NT DIVISION

TARCOOLA-DARWIN RAILWAY – TEN YEAR REVIEW OF REVENUES

PRELIMINARY RESPONSE TO ESCOSA ISSUES PAPER

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TABLE OF CONTENTS

EXECUTIVE SUMMARY	ii
1. BACKGROUND	1
2. RESPONSE TO THE THRESHOLD ISSUE	1
2.1 TRANSPARENCY OF INFORMATION.....	1
2.2 REVIEW SCOPE.....	2
2.3 APPROPRIATE CAPITAL VALUE AND RATE OF RETURN FOR RISK.....	2
3. OTHER RELEVANT REGULATORY ISSUES	3
3.1 COMPETITION FOR ABOVE RAIL SERVICES	3
3.2 ADEQUATE RING-FENCING PROVISIONS AND SEPARATION	3
3.3 PRICING METHODOLOGY AND CERTAINTY	3
3.4 TIME AND CAPACITY CERTAINTY	4
3.5 FREQUENCY OF REGULATORY REVIEWS	4

EXECUTIVE SUMMARY

This submission is provided by the Northern Territory Division of the Minerals Council of Australia (MCA-NT). MCA-NT appreciates the opportunity to provide a response to the Essential Services Commission of South Australia (ESCOSA) and confirms that this is a public submission.

The ability for ESCOSA (and stakeholders) to appropriately verify, address and respond to the Threshold Issue relies upon the provision and transparency of relevant information from the Access Provider. MCA-NT is supportive of ESCOSA's proposed process to assess the relevant revenues, subject to initially deriving an appropriate allocation of revenues and costs between above and below rail services provided by GWA (North) Pty Ltd.

Given that there is no transparency of these revenues, costs or the commercial arrangements underpinning this, MCA-NT's primary concerns are to ensure that there is an appropriate allocation of revenues and costs between above and below rail services (particularly fixed costs) and that the margin earned by the Access Provider is commensurate with the risk being borne. Further, in the absence of being able to make informed comment stakeholders are relying heavily upon ESCOSA to satisfy itself of the appropriateness of these specific matters.

MCA-NT proposes that the revenues and costs to be assessed include the following:

- Track infrastructure
- Train control and communication systems
- Signalling systems
- Railway maintenance
- Railway renewal programs

Moving forward MCA-NT encourages ESCOSA to undertake a broader review of the regulatory regime to ensure it is fit for purpose in the context of the Northern Territory market. MCA-NT believes that the current regulatory framework can be further improved by strengthening certain provisions and adopting similar approaches to other Australian regulatory frameworks as follows:

- transparency of information relating to infrastructure providers;
- vertical separation and appropriate ring-fencing measures so that any dealings between an infrastructure access provider and any related parties are at arm's length on conditions which are no more favourable than the conditions offered to unrelated third parties;
- amendments to facilitate pricing, capacity and time certainty to access seekers; and
- appropriate frequency of regulatory reviews to ensure it is fit for purpose for both access seekers and infrastructure providers and to align with other jurisdictions.

We would welcome the opportunity to discuss any issues raised in our submission.

1. BACKGROUND

This submission is made by the Minerals Council of Australia - Northern Territory Division (**MCA-NT**) in response to the Essential Services Commission of South Australia's (**ESCOSA**) invitation for comments on its Issues Paper (**Issues Paper**) in respect of the Ten Year Review of Revenues for the Tarcoola-Darwin Railway (**TDR**). We understand that ESCOSA is required to conduct this review under the terms of the *AustralAsia Railway (Third Party Access) Act 1999 (Act)* and associated Code. The TDR is currently operated by GWA (North) Pty Ltd (**GWAN**), a subsidiary of Genesee & Wyoming Inc.

MCA-NT appreciates the opportunity to provide a response to ESCOSA and confirms that this submission may be made public.

The focus of this submission is on issues and recommendations as they relate to the minerals industry in the Northern Territory (NT). The Minerals Council of Australia (MCA) is the peak industry association that represents the corporate minerals companies in Australia. The members of the MCA are engaged in mineral processing, mining, exploration, or the provision of services to the industry and account for more than 85 percent of mineral industry output in Australia. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, environmentally responsible and attuned to community needs and expectations.

The NT Division of the MCA represents the interests of members operating, exploring and providing services to the industry in the NT. The minerals industry has a large and diverse presence across the NT which comprises of 20% NT's gross state product and employs 4,400 people. The NT has mining operations for a range of mineral commodities including manganese, iron ore, lead, silver, zinc, gold, bauxite and uranium.

Members of the MCA-NT are currently engaged in seeking rail transport solutions for their respective projects. As such MCA-NT is well positioned to provide comment on behalf of its members on this review, together with other relevant regulatory issues which we encourage ESCOSA to consider, both in developing its terms of reference for the review and longer term suggestions of improvements to the regulatory framework. This preliminary submission provides a high level overview of MCA-NT's key issues. A more detailed submission expanding on the relevant issues will be provided to ESCOSA shortly.

2. RESPONSE TO THE THRESHOLD ISSUE

2.1 TRANSPARENCY OF INFORMATION

MCA-NT supports a robust and transparent regulatory framework where any potential customer is able to access sustainable rail infrastructure services on cost effective and efficient terms. Currently, no information is published in the public domain in relation to the specific financial, regulatory and operational performance of the TDR. The ability for ESCOSA (and stakeholders) to appropriately verify, address and respond to the Threshold Issue relies upon the provision and transparency of such information.

Section 46 of the Code states that the Access Provider (i.e. GWAN) must in relation to the railway infrastructure services:

- *“keep accounts and records of its business consisting of the provision of railway infrastructure services in relation to the railway so as to give a true and fair view of that business as distinct from other businesses carried on by the Access provider or any related body corporate or associate of the Access Provider”* and
- those records *“be kept in a way that gives a comprehensive view of the Access Provider's legal and equitable rights and liabilities”* and
- *gives “a true and fair view of income and expenditure...and assets and liabilities of the Access Provider's business”.*

In this regard, MCA-NT supports ESCOSA to give effect to the provisions of the Code and seeks that the Access Provider make available for stakeholder review, the relevant financial documentation relating to the railway

infrastructure services. If this information is not available to be released for stakeholder review, stakeholders will be heavily reliant upon ESCOSA in conducting a prudent revenue and cost assessment.

2.2 REVIEW SCOPE

MCA-NT notes that the review, as stated in the Code, will assess revenues from below rail infrastructure services only, but only to the extent that sustainable competitive prices do not exist for those infrastructure services.

The nature of the bulk mineral and other freight products transported over long distances in the NT does not, in MCA-NT’s view and experience, support the interpretation that road transport offers a sustainable competitive price to rail transport. Therefore, road transport is not relevant to ESCOSA’s review of the below rail revenues.

MCA-NT is supportive of ESCOSA’s proposed process to assess the relevant revenues, subject to initially deriving an appropriate allocation of revenues and costs between above and below rail services provided by GWAN. MCA-NT strongly encourages ESCOSA to ensure that this allocation is appropriate in order to avoid any potential cross-subsidy issues. In particular, the initial focus of the review should confirm, or otherwise, that there is an efficient allocation of material fixed cost items such as overheads and corporate costs.

Once this is established, the services to which those revenues apply and the cost of providing such services can be assessed. To determine the relevant revenues for below rail infrastructure services that will be assessed, MCA-NT proposes that ESCOSA has regard to similar declared railway infrastructure services in other relevant Australian jurisdictions. The following table provides a brief comparison of key railway infrastructure services and MCA-NT’s view of the proposed services to which ESCOSA’s review should apply:

Infrastructure Services	Aurizon Network (Coal)	ARTC [^] (Hunter Valley Coal / Interstate Freight)	Brookfield Rail (Freight)	Suggested TDR services to be reviewed
Jurisdiction	Queensland	New South Wales / Australia	Western Australia	South Australia / Northern Territory
Integration level	Vertically integrated	Separated	Separated	Vertically integrated (vertical monopoly)
Track infrastructure	✓	✓	✓	✓
Train control and communications systems	✓	✓	✓	✓
Signalling systems	✓	✓	✓	✓
Railway maintenance	✓	✓	✓	✓
Railway renewal programs	✓	✓	✓	✓

[^] ARTC is the Australian Rail Track Corporation Ltd

2.3 APPROPRIATE CAPITAL VALUE AND RATE OF RETURN FOR RISK

ESCOSA’s Issues Paper sets out the background to construction of the TDR and its subsequent sale to GWAN. The TDR was constructed for a cost of \$1.2Bn in 2003, with GWAN subsequently paying \$334m in 2010. In this respect, the asset value upon which a return is earned is likely to be considerably higher than the actual asset value paid for and depreciated since 2010. MCA-NT requests ESCOSA to consider this in the context of its review as to whether this is appropriate.

MCA-NT is of the strong opinion that the revenue and cost review also needs to incorporate a review of the commercial arrangements underpinning the margin earned by the Access Provider. As the access agreements entered into between the Access Provider and above rail operators are not available for stakeholder review, MCA-NT is reliant upon ESCOSA obtaining and reviewing these arrangements to ensure that a reasonable margin is earned commensurate with the risk being borne by the Access Provider. It is only then that a judgment can be made as to whether excessive profits have been earned over the 10 year period for those services.

3. OTHER RELEVANT REGULATORY ISSUES

MCA-NT understands that ESCOSA, in addition to meeting the requirements of the Act, is also seeking comments on other matters that may be of relevance to the review. MCA-NT submits the following key issues for ESCOSA's consideration both in developing the terms of reference for its current review and also a broader review of the regulatory regime to which improvements could be made.

3.1 COMPETITION FOR ABOVE RAIL SERVICES

The NT economy relies on movements smaller volumes of a diverse, but valuable range of products and minerals. The transport of these products is often over significant distances. While MCA-NT appreciates that the current regulatory framework for the TDR is designed to facilitate an open market for above rail services, it is questionable whether this framework openly supports this approach. MCA-NT understands that GWAN remains the only above rail operator providing freight services on the TDR, 10 years after being opened.

Declared access to below rail networks has led to above rail competition prevailing in most Australian states over the last 10-15 years. However, the foothold of incumbent operators has tended to be a difficult nexus to break and often been a long and arduous process for new entrants. MCA-NT appreciates the role that market dynamics of the products and services and alternative modes of transport also play in facilitating competition. In the Queensland coal market, for example, it took almost 10 years for competition to be established after the rail network became regulated. This only occurred due to the fact that two major coal producers jointly underwrote Pacific National's entry into Queensland.

The NT does not currently have the economies of scale to enable this underwriting, nor the large multi-national companies able to support such ventures. In this respect, the regulatory regime needs to cater for the particular market dynamics which it services and appropriately lower the barriers to entry. MCA-NT believes that the following would facilitate a more open and sustainable competitive above rail services market in the NT:

- access to provisioning facilities through a "service station" type approach, to reduce significant investment for new entrants;
- declaration of and facilitating third party access to key pieces of rail infrastructure e.g. access roads into and around the Port of Darwin;
- appropriate ring-fencing and separation of above and below rail services (discussed further below); and
- providing more certainty over time, cost and capacity for access seekers (discussed further below).

3.2 ADEQUATE RING-FENCING PROVISIONS AND SEPARATION

MCA-NT is concerned that adequate and transparent ring-fencing provisions do not currently exist in the regulatory framework which offers sufficient protection to third parties seeking rail access.

The viability of a regulatory regime which permits open access is only valid where the Access Provider deals with all parties (including its own related parties) on equal terms. Further, any dealings between these parties must be at arm's length and on conditions which are no more favourable than those offered to unrelated parties. The Aurizon Network current 2010 access undertaking provides an example of ring-fencing provisions which may be adopted and modified as necessary to apply to a vertically integrated rail provider for the TDR.

MCA-NT supports a truly open and competitive above rail services market through effective separation of above rail services and regulated below rail operations. Without adequate ring-fencing provisions, this can create a significant barrier to entry for other above rail operators. Uncertain pricing and the potential for sensitive confidential information relating to track access requests being used for above rail commercial advantage is not appropriate and undermines open access principles.

3.3 PRICING METHODOLOGY AND CERTAINTY

The current regulatory regime initially focusses on parties achieving a negotiated commercial price rather than price determination by regulators. The floor and ceiling methodology, together with the above transparency issues,

in the context of the TDR provides very little certainty for industry during the feasibility phase of project development. It is strongly preferable for the regulatory framework to provide price determination where a vertically integrated entity provides both above and below rail services.

In this regard, MCA-NT views that transparent pricing and commercial terms of access for the TDR should be similar to that which operates in Queensland, New South Wales and on the interstate freight network. The associated access undertakings in these jurisdictions provide certainty on the quantum of the below rail access charge based on certain freight and train characteristics, through published tariffs together with standard commercial terms of access. For example, ARTC publishes tariffs for bulk and general freight in significant detail together with key terms and conditions of access.¹

The key concern of the current approach of a commercially negotiated pricing outcome is that it significantly favours the Access Provider. Access seekers are at a significant disadvantage in negotiating access prices with the Access Provider in that only the Access Provider has detailed knowledge of their costs. This imbalance is able to be rectified through a regime which provides transparent pricing certainty and appropriate regulatory oversight of efficient costs.

3.4 TIME AND CAPACITY CERTAINTY

In addition to pricing certainty as discussed above, access seekers require a regulatory framework which provides greater certainty of availability and timeliness of capacity. Currently, very little transparency is available on the TDR itself and the value and timeframes of any proposed expansions.

MCA-NT believes that a prudent and transparent methodology for current capacity availability and future capacity potential would be a valuable addition to the current framework. Both Aurizon Network and ARTC provide information which supports this via the following:

- the Network Development Plan ²
- the Hunter Valley Capacity Strategy ³
- interstate Network Committed Capacity. ⁴

Provision of this information allows access seekers to make an informed judgment as to whether capacity may be available and the potential lead times and costs associated with expansion options.

3.5 FREQUENCY OF REGULATORY REVIEWS

MCA-NT is supportive of a regulatory regime which is fit for purpose and promotes balance between industry and the Access Provider. MCA-NT appreciates that there is a delicate balance between providing a sufficiently robust regulatory regime which is not administratively onerous on the Access Provider (or the Regulator) with the need to ensure monopolistic powers of Access Providers are not exploited.

Currently, the Code is not required to be reviewed until December 2029. MCA-NT believes that this is largely inconsistent with other jurisdictions across Australia for similar services and strongly encourages an earlier review of the regulatory regime. The following table illustrates a relevant comparison in similar jurisdictions:

Regulatory review timeframes	Aurizon Network (Coal)	ARTC (Hunter Valley Coal / Interstate Freight)	Brookfield Rail (Freight)	Current TDR (Freight)	Suggested TDR
Jurisdiction	Queensland	New South Wales / Australia	Western Australia	South Australia / Northern Territory	
Timeframe	4 years	5 years	5 years	22 years [^]	5 years

[^] Following an initial review in 2007, a further review is required by 31 December 2029 under Section 50 of the Code

¹ <http://www.artc.com.au/library/Pricing%20Schedule%20Effective%2001072014%20updated%2007072014.pdf>

² <http://www.aurizon.com.au/Downloads/Aurizon%20Network%20Development%20Plan%202013.pdf>

³ <http://www.artc.com.au/Content.aspx?p=236>

⁴ <http://www.artc.com.au/Content.aspx?p=209>

To achieve consistency with other regulatory reviews, MCA-NT would be supportive of a review at least every 5 years. Further, MCA-NT proposes that such 5 year reviews would also align with similar reviews of ARTC's access regime given the interaction between those rail networks.

Other access regimes also provide a requirement for the Access Provider to submit for regulator approval an annual capital and maintenance budget for the coming year. MCA-NT would support a more frequent review of these items to ensure that expended amounts are prudent and efficient and are relevant to the transport tasks at the time.