



Government of **Western Australia**
Public Transport Authority

PTA THIRD PARTY RAIL ACCESS OVER PAYMENT RULES

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PTA THIRD PARTY RAIL ACCESS - OVER PAYMENT RULES

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1. INTRODUCTION

1.1. Background

- 1.1.1. The purpose of the Railways (Access) Act 1998 (the Act) and the Railways (Access) Code 2000 (the Code) is to establish a rail access regime that encourages the efficient use of, and investment in, railway facilities by facilitating a contestable market for operations.
- 1.1.2. The Act requires nominated parts of the rail Network managed by the Public Transport Authority of Western Australia (PTA) to be made available for access by third party rail operators. Schedule 1 of the Code lists the sections of the PTA rail Network covered by the Code.
- 1.1.3. PTA is established under the Public Transport Authority Act 2003 to direct, manage, maintain and control the Government Railways in Western Australia.
- 1.1.4. The Economic Regulation Authority (ERA) was established on 1 January 2004 and became responsible for the administration of the Act and the Code which were previously the responsibility of the Office of the Rail Access Regulator.

1.2. Relevance of the Over-payment Rules

- 1.2.1. Section 47(1) of the Code requires each Railway Owner to prepare and submit to the ERA a statement of rules (the Over-payment Rules) that are to apply where breaches of the Ceiling Price Test occur on the part of the Railway Owner that could not reasonably be avoided.
- 1.2.2. The Ceiling Price Test is defined under Schedule 4, Clause 8 of the Code, and refers to a Ceiling Price Test that must be met for each Operator in isolation (sub-clause 1 and 2) as well as a combinatorial Ceiling Price Test (which is the Ceiling Price Test referred to in sub-clause 3). Clause 8 states that the Total Revenue earned on a particular route must not exceed the Total Costs attributable to that route.
- 1.2.3. In the event that over-payment occurs, these over-payments are deemed to be allowable within the Code provided the following applies:
 - 1.2.3.1. The Railway Owner can show that over-payments could not be reasonably avoided;
 - 1.2.3.2. The over-payment must be at all times within a percentage limit;
 - 1.2.3.3. All over-payments must be cleared (reimbursed to Operators) within each successive 3 year period; and
 - 1.2.3.4. The method of reimbursing Operators must follow rules set out in the Over-payment Rules.
- 1.2.4. This document outlines the Over-payment Rules that will apply to the Public Transport Authority (PTA). These Over-payment Rules provide a mechanism to:
 - 1.2.4.1. Calculate the amount by which Total Revenue earned on a particular route section exceeds the Total Costs attributable to the route section and infrastructure; and
 - 1.2.4.2. Reimburse Operators who are provided with access under the Code to that route section and infrastructure in the event of an overpayment.

2. BASIS OF THE OVER-PAYMENT RULES

2.1. Definition of Route and a Route Section

- 2.1.1. The route section is the basic unit to which the Over-payment Rules apply. A route section is a section of the Network that has been divided for management and floor purposes.
- 2.1.2. The term “route” referred to in this document has the meaning ascribed in Clause 8, Schedule 4 of the Code. A negotiated route could equate to a route section (or part thereof) or be a combination of several route sections.

2.2. One Regulatory Total Cost

- 2.2.1. Each route section has one Total Cost that will apply to all Operators when negotiating access prices, and will be the basis of determining whether Total Revenue earned on a particular route section has exceeded allowable Total Costs.
- 2.2.2. Total Costs will be calculated by PTA using methods set out in the Costing Principles, and submitted for approval by the ERA as required by Clauses 9 and 10 of Schedule 4 of the Code.

2.3. What constitutes revenue in the Ceiling Price Test under Clause 8, Schedule 4 of the Code

- 2.3.1. In assessing the extent of over-payments under Section 47 and Clause 8(3) Schedule 4 of the Code, all Access and Non-Access Revenue received by PTA for a route section, or part of a route section, and associated Railway Infrastructure will be included to calculate the Total Revenue attributable to that route section of the Network.
- 2.3.2. Total Revenue is the sum of Access Revenue and Non-Access Revenue.
- 2.3.3. Access Revenue is deemed to be all income received by PTA for the provision of rail access to Operators and entities with access outside the Code.
- 2.3.4. Non-Access Revenue may include private and government contributions, in accordance with the ERA’s approved set of Costing Principles to Apply to the Public Transport Authority.
- 2.3.5. The Code does not provide entities with access negotiated outside the Code a legal entitlement to any refund for any over-payment.

2.4. Breaches of the Ceiling Price Test

- 2.4.1. Section 47(1) of the Code states that the Over-payment Rules are to apply where breaches occur on the part of the Railway Owner that “could not reasonably be avoided.”
- 2.4.2. PTA will assess revenues earned on particular route sections on a periodic basis to determine whether there is likely to be a breach of the Ceiling Price Test. Where it is possible to forecast potential over-payments, the PTA will seek to negotiate new access prices with affected Operators to ensure that Total Revenue remains within the Total Cost.
- 2.4.3. If breaches of the Ceiling Price Test occur as a result of variations in traffic volume or revenue that are deemed to be temporary or unpredictable in nature, then PTA will advise the ERA of such circumstances and will follow the procedure set out in these over-payment rules to deal with such over-payments.

2.5. Over-payments and under-recoveries

- 2.5.1. Over-payment is defined as the amount of Total Revenue received by PTA for a route section that exceeds the Total Costs attributable to the route section for a one-year period.
- 2.5.2. Conversely, “under-recovery” refers to a situation where the Total Revenue to the Railway Owner on a route section for a one year period is less than the Total Costs attributed to that route section.
- 2.5.3. The ERA has determined that net over-payments will be assessed over a successive three-year period, during which over-payments in a particular year may be balanced out by under-recoveries in a subsequent year. Net over-payment in a three-year period will be paid back to the Operators according to these Over-payment rules.
- 2.5.4. Conversely, where under-recovery occurs an Operator is not required to pay PTA compensation for such under-recovery. However, where a net under-recovery occurs in a particular 3 year period, there are circumstances under which PTA will be allowed to carry-over this net under-recovery as an “accounting balance” which may be used to offset over-payments in the subsequent three year period. The circumstances where this will be allowed to occur are set out in Example 4 in Section 4 of these Over-payment Rules.
- 2.5.5. Example 4 refers to a situation where, as a result of having to reimburse Operators during the three-year period because the breach is greater than 10% of the Total Cost (refer to the Over-payment Rule #5 in Section 3), there are insufficient funds in the interest bearing account for PTA to recoup an under-recovery that has occurred during the same three-year period. In this instance PTA will put a case to the ERA to carry the under-recovery credits over to the next three years up to the amount PTA has been required to refund to Operators as a result of exceeding the 10% limit. If allowed, the carry forward will only apply for that one additional successive three year period.

2.6. Allocation of Access Revenue

- 2.6.1. Under Section 9(1)(c)(i) of the Code, PTA is only required to provide one Incremental and one Total cost for a proposed access to a route (i.e. from origin to destination) even though the access proposal could transverse over multiple route sections as defined in the Code.
- 2.6.2. Since price is determined on the route basis, and Total Costs are determined on a route section basis, it is necessary to distribute Access Revenue earned over particular route against the costs of individual route sections. The distribution of such Access Revenue will be done according to the following rules:
 - 2.6.2.1. Access Revenue derived from a route can only be allocated to the route sections on that Route; and
 - 2.6.2.2. PTA will allocate Access Revenue to cover the costs attributed to the applicable route sections in the following order:
 - a. Incremental Costs against all applicable route sections;
 - b. up to the Total Cost on all applicable branch or feeder (dedicated) route sections; and
 - c. up to the Total Cost on all applicable shared route sections.

- 2.6.3. The justification for the ordering of the allocation process is based on economic principles. First, to avoid cross subsidisation between route sections, Access Revenue allocated to each route section must at least cover the Incremental Cost. Second, recovery of capital costs on branch or feeder lines ranks ahead of shared lines on the basis that there is no other traffic on these lines to fund the dedicated infrastructure and unless those costs are covered the line may close.
- 2.6.4. Where PTA and the Operators have reached agreement to a different revenue allocation arrangement in an Access Agreement that arrangement would prevail.

2.7. Allocation of Non-Access Revenue

- 2.7.1. The allocation of Non-Access Revenue, private or government contributions will be only allocated to the route section for which the contribution was received. Where a capital contribution is made the value of the contribution to be used in the Ceiling Price Test is to be expressed as an annualised amount taking into account the Total Cost, expected life and Weighted Average Costs of Capital (WACC) determined by the ERA. Where capital is spent over multiple route sections the actual expenditure will be split into each route section at the time the expenditure is incurred. The allocation principles for Access revenue do not apply to Non-Access Revenue.

2.8. Allocation of an Over-payment

- 2.8.1. Where an Over-payment on a route section results from the Ceiling Price Test all Operators who have negotiated their Access Agreement inside the Code who have contributed to the Total Revenue on that route section will be entitled to a share of the Over-payment.
- 2.8.2. The proportion of Over-payment due to each Operator will be determined by each Operator's annual Access Revenue and Non-Access Revenue above the Incremental Cost accumulated on a route section divided by the aggregate of all Operator's Access Revenue and Non-Access Revenue above the Incremental Cost recorded on the route section over the preceding twelve month period from July to June.
- 2.8.3. The repayment will be apportioned based on the total annual payments above the Incremental Cost for access by each Operator on the route as a proportion of the Total Revenue. An Operator paying only the Incremental Cost on the route will not be considered for any refund as this would compromise the Floor Price Test in the Code.

3. THE OVER-PAYMENT RULES

- 3.1. The Over-payment Rules apply where breaches of the ceiling could not be reasonably be avoided.
- 3.2. PTA is to calculate over-payment in respect to each route section for a financial year.
- 3.3. In these overpayment rules, financial year is the year beginning on 1 July and ending on 30 June.
- 3.4. Where an over-payment is greater than a 10% amount allowable for breaches of the Total Cost for that route section for the financial year, PTA must reimburse the Operators on that route section for the amount of the over-payment calculated according to the pro-rata formula in paragraph 6 by 30 September of the following financial year.

3.5. Payments to Operators will be apportioned, based on the total annual Access Revenue above the Incremental Cost by each Operator on the route. The following formula is to apply:

$$\begin{array}{r}
 \text{An Operator's annual Access Revenue above the} \\
 \text{Incremental Cost} \\
 + \\
 \text{Non-Access Revenue (received from that Operator)} \\
 \text{for the route section} \\
 \hline
 \text{Total annual Access Revenue above the} \\
 \text{Incremental Cost} \\
 + \\
 \text{total Non-Access Revenue for the route section.}
 \end{array}
 \times
 \begin{array}{r}
 \text{Amount of net Over-} \\
 \text{payment} \\
 + \\
 \text{interest accrued for the} \\
 \text{route section}
 \end{array}$$

- 3.6. PTA is to establish in its accounting records an account to be known as the Over-payment Account.
- 3.7. The Over-payment Account is to be credited with all over-payments that are equal to or less than a 10% amount allowable for breaches of the Total Cost level for the financial year.
- 3.8. Any over-payment for the previous financial year shall be calculated by 31 July of each year and credited to the Over-payment Account. The over-payment will be treated as if it was credited to the Over-payment Account on 1 July of each year.
- 3.9. PTA will also credit to the Over-payment Account interest calculated daily on the balance from time to time standing to the credit of the Over-payment Account.
- 3.10. Interest is to be credited at a rate equal to the 10 year long term bond rate as at 30 June as at 30 June each year but if 30 June falls on a day which is not a business day then the rate published on the first day after that date.
- 3.11. At the end of 3 year period the amount standing to the credit of the Over-payment Account must be distributed by the PTA to Operators (who have negotiated inside the Code) for the amount of the over-payments calculated according to the pro-rata formula in paragraph 6 by 30 September.
- 3.12. Payments in respect of entities with access outside the Code will be retained by the PTA, subject to the terms of any agreement to the contrary.
- 3.13. No payment is to be made from the Over-payment Account without the prior approval of the ERA.
- 3.14. The following provisions are to be included in Access Agreements with Operators:
 - 3.14.1. Within seven (7) business days of the date of this agreement PTA must, in accordance with Rule #7 of the Over-payment Rules, establish within its books of account an account to be styled "Over-payment Account" and must maintain that account at all times during the continuation of this agreement.
 - 3.14.2. PTA must at all times operate the Over-payment Account in a manner consistent with the requirements of the Over-payment Rules and must make payments to the Operator in a manner and at the times contemplated by the Over-payment Rules.

4. APPLICATION OF THE OVER-PAYMENT RULES

- 4.1. The examples shown in Table 1 below demonstrate how these rules apply. Years 1, 2 and 3 show over-payments and under-recoveries (denoted by a minus sign) for a route section. All Operators are also assumed to be in the Regime and have met their Incremental Costs.
- 4.2. The annual interest rate assumed is 5% compounded, which given the deposit occurs annually would only apply to year one and two deposits. It is also assumed that the Total cost for the route section in the examples below is \$100,000, and over-payments in excess of \$10,000 are reimbursed immediately.
- 4.3. Example 4 refers to the one exception the carrying over of under-recovery credits to the next three-year period may apply. In this example, the PTA incurred a breach of 20% above the Total cost in year 1. At the end of year 1, it has to reimburse Operators \$10,000 and deposit \$10,000 into the interest bearing account. However, in year 2, PTA incurred an under-recovery of 15%. Assuming that the revenue from access is exactly at the Total cost in year 3, there are now insufficient funds to compensate PTA in the interest bearing account for the three-year period. In this example, the ERA may approve a carry-over in under-recovery credits of \$5,000.
- 4.4. If an entity has negotiated access outside the Code then its share of the over-payments would go to the PTA. For instance, if in Example 3 that route section comprised of only non-Regime entities then then the total accrued principle in the interest bearing account, i.e. \$15,000, and the interest earned, i.e. \$1,275, would go to PTA.

Table 1. Examples illustrating operation of the Over-payment Account

	Example 1	Example 2	Example 3	Example 4
Net annual over or under payment				
Year 1	\$ 10,000	\$ 10,000	\$ 10,000	\$ 20,000
Year 2	-\$ 10,000	-\$ 30,000	\$ 5,000	-\$ 15,000
Year 3	\$ 0	\$ 0	-\$ 10,000	\$ 0
Total of the 3 year period	\$ 0	-\$ 20,000	\$ 5,000	\$ 5,000
Reimbursed to operators	\$ 0	\$ 0	\$ 0	\$ 10,000
Accrued Principle in account	\$ 10,000	\$ 10,000	\$ 15,000	\$ 10,000
Accrued Interest in account	\$ 1,025	\$ 1,025	\$ 1,275	\$ 1,025
Refund to PTA	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000
Refund to Operators	\$ 1,025	\$ 1,025	\$ 6,275	\$ 1,025
Carry forward of credit	\$ 0	\$ 0	\$ 0	\$ 5,000

5. COMPLIANCE AUDITS

- 5.1. Where a party approaches the ERA seeking access to PTA's Network under the Code the ERA may require that PTA's compliance with the Over-payment Rules be subject to an independent external audit. The costs of such an audit will be the responsibility of the PTA. The ERA will approve the scope of the audit and may select and manage the auditor. The final audit report will be made available to the ERA. The ERA will place the audit report excluding any confidential components on its web site.
- 5.2. The ERA also has the power to commission special purpose compliance audits on any issue arising under the Over-payment Rules as considered necessary.

6. REVIEW AND CONSULTATION

- 6.1. Where a party approaches the ERA seeking access to PTA's Network under the Code the ERA may require that the Over-payment Rules be reviewed.
- 6.2. The ERA has power under the Code to require that the Over-payment Rules be amended at any time. Access seekers or Operators may request the ERA at any time to consider amendments to these Rules.

7. DEFINITIONS

Access Agreement - means an agreement in writing under the Code between the PTA and an entity for access by that entity to run services on the Network.

Access Related Function - means the functions involved in arranging the provision of access to Railway Infrastructure under the Code.

Access Revenue - means revenue received by PTA from Operators and other entities for rail access.

Act - means the *Railways (Access) Act 1998*

Ceiling Price Test - means an Operator (or group of Operators) that is provided with access to a route and associated Railway Infrastructure must pay for the access not more than the Total Costs attributable to that route and infrastructure.

Code - means the *Railways (Access) Code 2000* established under the Act.

Costing Principles - means the principles, rules and practices determined by the ERA in accordance with Section 46 of the Code.

Economic Regulation Authority (ERA) - means the Western Australian Independent Rail Access Regulator established by the *Economic Regulation Authority Act 2003*;

Floor Price Test - means an Operator that is provided access to a route and associated Railway Infrastructure must pay for the access not less than the Incremental Costs resulting from its operations on that route and use of that infrastructure.

Incremental Costs - means Incremental Costs as defined in Clause 1, Schedule 4 of the Code.

Network - means the track and infrastructure controlled by PTA to which access has or can be granted under an Access Agreement.

Non-Access Revenue - Means revenue received by PTA that may include private and government contributions in accordance with the ERA's approval set of Costing Principles to apply to PTA.

Operator - Means the Operator or Operators which have access to the PTA Network under an Access Agreement.

PTA - means the Public Transport Authority of Western Australia established by the *Public Transport Authority Act 2003 section 5*.

Railway Infrastructure - means the same meaning assigned to Railway Infrastructure in Section 3 of the Code.

Railway Owner - means the person having the management and control of the use of the Railway Infrastructure.

Total Costs - means the total of all:

- operating costs;
- capital costs; and
- overheads attributable to the performance of the Railway Owner's Access Related Functions whether by the Railway Owners or an associate.

as defined in Clause 1, Schedule 4 of the Code.

Total Revenue - means the sum of Access Revenue and Non-Access Revenue.