

6 March 2025

Mr Jeremy Threlfall  
Assistant Director – Rail  
Economic Regulation Authority  
Level 4  
469 Wellington Street  
Perth WA 6000

Submission via online form

Dear Jeremy

**Re: Roy Hill Infrastructure - Standard Access Provisions**

Pacific National appreciates the opportunity from the Economic Regulation Authority (“**ERA**”) to comment on Roy Hill Infrastructure’s (“**RHI**”) proposed standard access provisions. Pacific National is Australia’s largest private rail freight company with a long history of providing safe, reliable and efficient rail freight services. Pacific National primarily provides intermodal rail freight services in Western Australia, utilising standard gauge rail networks between Perth, Kalgoorlie and Esperance.

Pacific National does not have any existing access agreements with RHI and currently has no foreseeable plans to enter into any access agreements with RHI. However, noting that these are the first standard access provisions submitted to the ERA by a railway owner, Pacific National has reviewed RHI’s proposed standard access provisions in light of its potential to be used as a precedent for the negotiation of access agreements by other Western Australia railway owners governed under Western Australia’s Railways (Access) Code 2000 (the “**Code**”).

Pacific National provides the following comments on RHI’s proposed standard access provisions for the ERA’s consideration.

**Insufficient information for a “commercially workable access agreement”**

Section 47A(1) of the Code provides that each railway owner must prepare and submit to the ERA its standard access provisions. Standard access provisions are defined in the Code as the standard terms and conditions that a railway owner would want to be included in an access agreement entered into by a railway owner. Namely, section 47A(2)(b) of the Code requires the standard access provisions to “be sufficiently detailed and complete to form the basis of a commercially workable access agreement”.

Pacific National considers that RHI’s proposed standard access provisions do not contain a sufficient level of detail required to form the basis of a commercially workable access agreement. Instead, the standard access provisions proposed by RHI appear to be high level guidance principles which RHI will consider when negotiating an access agreement with an access seeker. The proposed standard access provisions lack the specific details and terms typically found in an access agreement and does not appear to be effective in informing access seekers of the detailed terms and conditions that RHI would seek to apply.

In Pacific National’s view, in order for the standard access provision to meet the requirement set out in section 47(2)(b) of the Code, the standard access provisions should be set out in the form of a long-form standard access agreement. A long-form access agreement will allow all the necessary specifics such as each party’s rights and obligations to be clearly identified, providing confidence to access seekers. It will also avoid any uncertainty around the interpretation of the standard access provisions, which may arise if the standard access provisions are set out in the form of guidance principles.

A reasonable and balanced access agreement

Further, Pacific National is concerned that RHI's proposed standard access provisions do not create a reasonable and balanced access agreement as required under section 47A(2)(a) of the Code.

For example, in RHI's proposed standard access provisions, there are numerous principles that appear to be only applicable to the access seeker and not RHI. This includes but is not limited to principles relating to certification of access seeker's staff and contractors (principle 9), compliance with environmental standards (principle 14), insurance (principle 15), and investigation and inquiries (principle 20). In Pacific National's view, these obligations should be adhered to by both parties in order for the agreement to be balanced and not skewed in favour of the railway owner.

Noting that RHI's proposed standard access provisions are not set out in the form of an access agreement, it may be possible that the principles will be drafted as reciprocal obligations later in the relevant access agreement. However, Pacific National is concerned that if these one-sided obligations are approved by the ERA, other railway owners will use this as a basis to determine what constitutes reasonable terms and conditions for an access agreement.

For the avoidance of doubt, Pacific National considers it may be appropriate to amend the abovementioned obligations and any other applicable one-sided obligations within RHI's proposed standard access provisions to be reciprocal and balanced obligations that apply to both parties.

We thank the ERA again for the invitation to make a submission and trust the ERA will find these comments useful in reviewing RHI's standard access provisions. If the ERA wishes to discuss the contents of this submission, please do not hesitate to contact Michelle So at [michelle\\_so@pacificnational.com.au](mailto:michelle_so@pacificnational.com.au).

Yours sincerely



Andrew Beck  
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