

8 July 2014

Confidential communication

Mr Ian Blayney MLA
Chairman
Economics and Industry Standing Committee
Parliament House
Harvest Terrace
Perth WA 6000

Dear Mr Blayney

Parliamentary Inquiry into the Management of Western Australia's Freight Rail Network: Request for Information

I refer to the letter from Loraine Abernethie dated 20 June 2014, requesting that Brookfield Rail provide certain information for each financial year for the period 2002 – 2003 to 2012 - 2013 to your Committee.

The relevance of information relating to each financial year for the period 2002 – 2003 to 2010 – 2011 to this inquiry is unclear. We note the Committee's terms of reference include inquiring about:

*'...whether the **current** lease arrangements and management of the Western Australian freight rail network comprising Tier 1, Tier 2 and Tier 3 lines facilitate or hamper state development.'* (emphasis added)

In our view, the word 'current' as it is used in that sentence applies to both the lease arrangements and the management of the freight rail network, and implies a temporal limitation. We consider that the financial years for the period 2011 – 2012 and 2012 to 2013 are 'current' for the purposes of this inquiry.

Notwithstanding the above, we respond to each of Dr Abernethie's requests in turn, as follows:

1. The specific lines to which CBH Group had access:

See Appendix 1 attached to this letter.

2. Other parties who had access to those lines:

See Appendix 2 attached to this letter.

3. The access fees paid by the CBH Group for those lines; and
4. The total amount expended by Brookfield Rail in maintaining those lines during that period, excluding capital works.

The information requested in 3 and 4 is confidential to both Brookfield Rail and to CBH Group. Public disclosure of this information would cause prejudice to Brookfield Rail and possibly to CBH Group.

As the Committee will understand, Brookfield Rail operates the railway network in competition to road and also provides access to the railway network in a competitive environment, with all access agreements being confidential to both BR and its customer. It would therefore be prejudicial for the access fees paid by CBH Group to be made publicly available, as that information would be available to current and potential customers, some of whom we are presently negotiating access arrangements with. Our business would be exposed to adverse effects. The traditional nature of the bargaining powers between two commercial entities would be destroyed and the prejudice caused to Brookfield Rail may impact its ability to negotiate over a number of years.

Further, given the access request by CBH for access under the *Railways (Access) Code 2000 (WA) (Code)* regime, public disclosure of access charges, and information on Brookfield Rail's maintenance expenditure (disclosure of which will necessarily involve Brookfield Rail disclosing its net operating margin) is likely to cause prejudice to the arbitration process currently on foot. Arbitration under the Code has already commenced in relation to capacity issues arising from CBH's access proposal.

Following this capacity arbitration, it is anticipated that negotiations under the Code in relation to the full terms of access will commence shortly thereafter. It would be inherently unfair to release such information publicly in August (when the Committee is due to table its report), as media and public commentary on such information has a reasonable likelihood of impacting an objective arbitration decision, which may be binding on Brookfield Rail.

For these reasons, before providing the information requested under points 3 and 4 to the Committee, Brookfield Rail requests that the Committee agree to receiving that information on an *in camera* basis. If this can be agreed with the Committee, Brookfield Rail will provide the information requested under points 3 and 4 shortly.

Yours sincerely

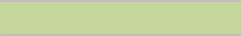


Paul Larsen
Chief Executive Officer
Brookfield Rail Pty Ltd

Encl.

Appendix 1: CBH Access to Various Line Sections

| | | Date From: | 01/07/02 | 11/04/08 | 25/07/08 | 01/08/08 | 01/11/13 |
|---------------|--------------------|------------|----------|----------|----------|----------|----------|
| | | Date To: | 10/04/08 | 24/07/08 | 31/07/08 | 31/10/13 | 30/06/13 |
| Section From | Section To | | | | | | |
| Kalannie | Burakin | | | | | | |
| Beacon | Avon | | | | | | |
| Mukinbudin | Amery | | | | | | |
| McLevie | Goomalling | | | | | | |
| Lake Grace | Hyden | | | | | | |
| Wagin | Newdegate | | | | | | |
| Avon | Sth Cross | | | | | | |
| Sth Cross | Koolyanobbing | | | | | | |
| Koolyanobbing | Kalgoorlie | | | | | | |
| Midland | Avon | | | | | | |
| Kwinana | Midland | | | | | | |
| Avon | Albany | | | | | | |
| Esperance | Salmon Gums | | | | | | |
| Salmon Gums | Kambalda | | | | | | |
| Kambalda | Kalgoorlie | | | | | | |
| Geraldton | Narngulu | | | | | | |
| Narngulu | Millendon Junction | | | | | | |
| Narngulu | Perenjori | | | | | | |
| Toodyay | Miling | | | | | | |
| Badgebup | Nyabing | | | | | | |
| Katanning | Badgebup | | | | | | |
| Tambellup | Gnowangerup | | | | | | |
| Trayning | Merredin | | | | | | |
| Quairading | York | | | | | | |
| Narrogin | Merredin | | | | | | |
| Kondinin | Merredin | | | | | | |
| Kulin | Yilliminning | | | | | | |
| Maya | Perenjori | | | | | | |

| Key | |
|-----------|---|
| Access |  |
| No Access |  |

Appendix 2: Other party access to lines

| Operator | Access Entitlement Sections |
|---------------------------------|--|
| Australia Western Railroad | Sections as per appendix 1 until 30/4/12 Sections as per appendix 1 excluding the Midland Railway and south of Perenjori between 7/5/12 and 31/10/12 Geraldton to Perenjori Kwinana to Esperance Redmond to Albany Dongara to Narngulu until 27/2/13 Other ad hoc access (for fleet servicing, loco swaps etc) |
| Pacific National | Kalgoorlie to Cockburn Triangle |
| Specialised Container Transport | Kalgoorlie to Kewdale |
| Great Southern Rail | Kalgoorlie to Kewdale |
| Watco | Sections as per appendix 1 from 20/3/12 |
| Public Transport Authority | Kalgoorlie to Kewdale |
| Qube | Ad hoc access to all parts of the network |
| Aurizon Intermodal | Kalgoorlie to Forrestfield |