



Your Ref:
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Contact: Greg Watkinson

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Principal Research Officer
Economics and Industry Standing Committee
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Dear Dr Abernethie

Clarification of Transcript

Further to my appearance before the Economics and Industry Standing Committee, and your provision of a transcript of those proceedings, please see the following comments and clarifications.

IN RESPONSE TO QUESTION ON NOTICE FROM MR LOGAN (PAGE 10 OF TRANSCRIPT)

Part 2A of the Code (*inserted in Gazette 23 Jun 2009, p2411*) includes section 6 which defines the information in schedule 2 to be part of the "required information". Section 7A requires that the required information be made available by the railway owner for purchase in hard copy.

The schedule 2 information includes some information relating to performance standards, such as maximum axle loadings and maximum speeds. The schedule 2 information also constitutes a description of the asset, including the characteristics of the track and formation, and location of passing loops and also some indication of current usage of the route by way of running times of existing trains, current tonnages, and 'available capacity'.

Section 7B (*inserted in Gazette 23 Jun 2009, p2412*) allows the regulator to exempt the railway owner from the obligation to publish some or all of the information described in schedule 2 Item 4(m) if the regulator is satisfied that publication of that information will adversely affect the railway owners business. Item 4(m) of schedule 2 is nett tonnages of freight carried.

The ERA has not provided an exemption to Brookfield Rail for the provision of Item 4(m) information, and that information is publicly available on the BR website.

IN RESPONSE TO MR NORBERGER'S COMMENTS ON PAGE 8 RE: THE KARARA TRANSCRIPT INDICATING A VIEW GIVEN BY ERA TO KARARA THAT: "NO YOU ARE BETTER OFF NEGOTIATING THAT ON YOUR OWN. GO OFF AND DO YOUR OWN THING"

I do not see this view expressed in the Karara transcript. However, I can confirm that members of the ERA Secretariat held discussions with Karara in 2009 in relation to the process for access under the Code. Although notes of those meetings are not available, it is likely that the ERA Secretariat provided information within the following context.

The case of the access required by Karara was one of expanding the capacity of the existing infrastructure. The railway route in question was not technically capable of the freight task required to transport Karara's ore and the capacity of the route was required to be expanded. The Code does not allow for costs to be determined for infrastructure which has not yet been built and the ERA does not have a role in relation to negotiations for extensions and expansions.

Any access proposal involving an extension or expansion must proceed first from a determination of costs for the pre-existing route, with costs associated with any required expansion or extension being negotiated separately, and not subject to the ERA's determination.

I note that the Karara transcript at the top of page 7 indicates there were no indicative floor and ceiling prices for the route of interest to Karara. This is to be expected as an access proposal to that route has never been made. If Karara were to have lodged an access proposal, then the Code would require that a determination of costs relevant to that route be provided by the railway owner within seven days.

The Authority did not receive an application for access under the Code and Karara, at the time, elected to negotiate outside the Code.

TO CLARIFY MR WATKINSON'S STATEMENT IN RESPONSE TO MR NORBERGER'S QUESTION "WHAT IS THE TIME FRAME FROM WHOA TO GO" (PAGE 6)?

From the date of the lodgement of an access proposal, the railway owner has 7 days to provide relevant information, including floor and ceiling prices.

The ERA must make its determination in relation to the costs which underpin those quoted prices within 30 days of the railway owner providing prices, unless the proponent agrees to an extension of the time limit.

In the case of the Co-operative Bulk Handling (**CBH**) access proposal, CBH agreed to an extension of the time limit for making the determination to 30 June 2014.

When the ERA's determination has been made, the parties are then able to commence negotiations. There is effectively no time limit on negotiations, a period of 90 days being established in the first instance, with this subject to extension more than once. If negotiations break down, or the proponent declares a dispute, then an arbitrator must be appointed by the ERA.

There is no time limit in the *Railways (Access) Code 2000* on arbitration, which must be carried out in accordance with the *Commercial Arbitration Act 1985*.

In the case of the CBH access proposal, CBH declared itself in dispute with Brookfield Rail on 12 June 2014, and an arbitrator was appointed on 27 June 2014.

Yours sincerely



LYNDON ROWE
CHAIRMAN
7 JULY 2014