



Victoria Government Gazette

No. S 184 Wednesday 5 October 2005

By Authority, Victorian Government Printer

Rail Corporations Act 1996 RAIL NETWORK PRICING ORDER

Order in Council

The Lieutenant-Governor as the Governor's deputy, with the advice of the Executive Council under section 38J(1) of the **Rail Corporations Act 1996** on the recommendation of the Minister, hereby makes the following Order.

1. **Citation**

This Order may be cited as the Rail Network Pricing Order 2005.

2. **Preamble**

This Order:

- (a) specifies the principles for the calculation of prices that an access provider may charge in respect of declared rail transport services that it may provide;
- (b) authorises the Commission to determine the methodology, in accordance with the principles specified in this Order, for the calculation of prices that:
 - (i) an access provider may charge in respect of declared rail transport services that the access provider may provide;
 - (ii) the Commission may, in a relevant decision, decide an access provider may charge in respect of declared rail transport services provided by that access provider.

3. **Interpretation**

Where a term used in this Order is defined in the **Rail Corporations Act 1996**, it has the meaning given to it in the **Rail Corporations Act 1996**.

In the event of any inconsistency between this Order and a provision of the **Rail Corporations Act 1996**, the **Rail Corporations Act 1996** will prevail.

The provisions of the **Interpretation of Legislation Act 1984** apply to the interpretation of this Order as they apply to subordinate instruments.

Access Period means, in respect of declared rail transport services that may be provided by an access provider, the period of operation of an access arrangement approved or prepared by the Commission, as the case may be, in respect of those declared rail transport services. (see note 1.)

Terminal Services are declared rail transport services provided by means of terminal infrastructure that would not be rail infrastructure but for the operation of an order under section 38B of the **Rail Corporations Act 1996**.

4. **Pricing Principles**

The prices that an access provider may charge in respect of declared rail transport services that it may provide must be calculated in accordance with the principles set out in this Order and with any methodologies determined by the Commission.

4.1 **General principles**

- (a) Prices charged by an access provider, including internal transfer prices, must be set with the objective of generating revenue such that across all declared rail transport services the expected revenue is equal to a reasonable forecast of the access provider's efficient cost of providing those services (taking account of the amount of any capital contributions from third parties), having regard to the standard and quality of those services, including the reasonably estimated financing costs associated with efficient capital expenditure incurred by that access provider since 30 April 1999. (see note 2.)

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- (b) The structure of prices may allow for multi-part pricing and price discrimination when it aids efficiency. (see note 3.)
- (c) The framework for setting prices must seek to provide an access provider with incentives, including within an Access Period and between Access Periods, to incur an efficient level of costs of providing declared rail transport services.
- (d) The framework for setting prices must seek to avoid volatility in prices arising by reason of volatility in freight traffic.
- (e) Where an access seeker or user, or a third party on behalf of an access seeker or user, makes any contribution towards capital or maintenance expenditure incurred in relation to the provision of declared rail transport services to that access seeker or user, the prices for the provision of those declared rail transport services must be reduced so that the revenue to be derived from the provision of those services is to be adjusted to take account of the contribution and any ongoing capital or maintenance savings.

Example: A Government makes a contribution to an access provider for expenditure on an upgrade of the rail network and states that the contribution is on behalf of all, or a particular category of, access seekers and users. The revenue to be recovered through charges for the provision of declared rail transport services to all, or the particular category of, access seekers and users is reduced to take account of the contribution.

4.2 Revenue cap

- (a) Prices that an access provider may charge in respect of declared rail transport services, including internal transfer prices, must be set so as to comply with a revenue cap included in an access arrangement approved by the Commission under section 38ZF(1) or 38ZK of the **Rail Corporations Act 1996** or made by the Commission under section 38ZJ(1) or 38ZL(1) of the **Rail Corporations Act 1996**.
- (b) The revenue cap must provide for the recovery of a reasonable forecast of the efficient costs of providing access to all declared rail transport services provided by that access provider over an Access Period, but excluding Terminal Services, including the estimated financing costs associated with efficient capital expenditure incurred by that access provider since 30 April 1999, having regard to the standard and quality of those services and an efficiency carry over mechanism in accordance with paragraph (d) (**the Forecast Revenue Requirement**).
- (c) **(Under and over recovery adjustment mechanism)**
 - (i) Subject to paragraph (ii), where the revenue derived over an Access Period is more or less than the Forecast Revenue Requirement for that Access Period, a corresponding adjustment must be made to the Forecast Revenue Requirement for the subsequent Access Period;
 - (ii) such adjustment may make allowance for usage above that reasonably forecast in the previous Access Period.
- (d) **(Efficiency carry over mechanism)** The revenue cap must contain an efficiency carry over mechanism such that where an access provider's actual costs in an Access Period differ from the access provider's Forecast Revenue Requirement for that Access Period:
 - (i) no adjustment is to be made to the revenue cap for that Access Period, subject to the operation of any cost pass-through mechanism;
 - (ii) an allowance may be made in a subsequent Access Period for increases or decreases in efficiency such that the access provider may retain all or part of lower costs due to efficiency increases and may bear all or part of higher costs due to efficiency decreases.

- (e) **(Cost pass-through mechanism)** The revenue cap may contain a cost pass-through mechanism.
- (f) **(Service and quality standard adjustment mechanism)** The revenue cap may contain a mechanism for the adjustment of the revenue cap having regard to whether the access provider meets the service and quality standards required to be met under an access arrangement approved by the Commission under section 38ZF(1) or 38ZK of the **Rail Corporations Act 1996** or made by the Commission under section 38ZJ(1) or 38ZL(1) of the **Rail Corporations Act 1996**.
- (g) The revenue cap must be consistent with the revenues that would be derived by the application of any internal transfer prices relating to an access provider's provision of the relevant declared rail transport services to its vertically integrated operations.

4.3 Freight specific pricing principles

- (a) Prices that an access provider may charge in respect of declared rail transport services that are freight services must be set with the objective of recovering the reasonable forecast of the access provider's efficient costs of providing all declared rail transport services that are freight services and excluding:
 - (i) those reasonably expected efficient costs directly attributable to the operation of passenger trains, including, without limitation:
 - A. the estimated additional operations and maintenance expenditure that will be incurred in each Access Period in operating and maintaining the rail infrastructure to a higher standard than would be required if only non-passenger trains operated on the rail infrastructure;
 - B. the estimated financing costs associated with the amount of existing capital expenditure incurred by that access provider since 30 April 1999 and new capital expenditure that is estimated to be incurred by that access provider in each Access Period which would not be required if only non-passenger trains operated on that rail infrastructure; and
 - (ii) a share of the reasonably expected costs of providing declared rail transport services to users of passenger services not directly attributable to passenger services or freight services, proportionate to the use of the rail infrastructure for passenger services and freight services.
- (b) The prices that an access provider may charge in respect of declared rail transport services that are freight services are to be set having regard to:
 - (i) the desirability of prices being consistent for access seekers and users with common freight use requirements;
 - (ii) the desirability of prices being consistent for access seekers and users who are provided declared rail transport services provided by means of rail infrastructure in the same geographic zones;
 - (iii) the desirability of minimising administrative requirements and costs imposed on access seekers, access providers and the Commission;
 - (iv) the principles of efficient price discrimination for relevant freight and end market characteristics.

4.4 Passenger specific pricing principles

Prices that an access provider may charge in respect of declared rail transport services that are passenger services must be set having regard to the efficient costs of providing those services to meet any quality and service levels and standards specified by the Secretary or Director.

4.5 Terminal Services and non-reference services

Prices that an access provider may charge in respect of Terminal Services and declared rail transport services that are not reference services must be set with the objective of generating revenue that in respect of each of those declared rail transport services:

- (a) at least covers the directly attributable or incremental costs of providing the service;
- (b) does not recover more than the stand alone costs of providing that service.

5. Commission authorised to determine methodology for the calculation of prices

- (a) The Commission is authorised to determine the methodology, in accordance with the pricing principles set out in this Order, for the calculation of prices that:
 - (i) an access provider may charge in respect of declared rail transport services that the access provider may provide;
 - (ii) the Commission may, in a relevant decision, decide an access provider may charge in respect of declared rail transport services provided by that access provider.
- (b) The methodologies that the Commission is authorised to determine include a methodology:
 - (i) to provide an access provider with incentives, including within an Access Period and between Access Periods, to incur an efficient level of costs of providing declared rail transport services;
 - (ii) to avoid volatility in prices arising by reason of volatility in freight traffic;
 - (iii) for taking account of any contribution made by an access seeker or user, or a third party on behalf of an access seeker or user, towards capital or maintenance expenditure incurred in relation to the provision of declared rail transport services in the prices for the provision of those services;
 - (iv) for setting a revenue cap, including:
 - A. an under and over recovery adjustment mechanism;
 - B. an efficiency carry over mechanism;
 - C. a cost pass-through mechanism for the pass-through of identified categories of unforeseen costs beyond the access provider's control;
 - D. a service and quality standard adjustment mechanism;
 - (v) for calculating prices for freight services that are consistent for access seekers and users with common freight use requirements;
 - (vi) for calculating prices for freight services that are consistent for access seekers and users who are provided declared rail transport services provided by means of rail infrastructure in the same geographic zones;
 - (vii) for calculating prices for freight services to minimise administrative requirements and costs imposed on access seekers, access providers and the Commission;
 - (viii) for efficient price discrimination having regard to relevant freight and end market characteristics;
 - (ix) for the assessment and allocation of costs in respect of declared rail transport services that are freight services and passenger services, including those that are directly attributable and those that are not attributable to those services;

- (x) for calculating prices for passenger services having regard to the efficient costs of providing those services to meet any quality and service levels and standards specified by the Secretary or Director;
- (xi) to allow for multi-part pricing and price discrimination when it aids efficiency; (see note 4.)
- (xii) for the calculation of prices that an access provider may charge in respect of Terminal Services that the access provider may provide.

6. Commencement

This Order comes into effect on the day section 5 of the **Transport Legislation (Further Amendment) Act 2005** comes into operation.

Notes

1. The period of operation of an access arrangement is as set out in section 38ZM of the **Rail Corporations Act 1996**. It is anticipated that an access arrangement will be in operation for three to five years (see section 38X(1)(f)).
2. Under section 38R(2) of the **Rail Corporations Act 1996**, the Commission is required to make rules that require an access provider to prepare, maintain and keep records relating to internal transfer terms and to provide those records to the Commission.
Sections 38ZB(4)(b), 38ZJ(4)(b), 38ZL(5)(b) and 38ZZD(2) prohibit the Commission from specifying a price for the provision of a declared rail transport service in an access arrangement or a dispute resolution decision that is higher than the price included in the access provider's internal transfer prices.
Pursuant to section 38J(3) of the **Rail Corporations Act 1996**, the pricing principles specified in this Order must not require, entitle or allow a relevant access provider to recover from a relevant user any capital expenses incurred by that relevant access provider in respect of relevant rail infrastructure other than expenses that have been or are incurred on or after 30 April 1999 for the purpose of extending or replacing that infrastructure.
3. Provisions in sections 38ZB(4)(b), 38ZJ(4)(b), 38ZL(5)(b), 38ZZD(2) and 38ZZY of the **Rail Corporations Act 1996** will apply.
4. Provisions in sections 38ZB(4)(b), 38ZJ(4)(b), 38ZL(5)(b), 38ZZD(2) and 38ZZY of the **Rail Corporations Act 1996** will apply.

NB: The notes referred to above do not form part of the Order.

Dated 4 October 2005

Responsible Minister:
PETER BATCHELOR
Minister for Transport

RUTH LEACH
Clerk of the Executive Council

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