

Seilwaith Amey Cymru / Amey Infrastructure Wales Limited
GB Railfreight Limited
DB Cargo (UK) Limited
Freightliner Limited
Freightliner Heavy Haul Limited
Vintage Trains Limited
Rail Express Systems Limited
Transport for Wales Rail Limited

08 July 2024

James Hickman
23 Stephenson Street
Birmingham
B2 4BH

Dear Seilwaith Amey Cymru / Amey Infrastructure Wales Limited (AIW), GB Railfreight Limited, RailAdventure UK Limited, DB Cargo (UK) Limited, Freightliner Limited, Freightliner Heavy Haul Limited, Vintage Trains Limited, Rail Express Systems Limited, and Transport for Wales Rail Limited

Core Valley Lines: Approval of Supplemental Agreements

1. The Office of Rail and Road has approved the following supplemental agreements ('the Agreements') under section 22 of the Railways Act 1993:
 - a. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and GB Railfreight Limited: 2nd Supplemental Agreement (Freight Services)
 - b. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and RailAdventure UK Limited: 1st Supplemental Agreement (Freight Services)
 - c. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and DB Cargo (UK) Limited: 2nd Supplemental Agreement (Freight Services)
 - d. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and Freightliner Limited: 2nd Supplemental Agreement (Freight Services)
 - e. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and Freightliner Heavy Haul Limited: 2nd Supplemental Agreement (Freight Services)
 - f. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and Vintage Trains Limited: 1st Supplemental Agreement (Charter Services)
 - g. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and Rail Express Systems Limited: 1st Supplemental Agreement (Charter Services)



- h. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and RailAdventure UK Limited: 1st Supplemental Agreement (Charter Services)
 - i. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and Transport for Wales Rail Limited: 10th Supplemental Agreement (Passenger Services)
 - j. Seilwaith Amey Cymru / Amey Infrastructure Wales Limited and GB Railfreight Limited 1st Supplemental Agreement (Charter)
2. These approvals follow earlier informal submissions of draft agreements for our consideration. We considered these applications together as they are intrinsically linked. This letter explains the reasons for our decisions.
 3. The Agreements amend track access contracts for the Core Valley Lines (CVL), following a charging review conducted by AIW (the CVL Infrastructure Manager) in 2023. The outcome of the charging review was that the charges to access the CVL would remain the same as charges to use the Network Rail network. As a result of ORR's Periodic Review 2023, changes were made to Network Rail track access contracts (Network Rail TACs). The Agreements ensure that where necessary to implement the CVL charging review, those changes are reflected in the CVL track access contracts (CVL TACs). The Agreements also make some other changes to administrative arrangements.
 4. The Agreements will ensure that operators will continue to be charged on the same basis on both the CVL network and the Network Rail network from 1 April 2024, when Control Period 7 (CP7) began for Network Rail.

Background

The Core Valley Lines

5. The CVL is the railway network running from Cardiff to Treherbert, Aberdare, Merthyr Tydfil, Coryton, Rhymney and Cwmbargoed. The CVL network is owned by Transport for Wales (TfW). TfW leases its assets to AIW who are the Infrastructure Manager for the CVL. The Train Operating Companies and Freight Operating Companies listed above (the Operators) all have existing CVL TACs which allow them to operate on the CVL and the terms of those TACs ensure that the Operators can operate services seamlessly across both the CVL and the Network Rail network.

CVL Charges

6. The CVL transferred from Network Rail to TfW on 28 March 2020. In 2019 AIW and the Operators agreed that Network Rail would administer the Restrictions of Use (or possessions) and Performance regimes under Schedules 4 and 8 of the CVL TACs on behalf of AIW. This is known as the 'single star model'.



7. A separate agreement was entered into between AIW and Network Rail (the Infrastructure Manager Agreement) which attributes various matters, including payments to AIW due to variations to services/restrictions of use, as appropriate, between AIW and Network Rail. The CVL TACs include paragraph 1A in Schedules 4 and 8 which disappplies the remainder of the Schedule should an operator have a current TAC with Network Rail. All of the Operators which currently have CVL TACs also have Network Rail TACs, so Schedules 4 and 8 of the Network Rail TACs apply.
8. When entering into the CVL TACs, AIW and the Operators also agreed that CVL would follow Network Rail's Track Usage Price List for CP6 (until 31 March 2024) and that track charges would be reviewed and adjusted by AIW on 1 April 2024.
9. AIW informed us that if in the future a train operator wished to operate solely only on the CVL, the charging regime would need to be revisited.

CVL Charging Review

10. The CVL TACs required AIW to implement a charging review by 1 April 2024. This was also reflected in the CVL network statement. AIW is also required to comply with the Railways (Access, Management and Licensing) Regulations 2016 ('the 2016 Regulations') with respect to its accounts and charges.
11. AIW conducted a charging review in 2023 and carried out a benchmarking exercise against Network Rail. The outcome of the charging review was that AIW proposed to continue to align its access charges with Network Rail's charges from 1 April 2024, and that the 'single star model' would continue.

ORR's Role

12. ORR's role in relation to AIW is not the same as for Network Rail. In particular, we do not conduct price reviews in the same way that we do for Network Rail. In 2020, ORR set out the [CVL Charging Framework](#) which states that any charges to access the CVL shall be determined by AIW, and requires AIW to ensure that any track access agreement contains provisions to give effect to the principles set out in the 2016 Regulations.
13. The Agreements require ORR approval under the Railways Act 1993 (the Act). Under the Act, a train operator may only enter into a contract with a facility owner for the use of that facility (including track) following ORR's approval or direction. Subsequent agreed amendments to a regulated contract require our approval under section 22 of the Act.



Industry consultation

14. AIW engaged with ORR and industry regarding the CVL Charging Review in 2023. AIW also undertook a pre-application industry consultation for the Agreements. No objections or issues were declared in the applications submitted to us.

Applications

15. AIW informally submitted applications for approval of eight supplemental agreements on 21 February 2024: four freight track access contracts, three charter services track access contracts, and one passenger services track access contract. On Friday 22 March 2024 AIW informally submitted applications for approval of two further supplemental agreements (both relating to RailAdventure UK Limited).

ORR Review

16. AIW engaged with ORR about the charging review before submitting the applications. We considered the benchmarking exercise and the proposals in light of AIW's obligations under the 2016 Regulations and in line with Network Rail. Our conclusion was that the outcome of AIW's charging review was proportionate and in line with the 2016 Regulations.

17. When we received the draft Agreements in February 2024 we focused our review on the implementation of the charging review. Our review was an iterative process: we engaged with AIW who provided more information and revised the draft agreements.

18. The Agreements ensure that track access charges for the CVL continue to align with track access charges for Network Rail. Following ORR's 2023 Periodic Review of Network Rail (PR23), changes were made to Network Rail TACs to implement ORR's final determination and conclusions on drafting changes. Those changes took effect on 1 April 2024. The Agreements largely apply the same changes to CVL TACs. This includes amendments to Schedule 4 (variations to services), Schedule 7 (track charges and other payments) and Schedule 8 (performance regime).

19. In some places, the changes made to the CVL TACs are not the same as the changes made to Network Rail TACs. This includes:

- a. Where there are existing differences between the Network Rail model contract and the CVL TACs, for example in relation to electric current for traction. These differences were considered and approved by ORR at the time that the CVL TACs were first entered into.
- b. Where changes have been made to Network Rail TACs to allow ORR to recalibrate Schedule 8 during CP7. AIW considered that it did not need to incorporate these changes to CVL TACs because it is AIW, not ORR, that conducts price reviews in relation to the CVL.



- c. Some figures have been replaced in the CVL TACs by 'to be determined'. AIW explained that there was limited benefit in including these figures in the Agreements because they would apply only if an operator wanted access solely to the CVL (so the 'single star model' would not apply) and in that situation AIW would need to recalibrate the charges in any event. AIW explained that this approach was taken in the past for certain other figures in the CVL TACs.
 - d. Changes made to the explanatory notes at Schedule 4 of the TfW Rail TAC, where TfW Rail intends to opt out of the single star model for Schedule 4. The changes explain this.
 - e. Changes made to Schedule 9 of the Network Rail TACs, which sets out the limitations on liability for each party, which were not made to the CVL TACs. The changes were to the indexation formula, to bring the caps in line with inflation for 2023-24. Those changes were not made to the CVL TACs. We raised this with AIW and recommend that AIW considers changing the Schedule 9 indexation formula in the future.
20. During our review we engaged with AIW about these differences. AIW provided explanations and revised the drafting of the Agreements where necessary. We also identified some drafting errors in the submitted documents. Some of these errors were typographical but others could have resulted in confusion or unintended consequences in key areas, such as indexation formulas and dates. We pointed these errors out to AIW to ensure that they were amended.

Our duties

21. These applications are under section 22 of the Act and therefore are agreed between the Parties. There are no other outstanding issues.
22. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
- a. to protect the interests of users of railway assets;
 - b. to promote the use of railway network in Great Britain for the carriage of passengers and goods, and the development of that railway network, to the greatest extent [...] economically practicable;
 - c. to promote efficiency and economy on the part of the persons providing railway services; and
 - d. to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

Conclusion



23. The Agreements provide for the new CVL charging provisions to be effective from 1 April 2024. We are approving the Agreements on this basis as this was agreed by the parties and reflects the CVL charging review.
24. ORR's review process took place under significant time constraints and we have learned lessons for the next CVL charging review about the need for regular communication and engagement in advance of implementation. We received the applications less than six weeks before the intended effective date and there were several things that had to be corrected before we could approve the Agreements. We do not routinely look for drafting errors or scrutinise the robustness of a contract submitted to us for approval, but where we identify significant problems (as in these cases), we will inform the applicants. The more complete and comprehensive an application is when it is submitted to us, the more promptly we are likely to be able to process it.
25. As well as being satisfied that our decision was in line with our statutory duties, we were particularly mindful that:
- a. the Agreements were agreed by all parties and no concerns were raised during the consultation;
 - b. ORR does not conduct a price review in relation to CVL;
 - c. all of the current operators with CVL TACs also have Network Rail TACs, meaning that under the 'single star model' Schedule 4 and Schedule 8 of the CVL TACs are not currently used; and
 - d. AIW informed us that in the event that an operator wished to operate only on the CVL, several of the charging provisions would need to be revised to account for the effect of that operator.

Yours sincerely

James Hickman