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8 December 2022

Eleanor Lloyd
Franchise and Access Manager
Network Rail Infrastructure Ltd
1 Puddle Dock
Queen Victoria Street
London
SE1 0NS

Susan Ellis
Track Access and HS1 Contracts Manager
SE Trains Ltd
4 More
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London
SE1 2AU

Dear Eleanor and Susan

Approval of the 88th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and SE Trains Limited dated 6 December 2007

We have today approved the above supplemental agreement submitted to us formally on 8 December 2022 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. This letter explains the reasons for our decision.

Purpose

The purpose of this agreement is to amend SE Trains' track access contract (TAC) in order to reflect the currently operating May 2022 rights and provide a working timetable baseline on which to base its PCD 22 offer. This will include amendments to and removals of described rights. The amendments will come into effect upon the date of this letter.

Industry consultation

Network Rail undertook the usual industry consultation. No issues or concerns were raised.



ORR review

During our review, we asked why the question of performance monitoring was not considered to be applicable to this application. In response, Network Rail stated that no additional performance monitoring initiatives were proposed for the December 2022 working timetable outside of the existing performance monitoring processes and reporting, which currently includes joint planning and performance assurance meetings.

We also note that this application was originally envisaged to be submitted to ORR for the Subsidiary Change Date in May 2022, but due to the complexity of the amendments required, it reached us just five weeks prior to the Principal Change Date (PCD) in December, along with another application for PCD 2022 itself which took the 88th SA as its baseline. We recognise that there have been resourcing issues at Network Rail and that instructions from SE Trains' funders have driven some late changes. However, such late planning has obliged ORR to make decisions based on scant information, without the time that we would ideally have needed to fully pursue our queries, and there are aspects of both applications that we do not find satisfactory. We ask that the applicants recognise that this degree of lateness is not acceptable and that this situation should not be repeated in future.

Our duties under section 4 of the Act and our decision

We have concluded that approval of this supplemental agreement strikes the appropriate balance in discharging our statutory duties under section 4 of the Act; in particular, those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

Conformed copy of the track access agreement

Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and the Train Operator. Please send the conformed copy to me at ORR.

Public register and administration

Electronic copies of this letter, the approval notice and the agreement will be sent to the Department for Transport and Network Rail's Policy and Access Team. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.



Yours sincerely

A handwritten signature in black ink, appearing to read "Louise Beilby". The signature is written in a cursive style with a long horizontal stroke at the end.

Louise Beilby