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ORR
By email only

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Dear Valentina,

Thank you for the opportunity to comment of ORR's Draft Determination. Northern Rail views this as the pinnacle of an extensive industry engagement programme as part of the Period Review 2013 Process, and is broadly supportive of its general direction/themes.

Northern Rail has the following comments to make on the Draft Determination, and would also like to take this opportunity to endorse the response that has been provided by ATOC.

Throughout the next regulatory control period Northern Rail continues to expect ORR to provide increasing and effective scrutiny of Network Rail as a monopoly supplier, using its range of powers and influence to hold Network Rail to account for the quality and standards of service that it delivers. We seek further clarification on how ORR intends to monitor and take enforcement action (as required) on Network Rail's regulatory outputs.

The Draft Determination does not go far enough to reinforce that operators are customers of Network Rail. This process is critical to the success of the industry, and requires engagement and commitment from all parties, and we would like to see the ORR setting out whether it considers the PR13 process to have been a success with respect to whether TOCs, as a customer, received the appropriate levels of consultation and input to the process, both from ORR and from those parts being managed and led by Network Rail.

We do, however, recognise that there have been many improvements during the PR13 process, but we are concerned over both the volume and timing of industry consultation, which did not take into account wider industry resourcing or priorities. With several key issues, including the capacity charge, volume incentive and the performance regimes, still unresolved at a principles level in the final stages of this process.

Enhancement schemes

Northern Rail has played an integral part in championing investment for rail customers in the Northern of England. Passenger numbers have increased significantly since the franchise was awarded in 2004. We are delighted to see that the draft determination supports the delivery of enhancements, such as Northern Hub, and Electrification. We welcome the opportunity to work more closely with Network Rail, in order to shape and influence the outputs for the schemes. It's absolutely essential that the industry develops solutions that are joined up and that deliver for all parties, and we welcome ORR's recognition of this in the Draft Determination.

We would want to understand in greater detail how the mechanism that allows TOCs greater involvement in the earlier stages would actually be realised, as we note many schemes scope/costs have been left open. Operators need to be involved at this early stage to enable us to be able to influence the cost/scope of the projects, though greater collaborative working.

Northern Hub

Northern Rail is proud to have been at the heart of developing the Northern Hub since its conception and we continue to be fully engaged in the project with Northern employees embedded in the North of England Programme team. The development of the Hub has been overseen by a pan industry Steering Group and Northern have played an active part in this Group from the outset and we continue to do so through the newly formed North of England Programme Board and Programme Delivery Group.

The draft determination sets out a significant challenge to the funds available to Network Rail for the delivery of Northern Hub. We believe that the scale of reduction in funds available for Hub is excessive as proposed by the ORR and their consultants, which will potentially leave the Hub under-funded and unable to be implemented in full despite the government announcing the full funding for the Hub scheme in the HLOS last year.

In 2011 recognising the significant contribution that the Hub will bring to the North's economy the DfT granted early approval for a principle part of the scheme, the Ordsall Chord with £85 million funding. The following year the Chancellor announced in the 2012 Budget a £130 million fund to achieve further outputs of the Hub which would seek to deliver capacity and Journey time improvements on three routes between Manchester and Sheffield, Manchester and Bradford and between Manchester and Preston/Blackpool via Bolton.

The ORR in its draft determination has applied risk and efficiency targets to that original £130 million pound fund, which Northern maintains is not appropriate in this case. Government announced a £130 million fund, that the Hub Steering Group has always treated as a fund to the total value of £130 million and at no time did the government or the ORR make its intentions clear that the fund would be subject to a reduction through the periodic review process.

Northern Rail maintains that this is a committed scheme and should be treated as a fund in the same way as the East Coast Main Line Fund, where it is for the industry to

determine how best to allocate the £130 million fund that achieves the government's outputs in the most effective manner. The industry programme team has yet to finalise how the £130 million should be allocated and which schemes prioritised so it is therefore not appropriate for the ORR to apply risk or efficiency savings to this element of Hub funding.

The Hub Steering Group, and the successor Programme Delivery Group have always strived to achieve optimum solutions balancing costs and outputs within the context of funds available whilst achieving the wider objectives of the Northern Hub. In fact the industry has reduced the original envisaged scope and scale of interventions to achieve a better value output that has enabled the Programme Delivery Group to reallocate funds to higher value interventions. If the full value of the £130 million fund is not made available then some difficult decisions will have to be made on scaling back the investments to those with the highest BCRs and as a result some routes are likely to be removed completely from the investment programme, effectively disenfranchising some towns and cities from the Hub programme.

There is still much unknown with the Hub development and it appears that the evaluation has applied the same level of risk across all interventions based on interventions that are further in their development. Significant emerging issues with the Oxford Road and Deansgate corridor are likely to increase cost substantially for which the review takes no cognisance of, and by applying reduced risk assumptions and efficiency savings to the low cost option means that this intervention will be unaffordable. Without an intervention at Oxford Road there is little point in progressing Platforms 15 & 16 at Manchester Piccadilly and then the overall objectives of the Hub will be unachievable with the inability to increase the number of trains that can operate between north and south Manchester.

Since the original submission Network Rail and the programme team has progressed further development of options and some options have been selected as the lowest cost but others have been selected as "most likely" to ensure Hub objectives can be achieved as in some cases the lowest cost does not achieve the required outputs. It appears that the consultants have assumed that all interventions will be made at the lowest cost.

We recognise and wholly support that the industry and Network Rail should continually strive to achieve efficiencies in the delivery of enhancement schemes and we welcome opportunity to be part of the solution in achieving those value for money solutions by the close collaboration between Northern Rail and the Network Rail teams. Northern Rail welcomes the mechanism proposed by the ORR for determining the efficient cost and outputs in two steps, which if applied to the Hub as a whole will enable Network Rail to develop all of the proposed Hub interventions to a greater level of cost certainty by the March 2015.

We therefore recommend that the ORR re-evaluates the recommendation in the Draft Determination to significantly reduce the funds available for the Hub and work with Network Rail and the industry Programme team to ensure that the government's commitment to full funding and the delivery of the Hub in totality can be achieved.

Condition led renewal of S&C and signalling is due at Liverpool Lime Street within CP5 and offers a once in a generation opportunity for enhancing the capability of the network at this location, which will be necessary to fully realise the benefits of the Northern Hub. The volume of services envisaged between Liverpool and Manchester

(and beyond), together with other additional services to the south, will not be robustly accommodated within the existing layout. We are concerned that whilst this scheme was not specifically identified in Network Rail's Strategic Business Plan submission, it is essential that the opportunity is not missed, and that funding is available to deliver a fit for purpose layout to modern standards.

Electrification Schemes

Northern Rail welcomes the electrification schemes that are proposed in the Enhancements Portfolio for the North of England that will support delivery of the HLOS capacity enhancements along with other socio economic and environmental benefits. We support the concept of a rolling programme of electrification and wish to see the programme extended during CP5 to include Lostock Junction to Wigan, which will drive improved capacity utilisation and journey time improvements on the Bolton corridor with the introduction of EMUs. We also wish to see the electric spine scheme extended up North of Sheffield to South Kirby and Doncaster in to unlock wider industry efficiency benefits in the South Yorkshire area, and we would expect the programme to extend to cities such as Hull and Harrogate during CP6. Coupled with this, it is imperative that depot strategy is considered as part of these electrification enhancement projects.

Capacity Schemes/HLOS Metrics

In response to Network Rail's Strategic Business Plan we highlighted that we had concerns that it did not adequately address capacity issues on all routes into key urban centres that the strategic electrification schemes deliver. We believe Network Rail's delivery plan must address these capacity issues across key corridors that link into our urban centres. We will continue to work with the industry in order to identify the appropriate funding mechanism that will deliver the benefits of such schemes.

We are concerned with the recommendations (in the Nichols report) in relation to the South Yorkshire, West Yorkshire and North West Train lengthening schemes. The report suggests that Selective Door Opening should be considered and assessed as a potential solution for train lengthening schemes. Northern Rail's view is that this transfers the infrastructure solution to a train borne solution, which imports significant safety, performance and IR risks onto an operator. Platform lengthening in order to accommodate longer trains at the large number of stations where intervention is required is the only viable long term solution.

Where the same type of rolling stock operates on a specific route there may be potential for a value for money SDO solution. However, due the diverse type of rolling stock Northern Rail currently operates SDO is not a viable solution.

Northern Rail is supportive of the numerous schemes are planned which seek to address capacity in and around the Leeds area (Micklefield turnback, East Leeds Area, Leeds Station Capacity), and we are fully engaged with Network Rail and other operators and are looking to explore holistic solutions for these schemes. The industry must view these schemes strategically in order to deliver an efficient access strategy as opposed to delivering each scheme in isolation and as a single project.

The Nicols reports sites Bradford Mill Lane Capacity scheme, and we note the view that the proposed solution is non compliant as it does not accommodate existing freight services. Northern Rail would like to understand which freight services currently

operate over this route? As we believe that no freight services currently operate to Bradford, and that the solution that has been developed takes cognisance of the services that operate currently and planned to operate over that line of route.

The planned renewal of the signalling at Mill Lane offers a once a life time opportunity to develop a value for money scheme that introduces parallel moves at Bradford. We will continue working with Network Rail to find a solution that is efficient and beneficial to the wider industry.

Depots and Stabling Strategy

With the significant upgrade to service levels across the north, we are concerned that a robust process is required to ensure that facilities are in place to accommodate the stabling, servicing and maintenance of additional trains as they are introduced. Given the position in the franchising cycle, with both Northern and TPE franchises scheduled to be re-let in 2016 in advance of the implementation of Phase One of the Northern Hub, it is unlikely that a new franchisee will be in a position to undertake the necessary development and implementation work for depot and stabling enhancements in the required timescales. As a result, there is likely to be a need for Network Rail to take a lead in development of facilities to ensure suitable provision is in place.

The East Leeds Capacity Scheme is vital to deliver the HLOS capacity metrics into Leeds. It is imperative that this scheme addresses and seeks to improve the access to and from Neville Hill Depot as this scheme will play a key part in delivering the additional capacity into Leeds.

Leeds Nottingham

Renewals between Leeds and Nottingham are also contained within the work bank for CP5, and Northern Rail wishes to see enhancements such as journey time improvements delivered as these renewals offer the once in a generation opportunity to deliver some real passenger benefit along this line of route. This scheme was categorised as an exemplar scheme in the Initial Industry Plan and we wish to see Network Rail take advantage of the opportunities that a renewals scheme of this nature presents.

Ring fenced Funds

Northern Rail supports the concept of ring fenced funds as we believe this allows the industry the opportunity to deliver strategic objectives and specific outputs. We continue to seek early engagement in the investment forums and we believe that the collaborative management of the funding pots drives efficiency and value add for all our customers.

We fully support the concept of and East Coast Connectivity fund, and are fully engaged in this process. We are looking for this work stream to deliver its high level objectives whilst balancing this against the requirements for local service providers, which indeed feed the long distance service sector.

It is widely acknowledged that the Strategic Freight Network has delivered enhanced capacity during the last control period. It is imperative that during the development of strategic freight schemes cognisance is given to the impact on the wider industry,

and that the requirements of passenger operators are balanced against the strategic objectives for our freight colleagues/customers.

Northern Rail welcomes the requirement for a Level Crossings Fund, this reinforces that safety improvements continue to be a priority and the recognition that funding is required in order to reduce risks at level crossings.

It is imperative that the industry continues to define and agree the governance of the industry funds in CP5, and this dialogue needs to be concluded before the commencement of the new control period. While this process continues, we look to the ORR to ensure that the final position reflects an industry-led consensus, delivering outcomes that are flexible that will drive the most efficient solutions for the industry. We expect the Enhancement Delivery Plan to set out the rules of engagement going forward and we look forward to be a key player in this process through out the next control period.

Asset Management

Northern Rail is supportive of the ORR's commitment to improve NR's capability for asset management and quality. Northern welcomes the additional funding for asset management, as their management of embankments and structures has been a key concern for us in recent years. We also welcome the outputs relating to improvement of Network Rail's knowledge of its asset base and incentivise good management practices in this area.

We have experienced two very near miss train accidents during 2012 caused by earthworks failures, and several other earthworks and structures failed on our network last year. We now see this as a key operational safety risk and it is evident that the very wet weather in 2012 which saturated land, combined with previous under investment, ageing infrastructure, change of neighbouring land usage, and emerging knowledge about design and construction has changed the risk profile, making a catastrophic accident more likely than it was 12 months ago.

We have previously raised our concerns with both Network Rail and ORR, and much work is in progress to better understand the change in level of risk, to understand the condition of embankments and structures, and to improve maintenance, inspection and monitoring processes.

Financial Framework and REBS

Northern Rail notes that ORR's determination sets out that Route-based Efficiency Benefit Sharing (REBS) will be the default position for new franchises, but will not apply to current franchises or direct awards as a result of No Net Loss, No Net Gain provision. We also note ORR's intention to continue to promote examination of the possibilities of moving TOCs onto total cost risk, including FTAC, for consideration in PR18 and beyond.

Northern Rail is concerned about to ORR's proposals that would see TOCs directly exposed to infrastructure cost risk. This would represent a substantial change to the current framework, and we have yet to be supplied with any assessment of the potential impact on bidder confidence. Rather than exposing costs onto total cost risk, it may be more prudent to explore opportunities for some cost risk sharing, which of course would need further dialogue with stakeholders and funders.

Charging Structure/Access Charges

ORR has tabled introducing a new proposal for the indexation of track access charges. We do not see merit in this approach, as we fear it will introduce uncertainty and complexity into the process without any clear additional incentives or levers for TOC influence. Transferring additional inflation risk to train operators, from Network Rail is not supported by Northern Rail. We remain unconvinced of the need for change in this area and consider a simple, RPI-based indexation is both transparent and implementable.

Northern Rail notes that the Draft Determination proposes that Capacity Charge rates are unchanged and up lifted for inflation or an alternative proposal put forward by the RFOA might be suitable also for passenger operators. Northern Rail received the ORR's recent letter outlining this alternative proposal and, whilst we continue to support the principle that the Capacity Charge should continue to allow Network Rail to recover its marginal cost of accepting additional traffic onto the network neither do we consider this alternative proposal has demonstrated sufficient merits or been subject to the requisite industry scrutiny to be considered as a viable option at this stage. Serco/Abellio is involved in the RDG Contractual and Regulatory Reform Working Group which is discussing Capacity Charge, volume incentive and Schedule 8 collectively.

We are concerned in relation to the way in which the ORR is consulting on charging structures for the next control period. Our view is that the Volume incentive cannot be considered in isolation and needs to be considered in parallel with the setting of the performance and engineering access baselines (Schedules 4 and 8), and the capacity charge. This will ensure that the correct signals and incentives are available to the industry to optimise and encourage use of the network.

Performance Outputs/Schedule 4 and 8

Northern Rail welcomes the requirements for all operators have a PPM of 90%, but notes there is no particular protection for individual service groups. Whilst this will be beneficial in terms of less reactionary delay, we may see Network Rail give the Long Distance sector even more focus and priority, with a detrimental effect to Regional Operators. We would like further clarity on how Network Rail's Delivery Plan will deal with these issues, and we seek assurance from ORR that the 90% must be delivered without letting other output measures deteriorate.

Northern Rail are also concerned that the ORR have chosen the period from April 2010 to the end of March 2012 as the Schedule 8 calibration period for setting Network Rail benchmarks. Performance has been poor during this time, so when it improves (as it must do under the CP5 PPM outputs) Network Rail will be receiving financial benefit from Schedule 8 payments. We would argue that a CP4 average would have been a more robust data source for these calculations.

Northern Rail supports the ORR's view that the most recent evidence for the impact of

poor performance on passengers should be broadly reflected in the Schedule 8 payment rates for CP5. We recognise that the performance regime interacts with the capacity charge and the volume incentive, and that the ORR should take into account the views of the industry. We are of the view that the opportunity for industry partners to engage on the optimal structure of access charges and incentive regimes will provide a stronger underpinning for the next Periodic Review.

We have engaged extensively with Halcrow and Network Rail, and we have robustly challenged methodologies and data sources as part of this process. We are now keen to understand the outcome of the benchmark and payment rate work streams as we see this as a key component of ORR's determination.

The industry must collectively agree the appropriate trade-offs to ensure best use of capacity, protect journey times, revenue base and provide opportunities to meet passenger requirements in terms of consistent service delivery. Northern Rail will work with Network Rail to agree performance trajectories and ensure delivery of targets against a background of significant enhancement and renewal volumes in CP5.

Northern Rail supports the decision to retain compensation for Schedules 4 & 8 for the full financial impact of disruption, as this sends strong signals to Network Rail about the impact of disruption on our customers. Coupled with this, Northern Rail also believes that the decision to allow the recovery of direct costs related to amended or cancelled Type 1 possessions is a positive move, as we have experienced a large volume of possession amendments and cancellations over the past 12 months and have had no contractual provision that allow us to claim our costs back from Network Rail. We would also expect such a provision within schedule 4 to drive behaviours within Network Rail and demonstrate the cost and impact on operators and customers of Network Rail's failure to plan efficiently and in a timely manner.

Network Rail has a significant amount of Engineering work to deliver over the next Control Period, the scale of work is at levels that we have never experienced in the North of England and we have about concerns over Network Rail's capability to deliver the train planning work associated with some of the major works. We await Network Rail's Delivery Plan in order to gain further clarity on how they plan to address these issues.

Traffic Management

Northern Rail does not believe that Network Rail has over estimated the negative impact of traffic growth on performance. Network Rail is funded for a new Traffic Management system as part of their operating strategy. We are concerned that the funding levels do not take into account requirements of operators, in particular a solution that allows for the management of train crew and unit resource. We would urge ORR to take a view on how overall rail system performance can be optimised through the appropriate funding levels being made available for an industry wide software solution.

In summary, The Draft Determination represents an important milestone in the process to set industry outputs going forward. Northern Rail supports its general direction while raising specific concerns/issues that we have outlined in our response. We look forward to ORR's consideration of these matters in its Final Determination.

Yours sincerely

Helen Cavanagh
Track Access Manager