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Bill Emery
Chief Executive
Office of Rail Regulation
One Kemble Street
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13 August 2007

Dear *Bill*

Portsmouth Resignalling

I write with regard to your letter and notice of 30 July 2007 in which you set out ORR's proposal to impose a penalty of £2.4m on Network Rail in respect of a contravention of Condition 7 of our network licence following failures associated with the delivery of the Portsmouth resignalling scheme.

Clearly, we are very disappointed that ORR considers it to be necessary to impose a fine of this magnitude on Network Rail as a result of this licence breach. We are also concerned about the potential implications for the level of fine in the event of a future licence breach.

We readily accept that the failures associated with the delivery of this project have caused disruption for both train operators and passengers. However, we believe that we have taken every step possible to mitigate the level of this disruption and that this matter should be viewed taking into account our previous successful delivery of a number of major projects. It is on this basis that we consider the level of ORR's proposed fine to be disproportionate.

We note however, that in proposing this fine, ORR has given regard to both the steps that we have taken to mitigate the effect on passengers and the lessons we have learnt from this project. ORR states in its notice that the proposed penalty relates to the conduct of Network Rail between September and December 2006. In particular, in proposing this fine, ORR has referred to our failure to identify effectively the risks associated with the project, to develop adequate contingency plans to address the possibility of extended disruption to services and to manage the project (and in particular our contractor) competently. We have already set out our views on these matters in previous correspondence and it does not seem to be productive to revisit these issues again here.

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The lessons that we have learnt at Portsmouth will be applied to future major resignalling schemes and we will be putting additional checks and balances in position to minimise the risk of similar problems occurring again in the future. We will correspond with ORR as regards the implementation of these lessons learnt in due course.

Whilst we are very disappointed by ORR's decision with regard to this matter, I should emphasise that Network Rail takes its obligations as set out under its network licence extremely seriously. We fully appreciate that it is of the utmost importance for Network Rail to comply (and to be seen to be complying) with its licence obligations and we will complete the resignalling work at Portsmouth by the end of October. You will be aware that this date has been agreed following consultation with train operators with a view to minimising the impact of these works on passengers.

Separately we are now reviewing our approach to risk. Moving forward, it will be vital to ensure that we do not expose ourselves to project risks, which (if these risks materialise) could result in us failing to meet the needs of our customers and consequently result in the possibility of licence breach. It is likely that ORR's conclusion in respect of Portsmouth will force Network Rail to become more risk averse as we seek to avoid the possibility of licence breach. We question if this is really the right way forward for an industry that faces considerable challenges in the years ahead especially in terms of providing additional capacity to meet growing demand at an affordable price. As explained in previous correspondence, we will write separately on Network Rail's approach to risk going forward, setting out our concerns. In conjunction with this we will set out our views in relation to reform of the licence and the related policy matters concerning breach of licence and the establishment of appropriate penalties in various circumstances.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Iain Coucher", written over a horizontal line.

Iain Coucher
Chief Executive