

Alexandra Bobocica
Office of Rail Regulation
1 Kemble Street
London WC2B 4AN

DB Schenker Rail (UK) Ltd
2nd Floor McBeath House
310 Goswell Road
London EC1V 7LW

Nigel Oatway
Access Manager

Telephone: +44 (0)1302 577010
Fax: +44 (0)20 7833 8449
Mobile: +44 (0)7801 905240
nigel.oatway@dbschenker.com

Dear Alexandra,

4 November 2013

CONSULTATION ON CONTRACTUAL PROVISIONS TO IMPLEMENT OPTIONS FOR THE CAPACITY CHARGE IN CP5

This letter contains the response by DB Schenker Rail (UK) Limited ("DB Schenker") to the consultation letter entitled "*Consultation on contractual provisions to implement options for the capacity charge in CP5*" issued by Office of Rail Regulation ("ORR") on 30 September 2013.

In making its response, DB Schenker has taken account of ORR's subsequent update letter dated 25 October 2013 on this matter advising that freight consultees may wish to restrict their comments to the proposed implementation wording for the "RDG – no negative wash-up option" as this is now the ORR's preferred option to be taken forward for implementation. DB Schenker has, therefore, restricted its comments in this letter to the implementation drafting associated with that option.

1. Definition of "Coal Train" – if it is ORR's intention to restrict "coal trains" to those actually carrying electricity supply industry coal, other coal and biomass then this definition would suffice. However, if "Coal Train" is also meant to include associated empty services, then DB Schenker suggests that the definition requires amendment to make this clear, for example:

"Coal Train" means any Service in respect of which more than fifty percent of the number of vehicles that make up that Service (not including the locomotive(s)) are designated the applicable Commodity of coal or biomass."

This alternative suggested wording also takes addresses (a) the issue of what happens when a train comprises 50% "coal" vehicles and 50% "intermodal" vehicles and (b) is consistent with other contractual definitions already used in the contract.

2. Definition of "Intermodal Train" – DB Schenker suggests that the definition would be clearer if amended as follows:

“Intermodal Train” means any Service in respect of which fifty percent or more of the number of vehicles that make up that Service (not including the locomotive(s)) are designated the applicable Commodity of domestic or European intermodal”


3. Definition of “Other Train” – DB Schenker suggests that the definition would be clearer if amended as follows:

“Other Train” means any Service that is not a Coal Train or an Intermodal Train.”

4. Paragraph 2.3 – It appears that the proposed drafting seeks to aggregate the capacity charge wash-up across all three commodities once calculated which could result in an outcome of one commodity being under its baseline being used towards cancelling out another commodity that happens to be over its baseline. If this is ORR’s intention, then there would seem little point in having any commodity splits at all. DB Schenker understood in fact that it was the intention of the RDG proposal that the commodity split would result in three separate wash-up processes, one for each of the three commodities so there would be no “netting off” between commodities.

5. Paragraph 2.3 – Whatever the approach to the wash-up, DB Schenker considers that there should be an explicit obligation on Network Rail to provide sufficient and appropriate back up information (including the figures inserted into the contractual formulae) to justify the results of its wash-up calculations to aid transparency and verification.

Yours sincerely,



Nigel Oatway
Access Manager