

**Emily Bulman**  
**Head of Transport Economics, Railway Markets and Economics**

Telephone 020 7282 3892  
E-mail [emily.bulman@orr.gsi.gov.uk](mailto:emily.bulman@orr.gsi.gov.uk)

20 December 2013

To open access operators



Dear colleague,

### **Capacity charge baselines in CP5 for existing open access operators**

1. The purpose of this letter is to update you on the proposed approach and draft values for capacity charge baselines for open access operators in CP5, as per the decisions set out in our *Periodic Review 2013: Final determination of Network Rail's outputs and funding for 2014-19*<sup>1</sup>. If you wish to comment on these proposals, please do so by **20 January 2014**.
2. The consultation consists of this letter and an annex prepared by Network Rail which includes draft baseline values for your particular service codes, and explains how these have been calculated. Following this consultation, baselines will be calculated by Network Rail for our approval (or we will determine them if we do not approve Network Rail's proposed baselines); they will then be published by Network Rail on or before 10 February 2013.
3. In the remainder of this letter we recap on our final determination decisions on the capacity charge and associated baselines, explain changes to contractual wording in Schedule 7, and cross refer to Network Rail's calculation of the baselines. We also set out the next steps for finalising the baselines.

### **Final determination**

4. In our final determination we concluded on how the capacity charge would be levied on open access operators in CP5. This followed a consultation process carried out over the summer of 2013 following the publication of our draft determination. This process involved input from individual operators and industry stakeholder groups, notably RDG.

---

<sup>1</sup> This may be accessed at: <http://www.rail-reg.gov.uk/pr13/PDF/pr13-final-determination.pdf>.



5. For open access operators, we concluded on adopting the option that we set out in our letter to RDG dated 25 September 2013<sup>2</sup>. In summary this means that in CP5, existing open access operators will pay capacity charge rates that are the CP4 rates for their existing services (uplifted for inflation and with any anomalies corrected). Operators will pay the equivalent of the capacity charge wash-up rates<sup>3</sup> for any additional or new services, levied via a year-end wash-up.
6. New entrant open access operators will pay rates that are equivalent to CP4 rates on services below a threshold (set to provide broadly equivalent treatment with existing open access operators) and what would be equivalent to wash-up rates above the threshold. This approach is to ensure that we are treating existing and new entrant open access operators in the same way.
7. This letter only deals with the baselines for existing open access operators. We will develop and publish a methodology for implementing our decision in relation to new open access operators before the start of CP5 (i.e. before 1 April 2014).
8. Each operator will have a baseline set using 2012-13 actual traffic levels for each of that operator's existing service codes.

### **Contractual wording**

9. On 30 September 2013 we consulted on the changes we would need to make to Schedule 7 of the track access agreements in order to implement the capacity charge policy options discussed with industry over the summer<sup>4</sup>.
10. Subsequent to this, we have refined the Schedule 7 contractual wording to correct for certain errors, including ensuring that the baselines are updated for inflation. And we have made three more substantive changes.
11. First, we have included a requirement for Network Rail to provide to the train operators such background data and workings as may reasonably be required for a proper understanding of Network Rail's calculations. We expect the wash-up calculation to be transparent.
12. Secondly, we have amended the formulae to ensure that the wash-ups work at the level of the service code rather than all traffic, following responses to our consultation on an equivalent issue in the freight operator contract.

---

<sup>2</sup> This may be accessed at: <http://www.rail-reg.gov.uk/pr13/PDF/capacity-charge-for-franchise.pdf>.

<sup>3</sup> Wash-up rates are published in Network Rail's List of Capacity Charge Rates and equate to the rates recalibrated by Arup for Network Rail as part of PR13, sometimes referred to as the "CP5 rates".

<sup>4</sup> The consultation letter and contractual wording may be accessed at: <http://www.rail-reg.gov.uk/pr13/consultations/capacity-charge-implementation.php>.

13. Thirdly, we have postponed the publication of the baselines from 20 December 2013 to on or before 10 February 2014. We think that this is important because it allows us to update you on our and Network Rail's thinking regarding these baselines and gives you the opportunity to comment.
14. We have now completed our work on Schedule 7 contractual wording (which is being issued to you separately as part of a review notice on 20 December). That contractual wording is now finalised and does not form part of this consultation.

### **Proposals for calculating the baselines**

15. As Network Rail explains in the annex, it is proposing to use actual traffic data sourced from its track access billing system (TABS) to calculate the baselines and wash-up for each existing service code.
16. To be consistent with the Schedule 7 contractual wording, the baseline for each service code is equal to:
  - a. the revenue that Network Rail would have received under 2012-13 traffic levels if the capacity charge was levied at the wash-up rates (i.e. the new **full** CP5 rates as recalibrated by Arup as part of PR13);  
  
minus:
  - b. the revenue that Network Rail would have received under 2012-13 traffic levels if the **lower** CP5 capacity charge was levied (i.e. which is based on the CP4 charge, uplifted for inflation and with anomalies corrected).
17. For each service code, the wash-up is the difference between the revenue Network Rail would have received if wash-up rates were applied to the actual traffic above the baseline (of 2012-13 traffic levels), and its actual capacity charge revenue above the baseline (subject to it being greater or equal to zero). Consistent with our final determination, each baseline is defined such that its respective wash-up is equal to zero if traffic is at 2012-13 levels.
18. Network Rail sets out draft baselines for your particular service codes in Annex A. Network Rail has used actual traffic data for 2012-13 sourced from Network Rail's track access billing system (TABS) to calculate these baselines. We welcome any comments on this calculation in response to this consultation.
19. We have independently calculated the baselines and reconciled our calculations with Network Rail's own in order to provide additional assurance.

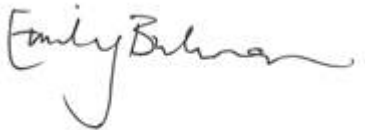
### **Next steps**

20. If you wish to comment on the proposed definitions of commodities or baselines or the draft baseline values, please send these comments to Alexandra Bobocica,

[alexandra.bobocica@orr.gsi.gov.uk](mailto:alexandra.bobocica@orr.gsi.gov.uk), copied to Caitlin Scarlett,  
[Caitlin.scarlett@networkrail.co.uk](mailto:Caitlin.scarlett@networkrail.co.uk), on or before **20 January 2014**.

21. In order to implement our decision for freight operators, Network Rail will publish a baseline for each of the three commodity groups, which will be approved by ORR (or determined by ORR if we do not approve Network Rail's calculation), on or before 10 February 2013.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Emily Bulman". The signature is written in a cursive style with a large, sweeping initial "E".

**Emily Bulman**