

**Proposed Track Access Contract Between  
Network Rail Infrastructure Limited and the Great  
North Eastern Railway Company Limited under  
Section 17 of the Railways Act 1993**

**Network Rail's Representations**

**28 May 2014**

## **Executive Summary**

The East Coast Main Line is an exceptionally valuable asset in the national transport system. It provides the fastest surface transport between London, North East England and Scotland as well as providing a mixed traffic including freight, commuter services, long distance passenger services, both franchise and Open Access. Substantial infrastructure enhancements have been completed in CP4 and more are due to be completed in CP5 in order to grow both freight and passenger traffic.

Network Rail welcomes the opportunity to grow this service offering and increased competition through further discussions with Great North Eastern Railway Company Limited (GNER) regarding the proposals in this Section 17 Application. Further discussions are required, due to the fact that there are elements of this Application that Network Rail may be able to support in the future, but can't at this time due to insufficient information. These are outlined below in Network Rail's response.

Network Rail is disappointed it was not invited to negotiate a jointly agreed contract under Section 18 of the Railways Act 1993 with GNER. This Section 17 was issued before any negotiations had taken place.

Network Rail is continuing to work constructively with GNER regarding this Application, and will keep ORR up to date as those discussions progress.

This Application includes investment proposals for a new station at East Leeds Parkway. The Application is not clear however where exactly the station is intended to be built, and Network Rail is aware that both Thorpe Park and Micklefield are being discussed. Network Rail supports such investment opportunities and looks forward to discussing the detail, however it needs to be satisfied that the location of the station is suitable from a performance and strategic perspective. With those opportunities though comes a greater degree of risk, and therefore requires a greater degree of modelling and development to determine what might be deliverable.

The submission of this Application to ORR follows a previous Section 17 application by GNER for services between Kings Cross and Edinburgh. GNER has requested that these services start from December 2016. Also, East Coast Main Line Company Limited (ECML) Trains has submitted a Section 17 application to ORR for services on ECML beyond 2016. Any further negotiation on this Application will need to consider those other applications in parallel.



## **The proposed contract**

### **Definitions**

**“Expiry Date”** means 01:59 on the Principal Change Date in December 2031, although the Form P attached to this Application states that the contract would expire in December 2032. Network Rail needs GNER to clarify the exact Expiry Date.

Any expiry date needs to be expressed as Principal Change Date in a specified year, rather than as Principal Change Date in a specified month of a specified year. This is to allow for any changes to the frequency of Principal Change Dates that may occur in the future.

This application requests a contract length of 14 years (or 15 years according to the Form P). Network Rail understands that GNER requires this contract length to facilitate the investments it is intending to make. Network Rail is undertaking a Capacity Study which is described below, which may indicate whether or not Network Rail is able to agree to sell any proposed rights for 15 years, or a shorter timeframe.

Legislation currently states (regulation 18.9) that ‘A framework agreement for a period in excess of 10 years may only be made in exceptional cases, in particular where there is a large scale and long term investment, and particularly where such investment is covered by contractual commitments.’ Network Rail recognises the importance of scrutinising applications as to whether investments being made by an applicant are such that the argument of an "exceptional case" can be made out in order to justify extended rights to capacity, as required by both The Railways Infrastructure (Access and Management) Regulations and by Art.42 of EU Directive 2012/34. In doing so, the ORR could consider the differential nature of any identified potential investments on their individual merits, such as that of disposable assets such as rolling stock; compared to fixed asset investments such as line side infrastructure or depots for example.

Network Rail would need to negotiate the detail of Schedule 13 with GNER before satisfying itself that the above requirements were met.

### **3.2 Conditions Precedent to Clause 5**

This clause refers to ‘the investment conditions laid out in Schedule 13’ being ‘satisfied’. Schedule 13 is currently incomplete. Network Rail would need to negotiate any proposed further contents of Schedule 13 with GNER. That negotiation would be subject to the outcomes of discussions ongoing with GNER regarding the scope of infrastructure investment.

### **Schedule 1 contract particulars**

All notices should be copied to the Route Managing Director, rather than the Route Director.

## **Schedule 4- Engineering Access Statement, Timetable Planning Rules and Restrictions of Use**

### **Definitions**

Network Rail notes that sub paragraph numbering throughout this Schedule 4, in comparison to the Model Contract, appears to have become corrupted.

Network Rail notes that a definition of 'journey time' has been added to this Schedule 4. The reasons are not explained in the application form. Network Rail would need to understand the reasons for its inclusion before deciding if it could support it.

## **Schedule 5-The Services and the Specified Equipment**

Whilst Network Rail is interested in further discussions with GNER regarding its proposals in Schedule 5, it cannot yet confirm that the capacity exists to offer the sale of the track access rights described within it.

We are undertaking a Capacity Study in order to ascertain whether or not Network Rail can support the rights requested by GNER in this Schedule 5.

The objective of the study is to determine if capacity exists to provide for the rights requested in both this Application and GNER's previous application for one long distance high speed (LDHS) path per hour between London Kings Cross and Edinburgh / Edinburgh to Kings Cross with an average journey time of 3 hours 43.

When this work is complete, it may provide a better indication of whether we can agree to any of the proposals listed in this Schedule 5. It is anticipated that the study will be complete by the end of July. This date may change if the remit is broadened to include capacity analysis of ECML Trains' recent Section 17 application for services on ECML.

## **Network Rail position on network wide sale of access rights**

Network Rail has recently reviewed its position on the sale of access rights, and as a result would now only consider agreeing more protection than table 2.1 provides, if the customer can provide evidence of a commercial need.

GNER has stated in its application form that 'GNER is seeking some maximum journey time protection to protect the return on investment made in both the infrastructure and the rolling stock.' The Application also requests Interval protection.

Network Rail would like to see evidence of this business case in order to justify the commercial need that GNER is claiming, so that Network Rail could consider whether it would be appropriate to negotiate the Maximum Journey Times described in Table 4.1 and the Intervals described at the foot of Table 2.1.

Network Rail notes that the Maximum Journey Time protection requested also applies to Sundays. Whilst the Capacity Study only currently intends to assess capacity for SX services, Network Rail will also in due course confirm whether or not it can agree to the proposed Maximum Journey Times on Sundays.

## **Specified Equipment**

The equipment proposed in the contract is Hitachi's 5 car Super Express Train (SET), although the application form states 'however, alternative rolling stock with similar capabilities is still under consideration'. Network Rail would want confirmation of the exact rolling stock to be used in order that the Capacity Study can produce accurate results.

The application form also states that 'the main depot for the rolling stock is likely to be in the Doncaster area'. Doncaster is already a busy area and plans to build the new IEP depot will add to this. Network Rail is concerned that an additional depot in this area brings with it a performance risk and would need to be satisfied that any performance risk could be mitigated.

The application form also states that 'up to two trains per day in each direction will be coupled or uncoupled at Doncaster to make best use of fast paths on the ECML.' Network Rail is keen that the best use of capacity is made, however is concerned that coupling and uncoupling in Doncaster Station could introduce a performance risk, so would need to fully analyse any such performance impact.

Network Rail would also need to satisfy itself that this Specified Equipment is fully route and gauge cleared, and that and relevant NRAP and Vehicle Change processes are followed as well as stepping distances and platform lengths being compliant.

## **Proving period**

Network Rail believes that a proving period provision should be included within this contract. Such a provision needs to be negotiated between Network Rail and GNER, and would essentially provide a mechanism for addressing any deterioration of network performance caused by the introduction of the services contained within this Application. This would ensure that any train service performance disbenefits from the introduction of the new services do not outweigh the benefits of the additional services to passengers.

Any such mechanism should include an obligation on GNER to remedy any significant deterioration as soon as reasonably practicable rather than at the end of the proving period. In the case of minor deterioration, the provision should oblige both GNER and Network Rail to meet promptly to take remedial action.

## **Safety**

The rights requested in this application would need to undergo safety risk assessments to ensure that there is no adverse impact on signaller workload, SPAD risk, level crossing risk, or any other safety impact.

## **Schedule 13-Programme of Works Specification**

GNER has added a Schedule 13, which is empty apart from the heading 'Investment in Infrastructure'. Network Rail agrees that such a Schedule needs to exist, as this Long Term Access Contract is dependent on fulfilment of the Investment Conditions to be contained within this Schedule 13. The nature and scope of the investment required by GNER is likely to be considerable, and therefore the importance of the content within this Schedule should not be underestimated.

Network Rail would need to discuss and negotiate the Schedule 13 contents with GNER before confirming its agreement.