



Gordon Herbert  
Track Access Executive  
Office of Rail Regulation  
1 Kemble Street,  
London WC2B 4AN

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

**Nigel Oatway**  
Access Manager

Telephone: [REDACTED]  
Fax: [REDACTED]  
Mobile: [REDACTED]  
[REDACTED]

16 January 2015

Dear Gordon,

**PROPOSED 25<sup>TH</sup> SUPPLEMENTAL AGREEMENT TO THE TRACK ACCESS CONTRACT BETWEEN NETWORK RAIL INFRASTRUCTURE LIMITED AND FREIGHTLINER HEAVY HAUL LIMITED**

Thank you for inviting the comments of DB Schenker Rail (UK) Limited (“DB Schenker”) on the above matter.

DB Schenker notes that Freightliner Heavy Haul Limited (“FLHH”) has decided to make its application under section 22a of the Railways Act 1993 (as amended) as it was not able to agree suitable terms with Network Rail. DB Schenker understands that section 22a of the Railways Act 1993 (as amended) only applies to amendments to access agreements that permit more extensive use of the facility concerned (in this case Network Rail’s network) and any amendments which ORR considers necessary or desirable in consequence of those “more extensive use” amendments.

DB Schenker supports FLHH’s view that since privatisation the way in which coal for electricity generation is transported by rail has changed greatly and that those changes would now necessitate a move toward granting more prescribed Level One Rights for such services instead of the previous approach of granting predominantly ‘quantum only’ Level Two Rights (subject to Cordon Caps). This is particularly the case at Power Stations which also take deliveries of biomass which is a commodity that cannot be stored and has to go straight to burn. Therefore, DB Schenker recognises and agrees with much of what is stated by FLHH by way of commercial justification in Annex A of its application. However, whether converting a Level Two Right into a Level One Right (assuming no other changes) represents “more extensive use” is a debatable issue, and DB Schenker will be very interested in seeing ORR’s decision in this respect. That said, DB Schenker is not opposed per se in the conversion of Level Two Rights to Level One Rights for electricity coal services and concurs with FLHH that freight operators have not agreed any “Level Two Rights – only” policy with Network Rail. In fact the industry discussions under the auspices of the Rail Delivery Group’s Contractual & Regulatory Reform Working Group are moving towards a proposal which, if approved, would result in Level Two Rights being abolished from PCD 2016 in any case.

DB Schenker notes FLHH's comments in paragraph 3.2 of its application form that "NR has recently agreed an extension to DB Schenker's access rights to PCD 2016, which includes Level 1 coal rights" and consequently believes that this appears to represent an inconsistent application of policy.

DB Schenker believes that Network Rail is not being inconsistent as the two proposed applications (i.e. DB Schenker's 116<sup>th</sup> Supplemental and FLHH's 25<sup>th</sup> Supplemental) are essentially different. DB Schenker's application is for a 'roll over' of its current access rights for electricity coal services (i.e. those that are Level One Rights remain as Level One Rights and those that are Level Two Rights remain as Level Two Rights) whereas FLHH's proposed application is based on the premise that the vast majority of its current Level Two Rights for electricity coal services are proposed to be upgraded in status to Level One Rights. In effect, therefore, DB Schenker's application does not seek to change the 'status quo' for its electricity coal services, whereas FLHH's application seeks to change Level Two Rights to Level One Rights in the majority of cases. If FLHH's application is not accepted by ORR, it will still have Level One Rights and Level Two Rights for electricity coal services in the December 2015 and May 2016 Working Timetables as will DB Schenker (assuming its proposed 116<sup>th</sup> supplemental agreement is approved by ORR). Network Rail's decision concerning the proposed agreement does not, therefore, appear to be inconsistent in DB Schenker's view.

DB Schenker also notes [REDACTED] application, FLHH has agreed to voluntarily surrender certain Level Two Rights to/from Uskmouth Power Station. DB Schenker believes that FLHH is [REDACTED] to DB Schenker under Condition J7 of the Network Code back in September 2013.

Yours sincerely,



**Nigel Oatway**  
**Access Manager**

cc. David Young      Network Rail  
Mike Pybus        Network Rail  
Lindsay Durham    Freightliner