

Office of Rail Regulation
One Kemble Street
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Network Rail
1 Eversholt Street
London
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19th January 2015

By email

Dear Gordon,

RE: Freightliner Heavy Haul Limited: Proposed 25th Supplemental Agreement: application under Section 22A of the Railways Act 1993 - Coal

Thank you for sending me a copy of GBRf's response to the FLHH 25th Supplemental consultation. You asked in your email whether the letter affected the 25th Supplemental. I don't believe that it does, as I've given the up to date position regarding the issues raised in previous correspondence to you, however I thought it helpful to reiterate those points, taking each point in turn:

- **Level 2 access rights policy - "that Network Rail has not agreed any general Level 2 access rights policy with freight operators and, in any case, ORR-approved changes would then only apply to access contracts post-December 2016."**

The industry debate on flexible access rights within both freight and passenger contracts continues, and that debate is addressing the situation beyond December 2016. However, aside from that debate, Network Rail has always in its interpretation of Criteria and Procedures, negotiated with operators the degree of specificity of access rights, taking into account the balance of flexibility to Network Rail in the capacity allocation process and the commercial benefit to the operator though we have generally tended to agree more specific rights. In this case we set out our arguments to FLHH why we believe that any new coal rights should be Level 2. Those arguments have already been detailed in my letter to you dated 12th January 2015 and 16th January 2015. For the avoidance of doubt this also applies to any amended coal rights where network usage as a result of the amendment increases.

The text in *italics* below refers to previous letters responses:

12th January - As it notes in its application, FHH is a participant in industry discussions involving the freight operators and NR regarding future access rights in general. The degree to which such a policy could be defined, if at all, remains the subject of continued discussions and pending the conclusion of this NR would expect to continue to consider any applications on a case-by-case basis.

16th January - With this in mind and taking into consideration the discussions to date with operators detailing why a more flexible approach to the sale of access rights is required, Network Rail maintains that there does not need to be betterment to the specificity of Coal Access Rights before PCD 2016 based on the information that has been reviewed. Whilst we agree that there is no negotiated Level 2 policy in place, that should not prevent Network Rail making the case for Level 2 rights when we believe the flexibility that these offer for capacity planning, outweighs the commercial need of the operator for Level 1 Rights.

- **Sale of Access Rights Panel consistency - “There are, currently, inconsistencies in the way Network Rail’s Sale of Access Rights panel are processing requests for new and amended rights.”**

From further dialogue between Network Rail and Ian Kapur, Network Rail understands that GBRf is referring to Sale of Access Rights Panel’s ruling over the Freightliner Intermodal 15th Supplemental, the Freightliner Heavy Haul 25th and 27th Supplementals, and the DB Schenker 106th supplemental.

As explained also in my letter of 12th January 2015 and 16th January 2015, Network Rail Sale of Access Rights panel has been consistent in its treatment of those applications. We treat each application we receive separately on its own merits, but within a coherent and consistent set of principles. The principles in this case were that we accepted the Freightliner Intermodal case for Level 1 rights, and also the Freightliner Heavy Haul case for Level 1 rights for non-coal services, with the exception of any services that traversed the MML section of Congested Infrastructure. However we did not accept the case for Level 1 rights for additional or amended coal services, except where those services were either rolled over from Level 1 or amended ‘downwards’ resulting in a lesser use of network capacity.

Our agreement to rollover the rights contained within the DBS 106th supplemental with the exception of services on the MML Congested Infrastructure section, which were amended to Level 2, is entirely consistent with our treatment of the 3 Freightliner supplementals mentioned above. The overriding principle was that additional or amended ‘upwards’ coal services and any services on the MML Congested Infrastructure Section were Level 2, all others were Level 1. This principle has been put into practice at Sale of Access Rights panel for every freight supplemental discussed at that panel.

The text in *italics* below refers to previous letters response:

12th January 2015 - As noted in response to the previous point, NR currently considers applications on a case-by-case basis. As noted, the application in question extended existing rights without amendment, thereby placing no further restriction upon NR in its ability to apply flex, whereas the FHH application seeks more highly specified rights which will further restrict the ability of NR to apply flex.

FHH’s original Section 22 Supplemental Agreement did contain some Level 1 rights that were being amended to reduce the capacity of those rights. NR has now agreed to sell those at L1 because they do not represent an increase in capacity. This is entirely consistent with NR’s agreement to the DBS 116th Supplemental Agreement Section 22 application.

- **Rights transferred to GBRf**

Ian is correct that the rights listed have in fact transferred to GBRf under Part J, since the original application was made by Freightliner Heavy Haul. These should be removed from Freightliner’s rights table when your directions are made.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Rebecca Stonehouse". The signature is fluid and cursive, with a large loop at the end.

Rebecca Stonehouse

Network Rail