

Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

Network Rail
1 Eversholt Street
London
NW1 2DN

21st January 2015

Dear Bill,

RE: Proposed 27th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Freightliner Heavy Haul Limited

Thank you very much for your letter of 30th December 2014 seeking the representations of Network Rail (NR) regarding the proposed 27th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and Freightliner Heavy Haul Limited (FHH).

NR notes that as stated by FHH in Section 3.2 of the application form;

- NR has agreed to the additional Level 1 access rights requested by FHH where these do not traverse declared Congested Infrastructure (Midland Main Line) or “minded to” Congested Infrastructure (Hope Valley Line).
- NR has agreed to additional Level 2 access rights on the Midland Main Line and the Hope Valley lines.
- NR has not specifically objected to any of the requested access rights or paths (though noting that there are some rights included in the application that were not included in the original submission to NR in May 2014).

The parties are therefore agreed regarding the extent of the rights and any more extensive or less extensive use of the network which this entails. The area of disagreement is solely regarding the level of specificity as to whether such rights are Level 1 or Level 2.

NR's response to the specific points made by FHH in Section 3.2 of the application form is shown below;

- **FHH contends that Level 1 rights that are being deleted on Congested Infrastructure should be off-set against the request for additional Level 1 rights. NR has not agreed to apply the principles set out in the ORR's West Coast decision letter (2 April 2013) for granting rights prior to PCD 2016. FHH's view is that the principles should equally apply across all NR routes, as stated in the 2 April letter, and that there should be a 'balancing, net-nil effect' where new Level 1 rights balance with Level 1 rights relinquished.**

NR believes that the Level 2 rights which it has indicated that it is willing to sell are in accordance with the ORR's West Coast decision letter of 2 April 2013. In the letter the ORR highlights the danger of ossification which could arise from the sale of overly-specified rights and makes it clear that it would expect to consider applications on a case-by-case basis.

- **FHH has provided a general commercial justification for Level 1 non-coal access rights (Annex D)**

NR reviewed Annex D in line with the original submission to NR. The commercial justification suitably demonstrated that Level 1 Rights could be sold for the paths that did not traverse Congested Infrastructure.

- NR has recently agreed an extension to DB Schenker's (DBS) access rights to PCD 2016, which includes Level 1 non-coal rights on the Hope Valley and Midland Main Lines. There appears to be an inconsistent application of policy.

The DBS 116th Supplemental has been updated to reflect Level 2 rights on the key Congested Infrastructure section on the MML which is Cricklewood to Leicester. DBS Rights on the Hope Valley are Level 1 as this is not yet declared as congested.

In terms of how this affects the rights that Freightliner has requested; the table shown below shows the Freightliner rights which operate over the Congested Infrastructure and should also remain at Level 2:

Headcode	Description
6L44	TTFHO additional service from Hope Earles Siding to West Thurrock
6L89	SX additional service from Tunstead BLI to West Thurrock
6M90	SO additional service from West Thurrock to Tunstead BLI
6E08	FSX additional service from Hope Earles Sidings to West Burton Power Station

In line with the DBS 116th Supplemental, FHH's original submission to NR did contain some rights that are not on the key Congested Infrastructure section. It also contained some rights on the Hope Valley. Therefore NR has now agreed to sell those at Level 1. This is entirely consistent with NR's agreement to the DBS 116th S22.

On this basis the following rights will be sold at Level 1:

Headcode	Description
6E23	MSX additional service from Hope Earles Sidings to Dewsbury Lafarge
6M24	MSX additional service from Dewsbury Lafarge to Hope Earles Sidings
6E45	SX additional service from Hope Earles Sidings to Drax Power Station
6V82	SUN additional service from Tunstead BLI to Westbury Lafarge
6M58	MO additional service from Westbury Lafarge to Tunstead BLI
6E08	FSX additional service from Hope Earles Sidings to West Burton Power Station
6M08	SX additional service West Burton Power Station to Hope Earles Sidings

As an aside, the following services have transferred to GB Railfreight (GBRf) as part of the Aggregate Industries Contract so no rights should be sold to FHH for these:

Headcode	Description
6E48	TWTHO additional service from Bardon Hill Quarry to Tinsley
6E48	MO additional service from Bardon Hill Quarry to Tinsley

- **A Level 2 access rights policy on Congested Infrastructure has not been agreed with freight or train operators and there has been no consultation in respect of this decision.**

Whilst we recognise that no policy for Level 2 rights is established through industry consultation, NR's interpretation of the Congested Infrastructure legal requirements is that a 6 month time tabling analysis phase must take place following a declaration of Congested Infrastructure. This is in order to ascertain whether the required capacity can be created through implementing changes in the timetable. To make best use of that timetable analysis, flexibility to implement timetable changes is extremely important. To this end, we believe we should take any opportunity we can to convert prescriptive Level 1 access rights into more flexible Level 2 rights, where they traverse the section declared as congested.

Yours sincerely,

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

Rebecca Stonehouse