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Nick Coles
Customer Relationship Executive
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Ian Kapur
National Access Manager
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Dear Nick and Ian

GB Railfreight Limited: Proposed Third Supplemental Agreement

1. On 28 March 2017 the Office of Rail and Road (ORR) approved the 3rd Supplemental Agreement (SA) to the track access contract (TAC) between Network Rail Infrastructure Limited (Network Rail) and GB Railfreight Limited (GBRf) under section 22 of the Railways Act 1993 (the Act). The agreement was formally submitted to us on 27 March 2017. This letter sets out the reasons for our decision.

Background

2. The purpose of the SA is to make changes to Schedule 7 of the TAC to include billing for bi-modal electric multiple units and locomotives. The amendments were drafted through an industry working group, and have been widely consulted on. The parties requested for billing purposes that the SA is approved by 31 March 2017.

Consultation

3. Due to the circumstances of this case and because no firm rights were affected, Network Rail ran an industry consultation shorter than normal on the changes to this TAC, from 3 March 2017 to 10 March 2017. No objections were declared.

ORR Review

4. In our review of the original drafts shown to us, before the formal submission, we recommended that:
 - The wording in Paragraph 3 and the annexes of the SA was clearer on what changes were being made to the contract;
 - "Proposed" was removed from the final versions when referring to the amendments; and
 - It was clarified that the Effective Date means when the SA is approved by ORR.

These changes were all reflected in the formal submission.

ORR Decision

5. This application is under section 22 of the Act and therefore is agreed between the parties, who are prepared to enter into the agreement as submitted. Therefore we are content to approve this agreement.
6. We will look to incorporate these changes to Schedule 7 into our model freight contract¹ in the near future to allow any other freight operators who decide to use bi-modal trains to be billed correctly for their electricity costs.
7. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
 - (i) to protect the interests of users of railway assets;
 - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
 - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
 - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.
8. Under clause 18.2.4 of the TAC, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and GBRf. I look forward to receiving the conformed copy.

Yours sincerely

Katherine Goulding

¹ <http://orr.gov.uk/rail/access-to-the-network/track-access/forms-model-contracts-and-general-approvals>