

Section 22a application: GB Railfreight 4th Supplemental Agreement

Consultation responses and dialogue

GB Railfreight nominated Network Rail to conduct an industry consultation of the aforementioned application to the Office of Rail and Road (ORR). Network Rail initiated the industry consultation on 11 August 2017 and the consultation closed on 11 September 2017.

In response to the industry consultation, the following parties provided responses:

1. Transport Focus
2. West Yorkshire Combined Authority
3. Arriva Rail North
4. Transport for Greater Manchester
5. Merseytravel
6. Welsh Government
7. Network Rail

In the order listed above, the consultees responses are provided below and any further dialogue from Network Rail or GB Railfreight is also enclosed.

1. TRANSPORT FOCUS

From:

Sent: 15 August 2017 15:58

To:

Cc:

Subject: Re: Section 22A application: GB Railfreight Limited 4th Supplemental Agreement 0808d18

Transport Focus has received files about GB Railfreight's 4th. supplemental agreement. They note that:

it was submitted to Network Rail on 3/3/17;

it is primarily concerned with:

coal traffic from:

1. Immingham to Eggborough, Ratcliffe, West Burton and Cottam PS,
2. the Port of Blyth to Drax, West Burton and Cottam PS;

biomass traffic from:

1. Liverpool Biomass Terminal and Drax PS,
2. the Port of Tyne to Lynemouth PS – new rights for a new ten-year contract to begin on 1/10/17;

it applies to extinguish 72 firm rights, many of which are on the ECML, around Doncaster in particular;

it applies for 114 new firm rights, and to amend 45 firm rights;

the changes are driven by a recent cross-industry Electricity Supply Industry review of coal and biomass services.

Transport Focus also notes that:

GBRf applied for 60 minute windows for both the arrival and departure times, as per the ORR's 29/2/16 Directions Letter;

a lot of tidying-up of coal and biomass rights was done;
GBRf planners have worked to create paths that are efficient and release capacity -
“efficient” rights are sought for most flows – with time savings of up to three hours;
rights between the Port of Tyne and Drax have been updated to “reflect far better
use of network capacity”;
actions to improve time-keeping of services, with updated procedures and
equipment;
Network Rail’s position is that the application should be altered to propose only 24
hour windows:
from the PCD in 2019 for rights which pass Mirfield or use the Calder Valley route –
Trans-Pennine Route upgrade and its associated diversionary requirements, and
timetable re-cast at unknown date,
from the PCD 2020 for ECML rights – particularly between Doncaster and Leeds -
planned re-cast of the ECML timetable
GBRf believes that Network Rail “does not have a clear, robust or legitimate position
on access rights over the ECML or across Trans-Pennine routes”.

Transport Focus recognises the need for GBRf to be able to plan services efficiently,
and supports the application.

Regards,

Tel.

2. WEST YORKSHIRE COMBINED AUTHORITY

From:

Sent: 18 August 2017 15:22

To:

Cc:

Subject: RE: Section 22A application: GB Railfreight Limited 4th Supplemental Agreement

Good afternoon, both

Many thanks for including WYCA in this consultation. While we would not wish to involve ourselves in the specifics of individual train paths under discussion, we would wish to take this opportunity to make some comments on what strike us as pertinent issues that the application raises.

WYCA is strongly supportive of railfreight being allowed to grow and develop, given its ability to contribute to sustainable economic growth and to reducing the overall adverse environmental impacts of freight transport as a whole. While efficient use must be made of the rail network overall, and the development of passenger rail connectivity is a priority for WYCA, we consider that the ability of railfreight to provide an attractive product to its customers, and to operate cost-effectively, must play an important role in decisions on the allocation of network capacity. At present, we understand that the freight sector already struggles with insufficient and sub-optimal paths on many parts of the network, constraining its ability to abstract traffic from road and to improve economic links.

Against this background, we note Network Rail's proposal that GBRf (and, we assume, any other FOCs) will on the Diggle and Calder Valley routes only be given access rights within a 24-hour "window", as opposed to the usual 1-hour window – and we understand that NR are looking to adopt similar on the ECML too. If we have not misunderstood this, this appears to mean that a freight operator could be granted a path at any time on a given day, at NR's discretion – we do not know whether there would then be any guarantees as to journey times. If this is correct, then FOCs would seemingly have little or no certainty as to whether they could get a path that is remotely workable, let alone commercially attractive to them or their customers.

We understand that this issue is the underlying concern in GBRf's submission. If that is correct, we would agree with them, as the "24-hour windows" system proposed would seem to risk making it in practice almost impossible for a FOC to plan its business effectively, to offer its customers a clearly defined and predictable product, and to ensure that its resources (crews, locomotives, wagons, etc.) are used efficiently. The result would surely be to stifle the growth of railfreight – and potentially even place at risk the flows already carried on rail. In the medium-to-long term, WYCA would wish to see *more*, rather than less, time-sensitive freight traffic transferring from road and air to rail, and we cannot see how access policies of this type are compatible with such an objective.

As we understand it, many of the flows in question relate to the supply of fuel for electricity generation; the self-evident strategically vital nature of these flows to the North can hardly be overstated.

We are mindful that much strategic planning is currently in progress for several of the routes in question – in particular the Diggle route (TRU), the Calder Valley (North of England Programme), and the ECML (ECML Route Study) – though also the wider rail network in the North (Rail North Long-Term Rail Strategy Update, North of England Route Study, and the various workstreams of Transport for the North, including those dealing specifically with freight). WYCA would wish such planning – and the design of specific interventions during the remainder of CP5, into CP6 as well as beyond – to take account of the legitimate interest of railfreight operators in obtaining reasonable access to operationally and commercially attractive paths, including the right to obtain network access with a reasonable degree of certainty. It is, in particular, in our view essential that TRU should be specified with sufficient freight capacity, which must not be at the cost of other network use (such as local passenger trains and providing integrated clockface timetables for all passenger services).

For the avoidance of doubt, the comments we have made above are intended to relate to railfreight in general and would, we consider, be equally valid for any other FOC in a similar position, and not just for GBRf: we are neutral as between operators and simply wish to see railfreight as a sector flourish.

We hope that you find these comments helpful and would, as always, be happy to discuss further any of the issues raised.

Best regards

Rail Technical Advisor
West Yorkshire Combined Authority
Wellington House
40-50 Wellington Street
Leeds LS1 2DE

3. ARRIVA RAIL NORTH

From: \$UK ARN - Track AccessConsultations
[mailto:TrackAccessConsultations@northernrailway.co.uk]
Sent: 22 August 2017 16:48
To:
Cc:
Subject: FW: Section 22A application: GB Railfreight Limited 4th Supplemental Agreement

Dear Ian,

Thank you for providing Arriva Rail North Ltd (ARN) with the opportunity to comment on GBRf's proposed 4th Supplemental Agreement.

ARN is broadly supportive of the 114 new Firm Rights. ARN seeks confirmation from GBRf that its proposed additional and amended paths across the North of England have been developed to work robustly alongside the timetable aspirations of other operators, including ARN, from May 2018 until their expiry in December 2026.

The Calder Valley route is ARN's key artery between Leeds and Manchester. From May 2018 ARN is planning on increasing its service level between Manchester and Rochdale, by two additional stopping services each hour in addition to the current four trains per hour east of Rochdale (1 x Blackburn via Burnley, 1 x Leeds via Dewsbury, 2 x Leeds via Bradford Interchange). The latter pair of services are planned to extend on to Manchester Airport and Chester from May 2018. These will form 'Northern Connect' services from December 2019, when ARN's Train Service Requirement specifies the introduction of a further hourly service from Leeds to Liverpool via Bradford and Manchester.

ARN seeks assurance from GBRf that the timings of the paths for biomass traffic over the Calder Valley will be validated for December 2017 and May 2018 in conjunction with ARN's own Priority Date bid, to exercise its Rights and expectation of Rights on the route, to ensure that the flexibility to fit within available slots on the route is maintained with the proposed 60 minute windows at Liverpool and Drax.

ARN is keen to continue its constructive engagement with GBRf, Network Rail and wider industry parties to ensure its service structure can be accommodated alongside GBRf's requirements.

Please let me know if you require any further information.

Kind regards,

Track Access Manager

Telephone:
Mobile:
Floor 4 Performance and Planning, Northern House, 9 Rougier St York



From:

Sent: 14 September 2017 16:06

To: '\$UK ARN - Track Access Consultations'

Cc: '

Subject: RE: Section 22A application: GB Railfreight Limited 4th Supplemental Agreement

Thank you for your consultation response regarding GBRf's proposed 4th SA. Ian Kapur has passed your correspondence onto Network Rail to reply and we are happy to do so.

On your two points for clarification, Network Rail can provide the following feedback:

- 1) ARN seeks confirmation from GBRf that its proposed additional and amended paths across the North of England have been developed to work robustly alongside the timetable aspirations of other operators, including ARN, from May 2018 until their expiry in December 2026.**

Those additional and amended rights sought by GB Railfreight correspond to existing trains slots in the Working Timetable and have been subject to requisite validation on entry to the timetable. As we near the commencement of the December 2017 Working Timetable, and with ARN's Offer Response well in hand, we are confident that the quantum of services sought by GBRf and ARN will be suitably accommodated in the upcoming timetable and will be compliant with Timetable Planning Rules. In terms of the development of the May 2018 Working Timetable, we cannot yet make the same statement as we are presently undertaking the detailed timetable work necessary to reach such a level of assurance. With two months of development work still to go, it is simply too early to report on this matter.

- 2) ARN seeks assurance from GBRf that the timings of the paths for biomass traffic over the Calder Valley will be validated for December 2017 and May 2018 in conjunction with ARN's own Priority Date bid, to exercise its Rights and expectation of Rights on the route, to ensure that the flexibility to fit within available slots on the route is maintained with the proposed 60 minute windows at Liverpool and Drax.**

As explained above, we are confident that the quantum of services sought by GBRf and ARN will be suitably accommodated in the December 2017 timetable and will be compliant with Timetable Planning Rules, GBRf biomass traffic included. Once again, though, it is simply too early in the development process to comment on the May 2018 Working Timetable, other than to provide the assurance that those services able to be accommodated in it will be compliant with Timetable Planning Rules. What we do anticipate is that demand for capacity at Leeds, York, Sheffield and Darlington stations will cause conflict and that the flex of various operators' services will likely be necessary in order to entertain all aspirations.

I trust that the replies above suitably explain where we are in the planning process and what levels of assurance we can/cannot provide at this time.

Kind Regards

Customer Relationship Executive
Freight and National Passenger Operators
Network Rail

4. TRANSPORT FOR GREATER MANCHESTER

From:

Sent: 07 September 2017 14:32

To:

Cc:

Subject: Section 22A application GB Railfreight Limited 4th Supplemental Agreement - Consultation Response

Dear ,

Please find attached TfGM's response to the following consultation:

Section 22A application: GB Railfreight Limited 4th Supplemental Agreement

Kind Regards,

Rail Services Development Officer
Rail Programme Team
Transport for Greater Manchester
7th Floor, 2 Piccadilly Place, Manchester, M1 3BG
Direct Line:
Mobile:
www.tfgm.com



Please consider the environment before printing this e-mail.

Customer Relations Executive
Network Operations
Network Rail

7th September 2017

Dear I

Section 22A application: GB Railfreight Limited 4th Supplemental Agreement

Thank you for the opportunity to comment on these proposals.

Rail freight is extremely important to Greater Manchester due to the presence of the large freight terminal at Trafford Park, the high number of north-south movements on the West Coast Mainline and increasing demand for east-west Transpennine paths to take advantage of new port facilities at Liverpool and new consignments including biomass.

TFGM notes that the contents of this application refer to changes in a number of service routings in and around Greater Manchester. In principle we do not object to this but when the practicalities of these are analysed by Network Rail we would request that consideration be given to ensure that there will be no material impact upon any additional or altered passenger services which are due to be delivered under the May 2018 and December 2019 timetable changes. In particular we would request that any impact of these freight paths upon the December 2019 new semi-fast Liverpool-Chat Moss-Manchester-Bradford-Leeds 'Northern Connect' be examined.

We note with concern that that GBRF's proposals include some re-routing of some service flows, in particular the biomass flows between Liverpool and Drax and vice versa, to switch from the Calder Valley to the North Transpennine route, and from the Mid Cheshire line to run via Victoria and Chat Moss. All of these parts of the network are already extremely constrained and most will be at full capacity following the December 2019 timetable change. We would ask that particular attention is given to these route changes upon passenger service reliability.

Transport for Greater Manchester is an executive body of the Greater Manchester Combined Authority

Given the above comments, so long as all existing **passenger** franchise commitments can be honoured in full with no impact upon performance TFGM will offer our support to the proposals outlined.

Yours Sincerely,

Rail Services Development Officer

From:

Sent: 14 September 2017 16:00

To:

Cc:

Subject: RE: Section 22A application GB Railfreight Limited 4th Supplemental Agreement - Consultation Response

Thank you for your consultation response regarding GBRf's proposed 4th Supplemental Agreement. I include Ian Kapur from GBRf in this correspondence as Ian will need to reflect to ORR what responses have been received during consultation and, in turn, will need to show what replies have been returned to consultees.

I would note in response to your letter the following points, which are most appropriate to make given those concerns you cite:

- those services where GBRf are seeking to propose a change to the "Suggested route is:" are already travelling via the new suggested route, in validated pathways, and performance is good;
- the "Suggested route is:" is a non-contractual comment within the Schedule 5 Rights Table and, as such, does not dictate which route a train service must travel in future;
- in the development of future timetables, such as May 2018 and December 2019, Network Rail is committed to delivering a zero-defect timetable and, as such, it is important to comment that paths which are offered to operators will be validated and compliant with Train Planning Rules, thus providing the basis for reliability in performance; and
- when developing timetables, Network Rail always consider what access rights are afforded to all operators, thus ensuring capacity is allocated in line with contractual commitments, and where required we use the Network Code's Decision Criteria to ensure we meet our "Objective", which is to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services.

These points above should provide you with comfort that Network Rail will approach the planning of future timetables in a methodical manner and will examine all capacity demands appropriately, applying the right priority to each request. Of course, during this process, undoubtedly collaboration between various parties will be required in order to optimise the number of services which can be offered and it will be Network Rail's role to bring stakeholders together on wherever areas of conflict exist.

It is not possible at this stage to say that there will be no material impact upon any additional or altered passenger services which other stakeholders, such as ARN, will have in the future – we are only now developing the May 2018 timetable and are still working through those requests which have been made for this timetable. We are yet to begin work on the December 2019 timetable. It is, therefore, only possible to say that the process of managing all aspirations in future will follow due process as is required by the Network Code.

Kind Regards

Customer Relationship Executive
Freight and National Passenger Operators
Network Rail

5. MERSEYTRAVEL

From:

Sent: 11 September 2017 10:52

To:

Cc:

Subject: RE: Section 22A application: GB Railfreight Limited 4th Supplemental Agreement

Dear ,

Merseytravel is content with the changes proposed in the 4th Supplemental Agreement.



Rail Development Officer | Merseytravel | Mann Island, PO Box 1976, Liverpool, L69 3HN
Office: 0151 330 1243 | Mobile: 07834 679 083 | Email: julian.daley@merseytravel.gov.uk

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6. WELSH GOVERNMENT

From:

Sent: 18 September 2017 15:33

To:

Subject: FW: Section 22A application: GB Railfreight Limited 4th Supplemental Agreement

Good Afternoon

The Welsh Government have no further comments to make on this proposal.

Regards

Yr Uned Rheilffyrdd/Rail Unit
Adran yr Economi a'r Seilwaith – Department for Economy & Infrastructure
Llywodraeth Cymru/Welsh Government
Ffôn/Tel:
e-mail / e-bost

7. NETWORK RAIL

From:

Sent: 20 September 2017 16:37

To:

Cc:

Subject: RE: Invitation for representations

I provide here Network Rail's representations on GB Railfreight's Section 22a application.

Kind Regards

Customer Relationship Executive
Freight and National Passenger Operators
Network Rail

M:

E:



Track Access Manager
Office of Rail and Road
One Kemble Street
London
WC2B 4AN

Customer Relationship Executive
Network Rail
1 Eversholt Street
London
NW1 2DN

BY EMAIL ONLY

20 September 2017

Dear

Application for directions: Proposed 4th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited and GB Railfreight Limited dated 11 December 2016

I refer to your letter of 11 August 2017 where you invited Network Rail Infrastructure Limited to make written representations in respect of the 4th Supplemental Agreement application made by GB Railfreight under Section 22a of the Railways Act 1993 (the Act). Our representations to the Office of Rail and Road (ORR) follow here within.

Background

Network Rail recognises the application made to ORR and acknowledges that GB Railfreight sought originally to make its application under Section 22 of the Act (i.e. with the support of Network Rail).

The GB Railfreight application was considered at Network Rail's Sale of Access Rights Panel on 30 May 2017, where it could not be substantially authorised owing to our ongoing review of East Coast Main Line (ECML) capacity (NB: a substantial proportion of the 4th Supplemental Agreement sought to obtain rights on the ECML until Principal Change Date 2026). At that time, Network Rail was willing to progress the sale of additional ECML Firm Rights (1 hour windows) until Principal Change Date 2020, after which our proposal was that the additional rights would revert to Contingent Rights (24 hour windows) until the end of GB Railfreight's current Track Access Contract in 2026.

We also reported to GB Railfreight that the sale of additional Firm Rights (1 hour windows) through Mirfield/Calder Valley would be limited up to Principal Change Date 2019, again with Contingent Rights (24 hour windows) to follow thereafter, due to the TransPennine Route Upgrade and the need for diversionary route capacity along this line of route.

Both of the aforementioned matters were subject to further discussion at the Sale of Access Rights Panel on 26 June 2017 and subsequently we were able to report, provisionally, to GB Railfreight that we were withdrawing our position concerning the limitation of additional Firm Rights through Mirfield/Calder Valley, however our limitation on the sale of additional Firm Rights on the ECML was now brought forward to Subsidiary Change Date 2019 (vice Principal Change Date 2020) and thereafter we no longer supported the sale of Contingent Rights.

Appendix B of the GB Railfreight application provides all relevant communications between Network Rail and GB Railfreight during the above timeline of events.

Appendix B of the application does not report Network Rail's position on those rights sought by GB Railfreight which do not interact with the ECML or Mirfield/Calder Valley lines of route, and that are not additional rights. For clarity, Network Rail was, and is, supportive of authorising such rights within the GB Railfreight application.

Current position

Regarding the original limitation of the sale of additional Firm Rights through Mirfield/Calder Valley up to Principal Change Date 2019, Network Rail confirms that no such limitation is proposed and we are content here with the sale of additional Firm Rights to GB Railfreight up to Principal Change Date 2026, except where those particular additional Firm Rights interact with the ECML. We acknowledge that our original position was incorrect inasmuch as it was not reasonable for Network Rail to propose selling less specified rights where we sought to have flexibility in pathing/re-routing during TransPennine engineering works.

Regarding our limitation of the sale of additional Firm Rights on the ECML up to Subsidiary Change Date 2019, ORR will be aware that we have been working to provide both yourselves and Industry stakeholders with our position regarding the ability to grant future ECML rights beyond May 2018. It has also been requested of Network Rail that we provide an update regarding the underpinning enhancement programme. In our *ECML Access and Enhancements: Aligning Infrastructure with services* letter to ORR, dated 20 September 2017, our position on these matters was confirmed and provides our representations in full regarding our proposed limitation of the sale of additional Firm Rights on the ECML where GB Railfreight's application is concerned. The *ECML Access and Enhancements: Aligning infrastructure with services* letter forms Appendix 1 to this letter.

Appendix 2 to this letter provides Network Rail's response on which specific additional Firm Rights sought by GB Railfreight's application interact with the ECML and are proposed for sale as Firm Rights only up to Subsidiary Change Date 2019. These are marked in green and orange in the Rights Table and carry the following comment in the Special Terms column of the Rights Table: 'Sale of Access Right expires on the last day of the Working Timetable before SCD2019'. It should be noted that the distinction between green and orange rights in Appendix 2 is that those highlighted green have an associated Train Slot already operating on the ECML and those in orange do not but have the reasonable potential to.

One matter which Network Rail has failed to identify to GB Railfreight in its application is that we do not support any further comments within the Special Terms and Minimum Turn Around columns of the Rights Table which relate to arriving or departing before or after another Firm Right/Train Slot. Such comments, which feature more heavily in this application than previous, would, if committed to the Track Access Contract, limit Network Rail's ability to flex GB Railfreight Train Slots as permitted by existing Departure and Arrival Windows. Network Rail proposes that such comments should appear as Non-contractual comments in the Rights Table.

Yours sincerely,

Customer Relationship Executive, Network Rail

Appendix 1:



Director, Railway Markets and Economics
Office of Rail and Road (ORR)
One Kemble Street London WC2B 4AN

Route Managing Director
Network Rail LNE & EM Route
Floor 4B
George Stephenson House
Toft Green York YO1 6JT

BY EMAIL ONLY

20th September 2017

Dear ,

East Coast Main Line (ECML) Access and Enhancements: Aligning infrastructure with services

Further to the ORR's letter of 12th May 2016, Network Rail has been requested to confirm its position regarding the ability to grant future ECML access rights beyond May 2018. It was also requested that an update was provided regarding the enhancement programme.

It is our understanding that the ORR is seeking to understand the choices available through the differing combinations of infrastructure interventions, capacity and operating parameters.

Whilst fundamentally our view on overall capacity choices on the ECML has not materially altered since our published work of 2014, 2015 and 2016, we do recognise that a number of factors, not least funding available, leave us obligated to challenge our previous assumptions such that we are together able to recommend a set of infrastructure interventions, that offer value for money and meet the strategic needs of funders.

The remainder of the letter addresses:-

- Network Rail's Department for Transport (DfT) high level output specification (HLOS) requirements.
- The current position with regards to the capacity work and a proposed way forward.
- A summary of the Infrastructure interventions proposed.
- Performance.
- Access rights.
- Next steps.

DfT requirements

Network Rail has taken the following as DfT's requirements:-

- Capacity for up to 8 long distance high speed (LDHS) services per hour out of KGX by 2021
- Capacity for 6 paths between Doncaster and Newcastle by 2021.
- Capacity for up to 10/12 urban/inter urban services per hour by 2021.
- Infrastructure capable of delivering 90% PPM by December 2022.¹
- 2 Hour London – Leeds journey time and 4 Hour London – Edinburgh journey time.

Capacity

In Quarter (Q) 3 of 2014 Network Rail confirmed that capacity for an hourly maximum of 8 LDHS and 10/12 urban/inter urban services could be accommodated. In reaching this view the industry acknowledged that a defined set of infrastructure enhancements would need to be funded and delivered². These are detailed in the infrastructure enhancements section of our response.

Network Rail confirms that we are the correct party to lead an Industry Planning Group (IPG) with the May 2021 ECML service specification as its primary output requirement. The IPG will have a responsibility to report on progress and findings.

The success of the IPG is heavily dependent on the ECML Programme Board providing a clear remit for the IPG to deliver against. It was apparent in the meeting, of the 25th March 2017, that all Programme Board members will seek to protect the position of their employers, until such point that they are directed by the ECML Programme Board to work to a defined set of strategic outputs. This direction is vital if any substantive integrated timetable work carried out through an Events Steering Group is to move us past the point that the capacity studies completed previously have arrived at.

Positively the terms of reference for the IPG were verbally proposed to ECML Project Delivery Group (PDG) on 17th May 2017, and endorsed by the ECML Programme Board on 7th June 2017.

Summary of infrastructure interventions proposed

The funders capacity, performance and connectivity requirements on the ECML, are consistent with the outcomes of the programme of industry wide capacity assessments that have taken place from 2014-2016.

This workstream reached its outcome statements and associated inputs to the sale of access rights process on the assumption that the following interventions would be delivered:

Project	Forecast commit to deliver date	Forecast completion date.
King's Cross (KGX) Remodelling	Q2 2018	Q1 2020
Huntingdon-Woodwalton 4 tracking	Q4 2017	Q4 2020
North East Freight loops	Q4 2017	To be confirmed
Peterborough Down Slow	Approved Q4 2016	Q4 2018
Werrington Grade Separation	Q3 2017	Q4 2020
York North throat	Q2 2019	To be confirmed
Power Supply 2 Upgrade	Q4 2017	To be confirmed

¹ 90% PPM refers to VTEC franchise targets and subject to agreed levels of renewals funding

² <http://www.or.gov.uk/rail/access-to-the-network/track-access/est-csml-main-line>

To understand fully how the end state service specification can be achieved, it remains our view that all of the above schemes need to reach the commit to deliver stage, and then be funded for delivery before we can commit to the allocation of services against the available capacity.

An update on these schemes progress will be provided at programme boards over the coming months and a final decision must be reached before any capacity choices and performance targets are committed to by Network Rail. This position can then be used as the foundation to inform stakeholders on the timeframe for any major timetable changes.

Performance

The previous ECML capacity reports have confirmed that Network Rail expects deterioration in PPM of up to 2% on the ECML through the introduction of the additional services as outlined when compared to current levels of performance.

At the time of writing no further information is available to materially alter our view on this forecast, although it can be noted that should all the enhancements be delivered the primary benefit is in overall capacity. Further if the hourly capacity is allocated as indicated above the overall resilience and ability to recover of the network will be diminished.

Network Rail is aware of the requirements of the franchise operators to achieve certain levels of performance under their franchise contracts.

Further work is required to align Network Rail Strategic Control Period (CP) 6 performance targets, with any associated funding as it is allocated through the CP6 funding cycle. These and wider industry work streams are continuing through 2017 and Network Rail is committed to keeping ORR informed on any material updates to our performance assumptions for the ECML.

It should be noted that before any detailed performance assessment of the ECML there needs to be a fully developed timetable for all ECML and off-route services that includes all significant interactions between all services, both suburban and LDHS (along with supporting resource plans).

Access rights

With regard to access rights on the ECML:

- We note that many operators hold access rights that expire beyond May 2018.
- In addition to any existing access rights that expire beyond May 2018:
 - With regard to any access rights that have already been sold until May 2018 only, where these remain appropriate to the train services operated, we would expect to agree to the perpetuation of those access rights until May 2019.
 - Beyond May 2019, we remain uncertain as to the timing and the effect of projected capacity enhancement schemes which might facilitate the operation of additional train services for which access rights would be required. Network Rail expects to be in a position in which it can provide more detail on this matter by the second quarter of 2018.

Next steps

Network Rail will continue the development of the ECML programme outputs with the requirement to provide the DfT with funding choices post HLOS and into 2018 including those required to meet the stated performance aspiration.

Yours sincerely,

Route Managing Director
LNE & EM Route

Appendix 2 – enclosed separately

From:

Sent: 20 September 2017 18:20

To:

Cc:

Subject: RE: Invitation for representations - GBRf Reply to Network Rail's Response

Importance: High

Dear

Thank for Network Rail's response, as a normal consultee, to GB Railfreight's Section 22A application. My comments and corrections to your response are listed, below:

- 1) Network Rail's consultation response shows changes of dates and decisions regarding applications for Firm Rights that come into contact with the ECML. These changes, and the contents of this letter, still give no clear or robust reasoning why all parts of normal industry processes shouldn't continue with regard to this rights application and approval up to December 2026. GB Railfreight reiterates, once again, that current and effective mechanisms including "Use It or Lose It", instigated by either Network Rail or an operator, and the recently introduced Part J (J10) *Right of Network Rail to make an Access Right Change* are cross-industry processes, agreed and in place, to cater for future changes to Firm Rights. Lack of clear knowledge, at this point, on Network Rail's part should not be an excuse for not granting long-term access rights (with generous 60 minute windows).
- 2) Network Rail's response fails to mention that GB Railfreight is surrendering 72 Firm Rights, currently valid to December 2026, with almost all of them running along the ECML. It goes without saying that there could easily be replacements for these from the new and amended rights being applied for in this application. It appears there is, therefore, no consistency in Network Rail's thought processes behind this application which GBRf finds very disappointing and not in line with the ORR Criteria and Procedures (2011) document for granting track access rights.
- 3) GB Railfreight does not agree with the point in Network Rail's penultimate paragraph stating that, in Appendix 2, those Firm Rights highlighted in orange do not have an associated Train Slot but have the reasonable potential to. All of the Firm Rights Network Rail has highlighted, in orange, do all already have a validated and offered train slot in the current and future timetables.
- 4) With regard to the final paragraph, GB Railfreight has a very strong view on this. All TOCs, FOCs and Network Rail spent the best part of two years debating changes to the model Freight Track Access Contract. It is not acceptable to just start not supporting the filling in of the Minimum Turn Round columns on an ORR approved document. They are there to be completed to provide the association and requirements of the rights applicant and have been in place for many years. These actually ought to be filled in for every right, given the industry agreed these columns should be included in the rights table. The wording in the Special Terms column clarifies these minimum turn rounds and Network Rail has already agreed the use of this mechanism for previous GBRf and other companies' applications. Consistency of application must be maintained.
- 5) For all of the reasons originally stated in GBRf's Section 22A and the very specific points above, GB Railfreight cannot agree to what Network Rail is proposing regarding the non-

support of access rights along the ECML post Subsidiary Change Date 2019, as indicated in Network Rail's Appendix B version of the GBRf Rights Table (dated 20th September 2017).

Now that I have replied to your response, and once you have been invited by ORR to do so, I believe you are then able to submit the fully signed up application forms and all supporting documents (up to and including this response) to ORR for consideration. Please let me know when you wish me to sign the application.

Regards,

National Access Manager,
GB Railfreight Ltd.,
3rd Floor,
55 Old Broad Street,
London, EC2M 1RX.
Tel:
Mobile:
E-mail:

GB Railfreight Ltd. Registered in England & Wales No. 03707899.
Registered Office: 3rd Floor, 55 Old Broad Street, London, EC2M

From:

Sent: 21 September 2017 09:49

To:

Cc:

Subject: RE: Invitation for representations - GBRf Reply to Network Rail's Response

Do you consider the email below to be your full formal response to Network Rail's representations, or as a clarification email before you send a formal response?

Regards,

From:
Sent: 21 September 2017 09:56
To:
Cc:

Subject: RE: Invitation for representations - GBRf Reply to Network Rail's Response

I consider this to be my formal response.

Regards,

National Access Manager,
GB Railfreight Ltd.,
3rd Floor,
55 Old Broad Street,
London, EC2M 1RX.
Tel:
Mobile:
E-mail:

GB Railfreight Ltd. Registered in England & Wales No. 03707899.
Registered Office: 3rd Floor, 55 Old Broad Street, London, EC2M 1RX.

From:
Sent: 21 September 2017 10:44
To:
Cc:

Subject: RE: Invitation for representations - GBRf Reply to Network Rail's Response

Your response is noted and will be included in the consolidated documents that we provide to ORR, as will our reply here because there are two points for clarification at this stage.

Regarding your point no. 3 further below, Network Rail wishes to clarify that those rights highlighted in orange in our Rights Table submission do have an associated Train Slot however that Train Slot does not currently operate on the ECML. As such, the last sentence in our penultimate paragraph would potentially benefit from the following amendment (in red) to avoid any further misunderstanding:

"It should be noted that the distinction between green and orange rights in Appendix 2 is that those highlighted green have an associated Train Slot already operating on the ECML whereas those in orange have an associated Train Slot which does not operate on the ECML but has the reasonable potential to."

Regarding your point no. 4 further below, Network Rail wishes to clarify that it is not the case that we do not support Minimum Turn Around information, but the case that we do not support here the Special Terms sought (i.e. the prescriptive ordering of Train Slots) that you have associated to the Minimum Turn Around information in this application. This is for the reasons stated in our letter of yesterday.

Network Rail has no further representations/clarifications to make. I shall now await ORR's invitation to submit your consolidated Section 22a application, at which point I shall seek your signature on the formal paperwork.

Kind Regards

Customer Relationship Executive
Freight and National Passenger Operators
Network Rail

M:

E:

From:

Sent: 21 September 2017 11:46

To:

Cc:

Subject: RE: Invitation for representations - GBRf Reply to Network Rail's Response

As the parties wish to make changes to the application in light of the representations, we invite the parties to resubmit it, along with an updated Form F to reflect the result of the consultation and including any consultation responses received. We will then consider the representations we've received and any concerns raised during the consultation.

We would expect the firm access rights for the Mirfield/Calder Valley to be removed from the application, now they are no longer under dispute, and submitted as part of a separate section 22 application. This is because we cannot direct on rights that the parties are agreed on under section 22A. We would not expect NR to consult again on those access rights.

If you have any questions, please do get in touch.

Regards,