15-25 Artillery Lane,
London E1 7HA.

Telephone: 020 7983 5174
Facsimile: 020 7983 5171
Mobile: 07818 421220
E-mail: ian.kapur@gbrailfreight.com

Robert Mills.
Office of Rail Regulation,
One Kemble Street,
London,
WC2B 4AN.

25th January 2013

Dear Robert,

GB Railfreight Ltd. response to the ORR Periodic Review 2013 Consultation on Schedules 4 & 8 Possessions and Performance Regimes:

General Comments:

GB Railfreight (GBRf) is in favour of the continuation of the current Schedules 4 and 8 and is supportive of their effectiveness as compensation regimes however these must not be viewed in isolation from other PR13 industry reform decisions as, taken together, they are very likely lead to a huge increase in charges and also much increased financial exposure to individual freight companies.

GBRf is particularly concerned that parts of this Schedule 4 & 8 consultation, if implemented, would increase the financial risk to operators but leave Network Rail's risk profile level. This increased risk profile would be greater for smaller operators and new entrants to the freight business and, we believe, would go against the spirit of competition in the rail freight market.

GB Railfreight believes that Schedule 4 and 8 payment rates should be set with the aim of compensating train operators, in full, for the financial impact of service disruption caused by Network Rail and other train operators. Setting payment rates below 100% compensation would not, in GB Railfreight's view, result in a significant change in behaviours by Network Rail or train operators in minimising the impact of possessions.

Schedule 4:

The Network Rail to freight operator payment rate must be at a high enough level to incentivise Network Rail not to automatically plan possessions during traditional freight hours of operation if it is the cheaper option. The lowering of the Schedule 4 freight payment rates by 31%, in 2011, only weakened Network Rail's incentive to not disrupt freight traffic ahead of passenger traffic. A set of rates that doesn't, already, fully compensate freight operators will not encourage them to agree to more efficient possessions (for Network Rail) that would materially affect freight operators' business.

GB Railfreight believes the current regime does not compensate freight operators for 100% of costs and losses resulting from severe disruption caused by possessions. There is no recognition of the impact on customers when services are unable to run and the long impact this may have on future business.

GBRf notes that ORR is minded to set payment rates to compensate train operators for the full financial impact of service disruption, where they do so currently, so ORR needs to be clear what the "full financial impact" value is – it is more than the Schedule 4 rates currently set.

These Schedule 4 payment rates should, at the very least, revert to the pre-adjustment levels, with additional funding, to take into account the increase in the number of major schemes and works that will be implemented in CP5 compared to CP4. This should also be done without an access charge supplement.

Schedule 8:

Payment rates:

The Network Rail payment rate should reflect the average financial impact of each minute of delay to a freight train. An in depth review is required in CP5 as the evidence used when setting CP4 rates is out of date and needs to reflect updated cost and revenue impacts on freight operators due to Network Rail caused delays. The value of delay to freight operators has also increased over time as FOCs are now running longer and heavier trains, over all commodities, with this trend set to continue through CP5.

The setting of the Network Rail payment rate must also take into account what the freight operator payment rate is. The *differential* between these rates are key and should not increase from the current CP4 value.

If the freight operator payment rate increases by 30-40% as predicted, yet the Network Rail payment rate remains the same, this will have a significant financial effect on the freight operator. It will penalise freight operators for their improved performance shown in CP4, dis-incentivise further performance improvements in CP5 and create an asymmetrical regime of unbalanced risk and reward between Network Rail and freight operators.

Cancellation payments:

GB Railfreight believes the Network Rail cancellation payments should remain the same but uplifted for inflation. We also support the need to keep a cancellation threshold whereby cancellations above this level are paid at a higher rate.

Benchmarks:

GB Railfreight is concerned that the benchmarks for CP5 is being based on the average actual delay caused between 2010/11 and 2011/12, rather than using three years data. However this is calculated, it must be done on a fair and equal basis, for both the Network Rail and FOC elements, with comparable assessments in each case.

If what is being proposed is applied, this will result in a significantly higher Network Rail benchmark than the final CP4 figure and will be rewarding Network Rail for failing to deliver their regulatory performance targets, undermining the justification for the funding Network Rail received in CP4 to deliver improved network performance. It will also be setting the benchmark at a much higher level than those Network Rail have already been able to attain in CP4.

Based on the same criteria, the new freight operator benchmark will result in freight operators being much worse off, destroying business cases made in CP4 that assumed a similarly symmetrical regime in CP5. This would also detrimentally affect new business cases and bringing more freight to rail as penalty payments could exceed any profit margins.

Similarly to payment rates, any potential widening of the gap between Network Rail and freight operator benchmarks would significantly shift the balance of the regime in Network Rail's favour despite their under performing and dis-incentivise improved freight operator performance.

Bonus Rates:

GB Railfreight strongly believes bonus rates should be increased from 50% to 100% of the level of the compensation payment rate. The bonus rates should not be less than the penalty rates and setting the bonus rate to 100% would fully reward operators for performing better than benchmark and simplify the regime. It would also incentivise further performance improvements.

Incident Caps:

GB Railfreight believes that the option to pay Network Rail an access charge supplement to have an incident cap in their freight performance regime should continue. Indeed, it isn't clear to GBRf why this proposal has come to be, given the system has worked well in CP4 and, more importantly, has allowed continued competition in the rail freight market to emerge, with the heavy financial risk of a big incident payment having been shielded to a degree.

GBRf cannot identify anyone in the insurance market that would offer a policy for capping delay costs of incidents on the national railway. It would, therefore, be useful if ORR could share its information on how and why it believes the private insurance market would offer such a policy for either freight of charter services.

We agree with the current methodology and believe the access charge supplement is set at about the right level so would like to see evidence of how and why a 10% uplift figure has been determined.

Annex A - Consultation Questions:

Many of these questions have been answered in the "General Comments" section above. That section also contains GBRf's clear views on several specific issues that haven't been raised in the list of consultation questions.

Transparency of Possession Management:

1–3. GB Railfreight believes that the TOCs and FOCs are very capable of dealing with the planning of possessions and the effects of these on their businesses, both for current and future levels of traffic. It doesn't believe there's a need for its customers to be involved in this detailed and convoluted activity as each customer would need to have an in-depth knowledge of all a FOC's traffic activity to determine how any possession, or groups of possessions, might affect all of the traffics.

What is far more of an issue, and has been for a number of years, is that when possessions are formally consulted in the Engineering Access Statement, almost one year out, there is little certainty of the actual work required on the ground, given that contracts for these works are not usually finalised at this point. This means Network Rail is often asking for incorrect access times. If the work content were finalised earlier, based on sound information, at the actual time of possession proposals, possession planning would be far more accurate first time around.

Schedule 4 & 8 overall:

4. GB Railfreight agrees with the SDG research findings, that a reduction in both Schedule 4 & 8 payment rates to 75% or 90% of their current levels would not lead to a significant change in behaviour by Network Rail or Train Operators due to stronger incentives including risks to reputation and loss of business. See also "General Comments" section above.

5. GB Railfreight believes that Schedule 4 and 8 payment rates should continue to be set with the aim of compensating train operators in full for the financial impact of service disruption caused by Network Rail and other train operators. See also "General Comments" section above.

Schedule 4 freight possessions regime:

20-22. The Network Rail to freight operator payment rate must be at a high enough level to incentivise Network Rail not to automatically plan possessions during traditional freight hours of operation as it is a cheaper option. The lowering of the Schedule 4 freight payment rates by 31%, in 2011, only weakened Network Rail's incentive to not disrupt freight traffic ahead of passenger traffic.

GB Railfreight believes the current regime does not compensate freight operators for 100% of costs and losses resulting from severe disruption caused by possessions. Freight Operating Companies, in certain instances, already absorb some additional costs from particular possessions, which cannot be recovered via Schedule 4 (e.g. when you need to divert a particular service, under 10 miles extra, but need at least one additional member of trancrew).

There is also no recognition to the impact on customers when services are unable to run and the long impact this may have on future business.

Schedule 4 payment rates should at least revert to the pre-adjustment levels with the additional funding also taking into account the increase in major schemes that will be seen in CP5 compared to CP4. This should also be done without an access charge supplement.

See also "General Comments" section above.

Schedule 8 freight performance regime:

31-33. The Network Rail payment rate should reflect the average financial impact of each minute of delay to a freight train. An in-depth review is required in CP5 as the evidence used when setting CP4 rates is out of date and needs to reflect updated cost and revenue impacts on freight operators due to Network Rail caused delays.

The value of delay to freight operators has also increased over time due to running longer and heavier trains.

The setting of the Network Rail payment rate must also take into account what the freight operator payment rate is. The differential between these rates are key and should not increase from the current CP4 value.

If the freight operator payment rate increases by 30-40% as predicted, yet the Network Rail payment rate remains the same, this will have a significant financial effect on the freight operator. It will penalise freight operators for their improved performance shown in CP4, dis-incentivise further performance improvements in CP5 and create an asymmetrical regime of unbalanced risk and reward between Network Rail and freight operators. See also "General Comments" section above.

34. GB Railfreight believes the Network Rail cancellation payments should remain the same but uplifted for inflation. We also support the need to keep a cancellation threshold whereby cancellations above this level are paid at a higher rate. See also "General Comments" section above.

37. GB Railfreight believes bonus rates should be increased from 50% to 100% of the level of the compensation payment rate. This would fully reward operators for performing better than benchmark and simplify the regime. It would also incentivise further performance improvements. See also "General Comments" section above.

38-39. See detailed answers on both of these questions in “General Comments” section above.

40. GB Railfreight believes that operator-specific annual liability caps should continue and should also be set at a level that’s unlikely to be triggered in order to incentivise both the FOC and Network Rail. This is especially important for FOCs whose businesses has been increasing year-on-year, where the cap needs to reflect the growth of a FOC over time. There should also be an agreed mechanism for calculating any new cap that takes into account business growth.

43. GB Railfreight agrees that a separate, more relevant, charter operator payment rate should be calculated using charter train data over an agreed period of time, rather than other, more general, freight service data. Indeed, a benchmark for charter train delays is desirable in a similar way to that for freight. This also has the advantage of removing the “peak hours” spikes of data from the equation, which is logical, as charters don’t tend to operate in the passenger peak hours.

44. GB Railfreight believes that, in principle, an incident cap for charters should remain but be offered by Network Rail along with an appropriate, carefully set, access charge supplement.

45. GB Railfreight cannot identify anyone in the insurance market that would offer a policy for capping delay costs of incidents on the national railway. It would, therefore, be useful if ORR could share its information on how and why it believes the private insurance market would offer such a policy for charter services.

Yours sincerely,

Ian Kapur.
National Access Manager.