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[9] August 2012

By Email Only (joe.quill@orr.gsi.gov.uk)

Dear Sirs

RESPONSE TO PERIODIC REVIEW 2013: CONSULTATION ON THE VARIABLE USAGE CHARGE AND ON A FREIGHT SPECIFIC CHARGE - MAY 2012

1. INTRODUCTION

This response is sent on behalf of Direct Rail Services.

We have prepared our response in consultation with entities with whom we are either affiliated or with whom we are closely engaged in the delivery of freight transportation services by rail. By way of background, the three main entities that fall within the grouping for response preparation purposes are:

The Nuclear Decommissioning Authority ("**NDA**"), Direct Rail Services ("**DRS**") and International Nuclear Services Limited ("**INS**"). Each responding party is pleased to have the opportunity to provide a response to the Office of Rail Regulation's ("**ORR**") consultation on the variable usage charge and the freight-specific charge of May 2012 ("**Consultation**").

The NDA is responsible for implementing Government policy on the long-term management of nuclear waste. Its aim is to deliver the decommissioning and clean-up of the UK's civil nuclear legacy in a safe and cost effective manner. Part of this responsibility is to ensure that all waste products, both radioactive and non-radioactive, are safely managed. DRS is a wholly owned subsidiary company of the NDA. It provides strategic rail freight transport services to the NDA and is committed to support and deliver the NDA's decommissioning programme through the supply of safe, secure and reliable rail services to the nuclear transport market. It is currently the only operator in the UK to have approval to carry nuclear material by rail. Assuming that there is no corresponding increase in the NDA's operating budget to cover the introduction of a new freight specific charge, the proposals in the Consultation regarding the charges levied upon the spent nuclear fuel market segment will directly

impact upon the NDA's decommissioning programme, through the diversion of funds from its decommissioning activities. INS is a wholly owned subsidiary of the NDA and is responsible for managing the NDA's customer contracts associated with spent fuel management services; as well as managing the logistics and transport arrangements for the NDA's customers; including rail freight movements of spent AGR fuel from EDF Energy's operational reactors.

Given the nature of the markets in which we operate this response naturally focuses on the spent nuclear fuel market segment; however, the points made will apply across those other sectors identified by the ORR as being subject to the proposed new freight specific charge. We are mindful of the fact that the imposition of any freight specific charge over and above the current variable usage and freight only line charges, which are charged on a GTM basis, may have the effect of reducing the attractiveness of rail to freight traffic.

We have considered the questions posed by the ORR throughout the Consultation and, where appropriate, have addressed these issues in the main body of this Response.

We have also responded specifically to those questions in the attached Appendix 1 to our Response.

2. SUMMARY

This response expresses a number of concerns regarding the proposed introduction of a new charge for freight operators which is intended to contribute to recovering those freight specific costs not recovered from other freight charges. We summarise these concerns under the following headings:

- Legislative Scope;
- Market Elasticity;
- Policy and Consultation Objectives;
- Scope of Freight Specific Charge;
- Charge Differentiation; and
- Caps.

In general, we have a fundamental concern with the proposals being made by the ORR in connection with the application of the freight specific charge being applied uncapped to the rail freight movement of spent nuclear fuel. We are of the opinion that the manner in which the ORR has assessed the impact of such a cost on spent nuclear fuel rail freight traffic as a segment of the freight market, is at best incomplete and at worse flawed. We are unclear how the ORR is able to reconcile its duties under the Railways Act 1993 ("the **Act**") or The Railways Infrastructure (Access and Management) Regulations 2005 ("the **Regulations**") with the proposal to implement the freight specific charge. In view of our observations and concerns expressed in this response, the ORR ought to reconsider its proposals in the Consultation on the basis of inconsistency with the Regulations and duties under the Act. Put simply the ORR is incorrect in its assessment of the impact of such a charge on the spent nuclear fuel rail freight market.

If, in the alternative, the ORR disagrees with our assessment and considers that it has, in fact, acted in line with its aforesaid obligations and duties under the Act and the Regulations (which remains in doubt in our mind), then we should expect that the concerns raised in this response are fully taken into account by the ORR when finalising its proposals to charge an additional levy on nuclear spent fuel.

In particular, we contend that the effect of introducing the freight specific charge will serve to have no material impact on the revenue currently received from our segment and should not result in an increase to payments made from this segment; provided that an appropriate and proportionate approach is adopted to the actual impact trains carrying spent nuclear fuel have on the network. We contend that the effect of spent nuclear fuel trains on the network is negligible and marginal and that appropriate recovery of costs for our segment is achieved through the current variable usage and freight only line charge.

It is recognised within the McNulty Report¹ that since privatisation the rail freight sector has invested in the industry, has become more efficient, driven costs down and contributed significantly to the UK economy. Given this, we are concerned that the proposed freight specific charge will have an adverse effect on our segment and be counter-productive to those achievements recognised in the McNulty Report. It should be noted that the margin for profit for rail freight is very low, yet the ORR continue to strive to levy more charges, currently seven with four more proposed, creating a degree of complexity and uncertainty that can only be damaging to the rail freight industry.

3. DETAILED RESPONSES

3.1 Legislative Scope

Railways Infrastructure (Access and Management) Regulations 2005 ("Regulations")

Under the Regulations the rationale for introducing a mark-up is to "*obtain full recovery of the costs*" and this is recognised at paragraph 4.6 of the Consultation. As currently estimated, avoidable costs attributable to freight are in the region of £200,000,000 - 250,000,000 per year². The ORR has proposed to structure the new freight specific charge to be levied against those who operate in the most inelastic of the freight markets. Some of these markets will enjoy the benefit of a cap on charges to ensure that demand does not fall below a pre-determined percentage. The spent nuclear fuel market, however, is adjudged to be the most inelastic, to such an extent that a cap would not be applied.

In consideration of the above, the ORR should be aware that DRS ships spent nuclear fuel from three Magnox Sites and this will progressively reduce through nuclear decommissioning. INS manages the rail transport, by DRS, from six of EDF-Energy's Sites, where the AGR reactors will also be decommissioned in due course. We would query how the ORR could achieve the Regulation's objective of "*obtaining full recovery*" of avoidable costs with a charging regime in which the spent nuclear fuel market is seemingly most exposed, yet the same market is progressively reducing its transportation requirements and hence a reducing revenue stream in which to levy a charge.

We are concerned that the ORR appears to have concluded that the spent nuclear fuel market is sufficiently inelastic; and can carry a freight specific charge without cap. We explain in Section 3.2 below the basis of our concerns in this regard.

The Regulations require that where any mark-up is to be levied it must be on the basis of:

- Efficiency
- Transparency

¹ Realising the Potential of GB Rail - Final Independent Report of the Rail Value for Money Study, May 2011.

² We note that there remains uncertainty about the accuracy or completeness of this estimate.

- Non-discrimination
- guaranteeing optimum competitiveness; and the costs for which the market can bear.

We have referenced these principles throughout this response where we have concerns that the ORR's proposals are not aligned to these principles.

In relation to the principle of non-discrimination, we see that under paragraph 4.10(b) of the Consultation the ORR proposes to satisfy this principle by differentiating between market segments and not by operator. We do not consider that this proposal will satisfy the requirements of the Regulations on the basis that non-discrimination by market segments will only satisfy the paragraph 1, Schedule 3, requirements for access charging. In order to satisfy the Regulation requirements for mark-up/additional freight charges, the principles of paragraph 2 of Schedule 3 will need to be satisfied. Under paragraph 2, the principle of non-discrimination is broadly stated (unlike with paragraph 1) and hence we consider that it is not possible, in any event, to discriminate between market segments.

We develop this point as follows:

Paragraph 1 of Schedule 3 refers to the charging regime resulting in, "... equivalent and non-discriminatory charges for different railway undertakings that perform services of an equivalent nature in a similar part of the market." This part of Schedule 3 therefore deals with different undertakings performing similar services in a similar market segment.

Paragraph 2 of Schedule 3 acts as an exception to Paragraph 1 and applies across all segments. There should be efficient, transparent and non-discriminatory principles applied across all sectors. We contend that, in fact, as soon as there is a different basis for a charge applied to one market segment and this same basis for a charge is not also charged on another market segment; then such charge is not in accordance with the non-discrimination obligations of the Regulations.

The Railways Act 1993 ("Act")

Section 4 of the Act provides certain general duties on the ORR, including to achieve sustainable development; to promote efficiency and economy; to promote competition and to promote use of the railway network.

We are concerned that the introduction of a new freight charge in the manner described in the Consultation may mean that the ORR has not discharged its statutory duties. We would summarise these concerns as follows:

- An increase in the level of access charges, potentially to disproportionate levels will affect sustainable development and the use of the railway infrastructure;
- The freight market would be viewed detrimentally and with uncertainty from a financial investment and commercial planning perspective owing to the level and complexity of the charge. This would impact on the efficiency and economy, sustainable development and promotion of competition; and
- the willingness by the ORR to accept a fall in demand in rail freight for road freight, through the additional charging, appears to be contrary to the duty to promote the use of the railway network and for sustainable development.

We recognise that the ORR has to contend with competing; and sometimes, overlapping priorities. On the one hand, the ORR is obliged to promote the use of the railway network. On the other hand, the ORR is under a duty to seek to recover the cost of use of that network by operators (both passenger and freight).

We are not convinced that the underpinning basis upon which the ORR has concluded that the spent nuclear fuel market is inelastic to such an extent that no cap would need be applied to any freight specific costs. We have considered the MDS Transmodal Limited report³ ("the Report") and find the assumptions and comparators of concern. It should be noted that there are road transports of spent nuclear fuel presently undertaken in the UK. This report assumes that none are capable of being undertaken. We note that the analysis in this Report to establish that ESI Coal would be affected by an uncapped additional charge has been somewhat more comprehensibly addressed than the short analysis seemingly given to the conclusion regarding spent nuclear fuel. We simply question the extent to which this report can properly be relied upon. We note that neither we, nor any of our affiliates were requested to provide data or verify the assumptions made in this report. Had we been requested to input, we would have proposed alternative assumptions which may have had a material effect upon the Report's conclusions.

Competition Law

We consider that the ORR may benefit in explaining to the industry how, in addition to the fact they consider compliance with the Act and the Regulations has been achieved in the analysis of the application of the freight specific charge on the spent nuclear fuel segment (uncapped) and not, for example on biomass or capped on ESI coal, whether this analysis also satisfies the standard within the UK Competition Act 1998 to ensure that there are no unlawful inhibitions to trade within the UK. Would a levy on rail freight of spent nuclear fuel, but not on rail freight of, for instance, biomass not amount to a barrier to entering one market segment but not another? We would be grateful for ORR's views in this regard.

3.2 Market Elasticity

We have briefly commented on the Report.

We are unsure why this Report has not considered any impact of the proposed freight specific charge upon the new nuclear build market. Has this proposed levy been tested in the context of the draft Energy Bill⁴ ? How will this proposed freight specific charge be factored into the proposed costs for new nuclear build? Will there be an element of this cost which is provided for in the contracts for difference?

We have previously commented upon the fact that the Report concludes, "*...but security and political reasons prevent road being used...*". In order for road transports to be undertaken, safety cases are required to be in place. Road transports of spent fuel are undertaken and, in the light of the fact that they are covered by appropriate safety cases, licenses and approvals, it is possible that increased road haulage of spent nuclear fuel could be undertaken. We consider it inappropriate for an independent regulator to rely on "political" judgments to set rail freight charges.

³ July 2012

⁴ CM 8362 - May 2012

We contend that road haulage and sea transport options are feasible for the carriage of spent fuel; and in fact such modes are regularly used in connection with European spent fuel transports as well as the transport of other nuclear packages and consignments sent from the UK to overseas customers. We are not convinced that the market for spent nuclear fuel transport by rail is as inelastic as is assumed in the Report; and, hence, are concerned that the ORR should consider that no cap should be applied to the proposed freight specific charge; which we feel could have a material impact upon our relevant market segment.

The nuclear industry could switch more transportation to road and the infrastructure does exist to permit this modal change to occur. The fact that rail freight transport is undertaken is a strategic decision at the present time. It is not, therefore, definitive and absolute to conclude that this segment is inelastic. We are concerned that the ORR may have viewed this issue too narrowly and reliance upon the Report has led to an incorrect analysis and conclusions that could materially and adversely affect the rail freight of spent nuclear fuel within the UK.

We do not consider that it is proper to isolate this market and apply a tougher financial regime to that which is proposed to be applied to ESI coal; or Biomass for that matter.

We contend that upon this application of the market inelasticity test, the ORR, by default, contravenes its obligation to ensure transparency and an unbiased approach to implementation of the charging regime. By discriminating one market segment over another (i.e. based on supposed inelasticity) the ORR fails to comply with its obligation in Schedule 3, paragraph 2 of the Regulations.

Proportionality

In the event that the ORR concludes that in introducing the freight specific charge on spent nuclear fuel, it has done so in a fair and transparent manner and that the proposal that such charge should be uncapped is not inconsistent with the realities of the elasticity of this market; then any such freight specific charge ought to be proportionate.

A failure to demonstrate proportionality in the application of any proposed freight specific charge within each segment of the freight market would, in our view, amount to discrimination. For instance, for period 3 recorded in TRUST the ratio of spent nuclear fuel rail transport compared to the rail transport of ESI coal was 138:6572 GTM⁵. We note, at paragraph 5.13 of the Consultation that coal traffic amounts to 30% of rail freight currently moved. Of the estimated freight specific costs of up to £250,000,000 per annum⁶, coal freight would attract circa £75, 000, 000 of this estimated freight avoidable cost⁷. Given that spent nuclear fuel amounts to around 2.1% equivalent GTM of coal transport in the UK and given the infrequency, weight and configuration of spent nuclear fuel trains - having a negligible impact on the network - any recovery of the proposed freight specific charge on a true proportionate percentage basis for spent nuclear fuel would be negligible and, more than likely, significantly less than is currently recovered under the current variable usage and freight only line charge arrangements. Recovery of the freight specific charge on this (proper and proportionate basis) would not have any material impact on seeking to recover the avoidable costs for freight to that which already exists under the CP4 charging regime. Given that the ORR intend to cap recovery of the freight specific charge from ESI Coal (to a level yet to be determined), we do not see how a proportionate and non-discriminatory application of this proposed new charge will achieve the

⁵ Period 3 figures

⁶ We note that there remains uncertainty about the accuracy or completeness of this estimate.

⁷ i.e. 30% of the estimate £250,000,000 freight avoidable cost.

purported intentions of the ORR. We are very keen to understand ORR's proposed rationale for calculating the appropriate and proportionate values for the proposed freight specific charge; should it be imposed.

3.3 Policy and Consultation Objectives

When considered against wider Government and public policy, the introduction of the new freight avoidable charge does not sit comfortably or in a consistent manner with the ORR's statutory duties or wider Government policy. As explained in the following paragraph, we contend that the introduction of such a charge would actually create a negative impact on a number of relevant bodies and stakeholders.

Such policy includes the need to reduce the amount of congestion on road infrastructure and to also reduce carbon emissions. Rail infrastructure is considered as a way of relieving these issues. Under section 4 of the Act the ORR has a duty to promote the use of the railway network in Great Britain and to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance. It is difficult to see how the levying of a new charge which has the potential to significantly increase the amount paid by rail operators achieves these aims. The ORR recognises that the new charges will lead to a reduction in freight traffic and have proposed a possible cap on the charge if this occurs (for certain market segments; but (wrongly in our opinion) not in respect of spent nuclear fuel). The ORR must therefore recognise that fundamentally this charge does not encourage the use of rail either generally or as a suitable alternative to road transportation and in reality will lead to a negative impact on stakeholders through a reduction in the amount of rail freight usage and increase carbon emissions through a shift to road transport.

It is a clear intention of the Consultation to reduce the Government's funding of avoidable costs by introducing the new freight specific charge. More broadly speaking it is also the Government's policy to reduce its expenditure given the prevailing economic climate. In respect of spent nuclear fuel, a unique situation arises by virtue of the ownership and funding of the NDA and DRS. As DRS is wholly owned by the NDA, the cost of the new freight specific charge would be passed on to the NDA directly through DRS' pricing. This conclusion is without prejudice to any commercial discussions that relevant stakeholders and counterparties would undoubtedly have upon the introduction of this charge. The NDA's budget is largely set by the Department of Energy and Climate Change ("DECC") and as such the costs of the increased charge will be passed back to DECC by the NDA through its funding requirements. This creates a circularity of charging, with the consequence that the Government would not reduce its costs of funding infrastructure in respect of the rail transport of spent nuclear fuel; by applying the freight specific charge calculated to be incurred on the rail network annually. In fact, we contend that there would be an increase in overall Government expenditure; since there would be higher administration costs in calculating and recovering this freight specific charge which would be applied to DRS. DRS would pass such charges to the NDA and NDA would simply show such charges as an additional cost of operating the rail freight services of spent nuclear fuel. There will be no positive recovery of funds to offset the freight specific charge and one Government Department's gain would be another Government Department's loss. It may also have the effect of reducing the NDA's budget for its decommissioning activity with a detrimental effect including the delay of critical hazard mitigation. Conceptually the new freight specific charge does not achieve one of its key overarching intentions.

We contend that one of the aims of the Consultation is to influence behaviours in optimising logistics and transportation design. In respect of the spent nuclear fuel market, spent nuclear fuel movements have defined start and end points; in this regard there is no opportunity to impact train miles.

Similarly the transport fleet of locomotives and flatrols is relatively small and would only be replaced or updated due to obsolescence. Given the above, the introduction of a new freight specific charge would not be a significant behavioural modifier in the manner intended by ORR and would instead impact on the NDA's budget for decommissioning with detrimental effect.

3.4 Scope of Freight Specific Charge

Nuclear is seemingly the most inelastic and most able to bear the burden of the charge, yet receives only two pages of discussion/analysis by MDS Transmodal in their Report. We note that the Report considers the effects of the freight specific charge on ESI coal and this analysis extends to circa 12 pages. We note that this thorough analysis draws a conclusion that the ESI coal segment is not sufficiently inelastic to be capable of bearing the freight specific charge on an uncapped basis. We are concerned that the analysis undertaken in respect of the spent nuclear fuel segment is not particularly thorough and, indeed, the conclusions appear to be based upon an unsound understanding of the segment and upon unsound assumptions. We contend that had a similarly thorough analysis been undertaken in respect the spent nuclear fuel segment, a different conclusion would have been drawn regarding the extent of the inelasticity of this market segment. We would expect that a cap would be identified as being required to this segment too.

We are not convinced that the underpinning basis upon which the ORR has concluded that the spent nuclear fuel market is inelastic to such an extent that no cap would need be applied to any freight specific costs. We have considered the Report and find the assumptions and comparators of concern. It should be noted that there are road transports of spent nuclear fuel presently undertaken in the UK. This report assumes that none are capable of being undertaken. We note that the analysis in this Report to establish that ESI Coal would be affected by an uncapped additional charge has been somewhat more comprehensively addressed than the short analysis seemingly given to the conclusion regarding spent nuclear fuel. We simply question the extent to which this report can properly be relied upon. We note that neither we, nor any of our affiliates were requested to provide data or verify the assumptions made in this Report. We note that some industry parties were invited to a conference call at the initial stages of their Report's preparation, but no further involvement of the industry was thereafter sought. Had we been requested to input, we would have proposed alternative assumptions which may have had a material effect upon the Report's conclusions.

We are also unclear as to whether empty and/or discharged flask moves have been considered in the context of the GTM calculation used for the analysis of spent nuclear fuel moves.

3.5 Charge Differentiation

The rationale in the Regulations for charging a mark-up is to obtain a full recovery of cost by Network Rail. At 4.21 of the Consultation this is interpreted by ORR so as not to produce an over-recovery of avoidable costs. It is crucially important that the ORR and Network Rail can demonstrate that there is no double counting/overlap between the variable usage costs and avoidable costs. Based on the information presented in the Consultation, we do not consider that this can be said with confidence and we do not consider that sufficient clarity has been provided in explaining the real difference between variable usage costs and avoidable costs.

We note and understand that the variable usage charge is designed to recover Network Rail's operating, maintenance and lifecycle costs that will vary with traffic and hence this can be viewed as costs based on demand/use. However, the variable usage charge is already and will continue to be applied across the passenger and freight sectors. We also note the new freight specific charge is

intended to capture those costs, which are not already covered by other charges and which in theory would not arise if freight did not run on the rail infrastructure. The Consultation acknowledges that such losses are theoretical and that the concept of variable costs and avoidable costs "overlap but are quite different". To assist the Consultation draws upon two "real" examples being, bridge strengthening and passing loops, but does not explain why these are a real difference.

We have not seen sufficient data to be in a position to confirm or refute the distinction purported to be applicable to these scenarios. In order to satisfy the requirement for transparency under the Regulations, we consider it necessary for clarification to be provided from the ORR and Network Rail on what is the real (as opposed to theoretical) difference between the two charging regimes.

3.6 Caps

The Consultation, at paragraph 4.41, proposes that the freight specific charge will be capped so that the average fall in freight traffic forecasted for each market segment is no more than a certain defined percentage; for example, 10%.

Given the ORR's view that the spent nuclear fuel market segment is highly inelastic and faces little competition from road, therefore, the cap has no practical relevance to this market segment. According to table 1 of the consultation, spent nuclear fuel will be the only market segment on which the charge will be levied without the benefit of any cap. Those market segments which have the option of choosing road over rail, or are elastic in some other way, will either not have the charge levied against them at all or will have the benefit of a cap. Therefore, the cap is not fairly apportioned based on the amount of avoidable cost created by each market segment but rather levied on those which have no choice but to bear the increase in charges. This is not in keeping with the "non-discriminatory principles" of the Regulations. Without the benefit of a cap, or by virtue of the remaining market segments enjoying the benefit of a cap, leaves a deep concern that, unless levied proportionately, the spent nuclear fuel market could bear a disproportionate share of the currently estimated £200-£250 million avoidable costs, a cost that this particular market could not bear and would be contrary to the principles of non-discrimination both as prescribed by the Regulations. We contend that this approach, if adopted, by the ORR, would be disproportionate and discriminatory.

4. CLOSING REMARKS

We are very grateful to the ORR for this opportunity to provide our response to the Consultation. We note that the ORR has to balance a number of competing interests against the background of exercising its duties pursuant to the Act and the Regulations. We contend that there is a natural dichotomy between (i) seeking to ensure full recovery of the use of the network by the users of the network; on the one hand; and (ii) seeking to promote and encourage use of the network; on the other hand.

In our Response, we have considered the analysis undertaken in support of the ORR's proposals to apply a freight specific charge. We remain unconvinced that the assumptions used and the data analysed (to the extent that the same has been made available) is, in a number of areas, sound. For this reason, we are concerned that the ORR would be capable of legitimately levying any freight specific charge on spent nuclear fuel transports. We are unable to verify the basis and rationale of some of the conclusions drawn in the MDS Transmodal Report.

Notwithstanding our concerns in respect of those assumptions and conclusions, we are also concerned that the ORR may not be in full compliance with its duties under the Act and we are not convinced that the requirements of the Regulations have been met in connection with the ORR's duty to be

transparent and non-discriminatory. We contend that Schedule 3 of the Regulations places a duty on the ORR not to discriminate between segments of the market.

Should the ORR determine that its proposal for a freight specific charge is consistent with its duties; then (notwithstanding the fact that we reserve our position in this regard) we contend that the extent of the levy should be proportionate to the use of the network by carriers of spent nuclear fuel. In our estimation, we consider that a proportionate application of this levy compared to the current freight only line charges and other GTM charges would be marginal at best and would fail to satisfy the ORR's rationale for imposing the levy in the first place. Moreover, we contend that any additional levy, however small, will have an impact on the NDA's decommissioning activity. These costs will be passed through one Government Department to another with an overall net sum loss to the Government. This cannot be consistent with overall policy intentions. There is no guarantee that the segment will not move to an alternative mode were the ORR to impose a levy that was not proportionate to the segment's actual use of the network.

In summary, we say this, the freight specific charge should not be introduced as it is inconsistent with the ORR's statutory duties. Should the ORR determine otherwise, whilst we reserve our position in this regard, we encourage the ORR to ensure that any such levy is proportionate. Should this not be the case, then the levy cannot satisfy the requirement of non-discrimination to the spent nuclear fuel segment. Assuming that the levy is proportionate and non-discriminatory, it would seem to fail to achieve the ORR's stated purpose in any event. We are therefore, generally unsupportive of such a levy.

Yours faithfully

John McGuinness

Industry Policy advisor

Direct Rail Services

APPENDIX 1: CONSULTATION QUESTIONS

Ref.	Question	Response
3.60	Network Rail has already consulted on its estimates of variable costs. Do you have any further evidence, subsequent to Network Rail's consultation, that you wish to provide in relation to the process for estimating variable costs and average variable usage charges?	<p>Network Rail have been noted as coming to the table with inaccurate/incomplete data/evidence and have repeatedly made judgement calls.</p> <p>The McNulty Report confirms that the industry has invested heavily and achieved significant cost reductions in a competitive market.</p> <p>The Study is aware that rail freight operators generate low margins and with long leases on equipment and a high proportion of fixed costs, rail freight operators are finding it difficult to further reduce costs.</p>
3.61	Do you agree with our analysis, which leads to a proposed confidence interval of 15% around Network Rail's estimates of variable usage costs?	No. As in previous correspondence we feel that 10% is more realistic. The proposed 15% would suggest that Network Rail are not confident of the data being input to VTISM.
3.62	Do you agree with our approach to estimating an adjustment to variable usage charges for long-run cost efficiency?	Yes, the proposal to levy a cap on the variable usage charge based on end CP4 efficiencies excluding the adjustment for CP5 improvements in efficiencies is reasonable.
4.49	Do you agree with our proposed approach to satisfying the Access and Management Regulations with respect to levying a new freight-specific charge?	<p>The regulations would appear to allow this to happen. However, this process of materialising new charges sends all the wrong signals to operators and customers alike.</p> <p>Please note the McNulty RVfM report:</p> <p>The Study's research has identified that the rail freight industry directly contributes about £870 million to the nation's economy, including £299m in profit and wages, but that the real economic impact is far greater. The total contribution to the economy, including</p>

Ref.	Question	Response
		<p>both the indirect effect and the induced effect, is calculated to be £5.9bn per annum. The Eddington Report (2006) estimated that road congestion reduces GDP by between £7bn and £8bn per annum.</p> <p>Please also refer to Section 3.6 of our Response.</p> <p>The Study is conscious of the Secretary of State's commitment in his written statement that accompanied the publication of the Study's Interim Submission on 7 December 2010, in which he said:</p> <p><i>"I am also clear that the changes the Study is proposing must protect the interests of freight operators on the network."</i></p>
4.50	Do you agree that the infrastructure costs allocated to freight operators - either for direct funding by freight operators, or explicitly subsidised by government - should be freight specific charge, including fixed costs, but not costs common between passengers and freight?	No, this just adds another level of complexity and the data used to establish freight specific charge is subjective and again this process sends all the wrong messages to industry and customers.
4.51	Do you agree that we should retain our current definitions of particular categories of rail freight commodities as separate market segments?	No, we believe that there should be an acceptable level of subsidy towards freight specific charge to counteract the almost free access to the road network that the road hauliers enjoy.
4.52	Do you believe that we have taken into account the appropriate factors in considering the efficiency of the proposed charges? Do you believe there are other factors we should take into account?	No, as above.
4.53	Do you agree that our approach (of analysing rail freight traffic) addresses the relevant criteria, when considering which to which market segments the charge should apply?	No, what if you had an inelastic market segment whose profit margins were so low that the operator/customer could not financially afford the charges?
4.54	Do you agree that certain market segments should be exempt from the new	Yes.

Ref.	Question	Response
	charge?	
4.55	What do you think is the most appropriate methodology for allocating costs, and what is your reasoning?	See response to item 4.51 The operators paying an all - encompassing rail equivalent of road tax, this would be financially beneficial and efficient.
4.56	Do you consider it is appropriate to cap the new charge for particular market segments according to its impact on the associated freight traffic (in addition to a constraint relating to relevant avoidable costs)? Do you wish to propose an alternative?	It is inappropriate to set charges even with caps that would be deemed as acceptable by the ORR in a resultant 10% reduction in traffic with the associated knock on effects. Please refer to secretary of state guidance to the ORR paras; 32, 33 and 34.
4.57	What should be the unit of the new charge? Please explain your reasoning.	Once again more complexity equals an increase in costs. The Charge unit should be straight forward and not disadvantage any operator.
Page 55	Do you agree with our framework for estimating freight avoidable costs? Please explain any suggested changes to the framework, including your calculations (noting that there will be further opportunities to contribute to this work as the cost estimates are refined during the periodic review, for example in relation to Network Rail's strategic business plan).	No, it is so subjective and there are too many variables which could have short/long term impact on the outcome. The current indicative estimate of £200-250M would indicate that there is no specific formula to determine this cost, compounded by lack of accurate data and will be viewed as a means to levy even greater charges on the market segments deemed as being able to bear the charge.
6.83	Do you agree with our proposed approach to satisfying the Access and Management Regulations with respect to levying a new freight-specific charge?	No. We consider that the proposed freight avoidance charge is not consistent with the 2005 Regulations. We are concerned about the basis upon which the ORR has determined that the spent nuclear fuel market is inelastic and can carry such charge without any cap. We are also concerned that the ORR has applied too narrow an interpretation to Schedule 3 of the Regulations and we consider that any discrimination between market segments is de facto discrimination and not consistent with the Regulations.
6.84	Do you agree with our proposal, on the basis of MDST's analysis, to not levy a mark-up on certain rail freight commodities, including intermodal,	We can accept the principle of not applying the levy to certain markets, but we are concerned that the MDS Transmodal Report is not a correct and

Ref.	Question	Response
	construction materials and metals?	thorough assessment of the likely impact of such a levy on the spent nuclear fuel segment is required. Please refer to Section 3.2 of our response.
6.85	Do you agree with our proposal to levy the proposed charge on ESI coal traffic:	No. The market studies carried out have shown that there could be modal shift, reduction in traffic, pits particularly in Scotland becoming unviable with potential closures and redundancies.
6.86	Do you agree with our proposal to levy the proposed charge on spent nuclear fuel traffic?	No. Please refer to Sections 3.1 to 3.6 of our Response.
6.87	What views do you have on our analysis of the iron ore market segment? Do you consider that there is also a case for levying the proposed charge on iron ore?	Similar to our response to item 6.85 and customer comments at workshops would indicate that this market is not as inelastic as the studies indicate.
6.88	Do you agree that we should revisit our policy on levying a charge for the biomass market segment to coincide with the recalculation of its credit (subsidy) regime (from 2017 for England and Wales)?	No response provided.
6.89	Do you consider that the proposed charge should be levied on other (non ESI) coal flows?	Please refer to our response to item 6.87. In addition, steel customers have indicated that costs passed onto them could tip the balance of steel being made in the UK or somewhere else.