Ref: Consultation on Freight Specific Charge

Joe Quill
Office of Rail Regulation
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Dear Sir,

Eggborough Power Limited (EPL) is an independent generator which owns and operates Eggborough Power Station (EPS), a 2,000 MW coal fired power station situated in the Aire Valley in North Yorkshire. EPS was previously owned and operated by British Energy (and latterly EDF) to provide flexible and reliable mid merit support to the “baseload” nuclear portfolio. EPL is now owned by two substantial private shareholders, SVP and Bluebay and is operating as an essentially merchant power plant in the wholesale market.

Our energy has traditionally been produced from Imported Coal with a recent consumption of up to 4,000,000 tonnes per annum being predominately moved from the UK ports by rail.

We have therefore taken a keen interest in the “Periodic Review 2013” – Consultation on the variable usage charge and on a freight-specific charge. We have answered the specific questions you have raised in the appendix attached, however we would like to expand on some of the key points in your document as follows:

Electricity Supply Industry (ESI) Coal:
The power industry will be undergoing unprecedented changes over the next 5 years as a result of the Industrial Emissions Directive and Electricity Market Reform implementation. The implementation of the various environmental legislative changes will result in a noteworthy number of power stations reducing production, closing plants or looking for investment in new technologies. (E.g. Biomass or SCR). We believe this will significantly reduce the amount of ESI coal being consumed and should be a major consideration as part of your consultation.

The NERA report does not seem to take this fully into account, and is basing its findings on maintaining the status quo and the known closures. We are therefore concerned that any implementation of your proposed Freight Specific Charge will be in conflict with these changes and potentially lead to considerably altering the Electricity generation market. Investment is likely to take place in this market place during this time period that will benefit both local job creation and the overall rail infrastructure. However the uncertainty and cost increases you are proposing in regards to the logistics of moving product into the power plants may result in these investments not taking place and making the choice to opt out and close plant more feasible and this will likely be in one target geographic area. These facts make the ESI coal market place inelastic. Thus this industry will be significantly affected by the changes you propose.

Although it is clear why you would wish to introduce these charges, and how it seems to be within your legal ability to do so in an inelastic market, we are however both concerned how you will measure the effect you are making and whether you are truly targeting inelastic markets, when the market place will be already going through so much change. We are concerned that this uncertainty we describe may cause some entities to raise various legal challenges as you try and justify how these charges are not responsible for plant closures and job losses.

We therefore urge you to defer the increases you have described for the ESI Coal sector during this review period and reassess at the next review when the Electricity supply industry future is more defined and certain.

Biomass:
We endorse your proposal to defer the assessment of this product. However our research suggests this market place will need significant investment by the power generators and payback for these investments will take at least 10 years. Unfortunately the ORR is increasing uncertainty which is likely to undermine confidence in making these investment decisions which would be of benefit to rail and the Electricity Industry. We therefore ask you to relook at this market segment in 10 years and to declare this as soon as possible, thus to remove the uncertainty that may impact on investments taking place.

Appropriate Methodology for Calculating Any Charge:
Although we ask you to seriously consider our concerns as described above, we would also ask that any charges and changes you implement are done on a tonnage base rather than a £/kgkm basis. Our reasoning for wanting this level playing field are as follows:

Legacy infrastructure and investment did not take into account these proposed changes and will unfairly impact on those businesses that have made those investments in longer rail distances prior to this announcement. Often these investments take place over a long time frame, and we expect this may result in sunk costs not being recovered and the overall logistic supply chains changing its geography in order to recover these costs. We expect the net result of this to be fewer miles travelled on your network and increased local unemployment at the extremities of the supply chain. This migration in the logistics network to travelling less miles will eventually lead to less revenue to the network operators and will impact the rail industry overall.

We would also ask you to consider that the prices for importing through the UK ports have always reflected the actual cost of doing so with a reasonable profit margin for the ports and therefore the market price has been consistently flat throughout the UK. Our recent commercial research would suggest that this market price is now changing dependant on the geography of the ports as the ones closer to the final customers are seeking disproportional market increase, that is taking some of the differential costs, the commercial gap of a £/kgkm is creating, to their price structure. This allows them to stay competitive in the market place, yet make more profit. We would suggest this is an uncompetitive practice and one that the ORR needs to consider as part of their proposals.

In summary we believe a tonnage increase will maintain a level playing field in the market place, thus safe guarding jobs and infrastructure, whilst ensuring that a fair market price stays available to all in the associated and connected industries.

For Eggborough Power Limited, the timings of these proposals could not come at a worse time. The long term future of the power station and associated businesses depends on significant investment plans which have now been complicated with the uncertainty around this review.

We would welcome the opportunity to discuss our concerns in more detail and I am available for a meeting at your convenience.

Yours Sincerely

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Appendix

List of all consultation questions

Chapter 3 – variable usage charge

7.14 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?

Not at this time.

7.15 Do you agree with our analysis, which leads to a proposed confidence interval of 15% around Network Rail's estimates of variable usage costs?

Evidence suggests that we should expect your costs to reduce during this period with the efficiencies have been implemented in recent years. However we welcome a upper cap on this cost area. We do believe 15% is two to three times more than the expected increase and we would like to see a more pragmatic view here and a cap of no more than 10%.

7.16 Do you agree with our approach to estimating an adjustment to variable usage charges for long-run cost efficiency?

No comment

Chapter 4 – Framework for a freight-specific charge

7.17 Do you agree with our proposed approach to satisfying the Access and Management Regulations with respect to levying a new freight-specific charge?

No. Please see comments above.

7.18 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 avoidable costs, including fixed costs, but not costs common between passengers and freight?

We understand the logic of this question and your approach, yet we also believe such an implementation of charges only on the freight industry is in direct conflict with other government policies in the power and transport industry and that this review should be delayed until the next period when the power market change program has been completed.

7.19 Do you agree that we should retain our current definitions of particular categories of rail freight commodities as separate market segments?

No. See above.

7.20 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. See above.

7.21 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. See above.

7.22 Do you agree that certain market segments should be exempt from the new charge?

Yes. See above.

7.23 What do you think is the most appropriate methodology for allocating costs, and what is your reasoning?

We believe this is in direct conflict with other policies (Transport and Environmental) to move more commodities onto the rail network and should be delayed until the market is more mature.

7.24 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?

As above.

7.25 What should be the unit of the new charge? Please explain your reasoning.

Tonnes. As above.

Chapter 5 – Freight avoidable costs

7.26 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 comment

Chapter 6 – Market Analysis

7.27 Do you have comments on our write-up, interpretation and application of the studies carried out by MDST and NERA? Is there any further evidence that you believe should be considered?

Please see above for comments on the NERA report.

7.28 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, construction materials and metals?

No comment.

7.29 Do you agree with our proposal to levy the proposed charge on ESI coal traffic:

No. Please see comments above.

7.30 Do you agree with our proposal to levy the proposed charge on spent nuclear fuel traffic?

We feel that this fuel is the one that is the most inelastic as well as its increased weight is the most likely to cause damage so we would understand why you would wish to target this market.

7.31 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?

No comment.

7.32 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)?

Yes, but we also believe this should be delayed by at least two review period to allow investment to take place.

7.33 Do you consider that the proposed charge should be levied on other (non ESI) coal flows?

No comment.