



By Appointment to
Her Majesty The Queen
Royal Train Operator
English Welsh & Scottish Railway Ltd
London

Anthony Barnes
Business Manager
Network Rail (CTRL) Limited
The Old Cattle Market
Gasworks Lane
Ashford
Kent TN23 1HS

11 January 2007

Dear Anthony,

HIGH SPEED 1 DECLARATION OF SPECIFIED INFRASTRUCTURE & NETWORK STATEMENT CONSULTATION

I am writing with regard to Chris Rayner's letter dated 20 November 2006 addressed to the Managing Director of English Welsh & Scottish Railway Limited ("EWS").

EWS welcomes the publication of the High Speed 1 ("HS1") Network Statement and being given the opportunity to comment on its contents. In this regard, EWS wishes to make the following representations. Please note that all references to headings, sections or paragraph numbers as well as definitions, unless otherwise stated, are those used in the Network Statement.

Introduction

(1) – Regulation 11(4)(g) of the Rail Regulations 2005 provides that the Network Statement should specify the measures taken by the infrastructure owner to ensure the fair treatment of freight [and international] services. EWS considers that a summary of the particular measures taken by NR(CTRL) to ensure the fair treatment of freight services would be helpful in the introductory section.

(1.1) – EWS considers that it would be helpful to summarise the key functions of the Allocation Body and the other services that have been sub-contracted to NRIL. EWS notes that the term "Allocation Body" is not defined in Appendix 1 so has assumed that the Allocation Body referred to in this paragraph is the same as the "Allocation and Charging Body" which is defined therein.

(1.3) – EWS believes that the Railways Act 2005 should also be listed as relevant legislation because, in addition to amending the Railways Act 1993, it also provided for the transfer of the responsibility for railway safety from HSE to ORR.

(1.4.2) – Given that NR(CTRL) is obliged under Regulation 11 of the Rail Regulations 2005 to publish the Network Statement and keep it up to date, EWS



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Registered No : 2938988

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would have expected that best, rather than just reasonable, efforts would have been made to ensure the information is accurate.

(1.4.2) – The third part of this paragraph does not appear to relate to liability. It instead covers charging matters dealt with elsewhere in the Network Statement. Notwithstanding this, given that Section 2 of the HS1 is due to open this year, EWS is extremely disappointed that no appreciation of the costs of its construction, maintenance and operation are yet to emerge to enable track access charges for freight services to be specified in the Network Statement. EWS would have thought that sufficient information in this respect would now be available, suitably informed by the experience already gained in operating Section 1 of the HS1. Whilst EWS notes that the independent Allocation and Charging Body will be pleased to enter into discussions with serious applicants in this respect, it would hope that the Network Statement is updated in accordance with section 1.6 as soon as the relevant information does become available.

(1.6.2) – EWS considers it would be helpful if a default time period for the consultation process, say at least 30 days, was specified.

(1.8.6) EWS wishes to update the details in the Network Statement in respect of issues related to Dollands Moor as follows:

Market Manager RIS
EWS Network
National Business Centre
Carolina Way
Doncaster DN4 5PN
Tel: 00 44 (0)870 140 5044
Website: www.ews-network.co.uk

Access Conditions

(2.2) – EWS considers that it would be helpful to summarise the key differences between the requirements applicable to the HS1 compared to those for the NRIL Network.

(2.2.2) – EWS notes that the HS1 has been declared as Specialised Infrastructure pursuant to the Rail Regulations 2005. EWS wrote to NR(CTRL) on 15 September 2006 (copy attached for ease of reference) setting out a number of reasons why it considered that NR(CTRL) was not entitled to implement the proposal set out in its consultation letter dated 18 August 2006 as a result of declaring the HS1 as Specialised Infrastructure. Whilst EWS received a subsequent letter dated 13 October 2006 thanking it for replying, a promised further letter responding to the points raised has not yet been received. Given that the 18 August 2006 proposal has been included in paragraph 4.4.3, EWS



can only assume its points have been discounted by NR(CTRL) in arriving at this decision. EWS therefore wishes to understand why.

(2.2.2) – In respect of Dollands Moor, whilst EWSI is the facility owner, neither EWS nor EWSI are considered an Infrastructure Manager. This is because Dollands Moor is not considered as “railway infrastructure” for the purposes of the Rail Regulations 2005.

(2.2.3) – EWS considers that it would be helpful to describe which operations on the HS1 are exempt from licensing under the CTRL Act 1996.

(2.2.4) – EWS believes that ORR was not formerly known as HMRI. Both organisations existed in their own right. ORR took over safety responsibility for railways from the HSE pursuant to the Railways Act 2005.

(2.3) – Whilst this paragraph is titled “how to apply for a train path” it does not set out how this is to be achieved.

(2.4.1) – It is not made clear in this paragraph whether a Train Operator is required to negotiate a Track Access Agreement with NR(CTRL) on behalf of the Infrastructure Owners or with the Infrastructure Owners (i.e. Union Railways (North) Ltd. / NR(CTRL) Ltd.) direct.

(2.4.2) – EWS believes Regulation 28(4) of the Rail Regulations 2005 does not specify that access agreements covering the CTRL (the HS1) do not have to be approved by ORR. This Regulation (by reference to Regulation 28(3)) merely states that negotiations between an applicant and the infrastructure manager shall only be permitted if they are carried out under the supervision of the Secretary of State. In EWS’s experience, an access agreement will typically cover more than just the level of charges. Whilst ORR may indeed not have to approve access agreements covering the HS1 this is not, EWS believes, as a result of Regulation 28(4) but more likely pursuant to Regulation 18(12) for example.

(2.6) – EWS wishes to understand whether the CTRL Infrastructure Registers will be placed on the HS1 website and, if not, how they may be made available otherwise.

Infrastructure

(3.3.2.3) – EWS considers that a trailing load limit of 1100 tonnes to be extremely restrictive for freight services and wishes to understand how NR(CTRL) arrived at this figure and whether it may be increased.



(3.3.3.2) – EWS believes that train regulation policies are agreed pursuant to Part H of the CTRL Track Access Conditions. This appears to be confirmed in paragraph 4.8.2.

(3.4.1) – Please see comments under paragraph 2.2.2 above.

(3.4.2) – EWS wishes to understand whether the HS1 environmental restrictions will be placed on the HS1 website.

Capacity Allocation

(4.1) – EWS assumes that as the term “Allocation Body” is not defined in Appendix 1, the Allocation Body referred to in this paragraph is the same as the “Allocation and Charging Body” which is defined therein.

(4.2) – The NRIL Track Access Conditions (now known as the Network Code) has been updated considerably over recent years in line with ORR's Network Code reform programme. It appears that similar changes have not taken place to the CTRL Track Access Conditions. Therefore, the timetabling processes within Part D of the CTRL Access Conditions may no longer be fully consistent with NRIL National Rules of the Plan which has been drawn up in accordance with the updated Part D of the Network Code. If NR(CTRL) wishes to rely on NRIL's own processes and procedures then EWS considers that Part D of the CTRL Track Access Conditions will need to be updated accordingly.

(4.2) – EWS understands that agreement has been reached that the mid-year timetable adjustment in respect of the NRIL network will be brought forward to May each year. Given the comments made in the previous paragraph, EWS wishes to understand whether the HS1 timetable change will follow suit.

(4.2) – EWS notes the statement that Regulation 18(12) provides that framework agreements for the HS1 are not subject to the approval of ORR. It should be made clear that this is not the case where section 17(3) of the CTRL Act 1996 applies.

(4.3.1) – EWS understands that NRIL now hold its Timetable Conference in June each year. EWS wishes to understand how this will affect the allocation and timetabling process applying to the HS1, particularly if the timetable change dates do not remain synchronised with those of NRIL (see second comment under paragraph 4.2 above).

(4.3.1) – As mentioned in its comments under paragraph 4.2 above, the NRIL Network Code has been updated considerably over recent years. These updates include changes to the Part D Decision Criteria. Therefore, EWS believes that the Decision Criteria used in respect of the NRIL network are no longer the same as those contained in Part D of the CTRL Track Access Conditions.



(4.3.2.1) – Again it appears that NR(CTRL) is relying on NRIL's processes pursuant to the NRIL Network Code being consistent with the CTRL Track Access Conditions. As mentioned above, Part D within the two different documents is no longer the same.

(4.3.2.2) – Please see comments under paragraph (4.3.2.1) above. EWS assumes that the reference to the HS1 Rules of the Route in line 3 should instead refer to the HS1 Rules of the Plan.

(4.4.3) – As already mentioned in its comments under paragraph 2.2.2 above, in respect of the Dollands Moor connecting network, neither EWS nor EWSI are considered an Infrastructure Manager for the purposes of the Rail Regulations 2005. Therefore, neither EWS nor EWSI are obliged to publish a Network Statement in respect of that connecting network.

(4.4.3) – Again as already mentioned in its comments under paragraph 2.2.2 above, EWS wrote to NR(CTRL) on 15 September 2006 (copy attached) setting out a number of reasons why it considered that NR(CTRL) was not entitled to implement its 18 August 2006 proposal as a result of declaring the HS1 as Specialised Infrastructure. Given that this proposal has been included in paragraph 4.4.3, EWS can only assume its points have been discounted by NR(CTRL) in arriving at this decision. EWS therefore wishes to understand why.

(4.4.3) – It is stated that NR(CTRL) will seek to avoid congestion by dealing with conflicts in access applications in accordance with the criteria set out in the declaration of Specialised Infrastructure as well as certain other procedures. EWS considers that the Decision Criteria in Part D of the CTRL Track Access Conditions are intended to resolve conflicts in allocating access requirements in the timetable and therefore these should be used instead.

(4.4.3) – EWS disagrees that the process applying if congestion remains conforms to the procedure set out in Regulation 23 of the Rail Regulations 2005. Regulation 23 would involve the Infrastructure Manager declaring the relevant element(s) of the infrastructure as congested or likely to be congested. This should then be communicated to existing users and the other persons listed in Regulation 23(3). In addition, NR(CTRL) must undertake a capacity analysis in accordance with Regulation 24 or implement a capacity enhancement plan pursuant to Regulation 25 and may levy a congestion charge. EWS does not consider that criteria specifying the relative value to the HS1 infrastructure owners of the competing proposals and the willingness to pay a congestion charge should be included in any list of priority criteria. This is because these are likely to work against the considerations listed in Regulation 23(6) of the Rail Regulations 2005, namely that the priority criteria should take account of the relative value to society at large and that international freight services are given adequate consideration.



(4.6) – EWS would expect that a declaration by the Infrastructure Manager of congested infrastructure in accordance with Regulation 23 of the Rail Regulations 2005 will determine whether or not there is congestion and therefore that the more restrictive “use it or lose it” process applies.

(4.8.1) – EWS wishes to understand whether the AFC Manual will be made available to relevant users of the HS1 network.

Charges & Performance

(6.1) – As stated earlier in this response, EWS is extremely disappointed that the charges for freight services are not specified in the Network Statement. EWS expects that any charges for freight services must take account of the marginal cost that is directly incurred as a result of operating the freight service. In addition, whilst EWS recognises that mark-ups to recover all costs incurred are permitted under the Rail Regulations 2005, EWS notes that these must not exclude the use of infrastructure by market segments which can pay at least the cost that is directly incurred as a result of operating the railway service, plus a rate of return which the market can bear.

(6.1.1) – It appears that this paragraph proposes that TOs will be expected to pay for the minimum access package prior to commencing operations. If so, EWS would disagree with such a proposal if it were to apply to freight operators as the charges for the minimum access package should be set in accordance with the relevant provisions of the Rail Regulations 2005 (i.e. at the cost that is directly incurred as a result of operating the train service).

(6.1.6) – EWS considers that the process for resolving congestion should not be finally resolved by an auction which would obviously be won by the party willing to pay the most money. EWS notes that this proposal is not included in paragraph 4.4.3 where the proposed process for resolving congestion is set out. In any event, EWS considers that a “free for all” open auction is contrary to the process for resolving congested infrastructure as set out in Regulations 23 to 25 of the Rail Regulations and therefore Article 22 of EU Directive 2001/14, particularly as it would not ensure that international freight services were given priority and consideration as their ability to pay is likely to be lower than some other market sectors.

(6.1.11) – EWS is firmly opposed to the introduction of a reservation charge for the non-use of capacity. A scarcity charge is only permitted by the Rail Regulations 2005 during periods of congestion and therefore following a declaration of “congested infrastructure”. In any event, EWS considers that capacity that is being held but not used should be dealt with in accordance with the “use it or lose it” provisions (paragraph 4.6). EWS notes that the proposed charge for the non-use of capacity does not appear to extend to the Infrastructure



Manager in cases where capacity is reserved for possessions but no work actually takes place.

(6.2) – Whilst a charging process which involves a payment on account in advance may be suitable for timetabled passenger services which see little variation over the course of a timetable, it would certainly not be suitable for freight services which can vary from day to day and week to week. As mentioned above, the charges for the minimum access package should be set in accordance with the relevant provisions of the Rail Regulations 2005 (i.e. at the cost that is directly incurred as a result of operating the train service). This would not be known in advance for the majority of freight services.

(6.3.1) – Whilst EWS accepts that the actual level of charge will depend in each case on the nature of the services and rights sought, EWS does not consider this to be a valid reason why usage charges for freight services cannot be specified in advance of application. The freight usage charges relating to the NRIL network are published and the proposed charges for Eurotunnel are included in its Network Statement.

(6.3.4) – EWS is not content with the suggestion that each time the goods being conveyed on its services change, it will be required to pay a lump sum. The nature of freight services mean that both the goods conveyed and the types of wagons on each individual service may change from week to week and even day to day. EWS believes that such a system would generate significant additional costs in time and effort in monitoring and considering whether such changes have had a material effect or not. The NRIL freight charging system specifies in advance the usage charge for each type of wagon and commodity carried and the appropriate charge is applied following the operation of each train. EWS sees no reason why this simple process could not apply to the HS1.

(6.4) – EWS has already had initial discussions with both NR(CTRL) and the Department for Transport over its concerns regarding the affordability of a freight performance regime on the HS1. EWS expects to continue these discussions to negotiate a fair, reasonable and affordable performance regime for inclusion in any HS1 track access agreement it may enter into.

EWS hopes the above comments are helpful and will be taken into account by NR(CTRL). EWS would also appreciate NR(CTRL)'s comments on each of the issues raised above and looks forward to receiving these in due course.

Yours sincerely,


Nigel Oatway
Access Manager