

Margret Haswell

Executive, Access and Licensing
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Quentin Hedderly
Network Capacity Advisor
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Lakeside Business Park
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Dear Megan and Quentin,

Amendment of a track access contract between Network Rail Infrastructure Limited and DB Cargo (UK) Limited: Sixty Fifth Supplemental Agreement.

1. On 18 January 2023 the Office of Rail and Road (ORR) approved the Sixty Fifth Supplemental Agreement (SA) to the track access contract (TAC) between Network Rail Infrastructure Limited (Network Rail) and DB Cargo (UK) Limited (DBC) under section 22 of the Railways Act 1993 (the Act), submitted to us on 25 November 2022. This letter sets out the reasons for our decision.

Background

2. This SA is to amend 12 one-hour window Firm Rights and relinquish 8 one-hour window Firm Rights.

Consultation

3. The draft SA went out to consultation between 24 October 2022 to 24 November 2022. Cross Country (XC Trains Ltd), GWR (First Greater Western Ltd) and Transport Focus responded. There are no unresolved issues or objections.

ORR Review

4. We received an informal submission from the parties on 25 November 2022. Two of the amended rights, 6C53 WO and 6V71 MO included marked increases to contract miles due to changes in the origin and/or destination columns.
5. We discussed with Network Rail the threshold between what constitutes an amended access right and a new right. There appears to be no established criteria for distinguishing between a new right and an amendment to an existing right. Network Rail decided to approve the changes as amendments to existing rights, as the industry process for approving both types (new or amended rights) is the same. Also there were no objections during the consultation. DBC's view is that in any event there is no quantum increase in rights. We note that the

legislation, section 22 of the Railways Act 1993, makes no differentiation, since both are presented as changes to the operator's Rights Table.

6. Network Rail identified that more amendments of this type were possible in the future and proposes highlighting the situation prominently at the industry consultation process. We will consider each such application made to us on its merits, in the light of our access policy and relevant guidance.
7. Our review did not identify any operational issues with the amendments and although both rights have been significantly amended, they retain relevant characteristics of the existing rights. There are no outstanding issues in this case and all the industry processes have been followed, so we see no reason in this instance not to approve these changes.

ORR Decision

8. This application is under section 22 of the Act and therefore is agreed between the parties and there are no outstanding issues. We are content to approve this agreement.
9. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:
 - (i) to protect the interests of users of railway assets;
 - (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent ...economically practicable;
 - (iii) to promote efficiency and economy on the part of the persons providing railway services; and
 - (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

Conformed copy

10. Under clause 18.2.4 of the TAC, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and DBC. I look forward to receiving the conformed copy.

Yours sincerely



Margret Haswell