

**Alice Kaiser**  
**Head of Passenger Track Access**

Office of Rail and Road  
7th Floor Piccadilly Gate  
Store Street  
Manchester, M1 2WD

Copies to: David Reed, ORR  
Louise Beilby, ORR

2<sup>nd</sup> May 2025

Dear Alice

**Industry Consultation – Network Rail response to LNER 35th Supplemental Agreement**

Thank you for the opportunity to comment on Network Rail's response to LNER's 35<sup>th</sup> Supplemental Agreement. LNER is alarmed to note that Network Rail is not supportive of these rights despite LNER currently holding rights for 6.5TPH. The rights for 6.5TPH per direction were granted by the ORR in May 2016 and Network Rail has not been able to meet this contractual obligation.

LNER wishes to make the following points on the proposal in light of the position expressed by Network Rail:

- Section 3.3 refers to “unused firm London North Eastern Railway (LNER) Firm Directed Rights.” LNER would like this wording to be amended to “unfulfilled” or “undelivered” rights. As noted in the letter, LNER has rights for 6.5TPH whereas only 6.0TPH are currently delivered by the ESG timetable. This is a result of the decision – taken very reluctantly - to descope the ESG timetable in order to expedite its implementation, when ESG timetable development work showed that the additional 0.5TPH could not be delivered without additional infrastructure activity. The ability to deliver 6.5TPH for LNER was based on a program of infrastructure activity (although we are still awaiting detail of what this would entail). Some of this activity was subsequently descope and the resulting reduction in available capacity led to the descope of the ESG timetable, but you will be aware that development work to identify options to facilitate the 6.5TPH has recently been re-started.
- It remains LNER's intention to deliver 6.5TPH, a position that is endorsed by DfT and confirmation of this position has been shared with NR. This is to support long term investment in rolling stock (the new LNER fleet from CAF) and in taxpayer funded infrastructure work under the Integrated Rail Plan to support the provision of the additional 0.5TPH.

- LNER has carried out extensive demand modelling work and our forecasts of future train loadings for the ESG timetable demonstrate the case for further timetable changes to deliver the full 6.5TPH service.
- Section 8 refers to the extension of the expiry date for the contract. It should be noted that LNER's contract with DfT has now been extended to 31<sup>st</sup> March 2028. However, we are concerned on this approach to contract end dates for publicly owned operators. Open Access operators hold no equivalent agreements with DfT. Network Rail is happy to grant extended contracts to privately funded operators but is not prepared to offer the same terms to publicly owned operators. This gives greater protection to private shareholders than UK taxpayers.
- We remain concerned that in its response to the 35<sup>th</sup> Supplemental, Network Rail is unable to support rights which it has been directed to deliver. We believe such a situation is unprecedented. LNER has recognised that the current rights it holds cannot be fulfilled and therefore is in effect proposing to defer their implementation until the necessary work has taken place to allow them to be delivered.
- We would support a similar pragmatic approach to the outstanding rights from Network Rail. We will be working with Network Rail over the coming weeks to determine a way forward using appropriate contractual mechanisms aligned to the design, construction and commissioning of the necessary infrastructure works.

We believe Network Rail's lack of support for rights it has been directed to deliver is unjustified. We would request that the ORR reaffirm its direction for Network Rail to deliver on its commitments for a further 0.5TPH per direction between London and Leeds, noting that work will take place to provide the appropriate contractual agreements to support this.

Yours sincerely,



**Malcolm Knight**  
**Head of Operational Planning**