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Dear Megan and Chris

27th Supplemental Agreement to the Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Freightliner Heavy Haul Limited (Freightliner) dated 11 December 2016

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and Freightliner (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision.
2. The 5 rights contained within this 27th application all relate to proposed traffic to support the construction of the Sizewell C nuclear power station in Suffolk. Sizewell C has been designated as a Nationally Significant Infrastructure Project and ORR's approval of this application contributes to providing Freightliner with certainty to plan its business with a reasonable degree of assurance.

Background

3. On 24 April 2024, ORR wrote to industry setting out a process for access applications for December 2024, May 2025 and December 2025, given our expectation (as confirmed by Network Rail) that we would receive numerous complex and competing applications across that period. Applications were submitted to ORR for direction as "unsupported" applications, as Network Rail was not able to agree that there was sufficient capacity and therefore submit agreed applications for our approval.
4. The original 27th application was for 53 new one-hour window firm rights for a mixture of aspirational traffic. Freightliner has withdrawn 48 of these rights from its application

as ‘some of the train slots covered in this application have been successfully developed, while others continue to be progressed at a slower rate than originally envisaged.’ The remaining 5 rights all relate to Sizewell C traffic.

Industry consultation

5. The initial industry consultation took place from 24 May to 24 June 2024. Industry was then invited to comment on Network Rail’s final representations from 1 August to 15 August 2025.
6. No substantive comments were received from the original consultation as due to commercial confidentiality, the Rights Table was redacted. While the majority of the table remained redacted during the opportunity to comment in August, the details of the 6 Rights that NR could support, which included the 5 that Freightliner still required, were unredacted and so we consider the industry consultation to be satisfactory.
7. During the opportunity to comment in August, GTS (formerly MTR Elizabeth Line) requested additional information about 3 of the proposed rights and Network Rail responded to close out the query.

Statutory Consultation

8. As required under the Act, on 30 May 2024, we sought Network Rail’s representations on the application, and it replied on 28 June 2024. We forwarded these representations to Freightliner 4 July 2024 and asked for its comments, which it provided on 18 July 2024.
9. Network Rail sent its final representations on 15 July 2025. Again, we forwarded these to Freightliner and asked for its comments, which it provided on 31 July 2025.

Network Rail’s representations

10. In its initial representations dated 28 June 2024, Network Rail stated that it was unable to support the application without further analysis because the rights pass through all of the interacting locations identified by Network Rail as containing competing aspirations and subsequently listed by ORR in its letter of 24 April 2024.
11. In its final representations Network Rail was partially supportive, offering 5 rights as one-hour windows for one year only (PCD 2025 – PCD 2026) and one right as contingent with a one-hour window. Freightliner has since withdrawn its application for the service 6M01 Drax Power Station – Hardendale Quarry which it no longer requires.
12. The remaining 5 services relate to proposed Sizewell C construction traffic and as the procurement process is still ongoing, Network Rail will only support them as Firm for a year, rather than to the end of contract, and with no presumption of continuity. It explains that this will allow it to gather data on performance to inform any future application for these rights as these services have not begun operating so there is no performance data available.

13. Network Rail noted that similar aspirations were requested in the Legge Infrastructure Limited (Legge) 2nd and GB Railfreight Limited (GBRf) 34th applications. It is content that these aspirations differ significantly, in terms of time of day, from those proposed in the GBRf 34th and so do not impact this application. Similarly, the rights supported by Network Rail in Legge 2nd differ from those in this application.

ORR review

14. We carried out a full review of the application, taking into account issues that were being considered in relation both to this application and to the competing demands on capacity on the wider network.
15. While we note that time limiting of the 5 rights to one year is cautious, it is consistent with how Network Rail have approached a number of these complex and competing applications to allow it to gather performance data where none currently exists.
16. We agree with these rights being offered as one-hour firm rights to offer maximum certainty to Freightliner and its customer, albeit for a limited time. We noted Network Rail's position regarding continuity of services (and by definition, access rights) and in light of this, our usual policy of a strong presumption of the continuation of existing rights will not apply for the rights in question.
17. In reaching our decision we have placed weight on reducing or ending the uncertainty of this period, in line with our duty of enabling operators to plan their businesses with a reasonable degree of assurance.
18. Overall, we concurred with Network Rail's assessment regarding capacity and performance and have directed the rights as applied for in Freightliner's 27th supplemental agreement.

Our duties under section 4 of the Act and our decision

19. We have considered this supplemental agreement, and we have concluded that its approval is consistent with the discharge of our statutory duties under section 4 duties of the Act: in particular, those relating to:
 - enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g))
 - promoting improvements in railway service performance (section 4(1)(zb))
 - protecting the interests of users of railway services (section 4(1)(a))
 - promoting the use of the railway network for the carriage of passengers and goods (section 4(1)(b))
 - having regard to the funds available to the Secretary of State (section 4(5)(c))



20. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application as submitted by Freightliner.

Conformed copy of the track access contract

21. Under clause 18.2.4 of the track access contract, Network Rail is required to produce a conformed copy, within 28 days of any amendment being made, and send copies to ORR and Freightliner Heavy Haul Limited. ORR's copy should be sent for my attention.

Public register and administration

22. Electronic copies of the directions notice and the supplemental agreement will be placed on ORR's public register (website) and copies of this letter and the supplemental agreement will be placed on the ORR website.

Yours sincerely

Margret Haswell