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Email [redacted]

4 November 2025

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Dear Ella and Adam

7th Supplemental Agreement to the Freight Track Access Contract between Network Rail Infrastructure Limited (Network Rail) and Devon and Cornwall Railways Limited (DCR) dated 6 August 2021

1. Today, we issued directions under section 22A of the Railways Act 1993 (the Act) to Network Rail and DCR (jointly the parties) to enter into the above supplemental agreement. This letter explains the reasons for our decision. This supplemental was originally submitted and consulted on as the DCR 2nd supplemental, but was recently renumbered by the parties as the 7th supplemental.

2. ORR's approval of this application will provide DCR with the rights necessary to move materials by rail aggregate traffic. These flows operate each week and see circa 1.5 million tonnes of material moved per annum.

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. DfT wrote to us on 20 June 2025 referring to "the cumulative scale and impacts of abstraction when [ORR] assesses Open Access applications" and asking ORR that this

should be “factored into all future decision-making”. To ensure that we were able to proceed with decision making for relevant public service operators in light of this, we had to clarify the DfT letter before finalising our decisions.

5. As we were already at an advanced stage in the decision-making process for this and many other applications by this point, we wrote to DfT stating that we intended to proceed with our established approach to access applications for the East Coast Main Line (ECML) in order to support the major timetable change coming up in December 2025 and to avoid risk to that timetable’s implementation. As we did not receive a response by Monday 7 July we have proceeded with decision making in line with our published policy.

Application

6. The purpose of the DCR 7th supplemental is to provide DCR with the rights necessary to move materials by rail aggregate traffic. These flows operate each week and see circa 1.5 million tonnes of material moved per annum.

7. The original application was for 47 Firm Access Rights with 1 hour windows to commence on approval until the expiry date of the Track Access Agreement. 19 of these trains are currently running under Contingent Rights.

Industry consultation

8. 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 on the applications in July and August 2025.

9. Freightliner and London TravelWatch stated that they did not yet have enough information on potential impacts or about other potential applications in the area and Network Rail’s plans to accommodate them to be able to offer its support, nor about the final details of the ECML ESG timetable.

10. In the opportunity to comment, we received no further comments.

Statutory Consultation

11. As required under the Act, on 30 May 2024, we sought Network Rail’s representations on the applications, and it replied on 11 July 2024. We forwarded these representations to DCR and asked for its comments. DCR provided comments on 14 October 2025.

12. Following the completion of Network Rail’s capacity analysis on the ECML and the other interacting locations associated with this application, it sent its final representations on 2 October 2025. Again, we forwarded these to GBRf and it provided its final comments on 15 October 2025.

Network Rail’s Representations

13. In its final representations, Network Rail stated partial support for this application.

14. Network Rail supports 20 firm rights with one-hour arrival/departure windows for a number of the services, with amendments to timing loads and windows for some services, where the services have been accommodated in the December 2025 timetable.

15. Network Rail does not support some of the requested new rights where DCR had not demonstrated a clear intention and ability to use the capacity. Further, it was noted through discussions that some of the rights DCR had included in later submissions to ORR had not been included in the original submission.

16. Following further discussions between the parties, DCR responded on 22 October 2025 confirming the full set of rights on which the parties agreed, and noting that rights beyond this will be included in a separate future application.

ORR review

17. 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.

18. Since 2019, Network Rail has offered operators only contingent or time-limited rights, providing limited certainty for businesses. The ECML ESG was set up to transparently develop a timetable which considered the service specifications and aspirations of timetable participants for implementation. This process was cross-industry, involving public service, freight and open access operators.

19. For these reasons, 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.

20. As referred to in the Network Rail representations, in late 2024, the Secretary of State and Department for Transport (DfT) accepted the recommendation to start the timetable in December 2025. This follows investment by the DfT in rolling stock and infrastructure to enable faster and more frequent services on the ECML. We consider directing the rights in this application supports our duty to have regard to guidance from the Secretary of State in terms of the value for money from public investment as well as the funds available to the Secretary of State.

21. Network Rail expects that implementing the ECML ESG timetable will lead to a limited reduction in train service punctuality. Network Rail is assuring us of the operational and timetable alterations it is leading with industry, to mitigate this reduction. It expects to be able to identify and implement further improvements following the introduction of the timetable.

22. In weighing all of our duties, reviewing the capacity and performance on the ECML and wider network, we consider directing rights which can be used to implement a longer-term baseline timetable, in this case the ECML ESG, is preferable to the alternative. Furthermore, we will continue to hold Network Rail to account to ensure the proposed timetable delivers the expected benefits to passengers, funders and freight operators.

23. Overall we concurred with Network Rail's assessment regarding capacity and performance, and noted that DCR was in agreement with this position.

Our duties under section 4 of the Act and our decision

24. 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)); and
- having regard to the funds available to the Secretary of State (section 4(5)(c)).

25. We have looked very closely at all the evidence submitted from the parties and consultees. We have concluded that we should approve the application in line with the rights Network Rail supported in its final representations.

Conformed copy of the track access contract

26. 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 the operator. ORR's copy should be sent for my attention.

Public register and administration

27. 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

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David Reed