

Emyl Lewicki  
Head of Freight and Open Access  
Office of Rail and Road  
25 Cabot Square  
London  
WC2B 4AN

Lysette Rowley  
Franchise & Access Manager  
Network Rail Infrastructure Limited  
Baskerville House,  
Centenary Square  
Birmingham  
B1 2ND

BY EMAIL ONLY

05 December 2025

Dear Emyl,

**Network Rail Infrastructure Limited Representations for a New Track Access Contract submitted under Section 17 of the Railways Act 1993 between Network Rail Infrastructure Limited and First Rail Stirling Limited**

This letter provides representations from Network Rail Infrastructure Limited (Network Rail) for a new Track Access Contract (TAC) submitted under Section 17 of the Railways Act 1993 between Network Rail and First Rail Stirling Limited (First Rail).

The application was submitted by First Rail to the Office of Rail and Road (ORR) on 27 October 2025 and included the Form P and a draft Track Access Contract. ORR wrote to Network Rail on 30 October 2025 requesting its representation on this application.

First Rail originally entered into a TAC with Network Rail dated 25 July 2024 for services between London Euston and Stirling/Preston, with an expiry date of Subsidiary Change Date 2030. This is understood to mean May 2030, as per the Form P for this new Section 17 application. First Rail now seeks to enter into a new TAC with an expiry date of "Principal Change Date 2039 (December 2038)" (as expressed in their application), effectively extending the expiry date of the existing TAC by 8 and a half years. First Rail also aspires to introduce Class 80x Battery Electric Multiple Units (BEMU) to their Schedule 5 Specified Equipment list from December 2028, in addition to the Class 222 Diesel Multiple Units (DMU) which are listed in the existing TAC. There are no proposed changes to access rights as part of this application. In addition, First Rail has also added conditions around the introduction of the Class 80x Battery Electric Multiple Units.

Network Rail would also like to highlight that First Rail has also submitted two other Section 17 Applications under the same company name and number but with differing expiry dates and for access rights which are not included in the current TAC or this new application. Network Rail would like clarification from First Rail if this is an interim measure until new company names and numbers are created, or if First Rail plans for all of what is requested in these applications to be part of one contract. If it is the latter, Network Rail would like the opportunity of viewing a draft of that proposed contract were ORR to direct on all or some of these applications. The consideration given to these applications as one or three separate contracts will be different. Based on the current status of the applications we will review them as separate applications but will make comments or references in the individual representation letters where Network Rail feels there is a collective point to be made to all three applications.

The purpose of this representation is to provide ORR with Network Rail's position on this Section 17 application. Network Rail can confirm that it is not supportive of this application for the following reasons:

- Power supply constraints.
- Lack of certainty around capacity availability on the West Coast Mainline (WCML) beyond 2030.
- Lack of actual performance data for the services in the current TAC, as they have not yet started running.
- The Vehicle Change process has not been followed for the introduction of new rolling stock into Schedule 5 Specified Equipment.

Our full rationale for not supporting this application is explained in later sections of this letter.

### **Interested Person(s)**

Network Rail is not aware of any persons who would fall within the definition of “Interested Person” in paragraph 1 of Schedule 4 of the Railways Act 1993 in relation to the application made by First Rail.

### **Competing and/or complex track access applications**

In line with ORR’s letter of 24 April 2024 to the industry on “Competing and/or complex track access applications for December 2024, May 2025, and December 2025 timetable changes”, Network Rail has now submitted all of its final representation on those applications and ORR has directed on a majority of those applications.

As part of the Competing and/or Complex applications workstream Network Rail also submitted three General Representation letters to ORR as follows:

- WCML General Representation dated 07 February 2025
- WCML General Representation dated 25 April 2025
- ECML General Representation dated 14 March 2025

Whilst this application is not part of that workstream there are elements of the general representation letters for WCML which are relevant to this application and, where applicable to particular sections of this letter, references to and/or extracts from those letters will be made.

### **Form P Application and Track Access Contract**

Network Rail acknowledges the proposed TAC that First Rail has included with their application. As we do not support this application, we cannot agree with the terms drafted in the TAC.

Network Rail has performed an initial assessment of the Form P and proposed TAC submitted with this application, and would like to highlight the following:

#### Form P

- In section 1.5 Executive Summary, the expiry date of the existing TAC is stated to be 2020. This is assumed to be a typing error and should be 2030, which is in line with what First Rail have proposed in their drafted TAC.
- In section 3.1 Application Overview, First Rail states “This application does not alter the existing quantum of rights or stations to be served. It effectively extends the existing period of operation from 2030 until 2038 to justify the investment being made in new rolling stock. A rolling stock procurement condition (with reversion clause) has been included but otherwise the contract remains as existing”. Network Rail does not fully agree with this statement, as the proposed new contract introduces Class 80x rolling stock to the Specified Equipment from December 2028, which is prior to the extended expiry date – electric rolling stock is not part of the original contract. In addition, as stated earlier in this representation, First Rail has submitted two other Section 17 applications for the same company name and number which include new access rights, therefore if all three applications will eventually be amalgamated into one contract, then First Rail is requesting changes to the access rights in those two other applications.
- In section 3.5 Bespoke Provisions, First Rail answers “no”. From our review of the proposed new TAC, it appears First Rail proposes to amend the following paragraph in their current TAC in

Schedule 5, paragraph 2.9A from “Save by prior **agreement** with Network Rail and subject to such conditions as Network Rail may reasonably impose, the Train Operator shall not be entitled to operate Services north of Motherwell on 01 January” to Schedule 5, paragraph 2.10 “Save by prior **arrangement** ...”. Network Rail would like to understand the reason why the word “agreement” has been changed to “arrangement”. Only then can Network Rail put forward its position on this proposed change.

- In section 4.2 Capacity, First Rail states “The services to be operated are existing services with new stock replacing old. Once discussions with Network Rail (NR) can take place, Lumo will work with NR to fully validate these paths with the new stock, adjusting them as required”. Network Rail’s support of the existing TAC and services was based on an expiry date of 2030; the services cannot be considered as “existing” from that point onward and must be treated as new services subject to the usual analysis process by Network Rail. In addition, as previously stated in this representation, First Rail has submitted two other Section 17 applications for the same company name and number with new access rights, therefore if all three applications will eventually be amalgamated into one contract, then First Rail are introducing new access rights into the TAC which cannot be considered existing services.
- In section 4.3 Performance, First Rail states “No detailed performance analysis has yet been carried out but as all existing paths are compliant and are not “forced”, we anticipate minimal impact with the introduction of the new stock.” The performance impact of the services beyond the agreed 2030 must also be considered, as full performance analysis has not been undertaken beyond that point. First Rail is unlikely to introduce its Euston <> Stirling/Preston services until spring 2026 at the earliest, therefore performance data for the new services and their impact on the WCML will not be available until a significant period of time after the introduction of the services.

### Track Access Contract

- There is inconsistency regarding the usage and implied meaning of PCD/SCD between the existing TAC and the proposed new TAC. The original TAC states an expiry date of SCD 2030 which all parties understand to mean the timetable change date in May 2030, however First Rail states in the proposed new TAC that the expiry date will be “Principal Change Date 2039 (December 2038)”, which implies a different application of PCD/SCD. Network Rail requests that the former convention is used, and the proposed expiry date is stated as “Principal Change Date (December) 2038”.
- In paragraph 3 Conditions precedent and duration, the Effective Date is stated as “the later of the signature of this contract and Subsidiary Change Date 2025”. As SCD (May) 2025 has already passed, this should be amended to reflect a more appropriate date – should ORR direct Network Rail to enter into this TAC with First Rail, we request that this is reconsidered ahead of any directions.
- Further to the above, the “Longstop Date” must also be amended, as it should be one year after the “Effective Date”. The draft TAC submitted with this Section 17 application includes the same Longstop Date as the existing TAC, which is 17 May 2026.
- In paragraph 3 Conditions precedent and duration, First Rail proposes adding the following new clauses:
  - Under 3.5 Expiry, “(d) 0159 hours on SCD 2030 if the Train Operator fails to obtain written confirmation from ORR that it has entered into a contract as set out in Clause 3.7.1 by 1700 hours on 1 May 2028”.
  - “3.7 Rolling stock
    - 3.7.1 The Train Operator shall (in sufficient time to enable ORR to comply with Clause 3.7.2 below) provide ORR with evidence that it has entered into a contract scheduled to expire on or after the Expiry Date, to procure a minimum of five new trains each with:
      - (i) a capacity of at least 375 seats;
      - (ii) 125mph capability; and
      - (iii) acceleration and braking characteristics comparable with Class 802 rolling stock operating at speeds up to 125mph.

3.7.2 The Train Operator shall obtain from ORR written confirmation that the Train Operator has entered into a contract as set out in Clause 3.7.1 above.”

Network Rail does not agree with the addition of the above proposed 3.5 (d), 3.71 and 3.72 to Conditions Precedent at this point in time. The reason for this is that, as we state in the Specified Equipment section later in this letter, First Rail has not adhered to Part F of the Network Code, therefore by accepting these conditions associated with the Specified Equipment we would be agreeing to the inclusion of the Specified Equipment without Vehicle Change, and we do not agree to this. However, once Vehicle Change is undertaken and established, at the point First Rail then seek to include the 80x rolling stock in the TAC we would like to explore the conditions as part of that application.

- The proposed new TAC contains the same Conditions Precedent clauses that are in the existing TAC, which were due to be met by SCD 2025 and with a Longstop Date of 17 May 2026. These conditions have not yet been fully met, as First Rail Stirling does not yet have the following:
  - A passenger licence granted under section 8 of the Act; and/or a European licence and corresponding SNRP. Network Rail understands First Rail is currently operating under a non-passenger licence, and has an application with ORR for a passenger licence.
  - Agreement to become a party to the Claims Allocation and Handling Agreement.
  - A signed access agreement with Network Rail granting First Rail Stirling permission to use London Euston station.
- In paragraph 5.6 of the front end of the TAC, The Services and the Specified Equipment, First Rail proposes adding reference to Schedule 12. There is no Schedule 12 in this proposed TAC and therefore Network Rail does not agree with this statement. However, if First Rail did intend to include a Schedule 12 in their drafting but omitted it, then we would like visibility of this Schedule prior to ORR making any directions.
- In Schedule 4, clause 4.2 Notional cost calculation formula, the EBMPR value is removed and it has not been made clear by First Rail in their Form P why this contractual amendment has been proposed. Network Rail cannot currently agree to this without understanding the reasons why this has been proposed and, depending on the reasons, Network Rail does not encourage diverging from the model clause contract, especially for Schedules like Schedule 4 and 8 where charges and incentives are concerned.
- In Schedule 5, clause 1.1 Definitions, “Off Peak Services” and “Peak Services” are removed. Network Rail agrees with this as services are not divided into Peak and Off Peak in Table 2.1.
- In Schedule 5, clause 2.1, the words “and within the Peak and Off-Peak times” should be removed, as these are removed from the Definitions and are not represented in Table 2.1.
- In Schedule 5, clause 2.7A states “The Train Operator has Contingent Rights to operate 222 rolling stock as non-passenger train slots for the purpose of carrying out train testing until 01:59 Subsidiary Change date 2025 between London Euston and Preston and London Euston and Stirling”. Network Rail understands that testing has not yet been carried out, and there are no plans to do so. Should this not be the case, this clause needs to be updated to give First Rail rights to carry out testing of the 222 rolling stock, as the date specified has now passed and, as stated previously, First Rail has not met all of the Conditions in paragraph 3 of the front of end of the TAC.
- Please refer to comments in the Form P section related to a proposed change to the wording in clause 2.9A/2.10.
- In Schedule 5, clause 5.1, First Rail proposes adding “Class 80x BEMU (from December 2028)” to the Specified Equipment table. As stated in the Specified Equipment section later in this letter, whilst First Rail have added new rolling stock to Schedule 5 in this application, they have not followed the correct procedure as set out in Part F of the Network Code in adding rolling stock to the Specified Equipment.

## Power Supply

NR understands that the units First Rail is proposing to use are dual 25KV/battery units where the battery is

mainly to power the onboard systems, rather than the train itself, therefore the units will require external power supply. On this basis power supply constraints on the network are relevant to this application.

Therefore, as stated in the General Representations on West Coast Mainline (WCML) South dated 25 April 2025, Network Rail has undertaken a comprehensive power supply modelling exercise to assess the impact of accommodating all outstanding access proposals for additional electric services against the rights already held by operators (both passenger and freight), on the network's traction power supply capability.

As ORR will be aware, Network Rail is currently seeing an increased traction power demand across the network. This is due to a combination of aspirational new services using electric rolling stock, in addition to a gradual introduction of electric, bi-mode, and tri-mode trains replacing services previously operated using diesel rolling stock. These actions, if uncontrolled (and without supporting investment) would lead to over demand on the overhead line power supply system and could result in Network Rail not being able to discharge its Network Licence Conditions and operate a safe and reliable railway. As stated in the General Representations on WCML South dated 25 April 2025, "Due to the nature of power capacity Network Rail may need to impose further operational controls and restrictions on the use of electric or bi-mode trains (which follow existing procedures) and/or may need to object to the introduction of further electric/bi-mode trains where there is not the requisite power capacity".

Due to power capacity constraints on the WCML, Network Rail has been unable to fully accommodate all operator Access Proposals for the December 2025 timetable, and as a result issued a Declaration of Congested Infrastructure for the Weaver feeding area, between Weaver Junction and Crewe Neutral Section (All Lines) on the West Coast Mainline, on 26 November 2025. Power supply upgrades are planned but are currently unfunded and not expected to be completed until 2031 at the earliest. Network Rail therefore cannot support additional rights for electric services in the affected area until these upgrades are completed.

## **NW&C Strategy beyond 2030**

### HS2

The access rights included in the TAC for this application will interact with Department for Transport (DfT) and industry proposals, developed with West Coast Partnership Development (WCPD), for HS2 operation. Network Rail stated in its representations for the original First Rail (at that time known as Grand Union Trains) Section 17 application, dated 06 January 2023 and 25 January 2024, that it supported the application only until December 2030 due to the interaction with HS2.

A captive service between Old Oak Common and Curzon Street (Birmingham) is planned to commence in the early 2030s. The current expectation is that HS2 service will then shortly afterwards begin running on the existing WCML – to a combination of Manchester, Glasgow, and Liverpool, joining the WCML at Handsacre Junction (near Lichfield). Some existing long-distance services will be withdrawn at this point with replacement services added between London Euston and Birmingham New Street/Lichfield to better serve intermediate markets by making use of the capacity released.

A further section of the HS2 route (from Old Oak Common to Euston) will – subject to funding – be opened later in the 2030s at which point the full HS2 Phase 1 infrastructure will be in place. That will trigger another change to the WCML timetable as more services can be withdrawn from the WCML south of Handsacre and re-directed to/from London via HS2. Train service specifications for these three stages are in development, decisions about which will be based on ongoing work between HS2 Ltd and WCPD. No part of the current HS2 programme scope delivers additional capacity north of Handsacre Junction, and it will therefore be necessary to reduce the current train service by approximately one path for every HS2 path introduced.

## Other aspirations on WCML

This application has the potential to interact with a number of other known aspirations along the WCML, including a possible future Section 17 application from Virgin Management Limited, applications which have already been submitted for industry consultation and/or to ORR namely, Wrexham, Shropshire & Midlands Railway Company Limited, and Section 22a applications from Avanti which are currently being consulted within Network Rail.

Whilst noting that all access rights held by existing operators are time limited with expiry dates, it is reasonable to expect that operators (or funders) will intend for these services to continue operating in some form beyond the relevant TAC expiry dates, and that the respective applications to continue operating those services will be forthcoming.

## **Performance**

First Rail has not yet started running the planned London Euston <> Stirling/Preston service, therefore no actual performance data is available for analysis. The services have been included in the New Working Timetable for December 2025, and are currently expected to begin running in spring 2026. As outlined in Network Rail's two letters of general representations for applications affecting the WCML South Fast Lines dated 07 February 2025 and 25 April 2025, performance on the WCML is currently of concern. Network Rail requires the opportunity to analyse both the actual performance of the new services and the actual impacts of the new services on overall WCML performance, before it can consider supporting an extension to the contract. We will also need the opportunity to carry out analysis on the impact of the new rolling stock on performance, which would form part of the Vehicle Change process. As already stated, Vehicle Change must be carried out before new rolling stock is added to Schedule 5 Specified Equipment.

## **The Specified Equipment**

In their drafted TAC, First Rail has included in paragraph 5.1 of Schedule 5 of the TAC "Class 80x BEMU". We would ask First Rail to engage with us on commissioning works to deliver the required capability and to undertake the Route Clearance processes. First Rail should commission a full gauging study from a recognized gauging company for the complete route which could take a few months – depending on the availability of external suppliers – and then a complete compatibility analysis.

As specified in Part F of the Network Code, an Access Beneficiary is required to carry out Vehicle Change prior to introducing new rolling stock to its Specified Equipment table in Schedule 5 of the TAC. This is covered in the Definitions section of Part F, which states:

““Vehicle Change” means, in relation to an Access Beneficiary:

(a) any change to Specified Equipment (or, in the case of an Access Option Holder, any change to the type or performance specification of any vehicle specifically identified within an access option) including by way of: [...]

(iii) the inclusion in Specified Equipment of any railway vehicle which is not so included; or

which, in any case, is likely materially to affect the maintenance or operation of the Network or the operation of trains on the Network, but excluding any authorized variation”.

Therefore, Network Rail expects First Rail to undertake Vehicle Change prior to the rolling stock being added to the Specified Equipment and we request that First Rail includes the exact Specified Equipment class in the TAC once Vehicle Change has been established, as opposed to “80x” as proposed in the

application presently.

## **Scotland**

### Rolling stock

As stated earlier in this letter, an Access Beneficiary is required to carry out Vehicle Change prior to introducing new rolling stock to its Specified Equipment table in Schedule 5 of the TAC. This process is a requirement for Network Rail to undertake the proper due diligence to assess possible impact on our infrastructure, performance or any power implications.

### Power supply

Due to the nature of power capacity Network Rail may need to impose operational restrictions on the use of electric or bi-mode trains (which follow existing procedures) and/or may need to object to the introduction of further electric/bi-mode trains where there is not the requisite power supply. Network Rail is conscious of its legal and regulatory obligations for power capacity to be allocated in a fair, open, and transparent manner and in the least restrictive way possible, always mindful of our duty of non-discrimination and equal treatment.

### Stabling

First Rail has not nominated a stabling location/depot, although has stated in the Form P that Hitachi will be responsible for the maintenance of the new units. Network Rail requires First Rail to confirm where unit maintenance will take place before we comment further.

## **Conclusion**

In this representation letter Network Rail has confirmed that it does not support this Section 17 application from First Rail for an extended TAC expiry of December 2038 or the introduction of Class 80x BEMU rolling stock from December 2028, due to power supply constraints and lack of certainty around capacity availability on the WCML beyond 2030. We have explained that Vehicle Change must be carried out before new rolling stock is added to the Specified Equipment in Schedule 5, and that we require the opportunity to analyse actual performance data of the new Euston <> Stirling/Preston services once they start running, before we can consider supporting an extension to the existing TAC.

Network Rail considers that this representation letter, coupled with the two WCML general representations dated 07 February 2025 and 25 April 2025, contain sufficient information on this application to enable ORR to make a direction.

Network Rail does not expect ORR to direct the TAC and specified equipment being sought in this application on the basis of the information provided in this representation letter. However, if ORR were to direct Network Rail and First Rail to enter into a contract, we would like the opportunity to review the terms of the contract.

Please do not hesitate to contact me if there is any further information you require.

Yours sincerely,



Lysette Rowley