

David Reed
Senior Executive, Access & Licencing
Office of Road and Rail
(by email only)

Andy Wylie
Head of Regulation & OA Contracts
First Rail

c.c. Lysette Rowley

2nd January 2026

Dear David,

First Rail Stirling Limited – Section 17 Application (New Rolling Stock)

Below are the FG comments on the NR representations

The commercial structures of the FirstGroup rail businesses are for FirstGroup to decide upon and are not relevant to this application process. Each submitted agreement is separate, even they do trade under one company brand, and for commercial reasons there is no plan to combine them into one agreement with NR.

The main barrier to entry for Open Access operators is the supply of rolling stock. In the case of new (either to route or network) rolling stock, Rolling Stock Companies and Financiers will not seriously engage with OA applicants until the Rights have been awarded.

This has been known about since the first OA application in 1999 and to avoid part F being an insurmountable barrier to entry, Rights for OA services are usually awarded by the ORR in advance of Part F being undertaken. This is allowed for in part F and I quote from the explanatory notes:

“Where a Vehicle Change is required as a result of a Change of Law or a Direction from a Competent Authority, the normal Vehicle Change procedure will be applied.”

In this case the Competent Authority is the ORR and the Vehicle Change procedure follows the awarding of Rights. It does not excuse the applicant from that process, nor the relevant compatibility processes for bringing a new vehicle type to the Network or part of the Network.

We therefore reject the charge that the Vehicle Change process has not been followed. NR is being premature in insisting that it is concluded before the awarding of Rights. Following any such ORR award, the Part F process will commence as usual.

The use of class 80x is quite deliberate in this respect as, once the real class number is handed down by the Rolling Stock Library, it will form part of the Part F process. This gives NR added protection that units cannot just operate from the awarding of rights.

An OA operator cannot extend a contract through an s.22a so this s.17 contract is designed to replace the existing contract before the commencement of operations to take advantage of a rolling stock offer. Therefore, some of the drafting of the replacement contract must reflect the reality of the current position.

The assumption that the units will be fitted with batteries “mainly for onboard services” is incorrect. These will be bi-mode units with batteries used for traction, especially in areas where the power supply is or will be restricted. That is the whole point of using batteries in this application.

We note the NW&C Strategy comments but should that strategy ever come to fruition, NR can invoke the Part J “Better Use” provisions.

As this stock is going to be built by Hitachi and they will be responsible for maintenance procurement, we will not know at this stage where it is going to be stabled. We will be responsible for daily delivery to their preferred maintenance location.

We note the NR comments about some of the drafting and once directions have been issued, we would like to discuss any necessary contract revisions with NR.

Yours Sincerely

(signed)

Andy Wylie