

Catherine Williams
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18 December 2018

Steve Tyler
Performance and Planning Director
South Western Railway
Friar's Bridge Court
41-45 Blackfriar's Road
London
SE1 8NZ

Rejection of an application made by First MTR South Western Trains Ltd (SWR) under section 17 of the Railways Act 1993

Dear Mr Tyler

1. Thank you for your letter of 26 October 2018 to Ian Williams explaining the situation regarding your application made on 25 July 2017 for a new track access contract under section 17 of the Railways Act 1993 and ongoing discussions with Network Rail. You asked for advice on how best to contractualise the access rights you have agreed with Network Rail while maintaining your application for those access rights on which you have not yet reached agreement.

2. Further to your letter, Ian met with Tony Crabtree and Kerene Raymond from SWR and Lee Shuttlewood and Alex Aitken from Network Rail on 3 December 2018 to discuss the issues further.

3. If I can summarise the current situation:

- On 25 July 2017, SWR submitted an application to ORR under section 17 for a new track access contract as it had not been able to reach agreement with Network Rail. The contract was intended to start in December 2018, which at the time of submission was the expiry date of your current contract, and extend until December 2025. It contained the rights considered necessary to meet SWR's obligations under its franchise.
- Following agreement with Network Rail, in February 2018, you submitted, and ORR approved, the extension of your current contract under section 22 to December 2019.
- I understand that you and Network Rail have agreed the timetables that will operate during the remainder of your current contract i.e. the December 2018 and May 2019 timetables.
- I also understand you are in alignment with Network Rail on the great majority of access rights from December 2019 onwards, but there are still some additional rights which you are seeking in order to meet your franchise specification which

Network Rail has not, as yet, been able to agree. You are continuing working with Network Rail to try to reach agreement on these.

- SWR now wants to contractualise what has been agreed with Network Rail beyond December 2019 without prejudicing your position in seeking those additional access rights needed in order to meet your franchise specification. You are therefore proposing to submit a section 18 application shortly and will submit a further amendment to that contract to add any additional rights later.

4. Another factor to consider is that following a public timetable consultation at the end of last year, SWR stated in its December 2018 Timetable Consultation Outcome Report that you have considered how you can adjust your original plans on your inner suburban routes and have been discussing changes to your Train Service Specification with the DfT. So, in any event, in order to reflect those changes, the specification of the rights requested from December 2019 in your section 17 application would probably also need to change. This, together with some other changes to services you have made since submitting your section 17 application means the access rights in Schedule 5 of your proposed contract are now out of date.

5. In terms of the contractual process:

- You cannot have two simultaneous applications for the same, or largely the same access rights (one under section 17 and one under section 18).
- We can only direct a new contract for you under section 17 or 18 after the expiry date of any existing contract covering the same or largely the same services.
- Under section 22, you can agree with Network Rail to make any changes including adding additional services and/or extending the duration of the contract.
- Under section 22A, we can only direct amendments to an existing contract which allows you to make 'more extensive use' of Network Rail's network, such as running additional services, during its existing term. We cannot extend the duration of a contract under s22A.

6. In these circumstances, and having consulted you on a draft of this letter, I am now formally rejecting your section 17 application submitted to ORR made on July 2017, on the grounds that:

- your current section 17 application, made 17 months ago, is now out of date;
- you have reached agreement on the great majority of access rights from December 2019 to December 2025 and wish to contractualise that agreement in the form of a new application under section 18;
- you cannot have two applications for contracts covering the same or largely the same services;
- you are continuing discussions with Network Rail on those access rights where you have not yet reached agreement; and



- once you have a new contract you will have the option of submitting an application under section 22A to add any additional access rights should you fail to reach agreement with Network Rail.

7. Rejecting your section 17 application will allow you to submit an application for a new contract under section 18 to cover the period from December 2019 to December 2025. When you are clearer on the additional rights you are seeking, and on Network Rail's final position, you can either submit an agreed amendment to that contract for approval under s22, or ask us to direct an amendment under s22A.

Yours sincerely

Catherine Williams

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