

Gordon Herbert

Executive, Track Access

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3 July 2015

Dear Andy, Wendy, Ruth

CONNECTION CONTRACTS BETWEEN NETWORK RAIL INFRASTRUCTURE LIMITED, GOVIA THAMESLINK RAILWAY LTD AND SIEMENS PLC AT THREE BRIDGES

1. On 3 July 2015 the Office of Rail Regulation approved the terms of the connection contract submitted by Network Rail Infrastructure Limited (Network Rail), Govia Thameslink Railway Limited (GTRL) and Siemens plc (Siemens) under section 18 of *The Railways Act 1993* (the Act), relating to the connections at Three Bridges Light Maintenance Depot. Please find enclosed a copy of our direction notice, directing the parties to enter into the contract.

Network Rail's submission to ORR

2. On 12 June 2015 Network Rail submitted the proposed connection contract for the new light maintenance depot at Three Bridges to us for approval under section 18 the Act.

3. The application consisted of:

- Form C.
- Proposed connection contract with plans and cost calculations.
- Comparison between the contract and ORR's model.
- Commentary on departures from ORR's model contract.
- Summary of the consultation.

The parties also kept us informed in the months leading up to their application. We are grateful to the parties for providing all this information.

Consultation

4. Network Rail conducted a pre-application consultation between 18 March and 27 April 2015, in addition to any earlier planning and network change consultations. One consultee raised some observations on the drafting and the plans and these were resolved. We are not aware of any outstanding substantive objections to the proposed connection contract.

Departures from the model contract

5. We note that whilst the starting point for the development of the connection contract was our model connection contract, there have necessarily been some departures from the model contract provisions to reflect the specific circumstances and special characteristics of the development of the connections at this facility.

Step-in rights

6. The proposed contract is a tri-partite agreement between Network Rail, GTRL and Siemens. GTRL is described as the Adjacent Facility Owner and Siemens as the Head Adjacent Facility Owner. Siemens is to be included as a party to the connection contract to enable it to have direct rights to remedy breaches by GTRL, as appropriate, and step-in and take over as Adjacent Facility Owner. It can then assign or novate the contract to another under-tenant. These are so called step-in rights. The contract deviates from ORR's model to accommodate this situation.

7. ORR accepts that in this case step-in rights can form part of the connection contract, although they are relatively unusual. The request for step-in rights reflects the franchise arrangements; the commercial position between GTRL and Siemens; and the level of new investment involved at this site. Also Network Rail, as the other party to the agreement, supported this proposition. The step-in rights do not appear to disadvantage any other third parties, especially as there are no other access beneficiaries already at the LMD.

Initial Condition Statement

8. ORR's model connection contract is drafted so that maintenance standards reflect the Initial Condition Statement (ICS) at Schedule 1. The parties have drafted the contract to have a more output based approach reflecting the nature and likely volume of traffic at this depot, as in Part 2 of Schedule 1 as well as the ICS. This approach seems reasonable and not unduly restrictive; we have no further comment on it.

Schedule 5 – Liability

9. Schedule 5 to the connection contract details limitations on liability. The parties did not fill in the liability cap for the first year in the proposed contract submitted to us. ORR's directions therefore make provision for the contract to be modified accordingly to read £750,000, as agreed with all three parties.

ORR decision

10. We consider that in this case the bespoke arrangements and changes to ORR's model contract fulfil a practical requirement.

11. This is an application under section 18 of the Act and therefore an agreed agreement between the parties who are prepared to enter into it as submitted, and as modified. We therefore expect them to be fully aware of all the rights and obligations it contains and the consequences of them.

12. In making this decision, we are satisfied that this decision reflects our duties under section 4 of the Act, in particular:

- (i) to protect the interests of users of railway assets;
- (ii) to promote the use of railway network in Great Britain for the carriage of passengers and goods and the development of that railway network, to the greatest extent economically practicable;
- (iii) to promote efficiency and economy on the part of the persons providing railway services; and
- (iv) to enable persons providing railway services to plan the future of their businesses with a reasonable degree of assurance.

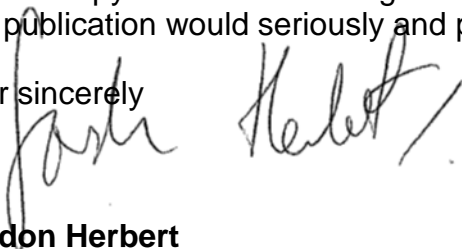
13. Once the contract is signed, in accordance with section 72(5) of the Act, you must send a copy to the ORR within 14 days and in accordance with section 72(2)(b)(iii). This will be placed on the ORR's public register.

14. In entering any provision on the register, the ORR is required to have regard to the need to exclude, as far as is practicable, the matters specified in section 71(2)(a) and (b) of the Act. These sections refer to:

- (a) any matter which relates to the affairs of an individual, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that individual; and
- (b) any matter which relates to the affairs of a particular body of persons, whether corporate or incorporate, where publication of that matter would or might, in the opinion of the ORR, seriously and prejudicially affect the interests of that body.

15. When submitting a copy of the signed contracts would you therefore please identify any matters which you would like the ORR to consider deleting from the Public Register and website copy. You will need to give reasons for each request explaining why you consider that publication would seriously and prejudicially affect your interests.

Your sincerely



Gordon Herbert