

Michael Albon
Executive, Access & Licensing
Telephone: 0207 282 3660
E-mail: michael.albon@orr.gov.uk



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Janet Turlington
Customer Manager
Network Rail Infrastructure Limited
4th Floor, George Stephenson House
Toft Green
York
YO1 6JT

Nicola Eyre
Track Access Manager
Northern Rail Limited
4th Floor, Northern House
9 Rougier Street
York YO1 6JT

Dear Janet and Nicola

Approval of the twenty-first supplemental agreement to the track access contract between Network Rail Infrastructure Limited (Network Rail) and Arriva Rail North Limited (jointly, “the parties”)

1. We have today approved the above supplemental agreement submitted to us formally on 21 June 2019 under section 22 of the Railways Act 1993 (the Act). This follows an earlier informal submission of a draft agreement for our consideration. The purpose of this letter is to set out the reasons for our decision.

2. The purpose of this agreement is to amend Paragraph 9.11 (a) of Part 2 in Schedule 7 of the parties’ Track Access Contract (TAC) to enable the parties to supplement the Traction Electricity Consumption Rates List with Class 331 retrospectively to the 2018/2019 financial year only for the purposes of the 2018/2019 Electric Current for Traction (EC4T) volume reconciliation.

3. During the 2018/2019 financial year, Arriva Rail North Limited began operating Class 331 vehicles. It was initially expected that these units would be billed based on meter readings. Consequently, a modelled consumption rate was not estimated for these vehicles. Instead, these vehicles were billed on the basis of a temporary consumption rate. Unfortunately, technical issues have prevented these vehicles from being opted-in to on-train metering. In addition, it has not been possible to estimate modelled consumption rates for these vehicles using the standard methodology due to complex technical issues.

4. No industry consultation was undertaken for the changes made under this agreement.

5. We carefully considered Network Rail's justifications to amend this provision in the parties' TAC and on balance, accepted its approach for this case. We agreed with the importance of completing the 2018/2019 volume reconciliation on time with the Traction Electricity Consumption Rates List up-to-date to ensure that no third parties would be adversely affected. We advised the parties that we would only support a contractual change that applied solely to the 2018-19 financial year. We also acknowledged that the risk of a future repeat of this case was mitigated in a change to EC4T policy for CP 6 where a default rate is being introduced for those vehicles operated on the network without a confirmed modelled rate on the Traction Electricity Consumption Rates List. For these reasons, we have agreed to this change.

6. In considering the agreement and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this supplemental agreement is consistent with our section 4 duties, in particular those relating to protecting the interests of users of railway services (section 4(1)(a)), promoting the use of the railway network for the carriage of passengers (section 4(1)(b)) and enabling persons providing railway services to plan their businesses with a reasonable degree of assurance (section 4(1)(g)).

7. 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 Train Operator. Please send the conformed copy to me at ORR.

9. Electronic copies of this letter, the approval notice and the agreement will be sent to Keith Merritt at Department for Transport and to Peter Craig at Network Rail. Copies of the approval notice and the agreement will be placed on ORR's public register (website) and copies of this letter and the agreement will be placed on the ORR website.

Yours sincerely

A handwritten signature in black ink, appearing to be 'M Albon', written in a cursive style.

Michael Albon