

Our Ref:
Your Ref:

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By Email

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Dear Bill

Application for directions: proposed 25th supplemental agreement to the track access contract between Network Rail Infrastructure Limited and Freightliner Heavy Haul Limited

Thank you for your letter of the 13th January and the enclosed representation from Network Rail Infrastructure Limited (NR). I also refer to the subsequent representations received from GB Railfreight Limited (GBRF) and DB Schenker Rail (UK) Limited (DBS). Here is our formal response to those representations.

Response to Network Rail Infrastructure Limited

We welcome NR's confirmation that there are no specific issues with the rights requested and it is only the quality of the rights that are not agreed.

Commercial Justification for Level 1 Access Rights

NR contend that the granting of Level 1 rights could require the construction of additional infrastructure to cope with further traffic growth and hinder the ability to provide capacity for new market entrants.

The services are already timetabled and running, NR in future timetables has the right to flex paths by +/- 30 minutes, as well as moving pathing and looping time to accommodate the paths. In deed the overall reduction in paths in the proposed Supplemental Agreement should have freed up capacity and provided more flexibility in future timetables. We have no expectation of new infrastructure being provided to allow existing timetabled services to run.

We disagree with NR that the Decision Criteria gives sufficient protection against a deterioration of the efficiency of a path. The Decision Criteria are inwardly conflicting and any decision about their application can only be subjective. We would not be confident in relying on the Decision Criteria in any appeal.

Overall we believe that the +/- 30 minute flex and the inbuilt pathing and looping time in freight paths (that do not apply on the same scale to passenger paths), give a reasonable balance of risk and flexibility to both freight operators and NR.

Level 1 versus Level 2 - Capacity and Timetables

Level 1 rights are more compatible with the slot process as there are clear rights linked with a slot. This is not the case with a Level 2 right, which are confused by the Cordon Caps and deleting a path does not necessarily lead to a reduction in a cordon cap.

It is a much clearer process in removing or transferring Level 1 rights between operators compared to Level 2 rights, which do not have clearly defined slots or paths attached to them.

We do not agree that the granting of Level 1 rights for freight traffic makes it harder to construct future timetables, due to the interaction with passenger services.

Generally freight paths are allowed for in the construction of a passenger timetable, and the +/- 30 minute flexing allows a freight path to be moved anytime within a standard hour.

Application of Policy and Principals

Freightliner disagrees that Level 1 rights are "overly-specified" or would "ossify" the timetable. NR has flexing rights of +/- 30 minutes and imposes significant pathing looping time in a freight path and "hard-wired" into the rights. We agreed to remove the listing of timed intermediate points in order to increase NR's ability to flex throughout the route.

We do welcome Network Rail's decision to approve the four rights as listed in the table on page 2.

Response to GB Railfreight Limited

We are pleased that GBRf supports the principal of our application.

The assertion that all the Hunterston - Drax tonnage has transferred is, at the time of writing, incorrect as Freightliner is still running trains and discussions for loading slots at Hunterston are yet to conclude. Similarly, discharge slots at Drax Power Station are to be discussed within the next 2 months and, in the absence of any formal application, the request to amend the rights table seems to be premature.

Given the foregoing, we suggest it is better to conclude the Supplemental Agreement and then deal with any path or slot transfers through Part J of the Network Code. If the rights were deleted from the application then GBRf would have to apply as new rights rather than as a transfer of rights.

Response to DB Schenker Rail (UK) Limited

We are pleased that DBS supports the principal of our application.

We note DBS's comment about the Uskmouth Power Station rights and Part J, their inclusion in the table as a "voluntary relinquishment" was an oversight. The rights had indeed been transferred to DBS in September 2013.

This concludes our response to the representations and, should you seek further clarification on any of the points made please do not hesitate to contact me.

None of this response is commercially confidential and we are happy for it to be published on your website.

Yours sincerely

Chris Wilson

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cc. Gordon Herbert Office of Rail Regulation
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