



Charging

April 2019

Introduction

1. This module explains our policy on track access charges. Access contracts should include provisions for cost recovery and securing the efficient use of network capacity, in order to facilitate better services for rail customers.

2. In the 2018 periodic review (PR18) we set the regulatory framework for control period 6 (CP6), which runs from 1 April 2019 to 31 March 2024. Our conclusions are set out in our final determination documentation¹. This document reflects the regulatory framework implemented through the track access contract as part of PR18, which included track access charges and other payments contained in Schedule 7.

Charging

3. Network Rail has a monopoly in the supply of access to its network. One of our key roles is to protect Access Beneficiaries (beneficiaries) from being charged unduly high prices for access to this network. However, we must also ensure that the access charges paid by operators are sufficient to enable Network Rail to recover the costs of operating, maintaining and renewing its network.

4. In this module we discuss charges levied via Schedule 7 as follows:

- (a) PR18 and the price lists for track access charges;
- (b) supplementing the price lists, and the role of the default rates for the variable usage charge and traction electricity charge;
- (c) the framework for paying for electricity for traction;

¹ The final determination documentation is available [here](#). However, for an overview, please see chapter 9 of '2018 Periodic review final determination – Overview of approach and decisions', ORR, October 2018, available [here](#).

- (d) opting-in to metered billing of traction electricity; and
- (e) miscellaneous issues relating to Schedule 7:
 - (i) enhancements; and
 - (ii) other charging regimes.

PR18 and the price lists for track access charges

5. Network Rail's track access charges for CP6 were established as part of PR18 and have effect from 1 April 2019. The basis on which they are charged is contractualised in Schedule 7. Network Rail describes the track access charges in its *Network Statement*².

6. The rates for individual track access charges are set out in price lists, which Network Rail published as part of PR18 implementation. These are uplifted each year for inflation using the consumer prices index (CPI)³. For ease of reference, Network Rail has committed to publishing consolidated versions of the price lists each year that reflect these uplifts⁴.

Supplementing the price lists, and the role of the default charge

7. The price lists published by Network Rail cannot be directly amended during a control period. However, there is a process within track access contracts⁵ to allow certain price lists to be 'supplemented'. This provides for a price list to be deemed to include changes, which then apply only in respect of the track access contract under which they were made (or successor contracts held by the train operator). Supplements are therefore made on a bilateral basis only and do not apply to any other track access contracts.

8. Supplements may be needed if:

- (a) rates for the vehicles being operated do not already feature in the relevant section of the Track Usage Price List or Traction Electricity Modelled Consumption Rates List;
- (b) a vehicle has been modified to reduce the damage it does to the infrastructure and it is appropriate to introduce a lower variable usage charge rate to reflect this; or
- (c) a new rate, or an amendment to an existing rate, needs to be applied in respect of an open access operator's infrastructure cost charge (ICC) on the Open Access ICC Rates List.

² See: <https://www.networkrail.co.uk/industry-commercial-partners/information-operating-companies/network-statement/>.

³ Prior to CP6, the retail prices index (RPI) was used to index charges and other arrangements.

⁴ <https://www.networkrail.co.uk/industry-commercial-partners/information-operating-companies/cp6-access-charges/>

⁵ See paragraph 9 of Schedule 7 of the model passenger contract and paragraphs 2.2.2 to 2.2.13 of the model freight contract and the model freight customer contract. The model charter contract does not include a supplements provision.

9. As charter operators are subject to generic charter prices, there are no such provisions in the charter model contract.

10. The process provides for either Network Rail or the train operator to propose a supplement to the other party. Where the parties agree on a supplement, they should submit it to us for our consent. This may be done through a jointly signed letter, submitted with appropriate supporting information. However, if the parties are unable to agree, either may refer the matter to ORR for determination. No supplement can have effect unless it has been:

(a) agreed between the parties and ORR has consented to it; or

(b) otherwise determined by ORR.

11. As a general rule, any charges that supplement the price lists should be calculated using the same methodology used to calculate the original charges as part of PR18. Network Rail has established processes for doing this. In the case of the variable usage charge, Network Rail has produced a guidance document that describes this process in detail, and prepared a CP6 variable usage charge calculator⁶. In the case of the traction electricity charge, the industry has produced a document that describes the methodology to be used to calculate new traction electricity modelled consumption rates. Any request for our consent to a supplement should be accompanied by information demonstrating that the proposed rates have been calculated correctly in accordance with these established processes. Where there is anything unusual about a proposal, we will expect the request to be accompanied by sufficient background explanation and supporting information for us to reach an informed decision.

12. Please note that supplements to the Track Usage Price List and the Open Access ICC Rates List should be calculated in 2017-18 prices. This is because both these lists were published in 2017-18 prices and the charging formulae in the track access contract uplifts the rates on these lists from 2017-18 prices to the price base for the relevant year. As supplemented rates are deemed to be included on the price list, the contract would therefore treat any supplemented rate as if it was in 2017-18 prices.

13. If a vehicle is operated on the network that does not have a corresponding rate on the Track Usage Price List, it will be subject to a default rate. The default rates are set out in the Track Usage Price List. The default rate will apply until a specific rate for the relevant vehicle is consented to or determined by ORR. As the permanent rate will almost always differ from the default rate, Network Rail must either credit the beneficiary for any earlier over-payment or the beneficiary must make good any earlier under-payment made while the default rate was being used.

⁶ Both Network Rail's CP6 variable usage charge document and its CP6 VUC calculator can be accessed at <https://www.networkrail.co.uk/industry-commercial-partners/information-operating-companies/cp6-access-charges/>.

14. Similarly, for passenger operators only, a default rate applies where a vehicle does not have a corresponding specific or generic rate on the Traction Electricity Modelled Consumption Rates List. This is discussed further in the section on traction electricity below.

15. While bilateral supplements apply only to individual track access contracts, Network Rail is required to maintain a list of the supplements that have been agreed in respect of all track access contracts⁷. This is to improve transparency but it also makes it easier for others to see if a rate has been agreed elsewhere for a particular type of vehicle. The parties to other track access contracts can then seek ORR's consent to a supplement using this rate, should it be appropriate to do so.

16. While charge rates could be applied through direct inclusion in Schedule 7, for example through a supplemental agreement, our general approach now is that, as far as possible, all rates should be included in the relevant price list or in a supplement to the relevant price list. This is to provide transparency and to avoid unnecessary bespokeing of Schedule 7.

The infrastructure cost charge for open access operators

17. The infrastructure cost charge (ICC) is designed to recover some fixed costs of using the railway from services that afford to pay. It is the blanket term used for all fixed charges and covers:

- (i) franchise services: FTAC;
- (ii) freight services: freight specific charge (FSC); and
- (iii) open access services: ICC.

18. In CP6, some open access services (or parts of services) will be subject to the ICC. This is explained in Network Rail's network statement, but set out in more detail in the October 2018 ICC conclusions document⁸ and the March 2019 ICC implementation conclusions document⁹.

The framework for paying for electricity for traction

19. The traction electricity charge is designed to recover the costs Network Rail faces in providing electricity for traction to beneficiaries. It is charged on the basis of:

- (a) modelled consumption rates;
- (b) actual consumption measured by on-train meters; or

⁷ See: <https://www.networkrail.co.uk/industry-commercial-partners/information-operating-companies/cp6-access-charges/>.

⁸ See: https://orr.gov.uk/_data/assets/pdf_file/0006/39309/pr18-final-determination-infrastructure-cost-charges-consultation-conclusions.pdf.

⁹ See: https://orr.gov.uk/_data/assets/pdf_file/0006/40677/pr18-consultation-on-open-access-infrastructure-cost-charges-implementation-conclusions.pdf.

(c) where the operator has opted-in to 'partial fleet metering' (PFM), rates derived from metered data in respect of partially metered train fleets¹⁰.

20. The Traction Electricity Rules¹¹ (TER) are the industry's rules for charging for traction electricity. These set out, for the purposes of calculating the Traction Electricity Charge:

- (a) the process for collecting electricity consumption data and other related data from metering equipment installed on trains and supplying it to Network Rail;
- (b) the rules which apply where metered data is missing or not supplied to Network Rail within the prescribed time;
- (c) provisions for applying regenerative braking discounts to modelled consumption rates for those train operators using regenerative braking;
- (d) provisions for billing on the basis of data from partially metered fleets;
- (e) the volume and cost reconciliation provisions that apply to train operators using electric traction;
- (f) other provisions relating to the procurement and billing of traction electricity;
- (g) provisions for carrying out metering and / or regenerative braking audits; and
- (h) a change process for making amendments to the TER¹².

The default rates for traction electricity

21. As mentioned above, default rates exist for passenger operators where a vehicle is operated on the network and there is not a corresponding specific or generic rate on the Traction Electricity Modelled Consumption Rates List. The default rate will apply until a specific rate for the relevant vehicle has been submitted to ORR by either party and ORR has consented to it (or determined another rate), via the bilateral supplements provision (in paragraph 9 of Part 2 of Schedule 7).

22. As the permanent rate will almost always differ from the default rate, the contract provides for the parties to apply the permanent rate retrospectively from the later of:

- (a) the date that the vehicle was first introduced on the network; and
- (b) 1 April in the relevant year in which ORR gave its consent or determined the rate.

¹⁰ For further information on opting-in to PFM and how we will consider applications for our consent, please see 'Consent to changes to the Traction Electricity Rules to allow the billing of traction electricity using partial fleet metering', ORR, January 2017, available [here](#).

¹¹ See: <https://www.networkrail.co.uk/industry-commercial-partners/information-operating-companies/on-train-metering/>.

¹² Note: ORR can also make changes to the Traction Electricity Rules as part of an access charges review through the process set out in Schedule 4A to the Railways Act 1993.

23. The 1 April cut-off point exists because Network Rail must calculate the annual volume reconciliation¹³ for modelled charges between 1 April and 30 June for the previous year. If supplements were applied prior to the current financial year, this would impact on the volume reconciliation for the previous year(s), which would have been settled or be in the process of being calculated.

24. This means there is a strong incentive on passenger operators to obtain a specific modelled rate for any new (unmetered) electric vehicle that they operate on the network.

25. It is our policy for CP6 onwards that all passenger operators with access rights to run services over electrified network should have the standard traction electricity provisions in their contracts (unless bespoke arrangements apply). This is to ensure that the default consumption rate would apply to them if they operated any electric vehicles.

Opting-in to metered billing of traction electricity

26. For passenger operators and freight operators, in order for trains to be charged on the basis of metered data rather than modelled consumption data, operators should formally notify Network Rail at least 90 days prior to their proposed opt-in date (the opt-in date would be a date agreed between the operator and Network Rail). This is to ensure that Network Rail has sufficient time to make the appropriate preparations for the transition to metering. The parties should follow the process set out in Schedule 7 of the relevant track access contract.

27. Assuming that the parties agree on the proposal to opt-in, they will need to make an amendment to Appendix 7D of Schedule 7 (in the case of passenger operators) or Appendix 3 of Schedule 7 (in the case of freight operators) to include the trains which are to be billed on the basis of metered data. This requires an industry consultation and our approval under section 22 of the Act.

28. A Railway Group Standard GM/RT2132 applies to on-train metering. Prior to CP6, there were provisions in the contracts that provided for the traction electricity charge to vary appropriately if certain aspects of GM/RT2132 had not been met. In particular, the minimum accuracy tolerance level of the meters. Aside from one case (when on-train metering first began), these were never used. For this reason, the provisions were scrapped from CP6 onwards. So, while it is very unlikely that meters/rolling stock used in CP6 will not be compliant with the standard, if this was to be the case, then a bespoke change to the Schedule 7 provisions may be appropriate.

29. Our model charter track access contract does not include on-train metering provisions in Schedule 7. If a charter operator wished to switch to metered billing for traction electricity, it and Network Rail would need to make substantive changes to their track access contract (and potentially to the TER) to provide for this.

¹³ This is to enable it to provide all relevant train operators with an invoice or credit note (as the case may be) for their share of the difference between modelled consumption already billed over the year and actual consumption.

Enhancements

30. Additional fixed charges may be incurred in relation to physical enhancements¹⁴, and these should be charged on a basis consistent with our *Policy Framework for Investments*¹⁵ and related policy documents. Our policy framework provides for efficient development and delivery of investment projects not included in a periodic review determination and sets out:

- (a) Network Rail's role and obligations and how these will be secured;
- (b) default terms (including principles for risk allocation) for carrying out investments;
- (c) specific proposals in relation to third party investments to overcome barriers caused by the impact of low-probability, high-impact risks which cannot be efficiently managed or insured; and
- (d) the remedies available when things go wrong.

31. A further type of additional fixed charge may be incurred in relation to non-infrastructure enhancements to the capacity of the network, e.g. an extension of signal box opening hours.

32. For regular scheduled passenger operators, any such 'additional charges' should be included in Part 5 of Schedule 7. We have issued a general approval¹⁶ enabling Network Rail and a train operator to agree additional charges up to £20,000 in any one year without the need for our specific approval, subject to certain conditions.

33. Prior to adding any charge to a passenger track access contract pursuant to the general approval, Network Rail must demonstrate to the train operator how the level of the charge reflects the incremental cost to it of providing the additional service (for example, extended signal box opening times). For example, by providing a cost-breakdown illustrating the composition of the different components of the proposed charge and providing reasons why these costs would be incremental to the capability for which it is already funded as part of the PR18 settlement for CP6.

34. Where a proposed additional permitted charge falls outside the scope of the general approval (for example, where it would exceed £20,000 in any one year), our specific approval will be required.

35. For freight beneficiaries, track access contracts provide for a similar type of charge, known in the contract as 'incremental costs'. These are set out in paragraph 2.8 of Schedule 7 of the model freight and freight customer track access contracts. Costs up to a cap of £300,000 can be recovered by Network Rail

¹⁴ It should be noted that enhancements might also generate additional variable charges – for example, incremental operating costs.

¹⁵ Available at: <https://orr.gov.uk/rail/investing-in-the-rail-network>.

¹⁶ See: <https://orr.gov.uk/rail/access-to-the-network/track-access/how-to-apply-for-track-access/access-for-passenger-operators>.

without ORR's involvement or approval. Enhancements which are greater than the cap can be carried out, but these would be subject to regulatory scrutiny and approval.

36. In assessing an application for our specific approval of additional charges, we will wish to understand the nature of the costs for which the beneficiary is being charged as well as details of any other beneficiaries who will benefit from the non-physical enhancement.

37. We will allow a funder to recover a fair proportion of costs incurred in funding an investment scheme where other operators benefit from the use of the enhancement (e.g. provision of additional capacity or higher gauge) by allowing the funder to apply to Network Rail to levy an additional charge on other such beneficiaries. Government funded schemes are outside the scope of the mechanism. Our approach is set out in *Proposals for a rebate mechanism for investors in large-scale enhancements – final conclusions*¹⁷.

Other charging regimes

38. We will consider any applications for proposed access contracts containing alternative charging regimes on their merits, and particularly whether the proposed regime:

- (a) properly reflects the financial position of and allocation of risk between the parties;
- (b) provides appropriate incentives and remedies for the parties; and
- (c) is consistent with the relevant requirements in The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 and other relevant legislation.

¹⁷ Available at http://orr.gov.uk/data/assets/pdf_file/0016/3832/cns-rebatemech-finconc.pdf.