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Dear John,

1. We are writing with our initial response to Network Rail's reply to your questions on capacity and infrastructure works which were circulated to us on Friday 2 October.
2. As we said in our letters to you dated 28 August and 30 September, we regard the time which you have given us to make comments on this document to be unreasonable and your imposed timescales are unrealistic and unfair. In particular, there is new information on power supply and capacity constraints off the core ECML (page 9) that required further analysis. We are therefore only able to provide you with this initial response in the time which we have had available to us, and we hereby reserve the right to make further comments by 23 October 2015.
3. The Network Rail report highlights the intractable connection between the applications which you are considering, and the Hendy review. In providing its response to you, Network Rail has assumed the infrastructure enhancements detailed within the Enhancement Delivery Plan. As you are aware, Sir Peter Hendy is reviewing the CP5 programme of enhancements and it is widely expected that the programme will be revised in both scope and timescales by Sir Peter's review. Indeed, in Sir Peter's letter to the Secretary of State (dated 29 September 2015) Sir Peter makes it clear that the unpauing of the Midland Mainline and Trans-Pennine electrification schemes "*will create a further significant spending pressure*". Network Rail's response highlights that the programme is subject to the review by Sir Peter Hendy and we repeat the point which we made in our previous correspondence that the ORR Board's decision needs to be informed by economic and performance analysis which reflects the plan endorsed by Sir Peter. This point is of course particularly significant given Network Rail's statement that these enhancements are required for 7, 7.5 and 8 tph and Network Rail's statement that they are unable to confirm at this stage whether it is possible to run 8 LDHS services even once the Connectivity outputs have been delivered (page 3). We therefore reserve the right to make further representations on capacity within 28 days of the Hendy Review being published.
4. The report provides an analysis, for the first time, of the enhancements which are required for 7 and 7.5 tph. In the time you have allowed, we have been unable to undertake a detailed review of the statements which Network Rail have made in relation to this. However it is clearly important that Network Rail demonstrates the linkage between the package of enhancements and capacity. We would also like to understand from Network Rail how the capacity constraints between Newcastle and Edinburgh have been addressed, given that their 15 May 2015 report highlighted that services to the recently-opened Tweedbank (Borders Railway) line would have to be curtailed in order to accommodate 3 LDHS services per hour.



5. With regards to power supply works, the report highlights that the power supply in the Doncaster area is a constraint to any increase in the number of electric train services. We note that the TransPennine Electrification project was intended to provide a power supply upgrade in this area to facilitate the operation of IEP trains and additional services. This timescale for this power supply upgrade has been uncertain since the pausing of TransPennine electrification in June 2015 and as Network Rail's report states further development work is required before a solution to this constraint can be identified. Given the constraints on industry funds and resources, until this information is available we do not consider that the ORR Board will have the necessary information it should properly take into account in reaching a decision on the additional access rights.
6. There are clearly a number of detailed issues in relation to the capacity constraints off the ECML and the pathing of freight services which need working through in some detail. Given the time you have allowed us to respond, we have been unable to undertake a detailed review of these elements of Network Rail's report and indeed we would suggest that these issues are best worked through jointly between Network Rail and operators to identify potential options (if any) for pathing the additional services taking into account the constraints which Network Rail has identified. The report clearly highlights that there may be potential trade-offs with service aspirations for the GTR, Northern and TransPennine franchises which may need input from other parties.
7. We note that Network Rail has been unable to make any further assessment of the performance impact of the options, given the current absence of a detailed de-conflicted timetable. We re-iterate our view expressed at the hearing and in our letter dated 28 August that further detailed performance analysis is essential in order for the ORR Board to make a safe and properly informed decision on these applications. This analysis should of course take account of the suite of enhancements which are endorsed by Hendy as deliverable.
8. In your letter to us dated 22 September, you state that ORR's duty to promote improvements in railway service performance is balanced by the ORR Board against a number of other duties when taking decisions. Whilst this is your position, in taking such a balanced decision it is clearly necessary to have available an assessment of the impact on performance - and this assessment of performance is not yet available. Given the importance of performance to customers (as we explained in our letter of 28 August) we believe that the impact of performance should be fully and properly considered by the ORR Board in reaching its decision.
9. In summary, the Network Rail report highlights that significant uncertainty still exists around the capacity and performance impact of the proposed services. Of particular concern is Network Rail's conclusion that additional capacity (for 7tph) will not be unlocked until January 2021. There is a clear link between these factors and the CH2M Hill economic analysis. Until there is more certainty of the capacity and performance outcomes, it would appear inappropriate for CH2M Hill to undertake further economic analysis and, in this regard, we ask you to review the forward process you have set out.



10. Finally we would like to draw to your attention once again that our application represents the best deal for passengers and taxpayers, delivering significant benefits to rail users and economic benefits to the regions served by our services. The aggregate Net Present Value of our proposal is £463.8m (CH2M Hill, June 2015). Our proposal is the complete package - we serve new markets and significantly improve the rail service to destinations that are currently poorly served by rail. The journey time improvements to core markets will improve our market share with air, private car and coach; whilst maintaining connectivity with intermediate destinations. We will return £3bn in franchise premium payments (as well as paying track access charges in full) helping to further reduce the burden of rail allowing the Government to invest in rail infrastructure and non profitable services.
11. We reserve the right to make further comments by 23 October 2015. We also continue to reserve our position in relation to the process and the associated deadlines.

Yours sincerely

A handwritten signature in black ink that reads "A Sparkes".

Andy Sparkes  
Business Development Director