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Office of Rail Regulation

Approved Minutes of a special ORR Board meeting held on 19 December 2007 at 11:30 at ORR's Head Office, 1 Kemble Street, London, WC2B 4AN, in accordance with paragraph 8.11 of the Rules of Procedure

Board Present:

Chris Bolt (Chairman)

Bill Emery (Chief Executive)

Michael Lee (Director, Access, Planning and Performance)

Item 1: Declarations of interest

1. There were no interests for Board members to declare relevant to the agenda.

Item 2: Network Rail's late notice proposal to extend a blockade at Rugby to include 31 December 2007

Background

2. Virgin Trains had complained to ORR about Network Rail's late-notice proposal to extend a blockade at Rugby to include 31 December 2007. They had asked ORR to take action to prevent this extension.

3. The Chief Executive wrote to Network Rail on 18 December and a copy of the text was sent to all Board members. A response was received from Network Rail on 19 December.

4. Given that Network Rail had indicated that it would notify extension of the blockade at 15:00hrs on 19 December unless action had been taken by ORR by then, and given that enforcement action by means of issuing a Provisional Order is a matter reserved to the Board, the Chairman concluded that in view of the extreme urgency of the matter the provisions of paragraph 8.11 of the Rules of Procedure should be followed.

5. In accordance with paragraph 8.11 of the Rules of Procedure, a meeting was therefore called at which three Board members, including the Chairman, were present.

Decision

6. Members of the Board present at the meeting considered two questions:

- was there sufficient evidence of a licence breach to merit enforcement action; and
- if so, should a Provisional Order (which could have immediate effect) be issued to Network Rail.

7. It was agreed that late notification of the extension of the blockade could well represent a breach of Condition 9 (Timetabling). However, Network Rail had argued that its actions were designed to meet the longer term reasonable requirements of operators and funders – in particular to support delivery of the improved West Coast timetable in December 2008 – and were therefore consistent with Condition 7 of its licence.

8. In the circumstances, and given the potential prejudice to delivery of the December 2008 timetable, the meeting concluded that it would not be appropriate to issue a Provisional Order. This was because taking the potential short and longer term consequences into account it was agreed that issuing a Provisional Order would not be acting in a manner best calculated to protect the interests of users of railway services. It was agreed that this decision would be notified to Network Rail and affected operators orally immediately following the meeting.

9. It was however also agreed that a more detailed investigation should be undertaken of the circumstances which had led to the need to extend the possession. This investigation, which would draw on the experience of the enforcement action taken in June 2007 in respect of the Portsmouth signalling scheme, would consider whether Network Rail's planning of West Coast works to deliver and maintain infrastructure improvements in support of the December 2008 timetable was consistent with the duty placed on Network Rail by Condition 7 of its licence to take such steps as are necessary or expedient so as to achieve the purpose to the greatest extent reasonably practicable having regard to all relevant circumstances.

10. Given the timescales of the West Coast project, it was agreed that this investigation should be started urgently, with a progress report to the Board's January meeting.

Chris Bolt
Chairman

Minutes approved by the Board on 22 January 2008