



Jon Clyne
Head of Financial Economics
Office of Rail Regulation
1 Waterhouse Square
138-142 Holborn
London
EC1N 2TQ

435.6/PL

Railway Industry Association

22 Headfort Place
London SW1X 7RY
United Kingdom

Telephone +44 (0) 20 7201 0777

Facsimile +44 (0) 20 7235 5777

e-mail ria@riagb.org.uk

www.riagb.org.uk

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Railway Industry Association Response to ORR's Policy Framework for Investments: An Initial Consultation - February 2005

Thank you, both for the opportunity to comment on this important consultation document and for the very useful meeting held with you and John Thomas at ORR on 12 April where we discussed a number of the issues below.

This response is in two separate sections; the first provides some background that might be helpful in putting our response into context; the second provides our detailed comments on the document itself.

I would be happy to discuss with you any part of this response if that would be helpful.

Peter Loosley
Policy Director
Railway Industry Association

Background to The Railway Industry Association's Response on ORR Policy Framework for Investments

The Railway Industry Association (RIA) represents the UK railway supply industry. Member companies are involved in, amongst other things, the provision of design services, construction work and maintenance activity to the UK railway infrastructure.

Although a large part of our Members' activity involves the renewal of the railway infrastructure (not the subject of this consultation) the investment or enhancement workload is also significant.

RIA member companies have been engaged, and hopefully will continue to be engaged, in the design and construction of investment projects on behalf of others such as Network Rail, Rail Link Engineering, Train Operators, Rail Vehicle Manufacturers, Freight Terminal Operators and Light Rail Operators. This work is frequently funded by other organisations - typically the SRA, Scottish Executive, Welsh Assembly Government or local government in one form or another.

A large part of our members' experience relates therefore to events that occur while facilitating the construction of investments rather than the funding of them. Consequently our response is more focused on the **process** involved in projects rather than the **payment** mechanism for the services, but we fully support any moves to encourage and ease the passage of investment work originating from other rail stakeholders (government, train operators etc).

Our detailed comments on the document follow.

The Railway Industry Association's Detailed Response To The ORR Policy For Framework For Investments Consultation Document

Chairman's Foreword

The Chairman's foreword describes, in the third paragraph, three concerns raised by promoters and funders of infrastructure schemes. We would like to flag up two further concerns based on members' experience and feedback from clients:-

- indecision which slows down project progress
- scope creep during the course of the project.

1. Introduction

1.7 To re-inforce the comments on the Chairman's Foreword we would suggest two further bullets:-

- The difficulties encountered in progressing the feasibility, design and approval stages of projects in a timely manner
- Many schemes have suffered from scope creep and changes in respect of those standards that are applicable to the project and the specification required for the scheme. We welcome Network Rail's recent decision normally to freeze these standards after GRIP Stage 4 and believe this will overcome the problem.

1.11 We agree that it is essential that Network Rail should grant suitably qualified and competent third parties access to its network to carry out schemes on non-discriminatory terms. We would wish this to be introduced as soon as possible.

1.21 We do not require any part of our response to remain confidential

2. Network Rail's role in investments

2.4 The UK railway experience of progressing projects efficiently and within agreed timescales is not good. The Institution of Civil Engineers ECC contract conditions (drawn up in response to the Latham report) include requirements on both contractual parties to provide information, warnings, responses and approvals within defined periods. We believe that similar requirements should be applied to rail investment projects. The following activities, as a minimum, should have clear timescales attached:-

- Responses to communication
- Provision of source records
- Provision of applicable standards
- Responses to approval requests

Any risk that Network Rail might be forced to waste time in dealing with promoters of bogus or inappropriate schemes could be avoided by clearly defining which

organisations are able to promote schemes. We believe the Office of Rail Regulation should oversee this whole process.

- 2.12 The fifth line states that ‘Schemes would be identified by Network Rail.’ We suggest that it should also be open to other organisations (TOCS, Government etc) to propose such schemes. We welcome Network Rail’s commitment to identify and deliver a series of small enhancement projects over the course of each financial year and fully support this process.
- 2.16 We see an additional area to add to Network Rail’s role:
- Pro-active assistance and facilitation
- 2.17 We believe that the advancement of identified enhancement projects, with clear benefits, should not have to wait for production of an RUS for the area in question, not least as benefits will often be substantially independent of the plausible range of RUS outcomes. Could this be confirmed please?
- 2.27-30 We would reiterate our earlier comments eg see 2.4; in all these scenarios our concerns about standards, specification and timing would need to be addressed.
- 2.34 The importance of Network Rail providing accurate, timely and detailed information on its assets cannot be over-stated.
- 2.36 Network Rail’s Code of Practice for dealings with Dependent Persons goes a long way to answering our concerns. However our experience in the real world leads us to believe that adherence to it may be patchy. We believe consideration should be given to making this Code of Practice mandatory.
- 2.51 We are asked whether or not we agree:
- with ORR’s proposed approach to securing Network Rail’s obligations in respect of investments and
 - that Network Rail has an appropriate set of incentives to facilitate and deliver investments

Evidence experienced by members strongly suggests that the incentives are not having the intended impact at the coalface – hence our concerns and suggested additions at paragraph 2.4 above. Subject to the reservations given above, we agree with the ORR approach. We believe that Network Rail as the supplier responsible for an often inappropriate (to today’s requirements) infrastructure which has suffered previously from lack of investment would welcome additional outside investment.

3. The terms on which Network Rail should carry out investments

- 3.15 We are asked whether or not we agree:
- with ORR’s proposal that, in most cases, it is appropriate for NR to offer the customer a fixed price or a target price for delivery of the required outputs – we agree.

- with ORR's proposed default allocation of risk – generally we do agree. However, whilst we understand the desire to establish 'a default allocation for key categories of risk', we are concerned that such an approach might make it possible for well-planned projects, with adequate risk mitigation built into the delivery mechanism, to in effect cross-subsidise lesser-planned, higher risk schemes. The main worry being that this could act as a perverse disincentive to the proper planning of projects at the outset. We would hope that whatever arrangements are agreed will minimise the risk of this occurring.
- 3.18 We agree that differing levels of risk in schemes should be reflected through differing levels of contingency and,
- 3.24 We are asked whether or not we agree with the ORR's proposals on risk – generally we do agree subject to the second bullet in 3.15 above.
- 3.35 You set out a number of criteria for what constitutes an efficient outcome. We agree with what you say as far as it goes, but feel that it offers insufficient assurance. For example we would also look for a transparent and competitive process and a well-planned proposal committed to suppliers in good time, with realistic programme allowances for tendering and undertaking of work.
- 3.38 With regard to ex-ante, ex-post issue we fully understand the difficulties with the ex-post approach. However, in reality, inefficiencies can arise during the implementation of a scheme – i.e. after any ex-ante assessment could have been completed - especially, for example, changes in specification and assumptions regarding possessions availability. Accordingly we would suggest that there would be benefit in ORR carrying out a small sample of ex-post assessments.
- 3.42 We are asked to comment on:
- ORR's proposal to make additions to the RAB ... - should this not read adjustments to the RAB, to allow it to go down as well as up?
 - Logging up investments – we agree
 - Conditions for efficient outcome – see 3.35 above
 - Assessing efficiencies ex ante – see 3.38 above
- 3.49 We are asked for our views on adding the written-off cost of schemes required by the Government to the RAB – we agree.
- 3.60 We agree that NR should report annually on the use of these funds and that the maximum size of the industry risk fund should be limited.