



OFFICE OF RAIL REGULATION

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Dear Stephen and Pat

Approval of a Track Access Agreement between Network Rail Infrastructure Limited and West Coast Railway Company Limited

1. The Office of Rail Regulation (ORR) has today approved the terms of the above track access contract submitted to it by Network Rail Infrastructure Limited (Network Rail) and West Coast Railway Company Limited (WCRC), under section 18 of the Railways Act 1993 (the Act) on 23 April 2007, and has directed Network Rail to enter into it. In considering the application and in reaching our decision we have had regard to our statutory duties and our criteria and procedures document¹. The purpose of this letter is to explain the reasons for our decision.

The contract

2. The contract provides WCRC with rights to operate charter passenger train services between Fort William and Mallaig ("The Jacobite" service) on specified days during the period for which the agreement is effective. The contract will come into effect on 16 May 2007 and expire on 20 October 2007.

3. The contract replicates the terms of the 2006 WCRC (Jacobite) track access agreement with the following exceptions:

(a) Schedule 5:

¹ *Criteria and procedures for the approval of passenger track access contracts: fourth edition*, Office of Rail Regulation, May 2006, available at http://www.rail-reg.gov.uk/upload/pdf/288-pass_candp4ed.pdf.

- (i) the agreement contains spot bid rights to operate services on certain Saturdays;
 - (ii) the references to the requirement for Network Rail to seek First ScotRail's consent before granting WCRC rights have been removed as they relate to the Moderation of Competition (MoC) provisions in the previous ScotRail Track Access Contract (TAC);
 - (iii) the list of Specified Equipment has been updated to reflect the withdrawal of certain locomotives and the addition of replacement locomotives;
- (b) Schedule 7: the Slot and Fire Patrol charges have been updated in line with inflation; and
- (c) Schedule 8: the financial values have been increased in line with inflation.

Consultation process

4. In considering track access applications, we make considerable efforts to ensure that our decision is consistent with our statutory duties. We therefore invited comments from the Department for Transport (the DfT), Transport Scotland, Strathclyde Partnership for Transport and Passenger Focus. In line with our policy to consult as widely as possible, we also consulted those train operators who may potentially be affected by the agreement. First ScotRail and EWS made comments.

First ScotRail

5. First ScotRail pointed out that the references in Schedule 5 to the requirement for Network Rail to seek First ScotRail's consent before granting WCRC rights related to the MoC provisions in the previous ScotRail TAC, which were not in the current ScotRail TAC, and suggested that therefore they were no longer necessary. The parties agreed that these references were no longer relevant and removed them from the version of the agreement that we have approved.

6. First ScotRail also asked for clarification as to the proposed stabling location of Fort William Yard in Schedules 2 and 5. The parties confirmed that stabling would be, as in previous years, at EWS' Fort William Tom-na-Faire Depot and amended the references to that in the version of the agreement that we have approved.

EWS

7. EWS also raised the issue of the references to stabling at Fort William Yard and said that, as the facility WCRC had used in previous years was EWS' Fort William Tom-na-Faire Depot, it believed the references in the agreement should also be to that. EWS also requested confirmation from WCRC that it was intending to use EWS' facility again this year so that a suitable access agreement could be negotiated on time to avoid any possibility of delaying commencement of operations. As referred to above, the parties have amended the references to stabling at Fort William Yard.

Our review

8. Our review of the contract did not raise any issues from a charging, operating or performance perspective. We did however suggest some minor drafting changes to the version of the agreement submitted to this office on 26 March 2007, which the parties agreed to and incorporated into a revised version submitted on 23 April 2007.

Conclusions

9. In considering the application and in reaching our decision, we have had to weigh and strike the appropriate balance in discharging our statutory duties under section 4 of the Act. We have concluded that approval of this agreement is consistent with our section 4 duties under, in particular those relating to:

- (a) promoting the use of the railway network for the carriage of passengers (section 4(1)(b)); and
- (b) enabling WCRC to plan the future of its business with a reasonable degree of assurance (section 4(1)(g)).

ORR's public register

10. We are required under section 72 of the Act to maintain a public register, which must include, inter alia, every direction to enter into an access contract and every access contract. Would you therefore please send me two copies of the signed contract no later than 14 days after the date upon which the contract is entered into, as required by section 72(5) of the Act.

11. In placing any agreement on the public register, we are required to have regard to the need for excluding, so far as that is practicable, the matters referred to in section 71(2)(a) and (b) of the Act. These cover:

- (a) any matter which relates to the affairs of the individual, where publication of that matter would or might, in our opinion, seriously and prejudicially affect the interests of that individual; and
- (b) any matter, which relates specifically to the affairs of that particular body or persons, whether corporate or incorporate, where publication of that matter would or might, in our opinion, seriously and prejudicially affects the interests of that body.

12. When you submit the copies of the signed agreement would you therefore please list any aspects of the agreement which you wish ORR to consider excluding from its register and explain why you consider they meet the requirements of sections 71(2)(a) or (b).

13. Please find enclosed a copy of the directions. Copies of this letter and the directions will be sent to Peter Painter at the DfT. Copies of the directions will be placed on our public register and this letter will be posted on the ORR website. I am copying this letter without enclosures to Steven Saunders at Network Rail, Bil McGregor at First ScotRail and Nigel Oatway at EWS.

Yours sincerely

Sam Gibbins