ATOC Response to ORR Consultation on "ORR's Sustainable Development and Environment Duties," published October 2006

ATOC welcomes this consultation and looks forward to continuing to work with ORR on the important issues of rail's sustainability and environmental impact. Rail is inherently a more sustainable form of transport and we believe that its benefits are increasingly being recognised by policymakers, but we also agree that work is needed to improve its energy efficiency and reduce its environmental impact further. Rail's green credentials are well known and we believe are vital to the search for ways of reducing the overall carbon intensity of the economy, and the Stern and Eddington Reports have helpfully laid out the evidence base supporting this.

Rail's contribution to mode shift

We think it is important at the outset to be clear that the current commercial success of both the passenger and freight businesses is playing a key role in reducing emissions from transport. Passenger traffic is increasing at about 5% per annum at present, its highest rate for many years and the sustained growth in traffic since 1994 makes the UK the fastest growing railway in Europe. Freight volume growth has been a similar story and the UK rail system is now moving the largest volumes of freight since before the recession of the early 1980s. This growth is taking pressure over both the road and air networks, both of which produce higher greenhouse gas emissions per passenger-km than rail. So, although there is no room for complacency, it should be recognised that the success that the industry is having by providing attractive services that customers want to use is playing a key role in reducing greenhouse gas emissions from transport.

In order to further improve environmental performance, the operators are working closely with Network Rail, RSSB, the ROSCOs, train manufacturers, suppliers including oil companies as well as the DfT to deliver improvements. Current examples are:

- testing of low-sulphur diesel fuel in existing rail diesel engines, in order to reduce emissions of sulphur dioxide, and examination of the use of blends of biodiesel,
- encouraging Network Rail to speed up progress on extending regenerative braking more widely, to eventually allow the over 85% of the train fleet that can regenerate to use this facility in order to reduce CO2 emissions, and
- close working between NR and train operators to develop some improved arrangements for Electric Current for Traction.

Market demand for environmental responsibility drives industry action

The consultation document points out the significant improvement in CO2 emissions and other pollutants that Government statistics say has taken place since 1990. This has taken place without any specific regulation or environmental target being applied. Such improvement gives some indication that TOCs are interested in environmental issues for their own sake rather than because legislation tells them that they must be or because of pressures to save cost. Improving environmental performance is a key element of TOCs' overall approach to corporate social responsibility and is becoming an important issue in the market place, as passengers become increasingly concerned about the sustainability of the different transport modes. Eurostar, for example, says that it is now regularly being asked by travel buyers for information on its trains'

environmental impact as part of corporate initiatives to reduce carbon impact.

More fundamentally, rail's good environmental credentials have been a key part of the equation that supports the significant public subsidy that the sector receives. Political commitment to the future long term development of rail is therefore closely connected to environmental improvement.

Specific issues

Against this background, there are eight specific points that we draw to ORR's attention arising from the consultation:

1. **Adding value when there are many actors** As the ORR document indicates, there are already a wide variety of organisations working on environmental and sustainability issues in rail, including particularly the RSSB but also more general organisations such as the Environment Agency, the Scottish Environment Protection Agency, DEFRA and the committees drawing the European Technical Standards for Interoperability (TSIs). Our view is that the field of environmental improvement is an already crowded one and the document helpfully indicates the thought that ORR is giving to identifying those areas where it can add most value rather than simply duplicating effort. We think this a central part of this consultation.
2. **Part E of the Network Code** The existing review of the Network Code encompasses Part E and we would recommend that this process continue within its present remit rather than be modified to widen its scope any further. Specifically:
   - We remain **firmly opposed to introducing any new environmental charges** through Part E, for example in relation to discharges onto ballast, because this would be double charging. The regulatory process already ensures that NR's costs are fully recovered, either through variable charges, fixed charges or (until recently) Network Grant. We therefore see no basis for levying any additional charges in CP3 and will continue to resist any continuing attempts that might be made do this.
   - In addition, we remain deeply concerned about the proposal to create an "environmental landlord" under the **Depot Access Conditions**, which we think would further confuse an already complicated area. Although operators recognise their responsibilities for discharges during their franchise periods, the proposal in effect invites them to take responsibility for earlier discharges. The oft-quoted "polluter pays" principle is of little practical value in relation to the question of responsibility for discharges by previous franchisees or that took place before privatisation. In addition, we think that the proposal would make it harder for to reach the right "whole industry" solution to investing to reduce discharges. Since NR rather than TOCs carries out investment at depots it doesn't seem to make sense to reduce in this way any responsibility from them for environmental issues.
3. **Better metrics** We support the suggestion, in Paragraph 3.24, that work be put into developing an agreed set of a "significant few" measures of rail's environmental impact. ATOC has been carrying out some in-house work, which will be published early next year, which "unscrambles" the Government's existing statistics for carbon dioxide emission from rail, using better data where available, and shows how these have changed over time. RSSB is already working on a major programme of KPIs, but as discussed at ORR's seminar we very much hope that this will result in a focussed set of key indicators that deal with the really big issues. We think that progress on these indicators might be published periodically in National Rail Trends, once suitable data sources have been developed. In relation to the mechanism by which this information should be gathered in

future, we commend the arrangements which have been in place for some time for National Rail Trends and which are supported by the Rail Statistics Steering Group the key feature of which is that they are a voluntary, rather than a compulsory, arrangement. This system is in place, respected and working and we see no need to change it.

4. **Price signals in a world of the "second best"** Consistent with our responses to the structure of charges and the incentive frameworks for CP4, we suggest that there is a need for considerable caution in relation to the use of price signals for environmental "externalities", as suggested in Paragraph 4.13. This is for two reasons:
   - Transport costs and benefits are very much a world of "second best". The way in which gains and losses are spread over users, taxpayers and society as a whole varies hugely from mode to mode. Economic theory suggests that a policy of moving in the direction of full internalisation of external costs on rail when other modes do not can lead to a worse, not a better, overall outcome for society. If rail costs are increased, then either rail fares must rise to pay for it (deterring use) or Government must increase the amount of subsidy it puts in (potentially constraining its ability to fund other benefits to society). A multi-modal approach to the internalisation of externalities is a better approach, under which those modes with high negative externalities face higher charges. We also think that ORR should examine the interactions between any new pricing system for variable access charges, the operation of the rolling stock leasing market and the franchise agreements. If both the franchise agreements and the leasing market severely constrain the ability of operators to change rolling stock (which they do in many cases), then higher variable access charges will simply provide a signal that operators cannot realistically respond to. The effect of this is that costs increase, which in the case of franchised operators would be transferred to Government via 18.1/Schedule 9, without generating extra benefits.
   - In relation to the possibility of an incentive according to **train mass**, as set out in Paragraph 4.19, this seems to us to be unnecessary given that NR is already using DfT appraisal guidance in assessing changes to train services through RUSs and through new train orders such as the InterCity Express programme. The guidance already requires an assessment of costs and benefits, both financial and social, which are incurred by all parties before decisions are taken. We think this already addresses the problem which ORR may believe exists in this area. It is also worth pointing to out that not all increase in train mass is bad. Higher quality trains (such as provision of effluent retention tanks, toilets with accessible access and better crash worthiness), offer environmental, quality and safety advantages but, of course, have higher mass..
5. **Practical decisions are often about tradeoffs between environmental disbenefits.** Experience has shown us that it is important to understand in more detail some of the tradeoffs involved when it comes to environmental issues. Rail produces a wide range of environmental disbenefits – such as greenhouse gas emissions, noise, particulates, visual intrusion and loss of farmland and open space when new lines are built -- and it is seldom the case that all of these can be improved in the same direction at once. Action to reduce sulphur emissions, for example, will increase the volume of fuel that needs to be burned. Electrification improves air quality locally, but at the expense of the visual intrusion of overhead structures. Increasing train frequencies to encourage mode shift can lead (if mitigation is not put in place) to an overall increase in noise. On the other hand, the current programme to re-engine HSTs will lead to both a reduction in particulate emissions and an improvement in fuel economy reflecting advances in technology. Our experience, however, is that tradeoffs are crucial and we would suggest that ORR pay particular attention to these.
6. **Clarify what a review of environmental policy statements is designed to achieve.** Although we agree, as set out in Paragraph 3.27 *et seq*, that the TOCs' environmental

policy statements could be usefully refreshed in the light of the experience of the last decade since they were first completed, it would be unhelpful if doing so allowed unrealistic expectations to develop.

- In our view, the pace of environmental improvement in the rail sector is being driven by the operators' awareness of public concerns, together with the ability of the supply chain, both in terms of infrastructure and rolling stock to improve it. Within this, the ability of the public sector to help unlock rolling stock investment to replace older fleets is also a key factor. Any review should essentially be concerned with pulling together in one place information on what operators are already doing on environment rather than raising the bar simply to demonstrate progress.
- We would also question the value of a requirement to produce an annual report on operators' sustainable development activities and on monitoring of performance against KPIs. If there is a desire for such a requirement, we think this would fit more naturally into the franchise agreement, in relation to franchised passenger operators. Once again, however, we caution that improvement on emissions from trains is closely linked to the development of the rolling stock market and that operators' flexibility to lease different trains, whether new or old, is often limited in practice.

7. **Avoid greening all ORR activities simply for completeness.** Finally, we would suggest caution about an approach under which the environment might be perceived as being added essentially "for completeness" on to each of the areas of ORR activity.
   - We see little value in adding any additional "green" element to the RUS process. Government appraisal guidelines already call for environmental disbenefits from interventions to be measured and, where possible, valued. Although this is often a tricky process, we do not see any pressing need to change the existing ORR guidance on the point. Equally, where infill electrification is proposed, which we think would offer significant benefits in some areas of the country in improving local air quality and reducing fleet sizes, reduced greenhouse gas emissions should already be being factored into appraisals. When considering its approach, we hope that the ORR considers, in line with its Corporate Strategy, the value of focusing its work on the significant issues where can have greatest impact.
   - That said, we believe that ORR should get more involved in issues in relation to the current EU requirement to carry out noise mapping and with measures to reduce water pollution under the Water Framework Directive. These could generate significant costs to NR and ORR will probably need to form a view on them in PR08.
8. In relation to **EC4T**, in Paragraph 4.31. we are working closely with NR on this at the moment, in particular the whole industry benefits of moving to a system in which NR acts as a purchasing agent on behalf of operators rather than as a remote wholesale procurer as at present. As we indicated in our response to the summer consultation on this, we do not see a justification for mandatory on-train metering. There is certainly value in further "sample" metering of vehicles and perhaps fleets so as to understand knowledge about fleet usage and the influence that driver behaviour and route regulation play in reducing consumption. We have activities on this underway at present. And much better use could be made of the existed "lineside" metering, both in this regard and to improve the quality of the "wash-up" process. But a requirement for on-train metering would be expensive to discharge and we do not think it would be cost effective.

ATOC
22 December 2006

Response on behalf of ATOC in relation to paragraphs 3.36 to 3.41 of the ORR's Sustainable Development and Environment Duties – a Consultation Document

1 This paper sets out the response on behalf of ATOC to paragraphs 3.36 to 3.41 of the ORR's Sustainable Development and Environment Duties – a Consultation Document, which paragraphs relate to the access regime.

2 ATOC confirms that the operation of Part E of the Network Code has been reviewed by the Network Code Industry Steering Group. A large measure of agreement has been achieved by the industry parties concerned regarding the terms of Part E. Some minor revisions have been proposed to clarify the principles of fair apportionment of liability between parties which would accord with practices already established.

3 ATOC would however note that the manner of application of Part E and any ongoing changes to Part E must take account of the wider charging arrangements within the industry. In particular "the polluter pays" principle should not apply to establish a double payment under Part E, where the industry charging arrangements have already taken account of the costs associated with relevant cleaning up. So for example where an additional charge is applied in respect of spillages from coal wagons, there should not be an additional liability under Part E for the same spillage.

4 This same argument applies in relation to the other consequences of the operation of railway vehicles, in accordance with the permission to use granted under the relevant track access contract. The consequences of the normal operation of railway vehicles should be addressed through the track access charges paid in respect of that operation. Part E should apply to address environmental damage when this is not a consequence of the normal operation of the railway in accordance with the contractual rights of the parties concerned. It is not desirable that there might otherwise be two streams of charging for normal railway operation, with Part E charges applying alongside other track access charges.

5 This has implications in relation to the future review of charges. It may be helpful for there to be further clarity on the elements of normal railway operation covered by the range of track access charges, so that the point at which additional costs may be recovered under Part E is made more certain.