

Terms of reference for ORR's investigation into Network Rail's planning and delivery of enhancement projects

ORR's letter to Network Rail (NR) dated 31 March 2015 gave formal notice of the above investigation and the context and areas of focus. Due to a number of other enhancement-related reviews currently being carried out by DfT and NR, this document supplements ORR's letter and clarifies the purpose and scope of this investigation.

Purpose

To establish whether NR is doing everything reasonably practicable to meet its licence obligations in relation to achieving its regulated outputs for CP5. This investigation concerns the planning, management and delivery of the enhancements projects in NR's Enhancements Delivery Plan. The investigation will also establish if there is evidence of systemic weaknesses relating to these regulated outputs.

Scope

The investigation will focus on NR's enhancements obligations in four main areas where we have already raised concerns:

- a) project development (including estimating costs, assessing risks and ensuring safety by design);
- b) project delivery;
- c) delivering major complex programmes (such as Great Western Route Modernisation); and
- d) management of the CP5 investment portfolio.

These are expanded below.

Project Development

This is a broad area and there is evidence supporting our concerns in four areas of project development:-

1. Late completion of project development. For projects in development, where the regulated milestone is GRIP3 (single option selection), NR has missed over 30% of its milestone dates so far in CP5
2. Inadequate risk assessments during project development identified through our inspections on Safety by Design. We have served two safety Improvement Notices on Great Western projects because NR failed to carry out sufficient assessments of health and safety risks to passengers and staff from the introduction of new infrastructure. Although we have dealt with this through our safety powers, NR has been slow to incorporate the principles of the latest statutory requirements on risk assessment into its safety management system and this is leading to inefficiencies and abortive costs.
3. Unreliable capture of relevant legislation and standards revealed by our assessment of projects under Interoperability Regulations: Recent

authorisation submissions show NR does not have a process which ensures all the relevant legal requirements are identified and understood at the outset of a project. Over the past year submissions for authorisation have been late, incomplete and have resulted in conditional approval or rejection. We have issued safety enforcement notices on 2 out of 5 projects authorised and we have recently rejected NR's authorisation submission for Northwest Electrification Phase 2a

4. Cost escalation during project development: we are seeing substantial cost escalation across a range of projects through the ECAM process, where project cost estimates submitted to us after GRIP3 have significantly escalated compared to the time of the Strategic Business Plan. Although this may reaffirm that the SBP enhancements submission was very poor, we are concerned that NR does not appear to have the processes and skills in place to measure, value and manage project costs throughout the lifecycle.

Project Delivery

- For project completion milestones, by the end of February 2015, NR had missed over one third of its completion milestones so far in CP5. There have been several reasons for late delivery; including over-optimistic planning, poor management of contractors and projects not taking into account asset condition. Looking forward, of the remaining 94 regulated milestones for project completion in CP5, ORR considers that over 30% are at risk of being delivered late.

Delivering major complex programmes

- There are several complex major programmes in CP5 involving significant route upgrade work that needs to be coordinated with new franchises, major timetable recasts and new or cascaded rolling stock. NR has a critical role in these cross industry programmes, but it does not have a framework or programme lifecycle setting out how NR should be organised, governed and managed. Each major NR scheme appears to start from a 'blank piece of paper', with assumptions not adequately tested by timetable and performance modelling before infrastructure requirements are set; the management of programme-wide risks, assumptions and interdependencies are developed too late. Programmes in this category include Great Western Route Modernisation, North of England Programme (LNW), Northern Programme (Yorkshire), and the Midland Mainline Programme (MML), East Coast Mainline, East West Rail, Edinburgh to Glasgow Improvement Programme.

Management of the CP5 Investment Portfolio

- We have raised concerns that NR may only be managing at project level, with little evidence of portfolio management in terms of efficiency, risks, costs, affordability, value for money and overall schedule. We are concerned that NR may be missing the opportunity to deliver the enhancements programme for the most efficient cost, as it is not yet managing across the portfolio. We would expect NR to set efficiency targets, and balance risk and contingency across the portfolio. To date we have had very little evidence of portfolio cost reporting from NR.

Methodology

We will use internal evidence gathered in the course of our regulatory functions and we will engage further with NR, funders and a selection of train operators.

There will be an initial planning meeting with NR to address any issues arising from this terms of reference. There will then be four subsequent stages of the investigation as follows:

Step 1. Define the problem by clearly identifying our concerns

- We will collate internal evidence that we have gathered in the course of our regulatory duties. This will clearly define the areas we are expecting NR to improve.
- We will consult with affected TOCs and FOCs to get their views of whether there are any other areas that needed addressing.

Step 2. Engage with NR

- We will share the outcome of step 1 to give NR the opportunity to challenge factual accuracy. This should inform NR of the issues we are expecting its improvement plan to address
- We will share our criteria against which we will assess NR's improvement plan

Step 3. NR to explain the scope of its current improvement plan

- We will review and highlight any gaps in NR's plans
- NR will have an opportunity to explain how it is addressing any perceived gaps, or how it proposes to deal with the gaps

Step 4. Conclude whether NR is doing everything reasonably practicable

- we will assess whether NR has:
 - a sufficiently finalised plan in place that adequately addresses the issues:-
 - clearly identified work-streams with specific and time-bound actions for deliverables
 - identified who is responsible and accountable for each work-stream and allocated appropriate resource
 - identified the intended benefits of each work-stream, and explained the governance process so that progress can be tracked and assured
- We will finalise our Evidence pack and make recommendations to the ORR Regulatory Interventions Committee on whether any further regulatory action is needed

Our assessment of the above matters will help us to identify whether there is evidence of systemic failures in NR's planning and delivery of enhancement projects i.e. caused by common weaknesses or isolated circumstances. If any issues are judged to be systemic, we would expect NR's remedial actions in its improvement plan to treat them accordingly.

Investigation team

This investigation is led by Alan Price, Director Railway Planning and Performance, supported by ORR experts across the office.

How the investigation will be conducted

In carrying out its investigation ORR expects to draw upon information and reviews already carried out internally as part of its usual regulatory roles. The review will engage primarily with NR and draw heavily on the NR NED review as well as effected TOCs and FOCs.

Timescales

The ORR aims to complete the investigation by the end of May 2015. It will then consider the investigation findings and decide the next steps in line with its economic enforcement process and policy. As part of these considerations, ORR will decide whether there are grounds to issue a case to answer letter to NR and then will make recommendations to ORR's Board on any licence breach, and if appropriate, enforcement action.