



OFFICE OF RAIL REGULATION

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15 October 2013

Group Company Secretary
Network Rail Infrastructure Limited
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ORR consent under network licence condition 5

1. On 9 October 2013, Network Rail Infrastructure Limited (Network Rail) applied to the Office of Rail Regulation for consent under condition 5.1 of its network licence to an arrangement under which Network Rail would hire an infrastructure monitoring train to the Severn Valley Railway (SVR). The hire, scheduled for 6 January 2014, would enable SVR to carry out ultrasonic testing of its network. Network Rail's letter of application is at Annex A.
2. The arrangement would entail the licence holder having an interest in the ownership or operation of a railway vehicle in Great Britain, not used in the operation of Network Rail's own network. This would contravene condition 5 of its network licence.
3. We note that the short-term arrangements proposed by Network Rail do not raise vertical integration issues for us to consider. We also note Network Rail's statement that the proposed vehicle hire would present no risk to Network Rail's activity.
4. On the basis of the application and having had regard to our duties under section 4 of the Railways Act 1993, we consent for the purposes of condition 5.1 of the network licence to the licence holder entering into the proposed arrangement.
5. We may at any time modify or revoke this consent after consulting you if it appears to us to be requisite or expedient to do so, having regard to our duties.

A handwritten signature in black ink that reads 'Robert M Plaskitt'. The signature is written in a cursive style with a large, stylized 'P'.

Rob Plaskitt



Les Waters
Licensing and Network Regulation
Office of Rail Regulation
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09 October 2013

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Dear Les

Track recording train hire to Severn Valley Railway – consent under licence condition 5

Network Rail has recently been approached by Severn Valley Railway, a heritage railway company which runs services between Bridgnorth and Kidderminster. Severn Valley Railway has requested the use of an infrastructure monitoring train on its infrastructure for approximately 3 hours on 6 January 2014. This will enable ultrasonic testing of its network.

Network Rail has a fleet of infrastructure monitoring trains used for technical inspection, one of which finishes a shift on Network Rail's network in Kidderminster on 6 January 2014 at the point where Severn Valley Railway's network connects to our network. Network Rail has determined that this service could therefore be added onto the end of the shift at no risk to Network Rail activity.

It is proposed that the infrastructure monitoring train and associated services will be provided to Severn Valley Railway on normal commercial terms. There will be no traction costs, given that the vehicle will already be at the location.

Subject to obtaining regulatory consent, Network Rail intends to provide this vehicle to Severn Valley Railway on 6 January 2014.

Licence Condition 5 implications

Licence Condition 5 does not permit Network Rail, without ORR's consent, to be directly or indirectly interested in the ownership or operation of any railway vehicle unless it is used in the operation of the network. We recognise that the above proposal will mean Network Rail will have an interest in the ownership of a railway vehicle not being used in the operation of the network whilst it is engaged in the proposed activity.

Network Rail will be responsible for the insurance of its vehicles whilst it is being used for the proposed purpose and will keep in full force appropriate insurance covering against the

physical loss or damage to the locomotive on an all risks basis. This will include keeping in full force and effect for the duration of the service agreement, insurance of not less than:

- a) £10 million or any higher amount required to comply with applicable local regulatory insurance requirements against liabilities for death or personal injury to any persons arising out of the use or operation of the vehicle and against liabilities for loss of or damage to any property arising out of the use or operation of the vehicle; and
- b) £5 million in respect of Employers' Liability insurance; and such other insurance cover as shall be necessary to cover any other risks Severn Valley Railway is accepting under the terms of the proposed agreement.

Accordingly, and on the basis as outlined above, Network Rail believes that it has taken all such steps as are appropriate to protect its legal interest in the vehicle.

Licence Condition 4 implications

As you will be aware LC4 prohibits Network Rail (except with the written consent of ORR) from conducting any business other than the Permitted Business (effectively operating and maintaining the network).

ORR has previously determined in relation to the supply of railway vehicles and services to a third party when they are not required by Network Rail, that this activity is not included in the definition of Permitted Business although such an activity would be permissible if carried on with consent or within our *de minimis* facility under licence condition 4.

It is our intention that the proposed use of this vehicle will be carried out under the *de minimis* facility, and tracked as a 'turnover' activity. For the avoidance of doubt, Network Rail's actual 'investment' costs under the *de minimis* facility will be negligible - the only costs to Network Rail being the staff costs of working up this transaction with Severn Valley Railway and obtaining the necessary regulatory consent. These costs will also be tracked.

I look forward to hearing from you once you have had the opportunity to consider this application. Should you have any questions please do not hesitate to contact me.

Yours sincerely



Laura Evans
Planning & Regulation Assistant