

By email

1 November 2024

Dear colleague

### **Rail network capacity allocation (access rights) for December 2024 to December 2025**

1. In ORR's [letter of 24 April 2024](#) I requested applicants submit applications for additional capacity in specific locations by 20 May 2024. The response by all applicants was constructive and achieved the desired objective of providing a clear demand for capacity use across the entire rail network.
2. To comply with our duties and ensure a fair process ORR has followed established procedures and guidance which supported the approach in the letter of 24 April. The aim of this process is to provide a consistent and transparent basis for Network Rail and applicants to assess the demands on capacity use. This includes expecting that *“applications received by 20 May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them.”*

### **Existing applications and new/amended demands for rights extending beyond December 2025**

3. In my industry-wide monthly meetings on the role of ORR in the process I have recognised that operators have increasingly been considering whether to make changes to their applications. Some applicants have already approached ORR or Network Rail regarding potential changes to the applications for rights which extend beyond December 2025.
4. Our position on changes, which I set out in further detail below, is in line with requests for additional capacity in the ORR letter dated 24 April. That letter stated:  
*“ORR plans to approve or direct access applications received after 20 May in the identified locations for December 2024, May and December 2025 only where there is clear evidence they do not interact/conflict with the applications which have already been received. **It is therefore less likely** that we will be able to assess*

*and determine applications for additional capacity in the identified locations received after 20 May, for inclusion in timetables before the end of 2025.”*

### **Changes which impact on capacity use/interact with other applications**

5. Applicants considering changes to applications made on or before 20 May 2024 must discuss the change with Network Rail. Any change which impacts on capacity use or interacts with other existing applications is likely to materially impact Network Rail and other operators' plans. We will require clear evidence on whether a change would be material or not from both parties to understand when those changes can be considered.
6. Our understanding, based on discussions with Network Rail, is that accepting material changes to submitted applications which impact or interact on other operators would delay Network Rail processes in its published plan. For Network Rail, operators and ORR to comply with their legal responsibilities all operators would need to have the same opportunity to change their applications. Where changes were material, this would require new consultations to ensure transparency. This would likely unreasonably delay the process of reviewing and deciding on the capacity use requested in the submitted applications.
7. For this reason, in my industry-wide monthly meetings I have repeated the fact it may not be possible to consider changes to applications before decisions are reached on those submitted by 20 May 2024. For the avoidance of doubt, **where changes are made to applications which change the use of capacity or interact with existing applications in the process, it is likely the changes will only be considered following decisions on applications which were submitted by 20 May.**
8. It is therefore for operators to consider whether the changes (new requests) are more significant to their overall operations than the capacity requested by 20 May. Alternatively, operators may want to consider whether a separate application for the new request, to be considered at a later date, is more appropriate.
9. The two exceptions to this position, which are based on there being no negative impact on the available capacity, are set out below.

### **Reductions in use of capacity**

10. Where applicants want to reduce rights within their applications ORR will consider these changes to applications. This is because the reduction should not negatively impact on the capacity available for other operators and should make Network Rail's analysis of available capacity easier. Any such reduction in rights should not have consequential amendments on capacity use.
11. We will also consider changes to 'push back' the proposed start dates of rights as long as the overall timescale of rights is within the envelope of the original

application. This is because the change is within the dates consulted on, and therefore the change will not adversely impact other applicants.

12. Where applicants want to remove rights or push back proposed start dates in their applications, we would encourage them to put these changes in writing to us and Network Rail at the earliest opportunity.

### **Errors**

13. We are aware that some applicants have identified errors in elements of their applications. Correcting these “errors” must not adversely impact on the use of capacity, otherwise they would be classified as a new application.
14. If there are discrepancies between the rights requested in the Form P/F and the draft contract or supplemental agreement as submitted by 20 May 2024, then subject to it not adversely impacting capacity use, it is in the interest of consistency and clarity these documents can be corrected.
15. Applicants should contact us and Network Rail at the earliest opportunity to correct the necessary documentation and ensure that the correct rights are being considered and assessed.
16. If the error is that *existing* rights were not properly identified in the application documentation, then these can also be accommodated in the process, because the process outlined on 24 April applies to applications for *additional* rights.

### **Process**

17. We require Network Rail to transparently and clearly communicate what rights it is assessing in the analysis it is conducting to reach its decisions. As part of this it will need to demonstrate to ORR how it has treated existing applications and any changes fairly and consistently. Given Network Rail is conducting analysis based on ongoing conversations with applicants, we expect it to keep an audit trail with justifications for including changes requested. This will support Network Rail and applicants making their case on whether changes are material or not to ORR.
18. Where updates to applications are made under the “reduction in use of capacity” or “errors” criteria we will publish updated documentation (Form P/F and draft contracts/supplemental agreements) on our competing applications webpage.
19. We are keeping the application process under review and while acknowledging the Network Rail plan, the ORR continues to look for opportunities where it can make decisions in accordance with timelines as set out in the [31 July letter](#). Following the introduction of the 15 December 2024 timetable, ORR will review the best way to progress applications for May 2025, December 2025 and future timetables. We will continue to communicate this review through the monthly briefings and in writing to industry parties.



20. We are committed to keeping applicants and stakeholders updated on the progress of this programme of work and ensuring transparency through publication of regular information on our website. This letter will be published on the ORR website. [Competing track access applications for 2024 and 2025 timetable changes | Office of Rail and Road \(orr.gov.uk\)](#).

Yours sincerely

**Gareth Clancy**