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By email only

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**Network Rail Representations for the proposed Section 17 application for proposed Track Access Contract between Network Rail Infrastructure Limited and East Coast Trains Limited North West Services (Lumo NW)**

As directed in your letter dated 30 May 2024, Network Rail is making its representations in respect of a Section 17 for a proposed track access contract between Network Rail Infrastructure Limited (we) and Lumo NW.

In line with ORR's letter of 24 April 2024 to the industry on 'Competing and/or complex track access applications for December 2024, May 2025 and December 2025 timetable changes', Lumo NW submitted this application to the ORR on the 16 May as a S.17.

Your letter made clear to industry that "We expect applications received by 20 May 2024 to be of sufficient quality, completeness, and certainty to enable Network Rail, industry and ORR to assess them. A prerequisite for achieving this is that applicants will have discussed their plans with, and sourced information from Network Rail before submission (in line with our guidance)."

It further "...requested that Network Rail produces a high-level plan by 05 June 2024 for ORR and industry. This will set out when it will produce its robust assessment for the applications submitted by 20 May 2024."

Network Rail fulfilled this request on the 05 June 2024 outlining the plan for undertaking capacity and performance assessments to inform both Network Rail and the ORR on the applications received.

That response should be considered alongside this Representation.

In particular, it should be noted as indicated therein that:

- due to the unprecedented scale of 83 unsupported applications received at one point in time, Capacity Planning plan to phase its analysis,
- assessments will initially focus on applications and geography which do not overlap with the ongoing ECML ESG Development work to mitigate the risk of redundant analysis,
- all ECML ESG related applications will be considered following decisions as to the implementation of the ESG Timetable,

As we set out in the High-Level Plan; “Only those rights which potentially interact, contain the required level of information to inform assessments, were discussed with Network Rail and are intended for the next three timetable changes will be considered by Network Rail.” and that “Applications consisting of rights for geography not impacted or for later timetable changes should be considered separately.”

These factors have shaped the anticipated plan for submission of evidence related to this and other applications.

Whilst Network Rail was made aware by Lumo NW that they would be applying for the proposed access rights as requested in ORR’s letter, Network Rail has not yet had an opportunity to fully consider its position on this application and whether it can eventually support the proposed access rights.

ORR, in its invitation to NR to make written representations, expects that NR will:

- include all of the necessary information for ORR to take an informed decision; or
- to refer to all of the necessary analyses and the confirmed timelines Network Rail requires to reach its decision on the application. This should include the “5 June 2024 capacity analysis” and any other analysis Network Rail needs to complete;
- recognise which other applications within the published list of “20 May 2024 applications” could interact with each application.
- Confirm any interested persons name(s) or confirm there are no interested persons.

Network Rail can confirm that we will not be able to in this representation provide all the necessary information for ORR to make an informed decision at this point in time. However, in this representation we will address each of the points above as well as provide:

- provide an initial view of the application Form P and Track Access Contract;
- where applicable, highlight if Network Rail believes that some of the access rights sought are outside the scope of the ORR’s letter dated 24 April 2024;
- an indication of how Network Rail will be able to provide its final representations and any intermediate representations so that ORR will then have all relevant information from Network Rail to assist ORR in making an informed decision.

### **Interested Person(s)**

Network Rail is not aware of any persons who would fall within the definition of “Interested Person” in paragraph 1 of Schedule 4 of the Railways Act 1993 in relation to the application made by Lumo NW.

### **Keeping you informed**

As stated in the letter to the ORR on the 05 June 2024 “The plan will need to be flexible and reviewed through the process to consider industry decisions in relation to the ECML ESG along with potentially other changing industry priorities and requirements. For example, recommendations from the East Coast Task Force may impact on industry resources, in particular timetabling resource. This could require changes to the remaining stages of the plan, including impacting when analysis can be completed.”

Please note although this application does not directly interact on the ECML, any decisions relating to the ECML could have consequential impacts on capacity and performance in relation to this application. This is particularly relevant for locations used by services which cross NR Route boundaries.

In the letter we also stated “We propose establishing a change control mechanism to track changes in the plan, when and where required, to retain transparency and clarity. This may also lead to consequential changes to anticipated dates of any resulting representations planned by our customer teams.” Where such changes in timeline occur, we will notify you of any impacts on expected content, volume or timing of forthcoming information.

Where there are capacity or performance aspects of this application that will not be addressed through the High-Level plan (due to lack of necessary information as indicated by ORR, or due to the focused areas of analysis being provided by the High-Level Plan we will discuss below how we propose to provide the necessary information that will be required by ORR to take a decision.

### **Summary of Rights Sought**

In their application and as a high-level summary Lumo NW are seeking a Track Access Contract via a S.17 with the following access rights to commence from 2027 (unspecified timetable) to 2037 (unspecified timetable):

- 6 trains per day in each direction between London Euston and Rochdale
- The calling pattern is: London Euston, Warrington Bank Quay, Newton-le-Willows, Eccles, Manchester Victoria, Rochdale
- With the aspiration of using “battery-electric 125mph Rolling Stock” to operate the services

Industry Consultation for this application commenced on 24/05/2024 and concluded on 24/06/2024. Some consultees have asked for additional time which has not been agreed yet.

### **The High-Level Plan and Dependencies**

The High-Level Plan submitted on June 5, and our additional engagement with Capacity Planning indicates that the following phases may be relevant for this application:

- Phase 1 - Collation and Scoping
- Phase 2 - Risk Identification for application
- Phase 3 - Production Development Period for SCD 2025 aspirations
- Phase 4a – ECML confirmation for December 2025
- Phase 4b – ECML confirmation for May 2025
- Phase 5 – December 2025 Production Period

This along with the interacting applications matrix in Annex B, should support Network Rail to in considering application and interacting location dependencies.

We are mindful that the High-Level Plan and its analysis, or other issues indicated, may identify dependencies, risks or changes in risk profiles that could require revision or further review of individual responses. We also note the 05 June plan does not guarantee that analysis will not have to continue beyond the timetable development process. Where this is the case we will communicate with the Operator and ORR.

As stated later in this letter, if interactions occur at different points in time, i.e. different Timetable Change Dates then this could have an impact on when Network Rail will be able to submit its position with regards to the application.

#### **Common route / regional identified considerations / constraints**

This request for rights covers a point in the network where it has been identified at a regional level that more than one application should be considered by ORR at the same time as any one decision would restrict the ability to accommodate other requests due to the items listed in Annex A. The other affected operators' applications are set out in Annex B.

#### **Network Review of Form P and associated documents**

Network Rail has performed an initial assessment of the Form P and associated documents submitted with this application.

Network Rail would like to highlight the following:

#### **The Specified Equipment**

Lumo stated in their submitted documentation that they would like to use “new build battery electric 125mph rolling stock with performance capabilities comparable to the new Class 803 trains that Lumo have been operating since 2021”.<sup>1</sup>

We would ask Lumo to engage with us on commissioning works to deliver the required capability and to undertake the Route Clearance processes. Lumo should commission a full gauging study from a recognized gauging company for the complete route which could take a few months – depending on the availability of external suppliers – and then a complete compatibility analysis.

We request that Lumo include the correct Specified Equipment in the Track Access Contract, once

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<sup>1</sup> East Coast Trains Limited (North West Services), *Application to the Office of Rail and Road for a Passenger Track Access Contract, or an Amendment to an Existing Contract*, p. 4, 16 May 2024.

identified.

### Investment Conditions

We note Lumo referenced rolling stock investments in their Form P.<sup>2</sup> We would be interested in understanding the specific investments being proposed by Lumo, the timescales involved and funding requirements.

### Track Access Contract

Network Rail has performed an initial assessment of the Form P and associated documents submitted with this application.

Network Rail would like to highlight the following:

### Track Access Contract

Key findings from the submitted Track Access Contract which the ORR and the applicant need to take into consideration and are as follows:

- *Contract commencement vs Service Commencement*
  - We assume the applicant may plan to undertake driver training and testing before the services commence. However, there is no indication from the applicant when the Contract will need to commence from as a minimum, in order to allow this testing / training to be undertaken. The ORR may wish to seek assurances from the applicant as to whether the proposed commencement date of the services are realistic considering the rolling stock has not yet been confirmed, driver training / testing will need to commence by the end of this year and the necessary vehicle and route acceptance to be obtained in time.
  - Conditions Precedent to Clause 5 to be added – a date of when the driver training and testing needs to be provided by the applicant.
  - The Expiry Date and the Longstop Date would need to be added.
- *Schedule 3*
  - Network Rail's Managed Stations need to be specified under clause 1.
- *Schedule 5*
  - 'Morning Peak', 'Evening Peak' and 'Off Peak Times' references should be removed from Table 2.1.

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<sup>2</sup> Ibid., p. 4.

- A footnote should be added to table 2.1 for the Passenger Train slots to commence in the proposed timetable change.
  - Driver training and testing sub paragraphs should be added to paragraph 2.7 to allow for driver training and testing noting that the Firm Rights are dated to commence in the proposed timetable change.
  - In Specified Equipment 5.1, Network Rail would like the applicant to add a specific rolling stock class once they know what rolling stock they will be operating but prior to the Contract commencing.
- *Schedules 4 & 8*
    - We would like to propose the inclusion of a Schedule 11 which will be a ‘Relevant Schedule 4 and 8 Modifications’. This is to allow Network Rail and the applicant to capture the required data once the services commence and then undertake a Schedule 8 recalibration. Network Rail invites the applicant to agree a ‘Start Date’ and ‘Backstop Date’ as required in this schedule.

As stated, these are the high-level points made in the review of the Track Access Contract and therefore Network Rail invites ORR and the applicant to review and take into consideration this document as part of Network Rail’s representations.

Network Rail in its initial review of the Application Form and associated documents, believe the rights sought are not in line with the specific request ORR’s letter dated 24th April 2024 which “sets out how we plan to make our decisions on “additional or amended services for the December 2024, May 2025 and December 2025 timetable changes applications”.

In its application, the access rights sought are not in line with the ORR’s letter dated 24 April 2024, i.e. December 2024, May 2025 and December 2025. The Operator is seeking their proposed rights to commence in 2027 (unspecified timetable). Assessments could commence for these proposed rights after Phase 5 is completed.

Although the access rights proposed for Lumo NW are not in line with the ORR’s letter for Timetable Change Dates, Network Rail recognises that the access rights sought are similar to that of another Operators Application submitted as part of 20 May 2024. Therefore, the assessment undertaken for the other Operator may be applicable to Lumo NW and could provide the information required for ORR to decide on this application. If this is not the case, then assessments could commence for these proposed rights after the assessments for the December 2024, May 2025 and December 2025 applications are complete.

**Network Rail’s Initial Position on the Access Rights Sought prior to necessary assessments being completed in line with the plan**

Network Rail has made every attempt in their initial assessment of the Application received to be able to inform the ORR of any early positions it might have on the access rights sought. Network Rail has a number of assessments and analysis that needs to be undertaken to inform a position whether Network Rail supports or not the Application that has been submitted by Lumo NW (detailed later in the letter). We do not have an initial view on the access rights sought by Lumo NW.

### **Possible Interactions with Other Applications from 20th May 2024**

As requested in ORR's invitation for NR to make written representations to this application, Annex B to this letter shows where this application could interact with each of the "20 May 2024 Applications" at the previously identified locations.

Please note if the interactions occur at different points in time, i.e. different Timetable Change Dates, then this will have an impact on the dates that Network Rail will be able to submit its position with regards to the application. I.e. if the application submitted for Operator A is to commence December 2024 and there are no concerns or conflicts that does not mean that when Operator B's aspirations are considered which start in May 2025 that both will be able to be accommodated and therefore Network Rail will have to see the outputs of the capacity assessments for the May 2025 Timetable for Operator B before they can give a final position on Operator A's application.

### **Allowing business continuity while preserving freedom of action for ORR in taking its decision**

Our letter of 05 June 2024 stated that in this interim period Network Rail will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.

We note that some operators have split their applications across different timetable periods, which already provides ORR with the ability to deal specifically with the nearer-term applications now, whereas others have combined different timetable periods in a single application.

Should ORR wish to make a single decision on each application it has received, without breaking that application into parts, then, where a single application has been made relating to multiple timetable periods, there is a risk that rights might not be available in time for an operator to commence services as early as it would like, given the need for all of the information set out in our plans to be available in order for decisions to be made relating to those future timetables.

Where paths associated with some of the quantum rights in this application are included in a New Working Timetable issued under the Network Code Part D process, then Network Rail proposes to work with the applicant on these elements of the application. Our aim, subject to normal governance processes, would be to potentially agree a new s22 application for contingent, time-limited rights for that timetable period with no presumption of continuity – in line with the approach that ORR has supported for applications on the East Coast Main Line in recent years.

This would enable you to reserve your position on future capacity choices, allowing decisions that relate to a later timetable period to be made simultaneously, while making effective use of the railway network in the earlier timetable periods.

### **Conclusion**

Network Rail is aware that this representation letter does not contain all the information needed for this application for the ORR to make a decision.

As explained in our letter of 5th June, these representations letters were mostly expected to reserve our position pending the outcome of the capacity and performance assessments. We are also mindful that the plan and its analysis may identify dependencies, risks or changes in risk profiles that could

require revision or further review of this response. However, we hope that the plans we provided give you the reassurance that we will assess this application to inform Network Rail's position in a later representation in line with the plan and letter. In addition, Network Rail wants to give the ORR the confidence that we have made every effort in this letter to give any initial views where we can.

Network Rail asks that while we carry out our assessments, ORR progresses with its own assessments wherever possible to assist in making early decisions/ descoping the scale of applications requiring assessment from Network Rail. Additionally, where we have deemed an application for December 2024 or May 2025 to be unready in the initial representations in this letter, we ask that this be descoped from the analysis requirements as quickly as possible.

Network Rail will continue to keep ORR sighted on the progress of the plan for this application.

Yours sincerely,

Gianmaria Cutrupi

Aspirant Open Access Operators Manager

Network Rail



**Annex A – Plan for Information / Analysis / Assessment**

<b>Details of Information / Analysis / Assessment</b>	<b>NOTES</b>	
<b><i>High Level Phases from 5th June Plan</i></b>		
Phase 1 Collation & Scoping	Please see the June 5 Letter for details.	
Phase 2 Risk Identification for May 2025	Please see the June 5 Letter for details.	
Phase 3 May 2025 Production Development Period	Please see the June 5 Letter for details.	
Phase 4a - (ECML confirmed for December 2025) – focusing on December 2025	Please see the June 5 Letter for details.	
Phase 4b - (ECML confirmed for May 2025) – focussing on December 2025	Please see the June 5 Letter for details.	
Phase 5 – December 2025 Production Period	Please see the June 5 Letter for details.	
<b><i>Further Route / Function Analysis / Assessments / Information</i></b>		
Freight & Customer Considerations		Further details of assessment to be carried out found in Appendix A
North West & Central Region Considerations	Informed by Regional / Route plans	Further details of assessment to be carried out found in Appendix B

**Appendices for Annex A****Appendix A: Freight & Customer Considerations**

<i>Assessment</i>	<i>Detail</i>
<b>Review of Aspirational paths</b>	This proposed Track Access Contract contains a number of Access Rights for aspirational capacity. Where this is the case, we are working through the detail to understand the impact on the network from a safety and operational point of view. In line with CP7 freight growth targets, we are committed to securing capacity in the timetable for future use. Where capacity and suitable capability can be identified, we will consider applications for the Sale of Access Rights.

**Appendix B: North West & Central Region Considerations**

North West and Central (NW&C) Region has several large enhancement projects taking place including TransPennine Route Upgrade, HS2 and Midlands Rail Hub impacting long term capacity utilisation for which we will give consideration to when reviewing this application once all the necessary assessments have been completed and Network Rail is able to collectively assess the risks and impact this application may have.

In addition to the key interacting locations specified in ORR's letter of 24 April 2024, Network Rail is also aware of other locations for which there are potentially interacting aspirations and capacity constraints. This includes but is not limited to Manchester and the surrounding area, Crewe, and the Wolverhampton corridor. During our assessment of the applications we will be paying particular attention to both the locations identified in ORR's letter and those named above.

In preparation of the December 2022 timetable, Network Rail formed industry workstreams to undertake a strategic review of capacity utilisation on both the West Coast Mainline South and Manchester area including the Castlefield corridor and Manchester Victoria. A separate industry working group (managed under the governance of the Grand Rail Collaboration) assessed options for the service structure on the Wolverhampton – Coventry route through Birmingham New Street. The timetable today still reflects this structure, and the outputs produced for December 2022, which were supported by the industry, remains the strategic plan for capacity utilisation and will help us in assessing this and the other applications.

As ORR is aware passenger flow at London Euston is currently a concern, with the region having been issued an improvement notice in October 2023 in relation to passenger surges and overcrowding. Network Rail therefore intends to undertake an assessment based on the quantum of services within the December 2022 Concept Train Plan. There also remains a restricted number of platforms at London Euston, with no funded plans to reintroduce a 17th and 18th platform. Passenger flow is primarily focused on number of passengers at a station at a given time, with arrivals and departures rather than requiring knowledge of origin or destination. It will therefore be possible to achieve a good understanding of the risk profile based on the quantum of services and associated passenger numbers within the Concept Train Plan, forming a basis which will allow for qualitative assessment of any differences to inform ORR in its decision.

A key consideration included in the plan within Annex A is regarding power supply on NW&C. As previously informed, NW&C has several areas of concern with regards to power supply. For any application utilising electric traction, it is our intention to model the outputs of the capacity assessment to understand the power supply risk both during normal working and in N-1 conditions. In carrying out traction power modelling, NW&C region adheres to the requirements stipulated in NR/L1/ELP/27000 "Policy Requirements for Electrical Power Assets". This policy states that the electrical power supply system shall have sufficient redundancy to support the peak timetable with one key piece of equipment out of service (known as N-1). In addition to fulfilling Network Rail policy requirements, maintaining the required N-1 redundancy levels in the traction power network supports adherence to contractual, performance and safety targets.

In order to accurately assess power supply it is key that we understand any Empty Coaching Stock moves. We will be requesting this information separately from operators if it was not previously supplied as part of the 20 May applications.

We will undertake internal consultation of the application following our usual business practices however as a result of ORR letter of 24 April 2024 NW&C has 55 application which it must consider. Therefore our internal consultation will be over a longer period of time, and this has been allowed for in the plan.

Power supply and route performance assessments require additional subject matter support from third party organisations and therefore whilst we have included anticipated timescales within the plan these are currently subject to confirmation.

The current number of new applications received at this point in time is unprecedented, with 83 new applications received. Of these, 55 are seeking capacity on NW&C Region. This volume of simultaneous applications on NW&C Region, with this number of interactions to analyse, involves a level of complexity not previously experienced. As we move through the complexities of assessing the applications the plan may necessarily need to be reviewed and revised.

As stated in our letter of 5 June 2024 to the ORR “Throughout the rights assessment work phases Network Rail intends to communicate with ORR on progress and provide collated information against individual applications as they are assessed through the plan. The intention is to enable decisions during the process, where possible, rather than await a fully completed package of work considering all in-scope applications.”

We also recognised in our letter of 5 June 2024 that “this approach will have to balance the need for business continuity, so that current services may continue to operate and timetable changes can be made when there is low risk of negative outcomes for passengers and freight users, with the need to avoid prejudicial decisions that could unduly favour one party where aspirations interact.”

NW&C Plan

OFFICIAL

TASK	ASSIGNED TO	
<b>Capacity Assessment</b>		
High Level Plan provided 05 June 2024		
Collating & Scoping	System Operator - CP	Please see June 5 letter for details
Phase 2 Timetable Risk Identification May'25	System Operator - CP	Please see June 5 letter for details
Phase 3 May'2025 Production Development Period	System Operator - CP	Please see June 5 letter for details
Phase 4a ECML confirmed Dec'25 Dec'25 assessment against May'25	System Operator - CP	Please see June 5 letter for details
Phase 4b Dec'25 assessment ECML confirmed May'25	System Operator - CP	Please see June 5 letter for details
Phase 5 december 2025 Production period	System Operator- CP	Please see June 5 letter for details
Other Capacity assessment		
2022 Strategic plan capacity assessment	Regional Timetable Team	
<b>Risk Identification</b>		
May'25 TP-Hazid passenger applications	Regional Timetable Team	
TP-Hazid Upto and including May'25 freight applications	Regional Timetable Team	
May'25 TP RAM - all applications	Regional Timetable Team	
Dec'25 TP Hazid - all applications	Regional Timetable Team	
Dec'25 TP -RAM - all applications	Regional Timetable Team	
Internal consultation of applications	F&A Team	
<b>Planned Assessments</b>		
Ped flow assessment of Euston Station	Station Capacity Team	
Level Crossing assessment		
Mapping of number of services to each ELR	Regional Timetable/F&A team	
ALCRM modelling/assessment	LCM	
ALCRM modelling/assessment - May'25	LCM	
ALCRM modelling/assessment - Dec'25	LCM	
Power Supply Modelling		
Phase 1: Build baseline model		
Phase 2: Navitas provide modelling for baseline model	Asset Management	
Phase 3: Assess baseline + Proposed services	Asset Management	
Phase 4: May'25 Production Development Timetable	Asset Management	
Phase 5:N-1 assessment	Asset Management	
Phase 6: Impact assessment + mitigation assessment	Asset Management	
Phase 6: Re-create modelling CIF file based on Dec'24 actuals	Asset Management	
Phase 7: Dec'25 Production Development Timetable	Asset Management	
Phase 8:N-1 assessment	Asset Management	
Phase 9: Impact assessment + mitigation assessment	Asset Management	
Performance Analysis		
Phase 1: Internal review of existing data	Route performance teams	
Phase 2: Performance assessment of May'25 decisions	Route performance teams	
Phase 3: Performance assessment of Dec'25 decisions	Route performance teams	
<b>Governance</b>		
Potential representations for Dec'24		
Draft Letter	F&A team	
Internal Review	F& A Team	
SOAR review and approval	F&A Team	
Submit to ORR	F&A Team	
Final representations:		
Draft letter	F&A team	
Internal Review	F&A team	
Internal Consultation	F&A team	
SOAR review and approval	F&A team	
Submit to ORR	F&A team	

