

7 February 2025

Gareth Clancy
Head of Access and Licensing
Office of Rail and Road (ORR)
25 Cabot Square
London
E14 4QZ

By email: [REDACTED]

Dear Gareth,

Ref DfT response: Live Open Access applications

We are writing in reply to the Department for Transport's letter to you of 4 February 2025 outlining their response to the consultation on the Open Access applications submitted in Spring 2024 from our East Coast Trains (ECTL) Lumo and Hull Trains companies. The DfT's response followed the Secretary of State for Transport's letter on 6 January 2025, which stated her expectations for Open Access.

We welcome the statements made by the Secretary of State for Transport ("SoS") and other representatives of the DfT, recognising the many benefits that can be provided by open access, opening up new markets, driving innovation and fostering competition. In addition we would note that ORR's careful exercise of its regulatory powers to approve open access operations has helped to provide businesses with the confidence to make significant investment in the industry and wider communities. Our recent order for a fleet of Hitachi trains that will be produced in Newton Aycliffe, celebrated by the Prime Minister and Secretary of State for Transport in December 2024. The Chancellor is also supportive, saying that she was "pleased" about our order of Hitachi trains for our open access services, and that it was something that "means a lot" to her.

We consider that the history of Open Access applications and operations bears out this positive view and that, in reality, successful applications granted by the ORR have universally resulted in service and performance enhancement, higher standards and greater ridership without significant capacity or revenue abstractive outcomes. While we note DfT's concern regarding the public purse and potential abstraction in this respect, the actual experience of Open Access operations is that such concerns have largely been unfounded and that ORR's independent assessment approach and robust application of the Not Primarily Abstractive Test ("NPAT") in line with SoS' formal guidance has been successful in ensuring this is the case. ORR's research conducted by Systra (*Open access: research on historic generation and abstraction - 2024*) published prior to Christmas supports this conclusion.

We are now in the 25th year of Open Access services in the UK with no real-life examples of track capacity, performance or abstraction risks manifesting themselves. There is strong evidence to the

contrary that shows that – despite early opposition from the DfT – Lumo, Hull Trains and Grand Central have all been successful for passengers and co-exist with other operators on their routes without issue. This all stands to support the success of the independent decision making of the regulator in relation to such applications, ensuring the efficient use of track capacity, greater benefits for passengers, and value for the taxpayer.

We consequently do not accept that DfT's concerns (generally in relation to the suite of Open Access applications on which it comments in its letter or specifically in relation to Lumo and Hull Trains) are well founded or evidenced. The independent exercise of decision making which ORR must undertake must, of course, be evidence based and conducted according to the law and published policies. As such, while DfT is properly a key stakeholder whose submissions must properly be considered, ORR's decision making (as a public law matter) must be based upon the evidence submitted by all parties and cannot unduly be influenced by any one stakeholders' views.

While we provide a number of high level responses below to the points raised in DfT's letter, we are continuing to review the detail of DfT's comments and reserve the right to respond further to them if required. In this respect we would welcome, in particular, any direction from ORR on matters which ORR considers it would benefit from further evidence from us (if any). Having said that, it appears that DfT's submissions are largely unsupported by the evidence and we anticipate that the detail of our track access applications, supported by modelling conducted in accordance with industry leading standards, will be sufficient to allay the concerns raised by the DfT.

High Level comments on DfT's concerns

Before addressing the specific access applications on which DfT comment, we note an overarching point concerning the modelling assumptions which DfT's letter appears to rely upon. While we have not seen the detail of DfT's economic analysis to comment on, and would (like ORR) need to do so in order to fully address the points made, it is our understanding that DfT has quoted many of its assumptions based on NPA ratios and that the DfT has only undertaken MOIRA modelling. We do not believe that this will take account of under-served markets getting significant improvements in service, and, additionally, does not take into account any economic benefits. Our applications are proposed to connect a series of under-served towns and cities that need a bespoke modelling approach to understand how new markets respond to having a direct rail service. We have provided such modelling with our applications which we consider to be more reliable than the approach apparently taken by DfT.

We also note that our proposals are expected to generate significant modal shift, and deliver considerable carbon savings. Lumo has helped drive modal shift between Edinburgh and London, with rail now close to a 50% share of the rail air market, up from c. 35% in 2019 prior to Lumo launch. These do not appear to be taken into account by DfT.

ECTL (Lumo) 11th Supplemental Agreement - an additional service between London Kings Cross and Newcastle

- This is one return service, not "services" as quoted in the DfT consultation response.
- This service has been comfortably included in all recent versions of Network Rail's East Coast 'ESG' timetable and performance modelling in both directions, demonstrating that there are no capacity constraints on the ECML or performance risks in respect of these paths (and none

have been raised to us by Network Rail), including with the re-instatement of CrossCountry services between Newcastle and Reading and the additional LNER services.

- Robust plans exist for both platforming and stabling.

We believe, especially given Network Rail's inclusion of these paths in their December 2025 East Coast ESG timetable and the track record of Lumo as a catalyst for growth for all long-distance ECML operators, including LNER, that there is no case to oppose this application for a small increase to Lumo's timetable which has been welcomed by stakeholders in the North East.

ECTL (Lumo) 12th Supplemental Agreement - extension of services from Newcastle/Edinburgh to Glasgow

- This application does not assume that the 11th Supplemental Agreement (see above) is approved, as has been mischaracterised in the DfT's response.
- We are unclear how an extension of existing services from Edinburgh to Glasgow could have an impact on capacity constraints at London Kings Cross and Newcastle
- The extensions would see no change to our existing services from London to Edinburgh, so there is no "potential detrimental impact that additional Open Access services would have on performance"
- This application has been developed with strong stakeholder input from Transport Scotland, who have indicated their support for our proposals (in addition to political support from across the Scottish Government)
- The times and paths for this extension have been developed with Network Rail Scotland and do not conflict with CrossCountry investigating options to reinstate former service extensions between Glasgow and Edinburgh.

Lumo has a strong evidence base of the benefits it has brought to Edinburgh, and this extension would deliver the same for Glasgow. These service plans have been developed in collaboration and with the support of Transport Scotland, including joint working with Network Rail Scotland, and have very strong stakeholder support. They will also help restore connectivity lost following the recent withdrawal of LNER services to Glasgow. We would encourage you to seek detailed input from Scottish Government colleagues.

East Coast Trains Limited North West (Lumo), Section 17 – new services between London Euston and Rochdale

- We would call into question the validity of the data provided by DfT that our Rochdale to London service would only generate £760k of new revenue generated (with an NPA of 0.14) when the service will provide 1.6m people a more convenient direct service to London than today. Our view of the use of MOIRA modelling has already been set out (and is well substantiated by the more detailed modelling that ORR undertakes, and its own review of this in the Systra report published in December 2024). Our revenue and demand modelling has been undertaken by WSP and Winder Phillips, industry experts in this field, and have used Industry best practice to ensure we have a fully calibrated model that reflects passenger behaviour from improvements in rail services.
- As the DfT have referred to there will be a considerable Infrastructure Capacity Charge that Lumo would pay (c. £5m per annum), and this needs to be included in the NPA calculation.

Even with an unrealistic small amount of generation being quoted, the application would still exceed the 0.3 NPA benchmark.

- The suggestion that “paths sought by Lumo do not account for the work of the Manchester Task Force” is inaccurate. We have had detailed dialogue with Transport for Greater Manchester and have flexed our plans to work around future aspirations for rail services in the region. This work is dynamic and can accommodate the impacts to capacity and diversions necessary during the Transpennine Route Upgrade and other committed RNEP projects affecting both Manchester Victoria (we are not proposing to serve Piccadilly) and the route via Rochdale.
- We have undertaken detailed performance modelling work using Trenolab, a respected supplier to Network Rail, to ensure that our services can be accommodated and do not cause performance risks. This has been shared with Network Rail, with no immediate issues raised.
- Trenolab also undertook detail performance modelling for Manchester Victoria, and provided to TfGM a timetable for their Golborne service aspirations, thus, clearly demonstrating how the Lumo service would work with TfGM aspirations.
- In respect of the cited performance challenges on the WCML, this view seems at odds with the stance taken for another application on the WCML (Wrexham, Shropshire and Midlands Railway). We cannot understand the inconsistent view taken for both applications, and wish to reassure all stakeholders of our robust performance modelling (on which there has been positive and proactive engagement with Network Rail too).
- HS2 is no longer planned to serve the North West, so our service would help deliver additional capacity and support regional connectivity in lieu of this. Our train plan works on an ‘as is’ basis today, so any additional capacity released on the south end of the WCML as a result of HS2 would still be available for uses such as freight, as cited by the DfT.
- We have undertaken detailed power supply modelling on the WCML noting, as DfT set out, that it is already a significant issue with systems currently operating at very near capacity. Dialogue on this matter remains ongoing with Network Rail, and we have multiple options on traction power for our proposed train fleet, so it is wrong for the DfT to take as final the view that Network Rail “have asserted that they are unable to accommodate short-term committed electric traction uplifts on the WCML without compromising performance”.

There are significant wider economic growth benefits that this new route would bring in terms of employment, connectivity and investment. This service would connect the Atom Valley – a major innovation cluster – as well as connecting Parkside Freeport in Newton-le-Willows with London. Arup, a leading consultancy, undertook an independent evaluation of the potential economic benefits, and calculated that there could be £345-£480m of economic benefit from the service. Plus, there would also be the additional benefit of a further order for new trains from Hitachi at Newton Aycliffe.

As you will have seen the application has very strong stakeholder support, and it builds upon the strong track record of Lumo on the East Coast Mainline in delivering journey and revenue growth that benefits all long-distance operators on the core route, including the DfT managed dominant operator, LNER. This application has the potential to replicate this success on the West Coast Mainline in a way that will benefit both the communities served, and the wider railway.

Hull Trains 29th Supplemental Agreement - additional service between London Kings Cross and Hull

- This application for an additional single return journey is part of the ongoing 25-year growth story of Hull Trains who have successfully provided better connections to a previously poorly served part of the UK and have grown rail journeys on the route. This additional return path

will help the metro area of Hull and its 0.5m population have a direct train to London every two hours to bring them closer to being served in a comparable manner to other cities of this scale.

- One direction of this return path has already been included and published by Network Rail in its December 2025 ESG timetable and modelling, indicating that there aren't any known performance or capacity restraints.
- At this point we are unaware of any further Railsys modelling undertaken for the December 2025 timetable which suggests that additional paths beyond those already agreed that would have direct performance impacts. Indeed, our own performance modelling through Trenolab shows that they can be comfortably accommodated and, that the return leg would actually help ease platform capacity and bottlenecks at King's Cross by getting a train out of the congested area quicker and earlier than the current offering. The investment case for the East Coast timetable was based on £1.2bn of infrastructure improvements that were undertaken in order to deliver more services, better performance and improved reliability, so it is surprising that this investment is not being fully realised by the DfT.

Hull Trains 27th Supplemental Agreement – two return journeys Kings Cross-Sheffield via Retford, Worksop and Woodhouse

- We welcome the DfT recognising that these proposals would bring certain benefits for passengers, such as new direct links between Worksop and London, as well as introducing greater competition and choice.
- We again stress the need to apply a modelling approach that captures the full extent of modal shift, particularly given that Woodhouse and Worksop are seeing direct rail services to London introduced. We commissioned WSP and Winder Phillips to build a modelling suite that uses industry best practice to forecast the demand response to this new service.
- We have undertaken detailed train path and performance analysis through Trenolab (a recognised and respected Network Rail provider) which does include CrossCountry's restoration of services between Reading and Newcastle.
- There are significant wider economic growth benefits that this new route would bring in terms of employment, connectivity and investment. The application has very strong stakeholder support, and it builds upon the successful track record of Hull Trains and Lumo on the East Coast Mainline in delivering journey and revenue growth that benefits all long-distance operators on the core route, including the DfT managed dominant operator, LNER. This application has the potential to replicate that well demonstrated success for Sheffield, and, provide much needed new connections for Worksop and Woodhouse that will benefit both the communities served and the wider railway.

In summary, our companies only submit what we believe are strong applications which have been well stress-tested in respect of network capacity, performance and economics, and our 25 year history in Open Access has demonstrated our success in this area.

Our applications have a very strong alignment to the Government's aspirations for private sector investment, delivering improved connectivity and driving economic growth. They build upon a successful track record in these areas, and robust evidence based on outcomes, along with strong stakeholder support.

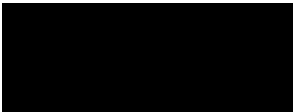
The Government is encouraging the private sector to deliver for the UK economy and the communities we serve, many of which are in the North and will see further much needed regional

benefits. The Secretary of State for Transport has said that she recognises the benefits that can be provided by Open Access operators in the right circumstances and that both existing and new Open Access operators can open up new markets, drive innovation and offer choice to passengers. We consider that our applications do so.

We would be grateful if the ORR would take this response into consideration when reviewing the DfT's submissions and, in the event that queries arise or remain in relation to any of the points DfT raises, identify them to us such that we can provide a fully evidenced response.

In the meantime we continue to review the detail of the DfT submission and reserve the right to write further in relation to it if necessary.

Yours sincerely,

A black rectangular redaction box covering the signature of Stuart Jones.

Stuart Jones
First Rail Open Access Commercial Director

cc. Joe Hickey, DfT 