Direct Rail Services Limited
Safe Secure Reliable

Ben Worley Esq.
Senior Regulatory Economist
Network Rail
Kings Place
90 York Way
London
N1 9AG

08th March 2013

Dear Ben

Direct Rail Services would like to respond to the Network Rail consultation on the phasing in of the freight-specific charge, applying the variable usage charge cap, updating the estimate of freight avoidable costs and updating / phasing in the freight-only line charge dated 8th February 2013.
We also appreciate the one week extension to the response deadline in order to allow us to consult further with our customers.
DRS have no issues with this response being published on the web.

Comments

DRS have serious misgivings over the competence of NWR to manage their accounts regarding the following extracts from the consultation letter.

'As part of this letter we would like to highlight an apparent significant error that has recently come to light in relation to the current freight-only line charge rate for spent nuclear fuel.

As part of the work that we have recently completed in order to develop the SBP income forecast, it emerged that the income that we have received through the spent nuclear fuel freight-only line charge is materially lower than that forecast by Network Rail and ORR in PR08. In fact, in the first three years of CP4 we received £0.25m, compared to the £1.87m forecast in ORR's PR08 final determination (nominal prices).

We believe that this under-recovery of income is a result of an error in the calculation of the spent nuclear fuel freight-only line charge rate in PR08. In order to recover the £1.87m (nominal prices) spent nuclear fuel income forecast in the first three years of CP4, charge rates would have had to have been approximately 7-8 times higher than the determined rates.

We also note that operators have benefitted from paying materially understated charges in CP4.'

We would like to understand how NWR have deduced that ‘operators’ have benefitted from paying materially understated charges.

In reality this has caused DRS to vastly underestimate it’s pricing to its customers and then attempting to recover 3 years of error from our customers.

Given the magnitude of this error we are again concerned that there is no attempt of an apology as this recovery will impact on our budget and our customer’s budget as we go forward and ultimately this bill will land at the tax payer’s door.

A similar error scaled to other operators could have dire consequences to their business.

We recognise that NWR are trying to cushion the recovery by phasing it in in line with ORR recommendation of phasing in the Freight Specific charges.

The signal that this sends however is that the ORR and NWR must now realise the potential damage to the freight industry if these charges were cumulatively levied from the start of CP5 and if this is so then this surely must be contradictory to the ORR regulatory obligations in maintaining a sustainable freight sector.

Our customer’s comments (with some slight editing)

“As I have stated on many occasion, there seems little point in ORR levying these charges on Magnox as it simply moves money from one Government department to another. The reality is, funding for these extra costs will need to be provided by the NDA which means the equivalent value of nuclear decommissioning will not be undertaken until those funds can be found.

I am particularly astounded that ORR / Network can recover historic under recovery of their costs (they got their sums wrong!) by imposing extortionate future surcharges that could not have been foreseen by Magnox and therefore do not feature in future budgets.

Response to specific consultation questions

Consultation question 1
What is your view on the illustrative profile of the FSC shown in Table 2, above (i.e. 0% in years one and two, 20% in year three, 60% in year four and a 100% of the charge in year five of CP5)? Ans. ‘The ORR has determined that the FSC should be phased in gradually during CP5 to allow businesses time to adapt to it.’ Refer to above comments and we would suggest that the level of charges is hardly in keeping with the McNulty report and the secretary of state’s interim submission of 7th December 2010 in which he said “I am also clear that the changes the study is proposing must protect the interests of freight operators on the network.”

Consultation question 2
What is your view on the illustrative profile of the spent nuclear fuel freight-only line charge rate shown in Table 3, above (i.e. retain the current rate for years one and two, 20% in year three, 60% in year four and a 100% of the charge in year five of CP5)? Ans. We find it incredulous that this nuclear charge rate error went unnoticed for three years and now we have to explain to our customers that due to a NWR error that the charge rate will increase from £**5.76** at 2014/15 to £**41.52** at 2018/19 with NWR magnanimously proposing to phase the charge in 'to provide the industry time to prepare for it.'

Consultation question 3
What is your view on how we have calculated initial CP5 freight-only line charge rates for ESI coal and spent nuclear fuel? Ans. "The cost estimates that we provided to L.E.K. were based on Initial Industry Plan (IIP) cost data, which was the latest available at the time. Based on this cost data we estimated charge rates for ESI coal and spent nuclear fuel of £0.68 and £41.52 per kgtm respectively (2012/13 prices and end CP5 efficiency)." We believe that the above should reflect that the NWR under recovery of the nuclear charge rate in CP4 is contained within the nuclear rate of £41.52 and that this figure should be shown separately in table 4. We also have concerns that the term of 'refinement of costs' inevitably means further increases and that the track access charges collectively have become a runaway train.

Consultation question 4
What is your view on the illustrative profile shown in Table 5, above, for iron ore and potentially biomass freight-only line charges during CP5 (i.e. 0% for years one and two, 20% in year three, 60% in year four and a 100% of the charge in year five of CP5)? Ans. Whilst DRS do not currently operate in the bio mass or iron ore markets we would reiterate that if the charges have to be phased in then they are too much and we have concern of the impact of these charges for freight funders, investors, operators, their customers and the wider industries.

John McGuinness
Industry Policy Advisor

Tel: 01228 406632
Mobile: 07880 502383
E-mail: john.mcguinness@drsl.co.uk

Direct Rail Services Limited
Kingmoor TMD
Etterby Road
Carlisle
CA3 9NZ