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OFFICE OF RAIL REGULATION

26 April 2013

**Paul Plummer,**  
**Group Strategy Director**  
Network Rail  
Kings Place  
90 York Way  
London N1 9AG

Dear Paul

### **Preparing CP5 price lists for the variable usage charge (VUC)**

You have just published draft CP5 price lists for the VUC. We understand that you have done so on the basis of the PR08 methodology for apportioning variable usage costs to individual vehicles, thereby discarding the equivalent research that you have carried out for PR13.

We are not completely clear what your reasons are for delaying implementation of your research until at least CP6 although we understand they are not technical. A reason you gave for the delay in your December 2012 consultation on the VUC was that "freight operators may consider that they require more time to better understand the underlying analysis". However, as freight operators have been involved in the work on apportioning variable costs since March 2012 and have had a draft of the Serco findings on vertical track damage since October 2012, we are not persuaded that this is a valid reason. In your April 2013 conclusions on the VUC you state that the implementation of Serco "would cause too much 'price turbulence' for the market to bear", but the legal wording on "market can bear" does not apply to the VUC, which must reflect cost directly incurred.

Without valid reasoning to the contrary, we consider that disregarding research that improves the cost reflectivity of charges is inconsistent with the charging objectives that we have set you and inhibits us from being able to assess the most appropriate charging package for CP5. In doing this, as part of our application of the legal framework including our statutory duties, we will consider the impacts of any changes in estimates of the VUC, alongside any changes in other costs directly incurred, on passenger operators, freight operators and their customers, reflecting this in our decision as appropriate.

In light of our responsibility under the Railways Infrastructure (Access and Management) Regulations 2005 to ensure that the charges that you impose in CP5 comply with the charging framework and rules that we have set, please provide us, by close on 25 April 2013, with the further information regarding the VUC estimates that are set out in the

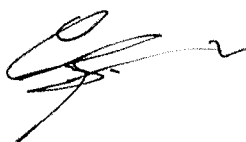


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Page 1 of 3  
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Annex. As you will be aware we have powers under section 80 of the Railways Act 1993 to require such information although we hope that we can work with you without having to trigger this formal process. If you consider any aspects of the requirements set out in the Annex to be unclear, please do not hesitate to seek clarification.

Yours sincerely

A handwritten signature in black ink, appearing to be 'C. Ross', written in a cursive style.

**Cathryn Ross**

## **Annex - Our requirements regarding estimates of the VUC for CP5**

We require that by 3 May:

- you recalculate the VUC using the PR13 research findings on apportioning costs to individual vehicles, where you consider that to do so – taking account of data constraints etc. – improves the cost reflectivity of the charges. We do not require to you provide charges for individual vehicles at this stage but do require estimated percentage change in the charge for each listed commodity. You do not need to take account of our January 2013 conclusions on a cap on the average VUC for freight at this stage because we will do this.
- You provide estimated CP5 VUC revenue split in the same categories in the same format as for charges in your Strategic Business Plan (year, route, freight / open access/ franchises).

We also require that you publish a full price list for the VUC as soon as practicable following our draft determination. In practice, as you have published price lists for other charges in advance, we would expect and welcome you doing so for the VUC also.

Our charging objectives are as follows: to

- (a) promote the objectives of our duties under section 4 of the Railways Act 1993 and be consistent with the wider objectives of funders;
- (b) incentivise Network Rail, train operators, train manufacturers, rolling stock companies (ROSCOs) and funders to ensure the efficient utilisation and development of the network and the optimisation of whole industry costs;
- (c) not discriminate unduly between users of the network;
- (d) be practical, cost effective, comprehensible and objective in operation;
- (e) be consistent with relevant legislation, including the EU Directive 2001/14/EC;
- (f) reflect the efficient costs caused by use of the infrastructure (both to Network Rail or otherwise); and
- (g) ensure that charges enable Network Rail to recover but not to over recover, its allowed revenue requirement.