Charging

01 April 2024

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Introduction

1. The purpose of this document is to provide an overview of the main regulated charges that train operators will pay in CP7, for accessing the part of the GB rail network that is owned and operated by Network Rail.

2. Central to the periodic review is the review of access charges paid by train operators (passenger, freight, charter) to use Network Rail's track and stations. These charges ensure that Network Rail recovers the cost of operating, maintaining and renewing the network fairly from different users (as well as from taxpayers). They also influence the decisions that Network Rail, train operators and funders make, which affect the overall cost of the network and how efficiently it is used. Charges can therefore play a role in making the industry more efficient and improving outcomes for passengers, freight customers and taxpayers.

3. In the 2023 periodic review (PR23) we set the regulatory framework for control period 7 (CP7), which runs from 1 April 2024 to 31 March 2029. Our conclusions are set out in our PR23 final determination: policy position-access charges. This document reflects the regulatory framework implemented through the track access contract as part of PR23, which included track access charges and other payments contained in Schedule 7.

Charging legal framework

4. Schedule 3 of the Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016, establishes the principles which underpin Network Rail's charging framework and specific charging rules. These state that charges for the minimum access package must be set to reflect "the cost that is directly incurred [by Network Rail] as a result of operating the train service". To obtain full recovery of its costs, Network Rail can, under certain conditions, levy 'mark-ups' above directly incurred costs. The level of these mark-ups takes account of the ability of relevant market segments to bear them.

5. In making our decision about Network Rail's charges in CP7, as set out in our PR23 final determination, we had to balance these legal requirements with our statutory duties as stipulated in section 4 of the Railways Act 1993. In particular, we took account of our duties to promote efficiency and economy on the part of persons providing railway services, have regard to the funds available to the Secretary of State, promote the use of the railway network and enable persons

providing railway services to plan the future of their businesses with a reasonable degree of assurance.

6. This means that while one of our key roles is to protect network users from being charged unduly high prices for access to this network, we must also ensure that the access charges paid by operators (and the taxpayers) are sufficient to enable Network Rail to recover the costs of operating, maintaining and renewing its network.

7. In this module we discuss charges levied via Schedule 7 as follows:

- (a) CP7 charging framework,
- (b) the price lists for access charges
  - (i) supplementing the price lists
  - (ii) the role of the default rates for the variable usage charge and traction electricity charge,
- (c) the framework for paying for electricity for traction
  - (i) The default consumption rate for traction electricity
  - (ii) opting-in to metered billing of traction electricity,
- (d) infrastructure cost charge; and
- (e) miscellaneous issues relating to Schedule 7
  - (i) enhancements; and
  - (ii) other charging regimes.

CP7 charging framework

8. Network Rail's access charges for CP7 were established as part of PR23 and have effect from 1 April 2024. The basis on which they are charged is contractualised in Schedule 7. Network Rail describes the track access charges in its Network Statement.

9. Under Schedule 7, there are two broad types of charges paid by operators:

- Infrastructure cost charges (ICCs), which recover a portion of the fixed costs of rail infrastructure i.e. costs which do not vary with network use in the short term. These are comprised of the fixed track access charge (FTAC), the ICC for freight services (defined as Freight Specific Charge in the contract), and the ICC for open access services.

- Variable charges, which recover costs that are directly incurred by Network Rail when train services are operated over its network. These include the variable usage charge (VUC); the traction electricity charge (EC4T); and the electrification asset usage charge (EAUC).

The price lists for access charges

10. The rates for individual track access charges are set out in price lists, which Network Rail published on 20 December 2023. These are uplifted each year for inflation using the consumer prices index (CPI). For ease of reference, Network Rail has committed to publishing consolidated versions of the price lists each year that reflect these uplifts.

Supplementing the price lists

11. The price lists published by Network Rail cannot be directly amended during a control period. For the avoidance of doubt, these price lists cannot be re-opened during the control period, even if errors are subsequently identified.

12. However, there is a process within track access contracts[1] to allow certain price lists to be ‘supplemented’. This provides for a price list to be deemed to include changes, which then apply only in respect of the track access contract under which they were made (or successor contracts held by the train operator). Supplements are therefore made on a bilateral basis only and do not apply to any other track access contracts.

13. Supplements may be needed if:

(a) rates for the vehicles being operated do not already feature in the relevant section of the Track Usage Price List published by Network Rail on 20 December 2023;

(b) a vehicle type has been modified following the publication of the CP7 Track Usage Price List on 20 December 2023 and as a result, the vehicle characteristics which determine the VUC rate have changed;

(c) the operating weight (laden) of a freight wagon has been changed due to the removal of any Heavy Axle Weight (HAW) dispensations that Network Rail has in effect at the start of CP7; or

(d) a new rate needs to be applied in respect of an open access operator’s infrastructure cost charge (ICC) on the Open Access ICC Rates List.

1 See paragraph 9 of Schedule 7 of the model passenger contract and paragraphs 2.2.2 to 2.2.13 of the model freight contract and the model freight customer contract. The model charter contract does not include a supplements provision.

14. As charter operators are subject to generic charter prices, there are no such provisions in the charter model contract.

15. Moreover, as part of PR23, we decided to remove the facility to obtain a new bespoke traction electricity modelled consumption rate from the start of CP7. This means there will be no further supplements to the Consumption Traction Electricity Modelled Rates List in CP7. To be clear, only modelled consumption rates that fall under one of the two groups below will have the opportunity to supplement the CP7 Consumption Traction Electricity Modelled Rates List as published by Network Rail on 20 December 2023:

(a) rates that are consented to after 20 December 2023 but before the end of CP6; and

(b) rates arising from applications that are already in progress prior to the end of CP6 but are still awaiting consent from ORR at the beginning of CP7.

16. The process of supplementing the price lists provides for either Network Rail or the train operator to propose a supplement to the other party. Where the parties agree on a supplement, they must submit it to us for our consent. This may be done through a jointly signed letter, submitted with appropriate supporting information. However, if the parties are unable to agree, either may refer the matter to ORR for determination. No supplement can have effect unless it has been:

(a) agreed between the parties and ORR has consented to it; or

(b) otherwise determined by ORR.

17. As a general rule, any charges that supplement the price lists should be calculated using the same methodology used to calculate the original charges as part of PR23. Network Rail has established processes for doing this. In the case of the variable usage charge, Network Rail has produced a "Process and policy for the application and approval of new rates" document (found here) that describes this process in detail. Network Rail has also published the CP7 variable usage charge calculator (found here), an excel based tool, that stakeholders can use to calculate new VUC rates. Any request for our consent to a supplement should be accompanied by information demonstrating that the proposed rates have been calculated correctly in accordance with these established processes. Where there is anything unusual about a proposal, we will expect the request to be accompanied by sufficient background explanation and supporting information for us to reach an informed decision.

18. Please note that supplements to the Track Usage Price List and the Open Access ICC Rates List should be calculated in 2023-24 prices. This is because both these lists were published in 2023-24 prices and the charging formulae in the track access contract uplift the rates on these lists from 2023-24 prices to the price base for the relevant year. As supplemented rates are deemed to be included on the price list, the contract would therefore treat any supplemented rate as if it was in 2023-24 prices.

The role of the default rates for the variable usage charge and traction electricity charge

19. If a vehicle is operated on the network that does not have a corresponding variable usage rate on the Track Usage Price List, it will be subject to a default rate. The default rates are set out in the Track Usage Price List. The VUC default rate will apply until a specific rate for the relevant vehicle is consented to or determined by ORR. As the permanent rate will almost always differ from the default rate, Network Rail must either credit the beneficiary for any earlier over-payment or the beneficiary must settle any earlier under-payment made while the default rate was being used.

20. The contract provides for the parties to apply the permanent variable usage rate retrospectively from the later of either:

(a) the introduction date of each individual new / modified vehicle or;

(b) the start of the control period within which the permanent rate was applied for.

21. This means that refunds / additional charges are limited to the control period in which the approval for the new VUC rate is applicable. The only exception concerns refunds/additional charges arising from applications that are already in progress (i.e. where ORR has received a formal application) prior to the end of CP6 but are still awaiting ORR's consent at the beginning of CP7. These will continue to be processed and settled in CP7.

22. This gives the operators and Network Rail a window of nearly five years in which to recover any overcharge or settle any underpayment thereby avoiding the financial uncertainty that would arise from having to settle over/underpayments accrued from the previous control period.

23. For traction electricity, a default rate applies where a vehicle does not have a corresponding modelled consumption rate on the Traction Electricity Modelled Consumption Rates List. This is discussed further in the section on traction electricity below.

24. While bilateral supplements apply only to individual track access contracts, Network Rail is required to maintain a list of the supplements that have been agreed in respect of all track access contracts. This is to improve transparency, but it also makes it easier for others to see if a rate has been agreed elsewhere for a particular type of vehicle. The parties to other track access contracts can then seek ORR's consent to a supplement using this rate, should it be appropriate to do so.

25. While charge rates could be applied through direct inclusion in Schedule 7, for example through a supplemental agreement, our general approach is that, as far as possible, all rates should be included in the relevant price list or in a supplement to the relevant price list. This is to provide transparency and to avoid unnecessary bespoking of Schedule 7.

The framework for paying for electricity for traction

26. The traction electricity (EC4T) charge recovers the cost of electricity supplied by Network Rail to power trains. The amount that is paid in EC4T charges depends on electricity prices – rather than being a charge set for the whole control period. The calculation of the charge is based on one of two approaches:

(a) metered consumption, based on readings taken from meters on trains; and

(b) modelled consumption, based on estimated consumption, subject to an end of year volume and cost reconciliation exercise.

As part of PR23, we removed what used to be a third approach i.e. the partial fleet metering (PFM) from the beginning of CP7.

27. The Traction Electricity Rules (TERs) are the industry's rules for charging for traction electricity. These set out, for the purposes of calculating the Traction Electricity Charge:

(a) the process for collecting electricity consumption data and other related data from metering equipment installed on trains and supplying it to Network Rail;

(b) the rules which apply where metered data is missing or not supplied to Network Rail within the prescribed time;

(c) provisions for applying regenerative braking discounts to modelled consumption rates for those train operators using regenerative braking;

(d) the volume and cost reconciliation provisions that apply to train operators using electric traction;

(e) other provisions relating to the procurement and billing of traction electricity;

(f) provisions for carrying out metering and / or regenerative braking audits; and

(g) a change process for making amendments to the TERs[2].

[2] Note: ORR can also make changes to the Traction Electricity Rules as part of an access charges review through the process set out in Schedule 4A to the Railways Act 1993.

The default consumption rate for traction electricity

28. As mentioned above, traction electricity default rates exist for train operators where a non-metered vehicle is operated on the network and there is not a corresponding modelled consumption rate on the Traction Electricity Modelled Consumption Rates List. Similarly, a default rate will apply where a new metered vehicle is operated on the network, but the operator has not yet opted-in to on-train metering. As part of PR23, we removed both the generic modelled consumption rates and the facility to obtain a new bespoke modelled consumption rate from the beginning of CP7. Therefore, the default consumption rate will apply until the point where the operator opts-in to on-train metering.

29. As the metered consumption will almost always differ from the default rate based consumption, the contract provides for the parties to apply the metered consumption retrospectively to calculate the appropriate refund from the later of:

(a) The date that the vehicle was first introduced on the network; and

(b) 1 April in the relevant year in which the operator opts in to on-train metering.

30. The 1 April cut-off point exists because Network Rail must calculate the annual volume and cost reconciliation for modelled charges between 1 April and 30 June for the previous year. This enables Network Rail to provide all relevant train operators with an invoice or credit note (as the case may be) for their share of the difference between modelled consumption already billed over the year and actual consumption. If supplements were applied prior to the current financial year, this would impact on the volume reconciliation for the previous year(s), which would have been settled.

31. This means there is a strong incentive on train operators to opt-in to on-train metering for any new electric vehicle that they operate on the network as soon as possible.

32. It is our policy that all train operators with access rights to run services over electrified network should have the standard traction electricity provisions in their contracts (unless bespoke arrangements apply). This is to ensure that, among others, the default consumption rate would apply to them if they operated any electric vehicles.

Opting-in to metered billing of traction electricity

33. For passenger and freight operators, in order for trains to be charged on the basis of metered data (rather than existing modelled consumption data or the default consumption rate), operators should formally notify Network Rail at least 90 days prior to their proposed opt-in date. The opt-in date would be a date agreed between the operator and Network Rail. This is to ensure that Network Rail has sufficient time to make the appropriate preparations for the transition to metering. The parties should follow the process set out in Schedule 7 of the relevant track access contract.

34. Assuming that the parties agree on the proposal to opt-in, they will need to make an amendment to Appendix 7D of Schedule 7 (in the case of passenger operators) or Appendix 3 of Schedule 7 (in the case of freight operators) to include the trains which are to be billed on the basis of metered data. This requires an industry consultation and our consent under section 22 of the Act.

35. A Railway Group Standard GM/RT2132 applies to on-train metering. Prior to CP6, there were provisions in the contracts that provided for the traction electricity charge to vary appropriately if certain aspects of GM/RT2132 had not been met. In particular, the minimum accuracy tolerance level of the meters. Aside from one case (when on-train metering first began), these were never used. For this reason, the provisions were scrapped from CP6 onwards. So, while it is very unlikely that meters/rolling stock used in CP7 will not be compliant with the standard, if this was to be the case, then a bespoke change to the Schedule 7 provisions may be appropriate.

36. The model charter track access contract does not include on-train metering provisions in Schedule 7. If a charter operator wished to switch to metered billing for traction electricity, it and Network Rail would need to make substantive changes to their track access contract (and potentially to the TERs) to provide for this.

Infrastructure Cost Charge

37. The infrastructure cost charge (ICC) is designed to recover some fixed costs of using the railway from services that can afford to pay. It is the blanket term used for all charges recovering a portion of Network Rail fixed costs and covers:

(a) The fixed track access charge (FTAC) which is paid by passenger operators on concession-style agreements based on each operator’s share of Network Rail’s avoidable fixed costs;

(b) the freight infrastructure cost charges (ICCs) also defined as Freight Specific Charge in the contract is levied on ESI coal, iron ore, spent nuclear fuel (SNF), and ESI biomass;

(c) the open access infrastructure cost charge of £5 per train mile (in 2023-24 prices) paid by interurban open access services; and

(d) the open access infrastructure cost charge of £5 per train mile (in 2023-24 prices) paid by open access services to major airports in Great Britain (i.e. Heathrow, Gatwick Stansted and Birmingham airports).

Miscellaneous issues relating to Schedule 7

Enhancements

38. Additional fixed charges may be incurred in relation to physical enhancements[3], and these should be charged on a basis consistent with our Policy Framework for Investments and related policy documents. Our policy framework provides for efficient development and delivery of investment projects not included in a periodic review determination and sets out:

(a) Network Rail's role and obligations and how these will be secured;

(b) default terms (including principles for risk allocation) for carrying out investments;

(c) specific proposals in relation to third party investments to overcome barriers caused by the impact of low-probability, high-impact risks which cannot be efficiently managed or insured; and

(d) the remedies available when things go wrong.

39. A further type of additional fixed charge may be incurred in relation to non-infrastructure enhancements to the capacity of the network, e.g. an extension of signal box opening hours.

40. For regular scheduled passenger operators, any such 'additional charges' should be included in Part 5 of Schedule 7. We have issued a general approval enabling Network Rail and a train operator to agree additional charges up to £20,000 in any one year without the need for our specific approval, subject to certain conditions.

41. Prior to adding any charge to a passenger track access contract pursuant to the general approval, Network Rail must demonstrate to the train operator how the level of the charge reflects the incremental cost to it of providing the additional service (such as, extended signal box opening times). For example, by providing a cost-breakdown illustrating the composition of the different components of the proposed charge and providing reasons why these costs would be incremental to the capability for which it is already funded as part of the PR23 settlement for CP7.

3 It should be noted that enhancements might also generate additional variable charges – for example, incremental operating costs.

42. Where a proposed additional permitted charge falls outside the scope of the general approval (for example, where it would exceed £20,000 in any one year), our specific approval will be required.

43. For freight beneficiaries, track access contracts provide for a similar type of charge, known in the contract as 'incremental costs'. These are set out in paragraph 2.8 of Schedule 7 of the model freight and freight customer track access contracts. Costs up to a cap of £300,000 can be recovered by Network Rail without ORR's involvement or approval. Enhancements which are greater than the cap can be carried out, but these would be subject to regulatory scrutiny and approval.

44. In assessing an application for our specific approval of additional charges, we will wish to understand the nature of the costs for which the beneficiary is being charged as well as details of any other beneficiaries who will benefit from the non-physical enhancement.

45. We will allow a funder to recover a fair proportion of costs incurred in funding an investment scheme where other operators benefit from the use of the enhancement (e.g. provision of additional capacity or higher gauge) by allowing the funder to apply to Network Rail to levy an additional charge on other such beneficiaries. Government funded schemes are outside the scope of the mechanism. Our approach is set out in Proposals for a rebate mechanism for investors in large-scale enhancements – final conclusions.

Other charging regimes

46. We will consider any applications for proposed access contracts containing alternative charging regimes on their merits, and particularly whether the proposed regime:

(a) properly reflects the financial position of and allocation of risk between the parties;

(b) provides appropriate incentives and remedies for the parties; and

(c) is consistent with the relevant requirements in The Railways (Access, Management and Licensing of Railway Undertakings) Regulations 2016 and other relevant legislation.

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