Office of Rail Regulation

Minutes of the a telephone meeting by the ORR Board on 16 December 2013

(17:00 – 18:00), ORR offices, One Kemble Street, London

Present:

Non-executive directors: Anna Walker (Chair), Peter Bucks, Ray O'Toole, Mark Fairbairn (on the phone)

Executive directors: Richard Price (Chief Executive), Ian Prosser (Director, Railway Safety), Alan Price (Director of Railway Planning and Performance)

In attendance, all items: John Larkinson (acting Director of Railway Markets and Economics),), Tess Sanford (Board Secretary), Dan Brown (Director of Strategy), Giles Buckenham (Deputy Director, Legal)

Apologies: Tracey Barlow, Stephen Nelson, Steve Walker.

Item 1: Welcome and apologies for absence

1. The Chair welcomed everyone to the meeting and noted the apologies.

Item 2: Declarations of interest

2. None.

NETWORK RAIL'S REBATE PAYMENTS TO GOVERNMENT IN CP4

3. The Chair introduced the item, reminding members that we had now discussed this issue a few times at the Board. We had previously agreed that the policy in place in CP4 should not be changed during this price control period, but we wanted to put in place a tighter policy in CP5. It was important, given what we now understood about the likely future funding arrangements for NR, that we took additional steps to ensure absolute clarity between NR and DfT/TS funds.

   Paragraphs 4-8 have been redacted as information relating to the formulation of policy.

9. The policy established at the outset of CP4 had permitted rebates. It was clear however that ORR must ensure that NR did not compromise its own ability to deliver a safe railway by making these payments. We asked the executive to ensure that we had a written assurance from NR on that basis before allowing the proposed payment. [Action: John Larkinson]
10. We also agreed that the rebate should only be allowed in the light of the much tougher and clearer policy on rebates in CP5.
11. We noted that the draft decision letter attached to the paper set out clearly our position on payments in CP5 with a clear hierarchy of uses for any financial outperformance with ORR agreement needed before any rebate was made. Subject to NR's confirmation that they had funds to deliver a safe railway and clarity on our CP5 position, then we agreed we would not seek to interfere in the payment of the current proposed rebate.

12. Dan Brown suggested that while it was appropriate to have the option to pay rebates in CP5 in ‘exceptional circumstances’; we should note that the reclassification would mean that any rebates made in CP5 were likely to come under HMT scrutiny and might even have to be made to HMT rather than DfT.

RECLASSIFICATION OF NR

13. Dan Brown introduced the paper which updated Board members on the issues he had originally described to us in November. He expected ONS to make their initial announcement on 17 December shortly followed by a statement from the SoS in Parliament. The statement would set the change out in terms of a technical statistical change which would not alter Government’s commitment to investment in the railways, the re-franchising process or the regulatory regime.
14. The company’s status would not change until September 2014 at which point two major issues arise: 1) NR becomes accountable to Parliament and 2) there is an option to change its process for raising capital.
15. The existing funding framework could not be altered until at least the beginning of the next financial year so it would proceed as currently.

Paragraphs 16-19 have been redacted as information relating to the formulation of policy.

20. Dan summarised by saying that ORR’s role and legislation would not change as a result of reclassification – but the relationship between DfT and NR was likely to be necessarily closer - which risked ultimately undermining our regulatory position.
21. We noted that much of our thinking on issues such as this had been set out in the LTRS and in PR13. We should continue to refer to these and continue trying to raise awareness of key issues for the industry.
22. We talked about the internal risks to ORR of this change, particularly diversion or over-extending our senior management. Richard Price said his main focus continued to be on NR performance.
23. Dan Brown did not think he needed additional resource as much of ORR’s background thinking was in the LTRS. There was a long list of risks to the regulatory regime which he was working through.
24. The Chair said that it would be important to maintain ORR’s credibility and to demonstrate that it could operate in the new world without suffering regulatory capture.
25. We asked the executive to keep us informed of any unanticipated drain on resources – this work must not distract from Directors’ agreed objectives.
26. We asked Dan to continue to keep us informed of progress.