

## **TTP2517 and TTP2521**

### **Third Directions – 01 November 2024**

In these directions, I refer to Network Rail as NR, First Great Western Limited as GWR, and MTR Elizabeth Line as MTREL.

When GWR submitted its SRD on 22 October 2024 it asked that loadings data provided in Appendices 1 and 2 which it submitted along with its SRD remain confidential to NR, the Chair, Secretary and Panel (i.e. that they not be put on the Committee’s website or shared further).

In doing so GWR did not give a reason but I infer, taking into account GWR’s requests in references TTP2453, TTP2454, TTP2455 and TTP2456, that this is for reasons of commercial sensitivity. I also note that in those references no objection was taken by NR to that course of action.

I note that on 24 October 2024 MTREL indicated that it wished to join as a Disputes Party.

On 29 October, when NR submitted its SRD it provided two versions of Appendix A, one version of which – “A” – contained material said to be commercially sensitive information which could only be shared with the Panel, and Appendix B which NR asked to be shared with the Panel only.

By further correspondence on 29 October, NR noted that its Appendices A and B were “commercially sensitive” and asked that they not be published on the website, or shared with other TOCs. NR has given no further detailed reasons.

By email on 31 October, GWR’s representative confirmed that GWR was content for the other Disputes Parties to see its Appendices 1 and 2. Those have now been sent to MTREL by the Secretary.

### **Summary of position**

So far, then, as I understand the present position of the Disputes Parties is as follows:

- (1) GWR Appendices 1 and 2 (“Appendices 1 and 2”), are available to the Panel and other Disputes Parties; and
- (2) NR Appendices A and B (“Appendices A and B”), may be shared with the Panel only, and none of the other Disputes Parties, (albeit Appendices A and B include commercial information from HEOC, which is not a Disputes Party).

### **The Rules**

ADRR Rule H31 provides that the Hearing Chair will consider commercial sensitivity and may exercise a discretion to grant less than full disclosure.

Further it is implicit in rulings from the ORR that in certain circumstances commercially sensitive materials might be restricted to a limited circulation perhaps in an extreme case to a Hearing Chair alone and perhaps sometimes to a Timetabling Panel. See as an example paragraphs 72-77 of the ORR appeal decision in TTP337.

It follows that in certain circumstances a Hearing Chair may direct that documents or parts of them should not be published on the website.

Directions (for all Parties)

My priority is to ensure that the Disputes Parties and the Panel can dispose of these references fairly, in accordance with the overriding objective (ADRR Rule H16) and on a basis of the legal entitlements of the Disputes Parties (ADRR Rule A5), and that all Disputes Parties know the case which they are asked to meet at least in gist and can respond to the substance of that case.

I am satisfied that it is proper that all members of the Panel should have access to the contents of Appendices 1 and 2 and Appendices A and B.

On the basis of the information which I have at present, I would be minded to direct that Appendices 1 and 2 and Appendices A and B should not be published on the Committee's website.

However, the Panel will need to be satisfied **at the hearing** that the Disputes can be disposed of fairly if neither GWR nor MTREL have access to Appendices A and B. **NR to confirm at the hearing** whether Appendices A and B or a reasonable gist of that data may be shared with the other Disputes Parties if all other Parties present consent (working for now on the basis, but subject to my final decision, that it is not published on the Committee's website).

It follows that I would be minded partially to grant GWR's and NR's requests and direct that the loadings data in Appendices 1 and 2 and Appendices A and B should not be published on the Committee's website. I will hear any further submission **from the Parties at the hearing**.

I will hear submissions from GWR or MTREL **at the hearing** about Appendices A and B.

[Signed on the original]

Paul Stevenson  
Hearing Chair TTP2517 and TTP2521