

ACCESS DISPUTES COMMITTEE

Some of the Appendices to the Sole Reference Document served by Freightliner Heavy Haul ("FLHH") are difficult for the Panel members to handle on account of the size of spreadsheets (in terms both of the numbers of columns and the numbers of rows). However, the Hearing Chair has concluded that it is fair to say that FLHH will not have erred in saying that Network Rail has either rejected bids which are for trains included in the Track Access Contract Schedule 5 Table of Rights or has simply not responded. These are two separate categories of issue so far as the Part D process is concerned but it is not easy to identify how many bids fall into which category.

To assist the Panel, FLHH is hereby requested to provide a list showing which trains fall into which category. This should be provided either in an amended Sole Reference Document (see below) or alternatively by 13 00 tomorrow (Tuesday 27 February) as a separate list if FLHH does not wish to avail itself of opportunity to serve an amended Sole Reference Document.

The Hearing Chair has decided that he is prepared to give FLHH leave to - if wished - amend Section 6 of its Sole Reference Document to ask the Panel to determine that Network Rail should accept the rejected bids. This will, of course, be after the Panel hearing has given careful consideration to Network Rail's explanations which will be provided in its Sole Reference Document and Network Rail is reminded that its Sole Reference document should explain the basis on which each bid has been rejected.

Turning to the unanswered bids, i.e. those for which Network Rail has not provided a response, the Hearing Chair does not consider that Network Rail can be ordered to resolve the dispute through a Formal Offer as only FLHH can decide what is acceptable and that will only be possible after the Offer has been made. Accordingly, the Hearing Chair is prepared to give FLHH leave to - if wished - amend Section 6 of its Sole Reference Document to seek from the Panel a determination along the lines that Network Rail should "within 5 Working Days of the issue of the determination make a firm offer which Network Rail anticipates will be acceptable to FLHH".

Panel members have observed to me that in addition to the problem of the handling the size of the spreadsheets, the presentation of the appendices to the FLHH Sole Reference document is not in accordance with the standard expected. The appendices are not clearly labelled and their content is not clearly explained; indeed, some Excel files seem to contain blank pages. FLHH is asked to give attention to the presentation of its evidence when addressing the matters above.

FLHH is given leave to serve a suitably amended Sole Reference Document by 13 00 tomorrow, Tuesday 27 February 2018.

Whilst the requested attention by FLHH should clarify matters, the underlying reasons for this dispute reference should be fully within the knowledge of Network Rail and it is therefore not considered necessary to defer the time for service of Network Rail's Sole Reference Document (due by 17 00 on Thursday 1 March).

ADR Rules A9(a) and A10 apply to this e-mail.

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