Ms Anna Walker
Chair
Office of Rail Regulation
One Kemble Street
London
WC2B 4AN

24th July 2012

Dear Ms Walker

ORR Consultation on the review of variable usage charge and freight specific charge

I am writing to voice my concern about the ORR Freight Charges Review which I believe could threaten existing rail freight traffic viability, undermine confidence in future freight investment as well as setting unhelpful precedents for passenger and freight services. I would therefore ask you to reconsider your planned changes in the light of industry and customer comments and the guidance issued to the ORR on 16th July by the Secretary of State for Transport.

Your statutory duties
Is the proposed 10% reduction in the coal business consistent with the ORR's statutory duties to promote the use of the railways for the carriage of passenger and freight? I would like to highlight that the Secretary of State's guidance to the ORR spells out in more detail the Government's commitment to rail freight expansion. The guidance not only highlights the importance of rail freight distribution to society and the economy (paragraph 32) but stresses the need to take into account the Government's policies to develop rail freight [i] and the need for the ORR to discuss with the DfT any policy which would adversely affect the competitiveness of rail freight compared to other modes (paragraph 34).

Also it is unclear whether there is any limit to the application of the "10% rule"? Can it apply to consecutive determinations – each Control Period plus any interim review? Is the 10% capable of being applied cumulatively – the consultation makes no suggestion that it cannot be or how it might be restricted if not. Establishing this principle gives ORR licence to progressively decimate rail freight out of existence over time.

The Secretary of State's guidance expressly states that *the Government recognises the important role that rail freight plays in the nation's logistics and ...the achievement of the sustainable distribution objectives. And that the Government wishes to facilitate the continuing development of a competitive, efficient and dynamic private sector rail freight industry and is committed to ensuring that policies and regulations should work to this end and should not create unnecessary transactional costs or other obstacles to the achievement of these objectives and future growth. (Paragraph 32)*

Competition/complexity of Freight charges
As paragraph 33 of the DfT guidance states, freight needs simple stable charging so that it can plan as it has to compete with road which sets the market price which, by and large, has access to national network and does not pay charging to access the network. Complex charging systems are a disincentive to using rail. Currently, road pays an annual VED and fuel duty whereas rail already has seven different charges with an additional four charges being proposed by yourselves. The added layer of complexity provided by the proposed changes will make it more challenging for rail freight operators to respond

quickly in quoting for business to potential customers and will therefore be a real deterrent to new business. This factor does not arise for competitors on road.

Longer term the ORR has stated its intention to determine a charge that is geographically disaggregated which would add further complexity even though the current consultation is about an average charge across all vehicle types and geography. are yet to be developed and. If distance based charging is not being considered on road why is it applicable to rail?
Route based charging will potentially distort competition with winners and losers on different routes being affected by different charges, e.g: iron ore inland sites such as Scunthorpe compared with coastal sites such as Port Talbot. Capacity/scarcity charges are likely to be an additional cost.

Sustainable distribution and its role in helping the Government meet its CO2 targets
If the ORR does not continue to take into account the economic, social and environmental benefits of rail freight to society and support the sector in its charging structures, certain rail freight flows may no longer be viable and the forecast growth will not happen. The industry predicts that rail freight overall will have doubled by 2030 with consumer rail freight growing 7.6% per annum during this period if the current market conditions are retained. This could result in the Government not being able to meet its carbon dioxide reductions for 2020 and 2050, to which it is legally bound. Additionally, the DfT would have to build more roads with all the resulting increase in road congestion, road accidents[ii] and pollution,

As you are aware, Freight is a big CO2 emitter; HGVs are responsible for 20% of carbon dioxide emissions from all domestic transport and road freight now account for 8% of UK carbon dioxide emissions. Rail produces 70% less carbon dioxide than road per tonne carried[iii] for the equivalent journey so it has a crucial role in reducing freight's overall carbon footprint. While electric cars will be able to reduce road's overall carbon emissions this approach is not open to HGVs given that the battery would weigh more than the payload of the vehicle; in the foreseeable future alternative fuel technology for HGVs do not look viable.

Were all freight modes to internalise a greater proportion of their costs, then the rail freight sector might be more able to make a greater contribution to track access charges – however, this would depend on the details of any such proposals.

Freight Avoidable Costs
These proposed charges raise longer term questions about whether the regulator should be pricing off demand, at this stage ESI coal, and whether the Government is using rail freight charges to reduce coal burning? Additionally, the question remains whether this charging mechanism would set a precedent to price off other freight commodities and indeed rural or open access passenger services? Coal is approximately one third of all rail freight so a significant contraction in this sector will affect the viability of operators and impact on other sectors.

Long term confidence for customers to commit to investment
Private investors face risks when they invest – risk in changing markets that involve both suppliers and customers. However, they accept those commercial risks and seek to manage them in the normal course of doing business. A major change in ORR policy stands outside normal commercial risk by overlaying a political risk upon the commercial ones. In PR08 ORR continued a trend established since privatisation by further lowering freight access charges by one third to reflect Network Rail's long term efficiency requirements. Just one Control Period later there is a policy to raise charges for some commodities three or four fold. How does such an astonishing volte face afford a reasonable degree of certainty? This major change in ORR policy does beyond affording businesses the ability to do their

business “with a reasonable degree of certainty”. ORR is surely in breach of its statutory duty to businesses in proposing this U-turn. By regarding past investment as “sunk” ORR is sweeping under the carpet the effect they will have in deterring future business investment. Charging uncertainty, such as deferred decisions on biomass traffic, will risk deterring investment and damage confidence in the sector. (DfT guidance to ORR 16th July paragraph 33)

Second Order impacts
Coal traffic cannot be isolated from other traffic. If coal traffic is reduced by 10%, this will have knock on effects on other parts of rail freight, for example locomotive use, maintenance and terminal costs across other commodities which could render other traffic unviable. There will also be a knock on for other users of coal other than the electricity generators that also rely on coal deliveries for their production process, e.g: cement, steel.

Job losses in the industry
These planned changes to reduce coal traffic by 10% would directly affect jobs so we ask what impact assessments on job losses has the ORR made? If tonnes of coal lifted are reduced by 10% tonne miles of traffic operated are forecast to reduce by 25%. This would certainly bring about redundancies in the FOC workforces.

Others in the industry are better placed to comment in more detail on the proposals but I wanted to raise these fundamental issues and ask what assessments has been made of the overall impacts on the rail freight sector of all these proposed changes?

Finally, it has to be asked why the ORR is considering undermining rail freight which has been a success story for the railways and is forecast to double tonne kilometres by 2030? Overall container number at SE ports were the same in 2010 as 2015 while consumer rail freight has grown 29% in the past five years gaining market share despite the recession.

Yours sincerely

Philippa Edmunds
Freight on Rail Manager

Please reply to Philippa@freightonrail.org.uk

[ii] *The Strategic Rail Freight Network Vision and the Strategic Rail Freight Interchange Policy*

[ii] *Rail freight is safer than long-distance road freight using motorway and A roads, as HGVs are over 3 times more likely to be involved in fatal accidents than cars due to a combination of size, lack of proper enforcement of drivers hours, vehicle overloading and differing foreign operating standards.*
Source: Traffic statistics table 2010 TRA0104, Accident statistics Table RAS 30017, both DfT

[iii] *DfT Logistics Perspective Dec 2008 P8 section 10 (corrected version)*

ORR Consultation on the review of variable usage charge and freight specific charge

Thank you for the opportunity to comment on the Periodic Review consultation.
Freight on Rail, a partnership of the rail freight industry, the transport trade unions and Campaign for Better Transport, works to promote the economic, social and environmental benefits of rail freight to local and central Government.

Summary
Freight on Rail is very concerned about the ORR Freight Charges Review which we believe could threaten existing rail freight traffic viability, undermine confidence in future freight investment as well as setting unhelpful precedents for passenger and freight services. We would therefore ask you to reconsider your planned changes in the light of industry and customer comments and the guidance issued to the ORR on 16th July by the Secretary of State for Transport.

Your statutory duties
Is the proposed 10% reduction in the coal business consistent with the ORR's statutory duties to promote the use of the railways for the carriage of passenger and freight? We would like to highlight that the Secretary of State's guidance to the ORR spells out in more detail the Government's commitment to rail freight expansion. The guidance not only highlights the importance of rail freight distribution to society and the economy (paragraph 32) but stresses the need to take into account the Government's policies to develop rail freight [i] and the need for the ORR to discuss with the DfT any policy which would adversely affect the competitiveness of rail freight compared to other modes (paragraph 34).

Also it is unclear whether there is any limit to the application of the "10% rule"? Can it apply to consecutive determinations – each Control Period plus any interim review? Is the 10% capable of being applied cumulatively – the consultation makes no suggestion that it cannot be or how it might be restricted if not. Establishing this principle gives ORR licence to progressively decimate rail freight out of existence over time.

The Secretary of State's guidance expressly states that *the Government recognises the important role that rail freight plays in the nation's logistics and ...the achievement of the sustainable distribution objectives. And that the Government wishes to facilitate the continuing development of a competitive, efficient and dynamic private sector rail freight industry and is committed to ensuring that policies and regulations should work to this end and should not create unnecessary transactional costs or other obstacles to the achievement of these objectives and future growth. (Paragraph 32)*

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Longer term the ORR has stated its intention to determine a charge that is geographically disaggregated which would add further complexity even though the current consultation is about an average charge

across all vehicle types and geography. If distance based charging is not being considered on road why is it applicable to rail?
Route based charging will potentially distort competition with winners and losers on different routes being affected by different charges, e.g: iron ore inland sites such as Scunthorpe compared with coastal sites such as Port Talbot. Capacity/scarcity charges are yet to be developed and are likely to be an additional cost.

Sustainable distribution
If the ORR does not continue to take into account the economic, social and environmental benefits of rail freight to society and support the sector in its charging structures, certain rail freight flows may no longer be viable. This could result in the DfT having to build more roads, with the resulting increase in pollution, road accidents and road congestion. This could result in the Government not being able to meet its carbon dioxide reductions for 2020 and 2050, to which it is legally bound. Additionally, the DfT would have to build more roads with all the resulting increase in road congestion, road accidents[ii] and pollution. As you are aware, Freight is a big CO2 emitter; HGVs are responsible for 20% of carbon dioxide emissions from all domestic transport and road freight now account for 8% of UK carbon dioxide emissions. Rail produces 70% less carbon dioxide than road per tonne carried for the equivalent journey so it has a crucial role in reducing freight's overall carbon footprint. While electric cars will be able to reduce road's overall carbon emissions this approach is not open to HGVs given that the battery would weigh more than the payload of the vehicle; in the foreseeable future alternative fuels for HGVs do not look viable.

Were all freight modes to internalise a greater proportion of their costs, then the rail freight sector might be more able to make a greater contribution to track access charges – however, this would depend on the details of any such proposals.

Forecast growth of the sector
The industry predicts that rail freight overall will have doubled by 2030 with consumer rail freight growing 7.6% per annum during this period if the current market conditions are retained.

Value of Rail Freight to GB PLC

- The rail freight sector directly contributes £870 million to the UK economy and supports output of £5.9bn.
- The rail freight industry has achieved a 48% growth in tonne kilometres since 1994/95 with half the number of locomotives and two thirds of the wagons employed at that time.
- The benefits of rail freight fall outside the railway balance sheet but benefit the road network and the economy by removing or reducing;
    - £772 million per annum in congestion costs
    - £133 million per annum in road infrastructure costs
    - £68 million per annum in CO_2 costs
    - Pro-rata 42 road deaths at a value of £78.8 million
- There has been over £1.5bn of private sector investment since 1996.

Freight Avoidable Costs
These proposed charges raise longer term questions about whether the regulator should be pricing off demand, at this stage ESI coal, and whether the Government is using rail freight charges to reduce coal burning? Additionally, the question remains whether this charging mechanism would set a precedent to price off other freight commodities and indeed rural or open access passenger services? Coal is

approximately one third of all rail freight so a significant contraction in this sector will affect the viability of operators and impact on other sectors.

Long term confidence for customers to commit to investment
Private investors face risks when they invest – risk in changing markets that involve both suppliers and customers. However, they accept those commercial risks and seek to manage them in the normal course of doing business. A major change in ORR policy stands outside normal commercial risk by overlaying a political risk upon the commercial ones. In PR08 ORR continued a trend established since privatisation by further lowering freight access charges by one third to reflect Network Rail's long term efficiency requirements. Just one Control Period later there is a policy to raise charges for some commodities three or four fold. How does such an astonishing volte face afford a reasonable degree of certainty? This major change in ORR policy does beyond affording businesses the ability to do their business "with a reasonable degree of certainty". ORR is surely in breach of its statutory duty to businesses in proposing this U-turn. By regarding past investment as "sunk" ORR is sweeping under the carpet the effect they will have in deterring future business investment. Charging uncertainty, such as deferred decisions on biomass traffic, will risk deterring investment and damage confidence in the sector. (DfT guidance to ORR 16th July paragraph 33)

Second Order impacts
Loss of bulk business will have serious impacts across all sectors. Coal traffic cannot be isolated from other traffic. If coal traffic is reduced by 10%, this will have knock on effects on other parts of rail freight, for example locomotive use, maintenance and terminal costs across other commodities which could render other traffic unviable. There will also be a knock on for other users of coal other than the electricity generators that also rely on coal deliveries for their production process, e.g: cement, steel. Coal could be a tipping point which causes a spiral of decline.

Job losses in the industry
These planned changes to reduce coal traffic by 10% would directly affect jobs so we ask what impact assessments on job losses has the ORR made? If tonnes of coal lifted are reduced by 10% tonne miles of traffic operated are forecast to reduce by 25%. This would certainly bring about redundancies in the FOC workforces.

Freight on Rail members are better placed to comment on the detail in the proposals but we wanted to raise these fundamental issues and ask what assessments has been made of the overall impacts on the rail freight sector of all these proposed changes?

Why undermine rail freight which has been a success story for the railways
Finally, it has to be asked why the ORR is considering undermining rail freight which has been a success story for the railways and is forecast to double tonne miles by 2030 Overall container number at SE ports were the same in 2010 as 2015 while consumer rail freight has grown 29% in the past five years gaining market share despite the recession.

Philippa Edmunds Freight on Rail Manager Philippa@freightonrail.org.uk July 24th 2012

[ii] *The Strategic Rail Freight Network Vision and the Strategic Rail Freight Interchange Policy*
[ii] *Rail freight is safer than long-distance road freight using motorway and A roads, as HGVs are over 3 times more likely to be involved in fatal accidents than cars due to a combination of size, lack of proper enforcement of drivers hours, vehicle overloading and differing foreign operating standards.*
Source: Traffic statistics table 2010 TRA0104, Accident statistics Table RAS 30017, both DfT