

## Opex Contingency - Airline Community position for CAA

### 1. Views on risk and efficiency

Given the lack of visibility and transparency of NERL opex and capex plans, the Airline Community does not feel in a position to comment to CAA upon the likelihood of NERL requiring any opex contingency funding. We are reliant on CAA as holders of the detailed information to judge this and take appropriate decisions.

The Community does consider that the delivery of the major capex projects; TBS, Transition altitude, LAMP etc. are absolutely critical. Risks to these must be mitigated appropriately and carefully if the CAA believes there is a need for contingency above that already accounted for within NERL planning in order for them to deliver the full programme of works in RP2.

We also consider that CAA have taken the appropriate action in their plan to move NERL towards being a more opex efficient business and that NERL must be held accountable for their opex decisions and efficiency. We would therefore not support an unconditional reversal of the CAA decision to remove the opex contingency from NERL.

### 2. Financial Conditions

- Recognising the CAA desire to manage the risk to Capital programme and maintain the drive for efficiency, the Community would support the following;
- We do not support a return of the £28m contingency without certain financial conditions being placed upon the use of this money. NERL must not have free access to any contingency monies that are provisioned within the plan.
- Any contingency allowed must be returned to the airlines if it remains unused.
- Interest earned on the contingency sum whilst unused during the RP should accrue to the airlines and be returned with the remaining amount at the end of the period.
- Release of any contingency is predicated on it being necessary to maintain the on time delivery of a specific project and related benefits. If the project is not delivered on time, then any contingency money spent must be returned. The effect of the contingency on the settlement should be neutral, i.e., at the end of RP2, if NERL have outperformed against their opex targets, but have drawn on the contingency; the contingency used should be deducted from the opex surplus. In the interests of protecting the capex programme with this opex contingency, the airlines are willing to take on the risk that should NERL not out perform on opex, that any contingency money spent will be over and above the original settlement figure.

### 3. Purpose of the Contingency Money

In thinking about how and when contingency monies should be used, the Community believes that the following are appropriate conditions for use;

- The agreement of the Airline Community must be integral to the release of money for contingency, including explicit involvement in governance for releasing any amount.
- Any request should be on the basis of full transparency of relevant information.
- Contingency money should only be requested when it can be evidenced to be required specifically for one of the existing key projects in the capex programme (TBS, TA, LAMP, NTSCA).
- The funds should only be available where there is a need for additional opex resource as a result of an unforeseen issue directly related to operational staff being utilised on one of the key projects.
- Evidence must be shared to demonstrate that the money being requested has not been provisioned elsewhere in the NERL plan, either in the capex plan or opex allowance.
- There must be fully transparent accounting of the use of any money drawn down, with should be subject to annual reporting.

### 4. Specific Governance issues

We recognise that this type of governance is new to NERL, and that NERL may well therefore be nervous that the Airline Community will unreasonably withhold agreement to access contingency funds.

Whilst as a community we offer our assurance that if the above conditions were met, that this would not be the case, we would anticipate that CAA being able to act as an arbiter in any disagreement should assuage any concern on the part of NERL.

We view this type of governance as working in a very similar way to the PSDH process in Q5 at Heathrow. This worked with a discreet pot of funding being held for a specific purpose, compliance with which had to be demonstrated before release, and agreed with the Airline Community and unspent amounts were returned to the airlines.

Due to apparent level of uncertainty of the actual need for this contingency money, it would seem helpful for all parties, if some kind of transparent review process was included in the settlement that looked retrospectively at the usage of any money drawn down from a contingency amount.

This would serve to give confidence not only that the usage was appropriate to the classification of contingency, but also as a test of efficiency spend. This review could

be done at the end of RP2 as part of the wash-up that determines any under/over recovery.

We view that this would assist with understanding for RP3 whether similar contingency measures were required.

Building on our Q6 experiences, as a progression of a closing review, the airlines would consider it very valuable if the CAA wish to consider the appointment of an Independent Fund Surveyor (IFS) to provide the appropriate level of assurance over the OPEX contingency funds during the Regulatory period. We would engage as a community on this under the direction of the CAA if requested.