



1.1 CUS WORK SECTION PRELIMINARIES CLAIM

- 1.1.1 The current CUS claim in respect of additional Work Section prelims is **£1,453,452.00**. This figure is detailed within its submission dated 21 December 2009.
- 1.1.2 My comments in this regard remain as previously noted¹. That is to say, the CUS claim for additional Work Section prelims is based on a **“purely hypothetical calculation”** that **“does not demonstrate that any loss or increase in cost was incurred by CUS”**.
- 1.1.3 Requests have been made of CUS to produce further information in substantiation of this claim. However, CUS has to date declined to provide any further information in this respect.
- 1.1.4 I note that CUS did revise its Schedule 4 rates and prices submission on a “without prejudice” basis reducing its additional Work Section prelims claim by **72%**² (from £1.281M at that time to £358k/£362k). However, during discussions with CUS at a meeting in November 2009, it became apparent that whilst CUS had attempted to address its Prelim Claim in its revised submission, the revised claim amount was incorrect. At the meeting CUS undertook to provide revised calculations. I have not yet received this further data.
- 1.1.5 In another subsequent revised submission, based on the tie/Acutus spreadsheet model, CUS valued its alleged additional Work Section prelims at **nil**³. At the time no explanation was provided by CUS – although we understand that this was merely presented by CUS to attempt to ‘justify’ a further on account payment.
- 1.1.6 To date CUS has not provided any further actual resource information in respect of its claim for additional Work Section prelims.

1.2 CUS WORK SECTION LABOUR (AND PLANT) CLAIMS

- 1.2.1 The average labour disruption percentage claimed by CUS is around **253%** over all Work Sections (see attached spreadsheet at column 7).
- 1.2.2 **CUS continues to apply its disruption factors to plant and reinstatement values.** CUS has failed to provide any data to substantiate this position (despite being expressly requested to do so on a number of occasions). That in my opinion is unreasonable and unsustainable without submission of auditable proof.

¹ “Brief explanation of the key factors/issues affecting CUS’ disruption claims”, Acutus note dated October 2009; more fully explained in section 3.0 of Acutus “Expert Report on Quantum” dated September 2009.

² RB email dated 12 November 2009 22:50 refers.

³ RB email dated 25 November 2009 at 22:11 refers.



1.2.3 My previous comments in respect of the CUS disruption claims concluded that ***“the claims are lacking in any proper analysis or substantiation of the ‘effect’ of same”***. I remain of that opinion as further explained below.

1.2.4 Our recent exercise, the main focus of which was work sections 1C-03-01/02 & 5C, has merely reinforced my earlier concerns and has in some instances identified further questions regarding the validity of the claims.

1.2.5 From the findings of our most recent detailed review and analysis of the CUS events (re Work Section 1C0301/02⁴) it remains my opinion that the events referred to and relied upon as a cause of delay and disruption are insufficient to demonstrate an entitlement to the amount claimed. Many are thought to have little or no effect.

1.2.6 Review of Work Section 1C0301/02 & 5C

- a) Over the period from October 2008 to November 2009, and of the 174 No. events relied upon by CUS, our initial findings indicate that the disruption for which **tie** is responsible is more likely to be in the region of **1504 hours (or 5.08%)** as opposed to circa **38,337 hours (or 143% as presently claimed)**.

Note: I accept that it may well be that the actual disruption caused by **tie** is ultimately found to be greater than the 5.08% noted above (on the basis that the current exercise is too ‘event focussed’). That said, the method of assessment currently adopted by CUS ‘masks’ a number of pertinent issues; this continues to inhibit a proper assessment of its claim. These issues include:-

- i) The veracity of the records relied upon by CUS in ascertaining its ‘actual’ labour hours expended. For example, in sub-section 5C we found **errors in CUS claims in the region of 28%** (i.e. requiring a reduction in hours claimed of circa 28% in 5C).
- ii) This is in addition to other separate anomalies identified in other CUS records requiring **reductions of circa 10%**;
- iii) CUS claims do not demonstrate (nor do they attempt to demonstrate) the actual disruptive impact, if any, of each of the individual events relied upon by CUS in Delay Schedule 1;
- iv) CUS’ do not properly / accurately reconcile Change Controls and other negotiated settlements;

⁴ CUS Schedule 4 Rates and Prices Submission, Appendix A “Delay Schedule 1”.



- v) Demarcation of the work sections is also a potential issue where analysing individual sections.

1.2.7 As a consequence, whilst we have identified some disruption hours from our analysis and review, together those hours are still significantly less than the total hours currently being sought by CUS.

1.2.8 The CUS as-built information also appears inconsistent (however this still requires to be finally established; we have recently received information from tie last week to enable this to be reviewed in detail).

1.2.9 There are significant issues with meterages achieved in the period (curiously this could lead to an increase in the CUS claims – demonstrating the lack of a credible approach to its assessment).

1.3 Summary of current findings

1.3.1 In conclusion, as I have noted in previous submissions, **I do not consider** that the CUS claims demonstrate a 'reasonable' measure of disruption incurred as a result of the matters for which tie is responsible. **They do not attempt demonstrate the loss or additional cost incurred.**

1.3.2 In my opinion, with the information presently submitted by CUS, **it is not possible to arrive at an accurate assessment of the extent to which the CUS Work Section labour and plant resources were disrupted as a result of matters for which tie is responsible.**

1.3.3 That said I acknowledge that disruption beyond the 5.08% disruption referred to above may have been incurred as a result of matters for which tie is responsible (paragraph 1.2.6a) refers). This may arise as a result of matters such as (i) the indirect effect of hand digging; (ii) delayed responses to TQ's; and (iii) TM revisions.

1.3.4 It should also be borne in mind that the weight of documentary evidence favours CUS.

1.3.5 In light of the foregoing, absent the submission of a properly detailed and analysed submission from CUS⁵, the extent of the disruption which in my opinion can reasonably be assessed from the information provided is likely to be no more than circa 20-25%. That however does not generate any further payment to CUS beyond that which tie has already certified.

Robert Burt 09 March 2010

⁵ Note: CUS had undertaken during November 2009 to resubmit its claim for 1C0301/02 adopting a method more acceptable to tie. During January 2010 however CUS advised it would not resubmit its claim on this basis

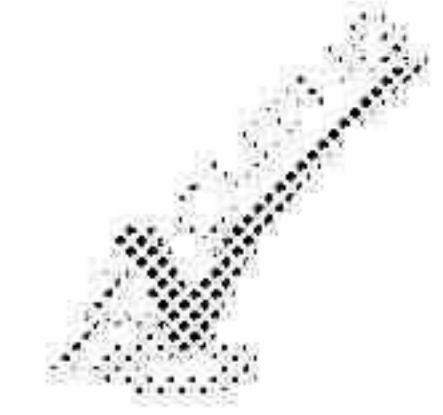


Table of various potential disruption percentage scenarios

1	2	3	4	5	6	7	8	9	10	11	12	13	14
Section	Alleged Planned hrs	Alleged Actual hrs	Increase claimed	Deduction 'allowed' by CUS for CC	Net claimed as 'disruption'	Alleged Disruption %	Possible labour disruption percentage ranges						
on CUS case							5%	10%	25%	50%	100%	200%	300%
1 SECTION 1A-01-01	4,393 hrs	25,547 hrs	21,154 hrs	-1,350 hrs	19,804 hrs	451%	220 hrs	439 hrs	1,098 hrs	2,197 hrs	4,393 hrs	8,786 hrs	13,179 hrs
2 SECTION 1B-01-01	5,344 hrs	31,955 hrs	26,611 hrs	-2,240 hrs	24,371 hrs	456%	267 hrs	534 hrs	1,336 hrs	2,672 hrs	5,344 hrs	10,688 hrs	16,032 hrs
3 SECTION 1B-01-02	5,407 hrs	42,080 hrs	36,672 hrs	-2,155 hrs	34,517 hrs	638%	270 hrs	541 hrs	1,352 hrs	2,704 hrs	5,407 hrs	10,815 hrs	16,222 hrs
4 SECTION 1C-01-01	9,949 hrs	28,369 hrs	18,420 hrs	-6,356 hrs	12,065 hrs	121%	497 hrs	995 hrs	2,487 hrs	4,974 hrs	9,949 hrs	19,897 hrs	29,846 hrs
5 SECTION 1C-03-01	26,902 hrs	67,958 hrs	41,057 hrs	-2,719 hrs	38,337 hrs	143%	1,345 hrs	2,690 hrs	6,725 hrs	13,451 hrs	26,902 hrs	53,803 hrs	80,705 hrs
6 SECTION 1C-04-01	15,176 hrs	56,682 hrs	41,506 hrs	-3,911 hrs	37,596 hrs	248%	759 hrs	1,518 hrs	3,794 hrs	7,588 hrs	15,176 hrs	30,351 hrs	45,527 hrs
7 SECTION 1C-05-01	9,694 hrs	45,896 hrs	36,203 hrs	-2,084 hrs	34,119 hrs	352%	485 hrs	969 hrs	2,423 hrs	4,847 hrs	9,694 hrs	19,388 hrs	29,082 hrs
8 SECTION 1D-01-01	17,649 hrs	62,062 hrs	44,413 hrs	-4,531 hrs	39,882 hrs	226%	882 hrs	1,765 hrs	4,412 hrs	8,824 hrs	17,649 hrs	35,298 hrs	52,947 hrs
9 SECTION 2A-01-01	5,346 hrs	13,982 hrs	8,637 hrs	-2,771 hrs	5,865 hrs	110%	267 hrs	535 hrs	1,336 hrs	2,673 hrs	5,346 hrs	10,691 hrs	16,037 hrs
10 SECTION 5B	846 hrs	3,326 hrs	2,481 hrs	-145 hrs	2,336 hrs	276%	42 hrs	85 hrs	211 hrs	423 hrs	846 hrs	1,691 hrs	2,537 hrs
11 SECTION 5C	33 hrs	8,202 hrs	8,169 hrs	-2,038 hrs	6,130 hrs	18515%	2 hrs	3 hrs	8 hrs	17 hrs	33 hrs	66 hrs	99 hrs
Totals	100,737 hrs	386,060 hrs	285,322 hrs	-30,299 hrs	255,023 hrs	253%	5,037 hrs	10,074 hrs	25,184 hrs	50,369 hrs	100,737 hrs	201,474 hrs	302,212 hrs
Labour Rate: £14.89							£74,999	£149,998	£374,994	£749,989	£1,499,977	£2,999,954	£4,499,931
Plant disruption at 17%							£136,443	£136,443	£136,443	£136,443	£136,443	£136,443	£136,443
MUDFA Uplift 8.80%							£18,607	£25,207	£45,006	£78,006	£144,005	£276,003	£408,001
Total (incl. MUDFA uplift)							£230,049	£311,648	£556,444	£964,438	£1,780,425	£3,412,400	£5,044,375
Labour Rate: £20.00							£100,737	£201,474	£503,686	£1,007,372	£2,014,744	£4,029,488	£6,044,233
Plant disruption at 17%							£136,443	£136,443	£136,443	£136,443	£136,443	£136,443	£136,443
MUDFA Uplift 8.80%							£20,872	£29,737	£56,331	£100,656	£189,304	£366,602	£543,899
Total (incl. MUDFA uplift)							£258,052	£367,654	£696,461	£1,244,471	£2,340,492	£4,532,533	£6,724,575