
From: Fitchie, Andrew
Sent: 04 September 2007 13:42
To: 'Graeme Bissett'; 'Graeme Bissett'
Cc: 'Colin MacKenzie'
Subject: ETN grant Funding Award Letter

Graeme

I am due to see Gill Lindsay at 2 pm.

Attached is a draft of the Award Letter which attempts to address at appropriate provisions Colin's comments. I have messages for Colin but we have not been able to speak yet. I do not consider that TS's draft was an adequate start point and that there is therefore a risk (a) that the position has now moved to one where the level of sophistication (justifiable though it is to protect interests properly) fits ill in this document -which was not intended by TS to be an even handed commercial arrangement but rather a blunt, controlling and one-sided protocol) (b) TS will pass it for legal review and this will be result in wholesale rejection on the grounds of fettering Ministers' discretion or more elaborate review/delay.

The draft as it stands is a compilation of Graeme's common sense changes -left as is - to introduce protection and my revisions of a more detailed legal and commercial nature.

- I have included additional basic boilerplate at paras 20, 21 and 22 as agreed with Graeme.
- I have included additional language at 12.1, making crystal clear that a dispute can be raised about the existence of Default/failure. In the time available at present I simply cannot produce smooth and elegant language to incorporate this concept in this document. I consider that it functions but does not read well.
- I have included language in para 12.3 which I believe will address Gill's concern over Ministers' notification not being required if the breach complained about is not capable of remedy.
- I have included language which spells out what the redress might be. I consider that there is a risk this will result in TS rejecting the amendment. (The provision as worded, placed no restriction on what redress CEC would seek through DRP).
- At 7.4 I have included entitlement for CEC to disclose the Ward letter if needs to for Project purposes. My advice o this is that CEC should resist this, and provide the acceptable letter of comfort/covenant.
- I have corrected the 385,200,000 in the opening para. I have no knowledge of previous letters of awards and cannot assist here without a detailed steer.
- I have included language in para 8.3 to address Colin's point -which does not seem to be impacted by a sale of the Project.
- I have included the express caveat in para 9.3
- Para 11: I am in difficulty here; CEC wants comfort from **tie** but **tie** is CEC for the purposes of this letter. I have not altered the provision since this is not a matter for Ministers, if CEC gives the assurance.
- Para 19 : I have included minor revisions to 19.3 -the relevant reserving clause - to clarify the issue for Colin. No issue here since this is being exposed to TS fro the first time.

I am now leaving to City Chambers and should be back around 4.30pm.

Kind regards

Andrew

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