

# TIE LIMITED V CARILLION UTILITY SERVICES LIMITED

## WITNESS STATEMENT

of

**JOHN CASSERLY**

I, **JOHN CASSERLY**, of Scottish and Southern Energy PLC, Inveralmond House, 200 Dunkeld Road, Perth, PH1 3AQ, UK WILL SAY as follows:

### 1. INTRODUCTION

- 1.1 My full name is John Casserly. My date of birth is ◆. My profession is that of a Senior Commercial Manager. My home address is [REDACTED] I can be contacted on [REDACTED] or by e-mail at john.casserly@sse.com. My current job title is Senior Commercial Manager at Scottish and Southern Energy in connection with their thermal and nuclear business. I commenced this role two months ago.
- 1.2 Whilst I was working at tie I was the Commercial Manager for the MUDFA ("**Multi Utility Diversion Framework Agreement**"). I commenced this role in April 2007. I reported to Graham Barclay, who is a Project Director at tie and Dennis Murray, who is the Commercial Director at tie.
- 1.3 Prior to working for tie, I was seconded from Black and Veitch to Scottish Water Solutions as a Commercial Manager. I was responsible for delivering the Scottish Water Solutions programme to half of Scotland. I was in this role for four years.
- 1.4 All views expressed in this statement are my own and although believed by me to be correct, must not be taken as fact.

### 2. HEADS OF CLAIM INTIMATED BY CARILLION

I am asked about the various heads of claims intimated by Carillion.

#### 2.1 Pre-Construction Services & Preliminaries

- 2.1.1 This is concerned with the design development section.
- 2.1.2 tie agreed a lump sum fixed price settlement with Carillion for the pre-construction services. The lump sum was £917,000/£918,000. That figure took account of all the work that Carillion done pre-construction and the recognition that in carrying the pre-construction services the work was delayed by the Scottish Parliament. As a result of this delay the work of pre-construction services was extended by three months.
- 2.1.3 The settlement figure incorporates a final settlement figure for the actual pre-construction services, preliminaries and any delay and disruption elements and deals with all issues up to that point in time. Therefore all commercial issues and all claims were included in the September 2008 settlement. It is quite clear in the wording that that was the case of the agreement.
- 2.1.4 There should be no further disputes in relation to the valuation of this matter.

## 2.2 Work Site Measurement

- 2.2.1 Under the MUDFA contract there is a requirement for **tie** to measure and value works throughout the duration of the project. Doing this required a lot of resources and time. It was decided instead that Carillion would make interim applications. Interim payments would be paid to Carillion on the basis of their interim applications, but this would all be subject to a final measure.
- 2.2.2 It transpired that Carillion were claiming for more than they had actually completed. **tie** agreed to get a set of red line drawings of what had actually been constructed. This was in fact an obligation for Carillion under the contract. **tie** agreed with Carillion that **tie** would use those as their drawings as a basis upon which **tie** would then measure the works and any ambiguities or discrepancies between them. If there were any discrepancies **tie** would go out and check these on site.
- 2.2.3 Carillion initially submitted a sum of £21 million for the cost of works they had completed. However going through the drawings and looking at the work on site, those items quickly reduced to about £19 million.
- 2.2.4 **tie** then employed an external third party, a self-employed chartered surveyor called Chris Ward to look over the red line drawings and the actual works undertaken. Chris was completely external and independent from **tie**. Carillion agreed to this. Carillion then issued a set of red line drawings and changed these drawings three times. After three revisions of the drawings the gas main was in a different location. **tie** said to Carillion that **tie** had a set of documentation that was signed off by everybody including yourselves, **tie** and the utility company that the original drawing was right. So **tie** asked to see all the paper work to verify what the drawings are showing is true.
- 2.2.5 The problem that **tie** have is that Carillion had a number of opportunities to issue **tie** with a complete set of finalised drawings. Those drawings have been changed and amended a number of times. Carillion don't have the supporting documentation for the amendments that they made so it's almost like somebody is trying to justify extra money by putting on extra lines on the drawings but then can't produce anything to substantiate what these extra lines are for.
- 2.2.6 **tie** went through every piece of paper that Carillion issued to **tie** and it was checked. **tie** had co-ordination meetings with the Carillion employees and **tie** spent a lot of time sending Chris Ward out to the sites to resolve all the issues and agreeing things.
- 2.2.7 Carillion have failed to provide **tie** with all the necessary documentation, therefore the deductions have been made on the basis of the documents that **tie** have received from Carillion.
- 2.2.8 The only area **tie** has a problem with now is areas where **tie** have confirmation from Carillion that the works had been deleted and **tie** have instructions confirming that and Carillion have now come back and said that they completed works there. However there is no paper work, no sign off and no quality plans from Carillion that back any of their claims up. **tie** said to Carillion that they are happy to pay for the work Carillion have done as long as Carillion's claim can be substantiated. Therefore if it cannot be proved that work was carried out, **tie** cannot pay Carillion because **tie** can't get this approved by the SUC's either.

## 2.3 Under Pressure Water Connections

- 2.3.1 In the tender submission that Carillion gave **tie**, there was an item in the CARP which states that Carillion have priced for water mains and the connections of water mains as being turned off so they can be isolated and so they are not under pressure.
- 2.3.2 Carillion are claiming that the water connections had to be done under pressure. Carillion are claiming £4,500 or £4,000 for each under pressure water connection.
- 2.3.3 **tie's** argument is that there would have been no need to carry out these connections under pressure. If Carillion have carried out the work in this way then that is their fault for choosing that method of work.
- 2.3.4 **tie's** argument is based on the fact that the mains can be isolated. It is possible to isolate the new section of pipe work using a stop valve. Therefore you can actually stop the flow and isolate the flow in the pipes, therefore making it possible to carry out the connections without it being under pressure. So at any time Carillion wanted, they can turn a valve and this would shut down the supply and therefore the connection is no longer under pressure.
- 2.3.5 If Carillion carried out the connections under pressure they would have needed to ask Scottish Water for permission to shut down the system. Carillion would need to have applied for a notice 22 to shut down the system but Carillion cannot produce any documentation showing that they have asked for these shut downs to the connections.
- 2.3.6 I believe that Carillion might have done some water connections under pressure but we paid for these separately under a change order. I think this only happened in like 10 or 12 limited locations like that.
- 2.3.7 If Carillion have done more than those 10 or 12 connections under pressure, that's their method of work. That was their decision at the time and they should have come and asked **tie** and stated that there was going to be an extra over but they have not done that.

## 2.4 Multiple Trenches

- 2.4.1 The preamble to the bill of quantities gives a description of a method in order to measure the trenches. I believe that the wording gives the effect that individual features will be measured separately.
- 2.4.2 Within the method measurement and the submission that Carillion gave **tie** as part of a CARP submission it stated to **tie** that there are potential savings from using multiple trenches instead of digging individual trenches. For multiple trenches they would actually put four or five pipes all in the one trench. This cuts down on the amount of digging, the amount of backfilling and the amount of other things.
- 2.4.3 **tie** then measured and valued the works on the individual basis for the individual features unless it was specifically noted that there was a common trench. If there was a common trench **tie** stated that there was a reduction in the cost. We have change controls throughout the duration of the works where Carillion have

accepted that that was the case and they have given us a revalue rate which is roughly about a 25% reduction.

2.4.4 I do not think that **tie** has a strong argument here. There is the argument that there was an agreement for a reduction in the cost for the common trenches, but if you go strictly by what the contract states, ie paid on the basis of individual features, then I can understand the argument that Carillion have.

2.4.5 I believe that the sum that Carillion are looking for is between £30,000-£40,000.

## 2.5 Gas Connections Within Diversions

2.5.1 There is an item within the preamble to the bill of quantities that gas connections will be re-measured according to their remuneration and all other intermediate features are not re-measurable and are to be included in their liner rate.

2.5.2 Within this claim, Carillion are looking for payment for installing intermediaries.

2.5.3 If when laying a pipe two, three or four, etc connections were required, then these are all intermediate features and these were included in the rates so Carillion is not entitled to get any extra remuneration for them. The only time that we would consider paying for them is when **tie** instructed Carillion to stop carrying out the works or SGN specifically stated that they wanted **tie** to stop the work in a particular area.

2.5.4 **tie's** reasoning behind this is that intermediate features were not necessary. There was no need to carry out a whole connection. Instead, the preferred method would be to put on a blanking plate on the end of the pipe so it just comes to a blank and you would put a valve in order to supply people off of that gas main.

2.5.5 When you lay the next section you would just take of your blank plate and connect it to the end of the pipe because you have got a valve to close off the supply of gas and then carry on laying the pipe. Therefore there is no requirement for a connection point or an intermediary gas connection.

2.5.6 If Carillion has carried out these intermediate connections then these connections should be identified on the red line drawings but they aren't.

2.5.7 There is also a requirement process that these intermediaries need to be signed off, tested, commissioned and Carillion have no documentation showing this.

2.5.8 Carillion are not entitled to any further remuneration as this was as a result of their method of working.

2.5.9 I have prepared a paper on this issue.

## 2.6 Ductile Iron on Red Line Drawings

2.6.1 Ductile iron pipe was used in specific locations. This is because the plastic pipe can sometimes be susceptible to oil seepage or chemical attack or chemical erosion. If there is a possibility of any of these issues a ductile iron pipe is used because it gives more security in the service.

- 2.6.2 Carillion have noted on their red line drawings in some areas ductile iron pipes instead of where plastic pipes were originally intended. As a result Carillion are looking for an extra over from the plastic pipe rate to ductile iron pipe for these pipes.
- 2.6.3 However Carillion cannot demonstrate that they have actually used ductile iron pipes in these areas. There are no records for the testing or signing off these pipes in the areas that Carillion are claiming ductile iron was laid.
- 2.6.4 I did not know of this claim when I worked at **tie**.

## 2.7 Gogar Depot

- 2.7.1 At the Gogar depot there is a variation **tie** gave to Carillion and it was for Gogar depot phase 1 and Gogar depot phase 2. Gogar depot phase 1 and phase 2 are concerned with the earth works.
- 2.7.2 The phase 1 earth works were completed, finalised and a final account agreed about a year and a half ago.
- 2.7.3 Phase 2 was completed two years ago and **tie** have been waiting for Carillion for substantiation of key elements of their submission. For the past 18 months **tie** were paying Carillion on account for this work. **tie** could not agree on the final account for Phase 2 for **tie** were still waiting on substantiation for £65,000 that Carillion was claiming.
- 2.7.4 As part of change control process I met with John Cowan a surveyor from Carillion. We agreed and signed off the items on Phase 2. There are emails to Carillion regarding the agreed exact sum of money to be paid. I think this sum was around £5,280,000.
- 2.7.5 Carillion wanted to allocate this money to the different items. I said to Carillion that that is up to them but **tie** agreed to the final amount. That was the end of the issue for us.

## 2.8 Change Controls Agreed

- 2.8.1 **tie** had a schedule that agreed everything, therefore I do not understand why this is still disputed.
- 2.8.2 In order to certify the change controls **tie** went through with Carillion its spreadsheets and adjusted each of the items with the total being the summary of the changes.
- 2.8.3 **tie** have a set of minutes for the meetings where **tie** and Carillion discussed the change controls. If there is an issue then Carillion would be able to go back to the minutes to decipher what was agreed.

## 2.9 Change Controls Not Agreed

- 2.9.1 Gas By-Pass
- 2.9.1.1 Carillion submitted to **tie** a caveat within the works that said that they hadn't allowed for gas by-passes. The reason they hadn't allowed for

the gas by-passes was it would be dependant upon the time of year when they did them, the amount of gas that was in the pipe and the demands of SGN. **tie** accepted that that was the case.

- 2.9.1.2 **tie** accept that Carillion have put in gas by-passes. **tie** disagree with the quantity of gas by-passes that Carillion state they have installed.
- 2.9.1.3 **tie** have a slight difference in the number of gas by-passes because every gas by-pass that is actually installed has to be signed off by SGN because in order to work on gas mains SGN provides a permit for this. Carillion do not have all the documentation from SGN proving that they have completed the number of gas by-passes they are claiming.
- 2.9.1.4 Carillion claim that in putting in a gas by-pass then they have had to do the same work as they would do for doing a connection. That strictly isn't the case.
- 2.9.1.5 So in doing a gas by-pass what Carillion are saying is that they have had to do two connections either side of the area where there is a by pass. So Carillion are asking for the rate for doing the connection and the by pass.
- 2.9.1.6 **tie's** argument on that is that we have actually detailed the procedure for carrying out this work to Carillion. Carillion accepted this procedure as being a reasonable way of carrying out this work.
- 2.9.1.7 **tie's** procedure stated that there are only two items that are extra in carrying out this work: a bit of pipe and two drill holes. So in fact all Carillion were to do was to drill two points. SGN approve of this process.
- 2.9.1.8 **tie** have valued the time that takes to do this connection at £100 and £4 for the materials. Giving a total for each by-pass of £104. Carillion don't agree with this valuation and they want £2,500 for a connection.
- 2.9.1.9 **tie's** argument is that looking at Carillion's valuation they are getting paid for doing stuff twice, because the majority of the work is already covered under the item for the gas connection. Therefore **tie** are paying Carillion the extra over for the gas by-pass. **tie** gave Carillion a fully detailed rate build-up and break-down of **tie's** valuation.
- 2.9.1.10 There is a bit of a debate about the actual valuation and the prices we have used but that debate should be plus or minus 10/15% maximum on **tie's** value. Even on that **tie's** value of the works would still be nowhere near the Carillion value.
- 2.9.1.11 **tie** have been paying Carillion on account for this work on the basis that Carillion will be able to substantiate the costs for the work.
- 2.9.1.12 I think within the valuation and within the certification **tie** actually allowed for £65,000 which is what **tie** paid them. But within **tie's** liability going forward **tie** have put in a potential liability of £110 for

each connection. This was because **tie** recognised that there might be some leeway because there are three different sizes of pipe for the by-passes (65mm, 110mm and 300mm).

2.9.1.13 Ninety-nine percent of the pipes are 65 millimetres. So **tie** took the standard connection of 65 millimetre and that's what **tie** worked all the rates back for. For the two bigger pipes **tie** then took a value at them and pro rated it up. The pro-ratoring isn't strictly correct but **tie** don't have anything else to base this item upon. I think **tie** went up to somewhere like £500 or £600 for the biggest size of 300 millimetres and **tie** showed that on a schedule to Carillion and gave them a rate breakdown.

2.9.1.14 In summary **tie** agree the gas by-passes are additional. **tie** agree that Carillion have put them in the locations where SGN have signed them off. **tie** agree that we will pay for them which is the valuation of the quantum already issued. **tie** believe that Carillion are not applying or are not valuing this in accordance with the provisions which is clause 46 which says "use the same rates or the rate build-ups".

## 2.9.2 CCTV Surveys

2.9.2.1 The rate that Carillion gave **tie** was for a bigger CCTV unit than Carillion had originally allowed. Carillion are now informing **tie** that in order to activate the CCTV survey they needed to flush out the sewer system. The flushing could be an extra rate but this is unclear because in the preamble to the bill of quantities it states that the CCTV cameras and CCTV camera footage and all works associated are required, so you could argue that the flushing is included but that would be harsh. But if you wanted to go strictly by the letter of the law then **tie** could argue that.

2.9.2.2 Within the schedule of rates the CCTV survey was valued at £425 a day. However **tie** have a letter from Carillion dated around March 2007 stating that the rate for the CCTV surveys will actually be £850 a day. **tie** has neither accepted or rejected this proposal. But **tie** did instruct the CCTV surveys to be carried out.

2.9.2.3 There are two ways of valuing the CCTV surveys.

2.9.2.4 The first valuation takes into account the £850 a day rate and multiply this by the number of times the men were on site. This gives a total of £515,000. However this rate did not include for travel time. The CCTV surveys were taken during night shifts and out-of-hours work. In doing that it meant that the CCTV camera squads were coming to sites and spending two hours so they turn up for two hours and then they would go away and then the following day they come for another two hours and then go away again. **tie**'s argument to that is well **tie** are paying you for an eight hour shift so if the men are only on site for a few hours there is no need to pay for travel time.

- 2.9.2.5 **tie** did informally agree with Carillion that we would adopt the Scottish Water framework. This states that the men are charged a minimum eight hours a day and then travelling time if they are working more than eight hours.
- 2.9.2.6 Carillion have charged everything and so it's a full eight hour shift plus three hours of travelling. **tie** cannot accept liability for this.
- 2.9.2.7 **tie**'s valuation is based on the fact that if the men were on site for less than five hours, travel time was not included. If the men were on site for over five hours, travel time was paid. **tie** then valued the traffic management based upon the actual time that was recorded in the records that Carillion gave **tie**.
- 2.9.2.8 Unless Carillion can demonstrate that the men were working for the hours they are claiming I don't see why **tie** should pay them.
- 2.9.2.9 There other method of valuation is from the view that was taken by senior commercial management in **tie** that said forget about the breach so far with Carillion because this is a starting point in negotiation lets just value the number of times they have been on site at £450 a time which came in at around £77,000 or £79,000. By taking this valuation **tie** have valued this work in accordance with the contract taking into account all the information that has been available to **tie** from Carillion.
- 2.9.2.10 But **tie** has actually paid Carillion around £450,000 or £460,000 on account. While although **tie** have liabilitised the full amount for this and although **tie** were quite happy to pay Carillion what we have paid them to date, this argument follows the principle of reverting back to the contract and apply the rates and prices in the contract in accordance with the agreement.
- 2.9.2.11 I have prepared a paper outlining **tie**'s view on CCTV surveys. But I am not sure if Carillion's position on this has now changed.
- 2.9.3 Logistic Support
- 2.9.3.1 When Carillion began work for the utility diversion they had to block off streets. Doing this meant that some shops could not get their goods supplied to their front doors. Therefore **tie** agreed with the businesses in the areas affected that **tie** would employ somebody that would take a delivery for a lorry, transport it through the site and deliver it to their door. And likewise, for their rubbish.
- 2.9.3.2 Carillion put forward a company to subcontract the works to. The company was called **◆**. **tie** had an issue with this company carrying out the works. This company employed Polish nationals and due to this high profile project **tie** were weary of the press and PR from a result of delegating work to this company. Carillion's project director agreed and therefore shared the labour rates with **tie** for this part of the project. Carillion's project director gave us a copy of these rates. He also then allowed **tie** to speak to their subcontractor and their subcontractor gave us a breakdown of



all the rates and prices that he gave their staff and also provided documentation for each member of their polish contingent that demonstrated that they all had the legitimate paper work.

- 2.9.3.3 The labour rates that Carillion were paying to **◆** were £7.50 or £8.00 per hour for a general operative. £11 for a skilled operative and £13.50 for a supervisor. **tie** were shown a copy of these rates and did not have an issue with them.
- 2.9.3.4 Carillion employed a logistics manager who was paid for by **tie** as part of the prelims.
- 2.9.3.5 He was their employee and he decided upon the number of the logistics people and what they were going to do every day. He had two subordinates who worked with **tie**. Every week Carillion's logistic team would sit down with **tie**'s commercial team and they would give **tie** a weekly run down on what had been happening on site.
- 2.9.3.6 Discussions with the logistic manager reflected that the logistic staff were spending only 15-20% of their time doing logistics work. The rest of the time they had all the logistic staff carrying out Carillion's own requirements and obligations under contract.
- 2.9.3.7 Carillion were paid for this work on account in an interim basis. Carillion then submit this huge bill for historical costs.
- 2.9.3.8 Carillion's bill has been arrived at by applying Carillion rates to the labour rather than the rates provided by the subcontractors. **tie** asked for the paperwork to substantiate this claim and it took Carillion a year and a half just to provide a list of names and hours that the men spent on site. They did not have paperwork or signing in records or anything that would actually justify and corroborate what Carillion have told **tie**.
- 2.9.3.9 **tie** had the records that the project manager for logistics had been issuing to them. **tie** then issued that to Carillion. Carillion denied seeing any of this information.
- 2.9.3.10 By looking at the records that were produced by the logistic manager **tie** valued the work in two ways:
- (a) **tie** valued the work by taking the value of the actual logistic work being carried out, ie the 10-15% and multiplied the subcontractor rate to this and then added the 8.8% Carillion management fee to that; or
  - (b) the other way **tie** valued the work was again taking the 10-15% value of actual logistic work being carried out but using the Carillion rate they were charging for the subcontractor and adding 8.8% to this on top.

These valuations are based on Carillion's own information from their project manager who managed it.

- 2.9.3.11 **tie** sent Carillion a break down of these valuations six times. **tie** first sent it to them 18 months ago, then three months after that, then in September 2009, then November 2009 and then in April 2010 and June 2010. Either way the value of these calculations resulted in a significant reduction of what Carillion were actually entitled to.
- 2.9.3.12 Carillion's only argument to that is the logistics guys were there and **tie** will just have to pay the cost for them.
- 2.9.3.13 I don't think that **tie** can argue with the number of guys Carillion had on site because **tie** were aware of that.
- 2.9.3.14 Carillion should have managed this part of the project better. Because the records are so late in coming and the justification that they actually gave us were so late, we had no opportunity or no ability to then go back and assist Carillion to reduce that litigation and address the issue at the time.
- 2.9.3.15 Carillion are using different rates for different parts of work in the project. For example, with the enabling works Carillion are valuing this work at actual cost, but yet the logistic support is valued at cost plus. **tie** want to apply consistent rates across the board so **tie** have asked Carillion if they want paid costs or do they want paid the rate because either way, they are either going to lose £3 million on this claim or £400,000 on another claim. **tie** have asked Carillion which value do they want to use so that we are consistent, but Carillion do not want to be consistent.
- 2.9.3.16 There is a paper that discusses **tie**'s position with regards to logistic support.
- 2.9.4 Gas Main at the Mound
- 2.9.4.1 Within the original tender documentation and the original contract, there is an item for a gas main at the Mound. In this there is an item there with a bill rating and an item description which includes all temporary works and connections for the gas main.
- 2.9.4.2 It is either clause 51 or 52 which states that the rates and prices will not be changed irrespective of the actual quantity and time taken.
- 2.9.4.3 Before work began at the Mound it was obvious that Carillion underestimated the number of connections that would be required. As an experienced contractor they should have reasonably anticipated that this section of work was going to be bigger. So rather than getting in to a debate with Carillion **tie** took a pragmatic view that what they had priced for was not what was going to be put in the ground so **tie** agreed to pay Carillion for the connections as an extra over.
- 2.9.4.4 A specialist contractor was employed by Carillion to carry out the work on the connections. **tie** paid Carillion for this contractor and Carillion's management fee on top of the contractors rate (8.8%).

- 2.9.4.5 Carillion have valued this work at cost plus. However **tie** argued that it was the same pipe going in the same location at the same depth. The only thing that was different was the connection works at either end and the pipe was a slightly different material, but it was not hugely different.
- 2.9.4.6 Therefore considering the rates for the gas main: labour, plant and materials, the labour and plant will stay the same because its exactly the same pipe, going in exactly the same place, in exactly the same condition so we will use the rates that were provided in the original rate builder and plan. **tie** bought the materials for Carillion so the cost of that can come out of the rates.
- 2.9.4.7 **tie** has in valuing the works, used the labour and flat rates that were in the original bill pricing for laying pipes. **tie** paid Carillion all their sub-contract costs and all costs associated with the connection points, plus 8.8%. **tie** paid Carillion all the actual costs for the materials. So all **tie** are doing is valuing the labour and the plant at the original at which Carillion want at cost plus, and that's where the argument lies.
- 2.9.4.8 **tie** made it clear to Carillion that they did not accept their submission of cost plus. **tie** said that it would be measured in value in accordance with the contract which means you go to clause 46. Clause 46 says "we value a change in accordance with the rates and prices". It gives you four ways of value. **tie** value in a consultation price of similar works, use the rates and prices as a basis, if you can't use those rates and prices then use reasonable costs and at a last resort, at **tie**'s discretion and **tie**'s instruction **tie** use costs, actual costs. So it's always at **tie**'s absolute discretion to decide which way you do, and what's reasonable costs and what isn't.
- 2.9.4.9 Carillion have yet to produce any record sheets, signing records and details to actually justify their cost. **tie** have asked for the timesheets, daily allocation time sheets and the signing in logs. These records are obligatory for health and safety and CDM Regulations. However their basis of their claim will not change after looking at these materials but it will allow them to assess the actual difference between **tie**'s valuation and what Carillion are claiming. That way **tie** can assess what Carillion actually incurred and **tie** can then assess if that's realistic or reasonable (ie clause 46 - reasonable cost).
- 2.9.4.10 Carillion were inefficient in carrying out this part of the project. For example, the crane Carillion had was not capable of lifting the pipes. It took four days for the crane to be removed and the new crane delivered. During this time the men on site did no work, therefore all that cost is captured in Carillion's cost plus. I do not see why **tie** should be responsible for the cost of this delay.
- 2.9.4.11 There were other examples of Carillion's inefficiencies. Carillion were allowing the crane to operate over the top of men. **tie** had to stop Carillion doing this because of health and safety issues. Again that meant that those four or five guys spent a week doing nothing.

- 2.9.4.12 As well as their own inefficiencies and inability to get the materials, which **tie** had already ordered, paid for and hand delivered. It was the ancillary bits like stone, gaskets which was Carillion's responsibility that weren't managed properly. Carillion's inability to do any of that meant that that also had an impact on the efficiency of their own labour.
- 2.9.4.13 It would not be necessary to dig deeper trenches for this pipe.
- 2.9.4.14 With regards to Carillion's argument that they needed to dig deeper trenches in order to weld the pipe together, that is not true. What Carillion are arguing is that in a plastic pipe you can weld it all on the surface of the floor and then roll it in to the trench. This is an argument, but you can only do that in the straight sections, you still have to get in the trench and weld the pipe in certain parts because you can't roll in a 90 degree bend. So there was always going to have to be welding in the trench at some point. In fact **tie** paid for a huge extrication because **tie** needed to get a big bit of kit in the trench for the specialist sub-contractor.
- 2.9.5 Water Supply Connections (Replacement of Lead)
- 2.9.5.1 This is in relation to the connecting pipe that runs from the water main to the boundary of the property.
- 2.9.5.2 Carillion are now stating that they have only allowed for the length of 1 metre pipe to do the connection of the water mains to the property boundary.
- 2.9.5.3 Under the preamble to the bill of quantities, it actually prices the connection irrespective of the length. So in respect of the length that it is, whether it's half a metre or 10 metres, then Carillion should have allowed for it or deem to have allowed for it when they priced the work so it is not an extra over.
- 2.9.5.4 The invoice is the preamble to the bill and in the paper that **tie** sent to Carillion on this, it actually gives the details and clause reference, I think it's 9.11 or 9.16 in the preamble to the bill quantities where it stipulates the price irrespective of the length of pipe's that is being used, you have deemed to have included for it in respect of how long it is. Therefore that was Carillion's risk.
- 2.9.5.5 An exception was made at Constitution Street. This was because of the width of the road Carillion had to move the water main to the other side of the road.
- 2.9.5.6 I agreed that **tie** would pay Carillion an extra over for this water connection because it was highly unreasonable for Carillion to have costed for the extra pipe that was needed. Therefore Carillion were paid an extra over for the water connections because of the specific constraint of the street and it was not something they could have been aware of at the start of the job so **tie** agreed to pay them.

- 2.9.5.7 Also irrespective to what the bill of quantities state, Carillion are now arguing that they have allowed for 2 metres to do each connection. **tie's** argument would be that where all the connections that are shorter than 2 metres, we will offset the shorter connections against the longer connections. So out of the 4,500 connections that were completed, Carillion are claiming that an extra is necessary for 115 of these connections. Would that not insinuate that 4,300 connections were shorter than 2 metres and so that has generated a bigger saving than the extra over costs. This is a silly argument to get into, but if Carillion want to be silly about this, **tie** will be silly.
- 2.9.5.8 **tie** agreed with Carillion a procedure that was to be put in place whenever a lead pipe needed to be replaced. Carillion did not follow this procedure.
- 2.9.5.9 The procedure was put in place because there is a legal obligation under the water bylaws in Scotland, that as a developer, or anybody that's doing any work, if they come across a lead pipe in what they are doing they have to replace the lead pipe to the boundary of the building. As this is a legal requirement Scottish Water get paid an allowance for each lead pipe that is replaced.
- 2.9.5.10 Therefore **tie** can claim from Scottish Water an element of the cost for replacing these lead pipes. This was a source of revenue for the project.
- 2.9.5.11 In order to claim a contribution towards the cost of the lead pipes, Scottish Water need to see a log of all the lead pipes that have been replaced. Carillion have failed to keep this log updated. So there is an argument that because of Carillion actions they are costing **tie** money because they have failed to follow an agreed process which had meant that **tie** has been unable to recover the additional funding for this project.
- 2.9.5.12 The procedure **tie** agreed with Carillion stated that every time they came across a lead pipe Carillion would inform **tie**. Carillion wouldn't do anything with the lead pipe until such time it had been agreed what the action would be and **tie** would then sign this action off. Carillion have not complied with this procedure in any way. So on that basis, I don't think there is any lead pipes because they haven't complied with the procedure that they agreed to implement.
- 2.9.5.13 It was Tarin Lowe, who is Carillion's commercial manager, who actually agreed to this procedure.
- 2.9.5.14 In summary, Carillion are claiming for this work from two avenues. They want paid for every time they have done a lead pipe and they want paid for every one that they have replaced that is longer than a metre long.

## 2.9.6 Utility Abandonment

- 2.9.6.1 Carillion are arguing that in their CARP submission they did not allow for any utility abandonment. But in accordance with the

preamble to bill of quantities under the connection item it includes for the abandonment and making good the existing asset so whatever you put in the connection it says that you will make it good ie put in a flange plate, blanking plate, etc. The submission also states that Carillion will carry out breaking in and connections to the existing structures of the existing network utilities making good and closing off all the services and the redundant services.

2.9.6.2 **tie** sent to Carillion a demarcation document. Carillion put in that that they had allowed for a whole number of things and under abandonment they said they hadn't allowed for abandoning which was digging up the pipe, but had allowed for putting in a blanket plate at the end of the pipe.

2.9.6.3 The specification isn't clear on what is included for abandonment, but **tie** assumed that Carillion allowed for the minimum piece of work of putting in a plate.

2.9.6.4 When Carillion was asked to remove a section of a pipe this was done by a Change Order and Carillion were paid for this. The only time I recall that a pipe needed to be removed was Constitution Street as there was no room to put in the new utility pipes. I recall that because we got a rebate from Carillion because the steel pipe was sold as scrap.

2.9.6.5 There are a number of abandonments that have yet to be completed. **tie** will be contra charging Carillion for the cost of getting someone else in to complete the abandonments.

2.9.6.6 I have written a paper on this outlining **tie's** position.

## 2.9.7 A8 Sewer

2.9.7.1 **tie** valued this work at £1,790,000 but Carillion valued this work at £1,860,000.

2.9.7.2 Phil Colon at Carillion was adamant that **tie** and Carillion should just split the difference of the two sums and settle this claim at that.

2.9.7.3 **tie** did not see any reason to split the difference for they had valued the work properly.

2.9.7.4 In August there was a series of meetings with Fiona Dunn, Phil Colon, Mike Wainwright and Steven Bell to agree all of Carillion's heads of claim except for enabling works and outstanding claim. A sum was agreed. It then transpired that Phil Colon and Mike Wainwright thought the sum should be £450,000 or £600,000 more than that what was actually agreed and so they backed away from the agreement. That is why these issues are being discussed once again.

2.9.7.5 I think that Fiona was looking for a figure of around £1,810,000 - £1,815,000 but you would need to speak to Fiona about this.

- 2.9.7.6 **tie's** view on this hasn't changed. The only reason **tie** would amend would be to come to a commercial agreement to finalise the issue.
- 2.9.8 Rhino Barrier
- 2.9.8.1 The reason **tie** asked Carillion for Rhino barrier was because Bilfinger Berger were using rhino barrier and aesthetically somebody thought it would be nice if all the site fencing matched.
- 2.9.8.2 Under the Carillion agreement they have priced for doing a scope of works. Included in that scope of works is providing fencing to the worksites. Therefore they have allowed for a sum of money for providing herras fencing. Herras fencing is included in their rates and in their rate build-ups.
- 2.9.8.3 Carillion's rate build up is built up from the amount of labour, plant and materials they will use per day on an average presumed output. Therefore in order to get to Carillion's rates or prices what they have done is have allowed so much labour so much plant so much materials of which the herers fencing is a specific detail element per day and that the output associated with that is approximately 7.5 linear metres of pipeline per day.
- 2.9.8.4 **tie** was willing to pay Carillion for the rhino barrier as an extra over. Carillion asked for the total cost for a rhino barrier.
- 2.9.8.5 **tie** sent to Carillion a break down of the build up rate for the rhino barrier.
- 2.9.8.6 There was in fact a saving in ordering a rhino barrier because of the way in which Carillion's rate was built up. This is because I valued the rates and prices based on Clause 46 and the details that Carillion had given **tie**.
- 2.9.8.7 The rate build up Carillion have provided demonstrates that Carillion have allowed for the 7.5 linear metres a day for the herras fence which means it costs 42p. Now where this all falls down is Carillion buy it in bulk and then they keep it, so they buy it instead of hiring it. That's their business opportunity. **tie** are paying Carillion 42p per linear metre everywhere, across the whole job. And actually because Carillion bought the herras fence then it's only costing them 10p per linear metre because they are buying it in bulk and reusing this again and again. I don't have an issue with that but the actual allowance Carillion have for herras fencing is more than what they actually incurred as a cost from rhino barrier based upon their rates of prices and their build ups. On that basis there isn't any extra over.
- 2.9.8.8 Phil Colon has been through this with Fiona and he understands our breakdown but Carillion are still demanding payment for the rhino barrier.
- 2.9.9 NPO (CC198 & Other)

- 2.9.9.1 **tie** agreed for a point in time in March 2009 that they would pay for non productive overtime. The agreement states the hours that qualify as non productive overtime: 7am-7pm Monday-Friday, 7am-4pm Saturday and 10am-4pm Sunday.
- 2.9.9.2 **tie** agreed a set of rates for each day. These rates were irrespective of the quantity of hours they worked that day. If they only worked for two hours the men would still be paid for a full shift.
- 2.9.9.3 Again Carillion do not give **tie** any substantiation of what they are claiming but just kept billing **tie**. **tie** asked for the documentation to back up their claim but did not receive a substantial breakdown of this claim until January 2010.
- 2.9.9.4 I looked at this documentation and sent it back to Carillion. Carillion in fact agreed that it was rubbish and that it hadn't been calculated properly and that it didn't use the correct rates and prices. Carillion then submitted this documentation a further two times and it still wasn't correct.
- 2.9.9.5 I said to Carillion that to confirm the information I will randomly pick a week and look at time allocation sheets and the documents you have given to me for that week. I did that and went through that painful exercise three times and three times it was wrong.
- 2.9.9.6 Carillion have submitted this information for a forth time now.
- 2.9.9.7 **tie** have reviewed what Carillion have actually put forward to us in great detail. **tie** had taken their allocation sheets and their daily log and went through it, page by page, item by item, and applied the rules.
- 2.9.9.8 **tie** sent Carillion our position paper on this, showing them the amendments that they made to it, highlighting the pages and the details of the differences on the pages to the actual submission they gave them.
- 2.9.9.9 It was noticeable that Carillion was not using the right rates and they were putting people through for overtime who hadn't been working on those days at all. Overall their submission was a dogs breakfast.
- 2.9.9.10 I asked one of the consultants that works at **tie** to have a look through the agreement and the documentation provided by Carillion and state how he would apply the valuation rules. I did not say to him how I would apply it. He agreed with the way in which I had applied the rates and prices.
- 2.9.10 Surplus Materials
- 2.9.10.1 There is a requirement on Carillion to supply the materials for the works. There's no requirement under the form of contract that **tie** have to pay for materials on site or to pick up the tab for any residual materials. That is Carillion's risk.



- 2.9.10.2 The only exception is if Carillion have ordered materials at **tie**'s instruction and then **tie** changed its mind on these materials, then **tie** will be liable for the cost of these materials.
- 2.9.10.3 **tie** agreed as a cashflow and as a gesture of goodwill and in the spirit of co-operation in going forward, **tie** would pay Carillion for the materials on site. It didn't make any difference to **tie**. All it means that as a client you have paid money out in advance of when the actual measured works are.
- 2.9.10.4 There were problems with this approach. If **tie** cancelled or transferred that element of the work to somebody else and Carillion had ordered some of the materials because **tie** had given them a Work Order for that work, Carillion were left with surplus materials.
- 2.9.10.5 Carillion came back to **tie** with a huge list of materials that they said were surplus. Carillion claimed that the majority of the surplus materials was a result of **tie** cancelling work. However Carillion often mismanaged the ordering of materials.
- 2.9.10.6 **tie** agreed that they would pay Carillion our residual materials on site value. Now it is the quantum of that residual that is the issue.
- 2.9.10.7 **tie** asked Carillion to demonstrate that the materials on site that were left related to the actual instructions that **tie** gave them. **tie** asked Carillion to give them copies of all the orders and instructions which were associated with the original Work Order. **tie** wanted to see their procurement invoices, their receipts for the materials and receipts that the materials had been delivered.
- 2.9.10.8 **tie** then asked Carillion to relay those invoices to the cancelled or transferred work.
- 2.9.10.9 **tie** then asked Carillion to show that they were not able to use those materials in any of the other work sections. This was because a lot of the materials are all generic materials, its the same size of pipes, the same size fittings, the same size, etc and could be used at other work sites. Apart from some specific specials which I could understand the rest of the materials should have been able to have been used elsewhere if the project was planned and managed properly.
- 2.9.10.10 Carillion failed on all three counts to demonstrate any of the surplus materials. They issued **tie** with a submission which showed the instructions and the errors that they said were applicable and again **tie** went through that item by item. This original submission costed £92,000 for the cost of the surplus materials.
- 2.9.10.11 I took Carillion's submission and I went through it item by item. I believed that upon the information that had been provided to **tie** the maximum claim Carillion could have was £15,000.
- 2.9.10.12 Carillion accepted that £15,000 was actually the true value based upon what they had been given but they would look at it again. They then came back and said that the £15,000 was now being increased to

£60,000 for materials on site but they wanted a further £100,000 for materials that they had offsite that had never been delivered to site and had never actually been paid for elsewhere.

2.9.10.13 Carillion sent a revised submission which again I went through line by line. **tie** came to a sum of money and I can't remember what that was but that was certified and **tie** gave Carillion a detailed breakdown for that with notes telling Carillion where their submission was flawed and where it failed to substantiate their claims.

2.9.10.14 **tie** also stated at that time that they would not pay for any materials that were offsite and that had never been delivered. The reason being was that Carillion were arguing in their basis of this £100,000 argument that when **tie** give them the works order Carillion had to go to a suppliers and the suppliers have invoiced them for these materials and put them aside for them. **tie** have asked Carillion to demonstrate that they have been charged for these materials because usually you can ask a supplier to call off materials. By doing this, the supplier will only charge the contractor the materials that they have actually used.

2.9.10.15 Also **tie** have asked Carillion to show them all the surplus materials but Carillion now state that it has been destroyed.

2.9.10.16 Carillion have also been in a dispute with their supplier Burdens. Of the £100,000 that Carillion are claiming, they state that £60,000 of this relates to materials bought from Burdens. In particular this relates to the A8 Sewer. The wrong materials were supplied and this created a dispute between Carillion and Burdens. This dispute had nothing to do with **tie**. A financial arrangement was settled and a copy of this was sent to **tie**.

2.9.10.17 Carillion claim they had to pay Burden's £60,000 for materials. **tie** objected to that because the document states that Carillion have agreed a full and final settlement figure with Burdens. This is a commercial compromise. This document did not actually demonstrate, show or justify to **tie** the price that was paid for materials. It just shows that Carillion had a roll up agreement for a big issue and in doing that Carillion have captured a whole load of other things which they are allocating to be £60,000.

2.9.10.18 I have prepared a paper outlining **tie**'s position on this.

## 2.9.11 Settlement No. 2 Residual Matters

2.9.11.1 This concerns all the heads of claims made by Carillion except enabling works and the delay and disruption claim.

2.9.11.2 There was a meeting with Fiona Dunn, Dennis Murray and Stephen Bell to negotiate a settlement on all the heads of claim. In this meeting **tie** and Carillion came to an agreement on all the items. However after the meeting when Carillion added the value allocated

to each item, it actually meant that it was £500,000 or £600,000 less than what Carillion thought it was going to be.

- 2.9.11.3 As a result Carillion walked away from the agreement. As Carillion didn't sign the agreement **tie** will not pay them those interim sums that we proposed in that negotiation.
- 2.9.11.4 Carillion have put this issue as being a residual matter and **tie** are saying as far as they are concerned that this has been withdrawn because Carillion have not agreed this so **tie** will not pay for something that has not been agreed.
- 2.9.11.5 On the basis that this has been withdrawn why would **tie** then certify any money against it and give away its negotiating position when Carillion still want to fight for more money over and above what they are proposing for here.
- 2.9.12 Other (WS)
  - 2.9.12.1 I understand that this has been withdrawn.
  - 2.9.12.2 **tie** tried to get everything into change controls except for the big items such as A8 Sewer and NPO as they are specific change control items which Carillion couldn't agree.

## 2.10 Enabling Works

- 2.10.1 The enabling works was something that was additional to the Carillion contract. It was an area of work which historically everybody had underestimated. **tie** are part-owned by CEC and the CEC were much harder on **tie** than any other contractor. Every rule had to be followed.
- 2.10.2 As a result if Carillion wanted to close off a section of road, to allow them to do that, Carillion need to go three miles either way and put up road signs and traffic management and tell people in advance where these things are going to be. Carillion needed to remove kerbs and kerb lanes and change traffic islands to make the flow easier on the flow model from the traffic management model. Carillion and nobody else could have envisaged all of this work would be necessary, so it was all additional.
- 2.10.3 Because of the nature of this work, **tie** were unable to get the designs and the details in advance to get the works priced and valued properly so **tie** had to go with Carillion on costs plus - cost reimbursement. When **tie** agreed to cost reimbursement **tie** caveat that slightly. **tie** agreed that they would pay the costs for the plant and the materials but **tie** would pay the labour at the labour rates at £14.75 an hour. There are emails confirming this.
- 2.10.4 From day one of enabling works, **tie** asked Carillion for daily allocation sheets and records to allow **tie** to then value, manage and mitigate the work and take it forward.
- 2.10.5 What Carillion did was they just ask for sums of money without much detail or when Carillion did give **tie** detail, it was just literally three inches worth of

paperwork of just anything, photocopies of invoices, drafts. It was impossible to allocate where the work was coming from.

- 2.10.6 **tie** have written continually to Carillion asking for detailed substantiation of the work but it has never been forthcoming. It got to the stage where I refused to actually sign anymore payments for Carillion on an account basis because the sums of money were becoming ridiculous.
- 2.10.7 I had a meeting in September 2008 with Stephen Bell, Steve Hudson who was the director of Carillion at that time and Keith Girley who was the commercial manager at that time of Carillion. At this meeting Carillion guaranteed that **tie** would get full supporting and documented details for 90% of the work within three months and at that time the bill was sitting at about £3.4/5 million. **tie** received the first set of information two and a half years later.
- 2.10.8 **tie** then asked Carillion for further information and both parties agreed the format. Carillion and **tie** level of detail that this would be in. I think that it was July 2009 when **tie** got the first tranche of information that covered the work to July 2008.
- 2.10.9 However there were many inconsistencies with this information and as a result the documentation does not support Carillion's claim. Some of the invoices that are part of the enabling works are not in actual fact anything to do with the enabling works. **tie** have received invoices from Carillion for the Gogar depot which has not got anything to do with the enabling works and **tie** have received invoices from other areas of the project which again have nothing to do with the enabling works. So in effect what Carillion have done, is they have taken all the material invoices and said we will use all the invoices for the enabling works. For example looking at the tar invoices, where in one day there's a bill for two guys and a machine laying tar. This is for a small area and it's about £800 worth of labour and plant for the tar and there's a £35,000 bill for the tar. The other £34,200 is other tar that was delivered on the same day but for the whole site and not just that little bit of the enabling works.
- 2.10.10 Also the rates and prices that Carillion have applied have been at cost and not the £14.75 that was originally agreed. The cost rate that Carillion are applying is the rate that was devised for logistic support.
- 2.10.11 The issue we have with that is that this is an area where Carillion Utility Services have employed Carillion Project Services to do the enabling works so Carillion Project Services have then employed Carillion Civil Engineering. Carillion Civil Engineering have then employed Skye Blue. Skye Blue have then employed somebody else so what you've actually got is four or five different parts of all the same Carillion. So you start off with a rate which starts at about £18 for the labour, which **tie** don't pay. And then on top of that you've got four or five percentage mark ups from every part of the business.
- 2.10.12 If Carillion didn't have the ability or the resources to do this work, then they should have come back and told **tie** that they were having to subcontract out because the whole point of giving it to them in the first place, is because they had the labour.

- 2.10.13 If the cost rate that was originally agreed is implemented, that reduces Carillion's submission by about £2.5 million straight away and that's before you start looking at the documentation.
- 2.10.14 There is no doubt that the nature of the works was such that it was piecemeal and Carillion had to do the works at short notice. I understand all that but on the basis that **tie** were quite happy to pay them their costs for doing that and the demonstrable cost then **tie** still don't have an issue doing that. Where **tie**'s problem lies is that Carillion have failed consistently to demonstrate any documentation that substantiates any of their claim. Carillion have actually submitted the cost breakdowns I think five or six different times.
- 2.10.15 Carillion gave us all the copies of all the allocation sheets which they said they didn't have for a certain period of time. **tie** then picked three weeks out of that information and took every sheet that was related to that week. **tie** then used that to then calculate the labour elements. It worked out that 25% of what was on the allocation sheets was actually enabling works and the rest of it was all doing measured works elsewhere. So **tie** then valued it on that basis and gave Carillion back a submission. On this information **tie** calculated that the final account value would be between £3,000,000 and £4,000,000. However **tie** did not adjust the account payment of the £6,500,000. The reason being was **tie** was told for two years by Carillion that they would get all the substantiation detail that was necessary to back up Carillion's claim.
- 2.10.16 In my opinion no matter how you value this, I can get nowhere near what we have paid Carillion to date. The maximum I think that Carillion are entitled to is between £4,500,000 - £5,000,000.
- 2.10.17 I don't think that this will actually be pinned down exactly because Carillion don't give you the information or they give you piecemeal stuff and then what they give you doesn't support what they are actually after so it just opens up more questions and more issues.

## **2.11 Gain Share**

Fiona Dunn is aware of the issues involved in this claim.

## **2.12 Indices**

Fiona Dunn is aware of the issues involved in this claim.

## **2.13 Incentivisation**

Fiona Dunn is aware of the issues involved in this claim..

## **2.14 Entitlement up to September 2008**

Fiona Dunn is aware of the issues involved in this claim.

## **2.15 Schedule 4 Rates and Prices Claim**

- 2.15.1 This is what Carillion are claiming for delay and disruption. So this is an additional cost to what Carillion incurred up to September 2008.

- 2.15.2 At September 2008 **tie** agreed a sum of money for full and final settlement for all financial contractual issues prior to 1 September 2008.
- 2.15.3 Carillion state that they have allowed for a schedule of rates and prices for doing work and the price for that work was under a set of assumptions that Carillion would have free access to do the work and that there wouldn't be as many utilities.
- 2.15.4 I am unhappy with this statement from Carillion. The reason we employed Carillion to carry out this job was that they were an experienced contractor. They had said that they had done 10,000 mms of diversions every year in Edinburgh over the past 10 years and that they worked in every major city in Britain including Manchester, Glasgow and London. Carillion stated that they knew all the intricacies and issues with the existing services and they had already worked in the areas where the tram project would be focusing on, such as the Haymarket Yards and Lothian Road.
- 2.15.5 When Carillion started the project they stated that they didn't expect to find unidentified services and they did not anticipate the extent of the services.
- 2.15.6 This claim revolves around four issues: Carillion's inefficiencies, **tie**'s documentation, issues regarding the level of detail and issues concerning the rates and prices.
- 2.15.7 The first one is Carillion's inefficiencies. **tie** anticipated getting an output so Carillion theoretically priced on achieving a certain numbers of millimetres per day per squad and they have failed to do that through their own inefficiencies and inability to manage.
- 2.15.8 The second issue is that Carillion are stating that the documentation that **tie** gave them wasn't representative. This is a very minor issue. **tie** prepared a schedule of rates and prices that included for all the works. I do not think that there is much more information that **tie** could have given Carillion.
- 2.15.9 The next item where **tie** do have a slight issue is the issue of the design and the timing of the design. There are also issues concerning the detail that is to included in the design and how much detail you would reasonably have expected as a contractor working in that type of environment. Carillion are asking for a Rolls Royce version of things and saying that they expected **tie** to do 3D dimensional models and have every route planned. **tie**'s argument is that if that is what Carillion expected why did they not state that in their actual submission.
- 2.15.10 This does not make sense because if you are going to carry out trial holes, tests trials, you are going to dig trial trenches to make sure that the utilities and everything that are there are there and work. Essentially Carillion are arguing that in the past every piece of work they have carried out, there have been no new issues that arose whilst carrying out the work and the pipe was laid exactly where it was planned to be. But in this job Carillion state that they are coming across things that they didn't expect. **tie**'s argument to this is that **tie** has been coordinating with all the utility companies and they state that nothing has changed.
- 2.15.11 **tie** have actually valued Carillion's claim and taken their claim submission. It has gone to an external third party claims consultant who was given the full

submission from Carillion. That full submission has been reviewed and **tie** asked for a lot more detail which wasn't forthcoming from Carillion. Carillion still haven't produced the information that was requested.

- 2.15.12 This claim is based upon a whole load of detail that does not tie back to specific contractual issues. It is more of a delay and disruption claim that Carillion are claiming. However Carillion have not presented this claim in a way that allows **tie** to assess it properly.
- 2.15.13 All Carillion do is change the claim consistently. The claim from Carillion is more of a cost claim so it is not actually tied properly to events and it has no bearing on actual events or substantiation. It is just a huge sum of money which is justified through theoretical calculations on theoretical outputs on theoretical bits and pieces which all add up through loads of different spreadsheets and complicated calculations to come out with this really complicated sum of money.
- 2.15.14 The problem with this claim is that it is just a big sum of money. As **tie** and Carillion worked through this claim, certain items were agreed but the final account wasn't in fact reducing. Money was being added to the other issues. The claim is just a balancing figure, so it's almost like a cost balancing number, and Carillion have tried to re-write the story and re-jig all the calculations to justify the increase every time. None of these figures can be substantiated or demonstrated.
- 2.15.15 Also within this claim Carillion have included the cost of relaying the BT ducts again. This is inflating Carillion's claim but this is their own fault because the work wasn't done properly in the first place. Furthermore the claims consultant has come across a claim within this item for a pipe that Carillion are claiming costs £134,000 a millimetre.
- 2.15.16 The last issue within this claim concerns the schedule for rates and prices. Carillion have stated that they had issued **tie** with work order proposals and that **tie** did not accept the work order proposals. The issue here is what impact does that have on Carillion because all the work order proposals are valued at the schedule for rates and prices, so you've got a schedule of rates and prices that have to be applied to the value of the measured works and, therefore, whether **tie** have agreed to a work order proposal or **tie** haven't agreed to it, it's valued at the schedule for rates and prices anyway. So **tie** have valued the work in accordance with that.
- 2.15.17 The schedule for rates and prices are such that under the contract the schedule for rates and prices are fixed irrespective of changes. The only time it won't be valued on the schedule for rates and prices is if there's a clause 46 change, in which case you use the schedule for rates and prices as the basis anyway.
- 2.15.18 Clause 8 details the process for work order proposals. This states that Carillion will not start any works until the work order proposals have been accepted. Therefore Carillion have taken on this risk because they started and continued with the works on a basis that they knew that they should not have started those works until they had a work order instruction. From these actions Carillion were obviously happy to continue the works on the schedule for rates and prices.

- 2.15.19 If Carillion thought that there would be entitled to additional consideration then they would have had to notify **tie** within the next 14 days of this. This is required under clause 46 of the contract.
- 2.15.20 As Carillion have not notified **tie** under clause 46 of the contract, I do not understand why Carillion would be entitled to any additional sums and money as a schedule for rates and prices claim is irrespective as you can't change the schedule for rates and prices. They are fixed and it would be almost impossible to get them changed. But that is my view, you need to check that legally. The clause is written in such a way that it doesn't give you much scope unless both parties agree and we haven't agreed.
- 2.15.21 I have allowed for £1.5 million claim for this liability. Our external consultants came back with a figure that was between £300,000 and £750,000 as an indicative figure of what they thought the actual claim was worth against the Carillion submission of about £6 million
- 2.15.22 I am confident that the settlement on this item is going to be less than the Carillion figure. But I am not confident how much less because there is a good narrative, but it's not backed up but a mediator may think that if someone is telling this story then there must be something in it.

## **2.16 Hand Digging Pending Agreement of Contentious Schedule**

- 2.16.1 This item has been withdrawn.
- 2.16.2 There has been a full and final settlement for this claim for £153,000. The agreement has yet to be signed and will not be signed until all the other outstanding issues between **tie** and Carillion have been agreed.
- 2.16.3 This was paid as a change control.

## **2.17 tie Deductions**

- 2.17.1 There are a number of areas where **tie** has incurred additional costs as a result of Carillion's works and actions. I have prepared papers on each of **tie**'s deductions.
- 2.17.2 Some deductions are more specific within the contract so **tie** have a specific contractual right to go back and claim these.
- 2.17.3 Originally there was a requirement for Carillion to insure the works, but with an option for **tie** to implement a no cap insurance policy or an owner occupier insurance. I believe that the policy states that if **tie** has a no cap insurance policy Carillion will be liable for all claims for the excess or values within the excess for any issues that they are responsible for. And so what **tie** have done is on a monthly basis, they sat down with Carillion, went through all the insurance claims that have come through and agreed with Carillion whose responsibility it is and whether or not Carillion paid for this. It is quite clear that under clause 55 **tie** can do that.
- 2.17.4 There are additional costs incurred by BT, SGN and Scottish Water that are a result of Carillion actions and will be recoverable and deductible from Carillion's account.



- 2.17.5 In relation to BT, BT have put it in writing that the extra costs were associated with the poor performance and inability of Carillion to lay the ducts on the contract specifications. This has resulted in delays to **tie**'s project and increased costs for remedial works. Carillion have been given copies of this letter. SGN and Scottish Water have written similar letters to **tie**.
- 2.17.6 There are also costs associated for items like the utility abandonments. These have yet to be completed and **tie** will need to contra charge Carillion the cost that they now need to pay for another contractor to carry out these works.
- 2.17.7 There are very few deductions that are global in nature. **tie** have gone down and detailed each deduction and prepared a paper about it which shows how each of the deductions has been valued.
- 2.17.8 The only deductions that are global are because **tie** know there is going to be a bill on it but they can not substantiate the value of this claim as of yet. **tie** think it is reasonable to let Carillion know that this may be part of their claim in the future.
- 2.17.9 **tie** have only deducted the items where there is a specific piece of paper or a claim from a third party which actually details their claim. Therefore **tie** are only deducting sums that have demonstrable costs and **tie** have the necessary documentation to back it up.

### 3. OVERALL IMPRESSION OF CARILLION'S PERFORMANCE

- 3.1 Overall I was disappointed with Carillion's performance. Their actual management and their ability to manage was non existent. Throughout the whole course of the works **tie** have questioned the level of management and supervision and the ability and capability of the supervisors.
- 3.2 On a commercial and contractual basis, Carillion were amateurs. They had no cost control or cost systems in place. Carillion do not know how much it has cost them for elements of the works and that's why we had to wait two years for accounts for things. **tie** were just getting demands for sums of money thrown at us. Nobody has any understanding of the processes and procedures.
- 3.3 I brought up my concerns to Carillion's director Steve Hodgkin. I said to him that Carillion stated when they were tendering for the project that they had processes and procedures in place, had a cost management system, daily allocation sheets, health and safety policies and quality policies. His reply was the tender process is a beauty parade and we just have to tell you that to win the job and then we just do whatever we have to do. So all the things that Carillion sold to us they didn't do so there was no quality which is why they had to redo all the BT works.
- 3.4 Carillion sub-contracted too much of the work out. Originally the works was going to be 80% Carillion own employees and 20% sub contracted, they have actually sub contracted 90% and only 10% has been Carillion employees. As a result Carillion let all their sub contracts to their suppliers on hourly rates with no targets, no time for incentives or outputs. They also then employed those same sub contractors to be the supervisors and managers in charge of the actual resources. Therefore there is no incentive for their sub contractors to make progress.
- 3.5 Carillion were contractual and commercially naive. **tie** was paying Carillion £14.75 for a labourer, and Carillion were paying £20 an hour to sub contract that work out. Immediately

the base rate for Carillion is £5.25 higher. The only way that this could work was to become more efficient. Carillion would need to drive the sub contractors to do more work in the same hour because they were already £6 down. Without having any incentive and without any measure, Carillion would continue to make losses working this way. And that is what has happened. Nobody in their right mind would take a re-measurable job on a schedule of rates of prices on that size and then give it to people on an hourly rate.

3.6 You can't trust anybody in Carillion. They don't stand by their agreements, they don't stand by discussions that you have had. Therefore you can sit and agree something and days later Carillion will want to change the agreement. Also the information they give you is complete nonsense.

3.7 Carillion were badly lead because they don't have a control system and a management system in place. Therefore people are reporting things that they don't really know and then they are struggling to try and achieve the figures that they have reported.

3.8 Carillion did have some really good guys working for them. However Carillion lost the benefit of these men because the had to spend time trying to fight and defend Carillion's claims.

**4. STATEMENT OF TRUTH**

I believe that the facts stated in this witness statement are true.

SIGNED: .....

NAME: .....

PLACE: .....

DATED: .....