

CONSENTS

Proposed Contractual Arrangements

4th February 2008

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Background

Participation of both Consortia conditional on not taking liability for discretionary aspects of consents – i.e. subjectivity

Consents are the responsibility of SDS to obtain under their contract

TROs – can in reality only be obtained by CEC

TTROs – again can only be effectively obtained by CEC

TTROs – Process already established by MUDFA

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CEC Concerns

These are understood to be:-

- Claims hiding – SDS blur the timelines for Consents with resubmissions, requests for changes and clarifications
- Snowballing – SDS submit a wave of design packages which CEC cannot process to the agreed timetable
- Ganging up – BBS and SDS see mutual advantage in making design submissions in a way which slows the approval process
- Quality – arguments develop over the quality of SDS submissions

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Current Position With Infraco

Current position with Infraco:-

- Very nervous of any subjectivity in their ability to claim relief
- Want consents defined in detail
- Reluctant to take any risk on missed consents
- We have put drafting to them – broadly agreed in principle

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Allocation Of Responsibility

Design Stage Consents – SDS (except where BBS takes on design responsibility – in which case BBS)

Construction Stage Consents – BBS

Tie Consents – TROs, TTROs and consents relating to statutory authority to implement the scheme (excl Design stage Consents and Construction Stage Consents)

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BBS Obligations

To deliver Design Stage and Construction and Maintenance Stage Consents

To deliver consents in accordance with the Consents Programme

To deliver Prior and Technical Approvals in accordance with the Consents Programme

To support **tie** in obtaining **tie** Consents

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Reliefs

BBS entitled to a Compensation Event where cannot obtain a consent provided:-

- Taken reasonable and timely steps to obtain
 - in accordance with Consents Programme
 - providing the requisite information
 - In accordance with terms of the SDS agreement
- Failure is not due to reprogramming the Infraco Works
- Approval body has failed to respond in stated timescale (or if none a reasonable timescale)
- Infraco has notified tie of reasons for failure to obtain
- The construction programme is actually affected

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Practically

To give effect to these obligations and to protect CEC and tie's interests

- Agree the programme for delivery of consents and include it in the SDS Novation Agreement and Infraco Contract
- Agree the programme for delivery of CEC Technical and Prior Approvals with CEC, SDS, Infraco and tie
- Ensure the Consents Programmes align with the Infraco Construction Programme
- Resource plan from CEC to match the agreed programme

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Mitigation Of CEC Concerns

Generally

- Replicate the current Design Assurance Procedure in the Infraco Contract
- No changes which impact on Prior Approval process
- tie Micromanage the remaining design programme

Specifically

- Claims hiding/Snowballing – Agree (tie, CEC, SDS and Infraco) programme and package content for delivery of CEC Prior and Technical Approvals
- Ganging Up – Agree programme and points under Generally
- Quality – Be clear on what expect in terms of quality

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Next Steps

- Meeting Infraco to settle Consents and other remaining issues on 5/2/08
- Programme for Consents to be provided by SDS this week
- Programme for delivery of Prior and Technical Approval Consents to be agreed between SDS, tie, CEC and Infraco this week

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