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**From:** Phil Douglas  
**Sent:** 21 September 2006 13:27  
**To:** Trudi Craggs; 'Trudi Craggs'  
**Subject:** FW: Utility Agreements Update

Trudi

Could you please advise on point 1 of issues for tie. Can we get CEC to become a party to the agreement, without going through a complexed review process?

Please advise.

Many thanks

*Philip Douglas*

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**From:** Rousson, Shannon [<mailto:Shannon.Rousson@dlapiper.com>]  
**Sent:** 21 September 2006 13:06  
**To:** Phil Douglas; John Low - TSS; Fitchie, Andrew; Fitzgerald, Sharon  
**Cc:** Horsley, Chris; McCarlie, Ian  
**Subject:** Utility Agreements Update

All,

Just a quick update on the status of the outstanding utility agreements:

**Cable & Wireless** - as per my recent email, the final form of agreement is currently awaiting C&W's internal legal approval. They are aware that this agreement needs to be executed next week in order for C&W to be incorporated into the MUDFA award.

**Scottish Power** - we have been promised to receive a mark-up to the agreement sometime today. John and I have been working closely with SP in negotiating this agreement and are hoping there will not be many outstanding issues remaining. I believe there is a meeting scheduled for 27 September to close out any remaining issues. John, can you please confirm?

*Outstanding issues for tie* - to confirm CEC's agreement to be party to this utility agreement and to enquire re any potential time delays of having the agreement executed by CEC.

**Telewest** - we have been promised to receive a mark-up to the agreement sometime today. As this will be the first time we have received comments from Telewest regarding this agreement, we do not really know the extent of revisions to expect. As Telewest is aware, this agreement was drafted based on the NTL agreement so it would prove quite frustrating if there were many substantive changes to the agreement at this point in time.

**BAA** - we have been drafting revisions to the BAA agreement since we received their first list of requirements in early March. We have yet to see an actual mark-up to the agreement from BAA, but have been told by Stuart White that the points raised at a meeting between tie and BAA in early July comprised their response to the draft agreement sent to them by tie on 8 June. We have formally responded to BAA's comments from this July meeting and have been chasing them for a response since.

*Outstanding issues for tie:* (1) to confirm CEC's agreement to be party to this utility agreement and to enquire re any potential time delays of having the agreement executed by CEC; (2) to discuss with risk department at tie, any implications of including an indirect loss provision for business interruption into the agreement, and in particular whether a list of insurances that tie would require BAA to have in place should be included .

**Forth Ports** - Chris has been dealing with this agreement - in summary:

During the meeting a fortnight ago, tie appeared to reach agreement with FP on all outstanding points. One issue remains for tie to give a decision upon. That is the concept of removing the indemnity drafting in favour of allowing losses of FP to be recovered through common law principles.

This change does allow for the MUDFA Contractor to back up any claims through the pass-down (save that a debate may arise where Indirect Losses arise other than through customer contracts and pass the test of remoteness) but would be limited to the MUDFA Contractor's cap on liability. That cap is 5% of the final price for the MUDFA, estimated to be about £3million. No cap now appears in the FP agreement, so tie would be responsible for losses claimed over that amount.

Geoff Gilbert wishes to make the decision on this point, and we are awaiting information on possible losses from FP to inform that decision. If the information does not come through by Friday, Chris suggests sending the mark-up to FP and noting this issue as the only outstanding point.

If you have any questions, please let me know.

Shannon

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