

Glover, Joanne

From: Glover, Joanne
Sent: 23 September 2010 19:56
To: Richard Jeffrey; Steven Bell; david_mackay@[REDACTED] rush_aj@[REDACTED] 'Susan Clark'
Cc: Fitchie, Andrew
Subject: Keen's Opinion on the RTN

Legally privileged and FOISA exempt

All,

We have received comments from Richard Keen QC on the RTN today (by phone call this afternoon):

- 3 sentences/phrases which he suggested are removed and one typo;
- para 2.8.6 - Review Procedure - ok for this to go in if there are facts to support it;
- para 2.9 - amendment to heading to: "Performance of Contract";
- considers that there is no downside to including Appendix A (list of breaches of contract) and it 'adds considerable flavour' to the Infraco's breach of the project partnering and good faith obligations; and
- para 2.12.2 - recommends that we incorporate **tie's** assessment of the rectification plans - level of detail noting why these are (or are not) accepted (a few sentences).

Keen appeared comfortable with the approach taken in the RTN and raised no concerns (other than the amendments above). For the second time, Keen appears extremely engaged on this.

Keen would like an electronic copy of the final RTN which is issued (we can send this on to him if you are comfortable with that).

Keen recommends that if there are any instances of disputed NDs which are referred to DRP, the adjudication goes before Howie, as Howie is a 'detail contractual man'.

Keen enquired whether or not the parties were still talking (I advised yes - following the Consultation in July, the position remains that there are ongoing negotiations re Carlisle). We also discussed briefly that there had been responses to the RTNs on Princes Street and extranet/Clause 10.16 and I noted that the assessment was under way at present but the initial view is that the rectification plan on Princes Street will not be acceptable (no approved design).

If you have any queries, let Andrew or me know.

Kind regards,


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