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**From:** Fitchie, Andrew  
**Sent:** 05 December 2007 10:58  
**To:** 'Willie Gallagher'; 'Graeme Bissett (external contact)'; 'David Mackay'; 'Neil Renilson (TEL)'; 'Stewart McGarrity'; 'Norman Strachan'  
**Cc:** 'Steven Bell'; 'Susan Clark'; 'Matthew Crosse'  
**Subject:** RE: Operating Agreements - tie

Willie  
Graeme

I am concerned that CEC are not focussed on their role as client, owner, formal authorised undertaker (under the Tram Acts) and banker in the close of the Contracts.

1. We have provided a draft of a CEC financial Guarantee, covering supply contracts worth half a billion pounds. CEC have not commented on this, nor have they given any real guidance as to how they would like this instrument to operate, whether it should contain a liability cap, whether they have any preferences regarding the call mechanics in it etc. Rebecca has said that CEC Finance is 'broadly comfortable' with the draft - but this does not mean that CEC Legal will be, without specific instructions. Graeme is taking this forward this week. In the meantime, I am not able to disclose the draft Guarantee to BBS to negotiate/close its terms and **tie** risk losing the opportunity to have this specific aspect of the contract structure approved by CEC on December 20th and therefore not subject to further discussion with BBS.

2. Yesterday, I drafted the resolutions for the CEC Report because it was apparent that these needed a serious push forward. The draft resolutions reflect my views on what **tie**/TEL require in order to have full legal authority which is appropriate and will stand up properly to BBS legal due diligence. This drafting now requires urgent study by CEC Legal to confirm they are comfortable with it. **Ideally, I would like to expose this to BBS as soon as possible, so that we have complete confidence that there will not be an issue raised later.**

3. **Operating Agreements:** the project is investing hours of unproductive time on this matter which has, despite continual **tie** efforts, been there for nigh on two years. Some of the provisions which CEC seem to require are seriously at odds with the '*single economic entity*' concept which is central, in particular, to TEL's role. Graeme has resolved one impasse which is CEC Legal's confirmation that they are content for the **tie** Operating Agreement to contain straight mention of **tie**'s authority as reflected in the Minutes of the Resolutions on December 20th. **tie** should maintain pressure to have the **tie** agreement, at least signed at the time of the Resolutions. There are two important reasons for this: (i) if it is not signed at this time, there is an appreciable risk that CEC's focus is then distracted and it remains unsigned until late January. This would undoubtedly prevent BBS's signature on the Infracore Contract since their lawyers would not have completed due diligence on **tie**'s authority. (2) BBS are using this uncertainty to support their own negotiations on the performance security package being offered to **tie**. Thus inertia on **tie**'s legal authority is therefore negatively affecting the project team's ability to secure best terms.

kind regards

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**From:** Willie Gallagher [mailto:Willie.Gallagher@tie.ltd.uk]

**Sent:** 04 December 2007 22:01

**To:** Graeme Bissett (external contact); David Mackay; Neil Renilson (TEL); Stewart McGarrity; Fitchie, Andrew; Norman Strachan

**Cc:** Steven Bell; Susan Clark

**Subject:** RE: Operating Agreements - tie

I am not comfortable with this position. As tie Chairman, I require clarity over the responsibility of my Company to enter contracts worth circa £300m for starters. The issues that require resolution are not rocket science and could be dealt with, in the main, within 60mins. I am also not prepared to agree an operating agreement, in advance of a finalised draft.

Graeme – Can you push for a meeting of the involved parties asap. We have the LAC tomorrow, don't know who is coming, but could Rebecca and Colin have the authority to agree most of the required drafting changes prior to the meeting?

Willie

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**From:** Graeme Bissett [mailto:graeme.bissett@██████████]

**Sent:** 04 December 2007 21:39

**To:** David Mackay; Willie Gallagher; Neil Renilson (TEL); Stewart McGarrity; 'Fitchie, Andrew'; Norman Strachan

**Cc:** Steven Bell; Susan Clark

**Subject:** Operating Agreements

Nick Smith of CEC Legal called me this afternoon to let me know that :

- 1) Although they have worked on the tie agreement they have not been able to get together with the "Directors" – messrs Holmes and McGougan – and cannot therefore get back to me on the issues in the current draft. They hope to meet early next week, after which they will respond to us.
- 2) The TEL agreement has not progressed. The current out-of-date draft was prepared by Jenny Drummond who is about to leave CEC. They hope to have an update when they meet the directors next week, but may not be able to do so.

The consequences are that we will have no further information for the paper going to the TPB on 7/12 or the tie Board on 11/12 ; I think there is also now little chance that a final agreed form will have been achieved for either company by the time of the Council meeting on 20/12. This will therefore need to be presented as WIP this side of Xmas, which is somewhat frustrating.

The most important section in terms of the BBS negotiations is that covering the authority delegated to tie to enter into the contracts (and related performance obligations) ; and there is a parallel need for agreed language covering TEL's ability to pick up the novated contracts and maintenance obligations in due course. Andrew– would you call me in the morning to discuss how we present these sections convincingly in the absence of final form agreements.

I have not ruled out immediate strenuous representations to Donald and Andrew that this situation is simply unacceptable and then to redouble efforts to reach agreement in the next two weeks. However, the point was made on Monday night I believe and this is the result. Even with assurances, the track record is such that you would not put any money on action following the words.

Views welcome – essentially do we respond immediately or simply go with the flow, with the exception of what's needed to convince BBS that we do actually have a relationship with CEC which enables us to enter the contracts.

Regards

Graeme

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Graeme Bissett

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