



1.1 CUS WORK SECTION PRELIMINARIES CLAIM

- 1.1.1 The CUS claim for £860,666 for additional Work Section prelims is a purely hypothetical calculation. It is **not** founded on any analysis of actual resource utilisation (or the increased cost of same). That position is in my opinion unsustainable and contrary to Clause 51.5.
- 1.1.2 The claim does **not** demonstrate that **any** loss or increase in cost was incurred by CUS.
- 1.1.3 The CUS assessment relies on a number of assumptions and/or hypothesis which are either unsubstantiated or appear to be incorrect.
- 1.1.4 All CUS claims lack transparency. There is no proper analysis of causation of loss (i.e. no link between cause & effect).
- 1.1.5 CUS implies prelim resource thickening – but will not provide evidence of same. This is unreasonable. CUS has declined to provide any analysis of actual resources.
- 1.1.6 The alleged entitlement to payment on the basis of a “factor” of 4.50 **cannot** reasonably be inferred or deduced from the present claim.
- 1.1.7 CUS claim for additional traffic management is a direct duplication of a separate Change Control claim (CUS accepts this point). This alone represents 77% of CUS' preliminaries claim.

1.2 CUS WORK SECTION LABOUR AND PLANT CLAIMS

- 1.2.1 The CUS' claim submissions contain reasonable detail on the 'cause' of the alleged disruption. **However, the claims are lacking in any proper analysis or substantiation of the 'effect' of same.**
- 1.2.2 I do not consider that the CUS claims demonstrate a 'reasonable' measure of disruption incurred as a result of the matters for which tie is responsible. They do not attempt demonstrate the loss or additional cost incurred.
- 1.2.3 I fundamentally disagree with the hypothetical 'global' approach taken by CUS in the quantification of its alleged entitlement. I do not consider that approach to be sanctioned by the terms of the Agreement.
- 1.2.4 CUS METHODOLOGY GENERALLY:
- a) CUS has to date failed to provide the substantiation required by Clause 51.5.
 - b) CUS has adopted a 'global' approach to the present submissions. 'Sufficiency (or insufficiency) of tender', contractor or sub-contractor inefficiencies / errors, costs incurred as a result of neutral events and the like are all masked by such global claims.



- c) **CUS attempts to set aside the whole value of each Work Order Proposal (for labour and plant).** It then attempts to substitute a hypothetical calculation. **This does not comply with Clause 51.5, 10.4, 14 or 46; nor does CUS provide the details required by Schedule 1 paragraphs 2.36 or 3.3.**
- d) The CUS claims are **not strictly delay or disruption claims**; they are more 'fluid', 'catch all' claims which **do not establish the true measure of CUS' entitlement** for the matters for which tie is responsible.

1.2.5 CUS ANALYSIS OF WORK ORDER PROPOSAL:

- a) The average labour and plant rate calculated by CUS **does not and cannot recognise that different operations will be completed at different times.** Any application of same will therefore produce results which are unreliable and likely to be incorrect.

1.2.6 CUS CLAIMS RE INCREASED RATE PER HOUR:

- a) It appears that the reason for the revision to CUS labour resourcing (and the resultant increase in cost) was the TUPE transfer of its employees to SGN. This is not a matter for which I can see that tie bears the risk. **That is a matter for CUS.**

1.2.7 CUS ADJUSTMENT FOR 10HR SHIFT VERSUS AN 8 HR SHIFT:

- a) The change in the working pattern is something which CUS elected to adopt.
- b) **Effect on plant cost/value:** the CUS claims maintain the same value of plant 'allowance' despite the number of team days reducing. **This assumption is invalid.** The plant in CUS' rates are either daily or weekly rated. As the number of days reduces, the cost of that plant should also be reduced. **CUS however has not reduced the plant cost/value.**
- c) **CUS assumption regarding productivity:** CUS 'assumes' that productivity remains the same during a longer 10 hour day. Productivity however decreases as the working hours increase. The decision to extend the working day was a CUS decision; it must bear the responsibility for same. The longer the overtime is worked, the higher the loss of productivity. **CUS' claims take no account of these issues.** Not to do so renders tie responsible for a matter which is not its responsibility.

1.2.8 CUS CONTENTIONS REGARDING ACTUAL TEAM DAYS WORKED: [This is a hugely significant issue]

- a) To date **CUS has been unable to provide any satisfactory evidence that the hours recorded on the weekly summary sheets are all hours for which tie is responsible.** Without detailed records of what each of the operatives was doing and when, it is not possible to establish the true extent of disruption incurred by tie 'events'.



- b) It is not possible to establish with any degree of certainty that the CUS weekly summary sheets were completed contemporaneously. Revisions (both additions and omissions) have been made after the initial sheet has been prepared. No adequate evidenced explanation capable of verification has been provided by CUS re same.
- c) CUS' process of record keeping is not auditable or transparent.
- d) CUS has still to satisfactorily demonstrate how all remedial work hours have been recorded, evaluated and reconciled. Again, process of recording remedial works is not transparent.
- e) Inconsistencies identified between various records kept by CUS; yet to be explained by CUS.
- f) The issues/concerns raised following the tie audit remain valid and remain unresolved.
- 1.2.9 Detailed evidence is required to demonstrate what the various operatives were doing during the increased labour hours claimed and why those hours were incurred. CUS' default position that tie **must** be responsible for those hours, in the absence of this evidence, is unreasonable and unsustainable.
- 1.2.10 CUS CONTENTIONS RE AVERAGE ACTUAL WORK SECTION OUTPUT, FACTOR AND NEW RATE:
- a) CUS **assumes** that tie must be responsible for all increases in labour hours and hence all labour costs claimed. CUS **does not** actually demonstrate the extent to which the matters complained of actually disrupted its activities. CUS proceeds on the assumption that unless it has specifically deducted hours for remedial works the balance of the labour hours claimed must be to tie's account. That is unreasonable.
- b) CUS proceeds on the assumption that its labour 'factor' applies in precisely the same way, and to precisely the same extent, to the plant value. **Absent any analysis of actual plant resources, it is unreasonable to proceed on that basis**.
- c) **No analysis had been carried out by CUS on plant resources**.
- d) **CUS must demonstrate by reference to actual records the level of labour and plant resources utilised in the various Work Sections**. Analysis of those records will, upon further analysis, demonstrate the level of disruption incurred for which tie is responsible.
- e) **This is what clause 51.5 of the Agreement requires**. Absent that information it is not possible to establish the correct or reasonable measure of disruption incurred or the cause.
- 1.2.11 CUS CONTENTIONS REGARDING ENTITLEMENT CALCULATION:
- a) The 'new rate' claimed is hypothetical and compounds earlier errors and invalid assumptions. It cannot therefore be considered to be a measure of, either (i) CUS'



entitlement to a re-rating exercise; or (ii) a measure of the disruption incurred solely as a result of the matters for which tie is responsible.

1.2.12 CUS CLAIM REGARDING REINSTATEMENT WORKS:

- a) **No evidence has been presented by CUS to demonstrate any disruption to this element. This does not comply with any of the provisions of the Agreement. Without any information, data or analysis CUS' claims are unreasonable and unfounded.**
- b) **I requested that CUS considering demonstrating the actual disruption incurred to the reinstatement works via proper analysis. CUS has declined to provide that information.**

1.2.13 CUS RECONCILIATION OF RECOVERY UNDER WORK ORDER AND CHANGE CONTROL PROCESS:

- a) It is not appropriate to use an average Work Section labour and plant rate as a means of establishing the actual recovery during any particular period; that cannot reflect the actual mix of operations carried out during any given window of time. Use of such an average rate and superficial linear measure, produces a hypothetical answer to the question of what work and operations were actually carried out and against which a claim for disruption is directed.
- b) CUS must demonstrate by reference to actual detailed records the level of labour and plant resources utilised in the various Work Sections/operations. CUS should be able to accurately identify for each Change Control item the precise labour and plant amounts recovered.

1.2.14 CUS claim for addition of amount for indexation:

- a) **The CUS claim overstates the amount(s) claimed for indexation in respect of labour; which, coupled with the hypothetical plant assessment, results in an invalid assessment.**

In my opinion, with the information presently submitted by CUS, it is **not possible to arrive at an assessment of the extent to which the CUS Work Section labour and plant resources were disrupted as a result of matters for which tie is responsible.**

Unless and until CUS provides reliable preliminary cost, labour and plant resource usage and cost data which is transparent, verifiable and capable of analysis, it will not be possible in my opinion to arrive at a proper assessment of entitlement. CUS has declined to provide certain information. That position is contrary to the terms and requirements of the Agreement. In other instances CUS has stated that it is not available. This however in my opinion prevents its claims from being properly evidenced and hence assessed.

Robert Burt

27 September 2009