

From: [Carol Douglas](#)
To: [Philip Kerr](#); [Barbara Elborn](#)
Cc: [Lesley McNeil](#)
Subject: RE: Draft Agreement
Date: 11 March 2024 12:03:25
Attachments: [image001.png](#)
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Good morning Philip and Barbara,

I hope this finds you both well. Sarah has asked me to share this LES community shared ownership event with you – Burness Paull LLP will be discussing various options for investment vehicles.

<https://localenergy.scot/structures-for-community-shared-ownership/>

With reference to the two points you raised about the draft CLG agreement.

Indexation from CLG signature date

I've spoken to Sarah and our legal team about this and, as anticipated, the position is that indexation will commence from the date of commissioning of the wind farm. Given the unknown period of time between signing the agreement and the date of commissioning, there is potential for unaffordable increases over that timeframe. This approach aligns with Scottish government guidelines which indicates that community benefit payments should be index linked for the operational lifetime of the project.

Export Failure

Our legal team have addressed this point with the following:-

' the CARES suggested wording is as follows at 2.5

In the event that the installed capacity of the [Windfarm / Hydroelectric scheme / Other – DELETE AS APPROPRIATE] is reduced at any time while the obligations of the Company under Clause 2.3 subsist (a reduction in installed capacity which is of a temporary nature (1 week) being ignored for this purpose), the Company shall be entitled to reduce the rate of payments under Clause 2.3 to reflect the lower capacity of the [Windfarm / Hydroelectric scheme / Other – DELETE AS APPROPRIATE], to such extent as the Company may determine (the Company being bound to act reasonably in this respect) having regard to the principles reflected to in Clauses 2.2 and 2.3.

For Crossdykes we added to the part about export failure to make it clear offsite failures and the example you use of grid collapse/destruction is the one we had in mind or destruction of the wind farm by cataclysmic events then the community benefit payments would be suspended– clearly the wind farm owner can only pay where it is receiving income from the sale of the electricity. It is not in anyone's interest, least of all the developer, for such an event to happen as it could endanger the continued viability of the project. The reference in the CARES example to reduction of installed capacity did not in our opinion adequately cover the description of possible catastrophic failures.'

I hope this is helpful. If you're content, we can go ahead with arranging the next all-communities meeting.

Kind regards

Carol

Carol Douglas
Office Manager - South of Scotland Office



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From: Carol Douglas

Sent: Thursday, February 29, 2024 2:30 PM

To: 'Philip Kerr' <philipm.kerr@btinternet.com>

Subject: RE: Draft Agreement

Hi Philip

I'm going to check with others about the points you raised and will revert to you early next week.

Kind regards

Carol

Carol Douglas

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From: Philip Kerr <philipm.kerr@btinternet.com>

Sent: Wednesday, February 28, 2024 8:08 PM

To: Carol Douglas <carol.douglas@muirhallenergy.co.uk>

Cc: Barbara Elborn <barbara.elborn@newcastleoncommunitytrust.co.uk>; Scott Matheson <scott.matheson@muirhallenergy.co.uk>; Kelly Wyness <kelly.wyness@muirhallenergy.co.uk>; Lesley McNeil <lesley.mcneil@muirhallenergy.co.uk>; Debbie Rae <debbie.rae@muirhallenergy.co.uk>; Adam Thom <adam.thom@muirhallenergy.co.uk>

Subject: Re: Draft Agreement

You don't often get email from philipm.kerr@btinternet.com. [Learn why this is important](#)

Hi Carol

Many thanks for the document

Two points of colour from my end for clarity

Indexation from CLG signature date

A quick point on Indexation that we discussed previously was that the CPI be indexed from the date that the CLG agreement was signed rather than the commissioning date which is a long way away. That would ensure the Community benefits are protected from that date. That remains a hot topic here post Pines Burn and can you potentially adjust the agreement to reflect that.

I understand the negative CPI clause that has been included and implications thereof.

"Index Linked" means increased by the same percentage as the increase in the CPI between the **Date of Commissioning** and the month for which the CPI was last published prior to the month when the relevant sum is to

be increased; for the avoidance of doubt "Index Linked" shall not include any decrease in the CPI and no decrease in the CPI shall result in a reduction in the amount of any sum which is Index Linked

Clause 2.4

I do want to dig a little more into clause 2.4 on the installed capacity and potential reductions in payments with reference to Export Failure, so a bit more colour would be helpful here under the various scenarios envisaged. This is not a request to change, but just to understand the implications. That might be covered off in the next meeting but a little more in the meantime would help.

In the event that the installed capacity of the Windfarm is reduced at any time while the obligations of the Company under Clause 2.2 subsist (a reduction in installed capacity which is of a temporary nature (being 1 week or less) being ignored for this purpose) or for any period where there is an Export Failure, the Company shall be entitled to reduce the rate of payments under Clause 2.2 to reflect the lower capacity of the Windfarm or loss of revenue in the case of Export Failure to such extent as the Company may determine (the Company being bound to act reasonably in this respect) having regard to the principles reflected to in Clause 2.2

Barbara and I are looking through to see if anything else stands out but thought I would lodge these in the meantime. The confirmation of the indexed linked change we would like to see to take this forward.

Many thanks
Philip Kerr

On 28 Feb 2024, at 10:31, Carol Douglas <carol.douglas@muirhallenergy.co.uk> wrote:

Good morning Barbara and Philip

I hope this finds you both well, particularly following last week's dreadful news from Hobkirk. Life seems a bit precarious these days.

Our Legal team has created this draft agreement between Teviot WF Ltd and Teviot Community Services Ltd for your consideration. It follows the model Muirhall Energy used at Crossdykes which was agreed with Burness Paull. Our Director of Finance Scott Matheson, copied in, can supply further information if needed.

As you know, Muirhall cannot give Legal or Financial advice and the Communities should seek independent advice as required.

Once you are content with this draft, we can go ahead organise the next group meeting for the CC reps.

Kind regards

Carol

Carol Douglas
Office Manager - South of Scotland Office
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<2024-02-22 - Comm Benefit agreement - Teviot v1 (for discussion) (002).doc>