

From: McCutcheon, Joanne
To: ["Catherine McArthur"](#)
Cc: [Hutchinson, Peter](#)
Subject: FW: NI RHI and outcomes of the Casework Committee
Date: 20 March 2012 15:15:00
Attachments: [image001.gif](#)
[RE Delivery of Draft Feasibility Study for the NI RHI.htm](#)
[OTOP.png](#)

Catherine
Have added comments to your note - will be in the office tomorrow if you need to have a word.
Regards
joanne

Joanne McCutcheon

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Please consider the environment - do you really need to print this e-mail?

From: Catherine McArthur [mailto:Catherine.McArthur@ofgem.gov.uk]
Sent: 16 March 2012 12:45
To: McCutcheon, Joanne
Cc: David Fletcher; Luis Castro; Matthew Harnack; Keith Avis; Hutchinson, Peter
Subject: NI RHI and outcomes of the Casework Committee

Hi Joanne,

Following our conversation yesterday it would be useful to get some detail around the issues we discussed in an email so that we can better understand what DETI and your Casework Committee needs from us, and what the timelines are looking like for a final decision.

From our end some initial thoughts on each of the points you raised:

1. In relation to the terms of the agreement between DETI and Ofgem - In the Feasibility Study we have recommended that we adopt the form of an Agency Services Agreement. This is based on the arrangement we have used with you (or NIAUR) under the NIRO and NI REGO schemes. If you refer to section 1.18 of the Feasibility Study, we have listed the preparation of the Agency Services Agreement as one of the key deliverables for the Development Phase for the Policy Development Team to undertake in consultation with DETI, and with input from Legal. In addition to this, section 2.6 of the Feasibility Study says, "A key working assumption of this study is that should DETI choose Ofgem to

administer the NI RHI scheme an Agency Services Agreement (ASA) will be agreed by both parties setting out the terms, obligations and costs of the arrangement. This agreement should follow the format and approach taken in previous ASAs between NIAUR/DETI and Ofgem for the administration of environmental schemes such as the NIRO and NI REGO." As this agreement will only be reached once both DETI and Ofgem are satisfied this will be a collaborative process. If there is further information you need about this agreement or process, please let me know what detail is required. **OK, I'll try to get a look at the ASA for the NIRO which will probably provide what I need. Basically the Committee was asking about the nature of the contract between us, in particular - remedies, break points etc. - all normal contractual issues so I don't anticipate a problem with this.**

2. In relation to DETI auditing Ofgem – It would be useful to get some additional clarify around what specifically you/the Committee would intend by this. Do you mean that you would engage an external auditor and would want them to come in to Ofgem and undertake an audit to report back to DETI? Who would you envisage undertaking such a role? Are there particular aspects of the scheme that would be the focus of such audit activity? Some more detail around what sort of arrangement you have in mind would be very helpful for us in responding to this. **Yes from what was said I would think we would want the right to engage an external auditor to undertake an audit in Ofgem and report back. There was no discussion around the specifics - the Committee was simply stated that we should seek right of audit entry. Do you anticipate any issue with this?**

3. Finally in relation to the concerns you mentioned around accepting legal risk or holding £1 million in legal contingency – We have said in the Executive Summary of the Feasibility Study, "Another key risk of this project for Ofgem is the legal risk surrounding the scheme. Based on Ofgem's experience administering environmental schemes it is crucial to establish early in a project where primary responsibility for funding the costs around legal challenges should lie. In our experience such challenge could be in relation to DETI's policy or NIAUR's determinations or to the administration carried out by Ofgem. We are aware that DETI will retain all of the risk and therefore hold adequate legal budget to deal with any challenge. At this stage we would recommend to DETI that a fund of no less than £1 million per year would be appropriate to deal with potential legal challenges to the scheme." This assumption that DETI would accept the legal risk of challenge came about following a discussion with yourself and Peter via telephone conference last year. Attached is an email where Peter refers to this agreement and asks that we finalise the feasibility study by revising the wording to confirm that DETI will retain the legal risk and hold adequate legal contingency for the scheme. It would be useful for us to better understand what the Committee would like to know in relation to this so that we can seek to agree this matter. **We don't anticipate NIAUR being involved now - we are proposing that DETI works directly with Ofgem. As we discussed previously, DETI already has legal consultants in place and we are content to retain all the risk associated with the policy. However, we will have the ASA/contract with you for the administration so if, for example, you make incorrect payments (i.e. it is a mistake on your part and not a problem with the policy) - I am presuming you are not expecting DETI to assume your liability?**

It would be useful if you could please provide us with some additional detail around each of these points so we better understand what you need from us we will endeavour to provide you with some more information from our end.

Once we've got some more information on these points we would also like to arrange a meeting (phone conference or video if you have access) to discuss this in more detail early next week. If you could let me know some times that suit you I'll arrange it from our end. [Early next week - Monday would be best.](#)

Finally it would be useful if you could provide us with some more detail around the process from here in terms of returning to your Casework Committee and how the approvals process will likely proceed. Will it be necessary to convene a second meeting with the Casework Committee, or are they seeking agreement to particular terms and provided those are satisfied the scheme can go forward? How long would you envision the approvals process taking once we come to an agreement around these areas you highlighted for further clarity?

[We do not need to return to the Casework Committee. It has approved the NI RHI subject to a number of actions being carried out \(above are those relating to Ofgem\). Basically, I need to send a note to the Committee providing detail of the contract/ASA, assurance that we have right of audit entry and clarification of the legal contingency. There are only a small number of actions not relating to Ofgem most of which we have already actioned since the meeting.](#)

Please give me a call if you'd like to discuss anything further.

Kind regards,

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