

From: Joanne McCutcheon
Energy Division

Date: 19 December 2013

To: 1. Andrew Crawford
2. Arlene Foster MLA

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COR/611/2013: RENEWABLE HEAT INCENTIVE SCHEME

Issue: Norman Blair, Managing Director of Eglinton Timber Products Ltd, has written to you regarding the Renewable Heat Incentive scheme and the Carbon Trust 0% loan.

Timing: Routine

Need for referral to the Executive: None.

Presentational Issues: None

Freedom of Information: Fully discloseable.

Financial Implications: None.

Statutory Equality Obligations: There are no Section 75 implications.

PFG/PSA implications: None.

Legislation Implications: None.

Recommendation: A draft response to Mr Blair is attached at Annex A.

Background

The Northern Ireland Renewable Heat Incentive (RHI) was launched in November 2012; the legislation underpinning the scheme is - the 'Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012'. Ofgem administers the RHI in Northern Ireland on behalf of DETI under formal 'Administrative Arrangements'.

2. On 30th September 2013, Ofgem rejected an applicant on the basis that they were in receipt of a Carbon Trust Zero Interest loan. The rejected applicant requested a Statutory Review under the RHI dispute resolution procedures.

Issue with Carbon Trust loan

3. Regulation 23 of the Renewable Heat Incentive (RHI) Scheme Regulations (Northern Ireland) 2012 states that systems cannot be accredited under the scheme where a grant from public funds has been paid (or will be paid) or other public support has been provided. Under the regulation “public support” is defined as a financial advantage provided by a public authority.
4. Ofgem rejected the application on the basis that ‘soft loans’ (such as zero interest loans) are a ‘financial advantage’ and that they became aware (Aug 2013) that Carbon Trust Zero Interest loans, within Northern Ireland, utilise funds from Invest NI. Prior to becoming aware of this, Ofgem had accredited two installations in possession of the loans.
5. Given the uncertainty surrounding the issue, DETI and Ofgem advised prospective applicants that the issue of compatibility between the RHI and the Carbon Trust loan was being considered by DETI as part of the dispute resolution.

Resolution

6. Energy Division and Ofgem officials have had discussions over a number of weeks. They have also had discussions with other affected parties, including affected applicants, enquirers, the Carbon Trust, Invest NI, DECC, BIS and DSO in order to find a way forward.
7. It has been determined that as the Carbon Trust, in themselves, are not a public authority the provision of the loan isn’t prohibited under the Regulations. Therefore the two schemes are compatible. In addition, DETI has had to put in place new operating procedures to manage applications in receipt of the Carbon Trust loan to ensure that State Aid Regulations are not breached.
8. Therefore, DETI has informed Ofgem that its decision to reject the application, on the basis of the Carbon Trust loan, has been revoked and it should allow systems that have received the Carbon Trust loan to be accredited under the RHI. Energy Division officials are working with Ofgem to update guidance documents and operating procedures.

Recommendation

9. It is recommended that you respond to Norman Blair using the draft attached at **Annex A**.

JOANNE MCCUTCHEON
Renewable Heat Branch
Energy Division

cc: David Sterling
David Thomson
Peter Hutchinson
Dan Sinton
Press Office
Glynis Aiken
Alastair Ross, MLA, APS

DRAFT REPLY FROM PS/MINISTER TO NORMAN BLAIR

Mr Norman Blair
Managing Director
Eglinton (Timber Products) Ltd
Longfield Ind. Est. West
Eglinton
County Londonderry
Northern Ireland
BT47 3PY

RE: RENEWABLE HEAT INCENTIVE SCHEME AND CARBON TRUST LOAN

Thank you for your letter of 5 December 2013 regarding the Renewable Heat Incentive (RHI) scheme and the Carbon Trust 0% interest loan. The Minister has read your correspondence and asked that I respond.

I understand that the issue regarding the compatibility of the RHI with the Carbon Trust 0% interest loan arose following Ofgem's decision to reject an application for the RHI on the basis that the applicant had availed of the loan. This applicant escalated the matter to DETI and officials within the Department have been looking at the issue with a view to determining the appropriate course of action.

This was a complex matter, relating to the compatibility of the two schemes as set out in the RHI Regulations and State Aid Guidelines. DETI has examined the issue and has revoked Ofgem's original decision. This means that businesses in receipt of the Carbon Trust loan are eligible to be considered for the RHI.

In addition, DETI has revised the operating procedures for the scheme. Where an applicant has availed of eligible 'de minimis' aid prior to making an RHI application for accreditation, the RHI aid will be provided on the basis of the European Commission's 'de minimis' regulation, Commission Regulation (EC) No 1998/2006 of 15 December 2006 (<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32006R1998:EN:NOT>).

DETI is currently working with Ofgem to update our relevant guidance documents; this will be available in due course. If you have questions on the approach to Carbon Trust loans or 'de minimis' aid, you should contact Ofgem via email to RHI.Enquiry@ofgem.gov.uk

Glynis Aiken

Private Secretary to the Minister of Enterprise, Trade and Investment