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Frazer, Helen

From: Scott, Michelle
Sent: 19 January 2017 16:45
To: Brennan, Mike
Cc: Sterling, David; Morelli, Emer
Subject: FW: RHI note to DfE
Attachments: FI1 16 517511 Supply - DfE - note of meeting 17 October 2016 - RHI.DOCX

Mike

The issue of amending a grandfathered tariff came up at the Economy committee this afternoon, with comments made on when this was first considered as an option by DfE.

As discussed, DoF officials did raise the option of introducing a tiered tariff on a prospective basis into the grandfathered scheme at our May and October 2016 meetings.

I have highlighted the relevant sections below and in the attached minute.

Michelle

From: Scott, Michelle
Sent: 01 June 2016 09:56
To: McMurray, Stephen
Cc: Brennan, Mike; Cousins, Heather; Morelli, Emer
Subject: FW: RHI note to DfE

Stephen

We had a useful meeting on Friday on RHI

In response to DoF queries, it was confirmed that DfE has sought legal advice (DSO) on options available to reduce the ongoing RHI financial pressure. These options include the introduction of a cap for all installations. DoF welcomed this approach - and asked whether DfE had also sought legal advice on other cost control measures including the introduction of a tiered tariff to be applied on a prospective basis to installations established under original tariff conditions. In addition, DoF questioned the legal position regarding the large installations which have been granted preliminary accreditation. DfE agreed to follow up on these points with DSO - DoF would be kept informed of progress.

DoF also asked for an update on the ongoing audits, and stressed the need for a timely field audit given the concerns raised. DfE representatives set out the inspection schedule which had been agreed between Ofgem and Deloitte, and reported that Michael Woods, the DfC internal auditor, has reviewed and agreed the audit approach.

The funding requirement at June monitoring was also discussed. It was confirmed at the recent DoF/DfE stocktake that the £32.4m RHI bid was based on a worst case scenario, and it was agreed that the DfE bid should be based on a more realistic scenario to reflect inevitable drop outs, along with the outworkings of the ongoing assessment and audit process. It was confirmed that any tariff adjustments which can be introduced would not impact on the 2016-17 funding requirement.

Turning to the recent NIAO report, I have added some comments in the attached document and I am happy to discuss. The figures in relation to applications and annual costs are different to the latest position notified to DoF - in particular Trevor Cooper's letter of 7 December outlined 828 applications during the retrospective period with an annual cost of £17.74m - which is the figure notified by DoF to NIAO. We have no way of checking the figures, but have assumed DfE are content.

I am happy to discuss

Michelle

Renewable Heat Incentive - Meeting between DoF Supply and DfE

Note of meeting Netherleigh, 17 Oct. 2016

In attendance:

DoF: Mike Brennan, Emer Morelli, Michelle Scott, Giulia ni Dhulchaointigh.

DfE: Heather Cousins, Stephen McMurray, Stuart Wightman, Lucy Martens.

Item	Description	Action
1	<p>Update since last meeting</p> <p>DoF asked for an update since the last meeting on this issue. DfE said that the situation remained the same – with an in-year pressure of £32 million for this scheme.</p> <p>The departmental officials stated that while the £32 million pressure is a worst case scenario, the actions that they are taking to address deficiencies in the scheme will not have a major impact on the funding required for this year.</p> <p>In respect of the in-year pressure, DfE confirmed that £5.6 million of the £12 million has been found from within the departmental baseline.</p> <p>DfE asked whether there was any way that the necessary AME funding could be found from AME underspend elsewhere in the NI Block. DoF advised that this has been explored with Treasury and is not an option.</p>	
2	<p>DSO advice</p> <p>DoF asked for an update on the legal advice which DfE has sought from DSO. DfE said that there were two separate issues on which they were taking advice:</p> <ul style="list-style-type: none"> • Taking any necessary enforcement action • Revising the scheme to bring the rates of return in line with the original policy intent <p>DfE advised that they are waiting for a response from the EU on notifying changes from the assumptions DfE had made about the operation of the scheme at its beginning. In the meantime, advice from DSO has confirmed that concerns regarding continued State Aid compliance are a solid rationale for consulting on the introduction of cost controls.</p> <p>In response to a query from DoF, DfE confirmed that DECC are aware of the engagement on State Aid issues.</p>	

3	<p>Enforcement</p> <p>DfE advised that payments to a small number of installations are on hold following the PWC report. These were in category 4. However these payments are not significant in terms of the scale of the overall cost of the scheme the scheme.</p> <p>Ofgem has started to work through the Category 3 and 2 cases. DfE advised that there is some difficulty in working with Ofgem, and outlined their impression that a conflict exists between enforcement of issues around the NI scheme if these would negatively impact the GB scheme. DoF sought clarification as to whether Ofgem had expressed any reciprocal concerns as to the impact of changes in England (enforcement/ control) on the Northern Ireland model.</p> <p>DoF asked, in light the views expressed regarding Ofgem's administration of the scheme, if DfE were considering terminating their contract with Ofgem . DfE said that they were considering taking inspection and decision-making responsibility following inspections for this scheme from Ofgem. DoF highlighted concerns previously raised by the department in relation to the in-house capacity to administer the domestic scheme. DfE confirmed that if elements of the administration were taken in-house the department would have to buy in appropriate expertise.</p> <p>DoF asked whether, there will be an attempt to claw back administration fees paid to Ofgem. DfE said that they have been advised that legally this will not be possible. DoF asked if DSO advice had also been sought on a prospective clawback through a reduction in future administration fees rather than a retrospective clawback mechanism.</p>	
4	<p>Regulations</p> <p>DoF asked whether any changes to primary legislation would be required should DfE decide to amend any component of the scheme DfE advised that none were necessary and that the necessary changes could be made through subordinate legislation. DOF queried whether DECC approval was required at any stage given that the primary legislation was UK wide, albeit with specific NI clauses. DoF also queried whether there was any concern at a UK level as to potential EU infringement fines.</p> <p>DoF asked whether there was scope to adjust the time period over which payments would be made.</p> <p>DoF asked whether the regulations were drafted in such a way that the tariffs could be changed again if market conditions changed to ensure that there was no possibility of over-</p>	DfE

	incentivisation. DfE agreed to seek DSO advice on this.	DfE
5	<p>Consultation</p> <p>DfE said that they aim to have a paper with the Minister by the end of October seeking his approval to consult on new draft regulations that would amend the tariffs for the scheme. DfE will conduct pre-consultation with major stakeholders prior to consultation. DoF queried whether the consultation would only consider amendments to tariffs or if any other cost control measures would also be included including the definition of eligible usage etc.</p> <p>DoF asked whether there was a statutory duty to consult on these regulations. DfE said that although there was no statutory duty they have received strong advice from DSO that they will need to consult those involved.</p> <p>DoF asked DfE consider all options on speeding up consultation if consultation has to be undertaken, by reducing the number of weeks of consultation or carrying out a focused consultation with those affected rather than a full public consultation. DfE agreed to seek DSO advice on these points.</p>	DfE
6	<p>Legal challenges</p> <p>DfE advised that a legal challenge could lead to delays. The risk of any challenge was more likely when the regulations had been implemented. The regulations would remain in place while any challenge proceeds.</p>	
7	<p>New Combined Heat and Power (CHP) installations</p> <p>DoF asked about the large installations that are coming into the scheme. DfE said that there was no legal way to stop these from proceeding. However, they will be adding a time limit to the new regulations and reducing the tariff. DoF asked whether there was any danger of the same problem arising with these installations as with others. DfE advised that there was not as it was different technology. DoF asked whether this was State Aid complaint. DfE confirmed that it was.</p>	
8	<p>Documentation</p> <p>DoF asked DfE to document the actions that have been taken and will be taken to address the failure of this scheme, including all engagement with DSO, from when problems with this scheme first became evident.</p>	
9	Finance Minister statement	

	<p>DoF said that the Finance Minister will have to make a statement to the Assembly around October Monitoring. He will need to include some detail on RHI as this accounts for such a large percentage of the Resource DEL over-commitment. DfE agreed to put together lines for this including the remedial actions that have been taken.</p> <p>DoF said that due to the challenging nature of the cuts that will be announced, RHI will come under renewed scrutiny and DfE will want to explore every option available to reduce the overall cost of this scheme and take all actions as necessary moving forward.</p>	DfE to provide lines
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