

To: Martin Crouch[Martin.Crouch@ofgem.gov.uk]; Clive Sparrow[Clive.Sparrow@ofgem.gov.uk]; Jacqueline Balian[Jacqueline.Balian@ofgem.gov.uk]; Teri Clifton[teri.clifton@ofgem.gov.uk]; Cathryn Scott[Cathryn.Scott@ofgem.gov.uk]; Ruth Lancaster[Ruth.Lancaster@ofgem.gov.uk]
Cc: Omolade Barker[Omolade.Barker@ofgem.gov.uk]; Ranak Tebbit[Ranak.Tebbit@ofgem.gov.uk]
From: Edmund Ward
Sent: 2013-12-17T18:42:57Z
Importance: Normal
Subject: Ofgem-DETI meeting update - Carbon Trust Matter
Received: 2013-12-17T18:42:59Z
RHI Statutory Review Decision

All,

We (Lade, Ranak, Edmund) met with DETI policy yesterday.

FYI, readout from the meeting below – including **next steps at paras 18-21**:

Rejected Applicant:

1. DETI confirmed that an email had gone last Friday to the rejected applicant (copy attached) setting out their Statutory Review decision. DETI also confirmed that copies of the e-mail were sent to other people who made enquiries during the review process.
2. I advised that the applicant had been in touch with Ofgem yesterday morning and had interpreted from the email that he had already been approved. [Update: I have since spoken to the applicant, and he is clear that he is not approved; he will await an email from us setting out such further information as we might require in order to confirm his state aid funding]
3. DETI confirmed that their intention was that the decision was not an automatic ‘accreditation’ of the original application, and that **their expectation was therefore that Ofgem would (re-)consider the application on the basis of the position adopted by DETI and revised operating procedures.**
4. [Note: We will need to consider whether this further Ofgem action equates to conducting a fresh review, or conducting a continued review of the original application. The former may have a cost implication for the applicant, and therefore increase the risk of challenge if he lost out on RHI payments because of starting afresh. This is because under the current accreditation process the 20yrs support is backdated to the date of application for accreditation and if the application is started afresh he would not be able to maintain the original accreditation date.]

Public Position and other affected parties:

5. DETI confirmed the website text was due to go on their website, possibly today. [Note: this is now live]
6. DETI advised they have also contacted ‘affected parties’ who had expressed an interest in the decision
7. I advised that, once a statement was published by DETI, we would consider a similar approach to those interested parties we have recorded on this matter (9 in number at time of the meeting)
8. We discussed whether the proposed website text could be made clearer to reflect any link between the reason for the decision and the revised State Aid operations procedure. [Update: We are minded not to make a further change which might draw attention to this aspect]

Basis of the DETI decision:

9. **The understanding of DETI policy was that the decision to revoke, was based only on narrow approach argument of the Carbon Trust not being a public authority and thus a misinterpretation of regulation 23. The statutory review decision did not take account of the State Aid position.** DETI policy is that on the basis of Carbon Trust not being considered a public authority the issue of state aid does not arise. We noted that our understanding was that taking the risk based approach that the Carbon Trust is not a public authority was dependent on the state aid issue being resolved and that we saw the two issues as linked.
10. DETI confirmed that the decision to review the State Aid position was a further consideration and the amendment to the operating procedure is not linked to the reasoning for the decision taken by DETI on the statutory review.
11. **DETI advised that they are likely to amend the regulations to align with GB regulation – DETI see this as “belt and braces” approach to ensure Carbon Trust loans are not interpreted as grant / public support.**

Change to operating procedures:

12. No changes made as yet to the operating procedures.
13. **DETI viewed the practical changes to operating procedures as something that would happen based on a view DETI would take once Ofgem had provided indicative costs associated with any additional state aid analysis required**
14. DETI laid out that, given that they have no funds available, they might seek to take on part of the additional burden themselves
15. We discussed whether they had in mind taking on the State Aid analysis of applications, or the whole review and decision-making process associated with any application for which the de minimis assessment might be required. DETI confirmed that all options might have to be considered given their financial constraints.
16. **DETI considered the application of State Aid considerations to the operating procedures as something that would not be likely to require a Consultation**, although until the scope of those changes had been defined they would not be able to comment on that definitively
17. However, DETI did think it would be likely that any change to Regulations would require a Consultation

Next steps:

18. Ofgem to advise of any suggested changes to website text [although we are minded not to ask for any change]
- 19. Ofgem to revert with any request for clarification regarding the basis of the decision [Note: we may wish to consider, when framing this request, the order of events and the implication this will have for any decision we may subsequently need to take]**
- 20. Ofgem to consider the costs of adopting a 'State Aid analysis' approach.**
21. Ofgem to liaise with the applicant to progress accreditation

The meeting with Bob is now proposed for Thursday at 5pm.

Edmund

X7168