

To: Stuart Cook[stuart.cook@ofgem.gov.uk]; Elizabeth Hillman[Elizabeth.Hillman@ofgem.gov.uk], Ruth Lancaster[Ruth.Lancaster@ofgem.gov.uk]; Joanna Whittington[Joanna.Whittington@ofgem.gov.uk]
From: Robert Hull
Sent: 2012-09-06T10:10:01Z
Importance: Normal
Subject: FW: RHINI arrangement agreement
Received: 2012-09-06T10:10:01Z
[Admin Arrangements \(22 Aug\).doc](#)

The arrangement (non) agreement as discussed....

From: William Elliott
Sent: 24 August 2012 13:52
To: Louise Oxley
Cc: Paul Heigl
Subject: RE: RHINI arrangement agreement

Louise

I attach the latest version of the arrangements, which were sent to DETI on 22 August.

Thanks

Will

From: Louise Oxley
Sent: 24 August 2012 13:45
To: William Elliott; Paul Heigl
Subject: RHINI arrangement agreement

Hello, Bob would like the latest version of the RHINI arrangement agreement please, can you forward to me?

Louise

Louise Oxley

PA to Managing Director

Commercial

9 Millbank

London

SW1P 3GE

Tel: 020 7901 7261

www.ofgem.gov.uk

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These Arrangements are entered into on [*date*]

BETWEEN:

- (1) The Department of Enterprise, Trade and Investment ("**DETI**"), a body corporate established under [*], whose principal address is Netherleigh, Massey Avenue Belfast BT4 2JP; and
- (2) The Gas and Electricity Markets Authority ("**GEMA**"), a body corporate established under section 1 of the Utilities Act 2000, whose principal address is 9 Millbank, London, SW1P 3GE.

BACKGROUND

- (A) Section 114 of the Energy Act 2011 provides that DETI and GEMA may enter into arrangements for GEMA to act on behalf of DETI for, or in connection with, the carrying out of any functions that may be conferred on DETI under, or for the purposes of a scheme established under section 113 of the Energy Act 2011.
- (B) Certain functions are conferred on DETI under the scheme established by the Renewable Heat Incentive Regulations (Northern Ireland) 2012. This document sets out the arrangements in accordance with which GEMA intends to carry out certain of those functions.
- (C) The parties enter into these Arrangements intending to honour them. However, these Arrangements are not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from these Arrangements. In particular, nothing in these Arrangements overrides or is intended to pre-empt the ability of either party to discharge any of its powers, obligations or duties that arise as a matter of law.

ARRANGEMENTS

1. DEFINITIONS AND INTERPRETATION

- 1.1. The definitions and rules of interpretation in this Clause are intended to apply throughout this document:

"Administration Costs" means the costs to GEMA of performing the Conferred Functions and Ancillary Activities *howsoever incurred*.

"Ancillary Activities" means the activities that GEMA considers are necessary or desirable for the proper performance of the Conferred Functions.

"Commencement Date" means [*date*].

"Conferred Functions" means all of the Functions other than the Retained Functions.

"Confidential Information" means information which has been designated as confidential by either of the Parties, whether, if it is passed to the other

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party, at the time it is so passed or at a later stage, or is of a confidential nature concerning DETI, GEMA or any third party.

"Functions" means the duties and powers conferred on DETI under the Regulations.

"Guidance" means [the document(s) entitled [*Title(s)*], published in accordance with regulation 51 of the Regulations on [*date*], as amended from time to time.

"Local Regulations" means the laws and regulations of Northern Ireland applicable to performance of the Functions.

"Party" means DETI or GEMA as a party to these arrangements, and "Parties" shall be construed accordingly.

"the Regulations" means the Renewable Heat Incentive Scheme Regulations (Northern Ireland) 2012, and reference to a "regulation" is reference to a specific regulation in the Regulations;

"Retained Functions" means the powers and duties conferred on DETI pursuant to:

- (i) Regulation 36(8).
- (ii) Regulation 47(1)(a);
- (iii) Regulation 51; and
- (iv) Part 10 of the Regulations.

1.2. Words used in these Arrangements and in the Regulations shall have the meaning given to them in the Regulations, unless otherwise defined herein.

1.3. Clause headings shall not affect the interpretation of these Arrangements.

2. GEMA'S RESPONSIBILITIES

2.1. GEMA shall carry out the Conferred functions and the Ancillary Activities and shall at all times do so in a manner which is consistent with any applicable obligations that arise as a matter of law.

2.2. Subject to clause 2.1, GEMA shall be responsible for, and hereby intends:

- (a) to carry out the Conferred Functions and Ancillary Activities –
 - (i) in such manner as it thinks best in order properly to carry out those functions and activities; and
 - (ii) in accordance with the Regulations;
- (b) subject to legal constraints, to provide DETI with:
 - (i) [*such information as is necessary to enable DETI to carry out the Retained Functions in a proper manner*];

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- (ii) *[include description of info included in automated monthly reports that are provided to DECC]; and*
- (iii) *[on request, any other information under GEMA's control relating to the performance by GEMA of the Conferred Functions and the Ancillary Activities].*
- (c) to inform DETI of any complaint or request for a formal review that is received by GEMA in connection with its performance of the Conferred Functions or the Ancillary Activities;
- (d) to provide such assistance as DETI may reasonably request in connection with any court or proceedings or other dispute with third parties in connection with the performance of the Functions on condition that any costs incurred by GEMA are charged to DETI at a daily rate to be agreed in advance of the provision of such assistance;
- (e) to nominate a person as a contact point for the purposes of these Arrangements and inform DETI of the identity of that person;
- (f) to take all reasonable steps to ensure that wherever possible it will facilitate the ability of DETI to operate effectively in relation to the Regulations. This may mean providing briefing or attending meetings with industry. Furthermore, GEMA will consult DETI on matters of common interest and common concern relating to the exercise by GEMA of the Conferred Functions or the Ancillary Activities prior to any public consultation whether formal or informal;
- (g) that any information it requests from DETI should be relevant to the Administration Costs, the Functions, the Regulations, the Guidance, Local Regulations, or any legislation made under section 113 of the Energy Act 2011;
- (h) that where it requests information from DETI under these Arrangements, it will specify the information or nature of the information it requires, the format in which it requires it, the deadline for receiving it and the reason it is required; and
- (i) to give DETI reasonable notice of information it requires, wherever possible.

3. DETI'S RESPONSIBILITIES

3.1. DETI shall be responsible for and hereby intends:

- (a) to pay the Administration Costs, on a pass through basis, in accordance with Clause 5;
- (b) to make available to GEMA, in accordance with Clause 6, the monies necessary for payment of the periodic support payments;
- (c) to nominate a person as a contact point for the purposes of these Arrangements and to inform GEMA of the identity of that person;
- (d) to take all reasonable steps to ensure that wherever possible it will facilitate the ability of GEMA to operate effectively in carrying out the

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Conferred Functions and Ancillary Activities. This may mean providing briefing or attending meetings with industry. Furthermore, DETI will consult GEMA on matters of common interest and common concern prior to any public consultation whether formal or informal;

- (e) to share information with GEMA (subject to legal constraints) necessary to enable GEMA to carry out the Conferred Functions and the Ancillary Activities in a proper manner. In doing so, DETI will comply with all relevant legislation and have respect for any personal or commercial confidentiality. Where DETI is made aware of such information, it will notify GEMA that it holds the information and provide it to GEMA on request;
- (f) to only request information from GEMA under these Arrangements which is relevant to the Administration Costs, the Functions, the Regulations, the Guidance, or any legislation made under section 113 of the Energy Act 2011;
- (g) to provide GEMA with all information necessary to ensure that GEMA is aware of any Local Regulations that will impact upon GEMA's performance of the Conferred Functions or the Ancillary Activities, and to give GEMA as much advance notice as possible of any prospective or actual changes in the Local Regulations if such would impact upon GEMA's performance on those functions or activities in any way;
- (h) where it requests information from GEMA under these Arrangements, to specify what information it requires, in what format, by when and why it needs it;
- (i) where it requests information from GEMA under these Arrangements, wherever possible to give GEMA reasonable notice of the information required; and
- (j) where GEMA provides DETI with information under these Arrangements, prior to the publication of that information, not without GEMA's express consent to circulate that information outside [*the Northern Ireland Executive*] until after the date of publication, GEMA and to treat such information as Confidential Information, unless otherwise agreed.

4. AMENDMENT TO THE SCOPE OF THE CONFERRED FUNCTIONS AND THE ANCILLARY ACTIVITIES

- 4.1 The Parties anticipate that the Regulations and/or the Guidance may be amended from time to time.
- 4.2 Where either Party becomes aware of any actual or proposed amendments to the Regulations or the Guidance, it shall be responsible for informing the other Party as soon as reasonably practicable.
- 4.3 Subject to Clause 4.4, the Parties shall amend these Arrangements to reflect any changes to the Regulations or the Guidance.
- 4.4 For the avoidance of doubt, GEMA shall be under no obligation to perform any Functions other than the Conferred Functions in operation at the date on which the Regulations came into operation.

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5. PAYMENT OF THE ADMINISTRATION COSTS

- 5.1 The Parties agree that, during the term of these Arrangements, GEMA shall invoice DETI on a monthly basis in respect of the Administration Costs incurred by GEMA in the immediately preceding month, and that DETI shall pay GEMA the amount of each invoice within 30 days of the date of the invoice.
- 5.2 If any dispute arises as to the amount of Administration Costs payable by DETI to GEMA in relation to a given month, the same shall be referred to GEMA's Chief Operating Officer for settlement and the adjudication of GEMA's Chief Operating Officer shall be final.

6. PERIODIC SUPPORT PAYMENTS

- 6.1. The Parties agree that, during the term of these Arrangements, GEMA shall on a monthly basis calculate the sum of the periodic support payments that are to be paid to participants in the period beginning the [first day and ending on the last day of the calendar month immediately subsequent to the month in which the calculation is carried out]; and GEMA shall notify DETI of the same by no later than [*].
- 6.2. On receipt of the notice in Clause 6.1, DETI shall transfer to GEMA the sum specified in the notice as soon as reasonably practicable, and in any event by no later than the [27th day] of the [calendar month in which the notice in 6.1 is provided to DETI].
- 6.3. Any monies transferred to GEMA pursuant to Clause 6.2 shall be held in a bank account established solely for the purpose of making periodic support payments.
- 6.4. Where these arrangements are terminated, either in accordance with Clause 7 or otherwise, GEMA shall arrange for any monies (including any interest that may have accrued thereon) held in the account referred to in Clause 6.3 to be returned to DETI as soon as reasonably practicable.
- 6.5. For the avoidance of doubt, GEMA shall not use funds made available to it under this Clause other than for the purpose of making periodic support payments.

7. DURATION AND TERMINATION

- 7.1. These Arrangements shall come into effect on the Commencement Date and shall continue in force indefinitely until terminated by either Party giving prior written notice to the other Party in accordance with clause 7.2.
- 7.2. Termination of these Arrangements shall take effect following expiry of the notice period specified in the written notice referred to in clause 7.1.
- 7.3. For the purposes of clause 7.2, the notice period shall not be less than [*] days from the date of the written notice, unless otherwise agreed by the Parties.
- 7.4. On termination of these Arrangements, the Parties intend that GEMA should (subject to applicable legal constraints) provide DETI with access to all information held by GEMA on DETI's behalf at GEMA's premises in connection with the performance of the Conferred Functions and the

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Ancillary Activities on condition that at least one week's notice is provided in advance to GEMA by DETI.

8. ASSETS

- 8.1. The Parties intend that any assets, including but not limited to intellectual property rights, created or purchased by GEMA in connection with its performance of the Conferred Functions and Ancillary Activities, shall vest in GEMA following termination of these Arrangements.
- 8.2. Subject to Clause 8.1, any materials, plant or equipment owned or held by DETI and provided by DETI for use by GEMA in performing the Conferred Functions or Ancillary Activities shall be returned to in DETI following termination of these Arrangements.

9. CONFIDENTIALITY

- 9.1. Each Party agrees to be responsible for ensuring (both during the term of these Arrangements and after its termination) that the Confidential Information is kept confidential, is not used other than strictly for the purposes of these Arrangements and is not disclosed to any third party without the prior written consent of the other Party, unless the information:
- (a) was public knowledge at the time of disclosure;
 - (b) subsequently becomes public knowledge other than by breach of this clause;
 - (c) subsequently comes lawfully into the possession of the Party in question from a third party without any restrictions regarding confidentiality attaching to such information; or
 - (d) is required by law to be disclosed, as set out in 9.2.
- 9.2. Each Party recognises that disclosure of the Confidential Information may be required by law, in particular under the duties imposed on GEMA and DETI under Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 and any subordinate legislation or codes of practice issued in accordance with such legislation ("the Legislation") as amended from time to time. Where disclosure of Confidential Information is required by law, each Party agrees to consult with the other in advance of making any disclosure of information which is held in relation to the subject matter of these Arrangements. Each Party agrees to offer all reasonable assistance to the other in handling any requests for information made under the Legislation which relate to the subject matter of these Arrangements and to transfer any information requests received by that Party to the other Party if appropriate.
- 9.3. To the extent necessary to implement the provisions of these Arrangements (but not further or otherwise), GEMA may disclose Confidential Information to any relevant governmental or other authority or regulatory body, and to any employees of GEMA or of any of the above, provided that before any such disclosure GEMA shall make those persons aware of its obligations of confidentiality under these Arrangements.

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9.4. Both Parties intend to use all reasonable endeavours to ensure that any employee or sub-contractor to whom Confidential Information is disclosed is made aware that the information is confidential and of the obligations on the Parties under these Arrangements.

10. VARIATION

10.1. These Arrangements may only be varied by written agreement of the Parties.

11. NOTICES

11.1. Any notice required to be given pursuant to these Arrangements should be in writing and sent by electronic mail to the electronic mail address agreed by the Parties at the time of signing of these Arrangements or such other address as either Party notifies to the other from time to time.

12. DISPUTE RESOLUTION PROCESS

12.1. In the case of a dispute between GEMA and DETI about the interpretation or implementation of these Arrangements, except in respect of a dispute as to the amount of Administration Costs payable by DETI to GEMA, the parties intend to comply with the following process:

- a) the dispute will first be discussed by the contact points from GEMA and DETI, with a view to resolving the dispute at that level;
- b) if the contact points are unable to resolve the dispute amongst themselves within two weeks of first being notified thereof, they shall each escalate the dispute to a more senior staff member within their respective organisation;
- c) senior staff members should arrange an informal resolution meeting;
- d) if the senior staff members are unable to resolve the dispute within four weeks of being notified thereof, they shall then each escalate the dispute to the Senior Civil Service or Director level of each of the organisations for final resolution; and
- e) if Senior Civil Service or Director parties are unable to resolve the dispute within two weeks of being notified of it then GEMA will select appropriate Counsel and will instruct Counsel jointly with DETI setting out the details of the dispute in question and both parties intend that Counsel's opinion shall be final and binding.

13. STATUS OF THESE ARRANGEMENTS

13.1. These arrangements are not intended to be legally binding, and no legal obligations or legal rights shall arise between the parties from these Arrangements. The parties enter into these Arrangements intending to honour all their obligations and to fulfil their responsibilities. For the avoidance of doubt, nothing in these Arrangements is intended to, or shall be deemed to, give rise to a relationship of agent and principal between the parties.

14. GOVERNING LAW AND JURISDICTION

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- 14.1. These Arrangements shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the jurisdiction of the English Courts.

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Signed by [])

for and on behalf of)
The Department of Enterprise, Trade and)
Investment)

Signed by [])

for and on behalf of)
The Gas and Electricity Markets Authority)

DRAFT