

To: Edmund Ward[Edmund.Ward@ofgem.gov.uk]
From: Edmund Ward
Sent: 2016-11-01T18:21:46Z
Importance: Normal
Subject: Example of 2013 DETI engagement with GB Departments (DECC and BIS) [State Aid] [OFFICIAL Internal Only]
Received: 2016-11-01T18:21:46Z

From: Moore, Stephen (DETI) [mailto:Stephen.Moore@detini.gov.uk]
Sent: 04 December 2013 11:06
To: Porter Kate (CCP)
Cc: Pauley, Alberta; Hutchinson, Peter; Edmund Ward; Cathryn Scott; Ruth Lancaster; Omolade Barker; Teri Clifton; Ryan, Damien; McCutcheon, Joanne
Subject: RE: Carbon Trust de minimis loans and the Renewable Heat Incentive

Kate

With reference to our conversation the other day and Joanne's email below, was it Andy Davey from DECC that you discussed the RHI / Carbon trust loans issue?

I also understand that Ofgem lawyers may want to have a further chat with someone from the BIS legal team. Could you advise who they should contact?

Happy to discuss.

Stephen

Stephen Moore

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From: McCutcheon, Joanne [mailto:Joanne.McCutcheon@detini.gsi.gov.uk]
Sent: 02 December 2013 10:37
To: Moore, Stephen (DETI); Porter Kate (CCP)
Cc: Pauley, Alberta; McCutcheon, Joanne; Hutchinson, Peter; Edmund.Ward@ofgem.gov.uk; Cathryn.Scott@ofgem.gov.uk; Ruth.Lancaster@ofgem.gov.uk; Omolade.Barker@ofgem.gov.uk; teri.clifton@ofgem.gov.uk; Ryan, Damien
Subject: RE: Carbon Trust de minimis loans and the Renewable Heat Incentive

Kate

It was a few weeks ago that I contacted DECC. From memory the person I spoke to was called irrelevant information redacted by the RHI Inquiry? and I think the contact number was 03000686605 – it was certainly someone from Stephen Martin's team.

Joanne

From: Moore, Stephen (DETI) [mailto:Stephen.Moore@detini.gsi.gov.uk]
Sent: 29 November 2013 16:09
To: Porter Kate (CCP)
Cc: Pauley, Alberta; McCutcheon, Joanne; Hutchinson, Peter; Edmund.Ward@ofgem.gov.uk; Cathryn.Scott@ofgem.gov.uk; Ruth.Lancaster@ofgem.gov.uk; Omolade.Barker@ofgem.gov.uk; teri.clifton@ofgem.gov.uk; Ryan, Damien
Subject: RE: Carbon Trust de minimis loans and the Renewable Heat Incentive

Kate

Received from Ofgem on 18/10/2017

Annotated by RHI Inquiry

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From: Porter Kate (CCP) [<mailto:Kate.Porter@bis.gsi.gov.uk>]
Sent: 29 November 2013 16:08
To: Moore Stephen ()
Cc: Pauley, Alberta; McCutcheon, Joanne; Hutchinson, Peter; Edmund.Ward@ofgem.gov.uk; Cathryn.Scott@ofgem.gov.uk; Ruth.Lancaster@ofgem.gov.uk; Omolade.Barker@ofgem.gov.uk; teri.clifton@ofgem.gov.uk; Ryan, Damien
Subject: RE: Carbon Trust de minimis loans and the Renewable Heat Incentive

OK, well I agree with what you say below, I see no problem with providing RHI and grants under cover of the de minimis regulation (alongside the rest of the RHI scheme which would operate under it's approval) from a state aid perspective. I think this is probably the safest and simplest way of handling this.

As you know, we are struggling to get cases through the state aid approval process at present due to the review of the state aid guidelines and wider case load so I would not want to ask the Commission about this or submit a notification unless absolutely essential.

Kate

Kate Porter | State Aid | Department for Business, Innovation & Skills | 1 Victoria Street | London | SW1H 0ET | Tel: 44 (0) 20 7215 2298 | Fax: 44 (0) 20 7215 0357 | kate.porter@bis.gsi.gov.uk | <https://www.gov.uk/government/organisations/department-for-business-innovation-skills>

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For more information on state aid, please see our website at <https://www.gov.uk/state-aid>

From: Moore, Stephen (DETI) [<mailto:Stephen.Moore@detini.gsi.gov.uk>]
Sent: 29 November 2013 09:39
To: Porter Kate (CCP)
Cc: Pauley, Alberta; McCutcheon, Joanne; Hutchinson, Peter; Edmund.Ward@ofgem.gov.uk; Cathryn.Scott@ofgem.gov.uk; Ruth.Lancaster@ofgem.gov.uk; Omolade.Barker@ofgem.gov.uk; teri.clifton@ofgem.gov.uk; Ryan, Damien
Subject: RE: Carbon Trust de minimis loans and the Renewable Heat Incentive

Received from Ofgem on 18/10/2017
Annotated by RHI Inquiry

Kate

I've just had a quick chat with Peter Hutchinson, as Joanne McCutcheon doesn't work on Fridays.

I think we should let this sit until Monday when Joanne is back in.

I don't think we would have a problem with your suggestion, quite the reverse, but, I am also aware that Joanne has been discussing the issue with DECC and it might be best if you first knew who Joanne has been talking to in DECC before contacting them.

Stephen

Stephen Moore

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From: Porter Kate (CCP) [<mailto:Kate.Porter@bis.gsi.gov.uk>]

Sent: 29 November 2013 09:30

To: Moore Stephen ()

Cc: Pauley, Alberta; McCutcheon, Joanne; Hutchinson, Peter; Edmund.Ward@ofgem.gov.uk; Cathryn.Scott@ofgem.gov.uk; Ruth.Lancaster@ofgem.gov.uk; Omolade.Barker@ofgem.gov.uk; teri.clifton@ofgem.gov.uk; Ryan, Damien

Subject: RE: Carbon Trust de minimis loans and the Renewable Heat Incentive

Thanks for this note - do you mind if I run this by the policy team in DECC too?

From: Moore, Stephen (DETI) [<mailto:Stephen.Moore@detini.gsi.gov.uk>]

Sent: 28 November 2013 15:54

To: Porter Kate (CCP)

Cc: Pauley, Alberta; McCutcheon, Joanne; Hutchinson, Peter; Edmund.Ward@ofgem.gov.uk; Cathryn.Scott@ofgem.gov.uk; Ruth.Lancaster@ofgem.gov.uk; Omolade.Barker@ofgem.gov.uk; teri.clifton@ofgem.gov.uk; Ryan, Damien

Subject: Carbon Trust de minimis loans and the Renewable Heat Incentive

Kate

Many thanks for discussing the Renewable Heat Incentive (RHI) problem with me and Peter Hutchinson yesterday.

Many thanks for also confirming our assessment there will probably be no problem with us operating the RHI scheme in Northern Ireland on the basis of the de minimis regulation for the projects in which the Carbon Trust has provided an interest free loan (on the basis of the de minimis regulation) and, simultaneously, on the basis of the RHI NI decision (SA.24140) for the remainder of projects, in which we expect there will any cumulation issues.

As we discussed, the RHI scheme is administered by Ofgem and the problem has come about because some of these companies who have applied for support under the RHI scheme have had their applications rejected by Ofgem, because they are receiving other State support in the form of a interest free loan from the Carbon Trust.

Following Ofgem's rejection of one of these applications, DETI received a formal request from the applicant, under the dispute resolution process, that it reviews Ofgem's rejection decision.

The issue in question is whether the installation that has availed of a Carbon Trust 0% finance loan is also eligible to receive the Northern Ireland RHI.

The issue is further complicated by the fact that applicants were previously told that the Carbon Trust loan scheme and the

RHI were compatible and also that under the GB RHI applicants can receive both.

DETI's assessment of the problem and proposed solution

As you will see in para 46 of the NI RHI decision, DETI had indicated to the Commission that there would be no other 'grant' support for the renewable heat equipment.

There was an identical commitment in relation to the GB RHI scheme (SA.32125).

http://ec.europa.eu/competition/state_aid/cases/240943/240943_1368451_125_1.pdf

While it could be argued that the UK was excluding the possibility of specific GB 'grants' (see SA.32125 para 37) and not all types of aid (including the Carbon Trust interest free loans), we suspect that if the Commission was ever to examine this issue, they would dismiss this argument and revert to the fact that operating aid (through the RHI scheme) is being cumulated with investment aid (through the interest free Carbon trust loan) and assess the compatibility of this aid with the 2008 Environmental Aid Guidelines (EAG).

If so, then we have a two problems.

First we have a problem with para 191 of the 2008 EAG..."Aid for environmental protection must not be cumulated with de minimis aid in respect of the same eligible costs if such cumulation would result in an aid intensity exceeding that fixed in these Guidelines."

In this case, we might find it very difficult to prove that cumulation would not result in an aid intensity exceeding that determined in the EAG, as there is no aid intensity ceiling for operating aid specified in para 109 of the EAG.

The second problem is that para 109 (b) of the EAG details that where operating aid is granted in accordance with para 109 (a), any investment aid granted to the undertaking in question

in respect of the new plant must be deducted from production costs when determining the amount of operating aid.

In this case, we would not want to be forced to reduce the RHI tariffs to adjust for the investment aid being provided via the interest free Carbon Trust loans.

Therefore, a solution based on para 191 of the EAG would not be preferable.

Furthermore, even if we were to decide to go this direction, we would probably have to notify the change to the Commission, which could result in the Commission also asking questions about how the RHI scheme operates in GB and well as resulting in a delay in dealing with the requested review of Ofgem's rejection decision, which could trigger a complaint to the Commission etc.

However, when we look at how little aid is likely to be present in these Carbon Trust cases, our assessment is that it will be well below the industrial de minimis ceiling.

Therefore, what we are proposing is that we revise the operating procedures for the RHI scheme so that RHI aid in such de minimis cumulation cases will be provided on the basis of the de minimis regulation.

In other words, de minimis aid from the Carbon Trust loans will be cumulated with de minimis aid from the RHI scheme, which would meet the requirements of the de minimis regulation.

I would be happy to discuss further as necessary.

Regards

Stephen

Stephen Moore

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From: Porter Kate (CCP) [<mailto:Kate.Porter@bis.qsi.gov.uk>]

Sent: 26 November 2013 17:16

To: Moore Stephen ()

Resent from Ofgem on 18/10/2017
 Annotated by RHI Inquiry

Subject: RE: Renewable Heat Incentive

I haven't heard from Ofgem or DECC about this.

15.30?

From: Moore, Stephen (DETI) [<mailto:Stephen.Moore@detini.gsi.gov.uk>]

Sent: 26 November 2013 15:38

To: Porter Kate (CCP)

Cc: McCutcheon, Joanne; Hutchinson, Peter; Pauley, Alberta; Templeton Edith (CCP)

Subject: Renewable Heat Incentive

Kate

Ofgem have encountered a difficulty with the operation of the Renewable Heat Incentive scheme in Northern Ireland and we have been in discussion with them to find a workable solution. In a telephone conference today one of their legal team (Catherine Scott) asked that we run the proposed solution by BIS State Aid Branch. She also indicated that she had been in discussions with someone from the BIS legal team, but we don't know who.

She would also be keen to run the proposed solution past the Commission, but, because of the possible ramifications this would have for the UK RHI scheme, I would be very reluctant to do this unless you think it is absolutely necessary.

If possible, could you give me a call tomorrow afternoon (after 2.30pm) to discuss.

Many Thanks

Stephen

Stephen Moore

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