OFG-206826

To: Keith Avis[Keith.Avis@ofgem.gov.uk]
From: Michelle Murdoch
Sent: 2012-12-17T11:02:36Z
Importance: Normal
Subject: RE: Enquiry 2x800kW boilers NIRHI
Received: 2012-12-17T11:02:38Z

Makes sense – will do. When is the next meeting re AA?
M

From: Keith Avis
Sent: 17 December 2012 10:58
To: Michelle Murdoch
Subject: RE: Enquiry 2x800kW boilers NIRHI

Michelle
My advice would be to call him and talk him through the view flagged below. Until we sign the Arrangements I would stoop short of enetering into a formal email exchange.
I hope that this helps.
Keith

From: Michelle Murdoch
Sent: 17 December 2012 10:18
To: Keith Avis
Subject: FW: Enquiry 2x800kW boilers NIRHI

Morning Keith
Morning Keith
Having read all of the below, I find myself asking the following question....
Should I or should I not go back to Peter at DETI with some sort of answer? If I do not, should I update him with the information that advice will be forthcoming AFTER the AA has been signed?
Yours in confusion!
Michelle
P.S. Still no applications received.

From: Marcus Porter
Sent: 16 December 2012 20:10
To: Marcus Porter; Lindsay Goater
Cc: Michelle Murdoch; Oliver More; Nadia Carpenter; Berta Paniagua; Keith Avis
Subject: RE: Enquiry 2x800kW boilers NIRHI

All
Slight change to the below: the bit highlighted in yellow in the email at the foot of the chain isn't quite right. The position would in fact be as stated in paras 7.30 to 32 of vol 2 of our guidance.
Marcus

From: Marcus Porter
Sent: 15 December 2012 12:52
To: Lindsay Goater
Cc: Michelle Murdoch; Oliver More; Nadia Carpenter; Berta Paniagua; Keith Avis
Subject: RE: Enquiry 2x800kW boilers NIRHI

All
Comments below in bold within Berta's email at the foot of the chain.
However I continue to take the view that there being (so far as I am aware)no agreed and signed "arrangements" as at today's date, there is no legal basis for us to participate in the administration of the scheme and for that purpose "administration" includes responding to eligibility enquiries under the NI Scheme from potential NI applicants. Thus the only proper course legally is to decline to respond and suggest they ask DETI.
If, despite our having no legal authority to administer, we nevertheless do respond then of course that exposes us to legal risk should our advice turn out to be incorrect no less than would be the case if the arrangements were in place.
NB Keith. It appears DETI may have erroneously omitted to provide in their Regs that additional capacity biomass plants that are commissioned more than 12 months after the original biomass plant is first commissioned cannot be accredited if to do so would mean that the combined capacities of the two plants would exceed the 1MW limit for biomass/ municipal waste biomass (see also comments below). I guess this must be an oversight because refusal of accreditation would be the outcome under the NI Regs if the plants were solar or biomass and I don't imagine DETI would want the position to be different for biomass. You will therefore need to

draw this to their attention so that they can consider, in discussion with their lawyers, whether to make an immediate amendment to the Regs to reverse this and make any associated amendment to the guidance – subject of course to consultation in both cases.
Marcus

From: Lindsay Goater
Sent: 10 December 2012 15:42
To: Marcus Porter
Cc: Michelle Murdoch
Subject: RE: Enquiry 2x800kW boilers NIRHI

For "many areas" read "guidance document contents" – where we explain how we interpret the Regs
It is as much guidance for DETI as any other stakeholder – whilst we have any relationship with them at all, they are a stakeholder.
Thx

From: Marcus Porter
Sent: 10 December 2012 14:15
To: Lindsay Goater; Michelle Murdoch
Cc: Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster
Subject: RE: Enquiry 2x800kW boilers NIRHI

Lindsay
As you may know, in the run up to NI RHI going live at the beginning of November there were numerous exchanges between Legal and the NI RHI policy development team on the subject of the arrangements and the associated correspondence, including as regards the issue of whether or not we should yield to DETI's demand that our relationship with them be underpinned by KPIs. Our firm and repeated advice was that it should not be and that remained (and remains)our position up until the point, at about the time of go live, when we ceased actively to advise in relation to this documentation - in the absence of any new issues.
If it is the case that the KPI referred to below would be used purely *internally* then I welcome that news, though I confess it seems to me that the wording of Michelle's email suggests otherwise.
Also, I'm not sure which "stakeholder" you refer to on this occasion: Unless I've misunderstood, the enquiry emanated from DETI and, there being as yet no arrangements in place, I don't see how they (still less any potential NI RHI applicant that may have approached them) could be regarded as being our stakeholder.
Moreover I take it that, if a KPI which is purely internal is missed by a couple of days, that won't necessarily be regarded as the end of life as we know it – though of course I accept that you will wish to minimise any delay.
I'm happy to advise for GB purposes and hope to do so by the end of the week. However, if it is intended that the advice be shared with DETI then I am likely to have more to say on that subject – as foreshadowed in my email below.
Don't follow your reference to "many areas". Does it relate to substantive advice given to DETI re scheme operational issues? Leaving the side the question of whether we could currently provide such advice to DETI, I wasn't aware that we had yet done so.
Marcus

From: Lindsay Goater
Sent: 10 December 2012 12:10
To: Marcus Porter; Michelle Murdoch
Cc: Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster
Subject: RE: Enquiry 2x800kW boilers NIRHI

Hi Marcus,
KPIs would be *internal*, as for GB, with the simple aim being to ensure good service to our stakeholders, with a measure on which to judge achievement of that aim
Any ETA on a response welcome pls
I think we can take this as indicative of a generic issue in relation to Additional Capacity on which DETI would like to know our position. We have done that in many areas, and arguably this is an area on which more explicit guidance would be welcome for the GB scheme too – the Regs being the same on this issue (bar the specific biomass capacity limit – but for GB this could be taken as solar thermal or biogas)
(I take your point on the AA and the money)
Lindsay

From: Marcus Porter
Sent: 10 December 2012 12:01
To: Michelle Murdoch
Cc: Lindsay Goater; Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster
Subject: RE: Enquiry 2x800kW boilers NIRHI

Michelle
I am a bit under the cosh at the moment with other things. So there may be a little further delay before I could look at this I'm afraid, quite apart from the considerations below.
I ought also to make the point that, so far as I am aware, we still currently have no arrangements that we have entered into with DETI for us to administer the scheme on their behalf – so legally, as at today's date, we have no role to play in connection with the scheme and, in

law, it is for DETI to administer it.

Also, part and parcel of the arrangements and associated documents are what we are agreeing with DETI as to payment for our services and as to being indemnified by them in the event that any claim is brought against us. As all this documentation has yet to be finalised it's not at all clear that we will be paid for any work I may do or that we will be able to rely on DETI's support should a legal challenge result from our involvement.

As for KPIs, legal advice has been given repeatedly in the context of RHI NI and GB RHI and otherwise that they ought to be an internal procedure only and should not be shared with DECC/DETI for the purpose of enabling them to check on the standard of our performance. It is not clear to what extent that advice has been/will be taken on board in the case of NI RHI. I suspect it will not be but, of course, the absence of any arrangements cuts both ways and, assuming I'm right in thinking that as yet there are no arrangements **(am I Keith?)** we have not yet committed ourselves to any KPIs with DETI.

Marcus

From: Michelle Murdoch
Sent: 10 December 2012 11:33
To: Marcus Porter
Cc: Lindsay Goater; Nadia Carpenter; Oliver More; Berta Paniagua
Subject: RE: Enquiry 2x800kW boilers NIRHI
Importance: High

Good Morning Marcus,

Hope you had an excellent weekend. Just wanted to know where you are with the below query as DETI asked me this question on 3rd Dec. KPI's indicate that enquiries should be answered within 10 working days, which brings us to Friday this week. I appreciate we have not received this query direct from an applicant, however DETI obviously has!

Kind Regards

Michelle

From: Berta Paniagua
Sent: 05 December 2012 16:20
To: Marcus Porter
Cc: Lindsay Goater; Nadia Carpenter; Michelle Murdoch; Oliver More
Subject: Enquiry 2x800kW boilers NIRHI

Hi Marcus,

We have received an enquiry regarding capacity of biomass boilers and eligibility under NIRHI (however, we might see similar cases in future under either GB and NI). I raised this to Lindsay in our Issues and Precedents meeting but we would like to receive your confirmation on this.

The case is an installation with 2 biomass boilers of 800kW capacity each. Assuming that both boilers meet the criteria for both being regarded as part of the same installation (Reg 14(2) and (3)) then this plant is ineligible under NIRHI as total capacity is higher than 1MW. **Agreed – because under the NI Regs there is a limit of 1MW for biomass plants.**

In order to make the installation eligible, they would be looking to claim the second boiler as ineligible**. I don't really understand what you mean here by "claim the second boiler as ineligible" if the means of achieving this would, as you say, be by commissioning at different dates. I don't see what bearing that has on eligibility.** They would propose to do this by commissioning the boilers at different dates i.e. commissioning one of the boilers 12 months later. **Not clear whether you mean within 12 months or after 12 months has elapsed. It makes a difference for the purposes of reg 42 of the NI Regs of course (as to which see further below).** Therefore, they would apply for accreditation for an initial capacity of 800kW and then for a later 'additional capacity' to the installation to declare the second boiler. From this scenario we have come up with the following questions.

- Can they make the second boiler non eligible 'in purpose'? They might claim this under Reg 14(3) *"where each component meets the eligibility criteria..."*
- If accepted and accreditation granted for one of the boilers, would they be able to claim RHI payments for the heat generated before commissioning the second boiler?
-
- **It is important to appreciate that reg 14 applies where there is *a single application* relating to a plant that "is comprised of more than one plant". Reg 14 deals with the issue of how such an application should be handled and the short answer to that is that, where 14(2) and (3) are both complied with, the "composite plant" is to be treated as one plant. If one or both is not satisfied then any application made in relation to the composite plant must fail because, in the words of reg 14(1), "the eligibility criteria are not met". Hence any application would have to be in relation to a component plant.**
-
- **Reg 14(1) is also expressed to be "without prejudice to regulation 433(5)(b)". The effect of that is that (just in case anyone thought otherwise)nothing in reg 14 "trumps" what reg 43(5)(b) (which has to be read in conjunction with the rest of reg 42(5)) lays down. Given that reg 42 involves 2 separate applications for accreditation (one for the original installation and one for the additional capacity)whereas in the reg 14 situation there is a single application, it's not clear how the latter *could* "prejudice" the former, but there it is. The words "without prejudice to" put the matter beyond doubt.**
-

- Therefore, where the circumstances are as specified in reg 42(4), reg 42(5) will apply in the usual way and nothing in regulation 14 changes that. Indeed reg 14 should be ignored in this scenario since it is reg 42, not reg 14 that determines whether or not the two installations should be treated as one.
-
- Reg 43(5) of course deals with the situation where the additional capacity is first commissioned *within* 12 months of the date on which the original installation was first commissioned.
-
- As to your question, so far as I can see there is nothing to prevent an applicant from avoiding reg 14 by doing what reg 42 provides for. However I don't see how that would get around the 1 MW limit where 42(5) applies. Where that applies and there is an application for additional capacity, the administrator (whoever that may turn out to be) is required by that provision to treat the additional capacity as if it were part of the original installation. Thus the capacities of each are combined and, if the total comes to more than the 1MW limit, accreditation of the additional capacity must be refused.

That said, I doubt that the NI guidance (which in the main reflects the GB guidance but which I haven't checked on this point) explains this. I say that because the relevant part of the GB guidance (paras 7.24 et seq) deal only with the situation where additional capacity takes the eligible installation above the *biogas or solar thermal* limits – there being no biomass limit under the GB Regs and I imagine the NI guidance has simply reproduced those paras. If so then the NI guidance will require amendment in this regard.

Turning to the situation where there is additional capacity that is first commissioned more than 12 months after the original plant is first commissioned (see reg 42(6) and (7) of the NI Regs) reg 14 does *not* provide that reg 14 is to be subject to reg 42(7) – but then it doesn't need to. It doesn't need to because, where 42(7) applies, the additional capacity, unlike where this occurs within 12 months, is treated as a separate plant – i.e. the two are not treated as one.

Again, there is nothing to prevent a participant making use of 42(7) if he so wishes, whatever his motives.

Unlike in the case of the within 12 months situation, it looks as if, in relation to biomass plants, there may be an unintended lacuna in the NI Regs (and presumably guidance too). In the case of biogas and solar thermal plants where there is additional capacity, the administrator cannot accredit (reg 15 refers) if the installation capacity of the additional capacity, together with the i.c. of the original plant, would exceed the capacity limit for those technologies. This is the same as under the GB Regs and the NI guidance presumably (though I haven't checked) also follows the GB guidance in relation that situation. However similar provision has *not* been made in reg 15 of the NI Regs in relation to biomass plants (whether normal or in municipal waste) where the combined capacities exceed 1MW. So the administrator would still have to accredit the additional capacity, even if the combined capacities exceeded that level. The tariff for each plant would then be calculated in accordance with reg 36((5) and (6). So it appears that, for each of the two plants, the tariff would be calculated on the basis of the *combined* capacity. Again, presumably not the intention! If I am correct in thinking these are unintended oversights then DETI will presumably wish to amend reg 15(1)(c) of their Regs by adding references to biomass and biomass in municipal waste where currently there are references only to biogas and solar collector plants.

The other scenario would be where both boilers are commissioning at the same time therefore it is our understanding that the installation would be ineligible for the NIRHI scheme as they would not be able to apply for only one of the boilers (following Reg 14). **If they were commissioned literally at the same time then there would by definition be no "additional capacity" and reg 43 wouldn't be engaged at all. However it would then need to be determined whether reg 14 was engaged in relation to the application that was made and it would be engaged if, in the words of 14(1), the application was in respect of a "plant comprised of more than one plant". If, having established that it was engaged, applying it led to the conclusion that there was only one plant for the purposes of 14(1) then, as you say, any application in respect of one of the component plants only would be bound to fail and reg 23(5) confirms this. The application would thus have to be made in relation to the composite plant (i.e. the position is the mirror image of that described in the second indented para above)and, if the capacity of the combined plant was above the 1MW limit, the application would fail on that ground.**

Thanks
Regards
Berta

Berta Paniagua
Assistant Manager RHI
New Schemes Development
9 Millbank
London
SW1P 3GE
Tel: 0207 901 1823
www.ofgem.gov.uk

To: Keith Avis[Keith.Avis@ofgem.gov.uk]
Cc: Michelle Murdoch[Michelle.Murdoch@ofgem.gov.uk]; Oliver More[Oliver.More@ofgem.gov.uk]; Nadia Carpenter[Nadia.Carpenter@ofgem.gov.uk]; Berta Paniagua[Berta.Paniagua@ofgem.gov.uk]
From: Lindsay Goater
Sent: 2012-12-17T14:36:37Z
Importance: Normal
Subject: RE: Enquiry 2x800kW boilers NIRHI
Received: 2012-12-17T14:36:38Z

As discussed Keith, we'll leave to you (& Michelle as req'd) and wait to hear!
L

From: Marcus Porter
Sent: 16 December 2012 20:10
To: Marcus Porter; Lindsay Goater
Cc: Michelle Murdoch; Oliver More; Nadia Carpenter; Berta Paniagua; Keith Avis
Subject: RE: Enquiry 2x800kW boilers NIRHI

All
Slight change to the below: the bit highlighted in yellow in the email at the foot of the chain isn't quite right. The position would in fact be as stated in paras 7.30 to 32 of vol 2 of our guidance.
Marcus

From: Marcus Porter
Sent: 15 December 2012 12:52
To: Lindsay Goater
Cc: Michelle Murdoch; Oliver More; Nadia Carpenter; Berta Paniagua; Keith Avis
Subject: RE: Enquiry 2x800kW boilers NIRHI

All
Comments below in bold within Berta's email at the foot of the chain.
However I continue to take the view that there being (so far as I am aware)no agreed and signed "arrangements" as at today's date, there is no legal basis for us to participate in the administration of the scheme and for that purpose "administration" includes responding to eligibility enquiries under the NI Scheme from potential NI applicants. Thus the only proper course legally is to decline to respond and suggest they ask DETI.
If, despite our having no legal authority to administer, we nevertheless do respond then of course that exposes us to legal risk should our advice turn out to be incorrect no less than would be the case if the arrangements were in place.
NB Keith. It appears DETI may have erroneously omitted to provide in their Regs that additional capacity biomass plants that are commissioned more than 12 months after the original biomass plant is first commissioned cannot be accredited if to do so would mean that the combined capacities of the two plants would exceed the 1MW limit for biomass/ municipal waste biomass (see also comments below). I guess this must be an oversight because refusal of accreditation would be the outcome under the NI Regs if the plants were solar or biomass and I don't imagine DETI would want the position to be different for biomass. You will therefore need to draw this to their attention so that they can consider, in discussion with their lawyers, whether to make an immediate amendment to the Regs to reverse this and make any associated amendment to the guidance – subject of course to consultation in both cases.
Marcus

From: Lindsay Goater
Sent: 10 December 2012 15:42
To: Marcus Porter
Cc: Michelle Murdoch
Subject: RE: Enquiry 2x800kW boilers NIRHI

For "many areas" read "guidance document contents" – where we explain how we interpret the Regs
It is as much guidance for DETI as any other stakeholder – whilst we have any relationship with them at all, they are a stakeholder.
Thx

From: Marcus Porter
Sent: 10 December 2012 14:15
To: Lindsay Goater; Michelle Murdoch
Cc: Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster
Subject: RE: Enquiry 2x800kW boilers NIRHI

Lindsay
As you may know, in the run up to NI RHI going live at the beginning of November there were numerous exchanges between Legal and the NI RHI policy development team on the subject of the arrangements and the associated correspondence, including as regards the issue of whether or not we should yield to DETI's demand that our relationship with them be underpinned by KPIs. Our firm and repeated

advice was that it should not be and that remained (and remains)our position up until the point, at about the time of go live, when we ceased actively to advise in relation to this documentation - in the absence of any new issues.

If it is the case that the KPI referred to below would be used purely *internally* then I welcome that news, though I confess it seems to me that the wording of Michelle's email suggests otherwise.

Also, I'm not sure which "stakeholder" you refer to on this occasion: Unless I've misunderstood, the enquiry emanated from DETI and, there being as yet no arrangements in place, I don't see how they (still less any potential NI RHI applicant that may have approached them) could be regarded as being our stakeholder.

Moreover I take it that, if a KPI which is purely internal is missed by a couple of days, that won't necessarily be regarded as the end of life as we know it – though of course I accept that you will wish to minimise any delay.

I'm happy to advise for GB purposes and hope to do so by the end of the week. However, if it is intended that the advice be shared with DETI then I am likely to have more to say on that subject – as foreshadowed in my email below.

Don't follow your reference to "many areas". Does it relate to substantive advice given to DETI re scheme operational issues? Leaving the side the question of whether we could currently provide such advice to DETI, I wasn't aware that we had yet done so.

Marcus

From: Lindsay Goater
Sent: 10 December 2012 12:10
To: Marcus Porter; Michelle Murdoch
Cc: Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster
Subject: RE: Enquiry 2x800kW boilers NIRHI

Hi Marcus,

KPIs would be *internal*, as for GB, with the simple aim being to ensure good service to our stakeholders, with a measure on which to judge achievement of that aim

Any ETA on a response welcome pls

I think we can take this as indicative of a generic issue in relation to Additional Capacity on which DETI would like to know our position. We have done that in many areas, and arguably this is an area on which more explicit guidance would be welcome for the GB scheme too – the Regs being the same on this issue (bar the specific biomass capacity limit – but for GB this could be taken as solar thermal or biogas)

(I take your point on the AA and the money)

Lindsay

From: Marcus Porter
Sent: 10 December 2012 12:01
To: Michelle Murdoch
Cc: Lindsay Goater; Nadia Carpenter; Oliver More; Berta Paniagua; Mary Smith; Keith Avis; Ruth Lancaster
Subject: RE: Enquiry 2x800kW boilers NIRHI

Michelle

I am a bit under the cosh at the moment with other things. So there may be a little further delay before I could look at this I'm afraid, quite apart from the considerations below.

I ought also to make the point that, so far as I am aware, we still currently have no arrangements that we have entered into with DETI for us to administer the scheme on their behalf – so legally, as at today's date, we have no role to play in connection with the scheme and, in law, it is for DETI to administer it.

Also, part and parcel of the arrangements and associated documents are what we are agreeing with DETI as to payment for our services and as to being indemnified by them in the event that any claim is brought against us. As all this documentation has yet to be finalised it's not at all clear that we will be paid for any work I may do or that we will be able to rely on DETI's support should a legal challenge result from our involvement.

As for KPIs, legal advice has been given repeatedly in the context of RHI NI and GB RHI and otherwise that they ought to be an internal procedure only and should not be shared with DECC/DETI for the purpose of enabling them to check on the standard of our performance. It is not clear to what extent that advice has been/will be taken on board in the case of NI RHI. I suspect it will not be but, of course, the absence of any arrangements cuts both ways and, assuming I'm right in thinking that as yet there are no arrangements **(am I Keith?)** we have not yet committed ourselves to any KPIs with DETI.

Marcus

From: Michelle Murdoch
Sent: 10 December 2012 11:33
To: Marcus Porter
Cc: Lindsay Goater; Nadia Carpenter; Oliver More; Berta Paniagua
Subject: RE: Enquiry 2x800kW boilers NIRHI
Importance: High

Good Morning Marcus,

Hope you had an excellent weekend. Just wanted to know where you are with the below query as DETI asked me this question on 3rd Dec. KPI's indicate that enquiries should be answered within 10 working days, which brings us to Friday this week. I appreciate we have not received this query direct from an applicant, however DETI obviously has!

Kind Regards
Michelle

From: Berta Paniagua
Sent: 05 December 2012 16:20
To: Marcus Porter
Cc: Lindsay Goater; Nadia Carpenter; Michelle Murdoch; Oliver More
Subject: Enquiry 2x800kW boilers NIRHI

Hi Marcus,

We have received an enquiry regarding capacity of biomass boilers and eligibility under NIRHI (however, we might see similar cases in future under either GB and NI). I raised this to Lindsay in our Issues and Precedents meeting but we would like to receive your confirmation on this.

The case is an installation with 2 biomass boilers of 800kW capacity each. Assuming that both boilers meet the criteria for both being regarded as part of the same installation (Reg 14(2) and (3)) then this plant is ineligible under NIRHI as total capacity is higher than 1MW. **Agreed – because under the NI Regs there is a limit of 1MW for biomass plants.**

In order to make the installation eligible, they would be looking to claim the second boiler as ineligible. **I don't really understand what you mean here by "claim the second boiler as ineligible" if the means of achieving this would, as you say, be by commissioning at different dates. I don't see what bearing that has on eligibility.** They would propose to do this by commissioning the boilers at different dates i.e. commissioning one of the boilers 12 months later. **Not clear whether you mean within 12 months or after 12 months has elapsed. It makes a difference for the purposes of reg 42 of the NI Regs of course (as to which see further below).** Therefore, they would apply for accreditation for an initial capacity of 800kW and then for a later 'additional capacity' to the installation to declare the second boiler. From this scenario we have come up with the following questions.

- Can they make the second boiler non eligible 'in purpose'? They might claim this under Reg 14(3) "*where each component meets the eligibility criteria...*"
- If accepted and accreditation granted for one of the boilers, would they be able to claim RHI payments for the heat generated before commissioning the second boiler?
-
- **It is important to appreciate that reg 14 applies where there is *a single application* relating to a plant that "is comprised of more than one plant". Reg 14 deals with the issue of how such an application should be handled and the short answer to that is that, where 14(2) and (3) are both complied with, the "composite plant" is to be treated as one plant. If one or both is not satisfied then any application made in relation to the composite plant must fail because, in the words of reg 14(1), "the eligibility criteria are not met". Hence any application would have to be in relation to a component plant.**
-
- **Reg 14(1) is also expressed to be "without prejudice to regulation 433(5)(b)". The effect of that is that (just in case anyone thought otherwise)nothing in reg 14 "trumps" what reg 43(5)(b) (which has to be read in conjunction with the rest of reg 42(5)) lays down. Given that reg 42 involves 2 separate applications for accreditation (one for the original installation and one for the additional capacity)whereas in the reg 14 situation there is a single application, it's not clear how the latter *could* "prejudice" the former, but there it is. The words "without prejudice to" put the matter beyond doubt.**
-
- **Therefore, where the circumstances are as specified in reg 42(4), reg 42(5) will apply in the usual way and nothing in regulation 14 changes that. Indeed reg 14 should be ignored in this scenario since it is reg 42, not reg 14 that determines whether or not the two installations should be treated as one.**
-
- **Reg 43(5) of course deals with the situation where the additional capacity is first commissioned *within* 12 months of the date on which the original installation was first commissioned.**
-
- **As to your question, so far as I can see there is nothing to prevent an applicant from avoiding reg 14 by doing what reg 42 provides for. However I don't see how that would get around the 1 MW limit where 42(5) applies. Where that applies and there is an application for additional capacity, the administrator (whoever that may turn out to be) is required by that provision to treat the additional capacity as if it were part of the original installation. Thus the capacities of each are combined and, if the total comes to more than the 1MW limit, accreditation of the additional capacity must be refused.**

That said, I doubt that the NI guidance (which in the main reflects the GB guidance but which I haven't checked on this point) explains this. I say that because the relevant part of the GB guidance (paras 7.24 et seq) deal only with the situation where additional capacity takes the eligible installation above the *biogas or solar thermal* limits – there being no biomass limit under the GB Regs and I imagine the NI guidance has simply reproduced those paras. If so then the NI guidance will require amendment in this regard.

Turning to the situation where there is additional capacity that is first commissioned more than 12 months after the original plant is first commissioned (see reg 42(6) and (7) of the NI Regs) reg 14 does *not* provide that reg 14 is to be subject to reg 42(7) – but then it doesn't need to. It doesn't need to because, where 42(7) applies, the additional capacity, unlike where this occurs within 12 months, is treated as a separate plant – i.e. the two are not treated as one.

Again, there is nothing to prevent a participant making use of 42(7) if he so wishes, whatever his motives.

Unlike in the case of the within 12 months situation, it looks as if, in relation to biomass plants, there may be an unintended lacuna in the NI Regs (and presumably guidance too). In the case of biogas and solar thermal plants where there is additional capacity, the administrator cannot accredit (reg 15 refers) if the installation capacity of the additional capacity, together with the i.c. of the original plant, would exceed the capacity limit for those technologies. This is the same as under the GB Regs and the NI guidance presumably (though I haven't checked) also follows the GB guidance in relation that situation. However similar provision has *not* been made in reg 15 of the NI Regs in relation to biomass plants (whether normal or in municipal waste) where the combined capacities exceed 1MW. So the administrator would still have to accredit the additional capacity, even if the combined capacities exceeded that level. The tariff for each plant would then be calculated in accordance with reg 36((5) and (6). So it appears that, for each of the two plants, the tariff would be calculated on the basis of the *combined* capacity. Again, presumably not the intention! If I am correct in thinking these are unintended oversights then DETI will presumably wish to amend reg 15(1)(c) of their Regs by adding references to biomass and biomass in municipal waste where currently there are references only to biogas and solar collector plants.

The other scenario would be where both boilers are commissioning at the same time therefore it is our understanding that the installation would be ineligible for the NIRHI scheme as they would not be able to apply for only one of the boilers (following Reg 14). **If they were commissioned literally at the same time then there would by definition be no "additional capacity" and reg 43 wouldn't be engaged at all. However it would then need to be determined whether reg 14 was engaged in relation to the application that was made and it would be engaged if, in the words of 14(1), the application was in respect of a "plant comprised of more than one plant". If, having established that it was engaged, applying it led to the conclusion that there was only one plant for the purposes of 14(1) then, as you say, any application in respect of one of the component plants only would be bound to fail and reg 23(5) confirms this. The application would thus have to be made in relation to the composite plant (i.e. the position is the mirror image of that described in the second indented para above)and, if the capacity of the combined plant was above the 1MW limit, the application would fail on that ground.**

Thanks

Regards

Berta

Berta Paniagua
Assistant Manager RHI
New Schemes Development
9 Millbank
London
SW1P 3GE
Tel: 0207 901 1823
www.ofgem.gov.uk