

To: Jonah Anthony[Jonah.Anthony@ofgem.gov.uk]
Cc: Matthew Harnack[Matthew.Harnack@ofgem.gov.uk]
From: Ruth Lancaster
Sent: 2011-11-18T14:46:43Z
Importance: Normal
Subject: FW: Legal resourcing for NI RHI - need final numbers by COP Wednesday
Received: 2011-11-18T14:46:42Z

Jonah
 This is the e-mail I tried to send from my blackberry last night. Happy to discuss.
 Ruth

From: Ruth Lancaster
Sent: 18 November 2011 14:23
To: Ruth Lancaster
Subject: Fw: Legal resourcing for NI RHI - need final numbers by COP Wednesday
 Jonah

Further to my earlier e-mail I have now had an opportunity to consider this in more detail and to discuss it with Faye and Marcus. I am sorry we were unable to reply sooner however the issues involved require careful consideration and the lateness of the request for input combined with our current workload on other more pressing matters meant we were unable to reply sooner.

I am aware that none of what I'm about to say will be popular, but there is a significant piece of risk assessment work that needs to be carried out before any decisions are taken. You will be aware that Matthew has urged us in the strongest terms to reduce the estimated cost of the legal resource required. As we have explained previously the difficulty with this is that every time something is excluded from the scope of legal review or the thoroughness of legal review is curtailed you increase the Authority's exposure to risk. However, it is for Policy to carry out the necessary risk assessment, to decide if it wishes to pursue this approach and, if so, to justify this to the Authority.

My comments are as follows:

A. Scope of Work

1. As I mentioned in my earlier e-mail the scope of legal work outlined for the scheme is not complete. I would suggest you refer to the Baseline document produced for the GB RHI scheme as a starting point;
2. In addition you need to add the following items to the list:
 - (a) dealing with State Aid submissions;
 - (b) advising on Technical Standards Regulations and any other relevant EU/WTO requirements;
 - (c) procurement of local lawyers - this could be a lengthy process if we have to run a full procurement process;
3. Assumption 2 - You have assumed heavy industrial sites are not included, but this appears in the list of legal work to be carried out;
4. Assumption 4 - does this refer to the provision of the draft regulation by DETI to us or vice versa? If the latter 23 December is not achievable;
5. Assumption 5 - what aspects of development are being referred to here? What if they give rise to significant issues at this late stage that impact on the work done earlier?
6. As mentioned previously 2 weeks is not sufficient to review the draft Regs bearing in mind the interfaces involved with DETI, Ofgem policy, local lawyers and possibly others. 4 weeks per review seems more realistic provided there are no contentious issues and we are able to appoint local lawyers with the relevant skills within a reasonable time;
7. The documents listed in the sub-bullet points make no reference to consultation documents. Is the view that there won't be any consultation and, if so, on what basis?
8. The list includes review of operating procedures. This was omitted from the GB scope and is therefore additional work. (Note that this was excluded for reasons of cost and as per my comment above whenever you exclude something from legal review the resulting risk to the Authority needs to be considered);
9. Fraud and compliance policy - On the the GB scheme this was limited to a review in respect of specified pieces of legislation. In addition any follow up work in respect of any suspected fraudulent activity was excluded (but note my earlier comments on the risk of limiting legal review);
10. Declarations and Ts and Cs - this was limited on the GB scheme to a review - of compliance with the Regulations (again note our previous comment on exclusions and consequential risk);
11. Services Agreement with DETI - this is not a services agreement. The Authority is a public body carrying out a statutory function it is not a private sector contractor providing services. Matthew and Ashley are well aware of the issues around this from their involvement in the

MOU with DECC. I suggest you speak with them in the first instance and consult with Legal before committing to anything.

B. Resource requirement

To resource this properly would be likely to require 2.5 FTE plus external support.

I advised Matthew last week that going forward only one member of the in house Legal team will be available to support both GB and NI RHI (with limited input on specific issues from other team members). The balance of resource will therefore be obtained externally. This means an enhanced budget for external resource will be required. Again to resource this properly you should be looking at something in the region of £200- £250k for the first 12 months (I haven't seen a timetable, but assume the majority of the development will take place in the first 12 months). In addition you are likely to need to factor in an uplift for the additional appointment of local lawyers. I am aware that you will not want to submit this as a budget figure to DETI so you need to advise me of the budget you are prepared to submit so that we can look at what work can be done for that amount. You will then need to consider what level of risk this exposes the Authority to and obtain approval for that.

With regard to the Operational period, we have not been provided with a scope of work for this period either for the NI scheme or the GB scheme. You have seen my comments on the corporate planning figures which make it clear that we will need to revisit those figures as soon as a scope of work is provided to us.

I appreciate this is not what you want to hear, but whilst the value of the NI scheme may be less, the volume of documentation to be reviewed remains the same. To meet your budget constraints corners would have to be cut and a risk assessment needs to be carried out to determine the viability of this approach.

Happy to discuss.

Kind regards
Ruth

From: Ruth Lancaster
To: Jonah Anthony
Cc: Catherine McArthur
Sent: Mon Nov 14 18:09:39 2011
Subject: Re: Legal resourcing for NI RHI - need final numbers by COP Wednesday

Jonah

I'm afraid this time frame doesn't work for me. I have back to back meetings tomorrow and am out of the office on Wednesday.

I will do what I can, but other pressing matters mean I'm unlikely to be able to look at your proposals in detail until Thursday at the earliest.

One point to note however is that there is only one member of the team available to support both the NI and RHI schemes going forward. Although they may have input from other team members on specific issues this is likely to be extremely limited. This means we will be much more dependent on external resource going forward.

I will need to consider the areas of work you have outlined as I suspect some items are missing. We will also need to discuss the contracts you refer to as there seem to be some significant potential procurement issues there.

I have no feel for adequacy of the assumptions put forward in terms of protecting the Authority, but I recall a discussion some time ago with Bob the outcome of which was that a 1 April target date was not realistic. We need to ensure we are not setting ourselves up for failure here.

The two weeks permitted for each of the Legal reviews of the Regs is not sufficient. The review we have just done of the current draft was a high level review only and 2 weeks was barely sufficient for that purpose. It has always been expected that the reviews in the next phase will be more detailed. The estimate makes no provision for that or for the time required to appoint and liaise with local lawyers. Also has any allowance been made for discussion (internally and with DETI) of issues arising?

We also need to understand the likely scope of work in the operational period before we can comment on the suggested 3-5%.

Apologies for the hurried nature of these comments, but in view of time constraints on us both I wanted to let you have my initial thoughts asap.

I suggest we discuss on Thursday.

Kind regards
Ruth

From: Jonah Anthony
To: Ruth Lancaster
Received from OFGEM on 25.05.2017
Annotated by RHI Inquiry

Cc: Faye Nicholls; Catherine McArthur

Sent: Mon Nov 14 16:54:03 2011

Subject: Legal resourcing for NI RHI - need final numbers by COP Wednesday

Ruth,

Given my absence tomorrow, we agreed I would send an email setting out this issues.

We need to give Bob final figures this Friday for the NI RHI Feasibility Study. However Matthew is going on leave from Thursday so we need to resolve all issues by COP Wednesday. This includes the budget for the development phase and forecasted RHI operational costs.

A) Development costs. We have decided to take a much more assertive position in the feasibility study – stating that we are able to deliver a working scheme on the 1 April 2012 if we assume

1. Air Source Heat Pumps are not included
2. Heavy Industrial Sites are not included
3. Policy remains broadly in line with GB RHI
4. Final policy decisions and “final draft regulations from a policy perspective” are provided by Friday 23 December.
5. Some aspects of the development can be undertaken after 1 April 2012
6. Budget approval given by Friday 16 December (so we have at least a week before Christmas to get the team in place for Tuesday 3 January 2012).

This is also assuming the following legal work.

- Second Review of regulations to be received by late December in a form that is finalised from a policy perspective (two weeks);
- Third review of regulations to be undertaken following the consideration of Ofgem Legal's comments from the first reg review (two weeks);
- Review of the following documents that will largely utilise existing GB RHI content, and only be updated for the NI RHI where additional information or further guidance is required (and as such only new content will require review):
 - Guidance material;
 - Standard Operating Procedures;
 - Fraud and compliance policy;
 - Audit strategy;
 - Information screen content for RHI Accreditation system to incorporate NI RHI information;
 - Declarations and Terms and Conditions (either specific to NI RHI or amended to cover both RHI schemes);
 - Heavy Industrial (if required) – Guidance material, Declarations and standard operating procedures for accommodating the approach to these sites.
- Advise on wording in NI declarations/letters used by the IT system
- Consultation on contracts/agreements to include NI RHI installations in current onsite auditing and identity verification arrangements; and
- Consultation in the drafting/negotiation of the Agency Services Agreement with DETI/NIAUR.

I had a go at estimating legal resourcing (so we could put a rough figure into the draft) and came up with

25% - Ruth

50% - Faye (or equivalent)

20% - Marcus (or equivalent)

95% - FTE for six months 1 January 2012 - 30th June 2012

Let me know what you think to this guess, and if you think it needs adjusting.

At the moment I've not put anything in for external council/consultancy.

B) For the operational costs forecasts, I've used the GB RHI Corporate Planning numbers and estimated a 3% and 5% update rate for the NI RHI in comparison to the GB RHI. **Given that we are assuming no major departures from the GB RHI scheme (at this moment), can we use the 3-5% estimate.**

We also need to agree on going external council/consultancy costs for NI.

NB we are putting strong caveats in the Feasibility Study stating clearly what are assumptions are, and that any deviation from those assumptions will mean we needs to look at both the cost and timescales for delivery. Also we make clear that this feasibility study is a best guess based on our current knowledge and that we will need to i) formally agree budgets and assumption with DETI and ii) seek GEMA approval.

I'll be checking emails on Tuesday before returning to the office on Wednesday. Catherine is also around to answer any questions you may have (and should be circulating a draft of the fesasibility study if you want to see some of the caveats we've built into the document). Hopefully we can wrap this up by COP Wednesday – which then gives us a day and bit to finalise the feasibility study before submitting to Bob.

thanks

Jonah Anthony

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