

Edmund Ward

From: Hutchinson, Peter <Peter.Hutchinson@detini.gov.uk>
Sent: 15 May 2014 17:19
To: Edmund Ward
Cc: Teri Clifton; Nadia Carpenter; McCay, Davina
Subject: RE: DETI/CT update

Edmund,

Thanks for this, Jonathan has been in touch and I will try to respond to his queries. My understanding is that as the RHI is generally provided as "operating" aid there are no such thresholds. The threshold apply to "de minimis" aid and therefore is only an issue if we treat applicants who have received CT loans under those guidelines.

I have raised the general CT issue with Stephen Moore outlining 3 options;

- Accredit based on the fact the schemes are compatible under the Regulations.
- Accredit the applications but notify DETI that an accreditation has been made on which the Carbon Trust loan had been received (this is the position in GB).
- Do not accredit applications until it is confirmed that any relevant threshold would not be breached by Loan aid + RHI aid. For accredited systems the aid would be provided under "de minimis" guidelines and DETI could record this separately. (the option we had previously agreed)

Stephen remains to be convinced about either Options 1 or 2 as it does not appear to be compatible with the EC's RHI decision (SA.34140) (this was the NI decision however is very similar to the GB decision SA.32125). Whilst the cumulation section in the decision letter refers to 'grants' it would be difficult to argue that this does not include soft loans. Stephen feels this might be a risky approach and robust due diligence would be required to demonstrate that the cumulation of the aid in the interest free Carbon Trust loan with the RHI aid will never result in the accredited systems being overcompensated. Perhaps if this is the route DECC have accepted they might be able to share any such investigation / calculation, or indeed legal / state aid opinion?

Therefore, the previously agreed option remains most viable in that applicants that receive CT loans receive RHI via "de minimis" rules with clear guidance provided before accreditation and this aid recording separately for State Aid reporting procedures.

In relation to liabilities and responsibilities, Stephen has advised that he is almost certain DETI has no 'legal' responsibility for ensuring that the 'aid providers' (i.e. Ofgem and Invest NI) are complying with the State aid rules, but clearly it would reflect badly on the department if we were aware there are breaches of the State aid rules and did nothing to rectify the situation, in particular to ensure there could be 'no overcompensation' of the accredited systems. Therefore there is an onus on the Department to act, particularly because of the risk of a complaint and a Commission investigation. Whilst the Commission does not undertake routine detailed 'monitoring' of de minimis aid (i.e. the Carbon Trust loan) or notified aid (i.e. the RHI scheme) but it will 'investigate' if there is a complaint and it thinks there has been a breach of the rules. The only thing that might trigger a complaint is if this situation is rectified quickly and one of the schemes that is waiting for accreditation decides to complain.

Stephen has also advised that the financial risk always sits with the accredited systems. It is these that would have to repay the aid, if, and it is a very big if, the Commission decides illegal aid is being provided (i.e. the cumulation of the aid in the interest free Carbon Trust loan with the RHI aid is overcompensating the accredited systems).

I therefore, think we need to explore the impact of option 3 and determine what guidance is needed for applicants and what checks Ofgem must carry out on these applications – bearing in mind the numbers are low. A decision can then be taken on how to proceed.

Perhaps another option remains that Regulations are changed to explicitly rule out the combination of "soft loans" and RHI, however this would be a policy decision and subject to consultation.

As you will be aware it is my last day in DETI tomorrow, it is expected there will be permanent replacements for myself and Joanne by start July. In the interim Davina McCay (cc'ed) will have responsibility for RHI related matters, I will brief Davina on this and other issues (data sharing, tiering of tariffs etc) before I leave.

Thanks for all the help and assistance over the past 12 months on a range of complex and difficult issues and good luck for the future.

Peter

From: Edmund Ward [mailto:Edmund.Ward@ofgem.gov.uk]
Sent: 14 May 2014 14:47
To: Hutchinson, Peter
Cc: Teri Clifton; Nadia Carpenter
Subject: FW: DETI/CT update

Hi Peter,

As discussed yesterday, I hope the below case study will help with any policy considerations on (i) the longer-term approach to state aid/de minimis, and (ii) any considerations on tiered tariffs under the NI RHI.

See also the attached email from Jonathan Buick at Action Renewables – he mentioned in discussion with my colleague that he might contact you about this and I am sharing this email on the understanding that he was happy for us to discuss these issues with you.

Do let me know if there's anything else you need to progress the state aid de minimis issue in the short term.

Kind regards,

Edmund

From: Nadia Carpenter
Sent: 14 May 2014 13:33
To: Edmund Ward; Teri Clifton
Cc: Gareth John
Subject: DETI/CT update

Hi Edmund,

The case study you requested:

A timber manufacturer has a 990KW boiler which operates at 85% efficiency.

The boiler generates heat to be used for:

- Process heating of 7 wood drying kilns, and
- Space and water heating for offices and a garage area.

It operates for 153 hours each week which is 7,956 hours of operation in a year.

As a large biomass installation under the NIRHI tariff (100kWth and above) the heat generated by the installation will be compensated at 1.5p per kWh.

Based on its 85% efficiency rate the boiler will generate 6,698,952 kWh of heat over its 7,956 hours of annual generation.

In payment terms this makes £100,484.25 p/a.

The state aid de minimis limit applies over a rolling three (financial) year period. The limit is EUR 200,000.

This installation would be paid £301,452.84 over three years which is EUR 368,633.41- coming up to double the de minimis limit.

Please also see the attached email from a consultant in Northern Ireland who is dealing with a company operating nursing homes and a large airplane manufacturer each of whom own multiple installations. As you will see he is concerned that the state aid limits may apply to organisations rather than individual installations so that cumulatively the companies' multiple installations would generate RHI payments almost certainly in excess of the de minimis limit.

Thanks,

Nadia

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