



ESIA Submission: ESS Annual Rule Change 2018-19

**NSW Energy Savings Scheme
Consultation Paper July 2019**

**Dept of Planning, Industry and Environment
Government of New South Wales**

Due 23 August 2019

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The Energy Savings Industry Association (ESIA) is pleased to make this submission to the New South Wales (NSW) Department of Planning, Industry and Environment (DPIE) in response to proposed changes to the NSW Energy Savings Scheme (ESS) Consultation Paper 2018-19 Rule Change, July 2019. It is understood that major or systemic changes will be considered as part of future Rule changes.

Considered in this submission is the current draft version of the Rule at energy.nsw.gov.au/government-and-regulation-energy-savings-scheme

The ESIA is a major stakeholder as the peak national body that represents businesses accredited under energy savings schemes across Australia. Many of our member companies work across all such schemes, enabling us to provide first-hand insights into the opportunities and complexities of the ESS that need to be addressed to enhance the program.

Some of the contributions in this submission are articulated in other submissions by ESIA members and have been included by request.

The ESIA welcomes the opportunity to discuss this submission in more detail with the DPIE as soon as possible, please email comns@esia.asn.au to coordinate a time. For any immediate content queries contact Ben Henderson, ESIA Vice President: ben@greenguys.com.au.

This ESIA submission is set out as follows:

- A. ESS Target
- B. Responses to questions
- C. Other matters:
 - i. Peak demand reduction opportunities with the ESS
 - ii. Commercial Lighting Formula - IPD requirements
 - iii. Commercial Lighting Formula - financing under co-payment

A. ESS Target

The ESIA will engage in the upcoming five-yearly target review of the ESS and welcomes the opportunity to engage on scope setting of the review and informal consultation prior to the review launch in early 2020.

B. Responses to questions

Question 1: Do you agree with the proposed transitional arrangement? Please provide reasoning supporting your response.

Installations completed between 1 January 2020 and 16 February 2020 will only have until June 2020 to register instead of June 2021. This kind of short transition time always causes issues: with a rush of audits and creation before 30 June. This may put unnecessary pressure on all stakeholders.

The ESIA questions why the time frame for registration should not follow the normal registration timeframe: with installations occurring before the rule change following the old rule and installations occurring after the rule change following the new rule.

Alternatively, the rule could be implemented from 1 January 2020 provided enough notice is given.

At 2.1 in the Consultation Paper, the DPIE proposes that “ACPs will be able to register ESCs in accordance with the previous rule until 30 June 2020, for Implementations with an Implementation date before 17 February 2020.”

The ESIA supports ‘grandfathering’ because energy savings should always be calculated according to the Rule as it applies at the implementation date, not the ESC registration date, which could be many months later due to extraneous factors such as administrative delay.

The transition arrangements as they stand may render PIAM&V projects ineligible due to the requirement: “proposes to specify that Measurement Procedures, in relation to the Baseline Energy Model, need to be deemed appropriate by an M&V Professional prior to the end of the Baseline Measurement Period”. There are existing (and future) projects where the baseline period has finished, but the upgrade measurement period will not be completed until well after February 2020. Hence there is no opportunity for the independent CMVP to assess prior to the end of the baseline measurement period as proposed in the changes to 7A.1.

Question 2: Is this approximate three-month timeframe sufficient for preparing your business to be ready to comply with the new ESS rule? If not, what timeframe do you deem necessary?

Where new clauses are added after the consultation period which are not directly consulted upon, adjustment time can be an issue.

Notably, it is not sufficient for PIAM&V projects if the proposed change under 7A.1 is implemented regarding the review prior to the end of Baseline Measurement Period.

Generally, as long as the Rule does not change significantly between consultation and completion, three months should be enough time to prepare for the change.

Question 3: Can you foresee any particular part of the new ESS Rule for which it will be difficult to get 'business-ready' within the proposed timeframe?

Yes. The changes proposed to the SONA method will significantly harm appliance retailers and ACPs operating SONA businesses because they will reduce ESC production/value by 80% with potentially only six months' notice. An objection to the magnitude of proposed changes and the short notification period is outlined under Question 15.

Question 4: Do you agree with the proposed changes to Table A26? Please provide reasoning supporting your response.

The ESIA supports removing non-NSW postcodes and PO Box postcodes. It also supports adding NSW postcodes that aren't already included in Table A26.

Question 5: Do you agree with the proposed changes to Section 5.4(i)(ii)? Please provide reasoning supporting your response.

The ESIA supports changes to the Rule that increase the number of eligible activities and/or reduce administrative burden.

Some members have suggested that the non-exporting requirement will exclude most projects and so recommend that the limit be placed on export (or the requirement be removed) instead of an absolute requirement of no export.

Question 6: Do you perceive any significant impacts, either positive or negative, associated with increasing the ESS cap on generating systems from 5MW to 30MW?

(No response)

Question 7: Do you agree with the proposed updates to Equation 1 in Clause 6.5? Please provide reasoning supporting your response.

Yes, this removes any ambiguity from the use of Equation 1.

Question 8: Do you agree with the proposed updates to Clause 6.8? Please provide reasoning supporting your response.

(No response)

Question 9: Do you agree with the proposed changes to Clause 7A.1? Please provide reasoning supporting your response.

This area has been problematic for the industry.

For example, there have been installations that have occurred, been signed off by M&VPs and the ESS panel auditor and certificates registered *several years ago* which have recently been called into question by the scheme administrator, resulting in ACPs being forced to forfeit certificates.

This retrospective action by the administrator represents an unworkable risk to ACPs working in this space as well as to energy consumers wishing to complete upgrades where ESCs help to fund the project.

Giving the scheme administrator greater discretion further increases the commercial uncertainty and decreases the likelihood that ACPs will make wide use of the PIAM&V method.

Question 10: Do you agree with the proposed changes to Measurement Procedures of the PIAM&V method? Please provide reasoning supporting your response.

We do not agree that the M&VP sign off should be required prior to the end of the baseline period.

This limits the ability to choose the most appropriate baseline in accordance with the Rule and this could potentially have a knock-on effect impacting whether energy savings represent a genuine reduction in the consumption of energy. Ensuring that the baseline model meets the regression requirements and is statistically valid is important and may result in excluding a period prior to the upgrade due to maintenance, shutdowns, and other unrelated activities etc at the site.

It would be better if the M&V professional signs off on the Baseline Measurement Procedure prior to the practical completion date of the upgrade. The M&V plan should give a detailed description of how the baseline will be generated and the M&VP should sign off that this is appropriate for the type of upgrade. If the baseline is required to change for any reason, a variation to the plan can be added and then the M&VP signing off on the upgrade at the end has a trigger to re-check the baseline and its appropriateness when signing off post-upgrade.

This would also be more in line with the VEU scheme PBA M&V method.

Question 11: Do you have any specific concerns in relation to the cut-off date of 17 February 2020?

Yes. (See answer to Question 12)

Question 12: Would this change present any particular issues for your business?

ESIA members have expressed concerns that the lack of independent M&VPs may result in delays to installations commencing or a failure for the Baseline Measure Procedure to be deemed appropriate prior to the completion of the Baseline Period.

Some ESIA members have stated that they have projects underway where the Baseline Period has - or will, finish before it is possible to have a M&VP deem the Baseline Measure Procedure appropriate, and these projects will not be fully complete until late 2020 and registered until 2021.

Question 13: Do you agree with the proposed changes to Clause 7A.16 of the PIAM&V method? Please provide reasoning supporting your response.

The ESIA supports increasing the understanding of the PIAM&V method and greater transparency for decisions made by the scheme administrator. A number of members have experienced the situation where the scheme administrator interpretation of the Rule is at odds with industry's understanding.

If this proposed change helps to ensure the scheme administrator is more transparent, consistent and accountable for its interpretation of the ESS Rule, then the ESIA supports the proposed change.

If the proposed change gives the scheme administrator the ability to publish changes without notice or consultation and without a transitional period, then the ESIA does not support this change.

Question 14: Do you agree with the proposed changes to the NABERS baseline method? Please provide reasoning supporting your response.

The ESIA supports the proposed changes to the NABERS baseline method.

Question 15: Would this change shift the market to the sale of these high efficiency appliances over appliances of a lower energy efficiency? Please provide reasoning supporting your response.

The consultation paper at 5.1.1 states that "...a review of the performance of the SONA method showed that this has not raised the proportion of high efficiency appliance sales in NSW compared to the Australian average."

Th ESIA believes this is a flawed methodology for determining additionality because the purchasing and marketing decisions of 80% of appliance retailers are made on a national basis. This means that additionality caused by the SONA method is not limited to NSW but provides a flow-on benefit to other states and territories; it means that the star ratings of appliances sold will be similar between all states and territories making a state-by-state comparison of little use.

An example of additionality that would not be recognised by this methodology was the relatively recent actions of a national appliance retailer who had the power supplies in TVs upgraded in order to achieve a higher energy star rating and thereby, the benefit of creating a greater number of ESCs.

The ESIA believes that the DPIE should choose a different method for determining additionality.

The consultation paper at 5.1.1 states that: "Deemed Equipment Electricity Savings were also updated for each eligible activity under SONA. These updates combine equipment and factor updates with review results and stakeholder feedback to reflect the most recent sales data."

It is unclear of the basis on which the proposed revisions are made to Deemed Equipment Electricity Savings and which stakeholder feedback and sales data was relied upon, but the affect will be a *devastation* of the SONA method and a substantial weakening of the incentive needed if retailers are to promote more energy efficient appliances than baseline in the medium to long-term.

The ESIA estimates that the draft Rule proposes to no longer recognise as much as 82% of energy savings recognised under the current Rule. (See Table 1)

| Table 1 – Projected impact on SONA of proposed Rule changes | | | | |
|--|-----------------|-----------------|-----------------|--------------|
| Appliance type | Activity | 2019 ESC | 2020 ESC | % |
| Washing Machine | B1 | 71,587 | 9,941 | 13.9% |
| Clothes Dryer | B2 | 8,017 | 5,027 | 62.7% |
| Dishwasher | B3 | 10,189 | 455 | 4.5% |
| 1Refrigerator | B4 | 1,846 | 5 | 0.3% |
| 2Refrigerator | B5 | 49,609 | 10,900 | 22.0% |
| Freezer | B6 | 632 | 500 | 79.1% |
| Television | B7 | 31,819 | 4,384 | 13.8% |
| TOTAL | | 173,699 | 31,213 | 18.0% |

This table was generated using 341,174 records of appliances sold between 1 January 2019 and 31 July 2019 across five appliance retailers, then extrapolated out to 12 months.

Some activities would suffer a more devastating impact than others. For example, there will no longer be any real incentive for the retailers of almost all dishwashers and one door fridge. The incentive offered to retailers of washing machines would be just 13.9% of the incentive offered under the current Rule.

The proposed changes would reduce ESCs created under the SONA method by an estimated 82%, a substantially larger change than any other baseline adjustment made since the SONA method began.

This is an extraordinarily large change for a minor Rule change, with too little notice given to ACPs and appliance retailers. It will devastate ACP's SONA businesses with only six-month notification. The methodology used to explain why the change is needed appears to be flawed, and access has not been given access to "stakeholder feedback and sales data" that informed DPIE's decision. The DPIE should consider reviewing the methodology and data relied upon.

The ESIA urges DPIE to reconsider the magnitude of changes proposed and the notice period (six-monthly only.) A change of this magnitude might better be contemplated in the context of the next major Rule review.

Question 16: Would this change shift the market to the sale of these high efficiency appliances over appliances of a lower energy efficiency? Please provide reasoning supporting your response.

Yes, the link between sales data and proposed changes to the grouping of appliances seems appropriate.

Question 17: Do you agree with the proposal to amend Activity Definition B5 to include refrigerators with more than two doors? Please provide reasoning

Yes, ESIA agrees with the proposal to amend SONA Activity Definition B5 to include refrigerators with more than two doors.

Question 18: Do you agree with the proposed amendments to the space type and space type classifications? Please provide reasoning supporting your response.

The ESIA agrees with:

- aligning Class 7b as Lifetime C;
- new space type for gyms; and
- splitting out cafés and restaurants in museums from accommodation and food services.

There were varying views by ESIA members regarding support for adding Class 10a. In support, it would allow upgrades unambiguously to sheds and storage canopies on commercial and rural properties. There is some room for differing interpretations between Class 10a and Class 10b structures, particularly in relation to sheds (such as those commonly found on rural properties) where the use of the shed does not meet the requirements for a class 7b or class 8 building and as such is not currently eligible under the program. Similarly, for standalone storage canopies with partially or full open sides found on commercial sites. Including these types of building in the program with 1,000 Annual Operating Hours (AOH) we believe is appropriate.

Clear guidance on the difference between storage and wholesale storage is still desperately required. This issue, coupled with the co-payment clause, causes significant unintended consequences for participants in the ESS.

An example of this is where an install has chosen space type storage and worked out the number of ESCs and charged at least the minimum co-payment. When the paperwork has been received by the AP/auditor, the space type of wholesale storage and display has been deemed to be more appropriate. However, if this is changed then co-payment is not met and so the whole upgrade becomes ineligible. In effect, the installer has chosen the most conservative space type, when the upgrade should be entitled to more certificates but now is penalised by no certificates at all.

In the event the installer adopts a conservative approach to energy savings there should be scope for the scheme administrator to accept conservative savings especially when not doing so could have adverse outcomes (i.e. breach of 9.4.1(e)).

There are other issues where uncertainty exists. For example, can landlords co-contribute to the lighting upgrade and not breach the purchases minimum co-contribution rules?

The ESIA would like the scheme administrator to publish commonly asked questions or issues.

Question 19: Given the scope of these changes, is it your understanding that the three-month transitional period for being 'business-ready' is sufficient?

(No response)

Question 20: Do you agree with the proposed change to the definition of maintained emergency lighting? Please provide reasoning supporting your response.

The ESIA requests clarification that sensor controls within a luminaire (including dimming controls) are not inadvertently caught up in the term 'switched' that define maintained emergency lighting.

We would suggest that a new LED maintained emergency luminaire that cannot be manually switched - however does have an internal sensor switch capability - should still be classified as 'maintained emergency lighting'.

Question 21: Does the proposed change provide for all relevant qualified contractors to undertake the lighting upgrade works? Please provide reasoning supporting your response.

The ESIA broadly supports that licenced electricians and/or their apprentices are required to undertake lighting upgrade works under the ESS.

Notably, by way of comparison, Subsection 2 of Section 14 of the Home Building Act allows a person who is neither a qualified supervisor nor a holder of a tradesperson certificate to carry out work under the guidance of a qualified supervisor.

We seek clarity on the following scenarios under the ESS:

- Even if an apprentice is able to carry out electrical work, under the guidance of a qualified supervisor, is the responsibility of the installation still with the qualified supervisor?
- If so, what does it matter if an apprentice does the job as the supervisor still signs the CCEW.
- What evidence do we need to collect that the actual person who physically did the installation is an apprentice to the supervisor?
- What evidence can we obtain to ensure they are apprentices and not labour hire?

Question 22: Does the proposed change provide for all relevant qualified contractors to undertake the lighting upgrade works? Please provide reasoning supporting your response.

Yes, all contractors conducting HEER lighting upgrades should/will comply with the proposed change in requirements, which applies the requirements in respect of electrical wiring work stated in the Home Building Act 1989 Section 14 to the upgrade of lighting under the HEER Method in houses and small business premises.

The change also makes it clear that even should the lighting upgrade not require electrical wiring work - as many HEER activities in practice don't, for example, E3 reflector lamp replacement - contractors must none-the-less be qualified and/or supervised to do electrical wiring work.

Question 23: Do you have any comments on proposed Activity Definition E13?

Lumen output for E13 should match E5: it is too much of a burden to have a different product range to allow for changeover of T5 or T8s. Installers would have to carry both sets of LED panels to site. The LED panels that are eligible under E5 should also be eligible for T5 lamps. The ELT List currently lists products by Activity for which they are eligible.

If product is eligible for E5, it should also be eligible for E13, this will reduce administrative burden for calculation tools that use list lookup formulas to function.

Further, ESIA members replacing T5s with 3,500 lumens report that this may be excessive with some customers complaining about overly bright LEDs. As such, 3,000 lumens would be appropriate as they continue to meet AS1680 minimum lighting requirements.

Question 24: How likely are you to use the proposed Activity Definition E13? Why/why not?

(No response)

Question 25: Do you agree with the proposed definition as opposed to the current definition of the Implementation Date for HEER activities? Please provide reasoning supporting your response.

It should not be the 'earliest' date that end-user equipment is installed, but the latest date. This is because, for example, an electrician could commence installing lights at a site on day one, having collected the nomination form prior to that day, but then have to return to the site over multiple days, sometimes weeks, due to unforeseen issues with the wiring at the site that could not be determined until the electrician commenced work.

The definition could be brought into alignment with Commercial Lighting which states "The Implementation Date is the date when the Lighting Upgrade was completed." Not started.

However, if the intention is for the nomination form to be signed and the site assessment to be carried out prior to works commencing at the site, then this should be clearly stated in the Rule.

Question 26: Do you anticipate that this change would present any difficulties with being nominated and generating ESCs for a particular work program?

No.

Question 27: Do you agree with combining lamp only magnetic and electronic transformers into a single category? Please provide reasoning supporting your response.

Yes, ESIA agrees. The change will greatly reduce complexity, cost and risk of error when upgrading lamps under the E1 activity.

Question 28: Would this change result in reduced administrative costs for your business?

Yes, the change would result in reduced administrative costs.

Question 29: Do you agree with aligning the terminologies used in Schedule E? If not, please provide supporting evidence to justify your response.

Yes, ESIA agrees. This would remove ambiguity from the Rule.

Question 30: Do you agree with the use of the 3-star rating, as defined within the 2019 Refrigerated Cabinets Determination, as a baseline for determining energy efficient status? Please provide reasoning supporting your response.

(No response)

Question 31: Do you agree with the proposed changes to Activity Definition F1? Please provide reasoning supporting your response.

(No response)

Question 32: Do you agree with the proposed changes to Activity Definition F4? Please provide reasoning supporting your response.

(No response)

Question 33: Do you agree that the removal of “and accepted by the Scheme Administrator” would make the activity easier to use? Please provide reasoning supporting your response.

(No response)

Question 34: Do you agree with updating and aligning this Activity Definition in line with the updates to the GEMS Determination 2018? Please provide reasoning supporting your response.

(No response)

C. Other matters

i) Peak demand reduction opportunities with the ESS

Further detail and discussion can be provided by the ESIA to explore how a Peak Demand Reduction Scheme (PDRP) could support households and businesses in NSW in reducing their energy consumption over the 5pm to 9pm peak period.

Such a PDRP could work stand alone or within existing energy savings schemes by applying an additional incentive (based on a multiplier) to those activities operating during these times.

Please refer to independent analysis illustrating the shifting peak demand challenge, [Victorian summer review: time to get serious and prioritise peak demand reduction](#) by Green Energy Markets, 16 May 2019. It explores the masking of demand reduction achieved by the Victorian energy savings scheme in AEMO’s metered demand data.

ii) Commercial Lighting Formula – IPD requirements

ESIA recommends restricting the Illumination Power Density (IPD) requirement under 9.4.1 (c)(iii) to only lighting upgrades that require development approval.

Executive summary

The ESIA does not believe that IPD under the National Construction Code (NCC) should be applied to the NSW ESS. This is because the ESS is designed to engage consumers in energy saving activities with a goal to save energy and money. The additional costs associated with meeting IPD will erode current incentives and activity.

In addition, IPD does not apply to typical lighting upgrades that do not require a Development Approval (DA), is not mandatory under a normal lighting upgrade, will create a poor customer experience, will create unnecessary compliance and installation costs and challenges within the ESS, will deem a lot of existing sites illegitimate, will be challenging meeting AS/NZS 1680 and moves NSW ESS further away from the harmonisation of VEET.

In addition, the IPD calculation that has been performed for CLESF upgrades to date has generally been irrelevant and has created additional and significant administrative burden.

For all the above reasons, and as explained below, the ESIA strongly recommends that IPD requirement should be removed from the ESS CLESF.

Background

The changes to IPD under the 2019 National Construction Code (NCC) aim to increase restrictions on the power allowed for lighting in each space type from the existing 2016 NCC. Additional adjustment factors apply, with the intention of increasing wellbeing and comfort, in addition to energy efficiency of lighting. They include:

- Correlated Colour Temperature (CCT);
- Colour Render Index (CRI); and
- control devices, such as sensors or dimmers.

These changes will apply from 1 May 2020 and have been voluntary since 1 May 2019. Depending on the space type, changes range from roughly 14% to 85% reduction.

Significance to ESS lighting implementations

While the ESIA is a strong supporter of the alignment of the ESS with standards aimed at increasing the quality and function of the lighting products involved, the 2019 NCC tightening of restrictions on IPD will create a range of issues for retrofit installations.

The premise of lighting under the ESS is based around retrofit installations and not new builds. The NCC is primarily designed to benefit new installations, or those which require a Development Approval where lighting can be designed from scratch.

Retrofit installations are typically within existing premises, where the incumbent fitting placement is significantly higher in quantity than with new builds, as they were designed at a time when light

fittings were far inferior to modern LEDs. As retrofit installations are typically fitting-for-fitting replacement, under the new IPD requirements many retrofit installations would be non-compliant.

If this were to be addressed by de-lamping, in order to stay under the IPD limit, this presents physical installation issues such as the need to repair ceilings or replace ceiling tiles where incumbent fittings have been removed.

It is likely that to meet the new IPD requirements a completely new lighting layout would be required, and this would make many upgrades uneconomic under the ESS.

Application of the National Construction Code to the ESS

The ESIA does not believe that IPD under the NCC should be applied to a typical lighting upgrade with the ESS for the below reasons:

1. The ESS objective is to incentivise commercial and residential consumers to engage in energy saving activities. The additional costs associated with meeting IPD will erode current incentives.
2. Meeting IPD under the NCC is not mandatory under the framework of a traditional lighting upgrade and should not be applied under the ESS.
3. Tracking and managing compliance of IPD within real commercial upgrades will be very difficult and could open avenues for non-compliance.
4. Meeting AS/NZS1680 while complying to IPD is not achievable across all space types using existing fittings or cut outs. This will open the way for lighting upgrades only to be applied to parts of each premises.
5. Upgrades being applied to only part of the premises will lead to negative outcomes for the consumer.
6. The ESIA has consulted with key partners in modelling the IPD against current installations and has results that reflect >70% failure rate.

Alignment with VEU

In the spirit of scheme harmonisation, the move towards closer alignment between the ESS and the VEU has often been raised by both programs as adding significant benefits to the participants of both. There are already channels of alignment for product and AP/ACP applications for approval, which have streamlined the process and reduced complexity.

The VEU does not require commercial lighting installations to conform to the NCC, which is at odds with the ESS position, which is a move away from scheme harmonisation.

Following are some examples of the impacts of tighter IPD restrictions on retrofits:

1. T-bar office environments: if de-lamping is required to conform to the 2019 NCC, new ceiling tiles need to be procured to cover the holes of existing fittings. This adds cost and complexity to otherwise straightforward, cost-effective retrofits, and in many cases many older offices have fittings spaced at intervals suited to older fluorescent tubes, (eg every second tile across, even every tile lengthways), which will be non-compliant using the new NCC code and will require de-lamping.
2. Incentive is given in the 2019 NCC to lower CCT, particularly <4500K for the stated purpose of wellbeing. Market demand clearly demonstrates a preference for higher CCT in many commercial installations, for example 5000K and 5700K in offices. A push towards lower CCT will likely be met with resistance in the market.

3. Equally, incentive is given to the presence of motion sensors on fittings, to further enhance energy savings. While sensors play an important role in some space types such as warehouses and car parks, care needs to be taken in applying sensors in office spaces. Poorly functioning sensors, usually prevalent when manufacturers are under price pressure to keep costs down, can deliver poor user experience - for example, low sensitivity to movement and non-configurable sensor parameters such as hold time being too short.
4. High CRI >90 is another incentivised feature in the 2019 code, which is a possibility, but adds to product cost and limits fitting efficacy.
5. Storage space types have an aggressive IPD requirement, reduced by up to 85% on the 2016 level.

These examples highlight some of the additional cost and complexity of conforming to the new IPD standards in retrofit installations. Such costs and complexities form barriers to entry for ACPs and energy savers alike.

iii) Commercial Lighting Formula – financing under co-payment

ESIA members continue to see opportunities to drive greater energy savings under the CLESF which are failing to occur due to the requirement to meet the “has been paid” wording of the ESS Rule.

Financing lighting upgrades under Energy Performance Contracts or simply leasing of equipment upgrades represent an excellent way to fund the capital cost of the upgrade through the energy savings of the upgrade.

Currently, Environment Upgrade Agreements that are now available Australia-wide cannot easily be performed in conjunction with the ESS CLESF method.