



23 August 2019

Stephen Procter  
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Dear Stephen,

## **Re: Consultation Paper 2018-2019 Rule Change**

We are grateful for the opportunity to provide feedback on the proposed 2018 – 2019 changes to the ESS Rule. In general, we are supportive of the proposed changes and commend Department of Planning, Industry and Environment on its continued good work on this important program.

We only have specific feedback on one particular change, namely:

### **Question 9: Do you agree with the proposed changes to Clause 7A.1?**

Our response is: no. While we support the intention behind the change, we strongly oppose the proposed change in the grounds that it is inconsistent with the intent of and operation of the rest of the Rule and Clause 7A. We believe there is a high risk that this change could render the entire Project Impact Assessment with Measurement and Verification Method (PIAM&V) unworkable.

We propose it be amended as follows:

*The energy savings for the Implementation be deemed reasonably reflective of what would be expected for the Implementation by a Measurement and Verification Professional, with their written explanatory reasoning provided.*

Our justification of this position in as follows:

- The intention of the ESS is to provide incentives for a high volume of energy efficiency upgrades to deliver additional energy savings for participants and lower energy costs for NSW energy market as a whole. For this to work a balance need to be struck between confidence in the additionality of savings for which certificates are created, and the administrative efficiency of the processes involved in creating certificates. The proposed change appears innocuous, but when taken in context of the rest of the Rule and its administration, it is highly problematic.
  - A key aspect of administrative efficiency, and the success for the scheme to date, is providing the market in advance, with clear and objective goal posts as to what projects and evidence will and will not be accepted for certificate creation.
  - Another key element of administrative efficiency is the policy acceptance of a necessary level of uncertainty over savings at an Implementation by Implementation level. For some implementations the exact number of additional savings will be higher than the number of certificates awarded for others it will be lower, with the overall level of savings averaging out at a scheme level. The goal of the Rule is to reduce the level of variance and account for in it with discount factors. But absolutely certainty is not possible or desirable at an Implementation level as the compliance costs would erode the marginal scheme cost: benefit gains.
- As proposed, the requirement provides no basis from which the Administrator is meant to assess whether energy savings are attributable to an activity. This creates great uncertainty for project proponents as to how they are to calculate or demonstrate savings. It also allows the administrator to make arbitrary and subjective decisions on a case by case basis.
- The proposed amendment risks introducing inconsistencies into the rule with respect to overarching clauses 5.3 and 6.3A (b) and 7A.
  - This change introduces a new concept on energy savings that is both poorly defined and inconsistent with the way energy

savings are defined in the rest of the Rule. Clause 5.3 already provides detailed and consistent requirements for all methods to ensure energy savings result from genuine energy efficiency measures. Clause 5.3 sets out the definition of energy savings in a way that makes clear the scheme is designed to promote energy efficiency (i.e. reducing energy consumption relative to output) not simply to deliver a “reduction in the consumption of energy” as proposed in this change to Clause 7A.1.

- This change is also inconsistent with the principles of natural justice, increasing the level of sovereign risk associated with the ESS, which in turn increases scheme costs. Clause 6.3A (b) already provides that the method produce a result reasonably reflecting, to the satisfaction of the Scheme Administrator, the Energy Savings arising from that Implementation. This qualification of reasonableness is crucial to the fair and effective operation of the ESS Rule or any legislative requirement. The proposed changes to Clause 7A.1 duplicate 6.3A (b), while removing the reasonableness test, requiring the scheme administrator to make absolute decisions on matters for which absolute certainty is not possible. Because the administrator has no way of being certain that all the savings are attributable to the activity, it will be challenging for the Administrator to accept any savings. This risks the rejection of high numbers if not all PIAM&V certificate claims. The outcomes of this will not even be known until nearly a year after the first projects have been implemented.
- The intention of Measurement and Verification Professional (MVP) in the PIAM&V method was to avoid the need for the Administrator to become experts on every potential upgrade type in energy end use and every sector. Clause 7A.15 provides for IPART to establish a process to appoint independent experts to provide advice on which they can rely. This is just as NSW Roads and Maritime Services does with the provision of Pink Slips and NABERS does with NABERS Assessors. This proposed amendment undermines the intent of the MVP process by requiring the Administrator to make technical assessments, which it cannot reasonably expected to have the

expertise on in all cases. If the Scheme Administrator is not confident in the ability of MVPs to make this, or other assessments, the appropriate response is administrative not Rule based. I.e. the Administrator should provide clearer oversight, training, feedback and guidance to MVPs and ACPs as to their expectations.

Finally even with our proposed new wording, the workability of the requirement requires that the Scheme Administrator publish clear guidance and examples as to what type of evidence they will require.

Thank you for taking the time to consider our feedback.

Yours sincerely,

**Henry Adams**

Director, Common Capital