

# Requirement to give an undertaking

## 1 Name of this instrument

This instrument is the *ESS and PDRS Standing Requirement (Undertakings) 2023*.

## 2 Application

This instrument applies:

- a) from the day it is published on the Energy Sustainability Schemes website until it is revoked; and
- b) to all Applicants from time to time, unless an Applicant is advised otherwise in writing by IPART.

## 3 Standing requirement to give an undertaking

Under clauses 40(2) and 62L(2) of the Regulation, IPART by this instrument requires all Applicants to give an undertaking substantially in the form set out in the Schedule to this instrument.

## 4 Definitions

In this instrument:

**Applicant** means an applicant for accreditation as a certificate provider under the ESS or the PDRS.

**IPART** means the Independent Pricing and Regulatory Tribunal of NSW in its capacity as Scheme Administrator of the ESS and in its capacity of Scheme Administrator of the PDRS.

**Regulation** means the *Electricity Supply (General) Regulation 2014*.

## Schedule – ESS and PDRS template undertaking, October 2022



# ESS and PDRS Undertaking

October 2022

# Energy Savings Scheme (ESS) Undertaking

Version 1.7, September 2022



# Clause 40 of the Electricity Supply (General) Regulation 2014 (NSW)

This undertaking is offered to the Independent Pricing and Regulatory Tribunal, acting in its capacity as the Scheme Administrator of the Energy Savings Scheme (the **Scheme Administrator**) by the applicant.

## 1. Background

- 1.1 The Energy Savings Scheme is regulated by the Act, the Regulation and the Rule. Under the Act, the Independent Pricing and Regulatory Tribunal is the Scheme Administrator of the Energy Savings Scheme.
- 1.2 The applicant has applied to the Scheme Administrator for accreditation as an ACP in respect of the RESA.
- 1.3 Under clause 40(2) of the Regulation, the Scheme Administrator may require an ACP applicant to provide an undertaking to withhold from transfer a certain proportion of the ESCs it creates, pending the outcome of an Audit of those ESCs.

## 2. Commencement

- 2.1 The applicant has offered this undertaking to the Scheme Administrator as part of its application for accreditation as an ACP in respect of the RESA.
- 2.2 The Scheme Administrator determines an application for accreditation as an ACP by either accrediting the applicant, or by refusing the application. This undertaking only takes effect if the Scheme Administrator decides to accredit the applicant and accept and require this undertaking.
- 2.3 This undertaking commences on the date that the Scheme Administrator decides to accept and require the undertaking.
- 2.4 For the avoidance of doubt:
  - (a) the Scheme Administrator may decide to accredit the applicant as an ACP but not to accept and require this undertaking. In that case, this undertaking will not come into effect; and
  - (b) if the Scheme Administrator decides to accredit the applicant as an ACP and accept and require this undertaking, this undertaking will apply to the applicant in its capacity as an ACP.

### 3. Undertaking to withhold ESCs from transfer

- 3.1 The applicant undertakes to withhold from transfer a proportion of the ESCs created during an Audit Period, pending the outcome of an Audit of those ESCs. The proportion of ESCs that the applicant is to withhold is determined in accordance with this clause 3.
- 3.2 Subject to clause 3.3 below, the applicant undertakes to withhold 10% of the ESCs it creates during an Audit Period as and when the ESCs are created.
- 3.3 Despite the general undertaking that is provided for in clause 3.2 above, the applicant undertakes to withhold the following proportion of ESCs in the following circumstances:

#### **Material Error Rate in either (or both) first two Audits**

- (a) Where either of the first two Audits following the Date of Acceptance has an Error Rate that is Material, the applicant undertakes to withhold 20% of the ESCs it creates during the following Audit Period as and when the ESCs are created.

#### **Two successive Audits with an Error Rate that is Not Material**

- (b) Where an Audit has an Error Rate that is Not Material and the preceding Audit also has an Error Rate that is Not Material, then, unless clause 3.3(c) below applies, the applicant undertakes to withhold 5% of the ESCs it creates during the following Audit Period as and when the ESCs are created.

#### **Three or more successive Audits with an Error Rate that is Not Material**

- (c) Where an Audit has an Error Rate that is Not Material and each of the two preceding Audits also has an Error Rate that is Not Material, the applicant does not undertake to withhold any ESCs in any subsequent Audit Period until the applicant has an Audit with an Error Rate that is Material.

### 4. Treatment of withheld ESCs

To facilitate the applicant's undertakings in clause 3 above, the applicant agrees that any ESCs withheld from transfer during an Audit Period:

- (a) will be registered separately to other ESCs created during the Audit Period; and
- (b) may be subject to an administrative hold in the Registry.

### 5. Further undertaking and acknowledgements

- 5.1 The applicant undertakes that it will do all things that are reasonably necessary to give effect to this undertaking.
- 5.2 The applicant acknowledges that:
- (a) This undertaking does not affect the exercise of the Scheme Administrator's functions or powers in regulating the Energy Savings Scheme under the Act, the Regulation or the Rule. In particular, this undertaking does not limit the Scheme Administrator's ability to:
- (i) impose additional conditions on the applicant's accreditation; or
- (ii) exercise its powers under clause 45 of Schedule 4A to the Act to order a person to surrender ESCs.

- (b) For the purpose of this undertaking, the Error Rate will be determined by reference to a sample of the ESCs created during the Audit Period.
- (c) If any provision of this undertaking is declared illegal, unenforceable or void, that provision will be severed, and the remaining provisions will continue to have full force and effect.

## Schedule 1: Definitions and interpretation

### 1. Definitions

In this undertaking:

**Accreditation Notice** means the accreditation notice which is the result of the application process in respect of which this undertaking was given.

**ACP** means a certificate provider accredited by the Scheme Administrator under Schedule 4A to the Act for the purposes of the Energy Savings Scheme.

**Act** means the *Electricity Supply Act 1995* (NSW).

**Audit** means an audit of a sample of the ESCs created during the Audit Period in accordance with the Act and the applicant's accreditation conditions. The purpose of the audit is to determine whether the ESCs were created in accordance with the Act, the Regulation, the Rule, and the applicant's accreditation conditions.

**Audit Period**, in respect of an Audit, means the period during which the applicant created the ESCs the subject of the Audit.

**Date of Acceptance** means the original date of RESA accreditation as specified in the Accreditation Notice in relation to the RESA.

**ESC** means an energy savings certificate created by the applicant in respect of the RESA under Schedule 4A to the Act.

**Energy Savings Scheme** means the Energy Savings Scheme established by Schedule 4A to the Act.

**Error Rate**, in respect of an Audit, means the percentage of ESCs, the subject of the Audit, reasonable assurance over which the auditor cannot provide.

**Independent Pricing and Regulatory Tribunal** means the tribunal established under section 5 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

**Material** means an Error Rate of 5% or greater for ESCs created during the Audit Period.

**Not Material** means an Error Rate of less than 5% for ESCs created during the Audit Period.

**Registry** means the internet-based register maintained by the Scheme Administrator in accordance with Schedule 4A to the Act.

**Regulation** means the *Electricity Supply (General) Regulation 2014* (NSW).

**RESA** means the Recognised Energy Savings Activity to which the applicant's application relates.

**Rule** means the *Energy Savings Scheme Rule of 2009*.

## 2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a party includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (d) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it and a legislative provision substituted for it.
- (e) Mentioning anything after *includes* or *including*, *for example*, or similar expressions, does not limit what else might be included. Where the number of ESCs to be withheld under this undertaking is not an integer, the number of ESCs to be withheld under this undertaking is to be rounded up to the nearest integer.



# Peak Demand Reduction Scheme (PDRS) Undertaking

Version 1, September 2022



## Clause 62L of the Electricity Supply (General) Regulation 2014 (NSW)

This undertaking is offered to the Independent Pricing and Regulatory Tribunal, acting in its capacity as the Scheme Administrator of the Peak Demand Reduction Scheme (the **Scheme Administrator**) by the applicant.

### 1. Background

- 1.1 The Peak Demand Reduction Scheme is regulated by the Act, the Regulation and the Rule. Under the Act, the Independent Pricing and Regulatory Tribunal is the Scheme Administrator of the Peak Demand Reduction Scheme.
- 1.2 The applicant has applied to the Scheme Administrator for accreditation as an ACP in respect of the RPA.
- 1.3 Under clause 62L(2) of the Regulation, the Scheme Administrator may require an ACP applicant to provide an undertaking to withhold from transfer a certain proportion of the PRCs it creates, pending the outcome of an Audit of those PRCs.

### 2. Commencement

- 2.1 The applicant has offered this undertaking to the Scheme Administrator as part of its application for accreditation as an ACP in respect of the RPA.
- 2.2 The Scheme Administrator determines an application for accreditation as an ACP by either accrediting the applicant, or by refusing the application. This undertaking only takes effect if the Scheme Administrator decides to accredit the applicant and accept and require this undertaking.
- 2.3 This undertaking commences on the date that the Scheme Administrator decides to accept and require the undertaking.
- 2.4 For the avoidance of doubt:
  - (a) the Scheme Administrator may decide to accredit the applicant as an ACP but not to accept and require this undertaking. In that case, this undertaking will not come into effect; and
  - (b) if the Scheme Administrator decides to accredit the applicant as an ACP and accept and require this undertaking, this undertaking will apply to the applicant in its capacity as an ACP.

### 3. Undertaking to withhold PRCs from transfer

- 3.1 The applicant undertakes to withhold from transfer a proportion of the PRCs created during an Audit Period, pending the outcome of an Audit of those PRCs. The proportion of PRCs that the applicant is to withhold is determined in accordance with this clause 3.
- 3.2 Subject to clause 3.3 below, the applicant undertakes to withhold 10% of the PRCs it creates during an Audit Period as and when the PRCs are created.
- 3.3 Despite the general undertaking that is provided for in clause 3.2 above, the applicant undertakes to withhold the following proportion of PRCs in the following circumstances:

#### **Material Error Rate in either (or both) first two Audits**

- (a) Where either of the first two Audits following the Date of Acceptance has an Error Rate that is Material, the applicant undertakes to withhold 20% of the PRCs it creates during the following Audit Period as and when the PRCs are created.

#### **Two successive Audits with an Error Rate that is Not Material**

- (b) Where an Audit has an Error Rate that is Not Material and the preceding Audit also has an Error Rate that is Not Material, then, unless clause 3.3(c) below applies, the applicant undertakes to withhold 5% of the PRCs it creates during the following Audit Period as and when the PRCs are created.

#### **Three or more successive Audits with an Error Rate that is Not Material**

- (c) Where an Audit has an Error Rate that is Not Material and each of the two preceding Audits also has an Error Rate that is Not Material, the applicant does not undertake to withhold any PRCs in any subsequent Audit Period until the applicant has an Audit with an Error Rate that is Material.

### 4. Treatment of withheld PRCs

To facilitate the applicant's undertakings in clause 3 above, the applicant agrees that any PRCs withheld from transfer during an Audit Period:

- (a) will be registered separately to other PRCs created during the Audit Period; and
- (b) may be subject to an administrative hold in the Registry.

### 5. Further undertaking and acknowledgements

- 5.1 The applicant undertakes that it will do all things that are reasonably necessary to give effect to this undertaking.
- 5.2 The applicant acknowledges that:
- (a) This undertaking does not affect the exercise of the Scheme Administrator's functions or powers in regulating the Peak Demand Reduction Scheme under the Act, the Regulation or the Rule. In particular this undertaking does not limit the Scheme Administrator's ability to:
- (i) impose additional conditions on the applicant's accreditation; or

- (ii) exercise its powers under clause 117 of Schedule 4A to the Act to order a person to surrender PRCs.
- (b) For the purpose of this undertaking, the Error Rate will be determined by reference to a sample of the PRCs created during the Audit Period.
- (c) If any provision of this undertaking is declared illegal, unenforceable or void, that provision will be severed, and the remaining provisions will continue to have full force and effect.

## Schedule 1: Definitions and interpretation

### 1. Definitions

In this undertaking:

**Accreditation Notice** means the accreditation notice which is the result of the application process in respect of which this undertaking was given.

**ACP** means a certificate provider accredited by the Scheme Administrator under Schedule 4A to the Act for the purposes of the Peak Demand Reduction Scheme.

**Act** means the *Electricity Supply Act 1995* (NSW).

**Audit** means an audit of a sample of the PRCs created during the Audit Period in accordance with the Act and the applicant's accreditation conditions. The purpose of the audit is to determine whether the PRCs were created in accordance with the Act, the Regulation, the Rule, and the applicant's accreditation conditions.

**Audit Period**, in respect of an Audit, means the period during which the applicant created the PRCs the subject of the Audit.

**Date of Acceptance** means the original date of RPA accreditation as specified in the Accreditation Notice in relation to the RPA.

**Error Rate**, in respect of an Audit, means the percentage of PRCs, the subject of the Audit, reasonable assurance over which the auditor cannot provide.

**Independent Pricing and Regulatory Tribunal** means the tribunal established under section 5 of the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW).

**Material** means an Error Rate of 5% or greater for PRCs created during the Audit Period.

**Not Material** means an Error Rate of less than 5% for PRCs created during the Audit Period.

**Peak Demand Reduction Scheme** means the Peak Demand Reduction Scheme established by Schedule 4A to the Act.

**PRC** means a peak reduction certificate created by the applicant in respect of the RPA under Schedule 4A to the Act.

**Registry** means the internet-based register maintained by the Scheme Administrator in accordance with Schedule 4A to the Act.

**Regulation** means the *Electricity Supply (General) Regulation 2014* (NSW).

**RPA** means the Recognised Peak Activity to which the applicant's application relates.

**Rule** means the *Peak Demand Reduction Scheme Rule of 2022*.

## 2. Interpretation

Headings are for convenience only and do not affect interpretation. The following rules apply unless the context requires otherwise:

- (a) The singular includes the plural, and the converse also applies.
- (b) If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
- (c) A reference to a party includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives).
- (d) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it and a legislative provision substituted for it.
- (e) Mentioning anything after *includes* or *including*, *for example*, or similar expressions, does not limit what else might be included.
- (f) Where the number of PRCs to be withheld under this undertaking is not an integer, the number of PRCs to be withheld under this undertaking is to be rounded up to the nearest integer.