

26 April 2017

Who

This notice contains important information for:

- ▼ Accredited Certificate Providers (**ACPs**) with accreditations under the Deemed Energy Savings Method - Commercial Lighting Energy Savings Formula; and
- ▼ auditors who audit Energy Savings Certificate (**ESC**) creation under such accreditations.

What

The purpose of this notice is to inform auditors and ACPs of the impact of amendments to clause 9.4.1(e) of the *Energy Saving Scheme Rule 2009 (Rule)* on the timing of Purchaser co-payments. These amendments take effect on 28 April 2017.

This notice updates the information provided in ESS Notices 03/2016 and 05/2016 (and replaces those notices).

\$5 per MWh payment requirement

Under clause 9.4.1(e) of the Rule, Energy Savings may only be calculated for an Implementation under the Commercial Lighting Energy Savings Formula if:

The Purchaser **has paid** a net amount of at least \$5 (excluding GST) per MWh of Electricity Savings, which must not be reimbursed, for the goods or services making up the Implementation... (emphasis added)

This means the Purchaser must pay an amount equivalent to at least \$5 per MWh of electricity saved in respect of every Implementation. This minimum amount cannot be reimbursed – including by a third party or after relevant ESCs have been audited or created.

Payment must be completed before ESCs can be created

Importantly, the amended clause requires the Purchaser to have made the necessary payment prior to ESC registration. That is, the amended clause does not permit the minimum co-payment to be completed after ESC registration – the co-payment must first be made in full. Future payment plans, partial payment and subsequent reimbursement are not permitted if they result in either:

- ▼ the co-payment not being made in full before registration, or
- ▼ a reduction of the net amount paid below the required co-payment after registration.

The amended requirements apply to all applications for ESC registration made on or after 28 April 2017, irrespective of the date the lighting upgrade occurred, unless the transitional arrangements in clause 11.1 of the Rule apply (see below).

ACPs and auditors are reminded that in-kind payments are not an acceptable form of co-payment. For example, the purchaser cannot provide goods and services in exchange for goods or services that make up the Implementation for the purposes of clause 9.4.1(e).

Transitional arrangements

Clause 11.1 of the Rule permits the calculation of Energy Savings in accordance with the previous version of the Rule where:

- ▼ the Implementation Date is prior to 28 April 2017
- ▼ no previous application to register ESCs in respect of the Implementation have been made prior to 28 April 2017, and
- ▼ an application to register ESCs in respect of those Energy Savings is made on or before 30 June 2017.

Please refer to ESS Notice 03/2016 for more information about the co-payment requirement under the previous Rule. In short, under the previous Rule, the Purchaser need not have actually made the required co-payment before ESC registration provided there is adequate evidence that the Purchaser is legally bound to make that payment. We note that the co-payment cannot be reimbursed by any party, or after the relevant ESCs have been created.

Required evidence

IPART's *Evidence Manual – Commercial Lighting Energy Savings Formula – Deemed Energy Savings Method* sets out the **minimum** evidence the Scheme Administrator requires to be satisfied that the requirement in clause 9.4.1(e) has been met in respect of the creation of ESCs.

IPART may require additional evidence, or further investigate possible non-compliance with the Rule, including to ensure that no subsequent reimbursements have reduced the net amount paid beneath the required minimum co-payment amount.

Audits

IPART is continuing to expand audits of ESC creation (including pre-registration) under commercial lighting formula accreditations. In addition to all existing audit requirements:

1. The auditor must check a certified copy or extract from a sales ledger clearly showing that the Purchaser paid for the lighting upgrade. At a minimum, this check must be performed for all Implementations within the tier 2 sample.
2. The auditor must obtain confirmation from the Purchaser that:
 - a) they have made the co-payment, and
 - b) where a reimbursement or credit of any kind was made or offered, that this did not, and will not, reduce the net amount paid by the Purchaser below the \$5 per MWh minimum net co-payment.

This check must be performed over a reasonable sample of Implementations within the tier 2 sample. At a minimum, it must include at least one Implementation undertaken by each installer, lighting supplier or contractor (but may require more, for example if a single contractor has undertaken a large portion of Implementations covered by the audit).

Note: For the purposes of this item, verbal or email confirmation of payment from the Purchaser may be sufficient. However, where the Purchaser advises that no payment was made, or that a credit or rebate was offered, the auditor should request

documentation or any additional information necessary to establish the net amount of any reimbursement or credit made or offered. If the auditor is unable to obtain the necessary verification, the auditor will need to note the circumstance and expand the sample to ensure the coverage is consistent with the requirement above.

If IPART has been provided with specific information regarding non-compliance, broader scope items may be required. If relevant, this will be communicated at the Detailed Scope of Works (**DSW**) stage of an audit. However, if relevant information is identified as part of the audit, IPART may require further expansion of the audit, possibly by formal variation.

Contractors

IPART understands that many ACPs engage contractors in relation to commercial lighting upgrades. We remind ACPs that ESS Notice: 01/2013 – *Minimum requirements for conduct of persons acting on behalf of Accredited Certificate Providers*, as amended (**Notice**), relevantly provides:

ACPs are accountable for all activities conducted by representatives on their behalf. They will be held responsible by the Scheme Administrator for all acts, omissions and information provided by representatives acting on their behalf – regardless of any contract or agreement with other parties.

ACPs are therefore responsible for the actions and representations of their contractors. It is a condition of every ACP's accreditation that they comply with the Notice (see paragraph 13 of your accreditation notice).

Compliance Action

If the Purchaser does not pay the minimum net \$5 per MWh co-payment amount, ESCs cannot be created. The Scheme Administrator may require the surrender of improperly created ESCs, or take other action available to it, under the *Electricity Supply Act 1995* (NSW) and the *Electricity Supply (General) Regulation 2014* (NSW).