

ENFORCEABLE UNDERTAKING

Renewable Energy (Electricity) Act 2000

Section 154Q

Undertaking to the Regulator given for the purposes of paragraph 154Q(1)(d) of the
Renewable Energy (Electricity) Act 2000

by

APRICUS AUSTRALIA PTY LTD

ABN 12 111 285 271

Glossary

1. In this undertaking, unless the contrary intention appears, the following definitions apply:

"Act" means the *Renewable Energy (Electricity) Act 2000*.

"CER" means the Clean Energy Regulator.

"Certificate" means *renewable energy certificate* as defined in section 5 of the Act.

"Regulations" means the *Renewable Energy (Electricity) Act 2001*.

"Regulator" means the Clean Energy Regulator.

"Solar Water Heater" has the same meaning as it has under the Act.

Person giving undertaking

2. This undertaking is given to the Regulator by Apricus Australia Pty Ltd for the purposes of paragraph 154Q(1)(d) of the Act.

Background

3. Apricus Australia Pty Ltd is a duly incorporated company engaged in trade or commerce in Australia.

Inclusion of Solar Water Heater models in the Register of Solar Water Heaters

4. Under the Act and Regulations registered persons may create certificates in respect of energy which has been offset by eligible solar water heaters as defined in the Act and Regulations.
5. Under the Regulation 3A to be considered an eligible solar water heater model with a capacity not more than 700L, the model must receive product certification to AS/NZS2712: 2007 and be listed on the *Register of solar water heaters*.
6. The certification for a solar water heater model to AS/NZS2712 is based on the assessment of fixed configuration of components and any changes to these components shall be considered a new system, see clause 1.3.4 of AS/NZS 2712

"If a packaged system is modified by changing its configuration or by changing one or more components, the modified system is considered a new system for which a new conformance report will be necessary."

Therefore only the fixed configuration of components can be considered to be a solar water heater model certified to AS/NZS2712 and therefore meeting the requirements of regulation 3A(2).

7. Regulation 19B(1) sets out that the Regulator may by legislative instrument determine the methodology used to determine the number of certificates a particular solar water heater model is eligible for. Clause B(i) of the legislative instrument (the *STC Calculation Methodology for solar water heaters and air source heat pump water heaters*) specifies that the modelling input parameters must be those used in the actual system, that is the configuration which received AS/NZS2712 certification.

Improper creation of Certificates as a result of sale of non-approved model by Apricus Australia Pty Ltd

8. An allegation was received that Apricus Australia Pty Ltd were selling solar water heaters with model numbers that were included in the Register of Solar Water Heaters maintained by the Regulator, where the configuration did not match that of the approved system.
9. An investigation into that allegation was undertaken. During the investigation Apricus acknowledged that, in their application to include models on the Register of solar water heaters – versions 10, 11 and 12, they had modelled their range of systems as including the FM-15C flow meter when this component was not included in the AS/NZS2712 system configuration. The inclusion of the flow meter in the modelling allowed the system to be modelled as stratified rather than 'fully mixed' and be eligible for a higher number of certificates.
10. Apricus Australia Pty Ltd updated their AS/NZS2712 certification to include the FM-15C flow meter on 1 February 2012.
11. The Clean Energy Regulator investigation concluded that Apricus Australia Pty Ltd had not included the FM-15C flow meter in 124 of their products installed between 1 November 2011 and 1 February 2012 and these systems therefore did not match the configuration of the approved model in the Register of Solar Water Heaters.
12. Apricus Australia Pty Ltd acknowledges that the basis on which the Regulator has formed its view is valid and the matter requires immediate and ongoing attention.

Undertaking

13. Under subparagraph 154Q(1)(a) of the Act, the Regulator may accept a written undertaking given by a person that the person will, in order to comply with this Act, the regulations or the associated provisions, take specified action.
14. Apricus Australia Pty Ltd hereby undertakes to, on or before 31 July 2012, for each system sold without the FM-15C flow meter, to provide the purchaser of the system

with the missing flow meter and where certificates have been claimed have them fit to the system at Apricus's expense.

Commencement of Undertaking

15. This Undertaking comes into effect when:
- a. the Undertaking is executed by Apricus Australia Pty Ltd ; and
 - b. the Regulator accepts the undertaking so executed.

Acknowledgements

16. Apricus Australia Pty Ltd acknowledges:
- a. the Regulator will make this undertaking publicly available, including by publishing it on the Regulator's website;
 - b. the Regulator and Officials of the Regulator will, from time to time, make public reference to this undertaking and the circumstances giving rise to this undertaking;
 - c. this undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct of Apricus Australia Pty Ltd .
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Executed by

Apricus Australia Pty Ltd ABN 12 111 285 271 by its authorised officers pursuant to
s 127(1) of the *Corporations Act 2001*

.....
Administrator


.....
Secretary/Director

This 29 day of June 2012

**ACCEPTED BY THE REGULATOR PURSUANT TO PARAGRAPH 154Q(1)(d) OF
THE *RENEWABLE ENERGY (ELECTRICITY) ACT 2000.***


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Andrew Livingston

Delegate of the Regulator

This 3 day of July 2012