

## UNDERTAKING TO THE CLEAN ENERGY REGULATOR

Undertaking to the Clean Energy Regulator given for the purposes of section 154Q of the  
*Renewable Energy (Electricity) Act 2000*

by

Ryan Mulhern

### 1. Glossary

- 1.1. In this Undertaking, unless the contrary intention appears, the definitions in section 5 of the Act, regulation 3 of the Regulations, and this clause apply:

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

**Business day** means a day that is not a Saturday, a Sunday or a declared public holiday in the state of Queensland or New South Wales.

**CEC** means the Clean Energy Council.

**Certificate** means a renewable energy certificate including a small-scale technology certificate.

**Defect** means a failure to satisfy the requirements listed in regulation 39(a) to (d) of the Regulations.

**EFS Solar** means Efficient Force Solutions Pty Ltd, ACN 607 956 436.

**PV** means photovoltaic.

**REC Registry** means the public registry of information maintained by the Regulator in accordance with Part 13 of the Act and which is published at <http://www.rec-registry.gov.au>.

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

**Regulator** means the Clean Energy Regulator.

**Sites** means the 22 solar PV system installations listed at Schedule 1 to this Undertaking.

**Solar PV system** means small generation unit; including solar panels, solar array, isolator, inverter and wiring.

### 2. Background

#### ***Person giving Undertaking***

- 2.1. This Undertaking is given to the Regulator by Ryan Mulhern for the purposes of section 154Q of the Act.
- 2.2. Mr Mulhern is a CEC-accredited solar PV designer and installer and a licenced electrician.
- 2.3. Mr Mulhern is a director of EFS Solar, which has since about 1 January 2019,

sold and installed solar PV systems to the general public.

### ***The creation of certificates***

- 2.4. The Regulator is a statutory agency with responsibility for administering and enforcing the Act and Regulations.
- 2.5. Under the Act, registered persons can create certificates for electricity generated from certain renewable energy sources. Regulation 20AC of the Regulations sets out the conditions which must be satisfied before certificates can be created in respect of a solar PV system.
- 2.6. Included in those conditions is the requirement, under sub regulation 20AC(5), to obtain a written statement by the installer of the solar PV system stating the name of the designer and the name of the installer of the solar PV system.
- 2.7. Designers and installers of solar PV systems must be accredited by either the Australian Business Council for Sustainable Energy or the CEC and must comply with the CEC's Code of Conduct.

### ***Provision of false information***

- 2.8. On 22 separate occasions, during the period 22 August 2019 to 4 September 2019, Mr Mulhern was responsible for the installation of solar PV systems by persons who were not accredited to install those solar PV systems.
- 2.9. On each of those 22 occasions, Mr Mulhern submitted false information to a second party, being information that Mr Mulhern was either the installer, or supervised the installation in accordance with the Act and Regulations, of various solar PV systems. On each occasion the second party relied on the false information to create certificates.
- 2.10. The Regulator considers that, on that basis, Mr Mulhern has contravened subsection 24B(1) of the Act.
- 2.11. Mr Mulhern has cooperated with the Regulator in coming to an agreeable outcome regarding the conduct above.

## **3. Terms of the Undertaking**

- 3.1. Under section 154Q of the Act, the Regulator may accept any of the following Undertakings:
  - (a) a written Undertaking given by a person that the person will, in order to comply with the Act, the Regulations or the associated provisions, take specified action;
  - (b) a written Undertaking given by a person that the person will, in order to comply with the Act, the Regulations or the associated provisions, refrain from taking specified action;
  - (c) a written Undertaking given by a person that the person will take specified action directed towards ensuring that the person does not

contravene the Act, the Regulations or the associated provisions, or is unlikely to contravene the Act, the Regulations or the associated provisions, in the future; or

- (d) a written Undertaking given by a person that the person will surrender one or more renewable energy certificates under section 28A of the Act, to compensate for the creation of one or more certificates that the person was not entitled to create.

### ***Inspection of the Sites and Further Sites***

3.2. Mr Mulhern undertakes, at his own expense, to:

on or before 30 September 2020

#### Audit of EFS Solar business records

- (a) complete an audit of all EFS Solar business records relating to solar PV systems installed by EFS Solar from 1 January 2019 to the date of this Undertaking, for the purposes of identifying any further sites where Mr Mulhern signed off on the installation of the solar PV systems without either personally installing the solar PV systems or supervising the installation of the solar PV systems in accordance with the Act and Regulations (**'Further Sites'**).

on or before 31 January 2021

#### Inspection of Sites

- (b) take reasonable steps to obtain the consent of the owners of the Sites (and where relevant, the occupiers of the Sites), to inspect the solar PV systems;
- (c) arrange for a CEC-accredited installer (or installers), agreed with the Regulator, to inspect each of the solar PV systems at the Sites, in accordance with regulation 39(a) to (d) of the Regulations, to assess whether the solar PV system has any defects;
- (d) if any inspection identifies any defect with the installation of a particular solar PV system at a Site, arrange for a new installation of the solar PV systems, or to remedy any defective part of that installation.

#### Inspection of Further Sites

- (e) take reasonable steps to obtain the consent of the owners of the Further Sites (and where relevant, the occupiers of the Further Sites), to inspect the solar PV systems;
- (f) arrange for a CEC-accredited installer (or installers), agreed with the Regulator, to inspect each of the solar PV systems at the Further Sites, in accordance with regulation 39(a) to (d) of the Regulations, to assess whether the solar PV system has any defects;
- (g) if any inspection identifies any defect with the installation of a particular solar PV system at a Further Site, arrange for a new installation of the solar PV systems, or to remedy any defective part of that installation;
- (h) upon request, provide the Regulator with all documents related to the

audit referred to at clause 3.2(a).

### ***Report to the Regulator***

3.3. Mr Mulhern undertakes to provide the following to the Regulator:

due no later than 5pm on the last business day of each month, starting 31 July 2020 until such a time as all Undertakings have been completed in full

(a) a written report, in a form approved by the Regulator, as to the progress made in completing the Undertakings at clause 3.2(b) to (g)

on or before 30 September 2020

(b) a list of any Further Sites referred to at clause 3.2(a)

on or before 28 February 2021

(c) evidence of the inspection by the CEC-accredited installer of the Sites and any Further Sites, including resubmission of all compliance paperwork including Certificates of Compliance - Electrical Work and photographs of the solar PV systems at the Sites including of panel serial numbers;

(d) a statutory declaration from the CEC-accredited installer who carried out the inspection, stating that the solar PV system does, or does not, have a defect, and if it does have a defect, the nature of that defect;

(e) evidence of any rectification work completed under 3.2(d) or (g) of the Undertaking;

(f) if the consent of the owners of any Sites or Further Sites (and where relevant, the occupiers of the Sites or Further Sites) is not obtained, as required by subclause 3.2(b) and (e) of this Undertaking, the steps that were carried out to obtain that consent; and

(g) where an event or issue occurs that prevents the fulfillment of clause 3.2 or 3.3 of the Undertaking, a written explanation of the event or issue.

## **4. Acknowledgements**

4.1. Ryan Mulhern acknowledges that:

(a) the basis on which the Regulator has formed its conclusion in clause 2 of this Undertaking is valid and that the matter requires immediate attention;

(b) the Regulator will make this Undertaking publicly available, including by publishing it on the Regulator's website;

(c) 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;

(d) this Undertaking in no way derogates from the rights and remedies available to any other person arising from any conduct of Mr Mulhern;

(e) he bears all costs associated with his compliance with this Undertaking;

- (f) he cannot create, or receive any payment for, any certificates in relation to any act commenced or completed in compliance with this Undertaking;
- (g) no person is entitled to create any certificates with respect to any work commenced or completed at a Site or Further Site in relation to this Undertaking;
- (h) the audit referred to at clause 3.2(a) of the Undertaking should be conducted in a way that allows sufficient time to complete clauses 3.2(e) to (g) as necessary for any identified Further Sites;
- (i) where an event or issue occurs that may prevent the fulfillment of clauses 3.2 or 3.3 of the Undertaking, the Regulator will not consent to vary the dates specified in clauses 3.2 or 3.3 unless a request that outlines the event or issue and reasons why the variation is required is submitted in writing as soon as reasonably practicable after the event or issue occurs, but no later than seven calendar days prior to the specified date; and
- (j) breaching this Undertaking may result in the Regulator enforcing this Undertaking through the Federal Court.

## **5. Duration of Undertaking**

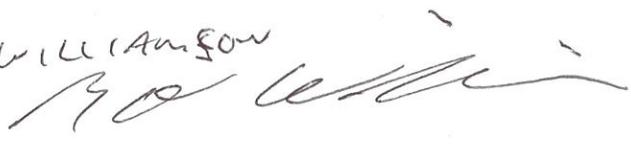
- 5.1. This Undertaking comes into effect when:
  - (a) the Undertaking is executed by Ryan Mulhern; and
  - (b) the Regulator accepts the Undertaking so executed by Ryan Mulhern.
- 5.2. This Undertaking ceases to have effect once the requirements of clause 3 have been completed.

Executed by

Ryan Mulhern 

This 28 day of May 2020

Accepted by the Clean Energy Regulator pursuant to section 154Q of the **Renewable Energy (Electricity) Act 2000**

Name: MARTIN WILLIAMSON  
Delegate of the Regulator 

This 29<sup>th</sup> day of MAY 2020