

## UNDERTAKING TO THE CLEAN ENERGY REGULATOR

Undertaking to the Clean Energy Regulator given for the purposes of section 45 of the  
*National Greenhouse and Energy Reporting Act 2007*

by

Peabody Australia Holdco Pty Ltd ('**Peabody**')

### Glossary

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

**Act** means the *National Greenhouse and Energy Reporting Act 2007*.

**Business day** means a day that is not a Saturday, a Sunday or a declared public holiday in the Australian Capital Territory.

**Facility** means an activity, or a series of activities (including ancillary activities) that:

- involve the production of greenhouse gas emissions, the production of energy or the consumption of energy;
- form a single undertaking or enterprise and meet the requirements of the regulations; and are attributable to a single industry sector.

**Peabody** means Peabody Australia Holdco Pty Ltd

**Regulations** means the *National Greenhouse and Energy Reporting Regulations 2008*.

**Regulator** means the Clean Energy Regulator.

**Undertaking** means Enforceable Undertaking

2. **Person giving Undertaking**

2.1. This Undertaking is given to the Regulator by Peabody for the purposes of section 45 of the Act.

3. **Background**

3.1. Peabody is an Australian company, incorporated on 16 December 2011 and holding ACN 154 820 130.

3.2. Peabody has been registered as a controlling corporation under section 17 of the Act since 2013.

3.3. 2012-2013 was the first financial year that Peabody was required to report under the Act.

## **Reporting**

- 3.4. The Act requires the registered controlling corporation to report on their greenhouse gas emissions, energy consumption and energy production for each financial year that they are registered.
- 3.5. Sections 19, 22G and 22X of the Act set out the reporting requirements.
- 3.6. Peabody is required to report under section 19 of the Act.
- 3.7. Under paragraph 19(6)(d) of the Act, a report must be submitted to the Regulator before the end of 4 months after the end of the financial year. This means by midnight (AEDT) 31 October each year or, if 31 October is not a business day, the report must be submitted to the Regulator by midnight (AEDT) of the first business day following 31 October.
- 3.8. Whilst Peabody submitted reports in accordance with the above timeframes as required under the Act, the reports submitted by Peabody failed to satisfactorily meet the reporting obligations under the Act.
- 3.9. Peabody acknowledges that it has failed to correctly report all greenhouse gas emissions, energy production, and energy consumption from facilities under its operational control. Peabody has made calculation errors which have resulted in instances of significant over- and under-reporting, and incorrectly reported uncertainty.

## **4. Terms of the Undertaking**

- 4.1. Subsection 45(1) of the Act states that the Regulator may accept any of the following Undertakings:
  - (a) a written undertaking that the person will take specified action, in order to comply with the provisions of this Act, the regulations or the safeguard rules;
  - (b) a written undertaking that the person will refrain from taking specified action in order to comply with the provisions of this Act, the regulations or the safeguard rules;
  - (c) a written undertaking that the person will take specified action directed towards ensuring that the person:
    - i. does not commit a contravention of this Act, the regulations or the safeguard rules; or
    - ii. is unlikely to commit a contravention of this Act, the regulations or the safeguard rules; in the future;
  - (d) a written undertaking of a kind specified in regulations made for the purposes of this paragraph.
- 4.2. Peabody, hereby undertake, at its own expense to:

### **External consultant**

- (a) Engage and direct an external consultant before 31 December 2021 to compile Peabody's reports under section 19 of the Act (section 19 NGER reports) for the 2021/2022 and 2022/2023 reporting periods (as and when they are due under the Act)

and ensure that these reports are produced using industry best practice reporting methodologies and that they comply with Act;

- (b) when submitting each of the reports described at 4.2(a) to the Regulator in accordance with the reporting timeframes under the Act, Peabody will include the relevant Basis of Preparation<sup>1</sup> or equivalent documentation, which describes how the underlying data was captured and processed; the key assumptions made during preparation of the report and the source of, and reason for, each assumption. The Basis of Preparation will detail the internal governance arrangements relating to NGER reporting and will specify the accountable Senior Manager and the responsible data owner/s for each data source. This documentation will be attached to the section 19 NGER report submitted as specified in the corresponding Manner and Form: Section 19, 22G and 22X reports document (<http://www.cleanenergyregulator.gov.au/NGER/Forms-and-resources/Guides-and-factsheets>).
- (c) The external consultant to be engaged in accordance with 4.2(a) will be an individual eligible to register as a National Greenhouse and Energy Auditor. The consultant will be an individual who does not have direct professional responsibility or association with Peabody. The consultant will need to be able to demonstrate their independence from Peabody. The consultant will not be someone who is, or has been, significantly involved in the activities of Peabody.
- (d) On or before 31 December 2021, the external consultant will conduct a comprehensive review of the facilities over which Peabody has operational control and any internal documents which describe the design, implementation and internal controls relevant to the preparation and presentation of the section 19 NGER reports. This review will also consider whether the assumptions made by Peabody in relation to section 19 NGER reports are reasonable and appropriate to the operational environment.
- (e) On or before 28 February 2022, the consultant will provide a written report that identifies matters which may lead to misstatement in the section 19 NGER reports identified during the review referenced at 4.2(d). The report will recommend a reporting approach that is appropriate for Peabody's operational environment.
- (f) On or before 31 May 2022, Peabody will provide the report referenced at 4.2(e) and a summary of Peabody's proposed actions to address the recommendations made by the consultant to the Regulator.

#### ***NGER Reporting Improvement Plan***

4.3. Within six (6) months of the Undertaking coming into effect, Peabody hereby undertakes to:

- (a) engage an external consultant, who meets the eligibility criteria defined at 4.2.(c) to prepare an NGER Reporting Improvement Plan (the plan) to improve the quality of Peabody's NGER reporting. The Plan will include:
  - (i) a register of issues. Peabody will maintain and update the register of issues which records:

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<sup>1</sup> General advice regarding good practice in NGER reporting including information to be included in the Basis of Preparation can be found in the Estimating emissions and energy from solid waste and landfill biogas management guideline which is available at <http://www.cleanenergyregulator.gov.au/NGER/Forms-and-resources/Guides-and-factsheets>

- 4.3.a.i.1. issues previously identified by the Regulator during its assessment of the section 19 NGER report;
  - 4.3.a.i.2. issues previously identified by the Regulator through the NGER audit program undertaken by the Regulator from time to time;
  - 4.3.a.i.3. issues identified through Peabody's Audit program (as referenced in 4.6 and 4.7); and
  - 4.3.a.i.4. the actions taken to resolve the issues and indicate what updates to the Basis of Preparation were made;
- (ii) relevant recommendations resulting from external consultant's review;
- (b) provide a copy of the plan, including the register of issues, which has been endorsed by Peabody management and any related documents to the Regulator;
  - (c) implement the plan until 28 February 2024.
- 4.4. Peabody hereby undertakes to review the plan at least once per calendar year until 28 February 2024 to ensure that it continues to be fit for purpose.
- 4.5. Peabody will provide a report to the Regulator within one month after each review of the plan. The report will detail any proposed changes to the plan and summarise progress made against specific items listed in the register of issues.

#### ***Peabody Audit Program***

- 4.6. Peabody hereby undertakes, at its own expense, to engage an independent Registered Greenhouse and Energy Auditor (Category 2) to conduct:
- (a) a reasonable assurance audit regarding its reporting under section 19 of the Act, of at least one facility under its operational control per reporting year until 30 June 2024; and
  - (b) limited assurance audits of all other facilities under Peabody's operational control (including those that come under Peabody's operational control after this undertaking comes into effect) by 30 June 2024.
- 4.7. The assurance audits to be conducted under 4.6 shall be performed in accordance with the *NGER (Audit) Determination 2009*.
- 4.8. Peabody will add all issues identified through the audits referenced in 4.6 to the register of issues referenced in 4.3(a)(i).

#### ***Conflicts of interest***

- 4.9. Peabody will notify the Regulator where a conflict of interest arises during any engagements associated with this undertaking. Peabody acknowledges that the Regulator may require Peabody to terminate the consultant's engagement if the conflict compromises, or may reasonably be seen to compromise, the consultant's ability to exercise objective and impartial judgement.

## 5. Acknowledgements

### 5.1. Peabody acknowledges:

- (a) the Regulator will make this Undertaking publicly available, including publishing it on the Regulator's website;
- (b) the Regulator and officers of the Regulator will, from time to time, make public reference to this Undertaking;
- (c) the Undertaking in no way derogates from the rights and remedies available to any other person arising from the conduct of Peabody;
- (d) Peabody will bear all costs associated with their compliance with this Undertaking;
- (e) breaching this Undertaking may result in the Regulator enforcing this Undertaking through the Federal Court.

**6. Commencement of the Undertaking**

6.1. This Undertaking comes into effect when:

- (a) the Undertaking is executed by Peabody; and
- (b) the Regulator accepts the Undertaking so executed

6.2. This Undertaking ceases to have effect once the requirements of clause 4 have been completed

**Executed by**

Peabody Australia Holdco Pty Ltd (ACN 154 820 130 ), executed by its authorised signatory.



Marc Hathhorn  
Peabody Australia Holdco Pty Ltd

This 26 day of Nov..... 2021

**Accepted by the Regulator pursuant to section 45 of the *National Greenhouse and Energy Reporting Act 2007*.**



Shayleen Thompson  
Delegate of the Regulator

This 29 day of November..... 2021