

Senate Standing Committee on Environment and Communications
Legislation Committee
Answers to questions on notice
Environment portfolio

Question No: 87
Hearing: Additional Estimates
Outcome: Agency
Programme: Clean Energy Regulator
Topic: Eligibility for accreditation
Hansard Page: N/A
Question Date: 04 March 2014
Question Type: Written

Senator Back asked:

Remittance of Large-scale Generation Certificates issued where a wind farm is reported to be non-compliant by the Minister:

A range of enforcement actions are available to the CER under the Renewable Energy (Electricity) Act 2000 for the improper creation of certificates. These include criminal and civil prosecutions, enforceable undertakings and injunctions. The provisions apply in respect of contraventions of the Act by individuals, companies, executive officers of companies and other persons involved in contraventions of the Act.

As you would be aware, section 154Q(1) of the Act provides that the CER may accept undertakings of the types enunciated in subparagraphs (a) –(d).

Subsection 154Q(4) provides that the Regulator may, by written notice given to the person, cancel the undertaking.

Subsection 154R(1) provides that if the person has given an undertaking under section 154Q; and the undertaking has not been withdrawn or cancelled; and the CER considers that the person has breached the undertaking; then the Regulator may apply to the Federal Court for any or all of the orders provided for under subsection 154R(2). That is:

- an order directing the person to comply with the undertaking;
 - an order directing the person to pay to the Regulator, on behalf of the Commonwealth, an amount up to the amount of any financial benefit that the person has obtained directly or indirectly and that is reasonably attributable to the breach;
 - any order that the court considers appropriate directing the person to compensate any other person who has suffered loss or damage as a result of the breach;
 - any other order that the court considers appropriate.
1. What is the CER's procedure to begin criminal prosecution in relation to false information for the creation of RECs?
 2. What details do the Australian Federal Police and the Commonwealth Department of Public Prosecutions require from the CER for their investigations?
 3. What is the procedure for amending electricity returns that relate to RECs issued improperly with false information?
 4. What is the procedure for surrendering these RECs back to the CER?
 5. What is the procedure for remittance from amended electricity returns and surrendered RECs?

In reference to the Small-scale Technology Certificates and the case of Mr John Testoni of Sydney Solar Eco Solutions Pty Ltd being convicted of 24 counts under section 192G of the Crimes Act NSW (misleading statements with the intention of obtaining a financial benefit):

6. What was the total cost of compliance investigation in this case?
7. What procedure did the CER follow to recover the 4307 improperly created Small-scale certificates with a value of over \$170,000?
8. Now that the CER is aware of its interminable position of neither compliance or non-compliance and is aware that Minister Guy (Vic) has before him evidence of non-compliance of the Waubra wind farm but nonetheless is proceeding as if neither compliance or non-compliance matters, with a sustained disregard for the implications and consequences of a failure to make a decision, when does the CER plan to consult with the federal court?

Answer:

1. The Clean Energy Regulator undertakes investigations into allegations of breaches of the legislation the Clean Energy Regulator administers. If, as a result of an investigation, the Clean Energy Regulator considers that there is sufficient evidence to support a criminal prosecution, a brief of evidence will be provided to the Commonwealth Department Public Prosecutions (CDPP). The CDPP will consider the brief of evidence and make a decision in accordance with the Prosecution Policy of the Commonwealth.
2. Referrals to the Australian Federal Police are made in accordance with their referral guidelines (www.afp.gov.au/what-we-do/referrals.aspx#initial). The CDPP does not undertake criminal investigations.
3. A range of enforcement actions are available to the Clean Energy Regulator under the *Renewable Energy (Electricity) Act 2000* (the REE Act) for the improper creation of certificates. These include criminal and civil prosecutions, enforceable undertakings and injunctions. The provisions apply in respect of contraventions of the REE Act by individuals, companies, executive officers of companies and other persons involved in contraventions of the REE Act. Also refer to:
 - Subdivision C – Improper creation of certificates 24 – Offences.
 - Division 4 Section 20A (2) – Amending electricity generation returns. Refer also to the *Renewable Energy (Electricity) (Large-scale Generation Shortfall Charge) Act 2000*.
 - the Criminal Code, the relevant state/territory civil liability legislation and Parts 3 to 5 of the Australian Consumer Law.
 - Section 137.2 (1) of the *Commonwealth Criminal Code Act 1995*.
 - Division 4 Section 20A (2). (Fraudulently issued Renewable Energy Certificates that are surrendered back to the Clean Energy Regulator are the equivalent of the market price or the penalty price of \$65 per megawatt hour (shortfall charge) – the penalty price (fine) is not a business expense/tax deduction and will equate to approximately \$90 per megawatt hour.)

Under section 20A of the the REE Act, an electricity generation return may be amended as per the following:

- The Regulator may amend an electricity generation return if the nominated person for the accredited power station requests, in writing, an amendment within 12 months of the return being given.
 - The Regulator may also amend an electricity generation return on its own initiative if the amendment is made within 4 years of the return being given.
 - If the Regulator refuses to amend an electricity generation return upon a request by a nominated person for an accredited power station, the Regulator must notify the person accordingly.
4. Please refer to response provided to part 3
 5. Please refer to response provided to part 3
 6. The Clean Energy Regulator does not cost individual investigations. Investigators will work on more than one investigation at any time. Additionally, to maximise the use of agency resources, it is usual that activities relating to more than one investigation will be undertaken during any one trip.
 7. The Clean Energy Regulator is working with the agent who was deceived by Mr Testoni and was responsible for creating the certificates. The agent has agreed to have systems installed or voluntarily surrender the equivalent number of certificates.
 8. Please refer to Question on Notice number 80 (Additional Estimates 2014)