

s47F

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**From:** s47F  
**Sent:** Thursday, 6 December 2018 3:42 PM  
**To:** s47F  
**Subject:** FW: URGENT: Negative decision by Clean Energy Regulator on ERF ACCU eligibility application by Sunset Power International trading as Delta Electricity concerning its Vales Point coal fired generator  
**Attachments:** CERDecision.pdf  
**Importance:** High

s47F

Negative decision by Clean Energy Regulator on the Delta application to participate in the current ERF auction. You will recall that we discuss this issue last week.

Would be keen to get your views on this. If you are in Brisbane tomorrow, would be keen to catch up to discuss.

Best regards,

s47F

s47F  
Principal Consultant  
**SAS Group**

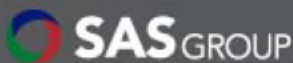
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STRATEGY  
ACTION  
SUCCESS

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**From:** s47F  
**Date:** Thursday, 6 December 2018 at 2:31 pm  
**To:** s47F  
**Cc:** s47F @environment.gov.au", s47F @energy.gov.au"  
**Subject:** URGENT: Negative decision by Clean Energy Regulator on ERF ACCU eligibility application by Sunset Power International trading as Delta Electricity concerning its Vales Point coal fired generator

s47F

Further to my email below, I refer to the attached advice from the Clean Energy Regulator (CER).

As set out in this advice from the CER, it has taken a preliminary decision that rejects Delta's interpretation of the Carbon Credits (Carbon Farming Initiative – Facilities) Methodology Determination 2015. I would highlight that Attachment A to this advice states:

1. The CER is not satisfied that Delta's interpretation of the above-mentioned Methodology Determination is "consistent with a plain reading of the method".
2. Delta had "not taken the opportunity to reduce its arguments about its interpretation of the Facilities Method to writing".

As set out in the email below, and in meetings Delta representatives have had with both the CER and you (and s47F from Minister Taylor's office), Delta has clearly spelt out its reasons as to why it believes the CER's interpretation of the method (or methodology) is incorrect. I would therefore submit that it is the CER's interpretation of the method that is not "consistent with a plain reading of the method". As set out in the email from yesterday (below), we therefore continue to request an urgent decision by your Minister on this issue of interpretation of the above-mentioned Methodology Determination.

I must also challenge the statement by the CER that Delta had "not taken the opportunity to reduce its arguments about its interpretation of the Facilities Method to writing". Delta had a detailed (2 hour plus) meeting with senior CER representatives last month which centred on this issue of the interpretation of the Methodology Statement (which I also attended). I have no record in my detailed notes of the CER representatives asking for the arguments that we had presented in detail to be placed in writing as part of the application process. In addition, in our recent meeting with you (and s47F), the Delta CEO, s47F provided a detailed presentation pack on this same issue, along with detailed materials demonstrating that the relevant project would **not** extend the life of the Vales Point plant. These materials therefore clearly explained why the stepped approach under the CER processes which inevitably lead it to a conclusion that the project would be deemed to extend the life of Vales Point plant - and, thus, be deemed to generate zero ACCUs – was totally contrary to the facts and, thus, is an illogical outcome.

Additionally, I note that the CER has given Delta only 1 day within which to provide additional information or submissions ahead of a final decision by it.

Based on the position presented in this email and my email from yesterday (below), I therefore make the following requests **as a matter of urgency**:

1. An urgent decision by the Minister on the disputed interpretation by the CER as to the expected eligibility of the Delta project to ensure that it is qualified to participate in the current ERF auction process.
2. An urgent meeting with the Environment Minister to have the Delta Chairman, s47F, and Delta CEO directly put the company's position on this matter to her for her further consideration, both in terms of the current auction and in terms of the policy position being adopted by the CER which has the effect of discriminating against coal-fired electricity generation - in conflict with the Government's "technology neutral" Energy Policy position.

As I noted yesterday, the Delta Chairman and CEO are in Melbourne next Tuesday (11 December) for meetings with other Commonwealth Ministers. Additionally, we understand Federal Cabinet is meeting in Melbourne next week. Given the significance of this matter, and the potential availability of your Minister

in Melbourne next week, we would **specifically seek a meeting with your Minister in Melbourne either next Tuesday or Wednesday.**

Please do not hesitate to ring me should you wish to discuss the contents of this email, or if you require any additional information.

Regards,

s47F

s47F

Principal Consultant  
**SAS Group**

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**From:** s47F

**Date:** Wednesday, 5 December 2018 at 2:03 pm

**To:** s47F

**Cc:** s47F @environment.gov.au", s47F @energy.gov.au"

**Subject:** Urgent request for Ministerial decision on disputed interpretation of ERF ACCU eligibility by Clean Energy Regulator on application by Delta Electricity concerning its Vales Point coal fired generator

s47F

Further to our telephone conversation this morning and the recent meeting with you and s47F from Minister Taylor's Office (with this meeting also attended by the CEO of Delta Electricity, s47F), I wish to confirm that, on behalf of Sunset Power International trading as Delta Electricity, I am **seeking an urgent decision by your Minister** on a disputed interpretation by the Clean Energy Regulator (CER) as to the expected eligibility of a project for participation in the current ERF auction submitted by Delta that improves the efficiency of Delta's 1,320MW coal-fired power plant (Vales Point) near Lake Macquarie, NSW – and, in doing so, will reduce emissions from the plant.

Full details of the issue are set out below, and necessarily involve the interaction of Government policy in the areas of Environment and Energy.

Essentially the dispute centres around one word: “may”, and whether the CER can assume that the project “**may** extend the operating life of” Vales Point when it is applying – and, therefore, interpreting - the current Methodology Determination, despite the fact that strong evidence was presented by the Delta CEO at our recent meeting (and, previously, to the CER) that the project will not extend the life of the plant.

Thus our argument is:

1. It is illogical for the CER to assume the Delta project “**may** extend the operating life of” Vales Point when it and the Government has received strong evidence that the project **will not** extend the life of the plant.
2. The current CER processes whereby it would automatically allocate zero ACCUs to the Delta project as part of the current ERF are incorrect and, therefore, should not be followed.

I would further submit that the effect of all this is that the CER would be effectively discriminating against a carbon abatement project involving a coal-fired power plant and, as a result, the approach/interpretation of the over-arching legislation and the accompanying Methodology Statement by the CER is inconsistent with the Government’s Energy Policy which is technology neutral.

It is correct, as you advised this morning, that the CER has not taken a decision on the Delta application. However the CER Delegate has confirmed to Delta that based on legal advice from the CER’s General Counsel, the CER processes would result in the project would not receive any ACCUs. I have attached relevant emails between Delta and the CER on this point; please see Delta email of 30 October and CER email of 7 November, with **specific references to advice from the CER’s General Counsel and the CER’s confirmation that the Delta project would not generate any ACCUs based on this CER legal advice.**

I would further note that the Delta CEO advised you and <sup>s47F</sup> that following initial Registration of the Delta project by the CER, Delta placed a multi-million dollar order for the relevant equipment. In addition, you will recall that the calculated NPV of the ACCUs Delta expected the project to generate was around \$6 million versus a capital cost for the project of around \$16 million. Without these ACCUs, the project is only marginal, and initial Registration of the project by the CER was a key factor in Delta’s decision to place this purchase order.

Delta has confirmed to the CER that it will proceed with participation in the current ERF auction.

As applications under this auction are due to close over coming days, this matter is becoming extremely urgent – and, thus, the request for an urgent decision by your Minister.

Lastly, I would note that against all of this background, if Delta’s project is automatically allocated zero ACCUs, Delta would necessarily need to consider challenging the CER position and, thus, its processes and interpretation of the Methodology Statement, via the Administrative Appeals Tribunal processes.

Given the urgency of this matter and the significance of the matter, we would be able to meet with you, the Minister’s Chief of Staff and, if appropriate, the Minister over coming days.

A number of Delta personnel, the Delta Chairman <sup>s47F</sup> and I will be in Melbourne next Tuesday and Wednesday on other business. I understand Cabinet is meeting in Melbourne next week. Thus, if there is an opportunity for a further meeting in Melbourne either next Tuesday

or Wednesday with you, the Minister’s Chief of Staff or the Minister, we would be available to do so.

**BACKGROUND**

Delta Electricity has submitted a proposal to the Clean Energy Regulator (CER) on the prospect of participating in an Emissions Reduction Fund (ERF) auction. The relevant project involves the replacement of 2 (of 3) sets of blades in a turbine at Vales Point; ie, at one of the 2 generating units at Vales Point. The project is designed to improve efficiencies of the unit. It will **not extend the current life of the plant**; the current end of life of Vales Point is 2029.

Without getting too deeply into the technicalities of the Carbon Credits (Carbon Farming Initiative – Facilities and Minor Corrections) Methodology Determination Variation 2016, if the Delta project is calculated (under a very convoluted definition) to have a “material effect”, then it is **deemed** to be a “new generating unit” and, if it is so deemed, then it can only be credited with ACCUs (Australian Carbon Credit Units) if the resultant emissions intensity of the electricity generated is below the NEM average. If the resultant emissions intensity of the electricity generated from a **deemed** “new generating unit” is above the NEM average, then the activity would **automatically be allocated zero ACCUs**.

The rationale presented in the Carbon Credits (Carbon Farming Initiative – Facilities and Minor Corrections) Methodology Determination Variation 2016 for this (deemed) position is as follows:

“The reason the Determination treats a generating unit as new when an essential component is replaced reflects **the intent** not to credit the replacement of components that **may** extend the operating life of emissions-intensive generating units, unless the upgraded generating unit has an emissions intensity that is lower than the grid average” (page 7).

We have strongly submitted to the CER that this approach/interpretation of the over-arching legislation and accompanying Methodology Statement is fundamentally flawed and in conflict with the current Administration’s Energy Policy as the Delta project:

1. Is not BAU.
2. Meets the Offset Integrity Standards specified in the relevant legislation, and, most importantly,
3. Delta has clearly demonstrated that the project **will not extend the operating life of Vales Point**.

Thus the bottom line – or fundamental point – here is that the CER processes and interpretation of the legislation and the accompanying Methodology Statement are not based on the facts presented to the CER and, as a result, the matter warrants action by the Government, through the Environment Minister, to ensure the CER applies a logical and rationale approach to how it interprets the Methodology Statement to ensure its approach/interpretation of the over-arching legislation and the accompanying Methodology Statement is inconsistent with the Government’s Energy Policy which is technology neutral.

ENDS

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