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Dr Kris Funston
Executive General Manager, Network Regulation
Australian Energy Regulator
Level 17, 2 Lonsdale Street
MELBOURNE VIC 3000

Via email: regulatorysandbox@aer.gov.au

Dear Dr Funston,

SUBMISSION ON REGULATORY SANDBOXING ISSUES PAPER

Powerlink Queensland (Powerlink) welcomes the opportunity to provide input on the Australian Energy Regulator's (AER's) Regulatory Sandboxing Issues Paper (Issues Paper) published in November 2021.

Overall, and consistent with the AER's view, we support a regulatory sandbox framework that makes it easier for new and established businesses across the energy supply chain to develop and trial innovative energy technologies and business models in a real-world environment. The sandbox framework is intended to help facilitate the energy market transition currently underway and continue to enable the delivery of energy in a safe, secure, reliable and cost-effective way to customers.

Given the breadth and rapid pace of change in the energy market, it is important that the regulatory framework be sufficiently flexible to enable and not hinder trials and proof-of-concept arrangements that could drive further value for customers.

We appreciate the AER's consultation on the Innovation Enquiry Service (IES), how it intends to assess trial waiver applications and the content of the Trial Projects Guideline (Guideline). To ensure the sandbox framework achieves its intended objectives, such as the development and implementation of innovative products and services, we:

- recommend the AER ensure its information requirements for trial waiver applications do not unduly delay, or create an unnecessary barrier to, the development of innovative technologies, products and services and business models;
- suggest the trial waiver application require proponents to submit an evaluation plan;
- support public reporting of trial outcomes, subject to replacement of confidential and/or commercially sensitive information with appropriately de-identified information;

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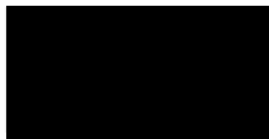
- agree that the AER should develop administrative processes that reap the benefits from the capture and publication of information about use of the sandbox website;
- recommend the AER adopt a tiered approach to trial waiver applications, with low-risk waiver applications (e.g. those that target large and well-informed directly connected customers of transmission networks) subject to less onerous requirements than higher-risk applications; and
- consider that the AER should request applicants to identify, rather than demonstrate, the benefits to consumers as part of the trial waiver process.

These and other matters, including responses to questions posed in the Issues Paper, are discussed in more detail in the attachment.

We have also provided input to and support Energy Networks Australia's submission.

If you have any questions regarding this submission or would like to meet with Powerlink to discuss this matter further, please contact Jennifer Harris.

Yours sincerely,



Jacqueline Bridge
EXECUTIVE GENERAL MANAGER, ENERGY FUTURES

Enquiries: Jennifer Harris, General Manager, Network Regulation
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ATTACHMENT: DETAILED FEEDBACK REGULATORY SANDBOXING ISSUES PAPER

Initial Consultation on IES and Guideline

The draft amendments to the National Electricity Rules (the Rules) require the AER to develop the Guideline in accordance with the Rules Consultation Procedures (RCP).¹ The Issues Paper notes the AER's intention to publish and seek feedback on its draft Guideline in March. We support the AER's initial consultation on how it will deliver the IES, how it will assess trial waiver applications, and the content of the Guideline ahead of the sandbox legislation coming into effect.

We encourage the AER to be cautious when it articulates how it plans to implement the sandbox toolkit before the formal consultation process under the RCP is completed. For example, the Issues Paper says that the AER's process to assess trial waiver applications will be aided by using a comprehensive and standardised application form.² The paper also states that trial waiver applicants must agree to allow the AER to share certain trial project confidential information with other sandbox parties.³ Such definitive statements in the Issues Paper could be interpreted by stakeholders as an indication that the AER has already settled its approach to these particular aspects of the sandbox framework.

We agree with the AER's suggested approaches with respect to knowledge sharing and the scope of the IES, consumer protection measures, the extension or variation of a trial waiver, and opting out of trial projects. Therefore we do not address Questions 4, 9, 12 and 14 in this attachment.

Question 1 – Trial Waivers

Our recent experience is that there are components of the Rules which limit networks' ability to explore approaches we consider would be in the long-term interests of consumers. For example, the transmission network pricing principles⁴ provide for a specific structure that transmission prices must follow. These principles and the AER's Transmission Pricing Methodology Guidelines (2014) limit the ability of transmission networks to explore alternative pricing approaches that could better reflect the characteristics of new types of loads, such as energy storage devices, that connect to the shared network. In particular, networks are unable to explore alternative pricing structures to provide stronger signals for the more efficient use of network capacity in the long-term interests of consumers.

As part of the development of our 2023–27 Revenue Proposal, we explored opportunities to use the contingent projects framework for asset replacement or reinvestment in transmission line assets on major transmission flow paths aligned with Integrated System Plan (ISP) identified needs. We considered the application of this framework to network reinvestment projects to prevent customers paying for the forecast cost of some large reinvestment projects within the capital expenditure allowance where the quantum and timing of those costs was still uncertain and could depend on ISP outcomes. The uncertainty around timing related to the application of condition-based reinvestment triggers, which were often related to the presence and severity of corrosion on steel lattice towers.

Our proposed approach was impeded by the specification of asset-based trigger events for contingent projects. While appropriate condition-based triggers can be developed, they may

¹ Draft Rules, clause 8.14(b). The RCP are in Rule 8.9.

² AER, *Regulatory Sandboxing*, Issues Paper, November 2021, p. 30.

³ AER, *Regulatory Sandboxing*, Issues Paper, November 2021, p. 40.

⁴ Rule 6A.23.

not satisfy all five criteria specified in the Rules⁵, which are predicated on trigger events being external to the network business. Given the cautious support of our customers for the use of contingent reinvestment in these circumstances and that such an approach is in the long-term interests of customers, we consider this aspect of the Rules presents a barrier to innovation in capital expenditure management.

Question 2 – Prioritising Enquiries and Waivers

We agree that the AER should develop administrative processes that reap the benefits of the capture and publication of information about use of the sandbox website, while putting appropriate safeguards in place. However, we do not consider that setting extensive upfront information requirements is an appropriate mechanism to manage demand for sandbox services. We encourage the AER to ensure its information requirements in the application process do not unduly delay, or create an unnecessary barrier to, the development of innovative technologies, products and services.

We also recommend the AER consider the broader implications of prioritising trial projects that could benefit consumers in vulnerable circumstances. These projects will entail higher risks, particularly for consumer protection, which could require the AER to use more resources to assess trial waiver applications and monitor approved trial projects. Care will also need to be taken to ensure this cohort of consumers is not over-studied and their involvement in trials remains in their best interests.

Question 3 – Confidential Information

In its Paper the AER states that the Australian Energy Market Operator (AEMO), the Australian Energy Market Commission (AEMC) and the Essential Services Commission of Victoria (ESCV) may receive confidential information from the AER in the course of the administration of the sandbox framework. The *Competition and Consumer Act 2010* (Cth) (CCA) and *Competition and Consumer Regulations 2010* (Cth) (Regulation) authorise the AER to disclose confidential information to a wide range of (mostly) government bodies.⁶ In the context of its administration of the IES, trial waiver applications and early terminations of trial waivers, we ask the AER to provide further information and clarification on:

- the extent to which it envisages sharing confidential information with the *full* range of bodies identified in the CCA and Regulation; and
- what processes/arrangements will be used to manage confidential information.⁷

We also do not consider, at least for the purpose of the assessment of trial waiver applications, that the AER will have the legal authority to require applicants to agree to the AER's provision of confidential information to other government bodies and regulators.

Question 5 – Timeline for Trial Waiver Applications

We recommend the AER adopt a tiered approach to trial waiver applications to allow some flexibility in timeframes to reflect the nature and complexity of individual applications. For example, expedited timeframes could be offered for low-risk waiver applications (e.g. those that target large and well-informed directly connected customers of transmission networks), with more detailed consideration of higher-risk applications (e.g. those that focus on residential consumers in vulnerable circumstances).

⁵ Clause 6A.8.1(c).

⁶ CCA, section 44AAF(3) and Regulation, section 7.

⁷ We note that the AER has [agreements and Memoranda of Understanding](#) in place with some bodies listed in the CCA and Regulation. These instruments address the management of confidential information.

Question 6 – Eligibility Requirements

Given trial waivers will be time-limited, we support the AER's position that applicants be required to document an exit strategy as part of the trial waiver application. We also consider the eligibility criteria should be broad to encourage new and existing businesses from across the energy supply chain to develop and trial innovative energy technologies and business processes.

Question 7 – Information Requirements

Trial Waiver Application Form

We consider the trial waiver application form should be part of the Guideline. The draft amendments to the Rules, National Energy Retail Rules (NERR) and National Gas Rules (NGR) provide that an application for a trial waiver must be made to the AER in the form (if any) prescribed in the Guideline.⁸ If the AER wishes to make material changes to the trial waiver application form, industry participants and stakeholders should have the opportunity to provide input on such changes. Keeping the application form in the Guideline will ensure material changes are consulted upon in line with the RCP.

The draft amendments to the Rules allow the AER to make minor or administrative amendments to the Guideline without the need to comply with the RCP.⁹ Therefore it is not necessary for the application form to be excised from the Guideline for the AER to address any administrative issues with the form.

Information Provided in Application

We consider the application form should be structured to provide sufficient information for the AER and other participating organisations (such as AEMO, the AEMC and ESCV) to assess the appropriateness of the trial waiver project, ensure adequate protections have been retained and provide assurance that risks for end-users have been managed. Information requirements in the application form should not be used to unduly delay, or create an unnecessary barrier to, the development of innovative technologies, products and services. To do so would greatly reduce the potential benefits of regulatory sandbox arrangements for supporting innovation across the energy supply chain.

We support a strong focus on evaluation and knowledge sharing as part of the trial waiver process. We consider that a significant number of proposed application questions could be consolidated through a requirement for applicants to submit an evaluation plan as part of the application form. This would ensure applicants identify the types of benefits they seek to measure and the framework they would adopt to monitor and assess changes through the trial project. We encourage the AER to publish a public version of the evaluation plan during consultation on the trial waiver application.

We recommend the AER requests that applicants *identify*, rather than *demonstrate*, the benefits to consumers as part of the trial waiver process, given demonstration of benefits may rely on international precedent. This step could easily be incorporated into an evaluation plan.

⁸ Draft Rules, clause 8.15.1(a); Draft NERR, clause 175(1); Draft NGR, clause 135M(1).

⁹ Draft Rules, clause 8.14(c).

We also suggest the trial waiver application form should:

- identify how informed consent of trial participants will be obtained; and
- address how trial applicants and their associates will collect, use, manage and disclose information to ensure participants' information privacy is maintained.

This could help avoid duplication of, or increased, effort later in the process if trial proponents seek to use external resources in the evaluation of trial projects.

Question 8 – Consultation Regarding a Proposed Waiver

We suggest the Guideline state that submissions on trial waiver applications will run for at least, rather than a maximum of, 20 business days. This would allow the AER flexibility to set longer consultation periods for more complex trial waiver applications, or in circumstances where a number of applications are being consulted on at the same time.

Question 10 – Duration of the Trial

We consider the duration of the trial should be determined primarily by how quickly results from evaluation activities can be realised, as indicated in the evaluation plan from trial proponents. This should be informed by any international precedent, where available. To ensure the maximum benefits from sandbox arrangements can be realised for energy consumers, we suggest the AER consider allowing longer rather than shorter waivers to ensure trials do not conclude prematurely.

Question 11 – Trial Project Reporting and Monitoring

We support public reporting of trial outcomes, subject to the replacement of confidential and/or commercially sensitive information with appropriately de-identified information. Reports prepared by, or on behalf of, trial waiver recipients should be sufficiently detailed to allow peer review of the methodology and results. We agree that the views and experiences of trial participants and other relevant bodies associated with the trial project should be incorporated into public reporting of trial outcomes.

Powerlink recommends the AER apply reporting requirements in a flexible manner so as to accommodate how quickly results from evaluation activities can be realised. For trials longer than one year, we support progress reports being provided (at least) annually and include a declaration related to compliance with trial conditions, and reports of any adverse events or participants electing to opt out of the trial. This is broadly consistent with reporting practices adopted for Australian human research ethics committees.

We also support the AER's proposed approach to report on and monitor compliance with trial waiver conditions.

Question 13 – Early Termination

We support the AER's proposal to include key reasons for early termination in the Guideline. To ensure procedural fairness, we also recommend that:

- the Guideline specify the minimum time an applicant will have to respond to the AER's proposal to terminate the trial waiver early; and
- the AER offers trial participants the opportunity to respond to the early termination proposal.

Question 15 – Other Matters

To support the trial waiver process, we recommend the Guideline set out the process through which trial proponents can seek time-limited exemptions from AER and/or AEMO procedures and guidelines, which are subordinate to the Rules, NERR and NGR.

We also recommend the AER specifies timeframes and/or criteria for regular reviews of the Guideline to ensure the Guideline remains fit-for-purpose.

Question 16 – Conditions the AER may impose when issuing a Trial Waiver

Finally, we recommend the Guideline offer more explicit guidance around a trial waiver condition that would allow the AER to unilaterally vary trial waiver conditions at any time. We consider unfettered application of this arrangement could unduly undermine participation in the regulatory sandbox process.