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Mr Mark Mcleish
Director - Strategic Policy and Energy Systems Innovation Branch
Australian Energy Regulator
GPO Box 3131
Canberra ACT 2601

Submitted electronically at: regulatorysandbox@aer.gov.au

Dear Mr Mcleish,

Re: Issues Paper - Regulatory sandboxing

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Australian Energy Regulator's (AER's) issues paper on regulatory sandboxing. As the paper notes, the AER has commenced consultation on its potential approach to administering the sandboxing framework at a very early stage, i.e. prior to the enactment of enabling legislation and Rules, the release of draft Trial Project Guidelines. We welcome the AER's open and collaborative approach and look forward to participating in future consultations as the project progresses. This consultation process will also allow stakeholders to explain to the AER how the current framework undermines innovation and therefore, whether broader regulatory reform is necessary.

We fully support the objective to promote innovation in energy markets. However, we encourage regulators to avoid viewing regulatory sandboxing as an alternative to adequate *ex ante* impact assessment, regular reviews, sunset clauses, letters of no action, and rules that allow any entity to propose a rule change. A competitively neutral regulatory framework that offers core protections to consumers but allows **all** market participants to compete and innovate is better able to achieve the objectives of the various energy laws and rules.

The AER must also avoid eroding ring fencing guidelines and other measures that maintain the integrity of the competitive market by preventing regulated monopolists and their subsidiaries from obtaining an unfair advantage relative to their competitors.

Sandboxing creates an artificial environment for a market participant and its customers in which some regulations are relaxed but there remains considerable uncertainty about how they might apply in the future. As such, we have some doubts about the insights that sandboxing will offer about how current regulations undermine innovation.

Innovation Enquiry Service

As described in the issues paper, the Innovation Enquiry Service (IES) appears to be a useful mechanism for creating additional communication between the AER and regulated entities, including prospective entrants. Through the IES, the market will be able to obtain greater clarity about the AER's expectations for compliance and this will not only provide certainty and encourage innovation, it will reduce the administrative burden of compliance. At the same time, the IES will enable the AER to better understand how current regulations are inhibiting innovation.

The issues paper states that the AER will also publish frequently asked questions and standard guidance, and update the market maps and case studies as part of the IES, and that this guidance will be anonymised. While this will be useful for many businesses, the AER must ensure it complies with all confidentiality and privacy obligations and check that businesses have consented to the publication of information, even if anonymised. This will encourage entities to use the service and to provide reliable and accurate responses.

It must also ensure that any information that it obtains through the IES—and also through a trial application or project—and then shares with other regulatory agencies is used appropriately. For example, information obtained through the IEC should not be used to inform trials or projects undertaken by AEMO that could have been delivered by the market.

Trial projects and waivers

The AER's willingness to waive or modify some regulatory obligations as part of a regulatory sandbox suggests they may not actually be core protections—at least in their current form—and therefore, they should be the subject of a broader review.

We also note that despite the guidance the AER is developing and the principles for sandboxing that will be prescribed in legislation and rules, there will always be considerable uncertainty about the precise obligations that an entity must comply with as part of a trial and the period over which it will operate. The framework grants considerable discretion to the AER in terms of the information it will require as part of the initial application for a waiver and any ongoing obligations, such as reporting or specific requirements around consumers' explicit informed consent.

The AER will need to strike the right balance as it develops the Trial Project Guidelines between exercising this discretion, providing certainty for an applicant and its competitors, and maintaining consumers' confidence in the energy market. Otherwise, the information requirements and uncertainty will act as a disincentive and businesses will be reluctant to invest resources into an application or develop innovative projects through this mechanism.

We also view consultation as an important element of the AER's process to consider an application for a waiver as part of the sandbox framework. We acknowledge the importance of maintaining confidentiality for the applicant but consultation provides further guidance to the



broader market about how sandboxing will work in practice. More importantly, it provides an opportunity for stakeholders to consider whether broader review and reform is required (in order to assess the impact of regulations on innovation, for example) rather than a narrow exemption for a single market participant.

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland, South Australia and in the ACT to over 1.1 million customers.

Red and Lumo thank the AER for the opportunity to respond to its issues paper. Should you wish to discuss aspects or have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on [REDACTED].

Yours sincerely



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