

Draft Trial Projects Guidelines

Regulatory Sandboxing

April 2022

© Commonwealth of Australia 2022

This work is copyright. In addition to any use permitted under the *Copyright Act 1968* all material contained within this work is provided under a Creative Commons Attributions 3.0 Australia licence with the exception of:

- the Commonwealth Coat of Arms
- the ACCC and AER logos
- any illustration diagram, photograph or graphic over which the Australian Competition and Consumer Commission does not hold copyright but which may be part of or contained within this publication.

The details of the relevant licence conditions are available on the Creative Commons website as is the full legal code for the CC BY 3.0 AU licence.

Inquiries about this publication should be addressed to:

Australian Energy Regulator
GPO Box 520
Melbourne VIC 3001
Tel: 1300 585 165
Email: AERInquiry@aer.gov.au

DRAFT

Contents

1	Nature and authority	4
1.1	Application of these Guidelines	4
1.2	Confidentiality	5
1.3	Interpretation	5
1.4	Definitions.....	6
1.5	Process for revisions	6
2	Relationship with other regulatory instruments.....	7
3	Application for a trial waiver.....	8
3.1	Form of application for the grant of a trial waiver.....	8
3.2	Information requirements	8
4	Approach to considering and granting trial waivers.....	10
4.1	Timeline	10
4.2	Approach to assessing whether the information requirements and eligibility requirements are satisfied.....	10
4.3	Terminating an application for a trial waiver	12
4.4	Consumer protection measures	13
4.5	Reporting obligations	13
4.6	Duration.....	14
4.7	Consultation regarding a proposed trial waiver	14
4.8	Evidence of a trial waiver	15
5	Overseeing the conduct and outcomes of trial projects	16
6	Extension, early termination and opt outs.....	17
6.1	Extension of a trial waiver	17
6.2	Early termination	17
6.3	Opting out of projects.....	19
7	Other matters.....	21
7.1	Conditions for trial waivers.....	21

1 Nature and authority

1.1 Application of these Guidelines

1.1.1 Background and summary

These Trial Projects Guidelines (**Guidelines**) are made under clause 8.14 of the National Electricity Rules (**NER**).

The **AER** may, on application by a person or body that proposes to undertake a **trial project** (the **proponent**), make a determination to grant the **proponent** an exemption (a **trial waiver**) from one or more of the following:

- a) section 11 of the **National Electricity Law (NEL)** and/or the **NER** or a provision of the **NER**¹
- b) section 88 of the **National Energy Retail Law (NERL)** and/or the **National Energy Retail Rules (NERR)** or a provision of the **NERR**²
- c) section 91BJ, section 91BRD, section 91BRR and/or section 91LB of the **National Gas Law (NGL)** and/or the **National Gas Rules (NGR)** or a provision of the **NGR**.³

The objective of these **Guidelines** is to promote and facilitate **trial projects** that are likely to contribute to the achievement of the **National Electricity Objective**, **National Energy Retail Objective**, and **National Gas Objective** by enabling:

- genuinely innovative **trial projects** to be carried out via **trial waivers** where the **trial projects** are unable to proceed under the existing regulatory framework, subject to conditions that ensure customers and market and system operation remain protected
- knowledge and insights gained from innovative **trial projects** to be shared with the wider industry, including regulators, to improve market outcomes and the design of regulatory arrangements.

The purpose of these **Guidelines** is to set out:⁴

- a) the approach the **AER** proposes to follow in considering and granting **trial waivers**
- b) the approach that the **AER** proposes to follow in overseeing the conduct and outcomes of **trial projects**
- c) each of the other matters required or permitted under the **NER**, **NERR** and **NGR** to be specified in the **Guidelines**
- d) any other matter that the **AER** considers appropriate in relation to the grant of **trial waivers** and the monitoring of **trial projects** conducted under **trial waivers** or **trial Rules**.

¹ NEL clause 18ZL(1)

² NERL clause 121C(1)

³ NGL clause 30W(1).

⁴ Draft NER 8.14(a).

1.1.2 Commencement

These **Guidelines** commenced on [TBC].

1.2 Confidentiality

An application for the grant of a **trial waiver** must identify **trial project confidential information**.

Any **trial project confidential information** which an applicant provides to the **AER** in, or in connection with, an application for a **trial waiver** may be disclosed in certain circumstances, if such disclosure is permitted or required by law.

Applicants for a **trial waiver** should be aware that in considering whether to grant a **trial waiver** the **AER** must have regard to, among other things, whether the extent and nature of the **trial project confidential information** claimed by the applicant may impair:

- the **AER's** ability to provide appropriate public transparency in relation to the conduct and outcomes of **trial projects**; or
- the appropriate development of regulatory and industry experience arising from the **trial project**.⁵

The **AER** may seek the applicant's written consent to allow the **AER** to disclose some of its information, including **Trial Project Confidential Information**, to other government bodies or regulators, on a confidential basis, for the purpose of assessing its **trial waiver** application.

Further information on providing confidential information to the **AER**, and the **AER's** generally policy on the collection, use and disclosure of information is set out in the ACCC/AER Information Policy available at www.accc.gov.au.

1.3 Interpretation

In these **Guidelines**, unless the contrary intention appears:

- A term in bold type that is expressly defined in clause 1.4 of these **Guidelines** has the meaning set out in that clause.
- A term in bold type that is not expressly defined in clause 1.4 of these **Guidelines** has the same meaning it has in the **National Energy Laws** or the **National Energy Rules**.
- The words 'shall' and 'must' indicate mandatory requirements.
- The singular includes the plural, and vice versa.
- A reference to any legislation, legislative instrument or other instrument is a reference to that legislation or instrument as in force from time to time.
- Explanations in these **Guidelines** about why certain information is required are provided for guidance only. They do not limit in any way the **AER's** objectives, functions or powers.

⁵ Draft NER clause 8.15.4(4);

1.4 Definitions

In these **Guidelines**:

- **Exit strategy** means a description of the trial closure process and how participating **retail customers** will revert to their pre-existing supply arrangements after closure of the **trial project**
- **Guidelines** means these **Trial Projects Guidelines** made under clause 8.14 of the **NER**
- **National Energy Laws** means the **National Electricity Law**, the **National Energy Retail Law** and the **National Gas Law**
- **National Energy Regulations** means the **National Electricity Regulations**, the **National Energy Retail Regulations** and the **National Gas Regulations**
- **National Energy Rules** means the **National Electricity Rules**, the **National Energy Retail Rules** and the **National Gas Rules**
- **Proponent** means a person or body that proposes to undertake a **trial project**

1.5 Process for revisions

Under clause 8.14(b) of the **NER**, the **AER** may amend these **Guidelines** from time to time in accordance with the **Rules consultation procedures**.

Under clause 8.14(c) of the **NER**, the **AER** may make minor or administrative amendments to these **Guidelines** without complying with the **Rules consultation procedures**.

2 Relationship with other regulatory instruments

The **AER's trial waiver** function is separate from the **AER's** functions in relation to:

- retail authorisation exemptions
- **Network Service Provider** registration exemptions
- waivers from **network ring-fencing** obligations.

Unless a proposed **trial project** meets **eligibility requirements** and the **innovative trial principles** outline in section 4.2 of this **Guideline**:

- waivers from having to hold a retailer authorisation may be considered under the AER's Exempt Selling Guidelines
- waivers from having to register as a network service provider may be considered under the AER's Network Service Provider Registration Exemption Guideline
- waivers from having to comply with network ring-fencing obligations may be considered under the **AER's** Ring-fencing Guidelines for electricity distribution, electricity transmission, or gas distribution and transmission, as relevant.

These guidelines are available at www.aer.gov.au.

Proponents seeking a trial waiver from the **NERL** and/or **NERR** that also wish to implement the **trial project** in Victoria should read this **Guideline** in conjunction with the Essential Services Commission of Victoria's trial project guidelines developed under clause 63 of the *Victorian Electricity Industry Act 2000*.

These guidelines are available at www.esc.vic.gov.au.

3 Application for a trial waiver

3.1 Form of application for the grant of a trial waiver

An application for the grant of a **trial waiver** must be made to the **AER** using a web portal accessed via the regulatory sandboxing website [link to be updated].⁶ All fields must be completed to be a valid application.

3.2 Information requirements

An application for a **trial waiver** must contain the following information:⁷

- a) Details of the particular provisions of the **National Energy Laws** and/or provisions of the **National Energy Rules** in respect of which the person seeks a **trial waiver** and why the **trial waiver** is required to conduct the **trial project**
- b) Identification of the **trial project confidential information**
- c) General information, including:
 - i) The name and address of the person making the application
 - ii) Details of the organisation(s) that will carry out the proposed **trial project**, including any licenses or exemptions they hold under the **National Energy Laws** and **National Energy Rules**
- d) A description of the proposed **trial project**, including:
 - i) Details of the proposed **trial project**
 - ii) The aims, objectives and success criteria for the **trial project**, which will be used to measure and report on the performance and outcomes of the **trial project**
 - iii) The number and type of consumers that are proposed to be involved and how they will be recruited
 - iv) The proposed duration of the **trial project**
- e) How the proposed trial project meets the **eligibility requirements** set out in the **National Energy Rules**, including:
 - i) How the proposed **trial project** is likely to contribute to the development of regulatory and industry experience
 - ii) A description of any risks to the safety, reliability and security of electricity, supply of energy and/or gas as a result of the proposed **trial project** and, if so, how those risks will be avoided or mitigated
- f) How the proposed **trial project** meets each of the **innovative trial principles**
- g) A description of consumer impacts, including:
 - i) identification of the benefits to consumers from the trial
 - ii) how consumers experiencing vulnerability will be supported

⁶ Draft NER clause 8.15.1(a); draft NERR clause 175(1); draft NGR clause 135M(1).

⁷ Draft NER clause 8.15.1(b); draft NERR clause 175(2); draft NGR clause 135M(2).

- iii) how consumer protections will be maintained through the trial
- iv) how consumer privacy will be maintained, including how customer information will be collected, used, managed and disclosed.
- h) A description of the risk management plan for the proposed **trial project**, including:
 - i) a description of the risks for other market participants and how these will be mitigated
 - ii) the processes in place to monitor and respond to potential risk events
- i) Evidence of the organisation's operational and financial ability to carry out the proposed **trial project**
- j) A description of the **trial project** closure process and how participating **retail customers** will revert to their pre-existing supply arrangements after closure of the trial project ("**exit strategy**")
- k) How participating **retail customers**:
 - i) Will provide their **explicit informed consent** and how this will be recorded. If it is intended that **explicit informed consent** will not be obtained, the applicant must explain why this should not be required
 - ii) can raise a dispute in relation to the proposed **trial project** and the processes and procedures in place to resolve these
 - iii) can opt out of the proposed **trial project** or, if the applicant considers that **retail customers** should not be able to opt out of the **trial project**, then the reasons why this should be the case
- l) How the **trial project** will be monitored, reported on and evaluated, including how learnings will be shared
- m) Any other information required by the **AER**.

Once an application is assessed as meeting the above information requirements, nothing precludes the **AER** from requesting further information for the purpose of assessing a **trial waiver** application should the need arise.

4 Approach to considering and granting trial waivers

4.1 Timeline

- a) The **AER** will determine applications for **trial waivers** within 6 months of notifying the applicant that the application meets the **information requirements** and has been accepted.
- b) The **AER** reserves the right to stop the clock if additional information from the applicant is required for the **AER** to assess the application, as permitted under section 4.2 of these **Guidelines**. Any days from the date that the **AER** issues a notice to the applicant requesting further information to the date that the information is satisfactorily provided to the **AER** will be disregarded for the purpose of working out the expected period within which the **AER** will determine an application for a **trial waiver**.

4.2 Approach to assessing whether the information requirements and eligibility requirements are satisfied

- a) In considering whether to grant a trial waiver, the AER will have regard to the following **eligibility requirements** specified in the Energy Rules⁸ and the **innovative trial principles** specified in the Energy Laws.⁹

Eligibility requirements

- i) whether the carrying out and monitoring of the **trial project** is likely to contribute to the development of regulatory and industry experience;
- ii) whether the **trial project** may have an adverse effect on the safety, reliability or security of supply of energy and the measures that the applicant will take to avoid or mitigate such risks;
- iii) whether the **trial project** may have an adverse effect on **AEMO's** operation and/or administration of the **power system**, the **market**, the **declared distribution systems** and **declared transmission system** for gas or markets for natural gas and the measures that the applicant will take to avoid or mitigate such adverse effects; and
- iv) whether the extent and nature of the **trial project confidential information** claimed by the applicant may impair:
 - 1. the **AER's** ability to provide appropriate public transparency in relation to the conduct and outcomes of **trial projects**; or
 - 2. the appropriate development of regulatory and industry experience arising from the **trial project**.

⁸ Draft NER clause 8.15.4(a); Draft NERR clause 178(1); Draft NGR clause 135MC(1).

⁹ Draft NEL section 18ZL(2); Draft section NERL 121C(2); Draft section NGL 30W(2).

Innovative trial principles¹⁰

- v) whether the **trial project** is focused on developing new or materially improved approaches to the use or supply of, or demand for, electricity;
- vi) whether the **trial project** is likely to contribute to the achievement of the **national electricity objective**;
- vii) whether the **trial project** is able to demonstrate a reasonable prospect of giving rise to materially improved services and outcomes for consumers of electricity;
- viii) whether the **trial project** maintains adequate consumer protections, including whether the **trial project** may involve risks to consumers and (if so), how those risks might be mitigated;
- ix) whether the **trial project** is unable to proceed under the existing regulatory framework;
- x) whether the **trial project** has moved beyond research and development stages but is not yet established, or of sufficient maturity, size or otherwise commercially ready, to attract investment;
- xi) whether the **trial project** may negatively impact **AEMO's** operation of the **national electricity system** and **national electricity market** and, if there are impacts, how those impacts can be mitigated;
- xii) whether the **trial project** may impact on competition in a competitive sector of the **national electricity market**;
- xiii) any other principle prescribed by the **Regulations**.

Additional principles prescribed by the Regulations¹¹

- xiv) whether the **trial project** is able to be trialled and evaluated
 - xv) whether there is potential for the **trial project** to be successfully expanded
 - xvi) whether the **trial project** will provide for public sharing of knowledge, information and data resulting from the trial project.
- b) After receiving an application for the grant of a **trial waiver**, the **AER** will assess whether the applicant has satisfied the **information requirements** and **eligibility requirements**. In undertaking this assessment, the **AER** will consider:
- i) Whether the application complies with the **information requirements**, including whether the applicant has submitted a complete application for a **trial waiver**¹²
 - ii) Whether the information provided is sufficient for the **AER** to determine whether the proposed **trial project** meets **eligibility requirements** and the **innovative trial principles**

¹⁰ Note these innovative trial principles relate to the NEL, but equivalent principles are set out in the NERL and NGL. Draft NEL clause 7B, Draft NERL clause 13A, Draft NGL clause 24A

¹¹ Draft National Electricity Regulations regulation 5B, Draft National Energy Retail Regulations regulation 9A, Draft National Gas Regulations regulation 5B

¹² Draft NER clause 8.15.2(a)(1); Draft NERR clause 176(1)(a); Draft NGR clause 135MA(1)(a).

- iii) Whether the **trial project** could be carried out satisfactorily without a **trial waiver**¹³
- iv) Whether the application is misconceived or lacking in substance¹⁴
- c) While a **trial project** is not required to meet all of the **innovative trial principles** in order for the **AER** to grant a **trial waiver**, the **AER** is more likely to grant a **trial waiver** where it is satisfied that a **trial project** does meet all of the **innovative trial principles**.
- d) After receiving an application for the grant of a **trial waiver**, the **AER** may, by notice in writing, request the applicant to provide, by a specified date, such further information as the **AER** may require in connection with the proposed **trial project** and the requested **trial waiver**.¹⁵
- e) In considering whether to grant a **trial waiver**, the **AER** may have regard to any other matter it considers relevant, including (but not limited to) any relevant consideration that may be specified in these **Trial Projects Guidelines**.¹⁶
- f) In considering whether to grant a **trial waiver** the **AER** will also consider whether the **trial waiver** applicant has an appropriate **exit strategy** in place.
- g) In having regard to whether the **trial project** maintains adequate consumer protections, including whether the **trial project** may involve risks to consumers and how those risks might be mitigated, the **AER** will apply the **Consumer Risk Assessment** tool developed by the **Energy Security Board**.
- h) The **AER** is unlikely to grant a **trial waiver** if it considers the potential risks to consumers, including in respect of safety, security and customers experiencing vulnerability, outweigh the potential benefits of the **trial project**.
- i) The **AER** must not grant a waiver if the **AER** reasonably considers:¹⁷
 - i) that the **trial project** for which the **trial waiver** is sought is materially similar to a **trial project** –
 1. for which a **trial Rule** has been made; or
 2. that is the subject of a request for the making of a **trial Rule**
 - ii) that the **trial project** is unlikely to be carried out.

4.3 Terminating an application for a trial waiver

- a) The **AER** may terminate its consideration of an application for the grant of a **trial waiver** at any time if:¹⁸
 - i) the **AER** considers that the application does not comply with the **information requirements**;

¹³ Draft NER clause 8.15.2(a)(3); Draft NERR clause 176(1)(c); Draft NGR clause 135MA(1)(c).

¹⁴ Draft NER clause 8.15.2(a)(4); Draft NERR clause 176(1)(d); Draft NGR clause 135MA(1)(d).

¹⁵ Draft NER clause 8.15.1(c); Draft NERR clause 175(3); Draft NGR clause 135M(3)

¹⁶ Draft NER clause 8.15.4(b); Draft NERR clause 178(2); Draft NGR clause 135MC(2).

¹⁷ Draft NEL section 18ZT(1); Draft NERL section 121K(1); Draft NGL section 30ZE(1).

¹⁸ Draft NER clause 8.15.2(a); Draft NERR clause 176(2); Draft NGR clause 135MA(1).

- ii) the applicant does not respond to a request for further information by the specified date, or the **AER** considers that the applicant has not provided a sufficient response to such a request;
 - iii) the **AER** considers that the proposed **trial project** can be carried out satisfactorily without a **trial waiver**; or
 - iv) the **AER** otherwise considers that the application is misconceived or lacking in substance.
- b) If, having regard to these matters, the **AER** considers that it should terminate its consideration of an application, the **AER**:¹⁹
- i) will notify the applicant in writing that it has formed that view, and the reasons why it has formed that view, and invite the applicant to make submissions or to provide further information within 7 days; and
 - ii) will take account of any submissions or information so provided by the applicant before deciding to terminate its consideration of the application.

4.4 Consumer protection measures

- a) Unless otherwise agreed by the **AER**, **proponents** that are granted a **trial waiver** must, as conditions of their trial waiver:
- i) obtain **explicit informed consent** from **retail customers** before they participate in a **trial project**.
 - ii) allow participating **retail customers** to opt out of the **trial project** at any time and for any reason, and inform them of this ability
 - iii) provide **retail customers** participating in a **trial project** with access to a dispute resolution process in the event of a dispute relating to the **trial project**
- b) Nothing in section 4.4(a) of these Guidelines prevents the **AER** from imposing additional customer protection measures as a condition of granting a **trial waiver**.

4.5 Reporting obligations

- a) The **AER** will determine reporting obligations on a case-by-case basis. The reporting obligations will be a condition of the **trial waiver**. **Proponents** that are granted a **trial waiver** must submit to the **AER** and publish progress reports at least once per year. More frequent progress reporting may be required if the **AER** considers this is necessary for monitoring or for knowledge sharing purposes. The frequency of progress reporting will be established as a condition of the **trial waiver**.
- b) **Proponents** that are granted a **trial waiver** will also be required to submit to the **AER** an outcomes report documenting the **trial project** outcomes. **Proponents** will also be required to publicly report on **trial project** outcomes for the purpose of knowledge sharing.
- c) The content requirements of the progress reports and outcomes report will be set on a case-by-case basis and based on the conditions on which the **trial waiver** is granted. The content requirements are likely to include, but will not be limited to:

¹⁹ Draft NER clause 8.15.2(b); Draft NERR clause 176(2); Draft NGR clause 135MA(2).

- i) Whether the **trial project** is meeting the agreed indicators, milestones and success criteria
 - ii) Details of any participating **retail customer** complaints or issues
 - iii) Effectiveness of the **trial project** in promoting benefits to consumers
 - iv) Any new risks arising during the **trial project**
 - v) Insights about the identified barriers to the relevant innovation
 - vi) Insights for potential **National Energy Rules** changes or changes in policy
 - vii) Compliance with the **trial waiver** conditions, including the measures the **proponent** has undertaken to ensure compliance with the **trial waiver** conditions, any breaches of the **trial waiver conditions** and actions taken to rectify these.
 - viii) Any other issues the **AER** requires to be included as part of a condition of granting a **trial waiver**.
- d) In determining reporting obligations for a **trial project**, the **AER** will take into account:
- i) The risks to customers, other **market participants** and to **AEMO's** ability to operate and/or administer the **power system**, the **market**, the **declared distribution systems** and **declared transmission system for gas** or markets for **natural gas** as a result of the **trial project**.
 - ii) The opportunity to leverage third-party reporting requirements in relation to the **trial project**.

4.6 Duration

The duration of a **trial waiver** will be determined on a case by cases basis and will be for no more than five years,²⁰ subject to clause 6.1 of these **Guidelines**.

4.7 Consultation regarding a proposed trial waiver

- a) The **AER** must carry out public consultation in relation to a proposed **trial waiver**, unless it is satisfied that the proposed **trial waiver**:²¹
 - i) is unlikely to have an impact on other **Registered Participants**; and
 - ii) is unlikely to have a direct impact on **retail customers** other than those who provide **explicit informed consent** to participate in the **trial project**.
- b) In carrying out public consultation in relation to a proposed **trial waiver**, the **AER** will publish a notice on its website, stating that an application for a **trial waiver** has been received and seeking submissions on the application from interested stakeholders. The **AER** may publish a consultation paper or other information to facilitate consultation.

²⁰ Draft NEL section 18ZP; Draft NERL section 121G; Draft NGL section 30ZA.

²¹ Draft NER clause 8.15.3(a); Draft NERR clause 177(a); Draft NGR clause 135MB(1).

- c) Submissions may be in written form or verbally via public forums and/or meetings. Written submissions will be published on the **AER's** website. A summary of verbal submissions will also be published on the **AER's** website.
- d) The consultation period will be at least 20 business days.
- e) The **AER** is also required to consult **AEMO** in relation to any potential impact of a proposed **trial waiver** and **trial project** on **AEMO's** operation of:²²
 - i) the **power system** (as defined in the **NER**)
 - ii) the **market** (as defined in the **NER**)
 - iii) the **declared distribution systems** and **declared transmission system** for gas (as defined in the **NGL**), or **AEMO's** capacity to perform its **declared system functions**
 - iv) markets for natural gas, as well as **AEMO's** administration of markets for natural gas.

4.8 Evidence of a trial waiver

- a) The **AER** will provide a certificate signed by a person (or persons) authorised by the **AER** certifying that a person named in the certificate has been granted a **trial waiver**, and setting out:
 - i) the extent and duration of the **trial waiver**; and
 - ii) any conditions subject to which the **trial waiver** was granted.²³
- b) The **AER** will establish, maintain and publish a register of all such certificates.²⁴

²² Draft NER clause 8.15.3(b); Draft NERR clause 177(2); Draft NGR clause 135MB (2).

²³ Draft NER clause 8.15.6(a); Draft NERR clause 180(1); Draft NGR clause 135ME(1).

²⁴ Draft NER clause 8.15.6(b); Draft NERR clause 180(2); Draft NGR clause 135ME(2).

5 Overseeing the conduct and outcomes of trial projects

- a) The **AER** will determine the monitoring of the conduct and outcomes of **trial projects** for which a **trial waiver** has been granted on a case-by-case basis. Performance and compliance will be assessed against the conditions on which the **trial waiver** is granted.
- b) In most cases, the **AER** expects to monitor the conduct and outcomes of **trial projects** for which a **trial waiver** has been granted via the reporting obligations set out in section 4.5 of these **Guidelines**. In determining the monitoring requirements, the **AER** will take into account the risks to customers, other **market participants** and to **AEMO's** ability to operate and/or administer the **power system**, the **market**, the **declared distribution systems** and **declared transmission system for gas** or markets for **natural gas** as a result of the **trial project**.
- c) Progress reports must address, among other things, a **proponent's** compliance with the **trial waiver** conditions, including:
 - i) The measures the **proponent** has taken to ensure compliance with the **trial waiver** conditions
 - ii) Any breaches of the **trial waiver** conditions and the actions taken to rectify these.
- d) Where a **proponent** is required to submit 1 or more reports to the **AER** in relation to a **trial project** under a notice issued by the **AEMC** under the **National Energy Laws**, the **AER** will monitor the conduct and outcomes of **trial projects** for which a **trial Rule** has been made via these reporting requirements.²⁵
- e) The **AER** may ask a **proponent** to provide additional information in relation to a **trial project** for the purposes of overseeing the conduct and outcomes of **trial projects**.
- f) A **proponent** must notify the **AER** in writing within 15 business days of becoming aware of a breach of any of the **trial waiver** conditions or its obligations under this **Guideline** and the action(s) taken to rectify the breach.
- g) More extensive monitoring may be implemented including in, but not limited to, the event of:
 - i) non-compliance with reporting milestones or any other condition of the **trial waiver**
 - ii) concerns or complaints raised by **AEMO**, **market participants**, customers and/or any other party about the **trial project**.

²⁵ Draft NEL section 104B; Draft NERL section 262B; Draft NGL section 314B.

6 Extension, early termination and opt outs

6.1 Extension of a trial waiver

- a) A **proponent** that wishes to extend the duration of a **trial waiver** must notify the **AER** at least three months before the commencement of the **exit strategy** to give the **AER** sufficient time to consider the application. The **proponent** must provide:
 - i) Reasons why the **proponent** considers the **trial waiver** should be extended
 - ii) Any changes in circumstances in relation to the **trial project** that may affect the **AER's** assessment of the **trial project** against the **eligibility requirements** and the **innovative trial principles**.
 - iii) An updated **exit strategy** or evidence that the existing **exit strategy** remains appropriate.
- b) In deciding whether to grant an extension to a **trial waiver**, the factors the **AER** will take into account include but are not limited to:
 - i) The reasons provided by the **proponent** why a **trial waiver** should be extended
 - ii) Whether the **trial project** continues to meet the **innovative trial principles** and any other matter required by the **National Energy Rules**²⁶ including the **eligibility requirements**²⁷
- c) If it extends a **trial waiver** the **AER** may impose further conditions, or modify or retain the existing conditions of the **trial waiver**, as it considers appropriate.²⁸
- d) An extension for a **trial project** will only be granted once²⁹ for a period of up to one year, subject to any alternative limits imposed through the **National Energy Regulations**.
- e) The **trial waiver** certificate will be reissued and published in the **trial waiver** certificate register.

6.2 Early termination

- a) The **AER** may revoke a **trial waiver** in accordance with the **National Energy Laws** and the **National Energy Rules**.³⁰ Reasons for which the **AER** may terminate a **trial waiver** before its scheduled expiry date include but are not limited to:
 - i) non-compliance with any condition(s) of the **trial waiver**
 - ii) non-compliance with any obligations under these **Guidelines**
 - iii) non-compliance with other obligations under the **National Energy Laws**, **National Energy Rules** and/or **National Energy Regulations**

²⁶ Draft NEL section 18ZQ(2); Draft NERL section 121H(2); Draft NGL section 30ZB(2).

²⁷ Draft NER clause 8.15.5(a); Draft NERR clause 179(1); Draft NGR clause 135MD(1);

²⁸ Draft NER clause 8.15.5(c)(2); Draft NERR clause 179(3)(b); Draft NGR clause 135MD(3)(b)

²⁹ Draft NEL section 18ZQ(4); Draft NERL section 121H(4); Draft NGL section 30ZB(4).

³⁰ Draft NEL section 18ZS; Draft NERL section 121J; Draft NGL section 30ZD.

- iv) concerns about the ongoing safe, secure and reliable operation and/or administration of the **power system**, the **market**, the **declared distribution systems** and **declared transmission system for gas** or markets for **natural gas**
 - v) concerns about the ongoing safety of trial participants
 - vi) other risks to trial participants, other consumers or **market participants** that may emerge during the trial and cannot be mitigated to the **AER's** satisfaction through new **trial waiver** conditions
 - vii) a permanent change to the **National Energy Rules** is made that addresses the identified barrier and so the **trial waiver** is no longer required
 - viii) the **trial waiver** has been granted on the basis of false or misleading information
 - ix) the **proponent** notifies the **AER** that it wishes to end the **trial project** early.
- b) If, having regard to these or any other matter, the **AER** considers that it should revoke a **trial waiver**, the **AER** will:³¹
- i) notify the **proponent** that it intends, and the reasons why it intends, to revoke the **trial waiver**, and invite the **proponent** to make submissions within a time specified in the notice, which will be at least 5 business days;
 - ii) take account of any submissions or information so provided by the **proponent** before deciding to revoke the **trial waiver**; and
 - iii) issue a notice to the **proponent** specifying the date on which the **trial waiver** will be revoked and require the **proponent** to conclude its **exit strategy** by that date; except where the reason why the **AER** intends to revoke the **trial waiver** is due to a safety or security of supply issue, in which case the **proponent** must cease the **trial project** immediately upon notification that the **AER** intends to revoke the **trial waiver**.
- c) As soon as practicable after revoking a **trial waiver**, the **AER** will publish a notice on its website specifying the date on which the revocation takes effect and the reasons for the revocation.
- d) The **AER** may also recommend to the **AEMC** that a **trial Rule** be repealed before its scheduled expiry. This could be based on the **AER's** own motion, or upon application by the **proponent**, a **retail customer** or **Registered Participant** affected by the **trial project**, or **AEMO**.³²
- e) The reasons why the **AER** may recommend to the **AEMC** that a **trial Rule** be repealed before its scheduled expiry include, but are not limited to:
- i) non-compliance with the **trial Rule** or any requirements imposed by notice by the **AEMC** on a **proponent** under **NEL** section 104B, **NERL** section 262B or **NGL** section 314B
 - ii) non-compliance with other obligations under the **National Energy Laws**, **National Energy Rules** and/or **National Energy Regulations**

³¹ Draft NER clause 8.15.2(b); Draft NERR clause 176(2); Draft NGR clause 135MA(2).

³² Draft NER clause 8.17.3(2); Draft NERR clause 184(b); Draft NGR clause 135OB(b).

- iii) concerns about the ongoing safe, secure and reliable operation and/or administration of the **power system**, the **market**, the **declared distribution systems** and **declared transmission system for gas** or markets for **natural gas**
 - iv) concerns about the ongoing safety of trial participants
 - v) other risks to trial participants, other consumers or **market participants** that may emerge during the trial
 - vi) failure to permit a **retail customer** to opt out of a **trial project** unless otherwise agreed with the **AER** or otherwise stipulated in a **trial Rule** or notice issued by the **AEMC** under **NEL** section 104B, **NERL** section 262B or **NGL** section 314B
 - vii) failure to respond to any reasonable request for information from the **AER** for the purposes of allowing the **AER** to carry out its functions in relation to the monitoring of the conduct and performance of **trial projects**
 - viii) a permanent change to the **National Energy Rules** is made that addresses the identified barrier and so the **trial Rule** is no longer required
 - ix) the **trial Rule** has been granted on the basis of false or misleading information.
- f) If, having regard to these or any other matter, the **AER** considers that a **trial Rule** should be repealed, the **AER**.³³
- i) will publish a notice on its website advising that it intends, and the reasons why it intends, to recommend that a **trial Rule** be repealed, and invite submissions by a date specified in the notice; and
 - ii) will take account of any submissions before deciding whether to recommend to the **AEMC** that a **trial Rule** be repealed; and
 - iii) will publish on its website its final recommendation to the **AEMC** that a **trial Rule** be repealed, including the reasons for that recommendation;
- except where the reason why the **AER** intends to recommend that a **trial Rule** be repealed is due to a safety or security of supply issue, in which case the **AER** will immediately advise the **AEMC** of its recommendation.

6.3 Opting out of projects

- a) **Retail customers** participating in a **trial project** must be able to opt out of the **trial project** at any time and for any reason unless otherwise agreed by the **AER** or otherwise stipulated in a **trial Rule** or a notice issued by the **AEMC** under **NEL** section 104B, **NERL** section 262B or **NGL** section 314B.³⁴ The factors the **AER** will take into account in considering whether to restrict the ability of **retail customers** to opt out of a **trial project** include but are not limited to whether it is practicable for a **retail customer** to opt out and the likely impact on the outcomes of the **trial project**.
- b) Should a **retail customer** participating in a **trial project** apply to the **AER** to opt out of a **trial project**, the **AER** will refer the **retail customer** to the relevant **proponent**.

³³ Draft NER clause 8.15.2(b); Draft NERR clause 176(2); Draft NGR clause 135MA(2).

³⁴ Draft NER clause 8.17.3(3); Draft NERR clause 184(c); Draft NGR clause 135OB(c).

The **proponent** must then allow the **retail customer** to opt out of the **trial project** unless otherwise agreed with the **AER** or otherwise stipulated in a **trial Rule**.

- c) **Trial waiver** applicants that do not wish to allow **retail customers** to opt out of their **trial project**, or wish to restrict the circumstances in which **retail customers** may be able to opt out, must include as part of their **trial waiver** application the reasons why they consider **retail customers** should not be able to opt out of the **trial project**. A proposal to restrict, or remove, the ability for **retail customers** to opt out will form part of the **AER's** consideration of whether a **trial project** meets the **eligibility requirements** and **innovation principles**.
- d) Unless otherwise agreed by the **AER**, the requirement that **retail customers** participating in a **trial project** must be able to opt out and, if relevant, the circumstances in which they may do so, will form a condition of a **trial waiver**.
- e) **Trial waiver** applicants will be required to identify a process by which a **retail customer** may opt out of a **trial project** when completing an application for a **trial waiver**. The opt-out process will form part of the **information requirements** set out in section 3.2 and will be subject to approval by the **AER**.³⁵

³⁵ Draft NER clause 8.17.3(1); Draft NERR clause 184(a); Draft NGR clause 135OB(a).

7 Other matters

7.1 Conditions for trial waivers

- a) In addition to the consumer protection measures set out in section 4.4 of these **Guidelines**, in granting a **trial waiver** the **AER** may impose any other conditions the **AER** considers appropriate.³⁶
- b) Examples of the matters that **trial waiver** conditions may address include, but are not limited to:
 - i) The frequency with which progress reports must be submitted to the **AER** and the milestones and other indicators that the progress reports must report against, including compliance with the **trial waiver** conditions
 - ii) The content of the outcomes report in respect of the **trial project**
 - iii) An obligation for the **proponent** to conduct a survey of the experiences of the trial participants
 - iv) Any monitoring requirements in addition to the progress reporting
 - v) An obligation for the **proponent** to report any changes to the circumstances under which the **trial waiver** was granted
 - vi) An obligation on the **proponent** to participate in knowledge sharing events and activities
 - vii) A requirement for the **proponent** to complete a survey in respect of, among other things, the process for obtaining a trial waiver and implementing a trial project
 - viii) A requirement that a **trial project** be suspended if the **AER** gives the **proponent** a notification that revocation is being considered on safety or security of supply grounds.
 - ix) A requirement that a **proponent** comply with these **Guidelines**.
- c) The **AER** may, prior to the scheduled expiry of a **trial waiver**, impose such further conditions, or modify the existing conditions, of the **trial waiver** with the agreement of the applicant.
- d) The **AER** may also vary or revoke a condition of, or impose further conditions on, the **trial waiver** if the proponent has not complied with any conditions of the **trial waiver**.³⁷
- e) If the **AER** imposes further conditions, revokes a condition, or varies a condition of the **trial waiver**, the **trial waiver** certificate will be reissued and published in the trial waiver certificate register.

³⁶ Draft NEL section 18ZM, Draft NERL section 121D, Draft NGL section 30X.

³⁷ Draft NEL section 18ZR; Draft NERL section 121I; Draft NGL section 30ZC.