

Australian Energy Regulator

Submitted via email: regulatorysandbox@aer.gov.au

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Regulatory sandboxing – Draft Trial Projects Guidelines

AGL Energy (**AGL**) welcomes the opportunity to respond to the Australian Energy Regulator's (**AER**) Regulatory sandboxing – Draft Trial Projects Guidelines (**Draft Guideline**).

Strategic direction

AGL strongly supports establishing a nationally harmonised regulatory sandboxing framework. We engaged closely with the Australian Energy Market Commission (**AEMC**) in its development of proposed reforms to implement regulatory sandbox arrangements.¹

We believe the regulatory sandbox package of reforms will provide an important opportunity to accelerate the development of technologies and business models in the national energy markets to deliver greater benefits to consumers.

Recommendations

We have carefully considered the Draft Guideline and provide the following recommendations to improve the effectiveness of the proposed regulatory framework, which we believe will provide longer term benefits for energy consumers across the NEM:

- 1. National harmonisation.** As we recently recommended to the Victorian Essential Services Commission (**ESC**) in the context of its implementation program,² we recommend the AER and ESC establish a memorandum of understanding that enables applicants to progress one application for the purposes of trials that span across jurisdictions.

The Draft Guideline does not contemplate circumstances where an applicant may seek to initiate a trial that spans across jurisdictions, necessitating regulatory relief from both AER and ESC. A streamlined approach that avoids duplication would promote greater business innovation, particularly for businesses operating across the NEM.

¹ See AEMC, Final Report on regulatory sandbox arrangements (March 2020), Available at <https://www.aemc.gov.au/market-reviews-advice/regulatory-sandboxes>. See AGL submission in response Regulatory Sandboxing Legislative Amendments (Sept 2020), Available at https://www.agl.com.au/content/dam/agl-thehub/documents/agl-submission-coag-regulatory-sandboxing-legislative-amendments_final.pdf; See also AGL submission in response to AEMC Draft Report on regulatory sandboxing (August 2019), Available at <https://www.agl.com.au/thehub/articles/2019/08/submission-in-response-to-the-aemcs-draft-report-on-regulatory-sandbox>.

² See AGL Submission to ESC on its Regulatory sandboxing – Trial Project Guideline (17 May 2022), Available at <https://www.agl.com.au/thehub/articles/2022/05/agl-supports-regulatory-sandboxing-for-victorian-energy-consumer>.

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- 2. Timeframe for considering applications.** We recommend that the timeframe for AER consideration of applications be revised to a maximum of two months after notifying the applicant that the application appears to meet the AER's information requirements and has been accepted.

While we appreciate that AER timeframes will entail additional resourcing, we consider the proposed six month maximum timeframe to be too protracted given the pace of change in the energy sector. Unless the regulatory sandbox framework facilitates timely consideration of proposals, it risks forcing applicants to redesign business models to go to market to avoid any additional time constraint. A best endeavours clause that aims towards finalising applications within 3 months is unlikely to be sufficient in ensuring timely consideration.

- 3. Assessment framework.** We recommend the AER establish further guidance to support its assessment of trial projects against innovation trial principle *a) whether the trial project is focused on developing new or materially improved approaches to use of, or supply of, or demand for electricity.* We believe this additional guidance should provide for:

- Circumstances where there is evidence that the application of a rule is not fit-for-purpose in serving the long-term interests of consumers.
- How the framework could support trials to inform a fit-for-purpose approach to consumer protections.

As we stated in our submissions to the AEMC's Draft Report and Draft Rules, we believe some trial projects can demonstrate that the long-term interests of consumers can be improved without necessarily fulfilling a strict interpretation of the innovation requirement. We foresee opportunities for proponents to seek regulatory waivers based on evidence that the application of a particular existing rule is no longer fit-for-purpose in serving the long-term interests of consumers. The National Energy Rules were written two decades ago for an energy system where energy flowed one way and consumers generally were passive users who relied on traditional modes of communication (e.g. telephone and mail). Allowing access to regulatory sandbox arrangements to test these rules and alternatives will enable evidence-based reform to the rules in a manner that provides confidence any changes are in the long-term interest of consumers.

Particularly with the growth in new energy products and solutions, it is also important that the consumer protections framework provides fit-for-purpose protections to support positive customer outcomes. We consider that regulatory sandboxing may provide opportunities to test whether novel approaches to consumer protections may result in better outcomes. As we stated in our response to the AEMC's 2019 Issues Paper³ on consumer protections in an evolving market, consumer protections should be designed in light of the evolving energy market to move away from prescription and towards an outcomes-based model. This would help remove constricting or outdated requirements that constrain traditional retailers in offering new and innovative developments for customers, while ensuring a level of consistency for the customer experience.

³ See AGL response to AEMC Issues paper on Consumer Protections in an evolving market (February 2020), Available at https://www.aemc.gov.au/sites/default/files/documents/agl_submission_-_aemc_consumer_protections_submission_-_13_feb_public_version_redacted.pdf.

4. Duration of trial waivers. We recommend the proposed duration be revised to a maximum of two years with an option to extend by application for any additional years.

While we appreciate that the National Energy Laws permit a trial length up to five years, we consider that the AER should carefully balance the anticipated benefits of the proposed trials against the risk of interfering with competitive neutrality in the market. Revising the timeframe to two years with an option to extent would more closely align with typical innovation trials supported by the Australian Renewable Energy Agency. We believe three years would provide sufficient time to assess the benefits of a trial to then inform any longer-term regulatory changes that could benefit to broader energy market system. Accordingly, the default position should not be to grant a trial waiver for the duration nominated by the applicant, unless there is a reason to diverge from this.

We are generally supportive of the other elements elaborated in the Draft Guideline, including the proposed approach to:

- Form and information requirements in an application;
- Treatment of confidential information;
- Consultation on a proposed trial waiver, including circumstances where consultation may not be required;
- Monitoring, reporting and knowledge sharing;
- Extensions, revocations, variations and opt out; and
- Default conditions on trial waivers.

Should you have any questions in relation to this submission, please contact Kurt Winter, Regulatory Strategy Manager, on [REDACTED] or [REDACTED]

Yours sincerely

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GM Policy and Markets Regulation