



Ref. A4885100

23 June 2022

Dr Kris Funston
Executive General Manager, Network Regulation
Australian Energy Regulator
Level 17, 2 Lonsdale Street
MELBOURNE VIC 3001

Via email: regulatorysandbox@aer.gov.au

Dear Dr Funston,

SUBMISSION ON REGULATORY SANDBOXING DRAFT TRIAL PROJECTS GUIDELINE

Powerlink Queensland (Powerlink) welcomes the opportunity to respond to the Australian Energy Regulator's (AER's) Draft Trial Projects Guideline for Regulatory Sandboxing.

We support a regulatory sandbox framework that makes it easier for businesses to develop and trial innovative energy technologies and business models in a real-world environment, in the long term interests of consumers. Our view is the Trial Projects Guideline and Explanatory Statement should provide valuable guidance to businesses who wish to undertake trial projects.

We acknowledge the AER's comprehensive response to the input we provided on the Regulatory Sandboxing Issues Paper, and note the effect given to our input in the Draft Guideline. The attachment to this submission provides some further suggestions for the AER's consideration as it prepares the Final Guideline.

If you have any questions regarding this submission please contact Jennifer Harris.

Yours sincerely,

A black rectangular box redacting the signature of Jacqueline Bridge.

Jacqueline Bridge
EXECUTIVE GENERAL MANAGER, ENERGY FUTURES

Enquiries: Jennifer Harris, General Manager, Network Regulation
Telephone: [REDACTED] Email: [REDACTED]

33 Harold Street, Virginia
PO Box 1193, Virginia, Queensland 4014, Australia
Telephone: (07) 3860 2111 Facsimile: (07) 3860 2100
www.powerlink.com.au

Powerlink Queensland is the registered business name of the

ATTACHMENT: DETAILED FEEDBACK REGULATORY SANDBOXING DRAFT TRIAL PROJECTS GUIDELINE

Trial Waiver Application Form

The AER's position is that keeping the application form separate from the Guideline will allow the AER to easily improve the application process as it learns from early applications.¹ Our submission on the Regulatory Sandboxing Issues Paper suggested that keeping the form in the Guideline would ensure material changes are consulted on by the AER in accordance with the Rules Consultation Procedures.² If the application form remains separate from the Guideline our view remains that there should be public consultation before the AER makes material changes to it.

Suggestions for the Final Guideline

References to energy laws, regulations and rules

Much of the content in the Draft Guideline is drawn from draft provisions of national energy laws, regulations and rules ('instruments'). The Draft Guideline, helpfully in our view, cites many of the draft provisions in footnotes. However, some clauses in the Draft Guideline clearly draw on a draft provision(s) but are not referenced to an instrument(s) via footnotes.

Two examples in the Draft Guideline illustrate this point:

- Paragraphs (a) to (m) in clause 3.2 are referenced to draft clause 8.15.1(b) of the National Electricity Rules (Rules) and equivalent draft provisions of other instruments, but the final (non-numbered) paragraph in the clause is not referenced to relevant instruments; and
- Clause 7.1(a) refers to draft section 18ZM(1)(b) of the National Electricity Law (NEL) and equivalent draft sections of other instruments, but clause 7.1(c) does not include a reference to draft section 18ZM(2) of the NEL and equivalent draft sections of other instruments.

We consider the Final Guideline should include all relevant citations to the finalised instruments, and identify clauses that the AER has included at its discretion. An exhaustive list of references to instruments in the Final Guideline will make it easier for trial waiver proponents and proponents who are granted a waiver to:

- understand and comply with trial waiver requirements; and
- locate provisions in instruments that are included, sometimes with amended wording, in the Guideline.

Application of the Guideline (clause 1.1)

We suggest that the statement of objective be to promote trial projects that are likely to contribute to *one or more*, rather than *all*, of the National Electricity Objective, the National Energy Retail Objective and the National Gas Objective. Trial projects may not necessarily contribute to the achievement of each of the energy market objectives.

¹ AER, *Regulatory Sandboxing Draft Trial Projects Guidelines: Explanatory Statement and Notice of Consultation*, April 2022, p. 30.

² Powerlink, *Submission on Regulatory Sandboxing Issues Paper*, January 2022, p. 4.

Relationship with other regulatory instruments (clause 2)

Other than the guidance for applicants who wish to implement a trial project in Victoria, the content of clause 2 is provided in section 1.2 of the Explanatory Statement to the Draft Guideline. For the Final Guideline we suggest the guidance for the implementation of projects in Victoria be moved to clause 1.1, and the remainder of clause 2 be deleted.

Drafting Issues

Below are some drafting issues we have identified in the Draft Guideline that the AER may wish to address in the Final Guideline³:

- Clause 1.3 says that a term in bold type in the Draft Guideline that is not expressly defined in clause 1.4 has the meaning set out in the 'National Energy Laws' or 'National Energy Rules' (as those terms are defined in clause 1.4). Clause 1.4 includes 'proponent' as a defined term; however, the term is already defined in draft section 18ZL(1) of the NEL and equivalent draft sections of other instruments.
- There are numerous references to trial waiver 'applicants' in the Draft Guideline, whereas the word 'proponents' is used in the draft amendments to the Rules and other instruments. The Final Guideline could:
 - refer only to proponent(s) as that is the term used in the draft amendments to the NEL and in equivalent draft amendments to other instruments; and
 - clearly and consistently distinguish between the obligations of proponents and proponents who are granted a trial waiver.⁴
- In clauses 1.1.1 and 1.4, 'clause 8.14' should be changed to 'rule 8.14'.
- In clause 1.2:
 - 'Trial Project Confidential Information' could be in lower case for consistency with other references to the term.
 - footnote number 5 should refer to draft clause 8.15.4(a)(4) of the Rules, not clause 8.15.4(4).
- In clause 2, 'network ring-fencing' does not need to be bolded as it is not a defined term in the National Energy Laws or National Energy Rules, or alternatively it could be bolded with a definition added to clause 1.4.
- Clause 4.1(b) says that the 'stop the clock' provision is permitted by clause 4.2, whereas it appears to supplement the further information notice provisions in draft clause 8.15.1(c) of the Rules and equivalent draft provisions of other instruments.
- For internal consistency, in clause 4.2(a) of the Final Guideline:
 - 'AER' should be bolded;
 - 'Energy Rules' should be 'National Energy Rules' and bolded;
 - 'Energy Laws' should be 'National Energy Laws' and bolded; and
 - 'Regulations' should be 'National Energy Regulations' and bolded.
- Clause 4.2(b) largely duplicates clause 4.3(a), both of which are referenced to draft clause 8.15.2(a) of the Rules and equivalent draft provisions of other instruments. Given draft clause 8.15.2(a) of the Rules relates to the AER's ability to terminate its consideration of trial waiver applications, a solution could be to remove clause 4.2(b) in the Final Guideline as termination is addressed in clause 4.3.
- The term 'Consumer Risk Assessment' in clause 4.2(g) is not defined in clause 1.4 or in the National Energy Laws or National Energy Rules.

³ References in this submission to draft provisions in the Rules are to the draft Rules consulted on by Energy Ministers in September 2020. We understand this is consistent with the approach taken by the AER (AER, *Regulatory Sandboxing Issues Paper*, November 2021, p. 9 (footnote number 6)).

⁴ For example, information requirements for trial waiver applications apply to proponents, whereas progress report obligations apply to proponents who are granted a waiver.

- In clause 6.3(a):
 - the first sentence describes the opt-out framework, which is set out in draft provisions of the instruments, and may be better placed in the Explanatory Statement than in the Guideline; and
 - the second sentence, which relates to the restriction of the ability of retail customers to opt out of a trial project, could be better placed in or combined with the existing content of clause 6.3(c).
- Clause 6.3(e) is referenced to draft clause 8.17.3(1), rather than 8.17.3(3), of the Rules and equivalent draft provisions of other instruments. Clause 6.3(b) is not referenced to any draft provisions of the instruments, but relates directly to draft clause 8.17.3(1) of the Rules and equivalent draft provisions of other instruments.