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Owen Pascoe

Director
Australian Energy Market Commission

Submitted online via: www.aemc.gov.au

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Dear Mr Pascoe

Regulatory Sandbox Arrangements to Support Proof-of-Concept Trials, Draft Report, July 2019

AGL Energy (**AGL**) welcomes the opportunity to respond to the Australian Energy Market Commission's (**Commission**) Draft Report, *Regulatory Sandbox Arrangements to Support Proof-of-Concept Trials*, July 2019 (**Draft Report**).

AGL commends the Commission on its development of a regulatory sandbox package of reforms to better support the emergence of innovative technologies and business models in the national energy markets to deliver greater benefits to customers.

As we observed in our previous submission¹, while regulatory sandbox arrangements could play an important role in proving innovative concepts that are inhibited by regulatory constraints or barriers in a transforming market, we believe this needs to be balanced with ensuring that existing and new market participants are afforded equal access to succeed in competitive markets. Without effective competition in the energy markets, we consider that the efficiency of network spending, customer choice and innovation would be diminished. Accordingly, regulatory sandbox arrangements should only be applied for specific types of trials that meet defined criteria.

AGL has considered the Draft Report and is generally supportive of the recommendations with respect to establishing an innovation inquiry service, regulatory waiver power and trial rule change process.

With respect to the proposed regulatory waiver power, as well as assessing whether a trial is genuinely innovative for the purposes of the regulatory waiver test, we also foresee opportunities for proponents to seek regulatory waivers on the basis of evidence that the application of a particular rule is not fit-for-purpose in serving the long-term interests of consumers.

We would recommend that further consideration be given to the stakeholder engagement process and knowledge sharing requirements in the context of regulatory waivers. We also recommend prescribing the timeframe in which the AER must issue a decision and consider a two-month timeframe to be appropriate.

¹ See AGL submission to the AEMC, Regulatory Sandbox Arrangement to Support Proof-of-Concept Trials (31 January 2019), Available at https://thehub.agl.com.au/-/media/thehub/documents/agl-submission_regulatory-sandbox_final.pdf?la=en&hash=386B2B4F4EDACD4D7314F7BF898795A8.



Where a trial has been successful in terms of delivering customer benefits, we would recommend establishing a formal AER process to assess whether the trial regulatory waivers should be transitioned towards a permanent waiver, that entails market notification, stakeholder consultation and an AER determination.

We also consider that certain knowledge sharing requirements should be developed in the context of the rule change process.

We elaborate our feedback on the Commission's Draft Report in the **Attachment**.

Should you have any questions in relation to this submission, please contact Kurt Winter, Regulatory Strategy Manager, on 03 8633 7204 or KWinter@agl.com.au.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'K. Winter', with a long horizontal flourish extending to the right.

Con Hristodoulidis

Senior Regulatory Strategy Manager



ATTACHMENT

1. Innovation inquiry service

AGL supports the development of the innovation inquiry service, that would be administered by the Australian Energy Regulator (**AER**). We welcome that proponents can use the service to seek an informal steer on regulatory implications for proof-of-concept trials and innovative products, services and business models.

While we appreciate that any advice provided would not be legal advice or be binding on any subsequent regulatory decisions made by the AER, we consider that this service would still provide a beneficial touchpoint for market participants to test their understanding of the regulatory regime and any possible barriers in developing innovative proof-of-concept trials. AGL considers that this service could build upon the AER's existing expertise and would provide a valuable first point of contact in assessing whether proponents should proceed with a regulatory waiver or rule change process.

2. Regulatory waiver power

AGL supports the Commission's draft recommendation that the AER should be granted a new regulatory waiver power in the energy laws, that provides the ability to:

- Grant time-limited waivers from the energy rules;
- Prioritise which trials it should consider first; and
- Set conditions on waivers.

AGL has over the last few years worked with the AER and has obtained time limited 'no action' waivers for the roll out of digital meters following the commencement of Power of Choice regulatory obligations. The 'no action' waiver allowed AGL to demonstrate to the AER, the Commission and other market participants that certain regulatory obligations inhibited rather than supported efficient roll out of digital meters and therefore led to poor customer outcomes. The success of the 'no action' waiver was a major input to the Commission's final Rule in setting minimum timeframes for installing digital meters.

We offer the following advice based on our experience with this process.

AER Regulatory Sandbox Guideline

AGL agrees with the Commission that while all National Electricity Rules, National Energy Retail Rules and National Gas Rules should be within scope for the regulatory waiver power, the AER's power to grant regulatory waivers should be limited by criteria in the rules, and that the rules should inform what is included in the AER's sandbox guideline. We support the Commission's view that the sandbox guideline should:

- Provide and facilitate a clear and transparent framework for trial proponents and market participants; and
- Promote the energy objectives by providing a framework for innovators to conduct trials and promoting competition in the electricity sector.

We agree that the sandbox guideline would elaborate the requirements that trial proponents would have to meet, including:

- *The overarching regulatory waiver test set out in the energy laws.* AGL supports that the regulatory waiver test would assess both whether the trial is consistent with the energy objectives and is

innovative and likely to lead to better outcomes for consumers. As well as assessing whether a trial is genuinely innovative, we also foresee opportunities for proponents to seek regulatory waivers on the basis of evidence that the application of a particular rule is not fit-for-purpose in serving the long-term interests of consumers.

- *Entry requirements to be met before being able to apply for a waiver.* We agree that the minimum requirements specified in the rules should include the details of the trial, the financial and operational capacity of the trial proponent, details of how consumer protections would be maintained, and identification of the rule(s) the proponent is seeking exemption from and why.
- *Eligibility criteria for the granting of a waiver.* We agree that the minimum eligibility criteria specified in the rules should include that the trial would be limited in time, scope and scale, be unable to be conducted without the waiver, is genuinely innovative and has appropriate consumer protections.

AGL also agrees with the Commission's view that the AER's waiver power should be subject to certain constraints and that the AER should not be empowered to:

- Waive provisions under the energy Laws;
- Alter existing rules;
- Exempt themselves; and
- Grant waivers for trials not meeting the energy objectives.

In our view, these parameters will ensure that regulatory sandbox waivers are only granted where there is evidence that a proposed trial aligns with the energy objective, is innovative and has the potential to benefit customers. These parameters also enable the AER to make well-informed determinations on the granting of regulatory waivers on a case by case basis, having due regard to the credentials of a proponent to undertake the proposed trial without detrimentally impacting upon consumer protections and the broader operation of the market.

AGL supports the Commission's recommendation that the sandbox guidelines should also prescribe the timeframe in which the AER must issue a decision with respect to regulatory sandbox waiver applications. In our view, it would be appropriate to set a two-month deadline for the AER to make a final decision. In instances where the AER seeks further information from proponents to inform their determination, the time period should be paused, resuming once any relevant supporting information is provided.

Stakeholder consultation process

AGL would recommend that further consideration be given to the stakeholder consultation process for regulatory waiver applications. In our view, this process will need to carefully balance the need for public consultation where a waiver may have an impact on third parties with the protection of commercial information and intellectual property in the context of a proposed proof-of-concept trial.

We note the Commission's draft recommendation that for waiver applications likely to have an impact on other market participants, the AER should be required to allow for public consultation and that the AER should retain some discretion in deciding whether to conduct public consultations for other waiver applications.

We recommend the stakeholder engagement process also be governed by the AER's sandbox guideline with greater prescription on the circumstances in which stakeholder engagement would be undertaken. The AER



could draw upon the Australian Competition and Consumer Commission's Guidelines for Authorisation of Conduct (non-merger) and the public benefit tests prescribed therein to inform when stakeholder consultation would be required. We also consider that appropriate confidentiality safeguards could be built into the AER's consultation processes to appropriately protect intellectual property in the context of public consultations.

Knowledge sharing

More broadly, we consider that all regulatory waiver applications should be subject to certain knowledge sharing obligations. Given that the regulatory sandbox arrangements are intended to benefit the development of innovation across the national energy markets, we see substantial benefit in the broader market having some degree of visibility of the outcomes of proof-of-concept trials conducted with regulatory waivers in place.

AGL is engaged in formal knowledge sharing arrangements through our participation in the Australian Renewable Energy Agency's (**ARENA**) Advancing Renewables Program. In the context of our Demand Response Project in New South Wales and Virtual Power Plant Project in South Australia, we have shared knowledge on key insights from these innovation trials to support the development of the broader Australian energy markets, including through the provision of formal project milestone reports.²

In our experience, knowledge sharing in the context of innovation trials needs to carefully balance the need for knowledge sharing to support the development of the market, with commercial imperatives to encourage further market innovation and participation. Our knowledge sharing arrangements with ARENA strike this balance through clearly described agreements that consider the project outcomes and allow the program partners to develop the most appropriate mechanism for gathering and sharing the information.

Accordingly, we would recommend the following requirements be implemented:

- All approved regulatory waivers should be published on a public register on the AER's website to appropriately inform the market. In order to protect commercial-in-confidence information and/or intellectual property associated with the trial, information reported on the public register could be limited to the applicant entity name, the rules to which the waiver applies and the duration of the waiver.
- All waiver applicants be required to report on the outcomes of proof-of-concept trials, detailing the impact of the trial on customers, in a manner akin to knowledge sharing arrangements currently in place with ARENA. These reports could similarly be published on the AER website to inform future market development and associated waiver applications.

Transitioning towards a permanent waiver

Where a trial has been successful in terms of delivering customer benefits, a formal AER process should be established to assess whether the trial regulatory waivers should be transitioned towards a permanent waiver. As well as allowing a trial to become fully compliant with the rules, this process should enable other market participants to apply for the regulatory waiver. The process should entail formal market notification, stakeholder consultations and an AER determination to ensure that all market participants are afforded equal access and an opportunity to respond should the waiver present any material impacts to third parties.

² See further AGL Demand Response Project, ARENA, Available at <https://arena.gov.au/projects/agl-demand-response/>; AGL Virtual Power Plant Project, ARENA, Available at <https://arena.gov.au/projects/agl-virtual-power-plant/>.



3. Trial rule changes

AGL supports the Commission's draft recommendation to introduce a new trial rule making process of eight weeks duration to trial innovation, with all of the Commission's proposed features.

As in the case of regulatory waiver applications, we consider that trials which are subject to time restricted rule changes should also be subject to certain knowledge sharing obligations for the benefit of the broader market. In the interests of supporting ongoing market development through appropriate regulatory reform, we would recommend that the rule change proponents be required to report on their proof-of-concept trials, detailing the consumer impacts of their trials.