

6 August 2019

Mr Owen Pascoe
Director
Australian Energy Market Commission
PO Box A2449
Sydney South NSW 1235

Submitted online via the Commission's website

Dear Mr Pascoe

Re: Regulatory Sandbox Arrangements to Support Proof-of-Concept Trials – Draft Report

Thank you for the opportunity to comment on the Regulatory Sandbox Arrangements to Support Proof-of-Concept Trials Draft Report published on 11 July 2019 (Project number: EPR0068). This letter outlines a submission from ATCO Australia (ATCO).

As an owner and operator of energy and logistics infrastructure in Australia for almost 60 years, ATCO is proud of its ongoing commitment to supporting the communities in which we operate. ATCO is a long-term investor with a clear vision of delivering customer value through sustainable growth, continuous investment, improvement and innovation.

The disruption of energy markets has highlighted the importance of consistent policy settings across the energy sector and the need for the regulatory framework to 'evolve / adapt' within the disrupted and continuously evolving landscape. And for this to be balanced with regulatory certainty and appropriate investment signals to ensure that customers continue to receive safe, affordable and reliable energy. As owner and operator of the Mid-West and South-West gas distribution network in Western Australia, innovation in our business is a major focus during this time of rapid technological change. It is essential that our customers are provided the opportunity to benefit from the rapidly evolving landscape during this period of transformation.

The integration of new technologies into our network provides opportunities to improve our services and allow better responsiveness to customer choice. This is particularly important given the unique position of gas distribution networks relative to electricity and the increasing contestability driving the need for more flexible services. An example of the integration of new technologies is our Clean Energy Innovation Hub (CEIH), an industry leading research and development facility at our Jandakot Operations Centre. The CEIH has two key components: the first being the continued research and development of hybrid energy micro-grids leveraging gas technology; the second is exploring the potential role of hydrogen in the future energy mix. The CEIH will also further explore how our network can provide security of energy supply, enabling faster uptake of renewable generation and explore the benefits of sector coupling since hydrogen can also be used in the electricity, gas, transport and industrial sectors. The CEIH will provide valuable insights into how our extensive existing gas distribution infrastructure can continue to benefit both gas and electricity consumers as part of optimising the future energy mix. However, the ERA's recent Draft Decision has created uncertainty of the treatment of cost recovery associated with this innovation.

Overarching comments

ATCO supports the introduction of a regulatory sandbox framework within which participants can trial innovative business models, products and services in the market under relaxed regulatory requirements. ATCO is pleased that the development of the regulatory sandbox framework is being treated as a matter of priority by the AEMC and the COAG Energy Council.

ATCO welcomes the AEMC's position in the Draft Report that the regulatory sandbox framework be available in the gas regulatory framework. The gas regulatory framework does not currently include any specific mechanisms to support innovation, unlike the electricity regulatory framework that incorporates mechanisms such as the Demand Management Innovation Allowance mechanism to encourage innovation. ATCO considers that adopting the regulatory sandbox framework across both electricity and gas provides for a level playing field, avoiding biases towards any particular technology, and will remove barriers for innovation and proof-of-concept trials across the energy sector.

ATCO seeks clarity in the Final Report on how the regulatory sandbox framework will be applied in Western Australia where the Economic Regulation Authority (ERA) is the regulator. The Draft Report details how the AEMC has been engaging extensively with the AER to establish the inquiry service, which included considering the means of accessing the service, the fees for the service and the resourcing of the AER to provide the service. But it is silent on whether any engagement has occurred with the ERA. ATCO considers it important that the regulatory sandbox framework is available in all Australian jurisdiction that adopt the national framework in order to:

- avoid any bias in where investment in innovation is undertaken in Australia; and
- ensure that all service providers are afforded the same incentives to pursue innovations that are in the long-term interests of consumers.

The Final Report should consider what respective roles that the AER and the ERA will undertake as part of the regulatory sandbox framework given the gas legislative framework in Western Australia.

The Draft Report is silent on whether a fee will be charged for the regulatory waiver process. The Final Report should clarify the recovery of the regulator's costs in running this process and consider if there are instances where any fee might be waived (such as if the results of the trial are to be shared publicly).

ATCO seeks additional clarity in the Final Report on how the regulatory sandbox framework will improve regulatory certainty of cost recovery for regulated network businesses, which will improve access to finance for projects. Innovation, by its very nature, requires a network business to incur up-front costs in the short to medium-term on initiatives with uncertain long-term payoffs. Consequently, network businesses could be deterred from innovations that have potential (but uncertain) long-term benefits in the form of lower costs, or new and improved services required by consumers if the regulatory sandbox framework is unclear on how these costs will be recovered. The Draft Report does recognise that the effect of granting a waiver may allow for cost recovery:

"This means that when making a revenue determination, the effect of granting a regulatory waiver could mean that network businesses can be allowed to recover, as regulated revenue, trial expenditure that would otherwise not be recoverable in this way."¹

However, the matter of cost recovery for regulated network businesses must be more explicitly addressed in the Final Report to increase regulatory certainty for networks. It can be challenging for network businesses to demonstrate that expenditure on innovation, that could deliver benefits over

¹ AEMC, Draft Report – Regulatory sandbox arrangements to support Proof-of-Concept trials, 11 July 2019, page 27.

multiple access arrangement periods, meets the relevant expenditure tests under the National Gas Rules. This is typically because the expenditure does not relate to the immediate provision of regulated services, although it may be expected to provide efficiencies in the long term related to regulated services. Therefore in addition to the two factors highlighted in the Draft Report (1) consistent with energy objectives; 2) innovative and likely to lead to better services and prices for consumers), the regulatory waiver test must include a third objective that a network business is allowed to recover the trial expenditure as regulated revenue. The method of cost recovery could also be part of the minimum entry requirements specified in the energy rules for an application.

ATCO supports the trial rule change process being only available as a last resort following the exhaustion of options through the inquiry service and regulatory waiver process.

About ATCO

ATCO has been proudly operating in Australia and providing employment opportunities for more than half a century. ATCO is a customer-focussed global company that develops, builds, owns and operates a range of energy infrastructure assets, supporting residential, business and commercial consumers. ATCO is committed to investing in its people, innovation and technology to drive leading-edge application-based research.

In Australia, ATCO:

- owns and maintains two non-regulated gas distribution networks in Albany (LPG) and Kalgoorlie (natural gas), together with the largest (Mid-West and South-West) gas distribution network in Western Australia, servicing over 760,000 connections through more than 14,000 km of natural gas pipelines and associated infrastructure;
- owns an exempt retailer (Source Energy Co) in the Wholesale Electricity Market that provides electricity to around 500 embedded network customers in strata developments through a combination of solar photovoltaic systems, grid purchases and battery storage;
- owns and operates two power generation facilities (a joint-owned facility in Adelaide and a wholly-owned facility in Karratha) with a combined capacity of 266 MW;
- is drawing on its established expertise in natural gas to explore the future role of hydrogen through the research and development of ATCO's Clean Energy Innovation Hub (an embedded hybrid microgrid system that incorporates renewable solar generation, battery storage, natural gas backup generation); and
- manufactures and delivers modular building solutions to a diverse group of customers.

ATCO's Australian businesses are part of the worldwide ATCO Group with approximately 6,000 employees and assets of \$24 billion. ATCO is a diversified holding corporation with investments in Structures & Logistics (workforce housing, innovative modular facilities, construction, site support services, and logistics and operations management), Energy infrastructure (electricity generation, transmission and distribution; natural gas transmission, distribution and infrastructure development; energy storage and industrial water solutions; and electricity and natural gas retail sales), Transportation (ports and transportation logistics) and Commercial Real Estate.

If you have any questions or would like to discuss any of these issues further please contact me or Matthew Cronin, General Manager Strategy & Regulation.

Yours sincerely



J.D. Patrick Creaghan
Managing Director & Chief Operating Officer