



Ref: 20190808TG:CB

8 August 2019

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

Dear Mr Pascoe

**Essential Energy submission to the regulatory sandbox arrangements to support proof-of-concept trials draft report**

Thank you for the opportunity to provide a submission to the Australian Energy Market Commission (AEMC or Commission) draft report on regulatory sandbox arrangements published on 11 July as part of the Electricity network economic regulatory framework review 2019 (the review).

Essential Energy welcomes the introduction of more flexibility in the regulatory arrangements to facilitate innovation. As technology advances and the expectations of energy customers change, trials are going to be an increasingly important part of the energy market.

The proposed regulatory sandbox toolkit will provide more certainty to trial proponents and regulatory bodies that trials are being conducted that are in the long-term interests of consumers. Essential Energy considers that the success of the proposed arrangements will depend on whether there is sufficient flexibility in the proposed arrangements to allow for a broad range of trials and to allow for trials to be altered in line with practical experience.

The proposed arrangements should be carefully considered to ensure that the arrangements do not take too long to be delivered and do not impose overly onerous conditions on trial proponents. The requirement for a trial to be 'genuinely innovative' should also be clarified to include trials of new ways of delivering services to customers and trials that would add to industry's collective understanding of issues.

Our response to specific issues raised in the draft report is attached to this letter. If you have any questions in relation to this submission, please contact Therese Grace, Regulatory Strategy Manager on 02 9249 3121 or [therese.grace@essentialenergy.com.au](mailto:therese.grace@essentialenergy.com.au).

Yours sincerely

A handwritten signature in black ink, appearing to read "Chantelle Bramley".

Chantelle Bramley  
**General Manager, Strategy, Regulation and Corporate Affairs**

## Essential Energy submission to the draft report

### General comments

Essential Energy welcomes the draft decision and the objective of providing more flexibility in the regulatory arrangements to conduct innovative trials. We also agree with the Commission's view that the focus of these arrangements should be on promoting genuine innovation rather than simply increasing the number of trials underway. The tiered framework with advice and regulatory relief through defined tools appears reasonable.

One important principle for the design of the regulatory sandbox toolkit is that the arrangements are sufficiently flexible. It is often the case that there is 'learning by doing' as a trial progresses and the regulatory arrangements to facilitate trials should allow for this process to occur.

Essential Energy notes that the draft report appears to focus solely on proof-of-concept trials for innovative technologies. However, the consultation paper also mentioned the possibility that the sandbox toolkit could also be used to trial new business models and regulatory changes.

More guidance should be provided on the criteria that a trial must be "genuinely innovative" in order to qualify for the regulatory sandbox toolkit. For example, a trial of stand-alone power systems may not wish to trial the technology (as this has already been proven) but rather ways to provide this service to customers in the most cost-effective way. There is a lack of clarity as to whether this type of trial would meet the innovative criteria as currently described.

The need for a trial to be innovative should not focus solely on new or untested technology but rather on whether conducting the trial would add to industry's collective understanding of issues.

### Comments on specific issues raised in the draft report

#### Regulatory Guidance

Essential Energy agrees with the introduction of a regulatory guidance service run by the AER. Having a defined process in place to answer queries with a dedicated first point of contact will be a useful addition to the NEM regulatory arrangements.

There is a trade-off between the provision of advice in a timely manner and providing certainty to guidance seekers that the advice can be relied upon. The fact that the advice represents a staff view may therefore pose some problems. For example, if a trial proceeds on the basis of advice received and is subsequently found to be in breach of the rules. This risk may be higher for advice provided by other agencies, without first checking with the AER if this is consistent with their understanding of the rules. The Commission should work with the other market bodies to mitigate this risk in the design of the advice service.

For parties seeking guidance, a single point of contact and one consolidated piece of advice that covers all identified issues would be most useful. A referral service would not meet the objective of fast frank feedback. This is because the process could still be lengthy and there is still a risk that the advice would be inconsistent or contradictory.

As noted in the paper the success of the advice service would depend on the resources devoted to it. The industry recognises that the workload of all market bodies is already quite large and if this service is not provided with dedicated resources, but rather is an add-on to business as usual functions, there is a risk that queries will not be processed in a timely manner. This would be particularly the case if the person or team involved in providing the advice is in the middle of a large project with upcoming deadlines.

Essential Energy agrees that the experience with the advice service would provide useful information both to the market and to regulators. We agree that the AER should regularly publish a summary of activity through the advice service, for example the number of queries processed, the areas of the rules that the queries were about and the outcome of the guidance (for example, how many trials went

ahead under current rules, how many waiver applications were made as a result of guidance and how many trials did not proceed).

The AER could use its experience of responding to requests for guidance to provide useful material to the market. If many queries relate to the same topic and the AER regularly provides similar responses, these could be drafted into a factsheet or FAQ document and posted on the AER website. Common queries that are referred to other bodies or agencies should also be included in this process (for example, common queries received by AEMO on the registration of batteries). Ideally this information would be available in one place.

Essential Energy also agrees that the experience of the guidance service could provide a signal to regulatory bodies regarding some areas of the rules that are overly complex or that require changes. The number of queries received on topics could be used as an input to AEMC reviews or other regulatory processes.

### **AER waiver power**

Essential Energy agrees that a new AER waiver power would be a useful addition to the regulatory sandbox toolkit. Much of the detail of how this waiver will operate will be decided in the preparation of the proposed sandbox guideline. It will be important that this guideline is prepared with meaningful consultation with industry and that the guideline can be updated as necessary with experience of using the new waiver power.

One of the most important issues with respect to the current AER waiver process (for example ring-fencing waivers) is that the process is not well-defined. The waiver application process can vary widely on a case-by-case basis, including the timeframe, information required, and the number of interactions required with the AER.

In order to provide more certainty to sandbox waiver applicants it would be useful if the guideline could outline the process of interaction with the AER, the expected timing of consideration of a waiver application and the process for providing information in a more prescriptive manner. This would provide more certainty to both applicants and the AER and will set expectations on what a reasonable timeframe for consideration of a waiver should be.

### **Trial rule change process**

The Commission has provided numerous examples of sandbox arrangements as part of this review. Examples have been provided of the OFGEM “fast frank feedback” service for providing advice and the Italian example where the energy regulator has issued specific exemptions and derogations in a number of areas. However, no example has been provided of a trial rule change process of the type proposed by the Commission. If no such international example is available, it would be useful if the Commission could more clearly outline the reasons why a trial rule change process is necessary in an Australian context.

Essential Energy notes concerns raised in the draft report that one potential barrier to innovation is that some trial proponents may not have the experience or resources to be able to fully understand the regulatory framework and how current rules impact on their business model. Given this, there is a question as to whether a rule change process is appropriate for these parties. The rule change process is comprehensive, and the proponent would need to understand the current rules and have a view on what changes to the rules would be appropriate to facilitate their trial. Being a trial rule proponent is therefore not a simple role and would likely require the trial proponent to devote time and resources to the process.

Essential Energy understands that trial rule change processes should be completed in a timely manner. However, the proposed timeframe appears to be ambitious. In our experience trials take a number of months to plan and fully understand the implications of the trial on network conditions, other market participants and customers.

As noted in the paper it is likely that in advance of submitting a trial rule change request the trial proponent will have engaged with other elements of the sandbox toolkit, including the regulatory guidance function. However, even with this prior analysis there would be a considerable amount of work involved in a trial rule change, including:

- fully understanding the technology and/or business model that the proponent is proposing to trial;
- the specific rules that would need to change to facilitate the trial;
- the potential consequences for other market participants, the operation of the market and impact on customers;
- the specific changes to the rules that would be required and the drafting of these proposed changes; and
- the appropriate time period for the trial rule.

Completing this analysis and taking into account stakeholder feedback on the trial rule change in eight weeks would have significant resource implications for the Commission.

In addition, much learning occurs once the trial is operational and often trials must include a number of 'trial and error' iterations. Drafting rules in advance of a trial being conducted may not allow for this process to take place. There is therefore a risk that a trial rule would actually inhibit innovation. This may occur if a trial rule was formulated in a way that proved too restrictive or was written in a way that precludes the trial for continuing. Rules, once drafted, cannot easily be changed without another rule change process.

Finally, Essential Energy does not consider that the trial rule proponent should fund, or provide a contribution to funding, a trial rule change. This is for two reasons.

First, in discussing the fee arrangements for the regulatory guidance service the Commission notes that "[i]f the service was provided for a fee, it may discourage some innovators and trial proponents from seeking advice".<sup>1</sup> As the trial rule change is also a part of the regulatory sandbox toolkit, we do not see any reason why the same principle should not apply to the trial rule change process. If the objective of the toolkit is to encourage genuine innovation in the NEM then all barriers, including financial barriers, should be minimised. Therefore, it would be inconsistent if the trial rule change was subject to a fee.

Second, in order for the trial rule change process to continue, it must be demonstrated that conducting the trial is consistent with the relevant energy market objective and is therefore in the long-term interests of consumers. That being the case it does not seem reasonable that the proponent should pay for a rule change to facilitate the trial.

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<sup>1</sup> AEMC, Regulatory sandbox arrangements to support proof-of-concept trials, draft report, 11 July 2019, p.20.