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14 August 2019

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

Submitted electronically [owen.pascoe@aemc.gov.au](mailto:owen.pascoe@aemc.gov.au)

Dear Mr Pascoe,

**Re: Draft Report: Regulatory Sandbox Arrangements To Support Proof Of Concept Trials**

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to provide input to the Australian Energy Market Commission's (Commission) draft recommendation to the Council of Australian Governments (COAG) on the current arrangements for facilitating proof-of-concept trials in the national electricity markets.

Regulatory stability is essential to support competitive markets and to encourage market participants to innovate and invest to improve their service offerings. Less certainty about the prevailing regulatory and competitive environment can distort investment decisions and favour some existing or prospective market participants as the expense of others. Therefore, Red and Lumo do not support the Commission's conclusion that the current arrangements for facilitating proof of concept trials can be improved and better facilitated through the introduction of regulatory sandbox arrangements. The regulatory regime already provides enough flexibility to support this. Some key examples of the regulatory regime's current flexibility in dealing with new market innovation including "No action" letters and "AER waivers". These are well established and understood mechanisms for carefully considering whether consumers would benefit from some relaxation of regulatory obligations.

Moreover, any individual or organisation can propose a rule change, which involves extensive public consultation and detailed assessment of the proposal itself and of alternative ways of achieving desired policy outcomes.

In addition to this, no evidence has been presented to date to demonstrate that a formal regulatory sandbox arrangement built into the regulatory regime would achieve improved outcomes for better consumers in either the short term or longer term. Trials have the potential to be misleading when they are undertaken in small environments and not under realistic operating and market conditions. Given this, we do not support formalising any sandbox arrangements into the rules to facilitate trials in the NEM.

If the Commission decides to introduce regulatory sandbox arrangements then we would not be surprised if they were bypassed. Proponents would need to satisfy a high threshold for their projects to qualify under the sandbox arrangements to ensure they are genuinely innovative and they provide broader consumer benefits. So it could be proponents view this reform as another regulatory barrier and bypass it. As a result, the reform has the potential to be costly and provide limited benefits.

Finally, we note that the Commission has structured its regulatory sandbox arrangements at three distinctive levels in the draft rule for trial components to consider sequentially. Below we provide comments on each of these.

### **Regulatory Guidance**

Red and Lumo do not support the new innovation inquiry service that would provide regulatory guidance to proof of concept trials. In general, we have some concerns regarding the introduction of the proposed innovation inquiry service. For example:

- Incumbents never had the benefit of this service when they invested in the national energy market. There was no such service they could rely on to explain the manner in which the rules would be applied by regulators. Instead they were required to undertake their own research and due diligence to make informed decisions about whether to invest in this market. Under this proposal, new market entrants would in effect avoid the costs that incumbents were required to incur before entering the NEM
- New entrants require reliable legal and regulatory advice before they invest in the NEM. As a result of this, it is not really clear what the objective of this service would be and whether it would provide any real benefit
- Both new players and incumbents have the potential to take advantage of the innovation inquiry service and use it as a free service to get free advice in relation to the national electricity market. So, we would not be surprised if this service was used in a manner for which it was not originally intended.

### **Regulatory Waivers**

Red and Lumo do not support the establishment of a broad power for the AER to grant regulatory waivers to proof-of-concept trials.

The AER is already able to grant a waiver for non compliance with an industry rule or guideline where there is a public benefit. As a result, and given that we do not support this proposal, in applying the test for the waiver, it is very important that:

- The AER must set a high threshold for this test and only approve a waiver where it is satisfied that it would be consistent with the National Electricity Objective (NEO), the National Electricity Retail Law (NERL) and the National Gas Law (NGL)
- The AER needs to be satisfied that a waiver will genuinely lead to improved consumer outcomes and the relevant project is genuinely innovative delivering a net benefit to all market participants. The market trial should also deliver a broader market benefit to market participants and not just a commercial benefit to the proponent
- We prefer that any market trial is made public with the relevant analysis to justify the waiver made available to all market participants. This approach would be beneficial to all market participants
- We expect that the AER limit the timing and the scope of the length of any waivers given under proof of market trials. Extension of waivers should not be granted unless there are strong reasons to do this.

### **New trial rule making process**

We do not support the introduction a new trial rule making process.

- The introduction of a new trial rule making process adds additional administrative complexity to and undermines the rule change process. Given the current complexity associated with the current rules change process, this should be avoided.
- Special care should be taken in permitting new entrants to operate under favourable conditions to bypassing the current rules because it has the potential to provide them with a competitive advantage. Hence, the Commission should consider this factor in when it gives a proponent permission to operate under a new trial rule process.
- New entrants are always free to get a “no action” letter from the AER for a new trial project. Perhaps it would make sense for them to take this action , rather than introduce the complexity of a new trial rule making process. In the end, such a process will only increase the complexity associated with the rules.

### Practical considerations

Finally, it is not clear to us how these arrangements would operate in practice. Therefore, we encourage the Commission to consider some of the following issues as it analyses possible arrangements for a regulatory sandbox.

- What obligations would a market participant have to notify its customers and any other affected party that they are not subject to the same regulatory obligations and that those parties would not have the same options if they are not satisfied with observed outcomes?
- What level of oversight would the AER apply to a sandbox arrangement to determine whether the parties involved are adhering to the terms and conditions of that arrangement?
- What happens at the end of the trial period if the Commission does not observe the outcomes that it or the proponent expected to see? Given the proponent does not have perfect foresight - about how consumers or other market participants will respond - what type of evaluation framework will apply to determine whether these arrangements actually benefit consumers in the short term or over the longer term? The impacts of the arrangement - either positive or negative - may not become apparent until some time has passed.

### About Red and Lumo

Red and Lumo are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, South Australia, New South Wales and Queensland to approximately 1 million customers. Should the Commission have any enquiries regarding this submission, please call Con Noutso, Regulatory Manager on 0481 013 988.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou".

**Ramy Soussou**  
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