

24 February 2020

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Mr John Pierce
Chairman
Australian Energy Market Commission
Sydney South NSW 1235

By online submission (EPR0079)

Dear Mr Pierce

Submission to the AEMC's draft rules to implement the Regulatory Sandbox Framework to facilitate proof-of-concept trials

The Australian Energy Market Operator (AEMO) welcomes the opportunity to provide comment on draft amendments to the National Electricity Rules (NER), National Gas Rules (NGR) and National Energy Retail Rules (NERR) to create part of the Regulatory Sandbox Framework.

The proposed Sandbox Framework was developed by the Australian Energy Market Commission (AEMC) as part of advice requested by the Council of Australian Government (COAG) Energy Council. The Sandbox Framework is intended to promote proof-of-concept trials of innovative energy market service offerings and approaches, through offering advice, waivers from existing regulatory provisions (granted by the Australian Energy Regulator (AER)) and temporary trial 'rules' (specific, time and scope-limited trial rule changes, made by the AEMC).

In November 2019, the COAG Energy Council accepted the AEMC's advice, and tasked the AEMC with undertaking further consultation on the draft changes to the NER, NGR and NERR that were included in the AEMC's advice.

AEMO supports the creation of the Sandbox Framework and the key elements of its design, as contained in the AEMC's final advice. Nonetheless, AEMO proposes a number of specific changes to the Draft Rules. In particular, AEMO does not support the AER having the power to unilaterally decide that a proposed trial waiver would not impact AEMO's operation of the power system or the market, without first consulting with AEMO.

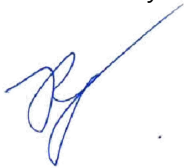
AEMO also proposes that the Rules should consistently adopt the stronger wording that the AER must, at various stages, "be satisfied" about the potential impact of a proposed trial on AEMO's operation of the power system and the market, rather than merely "have regard to" potential negative impacts or potential adverse effects of proposed trials on the safety, reliability and security of supply of electricity (as the proposed Rules allow, in some instances).

In addition, because proof-of-concept trials are inherently designed with imperfect information, AEMO proposes that as well as being able to extend a trial waiver, the AER should also have the ability to vary a waiver that is in place (subject to appropriate criteria and processes).

Finally, AEMO's submission makes a number of other proposed changes and specific comments to the drafting of individual draft clauses.

Should you wish to discuss any of the matters raised in this submission, please contact Kevin Ly, Group Manager - Regulation on kevin.ly@aemo.com.au.

Yours sincerely



Peter Geers
Chief Strategy and Markets Officer

ATTACHMENT 1:

DRAFT RULES TO IMPLEMENT THE REGULATORY SANDBOX FRAMEWORK TO FACILITATE PROOF-OF-CONCEPT TRIALS (EPR0079) – AEMO SUBMISSION

AEMO welcomes the opportunity to provide comment on Draft Rules, and supports the creation of the Sandbox Framework and the key elements of its design, as contained in the AEMC’s final advice.

The sections below provide comments in response to the proposed drafting of specific clauses. In some cases, this includes proposed alternative drafting. The AEMC has provided draft changes to three sets of energy Rules: the National Energy Rules (NER), National Gas Rules (NGR) and National Energy Retail Rules (NERR). In many cases the same change is proposed to equivalent provisions in each set of rules. Accordingly, all of AEMO’s comments regarding the NER should be taken as applying to the equivalent provisions in the NGR and NERR. Specific comments regarding the proposed changes to the NGR and NERR are provided in subsequent sections.

1. Amendments to the NER

Clause 8.15 – Trial Waivers

8.15.3 – Consultation regarding a proposed trial waiver

AEMO considers that clause 8.15.3 should be standardised to require the AER to conduct a public consultation in relation to a proposed trial waiver unless it is satisfied of the exceptions, no matter the identity of trial waiver applicant. AEMO further submits that the AER be required to consult with AEMO about the potential for any proposed trial waiver to impact AEMO’s operation of the market and the power system. To this end, AEMO makes the following specific proposals:

Clause **8.15.3(a)**, AEMO submits, may contain an error. In our view my view, the start of sub-clause (a) should read “Subject to paragraph (c), the AER must carry out public consultation in relation to a proposed trial waiver, unless it is satisfied that the proposed trial waiver trial project” meets the criteria set out therein. AEMO takes this view because it is the trial project (not the trial waiver) that may have an impact on other registered participants or retail customers.

Clause **8.15.3(b)** places an obligation for the AER to consult with AEMO where the AER believes the trial will impact AEMO’s operation of the power system and the market. However, the clause also grants the AER the power to unilaterally reach a state of satisfaction that the trial will not impact AEMO’s operation of the market and the power system and, in such cases, not consult with AEMO. AEMO does not support this provision and submits that the AER should be required to consult with AEMO about the potential for any proposed trial waiver to impact AEMO’s operation of the market and the power system.

Clause **8.15.3(c)** provides that the AER must carry out public consultation in relation to an AEMO proposed trial waiver. This is in contrast to an application from another party, in which case the AER is not required to undertake public consultation if the trial waiver is unlikely to have a direct impact on registered participants or retail customers (other than those who provide explicit informed consent to participate). AEMO can see no basis on which we should be subject to different rules to other trial waiver proponents in this regard. Accordingly, AEMO submits that clause 8.15.3(c) should be removed from the proposed rules.

8.15.4 – Eligibility requirements

Clause **8.15.4(b)(2)** requires the AER to “have regard to” whether a trial project may have an adverse effect on the safety, reliability or security of supply of electricity and the measures that the applicant will take to avoid or mitigate such risks. When considering whether to undertake consultation (under clause 8.15.3(b), as discussed above), the proposed rule requires the AER to be satisfied that ‘the proposed *trial waiver* and the proposed *trial project* will not affect AEMO’s operation of the *power system* and the *market*’. In AEMO’s view, this provision has greater effect than the requirement for an assessment of whether the project ‘may have an adverse effect on the safety, reliability or security of supply of electricity’. This is because the former takes into account AEMO’s operation of the electricity power system and financial operation of the NEM. In AEMO’s view, such consideration is always appropriate. Accordingly, AEMO submits that the drafting of clause 8.15.4(b) should be consistent with cl 8.15.3(b).

8.15.5 – Extension of a trial waiver

Clause **8.15.5(a)(2)** provides that the AER may extend a trial waiver for a further specified period if the AER remains satisfied of the relevant eligibility requirements. However, the eligibility requirements are only those set out in proposed clause 8.15.4(a). They do not include the AER’s consideration of whether the trial project may have an adverse effect on the safety, reliability or security of supply of electricity. AEMO submits that in determining whether to grant an extension to a trial waiver, the AER should also need to have regard to the considerations set out in sub-clauses 8.15.4(b) and (c), but most particularly the substance of clause 8.15.4(b)(2) (discussed above).

The nature of trials is that as they develop, there may be a need for changes or amendments to their format and approach. To this end, AEMO proposes that the AER should have powers not only to extend trial waivers, but also capacity to vary the terms of these trial waivers. This is similar to the AER’s power in the Ringfencing Guideline – Electricity Distribution to vary previous waiver decisions.¹

¹ AER, Ringfencing Guideline - Electricity Distribution, Version 2 October 2017 (clause 5.5, page 20).

AEMO also notes that process for early termination and extension of trial waivers are to be developed and set out by the AER in Trial Waiver Guidelines. These processes must provide adequate time for the applicant and AEMO to be consulted. In respect of early termination, a notification framework needs to be developed so that trial participants do not suddenly become non-compliant and in breach of the Rules.

8.15.6 – Evidence of a trial waiver

Under the Draft Rules, a certificate, signed by a member of the AER, will be provided as evidence that a trial waiver has been granted. AEMO submits that it would be appropriate for evidence that the trial waiver has been granted also be available through a public register. While there will be confidential aspects to certain trials, transparency about the granting of trial waivers is important to promote confidence in the operation of the Regulatory Sandbox Framework. The maintenance of a central register of waivers granted, maintained by the AER, will deliver this transparency.

8.16 – Request for Trial Rule

Clause **8.16(a)(10)** should, AEMO proposes, be consistent with clause 8.15.3(b), so that it reads “an explanation of how the *trial project* may have an effect on AEMO’s operation of the *power system* and the *market*, and how these risks will be avoided or mitigated”. As discussed with respect to proposed clause 8.15.4(b)(2), 8.15.3(b) has greater effect than ‘how risks to the safety, reliability or security of supply of electricity will be avoided or mitigated’ because it also takes into account AEMO’s operation of the electricity power system and financial operation of the NEM.

Clause **8.16(b)** provides that for the purposes of section 24 of the *Australian Energy Market Commission Establishment Act 2004* (SA), information provided to the AEMC as part of a request for a trial Rule is not confidential, unless it is identified as trial project confidential information. AEMO submits that, since the AEMC will make the trial Rule under section 96B of the National Electricity Law (NEL), section 108 of the NEL will apply to confidential information (including trial project confidential information). Accordingly, clause 8.16(b) should also reference section 108 of the NEL.

8.17 Monitoring of trial projects

8.17.3 – Early termination and opting out of trial projects

Clause **8.17.3** directs the AER to develop and set out the processes for early termination of a project in the Trial Projects Guidelines. AEMO notes that it will be important that these processes give adequate time for AEMO to be consulted, most particularly in situations where AEMO is the applicant, but also where the trial project affects AEMO’s work as market operator. If a *trial project* was terminated early, steps would need to be taken to ensure that trial participants did not suddenly become non-compliant and in breach of the Rules.

Clause **8.17.3(2)(ii)** provides for the AER to recommend to the AEMC that the AEMC repeal a trial Rule before its scheduled expiry, including upon application by AEMO. AEMO submits that it is unnecessary for AEMO to have to apply to the AER to contact the AEMC and recommend that a

trial Rule be terminated before its scheduled expiry. Rather, AEMO submits that the rules should enable AEMO to make application to the AEMC directly for the termination of a trial Rule.

Chapter 10: Glossary

Eligibility requirements - As discussed above, AEMO proposes that these requirements are extended to cl 8.15.4(b) and (c), or at least that the substance of clause 8.15.4(b)(2) be upgraded to an eligibility requirement.

2. Amendments to the NGR

The following comments relate only to the proposed changes to the NGR.

Clause **135MB(2)** has been written as though it applies to electricity, rather than gas. AEMO submits that the drafting of the clause should include:

"(2) The AER must consult with AEMO in relation to a proposed *trial waiver* unless the AER is satisfied that the proposed *trial waiver* and *trial project* will not affect:

- (a) AEMO's operation and administration of markets for natural gas, and
- (b) AEMO's operation of *declared distribution systems* and *declared transmission systems*, or AEMO's capacity to perform its *declared system functions*."

Clause **135MC(2)(b)** should be amended to contain the stronger provision, for the reasons outlined against clause 8.15.4(b)(2), above. AEMO submits that clause 135MC(2)(b) should be amended such that the AER be satisfied that the proposed *trial waiver* and the proposed *trial project* will not affect:

- (a) AEMO's operation and administration of markets for natural gas, and
- (b) AEMO's operation of *declared distribution systems* and *declared transmission systems*, or AEMO's capacity to perform its *declared system functions*,

3. Amendments to the NERR

The following comments relate only to the proposed changes to the NERR.

Clause **177(2)** does not, AEMO submits, adequately describe electricity and gas markets and systems. AEMO has recommended, above, that the AER not have the authority to unilaterally decide that a proposed waiver does not impact AEMO's operation of energy systems or markets. If that recommendation is not accepted, AEMO submits that drafting that better describes the electricity and gas markets and systems would read:

"The AER must consult with AEMO in relation to a proposed waiver unless the AER is satisfied that the proposed trial waiver and trial project will not affect AEMO's operation of:

- (a) the electricity *power system* (as defined in the National Electricity Rules),
- (b) the electricity *market* (as defined in the National Electricity Rules),
- (c) the *declared distribution systems* and *declared transmission system* for gas (as defined in the National Gas Law),
- (d) markets for natural gas.

Clause **178(2)(b)** should be amended to contain the stronger provision, for the reasons outlined against clause 8.15.4(b)(2), above. AEMO submits that clause 178(2)(b) should be amended such that the AER be satisfied that the proposed *trial waiver* and the proposed *trial project* will not affect:

“whether the *trial project* may affect:

- (a) the electricity power system (as defined in the National Electricity Rules),
- (b) the electricity market (as defined in the National Electricity Rules),
- (c) the declared distribution systems and declared transmission system (as defined in the National Gas Law),
- (d) markets for natural gas”.