



**AGL Energy Limited**  
ABN: 74 115 061 375  
Level 24, 200 George St  
Sydney NSW 2000  
Locked Bag 1837  
St Leonards NSW 2065  
t: 02 9921 2999  
f: 02 9921 2552  
agl.com.au

---

**Alex Oeser**  
Project Leader  
Australian Energy Market Commission

Submitted online via: [www.aemc.gov.au](http://www.aemc.gov.au)

**19 February 2020**

Dear Alex

**Draft rules for consultation – Regulatory sandboxes, January 2020**

AGL Energy (**AGL**) welcomes the opportunity to respond to the Australian Energy Market Commission's (**Commission**) draft rules published with its Final Report, *Regulatory sandbox arrangements to support proof-of-concept trials*, September 2019 (**Final Report**) and *Draft rules for consultation – Regulatory sandboxes*, January 2020 (**Draft Rules**).

AGL is generally supportive of the Commission's Final Report and Draft Rules. We believe the regulatory sandbox package of reforms will provide an important opportunity to accelerate the development of innovative technologies and business models in the national energy markets to deliver greater benefits to customers.

In order to best facilitate these opportunities, we recommend that the eligibility requirements for regulatory waivers be extended to circumstances where there is evidence that the application of a rule is not fit-for-purpose in serving the long-term interests of consumers.

To ensure that the regulatory sandbox arrangements benefit the development of innovation across the national energy markets, we also recommend that the rules governing the Australian Energy Regulator's (**AER**) obligation to make and publish Trial Project Guidelines further elaborate the scope of knowledge sharing obligations both for regulatory waiver applicants and the AER.

We elaborate our feedback on the Commission's Final Report and Draft Rules 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](mailto: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. Regulatory waiver power

#### *AER regulatory exemption function and waiver power*

AGL supports the conferral of a broader rule exemption function to the AER to enable trial waivers as well as the empowerment of the AER to grant trial waivers, with more detailed provisions made under the proposed new rules and in the Trial Project Guidelines.

#### *AER Trial Project Guidelines*

AGL supports the proposed rules governing the AER's obligation to make and publish Trial Project Guidelines, that specify amongst other things:

- The approach the AER proposes to follow in considering and granting trial waivers (timeline, assessment approach, consideration of consumer protections conditions and reporting obligations); and
- The approach that the AER proposes to follow in overseeing the conduct and outcomes of trial projects.

We consider that this level of specification in the Trial Project Guidelines will:

- 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.

#### *Eligibility requirements*

AGL also supports the eligibility requirements elaborated in the Draft Rules, including that:

- (1) the trial project is genuinely innovative;
- (2) the trial project has the potential to lead to better services and outcomes for consumers;
- (3) the trial project is unable to be conducted without a trial waiver;
- (4) the trial waiver will be appropriately limited in time, scope and scale;
- (5) adequate consumer protections will be maintained in connection with the trial project; and
- (6) that any other eligibility requirement specified in the Trial Projects Guidelines has been satisfied.

We note that the proposed eligibility requirements have been articulated as cumulatively, requiring that a trial project is genuinely innovative (**innovation requirement**) and has the potential to lead to better services and outcomes for consumers (**consumer requirement**). While we agree that all trial projects should demonstrate the potential to lead to better services and outcomes for consumers, we envisage that some trial projects may demonstrate an approach that better serves the long-term interests of consumers without necessarily fulfilling a strict interpretation of the innovation requirement. As we observed in our submission to the Draft



Report<sup>1</sup>, we foresee opportunities for proponents to seek regulatory waivers based on evidence that the application of a particular rule is not fit-for-purpose in serving the long-term interests of consumers.

In order to facilitate greater benefits to customers, we therefore recommend that the proposed innovation and consumer requirements be reframed to enable regulatory waivers based on evidence that the application of a rule is not fit-for-purpose in serving the long-term interests of consumers.

#### *Public consultations*

AGL supports the proposed rules governing the AER's requirement to carry out public consultation in relation to a proposed trial waiver, as articulated in the Draft Rules. As we observed in our submission to the Draft Report, 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.

AGL supports the proposed rule formulation that consultation be required unless a proposed trial waiver:

- 1) Is unlikely to have an impact on other registered participants; and
- 2) is unlikely to have a direct impact on retail customers other than those who provide explicit informed consent to participate in the trial project.

We consider that the Draft Rules appropriately balance the protection for commercial information and intellectual property with the need for trial projects to contribute to regulatory and industry experience, through the specific rules providing:

- that waiver applicants identify trial project confidential information; and
- that the AER, in considering whether to grant a trial waiver, assess whether the extent and nature of the trial project confidential information claimed by the applicant may impair:
  - the AER's ability to provide appropriate public transparency in relation to the conduct and outcomes of trial projects; or
  - the appropriate development of regulatory and industry experience arising from the trial project.

We also support the proposed rule that the Trial Project Guidelines specify the procedures by which the AER will carry out public consultations. As we observed in our submission to the Draft Report, 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.

#### *AER monitoring*

AGL supports that the AER be given responsibility for monitoring trial projects, whether they be conducted under a trial waiver or a trial rule and agrees with the compliance monitoring provisions articulated in the Draft Rules.

---

<sup>1</sup> See AGL submission to AEMC's Draft Report on Regulatory Sandbox Arrangements (9 August 2019), Available at <https://thehub.agl.com.au/articles/2019/08/submission-in-response-to-the-aemcs-draft-report-on-regulatory-sandbox>.



### *Knowledge sharing obligations*

The Commission's Final Report recommended that the NER, NERR and NGR include provisions for knowledge sharing and treatment of confidential information in the context of knowledge sharing. We note that the Draft Rules in relation to trial waivers have incorporated the Commission's recommendations to include relevant provisions:

- In considering whether to grant a trial waiver, the AER must have regard whether the carrying out and monitoring of the trial project is likely to contribute to the development of regulatory and industry experience.
- As part of the information requirements an applicant must identify trial project confidential information.

AGL supports these provisions and believes they will assist in ensuring that the regulatory sandbox arrangements benefit the development of innovation across the national energy markets while also protecting commercial information and intellectual property in the context of a proposed proof-of-concept trial.

Nevertheless, we would recommend that the rules governing the AER's obligation to make and publish Trial Project Guidelines further elaborate the scope of knowledge sharing obligations both for regulatory waiver applicants and the AER in the context of regulatory waivers. As we elaborated in our submission to the Draft Report, 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.

## **2. Trial rule changes**

### *Trial rulemaking power*

AGL also welcomes the empowerment of the Commission to make trial Rules, with information required to be included in a trial Rule change request as set out in the associate rules. AGL supports the proposed amendment to the NEL, NERL, NGL and the associated rules in the form articulated in the Final Report and Draft Rules.

### *Knowledge sharing obligations*

As we observed in our submission to the Draft Report, 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.



---

AGL welcomes the recommendation in the Final Report that the Commission have the ability to set conditions on trials through the trial rule, noting that requirements to share knowledge obtained through a trial is likely to be a condition applicable to all trials. We support the drafting instructions to empower the AEMC to impose additional obligation on a person applying for a trial Rule as it considers appropriate, including for example an obligation to submit one or more reports in relation to the trial project to the AER, as an appropriate means to implement knowledge sharing obligations in the context of trial rule changes.