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Essential Services Commission
Victorian Government

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Regulatory sandboxing – Trial Project Guideline, Draft for consultation – Version 1, 19 April 2022

AGL Energy (**AGL**) welcomes the opportunity to respond to the Essential Services Commission's (**ESC**) Regulatory sandboxing – Trial Project Guideline, Draft for consultation – Version 1, 19 April 2022 (**Draft Guideline**).

Strategic direction

AGL strongly supports establishing a nationally harmonised regulatory sandboxing framework. We engaged closely with the Australian Energy Market Commission (**AEMC**) in its development of proposed reforms to implement regulatory sandbox arrangements.[1]

We believe the regulatory sandbox package of reforms will provide an important opportunity to accelerate the development of technologies and business models in the national energy markets to deliver greater benefits to consumers.

As the ESC considers implementation in the Victorian context, it is important that the framework:

- Facilitates timely applications from across the entire energy supply chain for both new entrants and existing market participants to support competitive neutrality and maximise the benefits of innovation to serve the long-term interests of consumers; and
- Aligns with the national framework to support a harmonised and complementary approach to trialling innovative technologies and business models.

Recommendations

We have carefully considered the Draft Guideline and provide the following recommendations to improve the effectiveness of the proposed regulatory framework, which we believe will provide longer term benefits for Victorian energy consumers:

[1] See AEMC, Final Report on regulatory sandbox arrangements (March 2020), Available at https://www.aemc.gov.au/market-reviews-advice/regulatory-sandboxes. See AGL submission in response Regulatory Sandboxing Legislative Amendments (Sept 2020), Available at https://www.agl.com.au/content/dam/agl-thehub/documents/agl-submission_-coag-regulatory-sandboxing-legislative-amendments_final.pdf; See also AGL submission in response to AEMC Draft Report on regulatory sandboxing (August 2019), Available at https://www.agl.com.au/thehub/articles/2019/08/submission-in-response-to-the-aemcs-draft-report-on-regulatory-sandbox.

1. **Application.** We recommend the Draft Guideline be broadened to contemplate applications from the retail market and existing market participants which could deliver important innovations for the benefit of consumers.

   We consider it important that Victoria's regulatory framework supports innovation trials in the retail market context, as well as other segments of the energy supply chain, and that the regulatory sandbox avenue is equally available to both new entrants and existing market participants. We note that clauses 2.1.1 and 2.1.4 of the Draft Guideline provide that a trial waiver relieves a person from the requirements to obtain a licence and is available as an alternative to holding a licence. We recommend these clauses be broadened to also contemplate applications from existing market participants which could similarly deliver important innovations for the benefit of consumers.

2. **National harmonisation**. We recommend the ESC and AER establish a memorandum of understanding that enables applicants to progress one application for the purposes of trials that span across jurisdictions.

   The Draft Guideline does not contemplate circumstances where an applicant may seek to initiate a trial that spans across jurisdictions, necessitating regulatory relief from both the ESC and AER. A streamlined approach that avoids duplication would promote greater business innovation, particularly for businesses operating across the NEM.

3. **Timeframe for considering applications.** We recommend that the timeframe for ESC consideration of applications be revised to two months after notifying the applicant that the application appears to meet the ESC's information requirements and has been accepted.

   While we appreciate that ESC timeframes will entail additional resourcing, we consider the proposed six months timeframe to be too protracted given the pace of change in the energy sector. Unless the regulatory sandbox framework facilitates timely consideration of proposals, it risks forcing applicants to redesign business models to go to market to avoid any additional time constraint.

4. **Assessment framework.** We recommend the ESC establish further guidance to support its assessment of trial projects against innovation trial principle *a) whether the trial project is focused on developing new or materially improved approaches to use of, or supply of, or demand for electricity.* We believe this additional guidance should provide for:

   - Circumstances where there is evidence that the application of a rule is not fit-for-purpose in serving the long-term interests of consumers.
   - How the framework could support trials to inform a fit-for-purpose approach to consumer protections.

   As we stated in our submissions to the AEMC's Draft Report and Draft Rules, we believe some trial projects can demonstrate that the long-term interests of consumers can be improved without necessarily fulfilling a strict interpretation of the innovation requirement. We foresee opportunities for proponents to seek regulatory waivers based on evidence that the application of a particular existing rule is no longer fit-for-purpose in serving the long-term interests of consumers. The Electricity Industry Act 2000, Gas Industry Act 2001 and associated regulations contained in the Energy Retail Code of Practice and the Distribution Codes were written two decades ago for an energy system where energy flowed one way and consumers generally were passive users who relied on traditional

modes of communication (e.g. telephone and mail). Allowing access to regulatory sandbox arrangements to test these rules and alternatives will enable evidence-based reform to the rules in a manner that provides confidence any changes are in the long-term interest of consumers.

Particularly with the growth in new energy products and solutions, it is also important that the consumer protections framework provides fit-for-purpose protections to support positive customer outcomes. We consider that regulatory sandboxing may provide opportunities to test whether novel approaches to consumer protections may result in better outcomes. As we stated in our response to the AEMC's 2019 Issues Paper[2] on consumer protections in an evolving market, consumer protections should be designed in light of the evolving energy market to move away from prescription and towards an outcomes-based model. This would help remove constricting or outdated requirements that constrain traditional retailers in offering new and innovative developments for customers, while ensuring a level of consistency for the customer experience.

We also note that with the introduction of Victoria's Energy Fairness Plan, the Retail Code of Practice is intended to be subject to a regulatory impact assessment in 2025. By enabling Victoria's regulatory sandboxing framework to support trials to inform a fit-for-purpose approach to consumer protections, the framework would also provide an important evidence base to assess Victoria's retail market regulations.

5. **Consultation on trial waiver applications.** We recommend that Draft Guideline be revised to ensure the approach to public consultation carefully balances 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.

   Clause 4.4.1 provides that the ESC will consult publicly on all trial waiver applications. We would recommend the Guideline provide that consultation be required unless a proposed trial waiver:

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

6. **Duration of trial waivers.** We recommend the proposed duration be revised to two years with an option to extend by application for an additional year.

   Clause 4.5.1 provides that the ESC will determine the duration of a trial waiver on a case-by-case basis and that the duration will be for no more than five years. We consider that revising the timeframe to two years with an option to extent would more closely align with typical innovation trials supported by the Australian Renewable Energy Agency. Enabling long-term trials risks interfering with competitive neutrality in the market. We believe three years would provide sufficient time to assess the benefits of a trial to then inform any longer-term regulatory changes that could benefit to broader energy market system.

[2] See AGL response to AEMC Issues paper on Consumer Protections in an evolving market (February 2020), Available at https://www.aemc.gov.au/sites/default/files/documents/agl_submission_-_aemc_consumer_protections_submission_-_13_feb_public_version_redacted.pdf/.

We are generally supportive of the other elements elaborated in the Draft Guideline, including the proposed approach to:

- Form and information requirements in an application;
- Treatment of confidential information;
- Monitoring, reporting and knowledge sharing;
- Extensions, revocations, variations and opt out; and
- Default conditions on trial waivers.

Should you have any questions in relation to this submission, please contact [redacted].

Yours sincerely

Elizabeth Molyneux

GM Policy and Markets Regulation