

20 February 2020

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

Submitted online via the Commission's website

Dear Mr Pascoe

Re: Regulatory Sandbox Arrangements to Support Proof-of-Concept Trials – Draft Rules

Thank you for the opportunity to comment on the Regulatory Sandbox Arrangements to Support Proof-of-Concept Trials Draft Rules published on 16 January 2020 (Project number: EPR0079). This letter outlines a submission from ATCO Australia (ATCO).

As an owner and operator of energy and logistics infrastructure in Australia for almost 60 years, ATCO is proud of its ongoing commitment to supporting the communities in which we operate. ATCO is a long-term investor with a clear vision of delivering customer value through sustainable growth, continuous investment, improvement and innovation.

As an innovator in the energy market, ATCO supports the intent and stated objective of the AEMC through the regulatory sandbox initiative to encourage innovation within a regulated energy industry environment in the long term interests of consumers:

"The Commission considers that a regulatory sandbox initiative would provide for a regulatory framework that is better equipped to respond to the rapid change in the energy sector and deliver customer benefits through innovation. ...

... The objective of these arrangements should be to encourage innovation which has the potential to contribute to the long-term interests of consumers..."¹

ATCO has shown its willingness to invest in innovation to prepare for the future energy market. An example is our Clean Energy Innovation Hub (CEIH), which has two key components: the first being the continued research and development of hybrid energy micro-grids leveraging gas technology; the second is exploring the potential role of hydrogen in the future energy mix.

Gas is an important part of Australia's energy future supplying 44% of household energy.² Gas will continue to have a critical role to play in the transition to a net zero carbon emissions future. Innovation across the energy sector will be needed to enable this transition. Given the importance of gas to Australia's clean energy future, it is imperative that regulation both *allows* and *encourages* the necessary innovation to allow gas to play its necessary part.

¹ Australian Energy Market Commission, Final report, Regulatory sandbox arrangements, Page ii.

² Energy Networks Australia, Gas Vision 2050, Forward.

Draft Rule Feedback

ATCO supports the introduction of a regulatory sandbox framework applying to both the gas and electricity rules. However, ATCO believes amendments are required to the draft rules to effectively encourage innovation investment, as outlined below.

Cost recovery

Under the National Gas Rules (NGR) and National Gas Law (NGL) there are no existing mechanisms to enable the recovery of expenditure on innovation. In contrast, the National Electricity Rules (NER) already incorporates the demand management incentive scheme and demand management innovation allowance. Without a mechanism under the NGR to enable cost recovery, there will be no incentive to practically apply the regulatory sandbox framework.

ATCO accepts the AEMC's view that the regulatory sandbox toolkit is not a mechanism to provide additional funding for trials, nor impact the revenues set by regulatory determinations. However, not providing any mechanism under the NGR to allow for the recovery of costs during the trial period, or in the future, is not compatible with the stated objective to "encourage innovation". Without the prospect of cost recovery either at the time of the trial or at the next regulatory reset, innovation investment will be discouraged.

ATCO considers that given the checks and balances in the draft rules, the recovery of costs associated with trials should be provided for via regulated revenue. The checks and balances proposed in the draft include:

- The AER may only approve a trial waiver if it is satisfied the trial project has the potential to lead to better outcomes and services for customers (proposed NGR 135MC(1)(b)).
- An application to the AEMC for a trial rule must include an explanation of how the trial project will or is likely to lead to the achievement of the national gas objective (proposed NGR 135N(1)(c)).

ATCO considers that a mechanism could be incorporated into NGR 97 (tariff variation mechanism) that would enable the costs associated with any trial that is subject to a trial waiver or trial rule to be assessed and recovered through reference tariffs as part of the annual tariff variation process.

Trial Projects Guidelines

The provisions relating to Trial Projects Guidelines (Guidelines) are very broad regarding the powers conferred upon the AER - for example, at proposed NGR 135MC(3) relating to the matters the AER must consider when granting a trial rule waiver. Similarly, the AER has broad powers to determine under the Guidelines where explicit informed consent is required.

Without knowing the content of the Guidelines, it is difficult to determine the impact of the proposed NGR on innovation. ATCO considers that the ability for the AER to prescribe eligibility requirements for innovation projects under proposed NGR 135MC(1)(f) should be removed so as to provide certainty as to the projects that are intended to be eligible for trial waiver or trial rule.

Implementation in Western Australia

ATCO notes the AEMC's comments in the Final Report with regard to the applicability of the NGR in Western Australia.

“Limited provisions in the NGR mainly relating to gas pipeline regulation have been adopted in Western Australia. This means adoption of the NGL changes to give effect to the sandbox toolkit is likely to be of limited benefit in Western Australia.”³

Western Australia, apart from the retail market provisions, has in fact adopted almost all of the NGL and NGR provisions⁴. ATCO would like to see regulatory sandbox toolkit changes adopted in Western Australia to encourage innovation and create a level playing field for all regulated gas businesses across the country.

Given the AER has been established as the “first point of contact” for the innovation enquiry service ATCO would like further information on how the implementation of this service in Western Australia would work given the Economic Regulation Authority’s equivalent AER function as regulator of gas networks in Western Australia.

Hydrogen

ATCO commends the draft rules as a first step to facilitate innovation. It is anticipated that the majority of investment in innovation within gas networks in the near term will relate to the use of hydrogen as a fuel or for energy storage. ATCO believes hydrogen innovation investment will not be captured by the proposed rules until amendments, foreshadowed in the National Hydrogen Strategy, are made to the National Gas Law to clarify the inclusion of hydrogen gases into the framework.

About ATCO

ATCO has been proudly operating in Australia and providing employment opportunities for more than half a century. ATCO is a customer-focussed global company that develops, builds, owns and operates a range of energy infrastructure assets, supporting residential, business and commercial consumers. ATCO is committed to investing in its people, innovation and technology to drive leading-edge application-based research.

In Australia, ATCO:

- owns and maintains two non-regulated gas distribution networks in Albany (LPG) and Kalgoorlie (natural gas), together with the largest (Mid-West and South-West) gas distribution network in Western Australia, servicing over 760,000 connections through more than 14,000 km of natural gas pipelines and associated infrastructure;
- owns an exempt retailer (Source Energy Co) in the Wholesale Electricity Market that provides electricity to around 500 embedded network customers in strata developments through a combination of solar photovoltaic systems, grid purchases and battery storage;
- owns and operates two power generation facilities (a joint-owned facility in Adelaide and a wholly-owned facility in Karratha) with a combined capacity of 266 MW;
- is drawing on its established expertise in natural gas to explore the future role of hydrogen through the research and development of ATCO’s Clean Energy Innovation Hub (an embedded hybrid microgrid system that incorporates renewable solar generation, battery storage, natural gas backup generation); and
- manufactures and delivers modular building solutions to a diverse group of customers.

ATCO’s Australian businesses are part of the worldwide ATCO Group with approximately 6,000 employees and assets of \$24 billion. ATCO is a diversified holding corporation with investments in

³ Australian Energy Market Commission, Final report, Regulatory sandbox arrangements, page 17

⁴ See the AEMC summary of the application of the NGL and NGR in Western Australia: <https://www.aemc.gov.au/regulation/energy-rules/national-gas-rules/western-australia>

Structures & Logistics (workforce housing, innovative modular facilities, construction, site support services, and logistics and operations management), Energy infrastructure (electricity generation, transmission and distribution; natural gas transmission, distribution and infrastructure development; energy storage and industrial water solutions; and electricity and natural gas retail sales), Transportation (ports and transportation logistics) and Commercial Real Estate.

If you have any questions or would like to discuss any of these issues further please contact me or Amy Stanley, General Manager, Human Resources and Corporate Affairs.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John', with a stylized flourish at the end.

John Ivulich
Chief Financial Officer