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6 March 2020

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

Submitted electronically

Dear Mr Pascoe,

Re: Draft rules to implement regulatory sandbox arrangements

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to provide input to the Australian Energy Market Commission's (Commission) draft rules to implement regulatory sandbox arrangements.

We have concerns with the proof of concept trials that are being considered for the electricity, gas and retail energy markets. While the Commission's regulatory sandbox arrangements allow participants to test innovative concepts in the market under relaxed regulatory arrangements on a time limited basis. However, we consider that the current draft rules contain unintended consequences at the potential detriment to consumers. For example, it is unclear what would occur to consumers when a retailer is granted a trial waiver for a specific project and it subsequently defaults. The drafting does not specify whether these customers would be covered by the Retailer of Last Resort (RoLR) arrangements or an alternative arrangement must be made on the basis of a trial waiver being granted.

We accept that there are benefits for the introduction of the regulatory sandbox, we provide the following comments in relation to the draft rules as released for consultation.

Application for trial waiver: confidential information

Red and Lumo do not support revisions to the NER to safeguard confidential information for trial waivers. We understand that all commercial projects will include some commercially sensitive information. However, given that the regulatory sandbox is designed to be outside the normal framework, we object to the Rules to protect all confidential information.

All interested stakeholders, participants and ultimately consumers must have the opportunity to fully understand trial projects. These trials are established to meet the long term interests of consumers, by encouraging innovation to meet consumers' needs whilst maintaining consumer safeguards. As a result, they will provide valuable insights for external stakeholders and project proponents alike. It is

important that the learnings are made transparent as possible, under the regulatory framework.

Finally, if the Commission fails to abolish these confidential information provisions consideration for public consultation should outweigh protection of commercial information in any trial waiver application. In all circumstances, all trial applications and reports should always err on the side of the consumer.

Consultation regarding a proposed trial waiver

Red and Lumo consider these revisions provides the Australian Energy Regulator (AER) with too much discretion and the ability to avoid a public consultation when considering a trial waiver. The AER has the choice to avoid a public consultation of a proposed trial waiver if it considers the proposed trial waiver will:

- not impact registered participants or;
- is unlikely to have a direct impact on retail customers.

Trial projects are likely to impact customers and other market participants so any party potentially impacted by a trial project should be able to engage with the AER before it makes a decision to grant a trial waiver. Hence, the AER should not have the option to avoid public consultation on a proposed trial waiver. In the end, public consultation should always be conducted by the AER on trial waiver applications, regardless of the application. Such an approach will ensure that the trial waiver is considered in a transparent manner for all stakeholders to review.

Eligibility requirements

Red and Lumo consider the trial waiver eligibility requirements should be strengthened by the following changes.

Threshold

The AER should be required to apply a high threshold when considering a trial waiver. This approach would ensure trial waivers are only granted in circumstances where a project is genuinely innovative. Unfortunately, these revisions provide no guidance to the AER on the threshold level required to satisfy the eligibility test. Hence, this issue should be addressed.

No benefits from other regulatory schemes

The AER should be required to ensure that trial waiver applicants are not already receiving a benefit from another regulatory scheme. For example, it would be particularly concerning if an electricity network was already receiving an allowance under the Distribution Management Innovation Allowance (DMIA) and applying for a trial waiver for the same project. It must be incumbent on the AER to ensure that this does not occur.

Innovative

The Commission must provide the AER further guidance and define the term 'innovative'. As a result of this change, the AER will be better placed to determine the projects that are genuinely innovative. This could be provided within the revised rule changes. Alternatively, the glossary could include a definition of innovative, which can be achieved through adding context in what is not 'innovative', i.e. already provided for under an existing scheme or allowance.

Extension of a trial waiver

Red and Lumo do not support the inclusion of extension periods for trial waivers. The proposed regulatory sandbox arrangements were developed for participants to test innovative concepts under a relaxed regulatory environment on a time limited basis. By its very nature, a trial waiver should only be granted for a limited time frame and should not be extendable.

Consumer organisation: Definition

Red and Lumo considers the definition of consumer organisation in the glossary is not specific enough. The draft rule defines a consumer organisation as an association or body that:

- represents and promotes the interests of its members in relation to the provision of electricity
- promotes the interests of persons who intend to acquire electricity for consumption purposes

Organisations like the Major Energy Users (MEU) that represent the interests of larger energy users would be captured under this definition. We do not consider that this was the intention of this clause. As such, the definition should be adjusted.

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, and electricity in the ACT to over 1 million customers.

Should the Commission wish to discuss or have any enquiries regarding this submission, please contact Con Noutso, Regulatory Manager on 0481 013 988.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou". The signature is stylized with loops and a long horizontal stroke at the end.

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
Red Energy Pty Ltd
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