

13 October 2020

COAG Energy Council Secretariat
Department of Industry, Science, Energy and Resources
GPO Box 2013
CANBERRA ACT 2601

Submitted by email energycouncil@industry.gov.au

Dear Sir/Madam

Re: Regulatory Sandbox Legislative Amendments

Thank you for the opportunity to comment on the Regulatory Sandbox Legislative Amendments published on 16 September 2020. This letter outlines ATCO Australia's (ATCO's) views on the proposed amendments and follows a previous submission from ATCO on the draft rules in February 2020 to the Australian Energy Market Commission.

ATCO has been operating in Australia for almost 60 years and is a long-term investor in energy with a clear vision of delivering customer value through sustainable growth, continuous investment, improvement and innovation.

ATCO supports the regulatory sandbox initiative to encourage innovation within a regulated energy industry environment in the long term interests of consumers. To effectively encourage innovation, ATCO considers the amendments to the draft rules should include:

- A specific mechanism for cost recovery for trial projects
- Additional changes to specifically support hydrogen innovation
- Support to implement the rules in Western Australia (WA)
- Refinement of retail customer provisions for opt-out and consent retention to align with trial period.

ATCO's feedback in response to the draft rules is outlined below.

Cost recovery

It is essential to remain competitive in a rapidly evolving energy environment moving towards low carbon energy solutions, that a mechanism for cost recovery of innovation is included in the draft rules. This is particularly necessary for gas networks where the National Gas Rules (NGR) and National Gas Law (NGL) do not include a mechanism to enable the recovery of expenditure on innovation by gas network service providers who are progressing innovative technology.

Without a mechanism under the NGR to enable cost recovery, there will be no incentive to practically apply the regulatory sandbox framework and therefore consumers will not benefit. This lack of incentive is a challenge for our business because returns provided under the rate of return guideline do not provide headroom for research and development risk.

An avenue for cost recovery either at the time of the trial or at the next regulatory reset is needed to encourage innovation investment. Without such a mechanism, Australian consumers will fall behind the rest of the world. ATCO considers that given the checks and balances in the draft rules, the recovery of costs associated with trial projects should be provided for via regulated revenue. These checks and balances as proposed include:

- Consultation regarding a proposed trial waiver (proposed NGR 135MB)
- Consideration by the AER in granting a trial waiver of any adverse effect on the safety, reliability or security of supply of natural gas and the measures that the applicant will take to avoid or mitigate such risks (proposed NGR 135 MC (1)(b))
- Explanation to be provided in the application to the AEMC for a trial rule 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 an appropriate mechanism could be incorporated into NGR 97 (tariff variation mechanism). Such a mechanism would enable the costs associated with any trial project that is subject to a trial waiver or trial rule to be assessed and where the waiver or trial criteria are met, that those costs would be recoverable through reference tariffs as part of the annual tariff variation process.

Hydrogen

ATCO supports the submission made by Energy Networks Australia that indicates that all forms of energy or gas should be captured under the regulatory sandbox framework. The stipulation of 'natural gas' services in the draft rules may prevent trials of alternative forms of energy, including hydrogen.

ATCO commends the draft rules as a first important step to facilitate innovation. It is anticipated that the majority of innovation investment 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 (and National Gas Rules) to clarify the inclusion of hydrogen gases into the framework.

Implementation in Western Australia

It is important for there to be a level playing field across the energy sector in Western Australia. In recent changes to the Electricity Networks Access Code, Energy Policy WA have recognised the need to facilitate innovation, research and development of new technologies when approving Access Arrangements for covered electricity networks., Energy Policy WA found merit in providing Western Power with a mechanism for recovering costs for approved small-scale research and development initiatives, to incentivise progress towards innovative solutions that may deliver lower cost outcomes for customers.¹ A Demand Management Innovation Allowance mechanism was incorporated into the Electricity Networks Access Code in September 2020.

With an innovation mechanism now included in the Electricity Networks Access Code, an innovation mechanism incorporated into the gas framework is needed to avoid biases towards any one technology and to encourage innovation. Implementing the regulatory sandbox toolkit (with a cost recovery mechanism) in Western Australia will assist with achieving this objective.

¹ Energy Policy WA, Energy Transformation Strategy: Proposed Changes to the Electricity Networks Access Code Consultation Paper, May 2020, pg. 20, Available from: See <https://www.wa.gov.au/sites/default/files/2020-05/PUBLIC%20RELEASE%20-%20Consultation%20Paper%20-%20Proposed%20Changes%20to%20the%20Electricity%20Networks%20Access%20Code%202004.pdf>

In addition, ATCO would like to see the regulatory sandbox toolkit changes adopted in Western Australia to ensure that there is a level playing field for all regulated gas businesses across the country.

Opt out provisions

The draft rules (proposed NGR 1350B) provide retail customers participating in trial with the ability to opt out of trial projects. The practical application of opt out provisions may have implications for certain trials which may be unable to easily separate a single customer, for example blended fuel trials. It may be necessary to ensure that for trials to achieve the best outcomes, the preference to opt-out after initial approval should be available to customers on limited grounds, ie personal hardship.

Explicit informed consent

The draft rules (proposed NGR 135L(b)) indicate that a record of explicit informed consent of a retail customer is retained for at least two years. This appears inconsistent with the duration of trial projects which can proceed for up to five years. ATCO suggests that the retention periods should be aligned to the duration of the trial project for the most useful outcomes.

About ATCO

ATCO has been proudly operating in Australia and providing employment opportunities for almost 60 years. 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 the largest (Mid-West and South-West) gas distribution network in Western Australia, together with two non-regulated gas distribution networks in Albany (LPG) and Kalgoorlie (natural gas), servicing over 760,000 connections through more than 14,000 km of natural gas pipelines and associated infrastructure;
- owns an alternative electricity retailer (Source Energy Co.) in Western Australia that provides cleaner, affordable and innovative energy solutions 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 a number of projects, including the Clean Energy Innovation Hub (an embedded hybrid microgrid system that incorporates renewable solar generation, battery storage, natural gas backup generation and blends green hydrogen produced with natural gas used onsite), are working in collaboration with Fortescue Metals Group to establish a hydrogen refuelling facility at the Hub, and are currently conducting a feasibility study into the development of a commercial scale renewably hydrogen production facility, the Clean Energy Innovation Park; 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 6,500 employees and assets of \$22 billion. ATCO is a diversified holding corporation with investments in 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 Hugh Smith, General Manager, Regulation and Energy Policy on 08 6163 5237.

Yours sincerely



J.D. Patrick Creaghan
Managing Director & Chief Operating Officer