

Decision on amendments to the Constitution of the Retail Energy Market Company

Submitted by the Retail Energy Market Company

11 September 2012

Economic Regulation Authority

WESTERN AUSTRALIA

Important Notice

This document has been compiled in good faith by the Economic Regulation Authority (**Authority**). The document contains information supplied to the Authority from third parties. The Authority makes no representation or warranty, express or implied, as to the accuracy, completeness, reasonableness or reliability of the information supplied by those third parties.

This document is not a substitute for legal or technical advice. No person or organisation should act on the basis of any matter contained in this document without obtaining appropriate professional advice. The Authority and its staff members make no representation or warranty, expressed or implied, as to the accuracy, completeness, reasonableness or reliability of the information contained in this document, and accept no liability, jointly or severally, for any loss or expense of any nature whatsoever (including consequential loss) arising directly or indirectly from any making available of this document, or the inclusion in it or omission from it of any material, or anything done or not done in reliance on it, including in all cases, without limitation, loss due in whole or part to the negligence of the Authority and its employees.

This notice has effect subject to the *Competition & Consumer Act 2010 (Cwlth)*, the *Fair Trading Act 1987 (WA)* and the *Fair Trading Act 2010 (WA)*, if applicable, and to the fullest extent permitted by law.

Any summaries of the legislation, regulations or licence provisions in this document do not contain all material terms of those laws or obligations. No attempt has been made in the summaries, definitions or other material to exhaustively identify and describe the rights, obligations and liabilities of any person under those laws or licence provisions.

A full copy of this document is available from the Economic Regulation Authority website at www.erawa.com.au.

For further information, contact:

Economic Regulation Authority
Perth, Western Australia
Phone: (08) 6557 7900

© Economic Regulation Authority 2012

The copying of this document in whole or part for non-commercial purposes is permitted provided that appropriate acknowledgment is made of the Economic Regulation Authority and the State of Western Australia. Any other copying of this document is not permitted without the express written consent of the Authority.

Contents

DECISION	3
REASONS	3
Background	3
Discussion	4
CONCLUSION	5

DECISION

1. The Economic Regulation Authority (**Authority**) has approved the proposed amendments to the Retail Energy Market Company (**REMC**) Constitution, as submitted by REMCo on 4 July 2012¹, pursuant to section 11ZOM of the *Energy Coordination Act 1994* (**Act**).

REASONS

Background

2. Under section 11ZOL of the Act, REMCo may prepare an amendment to its Retail Market Scheme (**Scheme**), and submit the amendment to the Authority for approval.
3. Section 11ZOM of the Act provides that where an amendment is submitted under section 11ZOL of the Act, the Authority is to, in accordance with section 11ZOO and section 11ZOP of the Act:
 - approve it;
 - request that it be changed and approve it in a changed form; or
 - refuse to approve it.
4. The REMCo Scheme includes, amongst other things, the REMCo Constitution. The REMCo Constitution is an agreement signed by all REMCo members that binds them to comply with the Retail Market Rules (**Rules**), and describes how REMCo will operate under the *Corporations Act 2001*.
5. On 4 July 2012, the Authority received a letter from REMCo seeking approval of amendments to the REMCo Constitution to correct a circulatory problem between the REMCo Constitution, the Rules, and the ATCO Gas Australia Haulage Contracts (**Haulage Contracts**).
6. The circularity problem is that under the REMCo Constitution:
 - the REMCo Board must approve an application from an entity to become an Associate Member if the entity is a Self-Contracting User;
 - to become a Self-Contracting User, the entity must already be a User, which is an entity that has a Haulage Contract with the Network Operator; and
 - to get a Haulage Contract with the Network Operator, the entity must be a Member of an approved retail market scheme.

REMC acknowledges that this is a drafting issue that can be addressed through amendments to the REMCo Constitution.

¹ See ERA website, Letter dated 4 July 2012 'Approval of Amendments to the REMCo Constitution' http://www.erawa.com.au/2/533/42/review_of_the_remco_gas_retail_market_scheme.pm

7. In its submission, REMCo requested that the Authority consider and approve the proposed amendments to the REMCo Constitution under section 11ZOM of the Act, to take effect upon publication of the Authority's approval in the Gazette.

Discussion

8. Pursuant to section 11ZOO(1)(a) of the Act, the Authority may approve an amendment to a retail market scheme if it is satisfied that if the amendment is made, the scheme will:
 - comply with the Act; and
 - be suitable for the purpose of section 11ZOB of the Act.
9. With regard to the first requirement in section 11ZOO(1)(a) of the Act, the Authority considers that the intent of the REMCo Scheme is to allow Self-Contracting Users, as this will give end-use gas customers the ability to supply themselves with gas rather than purchase from retailers, and will promote competition in the market. The proposed amendments to the REMCo Constitution will correct a drafting issue that hinders the REMCo Board's approval process for admitting Self-Contracting Users as Associate Members of REMCo. As such, it will improve the compliance of the REMCo Scheme with the Act if these amendments are approved.
10. With regard to the second requirement in section 11ZOO(1)(a) of the Act, section 11ZOB of the Act states that the purpose of a retail market scheme is to ensure that the market is regulated and is operated in a manner that is:
 - open and competitive;
 - efficient; and
 - fair to gas market participants and their customers.
11. The Authority considers that proposed amendments to the REMCo Scheme will enable end-use gas customers to supply themselves with gas rather than purchase supply from retailers, and will promote competition in the market. As a result, the proposed amendments to the REMCo Constitution will enable the retail gas market to be operated in a manner that is open and competitive, efficient and fair to gas market participants and their customers. The Authority is of the view that the proposed amendments will allow the REMCo Scheme to be suitable for the purpose of section 11ZOB of the Act.
12. Pursuant to section 11ZOO(1)(b) of the Act, the Authority may approve an amendment to a retail market scheme if it is satisfied that any other principle, criterion, or requirement that is prescribed for the purposes of this paragraph in the Act has been met. The Authority is not aware of any other regulations that are relevant under section 11ZOO(1)(b), and therefore considers this section of the Act is not applicable in this instance.
13. The Authority notes that the consultation requirement in section 11ZOO(2) refers to amendments to retail market rules and it is not a prerequisite to approval of amendments to the REMCo Constitution. The Authority is informed that REMCo held an Extraordinary General Meeting on 21 June 2012 and sought approval from REMCo's Members. In its submission REMCo noted that four of REMCo's five members were present at the Extraordinary General Meeting and that all four

members in attendance voted in favour of the amendments to the REMCo Constitution.

14. Based on the assessment above, the Authority is of the view that the proposed amendments to the REMCo Constitution meet the prerequisites of approval of amendments as required under section 11ZOO of the Act.
15. Pursuant to section 11ZOP of the Act, the Authority is also to have regard to:
 - any principles, criteria or requirements that are prescribed for the purposes of this paragraph; and
 - such other matters as the Authority considers relevant when determining whether or not to give an approval under section 11ZOM of the Act.
16. The Authority is not aware of any other principle, criterion or requirement that is prescribed for the purposes of section 11ZOP of the Act that will prevent the Authority's approval of the proposed amendments under section 11ZOM of the Act.
17. The Authority considers that additional wording to the proposed amendments to the REMCo Constitution would provide further clarity in relation to the period of time within which an Associate Member ceases to be a Self-Contracting User or does not become a Self-Contracting User.
18. Based on consultation with REMCo, the Authority understands that whilst REMCo agrees that the additional wording may add further clarity to the drafting, it would still be able to operate without the additional wording. Hence, the Authority recommends that REMCo takes into account the clarification issue when it next proposes any other amendments to the REMCo Constitution.

CONCLUSION

19. The Authority considers that the proposed amendments to the REMCo Constitution, as submitted by REMCo, meet the prerequisites required under the Act and approves these proposed amendments.