

Decision on amendments to the Retail Market Scheme – Rule Changes C01/13S, C02/13R, C03/13C and C04/13S

Submitted by the Retail Energy Market Company

Economic Regulation Authority

WESTERN AUSTRALIA

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

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1 DECISION

1. The Authority approves the proposed amendments in Rule Changes C01/13S, C02/13R, C03/13C and C04/13S, submitted by the Retail Energy Market Company (**REMCo**) on 3 July 2013, pursuant to section 11ZOM of the *Energy Coordination Act 1994 (Act)*.

2 REASONS

2.1 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. The REMCo Scheme includes the Retail Market Rules (**Rules**), the Specification Pack (**Spec Pack**), the FRC Hub Terms and Conditions (**Hub T&Cs**) and the REMCo Constitution.
4. On 3 July 2013, the Authority received a submission from REMCo seeking approval of amendments to the REMCo Scheme.¹ The submission details the rationale for four Rule Changes (i.e. C01/13S, C02/13R, C03/13C and C04/13S) and REMCo's assessment of these amendments in meeting the prerequisites for approval under the Act.

2.2 Discussion

2.2.1 Legislative requirements for the Authority's approval

2.2.1.1 Approval of amendment under section 11ZOM of the Act

5. 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:
 - a) approve it;
 - b) request that it be changed and approve it in a changed form; or
 - c) refuse to approve it.

2.2.1.2 Prerequisites to approval of amendment under section 11ZOO of the Act

6. 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:

¹ See ERA website, Letter dated 3 July 2013 'Approval of Amendments to the REMCo Retail Market Scheme – Rule Changes C01/13S, C02/13R, C03/13C and C04/13S' <http://www.erawa.com.au/markets/gas-markets/remco-rule-changes/>

- i) comply with the Act; and
 - ii) be suitable for the purposes of section 11ZOB of the Act.
7. 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:
 - a) open and competitive;
 - b) efficient; and
 - c) fair to gas market participants and their customers.
 8. 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.
 9. Pursuant to section 11ZOO(2) of the Act, the Authority may approve an amendment to any retail market rules under section 11ZOM only if the Authority is satisfied that the consultation required by section 11ZOL(3) has taken place and:
 - (a) each person required to be consulted has agreed to the amendment; or
 - (b) if any person required to be consulted has not so agreed, that person has been given a reasonable opportunity in the course of the consultation to provide reasons for not agreeing and any reasons so provided have been considered.
 10. The Authority notes that the consultation requirement in section 11ZOO(2) refers to amendments to the Rule and it is not a prerequisite to approval of amendments to the REMCo Constitution.

2.2.1.3 *Matters to which the Authority is to have regard under section 11ZOP of the Act*

11. 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.

2.2.2 *Rule Change C01/13S – Notification Period for New Gas Business Operator identifiers and Hub identifiers*

12. Rule Change C01/13S proposes amending the Connectivity Testing and Technical Certification document (part of the Spec Pack) to require REMCo to notify gas retail market participants at least ten business days prior to the effective date of any new gas business operator identifiers (**GBO ids**)² for REMCo's Gas Retail Market

² A GBO id is a unique identification number that REMCo uses to identify all gas retail market participants such as pipeline operators, network operators, users, shippers, and self contracting users that operate in REMCo's Gas Retail Market Systems.

Systems (**GRMS**) and any new FRC Hub identifiers (**Hub ids**)³ for the FRC Hub operated by the Australian Energy Market Operator (**AEMO**).

13. Currently, REMCo is required to notify existing gas retail market participants in Western Australia of any new GBO ids and new Hub ids. However, there is no notification period that applies to REMCo. In the Eastern States, the AEMO must notify gas retail market participants at least ten business days prior to any new GBO ids or Hub ids becoming effective.
14. The Authority considers that the proposed amendments will clarify and specify REMCo's current practices; ensure consistency with other jurisdictions; and remove any confusion regarding the notification period for the activation of any new GBO ids and Hub ids, which will in turn avoid unforeseen delays when issuing new GBO ids or Hub ids by REMCo.
15. The Authority considers compliance of the Scheme with the Act will improve if these proposed amendments are approved, and these changes will help ensure that the retail gas market is regulated and is operated in a manner that is open and competitive, efficient and fair to gas market participants and their customers. Hence, the Authority considers the requirement in section 11ZOO(1)(a) of the Act is satisfied.
16. The Authority considers there is no other principle, criterion or requirement that is prescribed for the purposes of section 11ZOO(1)(b) of the Act that is relevant for approving this proposed Rule Change.
17. The Authority notes that REMCo submitted Rule Change C01/13S to the REMCo Rule Change Committee (**Committee**) for consideration, and the Committee unanimously agreed that it is a non-consequential Rule Change.⁴ The Authority is satisfied that the requirements under section 11ZOO(2) of the Act have been met.
18. Based on the assessment above, the Authority is of the view that the proposed amendments in Rule Change C01/13S meet all the prerequisites of approval of amendments as required under section 11ZOO of the Act.
19. 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.

2.2.3 Rule Change C02/13R – Verification of Shipper on Sub-Network

20. Rule Change C02/13R proposes to amend Rules 67 and 83 to enable the GRMS to validate that the Incoming User specified in a new connection confirmation notice or a transfer request has valid Shipper arrangements for the delivery of gas to that sub-network; and modify the GRMS by adding a validation check to the Change of User and Commissioning of Delivery Point transactions.

³ A Hub id is a unique identification number that REMCo uses to identify all gas retail market participants that operate in the FRC Hub operated by the Australian Energy Market Operator.

⁴ Pursuant to Rule 396A, if the Committee unanimously agree that the change to the Rules that is being considered has a non-substantial impact, the Committee must recommend that REMCo submit the Rule change to the Authority.

21. The Authority understands that if a User that does not have a valid Shipper arrangement for gas delivery submits a new connection notice or transfer request on a sub-network, the new connection notice or transfer request will be deemed invalid in the GRMS. Currently, there are no error codes in place to notify Users of an invalid new connection notice or transfer request.
22. The Authority considers that the proposed amendments will ensure that REMCo can operate the GRMS in a more robust manner in accordance with the timelines in the Rules, and protect Users and customers by ensuring that a User is notified if it submits an invalid new connection notice or transfer request. For these reasons, the Authority is of the view that the proposed changes to the Scheme will comply with the Act, and hence will satisfy the first requirement in section 11ZOO(1)(a)(i) of the Act.
23. The Authority understands that the proposed amendments are required because the balancing, allocation and reconciliation calculations will be delayed if a User submits an invalid new connection notice or transfer request. Delays in balancing, allocation and reconciliation calculations may impose costs on Users which would make the market less competitive and less efficient. The Authority considers that the proposed amendments will help ensure that the retail gas market is regulated and is operated in a manner that is open and competitive, efficient and fair to gas market participants and their customers. For these reasons, the Authority is of the view that the proposed changes satisfy section 11ZOO(1)(a)(ii) of the Act.
24. The Authority considers there is no other principle, criterion or requirement that is prescribed for the purposes of section 11ZOO(1)(b) of the Act that is relevant for approving this proposed Rule Change.
25. The Authority notes that REMCo submitted Rule Change C02/13R to the Committee for consideration, and the Committee unanimously agreed that it is a low impact Rule Change.⁵ The Authority also notes that REMCo commenced a consultation process in accordance with the requirements of Rule 399A(1)(a) and it received one submission in support of the Rule Change, and no objections. The Authority is satisfied that the requirements under section 11ZOO(2) of the Act have been met.
26. Based on the assessment above, the Authority is of the view that the proposed amendments in Rule Change C02/13R meet all the prerequisites of approval of amendments as required under section 11ZOO of the Act.
27. 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.

⁵ Pursuant to Rule 397, if the Committee unanimously determine that the Rule change is likely to have a low impact, the Committee must advise REMCo of that determination and submit an impact and implementation report to REMCo within two business days after making the determination. The impact and implementation report on Rule change C02/13R was submitted to the Authority.

2.2.4 Rule Change C03/13C – Amendments to the FRC Hub Operational Terms and Conditions

28. Rule Change C03/13C proposes to:
- replace all references to “FRC Hub Conditions” with “FRC Hub Operational Terms and Conditions”;
 - amend Rule 14(2) to remove the Hub T&Cs from the Rule Change process under Chapter 9 of the Rules;
 - insert a new Rule 14(4) that requires REMCo to publish new versions of the Spec Pack, as amended from time to time; and
 - implement a new version 6 of the Hub T&Cs that applies consistently across Western Australia, South Australia, Victoria and Queensland.
29. The FRC Hub referred in this Rule Change is owned and operated by the AEMO. It provides a communications hub for gas retail market participants on a contractual basis via the Hub T&Cs. The Hub T&Cs specifies subscribers’ obligations for the use of the FRC Hub and AEMO’s obligations for delivering services for the FRC Hub.
30. AEMO gives REMCo access to the FRC Hub via a contractual arrangement. REMCo then provides communications services to the WA gas retail market participants via the Hub T&Cs.
31. Currently, South Australia and Western Australia operate under version 4 of the Hub T&Cs, whereas Victoria and Queensland operate under version 5 of the Hub T&Cs. AEMO has developed version 6 of the Hub T&Cs, with the main change in version 6 being that AEMO will be required to consult on any changes to the Hub T&Cs with market participants in each jurisdiction that use the FRC Hub.
32. The Authority considers that:
- replacing all references to “FRC Hub Conditions” with “FRC Hub Operational Terms and Conditions” will make the term easier to comprehend.
 - removing the Hub T&Cs from the Rule Change process will ensure that REMCo and AEMO can manage the Hub T&Cs in a consistent manner across all of the jurisdictions that use the FRC Hub, and will allow the market to be operated in a more efficient and cost-effective way.
 - requiring REMCo to publish updates to the Spec Pack will ensure that market participants have access to the most up-to-date information on the Scheme.
 - implementing a new version 6 of the Hub T&Cs that applies consistently across Western Australia, South Australia, Victoria and Queensland will allow REMCo and AEMO to operate the FRC Hub in a more clear and efficient way.
33. For these reasons, the Authority is of the view that compliance of the Scheme with the Act is likely to improve if the proposed amendments are made, and hence will satisfy the requirement under section 11ZOO(1)(a)(i) of the Act.

34. The Authority understands from REMCo that should this Rule Change be implemented, both REMCo and AEMO will still run two separate and parallel Procedure Change processes for future changes to the Hub T&Cs. If a change to the Hub T&Cs is approved by AEMO for the Eastern States that is not approved by REMCo for Western Australia (or vice versa), then under the terms of the contract between AEMO and REMCo, AEMO must provide services to REMCo in accordance with the approved Hub T&Cs in Western Australia. In this case, AEMO will have to operate the FRC Hub under a different version of Hub T&Cs for WA market participants, and AEMO can pass on any additional costs for doing so. On the other hand, if a change to the Hub T&Cs is approved by both AEMO and REMCo, then AEMO will operate the FRC Hub under one version of Hub T&Cs that will apply to both the Eastern States and Western Australia.
35. Compared to the status quo (i.e. without this Rule Change), there will be cost savings on the administrative costs incurred by REMCo in seeking the Authority's approval for future changes to the Hub T&Cs and the associated costs incurred by the Authority in processing the changes, under each of the above two scenarios. There will be also cost savings in operating costs by AEMO if only one version of Hub T&Cs applies. However, there will be no further costs resulting from this Rule Change if circumstances arise that justifies AEMO to operate a different version of the Hub T&Cs specifically for Western Australia.
36. The Authority considers that the overall impact of this Rule Change is that it will not impose further costs to market participants and consumers, and will save costs in the event a future change to the Hub T&Cs is approved by both AEMO and REMCo. The Authority considers that the proposed amendments will help ensure that the retail gas market is regulated and is operated in a manner that is more efficient and cost-effective.
37. This Rule Change proposes to remove the Hub T&Cs from the Rule Change process, which will effectively remove the Authority's role in approving amendments to the Hub T&Cs in Western Australia, and any oversight on future changes to the Hub T&Cs. The Authority notes there is currently no appeal mechanism for decisions made by REMCo to be reviewed. Whilst the contractual arrangement between REMCo and AEMO will ensure that the FRC Hub is operated under the terms and conditions agreed by REMCo for WA market participants, the Authority considers managing changes to the Hub T&Cs solely through this contractual agreement may not be a robust form of protection for market participants and consumers in Western Australia. The Authority considers that there is still a risk that REMCo may make changes to the Hub T&Cs that have a detrimental effect on market participants and consumers in Western Australia.
38. However, the Authority considers that on balance, the overall benefits of reduced costs offered by this Rule Change outweigh the risks associated with the removal of regulatory oversight, given the nature of what is covered by the Hub T&Cs⁶, the protection offered by the contract between AEMO and REMCo, and the remoteness of the risk of REMCo making changes to the Hub T&Cs that will be detrimental to market participants and customers in Western Australia. This remoteness stems from REMCo being governed under the co-regulatory model with a Board comprising a mix of independent directors and representatives from market participants. Therefore, it is unlikely REMCo will make changes to the Hub T&Cs that are not for the best interests of the market participants and consumers. The Authority notes that no objections and one submission in support of the Rule

⁶ The Hub T&Cs merely govern the communication protocol within the FRC Hub.

Change were received from market participants during the two rounds of consultation conducted by REMCo.

39. Furthermore, the Authority is of the view that in the long run, reduced regulation will serve to promote increased competition in the market. A comparison can be drawn with the retail gas market in the Eastern States where AEMO is solely responsible for managing changes made to the Hub T&Cs, and that there is no regulatory approval or oversight involved in the process.
40. For these reasons, the Authority is of the view that the proposed changes satisfy section 11ZOO(1)(a)(ii) of the Act.
41. The Authority considers there is no other principle, criterion or requirement that is prescribed for the purposes of section 11ZOO(1)(b) of the Act that is relevant for approving this proposed Rule Change.
42. The Authority notes that REMCo submitted Rule Change C03/13C to the Committee for consideration, where the Committee unanimously agreed that it is a high impact Rule Change⁷ because the changes could have a material commercial impact on REMCo, participants, pipeline operators, or prescribed persons. The Authority has noted that REMCo conducted two rounds of consultation as required under the Rules. The Authority considers that the requirements under section 11ZOO(2) of the Act have been met.
43. Based on the assessment above, the Authority is of the view that the proposed amendments in Rule Change C03/13C meet all the prerequisites of approval of amendments as required under section 11ZOO of the Act.
44. 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.

2.2.5 Rule Change C04/13S – Clarification to the REMCo Constitution

45. Rule Change C04/13S proposes to include an additional clause 7A.2(e) into the REMCo Constitution to clarify an issue relating to the approval of Self Contracting Users (**SCUs**)⁸ as Associate Members⁹ of REMCo.
46. This additional clause was suggested by the Authority in its decision on 11 September 2012¹⁰ on amendments to the REMCo Constitution, which addressed a circulatory problem between the REMCo Constitution, the Rules and the ATCO Gas Australia Haulage Contracts. The Authority understood that whilst

⁷ Pursuant to Rule 398, if the Committee considers that the Rule Change is high impact, it must notify REMCo of the determination and submit an impact and implementation report to REMCo. REMCo must notify and seek submissions from each participant, pipeline operator, prescribed person and interested person. REMCo submitted an impact and implementation report to the Authority.

⁸ Under the Rules, a SCU is defined to mean a user that withdraws gas from a sub-network for the sole purpose of supply to a customer that is either itself or a related body corporate.

⁹ An Associate Member is an entity that has functions in the gas retail market other than as a retailer or network operator of the market.

¹⁰ See ERA website, 11 September 2013, Decision on amendments to the Constitution of the Retail Energy Market Company, <http://www.erawa.com.au/cproot/10756/2/20120912%20-%20D91856%20-%20Decision%20on%20amendments%20to%20the%20Constitution%20of%20the%20Retail%20Energy%20Market%20Company.pdf>

REMCo agreed 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 recommended that REMCo takes into account the clarification issue when it next proposes any other amendments to the REMCo Constitution.

47. The Authority is of the view that the proposed amendments will add further clarity to the process for approving SCUs as Associate Members of REMCo, and this clarity will make it easier for SCUs to enter the market, which will increase competition and make the market more open and competitive; make the process for approval of Associate Memberships more efficient; and be more fair to potential new SCUs. For these reasons, the Authority is of the view that the proposed amendments will allow the Scheme to continue to comply with the Act and be suitable for the purposes of section 11ZOB of the Act. Hence, this Rule Change satisfies both requirements in section 11ZOO(1)(a)(i) and section 11ZOO(1)(a)(ii) of the Act.
48. The Authority considers there is no other principle, criterion or requirement that is prescribed for the purposes of section 11ZOO(1)(b) of the Act that is relevant for approving this proposed Rule Change.
49. The Authority notes that the consultation requirement in section 11ZOO(2) refers to amendments to the Rules and it is not a prerequisite to approval of amendments to the REMCo Constitution. However, the Authority is aware that, consistent with the requirement under the REMCo Constitution, REMCo has sought agreement from its Members to amend the Constitution by circular resolution, and that the Members unanimously approved the proposed changes.
50. Based on the assessment above, the Authority is of the view that the proposed amendments in Rule Change C04/13S meet all the prerequisites of approval of amendments as required under section 11ZOO of the Act.
51. 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.

3 CONCLUSION

52. The Authority considers that the proposed amendments to the REMCo Scheme in Rule Changes C01/13S, C02/13R, C03/13C and C04/13S meet the requirements for approval, in accordance with sections 11ZOO and 11ZOP of the Act. Hence, the Authority approves the amendments proposed in Rule Changes C01/13S, C02/13R, C03/13C and C04/13S pursuant to section 11ZOM of the Act.