



Retail Energy Market Company Limited
ABN 15 103 318 556
228 Adelaide Terrace
Perth WA 6000
Telephone: (618) 6212 1829
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www.remco.net.au

4 July 2012

Mr Lyndon Rowe
Chairman
Economic Regulation Authority
Level 4, Albert Facey House
469-489 Wellington Street
Perth WA 6000

Dear Mr Rowe

RE: Approval of Amendments to the REMCo Constitution

Under section 11ZOL of the *Energy Coordination Act 1994* (the "Act"), the Retail Energy Market Company Ltd ("REMCo") may prepare an amendment to its Retail Market Scheme (the "Scheme"), and submit the amendment to the Economic Regulation Authority (the "Authority") for approval. The Authority is to approve amendments to the Scheme under section 11ZOM of the Act.

The Scheme is defined to include, amongst other things, the REMCo Constitution of Retail Energy Market Company Ltd (the "Constitution"); and as such, the Authority's approval is required for amendments to the Constitution.

On 5 January 2012, Geraldton Brickworks Pty Ltd ("GBW") submitted an application to become an Associate Member of REMCo, with the intent of becoming a Self-Contracting User ("SCU").

GBW's application was put before the REMCo Board of Directors (the "Board") in February 2012, and in considering this application, the Board noted a circularity problem between:

- the Constitution;
- the Retail Market Rules (the "Rules"); and
- the ATCO Gas Australia ("ATCO") Haulage Contracts (the "Haulage Contracts").

The problem relates to clause 7A of the Constitution, some definitions in the Rules, and the fact that there is a condition precedent in the Haulage Contracts that require Shippers to be a Member of an approved retail market scheme. The circularity problem is that:

- the Board must approve an application from an entity to become an Associate Member if the entity is a SCU;
- to become a SCU, the entity must already be a User;
- a User 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.

This is clearly a drafting issue in the Constitution, Rules, and/or Haulage Contracts, as the intent of the Scheme is clearly to allow for SCUs.

REMCo received legal advice indicating that the Board had sufficient discretion within the drafting of clause 7A of the Constitution to allow them to approve GBW's application, and so the Board did so. However, the Board requested that REMCo take steps to clarify this drafting problem.

REMCo received legal advice on the drafting of some amendments to the Constitution to address the drafting problem, and reviewed the proposed changes with the Rule Change Committee (the "RCC") on 18 April 2012.

The RCC unanimously endorsed the proposed changes to the Constitution, with one minor addition to the change.

The proposed changes to the REMCo Constitution are listed in Attachment A to this letter.

REMCo's Members were asked at an Extraordinary General Meeting on 21 June 2012 to approve the following resolution:

THAT the Constitution of the Company be amended with effect on and from the date approved by the Authority as contained in Attachment A to the Notice for the REMCo Extraordinary General Meeting scheduled for 21 June 2012.

The Members unanimously approved this resolution at its meeting on 21 June 2012.

Therefore, REMCo requests that the Authority:

- accept this letter and its attachments as a submission for an amendment of the Scheme under section 11ZOL of the Act; and
- consider and approve the proposed amendments to the Constitution under section 11ZOM of the Act, to take effect upon publication of the Authority's approval in the *Gazette*.

Section 11ZOO of the Act specifies the criteria that the Authority is to consider in determining whether to approve an amendment to the Scheme.

A table is provided in Attachment B to this letter that lays out the requirements that the Authority is to consider under section 11ZOO of the Act, and provides REMCo's commentary as to why these criteria have been met.

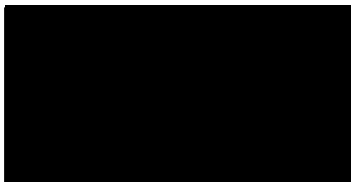
The following documents are also attached to assist the Authority in its deliberations on this matter:

- a copy of the "Notice of Extraordinary General Meeting", dated 31 May 2012, which was the basis on which REMCo's Members considered and approved the amendments to the Constitution (this notice includes the "Explanatory Memorandum" for the Extraordinary General Meeting); and
- a copy of the draft the minutes from the Extraordinary General Meeting of 21 June 2012, noting that these minutes are set to be approved by the Board at its meeting on 24 July 2012.

Once the Authority approves the amendments to the Constitution, REMCo will file an updated version of the Constitution with the Australian Securities and Investment Commission ("ASIC"), which will then take effect upon the date that the Authority's approval is published in the *Gazette*.

I am available on (08) 6212 1829 or on 0421 093 598 if you would like set up a meeting to discuss this application, or if have any questions or need any further information.

Yours sincerely



STEPHEN ELIOT
Chief Executive Officer

Copy: Ms Wana Yang, Assistant Director, Markets

Enclosures: Attachment A – Proposed Changes to the REMCo Constitution
Attachment B – Criteria for Approval of Change to the REMCo Scheme
Notice of Extraordinary General Meeting (dated 31 May 2012)
Minutes of Extraordinary General Meeting of the Members (date 21 June 2012)

ATTACHMENT A – PROPOSED CHANGES TO THE REMCO CONSTITUTION

7A Associate Membership

7A.1 Eligibility

A person (or if more than one person, each of those persons collectively) shall be eligible to be an Associate Member only if the person:

- (a) completes an application for Associate Membership in the form prescribed by the Board;
- ~~(a)~~(b) is or is likely to become, in the reasonable opinion of the Board, a Self-Contracting User; and
- ~~(b)~~(c) agrees in writing to:
 - (i) become an Associate Member; and
 - (ii) be bound by the Constitution; and
- ~~(c) completes an application for Associate Membership in the form prescribed by the Board.~~

7A.2 Application for Associate Membership

- (a) The Board must (subject to clause 8.3) accept an application for Associate Membership if the applicant is, or is likely to be, in the reasonable opinion of the Board, a Self-Contracting User.
- (b) The Board may accept, reject or defer consideration of an application for Associate Membership if, in the reasonable opinion of the Board, the applicant is likely to become a Self-Contracting User.
- (c) If the Board is not satisfied, acting reasonably, that an applicant is, or is likely to become a Self-Contracting User, it may ~~must~~ reject or defer consideration of an application by that applicant.
- ~~(a)~~(d) If accepted, the applicant is taken to be an Associate Member from the date of acceptance, or such other date determined by the Board.

7A.3 Rights of Associate Member

An Associate Member has all the rights and privileges of a Member pursuant to this Constitution, subject to the following:

- (a) an Associate Member is not entitled to vote at a general meeting of the Company (subject to the requirements in section 246B of the Corporations Act 2001); and
- (b) an Associate Member does not have a right to nominate a Director.

8.2 Automatic cessation

A person ceases to be a Member:

- (a) if the person was the holder of a Gas Distribution Licence, if that person ceases to hold a Gas Distribution Licence; or,
- (b) if the person carried on the business of Gas Retailer, if that person ceases, or has ceased, to carry on the business of Gas Retailer; or
- (c) if the person was an Associate Member, if that person ceases to be a Self-Contracting User or does not become a Self-Contracting User within the period of time specified by the Board under clause 7A.2.

For the purposes of this Clause 8.2, the words "Gas Retailer" have same the meaning given to them in Clause 7.1.

Attachment B – Criteria for Approval of Change to the REMCo Scheme

Section	Requirement	REMCo Comment
11ZOO(1)	The Authority may approve an amendment to the Scheme if it is satisfied that:	
	(a) if the amendment is made, the provisions of the Scheme:	
	(i) will comply with the Act; and	The intent of the Scheme is clearly to allow SCUs, as this will give end-use gas customers the ability to supply themselves with gas rather than purchase supply from retailers, and will promote competition in the market. The changes to the Constitution will correct a drafting error that hinders the Board approval process for admitting SCUs as Associate Members of REMCo. As such, REMCo submits that Scheme compliance with the Act will improve if the Authority approves the changes to the Constitution (noting that the Scheme currently complies with the Act).
	(ii) be suitable for the purposes of section 11ZOB;	Section 11ZOB indicates that the purpose of the Scheme is to ensure that the retail gas 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. REMCo submits that, as the amendments to the Scheme will give end-use gas customers the ability to supply themselves with gas rather than purchase supply from retailers, and will promote competition in the market. As a result, the amendments to the Constitution will expressly help meet criteria (a) and (c).
(b) any other principle, criterion, or requirement that is prescribed for the purposes of this paragraph has been met.	REMCo is not aware of any regulations under section 11ZOO(b), so this section of the Act is not applicable.	

Attachment B – Criteria for Approval of Change to the REMCo Scheme

Section	Requirement	REMCo Comment
11ZOO(2)	<p>The Authority may approve an amendment to the Scheme under section 11ZOM only if it is satisfied that the consultation required by section 11ZOL(3) has taken place and:</p> <p>(a) Each person required to be consulted has agreed to the amendment; or</p> <p>(b) If any person required to be consulted has not so agreed, that person has been given a reasonable opportunity in the course of consultation to provide reasons for not agreeing, and any reasons so provided have been considered.</p>	<p>REMCo notes that four of REMCo's five Members were present at the Annual General Meeting, and so a quorum was formed for this meeting; and that all four of the Members in attendance voted in favour of the amendments to the Constitution.</p> <p>REMCo also notes that, as the Constitution is not part of the Rules, the consultation requirements for a Rule change under Chapter 9 of the Rules do not apply to the changes to the Constitution.</p> <p>As a result, REMCo submits that it has met all of the consultation requirements for the amendments to the Constitution, and that each person required to be consulted has agreed to the amendment.</p>

Retail Energy Market Company Limited
ACN 103 318 556
Minutes of Extraordinary General Meeting (EGM) of the Members
Held at Level 13, 1 William Street, Perth, commencing Thursday 21 June 2012 at 10am

PRESENT:

Ms. Samantha Tough	Independent Chair
Ms. Anne Tregonning	Independent Director
Ms. Deborah Evans	ATCO Gas Australia
Mr. Stephen MacLean	Synergy
Mr. Corey Dykstra	Alinta Sales Pty Ltd
Mr. Geoff Gaston	Perth Energy

IN ATTENDANCE:

Mr. Stephen Eliot	Chief Executive Officer (CEO)
Mr. Baden Bowen	Company Secretary (CS)

APOLOGY:

Premier Power

OBSERVERS:

Ms. Wana Yang	Economic Regulation Authority
Ms. Michelle Shepherd	Alinta Sales Pty Ltd

Agenda Item	Action
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OPEN MEETING

The Chair opened the meeting commencing on Thursday 21 June 2012 at 10:00 AM.

It is noted that 50% of Members are required to be present to form a quorum. As 4 of the 5 REMCo Members were present, a quorum was formed.

1. AMENDMENT OF CLAUSES 7A AND 8.2 OF THE REMCO CONSTITUTION

Premier Power did not provide a proxy vote. Otherwise it was unanimously resolved:

THAT the Constitution of the Company be amended with effect on and from the date approved by the Economic Regulation Authority as contained in Attachment A to the Notice for the REMCo Extraordinary General Meeting scheduled for 21 June 2012.

The information contained in this document has been prepared for and is confidential to the Members of Retail Energy Market Company Limited ACN 103 318 556. Copying or distribution of this document or any information contained in it by anyone other than the addressee is prohibited. If you are not the intended recipient, any use, disclosure or copying of this document is unauthorised. If you have received this document in error, please call Baden Bowen 0402 339 443

**Agenda
Item**

Action

APPROVED AS A CORRECT RECORD OF THE PROCEEDINGS AT THE
EXTRAORDINARY GENERAL MEETING OF MEMBERS HELD ON 21 JUNE
2012.

.....
Signed: CHAIR

.....
Date

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NOTICE OF EXTRAORDINARY GENERAL MEETING

of

**Retail Energy Market Company Limited
ABN 15 103 318 556 ("REMCo")**

Notice is hereby given of the fifth Extraordinary General Meeting of REMCo to be held at the offices of Alinta Sales Pty Ltd, Level 13, The Quadrant, 1 William Street, Perth, Western Australia on Thursday 21 June 2012 at 10:00 AM (WST) for the following purposes:

BUSINESS:

1. Amendment of Clauses 7A and 8.2 the REMCo Constitution

To amend the Company's Constitution to remove a drafting issue that creates a problem for the Board in approving Associate Members to REMCo.

To consider and, if thought fit, to pass the following resolution:

THAT the Constitution of the Company be amended with effect on and from the date approved by the Economic Regulation Authority as contained in Attachment A to the Notice for the REMCo Extraordinary General Meeting scheduled for 21 June 2012.

By order of the Board

Baden M Bowen
Company Secretary

31 May 2012

VOTING BY PROXY:

- A Member has the right to appoint a proxy to attend and vote for the Member at the Meeting.
- The proxy need not be a Member of the Company.
- A Member who is entitled to cast 2 or more votes may appoint 2 proxies and may specify the proportion or number of votes each proxy is entitled to exercise.
- The instrument appointing a proxy shall be in writing and signed by the appointor or his or her duly authorised attorney or, if the appointor is a corporation, either under seal or signed by two directors, or one director and company secretary, of the company. If signed under a power of attorney or other authorisation a certified copy of the power or attorney or other authorising document must accompany the proxy form.
- A Proxy Form accompanies this Notice. To be effective, Proxy Forms (duly completed and signed) must be received by the Company at its registered office:
 - (a) 228 Adelaide Terrace
PERTH WA 6000; or
 - (b) by facsimile to facsimile number (08) 6212 1038;
(marked to the attention of the CEO) no less than 48 business hours before the time of the general meeting – that is 10:00 AM (WST) on Tuesday 19 June 2012.

**RETAIL ENERGY MARKET COMPANY LIMITED –
ACN 103 318 556
PROXY FORM**

We
(MEMBER NAME AND ACN/ABN)

of
(ADDRESS)

being a Member of Retail Energy Market Company Limited ABN 15 103 318 556 (the "Company"),
appoint:

.....
(PROXY NAME)

of
(ADDRESS)

or failing such appointment, or in the absence of that person.....
(ALTERNATE PROXY NAME)

of
(ADDRESS)

or failing both such appointments, or in the absence of both of the above named persons, the Chair of the meeting, as our proxy to vote for us on our behalf (with discretion as to any business not referred to below) at the General Meeting of the Company to be held on Tuesday 21 June 2011 and at any adjournment of that meeting.

Our Proxy is authorised to vote as follows:

Resolution 1: Amendment of clauses 7A and 8.2 of the REMCo Constitution	in favour/against <i>(delete as appropriate)</i>
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Unless otherwise instructed, the Proxy may vote as he or she thinks fit.

EXECUTED BY
(MEMBER NAME AND ACN/ABN)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Signature of Director

.....
Signature of Director/Secretary

Note: Please read under "VOTING BY PROXY" at the end of the Notice of General Meeting, as to completion and lodgement of this Proxy Form.



RETAIL ENERGY MARKET COMPANY LIMITED
ACN 103 318 556 ("REMCo")

EXPLANATORY MEMORANDUM – MEETING 21 June 2012

The purpose of this Explanatory Memorandum is to provide all information that is reasonably necessary to enable the Members of the Company to determine how to vote on resolutions to be put to the General Meeting of the Company, to be held at 10:00 AM (WST) on Thursday 21 June 2012 (the "meeting").

1. Amendment of Clauses 7A and 8.2 of the REMCo Constitution

On 5 January 2012, Geraldton Brickworks Pty Ltd ("GBW") submitted an application to REMCo to become an Associate Member of REMCo, with the intent of becoming a Self-Contracting User.

This application was put before the REMCo Board of Directors (the "Board") in February 2012, and in considering this application, the Board noted a circularity problem between:

- the Constitution of Retail Energy Market Company Limited (the "Constitution");
- the Retail Market Rule (the "Rules"); and
- the ATCO Gas Australia ("ATCO") Haulage Contract (the "Haulage Contract").

The problem relates to clause 7A of the Constitution, some definitions in the Rules, and the fact that there is a condition precedent in the ATCO Haulage Contracts that the Shipper must be a Member of an approved retail market scheme.

The circularity problem is that:

- the 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;
- a User 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.

This is clearly a drafting issue in the Constitution, Rules, and/or Haulage Contract, as the intent is clearly to allow for Self-Contracting Users.

REMCo received legal advice indicating that the Board has sufficient discretion within the drafting of clause 7A of the Constitution to allow them to approve GBW's application, and so the Board has done so. However, the Board requested that REMCo take steps to clarify this drafting problem.

REMCo received legal advice on the drafting of the proposed amendments to the Constitution, and reviewed the proposed changes with the Rule Change Committee (the "RCC") on 18 April 2012. The RCC unanimously endorsed the proposed changes to the Constitution, with one minor addition to the change.

The RCC endorsed proposes to the Constitution are listed in Attachment A below.

Once the Members approve this change to the Constitution, REMCo will:

- apply to the Economic Regulation Authority ("ERA") for approval to amend the Constitution;
- notify the Australian Securities and Investment Commission of the revisions to the Constitution; and
- post the revised Constitution on the REMCo website.

END OF EXPLANATORY MEMORANDUM

ATTACHMENT A: PROPOSED CHANGES TO THE REMCO CONSTITUTION

7A Associate Membership

7A.1 Eligibility

A person (or if more than one person, each of those persons collectively) shall be eligible to be an Associate Member only if the person:

- (a) completes an application for Associate Membership in the form prescribed by the Board;
- (a)(b) is or is likely to become, in the reasonable opinion of the Board, a Self-Contracting User; and
- (b)(c) agrees in writing to:
 - (i) become an Associate Member; and
 - (ii) be bound by the Constitution; ~~and~~
- ~~(c) completes an application for Associate Membership in the form prescribed by the Board.~~

7A.2 Application for Associate Membership

- (a) The Board must (subject to clause 8.3) accept an application for Associate Membership if the applicant is, or is likely to be, in the reasonable opinion of the Board, a Self-Contracting User.
- (b) The Board may accept, reject or defer consideration of an application for Associate Membership if, in the reasonable opinion of the Board, the applicant is likely to become a Self-Contracting User.
- (c) If the Board is not satisfied, acting reasonably, that an applicant is, or is likely to become a Self-Contracting User, it may ~~must~~ reject or defer consideration of an application by that applicant.
- (a)(d) If accepted, the applicant is taken to be an Associate Member from the date of acceptance, or such other date determined by the Board.

7A.3 Rights of Associate Member

An Associate Member has all the rights and privileges of a Member pursuant to this Constitution, subject to the following:

- (a) an Associate Member is not entitled to vote at a general meeting of the Company (subject to the requirements in section 246B of the Corporations Act 2001); and
- (b) an Associate Member does not have a right to nominate a Director.

8.2 Automatic cessation

A person ceases to be a Member:

- (a) if the person was the holder of a Gas Distribution Licence, if that person ceases to hold a Gas Distribution Licence; ~~or,~~
- (b) if the person carried on the business of Gas Retailer, if that person ceases, or has ceased, to carry on the business of Gas Retailer; ~~or~~
- (c) if the person was an Associate Member, if that person ceases to be a Self-Contracting User or does not become a Self-Contracting User within the period of time specified by the Board under clause 7A.2.

For the purposes of this Clause 8.2, the words "Gas Retailer" have same the meaning given to them in Clause 7.1.