

WA Gas Retail Market Agreement



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WA Gas Retail Market Agreement

Date: 2016

Parties

Australian Energy Market Operator Level 22, 530 Collins Street, Melbourne, Victoria 3000

AEMO

and

The Parties listed in Schedule 1.

Recitals

- A. AEMO's functions include operating the National Electricity Market; gas retail markets in Victoria, New South Wales, Australian Capital Territory, South Australia and Queensland; the Short Term Trading Market; the Gas Supply Hub; the Western Australian Wholesale Electricity Market; the Declared Transmission System in Victoria; the Gas Bulletin Board in Western Australia; the Natural Gas Services Bulletin Board for the South East of Australia; developing the Gas Statement of Opportunities for Western Australia; and acting as the National Transmission Planner.
- B. REMCo operates a gas retail market scheme for gas distribution systems in Western Australia (**WA Gas Retail Market**) approved by the Minister for Energy of Western Australia under section 44 of the *Energy Legislation Amendment Act 2003 (WA)* and amended by the Economic Regulatory Authority under section 11ZOM of the *Energy Coordination Act 1994 (WA)* (**Scheme**).
- C. Section 11ZOF of the *Energy Coordination Act 1994 (WA)* (**ECA**) requires the Scheme to consist of:
- (a) one or more agreements made between persons who are gas market participants in relation to that system (**WA Gas Retail Market Agreement**);
 - (b) a formal entity (whether a company, partnership, trust or otherwise) to provide the structure through which the scheme is administered (**Formal Entity**); and
 - (c) a set of retail market rules.
- D. REMCo and AEMO agreed that the Scheme should be amended to transfer operation of the Scheme from REMCo to AEMO by:
- (a) AEMO replacing REMCo as the Formal Entity of the Scheme;
 - (b) a new WA Gas Retail Market Agreement being entered into between AEMO and gas market participants in relation to the WA Gas Retail Market; and
 - (c) changing the retail market rules of the Scheme into retail market procedures.
- E. This agreement is the new WA Gas Retail Market Agreement for the purposes of section 11ZOF(1)(a) of the ECA between persons who are gas market participants in relation to the WA Gas Retail Market.

Provisions

1. Interpretation

1.1 In this Agreement, unless the context requires otherwise, the following expressions have the following meanings:

Admission Note	has the meaning given to it in clause 5.1 of this Agreement.
AEMO	means the Australian Energy Market Operator (ACN 072 010 327).
AEMO Constitution	means the constitution governing AEMO.
AEMO Member	means a member as defined in clause 1.1 of the AEMO Constitution.
Agreement	means this WA Gas Retail Market Agreement, including any schedules or annexures thereto.
Commencement Date	means the date on which the amendment to the Scheme to, amongst other things, transfer administration of the Scheme from REMCo to AEMO under section 11ZOL of the ECA takes effect.
Compliance Panel	means the independent Compliance Panel constituted under the Retail Market Procedures.
Deadline	has the meaning given to it in clause 5.4 of this Agreement.
ECA	means the <i>Energy Coordination Act 1994 (WA)</i> .
Eligible	has the meaning given to it in clause 5.1 of this Agreement.
ERA	means the Economic Regulation Authority established under the <i>Economic Regulation Authority Act 2003 (WA)</i> .
Formal Entity	has the meaning given to it in Recital C(b) of this Agreement.
Gas Distribution Operator	has the meaning given to it in section 11ZOC(1) of the ECA.
New Participant	has the meaning given to it in clause 5.1 of this Agreement.
Party	means a party to this Agreement from time to time, and Parties means one or more of them.
REMCo	means the Retail Energy Market Company Limited (ACN 103 318 556).
Retail Gas Operator	has the meaning given to it in section 11ZOC(1)(b) of the ECA.
Retail Market Procedures	means the Retail Market Procedures approved as part of the Scheme for the purposes of section 11ZOF(1)(c) of the ECA.
Scheme	has the meaning given to it in Recital B of this Agreement.

Scheme Participant	means a WA Gas Retail Market Participant who is a Party to this Agreement from time-to-time, by reason of that WA Gas Retail Market Participant having executed this Agreement, or by reason of that WA Gas Retail Market Participant becoming a Party to this Agreement in accordance with clause 5.
Self-Contracting User	has the meaning given to it in the Retail Market Procedures.
WA	means Western Australia.
WA Gas Retail Market	means the Western Australian Gas Retail Market.
WA Gas Retail Market Agreement	has the meaning given to it in Recital C(a) of this Agreement.
WA Gas Retail Market Participant	means a Gas Distribution Operator, a Retail Gas Operator or a Self-Contracting User.

1.2 In this Agreement, unless the context requires otherwise:

- (a) a reference to a statute includes its subordinate legislation and a modification or re-enactment of either;
- (b) headings are for convenience only and do not affect interpretation;
- (c) “under” includes by, by virtue of, pursuant to and in accordance with;
- (d) “including” and similar expressions are not words of limitation;
- (e) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning; and
- (f) unless the context otherwise requires, a reference to:
 - (i) a person includes a corporation, a firm, a body corporate, an unincorporated association or any authority;
 - (ii) the singular includes the plural;
 - (iii) time is a reference to Perth, Western Australia time; and
 - (iv) \$ is to Australian currency unless denominated otherwise.

2. Term

2.1 This Agreement commences on the Commencement Date and continues until the earlier of the date that:

- (a) AEMO is wound up in accordance with its Constitution or otherwise ceases to exist as a legal entity;
- (b) this Agreement is terminated; or
- (c) the Scheme is no longer an approved Scheme under section 44 of the *Energy Legislation Amendment Act 2003* (WA) or section 11ZOJ of the ECA.

3. Termination

- 3.1 This Agreement may only be terminated by the unanimous written agreement of all Parties.
- 3.2 Upon termination of this Agreement for any reason this clause will survive termination and the Parties will be bound by these provisions.
- 3.3 Subject to clause 3.4:
- (a) a breach of this Agreement by a Party does not give rise to any claim, action, dispute, demand, complaint, suit, proceeding, liability or cost; and
 - (b) a breach of this Agreement or any aspect of the Scheme and the liability of each Party with respect to any such breach is governed by the ECA, or the Retail Market Procedures, or both, as applicable.
- 3.4 AEMO may bring a claim, action, demand, suit or proceeding for any breach by a Scheme Participant of an obligation to pay an amount to AEMO pursuant to the Retail Market Procedures.
- 3.5 Termination will not affect any rights or obligations of the Parties which may have accrued on or before termination.

4. Nature and purpose

- 4.1 This Agreement is an agreement for the purposes of section 11ZOF(1)(a) of the ECA.
- 4.2 AEMO shall be bound by and operate in accordance with, and observe the roles, functions, powers and obligations set out in the respective Retail Market Procedures, as amended from time to time.
- 4.3 The primary aim of AEMO, in respect of the ECA, is to develop and operate cost efficient and effective retail market arrangements, which are fair and equitable, to facilitate competition in the WA Gas Retail Market.
- 4.4 AEMO must act in a manner which treats all Scheme Participants fairly and equitably and does not unfairly discriminate between the interests of Scheme Participants.
- 4.5 Upon becoming a Party to this Agreement, AEMO and Scheme Participants agree:
- (a) to be bound by and observe the terms of the Retail Market Procedures;
 - (b) that any amendments to the Retail Market Procedures shall be made in accordance with the terms of the Retail Market Procedures for the time being in force; and
 - (c) to abide by any determination made by the Compliance Panel in a matter to which the Scheme Participant is a party.

5. New Participants

- 5.1 A person that is not a Party to this Agreement may apply to AEMO to become a Party to this Agreement (**New Participant**) if it is eligible to do so. A New Participant will be eligible only if the person:
- (a) is a WA Gas Retail Market Participant who is lawfully entitled to carry on that business;
 - (b) honestly and accurately provides to AEMO the information required under clause 5.2;

- (c) is not being wound up in accordance with the *Corporations Act 2001* (Cth);
- (d) is not immune from liabilities incurred under this Agreement or as a Scheme Participant;
- (e) is capable of being sued in its own name in a court of competent jurisdiction; and
- (f) agrees in writing to become bound by the terms and conditions of this Agreement.

(Eligible)

5.2 An application by a New Participant under clause 5.1 must be in the form of an admission note as annexed in the Annexure and must:

- (a) specify the name and ABN (if applicable) of the New Participant;
- (b) specify whether the New Participant is a Gas Distribution Operator, a Retail Gas Operator or a Self-Contracting User;
- (c) state that the New Participant is applying to become a Party to this Agreement; and
- (d) be signed by an authorised officer of the New Participant.

(Admission Note).

5.3 An Admission Note is an offer from the New Participant to the Parties (being AEMO and each WA Gas Retail Market Participant who was initially a Party to this Agreement and each WA Gas Retail Market Participant subsequently joining this Agreement under this clause 5) to amend this Agreement to add the New Participant as one of the Parties.

5.4 AEMO must accept an Admission Notice if the New Participant is Eligible. If AEMO is not satisfied a New Participant is Eligible (acting reasonably), it may reject or defer consideration of an Admission Note.

5.5 If a New Participant provides AEMO with an Admission Note, and AEMO provides written confirmation to the New Participant before 5:00 PM on the 10th Business Day after the notice is given (**Deadline**) that the Admission Note has been accepted, then the Parties are deemed by this clause 5.5 to have agreed irrevocably to the offer referred to in clause 5.3, and, subject to approval of the ERA, this Agreement is amended from the Deadline or such date as approved by the ERA to add the New Participant as one of the Parties.

6. Registration

6.1 WA Gas Market Participants that are Parties to this Agreement will be registered with AEMO as a Scheme Participant for the WA Gas Retail Market.

6.2 Gas Distribution Operators and Retail Gas Operators that are parties to this Agreement are members of the Scheme for the purposes of Part 2B of the ECA.

6.3 AEMO will maintain a register of all current Scheme Participants.

6.4 Subject to the AEMO Constitution, Scheme Participants may apply to become AEMO Members.

7. Exit provisions

- 7.1 A WA Gas Retail Market Participant ceases to be a Party to this Agreement and a Scheme Participant at the time that it ceases to be Eligible.
- 7.2 Each Scheme Participant must give reasonable information to AEMO on request to verify that it continues to be Eligible.
- 7.3 A WA Gas Retail Market Participant ceasing to be a Party to this Agreement and a Scheme Participant does not affect:
- (a) the rights of a Party to recover an amount or the obligation of a Party to pay an amount, that became payable prior to the date the Party ceased to be a party to this Agreement or a Scheme Participant;
 - (b) any rights of a Party that otherwise relate to, or may arise in the future from, any breach or non-observance of obligations under this Agreement;
 - (c) the obligation of a Party under any provision of the Retail Market Procedures relating to exiting the market.
- 7.4 Upon the date on which a WA Gas Retail Market Participant ceases to be a Party to this Agreement, this Agreement remains in full force and effect and binding on each of the remaining Scheme Participants.

8. Notices

- 8.1 Subject to clauses 8.2 and 8.3, a Party may deliver a notice in connection with this Agreement to another Party by email to the other Party at the email address attached to that Party in Schedule 1.
- 8.2 A Party must notify the other Parties of any change to its email address for the delivery of notices.
- 8.3 Upon receipt of notice under clause 8.2, the new email address becomes the Party's address for service of notices.
- 8.4 A notice takes effect at the time stated in the notice, except that if no time is stated in the notice or the time stated is before receipt, then a notice takes effect on receipt.

9. Costs

Each Party agrees to bear its own costs and expenses in complying with its obligations under this Agreement, except where expressly stated otherwise.

10. Assignment

No Party may assign, novate or transfer a right or obligation under this Agreement without the other Parties' prior written consent.

11. Amendments

This Agreement may only be varied by agreement in writing between the Parties and with the approval of the ERA under section 11ZOM of the ECA.

12. Governing Law

This Agreement is governed by the laws of Western Australia.

13. Severability

13.1 If at any time any provision of this Agreement is or becomes illegal, invalid or unenforceable at law, that provision will not affect or impair the legality, validity or enforceability of any other provision of this Agreement.

13.2 The remaining provisions of this Agreement remain in full force and effect.

14. Entire agreement

This Agreement constitutes the entire agreement between the Parties as to its subject matter and supersedes all prior negotiations, representations, proposals, undertakings and agreements, whether written or oral, relating to the subject matter of this Agreement.

15. Further Assurance

Each Party must do everything necessary to give full effect to this Agreement.

16. Counterparts

16.1 The Parties may execute this Agreement in any number of counterparts, which taken together constitute one instrument.

16.2 The Parties may exchange counterparts by scanning the entire duly executed counterpart and emailing it to the other Party.

Schedule 1 – Parties

Number	Name and address	Contact person	Email
1.	[insert]		[insert]
2.	[insert]		[insert]
3.	[insert]		[insert]
4.	[insert]		[insert]
5.	[insert]		[insert]
6.	[insert]		[insert]
7.	[insert]		[insert]
8.	[insert]		[insert]
9.	[insert]		[insert]

Annexure 1 – Admission Note

Admission Note

New Participant name: [insert]

New Participant ABN: [insert]

New Participant address: [insert]

New Participant contact person: [insert]

New Participant email address: [insert]

New Participant Category: [Gas Distribution Operator / Retail Gas Operator / Self-Contracting User] (delete whichever are not applicable)

[Insert name of New Participant] hereby applies to become a Party to the Western Australian Gas Retail Market Agreement dated [insert] (**Agreement**).

[Insert name of New Participant] acknowledges and agrees that if this application is accepted and [insert name of New Participant] is registered in accordance with the Agreement, [insert name of New Participant] agrees to be bound by the terms and conditions of the Agreement.

Defined terms used in this Admission Note have the same meaning as given to them in the Agreement.

Signed by [insert name and ABN of New)
Participant]:)
)

.....
Signature of authorised officer

.....
Date

.....
Name of authorised officer

[Insert position of authorised officer]

Executed by the parties as a deed:

Executed as a deed by **Australian Energy)**
Market Operator Limited (ACN 072 010 327))
under s 127 of the Corporations Act:)
)

Signature of Director

Signature of Director/Company Secretary

(Delete title which does not apply)

Print name in full

Print name in full

Executed as a deed by **[insert] ACN [insert])**
under s 127 of the Corporations Act:)
)

Signature of Director

Signature of Director/Company Secretary

(Delete title which does not apply)

Print name in full

Print name in full