

# SUPPLEMENT

to the Agenda of the Invitation to the  
Annual General Meeting on 23 April 2015



# RWE AKTIENGESELLSCHAFT ESSEN

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## SUPPLEMENT TO THE AGENDA OF THE INVITATION TO THE ANNUAL GENERAL MEETING ON 23 APRIL 2015

Pursuant to Section 122, Paragraph 2 of the German Stock Corporation Act, Dela Beteiligungs GmbH requested that the following items be included in the agenda of the Annual General Meeting of RWE Aktiengesellschaft that will take place at 10:00 a.m. on 23 April 2015 at the Grugahalle in 45131 Essen at Norbertstraße 2 and announced.

Therefore, the Agenda, which was published on 10 March 2015, shall hereby be supplemented with the following additional items numbered 7 to 9 while maintaining existing items 1 to 6, and this supplement shall hereby be announced:

## AGENDA

7. **Appointment of a special auditor in accordance with Section 142, Paragraph 1 of the German Stock Corporation Act to audit transactions conducted by management in relation to the acquisition, operation and partial sale of the Dutch energy utility Essent**

A special auditor in accordance with Section 142, Paragraph 1 of the German Stock Corporation Act, who shall examine the transactions set out in Item 7.1 below and find answers to the questions posed in Item 7.2, shall be appointed.

- 7.1. **Description of the transactions conducted by management that are to be audited**

The subject matter of the special audit is the audit of transactions conducted by management relating to the acquisition and operation of the energy utility Essent NV (including the affiliated companies belonging to the Essent Group, collectively referred to as "Essent" hereinafter) and relating to the sale of the Essent Local Energy Solution (ELES) district heating division, the subsidiary of Essent NV in the Netherlands, including certain power stations.

In 2009, RWE decided to acquire Essent, one of the largest Dutch energy utilities. The Chairman of the Executive Board at the time, Großmann, believed that Essent was "a perfect partner" (cf. Handelsblatt dated 12 January 2009) for RWE. At the time, the shares in Essent were largely held by Dutch municipalities and provinces. RWE intended to benefit from the transaction to become a leading energy supplier in the Benelux countries and expected to leverage synergies which would amount to about €100 million per year from

2014 onwards. In fact, this highly touted acquisition proved to be a disaster. So far, 50% of the €8 billion purchase price paid at the time according to media reports have had to be written off, resulting in a remaining enterprise value of a mere €4 billion. In public, one thus rightly spoke of RWE AG's most severe crisis as follows:

"The most serious crisis since the advent of the wall outlet is not solely due to the botched transformation of the energy system. Management errors are also causing the Group some grief." (cf. Manager Magazin, March 2014)

In December 2013, Essent's district heating division Essent Local Energy Solutions (ELES) was sold to the Dutch pension fund PGGM and the energy service provider Dalkia, as were the three combined-cycle gas turbine power plants in Helmond, Eindhoven and Enschede (referred to as "partial divestments" hereinafter). RWE did not disclose the purchase price, but the following was announced in the press: "The proceeds on the sale of Essent's district heating activities are likely to be no more than a drop in the ocean for RWE." (cf. Handelsblatt dated 27 December 2013)

## 7.2. Questions that need to be answered

The special audit should answer the following questions:

- a) How did the acquisition of Essent come to pass? Who initiated the acquisition of Essent? Which former and current RWE AG corporate body members were involved in the acquisition and what was the nature of their involvement?

- b) Were the decisions to (i) acquire and (ii) implement the partial divestment of Essent reviewed with the diligence of a prudent and conscientious businessman in accordance with Section 93, Paragraph 1, Sentence 1 of the German Stock Corporation Act? Were the requirements imposed by the law and jurisdiction on privileged entrepreneurial decisions met? Did the Executive Board refer to objective bases for reaching its decision, in particular market studies and energy price forecasts, and take them into account? Did the Executive Board fulfil the due diligence duties imposed on it by German stock corporation law when preparing and implementing and monitoring the aforementioned transactions? Furthermore, did the Executive Board inform the shareholders to an appropriate extent at all times?
  
- c) Did the company manage risks sufficiently at all times during the acquisition and operation of Essent? What conclusions could be derived from this and how did the Executive Board react to this? Was the diligence of a prudent businessman exercised or was an entrepreneurial decision made for the benefit of the company once it had been found that the expected success did not materialise by “keeping” Essent instead of selling its completely or shedding it? If so, what were the reasons?
  
- d) What was Essent’s total income (net income) and total loss (net loss) from the date of its acquisition to 31 December 2014, broken down by year and in sum? The causes of the company’s earnings attributable to Essent must be fully determined. To what extent was the decline in electricity prices responsible for the

actual development? What were the specific reasons for the write-downs on the purchase price? What was Essent's open market value as of 31 December 2014?

- e) What was the purchase price for the district heating division (ELES) in detail and how high was this share valued relative to the total purchase price in 2009? What was the purchase price for the three combined-cycle gas turbine power plants in Helmond, Eindhoven and Enschede in detail and how high was their share valued relative to the total purchase price in 2009? How much EBIT, EBITDA and revenue did the district heating division (ELES) and the three combined-cycle gas turbine power plants in Helmond, Eindhoven and Enschede generate individually in 2009, 2010, 2011 and 2012? Were the purchase prices realised within the scope of the sale of these part-divisions appropriate and if so, why?
- f) Can former and/or current members of the Executive Board of RWE AG be held liable to pay compensation for the damages inflicted upon RWE AG and its shareholders in the past and in the future as a result of the aforementioned acquisition of Essent, the failure to conduct a complete sale, and the partial resale? If so, to what extent? In contrast, potential liability claims filed against the Supervisory Board shall not be the subject matter of the special audit.

### 7.3. Appointment of the special auditor

The special audit award shall be granted to

Dr. Zitzelsberger GmbH,  
Wirtschaftsprüfungsgesellschaft,  
Steuerberatungsgesellschaft,  
Maximiliansplatz 10,  
D-80333 Munich.

The special auditor shall be empowered to enlist the assistance of qualified individuals in support of its activities forming part of the special audit, in particular to conduct a legal audit. This shall include enlisting the assistance of individuals with knowledge of the energy utility sector.

Should the designated special auditor refuse to assume the mandate or fail to complete its work, the special audit award shall be granted to

WirtschaftsTreuhand GmbH,  
Wirtschaftsprüfungsgesellschaft,  
Steuerberatungsgesellschaft,  
Schulze-Delitzsch-Straße 28,  
D-70565 Stuttgart.

The special auditor shall be empowered to enlist the assistance of qualified individuals in support of its activities forming part of the special audit and to conduct a legal audit. This shall include enlisting the assistance of individuals with knowledge of the energy utility sector.



Should this special auditor also refuse to assume the mandate or fail to complete its work, the President of the Düsseldorf Regional Court shall appoint another auditor having the requisite qualifications.

**8. Appointment of a special auditor in accordance with Section 142, Paragraph 1 of the German Stock Corporation Act to conduct an audit of the transactions concluded by management in relation to the announced delisting of the subsidiary Lechwerke AG, Augsburg, Germany**

A special auditor shall be appointed in accordance with Section 142, Paragraph 1 of the German Stock Corporation Act to examine the transactions mentioned in Item 8.1 below and to find answers to the questions posed in Item 8.2 that follows it.

**8.1. Description of the transactions conducted by management that are to be audited**

The subject matter is the audit of transactions conducted by management in connection with the announced delisting of Lechwerke AG, Augsburg, Germany. RWE AG holds an 89.87 percent stake in Lechwerke AG via subsidiaries. Lechwerke AG's market capitalisation amounts to approximately €2.2 billion. According to a press release dated 10 December 2014, the Board of Management of Lechwerke AG decided on 10 December 2014 with the Supervisory Board's approval to revoke the permit for Lechwerke AG shares on the regulated market at the Frankfurt and Munich Stock Exchanges and to file an application for inclusion in qualified over-the-counter trading at the Munich Stock

Exchange (m:access). The market capitalisation of Lechwerke AG and, in turn, the value of the assets belonging to the RWE Group dropped on the day of the announcement. Since there is a factual group relationship with Lechwerke AG and the Supervisory Board of Lechwerke AG is partially staffed with members of the Executive Boards of RWE Deutschland AG and RWE Vertrieb AG, it is obvious that this measure was definitely coordinated and agreed upon with the management of RWE AG.

## 8.2. Questions that need to be answered

The special audit shall answer the following questions:

- a) Who initiated the delisting of Lechwerke AG? Did the Board of Management of Lechwerke AG decide to implement the delisting freely and independently? Did the Supervisory Board of Lechwerke AG decide to implement the delisting freely and independently? Were any related resolutions passed by RWE AG, RWE Deutschland AG, RWE Vertrieb AG or any other company affiliated with RWE AG and if so, what were they? Did RWE AG or RWE Deutschland AG or any other company affiliated with RWE AG or its corporate bodies exert influence on the issue of delisting and if so, who did this and how was it done? If influence was exerted, were the requirements of Sections 117 and 317 of the German Stock Corporation Act or other liability regulations complied with?

- b) If influence was exerted in accordance with sub-item a) above, were the requirements for entrepreneurial decisions in accordance with Section 93 of the German Stock Corporation Act satisfied? Was due diligence exercised in determining whether a delisting of Lechwerke AG is reasonable from a commercial and image-related point of view?
- c) In the absence of coordination and influence, should one have refrained from such activities at affiliated companies, primarily for reasons of due group compliance? If so, could liability claims possibly be filed due to a lack of group compliance and if so, against whom exactly?
- d) Was damage caused to RWE AG and/or the RWE Group as a result of the delisting of Lechwerke AG? If so, in which amount? How substantial are the trust and image losses suffered by RWE AG and/or the RWE Group? How is the delisting affecting the refinancing of Lechwerke AG? If this has not caused damage yet, could the delisting be harmful in the future? How much can the Lechwerke AG share be expected to drop in price due to its reduction in fungibility and the loss of trust on the capital market?
- e) What did it cost to list Lechwerke AG on the regulated market in 2013 and 2014? How high were the (direct and indirect) costs of the delisting? How high will the resulting planned cost savings be in 2015?

- f) Can members of the Executive Board of RWE AG or of the corporate bodies of companies affiliated with RWE AG be held liable to pay compensation for damages and if so, to what extent?

### 8.3. Appointment of the special auditor

The special audit award shall be granted to

GLNS,  
Rechtsanwälte Steuerberater Partnerschaft mbB,  
Max-Joseph-Str.7,  
D-80333 Munich.

The special auditor shall be empowered to enlist the assistance of qualified individuals in support of its activities forming part of the special audit, in particular to conduct a legal audit. This shall include enlisting the assistance of individuals with knowledge of the energy utility sector.

Should the designated special auditor refuse to assume the mandate or fail to complete its work, the special audit award shall be granted to

WirtschaftsTreuhand GmbH,  
Wirtschaftsprüfungsgesellschaft,  
Steuerberatungsgesellschaft,  
Schulze-Delitzsch-Straße 28,  
D-70565 Stuttgart.

The special auditor shall be empowered to enlist the assistance of qualified individuals in support of its activities forming part of the special audit, in particular

to conduct a legal audit. This shall include enlisting the assistance of individuals with knowledge of the energy utility sector.

Should this special auditor also refuse to assume the mandate or fail to complete its work, the President of the Düsseldorf Regional Court shall appoint another auditor having the requisite qualifications.

- 9. Appointment of a special auditor in accordance with Section 142, Paragraph 1 of the German Stock Corporation Act to conduct an audit of the transactions concluded by management in relation to the monitoring of affiliated companies, namely RWE Polska Contracting sp.z.o.o.**

A special auditor in accordance with Section 142, Paragraph 1 of the German Stock Corporation Act, who shall examine the transactions set out in Item 9.1 below and find answers to the questions posed in Item 9.2, shall be appointed.

- 9.1. Description of the transactions conducted by management that are to be audited**

The subject matter relates to the appointment of a special auditor in accordance with Section 142, Paragraph 1 of the German Stock Corporation Act to audit transactions conducted by management concerning the monitoring of RWE Polska Contracting sp. z.o.o., Poland, a Polish subsidiary of RWE AG. For years, RWE Polska Contracting sp. z.o.o. has been in a legal dispute with SKT Sp. z.o.o., the managing director of which is Mr. Benedikt Kotzur. The litigious matter is a

cooperation agreement that has been partially cancelled by RWE Polska Contracting sp. z.o.o. The following statement on this matter can be found on page 28 of the issue of Manager Magazin of December 2014:

“RWE managers have been waging a tough battle against the former Polish subcontractor Benedikt Kotzur regarding the latter’s rights arising from a business relationship that has long ended. This feud has even escalated up to Essen management. The District Attorney’s Office of the Ruhr metropolis has been investigating the RWE bosses for a suspected breach of trust since June of this year. The investigation was triggered by charges pressed by Kotzur against the Group’s Executive and Supervisory Boards. He argues that although RWE has lost a series of lawsuits against him time after time, the Essen electricity supplier only ever pays its debt if the Polish courts order the enforcement of the judgments. The resulting costs, including those for legal advice, are to the detriment of the company and its shareholders. By the time this document went to print, RWE had no knowledge of a preliminary investigation against the Executive and Supervisory Boards. However, the company would like to emphasise that it made all the payments “which we were ordered to make by the court.”

## 9.2. Questions that need to be answered

The special audit shall answer the following questions:

- a) Did the civil and enforcement proceedings brought against SKT Sp. z.o.o. cause damage to the subsidiary

RWE Polska Contracting sp. z.o.o. and the RWE Group and if so, in what amount and what did the damages consist of individually? How is the damage spread among the 2010, 2011, 2012, 2013 and 2014 fiscal years?

- b) Is the accusation that RWE only pays its debt to SKT sp. z.o.o. once the Polish courts order the enforcement of the judgment accurate? Were the claims asserted by SKT Sp. z.o.o. obviously justified and if so, in what amount?
- c) For what reasons did the Executive Board of RWE AG not become involved in this? From which point in time was the Executive Board informed of the dispute between RWE Polska Contracting sp. z.o.o. and SKT sp. z.o.o.? Did the Executive Board exercise the diligence of a prudent and conscientious managing director in monitoring RWE Polska Contracting sp. z.o.o.? Was the decision of the top echelons of the Group against becoming involved reached taking account of Section 93 of the German Stock Corporation Act? Did the Executive Board have an appropriate amount of information to make this decision in accordance with Section 93, Paragraph 1, Sentence 2 of the German Stock Corporation Act?
- d) Can former or current members of the Executive Board of RWE AG be held liable to pay compensation for past and future damages caused to the RWE Group as a result of the failure to become involved?

### 9.3. Appointment of the special auditor

The special audit award shall be granted to

Dr. Zitzelsberger GmbH,  
Wirtschaftsprüfungsgesellschaft,  
Steuerberatungsgesellschaft,  
Maximiliansplatz 10,  
D-80333 Munich.

The special auditor shall be empowered to enlist the assistance of qualified individuals in support of its activities forming part of the special audit, in particular to conduct a legal audit. This shall include enlisting the assistance of individuals with knowledge of the energy utility sector.

Should the designated special auditor refuse to assume the mandate or fail to complete its work, the special audit award shall be granted to

WirtschaftsTreuhand GmbH,  
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Schulze-Delitzsch-Straße 28,  
D-70565 Stuttgart.

The special auditor shall be empowered to enlist the assistance of qualified individuals in support of its activities forming part of the special audit, in particular to conduct a legal audit. This shall include enlisting the assistance of individuals with knowledge of the energy utility sector.



Should this special auditor also refuse to assume the mandate or fail to complete its work, the President of the Düsseldorf Regional Court shall appoint another auditor having the requisite qualifications.

## SUBSTANTIATION

The request for an extension of the Agenda is being made due to the company's mismanagement, which has also been decried in public, in order to examine certain transactions conducted by management and due to potential irregularities in group compliance.

### 1. Item 7

The public considers the acquisition of Essent one of the worst mistakes made by RWE management, which is partially responsible for the company's current desolate situation. It is absolutely necessary and in the interests of all shareholders that an investigation be conducted by an independent special auditor in order to prevent further damage and, if applicable, to take recourse against those responsible (based on information provided by the company, the coverage provided by the D&O insurance policy amounts to €500 million). Otherwise, the substantiation for this agenda item can be derived directly from Item 7 itself. Potential liability claims filed against the Supervisory Board shall not be the subject matter of the special audit.

## 2. Items 8 and 9

The special audits in accordance with Items 8 and 9 of the Agenda relate to the company's actions vis-à-vis affiliated companies. Once again, the task at hand is to determine whether damage has been caused for which the people responsible who work for the company can be held liable. As a result, the functioning of an effective group compliance will be indirectly reviewed based on specific transactions.

It should be noted as a supplement to Item 8 that Lechwerke AG has presented itself in its 2014 Annual Report, which has just been released, using the following slogan, which can be found on page 25 of said report:

"Responsible, qualified and transparent corporate governance oriented towards achieving commercial success is extremely important to Lechwerke AG."

Emphasis added

This is diametrically opposed to the delisting of a company with a market capitalisation of €2.2 billion. After all, the regulated stock market segment is legally regulated. The admission requirements and obligations for listed companies are regulated more strictly in order to protect all shareholders, unlike the unregulated open market. For instance, listed companies are subject to the German Securities Trading Act, have to publish half-year reports and are subject to notification obligations in accordance with Sections 21 and 22 of the German Securities Trading Act as well as ad-hoc publicity

in accordance with Section 15 of the German Securities Trading Act. This does not apply analogously to companies listed in qualified over-the-counter trading (m:access).

Otherwise, the substantiation for these agenda items can be derived directly from Items 8 and 9 themselves.

### 3. General Information

Section 122, Paragraph 2 and Section 142, Paragraph 1 of the German Stock Corporation Act grant authorisation to place special audits in accordance with Items 7, 8 and 9 on the Agenda.

#### **Statement by management regarding the request for an extension of the Agenda filed by Dela Beteiligungs GmbH**

The Supervisory Board of RWE Aktiengesellschaft deems the requests unsubstantiated and proposes to the Annual General Meeting that the resolutions sought on Items 7 to 9 of the Agenda be dismissed.

**Essen, March 2015**

Sincerely yours,

**RWE Aktiengesellschaft  
The Executive Board**

**RWE Aktiengesellschaft**

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