

IN THE MATTER OF:

INDEPENDENT MARKET OPERATOR (ACN 211 850 093)

Applicant

and

VINALCO ENERGY PTY LTD (ACN 137 532 300)

Respondent

ORDERS

Made by: DS Ellis (Presiding)

Date of Order: 31 October 2016

Where made: Perth

THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD ORDERS THAT:

1. By 28 November 2016:
 - (a) the Applicant is to give discovery to the Respondent, in a numbered bundle, of documents in its possession, power or control relied on by the Economic Regulation Authority (ERA) in arriving at the ERA's conclusions about the conduct of the Respondent; and
 - (b) the Respondent is to give discovery to the Applicant, in a numbered bundle, of documents in its possession, power or control relating to the financial impact of the Respondent's conduct the subject of the proceedings.
2. The Parties are to:
 - (a) identify if a document or any part of a document discovered in accordance with paragraph 1 of these Orders is confidential or subject to a claim for confidentiality (**Confidential Information**); and

- (b) if a document is Confidential Information, provide access to that Confidential Information on the basis of the confidentiality regime set out in paragraphs 3 – 6 of these Orders (**Confidentiality Regime**) and only to those persons or class of persons listed in Schedule 1 (**Approved Persons**) to these Orders, who will be subject to the obligations of confidentiality imposed by the Confidentiality Regime.
- 3. The Parties must:
 - (a) keep the Confidential Information confidential at all times and must not use the Confidential Information for any purposes other than the conduct of these proceedings;
 - (b) subject to paragraph (a), will not disclose the Confidential Information or any part of them directly or indirectly to any person, including the Parties to this proceeding, their employees and agents, unless;
 - (i) the relevant Party has obtained the prior written consent of the other Party; or
 - (ii) the disclosure is expressly authorised by the Board (after hearing from the Parties);
- 4. The Parties will:
 - (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
 - (b) not copy the Confidential Information without the other Party's prior written approval; and
 - (c) immediately notify the other Party of any suspected or actual unauthorised use, copying or disclosure of the Confidential Information of which is becomes aware.
- 5. At the conclusion of this proceeding, the Parties will ensure that:
 - (a) the Confidential Information and all copies of any of it is returned to the other Party; or
 - (b) all documents made or given to the other Party recording the Confidential Information are destroyed.
- 6. In any further hearing in these proceedings, no reference to the Confidential Information shall be made in any open hearing.
- 7. If any Confidential Information is provided to the Board, that Confidential Information shall be held by the Board on a confidential basis.
- 8. A Party may, on 3 business days' written notice to the other, request that the originals of the documents discovered in accordance with paragraph 1 of these Orders be made available for inspection. Inspection will take place at the offices of the Party or the Party's solicitors.
- 9. By **4 November 2016**, the Parties are to file a Statement of Agreed Facts.

10. By **8 November 2016**, each of the Parties is to file an amended Statement of Facts and Contentions:
 - (a) to take into account changes consequential from the Statement of Agreed Facts; and
 - (b) to include any Confidential Information, such information to be marked and subject to the obligations of confidentiality imposed by the Confidentiality Regime.
11. Evidence in chief be given at the hearing by way of witness statement.
12. By **3 February 2017**, the Applicant is to file and serve on the Respondent any witness statements and documents and expert evidence on which it intends to rely in the application.
13. By **10 March 2017**, the Respondent is to file and serve on the Applicant any witness statements and documents and expert evidence on which it intends to rely in the application.
14. On or before **17 March 2017** the experts retained by the Parties are to confer with a view to narrowing or removing the differences between their evidence.
15. By **24 March 2017** the experts retained by the Parties are to prepare a joint report setting out the matters on which they are agreed, the matters about which they disagree and a short statement of each expert's reasoning on the points of dispute.
16. By **24 March 2017**, the Applicant is to file and serve any materials in reply.
17. By **31 March 2017**, the Applicant is to file and serve a written outline of its submissions on the issues in the application.
18. By **5 April 2017**, each party is to identify the witnesses it does not require to attend at the hearing.
19. By **5 April 2017**, the Respondent is to file and serve a written outline of its submissions in response.
20. By **7 April 2017**, the Applicant is to file and serve any outline of written submissions in reply.
21. The matter be listed for hearing for 4 days commencing on **10 April 2017**.
22. The matter may be listed for further directions at the request of the Parties.
23. The Parties have liberty to apply.

DS Ellis
Presiding Member

Schedule 1 – Approved Persons

Persons approved to receive Confidential Information:

1. Matthew Knox, Minter Ellison
2. Adam Lippiatt, Minter Ellison
3. Amanda Seethor, Minter Ellison
4. Lauren Zambotti, Minter Ellison
5. Kylie O'Keeffe, Independent Market Operator
6. Board of Directors of the Independent Market Operator
7. Caroline Brown, Holman Fenwick Willan
8. Simon Adams, Holman Fenwick Willan
9. Luke O'Callaghan, Holman Fenwick Willan
10. Jessica Marshall, Holman Fenwick Willan
11. Paul Gower, Vinalco Energy Pty Ltd
12. Board of directors of Vinalco Energy Pty Ltd
13. Will Bargmann, Synergy
14. any independent expert retained by a Party for the purposes of the conduct of these proceedings
15. any counsel retained by a Party for the purposes of the conduct of these proceedings
16. any administrative or secretarial support of the persons or class of persons listed above
17. any other appropriate persons as agreed by the parties.