

## IN THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD

### File No 1 of 2010

Re: Application for review of the decision by the Western Australian Economic Regulation Authority published on 5 August 2010 to approve its own revised Access Arrangement for the Goldfields Gas Pipeline

Applicant BHP Billiton Nickel West Pty Ltd (ABN 76 004 184 598)

First Southern Cross Pipelines Australia Pty Limited, Southern Cross  
Respondent Pipelines (NPL) Australia Pty Ltd, Alinta DEWAP Pty Ltd and Goldfields Gas Transmission Pty Ltd

Second Economic Regulation Authority  
Respondent

### File No 2 of 2010

Re: Application under section 39(1) of Schedule 1 of the Gas Pipelines Access (Western Australia) Act 1998 (which provision continues to apply by reason of section 28(4) of Schedule 3 of the National Gas Access (WA) Act 2009) for a review of the decision of the Economic Regulation Authority to draft and approve revisions of the access arrangement to apply to the Goldfields Gas Pipeline in place of the access arrangement revisions submitted for approval by Goldfields Gas Transmission Pty Ltd on behalf of the Goldfields Gas Transmission Joint Venture

Applicant Southern Cross Pipelines Australia Pty Limited, Southern Cross  
Pipelines (NPL) Australia Pty Ltd, Alinta DEWAP Pty Ltd and Goldfields Gas Transmission Pty Ltd

First BHP Billiton Nickel West Pty Ltd (ABN 76 004 184 598)  
Respondent

Second Economic Regulation Authority  
Respondent

### ORDER AS TO CONFIDENTIALITY

Made by: DS Ellis

Date of Order 23 December 2010

Where made: Perth

## THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD:

- 1 **Notes** that the Economic Regulation Authority and the Applicants have agreed on the appropriate confidentiality regime to apply to the documents identified as confidential and supplied by the Applicants in the index to the Review Related Matter, being the regime set out in the undertaking in Schedule 1 to these Orders (**Confidentiality Regime**).
- 2 **Orders** that, subject to order 4, the Economic Regulation Authority only provide copies of the documents identified as confidential in the draft index to the Review Related Matter, and the information contained in those documents (**Confidential Information**), to:
  - (i) persons who have been approved by the relevant Applicant to receive the Confidential Information of that Applicant (listed in Schedule 2 to these Orders) and have signed an undertaking in the form annexed to these Orders and marked "A" and provided a copy of the same to the Applicant; and
  - (ii) persons otherwise permitted to receive copies of the Confidential Information under the Confidentiality Regime.
- 3 **Orders** that, subject to order 4, access to the Confidential Information by those persons permitted access pursuant to Order 2 above, be subject to the terms of the Confidentiality Regime.
- 4 **Orders** that any document identified in the index to the Review Related Matter as containing shipper information in respect of a third party not be provided to BHP Billiton Nickel West Pty Ltd or its representatives, employees or contractors unless information which identifies that third party shipper has been redacted or removed. For the avoidance of doubt, this order is not subject to any other order previously made in relation to the documents in the index to the Review Related Matter.
- 5 There be liberty to apply.

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DS Ellis  
Presiding Member  
Electricity Review Board

## **SCHEDULE 1 –CONFIDENTIALITY UNDERTAKING**

### **IN THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD**

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Applicant: BHP Billiton Nickel West Pty Ltd (ABN 76 004 184 598)

First Respondent Southern Cross Pipelines Australia Pty Limited, Southern Cross Pipelines (NPL) Australia Pty Ltd, Alinta DEWAP Pty Ltd and Goldfields Gas Transmission Pty Ltd

Second Respondent Economic Regulation Authority

#### **File No 2 of 2010**

Re: Application under section 39(1) of Schedule 1 of the Gas Pipelines Access (Western Australia) Act 1998 (which provision continues to apply by reason of section 28(4) of Schedule 3 of the National Gas Access (WA) Act 2009) for a review of the decision of the Economic Regulation Authority to draft and approve revisions of the access arrangement to apply to the Goldfields Gas Pipeline in place of the access arrangement revisions submitted for approval by Goldfields Gas Transmission Pty Ltd on behalf of the Goldfields Gas Transmission Joint Venture

Applicant: Southern Cross Pipelines Australia Pty Limited, Southern Cross Pipelines (NPL) Australia Pty Ltd, Alinta DEWAP Pty Ltd and Goldfields Gas Transmission Pty Ltd

First Respondent BHP Billiton Nickel West Pty Ltd (ABN 76 004 184 598)

Second Respondent Economic Regulation Authority

### **CONFIDENTIALITY UNDERTAKING GIVEN BY AN APPROVED PERSON**

I, \_\_\_\_\_ of \_\_\_\_\_, \_\_\_\_\_  
undertake to Southern Cross Pipelines Australia Pty Limited, Southern Cross Pipelines (NPL) Australia Pty Ltd, Alinta DEWAP Pty Ltd and Goldfields Gas

Transmission Pty Ltd (**GGT**) in relation to the documents described in the list of Review Related Matter provided by the Economic Regulation Authority and identified as being confidential and supplied by GGT, or information contained in those documents, (**Confidential Information**) that:

1. Subject to the terms of this undertaking, I will keep confidential at all times the Confidential Information that is in my possession, custody, power or control.

2. I acknowledge that:

(a) this undertaking is given by me to GGT in consideration for GGT making the Confidential Information available to me for the Approved Purposes (as defined below);

(b) all intellectual property in or to any part of the Confidential Information is and will remain owned by GGT or a third party contractor engaged by GGT; and

(c) by reason of this undertaking, no licence or right is granted to me in relation to the Confidential Information except as expressly provided in this undertaking.

3. I will only use the Confidential Information for:

(a) the purposes of the proceedings file numbers 1 and 2 of 2010 in the Western Australian Electricity Review Board (**Board**) (**WA Review Proceedings**), including any appeals from or review of a decision of the Board in those proceedings; or

(b) any other purpose approved by GGT in writing,

(the **Approved Purposes**).

4. Subject to paragraph 5 below, I will not disclose any of the Confidential Information to any other person without the prior written consent of GGT.

5. I acknowledge that I may disclose the Confidential Information to which I have access to:

- (a) the external legal advisers of a party to the WA Review Proceedings (**Legal Advisers**) provided the Legal Advisor has signed and served on GGT a confidentiality undertaking in the terms of this confidentiality undertaking;
  - (b) any person being an officer or employee of, or third party or expert engaged by, a party to the WA Review Proceedings provided:
    - i. the disclosure of that Confidential Information to that person has been approved in writing by GGT; and
    - ii. that person has signed and served on GGT a confidentiality undertaking in the same terms as this confidentiality undertaking;
  - (c) any member of the Board, their staff or associate and any other person assisting the Board;
  - (d) the Economic Regulation Authority (**ERA**), its staff and legal advisers;
  - (e) any person if required to do so by law including without limitation any order or direction of the Board (and the solicitors for GGT have been given sufficient written notice, as the circumstances would permit, of the intention to disclose the Confidential Information).
  - (f) any other person upon the execution and provision to GGT of confidentiality undertakings in the same terms as this confidentiality undertaking signed by this person, provided:
    - i. such a person has been nominated in writing to the GGT; and
    - ii. GGT has provided its written consent for access to be extended to this person.
6. I will establish and maintain security measures to safeguard the Confidential Information that is in my possession from unauthorised access, use, copying, reproduction or disclosure and use the same degree of care as a prudent person in my position would use to protect the Confidential Information.

7. If I am a lawyer acting for a party to the WA Review Proceedings and the Confidential Information, or any part of it, is to be referred to or otherwise used in the WA Review Proceedings I will take all reasonable steps within my power to ensure that such Confidential Information is not disclosed in open hearing and is only used or reproduced:
  - (a) as part of a confidential exhibit or annexure; or
  - (b) in a confidential section of any report or statement.
8. Except as required by law and subject to paragraph 10 below, within a reasonable time after whichever of the following occurs:
  - (a) a decision is made in each of the WA Review Proceedings;
  - (b) I cease to be employed or retained by a party to one of the WA Review Proceedings; or
  - (c) I cease to be working for a party to one of the WA Review Proceedings in respect of the Approved Purposes,

I will destroy or deliver to GGT the Confidential Information and any documents or things (or parts of documents or things), constituting, recording or containing any of the Confidential Information in my possession, custody, power or control.

Note: For the purposes of paragraph 8(a) above, a decision is made where:

- (a) 28 days has expired after the Board affirms, sets aside or varies the relevant reviewable regulatory decision and there are no outstanding applications, appeals, other legal proceedings in relation to that decision and the matter has not been remitted to the ERA; or
- (b) 28 days has expired after the Economic Regulation Authority has made a decision in relation to the relevant reviewable regulatory decision after the matter was remitted to the ERA by the Board and there are no outstanding applications, appeals or other legal proceedings in relation to that decision.

9. Where any of the Confidential Information is contained or reproduced in electronic form, I will take all reasonable steps within my power to ensure that when complying with paragraph 8 (or a specific direction of the party claiming confidentiality in respect of the Confidential Information in electronic form) the Confidential Information is deleted or otherwise destroyed.

10. Nothing in this Undertaking shall impose an obligation upon me in respect of information:

(a) which is in the public domain; or

(b) which has been obtained by me otherwise than in relation to the WA Review Proceedings,

provided that the information is in the public domain and/or has been obtained by me by reason of, or in circumstances which do not involve any breach of a confidentiality undertaking or a breach of any other obligation of confidence in favour of GGT or by any other unlawful means, of which I am aware.

11. I acknowledge that this undertaking is governed by the law in force in the State of Western Australia and I agree to submit to the non-exclusive jurisdiction of the courts of that place.

Signed: \_\_\_\_\_

Print name: \_\_\_\_\_

Dated: \_\_\_\_\_

## **SCHEDULE 2 – APPROVED PERSONS**

Persons approved by GGT to receive Confidential Information of GGT

1. Anthony Meagher SC, Senior Counsel.
2. Michael Borsky, Junior Counsel.
3. Beau Deleuil, Mallesons Stephen Jaques.
4. Paul Lingard, Mallesons Stephen Jaques.
5. Kailee Brown, Mallesons Stephen Jaques.
6. Tim Edwards, Mallesons Stephen Jaques.
7. Stephen Hooper, Senior Manager, Legal, BHP Billiton Nickel West.
8. David Rafferty, Manager, Commercial and Energy, BHP Billiton Nickel West.
9. Justine Thornett, Principal Business Analyst, BHP Billiton Nickel West.