

In the matter of the decision of the Honourable Eric Stephen Ripper MLA Minister for Energy, made on 2 July 2003 that Coverage of the Goldfields Gas Pipeline System under the *Gas Pipelines Access Law* is not revoked

And in the matter of an application under section 38(1) of Schedule 1 to the *Gas Pipelines Access (Western Australia) Act 1998* for review of that decision.

Application by:

SOUTHERN CROSS PIPELINES AUSTRALIA PTY LTD

(ACN 084 521 997)

SOUTHERN CROSS PIPELINES (NPL) AUSTRALIA PTY LTD

(ACN 085 991 948)

ALINTA DEWAP PTY LTD (ACN 058 070 689)

Applicants

and

WMC RESOURCES LTD

First Respondent

and

NEWMONT AUSTRALIA LTD

Second Respondent

and

NATIONAL COMPETITION COUNCIL

Third Respondent

**DIRECTIONS MADE BY THE GAS REVIEW BOARD AT THE THIRD
DIRECTIONS HEARING ON 6 APRIL 2005**

Members: Mr C P Stevenson (Presiding Member)
Mr F Oliver

Date of filing: 6 April 2005

Date of document: 6 April 2005

Where Made: Perth

Access to confidential documents

- 1 Until further direction of the Board or agreement between the entity or entities claiming confidentiality and the entity or entities seeking greater disclosure, and subject to directions 2 and 3 below, the documents, affidavits, annexures and exhibits filed or produced in these proceedings over which a claim for confidentiality is made by any person and which are marked confidential, will be treated as confidential and will not be provided to any person except on a confidential basis to (and between) the following persons:
 - (a) the third respondent and its staff who have signed confidentiality undertakings in accordance with Annexure A to this direction;
 - (b) solicitors, counsel and in-house counsel of the parties who have signed confidentiality undertakings in accordance with Annexure A to this direction;
 - (c) independent experts retained by the parties as specified in Annexure B and any professional staff employed by the company/firm of that independent expert who have signed confidentiality undertakings in accordance with Annexure A to this direction; and
 - (d) the Board and its staff.

- 2 Until further direction of the Board, document number 86 in the Amended Index to National Competition Council Documents will be treated as confidential and will not be provided to any person except on a confidential basis to (and between) the following persons:
 - (a) the third respondent and its staff; and
 - (b) the Board and its staff.

- 3 Until further direction of the Board, paragraph number 1 of document number 94 in the Amended Index to National Competition Council Documents will be treated as confidential and will not be provided to any person except on a confidential basis to (and between) the following persons:
 - (a) the first respondent;

(b) the third respondent and its staff; and

(c) the Board and its staff.

4 There be liberty to apply generally in writing served on all other parties in respect of any matter concerning directions 1, 2 and 3 above.

TransAlta Energy (Australia) Pty Ltd

5 The applicant have liberty to file and serve on the solicitors for TransAlta Energy (Australia) Pty Ltd and on the respondents an application, with an affidavit (if any) and an outline of submissions, seeking access to the documents referred to in paragraphs 2 and 3 above.

6 Within 14 days of receipt of an application made pursuant to direction 5 above, the solicitors for TransAlta Energy (Australia) Pty Ltd file and serve on the applicants and respondents any affidavit and submissions in response to the applicants application.

7 Within 7 days of receiving any affidavit or submission from the solicitors for TransAlta Energy (Australia) Pty Ltd the applicants file and serve any submissions in reply.

Programming directions

8 Direction 10 made on 20 December 2004 be varied such that on or before 26 April 2005 the applicants may file and serve a statement of issues, facts and contentions in reply (if any).

9 On or before 10 June 2005 the applicants file and serve on the respondents:

(a) any witness statements including expert reports; and

(b) any documents,

(collectively, "**Evidentiary Materials**"), on which they intend to rely.

10 On or before 8 July 2005 the respondents other than the third respondent ("**NCC**") file and serve on the other parties any Evidentiary Materials on which they intend to rely except as already provided under direction 9.

- 11 On or before 22 July 2005 the NCC file and serve on the other parties any Evidentiary Materials on which it intends to rely except as already provided under directions 9 and 10.
- 12 On or before 12 August 2005 the applicants file and serve on the respondents any Evidentiary Materials in reply except as already provided under directions 9, 10 and 11.
- 13 Direction 13 of the directions made 20 December 2004 is varied with respect to directions 9 to 12 above such that the parties shall file one hard copy and one electronic copy (the electronic copy not to include documents unless electronic copies are available) of their Evidentiary Materials.
- 14 On or before 26 August 2005 any party that proposes to object to the admission of any Evidentiary Materials filed and served by any other party in accordance with directions 9 to 12 shall file and serve notice of the grounds of objection and an outline of submissions in support.
- 15 On or before 9 September 2005 any party whose Evidentiary Material is objected to in accordance with paragraph 14 file and serve an outline of submissions in opposition to the objections as to admissibility.
- 16 On or before 18 August 2005 the applicants may require the parties to provide them with copies of relevant documents within 7 days of such request, to be included in a Trial Bundle for the purpose of the proceedings.
- 17 On or before 26 August 2005 the applicants file and serve a Trial Bundle for the purposes of the proceedings that contains the Evidentiary Materials filed and served by the parties in accordance with directions 9 to 12 above.
- 18 On or before 2 September 2005 the applicants file and serve an outline of their principal submissions.
- 19 On or before 16 September 2005 the respondents other than the NCC file and serve outlines of their principal submissions.
- 20 On or before 30 September 2005 the NCC file and serve an outline of its principal submissions.
- 21 On or before 14 October 2005 the applicants file and serve any outline of submissions in reply.

- 22 Direction 14 made on 20 December 2004 be vacated.
- 23 The matter is listed for hearing by the Board commencing on 31 October 2005 for a period of four weeks.
- 24 The ninety (90) day period referred to in section 38 (3) of Schedule 1 of the *Gas Pipelines Access (Western Australia) Act 1998 (the Act)* extended by directions of the Gas Review Board on 7 October 2004 and 2 November 2004 is extended pursuant to section 38 (4) of Schedule 1 of the Act for twelve (12) further consecutive thirty (30) day periods from 17 May 2005.
- 25 The parties have liberty to apply to the Board on 3 business day's notice.

C P Stevenson
Presiding Member
Western Australian Gas Review Board
Appeal No. 5 of 2004

"ANNEXURE A"**IN THE WESTERN AUSTRALIAN GAS
REVIEW BOARD****No 5 of 2004**

In the matter of the decision of the Honourable Eric Stephen Ripper MLA, Minister for Energy, made on 2 July 2003 that Coverage of the Goldfields Gas Pipeline System under The *Gas Pipelines Access Law* is not revoked

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CONFIDENTIALITY UNDERTAKING

I _____ of _____ undertake to [name of party whose document/information is claimed to be confidential] ('**Disclosing Party**'), and the Western Australia Gas Review Board ('**the Review Board**') that:

- 1 Subject to the terms of this Undertaking and any other order of the Review Board, I will not disclose, discuss or enable access to documents and information which are provided to me in the course of the conduct of the Review Board proceedings No. 5 of 2004 and any proceedings which are joined to, or are to be heard with, those proceedings (the 'Proceedings') and which is claimed by the Disclosing Party to be its confidential information ('the information').

- 2 I will take all proper and effective precautions to prevent disclosure, direct or indirect of the information to any person or any body, including a body corporate, who has not given an undertaking to preserve the secrecy and confidentiality of the information.
- 3 I will use the information only for the purposes of the Proceedings.
- 4 In relation to all documents and records in any form (including copies), which I make or cause to be made arising from my access to the information, relating to or recording the information:
 - (i) I will neither show those documents, records or copies to, nor discuss their contents with, any person who has not provided a confidentiality undertaking to the Disclosing Party in the form of this undertaking, or in a form otherwise acceptable to the Disclosing Party; and
 - (ii) I will store those documents, records or copies as are in my possession in such a way that persons who have not provided an undertaking to the Disclosing Party in relation to the information for the purposes of the Proceedings cannot obtain access to them.
- 5 I acknowledge that I may disclose the information to:
 - (a) any person for the purposes of the conduct of the Proceedings who has:
 - (i) been approved of by the Disclosing Party in writing, or by order of the Review Board, for disclosure of the information; and
 - (ii) signed a confidentiality undertaking to the Disclosing Party in the form of this undertaking, or in a form otherwise acceptable to the Disclosing Party, and served the undertaking on the Disclosing Party;
 - (b) a secretarial or support staff member of mine or of any person approved under paragraph 5(a) provided that person has:
 - (i) been advised that the information is confidential; and
 - (ii) been shown the terms of this undertaking and directed not to take action inconsistent with the maintenance of the confidentiality in accordance with this undertaking.
 - (c) any member of the Review Board or their associate or staff in connection with the Proceedings; and
 - (d) any person to whom I am required by law to disclose the information.
- 6 Except as required by law, within one (1) month after the occurrence of any of the following events:
 - (a) the conclusion of the Proceedings; or

- (b) my ceasing to be employed or retained by a party to the Proceedings,

I will destroy or deliver to the Disclosing Party or the Disclosing Party's solicitors any documents or things (or parts of documents or things), including in an electronic form, provided to me in the course of the Proceedings, or any copies of those documents or things, recording or containing any of the information in my possession, custody or control.

7 Nothing in this undertaking will 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 from the Disclosing Party in the course of the Proceedings,

provided that the information is in the public domain and/or has been obtained by me in circumstances which do not involve any breach of the confidentiality undertaking in these proceedings or a breach of any other obligation of confidence in favour of the Disclosing Party or any other unlawful means.

Signed:

Print Name:

Dated:

"ANNEXURE B"
**IN THE WESTERN AUSTRALIAN GAS
 REVIEW BOARD**

No 5 of 2004

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NOMINATED INDEPENDENT EXPERTS

Party nominating independent expert	Name and company/firm of independent expert
Applicants	Henry Ergas, Charles River Associates (Asia Pacific) Pty Ltd
Applicants	Stuart Hohnen, Ventnor Consulting Group
Applicants	John L Williams, KPMG
Applicants	Andy Wilkinson, Business Economics Decision Analysis
First Respondent	Phillips Williams, Frontier Economics
Second Respondent	Rob Booth, Bardak Ventures Pty Ltd
Second Respondent	Rhonda Smith, EcoAssist Pty Ltd
Third Respondent	Greg Houston, NERA Economic Consulting

