

B E T W E E N :

ECONOMIC REGULATION AUTHORITY

Applicant

and

ELECTRICITY GENERATION AND RETAIL CORPORATION TRADING AS  
SYNERGY

Respondent

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**ORDERS**

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Date: 20 December 2019

Place: Perth

Having heard the parties, the Western Australian Electricity Review Board makes the following Orders:

**Statement of facts, issues and contentions**

1. By 21 February 2020:
  - (a) the Applicant do file and serve on the Respondent its case statement, setting out concisely the facts relied on by it, the issues it contends will arise and its principal contentions; and
  - (b) the Applicant is to give discovery, in a numbered bundle, of the documents in its possession, power or control which were relied on by the Applicant in arriving at its conclusions about the conduct of the Respondent in the Applicant's draft confidential report titled 'Investigation into Synergy's pricing behaviour in the Wholesale Electricity Balancing Market for the period 31 March 2016 to 10 July 2017' dated 6 February 2019.
2. By 6 March 2020, the Applicant is to give discovery, in a numbered bundle, of

any additional documents in its possession, power or control which are relied on by the Applicant in respect of its case statement referred to in Order 1(a).

3. By 3 April 2020, the Respondent do file and serve:
  - (a) any application for the determination of a preliminary issue by the Board (any such application being supported by all the materials upon which the Respondent proposes to rely in relation to the application); or
  - (b) any application with the Supreme Court of Western Australia in relation to these proceedings.
4. If the Respondent files an application referred to in Order 3(a) above, by 13 May 2020 the Applicant is to file any materials upon which the Applicant intends to rely in relation to the application.
5. If the Respondent does not file either of the applications referred to in Orders 3(a) and 3(b) above:
  - (a) by 1 May 2020, the Respondent is to file its case statement, setting out concisely the facts relied on by it, the issues it contends will arise and its principal contentions;
  - (b) by 8 May 2020, the Respondent is to give discovery to the Applicant, in a numbered bundle, of documents in its possession, power or control which are relevant to the issues raised in the proceedings, save for any documents which are in the possession of the Applicant already; and
  - (c) by 15 May 2020 the parties are to prepare a working list of the principal issues in dispute between parties.
6. The matter be listed for further directions on 20 May 2020 at 10am (WST).
7. The directions hearing will be scheduled for a day, it being the intention that any application for determination of a preliminary issue will be heard on 20 May 2020. If an application is not made under Order 3(a), the directions hearing will deal with programming the matter for hearing including:
  - (a) the issues, if any, upon which evidence in chief should be given orally;
  - (b) the identification of:
    - (A) the issues upon which expert evidence may be necessary;
    - (B) the questions to be put to the experts; and
    - (C) the documents to be provided to the experts,

it being the present intention of the Board that the same questions and documents will be provided to all experts within each identified area on which expert evidence is required;

- (c) the exchange of witness statements, expert reports and submissions.

### **Confidentiality**

8. The Parties are to:

- (a) identify if a document or any part of a document identified in accordance with Order 1(b), 2 or 5(b) 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 orders 9 - 12 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.

9. 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) 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).

10. The Parties will:

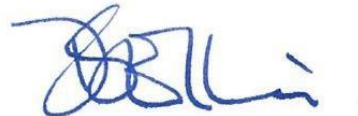
- (a) establish and maintain effective security measures to safeguard the Confidential Information from unauthorised access or use;
- (b) not copy the Confidential Information without the other Party's prior written approval; and
- (c) immediately notify the other Party of any suspected or actual

unauthorised use, copying or disclosure of the Confidential Information of which is becomes aware.

11. 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.
12. In any further hearing in these proceedings, no reference to the Confidential Information shall be made in any open hearing.
13. If any Confidential Information is provided to the Board, that Confidential Information shall be held by the Board on a confidential basis.
14. A Party may, on 3 business days' written notice to the other, request that the originals of the documents discovered in accordance with Orders 1, 2 or 5 of these Orders be made available for inspection. Inspection will take place at the offices of the Party or the Party's solicitors.

**Other**

15. The Parties have liberty to apply.



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The Electricity Review Board of Western  
Australia, by its Presiding Member, DS Ellis

## Schedule 1 - Approved Persons

Persons approved to receive Confidential Information:

1. Matthew Knox, MinterEllison
2. Lauren Zambotti, MinterEllison
3. Angus Paterson, MinterEllison
4. Adam Lippiatt, MinterEllison
5. Kylie O'Keeffe, MinterEllison
6. Simon Adams, HFW Australia
7. Caroline Brown, HFW Australia
8. Alastair Forward, HFW Australia
9. Mareli Treurnicht, HFW Australia
10. Ben Williams, HFW Australia
11. Jessica Marshall, HFW Australia
12. Jason Waters, Synergy
13. Andrea Chapman, Synergy
14. Kurt Baker, Synergy
15. Rob Fruin, Synergy
16. Andrew Everett, Synergy
17. Carole Clare, Synergy
18. Mark Chambers, Synergy
19. Dominic Regnard, Synergy
20. the Board of Directors of Synergy
21. Governing Body of the Economic Regulation Authority
22. Secretariat of the Economic Regulation Authority
23. any independent expert retained by a Party for the purposes of the conduct of these proceedings
24. any counsel retained by a Party for the purposes of the conduct of these proceedings
25. any administrative or secretarial support of the persons or class of persons listed above

26. any other appropriate persons as agreed by the parties