

THE WESTERN AUSTRALIAN ELECTRICITY REVIEW BOARD

No 2 of 2025

B E T W E E N

**BLUEWATERS POWER 1 PTY LTD (ABN 93 106 034 879) and
BLUEWATERS POWER 2 PTY LTD (ABN 57 122 896 968)**

Applicants

and

ECONOMIC REGULATION AUTHORITY

Respondent

DIRECTIONS
(Confidentiality Regime)

Date of document: 22 July 2026
Place Perth

Confidential and commercially sensitive information generally

1 Subject to directions 7 to 14 below, if any information contained in a document produced by a party (**Production Party**) is claimed by the Production Party to be confidential or commercially sensitive other than ERA Restricted Information (as defined in direction 7 below) (**Confidential Information**), then subject to any further order of the Western Australian Electricity Review Board (**Board**) or agreement in writing between the parties, access to, and use of, the Confidential Information is restricted to persons within the following categories:

- (a) where the Production Party is the respondent:
 - (i) the external solicitors acting for the applicants in this proceeding;
 - (ii) counsel acting for the applicants in this proceeding;

- (iii) any expert witness engaged by, or on behalf of, the applicants in this proceeding, or any expert engaged to provide expert advice to the applicants in this proceeding;
 - (iv) any lay witness engaged by the applicants in this proceeding;
 - (v) any employee or consultant of an applicant;
 - (vi) any other person agreed in writing between the parties; and
 - (vii) any person who is providing administrative or secretarial support to any person or class of persons listed in directions 1(a)(i) to (vi) above;
- (b) where the Production Party is one or both of the applicants:
- (i) the respondent's Governing Body, Secretariat, employees, legal advisers, consultants, expert or lay witnesses in this proceeding; and
 - (ii) any person who is providing administrative or secretarial support to any person or class of persons listed in direction 1(b)(i) above in this proceeding; and
- (c) a member of the Board and any person providing administrative or secretarial support to a member of the Board in this proceeding.

2 Subject to any further direction of the Board, the parties must:

- (a) keep Confidential Information confidential at all times and must not use the Confidential Information for any purpose other than the conduct of this proceeding;
- (b) not disclose Confidential Information directly or indirectly to any person, unless:
 - (i) they are a person within a category identified in the sub-paragraphs of direction 1 above;
 - (ii) the party who is not the Production Party (**Receiving Party**) has obtained the prior written consent of the Production Party; or

- (iii) the disclosure is expressly authorised by the Board (after hearing from the parties);
- (c) when Confidential Information is contained in any document produced, filed or served in this proceeding and only part of the document contains Confidential Information:
 - (i) in the confidential version of the document, highlight the Confidential Information in yellow shading or, for file formats other than Microsoft Word or PDF, in another appropriate manner expressly stated in that document as being used to identify Confidential Information;
 - (ii) provide a non-confidential version of the document which:
 - (A) clearly identifies the Confidential Information by redacting that Confidential Information (with the non-confidential version of the document retaining the same formatting and page numbers as the confidential version, where reasonably practicable); and
 - (B) contains, where reasonably practicable, a brief description of the nature of the Confidential Information redacted, which description must not reveal the Confidential Information;
- (d) when Confidential Information is contained, in whole or in part, in any document produced, filed or served in this proceeding:
 - (i) for electronic documents, specify whether the document is claimed to be “confidential” or “non-confidential” by:
 - (A) in the filename, including the characters “-C” or “-NC” respectively; or
 - (B) if it would be impractical to adopt the convention referred to in direction 2(d)(i)(A) above in the file name of the document, include the document in a zipped folder with a folder name which includes the characters “-C” or “-NC” to indicate that the file or files contained within that folder are claimed to be

confidential or non-confidential respectively; and

- (ii) for documents in Microsoft Word format or in PDF format, the document shall indicate clearly on the first page of the document (and on the first page of any exhibit to the document) whether the document or its exhibit (as the case may be) is the confidential or non-confidential version of the document or exhibit.

3 To facilitate compliance with these directions:

- (a) a Production Party may request that a Receiving Party identify whether a document to be produced by the Production Party is claimed by a Receiving Party to contain Confidential Information;
- (b) within 14 days of the request referred to in direction 3(a) above, the Receiving Party receiving the request must provide a response to the Production Party and, if a document is claimed to contain only Confidential Information in part, the response must clearly identify those parts which are claimed to be confidential;
- (c) a Receiving Party may give notice to the Production Party and the Board that a document produced by the Production Party is claimed by a Receiving Party to contain Confidential Information, which notice must clearly identify those parts of the document which are claimed to be confidential or commercially sensitive; and
- (d) subject to any further direction of the Board, upon notice being given in accordance with direction 3(c) above, the information in the document which has been identified as Confidential Information will be subject to directions 1, 2, 4, 5, and 6 and the Production Party must thereafter comply with direction 2(c) and (d) in respect of any document containing that information which has been or will be produced, filed or served in this proceeding.

4 Subject to directions 5 and 6, the Receiving Party must ensure that any person to whom, on the Receiving Party's behalf, Confidential Information has been disclosed, which Confidential Information was produced by the Production Party:

- (a) is aware of, and complies with, the obligations in direction 2; and
 - (b) except as otherwise required by law or permitted by direction 5, within 28 days after the conclusion of this proceeding (whether by decision of the Board or otherwise), returns to the Production Party's solicitors, or destroys, all documents containing Confidential Information.
- 5 The Receiving Party's solicitors may retain documents containing Confidential Information in connection with any potential or actual application for judicial review of a decision of the Board in these proceedings, provided that if no such application has been made within 6 months after a decision of the Board which resolves this proceeding, the Receiving Party's solicitors must, within 14 days of the expiry of that period, and except as otherwise required by law, return to the Production Party's solicitors, or destroy, all such retained documents.
- 6 The obligations on the Receiving Party under directions 2 and 3 do not apply to the extent that the Confidential Information:
- (a) is or becomes public knowledge (otherwise than as a result of: a breach of confidence by a person who received the Confidential Information from or on behalf of the Receiving Party; or a breach of these directions); or
 - (b) is required to be disclosed:
 - (i) under compulsion to the Board other than in accordance with this direction or a court; or
 - (ii) as otherwise required by law.

ERA Restricted Information

- 7 If the respondent has given notice to the applicants that a document required to be produced by the respondent is claimed to contain confidential or commercially sensitive information:
- (a) of a third party; or
 - (b) relating to the respondent's model of the Wholesale Electricity Market

Dispatch Engine (**ERA Model**); or

- (c) being the underlying programming code of the ERA Model (**ERA Model Code**)

(together, **ERA Restricted Information**) then, unless otherwise ordered or agreed, access to, and use of, that information is restricted in the manner set out in directions 8 to 14 below.

Applicants' lay witnesses, employees and consultants

- 8 The ERA Restricted Information, other than the ERA Model Code, may be accessed and/or used confidentially and only for this proceeding, by an applicant's employees, consultants, lay witnesses and their administrative and support staff referred to in direction 1(a)(iv), 1(a)(v) and 1(a)(vii) above, provided that each such person:

- (a) is either:

- (i) one of the following employees, who are members of the applicants' Senior Management Team who provide instructions to the applicants' external solicitors in the proceeding:

- (A) Andrew Sutherland (Chief Executive Officer);

- (B) Gemma Modra (Chief Operating Officer);

- (C) Shane Cremin (General Manager of Strategy and Development);

- (D) any other member of the applicants' Senior Management Team as agreed in writing by the respondent,

(each an **Agreed Instructor**); or

- (ii) is not involved in advising on, making or implementing decisions related to modelling, trading, pricing or bidding in the Wholesale Electricity Market (including the Real-Time Market) other than in connection with legal and/or regulatory requirements relating to such

trading, pricing or bidding;

- (b) signs an undertaking in the form of Annexure A to these directions; and
- (c) provides a copy of the signed undertaking to the respondent's solicitors.

Applicants' external solicitors, counsel, expert advisors and expert witnesses

- 9 The ERA Restricted Information, including the ERA Model Code, may be accessed and/or used on a confidential basis, in accordance with the terms set out in Annexure B, and for the purpose of this proceeding by an applicant's external solicitors, counsel, expert witnesses, and experts who are engaged to provide expert advice to the applicants in this proceeding referred to in directions 1(a)(i) to 1(a)(iii) above, provided that each such person:

- (a) signs an undertaking in the form set out in Annexure B to these directions; and
- (b) provides a copy of that signed undertaking to the respondent's solicitors.

Others by agreement

- 10 The applicants may give the respondent written notice of lay witnesses, employees or consultants referred to in direction 1(a)(iv) or 1(a)(v) that it nominates to access and/or use all or part of the ERA Restricted Information provided that the applicants:

- (a) identify the nominee by name and position;
- (b) if the nominee at any time since 1 October 2023, was, or will be during the course of these proceedings, employed, or engaged by one or more applicants to advise on, make or implement decisions related to modelling, trading, pricing or bidding in the Wholesale Electricity Market (including the Real-Time Market) other than in connection with legal and/or regulatory requirements relating to such trading, pricing or bidding, give full particulars of those aspects of the employment or engagement;
- (c) identify whether access is being sought to the ERA Model Code in addition to other ERA Restricted Information; and

- (d) provide a written explanation of why access and/or use by that nominee is reasonably necessary for the purposes of the proceeding.

11 The respondent will consider any nomination under direction 10 in good faith and notify the applicants within 2 business days from when the applicants' nomination (including the information referred to in direction 10(a) to (d)) was given whether it agrees to permit the nominee to access and/or use the ERA Restricted Information, either including or excluding the ERA Model Code, on the conditions set out in directions 8(b) and 8(c).

12 If the respondent does not agree to permit access to and/or use by the nominee (or agrees to permit access only on a partial basis (ie excluding the ERA Model Code)) within 2 business days of receipt of the nomination:

- (a) the respondent must provide brief written reasons for its refusal or limitation; and
- (b) any party may apply to the Board for a direction.

Members of the Board

13 The ERA Restricted Information may be accessed and/or used on a confidential basis and for the purpose of this proceeding by a member of the Board and any person providing administrative or secretarial support to a member of the Board in this proceeding.

Applicability of other directions

14 Directions 2 to 6 inclusive above apply to any access and/or use of ERA Restricted Information as though:

- (a) Production Party refers to the respondent;
- (b) Confidential Information refers to ERA Restricted Information;
- (c) persons identified in direction 2(b)(i) above refers to any person who is permitted to access and/or use that type of ERA Restricted Information in accordance with any of directions 7 to 13 above (**Authorised Person**); and

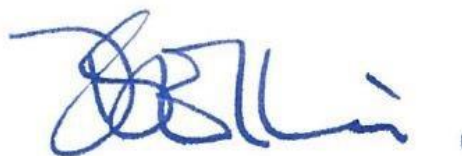
- (d) Receiving Party refers to the applicant who has received the ERA Restricted Information.

Notice of disclosure by Board

- 15 Within 7 days of the Board notifying the parties that it intends to publish on its webpage or disclose any information which includes evidence or references to evidence in the proceedings, each party must notify the Board of any of its confidential or commercial sensitive information which ought to be withheld from publication or disclosure.

Liberty to apply

- 16 There be liberty to apply, including liberty for a party to challenge a claim by the other party that information is confidential or commercially sensitive.



DS Ellis
Presiding Member
WA Electricity Review Board

Annexure A

Confidentiality Undertaking – ERA Restricted Information

I, *[INSERT FULL NAME]*, of *[ADDRESS]*, undertake to the Western Australian Electricity Review Board (**Board**) and the Economic Regulation Authority (**ERA**) that, until such time as this undertaking is varied, amended or otherwise discharged by order of the Board or a court or by agreement in writing between the parties:

- 1 Subject to the terms of this confidentiality undertaking, I will keep the ERA Restricted Information (as defined in the **attached** directions made by the Board on *[DATE]* (**Order**)) confidential.
- 2 I will not use or cause or permit the use of the ERA Restricted Information for any purpose other than the proceeding before the Board to which the Order relates and I confirm that:
 - (a) I am an Agreed Instructor; or
 - (b) I am not involved in advising on, making or implementing decisions related to modelling, trading, pricing or bidding in the Wholesale Electricity Market (including the Real-Time Market) other than in connection with legal and/or regulatory requirements relating to such trading, pricing or bidding; or
 - (c) where sub-paragraphs 2(b) to (b) above are not satisfied:
 - (i) I have accurately disclosed to the ERA details of the extent to which I have been involved in advising on, making or implementing decisions related to modelling, trading, pricing or bidding in the Wholesale Electricity Market (including the Real-Time Market) which is not in connection with legal and/or regulatory requirements relating to such trading, pricing or bidding during any employment or engagement by Bluewaters Power 1 Pty Ltd ABN 93 106 034 879 or Bluewaters Power 2 Pty Ltd ABN 57 122 896 968 at any time from 1 October 2023 and ending on the later of the conclusion of the proceedings in which the Order was made or, if any final determination in those proceedings is subject to judicial review, at the conclusion of the judicial review proceedings; and
 - (ii) the ERA has provided me with its consent in writing, to access and/or use, in whole or in part, the ERA Restricted Information in accordance with the Order and this undertaking.
- 3 I will not disclose or cause or permit the ERA Restricted Information to be disclosed to any person other than:
 - (a) to any other Authorised Person (as that term is defined in the Order) who, if required by the Order to do so, has first provided a confidentiality undertaking in the terms required by the Order;
 - (b) to a court, if compelled to do so;

- (c) to a member of the Board as part of the case presented by either Bluewaters Power 1 Pty Ltd ABN 93 106 034 879 or Bluewaters Power 2 Pty Ltd ABN 57 122 896 968 in proceedings before the Board being number 2 of 2025 subject to complying with direction 2(c) and (d), read together with direction 14, of the Order;
 - (d) as otherwise required by law; or
 - (e) with the prior written consent of the parties.
- 4 To the extent the ERA Restricted Information comes into my possession and is retained by me in any document, I will ensure that that document is held in a secure location where it cannot be accessed or used by anyone except an Authorised Person permitted to access or use that type of ERA Restricted Information.
- 5 If I disclose the ERA Restricted Information pursuant to paragraph 3(b) or 3(c) above, I will take all reasonable steps to limit the disclosure of the ERA Restricted Information, including requesting (or instructing Counsel to request) that the Board or court (as applicable) make an order preserving the confidentiality of the ERA Restricted Information that is to be placed before the Board or court, whether by way of exhibit or attachment (e.g. to an affidavit) or by tender or otherwise.
- 6 The obligations contained in this undertaking do not extend to any ERA Restricted Information that is or becomes public knowledge (otherwise than as a result of a breach of this confidentiality undertaking or a confidentiality undertaking given by another person in relation to the proceeding or a breach of the Order).
- 7 I will immediately notify, in writing, via the parties' external solicitors if I become aware of:
 - (a) any breach of this confidentiality undertaking or any other confidentiality undertaking given by any other person in this proceeding; or
 - (b) any other unauthorised use or disclosure of the ERA Restricted Information.
- 8 At the conclusion of this proceeding (whether by decision of the Board or otherwise), and unless a party has made an application for judicial review of a decision or conduct of the Board, I will ensure that any document recording the ERA Restricted Information is:
 - (a) returned to the respondent; or
 - (b) destroyed.

Dated: 2026

Signed:

Annexure B

Confidentiality Undertaking – ERA Restricted Information

I, *[INSERT FULL NAME]*, of *[ADDRESS]*, undertake to the Western Australian Electricity Review Board (**Board**) and the Economic Regulation Authority (**ERA**) that, until such time as this undertaking is varied, amended or otherwise discharged by order of the Board or a court or by agreement in writing between the parties:

- 1 Subject to the terms of this confidentiality undertaking, I will keep the ERA Restricted Information (as defined in the **attached** directions made by the Board on *[DATE]* (**Order**)) confidential.
- 2 I will not use or cause or permit the use of the ERA Restricted Information for any purpose other than the proceeding before the Board to which the Order relates and I confirm that I am not involved in advising on, making or implementing decisions related to modelling, trading, pricing or bidding in the Wholesale Electricity Market (including the Real-Time Market) for Bluewaters Power 1 Pty Ltd ABN 93 106 034 879 or Bluewaters Power 2 Pty Ltd ABN 57 122 896 968 other than in connection with legal and/or regulatory requirements relating to such trading, pricing or bidding.
- 3 I will not disclose or cause or permit the ERA Restricted Information to be disclosed to any person other than:
 - (a) to any other Authorised Person (as that term is defined in the Order) who, if required by the Order to do so, has first provided a confidentiality undertaking in the terms required by the Order;
 - (b) to a court, if compelled to do so;
 - (c) to a member of the Board as part of the case presented by either Bluewaters Power 1 Pty Ltd ABN 93 106 034 879 or Bluewaters Power 2 Pty Ltd ABN 57 122 896 968 in proceedings before the Board being number 2 of 2025 subject to complying with direction 2(c) and (d), read together with direction 14, of the Order;
 - (d) as otherwise required by law; or
 - (e) with the prior written consent of the parties.
- 4 To the extent the ERA Restricted Information comes into my possession and is retained by me in any document, I will ensure that that document is held in a secure location where it cannot be accessed or used by anyone except an Authorised Person permitted to access or use that type of ERA Restricted Information.
- 5 If I disclose the ERA Restricted Information pursuant to paragraph 3(b) or 3(c) above, I will take all reasonable steps to limit the disclosure of the ERA Restricted Information, including requesting (or instructing Counsel to request) that the Board or court (as applicable) make an order preserving the confidentiality of the ERA Restricted Information that is to be placed before the Board or court, whether by way of exhibit or attachment (e.g. to an affidavit) or by tender or otherwise.

- 6 The obligations contained in this undertaking do not extend to any ERA Restricted Information that is or becomes public knowledge (otherwise than as a result of a breach of this confidentiality undertaking or a confidentiality undertaking given by another person in relation to the proceeding or a breach of the Order).
- 7 I will immediately notify, in writing, via the parties' external solicitors if I become aware of:
- (a) any breach of this confidentiality undertaking or any other confidentiality undertaking given by any other person in this proceeding; or
 - (b) any other unauthorised use or disclosure of the ERA Restricted Information.
- 8 At the conclusion of this proceeding (whether by decision of the Board or otherwise), and unless a party has made an application for judicial review of a decision or conduct of the Board, I will ensure that any document recording the ERA Restricted Information is:
- (a) returned to the respondent; or
 - (b) destroyed.

Dated: 2026

Signed: