

# Decision to renew electricity retail licence ERL2

BHP Billiton Nickel West Pty Ltd

22 December 2020

Economic Regulation Authority

WESTERN AUSTRALIA

D223007

## 1. Decision

1. Pursuant to sections 9 and 19 of the *Electricity Industry Act 2004*, the Economic Regulation Authority has renewed BHP Billiton Nickel West Pty Ltd's electricity retail licence ERL2.
2. Subject to its terms and conditions, the licence authorises BHP Billiton Nickel West to provide electricity services in the Southern and Northern Goldfields areas (as set out in operating areas ERA-EL-070/2 and ERA-EL-071(B) in the licence).
3. The term of the renewed licence is 15 years (the maximum period allowed by section 15(1) of the Electricity Act) from 23 December 2020.
4. As required by section 23(1) of the Electricity Act, the ERA will publish a notice of the renewal of the licence in the Government Gazette as soon as practicable.

## 2. Reasons

### 2.1 Licence

5. Section 7(4) of the Electricity Act requires a person to hold an electricity retail licence to sell electricity to customers.
6. The ERA first granted ERL2 to BHP Billiton Nickel West on 24 March 2006 for a period of 15 years, with an expiry date of 23 March 2021.
7. On 12 October 2020, BHP Billiton Nickel West applied to the ERA to renew ERL2.

### 2.2 Public consultation

8. On 20 October 2020, the ERA sought [public comment](#) on the licence renewal application. The period for submissions closed on 10 November 2020.
9. The ERA did not receive any submissions.

### 2.3 Financial and technical assessments

10. Under section 19(1) of the Electricity Act, the ERA must renew a licence if it is satisfied that the licensee has and is likely to retain, or will acquire within a reasonable timeframe, and is then likely to retain, the financial and technical resources to undertake the activities authorised by the licence.
11. As part of its renewal application, BHP Billiton Nickel West provided audited financial reports for the past three financial years for BHP and a written declaration from BHP Billiton Nickel West's chief executive officer that it has, and will retain, the financial resources to continue to undertake the activities authorised by the licence.<sup>1</sup>
12. Based on the information provided, the ERA is satisfied that BHP Billiton Nickel West has, and is likely to retain, the financial resources to provide the service in its operating areas.
13. The ERA used BHP Billiton Nickel West's licence compliance and asset management history to determine whether it has the technical resources to continue to provide the licensed service.
14. Based on its compliance and asset management history, the ERA considers that BHP Billiton Nickel West has, and is likely to retain, the technical ability to provide the service in its operating areas.

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<sup>1</sup> BHP has 100 per cent ownership of BHP Billiton Nickel West. The consolidated financial reports incorporate the assets, liabilities and results of BHP, but the reports do not separately report on the individual performance of BHP Billiton Nickel West. Although the standalone financial position of Nickel West is not available in BHP's financial reports, the financial performance of BHP shows it has substantial financial resources to support the operations of Nickel West

## 2.4 Assessment of public interest

### 2.4.1 *Electricity Industry Act 2004*

15. Section 9 of the Electricity Act requires that the ERA must not renew a licence unless it is satisfied that it would not be contrary to the public interest to do so. Section 8(5) of the Electricity Act, provides that, without limiting the other matters that may be taken into account, matters that are to be taken into account by the Governor in determining whether the making of the order would not be contrary to the public interest are:
- a. Environmental considerations.
  - b. Social welfare and equity considerations, including community service obligations.
  - c. Economic and regional development, including employment and investment growth.
  - d. The interests of customers generally or of a class of customers.
  - e. The interests of any licensee, or applicant for a licence, in respect of the area or areas to which the licence in respect of which the power exercised is exercised would apply.
  - f. The importance of competition in electricity industry markets.
  - g. The policy objectives of government in relation to the supply of electricity.

### 2.4.2 *Economic Regulation Authority Act 2003*

16. The ERA must also have regard to the matters set out in section 26 of the *Economic Regulation Authority Act 2003*:<sup>2</sup>
- a. The need to promote regulatory outcomes that are in the public interest.
  - b. The long-term interests of consumers in relation to the price, quality and reliability of goods and services provided in relevant markets.
  - c. The need to encourage investment in relevant markets.
  - d. The legitimate business interests of investors and service providers in relevant markets.
  - e. The need to promote competitive and fair market conduct.
  - f. The need to prevent abuse of monopoly or market power.
  - g. The need to promote transparent decision-making processes that involve public consultation.

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<sup>2</sup> The ERA has discretion to decide the weight it gives to each of the matters listed in section 26 of the ERA Act in making its decision.

### 2.4.3 *ERA assessment of public interest*

17. The ERA has considered:
  - the matters set out in sections 8(5) and 9 of the Electricity Act
  - section 19(1) of the Electricity Act
  - section 26 of the ERA Act
  - BHP Billiton Nickel West's financial reports for the past three financial years
  - the written declaration from BHP Billiton Nickel West's chief executive officer
  - BHP Billiton Nickel West's previous compliance and asset management history.
18. The interests of BHP Billiton Nickel West's existing customers are best served by BHP Billiton Nickel West continuing to be licensed, so it can maintain supply to those customers (section 8(5)(d) of the Electricity Act and section 26(2)(b) of the ERA Act).
19. The renewal of BHP Billiton Nickel West's licence will support economic and regional growth, as BHP Billiton Nickel West supplies mining operations (section 8(5)(b) of the Electricity Act).
20. The ERA conducted public consultation on the licence renewal application and has stated in this decision the reasons for renewing the licence, which is consistent with section 26(g) of the ERA Act.
21. In all circumstances, after taking into account the matters in section 8(5) of the Electricity Act and section 26 of the ERA Act, the ERA is satisfied that renewing ERL2 would not be contrary to the public interest.