

Decision to renew electricity retail licence ERL5

Wesfarmers Kleenheat Gas Pty Ltd

22 June 2021

Economic Regulation Authority

WESTERN AUSTRALIA

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1. Decision

1. Pursuant to section 51 of the *Electricity Industry Act 2004*, the Economic Regulation Authority approves Wesfarmers Kleenheat Gas Pty Ltd's [amended standard form contract](#) for the supply of electricity to small use customers.¹
2. Pursuant to sections 9 and 19 of the Electricity Act, the ERA has renewed Kleenheat's electricity retail licence [ERL5](#).
3. Subject to its terms and conditions, the licence authorises Kleenheat to supply electricity to customers on the South West Interconnected System (as set out in licence area ERA-EL-099(C) in the licence).
4. The term of the renewed licence is 15 years (the maximum period allowed by section 15(1) of the Electricity Act).
5. 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.

¹ A 'small use customer' is a customer who consumes not more than 160 megawatt hours of electricity per year.

2. Reasons

2.1 Licence

6. Section 7(4) of the Electricity Act requires a person to hold an electricity retail licence to sell electricity to customers.
7. The ERA granted ERL5 on 26 June 2006 for a period of 15 years, with an expiry date of 25 June 2021.²
8. On 25 March 2021, Kleenheat applied to the ERA to renew ERL5.

2.2 Standard form contract

9. Section 50 of the Electricity Act provides that the ERA must not renew an electricity retail licence unless the licensee has submitted a standard form contract to the ERA, and the ERA has approved the standard form contract under which the licensee will supply electricity to customers pursuant to the licence.
10. Under section 51 of the Electricity Act, the ERA must not approve a standard form contract if it considers that the contract will not meet the requirements of the *Electricity Industry (Customer Contracts) Regulations 2005*, will be inconsistent with the Electricity Act or any other written law, or will be inconsistent with any term, condition or provision of the licence.
11. Kleenheat provided an amended standard form contract with its application to renew ERL5.
12. The ERA considers that the standard form contract meets the relevant regulatory requirements.
13. The amended standard form contract replaces Kleenheat's previous standard form contract, which was approved by the ERA in June 2015.

2.3 Electricity ombudsman scheme

14. Section 100 of the Electricity Act provides that the ERA must not renew a retail licence unless it is satisfied that the licensee is a member of an approved ombudsman scheme.
15. Kleenheat is a member of the Electricity Industry Ombudsman (WA) Scheme.

2.4 Public consultation

16. On 5 May 2021, the ERA sought [public comment](#) on the licence renewal application. The period for submissions closed on 27 May 2021.
17. The ERA did not receive any submissions.

² ERL5 was originally granted to Premier Power Sales. At its commencement ERL5 authorised supply to large use customers only. ERL5 was transferred to Kleenheat on 1 July 2015. As part of the transfer ERL5 was amended to authorise supply of electricity to small use customers.

2.5 Financial and technical assessment

18. 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 time after the renewal, and is then likely to retain, the financial and technical resources to undertake the activities authorised by the licence.
19. As part of its renewal application, Kleenheat provided audited financial reports for the past three financial years for its parent company Wesfarmers Limited and a written declaration from Kleenheat's Chief Financial Officer that it has, and will retain, the financial resources to continue to undertake the activities authorised by the licence.
20. Based on the information provided, the ERA is satisfied that Kleenheat has, and is likely to retain, the financial resources to undertake the activities authorised by the licence.
21. The ERA used Kleenheat's licence compliance history to determine whether it has the technical resources to undertake the activities authorised by the licence.
22. Based on its compliance history, the ERA considers that Kleenheat has, and is likely to retain, the technical resources to undertake the activities authorised by the licence.

2.6 Assessment of public interest

2.6.1 Electricity Industry Act 2004

23. 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 to determine 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.

2.6.2 Economic Regulation Authority Act 2003

24. The ERA must also have regard to the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003*:³
 - a. The need to promote regulatory outcomes that are in the public interest.

³ The ERA has discretion to decide the weight it gives to each of the matters listed in section 26(1) of the ERA Act in making its decision.

- 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.

2.6.3 ERA assessment of public interest

25. 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(1) of the ERA Act
- the financial statements for Kleenheat for the past three financial years
- the written declaration from Kleenheat's Chief Financial Officer
- Kleenheat's compliance history
- the outcome of the public consultation (no submissions received).

26. Renewing Kleenheat's licence will allow Kleenheat to continue to supply electricity (section 8(5)(d) of the Electricity Act and section 26(1)(d) of the ERA Act).

27. The interests of Kleenheat's existing customers are best served by Kleenheat continuing to be licensed, so it can maintain supply those customers (section 8(5)(d) of the Electricity Act and section 26(1)(b) of the ERA Act).

28. Kleenheat's participation in the electricity market for customers who consume more than 50 megawatt hours of electricity per year enhances competition and provides customers with a choice of retailer (section 8(5)(f) of the Electricity Act and sections 26(1)(e) and (f) of the ERA Act).

29. 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(1)(g) of the ERA Act.

30. In all circumstances, after taking into account the matters in section 8(5) of the Electricity Act and section 26(1) of the ERA Act, the ERA is satisfied that renewing ERL5 and approving the amended standard form contract would not be contrary to the public interest.