

Decision to renew electricity retail licence ERL12

Bluewaters Power 1 Pty Ltd

11 August 2021

Economic Regulation Authority

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1. Decision

1. Pursuant to sections 9 and 19 of the *Electricity Industry Act 2004*, the Economic Regulation Authority has renewed Bluewaters Power 1 Pty Ltd's electricity retail licence ERL12 for a period of 12 months.
2. Subject to its terms and conditions, the licence authorises Bluewaters to sell electricity to large use customers on the South West Interconnected System.¹
3. 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 'large use customer' is a customer who consumes more than 160 megawatt hours of electricity per year.

2. Reasons

2.1 Licence

4. Section 7(4) of the Electricity Act requires a person to hold an electricity retail licence to sell electricity to customers.
5. The ERA granted ERL12 to Bluewaters on 14 August 2006 for a period of 15 years, with an expiry date of 13 August 2021.²
6. On 14 May 2021, Bluewaters applied to the ERA to renew ERL12.

2.2 Public consultation

7. On 20 May 2021, the ERA sought [public comment](#) on the licence renewal application. The period for submissions closed on 9 June 2021.
8. The ERA did not receive any submissions.

2.3 Financial assessment

9. 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 resources to undertake the activities authorised by the licence.
10. As part of its renewal application, Bluewaters provided audited financial statements for 2017/18 and 2018/19, non-executed financial statements for 2019/20, draft financial statements for 2020/21 and a written declaration from the Chief Executive Officer of Bluewaters that it has, and will retain, the financial resources to continue to undertake the activities authorised by the licence.
11. The 2019/20 and 2020/21 financial statements have not been certified by an auditor while Bluewaters negotiates with its senior secured lenders to extend a loan that was due for repayment in August 2020.
12. Based on the financial information submitted by Bluewaters and the ongoing loan extension negotiations, the ERA engaged a financial consultant to examine the financial resources of Bluewaters. This was to determine if Bluewaters has the financial resources to undertake the activities authorised by the licence.
13. Following the financial assessment of Bluewaters' licence renewal application, the financial consultant concluded that, subject to the extension of the loan being agreed with its senior secured lenders, Bluewaters meets the requirements of section 19(1) of the Electricity Act, as it has the financial resources to undertake the activities authorised by the licence.

² Bluewaters also holds electricity generation licence EGL4.

14. The ERA considered the financial consultant's report, including information relied on in the report and the reasons for the consultant's conclusions. The ERA agreed with the consultant's conclusions for the following reasons:
 - a. The uncertified financial statements submitted by Bluewaters show it made a profit after tax in 2019/20 and 2020/21.
 - b. Bluewaters has been repaying its borrowings as and when they fall due.
 - c. Negotiations with its senior secured lenders to extend the loan are at an advanced stage.

2.4 Technical assessment

15. 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, and is then likely to retain, the technical resources to undertake the activities authorised by the licence.
16. The ERA used Bluewaters' licence compliance history to determine whether it has the technical resources to continue to provide the licensed services.
17. Based on its compliance history, the ERA considers that Bluewaters has, and is likely to retain, the technical resources to undertake the activities authorised by ERL12.

2.5 Licence duration

18. Due to the uncertainties about the loan extension, the ERA has decided to renew ERL12 for 12 months. This is to give Bluewaters and its senior secured lenders sufficient time to conclude their negotiations and for the ERA to assess the new financing arrangements when the licence is next due for renewal in 2022.

2.6 Assessment of public interest

2.6.1 *Electricity Industry Act 2004*

19. 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. Without limiting the other matters that may be taken into account, section 9(2) of the Electricity Act requires that the ERA is to take into account the matters referred to in section 8(5) of the Electricity Act when determining whether the renewal would not be contrary to the public interest. Those matters 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*

20. When making a decision on whether or not to renew a licence, the ERA must also have regard to the matters set out in section 26(1) on the *Economic Regulation Authority Act 2003*:³
 - 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.

2.6.3 *ERA assessment of public interest*

21. The ERA has considered the:
 - Matters set out in section 26(1) of the ERA Act.
 - Public interest test in section 8(5) of the Electricity Act, as required by section 9(1) of the Electricity Act.
 - Bluewaters' licence compliance history.
 - Bluewaters' financial reports for the past three financial years.
 - The report from the financial consultant.
 - Outcome of the public consultation (no submissions received).
22. The interests of Bluewaters' existing customers are best served by Bluewaters continuing to be licensed, so it can maintain supply to those customers (section 8(5)(d) of the Electricity Act and sections 26(1)(a) and (b) of the ERA Act). The ERA also considered that Bluewaters does not supply small use customers, including residential customers.⁴

³ 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.

⁴ A 'small use customer' is a customer who consumes not more than 160 megawatt hours of electricity per year.

23. The continued operation of Bluewaters promotes retail competition in the electricity market (section 8(5)(f) of the Electricity Act and sections 26(1)(e) and (f) of the ERA Act)
24. The ERA conducted public consultation on the licence renewal application and has stated in this decision the reasons for renewing ERL12 (section 26(1)(g) of the ERA Act).
25. 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 ERL12 for 12 months would not be contrary to the public interest.