



Economic Regulation Authority

# Decision to renew electricity retail licence ERL12

Bluewaters Power 1 Pty Ltd

28 July 2022

## **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 36 months.
2. Subject to its terms and conditions, the licence authorises Bluewaters to sell electricity to large use customers in the South West Interconnected System.<sup>1</sup>
3. As required by section 23(1) of the Electricity Act, the ERA will publish a notice of the licence's renewal in the Government Gazette as soon as practicable.

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<sup>1</sup> A large use customer 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 renewed ERL12 on 14 August 2021 for 12 months to give Bluewaters' time to negotiate with its senior secured lenders to extend a loan that was due for repayment in August 2020.<sup>2</sup>
6. On 13 May 2022, Bluewaters applied to the ERA to renew ERL12.

### 2.2 Public consultation

7. On 18 May 2022, the ERA sought [public comment](#) on the licence renewal application. The period for submissions closed on 8 June 2022.
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 2019/20 and 2020/21 and a written declaration from its Chief Executive Officer that it has, and will retain, the financial resources to continue to undertake the activities authorised by the licence.
11. Bluewaters also confirmed that the loan that was due for repayment in August 2020 has been extended until 30 June 2027.
12. The ERA engaged a financial consultant to examine the financial resources of Bluewaters to be able to continue to provide the services authorised by the licence.
13. Following the financial assessment of Bluewaters' licence renewal application, the financial consultant concluded that based on Bluewaters' current circumstances, Bluewaters has, and is likely to retain until at least 30 June 2027, the financial resources to undertake the activities authorised by the licence. However, the financial consultant noted that there is currently some uncertainty about Bluewaters' long-term coal supply and if this is not addressed there is a material uncertainty as to whether Bluewaters can repay its loan.
14. Bluewaters sells electricity to Synergy under a bilateral market contract and to two end use customers: the Water Corporation and Boddington Gold Mine.

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<sup>2</sup> Further information on the 2021 licence renewal is available on the ERA [website](#).

15. The Water Corporation and Synergy contracts are due to expire before the end of the term of the loan in 2027. If these contracts are not extended:
  - There will be uncertainty about Bluewaters' financial resources to undertake the activities authorised by ERL12, including its ability to repay its loan.
  - Bluewaters' revenue will be substantially reduced, and it will need to find alternative sources of revenue.

## 2.4 Technical assessment

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

## 2.5 Licence duration

19. The ERA has decided to renew ERL12 for 36 months, rather than a longer period, given the uncertainty about Bluewaters' coal supply and whether contracts with two of its three customers will be renewed. In 36 months' time (in 2025) the ERA expects there will be more clarity about these matters, which should enable the ERA to make a decision about ERL12's potential long-term renewal.
20. Renewing ERL12 for 36 months will:
  - a. Enable Bluewaters to meet its contractual commitments to its customers.
  - b. Give Bluewaters time to receive confirmation from its customers on whether they will renew their contracts or not, and potentially plan for other revenue sources.
  - c. Give Bluewaters time to address its coal supply constraints.
  - d. Enable Bluewaters to continue to meet its loan commitments.

## 2.6 Assessment of public interest

### 2.6.1 *Electricity Industry Act 2004*

21. 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 to determine whether the exercise of the power 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**

22. The ERA must also have regard to the matters set out in section 26(1) of the *Economic Regulation Authority Act 2003*:<sup>3</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 or 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**

23. The ERA has considered the:

- Matters set out in section 26 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' recent financial performance.
- The report from the financial consultant.
- Outcome of the public consultation (no submissions received).

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<sup>3</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.

24. 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(2)(a) and (b) of the ERA Act).
25. The continued operation of Bluewaters promotes retail competition in the electricity market (section 8(5)(f) of the Electricity Act and sections 26(2)(e) and (f) of the ERA Act).
26. The ERA conducted public consultation on the licence renewal application and has stated in this decision the reasons for renewing ERL12 (section 26(2)(g) of the ERA Act).
27. 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 36 months would not be contrary to the public interest.