



Economic Regulation Authority

# Decision on electricity generation licence application

FRWF Stage 1 Pty Ltd

21 July 2022

## **Economic Regulation Authority**

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## 1. Decision

1. In accordance with sections 9 and 19 of the *Electricity Industry Act 2004*, the ERA grants electricity generation licence EGL31 to FRWF Stage 1 Pty Ltd (FRWF).
2. The licence authorises FRWF to construct and operate generating works in the operating area in plan ERA-EL-160 in the licence.
3. The licence term is 30 years (the maximum period allowed by section 15(2) of the Electricity Act) from 22 July 2022.
4. As required by section 23(1) of the Electricity Act, the ERA will publish a notice of the grant of the licence in the Government Gazette as soon as practicable.

## 2. Reasons

### 2.1 Application

5. On 21 April 2022, FRWF applied for an electricity generation licence to construct and operate the proposed 75.6-megawatt Flat Rocks Wind Farm in the shires of Kojonup and Broomehill-Tambellup in the Great Southern region. The wind farm will be connected to the South West Interconnected System and supply electricity to BHP Billiton Nickel West Pty Ltd.

### 2.2 Public consultation

6. On 9 May 2022, the ERA sought public comment on FRWF's [licence application](#). The ERA received [submissions](#) from Ms Elizabeth Atkins and Mr Adrian Bilney.
7. Ms Atkins and Mr Bilney objected to FRWF being granted an electricity generation licence, putting forward broadly similar objections, which included:
  - a. The proposed location is not suitable for a wind farm, because it is high value and quality farmland.
  - b. The wind farm may affect the value and amenity of local farmland.
  - c. The wind farm does not comply with recommendations by the Australian Energy and Infrastructure Commissioner on the minimum setback from property boundaries and public roads.<sup>1</sup>
  - d. The wind farm will be built within nature reserves and require the clearing of native vegetation.
  - e. The wind farm will reduce the ability of neighbouring farmers to use aeroplanes and helicopters for agricultural and fire prevention purposes.
8. The submissions focus on the loss of amenity for neighbours of the proposed wind farm development and planning and environmental matters. Planning and environmental approvals for developments are provided by other decision-making bodies to the ERA.
9. FRWF received development (planning) approval for its wind farm from the relevant planning authorities prior to applying to the ERA for an electricity generation licence.
10. FRWF compiled an environmental impact report as part of its development approval application to the relevant planning authorities, which included environmental, archaeological, visual, aviation and noise impact assessments conducted by independent experts.

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<sup>1</sup> The [AIE Commissioner](#) is an independent position appointed by the Commonwealth Government. The Commissioner's role is to facilitate the resolution of complaints from residents about wind farms, large-scale solar, energy storage facilities and new major transmission projects. The Commissioner also promotes best practice for industry and government on planning and operating these assets. The Commissioner's role is not to duplicate or override the responsibilities of other jurisdictions, such as those relating to the planning and approval of wind farms.

11. The planning approvals include conditions that relate to the concerns raised by Ms Atkins and Mr Bilney about the location of the wind farm, including:
  - a. A limit on the number of turbines that can be built.
  - b. Where the turbines and supporting infrastructure can be built, including minimum distances from property boundaries.
  - c. Turbine design specifications.
  - d. Conditions prescribing construction, operational and decommissioning standards, including noise level standards for the turbines.
  - e. Before the applicant begins any works, FRWF must lodge a Construction Management Plan, Fire Management Plan, Noise Impact Mitigation Management Plan, Traffic Management Plan and Landscaping Plan for approval by local government.
12. The Commonwealth Government's Department of Agriculture, Water and Environment made a decision that constructing and operating the wind farm is not considered a 'controlled action' under the *Environmental Protection and Biodiversity Conservation Act 1999 (Cwlth)* and therefore does not require any further action.<sup>2</sup>
13. The ERA's role under the electricity licensing scheme in the Electricity Act is to assess whether a licence applicant has the technical and financial resources to undertake the activities to be authorised by the licence and whether granting the licence would not be contrary to the public interest (these matters are considered in section 2.3).
14. The granting of a licence under the Electricity Act does not affect the requirement for FRWF to obtain the other regulatory approvals it needs to construct and operate the wind farm.

## 2.3 Assessments

### 2.3.1 Financial and technical assessments

15. Under section 19(1) of the Electricity Act, the ERA must grant 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 financial and technical resources to undertake the activities authorised by the licence.
16. The ERA engaged financial and technical consultants (experts) to examine the financial and technical ability of FRWF to undertake the activities authorised by the licence.
17. Following the financial assessment of FRWF's application, the financial consultant concluded that FRWF complies with the financial requirements of section 19(1) of the Electricity Act. The ERA agrees with the consultant's conclusions in the financial report for the following reason:

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<sup>2</sup> If significant impacts are considered likely and the action (building the wind farm) is deemed a controlled action, then the proposal goes to the next stage of the process: environmental assessment and approval.

- a. The financial assessment of FRWF's parent company, Enel Green Power S.p.A, shows it has the capacity to finance the construction and operation of the wind farm.
  - b. Revenue for the first 12 years of the project is guaranteed through a power purchase agreement with BHP Nickel West Pty Ltd.
18. Following the technical assessment of FRWF's application, the technical consultant concluded that FRWF complies with the technical requirements of section 19(1) of the Electricity Act. The ERA agrees with the consultant's conclusions in the technical report for the following reasons:
- a. Enel Green Power Australia, which will manage the project on behalf of FRWF, has the management expertise to construct and operate the wind farm.
  - b. FRWF has appointed experienced contractors to construct, operate and maintain the wind farm, including Vestas, which will provide, install, and maintain the wind turbines.

## **2.3.2 Public interest**

### **2.3.2.1 Electricity Industry Act 2004**

19. Section 9 of the Electricity Act requires that the ERA must not grant 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 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.

### **2.3.2.2 Economic Regulation Authority Act 2003**

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

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<sup>3</sup> Under section 26(2) of the ERA Act, the ERA has discretion as to the weight it gives to the matters in section 26(1).

- 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.

### 2.3.2.3 *Assessment of the public interest*

21. The ERA has considered:

- The matters set out in section 9(2) and section 8(5) of the Electricity Act.
- Section 19(1) of the Electricity Act.
- Section 26(1) of the ERA Act.
- The outcome of the public consultation.
- The reports of the financial and technical experts engaged by the ERA.
- Information provided in FRWF's application on its ability to undertake the activities to be authorised by the licence.

22. The ERA is satisfied that granting an electricity generation licence to FRWF would not be contrary to the public interest, because:

- a. Granting a licence to FRWF will increase renewable energy generation on the South West Interconnected System, with a large industrial customer (BHP) benefiting from being able to use renewable energy to power its business. This reduces greenhouse gas emissions, which is beneficial for the environment and is consistent with the State Government's policy objectives on renewable energy (sections 8(5)(a) and (g) of the Electricity Act).
- b. The construction and operation of the wind farm will support economic and regional development (section 8(5)(c) of the Electricity Act and sections 26(1)(b) and (c) of the ERA Act).
- c. The ERA conducted public consultation on the licence application and has stated in its decision the reasons for granting the licence (section 26(1)(g) of the ERA Act).