

Utilities (Variation of licence) Notice 2009 (No 4)

Notifiable instrument NI2009–315

made under the

Utilities Act 2000, section 52 (Public notice of licence decisions) and section 53 (Public access to licences)

1 Name of instrument

This instrument is the *Utilities (Variation of licence) Notice 2009 (No 4)*.

2 Commencement

This instrument commences the day after it is notified.

3 Purpose of the instrument

Under section 38 of the *Utilities Act 2000*, the Independent Competition and Regulatory Commission has varied all utility service licences for gas supply services (section 9 (d)) granted under the Act, to:

- remove the reference to the requirement to participate in the Gas Market Company's gas market scheme, and substitute a requirement for registration as a participant with the Australian Energy Market Operator; and
- make minor editorial amendments to improve identification of the document.

4 Variation to licences

Schedule 1 to this instrument lists the grantees of licences varied in accordance with the master licence at Schedule 2.

5 Public access to documents

A copy of the licences and the record of the decision relating to the variation of the licences, are available for inspection by members of the public:

- at the Commission's offices (located at Level 2, 12 Moore Street, Canberra City, ACT) during ordinary office hours; and
- on the Commission's website (www.icrc.act.gov.au).

Copies of these documents can be made at the Commission's offices. Electronic copies are available on request. No charge will apply to the inspection or copying of the documents.

Paul Baxter
Senior Commissioner
Independent Competition and Regulatory Commission

30 June 2009

Schedule 1 Variation of gas supply licences

(see section 4)

The licences for gas supply services (section 9 (d)) of the *Utilities Act 2000* granted to the licensees listed below are varied in accordance with the master licence at Schedule 2:

- Australian Power & Gas Pty Ltd ACN 118 609 813,
- ACTEW Retail Ltd ACN 074 371 207 and AGL ACT Retail Investments Pty Ltd ACN 093 631 586 trading as “ActewAGL Retail”;
- Country Energy ABN 37 428 185 226,
- Dodo Power & Gas Pty Ltd ACN 123 155 840,
- Energy Australia ABN 67 505 337 385,
- Jackgreen (International) Pty Ltd ACN 097 708 104,
- SUN Retail Pty Ltd ACN 078 848 549, and
- TRUenergy Pty Ltd ABN 99 086 014 968.

**INDEPENDENT COMPETITION AND REGULATORY
COMMISSION**

~~Utility Services Licence under the *Utilities Act*
2000 (ACT)~~

**Licence to Supply Gas under the
*Utilities Act 2000 (ACT)***

issued **granted**

<<Company Name>>

<<ACN xxx xxx xxx>>

As granted on
<<day/month/year>>



AUSTRALIAN
CAPITAL TERRITORY

Note:

Variations to the standard licence for gas suppliers (non-franchise) are shown as follows:

~~Text which is struck through and highlighted in grey is deleted.~~

Text which is underlined and highlighted in yellow is new or amended.

Additional explanatory notes are highlighted in blue.

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Licence to provide **Utility Services** **granted** ~~issued~~ on <<day/month/year>>

BY

Independent Competition and Regulatory Commission, a body corporate established under the *Independent Competition and Regulatory Commission Act 1997* (ACT) ("**ICRC**") pursuant to the *Utilities Act 2000* (ACT)

TO

The **Person** specified in **Item 1** of the **Reference Schedule** ("**Licensee**").

ICRC has determined to **grant** ~~issue~~ a licence under **section 37 of** the *Utilities Act 2000* (ACT) **in respect of the utility service defined under section 9 (d) of the Act** on the conditions set out in this licence.

1. COMMENCEMENT AND TERM

1.1 Commencement date

This licence will take effect from <<day/month/year>>.

1.2 Licence term

This licence will remain in force until it is transferred, surrendered or revoked.

2. DICTIONARY

The dictionary at the end of this licence is part of this licence.

3. LICENCE NOT TO LIMIT LICENSEE

This licence does not and is not to be taken to:

- (1) limit or prevent the **Licensee** from doing anything that it may lawfully do without the benefit of this licence; or
- (2) override or derogate from a requirement under any other **Law**.

4. AUTHORISATION

4.1 Authorised Utility Services

This licence confers on the **Licensee** the right to provide the **Authorised Utility Services** referred to in **Item 3** of the **Reference Schedule**.

4.2 Area of operations

The **Licensee** may exercise the rights conferred on it in any part of the **Territory**.

4.3 Non-exclusive rights

The rights conferred by this licence on the **Licensee** are not exclusive.

5. LICENSEE TO COMPLY WITH OBLIGATIONS UNDER THIS LICENCE

5.1 Licensee to comply with obligations

The **Licensee** must, at all times during the term of this licence, provide the **Authorised Utility Services** in accordance with the obligations imposed upon it by this licence, including the obligations set out in the schedule.

5.2 Joint and several responsibility

Where the **Licensee** comprises two or more legal entities, each entity is jointly and severally liable for the **Licensee's** compliance with the terms of this licence.

6. COMPLIANCE WITH ALL APPLICABLE LAWS

6.1 Licensee to comply

The **Licensee** must comply with all **Laws** for the time being in force in the **Territory** and applicable to any services provided by the **Licensee** in the **Territory**.

6.2 Licensee to comply with the Act

Without limiting the generality of clause 6.1, in providing the **Authorised Utility Services** the **Licensee** must comply with:

- (1) any requirement of the **Act**;
- (2) relevant **Industry Codes** including the performance standards (if any) prescribed under those codes;
- (3) relevant **Technical Codes** including the performance standards (if any) prescribed under those codes;
- (4) any direction given to the **Licensee** by **ICRC** or the **Chief Executive** under the **Act**; and
- (5) any applicable ring fencing requirements.

6.3 Severance of any part of the licence does not affect continued operation of remainder of licence

If any part of this licence is prohibited, void, voidable, illegal or unenforceable, then that part is severed from the licence but without affecting the continued operation of the remainder of the licence.

7. LICENCE COMPLIANCE

7.1 Licensee to monitor compliance

The **Licensee** must monitor its compliance with this licence and any **Law** or such other code of practice, directions and guidelines applicable to the **Licensee** and to any of the other services to be rendered by the **Licensee** that it is required to comply with under clause 6.2.

7.2 Licensee to notify ICRC of any material breaches

If the **Licensee** becomes aware of a material breach of this licence and any **Law** or such other code of practice, directions and guidelines applicable to the **Licensee** and to any of the other services to be rendered by the **Licensee** that it is required to comply with under clause 6.2, the **Licensee** must notify **ICRC** of the breach as soon as practicable.

7.3 Licensee to provide statement on any non-compliance

If the **Licensee** has not complied with any of its obligations under clause 6.2, the **Licensee** must identify those obligations and provide a brief statement to **ICRC** that explains the circumstances of, and reasons for the non-compliance, consequences of the non-compliance (including any penalties imposed) and outlines measures that the **Licensee** will put in place to rectify that non-compliance.

7.4 Licensee to report annually

The **Licensee** must report to **ICRC** on its obligations under clause 6.2, and in relation to any other reporting requirements the **Licensee** has under the **Act**, including information which **ICRC** requires to be reported against pursuant to the **Act**, by 1 October every year during the term of this Licence.

7.5 Availability of annual report

The **Licensee** must ensure that a summary of the annual report required under clause 7.4 is publicly available.

7.6 Operation and compliance audits

- (1) The **Licensee** must, from time to time, undertake audits of the services and operations authorised by this licence and of its compliance with its obligations under this licence and any **Law**, code of practice, directions and guidelines that it is required to comply with under clause 6.2.
- (2) The audits must be conducted by an independent expert or auditor nominated by the **Licensee** and approved by **ICRC**.
- (3) The audit results must be reported to **ICRC** in a manner (including as to form and substance) approved by **ICRC**.

8. TECHNICAL AND PRUDENTIAL CRITERIA

8.1 Requirement to continue to meet criteria

The **Licensee** must, throughout the term of this licence, continue to satisfy the same technical and prudential criteria that it was required to meet as a condition of the grant of the licence under the **Act**.

8.2 Licensee to advise ICRC of financial and technical capacities

The **Licensee** must, from time to time as reasonably required by **ICRC**, provide **ICRC** with:

- (1) details of the **Licensee's** financial, technical and other capacity (including the capacity of its major contracted providers) to continue to provide the services and to conduct the operations authorised by this licence; and
- (2) such other information as **ICRC** requires.

9. CONTRACTING OUT

9.1 Licensee may contract out

The **Licensee** may contract out the provision, construction, operation, management or maintenance of any of the systems or services that are the subject of this licence.

9.2 Licensee bound by obligations under licence

Contracting out does not relieve the **Licensee** of its responsibility to comply with its obligations under this licence.

10. CHARGE AND ASSIGNMENT

10.1 Charge

The **Licensee** must not grant a charge over its interest in this licence without the prior written consent of **ICRC**.

10.2 Assignment

The **Licensee** must not **assign** its interest under this Licence without the prior written consent of **ICRC**.

10.3 Assignment generally

An application by a **Licensee** to **ICRC** for consent to an assignment must demonstrate, to the reasonable satisfaction of **ICRC**, that the proposed assignee is a respectable, responsible, and solvent **Person** who is capable of performing all obligations in this licence on the part of the **Licensee**.

10.4 Changes in Licensee's shareholdings

A change in the shareholding in the **Licensee**, at any one time, resulting in the transfer of more than 50 percent of the shares in the **Licensee** to a third party will be deemed to be an assignment for the purposes of clause 10.2. **ICRC's** consent to assignment in these circumstances will not be unreasonably withheld.

10.5 Changes in ownership

A **Licensee** must keep the **ICRC** informed of all relevant changes in the ownership of the **Licensee**.

11. RISK MANAGEMENT

11.1 ICRC may request information

ICRC may, from time to time, request details of the **Licensee's** risk management strategy.

11.2 Information that may be requested

The information requested by **ICRC** may include information about the **Licensee's** levels of insurance cover for the protection of:

- (1) persons affected by the activities or operations of the **Licensee** (including **customers**, owners or occupiers of land and members of the general public) from injury or harm; and
- (2) the property of those persons against damage or loss.

11.3 Licensee must provide information

The **Licensee** must provide the details requested under clause 11.1.

11.4 Licensee to indemnify ICRC

The **Licensee** will indemnify **ICRC**, the **Territory** and their respective employees and agents ("those indemnified") against liability in respect of all claims and for all loss, damage or injury to persons or property caused by the **Licensee**, its employees, agents or contractors in connection with services it provides pursuant to this licence (and those it purports to deliver under this licence). The amount of all claims, damage, costs and expenses which may be paid, suffered or incurred by those indemnified in respect of any such claim, loss, damage or injury will be made good at the **Licensee's** expense, except to the extent that **ICRC** or the **Territory** caused the relevant loss, damage or injury.

12. OTHER RESTRICTIONS ON LICENSEE

12.1 Restrictions on Licensee

A **Licensee** must first consult with **ICRC** if the **Licensee**:

- (1) intends to dispose of any major asset;
- (2) intends to enter into any major transaction;
- (3) is granted a **security interest** or a lien over the **Licensee's network facilities**; or
- (4) intends to engage in any other business activity;

that is likely to materially adversely affect the **Licensee's** ability to:

- (5) provide the **Authorised Utility Services**; or
- (6) comply with its obligations under:

- (a) the **Act**,
- (b) any **Law**,
- (c) this licence, or
- (d) the **customer contract**.

12.2 Suspension of licence

If during the term of this licence the **Licensee** breaches a licence condition in circumstances whereby **ICRC** determines that the breach is not serious and is remediable by the **Licensee** in a timely manner, **ICRC** may suspend this licence, or suspend the **Licensee's** conduct of specified services or operations under this licence, until the breach is remedied.

12.3 Licensee to comply with requirements of suspension notice

In the event of **ICRC** notifying the **Licensee** that this licence is suspended, or that the **Licensee's** provision of any specified services or operations under this licence are suspended, the **Licensee** must comply with any requirements under the suspension notice for the purpose of remedying a specified breach of this licence in a timely manner.

13. CONSENTS

The **Licensee** must obtain and keep current all **consents** necessary for it to lawfully provide the **Authorised Utility Services**.

14. INSPECTION OF RECORDS

14.1 Licensee to keep records

The **Licensee** must keep, or cause to be kept, comprehensive records in accordance with **ICRC's** requirements under the **Act**.

14.2 Licensee to provide copies of records

ICRC's officers and agents may request the **Licensee** to provide copies of records referred to in clause 14.

14.3 Licensee to comply with all requests

The **Licensee** must comply with all reasonable requests by **ICRC** for copies of the records.

15. ANNUAL LICENCE FEE

The **Licensee** must pay to **ICRC** an annual licence fee determined in accordance with the **Act**. The payment of the fee is to be made in accordance with **ICRC's** determination.

16. REVIEW OF LICENSEE'S OBLIGATIONS

ICRC may review this licence at any time in accordance with section 46 of the **Act**.

17. TRANSFER, SURRENDER OR REVOCATION OF LICENCE

This licence may only be transferred, surrendered or revoked in accordance with the **Act**.

18. VARIATION OF LICENCE

The terms of this licence may be varied by **ICRC** in accordance with section 38 of the **Act**.

19. COMMUNICATION

19.1 Communication to be in writing

A communication under this licence is to be in writing and:

- (1) delivered by hand at the address for service of the addressee;
- (2) sent by post to the address for service of the addressee; or
- (3) sent by facsimile to the facsimile number of the addressee.

19.2 Address for service

The **Licensee's** service address is the address referred to in **Item 4** of the **Reference Schedule** or another address subsequently notified to **ICRC** by the **Licensee**.

19.3 ICRC to be advised of contact details

The **Licensee** must notify the **ICRC** of a change in address in **Item 4** and any other contact details within 10 **business days** of the change.

19.4 Deemed delivery

Where a notice or other communication to be given under this licence is delivered or sent, it is deemed given to, and received by, the addressee:

- (1) if hand delivered, upon delivery;
- (2) if mailed to an address, two **business days** after the date of posting; or
- (3) if sent by facsimile before 4:00 pm on a **business day** at the place of receipt, on the day it is sent and otherwise on the next **business day** at the place of receipt.

20. WAIVER

20.1 Non exercise of power or right

A failure or delay to exercise a power or right arising under this licence by **ICRC** or the **Licensee** does not waive that power or right.

20.2 Exercise of power or right

The exercise of a power or right arising under this Licence does not preclude either its exercise in the future or the exercise of any other power or right.

20.3 Waiver must be in writing

A waiver by the **Licensee** or the **ICRC** of a power or right arising under this licence is not effective unless it is in writing.

20.4 Limit on application

A waiver of a power or right arising under this licence is effective only with respect to the specific instance to which it relates and for the specific purpose for which it is given.

REFERENCE SCHEDULE

- Item 1** **Licensee**
- <<Company Name ACN xxx xxx xxx>>
- Item 2** **Commencement date**
- <<day/month/year>>
- Item 3** **Authorised Utility Services**
- gas supply services under section 9 (d) of the **Act (non-franchise customers)**.
- Item 4** **Address for Service of Licensee**
- <<physical address>>

SCHEDULE 1: ADDITIONAL UTILITY SERVICE LICENCE OBLIGATIONS – GAS SUPPLY

1. EMERGENCY TELEPHONE SERVICE

1.1 Availability of telephone service

The **Licensee** must have a 24 hour emergency telephone service that is accessible to the public. The telephone service must be:

- (1) accessible every day of the year; and
- (2) able to receive reports of escapes of gas supplied by the **Licensee**.

1.2 Customers to be informed

The **Licensee** must ensure that the **Licensee's customers** are informed of the arrangements detailed in clause 1.1 of this schedule.

2. ENVIRONMENTAL REQUIREMENTS

2.1 Environmental strategies

The **Licensee**, if supplying gas in excess of 500 terajoules, must develop and implement strategies to encourage the use of thermally efficient gas appliances and efficient energy-use practices. The strategies should aim to reduce greenhouse gas emissions from the use of natural gas in the **Territory** and must be relevant to the **Licensee's customers**.

3. ~~PARTICIPATION IN GAS MARKET SCHEME~~ REGISTRATION WITH THE AUSTRALIAN ENERGY MARKET OPERATOR

Before the **Licensee** commences supplying gas to customers under this licence, the licensee must register as a participant in the Gas Market Company's gas market scheme or another scheme that the ICRC deems to be equivalent with the Australian Energy Market Operator as required under the National Gas Law in accordance with the National Gas Rules.

SCHEDULE 2: VARIATIONS TO THE LICENCE

Date	Clause	Reason for variation

SIGNED for and on behalf of)
THE INDEPENDENT COMPETITION AND)
REGULATORY COMMISSION by)
PAUL BAXTER in the presence of:)
.....

.....
Signature of Witness

.....
Name of Witness (BLOCK LETTERS)

DICTIONARY

In this licence, unless the contrary intention appears:

- (1) “**Act**” means the *Utilities Act 2000 (ACT)*;
- (2) “**assign**” includes assign, transfer, mortgage or otherwise deal with an interest but does not include the granting of a charge over an interest;
- (3) “**Authorised Utility Services**” means the **Utility Services** referred to in the **Reference Schedule** that the **Licensee** is authorised to provide under clause 4.1;
- (4) “**business day**” means a day, other than a Saturday, Sunday or public holiday in the **Territory**;
- (5) “**Chief Executive**” means the **Chief Executive** responsible for administering Part 5 of the **Act**;
- (6) “**consent**” includes any licence, permit, authority or consent issued or given by an agency or a Minister;
- (7) “**customer**” has the same meaning as in the **Act**;
- (8) “**customer contract**” has the same meaning as in the **Act**;
- (9) “**electricity network**” has the same meaning as in the **Act**;
- (10) “**franchise customer**” has the same meaning as in the **Act**;
- (11) “**gas distribution network**” has the same meaning as in the **Act**;
- (12) “**gas transmission network**” has the same meaning as in the **Act**;
- (13) “**ICRC**” means the Independent Competition and Regulatory Commission established under section 5 of the *Independent Competition and Regulatory Commission Act 1997 (ACT)*;
- (14) “**Industry Code**” means a code approved or determined by **ICRC** under Part 4 of the **Act**;
- (15) “**Item**” means the relevant **Item** in the **Reference Schedule**;
- (16) “**Law**” means any statute, regulation, rule, proclamation, order, ordinance or by-law whether present or future and whether Commonwealth, **Territory** or otherwise (in this subclause referred to as “statutory provision”) and includes:
 - (a) any such statutory provision as amended or re-enacted from time to time; and
 - (b) any statute, regulation, rule, proclamation, order, ordinance or by-law enacted in replacement of any statutory provision;

Note that dot points amended to (a) and (b)

- (17) “**Licensee**” means the **Person** referred to in **Item 1** of the **Reference Schedule**;
- (18) “**network facilities**” means:
- (a) any part of the infrastructure of a **utility network**; or
 - (b) any powerline, pole or wire, any water, sewerage or gas main or pipe, or any equipment, apparatus, structure or other thing used or for use, in connection with the provision of a **utility service**;
- Note that dot points amended to (a) and (b)**
- (19) “**non-franchise customer**” has the same meaning as in the **Act**;
- (20) “**Person**” includes a natural person, a firm, an unincorporated association, a **Territory** agency, a corporation or any other body corporate;
- (21) “**Reference Schedule**” means the **Reference Schedule** to this licence;
- (22) “**security interest**” means:
- (a) a mortgage, pledge, lien, charge, assignment, hypothecation, secured interest, title retention arrangement, preferential right, trust arrangement or other arrangement (including any set off or “flawed asset” arrangement) having the same or equivalent or commercial effect as a grant of security; or
 - (b) an agreement to create or give any arrangement referred to above;
- (23) “**sewerage network**” has the same meaning as in the **Act**;
- (24) “**Technical Code**” means a code approved or determined by the Minister under Part 5 of the **Act**;
- (25) “**Territory**” means:
- (a) when used in a geographical sense, the Australian Capital Territory; and
 - (b) when used in any other sense, the body politic established by section 7 of the *Australian Capital Territory (Self-Government) Act 1988* (Cth);
- (26) “**utility network**” means:
- (a) an **electricity network**,
 - (b) a **gas transmission network**,
 - (c) a **gas distribution network**,
 - (d) a **sewerage network**,
 - (e) or a **water network**;

- (27) “**utility services**” has the same meaning as in the **Act**;
- (28) “**water network**” has the same meaning as in the **Act**.