Utilities (Variation of Licence) Notice 2017 (No 1)*

Notifiable Instrument NI2017-652

made under the

Utilities Act 2000, section 38 (variation) and section 52(1)(c) (Public notice of licence decisions)

1 Name of instrument
This instrument is the Utilities (Variation of Licence) Notice 2017 (No 1).

2 Public notice of licence decision - variation
The electricity transmission, distribution and connection services utility licence held by Icon Distribution Investments Limited (ACN 073 025 224) and Jemena Networks Pty Ltd (ACN 008 552 663), trading as ‘ActewAGL Distribution’ (the licensee), has been varied under section 38 of the Utilities Act 2000 to change the trading name from ‘ActewAGL Distribution’ to ‘Evoenergy’. Details of the variation are set out in schedule 2 of the licence.

The variation does not affect any rights or obligations arising from the licence prior to the variation.

3 Date of effect of the variation
The licensee’s utility services licence remains in force from its commencement date of 1 July 2001, with the variation to the licence taking effect from 1 January 2018.


Joe Dimasi
Senior Commissioner
8 December 2017

*Name amended under Legislation Act, s 60
Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au
INDEPENDENT COMPETITION AND REGULATORY COMMISSION

Licence to provide electricity transmission, distribution and connection services under the Utilities Act 2000

granted to

Icon Distribution Investments Limited ACN 073 025 224

and

Jemena Networks (ACT) Pty Ltd ACN 008 552 663

trading as

“Evoenergy”

As varied on
1 January 2018
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**SCHEDULE 2: VARIATIONS TO THE LICENCE**

**DICTIONARY**
Licence to provide Utility Services granted on 29 June 2001.

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 a licence under section 37 of the Utilities Act 2000 (ACT) in respect of the utility services defined under section 6 (a) and section 6 (b) 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 1 July 2001.

1.2 Licence term

This licence will remain in force until a variation is made to this clause, or the licence 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 Technical Regulator 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;

(3) sent by email to the primary contact email of the addressee; or
(4) 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;

(3) if sent by email before 4:00 pm on a business day at the place of receipt, on the day it is sent, otherwise on the next business day; or

(4) 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

Icon Distribution Investments Limited ACN 073 025 224 and Jemena Networks (ACT) Pty Ltd ACN 008 552 663 trading as “Evoenergy”

Item 2  Commencement date

1 July 2001

Item 3  Authorised Utility Services

(a) electricity distribution services under section 6(a) of the Act;
(b) electricity connection services under section 6(b) of the Act;
(c) electricity transmission services under section 6(d) of the Act; and
(d) the action required by the distributor under section 6(2) of the Electricity Feed-in (Renewable Energy Premium) Act 2008 (ACT).

Item 4  Address for Service of Licensee

GPO Box 366
Canberra ACT 2601
SCHEDULE 1 ADDITIONAL UTILITY SERVICE LICENCE OBLIGATIONS - ELECTRICITY DISTRIBUTION AND CONNECTION SERVICES

1. EMERGENCY 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 network emergencies.

2. ENVIRONMENTAL REQUIREMENTS

   2.1 Program to minimise network losses

      The Licensee must develop, and implement an ongoing program to cost effectively minimise losses of electrical power in the Licensee’s electricity network.

   2.2 Annual reporting requirements

      The Licensee must report annually to ICRC on its implementation of measures to reduce:

      (1) network losses; and
      (2) the greenhouse gas emissions attributable to its network operations.

3. REQUIREMENTS UNDER THE ELECTRICITY FEED-IN SCHEME

   3.1 Licensee must comply with the Electricity Feed-in (Renewable Energy Premium) Act 2008 (ACT)

      The Licensee must comply with the Electricity Feed-in (Renewable Energy Premium) Act 2008 (ACT) and statutory instruments in force under that Act.
## SCHEDULE 2: VARIATIONS TO THE LICENCE

<table>
<thead>
<tr>
<th>Date</th>
<th>Clause</th>
<th>Reason for variation</th>
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<tbody>
<tr>
<td>15 August 2002</td>
<td>15</td>
<td>Clause 15.2 deleted and clause 15.1 renumbered as 15 and amended to the effect that the licensee must pay to ICRC an annual licence fee determined in accordance with section 45 of the Utilities Act and that the payment of the fee be made in accordance with ICRC’s determination. <strong>NI2002–276</strong></td>
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| 25 March 2009    | Title Page Reference Schedule Schedule 1 | To:  
  - reflect the change of company name from AGL Gas Company (ACT) Ltd ACN 008 552 663 to Jemena Networks (ACT) Pty Ltd ACN 008 552 663  
  - give effect to the provisions of the *Electricity Feed-in (Renewable Energy Premium) Act 2008*  
  - to make minor editorial amendments and formatting changes. **NI2009–175**                                                                                                                                                                                                 |
| 3 September 2015 | Title Page | Added "transmission" to the licensed services.  
  Changed the company name from “ACTEW Distribution Limited ACN 073 025 224” to “Icon Distribution Investments Limited ACN 073 025 224”.
  1.2 Updated clause to include “until a variation is made to this clause”  
  6.2(4), Updated to take account of the *Utilities (Technical Regulation) Act 2014*.
  19.1(3) & 19.4(3) Updated to include email as a method of delivery.
  Reference schedule Updated licensee company name. Added electricity transmission as a service.
  Schedule 1 Removed clause 3.2 to take account of changes in reporting requirements resulting from *Electricity Feed-in Tariff Schemes Legislation Amendment Act 2015*.
  Dictionary Updated dictionary to take account of the changes made to the text of the licence.                                                                                                                                                                                                  |
| 1 January 2018   | Title Page | Removed “ActewAGL Distribution” and replaced it with “Evoenergy”.  
  Reference Schedule Changed the trading name from “ActewAGL Distribution” to “Evoenergy”.                                                                                                           |
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<td>Footer</td>
<td>Removed “ActewAGL Distribution” and replaced it with “Evoenergy Utility Licence”.</td>
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</table>
SIGNED for and on behalf of )
THE INDEPENDENT COMPETITION AND )
REGULATORY COMMISSION by )
SENIOR COMMISSIONER )
Joe Dimasi 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;

(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) “consent” includes any licence, permit, authority or consent issued or given by an agency or a Minister;

(6) “customer” has the same meaning as in the Act;

(7) “customer contract” has the same meaning as in the Act;

(8) “electricity distribution network” has the same meaning as in the Act;

(9) “electricity transmission network” has the same meaning as in the Act;

(10) “gas distribution network” has the same meaning as in the Act;

(11) “gas transmission network” has the same meaning as in the Act;

(12) “ICRC” means the Independent Competition and Regulatory Commission established under section 5 of the Independent Competition and Regulatory Commission Act 1997 (ACT);

(13) “Industry Code” means a code approved or determined by ICRC under Part 4 of the Act;

(14) “Item” means the relevant Item in the Reference Schedule;

(15) “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;

(16) “Licensee” means the Person referred to in Item 1 of the Reference Schedule;

(17) “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;

(18) “Person” includes a natural person, a firm, an unincorporated association, a Territory agency, a corporation or any other body corporate;

(19) “Reference Schedule” means the Reference Schedule to this licence;

(20) “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;

(21) “sewerage network” has the same meaning as in the Act;

(22) “Technical Code” means a code approved or determined by the Minister under Part 3 of the Utilities (Technical Regulation) Act 2014;


(24) “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);

(25) “utility network” means:

(a) an electricity distribution network;

(b) an electricity transmission network;
(c) a gas distribution network;
(d) a gas transmission network;
(e) a sewerage network; or
(f) a water network;

(26) “utility services” has the same meaning as in the Act;

(27) “water network” has the same meaning as in the Act.