Utilities (Variation of Licence) Notice 2017 (No 2)*

Notifiable Instrument NI2017-654

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 2).

2 Public notice of licence decision - variation
The gas 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, including some minor updates, 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 gas distribution and connection services under the Utilities Act 2000 (ACT) 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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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 service defined under section 9 (b) and section 9 (c) 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,
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) gas distribution services under section 9 (b) of the Act; and
(b) gas connection services under section 9 (c) of the Act.

Item 4  Address for Service of Licensee
GPO Box 366
Canberra ACT 2601
SCHEDULE 1: ADDITIONAL UTILITY SERVICE LICENCE OBLIGATIONS – GAS DISTRIBUTION AND CONNECTION SERVICES

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 Telephone service publicity

The Licensee must ensure reasonable publicity is given to the ways in which the public can contact the Licensee for the purpose of reporting escapes of gas.

2. NETWORK OPERATION STANDARDS

2.1 Licensee to adopt network operation standards

The Licensee must adopt and comply with network operation standards. The standards must set out the Licensee’s policies, practices and procedures with respect to the provision of services to gas suppliers necessary to facilitate the operation of a competitive gas retail market in the Territory.

2.2 Standards to be approved by ICRC

Network operation standards must be submitted to ICRC within 14 business days of the grant of the Licensee’s licence. ICRC must approve the standards before the Licensee can adopt the standards.

2.3 Variation of standards

Any variation to the standards must be negotiated with, and agreed to by, gas suppliers. Should agreement between the Licensee and the gas suppliers not be reached, ICRC shall:

(1) assist the Licensee and the gas suppliers to resolve unresolved issues and to develop agreed standards; and/or

(2) develop, in consultation with the Licensee and the gas suppliers, agreed standards.

The Licensee must notify ICRC of any variations to the standards.

2.4 Expiry of licence condition

This condition expires on a date determined by ICRC and notified in writing to the Licensee.
3. **ENVIRONMENTAL REQUIREMENTS**

   The Licensee must adopt the objectives, policies and practices relating to environmental management for the gas industry in accordance with AG750 Environmental Code of Practice and the Australian Pipeline Industry Code of Practice for Pipeline Construction.

4. **ANNUAL REPORTING**

4.1 **Additional reporting requirements**

   In addition to the reporting requirements under clause 7 of this licence, the Licensee must report to ICRC on the following:

   (1) **Market:**
   
   (a) aggregate quantity of gas billed (terajoules);
   
   (b) aggregate quantity of gas entering the gas distribution network (terajoules);
   
   (c) total number of customer transfers processed by customer class;
   
   (d) total number of end users by customer class; and
   
   (e) total revenue;

   (2) **Operation and maintenance:**
   
   (a) number of unplanned outages;
   
   (b) significant gas leaks detected by survey by pressure classes;
   
   (c) number of gas regulators replaced by customer class;
   
   (d) number of meter replacements by customer class; and
   
   (e) number of times gas distribution network goes below normal operating system minimum pressure by pressure classes;

   (3) **Environment:**
   
   (a) amount of gas lost from the Licensee’s gas distribution network in the year (unaccounted for gas);
   
   (b) a plan to minimise gas losses in the forthcoming year; and
   
   (c) an assessment of the effectiveness of the year’s plan;

   (4) **Technical:**
   
   (a) total pipeline length (kilometres) – by pressure classes at end of year;
(b) update of general technical description (in total) as provided in application;

(5) Incidents:

(a) number of gas leaks (from mains, service and meters) reported by the public to the company by pressure classes;

(b) number of mechanical damage incidents to mains and services by pressure classes; and

(c) number of times gas specification reaches the maximum or minimum limits.

4.2 Licensee to report annually

The Licensee must report to ICRC on the matters outlined in clause 4.1 of this schedule by 1 October every year.

5. NOTIFICATION OF SPECIFIC EVENTS

The following events must be notified to the Technical Regulator as soon as possible:

(1) any serious injury, fatality, significant property damage, or major equipment failure that has resulted from gas leaks or damage to pipeline infrastructure;

(2) when any part of the gas distribution network reaches the emergency system minimum pressure; and

(3) when the gas specification exceed the maximum specification or falls below the minimum specification.

The following event is to be notified to the Technical Regulator prior to commencement:

(4) augmentation or major maintenance of the primary and secondary steel mains; and

(5) increasing the network operating pressure.

6. REGISTRATION WITH THE AUSTRALIAN ENERGY MARKET OPERATOR

The Licensee must register as a participant 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

<table>
<thead>
<tr>
<th>Date</th>
<th>Clause</th>
<th>Reason for variation</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 August 2002</td>
<td>15</td>
<td>To simplify the licence fee payments and remove administrative anomalies. (NI2002 – 276)</td>
</tr>
<tr>
<td>1 July 2009</td>
<td>Title page Reference Schedule</td>
<td>To reflect the change of name of AGL Gas Company (ACT) Ld ACN 008 552 663 to Jemena Networks (ACT) Pty Ltd ACN 008 552 663</td>
</tr>
<tr>
<td></td>
<td>Clause 6 Schedule 1</td>
<td>To reflect the formation of the Australian Energy Market Operator and its role in the operation of competitive gas markets. (NI2009 – 316)</td>
</tr>
<tr>
<td>1 January 2018</td>
<td>Title Page</td>
<td>“Granted” was replaced by “granted to”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Changed the company name from “ACTEW Distribution Limited ACN 073 025 224” to “Icon Distribution Investments Limited ACN 073 025 224”</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Removed “ActewAGL Distribution” to replace it with “Evoenergy”.</td>
</tr>
<tr>
<td></td>
<td>1.2</td>
<td>Updated clause. Added “a variation is made to this clause”.</td>
</tr>
<tr>
<td></td>
<td>6.2</td>
<td>Removed “Chief Executive” to replace it with “Technical Regulator”.</td>
</tr>
<tr>
<td></td>
<td>19.1(3) &amp; 19.4(3)</td>
<td>Updated to include email as a method of delivery.</td>
</tr>
<tr>
<td>Reference Schedule Item 1</td>
<td>Updated company name. Changed from “ACTEW Distribution Limited ACN 073 025 224” to “Icon Distribution Investments Limited ACN 073 025 224”.</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>Updated trading name of the Licensee. Changed from “ActewAGL Distribution” to “Evoenergy”.</td>
</tr>
<tr>
<td>Footer</td>
<td>“ActewAGL Distribution” was replaced by “Evoenergy Gas Licence”.</td>
<td></td>
</tr>
<tr>
<td>Dictionary</td>
<td>Updated dictionary to take account of the changes made to the text of the licence.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Removed definition of “Chief Executive” to replace it with a definition of “Technical Regulator”.</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Updated definition of “Technical Code” referring specific part of the relevant Act.</td>
<td></td>
</tr>
</tbody>
</table>
Licence to provide gas distribution and connection services under the *Utilities Act 2000* (ACT)

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 (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) “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 class” means all domestic, commercial and industrial customers;

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

(9) “electricity 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 network,
(b) a gas transmission network,
(c) a gas distribution network,
(d) a sewerage network, or
(e) 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.