

Instrument of Variation of conditions of transmission operator's licence

1 Variation of conditions of transmission operator's licence

I, Don Harwin, Minister for Energy and Utilities, pursuant to clause 7 of Schedule 2 of the *Electricity Supply Act 1995*, hereby vary the Licence held by the Licence Holder.

2 Commencement

The variations to the conditions of the Licence commence on the day this variation instrument is signed.

3 Definitions

In this variation instrument:

Licence means the transmission operator's licence granted under section 93A of the *Electricity Supply Act 1995* to the Licence Holder to operate a transmission system that is a transacted transmission system under the *Electricity Network Assets (Authorised Transactions) Act 2015* effective on 16 December 2015.

Licence Holder means NSW Electricity Networks Operations Pty Limited (ACN 609 169 959) as trustee for the NSW Electricity Networks Operations Trust.

old conditions of Licence means the conditions of the Licence as in force from time to time before the commencement of this variation instrument.

4 Variation of licence

- (1) The conditions of the Licence are varied as set out in Schedule 1.
- (2) The variation of the conditions of Licence does not—
 - (a) revive anything not in force or existing at the time the variation takes effect;
 - (b) affect the previous operation of the old conditions of Licence or anything done or begun under or in accordance with the old conditions of Licence; or
 - (c) affect a right, privilege or liability acquired, accrued or incurred under the old conditions of Licence.

Date: 29 November 2017



The Hon Donald Harwin MLC
Minister for Energy and Utilities

Schedule 1 Variations of conditions of transmission operator's licence

[1] Condition 3 Reliability and performance standards

Omit condition 3 and substitute:

3 Reliability and performance standards

The *Licence Holder* must ensure that it and all other network operators of its *transmission system* comply with the *Reliability and Performance Standard*.

[2] Preamble to conditions 6, 7 and 8

Omit the Preamble and substitute:

CRITICAL INFRASTRUCTURE LICENCE CONDITIONS

For the purposes of conditions 6, 7 and 8 of this Licence, it is acknowledged that the assets which the Licence Holder operates may constitute "critical infrastructure" being those physical facilities, supply chains, information technologies and communication networks which, if destroyed, degraded or rendered unavailable for an extended period, would significantly impact on the security, social or economic wellbeing of the State of New South Wales and other States and Territories which are from time to time electrically interconnected with New South Wales and other States and Territories. These licence conditions will be reviewed by the Minister from time to time (and where necessary) in consultation with responsible Ministers of the Commonwealth and relevant States and Territories. According to its own legislation and policy, the Commonwealth may require a Licence Holder to agree to certain arrangements. The Licence Holder should also establish procedures for national security threat sharing with the Critical Infrastructure Centre and action received information on a good-faith basis.

[3] Condition 6 Substantial presence in Australia

Omit condition 6 and substitute:

6 Substantial presence in Australia

- 6.1 Except to the extent allowed for under the *Protocol* agreed with the *Commonwealth Representative*, the *Licence Holder* must take all practical and reasonable steps to ensure:
- a) the maintenance of its *transmission system* is undertaken solely from within Australia, except where maintenance requires either physical servicing of components offshore or the acquisition of replacement components from outside Australia. In such an instance, it is the responsibility of the senior officer responsible for network operations to ensure this maintenance does not impact condition 6.2; and
 - b) that any third party or non-*Licence Holder* employee, including individuals/entities from outside Australia, undertaking maintenance of the *transmission system* is subject to the approval of the senior officer responsible for network operations.
- 6.2 Except to the extent that the *Licence Holder* is undertaking steps in accordance with, and for the duration of, a *Transition Plan* and/or a *Protocol* agreed with the *Commonwealth Representative*, the *Licence Holder*:
- (a) must, by using best industry practice for electricity network control systems, ensure that operation and control of its *transmission system*, including all associated ICT

infrastructure, can be accessed, operated and controlled only from within Australia, and that its *transmission system* is not connected to any other infrastructure or network which could enable it to be controlled or operated by persons outside Australia;

- (b) must notify the *Commonwealth Representative* in advance of any engagement with the market to procure a contract under which it outsources the operation and control of its *transmission system*, including any ICT infrastructure associated with the operation and control of its *transmission system*.

Note: For the purposes of Licence condition 6.2 (a);

Best industry practice includes access required by relevant Australian regulators and market and system operators to meet the Licence Holder's obligations under Australian law.

6.3 The Licence Holder must:

- a) have at least two directors who are Australian citizens; and
- b) have senior officers responsible for (notwithstanding their title):
- (i) operational technology;
 - (ii) network operations; and
 - (iii) security operations

in relation to its *transmission system*,

who are persons residing in Australia and hold an appropriate national security clearance, being a clearance of not less than Negative Vetting Level 1 (or equivalent) issued by the NSW Government on advice from the Australian Government Security Vetting Agency (AGSVA).

Note: For the purposes of Licence condition 6.3 (b):

The senior officer responsible for operational technology is the officer whose responsibilities include:

- *Delivering the Supervisory Control and Data Acquisition (SCADA) capability required to safely and reliably operate the NSW transmission system;*
- *Developing and implementing strategies to manage cyber security and other threats affecting the network operational technology environment; and*
- *Developing systems for effectively managing assets remotely, including but not limited to network switches, condition monitoring and remote interrogation or operation of protection systems and relays; and*

The senior officer responsible for network operations, is the officer whose responsibilities include:

- *The day to day operation, monitoring and maintenance of the transmission system; and*
- *Directing the operational planning, management, control and security of the transmission system.*

The senior officer responsible for security operations, is the officer whose responsibilities include:

- *Approval for the Licence Holder's personnel or other nominated personnel to access the Licence Holder's information systems or physical access to the Licence Holder's premises and associated infrastructure;*

- *Personnel security; and*
- *Managing relationships with Commonwealth and state government agencies.*

Note: The above responsibilities may be held by a single officer or shared between more than one officer. Where the responsibilities are shared between more than one officer, the relevant senior officer responsibility contemplated in condition 6.1(a) is the joint responsibility of the multiple officers and the approval contemplated in condition 6.1(b) must be obtained from each of those officers.

- 6.4 The *Licence Holder* is not in breach of its obligations under:
- a) condition 6.3(a) if, in the case of a casual vacancy on the board of directors, the vacancy is filled within two months of the casual vacancy first occurring;
 - b) condition 6.3 if:
 - (i) following the first issue of these conditions to the *Licence Holder*; or
 - (ii) any position identified in condition 6.3 being vacated or the relevant person ceasing to satisfy the qualifications set out there for any reason, the *Licence Holder*.
 - (iii) procures the appointment of a person to the relevant position that the *Licence Holder* bona fide believes will be able to obtain the required security clearance; and
 - (iv) has procured that the person apply for the required security clearance.
- 6.5 The exception in condition 6.4(b) ceases to apply to the *Licence Holder* if:
- a) an appointment and application for national security clearance for the person is not made within 4 months of (as relevant) the first issue of these conditions or the relevant vacancy or disqualification occurring; or
 - b) if the application referred to in condition 6.5(a) is made and is rejected or withdrawn, the *Licence Holder* does not procure a replacement application being made within 4 months of that rejection or withdrawal; or
 - c) the *Licence Holder* does not procure compliance with condition 6.3(b) in any event with respect to any position within 8 months (or such longer period as approved in writing by the *Minister*) of (as relevant) the first issue of these conditions or the relevant vacancy occurring.

[4] Condition 7 Data security

Omit condition 7 and substitute:

7 Data security

- 7.1 The *Licence Holder* must ensure that:
- (a) all of its information (being design specifications, operating manuals and the like) as to the operational technology (such as the SCADA system) and associated ICT infrastructure of the operational network is held solely within Australia, and that such information is accessible only by a *Relevant Person* who has been authorised by the *Licence Holder* and only from within Australia;
 - (b) all:
 - (i) *Load Data*; and

(ii) *Bulk Personal Data Records,*

relating to or obtained in connection with the operation of the *transmission system* by a *Relevant Person* is held solely within Australia, and is accessible only by a *Relevant Person* or a person who has been authorised by the *Licence Holder*; and

- (c) it does not export, and has appropriate security controls in place to prevent the export, of *Bulk Personal Data Records* relating to or obtained in connection with the operation of the *transmission system* by a *Relevant Person*, outside of Australia.

7.2 The *Licence Holder* is not in breach of its obligations under conditions 7.1(a), 7.1(b)(i) or 7.1(c) if the *Licence Holder* discloses, holds, uses or accesses any information or data referred to in those conditions, or the *Licence Holder* allows a *Relevant Person* approved by the senior officer referred to in condition 6.3(b)(i) to disclose, hold, use or access any information or data referred to in those conditions for the purposes of:

- a) disclosure to a recognised stock exchange so that such information is made available publicly in compliance with a binding obligation on the part of the *Licence Holder* or an *Associate* to do so;
- b) complying with any law of the Commonwealth of Australia, or of any of its States and Territories;
- c) disclosure to the financial, accounting, insurance, legal, regulatory and other advisers, auditors, insurers, security trustees and financiers (and each of their advisers) of the *Licence Holder*, any *Associate*, and any bona fide prospective purchaser of any interest in, or of any interest in the main undertaking of, the *Licence Holder* or any *Associate*, but in each case only to the extent necessary in order for those persons to provide the advisory or other services bona fide required of them;
- d) disclosure to participants, regulators and service providers in the electricity sector, provided it is in the ordinary course of business and in accordance with good electricity industry practice, and such information is required by those persons to provide the services or to perform the functions bona fide required of them;
- e) providing aggregated data which does not permit identification of any particular customer or customer's connection points or their demand characteristics;
- f) allowing a service provider or contractor to hold, use or access information where that arrangement is approved by the Minister, in the case of arrangements approved as of the first issue of this *Licence*, and otherwise where the *Licence Holder* has provided the *Commonwealth Representative* with a submission demonstrating that:
 - (i) the service provider or contractor is reputable; and
 - (ii) the service provider or contractor has data security systems in place to ensure information security is maintained;

and has obtained the written agreement of the *Commonwealth Representative* for the arrangement.

- g) allowing a service provider or contractor who is a provider to the *Licence Holder* at the date of this Licence to hold, use or access information where the *Licence Holder* is at the relevant time undertaking the steps that are required to be undertaken as set out in an *Approved Plan* (and for the duration of the period set out in that Plan) related to that service provider or contractor, provided that the *Licence Holder* has provided the *Approved Plan* to the *Tribunal*,

- h) such other circumstances as approved by the *Tribunal* in writing. Prior to seeking approval from the *Tribunal*, the *Licence Holder* must provide the *Commonwealth Representative* with a reasonable opportunity within a period not ending less than 60 calendar days, to confirm in writing to the *Tribunal* that the *Commonwealth* does not intend to make any further requests or submissions in relation to the matter.
- 7.3 The *Licence Holder* is not in breach of its obligations under condition 7.1(b)(ii) if a *Relevant Person* or a person authorised to access the information by the *Licence Holder* discloses, holds, uses or accesses personal information in accordance with the *Privacy Act 1988* (Cth).

[5] Condition 8 Compliance with critical infrastructure provisions

Omit condition 8 and substitute:

8 Compliance with critical infrastructure provisions

- 8.1 By 30 September each year the *Licence Holder* must furnish a report to the *Tribunal* and the *Commonwealth Representative* detailing whether the *Licence Holder* has complied with conditions 6 and 7 over the preceding financial year to 30 June.
- 8.2 The report required under condition 8.1 must be audited by an *Approved Critical Infrastructure Auditor* by a date specified by the *Tribunal*. The audit required by this condition 8.2 must be a comprehensive audit and must meet any requirements specified by the *Tribunal*. The *Licence Holder* must provide the audited report to the *Commonwealth Representative* at the same time that the report is provided to the *Tribunal*.
- 8.3 The *Tribunal* may provide guidance to the *Approved Critical Infrastructure Auditor* as to the *Licence Holder's* practices that have satisfied or will satisfy conditions 6 and 7
- 8.4 The report required under condition 8.1 must be accompanied by a certification in writing supported by a resolution of the Board of the *Licence Holder* that, with respect to the relevant period:
- the *Licence Holder* has complied with conditions 6 and 7; or
 - the *Licence Holder* has not complied with conditions 6 and 7, and certifying the nature and extent of each non-compliance and the steps taken by the *Licence Holder* to ensure compliance (and to preclude further non-compliance) and the timeframe within which it expects to achieve compliance.

[6] Definitions

[6.1] Substituted definitions

In the definitions, substitute the following definitions:

| | |
|--|--|
| Approved Critical Infrastructure Auditor | means an <i>Approved Auditor</i> who has been further approved by the <i>Tribunal</i> as having the necessary experience and expertise in system security or has otherwise demonstrated to the <i>Tribunal's</i> satisfaction the capability to audit compliance with the critical infrastructure licence conditions (being conditions 6, 7 and 8) |
| Relevant Person | means the <i>Licence Holder</i> , any other network operator of the <i>transmission system</i> , and any person who is contracted or sub-contracted by the <i>Licence Holder</i> to work on the <i>transmission</i> |

system.

[6.2] New definitions

In the definitions, add the following definitions in alphabetical order:

| | |
|--|---|
| Approved Plan | means a plan of the type described under condition 7.2(g), that is required by the Commonwealth, and which provides approval for a service provider or contractor to the Licence Holder in respect of holding, accessing or using specified information. Such a plan is to be agreed to in writing by the <i>Commonwealth Representative</i> . |
| Bulk Personal Data Records | means any holdings or files of personal information (within the meaning of the <i>Privacy Act 1988</i> (Cth)) about multiple individuals which contain fields or categories. |
| Commonwealth Representative | means the First Assistant Secretary, with responsibility for Critical Infrastructure Security within the Commonwealth or equivalent level in a subsequent agency with responsibility for Critical Infrastructure Security. <i>Note: At the time of varying this licence, the Commonwealth Representative is the First Assistant Secretary responsible for the Critical Infrastructure Centre within the Commonwealth Attorney-General's Department.</i> |
| first issue of conditions or first issue of this Licence | Refers to the date of the first issue of this <i>Licence</i> being 15 December 2015. |
| Foreign Person | has the meaning given to that term in the <i>Foreign Acquisitions and Takeovers Act 1975</i> (Cth). |
| Load Data | means data as to the quantum of electricity delivered (both historical and current load demand from or to any one or more sites (or their connection points) which satisfies each of the following criteria: <ol style="list-style-type: none">i. it is not historical load data older than 30 days;ii. it is not fault data;iii. it describes a location that allows a customer(s) or connection point(s) to be identified;iv. it describes the date and time of the data record;v. it describes a magnitude which comprises a voltage of at least 330 kV and power of at least one Terawatt hour; andvi. it describes a duration – a length of time that allows for a quantum to exist. |
| Protocol | means a document of the type referred to in conditions 6.1 and 6.2, that is required by the Commonwealth and which must be agreed to between the <i>Commonwealth Representative</i> and the <i>Licence Holder</i> , the document may set out (among other things) the: <ol style="list-style-type: none">i. specified purposes for which maintenance of |

- transmission system equipment may be conducted offshore and the circumstances in which it may be conducted offshore;
- ii. methodology and activities to be undertaken to allow for maintenance and repairs of transmission system equipment to be carried out involving remote access from offshore;
- iii. the exceptional circumstances in which the *Protocol* applies; and
- iv. activities and processes which achieve requisite levels of cyber-security.

Reliability and Performance
Standard

In condition 3, means the *NSW Electricity Transmission Reliability and Performance Standard 2017*, signed by the Minister on 1 June 2017, as amended or replaced from time to time.

Transition Plan

Means a plan of the type described under condition 6.2, that is required by the Commonwealth, and which describes the existing practices of the *Licence Holder* which do not comply with condition 6.2 and the planned actions and timeframes to move to compliance. Such a plan is to be agreed to in writing by the *Commonwealth Representative*.
