

Submission to the Australian Energy Regulator

Re: GridX Power Pty Ltd



**UNITED ENERGY
Distribution**

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1 Introduction

The Australian Energy Regulator (AER) is seeking comment on an application received in May 2006 from GridX Power Pty Ltd (GridX) seeking an exemption from the requirement to register as a Network Service Provider (NSP) under the National Electricity Law (NEL) and National Electricity Rules (NER). The application does not seek exemption from the technical standards for the distribution of electricity set out in clause 5 of the NER.

The GridX proposal involves an integrated gas fired generation and distribution system delivering electricity, among other products, within greenfields housing and apartment estates. The system would be islanded to the extent that the development would be connected to the main supply network at a single point only for the purposes of exporting excess electricity generation capacity, with no import capability.

The application is not site specific but rather seeks an in-principle indication from the AER that a network of the type described in GridX's revised application would be granted an exemption from registration requirements. Clause 2.5.1(d) of the NER provides for the AER to issue an exemption from the requirement to register on such conditions as the AER considers appropriate, providing the exemption is not inconsistent with market objectives.

Having reviewed the AER Issues Paper and the GridX proposal dated 19 May 2006, while welcoming the GridX initiative United Energy Distribution (UED) is of the view that it would be inappropriate for the AER to grant an exemption from the requirement to register as a NSP under the NEL and NER for a non site specific proposal as submitted.

UED does not consider that the network model proposed by GridX is in the spirit of the NSP Exemption Guidelines (Appendix A) principles, in that the provision of the network is not incidental to the business of GridX and that it is not site specific.

UED believes the GridX model does not provide the consumer protections generally expected by customers, in particular the consumer protection measures identified in the General Exemption Order¹ such as customers' right to choose a retailer. Additionally, it is not clear how the AER intends to protect GridX customers in circumstances where GridX is unable to supply electricity and gas to its customers.

In view of the fact that GridX has not provided the AER with detailed reasons as to why the exemption should be granted, UED considers a project by project exemption would be the best approach as this allows GridX to progress with its proposal while limiting the impact of a decision and providing the opportunity to assess the success of the approach generally.

¹ General Exemption Order issues under section 17 of the Electricity Industry Act 2000 provides that the Governor-in-Council may exempt a person from the requirement to hold a licence.

2 Assessment of the Application for Exemption

2.1 Market objective

As noted by the AER, the market objective in section 7 of the NEL in part reads:

'to promote efficient investment in, and efficient use of, electricity services for the long term interests of consumers of electricity with respect to price, quality, reliability and security of supply of electricity...'

Given that the GridX proposal is for a series of isolated, monopoly controlled generation, distribution and retailing arrangements over which the AER would have limited control and each jurisdiction is likely to have differing requirements, it is difficult to see how the AER can grant a non site specific exemption with any surety that the market objective will be met, let alone furthered.

2.2 The practical impact of granting an exemption

On page 6 of the Issues Paper the AER states:

"Granting an exemption from the requirement to register as an NSP in effect allows GridX to restrict access to its network by other distributors or retailers, and means that GridX is not required to comply with the technical standards for the distribution of electricity set down in chapter 5 of the NER.

GridX has indicated that it will be required to maintain technical standards under its connection agreement with the local distributor and as part of its obligations as a market generator under the Rules. Accordingly, GridX has not requested an exemption from compliance with the technical connection rules set down in chapter 5 of the NER."[underlining added]

While the AER has seen fit not to discuss these comments further, UED assumes that under any exemption given to GridX, like any other load customer or generator, it will be required to comply with the technical standards under its connection agreement with the local distributor. Further it is assumed that as the connection point is to function as a registered point in the market for the purposes of settlements, NER metering requirements will apply.

UED assumes that should GridX fail to comply with the technical standards, the local distributor would be within its rights to disconnect GridX from its grid.

While National Electricity Markets (NEM) metrology requirements apply to the registered connection point, it is unclear as to what standards will be applied to consumer metering and whether an exemption would mean that GridX is not subject to Council of Australian Government (COAG) and jurisdictional decisions such as the advanced interval meter roll-out in Victoria.

2.3 Access

In its discussion on ‘access’ on page 6 of the Issues Paper the AER states:

If the AER grants GridX an exemption from the registration requirements of the NEL, GridX will not be required to provide other market participants with network services and access to its network. As a result, GridX would be in a position to exercise significant market power in relation to the retailing of electricity to consumers connected to its network.”

The discussion following the above text notes that retailing requirements are regulated by instruments in the participating NEM jurisdictions and uses by way of example the Independent Pricing and Regulatory Tribunal (IPART) advice to GridX of the need to obtain a retail licence. No mention is made of the need to apply for a distribution licence, or seek an exemption from such a licence. In Victoria, the Electricity Industry Act 2000 requires any person who distributes electricity to have a distribution licence. Similar provisions require generators and retailers also to be licensed.

Section 17 of the Electricity Industry Act 2000 provides that the Governor-in-Council may exempt a person from the requirement to hold a licence. Under the General Exemption Order, GridX would be subjected to terms, conditions and limitations specified in Column 2 of the Schedule. For example Grid X must:

- Observe all applicable provisions of the Electricity Distribution Code and the Retail Code.
- Observe all applicable provisions of any Pricing Rule.
- In the event of a dispute concerning the distribution or supply of electricity advise the customers of their right to apply to have a matter heard by the Victorian Civil and Administrative Tribunal
- The supply arrangements must not be structured, in such a way as may have the effect of denying a person any rights they may have if the supply arrangements were not so structured; or a licensed retailer the ability to sell electricity to a customer with an approved meter. For example, a customer’s right to elect to purchase electricity from a licensed retailer of its choice should not be denied.

The Grid X model network as proposed is unlikely to be able to comply with the provisions of the General Exemption Order. Therefore, GridX could be required to apply for a distribution and a retail licence. The GridX consumer protection measures will very much depend on the Victorian government and the Essential Services Commission.

2.4 Improvements in quality and reliability of service delivery

The islanded nature of the proposed development provides no certainty in terms of system reliability and security. GridX suggests that consumers will be protected from interruptions to the main grid network. As the AER notes they will however be exposed to gas supply issues as well as local generation and network supply and plant issues without any

alternative supply. An interruption to the gas supply could result in a total energy incident for the estate.

The current proposal makes no allowance for the situation where GridX cannot or will not supply customers in its network either due to gas supply issues, equipment problems, failure of the retailer or a failure by GridX to meet the requirements of its connection agreement resulting in disconnection. Any requirement on the external network provider to provide some level of back-up supply, either imposed by regulation or entered into on a commercial basis, will be required.

2.5 Consumer issues

UED considers that the GridX proposal raises a number of issues in relation to consumer protection both in terms of pricing and supply security. While GridX suggests that the property developer at relevant estates will require a cap on electricity prices at regulated tariffs, developers come and go and without some form of jurisdictional or legal protection consumers have no long term certainty on pricing and or service standards. Jurisdictions foregoing their control over retail price caps, coupled with the limitation on retailer choice under the proposal, are likely to offer little protection for the disadvantaged and customers experiencing short term payment difficulties.

Customer protection in relation to an existing retailer not being able to continue to supply its customers is generally protected by a Retailer of Last Resort (ROLR) scheme. In the Energy Retailer of Last Resort – Final Decision (February 2006), the Chairman of the Essential Services Commission (ESC) states:

“A retailer of last resort (RoLR) scheme is intended to ensure that electricity and gas customers continue to receive electricity and gas supplies in circumstances where their existing retailer is unable to continue to provide that supply. This may be because the retailer ceases to be licensed to sell electricity or gas, so that it is legally prohibited from continuing the supply, or because it is unable to access electricity or gas in the wholesale market to supply its customers. The establishment of an effective RoLR scheme is an integral part of the institutional and regulatory framework for full retail contestability. There is a clear legislative intent in both the Electricity Industry Act 2000 and the Gas Industry Act 2001 for the Commission to develop RoLR schemes as part of the regulatory framework in both the electricity and gas supply *markets*.”

In the Issues Paper, the AER has not considered the possibility of GridX becoming insolvent. From a retail perspective, the RoLR scheme would provide the consumer protection and for it to work, the network must be configured to import electricity into the GridX network and it must be required to comply with the NEM metrology standards – effectively requiring GridX to be registered as a NSP.

2.6 Customer choice

One of the underlying principles to the electricity market has been to provide participants with incentives to innovate and provide customers with the opportunity to exercise choice. While the GridX proposal is innovative it restricts customer choice and may even restrict the opportunity for its customers to enjoy the benefits of innovation delivered in other sections of the market – for example, customer will not be able to purchase green energy.

UED notes the AER's concerns set out on page 9 regarding the lack of consumer choice through the export only aspects of the proposal and as to how these restrictions might be communicated not only to new owners but also intending purchasers or lessees.

2.7 Exemption guidelines

Clause 6.2 of the Principles set out in the NSP Exemption Guidelines states:

“the provision of the network (and any supply of electricity to other parties) must be incidental to the business of the applicant;”

The distribution aspect of the GridX proposal can hardly be considered as ‘incidental’. It is a key facet of the energy supply system for each development. The NSP Exemption Guidelines are principally designed for embedded networks such as office buildings, flats/apartments/units, industrial parks and shopping centres, where the network is provided as part of the building infrastructure. The embedded networks are generally owned and operated by the Body Corporate of the residential dwellings. In the case of shopping centres, office buildings and industrial parks, the owners operate the embedded networks and the buildings and land are leased to the occupiers. UED contends that the ‘National Electricity Code Administrator (NECA) Exemption Guidelines’ were not designed to be applied to the GridX network model and it notes that the AER considers GridX’s proposal is inconsistent with clause 6.2 of the Guidelines.

2.8 Interactions with the local network area

As noted above, the existing Principles were developed for specific sites. In the case of residential developments, developments tend to merge over time and are often developed by different developers, even between stages of the same development. This raises issues as to how boundary areas might need to be addressed and issues such as the local network supplier needing to traverse the GridX development in order to service an adjacent development.

3 Progressing the current GridX application

UED notes that this application is innovative and encourages growth in gas consumption. However the relationship with a full utility offering should be considered by relevant jurisdictions in relation to gas with retailer choice and water and electricity without retailer choice. It is UED's understanding that embedded networks have a considerable industry cost impact due to their complexity for little overall net consumer benefit.

The application for exemption is establishing a precedent in the market and consideration should be given to a more fundamental review of the implications, and how it fits with the licensing and Retailer/Distributor framework being proposed nationally under the Ministerial Council on Energy (MCE) process.

UED considers a project by project exemption would be the best approach as this allows GridX to progress with its proposal while limiting the impact of a decision and providing the opportunity to assess the success of the approach generally. UED does not consider that the model proposed by GRIDX is in the spirit of the general exemption guidelines in that the network is not incidental to the business of GridX and that it is not site specific.