

December 14, 2015

**BY HAND DELIVERY AND ELECTRONIC MAIL**

Luly E. Massaro, Commission Clerk  
Rhode Island Public Utilities Commission  
89 Jefferson Boulevard  
Warwick, RI 02888

**RE: Docket 4483 – Wind Energy Development, LLC (WED) and ACP Land, LLC  
Petition for Dispute Resolution Relating to Interconnection  
National Grid’s Private Letter Ruling Compliance Filing  
National Grid’s Response to WED Letter dated December 1, 2015**

Dear Ms. Massaro:

On behalf of The Narragansett Electric Company d/b/a National Grid (the Company), I am in receipt of correspondence dated December 1, 2015, which Wind Energy Development LLC (WED) submitted to the Rhode Island Public Utilities Commission (PUC) in this proceeding. That correspondence concerns a letter (November 9 letter),<sup>1</sup> which the Internal Revenue Service (IRS) sent to the Company in response to the Company’s Private Letter Ruling (PLR) request submitted on August 13, 2015. In that PLR request, the Company asked the IRS to rule that certain cash payments and in-kind property transfers, which WED plans to make to the Company in order to interconnect its generation facility with the Company’s distribution system “will not constitute a contribution in aid of construction under section 118(b) and will be excludible from the gross income . . . as a non-shareholder contribution to capital under section 118(a), notwithstanding that the interconnection is between the Facility and the Taxpayer’s electric distribution system and not with an electric transmission system.”

In the November 9 letter, the IRS declined to rule as the Company requested. Instead, the IRS determined that the issue presented in the Company’s request cannot be resolved before the United States Department of the Treasury (Treasury) issues new guidance on the application of

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<sup>1</sup> WED’s correspondence references an IRS letter “of November 18, 2015.” The Company is not in receipt of a letter from the IRS dated November 18, 2015, and the Company assumes that WED intended to reference the IRS letter of November 9, 2015. Moreover, although WED suggests that the Company was not responsive to its request for clarification, the Company did respond to WED’s correspondence and committed to follow-up with WED. Unfortunately, WED filed its December 1 letter with the PUC before the Company was able to complete its internal discussions and follow up with WED.

Internal Revenue Code Section 118(b). Consequently, the IRS closed the Company's case and indicated that it would return the Company's administrative filing fee. The Company filed a copy of the November 9 letter with the PUC on November 20, 2015, the day after the Company received the letter.

As noted in the November 9 letter from the IRS, updated guidance on the application of Internal Revenue Code Section 118(b) is currently listed on the Treasury 2015-2016 priority list.<sup>2</sup> While it appears that the Treasury may address the issues raised in the Company's PLR request, there is no certainty of the timing of any such guidance, whether the planned guidance will cover the specific issue raised in the Company's PLR request, or when the IRS will determine whether it can rule on the issues raised in the PLR request.

WED's December 1, 2015 letter seeks assurance that "National Grid has complied with its commitment to escrow all interconnection taxes paid by any distributed generation project in Rhode Island until final resolution of whether the tax is owed." (WED Letter at 1). WED further notes that, in the Company's September 12, 2014 letter on this issue submitted in this proceeding, "National Grid committed to put all interconnection taxes in escrow pending the IRS ruling" and further noting that "[i]n the meantime, all future project developers to whom this issue applies would place an amount in escrow with the Company equal to the potential tax liability, to be refunded if a decision is later made by the PUC that the taxes should not be paid." Id. Finally, WED requests that the PUC "confirm that all such taxes have been placed in escrow with notice and will be refunded if and when the IRS rules that they are not owed, and also to consider what it will order regarding any interconnection taxes paid since this proceeding began and during the period for which a tax refund can still be pursued with the IRS." Id.

In the interest of clarity, the Company has excerpted its PLR proposal in full below, as submitted by the Company on September 12, 2014:

"...the Company proposes to apply for one to four PLRs associated with projects that interconnect with the Company's electric distribution system and otherwise meet the remaining criteria required by the IRS for the tax exemption. The Company also proposes to share the PLR application content with the Division and the customer whose project is the subject of the PLR request prior to filing. Once the Company receives the IRS rulings, the Company would return to the PUC with a filing and recommendation based on the IRS responses. *If the PLRs provide a reasonable basis to conclude that the tax exemption applies to projects interconnected to electric distribution facilities, the Company will recommend that it no longer pay taxes on future projects meeting the IRS criteria and, thus,*

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<sup>2</sup> See [https://www.irs.gov/pub/irs-utl/2015-2016\\_pgp\\_1st\\_quarter\\_update.pdf](https://www.irs.gov/pub/irs-utl/2015-2016_pgp_1st_quarter_update.pdf). (Page 13 of 34, listing "Guidance updating Notice 2001-82 addressing the application of §118 to interconnection upgrade payments.")

*no longer collect the tax from the eligible projects. If, however, the PLRs do not provide the necessary clarity, the Company will recommend that taxes continue to be paid and the cost collected from each project developer that interconnects a project to the Company's electric distribution system. In any event, placing the facts and the Company's recommendation before the PUC will allow the PUC to determine the right solution, based on the facts, the PLR language, and the circumstances.* It also will allow other stakeholders to comment in the proceedings. In the meantime, all future project developers to whom this issue applies would place an amount in escrow with the Company equal to the potential tax liability, to be refunded if a decision is later made by the PUC that the taxes should not be paid. (emphasis added).

This settlement proposal was approved by the PUC at its December 23, 2014 Open Meeting. Accordingly, by its terms and the timing of the PUC's approval of the proposal, the proposal was in effect as of December 23, 2014. Although the IRS did not rule favorably on the Company's PLR request, the November 9 letter was responsive to the Company's request, and the Company does not believe it provides a reasonable basis to conclude that the planned cash payments and in-kind property transfers will be non-taxable to the Company. Instead, the IRS has closed the Company's case, and the Company does not believe that the November 9 letter provides a reasonable basis to conclude that the planned cash payments and in-kind property transfers will be non-taxable to the Company. Therefore, the Company recommends to the PUC under the terms of the settlement proposal that it continue to collect such taxes from distributed generation developers until such time as the Department of the Treasury provides clear guidance that these transactions are non-taxable.

During this period, as it relates to WED, the Company did not receive any CIAC-related tax payments from WED. Regardless, as a practical matter, the escrowing of such payments is not necessary in order to ensure a refund of such tax payments to affected developers, in the event that the Treasury ultimately issues guidance that warrants such refunds for a given tax year. The goal of the Company's proposal was to commit to refund any taxes associated with CIACs paid by a developer in the event that the IRS ruling in response to the Company's PLR request warranted such refunds.

Accordingly, the Company's commitment to escrowing CIAC-related taxes and potentially refunding such taxes to customers that paid them should be determined by the PUC to have terminated with the issuance of the November 9 letter. The unknown and unknowable timetable or results of any future Treasury guidance on this issue justify such a conclusion.

Luly E. Massaro  
Docket 4483 - National Grid's Private Letter Ruling Compliance Filing  
December 14, 2015  
Page 4 of 4

Thank you for your attention to this matter. If you have any questions, please contact me at 781-907-2121.

Very truly yours,



Raquel J. Webster

Enclosure

cc: Docket 4483 Service List  
Leo Wold, Esq.  
Steve Scialabba, Division

Certificate of Service

I hereby certify that a copy of the cover letter and any materials accompanying this certificate was electronically transmitted to the individuals listed below.

The paper copies of this filing are being hand delivered to the Rhode Island Public Utilities Commission and to the Rhode Island Division of Public Utilities and Carriers.

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Joanne M. Scanlon

December 14, 2015  
Date

**Docket No. 4483 – Wind Energy Development LLC & ACP Land, LLC –  
Petition for Dispute Resolution Relating to Interconnection  
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