

July 15, 2015

**BY HAND DELIVERY & 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 Reply to the Objection of WED and ACP Land, LLC**

Dear Ms. Massaro:

I have attached National Grid’s<sup>1</sup> response to the objection of Wind Energy Development, LLC and ACP Land, LLC dated July 9, 2015 in the above referenced matter.

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

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid.

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.

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.

\_\_\_\_\_  
Joanne M. Scanlon

July 15, 2015  
Date

**Docket No. 4483 – Wind Energy Development LLC & ACP Land, LLC –  
Petition for Dispute Resolution Relating to Interconnection  
Service List updated 4/10/15**

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**STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS  
PUBLIC UTILITIES COMMISSION**

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|------------------------------------|---|-----------------|
| IN RE: PETITION OF WIND ENERGY     | ) |                 |
| DEVELOPMENT, LLC AND ACP LAND, LLC | ) | Docket No. 4483 |
| RELATING TO INTERCONNECTION        | ) |                 |
|                                    | ) |                 |

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**THE NARRAGANSETT ELECTRIC COMPANY’S RESPONSE  
TO WIND ENERGY DEVELOPMENT, LLC AND ACP LAND, LLCs’ OBJECTION**

**I. INTRODUCTION**

National Grid<sup>1</sup> submits this memorandum in response to Wind Energy Development, LLC (WED) and ACP Land, LLC (ACP)’s (collectively, Petitioners) objection to National Grid’s final draft of a request for a Private Letter Ruling (PLR), which the Company filed with the Rhode Island Public Utilities Commission (PUC) on July 7, 2015 (PLR Request). For the reasons discussed below, National Grid respectfully requests that the PUC not require further negotiations between the Petitioners’ and the Company regarding revisions to the PLR Request.

**II. BACKGROUND**

On June 8 and July 7, 2015, National Grid submitted draft PLR requests to the PUC. In the PLR request, National Grid seeks a PLR from the Internal Revenue Service (IRS) on the issue of whether certain in-kind contributions and payments the Company receives for an interconnection are taxable under federal law. The Company discussed both drafts of the PLR requests with Petitioners before submitting them to the PUC, and the July 7, 2015 PLR Request reflects substantial input from Petitioners. During the drafting process, the

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid (National Grid or the Company).

Company accepted many of Petitioners' revisions, and the parties were able to reach agreement on many of their differences regarding the substance of the PLR Request.

However, the parties were unable to reach consensus on the following issues:

1. Whether to include Petitioners' requested language regarding the definition of "intertie";
2. Whether to incorporate Petitioners' requested modification regarding termination rights in the underlying interconnection agreement that is the subject of the PLR request; and
3. Whether to include the history of this docket in the PLR request.
4. Upon reading Petitioners' July 9, 2015 Objection (Objection), National Grid understands that Petitioners also disagree with Section V, Certification D in the PLR Request, a subject the parties did not discuss previously.

National Grid disagrees with Petitioners' proposed revisions, and the Company's internal federal tax experts agree that the PLR Request represents the most appropriate means of presenting this issue to the IRS for its deliberation. As demonstrated by the legal arguments included in the PLR Request, the Company has structured the request to strongly advocate the conclusion that WED is seeking, i.e., that certain in-kind contributions and payments received by the Company for an interconnection are not taxable under federal law. Nonetheless, as the taxpayer signing the PLR Request, National Grid is entitled to discretion regarding what language to include in the request, especially, when, as here, Petitioners' revisions would result in language that the Company believes is either inaccurate, incomplete, or irrelevant. National Grid and not Petitioners must sign the PLR Request under the penalties of perjury with a declaration that the request contains all the relevant facts relating to the request and, that such facts are true, correct and complete. As such, the Petitioners cannot have the final say over the contents of the PLR Request. Although the Company understands the Petitioners' desire for a favorable IRS ruling that will minimize its

costs associated with developing projects in Rhode Island, the Company has the sole responsibility as the federal taxpayer to submit a ruling request that fairly describes the transaction, discloses all relevant facts, employs an analysis that is supported by tax legal authority, and complies with all IRS procedural requirements. Accordingly, the PUC should not require the Company to negotiate further with the Petitioners' on this request.

### **III. ARGUMENT**

#### **1. Petitioners' Proposed Definition of Intertie is Incorrect and Misleading.**

The Petitioners assert that the ruling request should make reference to the Notice 88-129 definition of "intertie," which they assert "clearly and simply applies to any qualifying facility's equipment required for interconnection whether that equipment interconnects to the distribution or transmission system." Objection at p. 1. To support their assertion, Petitioners cite the following Notice 88-129 language:

PURPA and its implementing rules and regulations require that a utility interconnect with a Qualifying Facility for the purpose of allowing the sale of power produced by the Qualifying Facility. A Qualifying Facility must bear the cost of the purchase and installation of any equipment required for the interconnection. This equipment, referred to herein as an "intertie," may include new connecting and transmission facilities, or modifications, upgrades or relocations of a utility's existing transmission network.

Id. National Grid does not believe that Petitioners' proposed edits regarding the definition of "intertie" accurately reflect the context of Notice 88-129, and as the taxpayer signing the PLR Request, National Grid is obligated to make credible arguments. First, the cited text does not "clearly and simply" cover equipment used to interconnect to distribution systems. For example, the term "distribution" appears nowhere in the text of the definition. Additionally, although the Company agrees with Petitioners that the notice definition is not exhaustive and "may" include other types of equipment not enumerated in the text, the Company does not believe that it is reasonable to interpret the definition to include

distribution interconnecting facilities when the term “distribution” is nowhere mentioned in the text of either Notice 88-129 or Notice 2001-82. In short, neither the text of the definition, nor a broader reading of the notices support Petitioners’ expansive reading of Notice 88-129’s definition of intertie. Accordingly, Petitioners’ proposed edits regarding the definition of “intertie” should not be included in the PLR Request.

**2. Petitioners’ Request to Modify the Language Regarding Termination Rights Would Result in Incomplete Facts in the PLR Request.**

National Grid must include the reference to the Generator’s termination rights in the PLR Request, as reflected on pages three and four of the PLR Request. National Grid’s tax experts have concluded that this factual information is relevant to the IRS’s decision, and, contrary to Petitioners’ argument, this information is not an unnecessary distraction to the issue before the IRS. One of the relevant standards for the IRS’s safe harbor is that the intertie must be transferred pursuant to a long-term interconnection agreement. Importantly, Notice 2001-82 does not clearly define what constitutes “long-term.” If “long-term” is defined in reference to the definition of that term in Notice 88-129, Section 3 (with respect to “long-term” purchase power contracts), the term “long-term” interconnection agreements may not include agreements of less than ten years.

Given this ambiguity, National Grid believes that it is important to fully disclose that, although the interconnection agreement has an indefinite term, the Generator has termination rights under the agreement. Petitioners suggest that the IRS can find this information on its own since the interconnection service agreement will be included with the PLR request. As the taxpayer signing the PLR request, National Grid prefers to clearly disclose all the facts and not leave it up to the IRS to find relevant information.

The fact that Petitioners may believe that including the language about termination rights may harm its position is not sufficient to omit it from the PLR Request. This concern also suggests that the Petitioner also understands the relevance of these facts. As noted above, National Grid has structured the PLR Request to strongly advocate the conclusion that Petitioners are seeking. Indeed, the Company strongly supports any decision that will further improve the process for developers of renewable energy projects in Rhode Island. Notwithstanding these interests, the Company cannot file a PLR request that omits relevant information. Therefore, this information should not be included in the PLR request.

**3. The Context of This PUC Docket is Irrelevant and is Not the Type of Information That is Ordinarily Included in a PLR Request.**

National Grid objects to including Petitioners' proposed language regarding the context of the PUC proceedings in this docket in the PLR Request. This is not the type of information that is normally included in a PLR request. Moreover, Petitioners' proposed language includes many self-serving arguments that are inaccurate and highly irrelevant to the issue the IRS must rule on. For example, Petitioners propose to include a statement that "Generator paid the tax when Taxpayer refused to acknowledge the application of the safe-harbor." Objection at p. 2. Petitioners further propose to include a statement that "[the Company] opposed such a ruling on jurisdictional grounds and because it was allegedly unclear that the safe harbor applies to interconnections to the distribution system." Objection at p. 3. Although National Grid has drafted the PLR request to obtain a ruling that the safe harbor applies to distribution interconnections, National Grid has always maintained that it is not clear that the safe harbor applies in this context. Therefore, it is inappropriate, inaccurate, and illogical for National Grid, the taxpayer signing the PLR Request, to include Petitioners' proposed language regarding the context of this docket in the PLR Request.

Petitioners' argument that the inclusion of the PUC context in the PLR Request is relevant to the Company's certifications in Sections B and D<sup>2</sup> of the PLR Request also lacks merit. Petitioners' main point is that the PUC context is necessary since the Company and the PUC were unwilling to rely upon IRS precedent that Petitioners claim is clear on the issue of whether the safe harbor applies to distribution interconnections. The Company and Petitioners clearly disagree on the precedential value of PLR 200403084, and the PLR Request is not the place for Petitioners to reiterate their arguments concerning the precedential value of PLR 200403084. As the taxpayer, the Company is unwilling to overstate or mischaracterize the precedential value of PLR 200403084. The Company has prepared the PLR Request in efforts to clarify the IRS' position on whether the safe harbor applies to interconnections to the Company's distribution system, and the addition the history of the PUC proceedings in this docket will not enhance the Company's PLR Request, which seeks a ruling that the safe harbor applies to such interconnections.

The history of the PUC proceeding in this docket is exactly the type of information that is an unnecessary distraction to the issue before the IRS, and Petitioners' proposed revisions should not be included in the PLR request.

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<sup>2</sup> In certification B, the Company states in part: "As required under section 7.01(5)(a) of Rev. Proc. 2015-1, to the best of the knowledge of Taxpayer and the undersigned, the Service has not ruled on the same or similar issues for Taxpayer or a member of an affiliated group of which Taxpayer is also a member within the meaning of section 1504." In certification D, the Company states: "As required under section 7.01(5)(c) of Rev. Proc. 2015-1, the Taxpayer and the undersigned acknowledge that an affiliate of the Taxpayer, Massachusetts Electric Company, has submitted a ruling request on December 12, 2014 for a similar transaction involving an interconnection with its distribution system. To the best of the knowledge of Taxpayer and the undersigned, neither Taxpayer, a person related to Taxpayer, nor a predecessor have previously submitted any other request involving the same or a similar issue that is currently pending with the Service." PLR Request at pages 14 and 15.

**4. Section 7.01(5)(c) of Rev. Proc. 2015-1 Requires the Company to Include Section V, Certification D in the PLR Request and the Inclusion of the PUC History in This Certification is Irrelevant.**

Petitioners' revisions to Certification D in the PLR Request must also be rejected. Section 7.01(5)(c) of Rev. Proc. 2015-1 requires the Company to disclose that its affiliate, Massachusetts Electric Company (MECO), has filed a PLR request for a similar transaction involving an interconnection with MECO's distribution system. Nowhere in either Certification D or anywhere else in the PLR Request does the Company ask or encourage the IRS not to rule on the PLR Request. National Grid cannot control the IRS's rulemaking process, and revising Certification D as proposed by Petitioners will not change this fact. Moreover, the procedural history of this docket and the fact that the Company was ordered to file the PLR Request is not relevant to the IRS' consideration of the PLR Request. Finally, the Petitioners' revisions suggest that the Company had control over the disclosure of MECO's customer's PLR request. The MECO customer did not want the contents of its confidential PLR request disclosed to any third parties, and the Company, therefore, did not have a right to freely disclose confidential information relating to its affiliate's customer. Therefore, Petitioners' requested revision to Certification D of the PLR Request is improper.

**IV. CONCLUSION**

The PLR Request strongly advocates the position Petitioners are seeking and, contrary to Petitioners assertions, the PLR Request is not written in a way that undermines Petitioners' position. Contrary to their assertions, Petitioners did not lose control over all the facts and the language of the PLR Request. National Grid worked with Petitioners and incorporated many of their substantive edits to both versions of the PLR requests, and the

outstanding issues that are the subject of Petitioners' objection reflect the very few items upon which the Parties could not agree.

The Company has, in good faith, met the terms of its settlement in this proceeding by:

- (1) agreeing to file a request for a PLR for a project in Rhode Island;
- (2) using one of the Petitioners' projects;
- (3) negotiating the contents of the request with the Petitioners; and
- (4) including clear and comprehensive arguments in the request for a PLR advocating in favor of the Petitioners' preferred result.

Accordingly, the PUC should not require further negotiations between the Company and the Petitioners regarding the PLR Request.

Respectfully submitted,

**THE NARRAGANSETT ELECTRIC  
COMPANY**

By its attorney:



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Date: July 15, 2015