

July 12, 2017

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 – In Re: Petition of Wind Energy Development, LLC and
ACP Land, LLC Relating to Interconnection
National Grid’s Response to Petitioners’ Correspondence dated May 30, 2017**

Dear Ms. Massaro:

On behalf of National Grid,¹ I write this letter in response to ACP Land, LLC’s and Wind Energy Development, LLC’s (WED) (collectively, Petitioners) May 30, 2017 letter in this docket. In their May 30 letter, Petitioners seek clarification regarding the Rhode Island Public Utilities Commission’s (PUC) May 25, 2017 open meeting decision that the tax the Company collects for distributed generation (DG) interconnection projects (DG Tax) is a reasonable charge. In addition to responding to Petitioners’ May 30 letter, National Grid respectfully requests clarification from the PUC that the Company is no longer required to issue letters of credits to developers in lieu of collecting the DG Tax.

1. The Company Will Continue Collecting the DG Tax and Cannot Issue Refunds to Customers Who Have Paid the Tax.

When the tax issue arose in this docket three years ago, the Company submitted a settlement letter to the PUC dated September 12, 2014 (Settlement Letter) in efforts to reach a resolution that fairly balanced the very complicated factors and risks involved in this docket. Now, after the PUC has ruled that the DG Tax is a “reasonable charge”, Petitioners rely upon the Company’s Settlement Letter in efforts to undo the PUC’s ruling.

In its May 30, 2017 letter, Petitioners state that “since December 14, 2015, National Grid has never asked for or received approval of any different arrangement than its commitment to refund taxes paid post December 23, 2014 if and when the IRS clarifies its guidance to clearly safe-harbor distribution system interconnections. The Commission has yet to change its position on that commitment.” (See Petitioners’ May 30, 2017 letter at p. 3). Petitioners have misconstrued the Company’s Settlement Letter because the Company never made a blanket promise to refund DG Taxes paid post December 23, 2014 if and when the IRS clarified its

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

guidance regarding whether the safe harbor applied to DG interconnections. Instead, given the circumstances that existed in 2014 before the Company formally sought clarification from the IRS through a private letter ruling request, the Company noted 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.” Settlement Letter at p.4. The full context is important here because the entire paragraph that includes the preceding quote makes it clear that National Grid never made a blanket promise to refund all DG Taxes if and when” the IRS provided further guidance. Instead, the Company stated:

Given all these factors, the Company believes it has a resolution that fairly balances all these factors and risks. As such, 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, 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.

Settlement Letter at p.4 (emphasis added).

In the above-quoted paragraph, the words, “in the meantime” are critical here because they clearly indicate that the Company only intended to refund customers the DG taxes they paid if the PUC, based on the IRS’s ruling and Company’s recommendation, later determined that the DG Tax should not be paid. In several filings in this docket, the Company has made it clear that the existing IRS guidance, including the most recent notice (Notice 2016-36) is not clear enough to warrant the Company to stop collecting the DG Tax. Therefore, the Company, as the liable taxpayer to the IRS, will continue collecting such payments from developers until the IRS issues further guidance on this issue. Moreover, the Company does not know when and whether the

IRS will issue further guidance on this issue. To date, the IRS has not provided any formal definitive answers regarding whether it will issue such guidance in the future.

Accordingly, in light of the PUC’s ruling in this docket that the DG Tax is a reasonable charge, the Company will continue collecting these taxes from customers with DG Interconnection projects and does not intend to provide any refunds or hold any taxes in escrow. As the taxpayer, the Company is liable for taxes on DG interconnection transactions. The Company, will, of course, revisit its position if the IRS later rules that the tax safe harbor applies to DG interconnection projects.

2. The Company Respectfully Requests that the PUC No Longer Require the Company to Offer Letters of Credit to Developers in Lieu of Collecting the DG Tax.

At an open meeting on January 9, 2016, the PUC ruled that National Grid shall be required to notify developers of the option to enter into other financial arrangements, such as letters of credit, in lieu of paying the tax payments for DG interconnection projects. *See* PUC minutes of January 9, 2016 open meeting. In light of the PUC’s recent ruling that the DG Tax is a reasonable charge, the Company respectfully requests that the PUC no longer require the Company to offer letters of credits to customers in lieu of collecting the DG Tax. The PUC’s January 9, 2016 ruling that required the Company to offer customers the option of letters of credit predated the PUC’s recent ruling in this docket as well as the IRS’ most recent notice on this issue - Notice 2016-36. Therefore, given the existing IRS guidance and the PUC’s recent ruling that the DG Tax is a reasonable charge, the letter of credit option is unnecessary and burdensome.

Since the PUC’s January 9, 2016 ruling, WED is the only developer that has exercised the option to use a letter of credit in lieu of paying the taxes at the time of the interconnection application. The letter of credit process is very complicated, and, based on the Company’s recent experiences with two letters of credit for WED projects, properly executing and drawing upon letters of credit requires several legal and other internal resources. Accordingly, the Company respectfully requests that the PUC clarify that the Company is no longer required to offer letters of credit to developers in lieu of collecting the DG Tax.

In a separate filing, the Company will follow up with the PUC regarding the Rhode Island developers and entities that have either paid the DG Tax or entered into letters of credit with the Company since December 23, 2014.

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

Sincerely,



Raquel J. Webster

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.

Joanne M. Scanlon

Date

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