

Luly Massaro, Clerk
RI Public Utilities Commission
89 Jefferson Blvd.
Warwick, RI 02888

September 15, 2017

Re: Docket 4483 In re. Petition of Wind Energy Development, LLC and ACP Land, LLC Relating to Interconnection

Dear Ms. Massaro:

Petitioners ACP Land, LLC and Wind Energy Development, LLC (Petitioners) submit that National Grid's letter of July 12, 2017 does nothing to refute the proposition that the utility has made a commitment in this docket to refund any and all interconnection tax payments made after its September 12, 2015 settlement proposal once they accept it as clear that distribution system interconnections are eligible for the safe harbor clearly set out in IRS Notice 2016-36. As presented in our May 30 letter, both National Grid and the Commission have affirmed that commitment, National Grid repeatedly.

Petitioners also write to inform the Commission that this issue has been raised in the pending Eversource rate case in Massachusetts. In that proceeding, the Northeast Clean Energy Council, Inc. and Syncarpha Capital, LLC submit that Eversource's charge of the Contribution in Aid of Construction tax to distribution system interconnections is unjustified and should be prohibited. See Syncarpha Capital, LLC Comments (5.30.17) http://170.63.40.34/DPU/FileRoomAPI/api/Attachments/Get/?path=17-05%2fSyncarpha_Comments.pdf; NECEC Comments (5.31.17) http://170.63.40.34/DPU/FileRoomAPI/api/Attachments/Get/?path=17-05%2fNECEC_comments_53117.pdf; NECEC Reply Brief at p. 8 (8.18.17) http://170.63.40.34/DPU/FileRoomAPI/api/Attachments/Get/?path=17-05%2fNECEC_Reply_Brief_81817.pdf (record shows that Eversource is collecting millions of dollars a year from customers who install DERs without an equivalent tax liability). Syncarpha's filing cites a long list of tax accountants and law firms that have publicly concluded that IRS Notice 2016-36 makes it clear that distribution interconnections are eligible for the safe harbor, refuting the position taken by National Grid's hired gun, Ernst & Young.

Numerous leading law firms and accounting firms unqualifiedly confirm that Revenue Notice 2016-36 applies to DG Facilities. See, KMPG Updated safe harbor, transfers of property by electricity generators June 10, 2016 <https://home.kpmg.com/us/en/home/insights/2016/06/tnf-notice-2016-36-updated-safe-harbor-transfer-of-property-to-regulated-public-utilities-by-electric-generators.html>; McDermott Will & Emory IRS Issues Updated Notice Regarding Safe Harbor for Transfers of Property to Regulated Public Utilities by Electricity Generators June 15, 2016 Gale E. Chan Madeline Chiampou Tully Heather Cooper Martha Groves Pugh <https://www.mwe.com/en/thought-leadership/publications/2016/06/irs-notice-safe-harbor-for-transfers-of-property>; Steptoe & Johnson IRS Issues Guidance on Transfers of Property to Regulated Public Utilities June 14, 2016 <http://www.stepto.com/publications-11326.html>; Deloitte Notice 2016-36 and gross-up payments <https://www2.deloitte.com/content/dam/Deloitte/us/Documents/energy-resources/us-e-r-irs-guidance-update.pdf> November 14, 2016; Chadbourne IRS Updates Tax Treatment of Interconnection Payments August 2016 By Keith Martin <https://www.chadbourne.com/IRS-updates-tax-treatment-interconnection-payments-project-finance-august-2016>; Crowell & Moring Larry F. Eisenstat New IRS Safe Harbor for Contributions by Generators and Storage Facilities to Regulated Utilities Jun.14.2016 <https://www.crowell.com/NewsEvents/AlertsNewsletters/all/New-IRS-Safe-Harbor-for-Contributions-by-Generators-and-Storage-Facilities-to-Regulated-Utilities/pdf>

Syncarpha Capital, LLC Comments at p. 4, fn. 3 (5.30.17). KPMG has published that, “a generator (for example, a solar or wind farm) may contribute an intertie to a utility that qualifies under the new safe harbor even if the generator is interconnected with a distribution system, rather than a transmission system, if all requirements of today’s notice are satisfied.” McDermott Will & Emery commits that, “generators (including wind and solar generators) that are interconnected with a distribution system rather than a transmission system may contribute interconnection facilities to a utility that qualifies under the Safe Harbor, provided the other requirements of the Notice are satisfied.” Steptoe & Johnson LLP also notes that “a generator (such as a solar or wind farm) may contribute an intertie to a utility that qualifies under the new safe harbor even if the generator is interconnected with a distribution system, rather than a transmission system, if the requirements of Notice 2016-36 above are met.” Deloitte concludes, “a generator may contribute an intertie to a utility that qualifies under the new safe harbor even if the generator is interconnected with a distribution system, rather than a transmission system, if other requirements are met.” Chadbourne agrees:

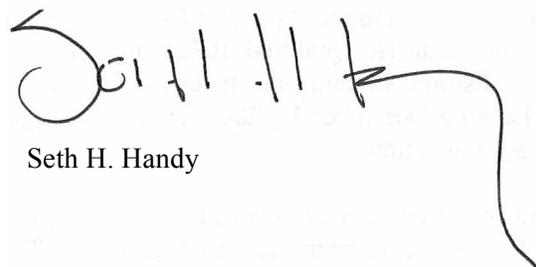
the intertie must be used for ‘transmitting electricity.’ Some distributed solar facilities connect to distribution lines rather than transmission lines. The IRS said it intends the policy of not taxing utilities on cost reimbursements will apply equally to them.

Finally, Crowell and Moring concur that, “The safe harbor applies to interties to distribution facilities as well as transmission facilities.” In response to those filings, the Massachusetts Department of Energy Resources has called for the Massachusetts Department of Public Utilities to review this matter as part of the Eversource rate case. See DPU Docket 17-05, Reply Brief of Department of Energy Resources (8.18.17), http://170.63.40.34/DPU/FileRoomAPI/api/Attachments/Get/?path=17-05/DOER_Reply_Brief_81817.pdf (In response to the Initial Brief filed by NECEC and given the barriers that high interconnection costs create for DERs, DOER recommends the Department review the Company’s practice associated with the CIAC in light of IRS Revenue Notice 2016-36, which examines the Company’s federal tax liability regarding the interconnection of some DERs).

The experts are aligned against National Grid and its hired consultant on their strained reading of IRS Notice 2016-36; they agree with former Commissioner DeSimone’s conclusion on the matter. It is only a matter of time before National Grid accepts that it can no longer consider its interconnection gross up tax a reasonable charge, or the regulators require them to accept that fact. The only remaining question is how much this has cost and will cost private and public sector investors in the renewable energy projects Rhode Island seeks until then.

Petitioners would still appreciate a reply to their request for an account of the total amount of interconnection taxes paid to National Grid since its settlement proposal to refund the tax once the guidance was clarified. Petitioners and the renewable energy industry remain very interested in that information.

Sincerely,



Seth H. Handy