STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

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

WIND ENERGY DEVELOPMENT, LLC
and ACP LAND, LLCS'
OBJECTION

Wind Energy Development, LLC (WED) and ACP Land, LLC (ACP) (collectively Petitioners) hereby object to National Grid's Motion for Protective Treatment of its paid opinion from Ernst & Young and to the conclusion evidently reached in that opinion that contradicts the record in this docket. Petitioners ask for expeditious resolution of this matter that was initiated on January 21, 2014.

The Commission's Rule of Procedure 1.2(g) provides that access to public records shall be granted in accordance with the Access to Public Records Act (APRA), R.I. Gen. Laws §38-2-1 et seq. Under the APRA, all documents and materials submitted in connection with the transaction of official business by an agency is deemed to be a public record, unless the information contained in such documents and materials falls within one of the exceptions specifically identified in R.I. Gen. Laws § 38-2-2(4). National Grid claims that Ernst & Young's opinion is subject to the APRA exemption in section (K) which provides an exclusion for "Preliminary drafts, notes, impressions, memoranda, working papers, and work products; provided, however, any documents submitted at a public meeting of a public body shall be deemed public." R.I. Gen. Laws § 38-2-2(4)(K). The Company claims protection under this exclusion (K) because the opinion is "privileged work product and opinion of the Company's tax advisor, and the Company would not normally disclose confidential opinions from its advisors to the public." This motion for protective treatment is

baseless for at least four reasons. First, exclusion K only applies to "preliminary drafts, notes, impressions, memoranda, working papers, and work products," not to the kind of final opinion issued for the Commission's reliance for resolution of this case. If Ernst & Young's opinion is a "draft" then it is not fit for the Commission's reliance. Second, the opinion is submitted to a public body as part of a public proceeding and therefore expressly would not be protected by section (K) even if it were a draft. Third, there is no work product protection for Ernst & Young's opinion. National Grid's September 16, 2016 filing identified Ernst & Young as its tax consultant, not its lawyer. Moreover, any such work product protection clearly would not apply to a final filing with the Commission presented as the basis for the Commission's resolution of this matter. The Company's claim that it would "normally not disclose confidential opinions from its advisors to the public" is just irrelevant – the consultant's final opinion filed in support of the Company's position in an adjudicative proceeding is not protected regardless of the Company's normal practice. Finally, the request for protection is patently unfair to Petitioners and developers paying the tax because it denies fundamental due process – it precludes the opportunity to understand and respond to the substance of a legal position National Grid asks the Commission to rely on for the resolution of this adjudication. Petitioners respectfully ask the Commission to require disclosure of Ernst & Young's opinion so they can properly understand and respond to its substance.

Without the benefit of seeing the opinion, Petitioners object to its conclusion because it is clearly inconsistent with the record in this case. The record establishes that the IRS safe-harbor applies to distribution interconnections and that this interconnection tax is not a reasonable and appropriate charge to customers interconnecting renewable energy. In addition to the record evidence noted in Petitioners' prior filings including its August 30, 2016 letter, the Commission now has before it two more, current exhibits providing compelling reason to reject this pass through tax as

unreasonable.

First, National Grid's October 13, 2016 filing includes (once again) its US Director of Tax Research and Planning, Mr. Robert Ermansky's email recounting his call with the author of the IRS Guidance, David Selig. On that call, Mr. Selig evidently made it plain and clear that notice 2016-36 was intended to apply to interconnections to the distribution system even if such interconnections do not ultimately send electricity to the transmission system. Mr. Selig said that the notice may need to be revised to make that conclusion clearer, but neither participant on that call raised any question that the notice intends that interpretation. Indeed, Mr. Ermansky's email expressly states that it would be "incorrect" to read it any other way. The Ernst & Young opinion must be "incorrect" then.

The Edison Electric Institute, a national trade association for utilities, evidently also reads the notice to apply the safe-harbor to distribution interconnections. National Grid's October 13 filing includes a September 13, 2016 letter from EEI to Mr. Selig stating that EEI's experts "assume your intent was to provide the same treatment for all transfers of an intertie to a distribution utility as is provided for transfers of intertie property to transmission utilities." That letter proceeds to point out that the notice still contains some references to transmission that should be amended to clearly reference both transmission and distribution in order to more clearly reflect the intent. However, there is no lack of clarity with regard to whether the safe-harbor applies to distribution interconnections; the utilities' trade association has also concluded that it does. It is unclear how Ernst & Young could possibly have had any basis to reach a different opinion.

For far too long, those seeking to make private investment in the improvement of our energy infrastructure for the benefit of energy consumers and the State of Rhode Island[1] have paid this tax

[1] See for example, Energy 2035 Rhode Island State Energy Plan (October 8, 2015); DG & REF Jobs, Economic & Environmental Impact Study, The Brattle Group (April 30, 2014); "Shining Rewards The Value of Rooftop Solar for Consumers & Society," Environment America Research & Policy Center (Summer 2015).

that was and is not owed to the IRS.[2] Thirty-four months after filing this Petition, Petitioners once again respectfully request the Commission's decision to put an end to this. Petitioners also repeat their requests for any other relief the Commission deems just and proper including an order that National Grid amend its interconnection tariff to provide instruction on how renewable energy developers can apply and qualify for this safe-harbor. Petitioners will address the inadequacies of National Grid's allegedly transparent interconnection queue in separate proceedings and filings.

WIND ENERGY DEVELOPMENT, LLC, & ACP LAND, LLC

By their attorneys,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2016, I delivered a true copy of the foregoing document to the service list by electronic mail.

Seth H. Handy

[2] Recall that per National Grid's September filing, the experts Troutman and Sanders, had informed its clientele that "historically the Service had issued private rulings concluding that interties connecting generation facilities to distribution lines qualified for the safe harbor in Notice 2001-82."