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

October 21, 2016

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

Dear Ms. Massaro:

ACP Land, LLC and Wind Energy Development, LLC (Petitioners) are in receipt of National Grid's letter to the Commission dated October 19, 2016. National Grid still fails to meet its burden to assess its renewable energy customers this pass-through interconnection tax.

National Grid has now used ratepayer funds to pay Ernst & Young for a misconstruction of the IRS' use of the term "transmission." The industry terminology related to the size and type of the wire ("transmission" versus "distribution") is irrelevant to the fundamental purpose of the Contribution in Aid of Construction (CIAC) tax and the safe-harbor. There is no reason to construe "transmission" in accordance with the industry term of art here. "Transmission" is a word that simply means the act or practice of sending a signal by wire. (American Heritage, 2nd ed.) No language in the CIAC statute, IRS Notice 88-129 or IRS Notice 2016-36 either compels or supports construing "transmission" to mean the act or practice of sending a signal across a wire of a specified size and voltage. As Petitioners submitted to the Commission back in August 2014:

> The IRS Notice [88-129] defines "intertie" as follows:
>
>> PURPA and its implementing rules and regulations require that a utility interconnect with a Qualifying Facility for the purposes 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 <u>new connecting and transmission facilities</u>, <u>or</u> modifications, upgrades or relocations of a utility's existing transmission network. [emphasis added]
>
> The notice clearly and simply applies to any equipment needed to interconnect a qualifying facility for the sale of electricity to the utility. On May 16, 2000, the US Department of Treasury responded to an inquiry about the application of IRS Notice 88-129 to interconnection applications from Qualifying Facilities (attached) as follows:
>
>> The Notice provides a safe harbor, excluding from the definition of a CIAC certain transfers of interconnection facilities to utilities by Qualifying Facilities. The rationale for the safe harbor is that a Qualifying Facility is not a customer that receives services from the transferee utility under section 118(b) if the transfer of the interconnection facilities is to allow the producer to sell power to its customer utility. Since the Qualified Facility does not receive services from the transferee utility, there is no concern that the property transferred might be a form of prepayment for future services from the transferee. Accordingly, the transfer of the interconnection facilities is not a taxable

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> CIAC to the transferee utility.

A note from the Energy Law Journal further explains:

> In IRS Notice 88-129, the IRS separated the tax treatment of interconnections from the long history of contributions in aid of construction. Contributions in aid of construction were paid to a utility by a customer in order to help the utility sell service to that customer. These payments were of a different nature than interconnection payments. PURPAS QFs typically sell power to utilities rather than buy power from utilities. Payments by qualifying facilities for interties, therefore, are generally not contributions in aid of construction, even if the intertie is used to wheel power to other utility customers of the QF.

Jackie S. Levinson and Andrew D. Schifrin, The Regulatory and Tax Treatment of Electric Interconnection Facilities," ENERGY LAW JOURNAL Vo. 23, No. 2 (2002), p. 486.

Ernst & Young confirms the fundamental intent of the CIAC tax and safe-harbor in its September 30, 2016 opinion. It notes that "The amendment of section 118(b) by Section 824(a) of the Tax Reform Act of 1986 was intended to require utilities to include in income the value of any CIAC <u>made to encourage the provision of services by a utility to a customer</u>." (page 3, emphasis added). Then it adds that:

> Notice 88-129 states that in a CIAC transaction the purpose of the contribution of property to the utility is to facilitate the sale of power by the utility to a customer. In contrast, the purpose of the contribution by a Qualifying Facility to a utility is to permit the sale of power by the Qualifying Facility to the utility. Accordingly, Notice 88-129 concludes that the fact that the 1986 amendments to section 118(b) render CIAC transactions taxable to the utility does not require a similar conclusion with respect to transfers from Qualifying Facilities to utilities. . . Notice 88-129 provides a safe harbor under section 118 for certain transfers of interties by a Qualifying Facility to a regulated public utility. The safe harbor provides in part, that with respect to transfers made by a Qualifying Facility to a utility exclusively in connection with the Qualifying Facility's sale of electricity to the utility, a utility will not realize income upon transfer of an intertie by a Qualifying Facility. (page 4)

Yet, the Ernst & Young opinion then construes "transmission" to upend the whole purpose of the CIAC and the safe-harbor. There is no relevant distinction between the distribution and transmission system in applying the CIAC or the safe-harbor; both are solely based on whether the interconnection improvement is designed to facilitate the sale of power by the utility to its customer (CIAC) or from the customer to the utility (safe-harbor).

Ernst & Young may be well paid by ratepayers to do National Grid's bidding, but Petitioners respectfully ask the Commission not to allow their opinion to overturn the fundamental intent of the CIAC and its safe-harbor.

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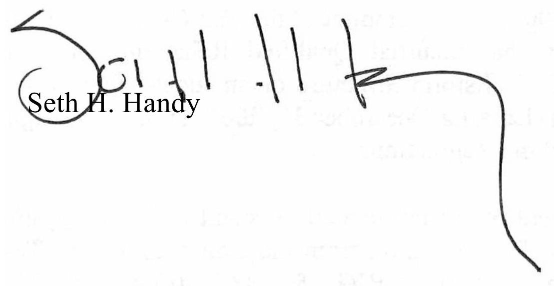
Thank you for all your consideration of this matter.

Sincerely,



Seth H. Handy