

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

July 7, 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 June 17, 2016, and have reviewed the Internal Revenue Service (IRS) Notice 2016-36 issued on June 10, 2016. The new IRS guidance makes it even clearer that generator interconnections to the distribution system are safe harbored and exempt from the interconnection taxes NGRID has assessed. Pages 10 and 11 of the guidance states, "Because no long-term power purchase contract or long-term interconnection agreement is required under the new safe harbor, 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 all of the requirements under section III.C of this notice are met." (emphasis added). The definition of "intertie" in this guidance includes all "connecting" facilities that "facilitate the interconnection of a generator with a utility."

As laid out in NGrid's Private Letter Ruling request, issued in compliance with the Commission's Order in this docket, a reading that only allows the safe harbor for transmission system interconnections is also inconsistent with the previously established definition of safe harbored "interties." That request stated as follows:

- "The IRS Notices confirm that section 118(b) does not apply to a generator's contribution in aid of construction, paid to a utility as reimbursement for the cost of interconnection equipment used exclusively for the purpose of allowing the flow of electricity from the generator to the utility."
- "Notice 88-129 provides that section 118(b) is not intended to apply to the transfer of interconnection equipment constructed for the purpose of allowing the flow of electricity from a generator to the utility; rather, it is intended to apply where the purpose is to allow the flow of electricity from the utility to the generator."
- "For purposes of determining the tax treatment to a utility of a contribution of interconnection equipment, there is no rational basis for differentiating between situations in which a utility directly interconnects with an electric transmission system versus with an electric distribution system. . . notwithstanding the references to "transmission," neither Notice 88-129 nor Notice 2001-82 rely on the presence of a direct interconnection with an electric transmission system; rather those Notices simply are concerned with the direction in which electricity flows through the intertie -- i.e., from the generator to the utility or from the utility to the generator."

- “The Service has already confirmed in private letter rulings that the contribution of an intertie by a generator to a utility that allows electricity to be delivered to the electric grid was a fully non-taxable contribution to capital where the intertie was part of both the ‘Taxpayer’s transmission and distribution system.’”

If there can remain any question about how the Department of Treasury and the Internal Revenue Service interpret this safe harbor, Petitioners ask the Commission to please call its author for confirmation (David Selig, 202.317.4137). He will confirm that there is no question regarding the safe harbor’s application to generator interconnections to the distribution system. Petitioners and others have waited long enough for final resolution of this matter. I have discussed this with other practitioners that reached out to me out of interest in this proceeding. They uniformly supported Petitioners’ position on this issue. In fact, Roger Reigner of the law firm of Troutman and Sanders in Atlanta, GA (404-226-1422) informed me that his team of tax lawyers has long advised his utility clients not to assess or pay an interconnection tax on these projects based on the IRS safe harbor. Those practitioners agree that the new guidance makes the state of this law even clearer.

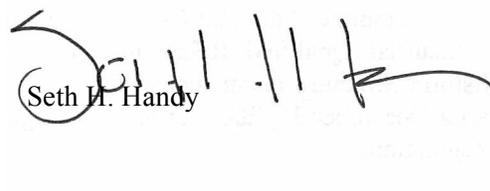
It is time for National Grid to refund or forgive the interconnection taxes paid or secured by the Petitioners and its other renewable energy customers interconnecting to its distribution system that meet the criteria for the application of the safe harbor, as Petitioners’ projects have demonstrated that they do. By my understanding and belief, Petitioner Wind Energy Development paid \$10,481.68 in interconnection tax for its turbine in North Kingstown (per the audit and revised interconnection cost dated August 12, 2014) and \$219,397 for its turbines in Coventry (per the Interconnection Services Agreement dated August 6, 2015) and also issued a letter of credit for \$146,200 for Coventry (per the Interconnection Services Agreement Amendment dated April 24, 2016). ACP Land, LLC paid \$3,104.05 in interconnection tax for its project in Middletown, RI (per the audit and revised interconnection cost dated April 11, 2014).

It would also now be appropriate for the Commission to order National Grid to properly instruct its customers on how to qualify for this safe-harbor moving forward, as Petitioners had advocated in its proposed revisions to the interconnection tariff (which were denied).

As an added matter, it has recently come to Petitioners attention that National Grid has not been using the form of Interconnection Services Agreement that was approved by the Commission and filed on May 11, 2016. Please confirm and order correction of any improper forms and use of the proper form of agreement moving forward.

Thank you for your help with these matters.

Sincerely,


Seth M. Handy