

May 14, 2014

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

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

Dear Ms. Massaro:

ACP Land, LLC and Wind Energy Development, LLC (Petitioners) write to provide their position on the recommendations of PUC counsel in this docket. First, we are grateful for the time and effort counsel dedicated to help the parties resolve these matters and appreciate the substantial progress made through a newly tested dispute resolution process.

- 1) The Income Tax Gross Up (the Interconnection Tax): Petitioners request further proceedings before the Commission to address the recommendation on this issue. The last sentence of the recommendation calls for more policy review, and Petitioners request the opportunity to advocate in that review.

Petitioners object to the PUC's refusal to exercise jurisdiction over the reasonableness of this utility charge. Petitioners agree that the burden of proof is clearly on the utility to establish the reasonableness of its charges and contend that this charge cannot be held reasonable in light of IRS guidance on the subject, unless and until the utility definitively establishes that the tax is owed. Any decision to allow the utility to continue charging a tax despite the IRS safe-harbor or to charge developers for pursuing even more clarity from the IRS is inconsistent with the utility's burden. To require developers to pursue a private letter ruling for each and every development project would not only ignore existing IRS guidance but would put unjustified and unmanageable burden on developers. This issue is not only relevant to distributed generation contract projects but to all interconnections of renewable energy. The impact of such an inappropriate charge is not only assessed to the project developer but to all ratepayers in the form

of elevated project development costs and inflated rates. Moreover, it impedes the accomplishment of our legislature's renewable energy objectives.

Given the clarity of existing IRS guidance on the safe-harbor, the remedy ought to be for the utility to expeditiously seek a refund from the IRS of the interconnection taxes Petitioners paid. Petitioners and the PUC should review and approve the contents of the refund request before it is filed. The utility should be barred from assessing or collecting an interconnection tax until the utility has met its burden of establishing that the safe-harbor is inapplicable to such projects. Please understand that the utility has a negative incentive to resolve this issue because it passes the entire tax through to developers and it is Petitioner's understanding (subject to discovery) that the utility still treats the tax as its expense for rate accounting purposes, upon which it then builds its profit.

- 2) Accuracy of Interconnection Studies and Charges: We accept and support this recommendation. However, it does not address the requirement for a true up on the prepaid fees for the interconnection impact studies themselves, which had been addressed and resolved during the proceeding. RIGL §39-26.3-4 sets maximum fees for interconnection studies with the exception that NGrid can increase the amount charged for impact studies on non residential projects based on actual costs incurred for the study as assessed after project completion. If the utility seeks recovery of additional, "actual" costs for non-residential projects, it should be required to provide an account of those costs with enough detail for the developer to determine whether the charges are reasonable.
- 3) Timeliness of Studies: Petitioners accept this recommendation.
- 4) Other issues: Petitioners accept these recommendations.

Thank you again for your help with these matters.

Sincerely,


Seth H. Handy

cc. National Grid