Raquel W. Webster
Senior Counsel

October 8, 2014

BY HAND DELIVERY & ELECTRONIC MAIL

Luly E. Massaro, Commission Clerk
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

RE: Docket 4483 – In Re: Petition of Wind Energy Development, LLC and ACP Land, LLC Relating to Interconnection
<u>Responses to PUC Data Requests – Set 2</u>

Dear Ms. Massaro:

On behalf of National Grid[1], I have enclosed responses to the second set of data requests issued by the Rhode Island Public Utilities Commission on September 17, 2014 in the above-referenced matter.

Thank you for your attention to matter. If you have any questions, please contact me at (781) 907-2121.

Sincerely,

Raquel J. Webster

cc: Docket 4483 Service List
Leo Wold, Esq.
Steve Scialabba, Division

[1] The Narragansett Electric Company d/b/a National Grid.

40 Sylvan Road, Waltham, MA 02451
T: 781-907-2121 ■ raquel.webster@nationalgrid.com ■ www.nationalgrid.com

Certificate of Service

I hereby certify that a copy of the cover letter and/or any materials accompanying this certificate was electronically transmitted to the individuals listed below. Copies of this filing will be hand delivered to the RI Public Utilities Commission and to the RI Division of Public Utilities and Carriers.

__________________________________ October 8, 2014

Docket No. 4483 – Wind Energy Development LLC & ACP Land, LLC – Petition for Dispute Resolution Relating to Interconnection Service List updated 7/29/14

Name/Address	E-mail Distribution List	Phone
Seth H. Handy, Esq. HANDY LAW, LLC 42 Weybosset St. Providence, RI 02903	seth@handylawllc.com	401-626-4839
John K. Habib, Esq. Keegan Werlin LLP 265 Franklin St. Boston, MA 02110-3113	jhabib@keeganwerlin.com	617-951-1400
Raquel Webster, Esq. National Grid 280 Melrose St. Providence, RI 02907	Raquel.webster@nationalgrid.com Thomas.teehan@nationalgrid.com Joanne.scanlon@nationalgrid.com Celia.obrien@nationalgrid.com	401-784-7667
Jon Hagopian, Esq. Division of Public Utilities & Carriers	Jhagopian@dpuc.ri.gov Acontente@dpuc.ri.gov Sscialabba@dpuc.ri.gov Jspirito@dpuc.ri.gov	401-784-4775
Original & 9 copies to be filed w/: Luly E. Massaro, Commission Clerk Public Utilities Commission 89 Jefferson Blvd. Warwick, RI 02888	Luly.massaro@puc.ri.gov Amy.dalessandro@puc.ri.gov Todd.Bianco@puc.ri.gov Alan.nault@puc.ri.gov	401-780-2107
Karen Lyons, Esq. Dept. of Attorney General	Klyons@riag.ri.gov jmunoz@riag.ri.gov dmacrae@riag.ri.gov	401-222-2424

PUC 2-1

Request:

True or False. The $25,000 cap in your proposal applies only to costs associated with the filing of a PLR and not to tax liability associated with a PLR ruling.

Response:

True. The $25,000 cap in National Grid's proposal applies only to costs associated with filing an individual PLR request. If the PUC adopts a policy whereby the Company does not collect the tax gross-up adder from developers with distributed generation projects interconnecting to National Grid's electric distribution system, and the IRS later determines that a tax liability exists for the Company, National Grid would seek recovery of its full tax liability from customers. See also the response to PUC 2-10.

Prepared by or under the supervision of: Robert A. Ermanski

PUC 2-2

Request:

Provide the PURPA citation referenced on page 2 of your proposal (last paragraph) that exempts payments from qualifying facilities from the CIAC tax.

Response:

To clarify, the Public Utility Regulatory Policies Act of 1978 (PURPA) does not exempt payments from tax.

Internal Revenue Service Notice 88-129[1] provides guidance on certain payments received by regulated public utilities from small power producers and qualifying co-generators (i.e., "Qualifying Facilities"), as defined in Section 3 of the Federal Power Act, as amended by Section 201 of PURPA. Notice 88-129 states that a payment received from the Qualifying Facility to fund the construction of interconnecting facilities between the Qualifying Facility and the utility's transmission system is not subject to tax under Internal Revenue Code Section 118(b) if certain requirements are satisfied. The conditions are specified in Notice 88-129.

[1] IRS Notice 88-129 is attached as Attachment C to National Grid's September 12, 2014 proposal.

PUC 2-3

Request:

Will the Company apply for a PLR for each of the petitioners' projects that involve a tax liability dispute?

Response:

The Company does not propose to file for a PLR request for each of the Petitioner's projects that involve a distribution system interconnection. As stated in the Company's September 12, 2014 proposal, the Company would like to file one to four PLR requests associated with projects that interconnect with the Company's electric distribution system, and otherwise, meet the remaining criteria required by the IRS for the tax exemption. Such projects may or may not be one of the Petitioners' projects, depending on whether one of Petitioners projects is at the appropriate stage for a PLR request. Moreover, to obtain as much clarity from the IRS as possible concerning whether certain distribution interconnection projects are tax exempt, it is better for the Company to file PLR requests concerning a diverse variety of distribution interconnection projects and not just Petitioners' projects. The Company will, however, try to use one of Petitioners' projects and seek any additional rulings on other customers' projects.

Prepared by or under the supervision of: Robert A. Ermanski

PUC 2-4

Request:

What is the future policy to be garnered from the filing of these proposed PLRs (page 5) if it cannot be used as precedent? For example, assume the following scenario. The IRS rules that the safe harbor provisions apply to distribution interconnections, and the Company in turn files a recommendation with the PUC that no CIAC taxes will be paid (and none collected from the customer) on payments received from projects connecting to the distribution system. The PUC approves this recommendation. At some point in the future, National Grid charges a pass through CIAC tax to a stand-alone generator connecting to the distribution system, and the developer files a complaint with the PUC. Is the Company suggesting that the PUC should not rely on its own decision (based on the prior PLR ruling), and order National Grid to reimburse the tax? If that is correct, then how does the proposal provide an avenue for future policy that can be applied uniformly and fairly to all eligible projects in the future, as stated on page 5 of your proposal? How will this proposal help prevent petitions such as this from being filed in the future?

Response:

Regarding future policy and its precedential effect, once the PUC decides the policy issue after considering the responses to the PLRs, the policy would be applied uniformly in all applicable cases. Specifically, if the PUC decides that the Company should not be collecting the taxes, such a ruling would apply uniformly to all eligible projects. Similarly, if the PUC decides that taxes should be collected up front, the collection of those taxes would be applied uniformly to all applicable projects. The Company would need to comply with the policy established for all applicable projects prospectively in all cases. If it did not, the developer would be able to complain to the PUC, relying on the policy precedent established in this docket.

Regarding the second question – relating to the hypothetical posed – the answer is "no." The PUC would be able to rely on its ruling regarding the policy determination, and require the Company to reimburse the tax consistent with the PUC's decision in this case where a project, otherwise, clearly met all of the eligibility criteria set forth in the IRS rules and is interconnected at distribution or transmission voltage.

The Company's statement regarding precedent that appears on page 5 of the proposal was not clearly articulated. It is worthwhile to restate the Company's intention here again with further clarification. In referring to the precedential issue on page 5, the Company was not referring to the policy determination of whether taxes would be collected up front; but rather, precedent as it

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PUC 2-4, page 2

would apply to (i) other developers making discrimination claims, maintaining that the Company is obligated to pay for the cost of future PLRs even where the exemption does not appear to apply, and/or (ii) other developers making discrimination claims who have already paid taxes in the past coming to the PUC, and maintaining they are entitled to retroactive reimbursement from past projects.

As such, the Company is proposing that the PUC make clear that an order approving the Company's proposal here (i) does not create an entitlement for other projects to assert a right to a cost-free PLR request in the future simply because the Company did it in this case, and (ii) does not create an entitlement to a retroactive reimbursement for project applications processed prior to the effective date of the order where the Company has already paid the taxes (other than the petitioner's projects that are expressly at issue in this case). In other words, this case presents unusual circumstances designed to address a broad issue, and developers shall not be entitled to claim discrimination because of the steps taken in this case to address the broader issue.

This is more than theoretical because the safe harbor exemption only applies to projects that meet specified criteria. It does not apply to all generation under the IRS rules. One of the criteria is that the generation project is selling its output to the utility or in the market. As a result, even if the IRS rulings indicate that an interconnection to the distribution system, by itself, does not invalidate the exemption, a project that has an on-site customer consuming the output of the generation (other than for station service), would not be eligible for the exemption. Thus, the Company would still be collecting the taxes from those distributed generation projects that are built behind-the-meter for on-site consumption because they would not meet the exemption criteria, whether interconnected at transmission or distribution voltage. As such, it is conceivable that a project developer may wish to further test the IRS rules under different sets of facts outside of the specific issue being addressed in this instance. For such cases, it is important that the PUC make clear that the cost of any such speculative PLRs would need to be borne by the developer wishing to further test the limits of the IRS policy. It would not be reasonable in such case to ask all distribution customers to fund speculative PLRs of such type, based on different sets of project facts where the project does not, on its face, meet the established criteria, whether connected at distribution or transmission voltage.

PUC 2-5

Request:

National Grid proposes to provide a reasonable itemization of costs "to the extent it takes steps to collect costs in excess of the specified fee." (Page 5) Does this mean that the Company will only provide a final accounting if and when it sends a bill for costs exceeding the statutory fee? If yes, what will prevent disputes from arising when National Grid delays sending a bill for 6, 8 months or longer? Is the Company willing to send an itemization within a reasonable time frame from when the developer exceeds the statutory fee, i.e. 30 or 60 days?

Response:

In answering this question, it is important to note the difference between the Company's recovery of the cost of impact studies versus the cost of interconnections.

With respect to the impact study cost, R.I.G.L. § 39-26.3-4 sets forth a fee structure. Under that structure, the Company charges an established fee up front, without regard to the cost, in accordance with the statute and as updated by the PUC. The Company would charge the actual cost of a study, only when it exceeds the established fee and only for non-residential applications. As such, the Company would itemize the impact study cost, only when the cost exceeds the fee, in order to seek the additional cost from the developer. Once the study is complete, and all internal and external charges have been incurred and recorded in the appropriate work orders, the Company will initiate the final accounting for the study. The Company commits to completing such final accountings for studies within 90 business days of initiating such reconciliations.

In contrast, the actual interconnection cost is fully reimbursed in every instance by the developer. Thus, in every instance, once the Company has authorized the project to interconnect and all internal and external charges have been incurred and recorded in the appropriate work orders, the Company will initiate the final accounting for the interconnection. The Company commits to complete final accountings for interconnections within 90 business days of initiating such reconciliations.

The Company's commitment to completing itemizations (when applicable) within 90 business days should avoid any disputes similar to the one that occurred in this case.

Prepared by or under the supervision of: Timothy Roughan

PUC 2-6

Request:

When is the Company proposing that it will provide the itemization of actual interconnection costs? Page 6 of the proposal states, "…the itemization would occur as a matter of course"

Response:

Once the Company has authorized the project to interconnect and all internal and external charges have been incurred and recorded in the appropriate work orders, the Company will initiate the final accounting for the project. The Company expects to complete final accountings within 90 business days of initiating such reconciliations.

PUC 2-7

Request:

Petitioners have asked to have final say over the contents of the PLR requests. National Grid has said that it would share the content of the PLR application with the Division and customer whose project is the subject of the PLR request prior to filing.

a) Is the Company amenable to incorporating reasonable edits suggested by the customer?

b) Is the Company proposing that it have final say over the content of the PLR application? If yes, why?

Response:

a) Yes. The Company is amenable to incorporating reasonable edits from Petitioners on the content of any PLR request the Company may file regarding one of Petitioners' projects.

b) Yes, the Company must have final say over the content of each PLR request that it files for several reasons. First, the Company is ultimately the taxpayer seeking guidance from IRS concerning the proper reporting of each transaction on its tax returns. In addition, a PLR request that does not accurately portray the specific transaction will not protect the transaction or the Company from future IRS audit adjustments, which may include tax, interest, and penalties. Finally, the Company must sign the PLR request under the pains and penalties of perjury. Therefore, although the Company is amenable to incorporating reasonable edits from a customer whose project is the subject of any PLR request that the Company files, the Company must have final say of the contents of the PLR request.

Prepared by or under the supervision of: Robert A. Ermanski

PUC 2-8

Request:

Petitioners have asked for a definite schedule for the filing of the PLR applications. Is the Company able to provide a definite schedule?

Response:

As stated in its response to PUC 2-3, the Company will try to use one of Petitioners' projects for a PLR request. Assuming a successful collaborative effort, the Company anticipates filing a PLR during the first half of 2015, which would be well in advance of National Grid filing its US tax return for the current tax year.

The Company will endeavor to identify up to three other projects for the other PLR requests. Such projects must be at a point in the design and interconnection process that would enable the proponents to confirm the facts that are relevant to the tax determination to be made by the IRS. Accordingly, the additional PLR requests could be filed during 2015 or 2016.

PUC 2-9

Request:

Assuming the Company deferred the maximum level of PLR costs, $25,000, to ratepayers in any given year, what would be the monthly bill impact of such a deferral on a typical residential customer?

Response:

If the Company were to defer the maximum level of recoverable costs associated with one PLR request, proposed here as $25,000, in any given year for recovery from customers during a subsequent 12-month period, it would not result in a monthly bill impact, because this amount is too small to produce a billable adjustment factor. If the Company were to file four PLR requests in one year, and defer $100,000 for recovery over a subsequent 12-month period, then the recovery factor would be $0.00001 per kWh. The impact on a typical residential customer receiving Standard Offer Service and using 500 kWh per month would be an increase of $0.01, or 0.0%, from $86.58 to $86.59, based on rates that are currently in effect, a total cost of $0.12 over the 12-month recovery period.

The Company would propose, however, to recover the costs associated with up to four PLR requests, up to the cap of $25,000 per PLR request, through an existing reconciliation mechanism, such as the Net Metering Provision. Any costs exceeding the $25,000 cap would be considered a normal cost of the Company's electric business and would not be included in the recovery presented in this proposal.

Prepared by or under the supervision of: Scott M. McCabe

PUC 2-10

Request:

Could the Company give a worst case scenario of the amount of tax liability that could in the future be deferred to ratepayers in a given year as a result of an unanticipated IRS ruling or a ruling that departs from one of the PLR rulings?

Response:

The Company can offer a hypothetical example. Assume that 40 MW of distributed generation were constructed and interconnected in a single tax year by customers, and assume that all of the projects appear to meet the requirements of a new policy. If the interconnection costs for all customers were $4 million[1] for the total 40 MW, and the Company had not collected the tax gross-up adder for any of the projects constructed that year, but these payments were all later found by the IRS to be subject to tax, the Company would seek to collect $913,600[2] for what should have been collected through the tax gross-up adder. The Company would then defer the $913,600, along with any interest and penalties, for later recovery from customers.

[1] This is equal to $100 per kW, which resembles the estimated average interconnection costs of $109 per kW, which is inclusive of tax adders, that was provided to the Office of Energy Resources and Rhode Island Distributed Generation Board as the Company's average 2012-2013 interconnection cost.
[2] This estimate is derived by applying the Company's current tax gross-up adder, which is 22.84%, to $4 million, which is assumed to be all capital in order to simplify this example.

Prepared by or under the supervision of: Ian Springsteel

PUC 2-11

Request:

If a tax liability were exceedingly high in a given year, would the Company be willing to spread the cost over multiple rate periods to mitigate the rate impact?

Response:

Yes. However, it is important to note that, in general, the Company proposes to recover costs over a period of no longer than 12 months because deferring costs over a longer period results in additional costs to customers through the application of interest. If it is determined at the time of a request to recover a tax liability that the impact to customers is significant, the Company would consider lengthening the recovery period to mitigate the impacts to customers. However, interest would continue to apply during the recovery period, as is typical in the operation of the Company's various recovery mechanisms.

Prepared by or under the supervision of: Scott M. McCabe