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Senior Counsel

February 14, 2014

**VIA HAND DELIVERY & ELECTRONIC MAIL**

Cynthia Wilson Frias, Senior Counsel
Rhode Island Public Utilities Commission
89 Jefferson Boulevard
Warwick, RI 02888

**RE: Docket No. 4483**
**Wind Energy Development, LLC ("WED") and ACP Land, LLC ("ACP Land")**
**Petition for Dispute Resolution Relating to Interconnection**

Dear Ms. Wilson Frias:

On behalf of National Grid, [1]I am submitting this response to the above-referenced petition brought under the dispute resolution provisions of the Standards for Interconnecting Distributed Generation ("Interconnection Standards"). R.I.P.U.C. No. 2078, Sheet 45, Section 9.0 et seq. As permitted in those dispute resolution provisions, the Company has summarized below the major issues contained in the petition and the Company's response to each issue. Since the dispute resolution provisions provide a process for resolving specific disputes between an interconnecting customer and the Company, where appropriate this response is intended to address the issues related to the specific projects that are the subject of the petition.

**Tax Assessment:**

Petitioners challenge the Company's practice of requiring a tax gross-up charge relative to certain of the Petitioners' generating projects in Rhode Island. The Petitioners argue that the Internal Revenue Service ("IRS") has issued Notices and Private Letter Rulings indicating that such interconnections are not subject to federal tax.

**Response:**

The Company believes that the question of federal tax liability under the IRS Code is beyond the Commission's jurisdiction and is instead committed to federal authorities such as the IRS. Beyond the jurisdictional issue, the IRS notices to which Petitioners refer do not exempt costs for interconnection to the Company's distribution system. Specifically, IRS Notice 88-129 and later notices only provide a "safe harbor" for transmission interconnections and not for distribution interconnections, as is the case here. Moreover, IRS private letter rulings are not to be relied on by a party other than the taxpayer that obtained the ruling and are thus not intended for application to other taxpayers. A private letter ruling may not be used or cited as precedent. IRC Section 6110(k)(3).

[1] The Narragansett Electric Company d/b/a National Grid ("National Grid" or the "Company").

Additionally, contrary to the assertion contained in the petition, there is not a clear and consistent pattern of IRS private letter rulings applying the principles of Notice 88-129 to distribution interconnections like Petitioners. The Company has offered to work with the Petitioners to file a private letter ruling with specific reference to the "distribution interconnection" issue. However, the cost of prosecuting a private letter ruling should be borne in this case by the interconnecting customer who seeks to benefit from that proceeding and not by the Company and ultimately by the Company's customers.

**System Modification Costs:**

Petitioners assert that, after interconnection work is completed, the Company should automatically conduct an accounting to affirmatively determine whether the actual System Modification costs exceed the costs projected in the feasibility/impact studies and if so should refund the over payment.

**Response:**

The Company believes that its practice relative to final accounting for System Modification costs complies with the uniform process set out in the Interconnection Standards. Under that process, a final accounting is to be conducted upon request of the Interconnecting Customer within 90 business days after completion of the construction and installation of the System Modifications described in the Interconnection Service Agreement. [2] The final accounting is to provide any difference between (a) the Interconnecting Customer's cost responsibility under the Interconnection Service Agreement for the actual cost of such System Modifications, and (b) the Interconnecting Customer's previous aggregate payments to the Company for such System Modifications. To the extent that the Interconnecting Customer's cost responsibility in the Interconnection Service Agreement exceeds Interconnecting Customer's previous aggregate payments, the Company shall invoice Interconnecting Customer and Interconnecting Customer shall make payment to the Company within 45 days. To the extent that Interconnecting Customer's previous aggregate payments exceed Interconnecting Customer's cost responsibility under this agreement, the Company shall refund to Interconnecting Customer an amount equal to the difference within forty five (45) days of the provision of such final accounting report. Thus, the Interconnection Standards specifically do not require an automatic final accounting, which instead is triggered by a timely request by the interconnecting customer.

The Company prefers the tariff language as written as the final accounting can be burdensome based on the size of the system modifications. As would be expected, it is unlikely any estimate done many months prior to actual construction, will always be 100% accurate. Although the Company strives to be as accurate as possible, in some cases the estimate will be lower or higher than actual costs. The Company does not "keep" any excess monies for those projects that may have been estimated higher than actual costs, rather any excess collections are simply used to offset other projects where estimates prove to be lower than the actual costs.

[2] R.I.P.U.C No. 2078, Sheet 74, para. 5.2.

The final accounting process described in the Interconnection Service Agreement is simple to request. As is referenced in the petition, Petitioner ACP Land did, in fact, exercise its rights under the tariff and requested a final accounting, which is underway and will be provided to ACP Landings upon completion. In essence, the Petitioners complain that they should not have to comply with the applicable provision in the Commission-approved Interconnection Service Agreement that simply requires the interconnecting customer to make a timely request for a final accounting. As such, the Petitioners' complaint is without basis. Petitioners should be required to comply with the tariff provision relating to final accountings.

**Interconnection Engineering Studies:**

The Petitioners seek automatic final accounting with respect to interconnection engineering studies for WED's NK Green project and contend that any difference between the engineering Impact Study fee of $10,000 charged for that project and the actual cost of that particular study should be provided to the interconnecting project. Additionally, Petitioner WED complains that although it has requested an Impact Study for its proposed Coventry II project, the Company has yet to provide it with the completed study, while ACP Land asserts that, although it received an Impact Study for its project, it did not receive the study results within the prescribed 90-day period.

**Response:**

The Interconnection Standards set out processes under which an interconnecting customer requests engineering studies to determine the feasibility of the proposed interconnection and to determine the needed electric system modifications and projected costs of interconnecting to the Company's electrical system. There are a variety of studies available, including a Feasibility Study, an Impact Study, and a Detailed Study.[3]

The project that serves as the basis for the petition's assertion that study fees should be reconciled to actual study costs is WED's NK Green project. That project is participating in the DG Standard Contracts program and was thus charged the statutory Impact Study fee of $10,000 that is applicable to that type and size of project. The form Impact Study Agreement entered into by the Company and the developer for the NK Green project was approved by the Commission and is Exhibit E to the Interconnection Standards. R.I.P.U.C. No. 2078, Sheet 67. The Impact Study Agreement language uses the same final accounting process found in the Interconnection Service Agreement with respect to System Modification costs, which is discussed above. That is, that upon

[3] The fees for Feasibility and Impact Studies performed for projects participating in the Distributed Generation ("DG") Standard Contracts program are set by the Rhode Island DG Interconnection Statute. R.I.G.L. Sec. 39-26.3-4. Those statutory fees are incorporated into the Commission's Interconnection Standards. R.I.P.U.C. 2078, Sheet 24. The Rhode Island DG Interconnection Statute does provide a process for adjusting the standard Feasibility and Impact study fees, which involves Commission approval. However, that process only provides for increasing the fees and specifically does not allow for the statutory fees to be reduced. R.I.G.L. Sec. 39-26.3-4(a)(6). The statute (as reflected in the Interconnection Standards) also permits the Company to recover the full cost of an Impact Study from a non-residential project if it becomes operational. R.I.G.L. Sec. 39-26.3-4(c); R.I.P.U.C. 2078, Sheet 26, note 4.

the request of the Interconnecting Customer within 90 business days after completion of the construction and installation of the System Modifications the Company is to conduct a final accounting of system modification costs. To date, NK Green has not requested a final accounting of either the statutory Impact Study fee or the System Modification costs.

Petitioners also assert that the Company did not provide study results for two projects, WED's Coventry II project and ACP Land's project, within the applicable schedule for completing studies. Because the Company relies on the interconnecting customer to provide complete information as to the configuration and engineering and other aspects of the project in the application process and also because the time period for a renewable DG interconnection study does not start until the interconnecting project pays the applicable study fee, the analysis of the timeliness of the studies for the two projects in question is unavoidably fact specific. For each project one must determine whether and when an agreement was signed, the length of time a study is delayed waiting for the developer to provide complete information regarding the project, and when the developer paid the study fee. For instance, with respect to the Coventry II project, a period of many months passed while the Company waited for the developer to provide "flicker" data necessary to complete the study. With respect to the ACP Land's project, an ISRDG (DG Impact Study) Agreement was executed on February 21, 2012. The Company provided the developer (at the time, rTerra) with a completed study on or about April 25, 2012 (within 63 calendar days), well within the 90-day period. Due to customers design changes the Company also provided an update to the completed study on or about October 2, 2012. The Company believes that it has complied with the time schedules for the projects in question. The Company reserves the right to further supplement its response as the mediation process proceeds.

If you have any questions, please contact me at (401) 784-7667.

Very truly yours,

Thomas R. Teehan

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