

May 14, 2014

**VIA HAND DELIVERY AND ELECTRONIC MAIL**

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

**RE: Docket 4483 - Wind Energy Development, LLC and ACP Land, LLC  
Petition for Dispute Resolution Relating to Interconnection  
National Grid Response to Summary and Recommendations**

Dear Ms. Massaro:

On behalf of National Grid<sup>1</sup>, I am submitting this response to the signed Mediation/Non-binding Arbitration Summary and Recommendations (“Summary and Recommendations”) issued on April 30, 2014 relating to the above-referenced petition brought under the dispute resolution provisions of the Standards for Connecting Distributed Generation (“Interconnection Standards”). R.I.P.U.C. No. 2078, Sheet 45, Section 9.0 *et seq.* The Company has summarized below the recommendations contained in the Summary and Recommendations and the Company’s response to each recommendation.

**1. Income Tax Gross-Up (pass-through tax)**

- a. Recommendation: The question of which party should have the burden of paying the cost to obtain a private letter ruling from the Internal Revenue Service (“IRS”) to determine whether a tax is imposed on National Grid for contributions in aid of construction where a distributed generation project is interconnecting to National Grid’s distribution system for the purpose of sending power to National Grid is an open policy question for the Rhode Island Public Utilities Commission (“PUC”) to consider more fully as part of the further review allowed in the tariff (p. 8).

Company’s Response: The Company believes that the cost of a private letter ruling, including without limitation administrative, accounting and legal fees and expenses as well as the IRS user fee, should be borne, in this case, by the interconnecting customer who seeks to benefit from that proceeding and not borne by the Company and ultimately by all of the Company’s customers, who have no direct economic benefit

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<sup>1</sup> The Narragansett Electric Company d/b/a National Grid (herein after referred to as “National Grid or the “Company”).

from the generation venture. The Company believes that a private letter ruling is necessary because IRS Notice 88-129 and later notices to which Petitioners refer only provide a “safe harbor” for transmission interconnections and not for distribution interconnections, as is the case here. The Company also notes the dearth of private letter ruling activity that explicitly covers distribution interconnections. In any event, the Company cannot rely on such private letter rulings issued to other taxpayers because IRS private letter rulings are not to be relied on by a party other than the taxpayer that obtained the ruling and such private letter rulings may not be used or cited as precedent by other taxpayers.

Given the absence of legal authority clarifying the taxation of distribution interconnections, the Company believes that the taxation of such transactions can only be clarified in a private letter ruling. In the Petitioners’ case, the Company offered to work with the Petitioners to file a private letter ruling with specific reference to the “distribution interconnection” issue. However, the Petitioners’, rather than the Company’s customers, would need to bear the cost of obtaining the private letter ruling as Petitioners’ stand to benefit from that proceeding.

The Company would consider filing for a private letter ruling from the IRS with specific reference to the “distribution interconnection” issue for a portfolio of Rhode Island projects with the same legally significant facts or a representative project. Depending on the legal analysis in the ruling and the degree to which the facts of the ruling are broadly representative of such distribution interconnection transactions, the Company would consider broad application of the ruling to all projects with the same legally significant facts, even if those projects are with different developers.

Assuming that such broad application of the ruling proves to be possible and given that such a favorable IRS ruling would benefit customers with projects with the same legally significant facts, to recover the cost that the Company would incur to obtain the private letter ruling, the Company would propose to include a fee in the Interconnection Standards intended to recover a proportionate share of the Company’s costs of obtaining such a private letter ruling. The Company would include and assess the fee until the total actual cost of the private letter ruling is recovered regardless of the ruling by the IRS on the Company’s request for a private letter ruling. The Company would provide further detail regarding the proposal set forth in this paragraph during the adjudicative process before the PUC.

## **2. Accuracy of Interconnection Studies and Interconnection Charges**

- a. **Recommendation:** As a short-term solution, the Company agreed to include a line on the interconnection service agreement and on the billing invoice to remind project developers that they have 90 days to request a final accounting (p. 10).

**Company’s Response:** The Company accepts this recommendation.

- b. Recommendation: As a long-term solution, the PUC should require the Company to modify the tariff to require an automatic final accounting where the costs in the impact study exceed \$5,000 (p. 10).

Company's Response: The Company does not agree with this recommendation. The Interconnection Standards' approach to interconnection construction costs provides a simple, predictable method that allows a project developer and the Company to receive a reasonable approximation of the interconnection costs for a particular project, while providing a mechanism for the project developer to elect a final accounting with reasonable notice to the Company. Requiring the Company to conduct a final accounting in each instance would impose a significant burden on the Company for which the Company does not have adequate resources to perform the work involved. As noted in Paragraph 2.a. above, the Company has agreed to provide additional reminders to interconnecting customers that they have the right to request a final accounting under the tariff. These reminders are in addition to the multiple references in the tariff, including the agreements attached thereto, that include the final accounting language. The Company believes that, with these two additional reminders and the multiple references in the tariff to the final accounting language, the interconnecting customer is more than adequately informed of its right to request a final accounting and this burden is appropriately placed with the interconnecting customer.

- c. Recommendation: The PUC should require the Company to provide a copy of the final accounting for the WED NK Green, LLC project to the PUC when it is provided to WED NK Green, LLC (p. 10, n. 26).

Company's Response: During the course of the mediation/non-binding arbitration process, the Company agreed to conduct a final accounting in this instance for the WED NK Green, LLC project specifically and to provide a copy to the PUC once the final accounting is completed.

- d. Recommendation: Each agreement attached to the tariff that contains the same "final accounting" language should be changed for consistency (p. 10, n. 27).

Company's Response: Although the Company does not agree with the recommendation set forth in Paragraph 2.b. above, the Company agrees that the same "final accounting" language should be consistent throughout the tariff, including the agreements attached thereto.

- e. Recommendation: National Grid should be required to keep the PUC apprised of the progress and results on the following: (1) development of a formal process for field decisions that will affect cost to be provided to National Grid in a timelier manner; and (2) internal review of several projects to compare the 2012 and 2013 estimates to

actual costs as a “reality check” to determine how accurate the estimates have been (p. 10, n. 28).

Company’s Response: The Company agrees with this recommendation. With regard to (1) above, the Company will keep the PUC apprised of its progress and results in development of a formal process for field decisions that will affect total costs to be provided to National Grid in a timelier manner. With regard to (2) above, during the mediation/non-binding arbitration process, the Company agreed to compare the 2012 and 2013 estimates with the final accountings for the three specific projects identified during the mediation/non-binding arbitration process and, upon completion, will provide the PUC with a summary of the results of this comparison, including the percentage variance of the estimate to the final accounting for each project.

### **3. Timeliness of Studies**

- a. Recommendation: National Grid should conduct an “accepted projects conference” following each distributed generation enrollment and before the submission of impact study applications (p. 14).

Company’s Response: National Grid accepts this recommendation. When National Grid sends the executed distributed generation standard contract to the interconnecting customer, in its transmittal email, the Company will include a sentence that it will conduct a conference for all interconnecting customers for that enrollment. This conference would provide an additional opportunity for the Company to communicate with and educate those customers who choose to participate on the Company’s interconnection process and associated timelines, which customers may find helpful as they seek to comply with their obligations relating to interconnections under the distributed generation standard contract.

- b. Recommendation: National Grid should offer a scoping meeting/discussion with each enrollee as a matter of course (p. 14).

Company’s Response: National Grid accepts this recommendation. When National Grid sends the executed distributed generation standard contract to the interconnecting customer, in its transmittal email, the Company will include an additional sentence reminding the customer to contact the Company to schedule the scoping meeting/discussion that the Company offers to the customer pursuant to the tariff.

### **4. Other Issues Identified**

- a. Recommendation: The PUC should order National Grid to meet with several interested parties, not just Petitioners, to discuss the tariff provisions and determine

what changes should be proposed to the PUC. The PUC should require this review to take place within a 60-day timeframe for filing with the PUC for its review (p. 14).

Company's Response: The Company is willing to convene a working group of parties expressing interest in meeting on a regular basis to discuss the tariff provisions and determine whether modifications to the tariff should be proposed to the PUC. If parties express interest in doing so, the Company will establish a schedule of regular meetings to be held at the Company's Melrose Street, Providence office during a three-month period. The Company would subsequently report to the PUC on the outcome of those meetings, which would include proposed agreed upon tariff modifications to be filed with the PUC for its review and/or unresolved issues raised by the parties during the three-month period.

- b. Recommendation: The timeframes in Section 9 of the tariff are unrealistic and, if the provision is retained by the PUC, should be amended as follows (p. 15):

Section 9.2.a, second sentence should be changed to "The other party shall also submit a summary within 10 days of the written request to the Commission."

Section 9.2.b, should be changed to "The parties will meet with a Commission staff person within 17 days of the submission of a petition to convene the Dispute Resolution Process. During that meeting, the Commission staff person may assist the parties in attempting to resolve outstanding differences, or shall provide two options to the parties: (1) to engage with the Commission staff person to attempt to resolve the dispute or make recommendations to the Commission or (2) to proceed with formal mediation/arbitration as set forth in 9.2.c-1.

In the event the parties choose to engage the assistance of the Commission staff member, the Commission staff member will set a reasonable schedule for the submission of any discovery issued by the Commission staff member and for a subsequent meeting with the parties. The matter will proceed as directed by the Commission staff member and any party may request to move to the formal third-party mediation/arbitration set forth in 9.2.c-1 prior to the final meeting conducted by the Commission staff member. Any information obtained by the Commission staff member, maintained by the Commission Clerk, shall be made available to the third-party mediator/arbitrator. Within ninety (90) days of the convening of the Dispute Resolution Process, the Commission staff member shall submit a summary of the dispute resolution process with the resolution, if one was agreed to, or recommendations to the Commission for its review under Rule 9.3.

Company's Response: The Company understands the concerns regarding the timeframes set forth in this section of the tariff and would propose the following revision to the tariff, which is intended to replace 9.2.a and 9.2.b in their entirety. The Company's changes to the language proposed above are marked below:

## **9.2 Mediation/Non-binding Arbitration**

- a. One party to the dispute requests dispute resolution assistance by submitting a written request to the Commission, with a summary of the situation. The party requesting dispute resolution assistance shall provide a copy of the written request to the other party at the same time that it submits its written request to the Commission. The other party shall also submit a summary of the situation to the Commission within 10 days of the date of the written request to the Commission for dispute resolution assistance. Such other party shall provide a copy of its summary of the situation to the party requesting dispute resolution assistance.
  
- b. Within 17 days of the submission to the Commission of a petition to convene the Dispute Resolution Process, ~~The parties will meet with a Commission staff person within 17 days of the submission of a petition to convene the Dispute Resolution Process at a date and time set by the Commission staff person.~~ During that meeting, the Commission staff person may assist the parties in attempting to resolve outstanding differences, or shall provide two options to the parties: (1) to engage with the Commission staff person to attempt to resolve the dispute or make recommendations to the Commission or (2) to proceed with formal mediation/arbitration as set forth in 9.2.c-1.

In the event the parties choose to engage the assistance of the Commission staff member, the Commission staff member will set a reasonable schedule for the submission of any discovery issued by the Commission staff member and for a subsequent meeting with the parties. The matter will proceed as directed by the Commission staff member and any party may request to move to the formal third-party mediation/arbitration set forth in 9.2.c-1 prior to the final meeting conducted by the Commission staff member. Any information obtained by the Commission staff member, maintained by the Commission

Clerk, shall be made available to the third-party mediator/arbitrator. Within ninety (90) days of the convening of the Dispute Resolution Process, the Commission staff member shall submit a summary of the dispute resolution process with the resolution, if one was agreed to, or recommendations to the Commission for its review under Rule 9.3.

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Thank you for the opportunity to provide these responses to the recommendations set forth in the Summary and Recommendations.

If you have any questions, please contact me at (781) 907-2153.

Very truly yours,

A handwritten signature in blue ink that reads "Celia B. O'Brien". The signature is written in a cursive style.

Celia B. O'Brien

cc: Seth Handy, Esq.