

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

May 30, 2017

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

Dear Luly:

Petitioners ACP Land, LLC and Wind Energy Development, LLC (Petitioners) write seeking clarification regarding the Commission's 2-1 decision that the interconnection tax is a reasonable charge. How that decision will be administered is unclear to Petitioners, particularly with regard to tax payments that had been contingent on clarification of the IRS guidance.

It is not clear whether or how the Commission's decision impacts National Grid's commitments and prior motions in this Docket. In its September 12, 2015, settlement proposal, National Grid made the following commitment:

...the Company proposes to apply for one to four PLRs 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. The Company also proposes to share the PLR application content with the Division and the customer whose project is the subject of the PLR request prior to filing. Once the Company receives the IRS rulings, the Company would return to the PUC with a filing and recommendation based on the IRS responses. If the PLRs provide a reasonable basis to conclude that the tax exemption applies to projects interconnected to electric distribution facilities, the Company will recommend that it no longer pay taxes on future projects meeting the IRS criteria and, thus, no longer collect the tax from the eligible projects. If, however, the PLRs do not provide the necessary clarity, the Company will recommend that taxes continue to be paid and the cost collected from each project developer that interconnects a project to the Company's electric distribution system. In any event, placing the facts and the Company's recommendation before the PUC will allow the PUC to determine the right solution, based on the facts, the PLR language, and the circumstances. It also will allow other stakeholders to comment in the proceedings. In the meantime, all future project developers to whom this issue applies would place an amount in escrow with the Company equal to the potential tax liability, to be refunded if a decision is later made by the PUC that the taxes should not be paid.

As National Grid confirmed in its December 14, 2015 letter, their settlement proposal was approved by the PUC at its December 23, 2014 Open Meeting and was in effect as of December 23, 2014. In that December 14 letter National Grid stated:

Although the IRS did not rule favorably on the Company's PLR request, the November 9 letter was responsive to the Company's request, and the Company does not believe it provides a reasonable basis to conclude that the planned cash payments and in-kind property transfers will be non-taxable to the Company. Instead, the IRS has closed the Company's case, and the Company does not believe that the November 9 letter provides a reasonable basis to conclude that the planned cash payments and in-kind property transfers will be non-taxable to the Company. Therefore, the Company recommends to the PUC under the terms of the settlement proposal that it continue to collect such taxes from distributed generation developers until such time as the Department of the Treasury provides clear guidance that these transactions are non-taxable.

During this period, as it relates to WED, the Company did not receive any CIAC-related tax payments from WED. Regardless, as a practical matter, the escrowing of such payments is not necessary in order to ensure a refund of such tax payments to affected developers, in the event that the Treasury ultimately issues guidance that warrants such refunds for a given tax year. The goal of the Company's proposal was to commit to refund any taxes associated with CIACs paid by a developer in the event that the IRS ruling in response to the Company's PLR request warranted such refunds.

In the December 14 letter, National Grid sought to terminate its commitment to escrow tax payments on the basis that the IRS had returned its request for a private letter ruling which the IRS intended to address through its coming guidance. The Commission held an Open Meeting to deliberate National Grid's request but did not approve termination of NGrid's commitment to refund tax payments upon issuance of clear guidance. The minutes of the Commission's January 9, 2016, Open Meeting indicate the following approved motion:

After review and discussion, Commissioner DeSimone made the following motion:

- National Grid shall maintain a list of the names of the developers/entities that have made CIAC-related tax payments since December 23, 2014, or who have entered into alternative arrangements, including but not limited to letters of credit. The list shall include the amount and date of the payments, and shall be provided to the PUC in a confidential manner on a quarterly basis, commencing March 31, 2016.
- After the published guidance is issued by the IRS, National Grid shall submit a filing apprising the PUC of the guidance so issued, and providing a recommendation as to how to proceed relative to the developers/entities who have made the CIAC-related tax payments, or entered into alternative arrangements, since December 23, 2014, as well as how to proceed on a going forward basis. Notice of the recommendations will be provided to all who have made CIAC-related tax payments or alternative arrangements, such as letters of credit.
- Effective immediately, National Grid shall be required to notify developers of the option to enter into other financial arrangements, such as letters of credit, in lieu of payment of CIAC-related tax payments.

Commissioner Roberti seconded the motion and the motion was unanimously passed. **Vote 3-0.**

The new IRS guidance issued on June 10, 2016. National Grid filed it with the Commission on June 16, 2016, indicating that they were still evaluating it. Then, on August 26, 2016, National Grid presented its position on the new guidance. The Company's position was that the guidance was not clear enough to warrant discontinued payment of the tax, that they could not rely on the position of the IRS lawyer listed as the contact for the guidance (who had confirmed that the guidance intended to clarify that the safe-harbor applies to distribution system interconnections) and that

Mr. Ermanski [National Grid's tax expert] specifically requested that the IRS provide written clarification about the application of the New Notice to DG interconnections. See Attachment 5. The Company is awaiting the IRS' response to this request.

In that request to the IRS for clarification, Mr. Ermanaski wrote, "the continued use of the restrictive term "transmission" in Section IIIB and IIIC of Notice 2016-36 may cause taxpayers to conclude incorrectly that the new safe harbor is only permitted when electricity which passes through a "distribution" system intertie is ultimately delivered to the utility's "transmission" system."

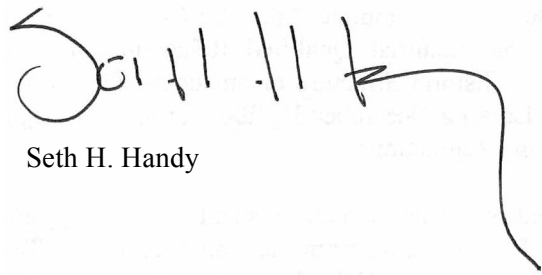
Since December 14, 2015, National Grid has never asked for or received approval of any different arrangement than its commitment to refund taxes paid post December 23, 2014 if and when the IRS clarifies its guidance to clearly safe-harbor distribution system interconnections. The Commission has yet to change its position on that commitment.

National Grid still awaits IRS clarification on the guidance in order to definitively resolve whether it owes this tax. It is Petitioners' understanding that both National Grid and the Commission have been informed of the IRS' intention to issue clarification on the guidance. The IRS has informed Petitioners of that intent as well so, to our knowledge, it is not a question of whether IRS will clarify the guidance but when such a clarification will issue. Therefore, pursuant to the approved September 12, 2015 settlement and the Commission's approved motion of January 9, 2016, Petitioners request the Commission's clarification that it will continue its commitment to refund interconnection taxes paid since December 23, 2014, if the IRS clarifies that distribution system interconnections are eligible for the safeharbor. Petitioners submit that despite the Commission's 2-1 ruling that the tax is currently deemed a reasonable charge (which, as we heard and understand it, was based largely on deference to National Grid as the purported taxpayer and a concern about jurisdiction), National Grid must still honor its commitment to refund the taxes accrued since December 23, 2014, if and when Treasury clarifies its guidance that the CIAC tax does not apply to distribution system interconnections.

Petitioners understand that the Company's filings accounting for developer-specific interconnection taxes paid since December 23, 2014 were intended to be confidential, but request an account of the total amount of interconnection taxes paid to National Grid since December 23, 2014. Petitioners and the renewable energy industry have a real interest in that information.

Thank you for your consideration and response to these requests.

Sincerely,

A handwritten signature in black ink, appearing to read "Seth H. Handy". The signature is written in a cursive style with a large initial "S" and a long, sweeping tail that extends downwards and to the right.

Seth H. Handy