STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS
PUBLIC UTILITIES COMMISSION

IN RE: PETITION OF WIND ENERGY	)
DEVELOPMENT, LLC AND ACP LAND, LLC	)
RELATING TO INTERCONNECTION	)

WIND ENERGY DEVELOPMENT, LLC
AND ACP LAND, LLCs'
OBJECTION

Wind Energy Development, LLC (WED) and ACP Land, LLC (ACP) (collectively Petitioners) hereby object to National Grid's draft request for a Private Letter Ruling filed on July 7, 2015, for three reasons, as follows. Petitioners attach proposed revisions to the PLR request and discuss the objections below.

1) Definition of "Intertie." National Grid refuses to include the following language, proposed by Petitioners, discussing the definition of "Intertie."

The IRS Notice defines "intertie" as follows:

> "PURPA and its implementing rules and regulations require that a utility interconnect with a Qualifying Facility for the purposes of allowing the sale of power produced by the Qualifying Facility. A Qualifying Facility must bear the cost of the purchase and installation of ***any equipment required for the interconnection***. ***This equipment, referred to herein as an "intertie," may include new connecting and transmission facilities*** [emphasis added], or modifications, upgrades or relocations of a utility's existing transmission network."

The notice clearly and simply applies to any qualifying facility's equipment required for interconnection whether it interconnects to the distribution or transmission system.

Petitioners submit that the definition of "intertie" in the notice applies to the qualifying facility's equipment required for interconnection, whether it interconnects to the distribution or transmission system. The definition of "intertie" in the notice makes it clear that: 1) the controlling question is whether the equipment is required to interconnect the qualifying facility; and 2) that the interconnection may, but does not have to, include "new connecting and transmission facilities;" and

3) that the question of whether the intertie is to the transmission or distribution system is not relevant to the application of the safe-harbor. Given the alleged alignment of interests driving this request for a PLR (to declare the Generator's project exempt from this tax), there is no good reason for excluding this argument that is, by Petitioner's reading, central and dispositive on the question put before the Service.

2) Termination rights. Petitioner's object to the inclusion of the following, underlined language on pages 3 and 4 of the request.

> The Interconnection Agreement will have an indefinite term, but may be terminated by Generator upon 60 days written notice.

As stated on page 8 of the request, the relevant standard for the application of the IRS safe-harbor is whether the "intertie is transferred pursuant to a long-term interconnection agreement." Whether the long-term interconnection is subject to termination rights is irrelevant to the safe-harbor. This question of termination rights has never been raised or addressed in any of the IRS' previous letter rulings on this subject; it simply is not part of the analysis. The interconnection service agreement will be provided with the request for reference, so there is no issue regarding transparency of its terms. This language regarding termination rights is an unnecessary distraction to the issue before the Service.

3) PUC Context:

National Grid refuses to incorporate the following language proposed by Petitioners for inclusion at the end of section 1 of the request.

> **5. PUC Petition and Order**
>
> Taxpayer assessed Generator the tax as a condition to interconnection. Generator paid the tax when Taxpayer refused to acknowledge the application of the safe-harbor. Generator then petitioned the Rhode Island Public Utilities Commission (the PUC) for a ruling that it is exempt according to the safe-harbor in IRS Notice 88-129 and Private Letter Rulings applying that notice, PLR 1122005 ("Generator requests that Taxpayer interconnect Facility to Taxpayer's distribution system") and PLR 200403084 ("Generator signed an interconnection

> agreement with Taxpayer that provides for the interconnection of Project with Taxpayer's grid"). NECo opposed such a ruling on jurisdictional grounds and because it was allegedly unclear that the safeharbor applies to interconnections to the distribution system. The PUC refused to rule on this issue of tax law but ordered NECo to pursue this private letter ruling on Generator's behalf and also for the benefit of six other projects that the Generator's parent has more recently pursued for interconnection and a large volume of distributed generation projects anticipated in Rhode Island. For more information see RIPUC Docket 4483, http://www.ripuc.org/eventsactions/docket/4483page.html.

Inclusion of this language is important to complete the request. The IRS needs to know the following things to be fully informed about this request: a) that this tax is passed through for payment by the Generator who is, therefore, the principal party interested in the ruling requested by the taxpayer; b) that the Generator made these arguments for exemption to the Taxpayer and the Commission based on existing IRS notices and private letter rulings; c) that National Grid opposed the Commission's recognition of the exemption on jurisdiction grounds and due to an alleged lack of clarity in the IRS notices and private letter rulings; and d) the Commission was not comfortable resolving this question of tax law and, therefore, ordered the filing of this additional request for a private letter ruling for Generator's project. In the absence of this information, the IRS lacks important context for the decision put before it.

This information is specifically relevant to the certification made in subsections B and D of section V (Procedural Matters) and the discussion of PLR 200403084, where National Grid submits that the IRS has not previously acted on the same issue for Taxpayers or its affiliates. The fact that neither Taxpayer nor the Commission was willing to rely on the precedent established at PLR 200403084 in ruling on Generator's exemption in this PUC Docket 4483 (while frustrating to Petitioners), supports National Grid's position on the required certification B. This context also helps explain certification D, why National Grid was ordered to proceed with this filing while its December 12, 2014, filing for MeCo is pending (as also addressed in revisions proposed below).

4) Section V, Certification D

Petitioners are concerned that Section V, Certification D, as proposed, actually encourages the IRS not to rule on this request in favor of awaiting the final ruling on the MeCo PLR request, as National Grid has suggested that the PUC should do. This approach is contrary to the PUC's Order that National Grid file this request contemporaneously because, among other things, National Grid was not able to share the language of the MeCo request with the parties to this proceeding and they had no capacity to comment on or influence the MeCo filing. Petitioners fear National Grid's submission that the MeCo filing really resolves the question central to this request (despite their position that PLR 200403084 does not) will be read by the IRS as reason not to rule on this petition in favor of resolving the MeCo request, even if according to terms that were not apparent to Petitioners or responsive to Petitioners' interests and concerns. Therefore, we ask for the following revision to certification D:

> As required under section 7.01(5)(c) of Rev. Proc. 2015-1, the Taxpayer and the undersigned acknowledge that an affiliate of the Taxpayer, Massachusetts Electric Company, has submitted a ruling request on December 12, 2014 for a similar transaction involving an interconnection with its distribution system. However, the Rhode Island Public Utilities Commission has ordered Taxpayer to file this request for a private letter ruling because neither it nor the Generator was allowed access to the content of MeCo's December 12 request in Docket 4483 or were given the opportunity to comment and influence the content of that request, which could, therefore, have unintended consequences for Generators and subsequent development projects in Rhode Island. For that reason, if the MeCo request does not adequately resolve the question put before the Service in this request, the Public Utilities Commission has ordered pursuit of this Private Letter Ruling to its resolution. To the best of the knowledge of Taxpayer and the undersigned, neither Taxpayer, a person related to Taxpayer, nor a predecessor have previously submitted any other request involving the same or a similar issue that is currently pending with the Service.

Conclusion

National Grid has told Petitioners that if Petitioners are unwilling to agree to their proposed form of the request for private letter ruling, they will simply select another project for the request. Once again, the principal party in interest evidently is granted little standing to ensure proper presentation of this matter for final resolution by the Service. Given the apparent, proposed choice between filing the current form of request or losing all control over the facts and language of the request, Petitioners would seem to have no choice but to submit to the filing of the request as National Grid dictates. However, Petitioners request the Commission's intervention to ensure that their remaining, legitimate concerns are addressed in this filing. We also ask that these concerns be resolved expeditiously so that the request can be filed and the safe-harbor can have its intended effect for the many renewable energy projects soon to be developed in Rhode Island.

WIND ENERGY DEVELOPMENT, LLC, & ACP LAND, LLC

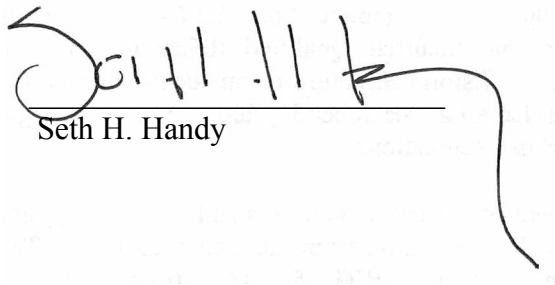
By their attorneys,

HANDY LAW, LLC

Seth H. Handy (#5554)
Weybosset Street
Providence, RI 02903
Phone: (401) 626-4839
Facsimile: (401) 753-6306
seth@handylawllc.com

CERTIFICATE OF SERVICE

I hereby certify that on July 9, 2015, I delivered a true copy of the foregoing document to the service list by electronic mail.



Seth H. Handy

July __, 2015

BY HAND DELIVERY

Courier's Desk
Internal Revenue Service
Associate Chief Counsel (Passthroughs and Special Industries)
Attn: CC:PA:LPD:DRU, Room 5336
1111 Constitution Avenue, N.W.
Washington, DC 20244

RE: The Narragansett Electric Company: Request For Ruling Under Section 118 With Respect To Certain Payments Received For Construction of An Interconnection

Dear Sir or Madam:

On behalf of The Narragansett Electric Company ("NECo" or "Taxpayer"), we respectfully request the ruling set forth in Section III, hereof, under section 118, with respect to certain in-kind contributions and payments received by NECo for an interconnection.[1]

I. STATEMENT OF FACTS

A. Taxpayer information

NECo, tax identification number 05-0187805, is a regulated electric and gas distribution company providing service to approximately 493,000 electric customers and 260,000 gas customers in 38 cities and towns in Rhode Island. NECo's electric distribution properties consist of, primarily, substations and distribution lines that are located in the state of Rhode Island. NECo is a member of a group of corporations that join in filing consolidated U.S. federal income tax returns on an accrual method, March 31 year-end basis. The common parent of these corporations is National Grid North America, Inc. ("NGNA"), tax identification number

[1] Unless otherwise noted, all "section" references are to the Internal Revenue Code of 1986, as amended, (the "Code"), and all references to "Treas. Reg. §" are to the Treasury regulations promulgated under the Code.

3. **Net Metering**

The Generator and the Town have entered the MNMFA (copy attached as Tab C). The term of the MNMFA is 25 years with the possibility of three five-year extensions. Pursuant to the MNMFA, the Town will take legal title and ownership of electricity generated by the Facility. Title and ownership of the electricity will pass to the Town at or prior to the busbar on the Facility's side of the intertie.

All the electricity purchased by the Town will be delivered to Town facilities through NECo's electric distribution system as allowed for public entity net metering facilities under Rhode Island law. Under certain Rhode Island state regulatory "net metering" rules, the Town will either be (i) charged by NECo, as a NECo customer, for the difference between the amount of electricity it consumes as a customer of NECo less the amount of electricity that it net meters from the Generator or (ii) issued credits for any amount of electricity net metered from the facility that exceeds the amount of electricity it consumes up to a maximum of 125 percent.[5]

4. **DGC**

The Generator and NECo will be parties to the DGC (copy attached as Tab D). The term of this agreement will be 15 years. Pursuant to the DGC, NECo will purchase all of the electricity generated by the Facility that is not used by the facility or net metered to the Town. This electricity will travel through the busbar at the NECo Intertie and onto the NECo Distribution Line.

5. PUC Petition and Order

Taxpayer assessed Generator the tax as a condition to interconnection. Generator paid the tax when Taxpayer refused to acknowledge the application of the safe-harbor. Generator then petitioned the Rhode Island Public Utilities Commission (the PUC) for a ruling that it is exempt according to the safe-harbor in IRS Notice 88-129 and Private Letter Rulings applying that notice, PLR 1122005 ("Generator requests that Taxpayer interconnect Facility to Taxpayer's distribution system") and PLR 200403084 ("Generator signed an interconnection agreement with Taxpayer that provides for the interconnection of Project with Taxpayer's grid"). NECo opposed such a ruling on jurisdictional grounds and because it was allegedly unclear that the safeharbor applies to interconnections to the distribution system. The PUC refused to rule on this issue of tax law but ordered NECo to pursue this private letter ruling on Generator's behalf and also for the benefit of six other projects that the Generator's parent has more recently pursued for interconnection and a large volume of distributed generation projects anticipated in Rhode Island. For more information see RIPUC Docket 4483,

[5] Rhode Island does not require public entities that are net metering customers under a municipal net metering financing arrangement to own the generating facility in order to be eligible for net metering benefits.

http://www.ripuc.org/eventsactions/docket/4483page.html.

II. REPRESENTATIONS

Taxpayer makes the following representations:

1. The Facility will be a Qualifying Facility ("QF").

2. The NECo Intertie will be used in connection with the distribution of electricity for net metering and sale to NECo.

3. The cost of the NECo Intertie will not be included in NECo's rate base.

4. The Interconnection Agreement will have an indefinite term, but the Generator is permitted to terminate the agreement upon 60 days written notice.

5. The term of the MNMFA is at least 25 years.

6. The term of the DGC will be 15 years.

7. Title and ownership of the electricity generated by the Facility will pass from the Generator to the Town at or prior to the busbar on the Facility's end of the NECo Intertie.

8. Taxpayer will not claim depreciation or amortization deductions with respect to the NECo Intertie for U.S. tax purposes.

9. The amount of any Interconnection Payments will be capitalized by Generator as an intangible asset and amortized over 20 years.

10. No more than 5% of the electricity will flow from NECo over the NECo Intertie during the first ten years beginning on the date on which the NECo Intertie is placed in service.

11. There is no direct interconnection between the Facility and an electric transmission system; there is a direct interconnection between the Facility and an electric distribution system.

Notice 88-129 provides that section 118(b) is not intended to apply to the transfer of interconnection equipment constructed for the purpose of allowing the flow of electricity from a generator to the utility; rather, it is intended to apply where the purpose is to allow the flow of electricity from the utility to the generator. **The IRS Notice defines "intertie" as follows:**

> **"PURPA and its implementing rules and regulations require that a utility interconnect with a Qualifying Facility for the purposes of allowing the sale of power produced by the Qualifying Facility. A Qualifying Facility must bear the cost of the purchase and installation of *any equipment required for the interconnection. This equipment, referred to herein as an "intertie," may include new connecting and transmission facilities* [emphasis added], or modifications, upgrades or relocations of a utility's existing transmission network."**

The notice clearly and simply applies to any qualifying facility's equipment required for interconnection whether it interconnects to the distribution or transmission system. In that regard, Notice 88-129 **also** states:

> The amendment of Code section 118(b) by the 1986 Act was intended to require utilities to include in income the value of any contribution in aid of construction [CIAC] made to encourage the provision of services by a utility to a customer. See H.R. Rep. No. 841, 99th Cong., 2d Sess. 324(1986 (Conference Report). In a CIAC transaction the purpose of the contribution of property to the utility is to facilitate the sale of power by the utility to the customer. In contrast, the purpose of the contribution by a Qualifying Facility to a utility is to permit the sale of power by the Qualifying Facility to the utility. Accordingly, the fact that the 1986 amendments to Code section 118(b) render CIAC transactions taxable does not require a similar conclusion with respect to transfers from Qualifying Facilities to utilities.
>
> …. With respect to transfers of property made by a Qualifying Facility to a utility exclusively in connection with the sale of electricity by the Qualifying Facility to the utility, a utility will not realize income upon transfer of an intertie by the a Qualifying Facility. These nontaxable transfers are referred to herein as "QF

member within the meaning of section 1504.[25]

C. As required under section 7.01(5)(b) of Rev. Proc. 2015-1, to the best of the knowledge of Taxpayer and the undersigned, neither Taxpayer, a person related to Taxpayer, a predecessor, nor any representatives have previously submitted the same or a similar issue to the Service but withdrew the request before a letter ruling or a determination letter was issued.

D. As required under section 7.01(5)(c) of Rev. Proc. 2015-1, the Taxpayer and the undersigned acknowledge that an affiliate of the Taxpayer, Massachusetts Electric Company, has submitted a ruling request on December 12, 2014 for a similar transaction involving an interconnection with its distribution system. **However, the Rhode Island Public Utilities Commission has ordered Taxpayer to file this request for a private letter ruling because neither it nor the Generator was allowed access to the content of MeCo's December 12 request in Docket 4483 or were given the opportunity to comment and influence the content of that request, which could, therefore, have unintended consequences for Generators and subsequent development projects in Rhode Island. Therefore, if the MeCo request does not adequately resolve the question put before the Service in this request, the Public Utilities Commission has ordered pursuit of this Private Letter Ruling to resolution.** To the best of the knowledge of Taxpayer and the undersigned, neither Taxpayer, a person related to Taxpayer, nor a predecessor have previously submitted any other request involving the same or a similar issue that is currently pending with the Service.

E. As required under section 7.01(5)(d) of Rev. Proc. 2015-1, to the best of the knowledge of Taxpayer and the undersigned, Taxpayer is not presently submitting another request involving the same or a similar issue to the Service.

F. As required under section 7.01(8) of Rev. Proc. 2015-1, the law in connection with this request is uncertain and Taxpayer cannot be assured of the proper tax treatment of the Interconnection Payment without obtaining a private letter ruling.

G. Consistent with section 7.01(9) of Rev. Proc. 2015-1, to the best of the knowledge of Taxpayer and the undersigned, there are no authorities that could be considered contrary to the rulings requested herein.

H. Consistent with section 7.01(10) of Rev. Proc. 2015-1, to the best of the knowledge of

[25] Although PLR 200403084 (2004) was issued to an affiliate of the Taxpayer and concluded with respect to the transaction therein that the transfer of intertie by the generator to the affiliate would not constitute a contribution in aid of construction under § 118(b) and would be excludable from the gross income of the affiliate as a non-shareholder contribution to capital under § 118(a), that ruling considered a different transaction and did not precisely address the issues raised herein.