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

August 30, 2016

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

Dear Ms. Massaro:

ACP Land, LLC and Wind Energy Development, LLC (Petitioners) are in receipt of National Grid's letter to the Commission dated August 26, 2016, regarding the Company's strained construction of Internal Revenue Service (IRS) Notice 2016-36 issued on June 10, 2016. National Grid still fails to meet its burden to assess its renewable energy customers this pass-through interconnection tax.

As set out on page 5 of the Mediation/Non-Binding Arbitration Summary & Recommendations of April 30, 2014, the "simple" question to be resolved here is whether the interconnection charge is a reasonable and appropriate customer charge. The burden of proving reasonableness is unequivocally on the utility; thus, the Commission ordered National Grid to pursue a Private Letter Ruling to meet that burden. The IRS returned that request pending guidance it intended to address the question at issue, whether distribution system interconnections are covered by the IRS safe harbor established in Notice 2001-82. That guidance, issued in Notice 2016-36, expressly states that the safe harbor applies to generators interconnected with the distribution system. IRS counsel, David Selig, who drafted that guidance, has confirmed with Petitioners and National Grid that the kind of interconnection at issue in this case is intended to be safe-harbored per the new guidance. In its June 20, 2016 newsletter, Troutman and Sanders, evidently informed its clientele that "[h]istorically, the Service had issued private rulings concluding that interties connecting generation facilities to distribution lines qualified for the safe harbor in Notice 2001-82" and that only the February 3, 2016, private letter ruling in MECO had raised any confusion regarding whether the safe harbor still applied to distribution system interconnections.[1] In its own Private Letter Ruling Request ordered in this proceeding, National Grid submitted that "notwithstanding the references to 'transmission,' neither Notice 88-129 nor Notice 2001-82 rely on the presence of a direct interconnection with an electric transmission system; rather those Notices simply are concerned with the direction in which electricity flows through the intertie -- i.e., from the generator to the utility or from the utility to the generator." Yet, last Friday National Grid still claimed too much confusion to allow its customers that interconnect with the distribution system to benefit from a tax safe harbor that has been in place since Notice 2001-82 issued in 2001. They ask the Commission to await further guidance from the IRS before resolving this matter. In their June 28, 2016, request for such clarification from the IRS, National Grid Director of US Tax Research & Planning wrote:

> "Consequently, 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

[1] Please ask National Grid for the corrective newsletters Troutman & Sanders sent them regarding this new IRS Notice 2016-36 after their June 20, 2016, newsletter. I do not subscribe to those newsletters and am not privy to them (despite request) but Mr. Cooper informs me that subsequent newsletters clarified the application of Notice 2016-36 to distribution system interconnections.

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permitted when electricity which passes through a "distribution" system intertie is ultimately delivered to the utility's "transmission" system."

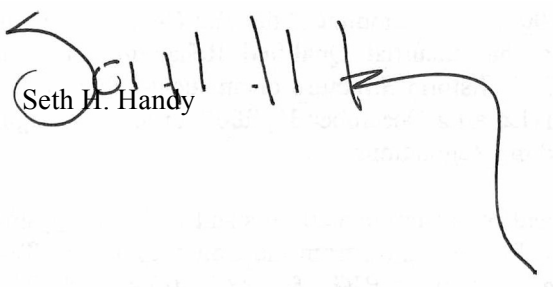
How can National Grid report uncertainty on this question on August 26, when on June 28 its expert acknowledged that the construction they put forward on August 28 is "incorrect."

The Commission does not need any more input from the IRS to conclude that National Grid's pass through of the interconnection tax is not a reasonable and appropriate charge to customers interconnecting renewable energy. The IRS has long and repeatedly, clearly and unequivocally undermined National Grid's strained attempts to meet its burden for that charge. The June 20 Troutman and Sanders newsletter makes it clear that the industry has long known that interties connecting generation facilities to distribution lines qualify for the safe harbor in Notice 2001-82, despite National Grid's confusion and continued assessment of this pass through tax burden.

Petitioners ask the PUC to please prohibit this unreasonable and inappropriate customer charge. Given the longstanding clarity in the industry regarding the application of this safe harbor to distribution system interconnections, Petitioners also ask the PUC to sanction National Grid for the assessment of this unwarranted burden on renewable energy generators since Notice 2001-82 issued in 2001. It is long past time to ensure that Petitioners and all Rhode Island customers need not overcome artificial barriers to the production of our own cost effective and secure clean energy.

As additional matters in this docket, Petitioners request evidence of National Grid's compliance with the requirement to itemize and true up actual interconnection costs versus estimated costs (Mediation/Non-Binding Arbitration Summary & Recommendations, pp. 8-10; Order of November 12, 2014 at ¶6) and an update on the status of the promised interconnection queue for facilities over 15kW.

Sincerely,



Seth H. Handy