North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

June 10, 2011

[redacted]

Re: [redacted] and [redacted] -- Request for a Letter Ruling

Dear [redacted]:

This letter is in response to your letter dated [redacted] to Mr. Thomas L. Dixon, Jr., Assistant Secretary for Tax Administration, wherein you requested on behalf of your client, [redacted], that North Carolina Department of Revenue ("Department") provide a letter ruling on issues relating to whether your client's proposed project will qualify for the Renewable Energy Tax Credit under N.C.G.S. §105-129.16A. In support of its request for a private letter ruling, [redacted] makes the following representations:

[redacted] is a single member limited liability company that is wholly-owned and managed by [redacted]. [redacted] is taxed as a disregarded entity for U.S. federal income tax purposes under Treasury Regulation §301.7701. [redacted] intends to construct a [redacted] megawatt wind energy facility comprising approximately [redacted] wind turbines in [redacted] and [redacted] counties (the "Project"). Session Law 2007-397 ("Senate Bill 3) requires investor-owned utilities in North Carolina to meet up to 12.5 % of their energy needs through renewable energy resources or energy efficiency measures by 2021. Rural electric suppliers must meet at least 10% of their needs with the Renewable Energy and Energy Efficiency Portfolios Standard ("REPS") by 2018. N.C.G.S. § 62-133 .8(8) defines "wind" as a renewable energy resource.

Investor-owned utilities, electric cooperatives and municipal electric suppliers ("Electric Power Suppliers") demonstrate compliance with Senate Bill 3 through the purchase of renewable energy certificates ("RECs").[1] The Project will provide a significant source of RECs for use by Electric Power Suppliers to demonstrate compliance with Senate Bill 3. This Project is expected

[1] A REC is equivalent to 1 MWh of electricity derived from a renewable energy source, or an equivalent amount of thermal energy in the case of combined heat and power and solar water heating, or 1 MWh of electricity avoided through an efficiency measure.

to generate approximately [redacted] RECs annually. Once [redacted] has obtained the necessary permits for the construction and operation of the Project, and if it is able to negotiate appropriate economic development incentives within the counties, [redacted] intends to form a new single-purpose entity in North Carolina to own and operate the Project.

The Project would be situated on approximately [redacted] acres located between [redacted], [redacted] and [redacted] (the "Project Area"). The County Board of Commissioners for each of [redacted] and [redacted] adopted wind ordinances in early [redacted] in anticipation of the construction of the Project. [redacted] has filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to construct the Project. Construction on the Project is expected to start in [redacted] of [redacted], and the Project is expected to be commercially operable by [redacted] of [redacted].

Issues:

(i) Whether the costs to construct and install a proposed wind energy facility in North Carolina will qualify for the State's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a)?

(ii) Whether each wind turbine in the proposed wind energy facility will constitute an "installation of renewable energy property" under N.C.G.S. §105-129.l6A(c)(l)?

Department's Response:

Yes. Based on our review of the facts and the information provided regarding the Project, we agree that the costs to construct and install the proposed wind energy facility in North Carolina will qualify for the State's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a) when the Project is installed and fully functional. In addition, the Project must conform to all applicable state and local codes and to the requirements of all inspecting jurisdictions.[2]

Under N.C.G.S. §105-129.16A(a), a taxpayer that constructs, purchases, or leases renewable energy property and places such renewable energy property in service in North Carolina during the taxable year is allowed a credit equal to thirty-five percent (35%) of the cost of the property. As described in your request, each component of the Project, including the wind turbine's nacelle, rotor and blades, tower and foundation, and collector lines and substations, qualifies as "renewable energy property" for purposes of the credit. Importantly, each of these components is either (i) a component of wind equipment required to capture and convert wind energy into electricity or mechanical power or (ii) a related device for converting, conditioning, and storing the electricity produced or relaying the electricity by cable from the turbine motor to the power grid."

[2] North Carolina's Guidelines for Determining Tax Credit for Investing in Renewable Energy Property (the "Guidelines") clarify that 100% of the costs of equipment required to capture and convert wind energy into electricity or mechanical power and 100% of the costs of related devices for converting, conditioning and storing electricity, including design, construction and installation costs, are eligible for the Credit.

As to whether each wind turbine in the Project will constitute an "installation of renewable energy property", N.C.G.S. § 105-129.l5(4b) defines an "installation of renewable energy property" as "renewable energy property that, when standing alone or in combination with other machinery, equipment or real property, is able to produce usable energy on its own." As described in your request, usable energy can be generated by each wind turbine. The blades cause the rotors to spin, which generates an electrical current through electromagnetic induction. Electricity is produced in each nacelle's generator at [redacted] volts and is routed to the generator step-up transformer, also located in the nacelle. The step-up transformer affixed to each wind turbine increases, or steps up, the voltage to [redacted] kV, readying the electricity for transmission through the collector lines to the collector substation, the step-up substation and eventually to an interconnect point to be transmitted to the power grid. Based on these facts, we agree that each wind turbine constitutes an "installation of renewable energy property" because it is able to produce usable energy on its own, as required by the aforementioned statute.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. Your statement of facts and our findings are subject to audit verification. If the facts and circumstances given are not accurate, or if there are other facts that were not disclosed that might cause the Department to reach a different conclusion, then the taxpayer requesting this ruling may not rely on it. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Very truly yours,

[redacted]