

**U.S. House of Representatives
Committee on Ways and Means
Comprehensive Tax Reform
COMMENTS: ENERGY TAX REFORM WORKING GROUP**

Comments Submitted for the Record - April 15, 2013

The undersigned residents and property owners of the State of Oklahoma respectfully submit these comments to the Ways and Means Energy Tax Reform Working Group. Our comments are limited to the Production Tax Credit (PTC) for wind energy.

In the final hours of the fiscal cliff¹ negotiations, a package of energy tax extenders² was surreptitiously added to the bill which assured the 20-year old wind production tax credit a \$12 billion, 1-year extension. This move was done behind closed doors, without debate or opportunity for amendment and no obligation of the Congress to find a way to pay for it.

The abuse of the Public Trust did not end there. With this extension, a critical change to the PTC was introduced that relaxed the eligibility requirements for the credit. Renewable energy projects now need only '*commence construction*' by January 1, 2014 to qualify for the credit, instead of projects being 'placed-in-service' by that date.

Since the law did not define what it means to '*commence construction*', the Internal Revenue Service (IRS) must determine the intent of the Congress and develop clarifying guidance.

The incentives for gaming the '*commence construction*' requirement are substantial, given the potential value of the tax credits in scale and duration, and the anticipated expiry of the program itself at the end of this year. David Burton, partner at Akin Gump Strauss Hauer & Feld, has stated that developers who plan well and bank enough 2013 PTC-eligible component parts, "***may be able to continue to construct PTC-eligible wind farms indefinitely***³."

Not surprisingly, this is leading potential PTC beneficiaries to pressure the IRS to accelerate its rulemaking process, and, meanwhile, to develop strategies to "game" the qualification rules to achieve compliance before January 1. This particular form of regulatory 'gaming' would encumber taxpayers with subsidy obligations for projects that may not go into production for many years after the PTC provision has expired.

At the end of 2012, lobbyists for the wind industry teamed with the Senate and the Administration to push through this latest extension of the PTC with no debate or opportunity for amendment. They turned pressure to avoid the putative fiscal cliff to their advantage, while leaving American taxpayers to pay the price. Unless you exercise your oversight responsibilities effectively, it appears likely that the problems associated with the extension of this subsidy will continue. We respectfully request the honorable members of the Committee to let the PTC expire.

Respectfully,

¹ American Taxpayer Relief Act (P.L. 112-240)

² Energy tax extenders were part of the Senate Finance Committee mark-up of S. 3521 (112th): Family and Business Tax Cut Certainty Act of 2012 which was reported by the Committee but died with no vote or debate by the full Senate.

³ North American Windpower, *Post-PTC Extension, Wind Energy Developers Face New Questions*, http://www.nawindpower.com/e107_plugins/content/content.php?content.10917#.UTtZSVec1NQ (Jan 3, 2013).

Joanna Taylor



Gary Don Taylor



Anthony Waltrip



Teresa Walker



Wayne Francis



Suzie Francis



Nita Biggs



Earl Biggs



Terra Walker



James Walker



Barbara Waltrip



David Parrett



Beth Parrett



Donald Graham



Candy Graham



Brannon Ward



Tony Lugafet



Brenda Slater



Dan Slater



Pam Suttles



John Guthrie



Rhonda Gilikin



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Tray Cornman



Traci Cornman



Jeff Holdridge



Tara Holdridge



Tobin Lovelace



Tamerah Lovelace



Tammy Huffstutlar



Rick Huffstutlar



Brent Robinson



Sharon Robinson



Craig Hooker



Joanna Haley



Genie Vinson



Julia Crist



Paul Crist



Mary Thurman



Virgil Thurman



Greg Smith



Linda Freeland



James Johnson



Art Peters



Glen L Pierce



Sandra Pierce



Jim Walker



Kathy Walker



Thomas Walker



Kelly Patterson



Derek Patterson



Tyler Cornman



Trent George Cornman



Lori Jones



Richard Jones



Dean Eskew



Debbie Eskew



Amy Pierce



Sara Pierce



Thomas Hall



Joanne Hall



April Hall



Lyn Land



Joe Land



Zack Myatt



Brianna Myatt



Darren Sparks



Deanna Sparks



Mark Ready



Dee Ready



Allen Smith



Gayla Smith



Dan Bourn



Rhonda Stover



Buster Elliott



Bo Kociuba



Pat Shenolds



Larry Shenolds



Mike Clark



Johnny Hensley



David Kudron



Randy Smith



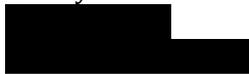
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John Roberts



Ashley Duval



Justin Duval



Daniel Pugh



John Ricketts



Gaylene Ricketts



Chris Hendrickson

