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Failure to Extend the Renewable Energy Production Tax Credit: Will It Send Wind Energy Investors Packing for Opportunities Abroad?

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The recent growth and success of the U.S. wind power industry is attributable in large part to a federal renewable energy production tax credit (the “PTC”) that provides significant tax incentives for investment in and development of wind energy projects. However, the uncertain fate of this credit, which is scheduled to expire at the end of this year, is crippling the growth of the U.S. wind power industry and increasingly sending investors in search of wind development opportunities abroad.

The U.S. wind power industry has experienced tremendous growth over the last decade. According to the American Wind Energy Association (“AWEA”), a wind power advocacy group, the U.S. generated 2.9% of its electricity from wind energy in 2011. Additionally, AWEA reports that the wind energy industry has been able to provide power to the equivalent of over 12 million homes and has fostered economic development in all 50 states.¹ To date, 29 states have legislative mandates that require utilities to use renewable energy to serve a specified minimum percentage (which usually increases over time) of the utilities’ retail customers.² The scale and economies of wind power production have also changed dramatically over the recent past. There are now close to 500 manufacturing facilities in 44 states. The wind power industry has been able to reduce the cost of wind power by over 90% since 1980. Over the past five years there has been, on average, private investment of \$15 billion annually in the wind power industry.³ AWEA predicts that by 2030 the U.S. could generate approximately 20% of its electricity from wind power, and that wind power could provide approximately 500,000 jobs in this country.

The PTC has been in effect since 1992 and provides wind farm operators with a tax credit in the amount of 2.2 cents per kilowatt-hour of electricity produced and sold to a third party during the first 10 years of the wind farm’s operation.⁴ The PTC has fueled growth of the U.S. wind power industry by providing wind power investors with income tax credits of approximately \$2.63 billion annually.⁵ However, the PTC is set to expire on January 1, 2013, and to remain available thereafter only to wind farms that have been placed in service by December 31, 2012.

Both the U.S. House of Representatives and U.S. Senate have pending bills that would extend the PTC. The Senate Finance Committee, in a 19-2 vote, recently voted to approve a one-year

¹ American Wind Energy Association, “Federal PTC for Wind Energy: The American Wind Industry Urges Congress to Take Immediate Action to Pass an Extension of the PTC,” *available at* http://www.awea.org/issues/federal_policy/upload/PTC-Fact-Sheet.pdf.

² Dan Voorhis, *Tax Break’s End is a Blow to Wind Power in Kansas*, THE WICHITA EAGLE, Mar. 18, 2012.

³ See *supra* note 1.

⁴ 26 U.S.C. § 45.

⁵ Don Hopey, *Company Cancels Shaffer Mountain Wind Power Project*, PITTSBURGH POST GAZETTE, June 13, 2012.

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reauthorization of the PTC as part of a broader tax legislative package.⁶ In the U.S. House of Representatives, the American Renewable Energy Production Tax Credit Extension Act of 2011, which is currently pigeonholed in the House Committee on Ways and Means, would amend the Internal Revenue Code of 1986 to extend the PTC until January 1, 2017.⁷ The advisability of extending the PTC remains a subject of considerable controversy in the 2012 presidential election. While President Barack Obama has consistently spoken out in favor of extending the PTC, Republican presidential candidate Mitt Romney's campaign has stated that Romney would let the credit die.⁸ Senate Majority Leader Harry Reid recently opined that he expects Congress to pass legislation extending the PTC before its expiration at the end of the year.⁹ With less than four months remaining until the current expiration date, the wind power industry and its supporters are lobbying for Congressional action with increasing intensity.

The impasse and uncertainty over extension of the PTC have already had a significant impact on wind project developers and wind equipment manufacturers in the U.S. The press has reported the cancellation or suspension of numerous wind power projects due to uncertainty over whether Congress will extend the PTC. In December, 2011, an offshore wind farm project located off the Delaware coast was cancelled in part because failure to extend the PTC made the project "financially untenable."¹⁰ Recently, three wind power projects in Pennsylvania were cancelled as a result of uncertainty over whether the tax credit will be available in 2013.¹¹ A wind power equipment manufacturer that employs over 1,700 people recently announced that it has laid off an undisclosed number of workers at a plant in Colorado due in part to Congress's failure to renew the PTC.¹²

The Department of Energy recently stated that the uncertain future of federal tax incentives for the wind power industry has "put the domestic wind turbine supply chain under 'severe pressure.'"¹³ Additionally, "[t]he cloudy future beyond 2012 and new competition from Chinese and Korean turbine makers are 'pressuring the wind power industry's domestic supply chain as margins drop and concerns about manufacturing overcapacity deepen.'"¹⁴ Commentators predict that failure to extend the PTC will further stymie the growth of the wind power industry and will cause increased unemployment in this country. AWEA has predicted that up to 37,000 U.S. jobs would be lost without the tax credit.¹⁵

Failure to extend the PTC is increasingly diverting development and private investment in wind energy away from the U.S. to other countries with more favorable wind power incentives. In 2009,

⁶ Derek Hawkins, *Wind Tax Credit Extension Blows Through Senate Panel*, LAW360, Aug. 2, 2012. The American Energy and Job Promotion Act, which has ten (10) co-sponsors and is pending in the Senate Committee on Finance, would amend the Internal Revenue Code of 1986 to extend the renewable energy production tax credit for another two (2) years (until January 1, 2015). S. 2201, 112th Cong. (2011-2012).

⁷ H.R. 3307, 112th Cong. (2011-2012).

⁸ See David Nakamura, *In Iowa, Obama Touts Clean Energy, Hits Republicans and Romney on Economic Agenda*, THE WASHINGTON POST, May 24, 2012; David Nakamura, *In Iowa, President Touts Clean Energy and Slams Republicans on Economy*, PITTSBURGH POST GAZETTE, May 15, 2012; Jackie Calmes, *Obama Draws Contrast With Romney on Wind Energy Tax Credit*, N.Y. TIMES (The Politics and Government Blog of The Times), Aug. 9, 2012.

⁹ Derek Hawkins, *Reid Says Wind Tax Credit Will Be Extended in 2012*, LAW360, Aug. 7, 2012.

¹⁰ Diane Cardwell, *Renewable Sources of Power Survive, but in a Patchwork*, N.Y. TIMES, Apr. 10, 2012; NRG Energy, Inc., "NRG Bluewater Wind News Release," available at <http://www.nrgenergy.com/nrgbluewaterwind/index.html>.

¹¹ Don Hopey, *Two Big Pennsylvania Wind Farm Projects Canceled*, PITTSBURGH POST GAZETTE, May 16, 2012; Hopey, *supra* note 5.

¹² Eli Stokols, *Failure to Renew Wind Tax Credit Prompts Vestas Layoffs in Pueblo*, FoxDenver, Aug. 13, 2012, available at <http://kdvr.com/2012/08/13/failure-to-renew-wind-tax-credit-forces-vestas-layoffs/>.

¹³ Derek Hawkins, *Wind Installations Could Drop Despite Gains, DOE Says*, LAW360, Aug. 14, 2012.

¹⁴ *Id.*

¹⁵ Alicia Acuna, *Battle grows over extending tax breaks for wind energy producers*, FOXNEWS.COM, May 1, 2012.

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the U.S. International Trade Commission issued a study noting that “[p]roject developers need access to significant capital in order to finance wind projects,” and that “[i]nstitutional tax equity investors . . . invest in wind power projects in order to use the PTC to offset other income. These tax investors are a significant source of financing for wind energy projects.”¹⁶

According to two separate studies, China, the U.S., Germany, Spain and India represent the five largest wind power producing countries in the world.¹⁷ The International Energy Agency reported that although “Germany, Spain and the U.S. were responsible for the majority of the increase in wind power capacity” during the first half of the past decade, “the center of gravity for wind energy markets has begun to shift to Asia, namely China.”¹⁸ India, other countries in Asia and various Latin American nations are providing strong financial incentives to help promote wind power growth.¹⁹ “Given the uncertain global climate for wind . . . since [2011],” countries like China have taken the opportunity to focus on and incentivize investors to develop in its wind markets.²⁰ One U.S.-based wind developer has stated that “if the PTC is not extended his company . . . will go abroad to develop wind projects.”²¹ If the U.S. fails to provide financial incentives for investment in the wind power industry, investors will increasingly shift their sights abroad to countries that are still providing financial incentives that promise a greater return on their investments.

The considerable uncertainty over the expiration of the PTC will continue to affect the growth of the U.S. wind power industry. Wind energy investors that rely on the PTC to sustain the viability of their investment are increasingly likely to look abroad to countries that can provide such credits or other financial incentives. Participants in the wind power industry need now more than ever to remain current on developments in Congress and to consult with a professional on the intricacies of the PTC and the effects that failure to extend the credit may have on the U.S. wind power industry.

For more information on this topic, please contact the authors at the contact information provided below.

¹⁶ United States International Trade Commission, “Wind Turbines Industry & Trade Summary,” Publication ITS-02 (June 2009), available at <http://www.usitc.gov/publications/332/ITS-2.pdf>.

¹⁷ U.S. Department of Energy, “2011 Wind Technologies Market Report,” August, 2012; Discovery News, “Top 10 Countries with the Most Wind Energy,” available at <http://news.discovery.com/tech/wind-power-top-countries.html>.

¹⁸ Flemming Emil Hansen, *Wind Giant Vestas Cuts Back*, THE WALL STREET JOURNAL ONLINE, Jan. 13, 2012. See also Michael Richardson, *America Sees Red Over China’s Green Ambition*, The Nation (Thailand), Jan. 20, 2011 (“Leadership in clean-energy manufacturing is shifting from the West to Asia. Within the Group of 20 leading economies, China, India, Japan and South Korea are projected to account for approximately 40 percent of clean-energy investments in 2020, leaving the U.S. and Europe trailing.”); Sara Rosner, *U.S. Sponsors Eye Development Abroad*, Power, Finance and Risk, Apr. 16, 2012 (“U.S. wind developers are looking at building project pipelines abroad as uncertainty over the extension of production tax credits puts a stranglehold on development stateside. Canada and Latin America are prime targets, officials said at the American Wind Energy Association’s Finance & Investment Seminar in New York.”).

¹⁹ See, e.g., *Wind Energy: China Set to Rule?* ENERGY NEXT, Dec. 8, 2011 (stating that “China’s wind turbine industry owes its rapid expansion to state-backed support, as Beijing’s mandate to embrace wind power, translated into easy financing for wind farms and a proliferation boom of new wind turbine manufacturers . . .”).

²⁰ Leslie Hook, *China’s Wind Group Pick up Speed*, FINANCIAL TIMES, July 15, 2012 (quoting Zhang Chuanwei, Chief Executive of China’s fourth-largest turbine producer by sales, and stating that “[g]lobal wind installation growth is expected to slow down in the US and Europe, two of the world’s biggest wind markets, because of political uncertainty over wind subsidies in the US and the eurozone debt crisis”).

²¹ Jeffrey Ryster, *One Company’s Story: Horizon Wind Describes its Concerns with Losing Production Tax Credit*, Electric Utility Week, Apr. 30, 2012.

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