

**Testimony of Rob Gramlich, Senior Vice President, Public Policy, American
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**House Oversight and Government Reform Subcommittee on Energy Policy,
Healthcare and Entitlements**

Oversight of the Wind Energy Production Tax Credit

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Good morning, Chairman Lankford, Ranking Member Speier, and Subcommittee members. I appreciate the opportunity to speak to you this morning about the success of the PTC and its value to American taxpayers.

I would like to begin by reviewing how the production tax credit (PTC) works. The PTC is a production-based tax credit provided to a variety of different renewable electricity sources, including small hydro, geothermal, and biomass, to name a few, and it is also available for new nuclear energy facilities. For wind energy, the PTC allows a project owner to reduce its tax bill by 2.3 cents for every kilowatt-hour of electricity produced over a 10-year period. Congress designed it as a performance-based incentive, such that the credit can be taken only if and when actual electricity is produced. It is only available after a facility is up and running. It does not provide funding to finance development or construction. It is also broad-based; every company that develops an eligible project can claim the credit on their tax return. There is not a competitive application process and government employees do not pick and choose winners or losers.

On January 1, 2013, as part of the *American Taxpayer Relief Act of 2012*, just as the PTC expired, Congress extended and modified the structure of how projects qualify for the PTC. This was done in recognition of the uncertainty created by the expiration and in recognition of project development delays, such as permitting delays or weather related construction delays, that can occur and create uncertainty as to when a project will be placed in service. Under the modification, projects that commence construction before January 1, 2014, qualify for the credit. However, consistent with prior law, a wind operator cannot actually claim the PTC until it produces and sells electricity.

The Internal Revenue Service (IRS) has issued guidance on this statutory change in a manner consistent with Congressional intent and other “start construction” precedents.¹ Under the guidance, construction commences when physical work of a significant nature starts. This start of construction framework has ample precedent in several others sections of the tax code, including sections for bonus depreciation for self-constructed property,² expensing for qualified

¹ IRS Notices 2013-29 and 2013-60.

² IRC §168(k)

property used in refining liquid fuels,³ and with respect to the recovery period for natural gas distribution lines.⁴

This physical work standard is tightly circumscribed. Preliminary activities do not qualify. For example, obtaining permits, environmental and engineering studies, planning and designing a facility, and work on transmission towers and roads for site access do not qualify. Further, the IRS has required a continuous program of construction and has narrowly defined a single project, which limits the ability to build additional phases at the same site with the initial qualification.

Projects can also qualify if companies incur 5% or more of total eligible costs prior to January 1, 2014. Such “safe harbors” also have precedent in IRS regulations.⁵ While 5% may not sound like a lot, in reality, it represents a significant investment and assumption of risk on the part of a project developer. The vast majority of the cost of a wind energy facility is in two things: buying the turbines and the construction contracts. Practically speaking, the surest way to achieve that 5% level is signing a turbine contract, making payments under the contract, and taking delivery of the turbines. This means the developer assumes tens or hundreds of millions of dollars of risk and has to pay millions of dollars in order to meet the 5% safe harbor. A company cannot achieve that 5% threshold just by funding preliminary development activities. In addition, the IRS requires the developer to demonstrate continuous efforts toward completion of the project after meeting the initial 5% safe harbor.

Over the years the PTC has been a tremendous success. With the credit in place, the U.S. wind industry was the number one source of new generation capacity last year.⁶ Wind turbines are now generally made domestically by approximately 550 manufacturing facilities in all regions of the country. Wind projects in the U.S. have brought economic growth to rural communities; roughly \$400 million in annual property taxes or similar payments to communities; and annual lease payments to farmers and ranchers of around \$120,000 per turbine over its lifetime. This tax credit, estimated by the Joint Committee on Taxation to cost less than \$2 billion this year, drives over \$20 billion of private investment annually and brings electricity to 15 million American homes.⁷ Without the PTC, these economic benefits and this private investment in the U.S. would not have occurred.

Wind energy is also saving money for consumers across the country. One recent report from May of this year found that doubling the use of wind energy in the Mid-Atlantic and Great Lake states would save consumers close to \$7 billion per year.⁸ Department of Energy data shows that from 2005 to 2010 electricity rates increased by twice as much in the 40 states with the least

³ IRC § 179C

⁴ IRC § 168(e)

⁵ For example, Section 168(k) with respect to bonus depreciation includes a 10% safe harbor. Given the complexity of the tax code and related regulations, the IRS has regularly offered safe harbors for individuals, partnerships and corporations.

⁶ U.S. Department of Energy, Energy Efficiency and Renewable Energy, *2012 Wind Technologies Market Report*, by Ryan Wiser and Mark Bolinger (Washington, DC: U.S. Government Printing Office, 2013), iv.

⁷ The Joint Committee on Taxation, *Estimates Of Federal Tax Expenditures For Fiscal Years 2012-2017* (Washington, DC, 2013), (<https://www.jct.gov/publications.html?func=startdown&id=4503>).

⁸ Synapse Energy Economics, *The Net Benefit of Increased Wind Power in PJM*, by Bob Fagan, Patrick Luckow, Dr. David White, and Rachel Wilson (Cambridge, MA, 2013), 1.

wind power compared to rates in the 10 states with the most wind generation.⁹ Even in the southeast, utilities have entered into power purchasing agreements with wind energy facilities because wind energy proved to be the least expensive option for their customers. Furthermore, wind energy offers the stability of a long-term fixed energy price, which is offered by very few other energy sources. This protects consumers from fluctuations in fuel prices much like a fixed rate mortgage protects homeowners from interest rate spikes.¹⁰

In addition to these benefits, the PTC helps ensure that our nation maintains a diverse energy portfolio. As I have noted in a previous testimony before Congress, electric utilities must commit to power supply options with over thirty-year lifetimes without knowing future fuel prices, future environmental regulations, future fuel supplies, cooling water availability, and more. These risks must be managed, and the best way for utilities to do that, as with one's financial investment portfolio, is to diversify.

The cost of wind energy has dropped by 43% in the last four years,¹¹ but the PTC is still needed to prevent us from relying too heavily on any single fuel source. The impending expiration of the PTC before it was extended in January had a devastating impact on the industry. Investment was put on hold and factories halted production and project installations came to a standstill. Only 1.6 megawatts were installed in the first half of this year, which is the capacity of a single turbine.

For decades, federal policy, especially within the tax code, has fostered a diverse mix of fuels in the interest of our economic and national security. So while the PTC may be a more recent addition to the tax code, it is one of many incentives that have been available over the years.

In conclusion, the PTC is a wise investment. Allowing it to expire, as is scheduled to occur at the end of this year, will move us away from further diversification of our energy portfolio, take away opportunities for consumers to save money, dampen domestic manufacturing and innovation, and cause companies to hold off on investing in communities across America.

Again, thank you for the opportunity to be here today. I look forward to answering your questions.

⁹ Electricity price data for 2005 and 2010 available at <http://www.eia.gov/electricity/state/>. 2010 state wind penetration data available at <http://emp.lbl.gov/sites/all/files/lbnl-4820e.pdf>, page 9

¹⁰ U.S. Department of Energy, Lawrence Berkley National Laboratory, *Revisiting the Long-Term Hedge Value of Wind Power in an Era of Low Natural Gas Prices*, by Mark Bolinger, 2013(
<http://emp.lbl.gov/publications/revisiting-long-term-hedge-value-wind-power-era-low-natural-gas-prices>).

¹¹ DOE, *2012 Wind Technologies Market Report*.