



reconsideration of that rejection, which rejection was affirmed by the Commission in July of 2011. Grouse Creek subsequently appealed, but the appeal was remanded to the Commission for further consideration. Following Reconsideration on Remand the Commission in September, 2012 again rejected the Grouse Creek contracts.

2. A significant portion of the economic benefit Grouse Creek has relied on in pursuing development of the two Grouse Creek wind projects relates to federal production tax credits (PTCs) available to the developers of renewable energy projects. Those credits were extended by the *American Taxpayer Relief Act of 2012* (“ATRA”), but are set to expire on December 31, 2013.<sup>1</sup>

3. The first year (2013) “all hours” energy production rate Grouse Creek would be paid by Idaho Power under the rejected contracts is 6.193 cents per kilowatt hour (kWH).<sup>2</sup> The PTCs available to Grouse Creek are 2.2 cents per kWH. In the first year of what was supposed to be Grouse Creek’s operation (2013), PTCs would have accounted for approximately 25% of the projects’ revenues. PTCs are available under the ATRA for the first ten years of operation of a renewable energy project.<sup>3</sup>

4. Without the benefits of PTCs Grouse Creek will suffer severe and irreversible economic harm.<sup>4</sup> In order to qualify for PTCs under ARTA, Grouse Creek must “start construction” before January 1, 2014.<sup>5</sup> While the Internal Revenue Service is yet to publish guidance on what is considered “start of construction” under ARTA,

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<sup>1</sup> The *American Taxpayer Relief Act of 2012*, H.R. 8, Sec 407 (January 2, 2013), <http://www.gpo.gov/fdsys/pkg/BILLS-112hr8eas/pdf/BILLS-112hr8eas.pdf>

<sup>2</sup> Firm Energy Sales Agreement between Idaho Power and Grouse Creek, R. Vol. I, p. 30.

<sup>3</sup> See Affidavit of Christine Mikell, attached.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

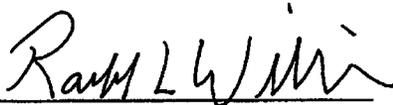
applying past guidance would indicate that five percent of the cost of a project must be incurred in order to have “started construction.”<sup>6</sup>

5. If Grouse Creek prevails in this appeal, but the Court’s decision occurs in late 2013, Grouse Creek is fearful that the benefit of a favorable Court decision could not be implemented in time for it to qualify for the PTCs. With a Court ruling favorable to Grouse Creek, the Commission must then conform its order to that decision, while at the same time allowing the Parties time to adjust key contract terms and conditions, in order to reinstate the economic viability of the contracts.<sup>7</sup> Those revised contracts would then be approved by the Commission. Only with approved contracts would Grouse Creek be able to finance the projects and start construction.<sup>8</sup>

6. If this matter was set for argument before the Court in the normal course, there is risk that Grouse Creek and the other parties in this case would not be able to accomplish the tasks described in paragraph 5 in time for Grouse Creek to qualify for PTCs. If this matter were argued before the Court in August and Grouse Creek prevails, the risk of Grouse Creek failing to qualify for the PTCs is substantially reduced.

For the reasons stated above, Grouse Creek respectfully requests that oral argument in the above matter be set for the Court’s August, 2013 Term.

DATED this 1<sup>st</sup> day of February, 2013.

  
Ronald L. Williams, ISB 3034  
Williams Bradbury, P.C.  
Attorneys for Grouse Creek

<sup>6</sup> See, Section 45 of the Internal Revenue Code of 1986, 26 U.S.C. § 45(a) and Section 1603 of the American Recovery and Reinvestment Act of 2009, H.R. 1, Pub. L. No. 111-5, 123 Stat. 115 (February 17, 2009) <http://www.gpo.gov/fdsys/pkg/BILLS-111hr1enr/pdf/BILLS-111hr1enr.pdf>, wherein the U.S. Treasury adopted a 5% safe harbor provision for “commencement of construction.”

<sup>7</sup> See Mikell Affidavit. For example, the First Energy Date contained in the contracts is June 1, 2013, an impossibility at this point in time.

<sup>8</sup> *Id.*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 15<sup>th</sup> day of February, 2013, I caused to be served a true and correct copy of the foregoing document upon the following individuals in the manner indicated below:

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Attorneys for Petitioners-Appellants Grouse Creek Wind Park, LLC and Grouse Creek Wind Park II, LLC.

**IN THE SUPREME COURT OF THE STATE OF IDAHO**

	)	
	)	<b>SUPREME COURT</b>
	)	<b>DOCKET NO. 39151-2011</b>
	)	
<b>GROUSE CREEK WIND PARK, LLC, and</b>	)	
<b>GROUSE CREEK WIND PARK II, LLC,</b>	)	
	)	<b>Idaho Public Utilities Commission</b>
<b>Petitioners-Appellants.</b>	)	<b>Case Nos.</b>
	)	<b>IPC-E-10-61 and IPC-E-10-62</b>
<b>vs.</b>	)	
	)	
<b>IDAHO PUBLIC UTILITIES COMMISSION,</b>	)	<b>AFFIDAVIT OF CHRISTINE</b>
	)	<b>MIKELL IN SUPPORT OF</b>
<b>and</b>	)	<b>MOTION TO EXPEDITE</b>
	)	
<b>IDAHO POWER COMPANY,</b>	)	
	)	
<b>Respondents-Respondents on Appeal.</b>	)	
	)	
	)	

I, Christine Mikell, being first duly sworn on oath, deposes and says:

1. I am over the age of 18, and I am the President of Wasatch Wind Intermountain, LLC, which is the owner of Grouse Creek Wind Park, LLC, and Grouse Creek Wind Park II, LLC (collectively, "Grouse Creek").

2. In December of 2010 Grouse Creek signed two contracts for the delivery of power to Idaho Power. In June and July of 2011, and again in September of 2012 (on

remand from the Idaho Supreme Court) the Idaho PUC declined to approve these two contracts between Grouse Creek and Idaho Power.

3. The contracts between Idaho Power and Grouse Creek contain power rates to be paid by Idaho Power which are calculated on an energy delivery basis. The first year "average" rate for energy delivered is 6.193 cents per kilowatt hour (kWH). That rate escalates over the 20 year life of the contract between Idaho Power and Grouse Creek.

4. Provided certain conditions are met, Grouse Creek is also entitled to a federal tax production tax credit ("PTC") for power delivered to Idaho Power, which is currently set at 2.2 cents per kWH. That rate, which also escalates, is available for the first ten years of a renewable project's commercial operation. In effect, approximately 25% of the expected Grouse Creek project revenues for the first 10 years of operation are tied to PTCs. Grouse Creek estimates that PTCs are worth approximately \$90 million in income tax credits over these 10 years of operation.

5. Federal PTCs expire on December 31, 2013. In order to qualify for PTCs a renewable energy project must have "started construction" before January 1, 2014. While the IRS has yet to issue guidance as to what "started construction" means, it is my opinion, and those of others in my industry, that the same or similar 5% "safe harbor" rules will apply as were applied to the "commencement of construction" requirements under the prior stimulus package.

6. If Grouse Creek is successful in its appeal in this matter, it then must renegotiate with Idaho Power certain key terms of the contracts that are now impossible to meet, see those contracts approved by the Idaho PUC, close construction financing and then spend the funds and "start construction" sufficient to qualify under the expected safe

Affidavit of Christine Mikell in Support of Motion to Expedite - 2

harbor rules. Grouse Creek estimates these activities would take, at a minimum, 60 to 90 days.

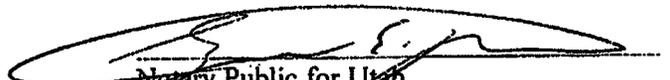
7. If Grouse Creek is successful on appeal, yet unable to start construction of its project before the end of 2013 sufficient to qualify for the PTCs, Grouse Creek would suffer severe and irreversible economic harm of approximately \$36 million related to the ten year loss of PTCs. In addition, loss of PTCs would seriously jeopardize the financial ability of moving forward with development of the two wind projects.

I declare under penalty and under the laws of the United States and under the laws of the State of Utah that the foregoing is true and correct, to the best of my knowledge and belief.

DATED this 1 day of February, 2013.

  
Christine Mikell

SUBSCRIBED AND SWORN to before me this 1 day of February, 2013.

  
Notary Public for Utah  
Residing at Salt Lake, Utah  
My Commission Expires: Feb 21, 2015

