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State of Minnesota
8/19/2020 5:37 PM

STATE OF MINNESOTA — DISTRICT COURT

COUNTY OF RAMSEY — SECOND JUDICIAL DISTRICT

State of Minnesota, ex. rel., Association of Freeborn County Landowners,

Plaintiff,

v.

Minnesota Public Utilities Commission,

Defendant,

and

Buffalo Ridge Wind LLC, Three Waters Wind, LLC, Northern States Power Company, Plum Creek Wind Farm, LLC,

Defendant-Intervenors.

Case Type: Other Civil
Court File No.: 62-CV-20-3674
Judge: Hon. Sara Grewing

DECLARATION OF ANDREW TERWILLIGER

I, Andrew Terwilliger, under penalty of perjury, state the following:

1. I am the Vice President - Commercial at Geronimo Energy, LLC, a National Grid plc company ("Geronimo"). Geronimo is the parent company of Plum Creek Wind Farm, LLC ("Plum Creek"). This Declaration is filed in Opposition to Plaintiff Association of Freeborn County Landowners ("AFCL")'s Motion for Temporary Injunction.

2. Plum Creek is developing the up to 414-megawatt Plum Creek Wind Farm ("Wind Farm") in Cottonwood, Murray and Redwood counties in Minnesota.

3. In role as Vice President - Commercial, I am familiar with the financials for the Wind Farm. I am heavily involved in the project financing process, offtake contract negotiations, and wind farm valuations. I have been an employee of Geronimo Energy, LLC for over nine years.

4. In developing Plum Creek, Geronimo planned for the project to qualify for federal production tax credits or PTCs.

5. PTCs are provided for by section 45 of the Internal Revenue Code and are credits for electricity output from wind farms in the United States. PTCs may be claimed only on electricity generated and sold to unrelated persons for the first 10 years after a facility is originally placed in service. The PTC on electricity sold in 2020 is 2.5¢ a kilowatt hour and adjusted annually for inflation. However, under current law a facility may qualify for PTCs at a discount rate of 60% if it is under construction by the end of 2020, and only qualifies for the full value of 100% for the PTCs if it is under construction by the end of 2016. Facilities for which construction began in 2017, 2018, 2019 and 2020 qualify for PTCs at reduced levels—80%, 60%, 40%, and 60% respectively. A wind facility that commences construction on or after January 1, 2021 is not eligible for PTCs.

6. Guidance from the Internal Revenue Service indicates that a project may qualify for PTCs by one of two methods. The first method is beginning project physical construction of a significant nature. The second method is the 5% safe harbor based on the taxpayer spending at least 5% of the total costs of the energy property to be included in the project (the "5% Safe Harbor"). As a practical matter, wind farms which started construction in 2016 or 2017 currently need to be placed in service within five years of when that the project went under construction.[1]

[1] For wind farms who started construction in 2016 or 2017, after five years (four years for projects who started construction in 2018 or later), the IRS may conduct audits to determine whether "continuous construction" or "continuous efforts" have occurred—a standard that is ambiguous and difficult to meet. There is some guidance that suggests exceptions may also exist in certain circumstances. Ambiguity in the application of these exceptions exist, however. To my knowledge, no project in the United States has been successfully financed and built without complying with the five-year / four-year safe harbor period.

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Wind farms which started construction in 2018 or later need to be placed in service within four years of when the project went under construction.

7. In 2017, Plum Creek became "under construction" based on the start of construction method and is therefore entitled to 80% PTCs if it can complete construction and be placed-in-service on or before December 31, 2022. It is my understanding from Mr. Burmeister that any delay beyond August 2021 in the current permitting and construction schedule would result in Plum Creek failing to meet that deadline. Grossed up for federal incomes taxes, the value of the PTC to Plum Creek is approximately $293,934,075 over the 10-year period. If Plum Creek does not qualify for the PTC, then the project would likely not proceed due to economic issues as a direct result of not having qualified for the PTC.

8. It may be possible for Plum Creek to re-qualify the project at a lower 60% value, by effectively restarting construction on the project prior to December 31, 2020. Plum Creek would need to undertake that process immediately to qualify for the 60% value. But it comes with disadvantages. First, requalification would involve an immediate expense of several hundred thousand dollars to complete. Second, because the "under construction" date would be a year later, Plum Creek would also drop from an 80% PTC to 60% PTC. As a result, even if requalification was possible, Plum Creek would still lose approximately $73,483,519. It is uncertain at this time whether the Plum Creek project would develop under such a scenario.

9. Even if the injunction only caused a delay, Plum Creek would incur additional costs such as additional lease payments to landowners, updated environmental studies, additional legal fees, and other similar such costs.

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I declare under penalty of perjury that everything I have stated in this document is true and correct

Dated: August 19, 2020 | Bloomington, MN

*/s/ Andrew Terwilliger*________________
Andrew Terwilliger