



**ORIGINAL**

IN THE SUPREME COURT OF THE STATE OF OKLAHOMA

**FILED**  
SUPREME COURT  
STATE OF OKLAHOMA

JUL - 7 2022

KINGFISHER WIND, LLC, )  
)  
Plaintiff/Appellee, )  
v. )  
)  
MATT WEHMULLER, )  
CANADIAN COUNTY ASSESSOR, )  
)  
Defendants/Appellants. )

Case No. 119837

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**DEFENDANTS/APPELLANTS' RESPONSE TO BRIEF OF AMICI CURIAE**

On Appeal from the District Court of Canadian County  
Canadian County Case No. CV-2016-241  
(Consolidated with Kingfisher County Case No. CV-2016-61)  
The Honorable Jack D. McCurdy II  
Canadian County District Judge

*Ad Valorem Tax Appeal*

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## INTRODUCTION<sup>1</sup>

Throughout the course of the litigation in the District Court and in this appeal, Assessors' position has remained consistently rooted in the applicable statutory authority and legal precedent set by the highest courts of the United States and the state of Oklahoma. Assessors have analyzed the legal nature of PTCs through the lens of the statutory provisions under 26 U.S.C. § 45, that establish the legal requirements for claiming PTCs on an income tax return. Assessors have and continue to analyze the proper characterization and treatment of PTCs utilizing the legal backdrop provided by the United States Supreme Court in *Randall v. Loftsgaarden*, 478 U.S. 647 (1986), and a number of legal decisions following and applying the rulings from *Randall*. Assessors are also the only party in this appeal to present a judicial decision involving the determination of the fair market value of wind farms. *See Van Duzer v. Comm'r of Internal Revenue*, 61 T.C.M. 2791, 1991 WL 93170 (U.S. Tax Ct. 1991).<sup>2</sup>

In addition to these legal authorities, Assessors have presented and relied upon leading appraisal treatises that instruct appraisers to value property with consideration of all forms of future benefits derived from the property, including tax benefits and tax credits. *See American Society of Appraisers, Valuing Machinery and Equipment, The Fundamentals of Appraising Machinery and Technical Assets*, at 115 (4<sup>th</sup> ed. 2020)<sup>3</sup>; (Defs.' Brief-in-Chief, Prop. II., at 21; Defs.' Reply Br., Prop. III, at 27.) Assessors are also the only party to present evidence of real-world transactions involving wind farms and the considerations of real-world buyers and sellers when negotiating purchase prices. (*See* Defs.' Brief-in-Chief, Prop. II., at 21-22; Defs.' Reply Br., Prop. IV., at 28-30.)

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<sup>1</sup> Capitalized terms used in this Response Brief shall have the same meaning as used in Assessors' Brief-in-Chief and Reply Brief.

<sup>2</sup> (Defs.' Appx. to Brief-in-Chief, Doc. 8.)

<sup>3</sup> (Defs.' Appx., Doc. 14, p. 212.)

Assessors ask this Court to follow the legal roadmap established herein and in Assessors' Brief-in-Chief and Reply Brief to reach the conclusion that PTCs are economic benefits of owning and operating the tangible personal property comprising a wind farm, and that these economic benefits should be considered in determining the fair cash value of such tangible personal property.

### ARGUMENT AND AUTHORITIES

#### **I. RATHER THAN INTANGIBLE PERSONAL PROPERTY, PTCs ARE ECONOMIC BENEFITS OF OWNING AND OPERATING THE TANGIBLE PERSONAL PROPERTY COMPRISING A WIND FARM.**

Amici Curiae have opted to replicate KW's primary contention in this appeal that PTCs are intangible personal property exempt from ad valorem taxation. In making this argument, Amici Curiae also rely almost exclusively on the Oklahoma Court of Civil Appeals' decision in *Stillwater Housing Associates v. Rose*, 2011 OK CIV APP 51, 254 P.3d 726, which was not ordered for publication by the Oklahoma Supreme Court.

Assessors have addressed Amici Curiae's argument and the shortcomings of *Stillwater Housing* on multiple occasions in the District Court and in their Reply Brief filed in this Court on June 20, 2022. Assessors incorporate their responsive arguments herein and summarize the salient points below. (*See* Defs.' Reply Br. at 14-27.)

#### **A. United States Supreme Court precedent precludes a finding that PTCs are intangible personal property.**

*Stillwater Housing* stands in direct conflict with controlling United States Supreme Court precedent in *Randall v. Loftsgaarden*, 478 U.S. 647 (1986). Assessors incorporate their entire discussion regarding the legal effect of the *Randall* opinion as it relates to tax credits and summarize the discussion below. (*See* Defs.' Reply Br., Prop. II.B., at 18-20.)



Like KW, Amici Curiae largely ignore the Supreme Court's decision in *Randall*, because it single-handedly defeats their entire argument that PTCs, along with all other tax credits, are intangible personal property. In addition to ruling that tax credits do not represent taxable gross income under the Internal Revenue Code, the Supreme Court's second ruling establishes that tax credits do not constitute a separate, identifiable property interest as a matter of law. *Randall*, 478 U.S. at 656-57, 665-66. Since *Randall*, courts across the country have followed the Supreme Court's decision and similarly ruled that tax credits are not intangible personal property, or property of any kind. Thus, this Court should reject *Stillwater Housing* and its analysis, because PTCs are not intangible personal property pursuant to United States Supreme Court precedent.

**B. The underlying rationale for the *Stillwater Housing* decision is contrary to longstanding Oklahoma Supreme Court precedent.**

To reach the conclusion that tax credits are intangible personal property, the *Stillwater Housing* court interpreted the words "others credits" under subsection (c) of the former version of Okla. Const. Art. 10, § 6A (1968), to mean "tax credit." Assessors refer to and incorporate the discussion in their Reply Brief which thoroughly analyzed and discredited the rationale of *Stillwater Housing*. (See Defs.' Reply Br., Prop. II.A., at 14-18.)

To summarize, the *Stillwater Housing* court's rationale and interpretation of "other credits" is contrary to the Oklahoma Supreme Court's longstanding, consistent interpretations of "other credits" used in the now repealed Intangible Personal Property Act of 1939, previously codified under 68 Okla. Stat. §§ 1501 *et seq.* (repealed 1971), as renumbered to 68 Okla. Stat. §§ 2501 *et seq.* (repealed 1971), and the former version of Okla. Const. Art. 10, § 6A (1968). See *In re Assessment of Personal Property Taxes Against Missouri Gas Energy, Div. of Southern Union Co., for Tax Years 1998, 1999, and 2000* ("**Missouri Gas**"), 2008 OK

94, 234 P.3d 938, *Dunlap v. Spencer*, 1942 OK 349, 131 P.2d 994, *State v. Atlantic Oil Producing Co.*, 49 P.2d 534 (Okla. 1935) and *Edmunds v. White*, 219 P.2d 1007 (Okla. 1950). Consistent with its prior decisions, the *Missouri Gas* court most recently ruled that the type of “credit” constituting intangible personal property under the prior version of Art. 10, § 6A(c) is the deferral of a monetary obligation granted by a creditor. Although all intangible personal property is now exempt from ad valorem taxation under the current version of Okla. Const. Art. 10, § 6A (2012), the Oklahoma Supreme Court’s prior decisions demonstrate the view that deferral of a monetary obligation in the context of accounts and bills receivable is the only type of “credit” that constitutes intangible personal property for purposes of taxation. Thus, *Stillwater Housing* should not be followed, because the decision rests on an erroneous conclusion that is a serious departure from Oklahoma Supreme Court precedent.

Notwithstanding its infirmities, Amici Curiae attempt to prop up the *Stillwater Housing* decision by suggesting that it is aligned with the decisions of other courts that have also ruled that low-income housing tax credits (“LIHTCs”) are intangible personal property. (See Amici Curiae Br., at 12-13.) However, much like the arguments of KW and Amici Curiae, these other judicial opinions present wildly varying, inconsistent and often legally incorrect reasons for declaring LIHTCs to be intangible personal property.

First, none of the cases cited by Amici Curiae from other jurisdictions rely on or even acknowledge the Supreme Court’s decision in *Randall*. Where *Randall* sets the legal framework for establishing the proper legal characterization and treatment of tax credits, any judicial decision that ignores *Randall* rests on unsound footing.

Second, Amici Curiae heavily rely on cases from an Arizona tax court, *Cottonwood Affordable Housing v. Yavapai County*, 72 P.3d 357 (Ariz. Tax Ct. 2003), and the Missouri

court of appeals, *Maryville Properties, L.P. v. Nelson*, 83 S.W. 3d 608 (Mo. App. Ct. 2002), which both held that LIHTCs are intangible personal property. However, the courts' rationale for these holdings violates the principles and required assumptions under the hypothetical willing buyer-willing seller standard that must be applied in all determinations of fair cash value under Oklahoma law.

In *Cottonwood*, the tax court's decision focused on the 10-year duration of the LIHTCs. The court concluded that since the LIHTCs would be exhausted after 10 years, the LIHTCs would be of no importance to a willing buyer and a willing selling in negotiating the purchase price for the low-income housing project at or after the tenth year of operations. *Cottonwood*, 72 P.3d at 359. Accordingly, the *Cottonwood* court stated that "[LIHTCs] do not add to the value of the property as their use is limited to ten years" and that there would be no incentive for the owner-taxpayer to sell during this 10-year period. *Cottonwood*, 72 P.3d at 359-60. The *Cottonwood* court's explanation cannot be applicable in this appeal. *Cottonwood* violates the fundamental principle of the hypothetical willing buyer-willing seller standard, which requires courts and appraisers to assume a hypothetical transaction on the ad valorem tax assessment date. Conversely, courts and appraisers are not to assume that a sale would not occur until after the tax credits are exhausted.<sup>4</sup>

*Maryville Properties* provides a similar rationale regarding why LIHTCs are intangible personal property. The court's analysis relied on a subjective market for low-income housing projects resting on the premise that such projects are not typically bought and sold until after

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<sup>4</sup> As a basis for finding LIHTCs to be intangible personal property, the *Cottonwood* court also stated that "LIHTCs are intangible because **they are sums of money paid by the federal government** as an incentive to invest in the project . . ." *Cottonwood*, 72 P.3d at 359 (emphasis added). This characterization of the tax credits is in error. Similar to PTCs, LIHTCs are tax credits that provide a reduction in the owner-taxpayer's income tax liability. The federal government does not pay money to the owner-taxpayer. The *Cottonwood* court's conclusion that LIHTCs are "sums of money" is contrary to the *Randall* court's first ruling that tax credits do not provide the owner-taxpayer with taxable gross income under the Internal Revenue Code.

the LIHTCs are used by the owners. The court noted that “the literature dealing with these projects suggests that most prudent investors will stay in the project for fifteen years[ ]” after the LIHTCs have expired. *Id.* at 616. The court essentially denied the existence of a hypothetical willing seller during the first 15 years of the low-income housing project, and on this basis, the court concluded that the “LIHTCs are not characteristics of the property.” *See id.* at 616. Like *Cottonwood*, the analysis in *Maryville Properties* can have no application in this appeal or any Oklahoma case, because it would violate the required assumptions that must be made under the hypothetical willing buyer-willing seller standard.

The remainder of the cases cited by Amici Curiae offer little in the way of guidance or discussion as to how the courts arrived that their rulings that LIHTCs are intangible personal property. For instance, in *Cascade Court L.P. v. Noble*, 20 P.3d 997 (Wash. App. Ct. 2001), the Washington court of appeals provided the following one-line conclusion with no supporting reasoning or discussion: “Tax credits are intangible personal property and thus are not subject to real property taxation.” Amici Curiae also cite to the Wisconsin Supreme Court’s decision, *Metropolitan Holding Co. v. Bd. of Review of City of Milwaukee*, 495 N.W. 2d 314 (Wisc. 1993). However, this court’s opinion has nothing to do with the proper characterization of tax credits. In fact, nowhere in the opinion is there even a reference to LIHTCs or any other tax credits.

The reality is that *Stillwater Housing* and cases cited by Amici Curiae are outliers in a line of decisions relating to the proper characterization and treatment of LIHTCs. In fact, “the majority of state courts that have considered the issue have concluded that the tax credits should be included when determining the value of a tax-credit-funded housing project.” *Huron Ridge LP v. Ypsilanti Tp.*, 737 N.W. 2d 187, 195 (Mich. App. Ct. 2007). Assessors have

thoroughly searched for and located 25 cases from 20 different state courts and 2 federal bankruptcy circuit courts addressing the proper treatment of LIHTCs. 19 of these cases from 13 different state courts and 2 federal courts have ruled that LIHTCs are not intangible personal property and/or that LIHTCs should be considered in the valuation of low-income housing projects.<sup>5</sup> The vast majority of courts in the United States have found that LIHTCs should not be excluded from the valuation analysis.

Moreover, Assessors are the only party in this appeal to identify a judicial decision involving the consideration of tax credits in the valuation of wind farms. In *Van Duzer v. Comm'r of Internal Revenue*, 61 T.C.M. 2791, 1991 WL 93170 (U.S. Tax Ct. 1991)<sup>6</sup>, the court agreed that the impact of tax benefits and credits generated by the wind farms should be considered in determining the fair market value of the tangible personal property comprising the wind farms. *See id.* at 10-11, 13.<sup>7</sup> In terms of judicial guidance regarding the legal issue in this appeal regarding the inclusion of PTCs in determining the fair cash value of a wind farm, this Court should follow *Van Duzer* court as opposed to the minority view among state courts regarding the treatment of LIHTCs in the valuation of low-income housing projects.

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<sup>5</sup> *In re Creekside Sr. Apartments, LP*, 477 B.R. 40 (B.A.P. 6<sup>th</sup> Cir. 2012); *In re Lewis & Clark Apartments, LP*, 479 B.R. 47 (B.A.P. 8<sup>th</sup> Cir. 2012); *State Bldg. & Constr. Trades Council of Cali. v. Duncan*, 76 Cal. Rptr. 3d 507 (Cal. Ct. App. 2008); *Nutmeg Hous. Dev. Corp. v. Town of Colchester*, CV126016973S, 2015 WL 1500529 (Conn. Super. Ct. 2015), *aff'd*, 151 A.3d 358 (Conn. 2016); *Deerfield 95 Investor Assocs., LLC v. Town of East Lyme*, CV960538357, 1999 WL 391099 (Conn. Super. Ct. 1999); *Heron Lake II Apartments, L.P. v. Lowndes County Bd. of Tax Assessors*, 791 S.E. 2d 77 (Ga. 2016); *Pine Pointe Hous., L.P. v. Lowndes County Bd. of Tax Assessors*, 561 S.E. 2d 860 (Ga. App. Ct. 2002); *Brandon Bay, Ltd. P'ship v. Payette County*, 132 P.3d 438, 441 (Idaho 2006); *City of Chicago v. Michigan Beach Hous. Co-Op.*, 609 N.E. 2d 877 (Ill. App. Ct. 1993); *Rainbow Apartments v. Ill. Prop. Tax Appeal Bd.*, 762 N.E.2d 534 (Ill. App. Ct. 2001); *Hometown Assocs., L.P. v. Maley*, 839 N.E. 2d 269 (Ind. Tax Ct. 2005); *Pedcor Investments-1990-XIII, L.P. v. State Bd. of Tax Comm'rs*, 715 N.E. 2d 432 (Ind. Tax Ct. 1999); *In re Ottawa Hous. Assoc., L.P.*, 10 P.3d 777 (Kan. 2000); *Huron Ridge LP v. Ypsilanti Tp.*, 737 N.W. 2d 187 (Mich. App. Ct. 2007); *In re Appeal of Greens of Pine Glen Ld.*, 576 S.E. 2d 316 (N.C. 2003); *Parkside Townhomes Assoc. v. Bd. of Assessment Appeals of York County*, 711 A.2d 607 (Pa. Cmmw. Ct. 1998); *Rebelwood, Ltd. v. Hinds County*, 544 So. 2d 1356 (Miss. 1989); *Spring Hill, L.P. v. Tenn. State Bd. of Equalization*, No. M2001-02683-COA-R3-CV, 2003 WL 23099679 (Tenn. App. Ct. 2003); *Stone Brooke Ltd. P'ship v. Sisinni*, 688 S.E. 2d 300 (W.Va. 2009).

<sup>6</sup> (Defs.' Appx. to Brief-in-Chief, Doc. 8.)

<sup>7</sup> (Defs.' Appx. to Brief-in-Chief, Doc. 8, p. 160-61, 163.)

**II. AMICI CURIAE'S POINTS OF EMPHASIS WHICH ARE OF NO CONSEQUENCE IN THIS APPEAL.**

**A. The fact that PTCs do not have the characteristics of tangible personal property is of no consequence in this appeal.**

Amici Curiae devote a portion of their Brief to argue that PTCs do not constitute tangible personal property. Amici Curiae appear to suggest that since PTCs cannot constitute tangible personal property, it must follow that PTCs are intangible personal property. This strict binary approach to characterizing PTCs leads to a faulty conclusion.

Assessors have never argued that PTCs constitute tangible personal property, because PTCs do not represent property of any kind, neither tangible nor intangible. PTCs are not property because PTCs lack the requisite characteristics of property, including: (i) free and legal transferability; and (ii) a legally protectable property interest in PTCs that is enforceable in a court of law against government denial. (*See* Defs.' Reply Br., Prop. II.C., at 20-25.) Thus, the fact that PTCs do not qualify as tangible personal property is of no consequence in this appeal.

**B. The 2012 Amendment to Oklahoma Constitution Art. 10, § 6A.**

In 1968, Art. 10, § 6A was adopted into the Oklahoma Constitution containing the following language:

Intangible personal property as below defined shall not be subject to ad valorem tax or to any other tax in lieu of ad valorem tax within this State:

- (a) Money and cash on hand, including currency, gold, silver, and other coin, bank drafts, certified checks, and cashier's checks.
- (b) Money on deposit in any bank, trust company, or other depository of money, within or without the State of Oklahoma, including certificates of deposit.
- (c) Accounts and bills receivable, including brokerage accounts, and other credits, whether secured or unsecured.
- (d) Bonds, promissory notes, debentures, and all other evidences of debt whether secured or unsecured; except notes, debentures, and other evidences of debt secured by real estate mortgages which are subject to the Mortgage

Registration Tax under Sections 12351 - 12362, inclusive, Oklahoma Statutes, 1931 (68 O.S. 1961, Sections 1171 - 1182).

(e) Shares of stock or other written evidence or proportional shares of beneficial interests in corporations, joint stock companies, associations, syndicates, express or business trusts, special or limited partnerships, or other business organizations.

(f) All interests in property held in trust or on deposit within or without this State, and whether or not evidenced by certificates, shares, or other written evidence of beneficial ownership.

(g) Final judgments for the payment of money.

(h) All annuities and annuity contracts.

The effective date of this Amendment shall be January 1, 1969; provided, that the intangible personal property taxes levied for the year 1968 shall be collected.

Okla. Const. Art. 10, § 6A (1968).

In 2012, Art. 10, § 6A was amended to its presently effective language: “Beginning January 1, 2013, intangible personal property shall not be subject to ad valorem tax or to any other tax in lieu of ad valorem tax within this State.” Okla. Const. 10, § 6A (2012). As a result of this amendment, all intangible personal property is deemed exempt from ad valorem tax.

In its Brief, Amici Curiae highlight the change in this constitutional amendment as if it has an impact on the resolution of this appeal. Specifically, Amici Curiae seem to suggest that since all intangible personal property is now exempt, PTCs should be deemed exempt intangible personal property. The error in this implication is that Art. 10, § 6A, as it currently reads, does not define what is and is not intangible personal property. While Assessors do not argue against the fact that intangible personal property is exempt from ad valorem tax under Oklahoma’s Constitution, the issue of whether PTCs meet the essential characteristics of intangible personal property, or property of any kind, must first be resolved to determine the applicability of Art. 10, § 6A. Thus, Amici Curiae’s position regarding the amendment to Art. 10, § 6A is of no consequence in this appeal.

### **III. THIS COURT SHOULD GIVE NO WEIGHT TO AMICI CURIAE'S POLICY CONSIDERATIONS.**

Amici Curiae recast many of KW's unsupported legal contentions as "policy considerations" to argue that PTCs are intangible personal property. These policy considerations should be given no weight by this Court, because the "policies" are contrary to law and acceptable appraisal methodology.

For example, Amici Curiae claim that PTCs are intangible personal property based on the same legally unsupported argument presented by KW that a hypothetical willing buyer would not receive the right to claim PTCs after purchasing the tangible personal property comprising a wind farm. Amici Curiae assert that "the economic reality is that a potential buyer would not necessarily obtain the benefit of the PTCs when purchasing a wind farm's tangible personal property." (Amici Curiae Br., at 18-19.) Amici Curiae continue by stating that "in order for a potential buyer to be entitled to claim the PTCs, the buyer would be required to purchase the tax equity class units from the tax equity partner." (Amici Curiae Br., at 19.) Apart from presenting no legal authority for their fictional scenario, Amici Curiae's "policy" argument is riddled with errors and inconsistencies.

First, Amici Curiae's argument is contradicted by the statutory ownership requirement under 26 U.S.C. § 45. As thoroughly discussed in Assessors' Brief-in-Chief and Reply Brief, a hypothetical willing buyer of the tangible personal property comprising a wind farm would be the only party eligible to claim future PTCs after the hypothetical sale. (*See* Defs.' Brief-in-Chief, Prop. III.D., at 29-30; Defs.' Reply Br., Prop. I.A., at 1-5.)

Second, Amici Curiae's argument is contrary to the legal restriction against the transfer or sale of PTCs. (*See* Defs.' Brief-in-Chief, Prop. I; Defs.' Reply Br., Prop. II.C.ii., at 24-25.)



Third, Amici Curiae's argument would violate the hypothetical willing buyer-willing seller standard by analyzing the fair cash value of tangible personal property based on a specific ownership structure of the actual seller. (*See* Defs.' Brief-in-Chief, Prop. III.A.-B., at 22-25; Defs.' Reply Br., Prop. I.C., at 6.)

Fourth, Amici Curiae attempt to define the legal nature of PTCs by arguing that PTCs are always a product of or associated with an investor's interest in a tax equity partnership, rather than the tangible personal property of a wind farm. While common, a tax equity partnership is not the only type of ownership structure for wind farms. For instance, the case study of Nextera Energy, Inc. ("**Nextera**"), provides one example of how the legal characterization of PTCs cannot be based on the ownership structure of a wind farm. Nextera is one of the largest renewable energy producers in the United States. Nextera owns, either directly or indirectly, 16 wind farm companies that own and operate 16 wind farms in the state of Oklahoma. Six of Nextera's wind farm companies have joined in the Brief of Amici Curiae—Blackwell Wind, LLC, Mammoth Plains Wind, LLC, Minco Wind III, LLC, Minco Wind IV, LLC, Seiling Wind, LLC, and Seiling Wind II, LLC. Each of these wind farm companies is subject to a tax equity partnership. However, a number of Nextera's other wind farms that have not joined in this appeal are owned outright with no tax equity partners. Nextera receives and utilizes the income, tax credits and other tax benefits, such as depreciation, from these wind farms.

Under Amici Curiae's argument, if a wind farm is owned by a tax equity partnership, PTCs generated by the wind farm would constitute intangible personal property exempt from ad valorem tax. But this argument does not account for wind farms that are not owned by a tax equity partnership. Thus, while Amici Curiae complain about the potential for disparate

treatment between wind farms utilizing PTCs over other types of tax credits, Amici Curiae's rationale for deeming PTCs to be intangible personal property would only be applicable to some, not all, wind farms in Oklahoma. This fundamental flaw is the primary reason why courts and appraisers are precluded from considering the specific ownership structure and contractual arrangements of the actual owner of a wind farm under the hypothetical willing buyer-willing seller standard. (*See* Defs.' Brief-in-Chief, Prop. III.A., at 24.)

Lastly and most importantly, the United State Supreme Court has already ruled that tax credits, like PTCs, are not property. KW and Amici Curiae's position that PTCs should be deemed intangible personal property has already been decided and rejected under *Randall* and progeny. (*See* Defs.' Reply Br., Prop. II.B., at 18-20.)

Amici Curiae conclude their Brief by attempting to paint a grim picture from the wind industry in Oklahoma. Amici Curiae attempt to pressure this Court into believing that the development of wind projects in Oklahoma will not occur in the future and the wind industry participants will pack up and leave Oklahoma, if this Court does not rule in their favor. Amici Curiae's veiled ultimatum should not influence this Court.

This ad valorem tax case has been pending since 2016, and the issue regarding the proper characterization and treatment of PTCs has always been a central focus throughout the litigation. Prior to the pendency of this action, there were 39 operable wind farms located in Oklahoma. During the litigation of this case from 2016 to 2021, 27 new wind farms were constructed in Oklahoma, increasing the total number of wind farms by 41%. Moreover, there are at least 7 reported wind farms that are scheduled to be constructed in Oklahoma over the next three (3) years. The actions of the wind industry participants, such KW, Amici Curiae and

Nextera, do not match the grave narrative presented in Amici Curiae's Brief. New construction and continued operations of wind farms in Oklahoma are increasing exponentially each year.

The reality is that wind farm companies anticipate, plan for and budget sums that in-line with their actual costs of construction to cover future ad valorem taxes. These sums are relatively small when compared against the millions of dollars in income generated by from the sale of electricity and the hundreds of millions of dollars in reduced income tax liability from the tax benefits and credits, such as accelerated depreciation, bonus depreciation and PTCs. Next, the wind farm companies promote the new construction of wind farms at townhall meetings before municipal and county government officials and members of the local communities. Garnering support through promises of job creation and increased tax dollars, the wind farm companies are able to purchase or lease land from Oklahoma's landowners to begin construction.

After budgeting future ad valorem taxes, making promises of significant increases to the local tax bases to primarily fund the counties' school districts, and spending hundreds of millions of dollars constructing a wind farm, KW and Amici Curiae ask this Court to adopt a legally unsupported position that strips away some of the economic benefits (i.e., PTCs) of owning and operating the tangible personal property comprising a wind farm. This is the way that wind farm companies, like KW and Amici Curiae, are able to justify claiming that the fair cash value of their tangible personal property, which cost approximately \$450 million to construct, only has a fair cash value of approximately \$175 million before the wind farm is even placed into service.

Regardless of how this Court decides this appeal, KW and Amici Curiae will continue to maximize every potential profit center from their Oklahoma wind farms. Alternatively,

Oklahoma's county and municipal governments and county school districts may be left to fill the hole in their tax bases left by the unfulfilled promises and attempts by wind farm companies to avoid paying their fair share. Thus, in addition to the applicable legal authorities, appraisal methodology and considerations of real-world buyers and sellers, Assessors contend that this inequitable result is the only real policy consideration that should impact the decision of this Court.

**CONCLUSION**

For the reasons set forth herein and in Assessors' Brief-in-Chief and Reply Brief, this Court should reverse the District Court's decision and enter a judgment establishing the fair cash value of KW's Subject Property to be \$416 million as of January 1, 2016.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

This is to certify that on the 7<sup>th</sup> day of July 2022, a true and correct copy of the above and foregoing was mailed, via U.S. mail postage prepaid, to the following:

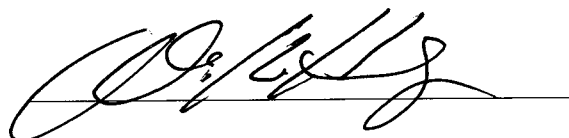
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A handwritten signature in black ink, appearing to be 'D. G. J.', written over a horizontal line.