

STATE OF VERMONT  
PUBLIC SERVICE BOARD

DOCKET NUMBER 8775

PETITION OF OTTER CREEK SOLAR, LLC PURSUANT TO  
BOARD RULE 5.508 SEEKING RESOLUTION OF A DISPUTE  
REGARDING AN INTERCONNECTION REQUEST WITH GREEN  
MOUNTAIN ENERGY CORPORATION

April 25, 2017  
9:30 a.m.

-----  
112 State Street  
Montpelier, Vermont

Technical Hearing held before the Vermont Public  
Service Board, at the Susan M. Hudson Conference Room,  
People's United Bank Building, 112 State Street,  
Montpelier, Vermont, on April 25, 2017, beginning at 9:30  
a.m.

P R E S E N T

Hearing Officer: John Gerhard, Staff Attorney

Staff: George Young, Acting General  
Counsel and Policy Director

CAPITOL COURT REPORTERS, INC.  
P.O. BOX 329  
BURLINGTON, VERMONT 05402-0329  
(802/800) 863-6067  
E-mail: info@capitolcourtreporters.com

A P P E A R A N C E S

MEGAN R. LUDWIG, ESQUIRE  
Appearing for the VT Department of Public Service  
112 State Street  
Montpelier, VT 05620-2601

MICHAEL MELONE  
Appearing for Otter Creek Solar LLC  
14 Wall Street, 20th Floor  
New York, NY 10005

CAROLYN BROWNE ANDERSON, ESQUIRE  
Appearing for Green Mountain Power Corporation  
2152 Post Road  
Rutland, VT 05701

PRIMMER PIPER EGGLESTON & CRAMER PC  
Appearing for Bullrock Deutsche-ECO LLC and  
BDE Addison Lazar Solar, LLC  
100 East State Street, P.O. Box 1309  
Montpelier, VT 05601-1309

BY: JOSLYN L. WILSCHEK, ESQUIRE

LUKE SHULLENBERGER  
Appearing for East Haven Solar LLC

I N D E X

<u>Witness</u>	<u>Page</u>
Christopher Little	6
Direct Examination by MR. Melone	6
Cross Examination by Ms. Anderson	21
Cross Examination by Ms. Wilschek	39
Prefiled Testimony Admitted	45
Redirect Examination by Mr. Melone	46
Kim Jones and Michael Butler	52
Direct Examination by Ms. Anderson	53
Prefiled Testimony Admitted	66
Cross Examination by Mr. Melone	67
Cross Examination by Ms. Wilschek	77
Andrew Thomas	
Prefiled Testimony Admitted	79

  

<u>Exhibits</u>	<u>Admitted</u>
GMP 13	32
GMP 2	34
GMP 1, 3-12, 14-18	52
OC-CML 1-9	45

1 HEARING OFFICER GERHARD: Good morning.  
2 My name is John Gerhard and I'm the Hearing Officer  
3 in this case Docket Number 8775 in re: petition of  
4 Otter Creek Solar LLC pursuant to Board Rule 5.508  
5 seeking resolution of a dispute regarding an  
6 interconnection request with Green Mountain Power  
7 Corporation. With me here today is George Young, our  
8 Acting General Counsel and Policy Director. If we  
9 could start by taking appearances, we'll start with  
10 the Department and work our way around the room  
11 please.

12 MS. LUDWIG: Megan Ludwig for the  
13 Department of Public Service.

14 MS. WILSCHEK: Joslyn Wilschek with  
15 Primmer Piper Eggleston & Cramer here on behalf of  
16 BDE-ECO LLC and BDE Addison Lazar Solar LLC, and with  
17 me here today is Andy Thomas from those companies.

18 MS. ANDERSON: I'm Carolyn Anderson  
19 representing Green Mountain Power, and with me today  
20 are our witnesses Michael Butler and Kim Jones.

21 MR. SHULLENBERGER: Luke Shullenberger  
22 for East New Haven Solar LLC.

23 MR. M. MELONE: Michael Melone for Otter  
24 Creek Solar LLC, and with me today is Christopher  
25 Little.

1 MS. WILSCHEK: I should probably state  
2 for the record that BDE Addison Lazar Solar issued  
3 subpoenas for Carl Cole and Armond Brisson -- Brisson  
4 and they are both here this morning pursuant to the  
5 subpoena.

6 HEARING OFFICER GERHARD: Thank you.

7 MS. WILSCHEK: And I have the original  
8 signatures on the subpoenas which I will give to you  
9 as a housekeeping matter.

10 HEARING OFFICER GERHARD: Okay. That's  
11 fantastic, and my understanding is that the motion or  
12 petition associated with the subpoenas there are no  
13 objections to that petition; is that correct?

14 MS. ANDERSON: Correct.

15 MR. M. MELONE: That's correct.

16 HEARING OFFICER GERHARD: Okay. Then  
17 we're going to grant that motion and I believe the  
18 first person up is going to be Mr. Little; is that  
19 correct?

20 MR. M. MELONE: That's correct.

21 HEARING OFFICER GERHARD: Okay.  
22 Fantastic. Mr. Little, I'm just going to swear you  
23 in here.

24 MR. LITTLE: Sure.

25 CHRISTOPHER LITTLE,

1                   Having been duly sworn, testified  
2                   as follows:

3                   DIRECT EXAMINATION

4                   BY MR. M. MELONE:

5                   Q.        Good morning.

6                   A.        Good morning.

7                   Q.        Can you please state your full name for the  
8                   record?

9                   A.        Christopher Little.

10                  Q.        And your current occupation?

11                  A.        I am the Director of Development for Ecos  
12                  Energy.

13                  Q.        Mr. Little, do you have in front of you two  
14                  sets of your prefiled testimony, the first dated August  
15                  31, 2016 consisting of 14 pages and including exhibits  
16                  labeled Petitioner CML 1 through CML 9?

17                  A.        I do.

18                  Q.        And the second supplemental testimony dated  
19                  September 9, 2016 consisting of two pages?

20                  A.        Yes I do.

21                  Q.        And were those items prepared by you or under  
22                  your direct supervision?

23                  A.        Yes.

24                  Q.        And are there any corrections to that  
25                  testimony or the related exhibits at this time?

1 A. No.

2 Q. And are they true and accurate to the best of  
3 your knowledge and belief?

4 A. They are.

5 MR. M. MELONE: I would like to move for  
6 the admission of the prefiled testimony of Chris  
7 Little dated August 31, 2016, including all the  
8 attached exhibits which are exhibits Petitioner CML 1  
9 through CML 9, as well as the supplemental prefiled  
10 testimony dated September 9, 2016.

11 HEARING OFFICER GERHARD: Any  
12 objections?

13 MS. ANDERSON: I don't have that  
14 supplemental testimony dated September 9, 2016.

15 MS. WILSCHEK: I don't either.

16 MR. M. MELONE: There's not much to it.

17 MS. WILSCHEK: Was it provided to the  
18 parties?

19 MR. M. MELONE: Unless I'm mistaken I  
20 think it was filed.

21 MR. LITTLE: To my knowledge it was as  
22 well.

23 MR. M. MELONE: And if it wasn't, it's  
24 not material and we could ignore it.

25 MS. WILSCHEK: May we go off the record

1 for a minute so we can review what that is because I  
2 don't have a copy of that.

3 HEARING OFFICER GERHARD: Certainly.  
4 Let's go off the record please.

5 (A discussion was held off the record.)

6 BY MR. M. MELONE:

7 Q. Mr. Little, your initial prefiled testimony  
8 dated August 31, 2016 question 16 was, does Otter Creek  
9 still have site control of the proposed new site? Do you  
10 have a revised response to that question 16 as of today?

11 A. Yes and I'm trying to find -- there's a lot in  
12 here, but the answer is no we did not have site control.

13 Q. Okay. Can you please provide us with some  
14 information regarding your employment history prior to  
15 working at Ecos?

16 A. I started my career as a right-of-way agent  
17 for at the time Wisconsin Electric Power Company which is  
18 now known as WE Energies, a utility in Wisconsin. My  
19 responsibilities were right-of-way acquisition, land use  
20 entitlements, things of those nature -- of that nature. I  
21 then worked as a land broker for Colliers International.  
22 Subsequent to that I worked as a land acquisition manager  
23 for a national home builder called Ryland Homes. We hit  
24 the great recession and I then ended up taking employment  
25 with my current employer Ecos Energy.

1 Q. And can you please provide me with some  
2 description of your job duties at your current employer?

3 A. Primarily my role is business development,  
4 land acquisition, and I also handle financing of solar  
5 projects for Ecos.

6 Q. And can you give an approximate estimate of  
7 the number of land acquisition agreements you have  
8 negotiated on behalf of Ecos?

9 A. About 130 -- exactly 130.

10 Q. Okay. Can you please tell me how you came to  
11 be involved with the property at 3146 Quaker Village Road  
12 in Weybridge?

13 A. It was an actively listed property that I  
14 discovered searching for potential solar sites that was  
15 listed by Carl Cole Realty on one of the internet web site  
16 listing sites.

17 HEARING OFFICER GERHARD: Mr. Melone,  
18 can I interrupt for one second?

19 MR. M. MELONE: Sure.

20 HEARING OFFICER GERHARD: Let me clarify  
21 3146 Quaker Village Road is what we have referred to  
22 as site number one in these proceedings?

23 MR. M. MELONE: That's correct.

24 HEARING OFFICER GERHARD: Thank you.

25 BY MR. M. MELONE:

1 Q. And do you remember approximately when that  
2 was when you started looking at the Weybridge I site?

3 A. Early 2015. So in advance of the initial  
4 contract date which was March 19, 2015.

5 Q. And prior to signing the initial purchase  
6 agreement on March 9, 2015 about how many communications  
7 had you had with Mr. Cole?

8 A. A handful. Probably a half dozen.

9 Q. And the purchase agreement was signed on  
10 behalf of PLH LLC; is that correct?

11 A. Yes.

12 Q. And can you tell us who PLH LLC is?

13 A. PLH is a land holding company, stands for  
14 Property Land Holding. It was an affiliate the Ecos  
15 Energy and Otter Creek Solar LLC.

16 Q. With respect to the initial purchase agreement  
17 when did that agreement terminate?

18 A. It terminated on May 15, 2015.

19 Q. And so during that approximately 70-day period  
20 before the termination of the initial purchase agreement  
21 were you in contact with Mr. Cole, and, if so, about what?

22 A. Yes. When we put land under contract we  
23 typically go through our typical screening criteria. One  
24 of the major things we look at right off the bat because  
25 it's such a sensitive issue in Vermont is the wetlands,

1 and we had hired a consultant to sort of perform an  
2 initial screening of this site. It was his opinion at the  
3 time that the soil characteristics of the Brisson farm  
4 contained hydric soils and that therefore the ANR may  
5 classify the soils as class 2 wetlands, and as any solar  
6 developer knows class 2 wetlands are problematic for  
7 development of solar farms. So Carl and I had had  
8 discussions about that, ongoing discussions, and that's  
9 ultimately what led us to initially seek alternative  
10 sites.

11 Q. So during that time period when you were  
12 discussing the wetlands issues with Mr. Cole about how  
13 many times did you speak to him approximately?

14 A. Probably over that period of time half dozen  
15 to a dozen times. More frequently than I normally do with  
16 a land broker.

17 Q. And what led up to Otter Creek's ultimate  
18 decision to let that initial purchase agreement terminate  
19 on May 15, 2015?

20 A. It was the hydric soils. We were concerned  
21 that we would end up with a site that was wetlands and we  
22 wouldn't be able to obtain an agreement with ANR to  
23 proceed with the 248 application.

24 Q. And subsequent to that decision to let the  
25 agreement terminate what happened next? Did you start

1 looking at alternative sites?

2 A. We did. We did. In fact, my colleague Tim  
3 Young, who handles interaction with utilities primarily on  
4 the interconnection side, had indicated that Michael  
5 Butler had said it would be possible to potentially move  
6 the point of interconnection --

7 MS. ANDERSON: I'm going to object as  
8 hearsay.

9 HEARING OFFICER GERHARD: Sustained.

10 A. We looked for alternative sites that were  
11 along the same circuit that were in close proximity to the  
12 substation.

13 Q. And during this time that you were looking at  
14 alternative sites were you still in contact with Mr. Cole?

15 A. I was periodically in the beginning and then  
16 much more frequently later on in the process of Carl had  
17 been working with Armond and a different ecologist on  
18 implementing best management practices for the property,  
19 and this ecologist had a differing opinion on the soil  
20 characteristics of the Brisson farm, and so ultimately  
21 Carl and I had been discussing that ongoing, and as it led  
22 up to the second time we put the site under contract we  
23 had increased our discussions and actually been more  
24 engaged in hiring this ecologist to ultimately perform the  
25 wetlands study.

1 Q. And during this time when you were speaking to  
2 Mr. Cole about the ongoing wetlands investigation about  
3 how many times were you in touch with Mr. Cole?

4 A. During that period on and off probably --  
5 between the two contracts probably ten times.

6 Q. And approximately, if you can remember, do you  
7 remember what time period this was?

8 A. Well this would have been between the  
9 termination of the first contract which was May 15th and  
10 execution of the second contract which was September 2016  
11 -- September 14, 2016.

12 Q. So your conversations with Mr. Cole regarding  
13 the wetlands it led to the signing of a second agreement?

14 A. Correct. Yes. We had -- the other ecologist  
15 was Trudell Consulting Engineers and they had done some  
16 initial site investigation and we were comfortable enough  
17 with the preliminary information we got based on her  
18 opinion to put the site back under contract, officially  
19 hire her to perform a wetland investigation which she  
20 ultimately did, and those results and conclusions were  
21 ultimately verified by the ANR.

22 Q. And through this time period between the first  
23 and second purchase agreement did you have any direct  
24 communications with Mr. Brisson?

25 A. I believe Mr. Brisson and I spoke on one or

1 two occasions including a conference call.

2 Q. And throughout this same time period did Mr.  
3 Cole or Mr. Brisson indicate whether any third parties  
4 were interested in purchasing the Weybridge I site?

5 A. I recall maybe perhaps Carl indicating that  
6 there was interest from maybe one other party, but that  
7 wasn't typically something he and I spoke about.

8 Q. A lot has been said in this case regarding the  
9 timing of PLH's decision to sign the second purchase  
10 agreement. Can you tell me why the purchase agreement was  
11 signed on the eve of the technical hearing in this case?

12 A. Well we had been working leading up to that  
13 with the wetland ecologist and trying to determine whether  
14 this site would in fact be developable and suitable for a  
15 248 application with the state, but we were motivated to  
16 get the contract executed before the date of the technical  
17 hearing.

18 Q. The primary impetus for deciding to sign the  
19 second purchase agreement that was based on the wetlands  
20 investigation or was there something else?

21 A. In our opinion the site was a great site -- is  
22 a great site for solar development. The wetland  
23 investigation at the time was the one factor that was  
24 preventing us from moving forward.

25 Q. And subsequent to the signing of the second

1 purchase agreement what has occurred with respect to the  
2 land?

3 A. The cloud of this hearing, the uncertainty of  
4 whether or not we're going to be able to proceed with our  
5 interconnection application.

6 Q. And has the second purchase agreement expired?

7 A. Yes.

8 Q. And can you tell me why PLH and Otter Creek  
9 has determined to let that contract lapse?

10 A. Because of the interconnection application  
11 issues and our uncertainty as to whether or not we can  
12 move forward.

13 Q. Notwithstanding the existence of this  
14 proceeding and the interconnection issues that Otter Creek  
15 is experiencing with GMP have you still been in contact  
16 with Mr. Cole and Mr. Brisson concerning the development  
17 of the property for solar?

18 A. Yes. Carl is a very engaged listing agent.  
19 He's very active in not only listing a property but in all  
20 aspects of the development, and he and I -- well we had  
21 voiced some concerns over some community opposition. We  
22 had held a hearing with the Town of Bennington. The town  
23 had subsequently, after finding out about our plans to  
24 develop a solar farm and having this community outreach,  
25 passed an amendment to the town plan that had discouraged

1 and really almost in some ways prohibited solar  
2 development on the Brisson farm, and there was some  
3 question as to the procedural issues that the town took to  
4 implement this amendment to their town plan, and Carl and  
5 I had been speaking about the possibility of perhaps  
6 challenging that or having Mr. Brisson challenge the  
7 amendments. Ultimately because of the cloud of the  
8 interconnection we elected not to proceed with that route.

9 Q. Notwithstanding the local land use issues that  
10 you have experienced in Weybridge, if this proceeding were  
11 to go forward and be resolved in Otter Creek's favor would  
12 PLH still be interested in the Weybridge I site?

13 A. Yes we would and it would remove a large  
14 portion of risk that would have otherwise been there and  
15 has prevented negotiations with the landowner and  
16 continuing forward.

17 Q. Over the course of I think it's about two  
18 years about how many conversations have you had with Carl  
19 and -- Mr. Cole and Mr. Brisson?

20 A. Probably over two dozen.

21 Q. Would you describe your relationship with Mr.  
22 Brisson's agent Mr. Cole as atypical?

23 MS. ANDERSON: Objection to the form of  
24 the question.

25 MS. WILSCHEK: Object.

1 MR. M. MELONE: I can rephrase it.

2 HEARING OFFICER GERHARD: Please do.

3 BY MR. M. MELONE:

4 Q. In your experience I think you mentioned you  
5 had something like -- have negotiated something around 130  
6 different land use contracts on behalf of Ecos and PLH.  
7 Does this experience with the Weybridge I site stand out  
8 in your mind in any way?

9 MS. ANDERSON: Objection. I don't think  
10 this is relevant. What his experience -- how this is  
11 different from others, I don't see the relevance of  
12 that.

13 HEARING OFFICER GERHARD: I'm going to  
14 let the question go ahead.

15 A. I would say in so far as the way that Carl is  
16 involved with the site in this particular case that he has  
17 listed, I don't very often see an agent get involved on  
18 the development side, attending public hearings, engaging  
19 the buyer as often as Carl did. He's one of the better  
20 land brokers that I have ever worked with in as far as  
21 that he doesn't just list a property, throw it up on the  
22 web, and hope that people call. So from that perspective  
23 I would say yes.

24 Q. And in your opinion in laymen's terms is this  
25 a business relationship that you have?

1 A. Yes.

2 MS. ANDERSON: I object.

3 MS. WILSCHEK: I object. That is a pure  
4 question of law. If the witness believes he can  
5 answer that question, we can explore that on cross.  
6 I also have a question in terms of resources and  
7 timing. This has been -- you know it's 10 o'clock  
8 and we have had a long live direct which I think is  
9 fine here, we're kind of going outside the box a  
10 little bit, but this is basically walking through his  
11 prefiled testimony and I'm not sure at what point  
12 that's not an appropriate process given everyone's  
13 time and resources here. So I just wanted to also  
14 put that out, but I think we have a lack of  
15 foundation right now in terms of this witness  
16 providing a legal opinion, but maybe Mr. Melone wants  
17 to explore that more. I don't know.

18 MR. M. MELONE: I was particular in the  
19 phraseology that I used to avoid any sense of asking  
20 the witness for a legal conclusion. I'm asking  
21 purely in terms of a layman description of what a  
22 business relationship is, not a legal conclusion  
23 under the Board rules at all.

24 HEARING OFFICER GERHARD: Okay. Go  
25 ahead and answer the question.

1 A. Yes.

2 Q. A lot has been said in this case about the  
3 need for a developer to maintain site control throughout  
4 the interconnection process, and from a business  
5 perspective, practical perspective, in your opinion is  
6 there a need for a solar developer to maintain site  
7 control throughout the process?

8 MS. ANDERSON: I'm going to object. It  
9 doesn't make any difference what his opinion is.  
10 It's what the rules require. From a business  
11 perspective that's not relevant here.

12 MR. M. MELONE: A lot of briefs have  
13 talked about the practical implications of  
14 maintaining site control. So I think what Mr. Little  
15 has from a business experience in these matters is  
16 important to say and relevant to what's being decided  
17 today.

18 HEARING OFFICER GERHARD: Go ahead and  
19 answer the question.

20 BY MR. M. MELONE:

21 Q. Let me know if you need me to repeat the  
22 question.

23 A. No. No. I understand the question. The  
24 answer is no because the site control is the developer's  
25 risk and developers typically have a lot invested into

1 these developments as far as interconnection cost,  
2 deposits, deposits with landowners, any due diligence  
3 activities related to whether it's geotechnical  
4 engineering, wetland investigations. It can amount to  
5 approaching \$100,000 in some cases or even more, and so  
6 the site control becomes secondary. There's the sort of  
7 notion that, you know, developers are going to go out and  
8 tie up sites all over the place and apply -- not tie up,  
9 but tie up the interconnection queue by just submitting  
10 applications. I think that is not realistic or practical  
11 for people to do because of the financial implications  
12 that would be required to do so.

13 MR. YOUNG: Can I interject here? So  
14 your point -- and correct me if I'm wrong, your point  
15 is up until the time you're ready to build it there  
16 should be no need for site control? Is that what  
17 you're saying?

18 MR. LITTLE: I'm saying it's not  
19 absolutely necessary is what I'm saying to have  
20 continuity of site control.

21 MR. YOUNG: Well I phrased it as there's  
22 no need for it. You said absolutely necessary. Is  
23 there a difference between those two terms?

24 MR. LITTLE: No.

25 MR. YOUNG: Okay. So in your view site

1 control is unnecessary from your perspective?

2 MR. LITTLE: Correct.

3 MR. YOUNG: That's fine. Thanks.

4 MR. M. MELONE: In the interest of Ms.  
5 Wilschek's concern about timing I'm going to open up  
6 the witness to questioning.

7 HEARING OFFICER GERHARD: Okay.

8 Department.

9 MS. LUDWIG: I have no questions.

10 MS. WILSCHEK: I think GMP will go first  
11 and then BDE.

12 HEARING OFFICER GERHARD: That's a good  
13 point. Thank you for reminding me.

14 CROSS EXAMINATION

15 BY MS. ANDERSON:

16 Q. So, Mr. Little, page 5 to 7 of your testimony,  
17 do you have it up there? You spend a great deal of time  
18 talking about the body of law regarding material  
19 modifications and FERC precedent and the Montgomery Great  
20 Falls, Lakeswind, and Jeffers FERC cases, correct?

21 A. Yup.

22 Q. You don't have a law degree, do you, Mr.  
23 Little?

24 A. I do not.

25 Q. And you're not a lawyer?

1 A. No.

2 Q. You have said that when you submitted the  
3 original application to GMP, the interconnection  
4 application for site one, that was the Brisson site?

5 A. Correct.

6 Q. You had a purchase and sale agreement,  
7 correct?

8 A. Correct.

9 Q. And that purchase and sale agreement was dated  
10 March 2015; is that correct?

11 A. Correct.

12 Q. All right. And on April 27, 2015 you  
13 submitted the interconnection application to Green  
14 Mountain Power?

15 A. Okay.

16 Q. You believe me on that?

17 A. Yes I believe you on that.

18 Q. And on -- you testified that on May 15, 2015  
19 you notified Mr. Brisson that you were exercising -- or  
20 PLH was exercising its right to terminate that contract?

21 A. Correct.

22 Q. Now in that Brisson contract the purchase  
23 price was \$405,000; is that correct?

24 A. I don't have it in front of me, but that seems  
25 accurate.

1 Q. You agree it's \$405,000?

2 A. Well to agree with a hundred percent certainty  
3 I would like to see the contract.

4 MS. WILSCHEK: Which contract is it?

5 BY MS. ANDERSON:

6 Q. It's the first Brisson contract. I'm going to  
7 show you what's been marked -- it's not yet in evidence  
8 but it will be -- GMP 1.

9 A. Okay.

10 Q. Brisson contract. Do you agree with me that  
11 the purchase price is \$405,000?

12 A. I agree. Yes.

13 Q. Thank you. Why don't I stay here because the  
14 contract price also required you to put a \$10,000 earnest  
15 money deposit down; is that correct?

16 A. Correct.

17 Q. And you did that?

18 A. Correct.

19 Q. And then the rest of the contract has a  
20 provision that if the contract isn't terminated in 60 days  
21 you lose your earnest deposit, your down payment, correct?  
22 Would you like to see it again?

23 A. No. Well yeah I would like to see the  
24 contract again because I don't think that's entirely  
25 accurate. I think if the contract is extended we lose the

1 earnest money deposit. It says prior to the end of the  
2 contingency period buyer does not notify seller of its  
3 intended -- okay. I agree with that. That's contrary to  
4 our standard agreement, but that was something that we had  
5 negotiated. Yes.

6 Q. So you agree if you didn't terminate that  
7 contract in 60 days you would lose your \$10,000?

8 A. Yes. Yes.

9 Q. Okay. So when was -- well I think I've got it  
10 here. I don't have to guess. So 60 days from your  
11 contract date was about May 18, 2015, isn't that right?

12 A. Yes.

13 Q. Okay. And so you terminated that contract on  
14 on May 15th, 2015 and you didn't lose your deposit, did  
15 you?

16 A. Correct.

17 Q. Now you understand under Rule 5.500 that you  
18 have to have site control in order to have a complete  
19 application for -- to be processed by the interconnecting  
20 utility, in this case Green Mountain Power; is that  
21 correct?

22 A. Well you're telling me that now, but that --  
23 yes.

24 Q. You want to look at --

25 A. We had a valid agreement at the time we

1 submitted the application.

2 Q. My question is that you understand that you  
3 have to have site control in order to have a complete  
4 application?

5 A. Yes. Yes.

6 Q. Just let me finish the question so that the  
7 record is clear. You understand that you have to have  
8 site control in order to have a complete application to  
9 the interconnected utility to process your interconnection  
10 application; is that correct?

11 A. Yes.

12 Q. So understanding that you had to have this  
13 complete application when you submitted your application  
14 -- let me withdraw that question.

15 So on May 15th, 2015 Green Mountain Power  
16 informed you that your application was deemed complete,  
17 isn't that correct?

18 A. I don't know. I don't have the date in front  
19 of me.

20 Q. If Michael Butler testifies in his prefiled  
21 testimony that will be submitted here that it was May  
22 15th, 2015 that -- let me finish and that's really just  
23 for the record, sir. If Michael Butler testifies that on  
24 May 15th, 2015 Otter Creek Solar was informed that its  
25 application was complete, you don't disagree with that, do

1 you?

2 A. No.

3 Q. All right. And on May 15th, 2015, the very  
4 same day that your application was deemed complete, you  
5 terminated that contract with the Brissons, isn't that  
6 correct? Yes or no answer.

7 A. It's correct. It's coincidental.

8 Q. So then on -- let's see -- after you  
9 terminated the Brisson contract on the same day that Green  
10 Mountain Power told Otter Creek that its application was  
11 complete, you never told Green Mountain Power during the  
12 interconnection process that you had terminated your  
13 contract with the Brissons, did you?

14 A. I don't recall. I'm not the one that  
15 interfaces with the utility. It's a colleague of mine.

16 Q. All right. So it's not that you don't recall.  
17 You don't know, do you?

18 A. I don't know.

19 Q. All right. So if Mr. Butler testifies that  
20 nobody from Otter Creek ever told him during the  
21 interconnection process that the contract for the Brisson  
22 property -- the site control for the application that we  
23 were processing had been terminated, you don't disagree  
24 with that, do you?

25 A. I don't know the answer to that because that

1 would be something my colleague would have to answer.

2 Q. Now on February 24, 2016 -- hang on one  
3 second. Let me withdraw that. You understand that Green  
4 Mountain Power sent Otter Creek a facilities study  
5 agreement in February; February 22, 2016?

6 A. Okay. Yes. Yes.

7 Q. All right. At the time that they sent a  
8 facilities study agreement in February of 2016 Otter Creek  
9 Solar did not have site control over the site it listed in  
10 its application; is that correct?

11 A. No we did not.

12 Q. Okay. And if that facilities study -- before  
13 the facilities study Green Mountain Power had done a  
14 system impact study and entered into a system impact study  
15 agreement with Otter Creek Solar, and so when those events  
16 took place you did not have -- Otter Creek did not have  
17 site control over the Brisson property, did it?

18 A. No it did not.

19 Q. Okay. And when the system impact study was  
20 done you didn't have site control, correct?

21 A. I don't believe so.

22 Q. And when we did the fast track, which we did  
23 right after we -- you know, after May 15th, 2015 you  
24 didn't have site control?

25 MR. M. MELONE: I'm going to object just

1 to the form of these questions. Site control is a  
2 legal defined term. I'm not sure if the witness is  
3 capable of giving a legal answer like that. If we  
4 could change the term to something other than site  
5 control. Perhaps purchase agreement.

6 MS. ANDERSON: He's answered the  
7 question repeatedly already. I don't see any reason  
8 to change it at this point.

9 MS. WILSCHEK: And may I add  
10 Petitioner's counsel asked the witness questions  
11 using the words site control. So I think he's opened  
12 the door on cross and I have the same questions using  
13 the same words. So --

14 HEARING OFFICER GERHARD: Okay. We can  
15 go ahead using the term site control.

16 MS. ANDERSON: Thank you. Could you  
17 read back the last answer?

18 (The record was read as requested.)

19 BY MS. ANDERSON:

20 Q. Could you answer the question please?

21 A. That's correct.

22 Q. You did not have site control?

23 A. Yes.

24 Q. So then we get back to February 22, 2016 when  
25 Green Mountain Power wants you to do a facilities study

1 agreement and you have to have a facility location for  
2 that agreement, don't you?

3 A. Yes.

4 Q. But Otter Creek Solar didn't have a facility  
5 location because it didn't have a site, correct?

6 A. We -- we ended up finding an alternate site.

7 Q. Excuse me. I'm talking about February 2016.

8 A. When in February of 2016?

9 Q. 22nd.

10 A. We had site control on an alternate site on  
11 February 24, 2016.

12 Q. Okay. So on February 22nd you had already  
13 entered into a facilities study agreement with Green  
14 Mountain Power. At that time you did not have a site on  
15 which we could have conducted the facility study; is that  
16 correct?

17 A. That's correct.

18 Q. So at that point you knew you needed to get a  
19 site?

20 A. We had actively been looking for sites.

21 Q. Yes or no. You knew you needed a site?

22 A. We invested a lot of money into investigating  
23 the potential development on a site.

24 Q. Could the witness be instructed to answer the  
25 question please?

1 HEARING OFFICER GERHARD: Mr. Little,  
2 please answer the question.

3 A. Okay. Repeat the question please.

4 Q. On February 22, 2016 you had a facilities  
5 study agreement to study the Brisson property, but you  
6 didn't have site control over the Brisson property?

7 A. Correct. Correct. Yes.

8 Q. And so you needed another site?

9 A. We did. Correct.

10 Q. And Green Mountain Power told Mr. Young that  
11 if you move to another site you're going to need a new  
12 interconnection application. Do you agree with that?

13 A. Is that the question?

14 Q. Do you agree with that?

15 A. I don't.

16 Q. You don't agree with that statement?

17 A. No. That is absolutely not what we were told.

18 Q. Okay. I'm going to show you what's been  
19 marked as Green Mountain Power 13. May I approach the  
20 witness? And I would like you to read the e-mail from  
21 Michael Butler on February 29, 2016 to Tim Young regarding  
22 the Weybridge facility study agreements.

23 A. And that may be accurate here.

24 Q. I'm not asking you -- I'm asking you to read  
25 that e-mail into the record.

1           A.           Okay. I see -- okay. Tim, GMP has reviewed  
2 your February 24, 2016 letter and satellite imagery you  
3 provided on 2/25/16 outlining the original point of  
4 interconnection and the modified point of interconnection  
5 for Weybridge Solar. An interconnection at the new  
6 location constitutes an entirely different project and  
7 such requires submission of a new interconnection  
8 application. Once received this new application will take  
9 a position within the interconnection queue based on the  
10 date and time it arrived. If you have any questions,  
11 please don't hesitate to let me know. Thank you, Michael  
12 Butler.

13           Q.           Thank you. Would it help if I move this  
14 exhibit now so the Board has that?

15                       HEARING OFFICER GERHARD: And do you  
16 have copies for --

17                       MS. ANDERSON: I believe these were all  
18 produced in discovery, but I do have some copies as  
19 well.

20                       HEARING OFFICER GERHARD: As long as  
21 everyone has a copy, I don't care where they got it  
22 from as long as it's an accurate copy, if the other  
23 parties have them. Mr. Melone, do you need a copy?

24                       MR. M. MELONE: Yes. I need a copy.

25                       MS. WILSCHEK: Just as a point sometimes

1 the Department offers its photocopier if anyone needs  
2 copies. I know I have had to do that in the past.

3 MS. ANDERSON: I do have a copy.

4 HEARING OFFICER GERHARD: And you had  
5 wanted --

6 MS. ANDERSON: This exhibit is  
7 stipulated for admission.

8 MR. LITTLE: Can I comment?

9 HEARING OFFICER GERHARD: You can answer  
10 questions. For the record exhibit GMP 13 is  
11 admitted.

12 (Exhibit GMP 13 was admitted into the  
13 record.)

14 MS. ANDERSON: GMP 13 is the emails that  
15 were produced in GMP's responses to Otter Creek's  
16 first discovery 1-2.10.

17 MS. WILSCHEK: Thank you.

18 MS. ANDERSON: You're welcome.

19 BY MS. ANDERSON:

20 Q. So then on 2/24/2016 you entered into an  
21 agreement for site two?

22 A. Correct.

23 Q. And that would be the Piper site; is that  
24 correct?

25 A. Yes.

1 Q. And this site was a little bit cheaper than  
2 the first site. This site was only \$215,000?

3 A. The price had nothing to do with it.

4 Q. Excuse me. I'm really going to ask you to  
5 wait until I finish the question before you answer and  
6 then to please only answer the question that I've asked.  
7 So the Piper agreement was substantially cheaper than the  
8 Brisson agreement being only \$215,000; is that correct?

9 A. The overall purchase price that is correct,  
10 but there's a lot of different aspects to a piece of land  
11 including acreage, buildable acreage, wetlands. So to  
12 compare the prices is really not relevant.

13 Q. But the price was \$215,000?

14 A. Correct.

15 Q. You still had a \$10,000 earnest money deposit;  
16 is that correct?

17 A. On this new site you're talking about?

18 Q. The Piper site, yes.

19 A. That may be accurate. That sounds right.

20 Q. Would you like to see it?

21 A. Sure.

22 Q. This is exhibit -- GMP exhibit 2 which also  
23 has been stipulated to so I will move this exhibit as  
24 well.

25 A. Okay. I agree, yes, that's accurate.

1 MS. WILSCHEK: What number was that?

2 Sorry.

3 HEARING OFFICER GERHARD: It's exhibit  
4 GMP number 2 and this is moved for admission and it's  
5 been stipulated and so it would be admitted.

6 (Exhibit GMP 2 was admitted into the  
7 record.)

8 BY MS. ANDERSON:

9 Q. So you have site control of a new site as of  
10 June 24, 2016, correct?

11 A. I think you meant February --

12 Q. Excuse me. February 24, 2016. I apologize.

13 A. Yes. Correct.

14 Q. All right. And that site was two miles away  
15 from the original site which was in your interconnection  
16 application; is that correct?

17 A. Yes approximately.

18 Q. And Green Mountain Power -- you asked -- not  
19 you specifically, but Mr. Young wanted Green Mountain  
20 Power to do the facilities study on the Piper site rather  
21 than the Brisson site, isn't that correct?

22 A. You would have to ask him, but it seems  
23 appropriate for what we were doing. Yes.

24 Q. If Mr. Butler testifies that Mr. Young asked  
25 him to do the facilities study on the Piper site rather

1 than the Brisson site, site two rather than site one, you  
2 don't disagree with that; is that correct?

3 A. I would have to consult with my colleague Tim  
4 Young before I would agree with that.

5 Q. Now you testified that on June 20, 2016 you  
6 terminated your site control for site two, the Piper site;  
7 is that correct?

8 A. That's correct.

9 Q. And during that time period that was while we  
10 were involved in the interconnection dispute; is that  
11 correct?

12 A. Yes. Correct. Yes.

13 Q. And the Pipers offered to extend that contract  
14 if you would pay them \$10,000, but you refused to do so;  
15 is that correct?

16 A. There was more to it than just that, but we  
17 did not elect to extend the contract because of our  
18 inability to negotiate an extension.

19 Q. I'm going to ask you to look at your testimony  
20 on page 13 line 17 -- 17 and 18 where you stated the  
21 Pipers then offered to extend the purchase contract on  
22 August 25, 2016 only if we paid them an additional \$10,000  
23 non-refundable payment. Is that what your testimony says  
24 right there?

25 A. Yes it does.

1 Q. Thank you. And you were unwilling to pay that  
2 \$10,000 non-refundable payment; is that correct?

3 A. Correct. At the time we were not.

4 Q. So then you -- it wasn't until September 14,  
5 2016 that Otter Creek regained site control over the land  
6 for site one, the Brisson site; is that right?

7 A. We regained site control to my knowledge on  
8 September 14, 2016.

9 Q. All right. What was the date that that  
10 contract terminated?

11 A. January 12, 2017 of which a significant amount  
12 of earnest money was non-refundable in that transaction.

13 HEARING OFFICER GERHARD: I would just  
14 like to ask a clarifying question. Which contract  
15 are we talking about at this point? I just want to  
16 make sure I'm following.

17 MS. ANDERSON: Thank you. I'm sorry I  
18 didn't make that clear.

19 BY MS. ANDERSON:

20 Q. This is the contract for site two, correct?

21 A. No. This is the Brisson farm, the original  
22 point of interconnection, we had under contract again from  
23 September 14, 2016 to January 12, 2017, and I know there's  
24 been this idea we haven't paid all this earnest money and  
25 she keeps pointing this out, but we did pay a significant

1 amount to the Brissons. Over \$20,000 of non-refundable  
2 money.

3 Q. So I want to just make sure that the record is  
4 clear on that question so I'm just going to rephrase it  
5 and ask it again. So it wasn't until September 14, 2016  
6 that Otter Creek regained site control over the land for  
7 site one?

8 A. Correct.

9 Q. All right.

10 A. Yes.

11 Q. And then you terminated -- Otter Creek  
12 terminated that site control on January 12, 2017?

13 A. The contract lapsed.

14 Q. The contract terminated?

15 A. It automatically terminated. Right. Correct.

16 Q. Under the terms of the contract could you have  
17 paid more money to keep the contract going?

18 A. Not under the terms because all of their  
19 earnest money became non-refundable to Mr. Brisson. To  
20 extend the contract we would have had to enter into an  
21 amendment that probably would have required additional  
22 non-refundable money.

23 Q. And you did not do that?

24 A. We did not do that --

25 Q. All right.

1 A. -- because of the interconnection issue.

2 Q. So I just want to go through this. You had an  
3 interconnection application that you submitted in April  
4 2015. In May -- from May 15th -- as of May 15th, 2015 to  
5 February 24, 2016 you had no site control while your  
6 application was being processed at Green Mountain Power;  
7 is that correct?

8 A. Right. Yeah. That's correct.

9 Q. And that was no site control over the original  
10 site?

11 A. Correct.

12 Q. No site control over any site?

13 A. No, but we were able to get it back under  
14 contract.

15 Q. And then from June 20 -- from February 24 --  
16 excuse me, from June 20, 2016 to September 13, 2016 you  
17 had no site control while your dispute was pending before  
18 the Public Service Board; is that correct?

19 A. Can you repeat the date ranges please?

20 Q. From June 20, 2016 to September 14, 2016 while  
21 your application was pending at Green Mountain Power and  
22 you were pursuing a dispute about changing the relocation  
23 of your point of interconnection with the Public Service  
24 Board you had no site control over the property?

25 A. Yes. That's correct. Yes.

1 Q. That's correct?

2 A. Yes.

3 Q. All right. And from January 12, 2017 until  
4 today, which I believe is April 25, 2016, while your  
5 application is still pending at Green Mountain Power and  
6 you're still pursuing a dispute with the Public Service  
7 Board you have no site control for your application --  
8 your interconnection application; is that correct?

9 A. That's correct. Yes.

10 MS. ANDERSON: I have no further  
11 questions at this time.

12 MS. WILSCHEK: I have about five  
13 questions. I'm going to condense mine because GMP  
14 asked many of them.

15 CROSS EXAMINATION

16 BY MS. WILSCHEK:

17 Q. Do you recall the questions about site control  
18 that GMP's counsel just asked you?

19 A. Yes.

20 Q. I have a few questions on that. During the  
21 time frames where you have acknowledged that you had no  
22 site control did you have any oral agreements to bind the  
23 site one landowner to sell you the property?

24 A. No. Just ongoing discussions, communications  
25 with the landowner. Nothing -- no verbal agreement.

1 Q. Okay. So you had no -- there's no verbal  
2 agreement to -- for an option to buy the property and  
3 there's no verbal agreement for an option to lease the  
4 property?

5 A. No.

6 Q. And there's no verbal agreement to enter into  
7 a later agreement for the time periods that GMP's counsel  
8 is questioning you on?

9 A. No. Just ongoing communications.

10 Q. So these ongoing communications were general  
11 in nature would you agree?

12 A. They are generally about the property, but  
13 yeah.

14 Q. But they are not specific in terms of during  
15 this time period where you had no written agreement there  
16 was no oral agreement to close on a certain date, correct?

17 A. No.

18 Q. Okay. What is the restatement of contracts?

19 A. I'm not sure I understand the question.

20 Q. Well your testimony discusses it and I would  
21 like to understand what it is.

22 A. Where does it discuss it?

23 Q. It discusses it on page 13 line 7. I have a  
24 few questions on that for you.

25 A. I need to reread the entire section here.

1 MR. M. MELONE: I'm going to object  
2 because Mr. Little has already said he's not an  
3 attorney.

4 MS. WILSCHEK: This is in his testimony  
5 and he swore under oath that he's written this  
6 testimony, and so if it's in somebody's testimony  
7 they have sworn under oath that they have written it  
8 and I have a right to ask them questions about it.

9 HEARING OFFICER GERHARD: I'll let the  
10 question. Go ahead.

11 A. The point is that it wasn't a material  
12 modification.

13 Q. Well that's not my question. My question is  
14 what is the restatement of contracts?

15 A. I don't -- I don't have it in front of me. I  
16 would have to reread that reference in state statutes.

17 Q. Do you know what that is?

18 A. Not off the top of my head.

19 Q. Did you write that testimony?

20 A. I wrote this portion of the testimony with  
21 help from our attorney.

22 Q. So do you have any idea sitting here today  
23 what the restatements are?

24 A. I would have to reread it.

25 Q. What's the difference between the restatement

1 second and the restatement third?

2 A. I do not know the answer to that.

3 Q. Why should the Board rely on the restatement  
4 of second of contracts in this case?

5 A. I do not know the answer to that.

6 Q. Do you have any knowledge -- personal  
7 knowledge of the restatements legal relevance in these  
8 proceedings?

9 A. I probably read it at one point or another  
10 because it's in here, but it's been a long time since this  
11 testimony was written.

12 Q. You mentioned -- you mentioned in response to  
13 a Green Mountain Power question that PLH LLC is an  
14 affiliate of Otter Creek. What's an affiliate?

15 A. An affiliate has common ownership at the top  
16 of our organizational chart.

17 Q. So does PLH and Otter Creek share members?

18 A. They don't have the same member, but I mean --  
19 I could go through the ownership structure, but  
20 essentially there is a common ownership at the top of our  
21 organizational chart that has control over these various  
22 entities.

23 Q. So PLH was the company that signed the site  
24 one purchase and sales agreement, correct?

25 A. That's correct. Yes.

1 Q. And does that company have a written agreement  
2 with Otter Creek in terms of an obligation to assign or  
3 transfer rights in a purchase and sales agreement?

4 A. I'm sorry. Can you repeat the question  
5 please?

6 Q. Are there any written agreements between PLH  
7 and Otter Creek Solar LLC that memorialize, if you will,  
8 an obligation of PLH to assign the purchase and sales  
9 agreement to Otter Creek?

10 A. I'm not aware of anything in writing, however,  
11 there are verbal interorganizational -- the common  
12 membership has control over both entities so it can be an  
13 internal agreement.

14 Q. Let's talk about that control. So if Otter  
15 Creek -- and I'm using that generally -- becomes the  
16 Section 248 -- would Otter Creek become the party that  
17 files for the 248 Certificate of Public Good?

18 A. Yes and Otter Creek would have a site lease  
19 with PLH. So once PLH purchases a site we then lease it  
20 to the project LLC.

21 Q. But there was never any written agreement  
22 between PLH and Otter Creek binding PLH to assign the  
23 purchase and sales agreement to Otter Creek, correct?

24 A. I don't recall.

25 Q. Okay. Do you ever recall seeing such an

1 agreement?

2 A. I don't recall.

3 Q. Do you -- is that something in your normal  
4 business practice you would insure takes place such as the  
5 company signing the purchase and sales agreement would  
6 assign that agreement to the ultimate solar developer?

7 A. Yeah it eventually would, but because the  
8 entities are controlled by the same individual it's not  
9 always necessary to memorialize everything in writing  
10 because it would be like you making an agreement with  
11 yourself in your head.

12 Q. But they -- but PLH and Otter Creek have  
13 separate Articles of Incorporation?

14 A. Correct.

15 Q. And they have separate Board of Directors?

16 A. They have -- they do not have a Board of  
17 Directors.

18 Q. They have separate officers?

19 A. They have separate officers. They have one  
20 controlling member.

21 Q. Do they have separate bank accounts?

22 A. Otter Creek does not have a bank account.

23 Q. Otter Creek doesn't have a bank account?

24 A. No.

25 Q. Okay. I think that's all I have.

1 MR. M. MELONE: I have a few questions  
2 for redirect.

3 HEARING OFFICER GERHARD: Mr.  
4 Shullenberger.

5 MR. SHULLENBERGER: I do not have any  
6 questions.

7 HEARING OFFICER GERHARD: And the  
8 Department?

9 MS. LUDWIG: No. I don't have any  
10 questions.

11 HEARING OFFICER GERHARD: And just do we  
12 want to clarify the record at this point? I just  
13 want to make sure that we moved the testimony and  
14 exhibits into the record at the beginning of your  
15 testimony and I'm wondering if you can double-check  
16 that for me. To the extent I didn't then we'll move  
17 those into the record just to be sure, and that's the  
18 prefiled testimony of Mr. Little along with exhibits  
19 CML 1 through 9.

20 (The Prefiled Testimony of Christopher  
21 Little was admitted into the record.)

22 (Exhibits marked OC-CML 1-9 were admitted  
23 into the record.)

24  
25

1 HEARING OFFICER GERHARD: The floor is  
2 yours, Mr. Melone.

3 REDIRECT EXAMINATION

4 BY MR. M. MELONE:

5 Q. Mr. Little, Ms. Wilschek just asked you a  
6 series of questions about the relationship between PLH and  
7 Otter Creek Solar LLC. Can you tell me who owns PLH LLC?

8 A. Thomas Melone.

9 Q. And who owns Otter Creek LLC?

10 A. I believe Allco Finance Limited owns Otter  
11 Creek.

12 Q. And who owns Allco Finance Limited?

13 A. Thomas Melone.

14 Q. And was there ever any question that the  
15 purchase agreement for either Weybridge I or Weybridge II  
16 would be assigned from PLH LLC to Otter Creek LLC?

17 A. I'm sorry. Can you repeat the beginning part  
18 of that question?

19 Q. Was there ever any question as to who would be  
20 the ultimate owner from internal corporate purposes?

21 A. No. PLH would always be the owner of any real  
22 property we purchased.

23 Q. And how many times has PLH LLC assigned a land  
24 interest to operating subsidiaries within your  
25 organization?

1           A.       None that I know of.

2           Q.       How many times -- I'm going to rephrase the  
3 question. How many times has PLH LLC as an owner of  
4 property leased certain land assets to operating  
5 subsidiaries under the corporate umbrella?

6           A.       Oh leased. To my knowledge -- well we own --  
7 I shouldn't say we. PLH owns 78 parcels of land, 42  
8 different locations. All of those are currently leased in  
9 one form or another. We have 15 operating solar farms  
10 that are operating on land that PLH leases to those  
11 various solar farms.

12          Q.       And does Thomas Melone control all of the  
13 decisions with respect to land transfers that PLH LLC is  
14 involved in?

15          A.       Yes.

16          Q.       Ms. Anderson asked you a number of questions  
17 regarding whether or not Otter Creek had quote unquote  
18 site control of the Weybridge I site at various points in  
19 time. There are a number of different ways that evidence  
20 site control. Can you please describe, so that there is  
21 no misunderstanding, what you understood the words site  
22 control to mean when Ms. Anderson asked you that?

23          A.       Purchase agreement, lease agreement, option  
24 agreement, or really the ability to get a site back under  
25 contract too.

1 MR. M. MELONE: No further questions.

2 MR. YOUNG: I have a few questions just  
3 to follow up on that last point. So you're saying  
4 site control -- when you say the ability to get a  
5 site under contract does that mean in your mind gee  
6 if I think I can get a contract at some later point  
7 that's site control?

8 MR. LITTLE: I see your point. I mean  
9 it's technically not site control. In the case of  
10 this particular property it had been on the market  
11 for a long time. The market conditions weren't in  
12 such a manner that it was a case where I was  
13 concerned at the time that we could get it back under  
14 contract.

15 MR. YOUNG: You had a reasonable  
16 expectation that you might be able to enter into a  
17 subsequent agreement to acquire the property?

18 MR. LITTLE: Correct.

19 MR. YOUNG: But you actually had at the  
20 time no right of exclusivity?

21 MR. LITTLE: No.

22 MR. YOUNG: And no right to use that  
23 property; is that correct?

24 MR. LITTLE: That's correct.

25 MR. YOUNG: Just on a different point

1 you filed your initial interconnection application  
2 with GMP in 2015 and then in 2016 did you file a new  
3 interconnection application?

4 MR. LITTLE: I don't believe so. I  
5 believe it was just the same application.

6 MR. YOUNG: So at that time you stated  
7 that you wanted to -- you informed GMP that you  
8 wanted to construct the project at a different  
9 location?

10 MR. LITTLE: Correct.

11 MR. YOUNG: Is it fair to say that at  
12 that time Otter Creek did not have an intent to build  
13 the project described in the application at this site  
14 described therein?

15 MR. LITTLE: Based on the information we  
16 had at the time regarding the wetlands that is  
17 correct.

18 MR. YOUNG: Okay. So when you informed  
19 GMP that you wanted a different location there was no  
20 intent for an active project for site one?

21 MR. LITTLE: Correct.

22 MR. YOUNG: And it wasn't until later  
23 that -- sometime -- I mean you signed the agreement I  
24 believe September 14th. Sometime around that time  
25 that you had an intent to go back to the original

1           Brisson property; is that correct?

2                       MR. LITTLE:  Yeah.  Leading up to the  
3           point where we signed a new contract with Brisson we  
4           had new information regarding the soil  
5           characteristics and the fact that they ended up not  
6           being wetlands like we had originally thought.  The  
7           initial wetland sort of delineation, it wasn't an  
8           official report, had basically designated the entire  
9           site as wetland with maybe some little tiny pockets  
10          of half an acre here and there which wasn't suitable  
11          for a solar farm.

12                      MR. YOUNG:  And just to follow up on  
13          when you declined to go forward with the -- I'm  
14          probably going to use the wrong term here -- the  
15          system impact study it was because you weren't  
16          intending to build that project -- the project that  
17          had been evaluated under that because you were going  
18          to build at a different location; is that correct?

19                      MR. LITTLE:  Yeah.  We were proposing to  
20          move it to a different location.

21                      MR. YOUNG:  I think that's all the  
22          questions I have.  Thanks.

23                      MS. WILSCHEK:  I have no questions.

24                      MS. ANDERSON:  I have no further  
25          questions.  Thank you.

1 HEARING OFFICER GERHARD: I think, Mr.  
2 Little, we're done. Thank you very much.

3 MS. WILSCHEK: I'm not going to call --

4 HEARING OFFICER GERHARD: Just want to  
5 go off the record for one second.

6 (A discussion was held off the record.)

7 HEARING OFFICER GERHARD: Let's go back  
8 on the record please. And, GMP, if you would present  
9 your witnesses please.

10 MS. ANDERSON: Yes. Thank you. Before  
11 we do just as a housekeeping can I move these  
12 exhibits, the remaining exhibits which are stipulated  
13 to, and I can read them off if that would be helpful.

14 HEARING OFFICER GERHARD: That would be  
15 good. Thank you.

16 MS. ANDERSON: So my understanding is  
17 that GMP 2 and 13 already are admitted. So we have  
18 GMP 1 which is the 2015 Brisson agreement. GMP 3  
19 which is a Google picture of where site one and site  
20 two are located. We have GMP 4 which is Thomas  
21 Melone's September 14, 2016 letter to the Public  
22 Service Board. GMP 5 which is the site one -- the  
23 second site one purchase and sale agreement dated  
24 9/14/16. GMP 6 are emails produced by GMP in  
25 discovery, request to produce -- I'm sorry, let me

1 slow down here. GMP emails are responses to Otter  
2 Creek's request to produce 1-2.3. GMP 7 is request  
3 to produce 1-2.4. Also emails. GMP 8 is request to  
4 produce 1-2.5 and those are emails. 9 are also  
5 emails 1-2.6. 10 are emails produced in discovery  
6 1-2.7. GMP 11 is emails produced 1-2.8. 12 are  
7 emails produced in discovery 1-2.9. 13 was already  
8 admitted. 14 are more emails GMP 1-2.11. 15 is GMP  
9 1-2.12 emails produced in discovery. GMP 16 is  
10 emails that were produced as GMP 1-2.13 in discovery.  
11 GMP 17 -- I'm sorry I'm losing my voice here. GMP 17  
12 are emails -- GMP emails produced as OCS GMP 1-2.14  
13 and GMP 18 are produced as OCS GMP 1-2.15.

14 HEARING OFFICER GERHARD: Okay and these  
15 have all been stipulated to, correct?

16 MS. ANDERSON: Yes.

17 HEARING OFFICER GERHARD: And since  
18 there are no objections we'll enter those into the  
19 record please.

20 (Exhibits marked GMP 1, 3-12, 14-18 were  
21 admitted into the record.)

22 MS. ANDERSON: Thank you.

23 HEARING OFFICER GERHARD: And let me  
24 just swear the witnesses in if I could.

25 KIM JONES AND MICHAEL BUTLER,

1                   Having been duly sworn, testified  
2                   as follows:

3                   DIRECT EXAMINATION

4                   BY MS. ANDERSON:

5                   Q.           All right. So could you each state your name  
6                   and your occupation with Green Mountain Power?

7                   A.           (Ms. Jones) Kim Jones and I am an electrical  
8                   engineer for Green Mountain Power.

9                   A.           (Mr. Butler) I'm Michael Butler. I'm a  
10                  distributed generation coordinator at Green Mountain  
11                  Power.

12                  Q.           And you prefiled testimony in this case on  
13                  August 31, 2016?

14                  A.           (Ms. Jones) That is correct.

15                  A.           (Mr. Butler) Yes.

16                  Q.           And do you have a clean copy of that prefiled  
17                  testimony?

18                  A.           (Ms. Jones) I have a copy that has some  
19                  changes on it.

20                  A.           (Mr. Butler) I have a clean copy right here.  
21                  Yes.

22                  Q.           And do you have any -- was that testimony  
23                  prepared under your direction and supervision?

24                  A.           (Ms. Jones) Yes.

25                  A.           (Mr. Butler) Yes.

1 Q. And do you have any corrections to that  
2 testimony?

3 A. (Ms. Jones) Yes.

4 Q. Would you please go through those corrections  
5 for the court reporter and the Board?

6 A. (Mr. Butler) So first is on page number 2 and  
7 on line 9 states my position I'm in the position of  
8 distributed resource coordinator. It should be stated as  
9 distributed generation coordinator.

10 And on page 4 of the testimony line number 1  
11 our testimony references both the timing and cost of four  
12 projects that currently hold lower positions. That should  
13 be changed to three projects and should be changed to  
14 three throughout the testimony.

15 Also on line number 3 at page 4 we reference  
16 four projects have been waiting from 11 to 14 months.  
17 That should be changed from 18 to 21 months and should be  
18 changed throughout.

19 On page 5 in the chronological table showing  
20 the occurrences for this project there's an entry of  
21 February 22, 2016 where it states GMP received \$12,000 for  
22 FACS fee. That should read \$15,000 not \$12,000.

23 And last on page 8 line number 9 states  
24 interconnection process that began over one year ago.  
25 Should state interconnection process that began nearly two

1 years ago. Those are all the changes.

2 MS. ANDERSON: So as we indicated earlier  
3 due to the passage of time and the change in the  
4 issues in this case, particularly with the  
5 withdrawal of the dispute, we have some  
6 supplemental questions and I'll ask those  
7 questions and then move the testimony into  
8 evidence.

9 HEARING OFFICER GERHARD: Okay.

10 BY MS. ANDERSON:

11 Q. So now, Michael and Kim, during the discovery  
12 phase of this process did you -- let me withdraw this.  
13 While we were processing the Otter Creek interconnection  
14 application, Michael, what was your understanding  
15 regarding site control of this site that -- site one that  
16 was on the interconnection application that was filed in  
17 April of 2015?

18 A. (Mr. Butler) We understood site control was  
19 still in place. That it still existed.

20 Q. And on the original site?

21 A. (Mr. Butler) On the original site. Correct.

22 Q. At any time during the process while you were  
23 processing the Otter Creek Solar interconnection  
24 application -- let me withdraw that. Who was your contact  
25 at Otter Creek Solar?

1 A. (Mr. Butler) Primary contact was Tim Young.

2 Q. And we've introduced a series of emails  
3 between Green Mountain Power and Tim Young and that's Tim  
4 Young from Otter Creek Solar?

5 A. (Mr. Butler) Yes.

6 Q. All right. And during -- while you were  
7 processing the interconnection application did Tim Young  
8 ever inform you that Otter Creek had lost site control of  
9 site one?

10 A. (Mr. Butler) No.

11 Q. All right. So what I'm going to ask you to do  
12 is to -- if you could sort of walk us through -- you have  
13 a timetable in your -- in your summary in your testimony,  
14 and we have a number of exhibits, and if you could just  
15 walk us through and tell us what occurred with regard to  
16 site control for the Otter Creek interconnection  
17 application?

18 A. (Mr. Butler) Okay. Well frankly as far as  
19 site control is concerned nothing about that changed until  
20 we were complete with all of the project review and the  
21 project study that has been done to date for the project.

22 Q. So why don't you tell the Board what that is?

23 A. (Mr. Butler) So the application was received  
24 deemed complete. Moved forward to a fast track review as  
25 dictated by Rule 5.500. After the fast track review GMP

1 recognized the need for a system impact study in order to  
2 -- for the project to proceed. We offered the system  
3 impact study to Otter Creek. They signed a system impact  
4 study agreement and rendered payment. I believe it was  
5 \$37,500. We performed the system impact study. Delivered  
6 the results of that to Otter Creek.

7           The next step in the process is a facilities  
8 study where we determine the cost and exact scope of  
9 implementing the changes and any upgrades necessary as  
10 found in the system impact study. Otter Creek executed a  
11 facilities study agreement and rendered the payment of  
12 \$15,000 for that and that is what we've done so far.

13           Q.       And on what date was that facilities studies  
14 agreement executed?

15           A.       (Mr. Butler) It was executed on I believe  
16 February 22nd, 2016.

17           Q.       And can you tell me what the address was for  
18 the original site in the interconnection application?

19           A.       (Mr. Butler) The original site -- let me refer  
20 to my testimony here --

21           Q.       I can also direct you to exhibit GMP exhibit 6  
22 if that helps.

23           A.       (Mr. Butler) 3146 Quaker.

24           Q.       And that's also in exhibit 6 which is a copy  
25 of the application?

1           A.       (Mr. Butler) Right.

2           Q.       And was it your understanding that was the  
3 site where the project would be built?

4           A.       (Mr. Butler) Yes.

5           Q.       So can you tell us what happened when you sent  
6 the facilities study agreement to Mr. Young at Otter  
7 Creek?

8           A.       (Mr. Butler) So I sent the facilities study  
9 agreement. Otter Creek requested an extension of the  
10 deadline to execute that agreement. GMP gave an  
11 extension. I believe it was 15 business days and three  
12 phone conversations. Tim Young did ask about the  
13 potential for changing site location and in a phone  
14 conversation I advised him that that would not be -- that  
15 would not be allowed. If he moved the site 2.3 miles  
16 away, that would constitute an entirely different project.  
17 Tim did send a letter requesting that move to a site 2.3  
18 miles away at which point I responded that that's an  
19 entirely different project, it's fed on a different  
20 distribution circuit, and we would have to start from the  
21 very beginning of the interconnection process.

22          Q.       And at some point during that time period did  
23 you ask Mr. Young to provide you with both the site --  
24 evidence of site control for the new site and the original  
25 site, site one and site two?

1           A.           (Mr. Butler) Yes. I asked -- I asked for the  
2 site control from the original site -- actually I asked  
3 for site control -- site control for the new site was  
4 provided. That prompted a number of questions to try to  
5 clarify what exactly the intention of Otter Creek was. At  
6 the same time I also requested confirmation of the site  
7 control for the original site.

8           Q.           And when you received -- I'm going to direct  
9 you to exhibit 10. If you can look at exhibit 10 please?

10          A.           (Mr. Butler) Okay.

11          Q.           Is that the e-mail where Mr. Young at your  
12 request sent you the original site agreement again?

13          A.           (Mr. Butler) Yes.

14          Q.           The original site P&S?

15          A.           (Mr. Butler) Yes.

16          Q.           Is that attached there?

17          A.           (Mr. Butler) Yes.

18          Q.           Okay. In that e-mail or in any conversations  
19 with Mr. Young did Mr. Young tell you that Otter Creek had  
20 terminated site control on May 15th, 2015?

21          A.           (Mr. Butler) No.

22          Q.           And when was the application deemed complete?

23          A.           (Mr. Butler) May 15th, 2015.

24          Q.           The same day direct site control was  
25 terminated?

1           A.       (Mr. Butler) Correct.

2           Q.       And so can you tell the Board, you know, why  
3 does -- why does Green Mountain Power feel that Rule 5.500  
4 requires site control?

5           A.       (Mr. Butler) Well Rule 5.500 requires site  
6 control in order for an application to be deemed complete  
7 and an application being deemed complete is the first step  
8 in a pretty long line of review and analysis of the  
9 project. So in order for an application to even be  
10 considered for like a fast track review, which is the next  
11 step, it must be a complete application. Site control  
12 must be in place for an application to be deemed complete.  
13 So really everything we do from an analysis and review  
14 perspective going forward is based on that complete  
15 application which requires site control.

16          Q.       So in this case what site did we do our system  
17 impact -- our fast track on?

18          A.       (Mr. Butler) The original site, the Quaker  
19 Road 3146.

20          Q.       And what site did we do our system impact  
21 study?

22          A.       (Mr. Butler) Same.

23          Q.       And what site did we do the proposed  
24 facilities study agreement?

25          A.       (Mr. Butler) The same site.

1 Q. All right. Is that system impact study valid  
2 for another site?

3 A. (Ms. Jones) No it would not be.

4 Q. Can you explain why it would not be?

5 A. (Ms. Jones) The second parcel is located on a  
6 completely different circuit which would have different  
7 electrical characteristics regarding the number of phases  
8 of conductor, the size of conductor, the length of  
9 conductor. It would also have a different amount of  
10 already existing generation. So the fast track and system  
11 impact study would have to be redone.

12 Q. Thank you. Now at any time did Mr. Young ask  
13 you to perform the facilities study agreement for site two  
14 instead of site one?

15 A. (Mr. Butler) No. It was -- it was after the  
16 facilities study agreement had been issued that I even  
17 ever learned about the intention or the desire to build on  
18 a different site.

19 Q. I'm sorry. After Mr. Young sent in the  
20 \$15,000 to conduct the facilities study what site did he  
21 want you to conduct the facilities study on?

22 A. (Mr. Butler) I assumed the first site, but  
23 through the site control that was provided along with that  
24 study agreement it became apparent that he wanted a  
25 different site, and that's what raised questions and

1 conversations to try to clarify that.

2 Q. And if we directed the Board to exhibit 9, is  
3 that the exchange of emails where Mr. Young was purporting  
4 to have the facilities study done at site two rather than  
5 site one?

6 A. (Mr. Butler) Yes.

7 Q. All right. And what was your response?

8 A. (Mr. Butler) I reviewed it and I advised that  
9 it was an entirely different project. It was in a  
10 different location on a different circuit and we can  
11 certainly review a project on that location, but it would  
12 be a separate project. It would require submission of a  
13 separate application and would take a position in the  
14 queue -- in the interconnection queue based on the date  
15 and time it was received.

16 Q. Now I'm going to direct your attention to  
17 exhibit 11 and can you -- I'll direct your attention to  
18 that.

19 A. (Mr. Butler) Yes.

20 Q. Can you tell the Board what -- could you read  
21 your response in the February 25, 2016 e-mail?

22 A. (Mr. Butler) Sure. Tim, I have just left you  
23 a voice mail in regard to the POI change at Weybridge.  
24 Are the projects going to be at the same location that we  
25 have already evaluated just with a different POI or is

1 there a new project location with a new POI? Please  
2 confirm the new POI and project location if applicable.  
3 Also are you still planning for one two-megawatt project  
4 and one three-megawatt project? Thanks. Michael.

5 Q. All right. And what was your response -- what  
6 was his response to that?

7 A. (Mr. Butler) At that point he sent me a Google  
8 map showing the original point of interconnection and new  
9 point of interconnection.

10 Q. And would that be exhibit 3?

11 A. (Mr. Butler) Yes.

12 Q. Now can you explain what happens in the  
13 interconnection queue if site control is moved around or  
14 people don't have site control or move their projects?

15 A. (Mr. Butler) So if a project were to move from  
16 one site to another, it would basically -- if that's  
17 allowed it prevents really any type of efficient  
18 evaluation of interconnection projects because each  
19 project that comes in is evaluated based on the state of  
20 the system it's connecting to. So how much generation is  
21 there, you know, just the entire state -- the electrical  
22 state of that system. If a project can be at one location  
23 and then move to another location, we can't evaluate a  
24 future project until we know where the final resting spot  
25 of that first project is because any time it moves it can

1 change the characteristics of the system.

2 Q. And so what is it about site control and  
3 having site control that helps the efficient  
4 administration of the interconnection process?

5 A. (Mr. Butler) I mean site control proves that  
6 you can build what you're proposing. Without site control  
7 you're proposing something that might not be real, and  
8 conceivably you could have multiple projects for the exact  
9 same location in the queue at the same time if there's no  
10 exclusivity out there. I mean if you don't have -- if one  
11 project -- if no project has an exclusive right to build,  
12 we could conceivably have multiple projects in the queue  
13 with the same site.

14 Q. One other question I wanted to ask is there  
15 has been some discussion about -- I'll withdraw that at  
16 this point. If I can just take a moment and determine  
17 whether there's any other questions.

18 Kim, can you explain why it's impossible to  
19 proceed with the review of the interconnection  
20 applications in the queue behind Otter Creek --

21 A. (Ms. Jones) Yes.

22 Q. -- when there's no site control and we don't  
23 know where Otter Creek will be?

24 A. (Ms. Jones) Yes. As part of the Rule 5.500  
25 under the section that outlines the fast track screening

1 process 5.505, it states that when -- and it's factual as  
2 well that when you go to do a fast track analysis you have  
3 to study the project that is in the current queue position  
4 that you want to evaluate, and then you have to include  
5 all the aggregated generation that is higher in the queue  
6 for that project. So this is why the queue position is so  
7 imperative for us and why we're seeking the guidance from  
8 the Public Service Board on our position. We feel that  
9 Otter Creek has lost their queue position.

10 In order for us to go forward with the  
11 evaluation of the projects lower in the queue, we need to  
12 clearly understand is the Otter Creek five megawatts to be  
13 included in the aggregated generation, or if they have  
14 lost their queue position the five megawatts would be  
15 excluded from the analysis, the aggregated generation, and  
16 that queue position of Otter Creek will impact and change  
17 the fast track analysis results.

18 Q. And does it matter where Otter Creek's site is  
19 when we're doing these evaluations?

20 A. (Ms. Jones) We always say location specific  
21 is imperative for us to properly review any solar project.

22 Q. And is that why we want to make sure when  
23 people submit an application with site control that site  
24 control remains?

25 A. (Ms. Jones) Yes, and I believe that is what

1 the intent of the rule was.

2 MS. ANDERSON: I have no further  
3 questions, but I will move the testimony of Kim Jones  
4 and Michael Butler.

5 HEARING OFFICER GERHARD: Any  
6 objections?

7 MS. LUDWIG: No.

8 MR. M. MELONE: No.

9 HEARING OFFICER GERHARD: Okay. We'll  
10 enter those into the record please.

11 (The Prefiled Testimony of Kim Jones and  
12 Michael Butler was admitted into the record.)

13

14

15

16

17

18

19

20

21

22

23

24

25

1 HEARING OFFICER GERHARD: Does the  
2 Department have any questions?

3 MS. LUDWIG: No.

4 HEARING OFFICER GERHARD: Ms. Wilschek?

5 MS. WILSCHEK: No thank you.

6 HEARING OFFICER GERHARD: Mr. Melone.

7 MR. M. MELONE: Yes.

8 CROSS EXAMINATION

9 BY MR. M. MELONE:

10 Q. Mr. Butler, good morning.

11 A. (Mr. Butler) How you doing?

12 Q. I'm going to ask you the same question that I  
13 asked Mr. Little earlier. Ms. Anderson when she was  
14 questioning you asked if Otter Creek ever informed you  
15 whether Otter Creek had lost site control. Just so  
16 there's no confusion I want to understand what your  
17 definition of site control means when you were answering  
18 that question?

19 A. (Mr. Butler) Site control -- I mean we take  
20 guidance from the rule. Site control is a purchase and  
21 sale agreement, an option to lease, an option to purchase.  
22 Those are generally the three most common forms of site  
23 control we come across.

24 Q. And if I understand correctly, it was in a  
25 letter on February 24, 2016 from Otter Creek to GMP where

1 they put in a formal request to change the point of  
2 interconnection; is that correct?

3 A. (Mr. Butler) Correct.

4 Q. Prior to that written request had you any  
5 conversations with Tim Young about the possibility of  
6 moving the point of interconnection?

7 A. (Mr. Butler) We had had conversation about the  
8 possibility of it, you know, specifically when the proof  
9 of site control for the second project came about and  
10 raised some confusion.

11 Q. Do you remember the substance of those  
12 conversations with Mr. Young again prior to the written  
13 formal request?

14 A. (Mr. Butler) I honestly don't remember the  
15 details. I mean my stance -- GMP's stance has been the  
16 same. You can't move a project from one site to another.  
17 Moving a point of interconnection a couple poles down the  
18 road on the same line at the same site that's one thing,  
19 but moving a great distance is an entirely different  
20 thing.

21 Q. So if I understand correctly, your  
22 conversations with Mr. Young involved telling him that  
23 depending on the characteristics of the change it could be  
24 possible, but if the distance was great it's unlikely?

25 A. (Mr. Butler) Again I don't remember the exact

1 conversation so I can't say for certain what was said.

2 Q. Does the interconnection agreement with Green  
3 Mountain Power require the requester to maintain site  
4 control?

5 A. (Mr. Butler) It's Green Mountain Power's  
6 understanding that the intent is -- of Rule 5.500 is for  
7 the requester to maintain site control.

8 Q. But the interconnecting agreement itself,  
9 putting the rules aside just asking about the  
10 interconnection agreement.

11 A. (Mr. Butler) I don't believe we have an  
12 interconnection agreement in place. So each  
13 interconnection agreement would be specific to a project.

14 Q. Is there a form interconnection agreement that  
15 GMP uses?

16 A. (Mr. Butler) We have a general template.

17 Q. Does the general template include a  
18 requirement that the requester maintain site control?

19 A. (Mr. Butler) I don't know off the top of my  
20 head to be frank. It's in the order of 23 pages long. I  
21 can't think of where it does, but I don't know.

22 Q. Is there a requirement in the interconnection  
23 template for a requester to provide notice to GMP if it  
24 loses site control?

25 A. (Mr. Butler) Again I really can't reference

1 the entire thing off the top of my head.

2 Q. Has GMP ever sent Otter Creek a notice of  
3 default or something similar under the interconnection  
4 agreement?

5 A. (Mr. Butler) We don't have an interconnection  
6 agreement with Otter Creek for this project.

7 Q. Let me rephrase that then. Has GMP ever sent  
8 notice to Otter Creek that its interconnection application  
9 has been withdrawn?

10 A. (Mr. Butler) I advised Otter Creek that if it  
11 did not want to pursue the original location we would  
12 gladly refund the facilities study payment and consider  
13 the application withdrawn.

14 Q. But you never sent a notice deeming them  
15 withdrawn?

16 MS. ANDERSON: I'm going to object to  
17 the form. I don't know what that is supposed to be.

18 BY MR. M. MELONE:

19 Q. I'll rephrase it in a yes or no question. Has  
20 GMP ever sent Otter Creek a notice deeming the  
21 interconnection application's withdrawn? Yes or no.

22 A. (Mr. Butler) No we have not.

23 Q. Mr. Butler, I'm going to hand you GMP exhibit  
24 13. This is an e-mail from you to Mr. Young. Can you  
25 please just read the e-mail starting with the second

1 sentence, at this juncture?

2 MS. ANDERSON: Okay. So I'm going to  
3 just --

4 MS. WILSCHEK: Can you give me the date?

5 MR. M. MELONE: March 15, 2016.

6 MS. ANDERSON: That is not exhibit 13.  
7 I can provide you with a copy of exhibit 13.

8 MR. M. MELONE: I can just label it as  
9 Otter Creek exhibit I think we're at 3. We're going  
10 to label this exhibit OC-2, and again can you just  
11 read your e-mail to Tim Young starting with the words  
12 at this juncture?

13 MS. ANDERSON: Do you want to relabel  
14 this? It's labeled exhibit 13.

15 A. (Mr. Butler) At this juncture there are three  
16 options: GMP cashes the check and performs the FAC study.  
17 Please keep in mind this study will only be applicable to  
18 the original POI; GMP returns the check, the two Weybridge  
19 applications are considered withdrawn and are removed from  
20 the interconnection queue; the project officially files  
21 with the Vermont Public Service Board regarding the  
22 dispute with GMP over the change in POI.

23 Q. At this juncture, which is March 15, 2016, had  
24 GMP considered the Weybridge applications to be withdrawn?

25 A. (Mr. Butler) GMP was awaiting guidance from

1 Otter Creek as to their intentions to go forward.

2 Q. So I'm going to rephrase that as a yes or no  
3 question. At this date March 15, 2016 did GMP consider  
4 the Weybridge applications to be withdrawn?

5 A. (Mr. Butler) No.

6 Q. My next question is for Ms. Jones. Did GMP  
7 conduct any sort of analysis regarding the interconnection  
8 costs to the projects lower in the queue than Otter Creek  
9 if Otter Creek's site were to move from Weybridge I to  
10 Weybridge II?

11 MS. ANDERSON: I'm just going to -- I  
12 don't think it makes that much difference, but I'm  
13 going to object because that seems to go to the  
14 material modification question that has been  
15 withdrawn, whether there was harm to the members of  
16 the queue underneath. I'm sorry I'm losing my voice  
17 here. So I'm objecting because he's asking about  
18 interconnection costs and that pertains to whether  
19 there was a material modification by moving the point  
20 of interconnection and that dispute has been  
21 withdrawn and the Board has indicated that's moot.  
22 So my understanding is we're talking about site  
23 control here.

24 HEARING OFFICER GERHARD: Mr. Melone.

25 MR. M. MELONE: I can withdraw the

1 question. No more questions.

2 HEARING OFFICER GERHARD: I have one  
3 quick question that I want to clarify because I think  
4 I heard you say that there's a difference between  
5 moving a point of interconnection from a -- let's say  
6 from a parcel of land to another parcel of land  
7 versus moving the point of interconnection from point  
8 A to point B on the same parcel of land. Am I  
9 getting that correct?

10 MR. BUTLER: Yes. I mean there's times  
11 when the original proposed point of interconnection  
12 might be a pole, call it pole number five, and for  
13 one reason or another interconnecting at that pole on  
14 to the same parcel does not work, and so we might in  
15 working with the developer move the point of  
16 interconnect a pole or two down the road all still to  
17 connect to the same parcel, same project originally.  
18 It's just the actual point where they tie into our  
19 system might be slightly different versus a project  
20 that's on a different parcel of land in an entirely  
21 different location.

22 HEARING OFFICER GERHARD: Okay.

23 MS. JONES: So that small change would  
24 have no impact on the analysis that was completed.  
25 The difference between, you know, the pole five or

1 the pole six is a matter of a possibly couple  
2 hundred, 300 max feet of line conductor and it is not  
3 going to have any impact, whereas, the proposal was  
4 2.3 miles difference on a completely different  
5 circuit so --

6 HEARING OFFICER GERHARD: Okay. Has GMP  
7 run into this before where an interconnector is  
8 seeking to move to a whole different parcel where it  
9 would require the restudy of the project or is this  
10 kind of a first time occurrence?

11 MR. BUTLER: I don't believe we've run  
12 into it where we've actually gone through and  
13 completed the studies. I know there's one that comes  
14 to mind where they had applied and then said they  
15 would rather be over here at a different location and  
16 asked guidance. At that point in time I looked in  
17 the queue, there was nothing else in the queue that  
18 had come in since then, and I advised them we  
19 certainly can move your application over here. Their  
20 application submission date was changed for purposes  
21 of the date and time stamp and entry into the queue  
22 to that new date and time. So in that case there's  
23 no one else in the queue behind them so they had no  
24 impact and we had not done any analysis or review at  
25 that point either. So there was no -- there was no

1 analysis that would need to be redone.

2 HEARING OFFICER GERHARD: Okay.

3 MR. YOUNG: I have a few questions.  
4 What's a project?

5 MR. BUTLER: A project is a generation  
6 facility that exists at a location.

7 MR. YOUNG: At a particular site I  
8 presume, and if you construct it at a different site  
9 I presume you would normally consider that a  
10 different project?

11 MR. BUTLER: Yes.

12 MR. YOUNG: Different question. Page 5  
13 of your direct testimony and in here you've got a  
14 table, chronology of events, and I was a little  
15 curious. Down at 2/24 -- there are obviously a whole  
16 bunch of 2/24s -- the second one down is GMP received  
17 proof of site control for the original location. Now  
18 my understanding is that as of that date it had been  
19 nine months since site control had been available.  
20 What did you receive at that point?

21 MR. BUTLER: So at that point I received  
22 the original purchase and sales or a copy of the  
23 original purchase and sale agreement.

24 MR. YOUNG: Okay. So you were basing it  
25 upon the original. You had no information -- this

1 wasn't a judgment that's based upon any subsequent  
2 information?

3 MR. BUTLER: No. No. Not at all.

4 MR. YOUNG: So getting back to my  
5 question about a project, if somebody proposed on a  
6 different parcel even if it were half mile down the  
7 road -- different parcel of land GMP would consider  
8 that a different project for purposes of  
9 interconnection and first place in the  
10 interconnection queue; is that correct?

11 MR. BUTLER: Yes. We would need an  
12 application and the -- all the associated --

13 MR. YOUNG: Even if you had reasonable  
14 expectation that from the perspective of the  
15 distribution line to which it is being connected it  
16 was likely to have a similar impacts to something  
17 farther up the road?

18 MR. BUTLER: Yes. That wouldn't have  
19 any bearing. Definitely we would need an entirely  
20 new application.

21 MR. YOUNG: Okay. Just wanted to make  
22 sure I understood that. Let's see if there's  
23 anything else. Thank you very much.

24 HEARING OFFICER GERHARD: Department, do  
25 you have any questions?

1 MS. LUDWIG: No questions.

2 MS. WILSCHEK: I just had one followup.

3 CROSS EXAMINATION

4 BY MS. WILSCHEK:

5 Q. The Hearing Officer asked you have you ever  
6 seen a situation like this. I have a slightly different  
7 question. You have seen -- you have seen fast track  
8 studies that have never been built?

9 A. (Mr. Butler) Certainly.

10 Q. GMP has issued fast track studies that have  
11 never been built, right?

12 A. (Mr. Butler) Yes.

13 Q. And GMP has no idea if that particular  
14 developer decided to go with a completely new project?  
15 You would not know the connection between the project that  
16 was never built and some other project that was built?

17 A. (Mr. Butler) No. We have lots of developers  
18 that have a multitude of projects.

19 Q. So you really don't know if a project was  
20 proposed and then the developer moved it somewhere else  
21 unless the developer connects the dots for you, right?

22 A. (Mr. Butler) And if that was to happen, I mean  
23 we would see it as a different project. It has a  
24 different location, a different point of interconnect, we  
25 would require, you know, a whole new set of application

1 materials that all line up with that new project. Now if  
2 that's the same name or not, it's really neither here nor  
3 there as far as interconnection aspect goes.

4 Q. Right. And so this project's unique in the  
5 sense that you -- that from GMP's perspective it sounds  
6 like it's unique because you have a developer trying to  
7 park the car, if you will, in two different spots?

8 A. (Mr. Butler) Yes. I would -- developers ask  
9 before, you know, based on whatever reasoning my original  
10 location is no longer viable, can I take that queue  
11 position and build somewhere else, and my answer is always  
12 no of course you can't. You need to put a new application  
13 in.

14 MS. WILSCHEK: Thank you. Just wanted  
15 to clarify that.

16 HEARING OFFICER GERHARD: Okay. Mr.  
17 Shullenberger, any questions?

18 MR. SHULLENBERGER: No.

19 HEARING OFFICER GERHARD: Any questions,  
20 Mr. Melone?

21 MR. M. MELONE: No.

22 HEARING OFFICER GERHARD: Then you don't  
23 have to step down since you're already sitting there,  
24 but we will go to the next witness and I believe that  
25 is you.

1 MS. WILSCHEK: Yes. Andy Thomas, if no  
2 one has questions for him, I will move his testimony  
3 in. So does anyone have questions of him?

4 MR. M. MELONE: No.

5 MS. ANDERSON: I don't have any  
6 questions.

7 MS. WILSCHEK: So I would like to move  
8 the admission of the prefiled testimony of Andrew  
9 Thomas on behalf of Bullrock Deutsche-ECO LLC and BDE  
10 Addison Lazar Solar filed with the Board on August  
11 24, 2016 and it has no exhibits. Move for admission  
12 with the Board.

13 HEARING OFFICER GERHARD: Since there  
14 are no objections it's admitted.

15 (The Prefiled Testimony of Andrew Thomas  
16 was admitted into the record.)

17

18

19

20

21

22

23

24

25

1 MS. WILSCHEK: And I'm providing a copy  
2 to the court reporter.

3 HEARING OFFICER GERHARD: And do folks  
4 have questions for the witness?

5 MS. ANDERSON: I have no cross.

6 MR. M. MELONE: No.

7 HEARING OFFICER GERHARD: No cross.  
8 Okay. I think that does it for witnesses. Have the  
9 parties thought at all about briefing for this issue?  
10 Since I see smiles I'm assuming that's a yes.

11 MS. ANDERSON: Yes.

12 HEARING OFFICER GERHARD: Any schedules  
13 in mind?

14 MS. ANDERSON: I think the main thing is  
15 we would like to have the transcript available before  
16 we have to submit briefs. I'm really losing my voice  
17 here. So some time period after the transcript  
18 becomes available.

19 HEARING OFFICER GERHARD: Okay. Does  
20 anybody have dates or do you just want me to kind of  
21 come up with some dates based on what the court  
22 reporter thinks and then just issue a short  
23 procedural order after we find out what the time  
24 frame might be?

25 MS. ANDERSON: I would think we would

1 want a couple weeks after the court reporter has the  
2 transcript available.

3 HEARING OFFICER GERHARD: And then how  
4 many weeks for reply brief?

5 MS. ANDERSON: Two would be fine.

6 HEARING OFFICER GERHARD: Do we need  
7 two?

8 MS. ANDERSON: One would be fine.

9 MS. LUDWIG: I would request two.

10 HEARING OFFICER GERHARD: I'm conscious  
11 that we've been at this for a long time and would  
12 really like to get it resolved, but if you folks tell  
13 me that two weeks is necessary --

14 MS. LUDWIG: One week will be fine.

15 MR. YOUNG: I would ask a different  
16 question. At this point in this process are replies  
17 necessary at all?

18 MR. M. MELONE: I think so. Yes.

19 MR. YOUNG: Okay.

20 MS. HILL: Mr. Gerhard, may I be heard?

21 HEARING OFFICER GERHARD: Sure.

22 MS. HILL: Attorney Cindy Hill for the  
23 Town of New Haven. We are listed as an interested  
24 party in this action, but I wanted to bring to your  
25 attention on the record that East New Haven GLG Solar

1 who is here at the table has pending actions in two  
2 dockets for the same project, Docket Number 8864 and  
3 Docket Number CPG#16-0060-NMP.

4 The Town of New Haven has filed  
5 objections and motions in those dockets regarding the  
6 fact that you heard in this docket with no notice to  
7 the town which is a statutory party in those other  
8 dockets or to the Department's, you heard argument if  
9 not evidence here regarding this case regarding the  
10 terms and conditions under which the East New Haven  
11 GLG Solar case will be heard and we filed objections  
12 on that.

13 I understand that that -- that the  
14 material changes regarding the queue position issue  
15 was withdrawn and this is about site control.  
16 However, we would again object strenuously to if East  
17 New Haven GLG is going to brief and argue regarding  
18 their project that already has two separate docket  
19 numbers, that that argument must be entered in the  
20 record on those two other docket numbers and be  
21 subject to hearing and counter argument regarding  
22 those cases.

23 In other words, you have already --  
24 which we've objected to in those cases -- accepted  
25 argument here with no notice to the parties on those

1 two other cases and yet applied that information to  
2 those two other cases, and we would again object here  
3 and any argument that is regarding that project  
4 should be noticed on the record of those other docket  
5 numbers and sent to all the parties who are parties  
6 in that docket. Thank you.

7 HEARING OFFICER GERHARD: Thank you.

8 MR. YOUNG: The one suggestion I might  
9 make is to the extent that you think there's  
10 information in this docket that needs to be  
11 introduced in those other dockets, one of which I  
12 believe is actually closed, you should make the  
13 motion in that docket please because the parties in  
14 that proceeding need to know about it.

15 HEARING OFFICER GERHARD: Okay. Do we  
16 have anything else that we need to deal with today?

17 MS. WILSCHEK: So just so I understand  
18 you'll issue a scheduling order once the transcript  
19 is out that says these are the dates and we'll just  
20 follow --

21 HEARING OFFICER GERHARD: Let's go off  
22 the record.

23 (A discussion was held off the record.)

24 HEARING OFFICER GERHARD: Let's go back  
25 on the record. After our discussion off the record

1 we are going to set two dates; one for the filing of  
2 briefs, one for the filing of reply briefs. Briefs  
3 will be due on May 17, 2017 and reply briefs will be  
4 due on May 24, 2017. Both Wednesdays. And since I  
5 think that takes care of all our business today we  
6 can close and go off the record. Thank you.

7 (Whereupon, the proceeding was  
8 adjourned at 11:50 a.m.)  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

C E R T I F I C A T E

1  
2  
3  
4  
5 I, JoAnn Q. Carson, do hereby certify that  
6 I recorded by stenographic means the technical hearing re:  
7 Docket Number 8775 at the Susan M. Hudson Hearing Room of  
8 the Public Service Board, 112 State Street, Montpelier,  
9 Vermont, on April 25, 2017, beginning at 9:30 a.m.

10 I further certify that the foregoing  
11 testimony was taken by me stenographically and thereafter  
12 reduced to typewriting, and the foregoing 84 pages are a  
13 transcript of the stenograph notes taken by me of the  
14 evidence and the proceedings, to the best of my ability.

15 I further certify that I am not related to  
16 any of the parties thereto or their Counsel, and I am in  
17 no way interested in the outcome of said cause.

18 Dated at Burlington, Vermont, this 1st day  
19 of May, 2017.

20 \_\_\_\_\_

21  
22 JoAnn Q. Carson

23 Registered Merit Reporter

24 Certified Real Time Reporter  
25