

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

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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.

48

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.

C E R T I F I C A T E

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

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

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

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

JoAnn Q. Carson

Registered Merit Reporter

Certified Real Time Reporter