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MEMORANDUM

TO: Oneida Business Committee

FROM: Jo Anne House, Chief Counsel 

DATE: September 25, 2013

SUBJECT: Cornelius – Petition – Dissolution of Oneida Seven Generations Corporation

You have requested a legal opinion regarding a petition submitted by Frank Cornelius. The petition contains the following request.

General Tribal Council directs the Business Committee to dissolve Oneida Seven Generations Corporation based on the Law Office's March 2013 finding that OSGC's Corporate Charter identifies that the shareholder (i.e. the Tribe) as represented by the Business Committee can dissolve the corporation.

The Enrollment Department has verified a sufficient number of signatures are on the petition.

I have reviewed the corporate charter, prior legal opinions regarding corporations, the financing and organizational documents within the Oneida Seven Generations Corporation subsidiaries and partnerships, the lease agreements, and laws of the Tribe, and other documents to formulate this legal opinion. This is not a comprehensive review of every document and agreement regarding the Oneida Seven Generations Corporation. Copies of documents are included with this review except where confidentiality agreements would prohibit the release of the document.

Portions of this legal review have been forwarded to Oneida Seven Generations Corporation Board of Directors and acting Chief Executive Officer for review to protect against violation of confidentiality agreements.

Previous Petitions

There have been three previous occasions where the Oneida Seven Generations Corporation has been the subject of a petition before the General Tribal Council. The legal reviews of those petitions are listed below.

- *Genskow Petition – Resolution – Oneida Seven Generations Corporation*, July 10, 2008 Requesting financial disclosures, relationship disclosures, and a financial/operational audit.
- *Genskow Petition – Resolution – Oneida Seven Generations Corporation*, February 15, 2011 – Corrected

Requesting a report on government-to-government relationships impacted by corporate activities and consideration of modifying the corporate relationship with the Tribe.

NOTE: There are two errors in the February 15, 2011, legal review. First, the chart on page 8 erroneously refers to an earlier version of the proposed reporting format that the Oneida Business Committee did not adopt. The financial and disclosure reports are confidential, non-public documents to protect the business activities of the corporation because of the specificity of information the corporation is required to present. Second, the review erroneously refers to the “Oneida Industrial Park” which should be correctly referred to as the “Oneida Business Park.”

- *Dodge Petition – Land Use – Oneida Seven Generations Corporation*, March 12, 2013 – Revised

Request to stop waste-to-energy development.

NOTE: This legal review erroneously refers to the “Oneida Industrial Park” which should be correctly referred to as “Oneida Business Park.”

Each of the above legal opinions is included with this opinion for reference.

Corporate Partnerships and Subsidiaries

The July 10, 2008, legal review identified corporate properties and relationships of the Oneida Seven Generations Corporation. Figures 1 and 2 below identify the updated corporate relationships with partnerships and wholly-owned subsidiaries.¹ Figure 1 identifies those limited liability companies in which Oneida Seven Generations Corporation is working in partnership with a third party to accomplish a business activity.

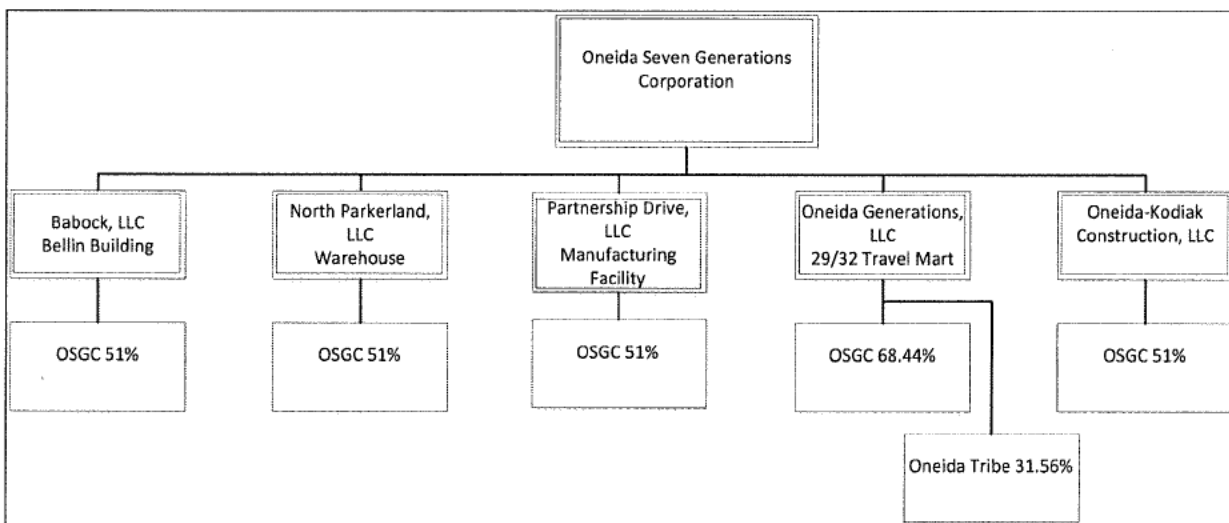


Figure 1. Corporate partnerships

¹ In addition to the companies listed in Figures 1 and 2, a search of the State of Wisconsin business registration system identifies O'Hare, LLC and Oneida Manufacturing, LLC with a principle office at Flight-way Drive, the offices of the Oneida Seven Generations Corporation. These companies are in the process of being dissolved, or should have been dissolved.

Figure 2 identifies those limited liability companies and corporations in which the Oneida Seven Generations Corporation owns the entire subsidiary.

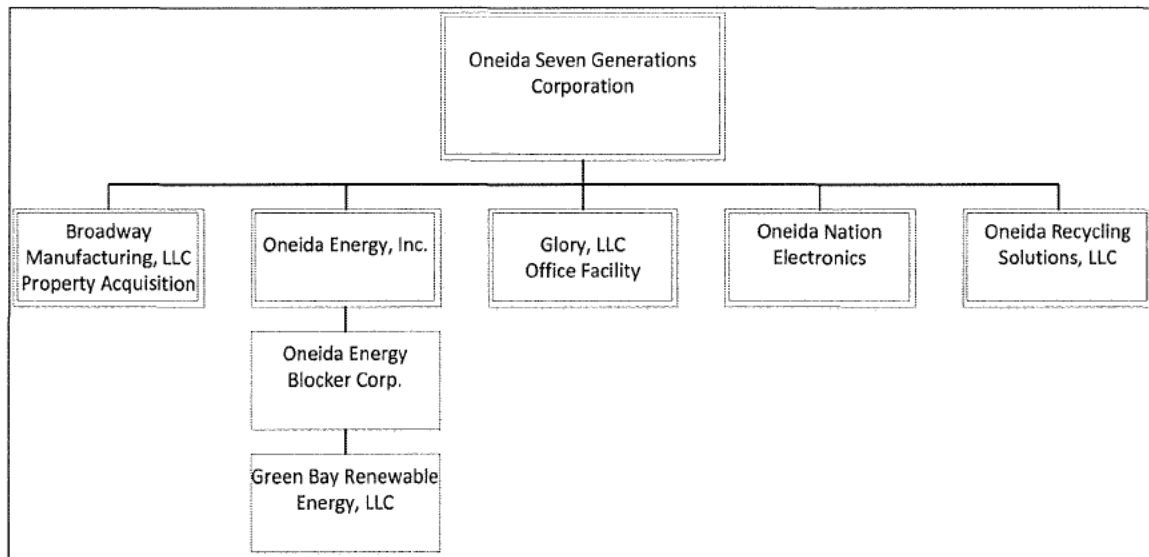


Figure 2. Wholly owned corporate subsidiaries.

Each entity is created in the State of Wisconsin by filing either corporate or limited liability company documents except for Oneida Energy Blocker Corporation and Green Bay Renewable Energy, LLC which were formed under the State of Delaware. This includes the requirement to file notice of a registered agent. The Oneida Seven Generations Corporation is the managing partner in the above companies, except Babcock, LLC in which the Oneida Seven Generations Corporation is not the active partner. In the past, the registered agent has been John Kroner as Chief Executive Officer, which was then changed to Kevin Cornelius as Chief Executive Officer, and is now in the process of being updated to Bruce King as acting Chief Executive Officer.

The Oneida Seven Generations Corporation creates companies for the purpose limiting liability to the assets allocated to and created by the new company. In addition, these companies also allow the Oneida Seven Generations Corporation to arrange business relationships to meet to the needs of the particular property and partnership. Finally, in some circumstances companies are created to take advantage of tax credits, investor opportunities and to allow additional partnerships to be developed or integrated into the company. In regards to those companies where the Oneida Seven Generations Corporation is the sole owner, the company is created for the purposes of limiting liability to the assets of the company.

In regards to energy business activities the corporation set up several entities. Initially Oneida Recycling Solutions, LLC was set up to operate the waste-to-energy plant when it was initially situated on the Reservation close to the Brown County Waste Transfer Station. It has had no other activities as it did not meet long-term business goals of the corporation regarding recycling and energy activities.

The corporation then created Oneida Energy, Inc. to manage all of these related activities. This general corporation would house all limited liability companies and other business entities in order to limit liabilities to the Oneida Seven Generations Corporation. It was created as a corporation to allow it access to various financing and tax incentives and currently carries a \$2 million loan from Wisconsin Economic Development Corporation and the \$2 million grant from the State of Wisconsin. The corporation is actively attempting to meet the requirements of the loan from the Wisconsin Economic Development Corporation and the grant from the State of Wisconsin, or, if unable to do so, the corporation is attempting to reduce the potential liabilities of not meeting the requirements.

However, to capture specific tax incentives and other business incentives related to the waste-to-energy project, the corporation created the Oneida Energy Blocker Corp. This company owns the limited liability company Green Bay Renewable Energy, LLC as the entity that would take on other investors. As a part of the waste-to-energy project Broadway Manufacturing, LLC was created to make an offer to purchase the Hurlbut Street location in order to avoid price escalation if the owner were made aware that the Tribe or a corporation of the Tribe was expressing interests. Ultimately, Broadway Manufacturing, LLC was only used for the offer to purchase and was not utilized for any other activity.

Each of the limited liability company organizational documents identifies language restricting the transfer of ownership value to another party. In all circumstances, the restriction requires the remaining partner to have the opportunity to purchase the value of the existing partner's shares at book value. Book value is the value of the assets listed on the balance sheet of the company and is calculated by deducting depreciation from the cost of the asset.

In accordance with the organizing documents, a member in the company can withdraw in two ways. A member may withdraw voluntarily with 180-day notice to the other members of the intent to sell the membership percentage. Alternatively, a member may withdraw involuntarily through bankruptcy or dissolution of the member corporation with 90-day notice to the other members of the involuntary withdrawal. During the notice period, the remaining member has the option to purchase the withdrawing member's interests at book value. In the alternative, the remaining member may choose to reject the sale and cause the dissolution of the company.

All of the organizing documents for the limited liability companies with third party members contain a confidentiality agreement and a waiver of sovereign immunity regarding Oneida Seven Generations Corporation.

Corporate Debt

The Oneida Seven Generations Corporation enters into contracts, employment agreements, lease agreements, and financial agreements in the course of its business activities. There were two groups of documents reviewed for the information provided in this section – corporate financing documents and the fiscal year 2012 audit of the corporation.

Corporate Financing Documents

I reviewed five financing documents of the corporation. Although there are likely more financing documents available, I requested the corporate officers to provide examples of typical financing it would enter into, as well as larger loans the corporation has entered into.

Corporation Financing

- \$150,000 line of credit at 5.350%
- \$250,000 line of credit at 4.5%
- \$601,778 line of credit at 5.330%
- \$401,752 line of credit at 4.940%

Limited Liability Company Financing

- \$4,375,000 line of credit – Oneida Generations (29/32 Travel Center)

All of the above financial agreements are collateralized by various master lease agreements and rental income from leases under those master lease agreements. All of the financing documents identify that a default on the loan occurs if there is any change in ownership in the company or an adverse change in the financial position or prospect of payment. The Oneida Seven Generations Corporation has waived its sovereign immunity in all financial agreements.

In addition to the above financing, the Oneida Seven Generations Corporation guaranties a \$2 million 2% interest loan for the Wisconsin Economic Development Corporation. Finally, the corporation has a debt owed directly to the Tribe originally set at \$750,000. However, the corporation drew down approximately \$375,000, the remainder of which was not used by the corporation and was withdrawn by the Tribe.

Fiscal Year 2012 Audit

A review of the 2012 fiscal year audit by the external audit firm of BDO. This audit was presented to the General Tribal Council at the July 2013 Semi-Annual General Tribal Council meeting. The audit identifies that the corporation maintains eight long term notes totaling approximately \$8 million. *FY2012 Audit, pg. 19*. Several of these notes were reviewed in the documents above. In addition to these loans, the corporation us a guarantor on approximately \$12.5 million in the various business relationships described above.

Oneida Tribe of Indians of Wisconsin

As the owner of the Oneida Seven Generations Corporation, the Tribe has the ability to dissolve the company. However, as identified in previous legal opinions, the decision to dissolve a corporation becomes progressively more complex as the corporation carries out business and as the Tribe's financial position changes. The effect of dissolving the Oneida Seven Generations Corporation on the Tribe occurs in three different ways. First, the liabilities of the corporation must be satisfied in accordance with existing agreements. Second, the actions of dissolving the corporation affect the Tribe's financial position. Finally, dissolution of the corporation affects the Tribe's ability to engage in business activities directly or through corporate structures.

Corporate Debt

The Oneida Seven Generations Corporation carries approximately \$20 million in debt whether directly or guaranteed through limited liability companies. As identified above, all of the debt is secured through rents on existing master lease agreements. The Tribe has approved the use of master leases for this purpose. In addition to the lease revenues, the financing agreements also authorize the bank to be repaid through all other accounts of the business.

If the Tribe dissolves the business, and similarly the limited liability companies, the use of corporate assets to pay "...debts and liabilities of the corporation ...[is taken] in the following order: (1) third parties perfected security interests; (2) security interests of the Oneida Nation; (3) third parties perfected interests." *Corporate Charter, Article XV(B)*. The 2012 audit of the corporation identifies \$9.7 million in net assets. It is possible to isolate the liabilities of the limited liability company as intended by the creation documents. However, doing so carries risk to the Tribe financially and through the ability to conduct business. This is discussed further below.

It should also be noted that for those partnerships with third parties (Babcock, LLC; North Packerland, LLC; Partnership Drive, LLC; and Oneida-Kodiak Construction, LLC) that the Tribe may be required to negotiate with those partners regarding maintaining the limited liability company or the value of dissolving the company. For example, if the partner in North Packerland, LLC chooses to reject the involuntary transfer of the Oneida Seven Generations Corporation membership to the Tribe, then the limited liability company will be forced to dissolve. In some circumstances, this may result in the Tribe having to negotiate book value of the shares of the partner.

Tribe's Finances

The Tribe has entered into loan and bond agreements based on the financial strength of the Tribe. That financial strength is based primarily on the gaming and retail revenues. However, it is in part based on the Tribe's diversification through corporate entities. In addition, the agreements are also based on calculated through financial ratios of cash flow, debts, and liabilities. It is not clear if the costs of the dissolution of the Seven Generations Corporation would result in a financial impact to the Tribe, the answer to this question is beyond the scope of this legal opinion.

Notwithstanding the actual financial impact, lending institutions for future project activities could hesitate to provide funding to the Tribe because of its actions regarding the dissolution of a tribal corporation. If the Tribe is unwilling to recognize obligations of corporate entities, lenders may be unwilling to jeopardize lending funds to the Tribe or may demand higher interest rates. This may be true even with clear waivers of tribal sovereign immunity contained in agreements.

Business Activities

The Tribe has authority to dissolve the corporation under the charter. However, doing so may result in greater difficulties in creating business relationships and contracting in the future. For example, will it be possible to enter into a business venture developing property where financing is needed or where both parties are called upon to utilize their own funding for start-up business

costs. It is not possible to answer these questions; however, it is important to note that these are strong potential consequences to dissolving a corporation.

Conclusion

It is within the authority of the General Tribal Council to direct the Oneida Business Committee to dissolve the Oneida Seven Generations Corporation. However, it should be identified that this dissolution could take significant time in light of existing agreements. Any time frame placed on dissolution should recognize that it may take as long as 12 months to complete such actions as:

- transferring all master leases
- renegotiating existing limited liability company memberships
- renegotiating financing agreements
- transferring tenant responsibilities and amending leases
- identifying and transferring corporate assets

Action to dissolve the corporation would require a simple majority vote as it affects no prior actions of the General Tribal Council.

If you have further questions, please contact me.