

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, LAW DIVISION

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ACF LEASING, LLC, ACF SERVICES,  
LLC, GENERATION CLEAN FUELS, LLC,

Plaintiffs,

v.

GREEN BAY RENEWABLE ENERGY,  
LLC, ONEIDA SEVEN GENERATIONS  
CORPORATION and THE ONEIDA TRIBE  
OF INDIANS OF WISCONSIN,

Case No. 14 L 002768

Defendants

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**THE ONEIDA TRIBE OF INDIANS OF WISCONSIN'S  
RESPONSE TO PLAINTIFFS' FIRST REQUEST TO ADMIT**

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Pursuant to Ill. Sup. Ct. R. 216(c), defendant The Oneida Tribe of Indians of Wisconsin ("Tribe"), by and through its attorneys, hereby responds to Plaintiffs' First Requests to Admit ("FRA"), as follows:

**GENERAL OBJECTIONS**

1. As a sovereign nation, the Tribe cannot be compelled to respond to the FRA due to its sovereign immunity. The Tribe is voluntarily responding to the FRA without waiver of its sovereign immunity and with the express reservation of its right to object to the FRA and any other discovery requests that may be served on the Tribe by the plaintiffs, based on the Tribe's sovereign immunity.

2. The Tribe's investigation into this matter is ongoing and its responses are therefore necessarily limited to the information presently available. The Tribe therefore reserves

the right to modify, amend and/or supplement its responses as further information becomes available if necessary.

3 The Tribe objects to the FRA to the extent they call for information protected by the attorney-client and the work-product privileges. By responding to the plaintiffs' discovery, the Tribe expressly reserves the right to shield from discovery such information without prejudice thereto. Any inadvertent disclosures shall not be deemed to constitute a waiver of any privilege.

4 The Tribe objects to the FRA to the extent they impose any obligation exceeding those contemplated by the Illinois Rules of Civil Procedure or Supreme Court Rules governing discovery in general and requests to admit specifically. The answers set forth herein disregard all instructions and definitions provided by Plaintiffs and instead give all words their plain meaning.

5 The Tribe objects to the FRA seeking admissions regarding any proprietary and/or confidential business and/or personal financial information. Without waiver of this objection, such information and documents will be produced only after entry, and in accordance with the terms, of a Protective Order.

6. The Tribe objects to the FRA because they seek admissions to statements that are neither relevant nor reasonably calculated to lead to the discovery of admissible evidence pertaining to the pending motion to dismiss on sovereign immunity grounds. The Tribe further objects to the FRA, except for FRA No. 7, because they are neither relevant nor reasonably designed to lead to the discovery of admissible evidence pertaining to the pending motion to dismiss for lack of personal jurisdiction. The parties have stipulated that discovery will be limited to those two motions until they are decided by the Court.

### REQUESTS TO ADMIT

1 During the period from January 2012 to some time in August 2013, Kevin Cornelius was the Chief Executive Officer of Green Bay Renewable Energy, L.L.C. ("GBRE"), the Chief Executive Officer of the Oneida Seven Generations Corporation ("OSGC") and a member of the Oneida Tribe of Indians of Wisconsin ("the Tribe").

RESPONSE: The Tribe admits "from January 2012 to some time in August 2013," Kevin Cornelius was the Chief Executive Officer ("CEO") of the Oneida Seven Generations Corporation ("OSGC") and that he was one of over 16,000 members of the Tribe but asserts that as a member of the Tribe he had no authority to act on behalf of the Tribe, to bind the Tribe to any contractual agreement or to waive the Tribe's sovereign immunity, and denies that Kevin Cornelius was the CEO of Green Bay Renewable Energy, L.L.C. ("GBRE").

2 During the period from January 2012 to some time in December 2013, Bruce King was the Chief Financial Officer of GBRE, the Chief Financial Officer of OSGC and a member of the Tribe.

RESPONSE: The Tribe admits that "from January 2012 to some time in December 2013," Bruce King was the Chief Financial Officer ("CFO") of OSGC and that he was one of more than 16,000 of the Tribe and asserts that as a member of the Tribe he had no authority to act on behalf of the Tribe, to bind the Tribe to any contractual agreement or to waive the Tribe's sovereign immunity, and denies that Bruce King was the CFO of GBRE.

3. In 2012 and 2013, GBRE was an indirect wholly-owned subsidiary of OSGC and was originally created by OSGC to engage in energy-related projects

OBJECTION: The Tribe objects to the request that it admit that "GBRE was an indirect wholly-owned subsidiary of OSGC" on the grounds that such phrase is undefined and ambiguous. Subject to the objection, the Tribe responds as follows

**RESPONSE:** Admits that GBRE is 100% owned by Oneida Blocker, Inc., which is 100% owned by Oneida Energy, Inc., which is 100% owned by OSGC. The Tribe denies that GBRE was created by OSGC and instead asserts that GBRE was created by Oneida Blocker, Inc. and/or Oneida Energy, Inc. and admits that GBRE was originally created to engage in energy-related projects.

4. The energy project detailed in Exhibits A and B of the Plaintiffs' Complaint at Law ("the Project") was intended to be a waste plastics to oil commercial project to be operated off of the reservation by the Tribe.

**OBJECTION:** The Tribe objects to this request to admit on the grounds that Exhibits A and B attached to the Complaint speak for themselves and denies anything in the request to admit inconsistent with the terms set forth in such Exhibits A and B. Without waiving its objection, the Tribe responds as follows:

**RESPONSE:** Admits that a general description of the Project described in Exhibits A and B of the Complaint was a plastics to oil and energy project to be operated off of the Tribe's reservation at a location in Monona, Wisconsin and Cheboygan, Michigan, and denies the remainder of request to admit number 4.

5. OSGC is a corporation chartered and solely owned by the Tribe to promote and enhance economic diversification on behalf of the Tribe and all net revenues of OSGC are paid over to the Tribe's general fund and the Tribe has provided funds to OSGC to operate as a tribal corporation.

**RESPONSE:** Admits that OSGC is a corporation chartered and solely owned by the Tribe and that it was created to "enhance the business and economic development of the Oneida Tribe", denies that all net revenues of OSGC are paid over to the Tribe's general fund, denies that the Tribe has provided funds to OSGC "to operate as a tribal corporation," and instead

admits that the Tribe has provided funds to OSGC to be used for specific projects rather than as operating capital.

6 Prior to August 2013, Kevin Cornelius and Bruce King discussed and negotiated with members of the Plaintiffs' LLCs regarding the contracts marked Exhibit A and B contained in Plaintiffs' Complaint at Law by telephone on at least twenty-five (25) occasions

**RESPONSE:** The Tribe is unable to truthfully admit or deny the requested admission of facts. After consultation with Bruce King, in-house counsel for the Tribe, Attorney James Buttorf, was told by Mr. King that he believes that the statement that Bruce King and Kevin Cornelius discussed and negotiated Exhibits A and B to the Complaint with Plaintiffs "by telephone on at least twenty-five (25) occasions" is incorrect because he believes that the telephone discussions and negotiations totaled less than twenty-five. However, because Kevin Cornelius is no longer employed by OSGC or GBRE and because there are no records that reveal precisely how many telephone discussions and negotiations took place, the Tribe can neither admit nor deny that such telephone discussions and conversations totaled twenty-five. In addition, the Tribe asserts that the telephone discussions and negotiations between Kevin Cornelius and Bruce King, on the one hand, and the Plaintiffs, on the other, were conducted by Kevin Cornelius and Bruce King in their capacities as representatives, employees and officers of GBRE and not on behalf of OSGC nor the Tribe.

7 Prior to August 2013, Kevin Cornelius, Bruce King and a financial advisor to OSGC discussed and negotiated with members of the Plaintiffs' LLCs regarding Exhibits A and B contained in Plaintiffs' Complaint at Law in Evanston, Cook County, Illinois on at least two (2) occasions and an attorney representing OSGC was present on one (1) of those occasions

**RESPONSE:** Admits that prior to August 2013, Kevin Cornelius, Bruce King and a financial advisor to OSGC discussed and negotiated with Plaintiffs Exhibits A and B to the

Complaint in Evanston, Cook County, Illinois on at least two (2) occasions and an attorney who represented OSGC was present on one of those occasions but asserts that the financial advisor and the attorney also represented GBRE and that the financial advisor and attorney were representing GBRE in all discussions and negotiations with Plaintiffs with regard to Exhibits A and B attached to the Complaint and, since OSGC is not a party to Exhibits A and B attached to the Complaint, denies that the financial advisor and attorney were representing OSGC with regard to such Exhibits A and B during meetings in Evanston, Cook County, Illinois

8 Prior to August 2013, Kevin Cornelius and Bruce King were authorized by the Board of Directors of OSGC to conduct business for OSGC and GBRE

**RESPONSE:** Denies the facts set forth in this request to admit and asserts that the authority provided to Messrs Cornelius and King to act on behalf of OSGC was derived from the Bylaws of OSGC and that their authority to act on behalf of GBRE was derived from GBRE's Operating Agreement, denies that the OSGC Board of Directors authorized Messrs Cornelius and King to conduct business for GBRE and admits that the Board of Directors of OSGC authorized certain conduct and actions by Messrs Cornelius and King on behalf of OSGC

9 From October 2012 to July 2013, GBRE had no corporate officers other than Kevin Cornelius and Bruce King

**RESPONSE:** Admits that "[f]rom October 2012 to July 2013," Kevin Cornelius was president and secretary of GBRE and Bruce King was treasurer of GBRE and asserts after conducting due diligence that it is not able to truthfully admit or deny whether there were ever any other corporate officers of GBRE but believe that there were no others. The due diligence conducted by the Tribe includes discussions with Bruce King, review of the GBRE Operating

Agreement and GBRE records, including a search for meeting minutes. No such records were found.

10 In 2012 and 2013, GBRE did not have any offices separate and apart from OSGC.

**RESPONSE:** Denies that "GBRE did not have any offices separate and apart from OSGC" to the extent that implies that GBRE did have offices at the business premises of OSGC, admits that GBRE did not have business offices because there was no need for business offices unless and until the project with Plaintiffs was ever constructed and completed.

11 When Kevin Cornelius and Bruce King were officers of OSGC and GBRE, they used OSGC letterhead, OSGC email accounts, and OSGC office facilities to conduct the business of GBRE.

**RESPONSE:** Admits that Kevin Cornelius and Bruce King, from time to time, used OSGC letterhead and OSGC email accounts when communicating with persons about issues pertaining to GBRE but asserts that they also used GBRE letterhead and Oneida Energy email accounts for such purposes, further admits that, from time to time, they communicated with persons with regard to GBRE issues while they were in their offices at OSGC facilities.

12. In 2012 and 2013, GBRE did not file any annual reports with the Department of State of the State of Delaware.

**RESPONSE:** Admits that GBRE did not file annual reports with the Department of State of the State of Delaware but asserts that it did not do so because annual reports are not required to be so filed by Delaware limited liability companies. The Tribe further asserts that limited liability companies are required to pay an annual fee to the State of Delaware and that GBRE did pay the required annual fee.

13. In 2012 and 2013, GBRE did not have its own website

RESPONSE: The Tribe admits, to the best of its knowledge, that GBRE did not have its own website

14. In 2012 and 2013, OSGC held all of the assets of GBRE

OBJECTION: The Tribe objects to this request to admit because the phrase "OSGC held all of the assets of GBRE" is undefined, vague and ambiguous. Without waiving the objection, the Tribe responds as follows

RESPONSE: Denies

15. In 2012 and 2013, GBRE owned no assets.

RESPONSE: Denies.

16. In 2012 and 2013, GBRE did not maintain its own corporate ledgers or books.

OBJECTION: The Tribe objects to this request to admit because the phrase "corporate ledgers or books" is undefined, vague and ambiguous. Without waiving the objection, the Tribe responds as follows

RESPONSE: Admits that GBRE did not maintain its own "corporate ledgers or books" because GBRE is not a corporation and, thus, it does not have "corporate" ledgers or books. GBRE is a limited liability company and maintained some company documents

17. Prior to September 2013, William Cornelius, then President and Chairman of the Board of OSGC, visited a machine related to the Project with members of the Plaintiffs' LLCs in Bakersfield, California



**RESPONSE:** Admits that William Cornelius was the President of the Board of OSGC and that he visited a machine with members of the Plaintiffs' LLCs in Bakersfield, California, denies that he did so "prior to September 2013" and asserts that he visited Bakersfield, California in September 2013, denies that William Cornelius visited Bakersfield, California to view a machine "related to the Project" and states that the Tribe cannot truthfully admit or deny that William Cornelius was Chairman of the Board of OSGC. The Tribe has seen references to William Cornelius in OSGC Board minutes describing him as "Board Chairman," but the Tribe is unaware that there was a formal position of Board Chairman in addition to President of the Board

18. Prior to May 2013, members of the OSGC Board of Directors were aware of the Project

**RESPONSE:** Denies

19. In August 2013, Bruce King provided a presentation regarding the Project to the OSGC Board of Directors.

**RESPONSE:** Admits that Bruce King made a presentation to the OSGC Board of Directors in August 2013 with regard to a potential plastics to oil and energy project because the Board had by then directed Messrs. Cornelius and King to stop working on any such project and denies that Mr. King's presentation in August 2013 was with regard to "the Project "

20. Prior to September 2013, Kevin Cornelius and Bruce King visited a machine related to the Project with members of the Plaintiffs' LLCs in Bakersfield, California

**RESPONSE:** Admits that Kevin Cornelius and Bruce King visited a machine with members of the Plaintiffs' LLCs in Bakersfield, California "[p]rior to September 2013 . ." The Tribe is unable to truthfully admit or deny that the machine Messrs. Cornelius and King visited

in Bakersfield, California was "related to the Project." The Tribe has not been able to confirm whether Mr. Cornelius traveled to Bakersfield before or after he signed the agreements attached as Exhibits A and B to the Complaint. The Tribe believes that Bruce King knew the contracts had been signed when he visited Bakersfield (although he had not disclosed the existence of the contracts to the Tribe), and, thus, the Tribe believes that Bruce King knew that the machine he visited in Bakersfield, California was "related to the Project." Because Mr. Cornelius is no longer employed by OSGC and GBRE, the Tribe has not been able to verify when he visited the machine in Bakersfield and thus is unaware whether he knew the machine he saw was "related to the Project."

21. Prior to October 2013, at least one Business Committee member of the Tribe visited a machine related to the Project with members of the Plaintiffs' LLCs in Bakersfield, California.

RESPONSE: Admits that at least one Business Committee member of the Tribe visited a machine with members of the Plaintiffs' LLCs in Bakersfield, California prior to October 2013 but denies that he knew the machine he viewed "related to the Project" and denies that the Business Committee member agreed to or authorized any conduct on behalf of the Tribe either during or after his trip.

22. Prior to October 2013, Kathy Delgado, then a member of the Board of Directors of OSGC, visited a machine related to the Project with members of the Plaintiffs' LLCs in Bakersfield, California.

RESPONSE: Admits the statements contained therein except denies that Kathy Delgado knew that the machine she visited in Bakersfield, California was "related to the Project."

23. In May 2013, facts were presented to the General Tribal Council of the Tribe regarding the Project.

RESPONSE: Denies

24. A majority of the OSGC Board of Directors gave authority to Kevin Cornelius to sign the contracts represented as Exhibits A and B in the Plaintiffs' Complaint at Law.

RESPONSE: Denies

25. In 2012 and 2013, only one person on the OSGC Board of Directors was not a member of the Tribe

RESPONSE: Admits.

26. In December 2013, the General Tribal Council of the Tribe was informed of the potential consequences of voting to dissolve OSGC

RESPONSE: Denies that in December 2013 the General Tribal Council of the Tribe ("GTC") was informed of the potential consequences of voting to dissolve OSGC but admits that the GTC was informed of some potential financial consequences of voting to dissolve OSGC unrelated to the Plaintiffs or the Project

27. In December 2013, the General Tribal Council of the Tribe voted to dissolve OSGC

RESPONSE: Admits

28. Following the General Tribal Council's vote to dissolve OSGC, the Wisconsin Bank & Trust withdrew its commitment to fund the Project

RESPONSE: The Tribe cannot truthfully admit or deny the statement set forth in this request to admit. The Tribe reviewed the records it has received from Wisconsin Bank & Trust ("WBT"), including those following the GTC's vote to dissolve OSGC, and the Tribe has not found any document whereby WBT "withdrew its commitment to fund the Project.. " The

Tribe is aware that WBT withdrew its application to the Bureau of Indian Affairs to guarantee a WBT loan related to a plastics to oil and energy project should WBT consummate such a loan, but the Tribe is unaware of whether WBT ever withdrew such a "commitment" for a loan

29. OSGC borrowed money from the Wisconsin Economic Development Corporation which OSGC intended to use to fund the Project.

RESPONSE: Denies.

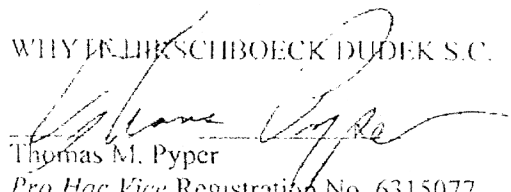
30. OSGC received money from the State of Wisconsin which OSGC intended to use to fund the Project

RESPONSE: Denies

ATTORNEY MAKING OBJECTIONS.

Dated this 3rd of July, 2014.

WHYTE, LIRSCHBOECK DUDEK S.C.

  
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