

STATE OF WISCONSIN : CIRCUIT COURT : BROWN COUNTY

ONEIDA SEVEN GENERATIONS  
CORPORATION; and GREEN BAY  
RENEWABLE ENERGY, LLC,

Plaintiffs,

Case No. 12-CV-2263

v.

Code No(s). 30955 (Petition for Writ of  
Certiorari)

CITY OF GREEN BAY,

Defendant.

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**AFFIDAVIT OF KEVIN CORNELIUS IN SUPPORT OF MOTION FOR  
PRELIMINARY INJUNCTION**

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STATE OF WISCONSIN )

COUNTY OF BROWN )

KEVIN CORNELIUS, being first duly sworn on oath, deposes and says:

1. I am the Chief Executive Officer of Oneida Seven Generations Corporation ("OSGC"). I make this affidavit in support of OSGC's Motion for Preliminary Injunction.
2. OSGC is developing a waste-to-energy facility (the "Facility") at 1230 Hurlbut Street in Green Bay, Wisconsin.
3. The financial viability of the Facility is dependent on a tax incentive known as a Section 1603 Grant. Section 1603 Grants were made available to all qualifying renewable energy facilities, pursuant to the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111-5, § 1603.

*ymi*

4. A report from an independent financial consulting firm, Baker Tilly, analyzing the value of the 1603 Grant for the Facility is attached to this Affidavit as Exhibit A. The value of the Section 1603 Grant for the Facility is estimated to be \$6.6 million to \$7.6 million.

5. Pursuant to the American Recovery and Reinvestment Tax Act of 2009, Pub. L. 111-5, § 1603(e), in order to qualify for the 1603 Grant, the Facility must be producing electricity to the grid by December 31, 2013.

6. From the current stage of the project, construction to the point of producing electricity is expected to take approximately 10 months. Therefore, in order to meet the December 31, 2013 operational deadline, construction must begin by March 1, 2012.

7. Construction cannot begin until the construction loan closes with the lender and construction funds are released.

8. Closing on the loan is dependent on finalization of a United States Bureau of Indian Affairs ("BIA") loan guaranty. BIA has already allocated \$19.6 million to OSGC for the construction of the Facility. However, pursuant to BIA regulations, including 25 CFR § 103.17, OSGC and the lender must document that the project has complied with all applicable Federal, State, local, and tribal laws, including all permits required to operate the Facility.

9. BIA has indicated that the review process is likely to take 60 to 90 days. Correspondence from BIA confirming the timing of the review process is attached to this affidavit as Exhibit B.

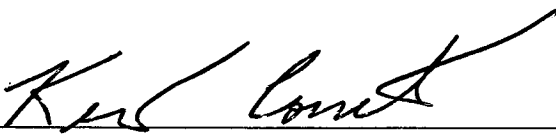
10. In order to commence construction by March 1, 2013, the BIA review process must be triggered as soon as possible so that the loan guaranty can be finalized, the loan can close, and the construction funds can be released.

11. In order to trigger the BIA review process, OSGC must submit the CUP, along with all other required permits.

12. The Green Bay City Attorney indicated in a November 1, 2012 letter that "any further action at 1230 Hurlbut Street to construct the solid waste facility will be prohibited by legal action, if necessary[.]" A copy of the November 1, 2012 letter is attached to this affidavit as Exhibit C.

13. OSGC seeks a preliminary injunction to restore the CUP so that it may commence the BIA loan guaranty review process, release construction financing, and commence construction in time to deliver electricity to the grid by December 31, 2013.

Dated this 11 day of December, 2012.

By:   
Kevin Cornelius

Subscribed and sworn to before me  
this 11 day of December, 2012.



Notary Public, State of Wisconsin  
My Commission Expires: 7-10-16  
8769753\_1



Baker Tilly Virchow Krause, LLP  
Ten Terrace Ct, PO Box 7398  
Madison, WI 53707-7398  
tel 608 249 6622  
fax 608 249 8532  
bakertilly.com

February 2, 2012

Mr. Kevin Cornelius  
Oneida Seven Generations Corporation  
dba Green Bay Renewable Energy, LLC  
1229 Flightway Drive  
De Pere, WI 54115

Dear Mr. Cornelius:

The Oneida Seven Generations Corporation ("OSGC"), doing business as Green Bay Energy, LLC ("GBRE") has engaged Baker Tilly Virchow Krause, LLP ("Baker Tilly") to assist with the assessment of eligible project costs as it pertains to applying for the ARRA Section 1603 Grant in Lieu of Investment Tax Credit for the creation of a new waste-to-energy facility (the "Project"). The facility will be located at 1230 Hurlbut Street in Green Bay, Wisconsin.

The Section 1603 Program Guidance, published by the U.S. Treasury in July 2009 and revised in March 2010 as well as April 2011, provides a listing of requirements for projects to be eligible for the entitlement grant. Listed below is a summary of the Section 1603 Grant guidance. This is not meant to be all-inclusive and therefore does not include all relevant requirements or stipulations.

- > Investment Tax Credit ("ITC")
  - 30% of cost of eligible "specified energy property" once placed in service, therefore, not dependent upon the amount of energy produced.
    - » Specified energy property must be "integral to the production of electricity"
  - For "Trash Facilities" as defined below, projects must be placed in service by 12/31/2013.
- > Section 1603 Grant in lieu of ITC
  - Forgo the ITC in favor of receiving non-taxable direct cash payment from the Department of Treasury in an amount equal to the ITC.
  - This payment is available for projects that are either placed in service by 12/31/2011, or projects that "begin construction" prior to 12/31/2011.
  - Definition of "beginning of construction" can be met in either of two ways:
    - » "Physical work of a significant nature" must be performed – can be on-site or off-site
    - » 5% of eligible costs must be "paid or incurred" to meet "Safe Harbor"
      - o "Paid" applies to cash basis tax payers
      - o "Incurred" applies to accrual basis tax payers

The GBRE Project appears to qualify under the U.S. Treasury Section 1603 Program Guidance as noted below:

"Trash Facilities: A trash facility is a facility, other than a landfill gas facility, that uses municipal solid waste to produce electricity..."

"Municipal solid waste" is defined in IRC section 45[c][6]. By reference, this term is defined in section 2(27) of the Solid Waste Disposal Act (42 USC 6903) as it relates to "solid waste". This Act defines solid waste as "any garbage, refuse...and other discarded material, including solid, liquid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations..."

Mr. Kevin Cornelius  
Oneida Seven Generations Corporation  
dba Green Bay Renewable Energy, LLC

February 2, 2012  
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Baker Tilly has completed an initial assessment of GBRE's planned facility as well as its efforts to start construction by 12/31/2011 by meeting the 5% safe harbor test. The final determination of eligible costs will be reviewed and approved by the U.S. Treasury after the project has been placed in service. Baker Tilly cannot guarantee GBRE's project will receive Section 1603 Grant amounts as a result of our joint efforts.

For the classification of a "trash facility" as described previously, the grant would be 30% of the eligible basis for electricity generating equipment and 10% for combined heat and power costs.

Based on costs provided by GBRE, the new facility will cost approximately \$29.5M. GBRE is asserting approximately \$27.4M will be deemed eligible basis for the grant. This initial management assertion is approximately 93% of estimated \$29.5M project cost and appears consistent with other project experiences we have seen for trash facilities to date. The state of Wisconsin has granted the project a \$2M reimbursable grant for the purchase of project equipment. As such, the 1603 Eligible basis has been reduced by \$2M to approximately \$25.4M.

Department of Treasury guidance states that buildings are not eligible as part of the project basis, but basis may include structural components of a building. The GBRE project cost breakdown incorporates eligible building costs based on a percentage of anticipated electrical production process square footage (89%) versus non-electrical process square footage (11%). Utilizing general industry standards of warehouse development costs for this type of building space of \$60/square foot, if the Treasury were to decide the related 56,070 feet square processing area of the facility is not eligible, it could reduce the eligible basis by approximately \$3,364,200.

Thus, in accordance with the accompanying cost breakdown spreadsheet, it appears that the grant could be approximately between \$6.6M or \$7.6M depending on the Treasury's acceptance of the eligible facility square footage.

Baker Tilly Virchow Krause, LLP is an international CPA and consulting firm founded in 1931. For more information on our firm, please visit [www.bakertilly.com](http://www.bakertilly.com).

Sincerely,

BAKER TILLY VIRCHOW KRAUSE, LLP



Richard Frohmader, Partner, CPA

*Pursuant to the rules of professional conduct set forth in Circular 230, as promulgated by the United States Department of the Treasury, nothing contained in this communication was intended or written to be used by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service, and it cannot be used by any taxpayer for such purpose. No one, without our express prior written permission, may use or refer to any tax advice in this communication in promoting, marketing, or recommending a partnership or other entity, investment plan or arrangement to any other party.*

*This documentation is to be used for illustrative purpose only. Financial information contained herein is based on management's best estimate of future performance. Future performance may differ significantly from these financial forecasts due to economic, market factors or other factors, and those differences may be material. No representations or warranties, expressed or implied, are made as the accuracy or adequacy of any of the financial information contained herein. Any conclusions derived and communicated from the presentation of this data should be considered an opinion with no certainty that any expressed course of events will actually transpire.*



# United States Department of the Interior

OFFICE OF THE SECRETARY  
Washington, DC 20240



December 5, 2012

Kevin Cornelius, CEO  
Oneida Seven Generations Corporation  
1239 Flightway Drive  
DePere, WI 54155

Dear Mr. Cornelius,

Thank you for your continued efforts to keep the Office of Indian Energy and Economic Development (IEED) apprised of the status of the Waste to Energy facility under development by Oneida Seven Generations Corporation (OSGC). As you know, the Division of Capital Investment (DCI), under IEED, manages the Indian Loan Guaranty Program and has obligated funds to provide a guaranty on the construction loan for the Waste to Energy facility, up to \$19 million.

Upon receipt of a complete loan guaranty request for the financing of the project from an approved lender, I expect the analysis of the request, and its final approval to be issued within 60 to 90 days. This extended timeframe is due in part to the size of the request which will require a final approval issued from our Division Chief, based in Washington DC. Additionally, the financing structure, though commonly used to finance renewable energy projects, is relatively unknown to DCI and its complexity is expected to delay the final approval of the loan guaranty request.

If you have any questions or concerns regarding this time line, or any other matter regarding the Indian Loan Guaranty Program, please contact me directly at (505) 563-5471.

Sincerely,

Shannon Loeve  
Manager, Southwest Zone  
Division of Capital Investment  
Office of Indian Energy and Economic Development



Law Department

"BETTER BY THE BAY"

Anthony S. Wachewicz III  
City Attorney

November 1, 2012

Mr. Kevin Cornelius, CEO  
Oneida Seven Generations Corp.  
P.O. Box 257  
Oneida, WI 54155

**Re: Green Bay Common Council Action on CUP  
1230 Hurlbut St.**

Dear Mr. Cornelius:

On Tuesday, October 16, 2012, the City of Green Bay Common Council voted to void the Conditional Use Permit issued to Oneida Seven Generations Corp. (hereinafter OSGC) for 1230 Hurlbut St. The bases for this decision are set forth below.

The Council's action to void the Conditional Use Permit (CUP) was based upon the following: information presented during the October 3, 2012, public hearing as well as a review of the history of the OSGC CUP application, including the materials submitted to the City of Green Bay by the Clean Water Action Council containing false statements and misrepresentations by OSGC.

As a result of the foregoing information, the Council's action to void the CUP was based upon the following conclusions, as stated at the Council meeting on October 16, 2012:

1. Kevin Cornelius, CEO of OSGC, made untruthful statements before City governmental bodies while seeking the CUP. These false statements were made in response to questions or concerns related to the public safety and health aspect of the Project and the Project's impact upon the City's environment.
2. Mr. Cornelius' statements were plain spoken, contained no equivocation, left no impression of doubt or uncertainty, and his words were intended to influence the actions of the governmental bodies he was addressing.
3. Mr. Cornelius knew his statements were false. Mr. Cornelius was not a new or uninformed member of OSGC; he was the CEO and had been involved throughout the Project's development; therefore, he was knowledgeable about the pilot work, the process and the equipment, the materials that would be used, the nature of the by-products and chemical releases. Mr. Cornelius understood his role he accepted as spokesperson for OSGC for the Project and had every

Mr. Kevin Cornelius

November 1, 2012

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opportunity to say "I don't know" or "I can't answer that" when questions were put to him.

4. The subject matter of the questions put to Mr. Cornelius was of very high importance. More specifically, on the subject of emissions, the documents submitted by OSGC in applying for the CUP referenced other plants using a variety of technologies, equipment and feedstock. Commissioners were rightfully interested in this Project and not what happened at other Projects. When Mr. Cornelius was asked about emissions, chemicals, and hazardous materials for this Project, Mr. Cornelius provided false information.

Accordingly, the Conditional Use Permit issued to OSGC for 1230 Hurlbut has hereby been declared void by action of the Council due to false statements and misrepresentations. Any land use pertaining to a solid waste facility at this location zoned General Industrial is no longer permitted; it is prohibited under GBMC Sections 13-901, 13-902, and Table 9-1.

Consequently, any further action at 1230 Hurlbut St. to construct the solid waste facility will be prohibited by legal action, if necessary, to obtain compliance with the above legislative directive.

Sincerely,



Anthony S. Wachewicz III  
City Attorney

Enc: Green Bay City Council Minutes Excerpts, Oct. 16, 2012

cc: Mayor Jim Schmitt  
Green Bay City Council  
Kris Teske, City Clerk  
Rob Strong, Community Development Director