

Greenbriar Capital Corp.
d/b/a Blue Mountain Power Partners, LLC
9 Landport
Newport Beach, California 92660
(949)-903-5906
westernwind@shaw.ca
jciachurski@greenbriarcapitalcorp.com

BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

In the Matter of:

BLUE MOUNTAIN POWER PARTNERS,
LLC

Complainant,

vs.

PACIFICORP d/b/a/ ROCKY MOUNTAIN
POWER

Respondent.

Docket No. 16-035-47

**DECLARATION OF JEFFREY
JOSEPH CIACHURSKI**

I, Jeffrey Joseph Ciachurski, hereby declare:

1. I am the Chief Executive Officer of Greenbriar Capital Corp., a publicly traded company, incorporated and in good standing under the laws of British Columbia, Canada (“Greenbriar”).

2. I am over the age of 21, and am competent to testify to the matters set forth herein which are based on my personal knowledge, including my review of relevant files and documents of Greenbriar, Blue Mountain Power Partners, LLC (“Blue Mountain”) and Blue Mountain Wind Holdings, LLC (“BMWH”).

3. Blue Mountain is a Delaware limited liability company formed on March 27, 2012.

4. BMWH is also a Delaware limited liability company, which was formed by Champlin on May 31, 2012. At the time Champlin originally formed BMWH, it was BMWH's sole member.

5. However, pursuant to the terms and provisions of BMWH's *Amended and Restated Limited Liability Company Agreement* dated July 31, 2013 (BMWH's "A&R Operating Agreement"), Champlin agreed to admit Greenbriar as a member of BMWH and transfer to Greenbriar a Fifty Percent (50%) ownership interest in BMWH.

6. In addition to Greenbriar receiving 50% of the membership interests in BMWH, Champlin agreed that Greenbriar's ownership interest in BMWH would be increased to Sixty-Six and Two-Thirds Percent (66 and 2/3%) upon the occurrence of certain events related to the development of the Project under PPA (which for reasons discussed in the Complaint did not occur because of the actions of PacifiCorp).

7. Further, BMWH's A&R Operating Agreement granted to Greenbriar the option of purchasing Champlin's remaining ownership percentage in BMWH at a set purchase price, which, if exercised, would result in Greenbriar being the sole owner of BMWH.

8. BMWH was formed for the purpose of serving as the holding and managing company for Blue Mountain. BMWH owns 100% of the membership interests of Blue Mountain, is Blue Mountain's sole manager, and has all rights and authority to act on behalf of Blue Mountain and in its name.

9. Indeed, BMWH's A&R Operating Agreement expressly provides that the "principal asset of the Company is 100% of the Project Company Membership Interests, which in turn owns all rights in and to the Project." [See Ex. 1 hereto, Excerpts from BMWH's A&R Operating Agreement at p. 1, Recitals, ¶ C]. The Operating Agreement defines "Project Company" as "Blue Mountain Power Partners, LLC, a Delaware limited liability company" and the "Project" as "An approximately eighty (80) megawatt wind electric generation facility to be located in San Juan County, Utah, and commonly identified as the 'Blue Mountain Wind Energy Project.'" [Id. at p. 6, §§1.45 and 1.43, respectively].

10. As also set forth in BMWH's A&R Operating Agreement, BMWH's was a manager-managed LLC and Greenbriar, as a member of the Company, was granted the right to appoint one of BMWH's two managers. [See Ex. 1 hereto, Excerpts from BMWH's A&R Operating Agreement at p. 19, § 6.1]. The Operating Agreement specifically provides that Greenbriar appointed me as manager of BMWH. [Id. at p. 20, § 6.2(a)(ii)]. Champlin appointed Michael D. Cutbirth as its appointed manager of BMWH. [Id.]

11. Accordingly, because Greenbriar has the vested right to trigger the option to buy Champlin's remaining ownership percentage in BMWH, under both U.S. GAAP and IFRS rules, Greenbriar is considered to have majority control of BMWH (and, in turn, Blue Mountain) and therefore Blue Mountain is a consolidated subsidiary of Greenbriar. Specifically, the IFRS audit reporting rules, which govern Greenbriar, introduced the control principal found in IFRS 10 in 2013, which provides that "An investor controls an investee when the investor is exposed, or has rights, to variable returns from its involvement with the investee and has the ability to affect those returns through its power over the investee." These rules thus provide that control can be

determined with 50% ownership (and even less in certain circumstances). Greenbriar's rights under the A&R Operating Agreement fall under these rules and grant control to Greenbriar. As such, Greenbriar is deemed to be the parent and majority owner of Blue Mountain and Champlin is deemed to hold the minority interest in Blue Mountain.

12. Although Greenbriar became a majority owner of BMWH shortly after the PPA was executed between Blue Mountain and PacifiCorp on July 3, 2013, Greenbriar (through me as its Chief Executive Officer) was the sole negotiator of the PPA on behalf of Blue Mountain with PacifiCorp beginning in May 2013. Greenbriar continued to exclusively negotiate the PPA on Blue Mountain's behalf until it was executed by Blue Mountain and PacifiCorp on July 3, 2013.. Because many of these negotiations occurred via telephone calls, PacifiCorp knew that it was negotiating the terms of the PPA with me/Greenbriar during the months of May, June and early July 2013.

13. After Greenbriar became a member, majority owner, and manager of BMWH in late July 2013, Greenbriar, on Blue Mountain's behalf, dealt with PacifiCorp extensively, and virtually exclusively, on all issues relating to the PPA.

14. All conference calls between PacifiCorp and Blue Mountain relating to PPA held before it was executed were led by myself/Greenbriar. Additionally, Greenbriar's President, Cliff Webb, and its wind energy finance counsel, Ed Zaelke of the law firm of Akin Gump, participated in each of these calls. Also, all calls were attended by Greenbriar's banker's legal counsel, Edward Kayukov. On the other hand, the conference calls were not always attended by Cutbirth or any other representative of Champlin. PacifiCorp knew and understood that Greenbriar represented Blue Mountain at these calls, that representatives from Champlin were or

may not be in attendance, and that Greenbriar had authority as Blue Mountain's manager to act and make decisions on its behalf on matters discussed during the calls.

15. All emails sent by PacifiCorp to Blue Mountain relating to the PPA after its execution were addressed to Greenbriar email addresses, including my own Greenbriar email address.

16. All other written communications sent by PacifiCorp to Blue Mountain regarding the PPA and the Project were also sent nearly always to Greenbriar alone (on all but one occasion of which I am aware).

17. For example, on June 3, 2014, Tom Fishback, Project Manager for PacifiCorp, sent a letter addressed to me, "Jeff Ciachurski" of "Greenbriar Capital Corp" at Greenbriar's address in Newport Beach, California "Re: Blue Mountain Power Partners, LLC – Blue Mountain Wind II / LGIQ0426 – Acknowledgment of Notice to Suspend Project", in which Mr. Fishback acknowledges Blue Mountain's notice of suspension of work and states that once the suspension is ended by Blue Mountain, PacifiCorp will provide modified dates for interconnection. [*See Ex. 2 hereto, 6/3/2014 letter from PacifiCorp to Blue Mountain addressed to Greenbriar*].

18. Also, as referenced in the Complaint, in the fall of 2014, PacifiCorp contacted Blue Mountain and expressed an interest in purchasing the Project from Blue Mountain. PacifiCorp contacted Greenbriar's President, Webb, to notify Blue Mountain of PacifiCorp's potential interest in purchasing the Project. To Greenbriar's knowledge, PacifiCorp never attempted to contact Champlin or Cutbirth to discuss with them its interest in the purchase of the Project from Blue Mountain.

19. After PacifiCorp contacted Greenbriar to discuss a purchase of the Project, PacifiCorp negotiated the potential purchase solely with Greenbriar, acting on behalf of Blue Mountain. Indeed, on September 5, 2014, PacifiCorp and Greenbriar signed a *Mutual Confidentiality Agreement* prepared by PacifiCorp relating to the exchange of confidential information between PacifiCorp and Greenbriar pertaining to PacifiCorp's performance of due diligence in connection with possibly purchasing the Project. [See Ex. 3 hereto, Mutual Confidentiality Agreement between PacifiCorp and Greenbriar dated 9/5/2014]. PacifiCorp had Greenbriar execute the Mutual Confidentiality Agreement because it understood that Greenbriar was the manager and majority owner of Blue Mountain, and thus the owner of the confidential information to be disclosed pursuant to the Agreement.

20. Following the execution of the Mutual Confidentiality Agreement, representatives from PacifiCorp reviewed Blue Mountain documents in a data room at Greenbriar. All Blue Mountain documents were stored at Greenbriar because of its status as manager and majority owner of Blue Mountain. These documents included the BMWH A&R Operating Agreement which was reviewed by PacifiCorp and which establishes that Greenbriar controls 100% of Blue Mountain based on its 50% vested majority interest in BMWH and additional vested option to buy the remaining ownership interest in Blue Mountain from Champlin upon payment of the purchase price set forth in the Operating Agreement.

21. On February 11, 2015, PacifiCorp sent a letter addressed to "Cliff Webb" as "President" of "Greenbriar Capital Corporation", which PacifiCorp expressly identifies as "**Partner on behalf of Blue Mountain Power Partners, LLC**", at Greenbriar's offices in Newport Beach. [See Ex. 4 hereto, 2/11/2015 Letter from PacifiCorp to Webb (emphasis

added)]. This is further evidence that PacifiCorp understood that Greenbriar was the acting partner or manager of Blue Mountain. The letter was also addressed to Cutbirth as President of “Champlin Windpower, LLC” and emailed to Webb as well. This is the only letter or other written communication of which Greenbriar is aware that PacifiCorp sent to Champlin or Cutbirth after execution of the PPA. PacifiCorp sent the letter to notify Blue Mountain that PacifiCorp rejected Blue Mountain’s claim, asserted by Greenbriar on Blue Mountain’s behalf, that a Force Majeure event had occurred under the PPA. I believe that if PacifiCorp did not recognize Greenbriar’s authority to act as manager of Blue Mountain and to take actions and make decisions on its behalf, PacifiCorp would not have addressed such a critical letter to Webb, Greenbriar’s President.

22. PacifiCorp was also aware that Greenbriar funded all of Blue Mountain’s activities after the execution of the PPA, given that PacifiCorp and Greenbriar explicitly discussed this fact during multiple conversations.

23. In addition to the foregoing, neither Champlin nor Cutbirth has ever objected to any regulatory filing Greenbriar has made on behalf of Blue Mountain, as majority owner and manager of it, despite their knowledge of these filings.

24. Further, neither Champlin nor Cutbirth has ever objected to any to any expense Greenbriar has incurred on behalf of Blue Mountain related to the PPA or the Project.

25. Importantly, when Greenbriar filed its original complaint against PacifiCorp with the PSC regarding PacifiCorp’s breaches of the PPA, which the PSC rejected because Greenbriar mistakenly failed to prepare the complaint in the proper form in compliance with the Commission’s rules, Cutbirth expressly stated in an email to me that he was “ok” with

Greenbriar filing a complaint on behalf of Blue Mountain against PacifiCorp. [See Ex. 5 thereto, October 6, 2015 Email from Cutbirth to me re: “Blue Mountain Power Partners”]. Neither Cutbirth or Champlin have withdrawn their approval of the filing of a Complaint by Blue Mountain against PacifiCorp or communicated to Greenbriar that they oppose the filing of the present Complaint. Therefore, even if Cutbirth’s approval of a filing of a complaint against PacifiCorp by Blue Mountain is required, as the other manager of BMWH, Cutbirth has given Greenbriar that approval.

26. Greenbriar did not allege facts outlining the details of the ownership of Blue Mountain or assert specifics regarding its authority to file the Complaint on behalf of Blue Mountain because I knew that PacifiCorp was well aware of Greenbriar’s right and authority to act on behalf of Blue Mountain. Greenbriar referred to Blue Mountain as a “DBA” of Greenbriar as a short-hand way to bypass in depth explanation of the structure of its majority ownership of Blue Mountain, which I felt was unnecessary given PacifiCorp’s extensive history of dealing with Greenbriar and PacifiCorp’s indisputable knowledge that Greenbriar possesses the authority to act on behalf of Blue Mountain, including the right and authority to file the Complaint in this matter. I simply did not imagine that PacifiCorp would raise such a senseless and demonstrably meritless challenge to Greenbriar’s authority as owner and manager of Blue Mountain to file the Complaint. Nor did I predict that PacifiCorp would attempt to imply, without any evidence or proof whatsoever, that a disagreement may exist between me and Cutbirth, the owners of BMWH, as sole owner of Blue Mountain, regarding whether PacifiCorp should be held accountable for its breaches of the PPA. No disagreement exists and both

Cutbirth and myself and the entities we represent, as the sole members and managers of BMWH (the 100% owner of Blue Mountain), agree that a complaint against PacifiCorp should be filed.

27. I declare under penalty of perjury under the laws of the State of California (where I make this Declaration) that, to the best of my knowledge, the contents of this Declaration are true and correct.

DATED this 11th day of January, 2017.

/s/ Jeffrey Joseph Ciachurski

Jeffrey Joseph Ciachurski

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by email this 11th day of January 2017 on the following:

PUBLIC SERVICE COMMISSION: psc@utah.gov

ROCKY MOUNTAIN POWER:

R. Jeff Richards	Robert.richards@pacificcorp.com
Sam Meziani	sam.meziani@pacificcorp.com
Yvonne Hogle	Yvonne.hogle@pacificcorp.com
D. Matthew Moscon	matt.moscon@stoel.com
Michael R. Menssen	Michael.menssen@stoel.com

DIVISION OF PUBLIC UTILITIES:

Patricia Schmid	pschmid@utah.gov
Justin Jetter	jjetter@utah.gov

OFFICE OF CONSUMER SERVICES:

Brent L. Coleman	brentcoleman@utah.gov
Robert Moore	rmoore@utah.gov

/s/ Jeffrey Ciachurski _____