

**DEPLOYMENT COMMITTEE OF THE
CONNECTICUT GREEN BANK
Minutes – Special Meeting
Friday, November 21, 2014**

A special meeting of the Deployment Committee (“Deployment Committee”) of the Board of Directors of the **Connecticut Green Bank (the “Green Bank”)** was held on Friday, November 21, 2014, at the office of the Connecticut Green Bank, 845 Brook Street, Rocky Hill, CT in the Colonel Albert Pope Board Room.

1. **Call to Order:** Matthew Ranelli, (designated meeting chair of the Deployment Committee by Commissioner Catherine Smith), called the meeting to order at 8:02 a.m. Deployment Committee members participating: Bettina Ferguson, State Treasurer’s Office (by phone); Reed Hundt (by phone); Rob Klee, Vice Chairperson of the Green Bank and Commissioner of the Department of Energy and Environmental Protection (“DEEP”)(by phone); Matthew Ranelli.

Members Absent: Catherine Smith, Chairperson of the Green Bank and Commissioner of the Department of Economic and Community Development (“DECD”); Patricia Wrice

Staff Attending: Joe Buonannata, Craig Connolly, Mackey Dykes, Brian Farnen, Bryan Garcia, Dale Hedman, Ed Kranich, Kerry O’Neill (by phone), Cheryl Samuels, and Bob Wall.

Others Attending: Tracy Babbidge, DEEP; Harsh Luthra, BeFree Green Energy (“BeFree”); Kapil Luthra, BeFree; and Brad Mondschein, Pullman & Comley.

2. **Public Comments:** There were no public comments.

3. **RSIP Sanction Appeal by BeFree Green Energy:**

Mr. Ranelli instructed the Green Bank staff to finish their presentation.

Attorney Farnen reminded the parties that the underlying concern in this hearing and deciding this Appeal is one of fairness.

Brian stated that once the Green Bank completes its presentation, BeFree will be given the opportunity to make a closing statement for the sole purpose of clarifying or rebutting any information or evidence provided after its presentation and to answer any open questions presented by members of the Deployment Committee from the last meeting.

Attorney Farnen explained that at the end of the Hearing, the Committee must use its judgment to reach a decision. At its sole discretion, the Committee may affirm,

vacate or modify the findings of fact and/or the sanctions imposed by CT Green Bank staff. A modification of the sanctions could result in no penalties, lesser penalties, or more severe penalties. He further explained that in reaching its decision, the Committee should consider all of the evidence, giving to each part of the evidence the weight that the Committee considers it deserves.

Attorney Farnen explained that in order to decide an Appeal, the Committee must vote on a motion made in accordance with the Committee's ordinary rules and procedures. At its discretion, the Committee may issue a written decision, a draft of which may be prepared and voted on at a subsequent meeting, or the Committee may decide an Appeal orally during a meeting.

Beginning the Green Bank's presentation, Attorney Farnen stated that he believed everyone was in agreement that there was misconduct by BeFree. He explained that BeFree currently has a backlog of 170-180 projects related to previous Solarize campaigns which is outside of the bell curve for operational issues. He added that the Green Bank feels that BeFree is overly-reliant on the Solarize marketing campaign for its business and that no installer should be relying on Green Bank lead generation to stay in business, as the program is not meant to be an installer's dominant pipeline. He stated that the Green Bank does not want to put BeFree out of business or cost people their jobs, but stressed that BeFree can continue its business without participating in Solarize, which is something that happens to installers who do not get selected to participate each round.

Mr. Garcia added that roughly 85% of projects done by BeFree are originated via Solarize. Mr. Hundt commented that it is right to agree that BeFree has committed to Solarize overwhelmingly and that they install 1/4 or 1/5 of the Solarize projects. Mr. Kapil Luthra stated that BeFree has committed to Solarize 100%.

Attorney Farnen continued his presentation, stating that the customer was very upset with BeFree and informed others about her negative experience, including the lender she was working with on the Green Bank financing program. He explained that the lender relies on the Green Bank to do a lot of the underlying paperwork, so this issue affects more than RSIP, it also has an impact on the lender. He noted that Ms. O'Neill has worked directly with Eastern Savings Bank on this issue, to which Ms. O'Neill added that from an insurance perspective, the lender is concerned about BeFree allowing this to happen. Mr. Hundt stated that without evidence, these are hearsay remarks. Attorney Farnen replied that a written statement from the customer is available in the Committee's packet of information and that the Green Bank chose not to include the lender in the proceedings. Mr. Hundt stated that from his perspective, hearsay ought to be given less weight unless the Green Bank can explain how the information was obtained. Ms. O'Neill replied that the information was given directly from the customer to the lender and that the lender was very concerned.

Mr. Ranelli stated that it was clear that there was some conversation about a heat pump between BeFree and the customer. He added that the chronology in the lender statement was that there was some communication back and forth with the customer being aware of the heat pump application being submitted, but that there was a period of time after they became aware and before they cancelled the project.

Attorney Farnen stated that the Green Bank was not aware of any remedial efforts having been completed by BeFree. He added that Mr. Kranich offered training to BeFree's staff prior to the appeal process, but that soon thereafter preparations for the misconduct hearing began.

Attorney Farnen explained that the Green Bank feels the sanction of banning BeFree from participating in the upcoming round of Solarize is appropriate because it will be difficult for them to complete their backlog of projects if they are awarded another town. Regarding the valuation of the punishment, Attorney Farnen explained that Solarize is about reducing customer acquisition costs. Based on industry standards, the Green Bank estimates for customer acquisition, an installer will need a marketing budget of approximately \$2,100 to \$4,200 per installation, with an average of \$3,150. Solarize allows the installer to save this \$3,150, which when multiplied by 100 projects means the installer would need about \$315,000. He added that BeFree's Solarize acquisition cost is estimated to be \$15,000, so the impact of missing a Solarize round would likely be \$300,000.

Mr. Garcia added that Mr. Hundt asked during the previous Deployment Committee meeting if the Green Bank felt as if the sanction would result in between \$500,000 - \$1.5 million in lost profit for BeFree. He explained that the Green Bank believes the value is much lower, at \$300,000. Mr. Hundt asked for clarification, asking if this would be equivalent to a \$300,000 fine. Attorney Farnen replied that this would not equal a \$300,000 fine, adding that the greater issue is a large backlog of projects that need to be completed.

Ms. Ferguson stated that she did not remember hearing about BeFree's backlog of projects prior to this meeting. Mr. Hundt added that significant time was spent during the last meeting during which the Committee asked the Green Bank what the issue was and what the appropriate sanction should be. Mr. Klee stated that the customer signature issue by BeFree had ramifications on the lender and the integrity of the program, which is implicit in the Green Bank's concern that BeFree wants to participate in another Solarize round while still having a large backlog of incomplete projects.

Mr. Ranelli stated that he did not believe that the backlog was entirely relevant to the misconduct, but that it is relevant to BeFree being able to meet program requirements. He asked if the town likely to select BeFree for the next round of Solarize would be equal in size to past towns or smaller, to which Attorney Farnen replied that it would be a somewhat smaller town. Mr. Ranelli stated that if there are performance issues with BeFree (i.e., their

ability to process paperwork), they should be addressed but that the Committee should focus on the unauthorized signature issue for purposes of this hearing.

Mr. Klee exited the meeting, designating Ms. Babbidge to serve as his proxy.

Attorney Farnen explained that the Green Bank felt that a one-round ban from Solarize would afford BeFree the opportunity to complete their backlog of projects. He offered an alternative punishment that would allow BeFree to participate in the upcoming round of Solarize if they paid a \$100,000 fine, the proceeds of which would be used by the Green Bank to refund avoided permit fees by BeFree to Haddam and Killingworth Solarize customers after the towns reduced or eliminated permit fees for the campaign (\$46,000) and for additional state-wide low-income incentives. A second alternative punishment would be to require BeFree to install a solar PV system on a town facility as a measure of goodwill. However, Attorney Farnen emphasized that the Green Bank staff felt that the one-round ban would be the most appropriate punishment, adding that BeFree could participate in round 6. He reiterated the Green Bank staff's opinion that it is not healthy for BeFree to rely on the majority of their business coming from a somewhat costly ratepayer funded marketing campaign, which they have shown themselves to be.

Mr. Hundt expressed his belief that Green Bank staff should call BeFree's action a falsification and not forgery, unless they can prove there was intent to deceive. Mr. Hedman replied that his concern is that though BeFree may not have intended to deceive the customer since they had conversations with the customer in which she expressed interest in a heat pump, BeFree did attempt to deceive the Green Bank by submitting the documentation via PowerClerk. He added that the deceit was committed by BeFree submitting an application to a secure a higher rebate. Mr. Hundt replied that this was not deceit, restating that this action was a falsification not forgery. Attorney Farnen responded that the customer would likely say there was intent to deceive, and that it is not clear from BeFree whether or not there was intent to deceive.

Mr. Hedman added that in the Green Bank staff's communications with BeFree, staff asked BeFree for additional documentation, especially from projects in which they claimed they used a service called "SignNow" for getting customer's signatures to execute contracts. He stated that, to date, staff had not received this requested documentation. He noted that the staff's investigation of projects submitted by BeFree into PowerClerk is still ongoing and that they have found several documents of which they are suspicious, but that they have not had the opportunity to contact the customers for verification. Mr. Ranelli asked Mr. Hedman if Green Bank staff requested from BeFree the audit report from "SignNow" featuring every signature they have registered, to which Mr. Hedman replied that they had not.

With no further discussion from the Green Bank, Mr. Ranelli allowed BeFree to make a closing statement.

After a two minute break requested by BeFree, Attorney Mondschein replied to the Green Bank's presentation. Regarding Solarize, he stated that BeFree should not be punished for reliance on the program. He stated that the fact that they have been more successful than anyone else is a testament to their business acumen. Regarding the customer and lender being upset, he noted that that is why the unbiased Committee is reviewing this appeal. Regarding the backlog of projects, he stated that BeFree is currently on time with their installations, unlike other installers, including Solar City. Regarding the Green Bank's estimate of \$300,000 in lost profit by BeFree if they were to not participate in the upcoming round of Solarize, he argued that the amount would be higher. Regarding remediating efforts, he stated that BeFree has gone back and spoken with every homeowner, confirming their projects either in writing, getting a further deposit or canceling their project. Regarding the fine or municipal installation, he stated that this was the first time BeFree was hearing about the alternative punishments, so they are unable to respond.

Mr. Kapil Luthra stated that BeFree always works for the customer, including his personally raking a customer's yard three times because they were unsatisfied with the way it was done. He explained that BeFree did assist the customer in question, including after the mourning period. He stated that the Principals of BeFree postponed travelling to India with their father's ashes until after the Solarize round was completed. He added that this customer wanted to cut in front of 30 people to have her system installed, but ultimately cancelled her project because she felt that it cost too much money. He also stated that BeFree allowed the customer to cancel her solar contract and refunded her \$1,000. Finally, he noted that BeFree staff did apologize to the customer and sought to move forward by training their staff, explaining that it could not happen again, and apologizing to the Green Bank. He stated that he did not think the proposed punishment was equal to what happened.

Mr. Harsh Luthra stated that BeFree would always estimate the highest possible rebate for the customer and they were fine with the Green Bank lowering the rebate.

Mr. Ranelli stated that the Committee's charge was to get this decision right, so if they were not going to hear any more evidence then he would recommend they close the presentation portion and begin deliberations. He added that keeping in mind the Green Bank staff's request that the Committee make a decision today in an effort to not further delay the upcoming Solarize round, it was appropriate to get the opinion of each Committee member.

With no further discussion, the Deployment Committee members began deliberating.

Mr. Hundt complimented BeFree and the Green Bank staff, stating that both sides were thoughtful and presented competing views in very good faith. He listed several points: (1) that if the infraction is forgery, then the case is not proven. If the infraction is falsified

signature, then that did happen. (2) He did not think that BeFree argued that the employee was authorized to make the submission, so the company is responsible for the falsification. (3) There would be lost profits associated with the proposed sanction, no less than \$300,000 but potentially between \$500,000 to \$1.5 million. (4) He did not think that the input of the lender should have a major impact on the Committee's judgment. (5) There was no evidence that the Solarize program at large was impacted by this issue.

Mr. Hundt stated that between \$300,000 and \$1.5 million in lost profit is excessively severe for a first time infraction. He added that if this were forgery or a repeated case of falsifications or contempt/ disregard for the Green Bank's process then BeFree should be banned from every Connecticut Green Bank program.

Mr. Hundt concluded by suggesting that BeFree and Green Bank staff should negotiate a reduced punishment, stating the he felt the proposed sanction was too severe.

Ms. Ferguson supported Mr. Hundt's comments. She added that she did not want people to become unemployed because of this action. She stated that what resonated with her the most was that BeFree felt the heat pump agreement was a rider to the original contract. She agreed with the idea of negotiating a lesser punishment, but that if this proves to be a pattern of misconduct then there will have to be a separate discussion.

Ms. Babbidge stated that, for her, this was an issue of compliance. She stated that decision made by Committee will set a precedent for the market, so regardless of whether this is sloppiness of back office staff or forgery, it is important to decide on a message that will be sent to others. She added that her sense was that this requires further consideration and was particularly concerned about the customers still in the queue.

Mr. Ranelli stated that this was a difficult matter and that he was troubled by what he heard from BeFree during the previous Deployment Committee meeting, that this was the responsibility of someone in their office – adding that he could not accept that. He stated that while the issue might have been caused by someone in the office, he felt the confusion likely starts with the two principals regarding how to handle paperwork, importance of documentation, and understanding the Green Bank's processes. He agreed with BeFree's claims of a focus on customer service, noting that there was no evidence of poor installations, but was troubled by the principals not having taken advantage of training opportunities provided by the Green Bank. He was also troubled by the principals being so focused on their business that their back office work suffered. He recommended that BeFree make as big a commitment to the paperwork that they do their customers.

Mr. Ranelli stated that he did not think BeFree should be penalized for participating in a program put forth by the Green Bank. He added that he shared Ms. Ferguson's thought of not wanting people to lose jobs, but was also mindful of Ms. Babbidge's thought that the

Committee's decision sets a precedent for future installers. He also stated that the principals of BeFree should sign and deliver every document and vouch for their accuracy.

Mr. Ranelli asked the Committee members if they felt comfortable voting on a specific sanction or if they should recess until later in the day and then vote via conference call. Mr. Hundt replied that the consensus seemed to be that we are dealing with a serious infraction and that a remedy/sanction is appropriate, but that the proposed sanction was too much.

Attorney Farnen offered to modify the sanction by removing the ban on BeFree from participating in Solarize and enacting a fine of no less than \$25,000 but not greater than \$75,000 (to be negotiated by the Green Bank staff and BeFree), a probationary period, and a requirement that BeFree's principals have to sign off on all documentation submitted through PowerClerk. Attorney Mondschein replied that the probation should be for one Solarize term, not a full year – Attorney Farnen said could be acceptable. Attorney Mondschein also stated that his clients did not have a reaction to the monetary fine.

Mr. Ranelli recommended that the meeting go into recess so that BeFree and Green Bank staff could negotiate a sanction that the Deployment Committee members could then vote on later in the day. Mr. Hundt agreed, recommending that BeFree stay in the room until a consent agreement was drawn up and noting that the Green Bank made them a strong offer.

Mr. Ranelli noted that the Committee would not prejudge BeFree, stating that all sanctions would remain on the table until the vote is held. He added that while the Attorneys for both parties should work on an agreement, he felt that the probation should be longer than one Solarize round.

With no further comments from the Committee members, Mr. Ranelli placed the meeting into recess until 2:00 p.m.

[recess]

Mr. Ranelli thanked the group for reconvening and stated that Attorney Farnen and Attorney Mondschein decided upon a mutually agreeable resolution, which was written into a document that was circulated to the Deployment Committee members prior to the meeting.

Attorney Farnen stated that he received some comments on the document from Members, so he made some redline revisions. He proceeded to review the document with the group.

Attorney Farnen stated that the finding of forgery was revised to “falsified document” and that “BeFree agrees and consents to” language was added to the document to certify that BeFree agreed and consented to the document.

Attorney Farnen explained that BeFree would be required to provide an additional 5 kW of solar to each of Haddam and Killingworth as part of the Clean Energy Communities Program at no cost to the Towns. Mr. Ranelli commented that there should be a firm end date, recommending that the systems be installed prior to June 30, 2015 or such later date agreed to by the towns. Attorney Mondschein replied that the issue with that is the timing associated with the Clean Energy Communities Program. Mr. Ranelli instead offered a one-year deadline, to which Attorney Mondschein agreed.

Attorney Farnen stated that within three months of the settlement, all BeFree employees should participate in at least one training session offered by the Green Bank and that BeFree should also conduct its own training. Attorney Farnen confirmed that there would be at least one training session offered within the next three months, stating that the Green Bank’s Deployment team could schedule a training as soon as possible.

Mr. Hundt requested that a line be added to the document regarding further punishment. Attorney Farnen clarified that BeFree would be on probation during the next two rounds of Solarize, but if any other issues arose, those could result in immediate suspension from the program.

Mr. Hundt asked for clarification regarding whether this settlement resolved all matters between the Green Bank and BeFree. Attorney Farnen replied that this settlement does not resolve the issue related to utility bills submitted by BeFree, but that since the Green Bank has not completed its due diligence on that matter, it remains an open item. Attorney Mondschein confirmed this statement.

Ms. Smith asked for clarification that this settlement resolved the matter regarding the unauthorized signature. Mr. Hundt requested clarification that BeFree would not appeal this decision to anyone above the Deployment Committee. Attorney Mondschein confirmed that BeFree would accept this settlement and request no further appeal.

Mr. Ranelli requested from Attorney Mondschein a signed version of the settlement that the Deployment Committee could then countersign. Mr. Hundt recommended that the Committee delegate Mr. Ranelli to sign on behalf of the Committee.

Ms. Ferguson asked for clarification on the resolution presented earlier to the Committee members to approve, reject or modify the sanction presented by the Green Bank staff. Attorney Farnen confirmed that the Committee was presented with option three – a modification of the sanction.

Mr. Ranelli asked Attorney Farnen and Attorney Mondschein to confirm that that they are comfortable with the Committee members voting to accept the settlement offer from BeFree and impose the conditions agreed to. Both Attorney Farnen and Attorney Mondschein replied in the affirmative.

Upon a motion made Mr. Ranelli, seconded by Mr. Hundt, the Deployment Committee members voted unanimously in favor of adopting the following resolution, accepting the settlement offer from BeFree Green Energy and imposing the conditions agreed to.

Resolution #6

WHEREAS, following an investigation, the Connecticut Green Bank determined that BeFree Green Energy LLC (“BeFree”) violated the provisions of Section 4.11 of the CEFIA Eligible Contractor and System Owner RFQ (the “RFQ”); and

WHEREAS, pursuant to Section 4.11 of the RFQ, the Connecticut Green Bank imposed sanctions against BeFree; and

WHEREAS, the findings of Connecticut Green Bank and resultant sanctions are set forth in a letter to BeFree dated October 29, 2014; and

WHEREAS, BeFree has appealed the sanctions of Connecticut Green Bank to the Connecticut Green Bank Deployment Committee (the “Committee”); and

WHEREAS, the Committee heard BeFree’s appeal at its November 14, 2014 regular meeting.

NOW, THEREFORE, BE IT RESOLVED that:

The appeal of BeFree Green Energy LLC is denied in part and granted in part. The findings of Connecticut Green Bank and resultant sanctions against BeFree, which are set forth in the October 29, 2014 letter from the Connecticut Green Bank to BeFree, shall be modified as described in the Settlement Agreement circulated to the Parties.

Mr. Ranelli thanked Attorney Mondschein for helping to facilitate the process and keep it orderly. He also thanked Attorney Mondschein’s clients, stating that it is an important issue and not an effort to treat them differently than anyone else. He and Ms. Smith added that they hoped BeFree take this as an opportunity to improve their operation and continue to participate in Green Bank programs.

Mr. Ranelli also thanked Mr. Hedman and the Deployment team for uncovering this issue. He explained that modifying the penalty was in no way a consideration that the Committee

did not believe that they got the facts incorrect; rather, the Committee simply decided to adjust the penalty.

Mr. Hundt commended Mr. Ranelli for chairing the proceedings so admirably.

Attorney Farnen thanked the Deployment Committee on behalf of the Green Bank staff for hearing both sides of the issue.

Attorney Farnen stated that he would place the settlement document on Connecticut Green Bank letterhead and Attorney Mondschein added that he would get the settlement document to his clients for their signature, and then will send to Mr. Ranelli for countersignature.

3. Adjourn: Upon a motion made by Ms. Smith, seconded by Ms. Ferguson, the Deployment Committee voted unanimously in favor of adjourning the November 21, 2014 meeting at 2:20 p.m.

Respectfully submitted,

Reed Hundt, Chairperson of
Deployment Committee