

**BEFORE THE STATE OF WASHINGTON**  
**ENERGY FACILITY SITE EVALUATION COUNCIL**

In the Matter of:

**COUNCIL ORDER No. 880**

Docket No. EF 170823

COLUMBIA SOLAR PROJECT

ORDER ON APPLICATION FOR  
TERMINATION OF SITE  
CERTIFICATION AGREEMENTS,  
TRANSFER OF REMAINING SITE  
CERTIFICATION AGREEMENTS, AND  
TRANSFER OF CONTROL OF SITE  
CERTIFICATION AGREEMENTS

**Executive Summary**

The Columbia Solar Project consists of five separate solar photovoltaic generation facilities in Kittitas County, each of which is subject to a standalone Site Certificate Agreement (SCA) currently held by TUUSSO Energy, LLC (“TUUSSO”).

This Order approves TUUSSO and Greenback Renewable Energy’s (GREC) July 28, 2021, request for:

- (1) termination of the Typha and Fumaria Project SCAs for the Columbia Solar Project pursuant to WAC 463-66-020;
- (2) transfer of the Penstemon, Camas, and Urtica Projects SCAs to project companies TE-Penstemon, LLC; TE-Camas, LLC; and TE-Urtica, LLC, pursuant to WAC 463-66-100; and
- (3) indirect transfer of the Penstemon, Camas, and Urtica Projects SCAs via the project companies’ acquisition by Citrine Solar LLC, a subsidiary of GREC pursuant to WAC 463-66-100.

**Background**

On October 16, 2017, TUUSSO filed an application with the Energy Facilities Site Evaluation Council (EFSEC or Council) to obtain site certification under RCW 80.50.060 to construct and operate the Columbia Solar Project, consisting of five solar photovoltaic generating facilities and

two generation tie lines. Following review of the application, on August 22, 2018, EFSEC issued its Report to the Governor, recommending approval of the application.

The Governor approved the application and executed five site certification agreements, one for each of the five proposed facilities on October 17, 2018.

The SCAs authorize TUUSSO, any and all parent companies, and any and all assignees or successors approved by the Council, to construct and operate the facilities subject to the terms and conditions set forth in the SCAs. Pursuant to WAC 463-68-030, construction may start any time within ten years of the effective date of the site certification agreement, subject to conditions in the SCA. The SCAs specify that construction must be substantially complete no later than ten years from the date that all final state and federal permits are obtained and appeals exhausted. *See, e.g.*, Site Certification Agreement for the Columbia Solar Project—Camas Solar Site between the State of Washington and TUUSSO Energy, LLC (“Camas SCA”), Art. I.B.

The Columbia Solar SCAs specify plans, approvals and actions required of the certificate holder prior to commencement of construction. *See, e.g., Id.*, Art. IV. One of those requirements is the submission of an Initial Site Restoration Plan and provision of financial assurance that is sufficient, based on detailed engineering estimates, for required site restoration costs in the form of a surety bond, irrevocable letter of credit, or guaranty. *Id.*, Art. VIII.D. “Financial assurance” refers to commitments that ensure funds will be available to restore a site to its original condition at the end of its useful life, or if abandoned. *See* WAC 463-72, WAC 463-60-075.

TUUSSO has submitted and received approval for all requisites for initiation of construction of the Penstemon, Camas, and Urtica Projects. TUUSSO has provided financial security for the performance of its site restoration obligations for the three projects through an irrevocable letter of credit issued by a qualified financial institution. Construction at the three facilities commenced on June 28, 2021, and is currently under way.

TUUSSO has stated that it will not proceed with the construction and operation of the Typha and Fumaria facilities. According to TUUSSO, the reason is the commercial impossibility of interconnecting into the Puget Sound Energy transmission system, due to significant transmission system upgrade costs. TUUSSO states that this impediment is not transitory, but will persist, rendering the construction and operation of these two generation facilities to be impracticable. No construction activities have commenced on the Typha and Fumaria generation sites and TUUSSO has notified the landowners of its intent to terminate the projects. Accordingly, TUUSSO requests termination of the SCAs for the Typha and Fumaria Projects.

TUUSSO has formed three standalone limited liability companies (LLCs), which it has termed the “Project Companies” for the Penstemon, Camas and Urtica facilities. The companies are named TE - Penstemon, LLC; TE – Camas, LLC; and TE – Urtica, LLC. TUUSSO Energy, LLC, is the parent company of TE-Columbia Solar, which is the parent company for the Project Companies. The formation of the separate Project Companies is to allow TUUSSO to construct, own, and operate each of the facilities as separate entities, subject to the contractual requirements for each corresponding SCA, such as securing separate power purchase agreements from Puget Sound Energy for each Project. According to TUUSSO, to arrange construction financing for the facilities, it is important that the SCAs are held by the Project Companies, instead of by

TUUSSO. TUUSSO therefore requests the Council's approval to transfer the Penstemon, Camas, and Urtica SCAs to the respective Project Companies. This would require amending to SCAs to change the name of the certificate holder on each of the SCAs from TUUSSO Energy, LLC, to that of the applicable Project Company.

Assuming the Council's approval of transfer of the Penstemon, Camas, and Urtica SCAs to the Project Companies, Citrine Solar LLC, a company that is owned by Greenbacker Renewable Energy Company (GREC), has agreed to purchase one hundred percent of the membership interests in each of the three Project Companies. GREC and TUUSSO are seeking the Council's approval of an indirect transfer, or change of control, of the Columbia Solar Site Certificates from TUUSSO to GREC.

In conjunction with this transfer, GREC intends to replace the Site Restoration Financial Assurance currently provided by TUUSSO through an irrevocable letter of credit, with a corporate guaranty to be provided by GREC. GREC and TUUSSO both acknowledge that in order for this to happen:

- (a) EFSEC would need to first determine that GREC is eligible to provide this type of financial assurance based on GREC's financial creditworthiness,
- (b) EFSEC would need to approve the form of this guaranty, and
- (c) under no circumstances will this transfer be allowed to take place if doing so would cause any lapse in the Site Restoration Financial Assurance.

### **Analysis**

#### **(1) Request to Terminate the Typha and Fumaria Site Certificate Agreements**

Under EFSEC's rules, a request to terminate an SCA is treated as, and follows the same process as a request to amend an SCA. WAC 463-66-020. The request must be made in writing by the certificate holder to the Council. The Council must hold one or more public hearing sessions on the request. WAC 463-66-030.

In reviewing any request for an amendment, the Council considers the intention of the original SCA; applicable laws and rules; the public health, safety, and welfare; and requirements pertaining to site restoration. *Id.*

The changed circumstance described by TUUSSO in regard to the permanent commercial impossibility of constructing and operating the Typha and Fumaria projects negates findings that were essential to the Council's recommendation of approval of site certification for these two projects. Because no construction activities have commenced on the Typha and Fumaria generation sites, EFSEC's requirements pertaining to site restoration are not implicated. It is therefore appropriate that the request to terminate the Typha and Fumaria SCA should be granted.

**(2) Application to Transfer the Penstemon, Camas and Urtica Site Certification Agreements to Three Project Companies**

WAC 463-66-100 provides that an SCA shall not be transferred except with the Council's approval. A certificate holder seeking to transfer an SCA must file an application with the Council including basic information about the new owner to demonstrate the transferee's organizational, financial, managerial, and technical capability to comply with the terms and conditions of the SCA, including approved plans for termination of the plant and site restoration. WAC 463-66-100(1). The Council may place conditions on its approval of the transfer, including provisions to reserve liability for site restoration in the original certificate holder. *Id.*

TUUSSO represents that transferring the SCAs to the Project Companies is needed to arrange construction financing for facilities through the sale of the Project Companies to GREC's subsidiary. As explained by TUUSSO and GREC, the Membership Interest Purchase and Sale Agreement between the two parties requires that the SCAs be transferred into the name of the respective project companies, TE – Penstemon, LLC; TE – Urtica, LLC; and TE- Camas, LLC.

TUUSSO's proposal to transfer the site certification agreements from itself to its subsidiary Project Companies does not raise issues about the transferees' organizational, managerial or technical capabilities because the transferee Project Companies are wholly owned and controlled by TUUSSO. Neither is financial capability of the Project Companies a concern in this instance, because TUUSSO has already secured financial assurance for site restoration in the form of an irrevocable trust that will continue to apply unless and until EFSEC agrees that sufficient replacement assurance is in place. It is therefore appropriate that transfer of the Penstemon, Camas, and Urtica SCAs to the Project Companies should be granted.

**(3) Application for Indirect Transfer of SCAs held by Project Companies TE - Penstemon, LLC, TE - Camas, LLC, and TE - Urtica, LLC via the Project Companies' Acquisition by Citrine Solar LLC, a subsidiary of Greenbacker Renewable Energy Corporation**

WAC 463-66-100 requires the Council's approval not only for *direct* transfers or assignments of SCAs (such as the requested transfer of the Penstemon, Camas and Urtica SCAs from TUUSSO to the three Project Companies), but also for any *indirect* transfer of an SCA, such as by a "transfer of control of . . . the site certification agreement owner." Consequently, EFSEC approval is required before ownership and control of the three Project Companies holding the SCAs can be transferred from TUUSSO to Citrine Solar LLC and to the control of its parent GREC. TUUSSO and GREC both request this approval pursuant to WAC 463-66-100(1).

Following a public informational hearing, the Council may approve an application for transfer of an SCA, including indirect transfer of control of an SCA, if it determines (1) that the applicant has provided sufficient information about its organization and affiliations and its financial commitment to the requirements of site restoration and preservation, (2) its entitlement to possession of the energy facility or facilities, and (3) its agreement to abide by all the terms and conditions of the SCA to be transferred and has demonstrated that it has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred. WAC 463-66-100(4).

WAC 463-66-100(5) provides that the Council “shall issue a formal order either approving or denying the application for transfer of the site certification agreement. If the council denies the request, it shall state the reasons for its denial.”

As required by WAC 463-66-100(4), EFSEC held an informational hearing on the application on August 17, 2021 at which representatives of TUUSSO and GREC presented information about GREC and the proposed transaction. No public comments were submitted.

In its written application and during the public informational hearing, TUUSSO and GREC presented information about GREC’s organization and history, its considerable assets, and its large portfolio of planned and operational alternative energy projects, all of which evidences to its organizational, financial, managerial, and technical capability to comply with the terms and conditions of the SCAs. TUUSSO represents that it will continue to be involved in the ongoing construction of the facilities following the transfer of the Project Companies to GREC’s control.

TUUSSO has consistently described itself as a developer whose projects eventually are sold to entities with the financial means to carry the projects through construction and to provide for operation over their lifetime. Council Order No. 877 (Sept. 5, 2019) temporarily suspended TUUSSO’s SCAs when TUUSSO’s original agreement to sell the Columbia Solar Project was terminated by the counterparty and TUUSSO became unable to pay costs invoiced by EFSEC and UTC with regard to the Columbia Solar Project. TUUSSO’s efforts to find a new partner to take the Columbia Solar project forward through construction are documented in that order, and the subsequent Council Order No. 878 (Dec. 6, 2019) reinstating the SCAs.

The information provided by TUUSSO and GREC supports a determination that GREC has the organizational, financial, managerial, and technical capability and is willing and able to comply with the terms and conditions of the certification agreement being transferred. WAC 463-66-100(4)(c).

The sequencing of the transaction between TUUSSO and GREC requires that EFSEC give its approval for the transfer of the SCAs to the Project Companies, and for the indirect transfer of the SCAs to GREC’s control, before GREC will take over the financial assurance commitment that is required by EFSEC to ensure that funds are available for site restoration in the event of abandonment of the projects or at the end of their life.

This “chicken and egg” problem is addressed by TUUSSO and GREC’s proposal that EFSEC’s final approval of the transfer of the SCAs to GREC’s control shall be conditional upon EFSEC’s written approval, subsequent to this Order, of the Site Restoration Financial Assurance that will need to be in place before the actual transfer of ownership of the project companies is consummated. For the avoidance of doubt, TUUSSO and GREC agree that the indirect transfer of control shall not be allowed to occur until and unless any and all concerns related to the Site Restoration Financial Assurance have been sufficiently addressed in EFSEC’s sole determination.

With these conditions, it is appropriate that the indirect transfer of control of the Penstemon, Camas, and Urtica SCAs by sale of the Project Companies to Citrine Solar LLC and to the control of its parent GREC should be approved.

**ORDER**

THEREFORE, IT IS HEREBY ORDERED that:

(1) The proposed termination of the Site Certification Agreements between the State of Washington and TUUSSO Energy LLC for the Typha and Fumaria Sites is approved pursuant to WAC 463-66-020.

(2) The proposed transfer of the below named site certification agreements from TUUSSO Energy LLC to the corresponding project entities is approved pursuant to WAC 463-66-100 and the agreements shall be amended accordingly:

a) Site Certification Agreement between State of Washington and TUUSSO Energy LLC for the Columbia Solar Project Penstemon Site to TE - Penstemon, LLC

b) Site Certification Agreement between State of Washington and TUUSSO Energy LLC for the Columbia Solar Project Camas Site to TE - Camas, LLC

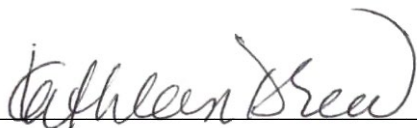
c) Site Certification Agreement between State of Washington and TUUSSO Energy LLC for the Columbia Solar Project Urtica Site to TE - Urtica, LLC

(3) The proposed change in control of the Columbia Solar Project from TUUSSO Energy, LLC, to Greenbacker Renewable Energy Corporation via the acquisition of TE – Penstemon, LLC, TE – Camas, LLC, and TE – Urtica, LLC, by Citrine Solar LLC, a subsidiary of Greenbacker Renewable Energy Corporation, is approved pursuant to WAC 463-66-100, provided that Greenbacker provides acceptable financial assurances for site restoration.

(4) Upon the Council’s receipt and the EFSEC Manager’s approval of the financial assurances from Greenback Renewable Energy Company and notification that the transaction has closed, the Council shall issue a resolution that the condition for final approval of transfer of the SCAs is satisfied.

DATED at Olympia, Washington and effective on this 21<sup>st</sup> day of September, 2021.

WASHINGTON ENERGY FACILITY  
SITE EVALUATION COUNCIL



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Kathleen Drew, Chair