

# Verbatim Transcript of Special Meeting

## Washington State Energy Facility Site Evaluation Council

November 25, 2019



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WASHINGTON STATE  
ENERGY FACILITY SITE EVALUATION COUNCIL  
Olympia, Washington  
November 25, 2019

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SPECIAL MEETING  
Verbatim Transcript of Proceedings

REPORTED BY: TAYLER GARLINGHOUSE, CCR 3358

Buell Realtime Reporting, LLC  
1325 - 4th Avenue  
Suite 1840  
Seattle, Washington 98101  
(206) 287-9066 | Seattle  
(360) 534-9066 | Olympia  
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**A P P E A R A N C E S**

**Councilmembers:**

- KATHLEEN DREW, Chair
- CULLEN STEPHENSON, Department of Ecology
- STACEY BREWSTER, Utilities and Transportation Commission
- MIKE LIVINGSTON, Department of Fish & Wildlife (phone)
- DAN SIEMANN, Department of Natural Resources (phone)

**Assistant Attorney General:**

JON THOMPSON

**Council Staff:**

- SONIA BUMPUS
- AMI KIDDER
- AMY MOON
- TAMMY MASTRO
- JOAN AITKEN

**In Attendance:**

- BILL SHERMAN, The Environment (phone)
- TIM McMAHON, Stoel Rives (phone)
- OWEN HURD, TUUSSO Energy
- GREG POREMBA, Praxis Strategy Group

1 LACEY, WASHINGTON; NOVEMBER 25, 2019

2 3:00 P.M.

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4 P R O C E E D I N G S

5

6 CHAIR DREW: Good afternoon. This is  
7 Kathleen Drew, Chair of the Washington State Energy  
8 Facility Site Evaluation Council, and I am calling to  
9 order our special meeting on this Monday.

10 Meeting is open. Clerk will call the roll.

11 MS. MASTRO: Department of Ecology?

12 MR. STEPHENSON: Cullen Stephenson, here.

13 MS. MASTRO: Department of Fish & Wildlife?

14 MR. LIVINGSTON: Mike Livingston, here, on  
15 the phone.

16 MS. MASTRO: Department of Natural  
17 Resources?

18 Utilities and Transportation Commission?

19 MS. BREWSTER: Stacey Brewster, here.

20 MS. MASTRO: Chair, and there is a quorum.

21 CHAIR DREW: Thank you.

22 MR. SIEMANN: And Dan Siemann from DNR just  
23 joined.

24 CHAIR DREW: Thank you.

25 Is there anyone else on the call who would

1 like to introduce themselves?

2 MR. SHERMAN: This is Bill Sherman from the  
3 Washington State Attorney General's Office as counsel  
4 for The Environment.

5 CHAIR DREW: Okay. Thank you.

6 MR. McMAHON: Tim McMahon from Stoel Rives.  
7 Not sure if you picked that up.

8 CHAIR DREW: Just did, thank you.

9 And we also have two people in the room.

10 MR. HURD: Owen Hurd from TUUSSO Energy.

11 MR. POREMBA: Greg Poremba from Praxis  
12 Strategy Group.

13 CHAIR DREW: As well as the EFSEC Council  
14 Staff.

15 The item we are taking up today is the  
16 consideration of reinstatement for the Columbia Solar  
17 Project.

18 Ms. Bumpus, will you give us an overview of  
19 the documents that we have?

20 MS. BUMPUS: Yes. Thank you, Chair Drew,  
21 and good afternoon, Councilmembers. So a couple of  
22 things first. In -- in the Council special meeting  
23 packet, there is the meeting agenda, also the order  
24 suspending the site certificate agreement for the  
25 Columbia Solar Project from September, and there's also

1 a copy of TUUSSO Energy's letter to Chair Drew  
2 requesting reinstatement of the site certification  
3 agreements dated November 20th, 2019.

4 So just for some background, the order,  
5 which was Order No. 877, the Council suspended all five  
6 of the site certification agreements for the Columbia  
7 Solar Project for TUUSSO Energy due to its failure to  
8 pay the Utilities and Transportation Commission's costs  
9 that were incurred by the Council for inspection and  
10 determinations of compliance by the certificate holder.

11 So consistent with the Council's direction  
12 to TUUSSO in that order, TUUSSO has made full payment of  
13 the invoiced amounts. This is approximately  
14 \$273,378.89, which includes a deposit of \$50,000 as  
15 required of the certificate holder by Statute 80.50.071,  
16 Sub (2)(a). They've also made the request for the  
17 reinstatement to the Council in writing, including a  
18 description of their financial situation and an  
19 attestation to their ability to make payments of  
20 invoices going forward.

21 I've reviewed the letter. I've also gone  
22 back -- and when I say "letter," I mean TUUSSO Energy's  
23 letter requesting the reinstatement. I've also gone  
24 back and reviewed the conditions that were identified in  
25 the SCA suspension order. I've looked at all of that,

1 and ultimately, I'm recommending that the Council take  
2 final action to reinstate the five site certification  
3 agreements for the Columbia Solar Project.

4 I have talked with EFSEC's legal counsel  
5 about my recommendation, and I also wanted to add  
6 another condition that the -- the Council I think should  
7 consider, which would be that as a condition of the  
8 reinstatement, the consul- -- the Columbia Solar Project  
9 also be required to -- let me see how I want to word  
10 this -- basically to be able to adjust the amount of the  
11 required deposit as the project moves towards  
12 construction and other phases to ensure that EFSEC's  
13 costs are covered if there's another invoice that's  
14 missed. So it would be only if they've missed a  
15 quarterly invoice payment. At that time, we would  
16 revisit the amount of the deposit if that makes sense.

17 So I wanted to see if you have any  
18 questions, but also let you know that Owen Hurd is here  
19 from TUUSSO Energy, and he's also available to answer  
20 any questions you may have.

21 CHAIR DREW: So are there questions -- let's  
22 start first with what Ms. Bumpus has brought to our  
23 attention. Are there questions from Councilmembers?

24 One of the questions I have is, what legal  
25 authority do we have to adjust the deposit that -- that

1 we have for the project?

2 MR. THOMPSON: So this is Jon Thompson,  
3 Assistant Attorney General. So the -- the reasoning  
4 would be that EFSEC has the ability to condition  
5 reinstatement. There's authority under the statute to  
6 charge up to or more than \$50,000 as a deposit. In this  
7 case, \$50,000 has been deposited, but there's a  
8 provision in there for consulting with the certificate  
9 holder on the appropriate amount. That's the sort of  
10 thing that could be reserved until later when there's a  
11 clearer picture of what the cost might be that would be  
12 incurred by EFSEC and revealing construction -- or  
13 permitting matters and adjusted accordingly so...

14 CHAIR DREW: So and -- and, Ms. Bumpus, how  
15 do you envision if -- first of all, it would -- what  
16 we're saying, that in the event that an invoice isn't  
17 paid is what your suggestion is, and then the process  
18 you would use. Would it be certainly to consult with  
19 the certificate holder and have a conversation about  
20 what the costs might be?

21 MS. BUMPUS: Sure. Yeah, let me talk about  
22 that just a -- just a second. So as Jon was saying, in  
23 80.50.071(2)(a), you can have up to \$50,000 or a greater  
24 amount that is basically agreed to in consultation  
25 between the Council and the certificate holder. So in



1 terms of process, how this would occur, I would  
2 anticipate that if they were to miss an invoice payment,  
3 we would -- being me and other Staff and likely would  
4 coordinate with our legal counsel as well to discuss an  
5 appropriate amount that might need to be considered at  
6 that time.

7           So we would work that out with them, work  
8 with them to come to some amount, and then I would  
9 present that to the Council and ask the Council for  
10 input on whether they agree with that greater amount  
11 beyond \$50,000. And so at that -- and then of course I  
12 would imagine there would be some discussion about if  
13 the Council thinks that's agreeable and what it's based  
14 off of.

15           CHAIR DREW: Okay. Are there any other  
16 questions?

17           Mr. Stephenson?

18           MR. STEPHENSON: Thank you, Chair Drew. So  
19 I hear about these \$50,000 chunks. What I want to  
20 really know is, Ms. Bumpus, are we going to be really  
21 recompensed for the costs?

22           MS. BUMPUS: Moving forward?

23           MR. STEPHENSON: Well, for this project, for  
24 the entire project, will we be recompensed for Staff  
25 costs to take care of this project?

1 CHAIR DREW: We can ask Mr. Hurd that maybe.

2 MR. STEPHENSON: That would be great.

3 CHAIR DREW: Okay. So let's see if there  
4 are other questions right now.

5 MS. BREWSTER: So this would be agreed upon  
6 between the -- TUUSSO and us, EFSEC Staff, correct?

7 MS. BUMPUS: Correct. If it's an amount  
8 greater than the \$50,000 identified in this statute, the  
9 Council would have to agree and the certificate holder  
10 would have to agree to that amount.

11 MS. BREWSTER: Okay. Thank you.

12 CHAIR DREW: Okay.

13 MR. THOMPSON: Well, if I --

14 MS. BUMPUS: Well, please.

15 CHAIR DREW: Thank you. Mr. Thompson.

16 MR. THOMPSON: So I'm just looking at the  
17 wording in the statute. I -- my advice would be that it  
18 doesn't require agreement with the certificate holder,  
19 but it does require consultation prior to arriving at  
20 the amount.

21 MS. BUMPUS: Yeah, that's better said.

22 CHAIR DREW: Okay. Thank you for that  
23 clarification.

24 So, Mr. Hurd, would you like to give us an  
25 overview from your perspective of where you are, and

1 certainly we had that in the letter as well so...

2 MR. HURD: Sure, sure. First, just good  
3 afternoon, Chair Drew, EFSEC Councilmembers, EFSEC  
4 Staff. Thank you for scheduling this to make this  
5 happen. I apologize for the inconvenience of this.

6 So to let you know kind of where the  
7 projects are, we're -- we're now kind of in the  
8 mobilization phase, heading into start of construction.  
9 So we're anticipating the construction would begin in  
10 the April time frame 2020. But given that we're just  
11 several months away from that, this -- we are currently  
12 in the phase of where we're needing to incur  
13 construction-like expenses, you're needing to put down  
14 large deposits on the interconnection, order equipment  
15 that has long lead times. So -- so we're kind of at the  
16 end of the development and then getting into the final  
17 engineering, making sure that we're in compliance with  
18 the site certification agreements.

19 So there's a lot of work that goes into  
20 that, and so this -- this financing basically gets us  
21 kind of all the way through that. The -- the party that  
22 this is with, Greenbacker Renewable Energy corporation,  
23 is primarily interested in owning these projects long  
24 term, and for various reasons because we're several  
25 months away from breaking ground, we've structured this

1 as a loan. But my expectation is that one of several  
2 things will happen as we get closer to that March or  
3 April time frame. One will be they'll -- will either  
4 expand the loan to then cover the whole amount and then  
5 build these out and they will take it at the end, or they  
6 will require it at that point.

7 But -- but I think just given the rocky  
8 history with these projects and to kind of put things in  
9 context, it was -- you know, I think we're now at a big  
10 jumping off point where a lot of capital is about to go  
11 into these projects, and -- and there had been the deal  
12 that had broken before, but, you know, there were much  
13 smaller amounts that were at risk at that point.

14 So, you know, knock on wood, I would say we  
15 are kind of over the hump in terms of the risk of these  
16 projects, and I don't -- I don't think it is -- I think  
17 it's extremely unlikely that there will be any issues  
18 going forward with any of the payments. I'm very  
19 agreeable to this concept with the deposit that you  
20 proposed so...

21 CHAIR DREW: Thank you.

22 Are there additional questions? No?

23 MR. SIEMANN: Chair Drew, this is Dan  
24 Siemann.

25 CHAIR DREW: Yes, go ahead.

1 MR. SIEMANN: A question -- thank you. A  
2 question is, and I think this is maybe related to what  
3 Commissioner -- or Councilmember Stephenson was asking,  
4 has there been an -- an accounting of the costs that  
5 have been incurred by EFSEC Staff with regard to the  
6 management of the suspension and then the -- the  
7 engagement here as a way of thinking about what the  
8 costs are for the period of time for which TUUSSO has,  
9 you know, not been able to pay? And I'm wondering if  
10 maybe kind of thinking about it from that point of view  
11 and maybe, you know, moving forward thinking about maybe  
12 adding something to that, maybe like a doubling or  
13 something like that for future insurance or something?

14 CHAIR DREW: Yes, there has, and, in fact,  
15 the requirement for the reinstatement was to completely  
16 pay for all expenses incurred to date. And we got that  
17 wire last Tuesday, I believe, or Wednesday of those  
18 funds, the 273,000 that are a complete payment of all  
19 the outstanding issues.

20 Go ahead, Ms. Bumpus.

21 MS. BUMPUS: And, Councilmember Siemann,  
22 this is Sonia Bumpus. So the other thing I wanted to  
23 let you know is that while the suspension has been in  
24 effect, the -- the outstanding balance has been on the  
25 books, which has -- has now been paid. With the

1 reinstatement -- if the reinstatement were to occur and  
2 the suspension is lifted, there would be a change to the  
3 accounting system where we would add their charge code  
4 back into the accounting system, and any work that's  
5 been done by Staff, legal counsel, Councilmembers could  
6 then be billed to the project.

7           And so they, being TUUSSO Energy, will be  
8 responsible for paying the costs of preparing the order,  
9 prepare- -- you know, preparing for this meeting. Does  
10 that help answer your question?

11           MR. SIEMANN: Yes, very much. Thank you.

12           CHAIR DREW: And I think too if I could add  
13 that there are a variety of approaches that the Council  
14 could take, and consideration would be a higher deposit.  
15 And yet given the situation and the -- one of the  
16 conversations we've had internally is, we don't actually  
17 know what it's going to look like in terms of our  
18 monthly costs to review plans. I think that given the  
19 expectation that it's a long-term funding partner that's  
20 in place now, that the safety would be that if an  
21 invoice is missed, that we can then consider a higher  
22 deposit moving forward because it's a completely  
23 different funding partner with capacity. And the  
24 capacity is actually more in purchasing the equipment  
25 than it is for, you know, our review process. And so

1 that's moving forward.

2 So it's up to the -- I mean, I would  
3 entertain consideration of other options from  
4 Councilmembers, but I believe that's why Ms. Bumpus  
5 brought this particular one forward.

6 MR. THOMPSON: If I could offer a point of  
7 clarification. Is it -- just -- just to -- just to  
8 clarify what's -- what's being discussed. It may be  
9 helpful to clarify whether the idea is to adjust the  
10 money as it becomes more clear what the burdens will be  
11 on -- on the Council and its Staff, you know, in terms  
12 of reviewing permits and so forth as that information  
13 becomes available versus requiring more of a deposit if  
14 a problem arises. I think it's the former; is that  
15 correct or...

16 MS. BUMPUS: Mm-hmm. Well, I think -- I  
17 think that they could list both. I think that they  
18 could -- I would imagine the Council could in -- as part  
19 of the condition for reinstatement acknowledge that the  
20 amount of deposit could be adjusted based off changes in  
21 costs as the project moves through construction into --  
22 moves from preconstruction to construction to  
23 operational phases. And also, in addition to that, say  
24 that if a -- if all that being said, there is an invoice  
25 missed, we would more immediately revisit the amount of

1 the deposit as well.

2 So that's kind of how I'm thinking about if  
3 you wanted to also just acknowledge that the piece of  
4 EFSEC's practice really where we tend to set that  
5 deposit amount that's identified in 80.50.071(2)(a)  
6 based off sort of what we expect preconstruction and  
7 construction phase to cost.

8 CHAIR DREW: If I could ask, currently, if  
9 we were to face a situation, maybe we face these in the  
10 past, where there's a different need for a different  
11 deposit as you said during the construction phase and  
12 perhaps adjust it the other way, less so, when we're in  
13 operational phase depending on the type of the project,  
14 is that something which the Council has done in the  
15 past?

16 MS. BUMPUS: Yes.

17 CHAIR DREW: Both --

18 MS. BUMPUS: My understanding is that yes,  
19 they've -- specifically they've both increased it.  
20 They've also decreased it once -- a good example would  
21 be going from construction where costs were very high  
22 and very acute to operation where things tend to be more  
23 steady.

24 CHAIR DREW: And currently, Mr. Tompson,  
25 under our statute, we would have the ability to adjust



1 that deposit and periods of time whether or not we say  
2 it in this order; is that true?

3 MR. THOMPSON: I would recommend including  
4 it in the order as a -- specifically as a condition of  
5 reinstatement --

6 CHAIR DREW: Okay.

7 MR. THOMPSON: -- of the certification  
8 because it does say in the statute I think within 30  
9 days of issuance --

10 MS. BUMPUS: It does.

11 MR. THOMPSON: -- of the certification that  
12 the deposit should be --

13 CHAIR DREW: Perhaps something we should put  
14 on one of our future legislative agendas to adjust, but  
15 that being what it is in the statute right now...

16 So what I'm hearing is that we do -- the  
17 Staff does see a need for an ability to adjust the  
18 amount of the deposit depending on the phase of the  
19 project perhaps, and there's also the security need, if  
20 you will, to make sure that even though it's unlikely  
21 there -- if there is a future payment that's missed,  
22 we're also including that in the order. Am I reading  
23 the interests of the Council correctly?

24 Would you like to speak, Mr. Stephenson,  
25 since people can't all see you?

1 MR. STEPHENSON: Yes.

2 CHAIR DREW: Thank you.

3 Mr. Siemann or Mr. Livingston, do you have  
4 any thoughts?

5 MR. SIEMANN: I'm okay either way on that --  
6 this is Dan Siemann, and I'm okay either way. I would  
7 defer to the recommendation of EFSEC Staff as to which  
8 is the appropriate approach we should take.

9 MR. LIVINGSTON: Yeah, this is Councilmember  
10 Livingston, and I -- I'm in concurrence --

11 CHAIR DREW: Okay.

12 MR. LIVINGSTON: -- with what has been  
13 discussed so far.

14 CHAIR DREW: Ms. Brewster?

15 MS. BREWSTER: I also concur, that seems to  
16 cover it.

17 CHAIR DREW: Okay. So I'd like to take a  
18 couple-minute break and think about a motion that we can  
19 construct to include all of this. So let's take a  
20 few-minute break. Thank you.

21 (A break was taken from  
22 3:22 p.m. to 3:31 p.m.)

23 CHAIR DREW: Okay. We are back. Thank you  
24 for that brief few minutes. I will entertain a motion.

25 Mr. Stephenson?

1 MR. STEPHENSON: Chair Drew, I will make a  
2 motion. I will move that the Council grant TUUSSO  
3 Energy LLC's request for reinstatement of site  
4 certification for the Columbia Solar Project subject to  
5 two conditions; one, that EFSEC manager, that's Sonia,  
6 will work with the certification holder to recommend  
7 adjusting the amount of the required deposit based on an  
8 estimated oversight and compliance cost -- excuse me,  
9 based on the estimated oversight and compliance costs.  
10 Sorry.

11 And second, that EFSEC -- the EFSEC manager  
12 will draft an order to be signed by the Chair to this  
13 effect.

14 CHAIR DREW: Okay. Is there a second?

15 MS. BREWSTER: I second that motion.

16 CHAIR DREW: Okay. Are there questions?  
17 Discussion?

18 MR. STEPHENSON: Chair, I would like to  
19 discuss, I always get to do these complicated motions.  
20 In this case, it seems to me a rather simple process. I  
21 would like to help promote this project. And so yes, we  
22 have some conditions, but it seems to me as a Council,  
23 that's what we ought to do.

24 CHAIR DREW: Okay. Thank you.

25 Yes, and I -- I would say that we talked

1 about the concern in terms of appropriate deposit, and  
2 one of the conclusions could be that we want to make  
3 sure that the deposit addresses increase in costs. And  
4 so I think with this form of saying -- asking the  
5 manager to look when we actually know what kind of time  
6 we might be spending on this, to look at whether or not  
7 the deposit is sufficient and to work with the  
8 certificate holder on that realistic estimate rather  
9 than where we are today where we don't really have a  
10 realistic estimate.

11 So I think this covers our due diligence in  
12 making sure that we anticipate costs and appropriately  
13 have deposits in order for this project to be successful  
14 for all of us in the state of Washington, which is  
15 important as well.

16 Other comments or questions? If not,  
17 hearing none, all those in favor of the motion, please  
18 say "aye."

19 COUNCILMEMBERS: Aye.

20 CHAIR DREW: Motion is adopted.

21 And yes, I would say that we look forward to  
22 a really successful project in Kittitas County with  
23 Solar Energy Project under construction next year.

24 Is there any other business to come before  
25 the Council at this point? Hearing none, meeting is

1 adjourned. Thank you all.

2 (Adjourned at 3:36 p.m.)

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CERTIFICATE

STATE OF WASHINGTON  
COUNTY OF THURSTON

I, Tayler Garlinghouse, a Certified Shorthand  
Reporter in and for the State of Washington, do hereby  
certify that the foregoing transcript is true and  
accurate to the best of my knowledge, skill and ability.

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Tayler Garlinghouse, CCR 3358