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

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
(800) 846-6989 | National
www.buellrealtime.com
APPEARANCES

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
LACEY, WASHINGTON; NOVEMBER 25, 2019

3:00 P.M.

--o0o--

PROCEDINGS

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

Meeting is open. Clerk will call the roll.

MS. MASTRO: Department of Ecology?

MR. STEPHENSON: Cullen Stephenson, here.

MS. MASTRO: Department of Fish & Wildlife?

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

MS. MASTRO: Department of Natural Resources?

Utilities and Transportation Commission?

MS. BREWSTER: Stacey Brewster, here.

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

CHAIR DREW: Thank you.

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

CHAIR DREW: Thank you.

Is there anyone else on the call who would
like to introduce themselves?

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

CHAIR DREW: Okay. Thank you.

MR. McMAHON: Tim McMahon from Stoel Rives.

Not sure if you picked that up.

CHAIR DREW: Just did, thank you.

And we also have two people in the room.

MR. HURD: Owen Hurd from TUUSSO Energy.

MR. POREMBA: Greg Poremba from Praxis Strategy Group.

CHAIR DREW: As well as the EFSEC Council Staff.

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

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

MS. BUMPUS: Yes. Thank you, Chair Drew, and good afternoon, Councilmembers. So a couple of things first. In -- in the Council special meeting packet, there is the meeting agenda, also the order suspending the site certificate agreement for the Columbia Solar Project from September, and there's also
a copy of TUUSSO Energy's letter to Chair Drew
requesting reinstatement of the site certification

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

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

I've reviewed the letter. I've also gone
back -- and when I say "letter," I mean TUUSSO Energy's
letter requesting the reinstatement. I've also gone
back and reviewed the conditions that were identified in
the SCA suspension order. I've looked at all of that,
and ultimately, I'm recommending that the Council take final action to reinstate the five site certification agreements for the Columbia Solar Project.

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

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

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

One of the questions I have is, what legal authority do we have to adjust the deposit that -- that
we have for the project?

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

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

MS. BUMPUS: Sure. Yeah, let me talk about that just a -- just a second. So as Jon was saying, in 80.50.071(2)(a), you can have up to $50,000 or a greater amount that is basically agreed to in consultation between the Council and the certificate holder. So in
terms of process, how this would occur, I would anticipate that if they were to miss an invoice payment, we would -- being me and other Staff and likely would coordinate with our legal counsel as well to discuss an appropriate amount that might need to be considered at that time.

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

CHAIR DREW: Okay. Are there any other questions?

Mr. Stephenson?

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

MS. BUMPUS: Moving forward?

MR. STEPHENSON: Well, for this project, for the entire project, will we be recompensed for Staff costs to take care of this project?
CHAIR DREW: We can ask Mr. Hurd that maybe.

MR. STEPHENSON: That would be great.

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

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

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

MS. BREWSTER: Okay. Thank you.

CHAIR DREW: Okay.

MR. THOMPSON: Well, if I --

MS. BUMPUS: Well, please.

CHAIR DREW: Thank you. Mr. Thompson.

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

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

CHAIR DREW: Okay. Thank you for that clarification.

So, Mr. Hurd, would you like to give us an overview from your perspective of where you are, and
MR. HURD: Sure, sure. First, just good afternoon, Chair Drew, EFSEC Councilmembers, EFSEC Staff. Thank you for scheduling this to make this happen. I apologize for the inconvenience of this.

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

So there's a lot of work that goes into that, and so this -- this financing basically gets us kind of all the way through that. The -- the party that this is with, Greenbacker Renewable Energy corporation, is primarily interested in owning these projects long term, and for various reasons because we're several months away from breaking ground, we've structured this
as a loan. But my expectation is that one of several things will happen as we get closer to that March or April time frame. One will be they'll -- will either expand the loan to then cover the whole amount and then build these out and they will take it at the end, or they will require it at that point.

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

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

CHAIR DREW: Thank you.

Are there additional questions? No?

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

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

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

Go ahead, Ms. Bumpus.

MS. BUMPUS: And, Councilmember Siemann, this is Sonia Bumpus. So the other thing I wanted to let you know is that while the suspension has been in effect, the -- the outstanding balance has been on the books, which has -- has now been paid. With the
reinstatement -- if the reinstatement were to occur and
the suspension is lifted, there would be a change to the
accounting system where we would add their charge code
back into the accounting system, and any work that's
been done by Staff, legal counsel, Councilmembers could
then be billed to the project.

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

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

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

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

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

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

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

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

MS. BUMPUS: Yes.

CHAIR DREW: Both --

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

CHAIR DREW: And currently, Mr. Tompson, under our statute, we would have the ability to adjust
that deposit and periods of time whether or not we say
it in this order; is that true?

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

    CHAIR DREW: Okay.

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

    MS. BUMPUS: It does.

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

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

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

    Would you like to speak, Mr. Stephenson,
since people can't all see you?
MR. STEPHENSON: Yes.

CHAIR DREW: Thank you.

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

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

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

CHAIR DREW: Okay.

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

CHAIR DREW: Ms. Brewster?

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

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

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

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

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

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

CHAIR DREW: Okay. Is there a second?

MS. BREWSTER: I second that motion.

CHAIR DREW: Okay. Are there questions? Discussion?

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

CHAIR DREW: Okay. Thank you.

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

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

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

COUNCILMEMBERS: Aye.
CHAIR DREW: Motion is adopted.

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

Is there any other business to come before
the Council at this point? Hearing none, meeting is
adjourned. Thank you all.

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

___________________________________
Tayler Garlinghouse, CCR 3358