

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

In the Matter of Docket No. EF-170823:

TUUSSO Energy LLC,

**COLUMBIA SOLAR ENERGY
PROJECT**

COUNCIL ORDER No. 877

**ORDER SUSPENDING SITE
CERTIFICATION AGREEMENTS FOR
THE COLUMBIA SOLAR PROJECT**

Regulatory Authority:

RCW 80.50.071 provides, in relevant part, as follows:

(1) The council shall receive all applications for energy facility site certification. Each applicant shall pay actual costs incurred by the council and the utilities and transportation commission in processing an application.

(a) Each applicant shall, at the time of application submission, deposit with the utilities and transportation commission an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the applicant. The council and the utilities and transportation commission shall charge costs against the deposit if the applicant withdraws its application and has not reimbursed the commission, on behalf of the council, for all actual expenditures incurred in considering the application.

* * *

(c) In addition to the deposit required under (a) of this subsection, applicants must reimburse the utilities and transportation commission, on behalf of the council, for actual expenditures that arise in considering the application * * *. The utilities and transportation commission, on behalf of the council, shall submit to each applicant an invoice of actual expenditures made during the preceding calendar quarter in sufficient detail to explain the expenditures. The applicant shall pay the utilities and transportation commission the amount of the invoice by the due date.

(2) Each certificate holder shall pay to the utilities and transportation commission the actual costs incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(a) Each certificate holder shall, within thirty days of execution of the site certification agreement, deposit with the utilities and transportation commission an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the certificate holder. The council and the utilities and

transportation commission shall charge costs against the deposit if the certificate holder ceases operations and has not reimbursed the commission, on behalf of the council, for all actual expenditures incurred in conducting inspections and determining compliance with the terms of the certification.

(b) In addition to the deposit required under (a) of this subsection, certificate holders must reimburse the utilities and transportation commission, on behalf of the council, for actual expenditures that arise in administering this chapter and determining compliance. The council, after consultation with the utilities and transportation commission, shall submit to each certificate holder an invoice of the expenditures actually made during the preceding calendar quarter in sufficient detail to explain the expenditures. The certificate holder shall pay the utilities and transportation commission the amount of the invoice by the due date.

(3) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the invoice from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

Findings:

1. On October 16, 2017, TUUSSO Energy, LLC (TUUSSO) filed an application with the Energy Facilities Site Evaluation Council (EFSEC or Council) to obtain a site certification, pursuant to RCW 80.50.060, to construct and operate the Columbia Solar Project consisting of five solar photovoltaic generating facilities and two generation tie lines. TUUSSO provided the Utilities and Transportation Commission (UTC) a deposit of \$50,000 as required by RCW 80.50.071(1)(a).
2. Following review of the application, on August 22, 2018, EFSEC issued its Report to the Governor, recommending approval of the application.
3. The Governor approved the application and executed five site certification agreements, one for each of the five solar photovoltaic generating facilities proposed in TUUSSO's application on October 17, 2018.
4. Kittitas County filed a petition for judicial review in Thurston County Superior Court on November 14, 2018. After EFSEC assembled the agency record for review to the Court, and the Office of the Attorney General submitted legal briefing to the Court in defense of the Governor's approval of the application, Kittitas County agreed to dismissal of its petition for judicial review. The County's petition was dismissed on April 9, 2019.
5. EFSEC and the UTC have invoiced TUUSSO for expenses incurred in considering the application, determining compliance by the certificate holder with the terms of the certification, and otherwise administering RCW 80.50 in regard to the Columbia Solar

Project, including legal defense of the decision to approve the application against Kittitas County's appeal. TUUSSO paid the amounts invoiced for agency expenditures through the 4th Quarter of Fiscal Year 2018 (April-June 2018).

7. TUUSSO received Columbia Solar Project billing for 1st Quarter Fiscal Year (FY19) expenditures (July - September 2018), in Invoice No. 5045-1, dated 12/20/2018, with a payment due date of 01/18/2019. TUUSSO did not pay Invoice No. 5045-1.
8. TUUSSO received Project billing for 2nd Quarter FY19 expenditures (October - December 2018) in Invoice No. 5124-1, dated 01/29/2019, with a payment due date of 03/01/2019. TUUSSO did not pay Invoice No. 5124-1.
9. EFSEC sent a letter to TUUSSO dated May 6, 2019 requesting that TUUSSO make a payment towards the unpaid balance for 1st and 2nd Quarter FY19 unpaid invoices. EFSEC also requested that TUUSSO provide a Project update by May 31, 2019.
10. TUUSSO remitted a partial payment in the amount of \$100,000.00 in May 2019. The Utilities and Transportation Commission (UTC) applied that payment towards the 1st Quarter FY19 unpaid invoice.
11. The UTC has not refunded TUUSSO's original deposit of \$50,000, submitted with TUUSSO's application for purposes of RCW 80.50.071(1)(a).
12. On May 31, 2019, email correspondence received by EFSEC from TUUSSO indicated that a "funding partner" had terminated Project-related agreements and that consequently, TUUSSO was seeking "alternative sources of funding" to fund the Project. The timeframe TUUSSO provided indicated they would have, "a source of funding in place by the end of July."
13. TUUSSO received billing for 3rd Quarter Fiscal Year (FY19) expenditures (January - March 2019 in Invoice No. 5279-1, dated 05/17/2019, with a payment due date of 06/20/2019. TUUSSO did not pay Invoice No. 5129-1.
14. EFSEC sent a letter dated July 10, 2019, to TUUSSO requesting that its outstanding Project balance be paid by August 15, 2019, and noted that EFSEC may consider suspension of the Site Certification Agreement for non-payment of the Project billings, pursuant to RCW 80.50.071(3).
15. EFSEC received a response by email dated July 15, 2019, from Jason Evans, TUUSSO's Vice President. The correspondence provided by Mr. Evans indicated TUUSSO's intent to secure project funding and settle the unpaid balance by the August 15th date, per EFSEC's request in its July 10th letter. However, on August 14th, during a phone call between Sonia E. Bumpus, EFSEC Manager, and Mr. Evans, Mr. Evans indicated that TUUSSO was

unable to make any payment for the Project billings by August 15th and that no additional funding source had been secured.

16. As of the completion of 4th Quarter FY19, TUUSSO's outstanding unpaid balance of invoiced amounts for UTC and EFSEC's Columbia Solar Project expenses totals approximately \$264,067.78.
17. At the Council's August 20, 2019, open meeting, Mr. Evans addressed the Council regarding the Project's financial difficulties and TUUSSO's inability to pay the 1st, 2nd, 3rd, and 4th Quarter FY19 billings for the Project.
18. According to Mr. Evans, TUUSSO committed all of its funding as a company to development of the Columbia Solar project and was, and remains, in a "very low cash position." TUUSSO entered into an agreement with a counterparty in early 2018 to sell the Columbia Solar Project, and the counterparty began to make payments to TUUSSO's vendors for development of the Project, including to EFSEC, and to pay a development services fee to TUUSSO for its continued work on the Project. Under that agreement, TUUSSO was to be paid for the Project following its successful realization. However, for a variety of reasons including Kittitas County's appeal and Puget Sound Energy's (PSE) denial of interconnection for two of the five sites, the counterparty stopped making payments and providing funding to TUUSSO. This occurred in December 2018, without the counterparty informing TUUSSO of its intention to stop funding. However, the counterparty waited another five months, until May 31, 2019, to officially terminate its agreement with TUUSSO. TUUSSO has, since that time, been searching for a partner to take the Project forward. Mr. Evans stated that TUUSSO is in discussions with potential purchasers and potential providers of financing. That effort is challenging because of outstanding payables that are now due and the nature of the split with the prior counterparty. Mr. Evans explained that TUUSSO has three viable interconnection agreements with PSE, and must give notice to PSE in November 2019 that the facilities at those three sites will go forward. Therefore, it is critical that TUUSSO secure a partner by November.
19. Following Mr. Evans explanation and recommendations by Ms. Bumpus, the Council voted to proceed with suspension of TUUSSO's certification for the Columbia Solar Project. The Council directed the EFSEC Manager and the Council Chair to develop and issue an order suspending TUUSSO's certification for the Columbia Solar Project on the terms generally described in staff's recommendation with additional terms provided by the Council.

ORDER

THEREFORE, IT IS HEREBY ORDERED that:

- (1) TUUSSO's certification for the Columbia Solar Project, which became effective on October 17, 2018, is suspended on the terms specified in this order.
- (2) Unless and until TUUSSO's certification is reinstated by the Council, TUUSSO may not initiate construction or take any action at the Project sites for which the law requires either site certification or a state or local permit or similar authorization.
- (3) EFSEC staff and contractors shall cease work on inspection and determination of compliance by the certificate holder with the terms of the certification.
- (4) Effective September 5, 2019 UTC shall cease allocating overhead to the Columbia Solar Project, but shall issue an invoice to TUUSSO for the first quarter of fiscal year 2020 (July 1, 2019 through September 30, 2019) reflecting direct and overhead costs incurred prior to September 5, 2019.
- (5) To obtain reinstatement of certification, TUUSSO must first make full payment of all invoiced amounts. Due to its history of non-payment, TUUSSO must provide a new deposit of at least \$50,000, or such greater amount as may be specified by the Council at that time, to meet the requirement of RCW 80.50.071(2)(a). TUUSSO must make a request for reinstatement to the Council in writing, and must include in that request a full description of its financial situation and an attestation to its ability to make timely payment of invoices going forward. The Council will endeavor to act promptly to decide such a request. The Council reserves the authority to impose any additional conditions on reinstatement of certification it deems appropriate at that time. TUUSSO shall be required to pay the cost incurred by the Council in reviewing any such request.
- (6) The terms of WAC 463-68-080, including the provision that site certification shall expire if the certificate holder does not start construction within ten years of execution of the SCAs, shall continue to apply notwithstanding suspension.
- (7) The terms of WAC 463-68-060, including the requirement that the certificate holder must report to the Council its intention to proceed or not proceed with the project if construction has not started within five years of execution of the SCAs, shall continue to apply notwithstanding suspension. TUUSSO shall be required to pay the cost incurred by the Council in reviewing of any such report.
- (8) UTC shall apply the \$50,000 deposit that TUUSSO provided at the time it submitted its application for site certification, and which the UTC retained as the deposit required of the certificate holder by RCW 80.50.071(2)(a) following execution of the site certification agreement, toward payment of TUUSSO's outstanding unpaid invoices.
- (9) TUUSSO remains responsible for payment of all outstanding costs invoiced by EFSEC, and this order in no way excuses or delays TUUSSO's continuing obligation to pay, nor

does it affect the UTC and EFSEC's right to pursue collection in any manner and on any timeline those agencies deem appropriate.

- (10) EFSEC retains all available enforcement authority, including penalty authority under RCW 80.50.150 and 155, and the authority to revoke the Columbia Solar certificates if it deems such action appropriate under RCW 80.50.130.

DATED at Lacey, Washington and effective on this 5th day of September, 2019.

WASHINGTON STATE
ENERGY FACILITY SITE EVALUATION COUNCIL



Kathleen Drew, EFSEC Chair