

STATE OF OREGON
DEPARTMENT OF CONSUMER AND BUSINESS SERVICES
DIVISION OF FINANCIAL REGULATION

In the Matter of

Case No. S-23-0033

GREENBACKER RENEWABLE
ENERGY COMPANY LLC,

Respondent.

FINAL ORDER TO CEASE AND
DESIST, FINAL ORDER ASSESSING
CIVIL PENALTY, AND CONSENT TO
ENTRY OF ORDER

The Division of Financial Regulation (the “Division”), acting on behalf of the Director of the Department of Consumer and Business Services for the State of Oregon (the “Director”), has investigated the business activities of Greenbacker Renewable Energy Company, LLC (“Respondent”). The Division has concluded that Respondent has violated one or more provisions of Oregon Revised Statutes (“ORS”) 59.005 to 59.451, 59.991, and 59.995, and the Oregon Administrative Rules (“OAR”) promulgated under those laws (collectively, the “Oregon Securities Law”).

Whereby Respondent has cooperated with the Director’s investigation and wishes to resolve this matter with the Director.

Whereby Respondent neither admits nor denies the allegations herein, but consents to a final determination in the matter, as set forth below.

Now, therefore, as evidenced by the signatures subscribed herein, Respondent hereby CONSENTS to entry of this Order.

FINDINGS OF FACT

The Director FINDS that:

1. Respondent is a duly organized Delaware limited liability company established on December 4, 2012. Respondent maintains its principal executive

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Labor and Industries Building
350 Winter Street NE, Suite 410
Salem, OR 97301-3881
Telephone: (503) 378-4387





1 offices located at 230 Park Avenue, Suite 1560, New York, NY 10169.

2 2. Respondent registered its Class A, Class C, and Class I common
3 shares and distribution reinvestment plan (“DRIP”) with the Division from 2016
4 to 2018.

5 3. On April 2, 2020, the Division entered a final order by consent against
6 Respondent for the unregistered sales of 12,480.9 DRIP shares for value in the
7 amount of \$126,821 to 69 Oregon investors (the “2020 Consent Order”).¹ Under
8 the terms of the 2020 Consent Order, Respondent agreed to pay a civil penalty in
9 the amount of \$4,500. Respondent also agreed to cease and desist from selling
10 unregistered securities in Oregon in violation of ORS 59.055.

11 4. On May 8, 2020, the Division issued an order of registration for
12 Respondent’s sale of DRIP shares in Oregon.

13 5. On May 8, 2022, Respondent’s order of registration to sell its DRIP
14 shares expired in Oregon and there was no active order of registration in effect.

15 6. On July 6, 2022, Respondent contacted the Division regarding its
16 lapsed order of registration. The Division requested a statement of sales made in
17 Oregon since the expiration of the most recent order of registration.

18 7. On July 29, 2022, in response to the inquiry from the Division,
19 Respondent reported that it sold 6,168.514 DRIP shares for value in the amount of
20 \$51,257.12, including Class A, Class C, and Class I, in May and June 2022,
21 during which time no active order of registration was in place.

22 8. On July 29, 2022, the Division received a renewal application for the
23 offer and sale of \$20,000,000 in the Issuer’s DRIP shares in Oregon, not including
24 private offerings.

25 9. On March 31, 2023, Respondent provided an updated sales report,

26 ¹ See Division case number S-19-0100.

1 noting that it had continued to sell DRIP shares without an active order of
2 registration. Respondent reported that it had sold 9,329.60 DRIP shares for value
3 in the amount of \$77,524.11 from May to August 2022 to 62 investors in Oregon,
4 during which time no active order of registration was in place.

5 10. There is no exemption from registration in Oregon for common stock
6 sold through a distribution reinvestment plan.

7 11. As a result of the unregistered sales made in Oregon from May 8, 2022
8 to August 28, 2022, Respondent violated the 2020 Consent Order by continuing to
9 offer and sell unregistered securities in Oregon in violation of ORS 59.055.

10 CONCLUSIONS OF LAW

11 The Director CONCLUDES that:

12 12. Under ORS 59.015(19)(a), “security” means a note, stock, treasury
13 stock, bond, debenture, evidence of indebtedness, investment contract, or, in
14 general, any interest or instrument commonly known as a “security.”

15 13. Respondent’s Class A, Class C, and Class I shares distributed under
16 Respondent’s distribution reinvestment plan are “securities” under ORS
17 59.015(19)(a).

18 14. Under ORS 59.055, it is unlawful for any person to offer or sell any
19 security in this state, unless: the security is registered and the offer or sale is not in
20 violation of any rule or order of the Director; the security is exempt under ORS
21 59.025 or the sale is exempt under ORS 59.035; or the security is a federal
22 covered security for which a notice has been filed and fees have been paid under
23 ORS 59.049.

24 15. By offering or selling securities to individual investors in Oregon that
25 were not registered, exempt from registration, or federal covered securities,
26 Respondent offered or sold securities in violation of ORS 59.055.





1 59.995.

2 21. The Director SUSPENDS the collection of ten thousand dollars
3 (\$10,000) provided Respondent pays the remaining twenty thousand dollars
4 (\$20,000) in civil penalty at or prior to returning this signed Consent Order and
5 complies with all terms and conditions of this Order and all requirements of the
6 Oregon Securities Law.

7 22. The Director agrees to WAIVE the foregoing suspended amount of ten
8 thousand dollars (\$10,000) in civil penalty at the end of a (3) three-year period from
9 the effective date of this Consent Order, provided Respondent complies with the
10 Oregon Securities Law and the terms of this Consent Order. If Respondent fails to
11 comply with the Oregon Securities Law or otherwise fails to comply with the terms
12 of this Consent Order, then the suspended portion of the civil penalty shall become
13 immediately due and payable.

14 23. The Director makes no finding and nothing in this Order is intended to
15 state or imply a finding that Respondent engaged in fraudulent, manipulative, or
16 deceptive conduct, nor engaged in any device, scheme or artifice to defraud, nor
17 engaged in any act, practice or course of business which operates or would operate
18 as a fraud or deceit upon any person.

19 24. This Order is not, and is not intended to be, an order based upon a
20 violation of any Oregon statute, rule, or regulation that prohibits fraudulent,
21 manipulative, or deceptive conduct.

22 25. Nothing in this Order is intended to be construed as a conclusion that
23 any dishonest or fraudulent conduct occurred, and no such conclusions were
24 reached.

25 26. This Order is not intended to state or imply willful, reckless, or
26 fraudulent conduct by Respondent or its affiliates, directors, officers, employees,

1 associated persons, or agents.

2 **NONDISCHARGEABILITY**

3 27. Respondent agrees the facts and violations set forth in this Order may be taken
4 as true without further proof in any bankruptcy case or subsequent civil litigation the
5 Director may pursue to enforce its rights to any payment or money judgment under the
6 terms of this Order, including but not limited to any nondischargeability complaint in any
7 bankruptcy proceeding and that this Order shall have collateral estoppel effect in any
8 bankruptcy case.

9 **FINAL ORDER**

10 28. This is a “Final Order” under ORS 183.310(6)(b). Entry of this Order in
11 no way limits or prevents further remedies, sanctions, or actions which may be
12 available to the Director under Oregon law to enforce this Order, for violations of
13 this Order, for conduct or actions of Respondent that are not covered by this Order,
14 or against any Respondent or other party not covered by this Order.

15 IT IS SO ORDERED

16 Dated this 2nd day of August, 2023.

17 ANDREW R STOLFI, Director
18 Department of Consumer and Business Services

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20
21 /s/ Dorothy Bean
22 Dorothy Bean, Chief of Enforcement
23 Division of Financial Regulation
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CONSENT TO ENTRY OF ORDER

I, Charles Wheeler, state that I hold the title of Chief Executive Officer and I am an authorized representative of Respondent Greenbacker Renewable Energy Company, LLC (“GREC”) with the authority to sign this Consent Order on behalf of GREC. I have read the foregoing Consent Order and I fully understand the contents hereof. I have been advised of the right to a hearing and of the right to be represented by counsel in this matter, and I have been represented by counsel in this matter. GREC voluntarily consents to the entry of this Consent Order without any force or duress, expressly waiving any right to a hearing in this matter, as well as any rights to administrative or judicial review of this order. GREC understands that this is a “Final Order” under ORS 183.310(6)(b). GREC understands that the Director reserves the right to take further action to enforce this Order or to take appropriate action upon discovery that GREC has committed other violations of the Oregon Securities Law. GREC will fully comply with the terms and conditions stated herein.

GREC understand that this Order is a public document.

Signature: /s/ Charles Wheeler
Name: Charles Wheeler
Title: Chief Executive Officer

State of New York
County of New York

Signed or attested before me on this 1st day of August, 2023
by Katelyn Esper.

/s/ Katelyn Ferris Esper
Notary Public

