



November 27, 2017

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Re: Petition for Declaratory Ruling Regarding Energy Conversion Facility Permit for the
Lookout Solar Project

Dear Ms. Edwards:

On behalf of Lookout Solar Park I, LLC, I am writing to request a declaratory ruling from the Commissioners of the South Dakota Public Utility Commission (“PUC”) concerning the need for a facility permit with respect to the construction of a 110 MW solar photovoltaic project, known as the Lookout Solar Project (the “Project”), pursuant to ARSD 20:10:01:34. The Project would be located on federal individual Indian trust land, within the boundaries of a reservation of a federally-recognized tribe, on land owned by members of the tribe. Under current case law, state law requirements, such as permitting requirements, are generally not applicable to the use of trust land within the boundaries of a federally-recognized tribal reservation and on land owned by members of federally-recognized tribe. We believe that no PUC-issued facility permit is required for the Project, but are writing to request the PUC’s determination in order to avoid any potential violations of South Dakota law.

Background

The Project is a 110 megawatt (“MW”) solar generating facility on the Oglala Sioux Pine Ridge Reservation in South Dakota. The solar generating facility will be located on land leased from enrolled members of the Oglala Sioux Tribe. The land is individual Indian trust land within the jurisdiction of the Tribe and the federal government. The Project includes an approximately 10-mile long transmission line with an interconnection to the Western Area Power Administration high-voltage power lines all located in Custer County, South Dakota. The owner of the Project, and the lessee of the land on which the Project is located, Lookout Solar Park I, LLC, is a limited liability corporation incorporated in Delaware that has registered to do business in South Dakota. Lookout Solar Park I would lease the land from the individual tribal members pursuant to a form



Kristen N. Edwards
November 27, 2017
Page 2

of lease approved by the Bureau of Indian Affairs after review of its substantive terms and considering environmental impacts under the National Environmental Policy Act.

Under South Dakota law, a PUC permit is required for an energy conversion facility (excluding wind facilities) that is capable of generating 100 MW or more. Specifically, SDCL 49-41 B-4 states that no utility may begin construction of a facility in the state on or after July 1, 1979, without first having obtained a permit issued with respect to such facility by the Commission. Any facility, with respect to which a permit is required, shall thereafter be constructed, operated, and maintained in conformity with such permit including any terms, conditions, or modifications contained therein. SDCL 49-41 B-2 defines an "energy conversion facility" as: any new facility, or facility expansion, designed for or capable of generation of one hundred megawatts or more of electricity, but does not include any wind energy facilities.

The South Dakota code states the legislative justification for requiring permits for energy facilities:

The Legislature finds that energy development in South Dakota and the Northern Great Plains significantly affects the welfare of the population, the environmental quality, the location and growth of industry, and the use of the natural resources of the state. The Legislature also finds that by assuming permit authority, that the state must also ensure that these facilities are constructed in an orderly and timely manner so that the energy requirements of the people of the state are fulfilled. Therefore, it is necessary to ensure that the location, construction, and operation of facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that a facility may not be constructed or operated in this state without first obtaining a permit from the commission.

In short, the PUC's jurisdiction is based on protecting the environment, minimizing impacts to the citizens of South Dakota, and ensuring that the energy requirements of the citizens of South Dakota are fulfilled.

The PUC Commissioners have not addressed whether an energy conversion facility over 100 MW on the reservation of a federal-recognized tribe is within the jurisdiction of the PUC and, therefore, is subject to the PUC requirement to obtain a permit. Lookout Solar Park I, LLC is requesting clarity on whether the PUC believes that it has jurisdiction of such a project, and would require the project owner or operator to obtain an energy conversion facility permit. To this end,



Kristen N. Edwards
November 27, 2017
Page 3

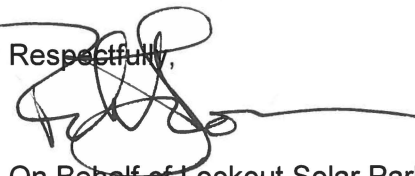
a draft petition for a declaratory ruling from the Commissioners is attached for the PUC's review and possible use as a form for issuing a determination.

As there are no South Dakota citizens that own the land or are members of the project, we do not believe that there is a basis for the PUC requiring an energy conversion facility permit. Rather, we believe that the generating facility is within the jurisdiction of the federal government in connection with its governance of the Oglala Sioux Tribe and related reservation lands.

Although Lookout Solar Park I, LLC does not believe the PUC has jurisdiction over the energy conversion facility of the Project, we expect that the PUC could assert jurisdiction over the Project's transmission line and associated substation in Custer County. Accordingly, Lookout Solar Park I, LLC is requesting a transmission line permit for the Project. A notice of intent to apply for a transmission line permit from the PUC is attached to provide background on transmission line portion of the project.

* * *

If you have questions regarding our request for a declaratory ruling or require additional information please contact Bob Lawrence at rlawrence@orrick.com and 202.339.8430 or Shani Harmon at sharmon@orrick.com and 202.339.8617. We look forward to working with you on this matter.

Respectfully,


On Behalf of Lookout Solar Park I, LLP
Robert F. Lawrence

Enclosures: Draft Petition for Declaratory Ruling from the Commission
Notice of Intent for Transmission Line Permit