

**BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA**

**IN THE MATTER OF THE APPLICATION
OF LOOKOUT SOLAR PARK I, LLC FOR
A PERMIT OF A SOLAR ENERGY
FACILITY IN OGLALA LAKOTA
COUNTY**

*
*
*
*
*
*

**REVISED SETTLEMENT
STIPULATION**

EL18-059

It is hereby stipulated and agreed by and between the Applicant, Lookout Solar Park I, LLC (Applicant or Lookout Solar), and Staff of the South Dakota Public Utilities Commission (Staff), (jointly the Parties), that the following Settlement Stipulation (Stipulation) may be adopted by the South Dakota Public Utilities Commission (Commission) in the above-captioned matter.

The Parties held several negotiating sessions in an effort to arrive at a jointly acceptable resolution of this matter. As a result of those negotiations, the Parties have resolved all issues subject to this proceeding.

INTRODUCTION

On December 17, 2018, the Commission received an Application for an Energy Permit (Application) from Lookout Solar. In its Application, Lookout Solar proposes to construct and operate a 110-megawatt (MW) solar generation facility to be located in Oglala Lakota County, South Dakota, known as the Lookout Solar Project (Project). The Project is located approximately 22 miles east of Buffalo Gap, South Dakota, on 810 acres of privately owned land in Township 41 North, Range 48 West, Section 36 and the southern portion of Section 35 on individually-owned Indian trust land on the Pine Ridge Reservation (Project Area). The Project includes 500,000 solar panels, an energy storage facility, access roads, underground 34.5 kilovolt (kV) electrical collector lines, an underground fiber-optic cable, a collection substation, an operations and maintenance facility, and temporary construction areas. The Project would interconnect to the high-voltage transmission lines owned by Western Area Power Administration near Cottonwood Cutoff. The Project is expected to be in-service by the second quarter of 2021. Applicant estimates the total construction cost to be \$100 million.

PURPOSE

This Stipulation has been prepared and executed by the Parties for the sole purpose of resolving all issues in Docket EL18-059. In consideration of the mutual promises hereinafter set forth, the Parties agree as follows:

1. Upon execution of this Stipulation, the Parties shall file this Stipulation with the Commission together with a joint motion requesting that the Commission issue an order approving this Stipulation in its entirety without condition or modification.
2. This Stipulation includes all terms and conditions of the settlement and is submitted with the condition that, in the event the Commission imposes any material changes or conditions to this Stipulation which are unacceptable to any Party, this Stipulation may, at the option of any Party, be withdrawn and shall not constitute any part of the record in this proceeding or any other proceeding, nor be used for any other purpose.
3. This Stipulation shall become binding upon execution by the Parties, provided however, that if this Stipulation does not become effective in accordance with Paragraph 2 above, it shall be null, void, and privileged. This Stipulation is intended to relate only to the specific matter referred to herein; no Party waives any claim or right, which it may otherwise have, with respect to any matter not expressly provided for herein. No Party or a representative thereof shall directly or indirectly refer to this Stipulation as precedent in any other current or future proceeding before the Commission.
4. The Parties to this proceeding stipulate that the Application, as amended and supplemented, all pre-filed testimony, exhibits, and responses to Staff data requests on the settled issues will be made a part of the record in this proceeding. The Parties understand that if these issues had not been settled, the Parties may have filed further testimony.
5. The terms and conditions contained in this Stipulation shall inure to the benefit of and be binding upon the respective successors, affiliates, owners, stockholders, partners, parents, subsidiaries, directors, officers, agents, employees, representatives, attorneys, and assigns of the Parties. In addition, the terms and conditions of this Stipulation, including all facts leading up to the signing of this Stipulation, shall bind the Parties, including consultants, contractors, and retained professionals.
6. This Stipulation constitutes the entire agreement between the Parties and shall be deemed to supersede any other understanding or agreements, whether written, oral, expressed or implied, relating to the Application. This Stipulation may not be amended, modified, or supplemented, and waivers or consents to departures from the terms and conditions of this Stipulation may not be given without the written consent thereto executed by all Parties.
7. This Stipulation shall be interpreted and construed in accordance with the laws of the State of South Dakota.

8. This Stipulation may be executed by electronic mail or facsimile and in multiple counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document.
9. The Parties agree that subject to the four elements of proof under SDCL 49-41B-22, the Commission has the authority to grant, deny, or grant upon reasonable terms, conditions, or modifications a permit for the construction, operation, and maintenance of the Project. Each Party further agrees that Applicant has met its burden of proof pursuant to SDCL 49-41B-22 and is entitled to a Permit to construct the Project as provided in SDCL 49-41B-24, subject to the following:

TERMS AND CONDITIONS OF THE SETTLEMENT STIPULATION

1. Applicant will obtain all governmental permits which reasonably may be required by any township, county, state agency, or federal agency, or any other governmental unit for construction and operation activity of the Project prior to engaging in the particular activity covered by that permit. Copies of any permits obtained by Applicant shall be sent to the Commission.
2. Applicant shall construct, operate, and maintain the Project in a manner consistent with (1) descriptions in the Application, (2) Application supplements and corrections, (3) responses to any data requests, (4) the Final Decision and Order Granting Permit to Construct Facility and Permit Conditions, (5) any applicable industry standards, and (6) any permits issued by a federal, state, or local agency.
3. Applicant shall comply with and implement any requirements or commitments set forth in the final Western Area Power Administration (WAPA) Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) and final Bureau of Indian Affairs EA and FONSI that were completed in accordance with the National Environmental Policy Act.
4. If construction of the Project commences more than four years after the date the permit is granted, pursuant to SDCL 49-41B-27, Applicant must certify to the Commission prior to construction that such facilities will meet the permit conditions.
5. The Permit shall not be transferable without the approval of the Commission pursuant to SDCL 49-41B-29.

6. Applicant agrees that the Commission's complaint process as set forth in ARSD Chapter 20:10:01 shall be available to landowners and other persons sustaining or threatened with damage as the result of Applicant's failure to abide by the conditions of the Permit or otherwise having standing to seek enforcement of the conditions of the Permit. Participating landowners are free to use the complaint process free from retribution or consequence regardless of any private easement term to the contrary.
7. At least 14 days prior to commencement of construction, Applicant shall provide each participating and non-participating landowner in the Project Area as shown in the Application and one-half mile outside the Project Area, using the names and addresses designated to receive the property tax bill sent by the county treasurer, with the following information:
 - a) A copy of the Final Decision and Order Granting Permit to Construct Facilities with attached Permit Conditions;
 - b) Detailed safety information describing:
 - i. Reasonable safety precautions for existing activities on or near the Project;
 - ii. Known activities or uses that are presently prohibited near the Project; and
 - iii. Other known potential dangers or limitations near the Project;
 - c) Construction/maintenance damage compensation plans and procedures (only to participating landowners);
 - d) The Commission's address, website, and phone number;
 - e) Contact person for Applicant, including name, e-mail address, and phone number.
8. In order to ensure compliance with the terms and conditions of this Permit pursuant to SDCL 49-41B-33, it is necessary for the enforcement of this Order that all employees, contractors, and agents of Applicant involved in this Project be made aware of the terms and conditions of this Permit.
9. Except as otherwise provided in the Permit Conditions, Applicant shall comply with all mitigation measures set forth in the Application and Applicant's responses

to Staff data requests. Material modifications to the mitigation measures shall be subject to prior approval of the Commission.

10. Applicant will negotiate road use agreements with Oglala Lakota County, U.S. Bureau of Indian Affairs, and all affected townships, if required. Applicant will follow the terms of all road use agreements. When using haul roads specified in applicable road use agreements, Applicant shall take appropriate action to mitigate wind-blown particles created throughout the construction process, including but not limited to implementation of dust control measures such as road watering, covering of open haul trucks when transporting material subject to being windblown, and the removal of any soils or mud deposits by construction equipment when necessary.
11. In accordance with applicable road use agreements or applicable law, Applicant shall comply with or ensure the following conditions regarding road protection:
 - a) All necessary permits authorizing the crossing of federal, state, county, and township roads are properly acquired.
 - b) Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
 - c) A regular program of road maintenance and repair through the active construction period to keep paved and gravel roads in an acceptable condition for residents and the public shall be implemented.
 - d) After construction, all deteriorated or damaged roads shall be repaired and restored to correct all damage resulting from construction traffic or compensate governmental entities for their repair and restoration of deteriorated roads, such that the roads are returned to their preconstruction condition.
 - e) Within 180 days of completing construction and reclamation of the Project, Applicant shall submit documentation to the Commission identifying that the roads were repaired in accordance with this Condition 11 and to the satisfaction of affected townships and county. If the townships or county will not provide such documentation, then Applicant shall provide a report to the Commission on the outstanding road repair issues and how those issues will be resolved.
 - f) Privately owned areas used as temporary roads or paths during construction will be restored to their preconstruction condition, except as otherwise requested or agreed upon by the landowner.

- g) Should Applicant need to widen any existing roadways during construction of the Project, Applicant shall return the roadways back to original width after completion of the Project, unless otherwise agreed upon with the federal, state, county, or township entities, or the landowner.
- 12. Signage that identifies road closures and disturbances resulting from the Project in accordance with the most recent editions of the Manual on Uniform Traffic Control Devices as published by the Federal Highway Administration shall be provided.
- 13. Applicant shall promptly report to the Commission the presence of any critical habitat of threatened or endangered species in the Project Area that Applicant becomes aware of and that was not previously reported to the Commission.
- 14. Applicant agrees to avoid direct impacts to cultural resources that are unevaluated, eligible for or listed in the National Register of Historic Places (NRHP). When a NRHP unevaluated, eligible or listed resource cannot be avoided, Applicant shall notify the South Dakota State Historic Preservation Office (SHPO) and the Commission of the reasons that complete avoidance cannot be achieved in order to coordinate minimization and/or treatment measures.
- 15. Applicant agrees to develop an unanticipated discovery plan for cultural resources that are consistent with 36 Code of Federal Regulations § 800.13 (Post-review Discoveries) and South Dakota Codified Laws Chapter 34-27: Cemeteries and Burial Records.
- 16. Applicant shall file a final Level III Archaeological report with the Commission prior to commercial operation. If any potential adverse impacts to NRHP unevaluated, listed, or eligible cultural resources are identified in the final cultural resources report, Applicant shall file with the Commission a report describing the SHPO-approved planned measures to ameliorate those impacts.
- 17. Applicant shall provide the Stormwater Pollution Prevention Plan (SWPPP) to the Commission when Applicant has a final design for the Project. The SWPPP will outline the water and soil conservation practices that will be used during construction to prevent or minimize erosion and sedimentation. The SWPPP shall be completed as required by the National Pollutant Discharge Elimination System (NPDES) general permit for construction activities. Applicant will give a copy of the SWPPP to all contractors to be engaged in ground disturbing activities and applicant will review the requirements with them prior to the start of construction.
- 18. Applicant shall repair and restore areas disturbed by the construction or maintenance of the Project. Except as otherwise agreed to by the landowner,

restoration shall include replacement of original pre-construction topsoil or equivalent quality topsoil to its original elevation, contour, and compaction and re-establishment of original vegetation as close thereto as reasonably practical. In order to facilitate compliance with this Permit Condition, Applicant shall:

- a) Strip the topsoil to the actual depth of the topsoil, or as otherwise agreed to by the landowner in writing (e-mail is sufficient), in all areas disturbed by the Project; however, with respect to access roads, Applicant may remove less than the actual depth of the topsoil to ensure roads remain low-profile and the contours align with the surrounding area;
 - b) Store the topsoil separately from the subsoil in order to prevent mixing of the soil types;
 - c) All excess soils generated during the excavation shall remain on the same landowner's land, unless the landowner requests or agrees otherwise in writing; and
 - d) When revegetating non-cultivated grasslands, Applicant shall use a seed mix that is recommended by the Natural Resource Conservation Service (NRCS), or other land management agency, unless otherwise agreed upon with the landowner in writing.
19. The spread of noxious weeds will be avoided or minimized by delivering clean, washed vehicles to the site; using weed-free straw or wattles for erosion control, if readily available; and through the use of weed-free seed mixes following construction. Applicant shall work closely with landowners or land management agencies, such as the NRCS, to determine a plan to control noxious weeds.
20. Applicant shall stage construction materials in a manner that minimizes the adverse impact to landowners and land users as agreed upon between Applicant and landowner or Applicant and the appropriate federal, state, and/or local government agency. All excess (non-permanent) construction materials and debris shall be removed upon completion of the Project, unless the landowner agrees otherwise.
21. In order to mitigate interference with agricultural operations during and after construction, Applicant shall locate all structures, to the extent feasible and prudent, to minimize adverse impacts and interferences with agricultural operations, shelterbelts, and other land uses or activities. Applicant shall take appropriate precautions to protect livestock and crops during construction. Applicant shall repair all fences and gates removed or damaged during construction or maintenance unless otherwise agreed upon with the landowner or designee. Applicant shall be

responsible for the repair of private roads damaged when moving equipment or when obtaining access to the right-of-way.

22. Applicant shall bury the underground collector system at a minimum depth of 4 feet, or deeper if necessary, to ensure the current land use is not impacted.
23. Applicant shall repair or replace all property removed or damaged during all phases of construction, including but not limited to, all fences, gates, and utility, water supply, irrigation or drainage systems. Applicant shall compensate the owners for damages or losses that cannot be fully remedied by repair or replacement, such as lost productivity and crop and livestock losses. All repair, replacement and/or compensation described above shall be in accordance with the terms and conditions of written agreements between Applicant and affected landowners where such agreements exist.
24. Applicant shall, in the manner described in its written agreement with a landowner, indemnify and hold the landowner harmless for loss, damage, claim, or actions resulting from Applicant's use of the easement, including any damage resulting from any release, except to the extent such loss, damage claim, or action results from the negligence or willful misconduct of the landowner or his employees, agents, contractors, invitees, or other representatives.
25. Applicant may adjust access roads, the collector system, the operations and maintenance facility, the Project substation, and temporary facilities, so long as they are: located on land leased for the Project; cultural resources are avoided, or mitigated in consultation with the SHPO; documented habitats to listed species are avoided; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met.
26. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate action to minimize any such interference and shall make a good faith effort to restore or provide reception levels equivalent to reception levels in the immediate areas just prior to construction of the Project. This mitigation requirement shall not apply to any dwellings or other structures built after completion of the Project.
27. Applicant will provide Global Positioning System (GPS) coordinates of structure locations to affected landowners at any time during the life of the Project. Coordinates will be provided in writing to landowners within 30 days of a request.

28. Not less than 30 days prior to commencement of construction work in the field for the Project, Applicant will provide to Staff the most current preconstruction design, layout, and plans. Applicant will also provide such additional Project preconstruction information as Staff requests.
29. Within 90 days after the Project's commercial operation date, Applicant shall submit a report to the Commission that provides the following information:
 - a) as-built location of structures and facilities;
 - b) the status of remedial activities for road damage, landowner property damage, crop damage, environmental damage, or any other damage resulting from Project construction activities; and
 - c) a summary of known landowner complaints and Applicant's plan for resolving those complaints.
30. Applicant shall seek input from local emergency response personnel to properly and effectively coordinate an emergency response plan consistent with local resources and response abilities. Upon completion of construction, a Project operation emergency response plan shall be provided to Staff to make available to the general public on the Commission's website.
31. Prior to construction of the Project, Applicant will notify public safety agencies by providing a schedule and the location of work to be performed within their jurisdiction. The agencies contacted will include the South Dakota Department of Public Safety, the sheriffs of Oglala Lakota and Custer counties, and the Offices of Emergency Management for Oglala Lakota and Custer counties.
32. Applicant agrees to undertake a minimum of two years of independently-conducted post-construction avian and bat mortality monitoring for the Project, and to provide a copy of the report and all further reports to the United States Fish and Wildlife Service, South Dakota Game, Fish, and Parks, and the Commission.
33. If Applicant plans to construct the Project during the lekking season, then prior to construction, Applicant agrees to conduct a prairie grouse lek survey during the lekking season in order to determine if active prairie-grouse leks are within the project area. The lekking season is considered to be March 15 through May 15. Surveys should occur from 30 minutes prior to sunrise until 90 minutes after sunrise under low wind (<20 kph) conditions. A minimum of 2 searches should be conducted, at least 1 week apart. At least one of the surveys should occur in April. If an active prairie grouse lek is found in the project area, Applicant agrees

to implement SD GF&P's 2-mile construction buffer during the remainder of the lekking season.

34. If the Project is decommissioned, Applicant will follow Section 23 of the Application and Applicant's responses to Staff data requests. The Commission shall be notified prior to any decommissioning action.
35. Applicant shall comply with any performance bond or other decommissioning requirement the U.S. Bureau of Indian Affairs imposes.
36. The terms and conditions of the Permit shall be made a uniform condition of construction and operation, subject only to an affirmative written request for an exemption or amendment addressed to the Commission. A request for an exemption or amendment shall clearly state which particular condition should not be applied to the property in question and the reason for the requested exemption. The Commission shall evaluate such requests on a case-by-case basis, which evaluation shall be completed within 60 days unless exigent circumstances require action sooner.
37. Applicant shall provide a copy of the Commission's Final Decision and Order Granting Permit to Construct Facilities; Notice of Entry and attached Permit Conditions in this docket to the affected county, townships, and municipalities in the Project Area.

Dated this 21st day of January 2020.

Lookout Solar Park I, LLC

By: Christian Bohn

Christian Bohn

Its: President

Public Utilities Commission Staff

By: Andrew M. Riss

Its: STJF Attorney