

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

**IN THE MATTER OF THE APPLICATION
OF WILD SPRINGS SOLAR, LLC FOR A
PERMIT OF A SOLAR ENERGY
FACILITY IN PENNINGTON COUNTY,
SOUTH DAKOTA**

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SETTLEMENT STIPULATION

EL20-018

It is hereby stipulated and agreed by and between Applicant Wild Springs Solar, LLC (Applicant or Wild Springs), Intervenor Bundorf Family Trust , 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 multiple 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, except for the appropriate decommissioning financial assurance.

INTRODUCTION

On May 15, 2020, the Commission received an Application for a Solar Energy Facility Permit (Application) from Wild Springs. In its Application, Wild Springs proposes to construct and operate an up to 128 megawatt (MW) alternating current (AC) solar generation facility to be located in Pennington County, South Dakota, known as the Wild Springs Solar Project (Project). The Project is located approximately one-half mile south of New Underwood, South Dakota, on 1,499 acres of privately owned land in the Rapid City East and East Central Pennington Unorganized Territories, where civil township data is not available (Project Area). The Project includes solar modules, inverters, tracking racking, fencing, access roads, a substation, an operations and maintenance building, a parking lot, electric collection lines, up to three weather stations, and temporary construction areas. The Project will interconnect to the New Underwood Substation owned by Western Area Power Administration, located adjacent to the Project Area. Wild Springs has entered into a Power Purchase Agreement with Basin Electric Power Cooperative, who is taking the entire output of the Project for 15 years, starting in 2022. The Project is expected to be completed and in-service by the end of 2022. Wild Springs estimates the total cost of the Project to be \$190 million.

PURPOSE

This Stipulation has been prepared and executed by the Parties for the sole purpose of resolving all issues in Docket EL 20-018, except for the appropriate decommissioning financial

assurance. 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 other than the appropriate decommissioning financial assurance 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 with respect to the issues it resolves and shall be deemed to supersede any other understanding or agreements, whether written, oral, expressed or implied, relating to the Application. Except as set forth in Condition 34 below, 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. Except for the appropriate decommissioning financial assurance, 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-25, 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. Applicant shall file an itemized affidavit with the Commission attesting that all permits were properly obtained prior to commercial operation.
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, (6) any permits issued by a federal, state, or local agency, and (7) applicable state law.
3. Applicant shall complete the Western Area Power Administration (WAPA) environmental review process as required by the National Environmental Policy Act (NEPA). Further, Applicant shall comply with and implement any requirements or commitments set forth in the WAPA NEPA review. Applicant expects the environmental review to be composed of an Environmental Assessment (EA) and issuance of a Finding of No Significant Impact (FONSI).
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 Pennington County, the City of New Underwood, and all affected townships, if required. Applicant will follow the terms of all road use agreements. When using haul roads, 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, township, and municipal roads are properly acquired.
 - b) Applicant shall coordinate road closures with federal, state, and local governments and emergency responders.
 - c) If required by a road use agreement or as otherwise agreed with the road use authority, 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) In accordance with any road use agreement or as otherwise agreed with the road use authority, after construction, Applicant shall repair and restore deteriorated roads 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 local governmental entities. If the affected local governmental entities 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, or local entities, or the landowner.
12. Applicant shall provide 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.

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 and human remains. Applicant will comply with SDCL 34-27-25, 34-27-26, and 34-27-28 for the discovery or human remains.
16. Applicant shall file a final cultural resources 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 specified below. 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 (e-mail is sufficient); and
 - d) When revegetating, 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 (e-mail is sufficient).
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 implement the noxious weed control plan developed in coordination with the Pennington County Weed & Pest/Natural Resources Director, and will utilize weed free seed mixes developed in coordination with the NRCS.
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. Applicant shall take appropriate precautions to protect livestock 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. This condition does not apply to any aboveground portion of the collector system.
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 the location of the solar panels, tracking rack system and piers, inverters, and transformers (each, a Facility), so long as: they are located within the Land Control Area identified in the Application; cultural resources are avoided or mitigated in consultation with the SHPO; active burrows within the 2019-mapped prairie dog colonies' extent are avoided; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met. Prior to implementing Facility adjustments, Applicant will file in the docket an affidavit demonstrating compliance with the limitations set forth above. Any Facility adjustment that does not comply with the aforesaid limitations, or any inverter, tracker or transformer model changes, would be considered a "material change," and Applicant shall file a request for approval of the "material change" prior to making the adjustment pursuant to the following approval process:

- For Facility adjustments, Applicant will file with the Commission and serve on the official Service List a request for approval of a material change that includes:
 - An affidavit describing the proposed Facility adjustment, the reason for the adjustment, the reason the adjustment does not comply with one or more Facility flexibility limitations set forth above, and information regarding compliance with all other applicable requirements; and
 - A map showing both the approved location and the proposed adjustment (in different colors).
- For inverter, tracker or transformer model changes, Applicant will file with the Commission and serve on the official Service List a request for approval of the material change that includes the proposed model design specifications (to the extent different than the specifications provided for the model(s) identified in Table 9.5-3 of the Application), the distance to 55 dBA based on the manufacturer's noise modeling data, and the minimum distance to a parcel line from the changed component.
- Once received, the information would be reviewed by Staff, and Staff will have 10 calendar days within which to request further Commission review.
- If no further review is requested, Applicant may proceed with the Facility adjustment or model change.
- If further review is requested, the Commission will issue a decision regarding Applicant's request at its next available regularly

scheduled Commission meeting, subject to notice requirements, after the request for further review is made by Staff.

26. Applicant may adjust access roads, the collection/communication systems, weather stations, the operations and maintenance building, the parking lot, the Project substation, and temporary facilities, so long as they are located within the Land Control Area identified in the Application; cultural resources are avoided or mitigated in consultation with the SHPO; active burrows within the 2019-mapped prairie dog colonies' extent are avoided; wetland impacts are avoided or are in compliance with applicable USACE regulations; and all other applicable regulations and requirements are met.
27. Applicant will provide Global Positioning System (GPS) coordinates of the array extent to affected landowners at any time during the life of the Project if requested by the landowner. 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 shall identify the tracker, inverter, and transformer models to be used for the Project and provide an analysis demonstrating the sound levels comply with the Pennington County Conditional Use Permit. 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, 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 Pennington County Sheriff, the Pennington County Office of Emergency Management, and the New Underwood Volunteer Fire Department.

32. Applicant agrees to undertake two years of independently-conducted post-construction breeding bird surveys and associated nest monitoring within the Project site and adjacent reference areas for comparison. A copy of the reports and all further reports shall be provided to the United States Fish and Wildlife Service, South Dakota Game, Fish, and Parks (SDGFP), and the Commission. Applicant also agrees to provide the SDGFP with documentation on a Wildlife Incident Reporting System (WIRS) in the event that avian carcasses are discovered during routine operation and maintenance activities on an annual basis until the post-construction avian surveys are complete.
33. If the Project is decommissioned, Applicant will follow Section 5.0 of the Application and the decommissioning plan laid out in Appendix D of the Application. The Commission shall be notified prior to any decommissioning action.
34. 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 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.
35. Applicant shall provide a copy of the Commission's Final Decision and Order Granting Permit to Construct Facilities; Notice of Entry and Permit Conditions in this docket to the affected county and municipalities in the Project Area within 30 days of issuance.
36. Applicant shall develop a plan for screening identified on Figures 4 and 5a of the Application and file the plan with the Commission at least 30 days prior to construction. Applicant shall make a good-faith effort to consult the adjacent non-participating residence and incorporate any feedback received into the plan.
37. If the Project causes interference with radio, television, or any other licensed communication transmitting or receiving equipment, Applicant shall take all appropriate actions 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.

Dated this 30 day of October 2020.

Wild Springs Solar, LLC

By: /s/ Mollie M. Smith

Its: Counsel of Record

Bundorf Family Trust

Judith Bundorf, Trustee

Public Utilities Commission Staff

By: /s/ Amanda M. Reiss

Its: Staff Attorney

By: _____

Its: _____

Bundorf Family Trust

Judith Bundorf, Trustee
Judith Bundorf, Trustee

Public Utilities Commission Staff

By: _____

Its: _____