

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

IN THE MATTER OF LOOKOUT) SOLAR PARK I, LLC FOR A PERMIT) OF A SOLAR ENERGY FACILITY IN) OGLALA LAKOTA COUNTY))))))	ORDER GRANTING JOINT MOTION FOR APPROVAL OF REVISED SETTLEMENT STIPULATION; ORDER GRANTING PERMIT TO CONSTRUCT ENERGY CONVERSION FACILITY; NOTICE OF ENTRY EL18-059
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On December 17, 2018, the South Dakota Public Utilities Commission (Commission) received an Application for an Energy Facility Permit (Application) from Lookout Solar Park I, LLC (Lookout Solar or Applicant). Lookout Solar proposes to construct and operate a 110-megawatt 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 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 the 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. Lookout Solar previously filed its required Notice of Intent to Apply for a Permit for an Energy Conversion Facility in Docket EL18-007.

On December 20, 2018, the Commission electronically transmitted notice of the filing and the intervention deadline of February 15, 2019, to interested individuals and entities on the Commission's PUC Weekly Filings electronic listserv. On December 26, 2018, the Commission issued a Notice of Application; Order for and Notice of Public Input Hearing; Notice of Opportunity to Apply for Party Status. On January 4, 2019, the Commission issued an Order Assessing Filing Fee; Order Authorizing Executive Director to Enter into Consulting Contracts. On February 6, 2019, the Public Input Hearing was held as scheduled at the Hermosa School Gymnasium. No applications for party status were filed with the Commission. On July 1, 2019, the Commission issued an Order Granting Local Review Committee's Request to Hire Consultant. On November 1, 2019, the Report of the Local Review Committee was filed. On December 2, 2019, the Commission issued an Order Granting Motion to Extend the Deadline for Commission Action.

On December 9, 2019, Commission staff and Lookout Solar filed a Joint Motion for Approval of Settlement Stipulation and a Settlement Stipulation. On December 10, 2019, at its regularly scheduled meeting, the Commission heard from the parties and deferred action on the matter. On January 21, 2020, a Joint Motion for Approval of Revised Settlement Stipulation and a Revised Settlement Stipulation was filed.

The Commission has jurisdiction over this matter pursuant to SDCL Chapters 1-26 and 49-41B, specifically 49-41B-22 and 49-41B-24, and ARSD Chapters 20:10:01 and 20:10:22.

At its regularly scheduled meeting of February 3, 2020, the Commission considered

this matter. Having thoroughly reviewed the filings in the docket and after making further inquiry of the parties, the Commission voted unanimously to amend the Terms and Conditions of the Revised Settlement Stipulation. The Commission further voted unanimously to grant the Joint Motion for Approval of the Revised Settlement Stipulation as amended. By approving the Revised Settlement Stipulation, the Commission grants Lookout Solar's Application for a permit to construct an energy conversion facility and associated infrastructure (Permit), subject to the Permit Conditions set forth below. It is therefore

ORDERED, that the Joint Motion for Approval of the Revised Settlement Stipulation is hereby granted, and the Revised Settlement Stipulation as amended by the Commission is approved. It is further

ORDERED, that a permit to construct the Lookout Solar Project and its associated infrastructure is hereby granted to Lookout Solar, subject to the Permit Conditions set forth below:

PERMIT CONDITIONS

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 Order Granting Joint Motion for Approval of Revised Settlement Stipulation; Order Granting Permit to Construct Energy Conversion Facility; Notice of Entry of Order, (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 Order Granting Joint Motion for Approval of Revised Settlement Stipulation; Order Granting Permit to Construct Energy Conversion Facility; Notice of Entry of Order;
 - 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; and
 - e) Contact person for Applicant, including name, e-mail address, and phone number.
8. In order to ensure compliance with the Permit Conditions, 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 Commission 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 waddles 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 Commission staff the most current preconstruction design, layout, and plans. Applicant will also provide such additional Project preconstruction information as Commission 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 Commission 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 (GF&P), 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 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 Commission staff's 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. Prior to the start of commercial operation, Applicant shall file the Solar Energy Ground Lease and Grant of Easements executed between Lynn Dee Rapp, Frank D. Rapp, Julia Rapp Trevillyan, Deborah Rapp Wammen (Lessor) and Lookout Solar Park I, LLC (Lessee), dated December 5, 2018, which has been given written final approval by the U.S. Bureau of Indian Affairs.
 36. The Permit Conditions 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 Order Granting Joint Motion for Approval of Revised Settlement Stipulation; Order Granting Permit to Construct Energy Conversion Facility; Notice of Entry in this docket to the affected county, townships, and municipalities in the Project Area.

NOTICE OF ENTRY

PLEASE TAKE NOTICE that this Order Granting Joint Motion for Approval of Revised Settlement Stipulation; Order Granting Permit to Construct Energy Conversion Facility was duly issued and entered on the 14 day of February 2020.

<p style="text-align: center;">CERTIFICATE OF SERVICE</p> <p>The undersigned hereby certifies that this document has been served today upon all parties of record in this docket, as listed on the docket service list, electronically or by mail.</p> <p>By: <u>Karen E. Cremer</u></p> <p>Date: <u>02/14/20</u></p> <p style="text-align: center;">(OFFICIAL SEAL)</p>

BY ORDER OF THE COMMISSION:

Gary Hanson

GARY HANSON, Chairman

Chris Nelson

CHRIS NELSON, Commissioner

Kristie Fiegen

KRISTIE FIEGEN, Commissioner