

*Be it remembered that at the Regular Meeting of the Board of County Commissioners of Luna County in Deming New Mexico, on the 9<sup>th</sup> day of June 2022, the following proceedings were had and entered of record.*

**RESOLUTION NO. 22-47**

**APPROVING REQUEST OF  
SUNZIA TRANSMISSION LLC TO USE CERTAIN ROADS IN  
LUNA COUNTY AND OTHER MATTERS**

**WHEREAS**, SunZia Transmission LLC (including its successors and assigns, “**Sunzia**”) contemplates constructing up to two high voltage electric transmission lines (each a “**Transmission Line**” and collectively, the “**Transmission Lines**”) across portions of Luna County (the “**County**”);

**WHEREAS**, the construction, operation and maintenance of the Transmission Lines will require access to, ingress and egress to and from, and crossings of County owned right-of-way and County held right-of-way easements and other public ways of County, including shoulders, designated for the purpose of vehicular traffic and under the jurisdiction of the County as identified in Exhibit A attached hereto (the “**County Roads**”), including the right of SunZia and its contractors, subcontractors, employees, agents, and representatives (the “**SunZia Parties**”) to use the County Roads to transport structures, materials, construction equipment and supplies related to the construction of the Transmission Lines, and, if necessary, to improve same (the “**Road Usage**”) and to cross over the County Roads with the conductors and cables of the Transmission Lines (the “**Overhead Crossings**”);

**WHEREAS**, by the County’s dedication, use, and/or maintenance of the County Roads and the County’s ownership of the right-of-way of the County Roads, the Board of Commissioners of the County has the authority on behalf of the County to permit such Road Usage and Overhead Crossings; and

**WHEREAS**, the County and SunZia anticipate that the additional volume of traffic on the county roads due to Road Usage may result in repairs, improvements and associated expenses to the County, and the County desires to provide certain conditions to SunZia regarding the Road Usage so that the County Roads will remain in as good a state of repair as existing before the Road Usage and that SunZia be responsible for repairing any damage done the County Roads as a result of the Road Usage; and

**WHEREAS**, SunZia desires to comply with any applicable and currently existing rules, ordinances, permits, or regulations of the County (the “**County Requirements**”) in the construction, operation, and maintenance the Transmission Lines within the County and for the Road Usage, and seeks verification through this resolution of its compliance with any such County Requirements; and

**WHEREAS**, there are no County Requirements that would compel SunZia to obtain zoning approval, a permit, or an authorization for the construction, operation or maintenance of the Transmission Line within the County. There are no County rules or ordinances regarding

buffer zones; noise restrictions; shade, shadow, or visibility restrictions; or other zoning rules or regulations affecting the proposed construction, operation, or maintenance of Transmission Lines in the County;

**WHEREAS**, SunZia seeks the County's permission for such Road Usage and Overhead Crossings, and the County has agreed to grant said permission, subject to the provisions hereof.

**NOW, THEREFORE, BE IT ORDERED BY THE BOARD OF COMMISSIONERS OF LUNA COUNTY, NEW MEXICO:**

1. That the findings and recitals in the preamble to this Resolution and Order are found to be true and correct and are hereby **RATIFIED, APPROVED** and **ADOPTED**.
2. That the Board of Commissioners hereby grants permission to SunZia during the planning and construction phases of the Transmission Lines, and thereafter during the operation and maintenance phase of the Transmission Lines, until the Transmission Lines are completely abandoned and/or removed, to use the County Roads for the Road Usages described herein, including, but not limited to, for access and egress to and from the Transmission Lines and for crossings of said County Roads with the Overhead Crossings.
3. That the permission granted in Paragraph 2 includes an authorization to conduct geo-technical and other preliminary construction analysis of such County Roads where necessary and to determine whether upgrades to the County Roads (the "**Upgrades**") are necessary to permit the Road Usage.
4. SunZia will be responsible for reshaping, repair, and/or modification of the County Roads that must be performed on the County Roads resulting from the Road Usage that is in excess of the usual and customary maintenance operations performed as routine maintenance by the County (the "**Additional SunZia Maintenance**").
5. SunZia agrees to conduct a pre-construction assessment of the County Roads (the "**Assessment**") for each Transmission Line to determine the current suitability for the Road Usage. At a minimum, the Assessment will document the following items for the County Roads: current load bearing capacity of the County Roads and their bridges or culverts, drainage damage/distress, pavement damage/distress, bridge damage/distress, and any required expansion of private road entrances from the County Roads. In addition, the Assessment will include the type and classification of vehicles requiring special permitting that will be used by the SunZia Parties as part of the Road Usage. The Assessment will describe the **Additional SunZia Maintenance** to be performed by SunZia during the construction of a Transmission Line and any **Upgrades** required, including any construction specifications for any additional material added to the County Roads or cuts or widening of the County Roads or private entrances as part of the **Upgrades**. The Assessment will be provided to the County Road Department Director (the "**County Representative**") at least sixty (60) days prior to the commencement of construction of a Transmission Line in the County. The County Representative shall have twenty (20) days to submit any proposed changes or revisions to the Assessment with respect to the proposed SunZia **Additional Maintenance** and any **Upgrades**

identified and SunZia will incorporate such changes to the extent commercially reasonable and if consistent with the obligations of SunZia as set forth herein.

6. As a result of the Assessment, if any of the Road Usage requires Upgrades, SunZia will perform such Upgrades at its cost. The County may inspect such Upgrades after completion thereof, and SunZia will perform additional work if needed to cause the Upgrades to meet the same or better road standards as in effect at the commencement of such Upgrades.
7. In addition, SunZia must repair any damage to the County Roads caused by its Road Usage so that the County Roads will meet the same or better road standards as in effect as of the date of such damage to the County Roads.
8. Under no circumstances will SunZia be responsible or liable for any accident, injury, tort, or other theory of liability to any third party solely by virtue of this Resolution and Order. Furthermore, no third party beneficiary may claim or assert any benefit or right, either directly or indirectly, by or through this Resolution. The County agrees that this Resolution does not alter or in any way shift responsibility for ensuring the safety of the County Roads from the County to SunZia.
9. SUNZIA AGREES TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE COUNTY, ITS COMMISSIONS, AGENCIES, AGENTS, REPRESENTATIVES AND EMPLOYEES (COLLECTIVELY THE "INDEMNITEES") AGAINST ANY AND ALL LOSSES, DAMAGES, CLAIMS, EXPENSES AND LIABILITIES, INCLUDING WITHOUT LIMITATION, PHYSICAL DAMAGE TO THE ROADS OR PROPERTY OF THE COUNTY, WHICH DIRECTLY OR INDIRECTLY, IN WHOLE OR IN PART, ARISE OUT OF, ARE CAUSED BY, OR ARE AS RESULT OF (1) ANY NEGLIGENT, INTENTIONAL, OR MALICIOUS ACT OR OMISSION OF THE SUNZIA PARTIES ARISING OUT OF THE ROAD USAGE; OR (2) ANY BREACH OF THIS RESOLUTION AND ORDER BY THE SUNZIA PARTIES (COLLECTIVELY THE "LIABILITIES"). THIS INDEMNITY SHALL INCLUDE, BUT NOT BY WAY OF LIMITATION, THE PAYMENT OF, OR REIMBURSEMENT TO, THE COUNTY OF ALL COSTS, EXPENSES, REASONABLE ATTORNEY'S FEES, DAMAGE AWARDS WHICH MAY BE INCURRED, OR RESULT IN ANY MANNER, FROM ANY LIABILITIES. THIS INDEMNITY AGREEMENT SHALL SURVIVE THE TERMINATION OF THIS RESOLUTION AND ORDER.
10. SunZia agrees to provide insurance at all times during construction and such insurance will include: (1) if any employees, Worker's Compensation insurance in compliance with the laws of the State of New Mexico (2) Commercial General Liability insurance with minimum limits of \$1,000,000.00 per occurrence, and (3) Automobile Liability insurance. Certificates of Insurance will be provided to the County.
11. SunZia shall be responsible for obtaining any other permits or agreements which any governmental entity other than the County may require to operate or move its vehicles on the County Roads.

12. This Resolution shall not serve to relieve any operator of a SunZia Party vehicle from complying with applicable speed limits or weight restrictions.
13. Any widening or cuts occurring inside the existing County Road rights-of-way as a result of the Upgrades shall remain in place after construction of the Transmission Line, unless the County specifically requests that such cuts or widening be removed.
14. Upon request of the County, the SunZia Parties shall obtain and post traffic signs at various locations as an aid to traffic management. All such signage or postings shall comply with the applicable County Requirements.
15. The SunZia Parties shall provide, erect and maintain all necessary barricades, suitable and sufficient lights, hazard beacons, other signs, and provide a sufficient number of flaggers and take all necessary precautions for the protection of the work and the safety of the public during the construction of a Transmission Line.
16. The County Representative and/or its designee shall have reasonable access to the County Roads for inspection of such roads, culverts and adjacent ditches.
17. SunZia shall comply with all Federal, State, and local laws and regulations related to the construction of the Transmission Lines.
18. In the event that a County Road becomes impassable due to reasons outside of the reasonable control of the SunZia Parties which requires access on or across other County roads or rights of way other than the County Roads, the County grants the SunZia Parties the right to use such other roads for so long as the County Roads are impassable, provided that the SunZia Parties shall be responsible for repairing any damage done to such roads as a result of such use by the SunZia Parties.
19. Upon the completion of SunZia's construction operations of a Transmission Line, SunZia, at its own cost and expense, shall within sixty (60) days restore the portions of the County Roads used by SunZia to the same or better condition as existed prior to the commencement of SunZia's construction operations. Should SunZia fail to restore the roadways to the condition existing prior to the execution of this Resolution within sixty (60) days from the date of completion of SunZia's construction operations of a Transmission Line, SunZia hereby agrees to reimburse and indemnify the County for all costs and expenses incurred by the County to repair, restore or resurface the portions of the County Roads used by SunZia to the same condition which existed prior to SunZia's construction operations. In addition, emergency repairs resulting from SunZia's construction operations and determined to be necessary by the County, may be made by the County with SunZia to reimburse the County for all reasonable costs incurred by the County in making such emergency repairs.
20. Any Overhead Crossing shall meet the minimum overhead clearance of the New Mexico Department of Transportation for such County Road crossed or the latest version of the National Electrical Safety Code (NESC).

21. All notices and oral or written communications relating to this Resolution and Order shall be forwarded as follows:

To SunZia:

Name: SunZia Transmission, LLC  
Address: 3610 N. 44<sup>th</sup> Street, Suite 250  
Phoenix, AZ 85018  
Attn: David Getts  
Phone: (602) 808-2004

To the County:

Name: Luna County  
Address: 700 S. Silver Ave.  
Deming, NM 88030  
Attn: Chris A. Brice  
Phone: (575)-546-0494

22. If any portion of this Resolution is held invalid, it shall have no effect upon the validity of the remaining portions of this Resolution.


23. This Resolution shall be binding upon the parties hereto, their heirs, executors, administrators, successors and assigns. This Resolution may be partially assigned to the New Mexico Renewable Energy Transmission Authority, a public body of the State of New Mexico, politic and corporate, separate and apart from the State ("RETA") constituting a governmental instrumentality for the performance of essential public functions, and SunZia (excluding RETA) agrees to continue to be bound by the terms and conditions of this Resolution and Order.

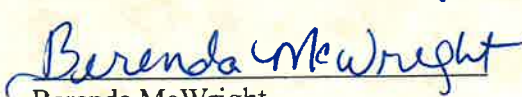
24. This Resolution shall be interpreted and controlled by the laws of the State of New Mexico. Any action arising out of or related to this Resolution and Order shall be brought only in the 6<sup>th</sup> Judicial District Court for the State of New Mexico.

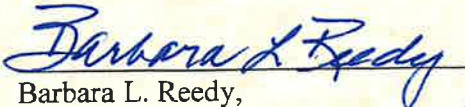
**DONE THIS 9<sup>th</sup> DAY OF JUNE, 2022**

by the Board of County Commissioners of Luna County

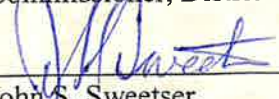
ATTEST:

  
Linda M. Smrkovsky, Chairperson  
Commissioner, District 2

  
Berenda McWright,  
County Clerk

  
Barbara L. Reedy,  
Commissioner, District 1

REVIEWED FOR LEGAL SUFFICIENCY:

  
John S. Sweetser,  
Commissioner, District 3

  
Charles C. Kretek, County Attorney

