

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

TATANKA WIND POWER, LLC,)	
)	
Complainant,)	
)	
v.)	Docket No. EL10-41-000
)	
MONTANA-DAKOTA UTILITIES)	
COMPANY, a division of MDU Resources)	
Group, Inc.,)	
)	
Respondent.)	

**MOTION FOR LEAVE TO FILE AN ANSWER, AND ANSWER TO AN
ANSWER OF
TATANKA WIND POWER, LLC**

Pursuant to Rules 212 and 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),¹ Tatanka Wind Power, LLC (“Tatanka”) respectfully files this Motion for Leave to File an Answer, and Answer to an Answer in the above-captioned proceeding.

Tatanka requests permission to file this Answer. Although the Commission’s procedural rules do not provide for answers to protests, answers, or similar filings unless otherwise ordered,² the Commission may, for good cause shown, permit such answers.³ Good cause exists in this case to permit Tatanka to respond to the Answer of Montana-Dakota Utilities Company, a division of MDU Resources Group, Inc. (“MDU”) in this proceeding. This Answer will assist in the Commission’s resolution of the issues

¹ 18 C.F.R. §§ 385.212, .213 (2009).
² 18 C.F.R. § 385.213(a)(2).
³ 18 C.F.R. § 385.101(e).

presented by providing the Commission with a complete and accurate record, and by clarifying certain misstatements made by MDU in its Answer.⁴

I. RELEVANT BACKGROUND

On February 9, 2010, Tatanka filed a Complaint against MDU. In its Complaint, Tatanka demonstrated that MDU refused to repay Tatanka for 100% of costs incurred for network upgrades and has consistently denied that it has any repayment obligation. MDU's refusal and denial of its repayment obligations constitutes a breach of MDU's obligations under the currently effective Amended and Restated LGIA. The refusal and denial violate the Commission's policies regarding generation interconnection agreements and procedures contained in Order Nos. 2003 and 2003-A and the Midwest ISO OATT in effect when the LGIA was approved by the Commission. Tatanka further demonstrated that MDU's objections to its repayment obligations have been heard and rejected by the Commission in previous proceedings.

On March 1, 2010, MDU filed an Answer to Tatanka's Complaint. MDU's Answer confirms that the parties agree to all material facts. The disputed issues pertain to interpretation and application of the terms of the Amended and Restated LGIA. Thus, this dispute can be resolved by the Commission based on the pleadings.

⁴ See, e.g., *ISO New Eng., Inc.*, 129 FERC ¶ 61,101 at P 18 (2009)(allowing response "because it has provided information that assisted [the Commission] in our decision-making process"); *Entergy Servs., Inc.*, 116 FERC ¶ 61,286 at P 6 (2006)(Commission accepted an answer that "provided information that assisted us in our understanding and resolution of the issues raised"); *S. Natural Gas Co.*, 113 FERC ¶ 61,199 at P 23 (2005)(Commission stated that it will waive Section 385.213(a)(2) for good cause shown to permit answer that will "help clarify the issues under consideration"); *Mich. Elec. Transmission Co., LLC*, 106 FERC ¶ 61,129 at 61,452 (2004)(allowing responses to protest "as they provide additional information that assists the Commission in the decision-making process"); *PJM Interconnection, L.L.C.*, 104 FERC ¶ 61,031 at 61,077 (2003)(admitting answer to protest "since it will not delay the proceeding, will assist the Commission in understanding the issues raised, and will insure a complete record upon which the Commission may act").

In relevant part, MDU's Answer asserted that (1) Tatanka materially deviated from MDU's project specifications and MDU never "formally" approved or accepted the facilities, and thus MDU is not required to pay for the upgrades; (2) the cost of the Network Upgrades exceeds the estimate in the Amended and Restated LGIA, and thus MDU should not be required to pay more than the estimate; (3) \$500,000 in renovations would render the upgrades minimally acceptable to MDU; (4) the Amended and Restated LGIA was not properly assigned to Tatanka; and (5) MDU is not required to pay all of the credits in a lump sum.

In this Answer, Tatanka first describes the matters on which there is agreement between the parties. Because of the extent of this concurrence as to the material facts, the legal issues that need to be resolved are isolated and shown not to depend on the resolution of any disputed facts. Tatanka then addresses each of MDU's five assertions in turn.

II. ANSWER

A. Agreement on Material Facts

Comparing the Tatanka Complaint, the MDU Answer and the contents of this Answer to MDU's Answer, it is clear that the parties agree to the following:

- (1) that the Amended and Restated LGIA governs the dispute;⁵
- (2) that the Amended and Restated LGIA repayment obligation for Network Upgrades specifies a repayment level of 100% repayment;⁶
- (3) that there is no dispute about the identity, definition, and classification of the facilities identified in the invoice found at Tatanka Attachment A-5

⁵ Inexplicably and without referring to it, MDU did attach a prior LGIA, dated February 25, 2005, as Exhibit C to its Answer.

⁶ MDU's arguments as to why it should pay less than the cost of the Network Upgrades constructed by Tatanka do not rely on any claim that some other percentage level in this or any previous LGIA applies to the dispute.

(hereafter, “Invoice”) as “Network Upgrades” under the Amended and Restated LGIA;

- (4) that the \$4,036,892.67 amount identified in the Invoice and supported in the Chocarro Affidavit is the amount actually incurred by Tatanka in construction of the Network Upgrades;
- (5) that the \$239,895.00 included in interest as of the date of the Invoice was calculated in accordance with the Amended and Restated LGIA and FERC regulations;
- (6) that the project has been energized and is in commercial operation and has been since July 24, 2008; and
- (7) that, were MDU to incur an additional \$500,000 in renovation costs, it would be happier with the layout and functionality of the substation.⁷

Given this area of agreement, there are no issues of material fact that must be resolved prior to a final Commission order. The following legal issues must be resolved and do not depend on disputed facts:

- (1) What rights under the Amended and Restated LGIA, if any, does MDU have to raise objections as to alleged departures from design specifications after construction and energization of the Network Upgrades have been completed and commercial operation has commenced?
 - Tatanka suggests the answer is that MDU does not have such rights. Whatever rights MDU had to object as to design issues terminated upon the energization and commercial operation of the Network Upgrades, and, despite MDU’s claims, there is no other “formal” step by which MDU would accept the facilities.
 - In the alternative, if the Commission finds that MDU retains such rights, Tatanka acknowledges that an additional \$500,000 in renovation costs are desired by MDU.
- (2) If the \$500,000 worth of renovations that MDU desires should be made, is a reduction in Network Upgrade repayments appropriate?

⁷ MDU’s Answer at 3; Ford Affidavit at ¶ 10; Tatanka acknowledges that the \$500,000 estimate is an accurate assessment as to the costs required to resolve the concerns identified in Ford’s Affidavit at ¶ 9 (as to his items “a through d”). See Attachment H, Chocarro Supplemental Affidavit at ¶ 2. In its initial Complaint, Tatanka included Attachments A, B, and C. To simplify matters for the Commission, Tatanka will identify its attachments in this filing as D, E, F, G, and H.

- Tatanka suggests the answer is that no such reduction would be appropriate. If MDU desires changes in facilities on its network, it can make them at its own expense. If the Commission requires such renovations to be conducted and Tatanka to pay for them, Tatanka should be eligible for repayment.
- (3) Under the Amended and Restated LGIA, is the estimate of costs for Network Upgrades a binding cap? Is the Interconnection Customer under the Option to Build ineligible to receive repayment for Network Upgrade costs that exceed that estimate?
- Tatanka suggests the answer is that under Commission policy and precedent, an estimate is an estimate, not a binding cap, and that just as the Interconnection Customer must provide for the funding of the Network Upgrades, so, too, it is entitled to repayment for actual Network Upgrade costs.
- (4) Is a lump sum the appropriate method for repayment of the Network Upgrade costs?
- Tatanka suggests the answer is that a lump sum could be appropriate but that it would accept a lump sum for past due amounts and continued repayment for ongoing service at the firm point-to-point rate specified in the Amended and Restated LGIA.

What is clear from this list of the legal issues to be resolved is that they do not depend on resolution of any disputed facts. As detailed below, the only disputed fact is whether the facilities actually depart from MDU's specifications or whether those specifications were in effect modified during the construction process in which MDU participated and during which it did not raise objections. As shown below, no hearing is required on this issue. Tatanka is willing to concede that \$500,000 in renovations would resolve the concerns regarding specifications. The only questions are whether, by whom, and how the \$500,000 in renovations specified by MDU should be paid for. If the Commission chooses to reach this question, it can be resolved on the pleadings.

B. MDU Accepted the Facilities Built by Tatanka, Which Tatanka Understood to Be Consistent With MDU’s Specifications As Modified During Project Team Meetings

1. No Requirement for “Formal” Acceptance

MDU has expressed concerns about departures from its design specifications. While Tatanka reasonably believed, as detailed below, that such departures were approved by MDU during the course of team project meetings, it concedes that the \$500,000 in renovations specified in Mr. Ford’s affidavit would resolve these concerns. The key legal question is whether MDU can require such renovations and who should pay for them after the facility has been energized and is in Commercial Operation.

MDU’s position is that it never “formally” accepted the facilities (perhaps implying that it will not do so until renovations are completed or at least cost responsibility for them is allocated). MDU notes that the Amended and Restated LGIA provides that in certain circumstances MDU would not be required to accept the facilities.⁸ But while MDU apparently would like the Commission to revise that requirement to say “formally” accept the facilities, there is no such language in the Amended and Restated LGIA. Further, the undisputed facts are that the facilities have been energized and are in Commercial Operation. They have thus been accepted under the Amended and Restated LGIA, and there is no further remedy for the alleged violation.

MDU repeatedly asserts that it never “formally” approved the design work presented to it for review.⁹ Nowhere in MDU’s Answer or Affidavits does MDU assert

⁸ MDU’s Answer at 3, 11-12; *see also* section 5.2(10) of the Amended and Restated LGIA.

⁹ MDU’s Answer at 12 (“Montana-Dakota never *formally* approved the design work that was presented to Montana-Dakota for review . . . To date, Montana-Dakota has never *formally* approved and accepted the ‘as-built’ facilities”); Raveling Affidavit at ¶¶ 12, 14 (“I never *formally* approved the design

that it did not approve the modifications; MDU only asserts that it did not “formally” approve the modifications and has not “formally” accepted the facilities. But there is no requirement in the Amended and Restated LGIA for “formal” acceptance of the facilities.

The Amended and Restated LGIA itself, in the section relied on by MDU,¹⁰ states:

Transmission Provider . . . and Transmission Owner **shall be entitled to review and approve the engineering design, equipment acceptance tests . . . , and the construction . . .** of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades, and **shall have the right to reject any design, procurement, construction or acceptance test** of any equipment that does not meet the standards and specifications of Transmission Provider, Transmission Owner and any Governmental Authority. . .¹¹

There are no particular “formalities” prescribed in this section. So while the Amended and Restated LGIA admittedly provides MDU with the opportunity to reject any design, procurement, construction, or acceptance test, it does not provide any opportunity to do so after the facilities have been constructed, energized, and put into Commercial Operation.

For example, the Amended and Restated LGIA provides the opportunity for Tatanka to remedy any deficiency following such a rejection “at any time during construction.”¹² But MDU did not reject the modifications proposed by Tatanka, and it certainly did not provide Tatanka with any opportunity to remedy any perceived deficiency during construction. Despite MDU’s assertion that Tatanka violated Section

work that was presented to Montana-Dakota for review I never *formally* approved the ‘as-built’ facilities, including the substation or any other network upgrades associated with this project.”)(emphasis added).

¹⁰ MDU’s Answer at 12.

¹¹ LGIA § 5.2(3) (emphasis added).

¹² LGIA § 5.2(6) (emphasis added).

5.2(6) of the Amended and Restated LGIA,¹³ in fact MDU did not provide Tatanka with any notice that would have triggered its opportunity to remedy alleged deficiencies during construction.

Similarly, Section 5.2(10) of the Amended and Restated LGIA applies to approval and acceptance of the Network Upgrades “*for operation and maintenance.*”¹⁴ There is no question at all that the facilities are currently being operated and maintained by MDU under the MISO tariff.¹⁵ For example, MDU operates the breakers by SCADA and operates the switches in the substation.¹⁶

On Monday November 26, 2007,¹⁷ the Network Upgrades were energized. During this process – in which MDU fully participated¹⁸ – MDU never raised any red flags, suggested that the facilities materially deviated from MDU’s specifications,¹⁹ or suggested that it was not accepting the facilities. MDU was fully involved in the final commissioning checkouts; a facility cannot go online without these tests being performed. MDU failed to raise any issues during this process or suggest that any deviations that existed were material.

As of July 24, 2008, Tatanka issued a commercial operation notice to the Midwest ISO.²⁰ This commercial operation notice was accepted, indicating that the project complies with tariff requirements, as shown by the fact that Tatanka began to and

¹³ MDU’s Answer at 13.

¹⁴ LGIA § 5.2(10) (emphasis added).

¹⁵ See, e.g., Chocarro Supplemental Affidavit at ¶ 5.

¹⁶ *Id.* at ¶ 7.

¹⁷ See, e.g., Chocarro Affidavit, Attachment A-4, page 29.

¹⁸ See, e.g., Chocarro Affidavit, Attachment A-4, pages 29-30.

¹⁹ Mr. Raveling indicates that he raised three issues, one since resolved, during a final walk through. Raveling Affidavit at ¶ 13. But neither the size of the control house nor the battery type were significant enough to prevent energization and acceptance of the facilities.

²⁰ Attachment D.

continues to receive payment for energy under the Midwest ISO tariff. The Commercial Operation Date is defined in the Amended and Restated LGIA as “the date on which the Generating Facility commences Commercial Operation as agreed by the Parties pursuant to” such a notice. If the project did not comply with the Midwest ISO’s tariff, the project would not have been commissioned and the commercial operation notice would have been disputed.

MDU demonstrated its acceptance of the facilities by participating in this transition.²¹ MDU knowingly allowed the facilities to be energized as Network Upgrades under the control of Midwest ISO as part of the MDU system. Tatanka received notice regarding alleged deviations from MDU standards in a letter dated October 22, 2008 when MDU disputed the original invoiced tendered by Tatanka.²² In effect, MDU did not dispute the design of Tatanka until MDU was requested to reimburse Tatanka for the Network Upgrade costs.

In sum, MDU’s assertion to the contrary, the Amended and Restated LGIA does not specify any procedure for “formal” acceptance of the facilities. These facilities were commissioned and integrated into the Midwest ISO’s Transmission System. MDU did not object to or otherwise dispute energizing and Commercial Operation of the project. With energization, Commercial Operation, and with the Network Upgrades now under Midwest ISO control, and as a matter of law, MDU accepted the facilities. With no method of “formal” approval described or required in the Amended and Restated LGIA, with no rejection communicated by MDU, and with no opportunity to remedy any

²¹ The now retired Mr. Raveling states that to his knowledge MDU had not received “as built” drawings. Raveling Affidavit at ¶ 14. But Mr. Ford’s affidavit confirms that MDU received and reviewed “as built” drawings. Ford Affidavit at ¶ 8.

²² See Attachment E.

perceived deficiency during construction, Tatanka reasonably relied on the modifications consented to in numerous interactions with MDU as approval sufficient to satisfy Sections 5.2(3) and 5.2(10) of the Amended and Restated LGIA. Well aware of its repayment obligations, MDU participated while Tatanka spent millions of dollars constructing the Network Upgrades. MDU cannot now raise these issues as a defense to its repayment obligations.

2. MDU Participated in Project Meetings and Actively Modified the Design Specifications

MDU has expressed concerns about departures from its design specifications. Tatanka concedes that the \$500,000 in renovations specified in Mr. Ford's affidavit would resolve these concerns if MDU has the right to raise such issues at this stage, after energization and Commercial Operation. Nonetheless, Tatanka does wish to explain that it reasonably believed that departures from MDU's original specifications were approved by MDU during the course of team project meetings.

Specifically, MDU's Answer asserts that the facilities built by Tatanka materially deviate from MDU's specifications in violation of Section 5.2(1) of the Amended and Restated LGIA.²³ Tatanka does not dispute that, as built, the facilities do not follow every detail included in the initial specifications that MDU provided. However, the facilities do comply with MDU's specifications as modified by repeated project team meetings throughout the course of the project. Throughout the development of the project, representatives from MDU communicated with Tatanka representatives on a regular basis to discuss design issues.²⁴ These meetings lasted throughout the

²³ MDU's Answer at 13.

²⁴ Chocarro Supplemental Affidavit at ¶¶ 3-4.

construction phase, and in that time Tatanka consulted with MDU to ensure that the project was consistent with MDU's requirements.²⁵

Over the course of those project meetings, MDU and Tatanka conferred on numerous issues to ensure that the Tatanka facilities complied with MDU's specifications, as modified by the project meetings. Tatanka routinely consulted with MDU, routinely sought approval from MDU, and routinely followed MDU directions, even down to details like the color of the paint for the control building.²⁶ Consider the following examples in chronological order:

- Chocarro Affidavit, Attachment A-4, page 1 (October 2006 e-mail exchange): Bill Barnhart of Tatanka's contractor asks Mr. Raveling of MDU a design issue question and receives a positive response regarding a "230kV grounded wye/34.5kV grounded wye transformer."
- Chocarro Affidavit, Attachment A-4, page 2 (January 5, 2007 e-mail exchange): Bill Barnhart references a phone conversation with Mr. Raveling of MDU and provides him a list of "my understanding of items that provides MDU acceptance of our design" and describing seven separate items.
- Chocarro Affidavit, Attachment A-4, page 4 (January 24, 2007 e-mail exchange): Bill Barnhart to Tatanka subcontractor Mortenson indicating receipt of "additional changes from MDU for the protection schemes at the interconnect station" that "changes most of the schematics and all of the wiring" that "will require redesign work on the drawings."
- Chocarro Affidavit, Attachment A-4, pages 9-12 (January 14, 2007 e-mail exchange): In a series of e-mails between Mr. Raveling of MDU and Tatanka's contractor Bill Barnhart, among other things Mr. Barnhart indicates that Tatanka's (his "client") directions are "to minimize costs" and to provide "what is absolutely required" and to comply with anything that is a "requirement" and "not an option." Mr. Raveling, among other things, indicates that he is "open to proposals for consideration" and there "may be other ways" the particular item

²⁵ *Id.*

²⁶ Attachment A-4 to Mr. Chocarro's Affidavit at 27-28.

under discussion “can be insured.” As to the issue (redundant relay schemes on the 230kV line), Mr. Raveling indicates that he “can’t address the fact that this hasn’t come up before, but I suspect it was just not caught or has been otherwise overlooked.”

- Chocarro Affidavit, Attachment A-4, pages 14-15 (January 2007 e-mail exchange): Bill Barnhart asks Mr. Raveling to review “revised drawings per our discussion and your comments. If you could review them and let me know if they are acceptable, I would appreciate it.” In response, Mr. Raveling provides a detailed list of comments while remarking that the drawings “appear nicely done with the circuits nicely laid out.”
- Chocarro Affidavit, Attachment A-4, pages 17-23 (series of August 2007 e-mail exchanges): Scott Englander of Tatanka’s contractor CRA International, copying Mr. Raveling, asks Henry Ford of MDU for a conference call to “identify any issues that need further discussion” that “related to requirements by MDU as transmission owner.” Listed among the agenda items are “MDU design approval,” “Tatanka construction issues,” “construction,” “testing requirements,” “procedures for energizing, operating and maintaining.” The follow-up e-mail of August 17, 2007 to Mr. Ford and Mr. Raveling, among others on the project team, lists a number of action items for follow-up, without indicating any MDU objections.
- Chocarro Affidavit, Attachment A-4, pages 24-26 (August 2007 e-mails): In connection with the weekly coordination meeting notice for MDU, Tatanka, and the contractors, a schedule attributed to MDU includes dates for interconnection work to be completed and for MDU to check out and conduct “inspections onsite when breakers and other key elements of the interconnection are being installed.” Notes from the discussion include, among other things, that “Don Raveling requires a clear decision on communications. The decision is to come from MDU management. I [the contractor] am unclear what MDU requires to support their internal review.” The notes also indicate that, as to substation tests, “MDU does not wish to slow the construction/testing if they cannot attend.”
- Chocarro Affidavit, Attachment A-4, pages 27-28: Ryan Klug of Tatanka’s contractor Mortenson asks Don Raveling of MDU “your preference for color” of the substation control house. Mr. Raveling replies “Light Stone” for exterior walls, roof, and door; “Regal White” for interior walls and ceiling.
- Chocarro Affidavit, Attachment A-4, page 35 (October 2007 e-mail exchange): Mr. Raveling provides to a Tatanka contractor what he has

completed at that point for the “Energization Plan” for that Tatanka interconnection substation. The Tatanka contractor had provided “a start to the Energization Plan” for MDU to use as MDU prepared its plan.

This evidence shows that Tatanka was responsive to design issues raised by MDU²⁷ and even proactively sought out MDU’s approval on facilities, a fact noted by Mr. Raveling in his affidavit and exhibits.²⁸ Mr. Raveling also confirmed that the comments he provided to Tatanka “were followed.”²⁹ This conflicts with Mr. Raveling’s unsupported assertion that at some point a Tatanka contractor asserted that it “did not need to follow [MDU]’s design specifications.”³⁰ MDU’s active participation combined with silence on any material deviations constitutes acceptance as a matter of law.³¹

Nonetheless, whether or not MDU approved the departures from its design specifications during the course of construction is not a material fact which needs to be resolved by the Commission. If MDU has the legal right to raise design issues after having accepted the facilities for energization and Commercial Operation, Tatanka will concede that the \$500,000 in renovations specified in Mr. Ford’s Affidavit would resolve all such concerns.

²⁷ See, e.g., Attachment A-4 to Mr. Chocarro’s Affidavit at 35 (E-mail chain between Ryan Klug at Acciona and Don Raveling at MDU, where Mr. Klug states, “After you supply your input we will have to work together to revise, if needed . . . Once we have . . . comments back we will finalize the plan.”).

²⁸ MDU’s Answer, Exh. A, pp. 1-2 (E-mail chain between Bill Barnhart at HDR and Don Raveling at MDU, where Mr. Barnhart followed up with MDU to confirm that a 230 kV grounded wye/34.5 grounded wye transformer to be installed at the collection substation was acceptable to MDU. Note that although this is not a Network Upgrade, Tatanka proactively sought input on potential areas of concern with MDU).

²⁹ Raveling Affidavit at ¶ 12.

³⁰ *Id.* at ¶ 9.

³¹ *E.g.*, RESTATEMENT (SECOND) OF CONTRACTS § 4, comment a (“assent may be manifested by words or other conduct, sometimes including silence”); JOHN D. CALAMARI & JOSEPH M. PERILLO, THE LAW OF CONTRACTS § 2.18, at 80-83 & n.5 (4th ed.1998) (a basic principle of contract law permits silence to constitute acceptance “when silence would be deceptive and beguiling”) (cited in *United States v. Wood*, 378 F.3d 342, 349 n.3 (4th Cir. 2004)).

C. Tatanka's Costs Were Neither Unjust or Unreasonable, but Were Consistent with and Permitted by the Amended and Restated LGIA

MDU's Answer argues that Tatanka should assume the risk for any actual Network Upgrade costs in excess of the estimate associated with design and construction of the facilities.³² But MDU does not cite any Amended and Restated LGIA provision to support this claim, does not assert that any of the incurred costs are somehow unjust or unreasonable, did not itself take any of the steps available to it were it concerned about costs, and has not provided any basis or support from the Amended and Restated LGIA, case law, or Commission precedent to conclude that MDU is not required to pay for any costs in excess of the original and outdated estimate.

First, no provision supports MDU's assertion that an option to build customer cannot receive repayment for Network Upgrade costs above the Amended and Restated LGIA estimate. MDU points only to Section 5.1.2 ("Alternate Option") and 5.1.4 ("Negotiated Option") of the Amended and Restated LGIA. But neither of those sections applies, as the Amended and Restated LGIA itself indicates the Section 5.1.3 ("Option to Build") was selected by the parties.³³ Because MDU has provided neither factual nor legal support for its conclusions, and has not contested the applicability of the Section 5.1.3 Option to Build, the Commission should reject MDU's attempt to escape the clear provisions of the Amended and Restated LGIA.

Second, MDU fails to identify with specificity any of the Network Upgrade costs described in the Invoice and the Chocarro Affidavit that it believes are "added

³² MDU's Answer at 13.

³³ See Tatanka Complaint at 3-5.

expenses.”³⁴ MDU does not clarify which expenses it believes are excessive, and it does not argue that these expenses are somehow unjust or unreasonable.

Third, MDU did not take any of the steps available to it if it were concerned about costs. For example, MDU did not attempt to revise the cost estimate or to renegotiate the “option to build” selection.³⁵ MDU never expressed to Tatanka any desire to step in and construct the facilities. MDU simply asserts that it should not have to absorb the difference between the estimate and the actual costs incurred.³⁶ This is not the Commission’s policy, nor is it part of the Amended and Restated LGIA.

Fourth and finally, MDU’s argument is a simple assertion that the fact that the 2007 cost of the Network Upgrades exceeded the original 2004 estimate somehow excuses MDU from paying for the costs. There is no basis for this argument in the Amended and Restated LGIA.³⁷ If the situation was reversed and a Transmission Owner exceeded costs during construction,³⁸ MDU certainly would not argue that the Interconnection Customer should not be responsible for all of the necessary amounts for construction.

MDU’s position is that the Commission should treat an estimate as though it were a price cap. But an estimate is simply that—an estimate. It is not a binding cap on the amount of money that the Interconnection Customer could spend while interconnecting

³⁴ *Id.* at 15.

³⁵ Showing a similarly cavalier approach to the actual LGIA provisions, MDU did not provide a new one line diagram to reflect the facility’s design changes when the Amended and Restated LGIA was filed.

³⁶ MDU’s Answer at 15.

³⁷ *See, e.g.*, LGIA § 11.4.1.

³⁸ LGIA § 11.3.

the facility.³⁹ Further, the \$1.8 million estimate was not provided by Tatanka and was unrealistically low, particularly after accounting for the remote location of the project, which would cost more than similar projects located elsewhere.⁴⁰ MDU determined the estimate “in 2004 dollars” and it was not adjusted for inflation.⁴¹

MDU has not provided any basis for ignoring the Amended and Restated LGIA obligation requiring 100% repayment of Network Upgrade costs. If the tables were turned, and a Transmission Owner incurred costs above the estimate while completing construction, MDU would not argue that an estimate somehow serves as a cap. But that is exactly what MDU seeks to do now to avoid paying these costs. The Commission should reject MDU’s attempt to cap its repayment obligation at the initial estimate amount.

D. MDU’s Desire to Upgrade the Facilities for Future Interconnecting Generators is Not a Cost Properly Assigned to Tatanka

MDU claims that it is “required to replace certain facilities at the Tatanka substation in order to make those facilities functionally compatible” with MDU’s facilities,⁴² and that Tatanka effectively should be required to pay for these upgrades. Specifically, MDU describes five categories, (a) through (e), of what it perceives to be material deviations for its initially delivered design specifications.⁴³ It states that \$500,000 in costs would be required for renovations as to items (a) through (d), while it

³⁹ See, e.g., Order No. 2003, 104 FERC ¶ 61,103 at P 409 (2003)(acknowledging that circumstances may result in costs exceeding initial estimates); accord, *Midwest Indep. Transmission Sys. Operator, Inc.*, 124 FERC ¶ 61,166 at PP 15-16 (2008)(finding provision of interconnection agreement purporting to cap costs for network upgrades not to be just and reasonable).

⁴⁰ Chocarro Supplemental Affidavit at ¶ 8.

⁴¹ See Amended and Restated LGIA, Attachment B to Tatanka Complaint, at Original Sheet No. 83. As noted in Mr. Ford’s affidavit, MDU’s estimate was qualified to apply only “at the time the estimate was included in the LGIA.” Ford Affidavit at ¶ 11.

⁴² MDU’s Answer at 17.

⁴³ Ford Affidavit at ¶ 9.

has no plans for changes in connection with item (e).⁴⁴ While Tatanka acknowledges the \$500,000 in renovations MDU desires for items (a) through (d), the Commission should make clear that the cost responsibility for any renovations conducted for the purpose of accommodating future generators or other future expansion should not be allocated to Tatanka.

Generators such as Tatanka under the Amended and Restated LGIA are only required to pay for the **necessary** facilities to interconnect the Tatanka generator to the grid, not to construct facilities that MDU intends to use for future interconnections. The Amended and Restated LGIA definitions make this clear: “Interconnection Facilities” “include all facilities and equipment. . . that are **necessary** to physically and electrically interconnect the Generating Facility to the Transmission System”; “Network Upgrades” are the “upgrades to the Transmission System **required** . . . to accommodate the interconnection of the Generating Facility to the Transmission System.”⁴⁵

The Commission recently confirmed this view.⁴⁶ In analyzing a definition for “Network Upgrades” from the most recent Midwest ISO tariff identical to that in the Amended and Restated LGIA, the Commission concluded, “[u]nder the Midwest ISO's tariff, interconnection customers may only be required to fund the costs of network upgrades that are **necessary** for their interconnection. . . . In other words, under the Midwest ISO's tariff, a generator **can only be allocated the cost of network upgrades that would not have been constructed but for the interconnection of the**

⁴⁴ Ford Affidavit at ¶ 11. This is appropriate, as item (e) details accommodations for future line expansions. This goes beyond the facilities necessary for interconnection of the Tatanka generating facilities.

⁴⁵ Amended and Restated LGIA, Attachment B to Tatanka Complaint, at § 1 (emphasis added).

⁴⁶ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,019 at PP 23-24 (2009).

generator.”⁴⁷ This “but for” standard does not require an Interconnection Customer to build additional facilities to provide for future generator interconnections; the Interconnection Customer is only required to build those facilities necessary for interconnection of its own generator.

Thus, to the extent the Commission finds that MDU has a right to raise design issues at this stage, it should clarify that Tatanka should have no responsibility as to any facilities which go beyond what would be required to interconnect Tatanka. For example, item (e) regards Tatanka’s construction of a 3 breaker ring bus rather than a breaker and one-half arrangement.⁴⁸ As demonstrated in Mr. Chocarro’s Supplemental Affidavit, the 3 breaker bus configuration is sufficient to interconnect the Tatanka facility to MDU’s transmission system and can even be upgraded in the future to accommodate an additional generator interconnection.⁴⁹ The breaker and one-half arrangement would be convenient for MDU inasmuch as it would allow greater numbers of future generators to interconnect,⁵⁰ but this issue of convenience is not the type of Network Upgrade cost which generators are required to bear for the benefit of possible future generators seeking interconnection.

MDU similarly argues that certain line switches should have been installed.⁵¹ These line switches might be desirable, but they are not necessary for operation of a 3

⁴⁷ *Id.* (emphasis added).

⁴⁸ *See, e.g.*, Raveling Affidavit at ¶ 10; Ford Affidavit at ¶ 9(e).

⁴⁹ Chocarro Supplemental Affidavit at ¶ 9.

⁵⁰ *Id.*

⁵¹ Raveling Affidavit at ¶ 10; Ford Affidavit at ¶ 9(e).

breaker ring for interconnection, and the installation as it stands is adequate for this interconnection facility.⁵²

As MDU admitted, it is currently planning additional interconnections in the future.⁵³ In fact, Tatanka has learned that a proposed generator interconnection (G359) depicts the possible expansion of the Tatanka substation into a breaker and a half configuration. If a future generator requires substation enhancements to connect to MDU's transmission system, that future generator should bear that cost, not Tatanka.

Tatanka is only required to build what was necessary to interconnect to MDU's transmission system.⁵⁴ If MDU seeks to enhance facilities to enable future generators to interconnect, those future generators can pay for the enhancements. So to the extent the Commission finds that MDU has a right to raise design issues at this stage, it should clarify that Tatanka should have no responsibility as to any facilities which go beyond what would be required to interconnect Tatanka, and certainly no obligations beyond the \$500,000 in renovations described by Mr. Ford.

E. Dakota Wind Properly Assigned its Interests to Tatanka

In its Answer, MDU argued that the Amended and Restated LGIA may not have been properly assigned from Dakota Wind to Tatanka.⁵⁵ That is not the case. Effective as of December 31, 2006, Dakota Wind assigned to Tatanka its right, title and interest in, to and under the previous LGIA.⁵⁶ At the time of the Assignment and Assumption Agreement, Tatanka was the owner of the membership interests of Dakota Wind, and as

⁵² Chocarro Supplemental Affidavit at ¶ 10.

⁵³ Ford Affidavit at ¶ 9(d), (e) (control building layout was necessary "to allow for future additions of relay panels as additional transmission lines are brought into the substation"; MDU wanted substation laid out "so the substation could accommodate future line interconnections")

⁵⁴ See *supra* notes 45-47 and accompanying text.

⁵⁵ MDU's Answer at 6, n.6.

⁵⁶ See Attachment F, Assignment and Assumption Agreement.

such Tatanka and Dakota Wind were "affiliates" as defined in the LGIA. This assignment was permitted under Article 19 of the LGIA without consent of MDU. Furthermore, as shown on Attachment G, Dakota Wind Harvest, LLC merged with and into Tatanka Wind Power, LLC, effective as of September 21, 2007.

But in any event Tatanka is the named party in the Amended and Restated LGIA which the Midwest ISO filed with the Commission on December 21, 2007 in Docket No. ER08-352-000. In the cover letter to that filing, under the heading of "uncontested issues" it is noted that "the only changes to the body of the LGIA reflect the replacement of Dakota Wind with Tatanka as the Interconnection Customer."⁵⁷ The cover letter noted the sole objection of MDU was as to its repayment obligations. If MDU believed Tatanka was not properly a party to that agreement, it had an opportunity to object at that point. Since the agreement was approved,⁵⁸ raising this issue now is simply a forbidden collateral attack on a prior Commission order.⁵⁹

F. Cash Repayment

MDU asserts that it has not breached § 11.4.1 of the Amended and Restated LGIA and should not pay Tatanka a lump sum because (1) "Tatanka has not yet triggered the transmission crediting repayment provisions of the LGIA,"⁶⁰ and (2) the agreement only provides for credits, not lump sum reimbursements.⁶¹ Neither of these contentions holds

⁵⁷ Tatanka Complaint, Attachment B, at page 2.

⁵⁸ See *Letter order accepting Midwest Independent Transmission System Operator Inc's Service Agreement 1519 with Tatanka Wind Power LLC and Montana-Dakota Utilities Co.*, Docket No. ER08-352-000 (filed Feb. 7, 2008).

⁵⁹ See, e.g., *N.Y. Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,147 at P 16 (2009)(dismissing as an impermissible collateral attack a party's attempt to raise an issue it should have raised previously); *N.Y. Indep. Sys. Operator, Inc.*, 127 FERC ¶ 61,042 at PP 26-27 (2009)(same).

⁶⁰ MDU's Answer at 18.

⁶¹ *Id.*

up to close scrutiny, but nonetheless a lump sum payment of the entire amount is not the only reasonable resolution of this dispute.

First, Tatanka has triggered the repayment provisions of the Amended and Restated LGIA. The Amended and Restated LGIA specifically provides for recovery of a facility designated a Network Resource.⁶² In such a situation,

repayments shall be established equal to the applicable tariff rate for firm point-to-point transmission service multiplied by the portion of the demonstrated output of the Generating Facility designated as a Network Resource by the Network Customer(s) studied pursuant to Section 3.2.2.2 of the LGIP.⁶³

Tatanka has been designated as a Network Resource, as MDU certainly knows.⁶⁴ As a Network Resource, Tatanka is eligible for reimbursement under the provision cited above. The firm point-to-point transmission service rates are set forth in the MISO tariff. Under the Amended and Restated LGIA, Tatanka has already triggered the reimbursement provisions, yet MDU admits that it has not paid anything.⁶⁵ MDU argues that it “has not been informed by MISO . . . that Tatanka is entitled to any amount of money as a credit”⁶⁶ The LGIA between MDU and Tatanka contains no requirement that MDU’s obligation to reimburse Tatanka does not arise until the Midwest ISO informs MDU of any credit.

Second, MDU confuses the issue by arguing that it has not breached the Amended and Restated LGIA because it is under no obligation to pay Tatanka a lump sum. This is

⁶² LGIA § 11.4.1.

⁶³ *Id.*

⁶⁴ For example, during the mediation process, MDU was unequivocally informed of this fact in writing. Because of potential concerns regarding the discoverability of communications during that process, it is not attached here. But MDU cannot accurately claim ignorance of this fact.

⁶⁵ MDU’s Answer at 18-20.

⁶⁶ *Id.* at 18.

wrong. MDU's breach is not simply the failure to pay a lump sum because, in addition, MDU has consistently denied that it has any repayment obligation and has failed to pay *anything at all*.⁶⁷ Additional evidence of this denial of any repayment obligation is provided at Attachment E, MDU's response to the original Tatanka request for payment. In explaining its refusal to provide payment, among other things MDU wrongly states that the Amended and Restated LGIA "does not provide for repayment to the Interconnection Customer for costs incurred for the design, procurement, and construction of Network Upgrades assumed by the Interconnection Customer under the Option to Build."⁶⁸ Because the Network Upgrade costs were properly incurred and are properly owed under the Amended and Restated LGIA, the denial and failure to pay is a breach of the Amended and Restated LGIA.

Third, MDU's repeated denials as to its obligations have led to this litigation. The specter of MDU's repeated recalcitrance creates equitable concerns about whether Tatanka will be forced to litigate every single issue to obtain the repayment to which it is entitled. These concerns, in the absence of a mutually agreed repayment schedule, prompted Tatanka's request for lump sum reimbursement of the full amount. Nonetheless, Tatanka would accept a Commission order:

- (1) directing a lump sum repayment of the past-due amounts since the July 24, 2008 Commercial Operation Date calculated at the firm point-to-point rate specified in the Amended and Restated LGIA;

⁶⁷ Tatanka's Complaint at 5.

⁶⁸ Attachment E at 1.

- (2) on a going-forward basis, directing further repayments of transmission credits at the point-to-point rate, as outlined in the Amended and Restated LGIA; and
- (3) confirming the total amount due as the \$4,036,892.67 specified in the Invoice plus applicable interest.

III. CONCLUSION

For the foregoing reasons, Tatanka respectfully requests that the Commission grant the relief requested in the complaint as expeditiously as possible.

Respectfully submitted,

/s/ Thomas McCann Mullooly
Thomas McCann Mullooly
Trevor D. Stiles
Foley & Lardner LLP
777 East Wisconsin Avenue
Milwaukee, WI 53202-5306
Telephone: (414) 297-5566
Facsimile: (414) 297-4900
E-mail: tmullooly@foley.com

Attorneys for Tatanka Wind Power, LLC

Dated: March 16, 2010

CERTIFICATE OF SERVICE

In accordance with 18 C.F.R. § 385.2010, I hereby certify that the foregoing document was this day served, via electronic mail, upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Milwaukee, Wisconsin, this 16th day of March, 2010.

/s/ Trevor D. Stiles

Trevor D. Stiles

Foley & Lardner LLP

777 East Wisconsin Avenue

Milwaukee, WI 53202-5306

Telephone: (414) 319-7346

Facsimile: (414) 297-4900

E-mail: tstiles@foley.com

Attorney for Tatanka Wind Power, LLC

Attachment D

TATANKA WIND POWER, LLC

July 23, 2008


Midwest ISO, Inc.
Attn: Manager, Interconnection Planning
701 City Center Drive
Carmel, IN 46032

Re: Tatanka Large Generating Facility

Dear Manager, Interconnection Planning:

On the 23rd of July, 2008 Tatanka Wind Power, LLC has completed Trial Operation of Unit No. 1. This letter confirms that Tatanka Wind Power, LLC commenced commercial operation of Unit No. 1 at the Generating Facility, effective as of the 24th of July, 2008

Thank you.



Peter Duprey
Manager, Tatanka Wind Power, LLC

xc: Transmission Owner:
Vice President, Electric Supply
Montana-Dakota Utilities Co.
400 North 4th St
Bismarck, ND 58501-4092

Market Interface Integration Services Provider:
Thomas A. Imbler
Vice-President, Commercial Operations
Northern States Power Company
1099 18th St, Suite 3000
Denver, CO 80202

Attachment E



A Division of MDU Resources Group, Inc.

400 North Fourth Street
Bismarck, ND 58501
(701) 222-7900

*Direct Dial No.
(701) 222-7752
(701) 222-7606 Fax*

October 22, 2008

Tatanka Wind Power LCC
formerly Dakota Wind Harvest, LLC
101 North Wacker Drive, Suite 610
Chicago, IL 60606

Midwest ISO, Inc.
Attn: Manager, Interconnection Planning
701 City Center Drive
Carmel, IN 46032

RE: NOTICE OF DISPUTE – LARGE GENERATOR INTERCONNECTION AGREEMENT G132

Reference is made to that Amended and Restated Large Generator Interconnection Agreement (“LGIA”) as filed with the Federal Regulatory Commission on December 21, 2007, and effective as of December 22, 2007, among Tatanka Wind Power, LLC, as Interconnection Customer (“Tatanka”), Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., as Transmission Owner (“MDU”), and the Midwest Independent Transmission System Operator, Inc., as Transmission Provider (“Midwest ISO”). Pursuant to Section 27.1 of the LGIA, MDU provides notice that it disputes the invoice dated September 30, 2008 from Acciona Wind Energy USA, LLC (“Acciona”) with reference to the LGIA. MDU disputes the invoice for reasons including, but not limited to, the following:

- 1. The LGIA does not provide for repayment to the Interconnection Customer for costs incurred for the design, procurement, and construction of Network Upgrades assumed by the Interconnection Customer under the Option to Build.** The provision for such repayment was removed from Section 11.4.1 of the LGIA by the compliance filing made by the Midwest ISO in FERC Docket No. ER05-667 on November 23, 2005.

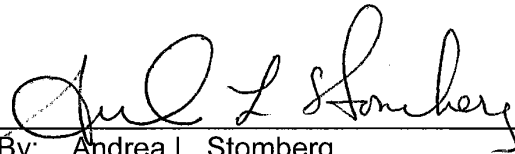
2. **Tatanka did not meet the requirements for the Option to Build under Section 5.1.3 of the LGIA.** Exercise of the Option to Build under Section 5.1.3 of the LGIA is conditioned upon: (1) the dates designated by the Interconnection Customer are not acceptable to the Transmission Owner to complete the Transmission Owner's Interconnection Facilities or Stand Alone Network Upgrades; and (2) the Interconnection Customer assumes responsibility for the design, procurement and construction of the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades by the dates originally designated by the Interconnection Customer under Article 5.1.2. Tatanka rejected MDU's proposal to build the Network Upgrades under the Standard Option because the dates proposed by MDU were not acceptable to Tatanka. Tatanka failed to complete, indeed failed to commence, the Transmission Owner's Interconnection Facilities or Stand Alone Network Upgrades by the milestones set forth in Appendix B of the original LGIA. Tatanka never sought acceptance from MDU to complete the Transmission Owner's Interconnection Facilities or Stand Alone Network Upgrades by the milestones set out in the Amended and Restated LGIA. Moreover, Tatanka did not complete the Transmission Owner's Interconnection Facilities or Stand Alone Network Upgrades by the milestones set out in the Amended and Restated LGIA.
3. **Tatanka did not meet the general conditions applicable to the Option to Build.** Article 5.2 sets forth the general conditions applicable if the Interconnection Customer exercises the Option to Build under the LGIA. The conditions require the Interconnection Customer to engineer, procure equipment, and construct the Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades (or portions thereof) using Good Utility Practice and standards and specifications provided in advance by the Transmission Owner. Tatanka did not engineer, procure equipment, or construct either the Transmission Owner's Interconnection Facilities or the Stand Alone Network Upgrades using Good Utility Practice and the Standards and Specifications provided by MDU
4. **Tatanka's invoice does not reflect actual or reasonable costs of completing the Network Upgrades.** Tatanka's invoice does not reflect reasonable costs of completing Network Upgrades. The invoice is more than twice the estimated costs of these facilities provided by MDU and referenced in the LGIA. The invoice also includes arbitrary internal project management costs of Acciona which are not part of the actual costs of completing the facilities.

MONTANA-DAKOTA UTILITIES CO.

5. **Tatanka's invoice includes more than Network Upgrades.** The LGIA does not provide for cash repayment of the Interconnection Facilities, Interconnection System Upgrades or System Protection Facilities which are included within Tatanka's invoice.
6. **MDU has not received payments for transmission services with respect to Tatanka's Large Generating Facility.** Although the LGIA provides for cash repayment of the amount paid to the Transmission Owner, if any, for Network Upgrades; the repayments are to be paid "on a dollar-for-dollar basis for the non-usage sensitive portion of transmission charges, as payments are made under the Tariff ... for transmission services with respect to the Large Generating Facility". Under the Midwest ISO tariff, MDU has not received payments under the Tariff for transmission services with respect to Tatanka's generating facility.
7. **Tatanka's invoice does not provide any support for interest charges.**

For the reasons set forth above, MDU does not agree to pay of the invoice dated September 30, 2008 from Acciona Wind Energy USA. Pursuant to Section 27.1 of the LGIA, MDU designates Andrea L. Stomberg as its senior representative for resolution of this dispute on an informal basis. In my absence, please contact Henry Ford at 701-222-7944 to arrange for discussions regarding this matter.

Sincerely,



By: Andrea L. Stomberg

Title: Vice President – Electric Supply

Attachment F

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Assignment Agreement") is made and entered into as of December 31, 2006 (the "Effective Date") by and between Dakota Wind Harvest, LLC, a Delaware limited liability company ("Dakota Wind") and Tatanka Wind Power, LLC, a Delaware limited liability company (the "Project Company"). Dakota Wind and the Project Company may be referred to individually as a "Party," and collectively as the "Parties".

RECITALS

WHEREAS, Dakota Wind and the Project Company are affiliates;

WHEREAS, Dakota Wind entered into that certain unexecuted Interconnection Agreement filed with the Federal Energy Regulatory Commission on November 22, 2005 among Midwest Independent Transmission System Operator, Inc., Montana-Dakota Utilities Co, and Dakota Wind (the "Interconnection Agreement");

WHEREAS, in connection with the Interconnection Agreement, Dakota Wind has received certain other correspondence and has certain other rights, more particularly described on Exhibit A attached hereto (collectively, the "Interconnection Rights");

WHEREAS, pursuant to Article 19 of the Interconnection Agreement, Dakota Wind may assign the Interconnection Agreement to certain affiliates without the consent of the other parties to the Interconnection Agreement;

WHEREAS, Dakota Wind desires to assign all of its rights, obligations, title and interest in, to and under the Interconnection Agreement and the Interconnection Rights to the Project Company; and

WHEREAS, the Project Company desires to accept the assignment of the Interconnection Agreement and the Interconnection Rights and assume all of Dakota Wind's rights, obligations, title and interest in, to, and under the Interconnection Agreement and the Interconnection Rights.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

1. Assignment and Transfer. Dakota Wind hereby transfers, assigns, conveys, sets over and delivers to the Project Company all of Dakota Wind's rights, obligations, title and interest in, to, and under the Interconnection Agreement and the Interconnection Rights (the "Assignment").
2. Assumption of Obligations. The Project Company hereby accepts the foregoing Assignment and assumes all of the obligations of Dakota Wind relating to the Interconnection Agreement and the Interconnection Rights, which accrue after the Effective Date.

3. Cooperation. Dakota Wind shall, from time to time after the delivery of this Assignment Agreement, at the Project Company's request, execute and deliver to the Project Company such other instruments of assignment and take such other action as the Project Company may reasonably request so as to more effectively transfer, assign, convey, set over and deliver and vest in the Project Company all rights, title and interest in, to and under the Interconnection Agreement and the Interconnection Rights.

4. Representations of Dakota Wind.

(a) Dakota Wind is duly organized, validly existing and in good standing under the laws of the State of Delaware. Dakota Wind has all necessary power, authority and legal right to execute, deliver and perform its obligations hereunder. The execution, delivery and performance by Dakota Wind of this Assignment Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on its part. This Assignment Agreement has been duly and validly executed and delivered by Dakota Wind and constitutes the legal, valid and binding obligation of Dakota Wind enforceable against Dakota Wind in accordance with its terms.

(b) Dakota Wind has good and valid title to the Interconnection Agreement and the Interconnection Rights and the right to assign its interest in the Interconnection Agreement and the Interconnection Rights pursuant to the terms of this Assignment Agreement, free and clear of any liens, claims, security interests or other encumbrances of any kind. No consent of any third party is required for the assignment of the Interconnection Agreement and the Interconnection Rights.

5. Representations of the Project Company. The Project Company is duly organized, validly existing and in good standing under the laws of the State of Delaware. The Project Company has all necessary power, authority and legal right to execute, deliver and perform its obligations hereunder. The execution, delivery and performance by the Project Company of this Assignment Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all necessary action on its part. This Assignment Agreement has been duly and validly executed and delivered by the Project Company and constitutes the legal, valid and binding obligation of the Project Company enforceable against the Project Company in accordance with its terms.

6. Binding Effect. This Assignment Agreement and all of the provisions hereof shall be binding upon and shall inure to the benefit of the Parties and their respective successors and assigns.

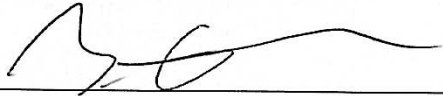
7. Applicable Law. This Assignment Agreement shall be governed by and construed in accordance with the laws of the State of Illinois (without giving effect to conflict of law principles).

8. Execution of Counterparts. This Assignment Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.


[Signature page follows]

IN WITNESS WHEREOF, this Assignment Agreement has been duly executed and delivered by the duly authorized officers of the Parties as of the date first above written.

DAKOTA WIND HARVEST, LLC

By: 
Name: Ingo Stuckmann
Title: Manager

TATANKA WIND POWER, LLC

By: 
Name: Peter Duprey
Title: Manager

Attachment G

Delaware

PAGE 1

The First State

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE CERTIFICATE OF MERGER, WHICH MERGES:

"DAKOTA WIND HARVEST, LLC", A DELAWARE LIMITED LIABILITY COMPANY,

WITH AND INTO "TATANKA WIND POWER, LLC" UNDER THE NAME OF "TATANKA WIND POWER, LLC", A LIMITED LIABILITY COMPANY ORGANIZED AND EXISTING UNDER THE LAWS OF THE STATE OF DELAWARE, AS RECEIVED AND FILED IN THIS OFFICE THE TWENTY-FIRST DAY OF SEPTEMBER, A.D. 2007, AT 2:29 O'CLOCK P.M.

3499173 8100M
071040608



Harriet Smith Windsor

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 6031423

DATE: 09-27-07

**STATE OF DELAWARE
CERTIFICATE OF MERGER OF
DOMESTIC LIMITED LIABILITY COMPANIES**

Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Act, the undersigned limited liability company executed the following Certificate of Merger:

FIRST: The name of the surviving limited liability company is

Tatanka Wind Power, LLC

and the name of the limited liability company being merged into this surviving limited liability company is Dakota Wind Harvest, LLC

SECOND: The Agreement of Merger has been approved, adopted, certified, executed and acknowledged by each of the constituent limited liability companies.

THIRD: The name of the surviving limited liability company is

Tatanka Wind Power, LLC

FOURTH: The merger is to become effective UPON FILING

FIFTH: The Agreement of Merger is on file at 101 N. Wacker Dr., Ste 610, Chicago, IL 60606

the place of business of the surviving limited liability company.

SIXTH: A copy of the Agreement of Merger will be furnished by the surviving limited liability company on request, without cost, to any member of the constituent limited liability companies.

IN WITNESS WHEREOF, said surviving limited liability company has caused this certificate to be signed by an authorized person, the 6th day of September , A.D., 2007

By: 

Authorized Person

Name: Peter Duprey

Print or Type

Title: Manager

State of Delaware
Secretary of State
Division of Corporations
Delivered 02:28 PM 09/21/2007
FILED 02:29 PM 09/21/2007
SRV 071040608 - 3499173 FILE

Attachment H

3. As to the involvement of MDU in the construction process for the Network Upgrades, it is my understanding based on my review that this involvement continued throughout the construction phase and involved regular meetings with MDU and frequent on site presence by MDU representatives.

4. Based on my review, MDU participated in project meetings where departures from its design specifications were proposed and agreed upon to facilitate the installation of the project.

5. As of now, it is my understanding that Tatanka transferred the substation to MDU, and MDU is performing all maintenance and operation for it.

6. MDU has raised an issue regarding the size of the control house at the substation. I have reviewed the issue and conclude that the control house is sufficient for purposes of the interconnection with the Tatanka facility, but I understand that if in the future more generators are interconnected at the substation, additional room would be an improvement.

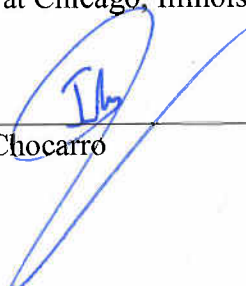
7. To the extent that there is any doubt, it is clear the MDU controls the Network Upgrades today. When we needed an outage on the line, we needed to obtain MDU's permission, and MDU had an employee on-site at the substation. Acciona contacts MDU dispatch before accessing the substation to check out, for example, the Ion Meter or the fiber optic in the substation. To the best of my knowledge, MDU operates the breakers by SCADA and operates the switches in the substation.

8. As to MDU's estimate of the costs for Network Upgrade construction, this estimate was prepared in 2004. It seems unreasonably low to me and does not appear to recognize, for example, the remoteness of the location and the additional complications in dealing with such a site. MDU does not account for any inflation in that estimate either.

9. The 3 breaker bus configuration is sufficient to interconnect the Tatanka facility to MDU's transmission system and can even be upgraded in the future to accommodate an additional generator interconnection.

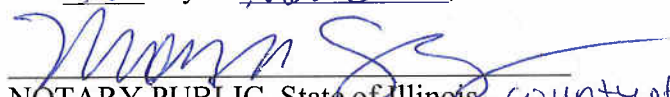
10. MDU similarly argues that certain line switches should have been installed.¹ These line switches might be desirable, but they are not necessary for operation of a 3 breaker ring for interconnection and are adequate for this interconnection facility.

Executed on this 16th day of March, 2010, at Chicago, Illinois.

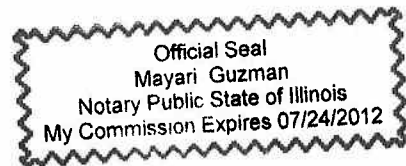


Iker Chocarro

Subscribed and sworn to before me,
this 16 day of March, 2010



NOTARY PUBLIC, State of Illinois, county of Cook
My Commission is/expires 7/24/2012



¹ Raveling Affidavit at ¶ 10; Ford Affidavit at ¶ 9(e).