

March 15, 2010

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Kimberly D. Bose, Secretary  
Federal Energy Regulatory Commission  
888 First Street, N.E.  
Washington, D.C. 20426

**PUBLIC SERVICE COMMISSION**

Re: Tatanka Wind Power, LLC v. Montana-Dakota Utilities Company  
Docket No. EL10-41-000

Dear Secretary Bose:

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission,<sup>1</sup> Tatanka Wind Power, LLC respectfully submits the enclosed Answer in Opposition to the Motion to Intervene of Otter Tail Power Company in the above-captioned proceeding.

Please contact the undersigned with any questions regarding this filing. Thank you for your consideration.

Very truly yours,

/s/ Thomas McCann Mullooly

Thomas McCann Mullooly  
Trevor D. Stiles

Encl.

9 **PU-10-52** Filed: 3/15/2010 Pages: 6  
**Tatanka's Answer in Opposition to Otter Tail's  
Motion to Intervene**

Public Service Commission

<sup>1</sup> 18 C.F.R. § 385.213 (2009).

**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.	)	

**TATANKA WIND POWER, LLC’S  
ANSWER IN OPPOSITION TO MOTION TO INTERVENE OF  
OTTER TAIL POWER COMPANY**

Pursuant to Rule 213 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”),<sup>1</sup> Tatanka Wind Power, LLC (“Tatanka”) respectfully files this Answer in Opposition to the Motion to Intervene of Otter Tail Power Company (“Otter Tail”) in the above-captioned proceeding.

**I. SUMMARY**

On February 26, 2010, Otter Tail submitted a doc-less intervention in Docket No. EL10-41-000, which does not meet the Commission’s requirements for intervention.<sup>2</sup> In particular, Otter Tail failed to (1) provide a basis on which to intervene, (2) provide sufficient factual detail to support its intervention, or (3) assert any non-speculative interests. Thus, Otter Tail’s motion to intervene should be denied.

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<sup>1</sup> 18 C.F.R. § 385.213.

<sup>2</sup> *Id.* at § 214(b)(2).

## II. ANSWER

Pursuant to Rule 214(b)(2), a party moving to intervene must demonstrate in sufficient factual detail that:

- (i) The movant has a right to participate which is expressly conferred by statute or by Commission rule, order, or other action;
- (ii) The movant has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a (A) Consumer, (B) Customer, (C) Competitor, or (D) Security holder of a party; or
- (iii) The movant's participation is in the public interest.<sup>3</sup>

A movant must demonstrate its interest in sufficient factual detail and provide a basis upon which to grant intervenor status. Failure to do so is grounds for denial of the motion to intervene.<sup>4</sup> Additionally, "purely speculative" interests do not justify intervention.<sup>5</sup> A party seeking to intervene "must have a direct interest in the proceeding and not merely the desire to shape precedent."<sup>6</sup> When a movant was not privy to the contracts that were the subject of a proceeding, intervention was denied.<sup>7</sup>

Otter Tail's motion fails to meet these requirements. Otter Tail did not suggest that it intervened by right or that its intervention is in the public interest. Rather, Otter Tail asserted that it "has a direct interest in this case that cannot be adequately represented by any other party." Yet Otter Tail provided no factual foundation on which

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<sup>3</sup> *Id.*

<sup>4</sup> E.g., *Columbia Gas Transmission Corp.*, 106 FERC ¶ 61,312 at P 2 (2004)(denying motion to intervene because "movant has neither demonstrated its interest in sufficient factual detail nor any other basis upon which to grant intervenor status.").

<sup>5</sup> *Eagle & Phenix Hydro Co., Inc.*, 61 FERC ¶ 61,386, 62,487 (1992)("purely speculative" interests do not justify intervention).

<sup>6</sup> *Kan.-Neb. Natural Gas Co., Inc.*, 21 FERC ¶ 61,285, 61,781-82 (1982)(intervention in proceeding was not justified when movant was not a supplier of a party, did not serve a party, was not a competitor of the party, nor was privy to or a beneficiary of a party's contracts).

<sup>7</sup> *Id.*

to base this conclusion. On the contrary, Otter Tail merely stated that it is a transmission owner and utility “conducting business in the same state jurisdictional region” as the respondent. From this, Otter Tail drew the conclusion that it “may be affected by any decision that the Commission makes in this proceeding.”

This complaint proceeding involves a dispute regarding obligations under an interconnection agreement between Tatanka and MDU to which Otter Tail is not a party. While Otter Tail and MDU are both transmission owners, Otter Tail has not stated and cannot now state with specificity which interests it believes would be affected or how they might be affected. In fact, nothing in this proceeding would directly affect Otter Tail’s interests, as required. Similar to the movant in *Kan.-Neb. Natural Gas Co., Inc.*, Otter Tail has not demonstrated any privity of contract with the parties here, nor has Otter Tail shown that it is a beneficiary in any way of the disputed LGIA.

Otter Tail’s general statement that a decision involving parties in the same state “may” affect its interests is purely speculative.<sup>8</sup> As it has in similar circumstances, the Commission should deny an intervention request based on such a speculative interest.

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<sup>8</sup> *Miss. River Transmission Corp. v. United Gas Pipe Line Co.*, 29 FERC ¶ 61,171 (1984)(interest was “too speculative “to justify intervention when parties were all purchasers from same entity; movant “failed to explain how [the] request to change the terms of its contract . . . could affect [the party].”).

### III. CONCLUSION

Because Otter Tail has not indicated its grounds for intervention, provided any factual basis for intervention, or stated an interest that is not purely speculative, the Commission should deny Otter Tail's Motion to Intervene.

Respectfully submitted,

/s/ Thomas McCann Mullooly

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Dated: March 15, 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 15th day of March, 2010.

/s/ Trevor D. Stiles

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