

April 28, 2010

WRITER'S DIRECT LINE  
414.297.5566  
tmullooly@foley.com EMAIL

VIA ELECTRONIC DELIVERY

**RECEIVED**

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

APR 29 2010

**PUBLIC SERVICE COMMISSION**

Re: Docket No. EL10-41-000

Dear Ms. Bose:

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

Please contact the undersigned if you have any questions concerning this filing. Thank you for your consideration of this matter.

Very truly yours,

/s/ Thomas McCann Mullooly

Thomas McCann Mullooly  
Trevor D. Stiles

Encl.

11 PU-10-52 Filed 04/29/2010 Pages: 36  
Tatanka's Motion to File an Answer to MDU's Answer  
Public Service Commission

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<sup>1</sup> 18 C.F.R. §§ 385.212, .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.	)	

**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”),<sup>1</sup> 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,<sup>2</sup> the Commission may, for good cause shown, permit such answers.<sup>3</sup> 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

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<sup>1</sup> 18 C.F.R. §§ 385.212, .213 (2009).

<sup>2</sup> 18 C.F.R. § 385.213(a)(2).

<sup>3</sup> 18 C.F.R. § 385.101(e).

proceeding. This Answer will assist in the Commission's resolution of the issues presented by providing the Commission with a complete and accurate record.<sup>4</sup>

This Answer addresses only the new matters brought up by MDU in its latest pleading, including its new assertions regarding the distinction between ownership and operation, regarding written modifications, and regarding connection of future generators.

Finally, Tatanka notes its agreement with MDU that "the Commission should decide" any prerequisite issues and, ultimately, "what amount will be owed to Tatanka?"<sup>5</sup> No hearing is required for the Commission to resolve this dispute.

## I. ANSWER

### A. MDU Assertions Regarding Distinction Between Ownership and Operation

MDU asserts that the LGIA creates a distinction between ownership and operation of the Network Upgrades.<sup>6</sup> But that is correct only in that it provides an option *to the Interconnection Customer* to retain ownership. MDU fails to demonstrate any Commission precedent that provides an option to the *Transmission Owner* to reject the transfer of these facilities. The section of Order No. 2003 cited by MDU is clear on this point:

[T]he Commission clarifies how the crediting policy will work when *the Interconnection Customer elects to build and retain ownership* of Stand-Alone Network Upgrades. In such case, the Interconnection Customer is not entitled to a refund of its investment in any facilities in which *it elects to retain ownership*. If the Interconnection Customer

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<sup>4</sup> 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").

<sup>5</sup> MDU's Answer at 4.

<sup>6</sup> MDU's Answer at 4-5 (citing Order No. 2003 at PP 362, 735).

constructs Stand-Alone Network Upgrades, and *chooses not to transfer ownership* to the Transmission Provider, it will not receive a refund but may enter into a cost-based lease agreement with the Transmission Provider that places the upgrades under the Transmission Provider's operation and control.<sup>7</sup>

The Commission was addressing situations where an Interconnection Customer sought to retain facilities and yet still wanted reimbursement for those facilities. This section simply clarifies that an Interconnection Customer could choose to retain ownership, but it could not obtain transmission credits for any retained facilities.

What this section does not do, however, is give a Transmission Owner the right to reject ownership and refuse to pay for facilities. In fact, the LGIA provides no such rights: ownership must be transferred unless both parties agree otherwise.<sup>8</sup> Section 5.2(9) of the Amended and Restated LGIA similarly states that “[u]nless Parties otherwise agree, Interconnection Customer *shall transfer* ownership of Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Owner.”<sup>9</sup>

Situations where a Transmission Owner has concerns regarding design issues are addressed in section 5.2 of the Amended and Restated LGIA, but that section does not provide the defense MDU has asserted. Section 5.2(6) clearly states that, while the Interconnection Customer is “obligated to remedy deficiencies” identified by the

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<sup>7</sup> Order No. 2003 at P 735 (emphasis added).

<sup>8</sup> See Order No. 2003-B, 109 FERC ¶ 61,287 at P 87 (2004)(citing Order No. 2003-A, LGIA § 5.2(9)) (“Order No. 2003-A revised LGIA article 5.2 to provide that “[u]nless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Provider's Interconnection Facilities and Stand Alone Network Upgrades to Transmission Provider.”); see also *N.Y. Indep. Sys. Operator, Inc.*, 108 FERC ¶ 61,159 at P 77 (2004) (“Order No. 2003-A now requires that any Network Upgrades constructed by the Developer be transferred to the Transmission Owner, unless both parties agree otherwise.”).

<sup>9</sup> Amended and Restated LGIA § 5.2(9)(emphasis added).

Transmission Owner, this obligation is applicable “at any time during construction.” But the construction phase of the project has long since been completed. Similarly, Section 5.2(3) gives the Transmission Owner the opportunity “to review and approve the engineering design, equipment acceptance tests (including witnessing of acceptance tests), and the construction (including monitoring of 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. . . .” MDU has not provided any evidence that it ever notified Tatanka of any such rejection, and, to the contrary, admits that it is currently operating the facilities.<sup>10</sup> This section does not state that the Transmission Owner can reject ownership of facilities as a method of avoiding its reimbursement obligations for Network Upgrade costs.

To the contrary, Section 5.2(10) is explicit that “Transmission Owner shall approve and accept for operation and maintenance the Transmission Owner’s Interconnection Facilities and Stand Alone Network Upgrades to the extent engineered, procured, and constructed in accordance with this Article 5.2 only if the Transmission Owner’s Interconnection Facilities and Stand Alone Network Upgrades meet the standards and specifications of Transmission Provider, Transmission Owner and any Governmental Authority.”<sup>11</sup> MDU has “approved and accepted” the facilities “for operation and maintenance,” and thus cannot now raise old design issues regarding meeting “standards and specifications.”

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<sup>10</sup> MDU’s Answer at 5.

<sup>11</sup> Amended and Restated LIGA, § 5.2(10) (emphasis added).

As for transfer of ownership, despite MDU's novel attempt to say it has not "formally" accepted ownership, everything required by law and by the Amended and Restated LGIA has been performed so as to transfer ownership. Pursuant to Section 5.2(9) of the Amended and Restated LGIA, Tatanka "shall transfer ownership" ownership of the facilities.<sup>12</sup>

This transfer has been accomplished. MDU admits that it "received from Tatanka a Bill of Sale and evidence of a Warranty Deed for the facilities."<sup>13</sup> For the Commission's convenience, those documents and the cover correspondence, along with a stamped copy providing evidence that the Warranty Deed has been properly recorded, are attached as Exhibit I.<sup>14</sup> Exhibit I also includes a copy of the 2009 Real Estate Tax Statement of Dickey County to MDU, which indicates that MDU paid the property taxes for the substation property.<sup>15</sup>

MDU argues that because it did not "acknowledge receipt" of the bill of sale and evidence of warranty deed, no property transfer occurred. But under North Dakota law, conveyance by deed takes effect upon delivery of the deed by the grantor, which has been accomplished here.<sup>16</sup> While it is true that "[a]cceptance by the grantee is an essential part of a delivery,"<sup>17</sup> the recording of a deed, as here, creates a rebuttable presumption of its

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<sup>12</sup> Amended and Restated LIGA, § 5.2(9) ("Unless Parties otherwise agree, Interconnection Customer shall transfer ownership of Transmission Owner's Interconnection Facilities and Stand Alone Network Upgrades to the Transmission Owner.").

<sup>13</sup> MDU Answer at 5, n.6.

<sup>14</sup> This continues the sequential lettering of Tatanka's Exhibits from previous filings.

<sup>15</sup> The first parcel listed on MDU's tax receipt on page 18 of Exhibit I, parcel # 02477001 at 5-130-66-SW, is the same as the Tatanka substation parcel described on the last page of the Warranty Deed on page 16 of Exhibit I.

<sup>16</sup> *Frederick v. Frederick*, 178 N.W.2d 834, 837 (N.D. 1970); § 47-09-06, N.D.C.C.

<sup>17</sup> *Arnegaard v. Arnegaard*, 75 N.W. 797, 805 (N.D. 1898).

delivery to, and its acceptance by, the grantee.<sup>18</sup> Further, a “failure to renounce a deed after knowledge of its existence,” as here, is “sufficient to show that a grantee accepted the deed. . . . [P]resumptions of acceptance arise only when the deed is beneficial to the grantee, not when the deed places a burden on the grantee.”<sup>19</sup>

Here, ownership was transferred as required by the Amended and Restated LGIA, and the deed was transferred and recorded, as is and was known to MDU. MDU failed to renounce the deed and has paid taxes on the parcel. The deed was beneficial to MDU, as demonstrated by MDU’s party status to the Amended and Restated LGIA which requires Tatanka to transfer ownership to MDU and by MDU’s acceptance of the facilities for operation and maintenance. By failing to renounce the deed since July 2008, MDU constructively accepted it and cannot now reject ownership of the facilities.

**B. MDU’s Assertions Regarding Written Modifications**

MDU asserts that modifications must be in writing to be enforceable under the Amended and Restated LGIA.<sup>20</sup> This assertion is relevant to MDU’s claims regarding alleged departures from the originally provided design specifications and from the one line diagram in the Amended and Restated LGIA.

As to design specifications, as noted above, the Amended and Restated LGIA provided MDU with a remedy to raise those issues earlier, during construction. But as to requiring a written change to the Amended and Restated LGIA to allow changes to design specifications, the claim has no merit since the design issues MDU has raised

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<sup>18</sup> *Dinius v. Dinius*, 448 N.W.2d 210, 216 (N.D. 1989).

<sup>19</sup> *CUNA Mortgage v. Aafedt*, 459 N.W.2d 801, 804 (N.D. 1990)(citing 23 AM. JUR. 2d *Deeds* § 181, at p. 200 (1983)).

<sup>20</sup> MDU’s Answer at 6-8.

pertain to specifications sent to Tatanka separately and were not a part of the Amended and Restated LGIA in the first place.<sup>21</sup> The “no oral modification” clause referred to by MDU only applies to the Amended and Restated LGIA itself, not to the specifications provided by MDU.<sup>22</sup>

As for the one line diagram in the Amended and Restated LGIA, Tatanka has already noted that the changes to the layout were already known to all parties when the Amended and Restated LGIA was filed with the Commission.<sup>23</sup> While an updated version should have been attached, even an oral modification is arguably acceptable.<sup>24</sup>

Nonetheless, of the five items identified by MDU as deviations in Mr. Ford’s affidavit, only two of those five – item (a) as to specific line disconnects and item (b) as to station service – are actually included in the one line diagram.<sup>25</sup> Tatanka has conceded that those two items were not installed, and they would be among the items that could be added with the estimated \$500,000 in additional work MDU has identified to resolve items (a) through (d) in Mr. Ford’s affidavit.

Note, however, that these additional line disconnects and station service facilities would simply be additions to the existing substation rather than a replacement of the facilities that have been constructed and accepted for commercial operation. If the

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<sup>21</sup> See Raveling Affidavit at P 7; Ford Affidavit at P 6; MDU’s Motion to Intervene and Answer, at 5.

<sup>22</sup> LGIA §§ 30.9, 30.10.

<sup>23</sup> See Tatanka’s Answer at 11-13.

<sup>24</sup> There is significant dispute as to the enforceability of a “no oral modifications” clause. See, e.g., *Puma v. Sullivan*, 746 A.2d 871, 875 (D.C. 2000)(citing *Nickel v. Scott*, 59 A.2d 206, 207 (D.C. 1948)) (“a written contract may be modified or rescinded by a subsequent oral agreement, even where the contract contains express language prohibiting oral modification.”); *Shah v. Racetrac Petroleum Co.*, 338 F.3d 557 (6th Cir. 2003); *Much v. Pac. Mut. Life Ins. Co.*, 266 F.3d 637 (7th Cir. 2001).

<sup>25</sup> Item (c) as to the battery type and item (d) as to the control building size were not included in the one-line diagram and have been addressed in previous pleadings. Item (e) is addressed below.

Commission requires Tatanka to install these additional facilities, such installation costs should be reimbursable under the Amended and Restated LGIA.<sup>26</sup>

### C. MDU Assertions Regarding Connections of Future Generators

MDU asserts that “it is difficult to interconnect any future generating facility at the substation” with the current arrangement of the facilities.<sup>27</sup> This assertion is directly contradicted by MDU’s publically available facilities study G-359,<sup>28</sup> which includes a proposed one-line diagram for an interconnection of another generator at the Tatanka substation and demonstrates that the substation can be converted to a breaker-and-a-half arrangement to allow for future expansion.<sup>29</sup>

This option, developed by MDU itself, demonstrates that MDU is capable of changing the as-built substation into the desired arrangement, and that the existing site can be expanded to accommodate future generators. According to its own study, MDU is thus not “required to pursue . . . duplication of substation facilities.”<sup>30</sup>

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<sup>26</sup> See Amended and Restated LGIA at §§ 5.1.3, 11.4.1.

<sup>27</sup> MDU’s Answer at 11.

<sup>28</sup> The referenced one-line diagram and two pages discussing relevant options are attached as Exhibit J; the entire facilities study is available at [http://www.midwestmarket.org/publish/Document/6b6059\\_1239ec7b046\\_-7fce0a48324a/G359%20Interconnection%20Facilities%20Study.pdf?action=download&\\_property=Attachment](http://www.midwestmarket.org/publish/Document/6b6059_1239ec7b046_-7fce0a48324a/G359%20Interconnection%20Facilities%20Study.pdf?action=download&_property=Attachment).

<sup>29</sup> *Id.* at 9.

<sup>30</sup> MDU’s Answer at 11. Indeed, the G-359 facilities study indicated that interconnecting to the existing Tatanka Substation was significantly less expensive for an interconnecting generator than building a new substation.

## II. CONCLUSION

For the foregoing reasons, Tatanka respectfully requests that the Commission accept this Answer and 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](mailto:tmullooly@foley.com)

*Attorneys for Tatanka Wind Power, LLC*

Dated: April 28, 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 28th day of April, 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](mailto:tstiles@foley.com)

*Attorney for Tatanka Wind Power, LLC*

**EXHIBIT I**

Tatanka Wind Power, LLC  
c/o Acciona Energy North America Corporation  
333 W. Wacker Drive, Suite 1500  
Chicago, Illinois 60601

July 7, 2008

**VIA FEDERAL EXPRESS**

Montana-Dakota Utilities Co.  
Attn: Vice President, Electric Supply  
400 North 4th Street  
Bismark, North Dakota 58501-4092

***Re: Notice of Transfer of Control and Ownership of the 230 kV Three-Circuit  
Breaker Ring Bus Switching Substation located on the Ellendale-Wishek 230  
kV Transmission Line***

Ladies and Gentlemen:

This notice is delivered to you pursuant to Article 15.1 of the Amended and Restated Large Generator Interconnection Agreement (the "LGIA") as filed with the Federal Energy 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"), and, along with Tatanka and MDU, the "Parties"). Capitalized terms used but not defined herein shall have the respective meanings specified in the LGIA.

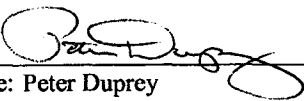
Pursuant to Section 5.1.3 of the LGIA, Tatanka assumed responsibility for the construction of the 230 kV three-circuit breaker ring bus switching substation located on the Ellendale-Wishek 230 kV transmission line ("Switching Substation"). As required under Section 5.1.3 of the LGIA, the Parties have identified the Switching Substation on Section 3(a) of Appendix A to the LGIA as a Transmission Owner Stand Alone Network Upgrade. As further required under Sections 5.2.8 and 5.2.9 of the LGIA, Tatanka must transfer control and ownership of the Switching Substation to MDU as the Transmission Owner.


Since the Generating Facility is now in the final stages of start-up and commissioning, Tatanka hereby transfers control and ownership of the Switching Substation to you in compliance with its obligations to do so under Sections 5.2.8 and 5.2.9 of the LGIA. To effectuate this transfer, attached to this notice is (i) a Warranty Deed pursuant to which Tatanka shall grant to MDU all of the real property on which the Switching Station is located as described in the Exhibit A thereto ("Attachment A") and (ii) a Bill of Sale from Tatanka to MDU pursuant to which Tatanka shall convey to MDU the Switching Station ("Attachment B").

Please acknowledge your receipt of this Notice and the attached Warranty Deed and Bill of Sale by executing the copy of this letter enclosed herewith and send such signed copy to John Taylor, Vice President and General Counsel, Acciona Energy North America Corporation, at the address indicated above. Please contact John Taylor at (312) 673-3010 with any questions.

Sincerely,

**TATANKA WIND POWER, LLC,**  
as Interconnection Customer

By:   
Name: Peter Duprey  
Title: Manager

By:   
Name: Susan D. Nickey  
Title: Secretary and Treasurer

Receipt Acknowledged

MONTANA-DAKOTA UTILITIES CO.,  
A Division of MDU Resources Group, Inc.

By: \_\_\_\_\_  
Name:  
Title:  
Date:

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

**Attachment A**

**Warranty Deed**

Please see attached.

**Attachment B**

**Bill of Sale**

Please see attached.

**BILL OF SALE**

This BILL OF SALE (this "Bill of Sale") is made and entered into as of July 7, 2008, by and from Tatanka Wind Power, LLC, a Delaware limited liability company ("Grantor") in favor of Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc., a Delaware corporation ("Grantee").

**WITNESSETH:**

- A. WHEREAS, the Amended and Restated Large Generator Interconnection Agreement (the "LGIA") as filed with the Federal Energy Regulatory Commission on December 21, 2007 and effective as of December 22, 2007 among Grantor as Interconnection Customer, Grantee as Transmission Owner, and the Midwest Independent Transmission System Operator, Inc. as Transmission Provider governs the relationship between Grantor and Grantee.
- B. WHEREAS, Grantor is the current owner of the 230 kV three-circuit breaker ring bus switching substation located on the Ellendale-Wishek 230 kV transmission line located in the County of Dickey, State of North Dakota, and described on the attached Exhibit "A" (the "Switching Substation");
- C. WHEREAS, pursuant to Sections 5.2.8 and 5.2.9 of the LGIA, Grantor is required to sell, assign, convey, transfer and deliver the Switching Substation to Grantee; and
- D. WHEREAS, Grantor desires at this time to so sell, assign, convey, transfer and deliver the Switching Substation described on the attached Exhibit "A" (collectively, the "Assets") to Grantee.

NOW, THEREFORE, in consideration of Ten and NO/100 Dollars (\$10.00), and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

**AGREEMENT:**

- 1. For value received, Grantor does hereby sell, assign, convey, transfer and deliver to Grantee all of Grantor's interest in the Assets described in Exhibit A hereto, in each case on a "where is, as is" basis without representation or warranty of any kind whatsoever, under the terms and conditions set forth herein.
- 2. On and after the date hereof, Grantor shall have no further obligations or liabilities arising from ownership of the Assets.
- 3. Grantor hereby agrees to execute and deliver to Grantee such other documents, instruments or agreements as may be reasonably requested by Grantee to further effectuate the sale, transfer and assignment of the Assets as herein provided.

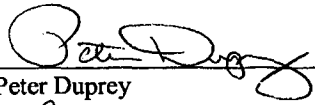
4. This Bill of Sale will be construed in accordance with, and be governed by, the internal laws of the State of North Dakota, without regard to the conflict of laws provisions thereof.

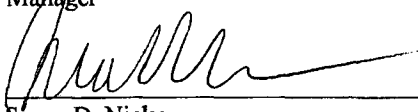
**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, the Parties have caused this Bill of Sale to be duly executed as of the date first above written.

**GRANTOR:**

**TATANKA WIND POWER, LLC,**  
a Delaware limited liability company

By:   
Name: Peter Duprey  
Title: Manager

By:   
Name: Susan D. Nickey  
Title: Secretary and Treasurer

**EXHIBIT A**  
**TO BILL OF SALE**

**Assets**

**Switching Substation:** That certain 230 kV three-circuit breaker ring bus switching substation located on the Ellendale-Wishek 230 kV transmission line described in Section 3(a) of Appendix A to the LGIA (the "Switching Substation").

**AFTER RECORDING RETURN TO**

John Taylor, Esq.  
Tatanka Wind Power, LLC  
c/o Acciona Energy North America Corporation  
333 W. Wacker Drive, Suite 1500  
Chicago, Illinois 60601

(This space reserved for recording information)

**WARRANTY DEED**

This INDENTURE made this 7<sup>th</sup> day of July 2008, between Tatanka Wind Power, LLC, a Delaware limited liability company ("Grantor") and Montana-Dakota Utilities Co. a Division of MDU Resources Group, Inc., a Delaware corporation whose address for notices is 400 North 4<sup>th</sup> Street, Bismark, North Dakota 58501-4092, Attn: Vice President, Electric Supply ("Grantee").

WITNESSETH, for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration (\$10.00 etc.), Grantor does hereby GRANT to the Grantee all of the real property on which the 230 kV three-circuit breaker ring bus switching substation located on the Ellendale-Wishek 230 kV transmission line is located in the County of Dickey, State of North Dakota, and described on the attached Exhibit "A" ("Property").

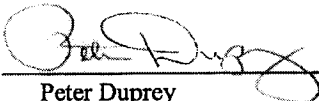
Grantor, for itself, its successors and assigns, does hereby reserve a perpetual, non-exclusive easement and right of way (the "Easement") on, over, under and across the Property, sixty (60) feet in width, being thirty (30) feet on each side of Grantor's transmission line extending onto the Property to the interconnection point with the substation located on the Property, for the installation, construction, operation, maintenance, repair, replacement, relocation, removal, and inspection of overhead electrical transmission facilities, including, without limitation, poles, towers and other structures, guys, wires, cables, conduits, communication lines, and other related facilities, equipment, improvements and access roads (the "Facilities"), together with a non-exclusive easement and right to trim, cut down and remove all trees, brush, vegetation, and fire and electrical hazards now or hereafter existing on the Property that may interfere with the Facilities. The Easement reserved by Grantor pursuant hereto is an easement in gross for the benefit of Grantee, its successors and assigns. Grantee (and/or others to which Grantee shall assign or convey its rights hereunder) shall at all times retain title to the Facilities. Grantor shall have no ownership interest in or to the Facilities.

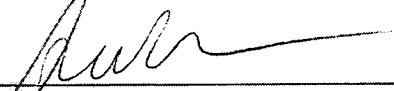
And Grantor for itself, its successors and assigns, does covenant with Grantee that it is well seized in fee of the Property and has good right to sell and convey the same in manner and form aforesaid; that the same is free from all encumbrances, except for: (i) installments of special assessments or assessments for special improvements which have not been certified to the County Auditor for collection, (ii) taxes not yet due and payable, (iii) zoning and other use restrictions, conditions or requirements now or hereafter imposed by governmental authorities,

and (iv) easements or other matters of record; and that the Property is in the quiet and peaceable possession of the Grantee, against all persons lawfully claiming or to claim the whole or any part thereof, except for the matters set forth above, the Grantor will warrant and defend.

WITNESSETH the hands of the Grantor:

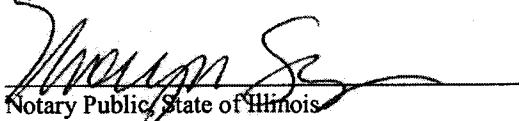
**TATANKA WIND POWER, LLC,**  
a Delaware limited liability company

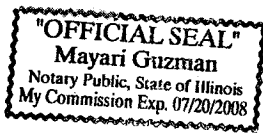
By:   
Name: Peter Duprey  
Title: Manager

By:   
Name: Susan D. Nickey  
Title: Secretary and Treasurer

STATE OF ILLINOIS            )  
  )  
COUNTY OF COOK            )

The foregoing instrument was duly acknowledged before me this 7 day of July, 2008, by Peter Duprey, as Manager of Tatanka Wind Power, LLC, a Delaware limited liability company, who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said limited liability company and that he was duly authorized to do so.

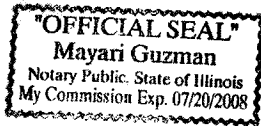
  
Notary Public, State of Illinois



MAYARI GUZMAN  
Notary Printed Name  
7/20/08  
My Commission Expires:

STATE OF ILLINOIS            )  
  )  
COUNTY OF COOK            )

The foregoing instrument was duly acknowledged before me this 7 day of July, 2008, by Susan D. Nickey, as Secretary and Treasurer of Tatanka Wind Power, LLC, a Delaware limited liability company, who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said limited liability company and that he was duly authorized to do so.



Mayari Guzman  
Notary Public, State of Illinois  
MAYARI GUZMAN  
Notary Printed Name  
7/20/08  
My Commission Expires:

**EXHIBIT A**

That part of the Southwest  $\frac{1}{4}$  of Section 5, Township 130 North, Range 66 West of the 5<sup>th</sup> Principal Meridian, Dickey County, North Dakota described as follows:

Beginning at the Northwest Corner of the Southwest  $\frac{1}{4}$ ; thence N89°41'46"E, assumed bearing, along the North line of said Southwest  $\frac{1}{4}$ , a distance of 1260.65 feet, thence S71°32'21"E, a distance of 680.09 feet; thence on a bearing of South, a distance of 471.10 feet; thence on a bearing West, a distance of 320.00 feet; thence on a bearing of North a distance of 238.00 feet; thence N41°16'28"W, a distance of 508.81 feet to the intersection with a line 66 feet south of, as measured perpendicular to, and parallel with said North line of the Southwest  $\frac{1}{4}$ ; thence S89°41'46"W, along said parallel line, a distance of 1248.47 feet to the West line of said Southwest  $\frac{1}{4}$ ; thence N01°24'56"W, along said West line, a distance of 66.01 feet to the point of beginning.

175965

**AFTER RECORDING RETURN TO**

John Taylor, Esq.  
Tatanka Wind Power, LLC  
c/o Acciona Energy North America Corporation  
333 W. Wacker Drive, Suite 1500  
Chicago, Illinois 60601

(This space reserved for recording information)

**WARRANTY DEED**

This INDENTURE made this ~~14~~ day of July 2008, between Tatanka Wind Power, LLC, a Delaware limited liability company ("Grantor") and Montana-Dakota Utilities Co. a Division of MDU Resources Group, Inc., a Delaware corporation whose address for notices is 400 North 4<sup>th</sup> Street, Bismark, North Dakota 58501-4092, Attn: Vice President, Electric Supply ("Grantee").

WITNESSETH, for and in consideration of the sum of ten dollars (\$10.00) and other good and valuable consideration (\$10.00 etc.), Grantor does hereby GRANT to the Grantee all of the real property on which the 230 kV three-circuit breaker ring bus switching substation located on the Ellendale-Wishek 230 kV transmission line is located in the County of Dickey, State of North Dakota, and described on the attached Exhibit "A" ("Property").

Grantor, for itself, its successors and assigns, does hereby reserve a perpetual, non-exclusive easement and right of way (the "Easement") on, over, under and across the Property, sixty (60) feet in width, being thirty (30) feet on each side of Grantor's transmission line extending onto the Property to the interconnection point with the substation located on the Property, for the installation, construction, operation, maintenance, repair, replacement, removal, poles, towers and other electrical facilities, including, without limitation, poles, towers and other structures, guys, wires, cables, conduits, communication lines, and other related facilities, equipment, improvements and access roads (the "Facilities"), together with a non-exclusive easement and right to trim, cut down and remove all trees, brush, vegetation, and fire and electrical hazards now or hereafter existing on the Property that may interfere with the Facilities. The Easement reserved by Grantor pursuant hereto is an easement in gross for the benefit of Grantee, its successors and assigns. Grantee (and/or others to which Grantee shall assign or convey its rights hereunder) shall at all times retain title to the Facilities. Grantor shall have no ownership interest in or to the Facilities.

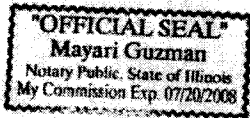
And Grantor for itself, its successors and assigns, does covenant with Grantee that it is well seized in fee of the Property and has good right to sell and convey the same in manner and form aforesaid; that the same is free from all encumbrances, except for: (i) installments of special assessments or assessments for special improvements which have not been certified to the County Auditor for collection, (ii) taxes not yet due and payable, (iii) zoning and other use restrictions, conditions or requirements now or hereafter imposed by governmental authorities,

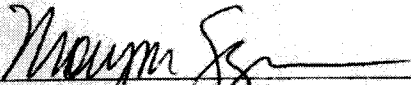


175966

STATE OF ILLINOIS       )  
  )  
COUNTY OF COOK        )

The foregoing instrument was duly acknowledged before me this 7 day of July, 2008, by Susan D. Nickey, as Secretary and Treasurer of Tatanka Wind Power, LLC, a Delaware limited liability company, who subscribed to the foregoing instrument and acknowledged that he executed the same on behalf of said limited liability company and that he was duly authorized to do so.



  
\_\_\_\_\_  
Notary Public, State of Illinois

MAYARI GUZMAN  
\_\_\_\_\_  
Notary Printed Name

7/20/08  
\_\_\_\_\_  
My Commission Expires:

175965

EXHIBIT A

That part of the Southwest ¼ of Section 5, Township 130 North, Range 66 West of the 5<sup>th</sup> Principal Meridian, Dickey County, North Dakota described as follows:

Beginning at the Northwest Corner of the Southwest ¼; thence N89°41'46"E, assumed bearing, along the North line of said Southwest ¼, a distance of 1260.65 feet, thence S71°32'21"E, a distance of 680.09 feet; thence on a bearing of South, a distance of 471.10 feet; thence on a bearing West, a distance of 320.00 feet; thence on a bearing of North a distance of 238.00 feet; thence N41°16'28"W, a distance of 508.81 feet to the intersection with a line 66 feet south of, as measured perpendicular to, and parallel with said North line of the Southwest ¼; thence S89°41'46"W, along said parallel line, a distance of 1248.47 feet to the West line of said Southwest ¼; thence N01°24'56"W, along said West line, a distance of 66.01 feet to the point of beginning.

and special assessments  
and transfer accepted  
this 25 day of July 2008

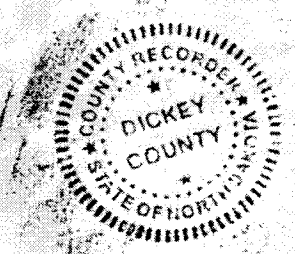
Dickey County Auditor  
by W. Sheppard  
Deputy Dickey County Auditor

Recorded   
Indexed   
Compared

Document No. 175965  
State of North Dakota }  
County of Dickey }  
Office of County Recorder  
Filed for record this 25<sup>th</sup>  
day of JULY, 2008 at  
2:20 o'clock P. M.

Tom [Signature]  
County Recorder

by 1900 CGG DC ABSTRACT



**2009 Real Estate Tax Statement**

Dickey County Treasurer  
Gail Veland  
P O Box 369  
Ellendale, ND 58436 0369  
(701) 349-3249

5% discount will be given if total taxes for a parcel are paid on or before February 15th.  
First payment consists of one-half of the consolidated tax and the full amount of the yearly installment of special assessments as shown on this statement.  
First payment is due on or before March 1. After March 1 use the following penalty schedule for first payment amount:  
**March 2:** 3 percent **May 1:** 6 percent **July 1:** 9 percent **October 15:** 12 percent (to January 1)  
Second payment consists of the remaining one-half of the consolidated tax.  
Second payment is due on or before October 15. After October 15 use the following penalty schedule for second payment amount:  
**October 16:** 5 percent (to January 1)  
An interest of 12 percent per annum will begin after January 1 on any outstanding tax.  
The true and full value represents the starting point used by your assessor in determining the assessed valuation of residential and commercial property for tax purposes and is his estimate of what your property would sell for on an open market assuming a willing seller and willing buyer. If you feel this figure is in error, please contact your local assessor.

MONTANA-DAKOTA UTIL CO

MONTANA-DAKOTA UTIL CO  
PO BOX 5650  
BISMARCK, ND 58506 5650

TAXPAYER ID

Reminder: If taxes are paid by escrow, this notice is for information only.

<b>PARCEL #</b> 02477001	<b>SEC - TWP - RNG 5 - 130 - 66</b>		
<b>Parcel Values</b>	<b>Taxing Districts</b>	<b>Legal Owner</b>	
AG ACRES 7.32	SPRING VALLEY TOWNSHIP	MONTANA-DAKOTA UTIL CO	
RES ACRES 0.00	KULM PUBLIC SCHOOL		
COMM ACRES 0.00		<b>Legal Description</b>	
TRUE & FULL VALUE 2,160		A PARCEL IN THE SW1/4	
ASSESSED VALUE 1,080			
TAXABLE VALUE 108			
TOTAL MILLS 258.85			

Allocation of Taxes	2009	2008	2007	Special Assessments	Taxes Due
STATE	\$0.40	\$0.30	\$0.27		FIRST PAYMENT \$13.99
COUNTY	\$12.92	\$11.64	\$10.28		SECOND PAYMENT \$13.98
TOWNSHIP/CITY	\$2.05	\$2.04	\$1.78		<b>TOTAL: \$27.97</b>
SCHOOL	\$12.60	\$19.25	\$16.60		DISCOUNT IF PAID BY FEB 15TH \$1.40
FIRE	\$0.00				TOTAL LESS DISCOUNT \$26.57
WATER	\$0.00				
OTHER	\$0.00				
<b>CONSOLIDATED TAX</b>	<b>\$27.97</b>	<b>\$33.23</b>	<b>\$28.93</b>	<b>TOTAL SPECIALS \$0.00</b>	

<b>PARCEL #</b> 08383000	<b>SEC - TWP - RNG 0 - 0 - 0</b>		
<b>Parcel Values</b>	<b>Taxing Districts</b>	<b>Legal Owner</b>	
AG ACRES 0.00	ELLENDALE CITY	MONTANA DAKOTA UTIL CO	
RES ACRES 0.00	ELLENDALE PUBLIC SCHOOL		
COMM ACRES 0.00	ELLENDALE FIRE DISTRICT	<b>Legal Description</b>	
TRUE & FULL VALUE 0		LOT 7 BLK 25 ELC ELLENDALE	
ASSESSED VALUE 0			
TAXABLE VALUE 0			
TOTAL MILLS 0.00			

Allocation of Taxes	2009	2008	2007	Special Assessments	Taxes Due
STATE	\$0.00			STREET PROJECT 08 \$119.60	FIRST PAYMENT \$119.60
COUNTY	\$0.00				SECOND PAYMENT \$0.00
TOWNSHIP/CITY	\$0.00				<b>TOTAL: \$119.60</b>
SCHOOL	\$0.00				DISCOUNT IF PAID BY FEB 15TH \$0.00
FIRE	\$0.00				TOTAL LESS DISCOUNT \$119.60
WATER	\$0.00				
OTHER	\$0.00				
<b>CONSOLIDATED TAX</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>TOTAL SPECIALS \$119.60</b>	

**Receipt of Taxes Paid**  
 Dickey County  
 P O Box 369  
 Ellendale, ND 58436-0369

**25554**  
 3/4/2010 1:45:25PM  
 Check Payment

**MONTANA-DAKOTA UTIL CO**  
**PO BOX 5650**  
**BISMARCK, ND 58506-5650**

Paid By: **MONTANA-DAKOTA UTIL CO CK#046153**

Year	Parcel #	Payment #	Amount	Specials	Discounts	Penalty/ Interest	Adjustments Advertising	Parcel Total
2009	02477001	1	\$13.99	\$0.00	\$0.00	\$0.00	\$0.00	\$13.99
	5-130-66-SW A PARCEL IN THE SW1/4 16-060-00-00-00	2	\$13.98	\$0.00	\$0.00	\$0.00	\$0.00	\$13.98
<b>Parcel Subtotal:</b>								<b>\$27.97</b>
2009	08383000	1	\$0.00	\$119.60	\$0.00	\$0.00	\$0.00	\$119.60
	0-0-0-R/C LOT 7 BLK 25 ELC ELLENDALE 39-020-02-00-00							
<b>Parcel Subtotal:</b>								<b>\$119.60</b>
2009	08619000	1	\$0.00	\$239.20	\$0.00	\$0.00	\$0.00	\$239.20
	12-129-63-SW TRACT U 1 OF LOT B MISC ELLENDALE 39-020-02-00-00							
<b>Parcel Subtotal:</b>								<b>\$239.20</b>
2009	21016000	1	\$20.05	\$0.00	\$0.00	\$0.00	\$0.00	\$20.05
	36-129-62-R/C 04-020-02-00-00	2	\$20.05	\$0.00	\$0.00	\$0.00	\$0.00	\$20.05
<b>Parcel Subtotal:</b>								<b>\$40.10</b>
2009	21020000	1	\$9,358.05	\$0.00	\$0.00	\$0.00	\$0.00	\$9,358.05
	36-129-63-R/C 05-020-02-00-00	2	\$9,358.04	\$0.00	\$0.00	\$0.00	\$0.00	\$9,358.04
<b>Parcel Subtotal:</b>								<b>\$18,716.09</b>
2009	21028000	1	\$393.32	\$0.00	\$0.00	\$0.00	\$0.00	\$393.32
	36-129-64-R/C 06-020-02-00-00	2	\$393.32	\$0.00	\$0.00	\$0.00	\$0.00	\$393.32
<b>Parcel Subtotal:</b>								<b>\$786.64</b>
2009	21037000	1	\$197.95	\$0.00	\$0.00	\$0.00	\$0.00	\$197.95
	36-129-65-R/C 07-020-00-00-00	2	\$197.95	\$0.00	\$0.00	\$0.00	\$0.00	\$197.95
<b>Parcel Subtotal:</b>								<b>\$395.90</b>
2009	21039000	1	\$65.74	\$0.00	\$0.00	\$0.00	\$0.00	\$65.74
	36-129-66-R/C	2	\$65.74	\$0.00	\$0.00	\$0.00	\$0.00	\$65.74

**25554**

4/28/2010 11:18:46AM  
Page 1 of 3

Year	Parcel #	Payment #	Amount	Specials	Discounts	Penalty/ Interest	Adjustments Advertising	Parcel Total
								<b>Parcel Subtotal:</b>
08-020-00-00-00								<b>\$131.48</b>
2009	21040000	1	\$76.80	\$0.00	\$0.00	\$0.00	\$0.00	\$76.80
	36-129-66-R/C	2	\$76.80	\$0.00	\$0.00	\$0.00	\$0.00	\$76.80
08-060-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$153.60</b>
2009	21066000	1	\$305.74	\$0.00	\$0.00	\$0.00	\$0.00	\$305.74
	36-130-63-R/C	2	\$305.73	\$0.00	\$0.00	\$0.00	\$0.00	\$305.73
13-020-02-00-00								<b>Parcel Subtotal:</b>
								<b>\$611.47</b>
2009	21070000	1	\$468.36	\$0.00	\$0.00	\$0.00	\$0.00	\$468.36
	36-130-64-R/C	2	\$468.36	\$0.00	\$0.00	\$0.00	\$0.00	\$468.36
14-020-02-00-00								<b>Parcel Subtotal:</b>
								<b>\$936.72</b>
2009	21072000	1	\$459.94	\$0.00	\$0.00	\$0.00	\$0.00	\$459.94
	36-130-65-R/C	2	\$459.93	\$0.00	\$0.00	\$0.00	\$0.00	\$459.93
15-020-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$919.87</b>
2009	21076000	1	\$434.76	\$0.00	\$0.00	\$0.00	\$0.00	\$434.76
	36-130-66-R/C	2	\$434.75	\$0.00	\$0.00	\$0.00	\$0.00	\$434.75
16-060-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$869.51</b>
2009	21080000	1	\$14.83	\$0.00	\$0.00	\$0.00	\$0.00	\$14.83
	36-130-66-R/C	2	\$14.82	\$0.00	\$0.00	\$0.00	\$0.00	\$14.82
16-090-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$29.65</b>
2009	21102015	1	\$1,044.17	\$0.00	\$0.00	\$0.00	\$0.00	\$1,044.17
	36-131-62-R/C	2	\$1,044.16	\$0.00	\$0.00	\$0.00	\$0.00	\$1,044.16
20-020-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$2,088.33</b>
2009	21106000	1	\$634.92	\$0.00	\$0.00	\$0.00	\$0.00	\$634.92
	36-131-63-R/C	2	\$634.92	\$0.00	\$0.00	\$0.00	\$0.00	\$634.92
21-020-02-00-00								<b>Parcel Subtotal:</b>
								<b>\$1,269.84</b>
2009	21112000	1	\$48.11	\$0.00	\$0.00	\$0.00	\$0.00	\$48.11
	36-131-64-R/C	2	\$48.10	\$0.00	\$0.00	\$0.00	\$0.00	\$48.10
22-020-02-00-00								<b>Parcel Subtotal:</b>
								<b>\$96.21</b>
2009	21145010	1	\$23.75	\$0.00	\$0.00	\$0.00	\$0.00	\$23.75
	36-132-64-R/C	2	\$23.75	\$0.00	\$0.00	\$0.00	\$0.00	\$23.75
30-020-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$47.50</b>
2009	21146000	1	\$283.02	\$0.00	\$0.00	\$0.00	\$0.00	\$283.02
	36-132-64-R/C	2	\$283.02	\$0.00	\$0.00	\$0.00	\$0.00	\$283.02
30-070-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$566.04</b>
2009	21157000	1	\$24.34	\$0.00	\$0.00	\$0.00	\$0.00	\$24.34
	36-132-65-R/C	2	\$24.33	\$0.00	\$0.00	\$0.00	\$0.00	\$24.33
31-070-00-00-00								<b>Parcel Subtotal:</b>
								<b>\$48.67</b>
2009	21165000	1	\$7,944.92	\$0.00	\$0.00	\$0.00	\$0.00	\$7,944.92
	0-0-0-R/C	2	\$7,944.91	\$0.00	\$0.00	\$0.00	\$0.00	\$7,944.91

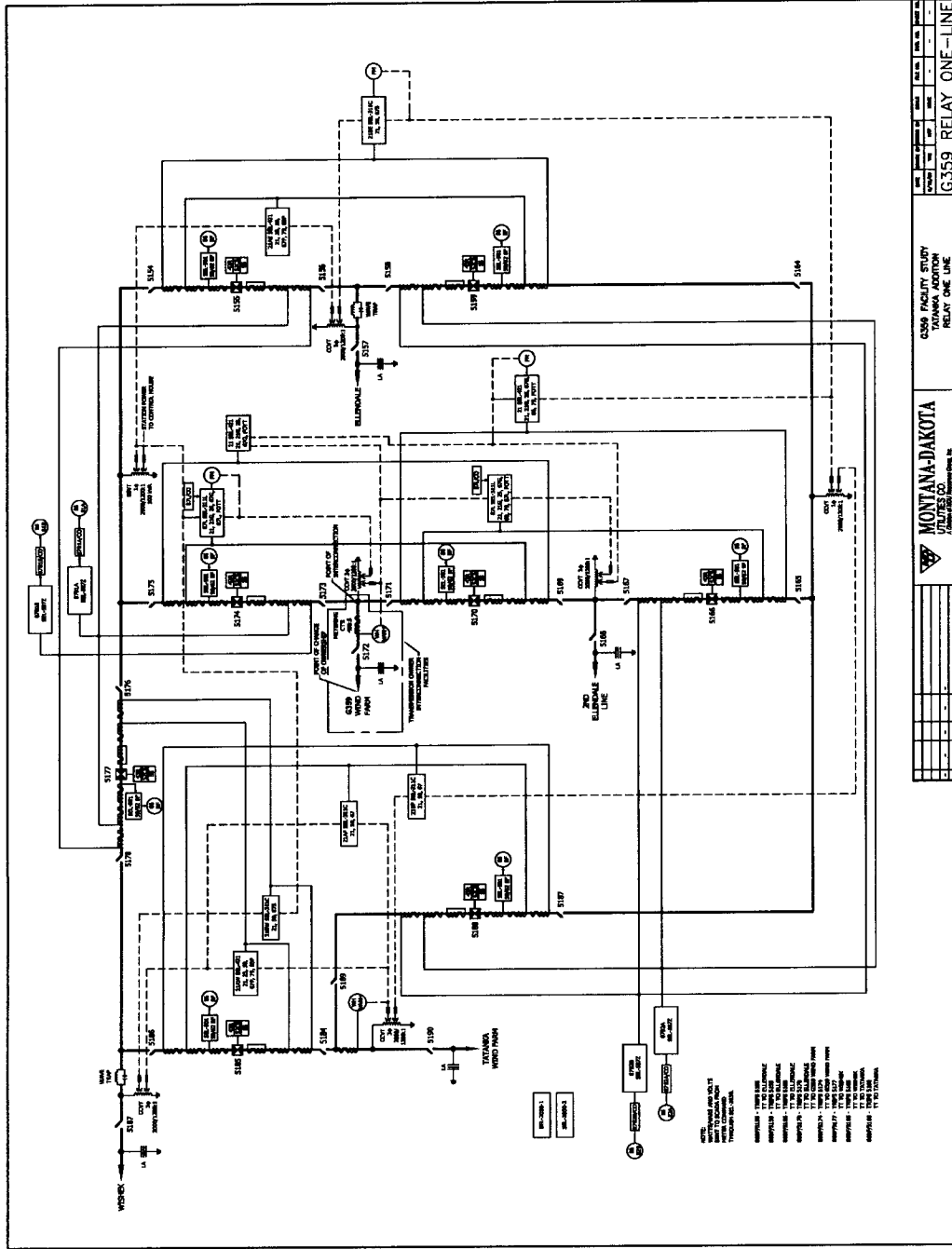
Year	Parcel #	Payment #	Amount	Specials	Discounts	Penalty/ Interest	Adjustments Advertising	Parcel Total
2009	21183000	1	\$311.98	\$0.00	\$0.00	\$0.00	\$0.00	\$311.98
	0-0-0-R/C	2	\$311.98	\$0.00	\$0.00	\$0.00	\$0.00	\$311.98
	41-020-00-00-00							
<b>Parcel Subtotal:</b>								<b>\$623.96</b>
2009	21187000	1	\$366.60	\$0.00	\$0.00	\$0.00	\$0.00	\$366.60
	0-0-0-R/C	2	\$366.59	\$0.00	\$0.00	\$0.00	\$0.00	\$366.59
	42-020-00-00-00							
<b>Parcel Subtotal:</b>								<b>\$733.19</b>
2009	21194000	1	\$695.74	\$0.00	\$0.00	\$0.00	\$0.00	\$695.74
	0-0-0-R/C	2	\$695.73	\$0.00	\$0.00	\$0.00	\$0.00	\$695.73
	44-020-02-00-00							
<b>Parcel Subtotal:</b>								<b>\$1,391.47</b>

<b>Receipt Total:</b>	<b>\$46,732.84</b>
-----------------------	--------------------

**This Receipt Not Valid Until  
Remittance Has Been Cleared**

E I I

Exhibit A2-1 – Tatanka One-Line



## West End Option 1 – Tantanka Interconnect Substation Addition

Convert the Tatanka Interconnect Substation into a five terminal breaker-and-a-half arrangement. This conversion will require relocating one of the existing breakers and the Ellendale line terminal.

Please refer to the drawings attached as Exhibit A2-1 and Exhibit A3-1.

### a o e e o g a e

Stand alone network upgrades include: five (5) 245kV 2000 Amp gas circuit breakers, three (3) 230kV line termination structures, nine (9) 230kV group operated disconnect switches, two (2) 230kV group operated disconnect switches with interlocking ground switch, eight (8) coupling capacitor voltage transformers, three (3) 192kV lightning arrestors, 230kV bus work, steel structures, grounding, conduit, foundations, and seven (7) switchboard panels containing protective relaying and controls required to support the circuit breakers and the system protection functions. These network upgrades would require an expansion of the substation which would include purchasing land, fence, and an addition to the existing control hut.

Estimated cost - \$3,440,000.00

### o a o e e o g a e

Non-stand alone network upgrades include: all necessary bus work, foundations, structural steel, grounding, and control wiring required to relocate one (1) 245kV 2000 Amp gas circuit breaker, one (1) 230kV line termination structure, two (2) group operated disconnect switches, three (3) coupling capacitor voltage transformers, three (3) 192kV lightning arrestors, and one (1) 1200 Amp wave trap.

Estimated cost - \$325,000.00

## West End Option 2 – Interconnect Substation

Build a 230kV interconnect substation, four terminal breaker-and-a-half arrangement, that taps the existing 230kV line between the Tatanka Interconnect Substation and the Ellendale Jct Substation.

Please refer to the drawings attached as Exhibit A2-2 and Exhibit A3-2.

**a o e e o g a e**

Stand alone network upgrades include: six (6) 245kV 2000 Amp gas circuit breakers, six (6) 230kV line termination structures, twelve (12) 230kV group operated disconnect switches, three (3) 230kV group operated disconnect switches with interlocking ground switch, fourteen (14) coupling capacitor voltage transformers, nine (9) 192kV lightning arrestors, 230kV bus work, steel structures, grounding, foundations, conduit, fence, and control hut. The control hut interior equipment includes AC and DC equipment, battery, battery charger, and eleven (11) switchboard panels containing protective relaying and controls required to support the circuit breakers and the system protection functions.

Estimated cost - \$4,455,000.00

**o a o e e o g a e**

Non-stand alone network upgrades include splitting the Tatanka to Ellendale 230kV line and terminating each line section in the G359 Interconnection Substation.

Estimated cost - \$200,000.00