

**Hamre, John G.**

---

**From:** Haley Mittler [HAM@vnf.com]  
**Sent:** Tuesday, May 11, 2010 1:35 PM  
**To:** FBRISTOL@ACCIONA-NA.COM; achambers@foley.com; tmullooly@foley.com; tstile@foley.com; dan.kuntz@mduresources.com; douglas.schulz@mduresources.com; mdorsett@midwestiso.org; Jeffcoat-Sacco, Illona; Hamre, John G.; jthompson@otpc.com; aas@vnf.com; Andrew Art; Evan Reese  
**Subject:** EL10-41 MDU Motion to Reject Tatanka's Apr. 29, 2010 Answer  
**Attachments:** MDUMotToAnswer.pdf

Pursuant to Rule 2010, please see attached for Montana-Dakota Utilities Company's Motion to Reject Tatanka's April 29, 2010 Answer filed today in the above-referenced docket.

Regards,  
Haley Mittler

Haley Mittler  
Paralegal  
Van Ness Feldman  
1050 Thomas Jefferson St., NW  
Suite 700  
Washington, DC 20007

(202) 298-1912

-----  
This communication may contain information and/or metadata that is legally privileged, confidential or exempt from disclosure. If you are not the intended recipient, please do not read or review the content and/or metadata and do not disseminate, distribute or copy this communication. Anyone who receives this message in error should notify the sender immediately by telephone (202-298-1800) or by return e-mail and delete it from his or her computer.  
-----

12 **PU-10-52** Filed: 5/11/2010 Pages: 6  
**Montana-Dakota Utilities Company's Motion to  
Reject Tankanka's April 29, 2010 Answer**

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

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

**MONTANA-DAKOTA UTILITIES COMPANY'S  
MOTION TO REJECT TATANKA'S APRIL 29, 2010 ANSWER**

Pursuant to Rule 212 of the Rules and Practice and Procedure of the Federal Energy Regulatory Commission ("FERC" or "Commission"), 18 CFR § 385.212 (2009), Montana-Dakota Utilities Company, a division of MDU Resources Group, Inc. ("Montana-Dakota") hereby moves that the Commission reject the April 29, 2010 answer ("April 29 Answer") filed by Tatanka Wind Power, LLC ("Tatanka") in the above-referenced proceeding.

**I. MOTION TO REJECT ANSWER**

Tatanka's April 29 Answer purports to respond to Montana-Dakota's arguments related to the transfer of ownership of the transmission facilities, the fact that the contract requires modifications and amendments to be in writing, and the fact that the design configuration makes it difficult and costly to interconnect any future generator at the Tatanka substation.<sup>1</sup>

---

<sup>1</sup> The issues included in Montana-Dakota's March 31, 2010 answer properly responded to items raised for the first time in Tatanka's March 16, 2010 answer.

Montana-Dakota respectfully requests that the Commission reject the April 29 Answer.<sup>2</sup> First, not only is the answer prohibited by Commission rules, Tatanka's answer was filed 29 days after the Montana-Dakota pleading that the answer purports to respond to, well beyond the Rule 213 15-day period for filing otherwise permissible answers. The Commission should not endorse the filing of an answer so late in the process and effectively allow this proceeding to extend beyond a reasonable time for the Commission to make its determination on the underlying complaint.

Second, Tatanka has not addressed any issue in its answer that it hasn't already addressed in the complaint or its March 16, 2010 answer ("March 16 Answer"). The Commission will not accept an answer that presents facts that could have been included in the initial complaint or that simply reiterates arguments in prior pleadings.<sup>3</sup>

In the affidavit accompanying Tatanka's complaint, Tatanka witness Iker Chocarro alleges that Montana-Dakota negotiated and agreed to changes to the Montana-Dakota transmission facility design specifications.<sup>4</sup> In its March 16 Answer, Tatanka further argued that Montana-Dakota participated in project meetings and "actively" modified the design specifications.<sup>5</sup> Tatanka, therefore, raised the modification issue in its earlier pleadings and could have supported its position that the Large Generator Interconnection Agreement ("LGIA") permits such modifications – it chose not to.

---

<sup>2</sup> While Tatanka served its answer upon Montana-Dakota on April 28, the FERC docketing system reflects a filed date of April 29, 2010.

<sup>3</sup> See *City of San Diego, California v. San Diego Gas & Electric Co., et al.*, 51 FERC ¶61,058 at 61,129 (1990).

<sup>4</sup> Chocarro February 8, 2010 Affidavit at P 23.

<sup>5</sup> March 16 Answer, at pp. 10-13.

Tatanka also alleged in the March 16 Answer that Montana-Dakota had “accepted” the facilities built by Tatanka<sup>6</sup> and responded to Montana-Dakota’s argument regarding the difficulty of interconnecting future generators at the Tatanka substation.<sup>7</sup> It is incumbent upon Tatanka to present evidence supporting its position at the time it makes a claim. It should not be permitted to submit a pleading over a month later with additional purported evidence it had in its possession at the time the claim is made.<sup>8</sup>

There comes a time when responsive pleadings must end.<sup>9</sup> Tatanka’s April 29 Answer simply reiterates argument included in Tatanka’s earlier-filed pleadings – it provides no additional facts or information the Commission needs to issue a determination in this proceeding. The Commission has the benefit of a full record without the April 29 Answer and has all the information it needs to issue an order in this proceeding.

---

<sup>6</sup> March 16 Answer, at pp. 6-13.

<sup>7</sup> March 16 Answer, at pp. 16-19. The one-line diagram included in Tatanka’s April 29 Answer is irrelevant to the issues presented in Tatanka’s complaint. Although Montana-Dakota studied the possibility of reconfiguring the Tatanka substation to accommodate another interconnection request, the project developer ultimately determined not to choose that option and executed an interconnection agreement that contemplates the construction of a new substation.

<sup>8</sup> In any event, the caselaw cited in its answer does not support Tatanka’s position. The Warranty Deed does in fact place a burden on Montana-Dakota by forcing Montana-Dakota to pay unwarranted costs for transmission facilities that do not meet Montana-Dakota design specifications.

<sup>9</sup> *Seminole Electric Cooperative, Inc.*, 24 FERC ¶ 61,331 at 61,703 (1983).

## II. CONCLUSION

WHEREFORE, for the reasons set forth above, Montana-Dakota respectfully requests that the Commission reject the April 29 Answer and provide relief consistent with Montana-Dakota's pleadings.

Respectfully submitted

/s/ Evan C. Reese

Evan C. Reese

Andrew Art

Van Ness Feldman, P.C.

1050 Thomas Jefferson St., NW

Washington, DC 20007

Tel. (202) 298-1800

Fax (202) 338-2416

Daniel S. Kuntz

Associate General Counsel

MDU Resources Group, Inc.

Bismarck, ND 58506-5650

Tel. (701) 222-7612

Fax (701) 222-7607

Counsel for Montana-Dakota Utilities Co.

Dated: May 11, 2010

## CERTIFICATE OF SERVICE

I hereby certify that I have this day caused to be served the foregoing document upon each person included on the official service list compiled by the Secretary in this proceeding in accordance with Section 385.2010 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission.

Dated at Washington, D.C., this 11<sup>th</sup> day of May 2010.

/s/ Evan C. Reese  
Evan C. Reese  
Van Ness Feldman, P.C.  
1050 Thomas Jefferson St., N.W.  
Washington, DC 20007-3877  
(202) 298-1917