

**Viracocha Wind Holdco LLC v Ignis Energy USA  
LLC**

2024 NY Slip Op 33015(U)

August 26, 2024

Supreme Court, New York County

Docket Number: Index No. 652538/2024

Judge: Andrea Masley

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SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: COMMERCIAL DIVISION PART 48

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VIRACOCHA WIND HOLDCO LLC, SAND HILL WIND PARENT LLC, VIRACOCHA WIND EQUIPMENT LLC, and SALKA WIND DEVELOPMENT SERVICES VIRACOCHA LLC,

Plaintiffs,

- v -

IGNIS ENERGY USA LLC, VIRACOCHA WIND LLC, RECLAIMED WIND, LLC, SAND HILL WIND, LLC, SAND HILL A, LLC, SAND HILL B, LLC, SAND HILL C, LLC, and ROONEY RANCH WIND LLC,

Defendants.

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INDEX NO. 652538/2024  
MOTION DATE --  
MOTION SEQ. NO. 001

**DECISION + ORDER ON MOTION**

HON. ANDREA MASLEY:

The following e-filed documents, listed by NYSCEF document number (Motion 001) 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47

were read on this motion to/for PREL INJUNCTION/TEMP REST ORDR.

In this action (Action I), *Virachocha Wind Holdco LLC et al v Ignis Energy USA LLC, et al*, 652538/2024, plaintiffs Viracocha Wind Holdco LLC, Sand Hill Wind Parent LLC, Viracocha Wind Equipment LLC, and Salka Wind Development Services Viracocha LLC (collectively Salka), all of which are owned by Salka LLC (Salka LLC), move by order to show cause to enjoin defendants from (1) breaching §13.6(c) of the Second Amended and Restated Development Services Agreement, dated September 1, 2022 and §12.6(c) of the Amended and Restated Owner’s Representative Services Agreement both of which require that “[p]ending final resolution of any dispute hereunder, the Parties shall continue to fulfill their respective obligations under this Agreement, including all payment obligations”; and (2) from making any statements to third parties connected with the Viracocha Project to the effect that Salka is no longer

the developer for the Viracocha Project or that Salka no longer has any affiliation with the Viracocha Project. (NYSCEF Doc. No. [NYSCEF] 27, OSC at 2.)<sup>1</sup>

In Action II, *Ignis Energy USA, LLC et al v Salka Wind Development Services Viracocha LLC*, 652587/2024, plaintiffs Ignis Energy USA, LLC, Viracocha Wind LLC, Reclaimed Wind LLC, Sand Hill Wind, LLC, Sand Hill A, LLC, Sand Hill B, LLC, Sand Hill C, LLC, and Rooney Ranch Wind, LLC (collectively Ignis Entities) move by OSC for a preliminary injunction enjoining defendant Salka Wind Development Services Viracocha LLC (1) from representing to be the owner of the Viracocha Project, any phase thereof, or any of the following entities: Viracocha Wind LLC, Reclaimed Wind LLC, Sand Hill Wind, LLC, Sand Hill A, LLC, Sand Hill B, LLC, Sand Hill C, LLC, and Rooney Ranch Wind, LLC; (2) from representing to be in control of the Viracocha Project; and requiring defendant (3) to take all actions necessary to ensure that any and all vendors, consultants, advisors, stakeholders, government agencies, and other third parties (Providers) involved in the development of the Viracocha Project are made aware that Ignis USA is the owner of the Viracocha Project; and (4) to take all actions necessary to ensure that all Providers list Project Company's representative, Liliana Grande Lamela, as the authorized contact person to be included on all correspondence, permits and contracts related to the Viracocha Project.

For the reasons stated on the record on June 25, 2024, the court grants Salka's motion for a preliminary injunction in Action I, in part, and, for the following reasons,

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<sup>1</sup> Unless indicated otherwise, citations to the record are to Index. No. 652538/2024.

grants Ignis Entities' motion in Action II, in part. This decision supplements the decision on the record.

The actions concern the ownership and development of a wind-powered electricity generating facility and battery energy storage system in Alameda County, California, known as the Viracocha Hill Wind Project (Viracocha Project).

“A preliminary injunction may be granted in any action where it appears that the defendant threatens or is about to do or is doing or procuring or suffering to be done, an act in violation of the plaintiff's rights respecting the subject of the action and tending to render the judgment ineffectual.” (CPLR 6301.)

To obtain a preliminary injunction, a movant must establish: “(1) a likelihood of ultimate success on the merits; (2) the prospect of irreparable injury if the provisional relief is withheld; and (3) a balance of equities tipping in the moving party's favor.” (*Doe v Axelrod*, 73 NY2d 748, 750 [1988] [citation omitted].)

For the purposes of these motions only, which are preliminary in nature only, the court relies on the following undisputed assertions:

1. Ignis Energy USA, LLC (Ignis) owns Viracocha Wind LLC (Project Company) which in turn owns the Viracocha Project. (Index. No. 652587/2024, NYSCEF 7, Ignis Amended Complaint [AC] ¶1.) Ignis also owns Reclaimed Wind LLC, Sand Hill Wind, LLC, Sand Hill A, LLC, Sand Hill B, LLC, Sand Hill C, LLC, and Rooney Ranch Wind, LLC (Ignis Subsidiaries). (*Id.* ¶¶12-17.)
2. Salka Wind Development Services Viracocha LLC (Salka Developer) is the developer of the Viracocha Project and sole defendant in Action II. (*Id.* ¶1.)
3. On May 17, 2021, Salka LLC's subsidiary acquired all rights to the Viracocha Project, and then Ignis executed a Membership Interest Purchase and Sale Agreement (2021 MIPSAs) whereby Ignis bought 100% of the issued and

outstanding membership interests in Salka LLC's subsidiary. Thus, Ignis acquired all rights in the Viracocha Project for \$20. (*Id.* ¶29; NYSCEF 12, Salka Amended Complaint [AC] ¶42.) Relevant here is §2.7 of the 2021 MIPSA which contains a reversion provision.<sup>2</sup> It provides that if Ignis materially breaches the agreement with Salka, in exchange for only \$10, "Ignis could be forced to reconvey the membership interests purchased in the Viracocha MIPSA to Salka subsidiaries within 20 days." (Index. No. 652587/2024, NYSCEF 7, Ignis AC ¶31.)

4. Simultaneously, Ignis and Project Company entered into a Development Services Agreement which provides that Project Company hired Salka Developer

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<sup>2</sup> Section 2.7 of the 2021 MIPSA sets forth Salka's reversion rights:

"2.7 Reversion of Membership Interests. If (a) (i) Buyer or Project Company shall fail to make any payment or transfer any other funding amount required under this Agreement, the DSA, the ORSA or any other Transaction Document within ten (10) Business Days after the date due or required, (ii) Buyer or Project Company materially otherwise breaches or fails to comply with this Agreement, the DSA, the ORSA or any other Transaction Document or a material default exists and is not cured within thirty (30) days of Buyer's or Project Company's receipt of a notice of default from Seller or an affiliate thereof under any of the foregoing (other than a default with respect to the Seller or Developer covered by (a)(i) above), . . . then (b), Buyer shall reconvey the Membership Interests to Seller within twenty (20) days of such Reversion Event (such date, the 'Reversion Date'), for consideration of Ten Dollars (\$10) payable by Seller to Buyer and Section 8.1 shall apply; provided, however, that Seller may by written notice to Buyer either (x) select a different date as the Reversion Date or (y) decline to exercise Seller's reversion right pursuant to this Section 2.7 (in Seller's sole discretion). The reconveyance described in this Section 2.7 shall be on an 'as is, where is' basis, and otherwise consummated pursuant to a purchase and sale agreement between Seller and Buyer on terms substantially similar to the terms of this Agreement, other than the absence of all representations and warranties, other than as to authorization and enforceability, and related indemnities." (NYSCEF 2, 2021 MIPSA §2.7.)

to provide development and management services for the Viracocha Project which was later amended. (*Id.* ¶12.)

5. Simultaneously, the parties entered the 2021 Owner's Representative Service Agreement (ORSA)<sup>3</sup> which provides that Salka Developer is responsible for managing the permitting process for the development, the process to interconnect the project to the electrical grid, as well as in negotiations with landowners which was later amended. (NYSCEF 12, Salka AC ¶7; NYSCEF 14, ORSA.)
6. Simultaneously, Ignis and Salka entered into a security agreement pursuant to which Salka acquired a first priority secured lien on Project Company, its assets and membership interests which was later amended in 2022. (NYSCEF 12, Salka AC ¶6; NYSCEF 15, May 5, 2024 Security Agreement.)
7. In a second deal, on May 5, 2022, Salka LLC's affiliate acquired the Sand Hill entities<sup>4</sup> which owned an adjacent wind energy project, which, in turn, sold the Sand Hill entities pursuant to the Membership Interest and Turbine Purchase and Sale Agreement (2022 MIPSA) to the Project Company which acquired 100% of the issued and outstanding membership interests in those entities. (Index. No. 652587/2024, NYSCEF 7, Ignis AC ¶36.)

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<sup>3</sup> The parties to the ORSA agreement are Viracocha Wind LLC, Reclaimed Wind, LLC, Sand Hill Wind, LLC, Sand Hill A, LLC, Sand Hill B, LLC, Sand Hill C, LLC, Rooney Ranch Wind LLC, and Salka Development Services Viracocha LLC. (NYSCEF 14, ORSA at 130 [NYSCEF pagination].)

<sup>4</sup> Sand Hill entities are Rooney Ranch Wind, LLC, Sand Hill Wind LLC, Sand Hill A, LLC, Sand Hill B, LLC, and Sand Hill C, LLC. (Index. No. 652587/2024, NYSCEF 7, Ignis AC ¶35.)

8. Simultaneously, the parties<sup>5</sup> entered into the 2022 Second Amended and Restated Development Services Agreement (2022 DSA), wherein Project Company hired Salka Developer to develop and manage the expanded Viracocha Project. (*Id.* ¶139.) Relevant here, §2.7 of the 2022 DSA provides that if Project Company “materially breached the agreements and failed to cure within 30 days of receipt of a notice of default, then in exchange for \$10, Project Company would reconvey the membership interests purchased in the” 2022 MIPSAs to the Salka LLC’s subsidiary within 20 days.<sup>6</sup> (*Id.* ¶140.)
9. Salka Developer and the Project Company also entered into the ORSA. Relevant here is §12.6 which provides: “[p]ending final resolution of any dispute

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<sup>5</sup> The parties to the 2022 Second Amended and Restated Development Services Agreement, are Viracocha Wind LLC, Reclaimed Wind, LLC, Sand Hill Wind, LLC, Sand Hill A, LLC, Sand Hill B, LLC, Sand Hill C, LLC, Rooney Ranch Wind LLC, and Salka Development Services Viracocha LLC.

<sup>6</sup> The reversion rights of Sand Hill Parent and Viracocha Equipment are set forth in §2.7 of the 2022 MIPSAs are similar:

“2.7 Reversion of Membership Interests. If (a) . . . (ii) Buyer or the Project Companies otherwise materially breach, violate or fail to comply with this Agreement, the MIPSAs, the DSA, the ORSA or any other Transaction Document and fail to cure such breach within thirty (30) days or . . . then (b), Buyer shall reconvey the Membership Interests to Seller and Turbines to Turbine Seller within twenty (20) days of such Reversion Event (such date, the ‘Reversion Date’), for consideration of Ten Dollars (\$10) payable by Seller to Buyer and Section 8.1 shall apply; provided, however, that Seller may by written notice to Buyer either (x) select a different date as the Reversion Date or (y) decline to exercise Seller’s reversion right pursuant to this Section 2.7 (in Seller’s sole discretion). The reconveyance described in this Section 2.7 shall be on an ‘as is, where is’ basis, and otherwise consummated pursuant to a purchase and sale agreement between Seller and Buyer on terms substantially similar to the terms of this Agreement, other than the absence of all representations and warranties, other than as to authorization and enforceability, and related indemnities.” (NYSCEF 14, 2022 MIPSAs §2.7.)

hereunder, the Parties shall continue to fulfill their respective obligations under this Agreement, including all payment obligations.” (NYSCEF 12, Salka AC ¶54.) However, the ORSA is not in effect because the notice to proceed (NTP) has yet to issue. (NYSCEF 12, Salka AC 1; NYSCEF 34, Liliana Grande Lamela<sup>7</sup> ¶¶ 46-47; NYSCEF 65, ORSA, Art. 5 [“[t]he term of this Agreement (the ‘Term’) shall commence on the NTP Date ...”].)

10. In the 2022 DSA, the parties agreed to add the BESS Phase of the Viracocha Project. (NYSCEF 12, Salka AC ¶69.) Section 3.6 provides as follows:

“Upon the Effective Date, the Project Company commits to pay the initial Two Million Dollars (\$2,000,000) of the Additional Development Budget (which [is set out in Schedule 4 and] includes the corresponding BESS Monthly Development Fee) at such times and in accordance with Section 4.1(b) and Section 4.2(a). In the event that Project Company does not notify [Salka Developer] within ninety (90) days of the Effective Date in writing that it has secured approvals from its Affiliate(s) to commit to pay the balance of Additional Development Budget above the Two Million Dollars (\$2,000,000) at such times and in accordance with Section 4.1(b) and Section 4.2(a), **the Parties shall meet (in person or via video conference) within ten (10) days to discuss how to proceed with the BESS Phase and how to amend this Agreement accordingly.**” (NYSCEF 4, 2022 DSA §3.6 [emphasis added].)

11. Section 7.5 of the 2022 DSA provides for joint control of the project:

“As from April 30, 2023, and provided that NTP for the entire Viracocha Hill Project (**excluding the BESS Phase**) has not occurred and that the then total Development Budget has been actually spent, the following authority/ability shall be jointly exercised by the Parties in connection with the Viracocha Hill Project (excluding the BESS Phase): (i) the selection, review and approval authority set forth in Section 3.2(c); (ii) the Development Budget’s costs and expenses approval authority and the ability to move monies between line items/categories pursuant to Section 4.2(b); and (iii) the ability to present Project Contracts for execution and invoices for payment set forth in Section 5.1.” (*Id.* §7.5 [emphasis added].)

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<sup>7</sup> Lamela is US Director of Ignis. (NYSCEF 34, Lamela aff ¶4.)

12. Under Section 7.2, the Project Company may terminate the 2022 DSA and, in turn, terminate Salka Developer as developer of the project

“upon any of the following circumstances by giving written notice to Developer: ... Developer commits gross negligence, willful misconduct or fraud in the performance of its obligations under this Agreement [or] ... Developer shall fail in any respect to observe or perform any material term, covenant or condition of this Agreement (other than a failure to make a payment as provided in Section 7.2(d)), if such failure shall continue for thirty (30) days after written notice thereof has been given to Developer by Project Company.” (*Id.* §§ 7.2[c], [e].)

13. On March 27, 2024, Salka informed Ignis and Project Company by letter that Project Company materially breached the 2022 DSA by “unilaterally” developing the BESS Phase (by entering into the BESS PPA). (Index. No. 652587/2024, NYSCEF 7, Ignis AC ¶ 159.)

14. On April 18, 2024, Project Company terminated the 2022 DSA as of that date. (*Id.* ¶ 168.)

15. The parties engaged in the dispute resolution process set forth in the agreements. On April 30, 2024, the party representatives met. (*Id.* ¶ 171.) When that meeting was unsuccessful, the parties’ senior officers met on May 16, 2024 which meeting was also unsuccessful. (*Id.* ¶ 172.)

16. On April 29, 2024, Salka notified Ignis in writing of its intent to exercise its reversion right in the 2021 and 2022 MIPSAs. (*Id.* ¶ 173.)

17. Subsequently, both parties engaged in letter writing campaigns alerting vendors, government entities and others that they, not the other party, were the rightful owner. (NYSCEF 19, Jiddu Tapia<sup>8</sup> aff ¶ 7; NYSCEF 34, Lamela aff ¶¶ 26-28.)

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<sup>8</sup> Tapia is the Chief Executive Officer of Salka LLC. (NYSCEF 19, Tapia aff ¶ 1.)  
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Motion No. 001

Salka initiated this action on May 16, 2024. Salka asserts the following causes of action: (1) – (3) breach of contract against Ignis for which Salka seeks specific performance; (4) – (6) declaratory judgment that Ignis breached, Salka is entitled to exercise its reversion rights, and Ignis must reconvey memberships interests to Salka pursuant to §2.7 of the 2021 MIPSAs and reconvey four wind turbines; (7) breach of contract for wrongful termination of the 2022 DSA for which Salka seeks damages in the amount of \$12.5 million –the development fee; (8) breach of §13.6(c) of the 2022 DSA; (9) breach of ORSA’s §12.6(c) for which Salka seeks specific performance; (10) – (11) breach of implied covenant of good faith and fair dealing; (12) breach of the amended security agreement; (13) breach of the implied covenant of good faith and fair dealing; (14) indemnification; (15) attorneys’ fees. (NYSCEF 12, Salka AC ¶¶155-313.)

Salka asserts the following breaches: (1) on October 1, 2023, the Project Company failed to pay the BESS Monthly Development Fee of \$15,000 due to Salka Developer. (*Id.* ¶84.) (2) On November 1, 2023, the Project Company failed to pay the BESS Monthly Development Fee of \$15,000 due to Salka Developer. (*Id.* ¶90.) (3) On November 30, 2023, the Project Company paid the October BESS Monthly Development Fee, two months late, and the November BESS Monthly Development Fee, one month late. (*Id.* ¶91.) (4) Salka objects to execution of the PPA as a violation of §3.6 of the 2022 DSA because, prior to executing the PPA, the parties were not able to execute the third amended DSA. (Index. No. 652587/2024, NYSCEF 7, Ignis AC ¶95.) In July of 2023, “Project Company concluded that it was essential to secure a power purchase agreement (‘PPA’) for the BESS Phase in order to ensure the project would be eligible to apply for Full Capacity Deliverability Status and to prove commercial

viability to the California Independent System Operator .... Critically, a PPA, which is for commercial, rather than development, purposes, would secure a stream of income in the future for the benefit of the long-term project.” (*Id.* ¶¶91.) (5) Salka asserts that Ignis breached the agreements because it fails to cooperate pursuant to §13.6 (c) of 2022 DSA. (NYSCEF 12, Salka AC ¶¶147.)

Ignis initiated Action II on May 20, 2024 against Salka Wind Development Services Viracocha LLC . Ignis asserts the following causes of action for which it seeks damages and attorneys’ fees: (1) breach of contract; (2) breach of implied covenant of good faith and fair dealing; (3) unfair competition; (4) gross negligence; (5) accounting; (6) tortious interference with contractual relations; (7) tortious interference with prospective business relations. (Index No. 652587/2024, NYSCEF 7, Ignis AC ¶¶230-303.) Ignis asserts the following breaches by Salka Wind Development Services Viracocha LLC: (1) “chronically breached its development obligations [under 2022 DSA], including, but by no means limited to, failing to secure permitting for Project Company, failing to negotiate and secure land leases and use rights, and withholding critical information regarding material contracts and project delays from Project Company. Through its gross negligence, Defendant—which is responsible for the majority of all development on the project—caused Project Company to expend more money than budgeted, drastically missed project deadlines, and failed to perform in accordance with applicable law or Prudent Renewable Energy Development Practices.” (*Id.* ¶¶5.) (2) When the Viracocha Project was first acquired, “it included an interconnection agreement and several land option agreements, including an option agreement for a lease with Waste Management. Second Amended DSA, Schedule 2, § VII. This option

agreement, which was set to expire on December 7, 2023, accounted for almost 80% of the land required for Phase II of the Viracocha Hill Project.” (*Id.* ¶105.) Salka Developer “let the option agreement lapse in December 2023. The lapse of the Waste Management land option resulted in the loss of land for almost 80% of the turbines proposed for Phase II.” (*Id.* ¶107.) (3) “[Salka] also willfully forced the extension of the project timeline, which caused Project Company to pay Defendant over \$1.2 million in Monthly Development Fees for more than a year beyond the agreed notice to proceed (‘NTP’) deadline for the Viracocha Hill Project.” (*Id.* ¶16 [emphasis omitted].)

As a preliminary matter, Salka LLC and its subsidiaries did not unreasonably delay in making this motion, contrary to Ignis’s objection. Salka LLC and its subsidiaries rightfully waited for the requisite dispute process to occur.

The court finds that status quo is the positions the parties had prior to Salka’s March 27, 2024, letter to Ignis asserting a material breach. At that point, Ignis was the owner and Salka was the developer. “[T]he existence of a factual dispute will not bar the granting of a preliminary injunction if one is necessary to preserve the status quo.” (*Mr. Natural, Inc. v Unadulterated Food Prods., Inc.*, 152 AD2d 729, 730 [2d Dept 1989].)

As to likelihood of success, Salka has established a likelihood of success with its reliance on § 13.6(c) of 2022 DSA, which requires both parties to continue to cooperate until disputes are resolved. Failure to do so yields the current situation where vendors, government agencies and others have no idea which party is in charge. This situation could destroy the Viracocha Project which would constitute irreparable harm for both

parties. Rather, issues of fact that require resolution before either party can be declared in charge include:

(1) whether Ignis has properly triggered joint authority turns on whether the development budget had been spent. On April 5, 2024 by email, Salka rejected Ignis's attempt to invoke §7.5 of 2022 DSA because, even though the NTP has not been achieved, the total Development Budget has not been "actually spent" as of April 5, 2024. (NYSCEF 12, Salka AC ¶128.) According to Salka, funds under the Development Budget remained in the Project Account that had not yet been spent on development expenses. (*Id.*)

(2) Whether Salka has effectively exercised its reversion rights to re-acquire ownership of the Viracocha Project.

(3) Which party is at fault for not finalizing a third amended DSA.

(4) Whether the reversion provision is a disproportionate penalty because Salka would pay Ignis \$20 where Ignis has invested \$15.9 million. The court notes that Ignis paid Salka \$20 for the acquisition of the rights.

As a result of these issues of fact, the court cannot find that Ignis has established a likelihood of success on its tortious interference claim.

The court rejects Ignis's argument that §13.6(c) of 2022 DSA swallows Ignis's right to terminate Salka as developer. First, Ignis's cases are not relevant because they do not reference a contract provision like §13.6(c). Likewise, the court rejects Ignis's argument that §13.6(c) applies to "non-existential disputes," because the parties failed to make such a distinction in the 2022 DSA. Rather, §13.6(c) prevents an abrupt end to this very complex project because of a party dispute. Here, the parties anticipated

disputes, agreed to a dispute resolution process, and prepared for termination by contracting for a continuation until the party taking over is able to do so without disruption to the Viracocha Project. Salka could make the same argument with regard to its redemption right. Instead, the parties are left in limbo having effectively simultaneously exercised their contract rights. Having failed to contract for the limbo situation, pursuant to §13.6(a), the parties shall engage in the dispute resolution process regarding Salka's reversion right since Salka has not tendered \$20 and Ignis has not accepted \$20 and thus whether Salka is entitled to reversion is an issue of fact. Having signed the 2022 DSA with §13.6(c), Ignis must comply with it.

The court rejects Salka's argument that it will be irreparably harmed if Ignis develops the project. Both parties clearly wish to develop a successful project. There is no evidence before the court that suggests that Ignis would destroy the project were it to become the developer.

As to the balance of the equities, with regard to §13.6(c), the equities favor Salka which has a clear contract provision that requires cooperation until resolution.

Since the court's decision is based on §13.6(c), it does not address Ignis's arguments about Salka's redemption rights.

The court has considered the parties' remaining arguments and finds them not requiring an alternate result.

Accordingly, it appearing to this court that a cause of action exists in favor of plaintiffs and against defendants in Action I and Action II and that plaintiffs in both actions are entitled to a preliminary injunction on the ground that defendants threaten or is about to do, or are doing or procuring or suffering to be done, an act in violation of

plaintiffs' rights respecting the subject of Action I and Action II and tending to render the judgment ineffectual, as set forth in the aforesaid decision, it is

ORDERED that since both parties are required to file undertakings conditioned that the parties, if it is finally determined that they were not entitled to an injunction, will pay to defendants all damages and costs which may be sustained by reason of this injunction, the parties shall come to an agreement as to the amounts of their respective undertakings, but if they fail to agree by August 28, 2024, the parties shall submit papers by September 4, 2024 and responses by September 9, 2024; and it is further

ORDERED that since Salka has not tendered \$20 and Ignis has not accepted \$20 and thus whether Salka is entitled to reversion is an issue of fact, the parties shall engage in the dispute resolution process regarding the reversion dispute pursuant to §13.6(a) of the Second Amended and Restated Development Services Agreement, dated September 1, 2022; and it is further

ORDERED that the parties and their agents, servants, employees and all other persons acting under the jurisdiction, supervision and/or direction of defendants In Action I and Action II, are enjoined and restrained, during the pendency of this action, from doing or suffering to be done, directly or through any attorney, agent, servant, employee or other person under the supervision or control of defendant or otherwise, any of the following acts:

ORDERED that Salka's motion is granted as to §13.6(c) of the Second Amended and Restated Development Services Agreement, dated September 1, 2022, which requires that "[p]ending final resolution of any dispute hereunder, the Parties shall

continue to fulfill their respective obligations under this Agreement, including all payment obligations”; and it is further

ORDERED that Salka’s motion is denied as to ORSA §12.6(c), which also requires that “[p]ending final resolution of any dispute hereunder, the Parties shall continue to fulfill their respective obligations under this Agreement, including all payment obligations”; and it is further

ORDERED that Slaka’s motion is granted to the extent that Ignis Energy USA LLC, Viracocha Wind LLC, Reclaimed Wind, LLC, Sand Hill Wind, LLC, Sand Hill A, LLC, Sand Hill B, LLC, Sand Hill C, LLC, and Rooney Ranch Wind LLC are enjoined from making any statements to third parties connected with the Viracocha Project to the effect that Salka is no longer the developer for the Viracocha Project or that Salka no longer has any affiliation with the Viracocha Project; and it is further

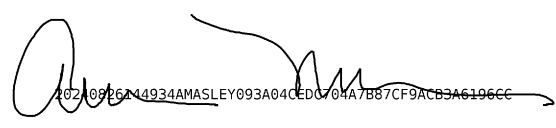
ORDERED that Ignis’s motion is granted to the extent that Salka Wind Development Services Viracocha LLC and its subsidiaries are enjoined from representing that it and/or its subsidiaries are the owner of the Viracocha Project, or any phase thereof, or any of Ignis’s subsidies: Viracocha Wind LLC, Reclaimed Wind LLC, Sand Hill Wind, LLC, Sand Hill A, LLC, Sand Hill B, LLC, Sand Hill C, LLC, and Rooney Ranch Wind, LLC; and it is further

ORDERED that Ignis’s motion is denied to the extent that Salka Wind Development Services Viracocha LLC and its subsidiaries are the developers of the Viracocha Project and thus are in control to the extent they are the developers; and it is further

ORDERED that Ignis’s motion is granted to the extent that Salka Wind Development Services Viracocha LLC and/or its subsidiaries shall take all actions necessary to ensure that any and all vendors, consultants, advisors, stakeholders, government agencies, and other third parties (Providers) involved in the development of the Viracocha Project are made aware that Ignis USA is the owner of the Viracocha Project; and it is further

ORDERED that Ignis’s motion is granted to the extent that Salka Wind Development Services Viracocha LLC shall take all actions necessary to ensure that all Providers are informed to copy Project Company’s representative, Liliana Grande Lamela, as the authorized contact person to be included on all correspondence, permits and contracts related to the Viracocha Project; and it is further

ORDERED that counsel are directed to appear for a conference on MS Teams on August 28, 2024, at 9:30 AM.



8/26/2024  
DATE

\_\_\_\_\_  
ANDREA MASLEY, J.S.C.

CHECK ONE:	<input type="checkbox"/>	CASE DISPOSED	<input type="checkbox"/>	DENIED	<input checked="" type="checkbox"/>	NON-FINAL DISPOSITION	<input type="checkbox"/>	OTHER
APPLICATION:	<input type="checkbox"/>	GRANTED	<input type="checkbox"/>		<input checked="" type="checkbox"/>	GRANTED IN PART	<input type="checkbox"/>	
CHECK IF APPROPRIATE:	<input type="checkbox"/>	SETTLE ORDER	<input type="checkbox"/>		<input type="checkbox"/>	SUBMIT ORDER	<input type="checkbox"/>	
	<input type="checkbox"/>	INCLUDES TRANSFER/REASSIGN	<input type="checkbox"/>		<input type="checkbox"/>	FIDUCIARY APPOINTMENT	<input type="checkbox"/>	REFERENCE