

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Marshall)	
Wind Farm for Certification as an Eligible Ohio)	Case No. 21-0162-EL-REN
Renewable Energy Resource Generating Facility.)	
)	

**MOTION FOR LEAVE TO INTERVENE OUT OF TIME,
MOTION TO CONSOLIDATE, AND
MOTION TO ESTABLISH A PROCEDURAL SCHEDULE OF
CARBON SOLUTIONS GROUP, LLC**

In accordance with R.C. 4903.221, Ohio Admin. Code 4901-1-11, and Ohio Admin. Code 4901:1-40-02(B), Carbon Solutions Group, LLC (CSG) requests issuance of an entry: (1) granting leave to intervene in this proceeding; (2) consolidating the proceedings listed in Table 1 of the accompanying Memorandum in Support; and (3) establishing a procedural schedule for the consolidated proceedings. This motion should be granted for the reasons explained below.

Respectfully submitted,

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MEMORANDUM IN SUPPORT

This motion arises from five pending applications by project owners or sponsors for certification of certain electric generation facilities as renewable energy resource generating facilities. For purposes of this motion, these applications will be referred to collectively as the “REN Applications.” The basic details of the REN Applications are summarized below:

Project	State	Interconnection	MW	MWh/Year	Application Filing Date	Case Number
Wessington Springs	South Dakota	Western Area Power Authority (WAPA)	51.00	228,488	2/3/21	21-0110-EL-REN
Marshall Wind	Kansas	Southwest Power Pool (SPP)	72.00	275,372	2/19/21	21-0162-EL-REN
Buckeye Wind	Kansas	Southwest Power Pool (SPP)	205.00	794,000	2/19/21	21-0163-EL-REN
Prairie Rose Wind	Minnesota	Midwest Interconnection (MISO)	190.40	600,000	1/29/21	21-0096-EL-REN
Nickelson Solar	North Carolina	Duke North Carolina	7.11	15,580	12/14/20	20-1790-EL-REN

Table 1

CSG requests leave to intervene in the REN Applications out of time. If intervention is granted, CSG requests that the Commission or Attorney Examiner consolidate these applications and issue a procedural schedule for discovery and an evidentiary hearing. CSG will defer filing “comments and objections” to the REN Applications until the Commission rules on intervention. See O.A.C. 4901:1-40-04(D)(1).

I. Motion for Leave to Intervene Out of Time

The REN Applications seek certificates recognizing certain facilities as Ohio renewable energy resource generating facilities. “Any interested person may file a motion to intervene and file comments and objections to any application filed under this rule within twenty days of the date of the filing of the application.” O.A.C. 4901:1-40-04(D)(1). All of the REN Applications were filed more

than 20 days ago. “The Commission may,” however, “waive any requirement of this chapter, other than a requirement mandated by statute, for good cause shown.” O.A.C. 4901:1-40-02(B).

Good cause exists to grant leave to intervene. REN applications often “fly under the radar” because they are not docketed or assigned a case number unless Staff determines the application should be suspended. The applications at issue in this motion were docketed between December 2020 and February 2021. Upon learning of the REN Applications, CSG had to identify and retain counsel; counsel in turn had to investigate the legal and factual issues implicated by the applications. Each of the REN Applications remain under suspension. No procedural schedules have been set in any of the cases. Under these circumstances, no applicant can claim prejudice by granting leave to intervene beyond the 20-day deadline.

II. Motion to Intervene

R.C. 4903.221 confers a right to intervene to any person who may be "adversely affected" by a Commission proceeding. In considering a request to intervene, the Commission must consider the nature of the intervenor's interest, the extent that interest is represented by existing parties, the intervenor's potential contribution to a just and expeditious resolution of the issues, and whether intervention would unduly delay the proceeding. *See* R.C. 4903.221(B)(1-4). CSG meets all of the criteria for intervention.

A. Nature of CSG's interest.

CSG is a project development, environmental asset management and advisory firm. Services to clients include development of carbon and renewable energy projects, emissions mitigation and management, GHG Emissions Inventory, Green Building projects, as well as regulatory and protocol advisory with regard to carbon emissions and renewable fuels. CSG's clients include renewable energy developers and facilities located throughout Ohio and PJM. Renewable energy credits (RECs) play a key role in the development and financing of renewable generation resources. The purchase of a REC

provides a direct financial benefit to the facility from which the REC originated. The REC market, like any market, is subject to the law of supply and demand. All other things being equal, where RECs are plentiful the price is low; when REC's become more scarce, the price increases. A scarcity of RECs sends a market signal to developers to build more renewable resources. Conversely, an oversupply of RECs (and the correspondingly lower price) signals that the demand for renewable resources is being met.

Ohio electric utilities may meet their RPS requirements by purchasing RECs, provided the REC “originate[s] from a facility that has been certified by the commission [.]” O.A.C. 4901:1-40-04(C). To become certified, an entity must file an application disclosing certain details about the facility. “The application shall include a determination of deliverability to the state in accordance with paragraph (F) of rule 4901:1-40-01 of the Administrative Code.” *Id.* at (D). Under O.A.C. 4901:1-40-01(F), “‘Deliverable into this state’ means that the electricity ... originates from a facility within a state contiguous to Ohio. It may also include electricity originating from other locations, pending a demonstration that the electricity is physically deliverable to the state.”

When Ohio electric utilities purchase RECs to meet their RPS requirements, the utilities support the facilities from which those RECs originated. RECs purchased from facilities located in Ohio directly support Ohio's renewable energy economy. RECs purchased from out-of-state facilities also benefit Ohioans if—and only if—the electricity generated by these facilities is “deliverable into this state.” Absent unique circumstances, any generation within PJM is generally deliverable anywhere else within PJM.

With regard to the REN Applications, none of the facilities are located within PJM. Nonetheless, in Case No. 21-0110-EL-REN (Wessington Springs), “Staff concludes that the Facility is physically deliverable to the state of Ohio.” (March 1, 2021 Review and Recommendation at 2.) CSG assumes that Staff is inclined to make similar recommendations in the remaining REN Applications.

Staff's deliverability determination is based on a methodology used in Case No. 05-0555-EL-REN, which relies on power flow studies to determine a facility's impact on a transmission line in Ohio. Whatever merit this methodology had in the past no longer holds today. If granted intervention, CSG is prepared to show that, like any modelling technique, the output of a power flow study is heavily influenced by the inputs. By massaging the inputs, an applicant can produce a study showing that renewable energy generated just about *anywhere* is "deliverable into this state." These flawed power flow studies render the "deliverability" requirement meaningless.

None of the facilities described in the REN Applications are located within PJM. And none disclose any information about deliverability of the output of these facilities into Ohio. Regardless of whether electricity from these facilities is "deliverable" into PJM through physical interconnections with Southwest Power Pool (SPP) or Midwest Interconnection (MISO), there is no indication that these facilities have or intend to actually deliver electricity into Ohio. Whether electricity could be physically delivered to Ohio does not answer the question of whether electricity will be delivered into Ohio. Hypothetical deliverability is not a substitute for actual deliverability within the meaning of R.C. 4928.64.

The concept of "deliverability" under R.C. 4928.64 has both a physical and financial dimension. The laws of physics compel electrons to follow a path of least resistance. But wholesale electricity markets function under a construct in which market participants pretend that electricity flows along a "contract path." The contract path of electricity is basically an accounting of who puts electricity onto the grid and who is taking it off. All generation within PJM is "deliverable" anywhere else in PJM, physically as well as financially.

Staff's focus on whether energy from a facility is "physically deliverable" into Ohio ignores the contract path of electricity within PJM. Load centers within PJM do not contract for renewable resources generated outside the PJM region because of line losses, transmission costs, and a host of

other factors. Yet the facilities described in the REN applications will allow these facilities to generate RECs tradeable in Ohio. That does not make sense. At bottom, a REC is a financial instrument created to reward a desired activity, *i.e.*, developing and operating renewable generation facilities that supply electricity to Ohioans. It is appropriate to reward entities that undertake the desired activity. It is not appropriate to reward entities that produce renewable energy generated and used within MISO and SPP. The revenue generated by the REN Applicants' certification in Ohio will be used to support renewable energy projects everywhere *but* PJM or Ohio.

In short, CSG's interest is in preserving the value of RECs to renewable generators located in Ohio and PJM. This is an important interest for which intervention should be granted.

B. The extent that CSG's interest is represented by other parties.

In each of the REN Applications, the applicant is the only party. These parties do not represent CSG's interests. And, while other entities may share CSG's interest in these proceedings, no other entities have sought intervention.

C. CSG's contribution to a just and expeditious resolution.

CSG's participation in the REN Applications will contribute to a just and expeditious resolution of the issue of whether the output of these facilities is "deliverable into this state," as well as the appropriate methodology for making this determination.

D. Granting intervention will not unduly delay the proceedings.

Each of the REN Applications has already been suspended. Any delay caused by CSG's intervention will not be "undue," considering the importance of the issues raised and the precedent that may be created.

III. Motion to Consolidate

All of the REN Applications implicate the same legal and factual issues. Each application involves a facility located outside PJM. None of the applications disclose how the output of the

facility is deliverable into Ohio. Presumably, each applicant will rely on a power flow study to demonstrate purported deliverability. The flaws in this approach are common across each application. Judicial economy would be served by consolidating the applications into one proceeding for purposes of discovery and an evidentiary hearing.

IV. Motion to Establish Procedural Schedule

Finally, CSG requests that the Attorney Examiner convene the parties to discuss a mutually acceptable schedule for discovery and an evidentiary hearing. The technical issues surrounding the “deliverability” requirement are too complex to merely address in comments.

V. Conclusion

For the reasons discussed above, the Commission should grant intervention, consolidate these proceedings, and convene a prehearing conference to discuss a case schedule.

Dated: April 7, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Motion to Intervene and Memorandum in Support was served by electronic mail this 7th day of April, 2021 to the following:

/s/ Lucas A. Fykes
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Summary: Motion Motion For Leave to Intervene Out of Time, Motion to Consolidate, and Motion to Establish a Procedural Schedule of Carbon Solutions Group, LLC electronically filed by Ms. Valerie A Cahill on behalf of Carbon Solutions Group, LLC