

In the Matter of the Application of :
Wessington Springs Wind Energy Center : Case No. 21-110-EL-REN
for Certification as an Eligible Ohio :
Renewable Energy Resource Generating :
Facility. :

The Public Utilities Commission of Ohio (“Commission” or “PUCO”) should deny Carbon Solutions Group, LLC’s (“Carbon Solutions”) request to consolidate certain renewable energy certificate (“REN”) cases for the reasons explained in the accompanying Memorandum in Support. Additionally, should the Commission order a hearing in this matter, the Staff of the PUCO (“Staff”) moves the Commission to allow the parties to stipulate to the facts and make legal arguments through written briefs in lieu of live testimony and cross-examination. Finally, Staff respectfully requests that the Commission, pursuant to Ohio Adm.Code 4901-1-13(A), accept this Memorandum Contra filed out of time for good cause, as demonstrated in the attached Memorandum in Support.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John Jones
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/s/ Jodi Bair

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**On Behalf of the Staff of the
Public Utilities Commission of Ohio**

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of :
Wessington Springs Wind Energy Center : Case No. 21-110-EL-REN
for Certification as an Eligible Ohio :
Renewable Energy Resource Generating :
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MEMORANDUM IN SUPPORT

I. The Commission should grant Staff leave to file its Memorandum Contra out of time.

Staff moves the Commission to allow it to file this Memorandum Contra out of time in accordance with Ohio Adm. Code 4901-1-13(A) because the parties first participated in a prehearing conference to discuss the Motion to Consolidate, held April 30, 2021 – 23 days after the motion was filed on April 7, 2021. Memoranda Contra may be filed within fifteen days after the service of a motion. Ohio Adm. Code 4901-1-12(B)(1). Because the prehearing was held after the time to file the Memorandum Contra, the Staff respectfully requests the Commission to allow it to file out of time.

II. The Commission should deny Carbon Solutions’ motion to consolidate cases.

The Commission should deny Carbon Solutions’ motion to consolidate five REN cases. Though Carbon Solutions filed a motion in each of the various cases that it wishes to consolidate with this case, the applicants in the other cases have yet to respond, and

prehearing conferences have not been scheduled in those cases.¹ In addition, each one of those cases represents a unique facility with distinct and individual technical characteristics that should not be combined in a single case, especially considering that the cases are at different procedural stages.

There is no claim by Carbon Solutions that any of the facilities in the five cases are at all similar in their technical or operational characteristics. In fact, The Applicant in the case at bar, Wessington Springs Wind Energy Center (“Wessington Springs” or “Applicant”), is a wind-generating facility located in South Dakota that has a 51 MW generating capacity and feeds directly into the Western Power Administration;² whereas, the Nickelson case concerns a solar-generating facility located in North Carolina that has a 7.11816 MW capacity.³ Consolidating the cases would require all parties to contend with myriad differences in facts. And while Staff acknowledges that the same underlying legal issue is present in each case, this detail actually lends itself to denying consolidation. By keeping the cases separated, factual determinations may be made more swiftly, and the first case to reach resolution on the legal issue may act as legal precedent

¹ *In the Matter of the Application of Marshall Wind Farm for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-162-EL-REN, *In the Matter of the Application of Buckeye Wind Energy Center for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-163-EL-REN, *In the Matter of the Application of Enel Green Power, North America for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-96-EL-REN, *In the Matter of the Application of Nickelson Solar, LLC-NC-PV-7.114MW for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 20-1790-EL-REN, Motion at 2.

² Wessington Application at 1-2.

³ *In the Matter of the Application of Nickelson Solar, LLC-NC-PV-7.114MW for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 20-1790-EL-REN, Application at 1 (Dec. 14, 2020).

for the remaining cases. Thus, in the interest of judicial economy, the cases should not be consolidated.

In addition, the procedural timing of these cases is not aligned. The applications in these cases were filed beginning December 14, 2020 and going through February 19, 2021, so the Staff investigations are at different stages in each case. Only in this case has a Staff Report even been issued. If consolidated, the Applicant would then have to wait for staff reports to be issued in the four other cases before a consolidated case could proceed. Making the procedural timelines align would be burdensome and time-consuming for all the applicants involved, as well as the Commission. Therefore, the cases should not be consolidated.

III. If the Commission orders a hearing in this matter, the issue of deliverability should be briefed, allowing for a stipulation of facts, and eliminating the need for live testimony and cross-examination.

No rule or statute requires that the Commission hold a hearing in REN cases, yet Carbon Solutions requests a hearing here. Staff proposes that if the Commission grants Carbon Solutions' request for a hearing, that the Commission save time and expenses by asking the parties to stipulate to the facts of the case and make legal arguments through written briefs. Carbon Solutions' challenge of the Wessington Springs application appears limited to the deliverability issue within the meaning of Ohio Rev. Code 4928.64.⁴ Carbon Solutions questions the precedent established in the *Koda Energy Case*

⁴ Carbon Solutions' Motion at 5.

No. 09-555-EL-REN.⁵ These are issues that are legal and deal with the interpretation of Ohio's renewable energy requirements in the Ohio Revised Code. Therefore, the Staff proposes that the Commission order the Staff and parties in the case to brief the legal deliverability issue as it relates to renewable energy in the state of Ohio and stipulate to the facts, eliminating the need for live testimony and cross-examination.

Respectfully submitted,

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**On Behalf of the Staff of the
Public Utilities Commission of Ohio**

⁵ *Id.* Carbon Solutions cited to Case No. 05-555-EL-REN, but that case is an East Ohio Gas Company case that dealt with the Commission's approval of an asset exchange; whereas the *In the Matter of the Application of Koda Energy LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-555-EL-BGN is a REN case that ruled on the necessary criteria for a renewable energy resource generating facility to meet the standards of Ohio Rev. Code 4928.64 and 4928.65.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Memorandum Contra to the Motion to Consolidate Filed by Carbon Solutions Group, LLC, and Motion to File Written Briefs in lieu of Live Testimony and Cross-Examination Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio** was served via electronic mail upon the following parties of record, this 5th day of May 2021.

/s/ Jodi Bair

Jodi Bair

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Summary: Memorandum Contra to the Motion to Consolidate filed by Carbon Solutions Group, LLC, and Motion to File Written Briefs in Lieu of Live Testimony and Cross-Examination electronically filed by Mrs. Kimberly M Naeder on behalf of PUCO