

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Bluegrass    ) Case No. 21-289-EL-REN  
Ridge Wind for Certification as an Eligible    )  
Ohio Renewable Energy Resource Generating    )  
Facility.    )

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**MOTION FOR LEAVE TO INTERVENE  
BY BLUE DELTA ENERGY, LLC**

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Pursuant to R.C. 4903.221, and Ohio Adm.Code 4901-1-11, Blue Delta Energy, LLC (Blue Delta) respectfully moves the Public Utilities Commission of Ohio (Commission) to intervene in the above-captioned case with the full powers and rights granted to intervening parties.

As detailed in the attached Memorandum in Support, Blue Delta has a real and substantial interest in this proceeding that may be adversely affected by the outcome herein, and which cannot be adequately represented by any other party. Accordingly, Blue Delta satisfies the standard for intervention set forth in Ohio statutes and regulations. Therefore, Blue Delta respectfully requests that the Commission grant this motion to intervene and that Blue Delta be made a full party of record in these proceedings.

Respectfully submitted,

/s/ Kimberly W. Bojko

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

On March 30, 2021, in the above-captioned case, an application was filed for Bluegrass Ridge Wind pursuant to Ohio Adm.Code 4901:1-40-04(D) for the certification of a facility as an eligible Ohio renewable energy resource generating facility, as defined in R.C. 4928.01. On April 5, 2021, the Commission suspended the automatic thirty-day approval process to afford the Commission and Staff additional time to review the application pursuant to Ohio Adm.Code 4901:1-40-04(D)(3).

Ohio Adm.Code 4901:1-40-04(D)(1) allows interested parties to intervene within twenty days of the filing of such an application. Several weeks after the Commission suspended the application and after the intervention deadline had expired, on April 27, 2021, Carbon Solutions Group, LLC (CSG) filed an untimely motion to intervene and objections to the application filed in the above-captioned proceeding.<sup>1</sup> CSG simultaneously sought to intervene in two other cases involving separate REN applications.<sup>2</sup> Additionally, CSG moved to consolidate the three cases

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<sup>1</sup> See Motion for Leave to Intervene Out of Time, Motion to Consolidate, and Motion to Establish a Procedural Schedule of Carbon Solutions Group, LLC (May 7, 2021) (Motion).

<sup>2</sup> *In the Matter of The Application of Cow Branch Wind for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-0290-EL-REN; and *In the Matter of The Application of Conception Junction Wind for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-0291-EL-REN.

and establish a procedural schedule in the consolidated proceeding in order to challenge the legal basis for granting REN certifications to the three applicants in the three proceedings. In its untimely Motion, CSG asserted a general interest in the proceedings, stating that its “interest is in preserving the value of [renewable energy credits] to renewable generators located in Ohio and PJM.”<sup>3</sup> To this end, CSG challenges the Commission’s long-standing policy and precedent regarding the determination of “deliverability” pursuant to R.C. 4928.64.<sup>4</sup>

On June 3, 2021, the Commission issued an Entry in Case No. 21-110-EL-REN, which granted a similar motion by CSG to intervene in that case, as well as others’ interventions, but denied a similar motion by CSG to consolidate five other cases.<sup>5</sup> Subsequently, the Commission issued a second Entry in the above-captioned case, which established a procedural schedule for this case.<sup>6</sup> The Entry scheduled a telephonic prehearing conference on July 19, 2021, and extended the intervention deadline to July 12, 2021.<sup>7</sup>

While Blue Delta does not believe that this case or any of the other unrelated cases are the proper forum for CSG to raise this policy issue or to challenge long-standing Commission precedent, any potential changes to the Commission’s current policy and its precedent will have wide reaching implications for all REN certification applicants. In fact, the Commission has already considered its policy and prior precedent regarding the determination of deliverability in a prior rulemaking proceeding, which is a more appropriate forum. In that rulemaking proceeding,

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<sup>3</sup> Motion at 6.

<sup>4</sup> *Id.* at 5-6.

<sup>5</sup> See *In the Matter of the Application of Wessington Springs Wind Energy Center for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-110-EL-REN, Entry at ¶¶ 16, 20 (June 3, 2021).

<sup>6</sup> See Entry (June 16, 2021).

<sup>7</sup> See *id.* at ¶¶ 4-5. The Commission may waive any requirement of the rules for good cause shown. Ohio Adm.Code 4901:1-40-02(B).

commenters sought to change the methodology for determining what is deemed to be deliverable when seeking REN certification. The Commission held:

the comments regarding the definition of “deliverable into this state” have been thoroughly addressed in previous rulemaking cases, and the Commission maintains its position that this definition does not need to be expanded to include any generation originating within the PJM or MISO transmission systems. We continue to believe that “a demonstration of delivery via a powerflow study and/or deliverability study should be necessary, although not to the extent of requiring signed contracts.”<sup>8</sup>

As noted by the Commission, the issue of deliverability and narrowing the definition of deliverability has already been raised and addressed by the Commission in multiple prior rulemaking proceedings. As such, it is clear that rulemaking proceedings were and are the proper forum for CSG to raise its issues concerning the definition of deliverability and/or the methodology used for determining deliverability. A challenge in this REN certification case or in any other REN certification proceedings amounts to an untimely application for rehearing of the Commission’s prior orders, including the Commission’s Finding and Order in Case No. 12-2156-EL-ORD.<sup>9</sup> Such attempt and untimely rehearing request by CSG should be rejected by the Commission.

Nonetheless and despite the prior Commission orders on the issue and other precedent created by the REN certification proceedings, if the Commission allows CSG to participate in the above-captioned proceeding and challenge the current policy and precedent regarding the determination of deliverability in this individual REN certification case, the Commission should also allow other parties to participate in the above-captioned case to represent their own interests in opposition to CSG.

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<sup>8</sup> *In the Matter of the Commission’s Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code*, Case Nos. 12-2156-EL-ORD, *et al.*, Finding and Order at ¶ 181 (Dec. 19, 2018).

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

To that end, pursuant to the Commission's June 16, 2021 Entry, Blue Delta respectfully requests that the Commission grant its timely intervention as Blue Delta has a direct, real, and substantial interest in the outcome of this case and the challenges to the Commission precedent raised by CSG. Blue Delta also has a substantial interest in the broad policy positions referenced in CSG's Motion. Blue Delta provides a wide range of sustainability and clean energy solutions via market access and regulatory services to electric utilities, as well as cooperative and municipal utilities, and commercial, industrial, healthcare, educational and financial institutions. Among other services, this includes assisting and in some case representing clients, including out-of-state clients, in obtaining REN certifications in Ohio. In the majority of applications with which Blue Delta has been involved, Blue Delta has obtained the necessary transmission studies for their clients establishing deliverability under the Commission's existing precedent. Multiple Blue Delta clients have secured or plan to secure REN certification under the existing deliverability standards and Staff's methodology for determining deliverability. In reliance on these facility certifications and the expectation of the Commission's consistent application of the deliverability standards and Staff's methodology for determining such when reviewing future facility applications, many of Blue Delta's clients have entered into long-term contracts for renewable energy credits with electric service companies for their compliance with Ohio's renewable portfolio standard obligations.

By seeking to create an entirely new standard for deliverability, CSG would potentially threaten the ability of Blue Delta's clients to perform under these contracts, leading to the possibility of Blue Delta and its clients suffering substantial financial harm. In fact, CSG appears to be seeking to limit or eliminate the availability of REN certifications to out-of-state facilities in order to increase the demand for CSG's own renewable energy credits from in-state resources and

other resources within PJM primarily to inflict such harm, thereby furthering its business model and to garner a competitive advantage.<sup>10</sup> CSG's interest in this case is to create new market barriers to limit supply that will directly harm Blue Delta and its clients while directly benefitting CSG. Thus, to the extent that CSG has a valid interest in this case, is allowed to intervene, and is afforded the opportunity to challenge the deliverability standards and Staff's methodology for determining deliverability, Blue Delta also has an interest in this case to protect the deliverability standards adopted by the Commission and support Staff's long-standing methodology for determining deliverability.

As such, Blue Delta has a real and substantial interest in the outcome of this proceeding and that interest cannot be adequately represented by any existing parties. R.C. 4903.221 and Ohio Adm.Code 4901-1-11 and 4901:1-40-04(D) allow interested parties to intervene in REN certification proceedings. R.C. 4903.221 provides, in pertinent part, that any person "who may be adversely affected" by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor's interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and the prospective intervenor's potential contribution to a just and expeditious resolution of the issues involved. Ohio Adm.Code 4901-1-11 permits intervention to an affected party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party.

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<sup>10</sup> See Motion at 3-6.

Additionally, Ohio Adm.Code 4901:1-40-04(D) allows any interested person to intervene and file comments and objections to any application for certification seeking facility qualification.

No other parties to the proceeding can adequately represent Blue Delta's interests in this matter. As explained previously, Blue Delta's interests are adverse to CSG's interests. While Bluegrass Ridge Wind's interest may be with regard to its own facility seeking the instant certification, Blue Delta's interest includes the instant application but also includes the precedent that this case may establish for both existing and future REN certifications. Blue Delta is also concerned with the broad policy issues raised by CSG and some of the comments and misinformation that CSG has raised.

For example, CSG uses a variety of misrepresentations to assert that the Commission's adopted test is inherently flawed. CSG incorrectly argues that the deliverability test allows any applicant in any state to "produce a study showing that renewable energy generated just about *anywhere* is 'deliverable into this state.'"<sup>11</sup> According to CSG, the focus on hypothetical, rather than actual delivery means that the test holds no merit today.<sup>12</sup> CSG's statements simply ignore the fact that the applicants do not produce the applicable power flow studies, and therefore have no opportunity to influence the inputs to the power flow study conducted for the particular facility. Instead, individual facilities seeking certification rely upon Distributed Factor Studies prepared by PJM's Transmission Planning Group, using the Regional Transmission Expansion Plan Baseline. Unless CSG is questioning the PJM Transmission Planning Group and implying that PJM somehow conspires with applicants in "massaging the inputs,"<sup>13</sup> this accusation lacks any merit and is simply false.

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<sup>11</sup> Motion at 5.

<sup>12</sup> *Id.*

<sup>13</sup> *See* Motion at 5.

Second, CSG’s criticism of hypothetical physical delivery is misplaced, as actual physical delivery cannot be tracked. As the Commission noted when it initially adopted the test, “it is impossible to physically track energy from a specific generating facility to a specific load location.”<sup>14</sup> At any rate, arguments about the physical deliverability directly conflict with CSG’s self-serving focus on assets within PJM.<sup>15</sup> A facility located in northern New Jersey or North Carolina does not physically deliver more electricity to Ohio than a facility located in Kentucky or Michigan simply by virtue of being part of PJM. MISO borders Ohio on two sides. Physical proximity and interconnectedness do in fact influence physical deliverability of power far more than the ever-changing borders of a regional transmission organization or an electric distribution utility. CSG’s focus on PJM, however, would provide a competitive advantage to itself or its own clients within PJM, regardless whether those facilities actually deliver energy to Ohio—an issue that CSG feigns concern over.

Finally, CSG’s assertion that the test allows any applicant to pass is simply untrue. Facilities can, and regularly do, fail the test for failure to demonstrate physical deliverability, even when all other requirements for certification are satisfied.<sup>16</sup> The Commission has also rejected applications and declined to grant certifications to facilities physically connected at the distribution level, rather than the transmission level.<sup>17</sup> The Commission has applied this test many times, and

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<sup>14</sup> *In the Matter of Koda Energy LLC*, Case No. 09-0555-EL-REN, Finding and Order at 3 (Mar. 23, 2011).

<sup>15</sup> See Motion at 5 (“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.”).

<sup>16</sup> See, e.g., *In re Hecate Energy Cherrydale LLC*, Case No. 17-2074-EL-REN, Finding and Order (Mar. 14, 2018); *In re Hectate Energy Clark County LLC*, Case No. 17-1996-EL-REN, Finding and Order (Mar. 14, 2018); *In re Anthony Harrington*, Case No. 17-2039-EL-REN, Finding and Order (Mar. 14, 2018).

<sup>17</sup> See *In re Invenergy Illinois Solar I, LLC*, Case No. 19-0067-EL-REN, Finding and Order (Jan. 13, 2021).



has both approved and denied applications based on the outcomes of the test. CSG also makes arguments as to the “contract” deliverability of a facility’s energy to Ohio.<sup>18</sup> However, as CSG noted in its Motion, and as the Commission confirmed in a prior rulemaking case,<sup>19</sup> the contract element is not currently part of the Staff’s consideration.

Accordingly, to the extent the Commission allows CSG to intervene to challenge the Commission’s precedent and deliverability test, Blue Delta should also be allowed to intervene as Blue Delta will contribute to the full development and equitable resolution of the issues in this proceeding by representing diverse interests and opinions. Further, while CSG will delay and prolong this routine proceeding by challenging long-standing Commission precedent, Blue Delta’s participation to offer divergent views will not further delay or prolong the proceeding.

For these reasons, Blue Delta has a direct, real, and substantial interest in the issues that have been raised in this proceeding and is so situated that the disposition of this proceeding may, as a practical matter, impair or impede its ability to protect that interest. Blue Delta’s counsel is regularly and actively involved in Commission proceedings and counsel’s unique knowledge and perspective will contribute to the full development and equitable resolution of the factual issues in this proceeding. Blue Delta’s interest will not be adequately represented by other parties and its intervention will not unduly delay or prolong these proceedings.

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<sup>18</sup> Motion at 5-6.

<sup>19</sup> See *In the Matter of the Commission’s Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code*, Case Nos. 12-2156-EL-ORD, *et al.*, Finding and Order at ¶ 181 (Dec. 19, 2018) (“a demonstration of delivery via a powerflow study and/or deliverability study should be necessary, although not to the extent of requiring signed contracts.”).

Because Blue Delta satisfies the criteria set forth in R.C. 4903.221 and Ohio Adm.Code 4901-1-11, Ohio law authorizes Blue Delta to intervene in this proceeding with the full powers and rights granted by the Commission to intervening parties. Blue Delta respectfully requests that the Commission grant this motion to intervene and make Blue Delta a full party of record.

Respectfully submitted,

/s/ Kimberly W. Bojko

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*Counsel for Blue Delta Energy, LLC*

### **CERTIFICATE OF SERVICE**

The Public Utilities Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on July 9, 2021 upon the parties listed below.

/s/ Kimberly W. Bojko  
Kimberly W. Bojko  
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Summary: Motion for Leave to Intervene and Memorandum in Support electronically filed by Mrs. Kimberly W. Bojko on behalf of Blue Delta Energy, LLC