

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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| In the Matter of The Application of Moraine Wind LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility. |) | Case No. 21-516-EL-REN |
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| In the Matter of The Application of Rugby Wind LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility. |) | Case No. 21-517-EL-REN |
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| In the Matter of The Application of Elm Creek II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility. |) | Case No. 21-531-EL-REN |
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| In the Matter of The Application of Buffalo Ridge II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility. |) | Case No. 21-532-EL-REN |
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| In the Matter of The Application of Barton Windpower 1 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility. |) | Case No. 21-544-EL-REN |
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**AMENDED JOINT MOTION TO CONSOLIDATE
BY
MORAINE WIND LLC, RUGBY WIND LLC,
ELM CREEK WIND II LLC, BUFFALO RIDGE II LLC,
BARTON WINDPOWER LLC, AND AVANGRID RENEWABLES, LLC**

Pursuant to Ohio Adm.Code 4901-1-02(A)(6), 4901-1-12, and 4901-1-27, Applicant Avangrid Renewables, LLC (Avangrid Renewables), and its wholly-owned subsidiaries, Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind II LLC, Barton WindPower LLC, and Buffalo Ridge II LLC (collectively, the Applicants), jointly file an Amended Joint

Motion to Consolidate. Avangrid Renewables is the identified legal owner and sole member and manager of and the shared service provider to each of the Applicants, and the parent company and sole owner of each facility seeking certification. As such, Avangrid Renewables had the authority and standing to file the August 3, 2021 Motion to Consolidate on behalf of itself and its wholly-owned subsidiaries. Nevertheless, to clarify the relationship of Avangrid Renewables to the facilities seeking certification and to confirm standing of the Applicants, including Avangrid Renewables, the Applicants hereby submit this Amended Joint Motion to Consolidate.

The Applicants respectfully request that the Public Utilities Commission of Ohio (Commission) consolidate the above-captioned proceedings and establish a new procedural schedule. Avangrid Renewables initiated all five cases—as either the owner of the facility, or as the shared services provider and owner of a subsidiary which in turn owns the facility. The cases all concern applications for certification as eligible Ohio renewable energy resource generating facilities (REN), as defined in R.C. 4928.01. After Avangrid Renewables, on behalf of itself or through its subsidiaries filed various applications for REN certification in the above-captioned cases,¹ Carbon Solutions Group, LLC (CSG) filed a motion to intervene, motion to consolidate, and motion to establish a new procedural schedule on May 7, 2021, in each of these proceedings

¹ See *In the Matter of The Application of Moraine Wind LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-516-EL-REN, Application (Apr. 30, 2021); *In the Matter of The Application of Rugby Wind LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-517-EL-REN, Application (Apr. 30, 2021); *In the Matter of the Application of Elm Creek II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-0531-EL-REN, Application (May 3, 2021); *In the Matter of The Application of Buffalo Ridge II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-532-EL-REN, Application (May 3, 2021); and *In the Matter of The Application of Barton Windpower 1 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-544-EL-REN, Application (May 4, 2021).

(CSG's Motion).² CSG seeks to challenge the Commission's long-standing precedent used for evaluating applications seeking REN certification of a renewable generating facility.

Although Applicants believe that CSG's Motion is an improper attempt to challenge the Commission's rules and long-standing precedent in individual REN proceedings, which is more appropriate for a rulemaking or Commission-Ordered Investigation (COI) proceeding, CSG's challenge raises policy questions and could have major implications for any renewable facility that has applied or will apply for REN certification. Again, such policy questions are best resolved in a rulemaking or COI proceeding. But, if the Commission decides to hear, at this time through REN certification proceedings, the threshold question regarding the existing deliverability standards and Staff's methodology for determining deliverability, the Applicants propose to consolidate the Applicants' five REN certification proceedings for the limited purpose of litigating the threshold question and hearing CSG's improper challenge.

While the Applicants do not agree with CSG's rationale for consolidation, as detailed in the attached Memorandum in Support, the Applicants believe that consolidation of the Applicants' five REN certification proceedings and establishment of a new procedural schedule for the limited purpose of addressing CSG's challenge best serves the interests of judicial efficiency and procedural fairness while protecting the substantial interests of the Applicants and parties to these cases and future REN certification cases. It will also expedite the resolution of this issue given that time is of the essence for the Applicants requesting certification who are being negatively affected financially from the delay in certifying the facilities.

² See Motion to Intervene, Motion to Consolidate, and Motion to Establish a Procedural Schedule of Carbon Solutions Group, LLC (May 7, 2021) (CSG's Motion).

Respectfully Submitted,

/s/ Angela Paul Whitfield

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| In the Matter of The Application of Barton Windpower 1 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility. |) | Case No. 21-544-EL-REN |
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

CSG intervened in several routine REN certification cases, including the five REN certification cases filed by the Applicants, not because CSG has any specific interest in challenging the renewable facilities' data and information supporting each of the individual REN Applications, but because CSG seeks to overturn long-standing Commission precedent. While this is not the proper forum for CSG to make such a challenge, CSG has repeatedly made the challenge to various

applications for REN certifications. Numerous applicants have in turn withdrawn their applications rather than defend their application and litigate this unique issue in their individual certification cases. However, Avangrid Renewables, by and through itself and its subsidiaries, is willing and able to defend its REN Applications and fully litigate the issue in response to CSG's challenge. To do so in the most efficient, cost effective, and fair way, Applicants request that the Commission consolidate the five certification proceedings for the limited purpose of responding to CSG's challenge to longstanding Commission precedent so that Avangrid Renewables as the shared services provider to each of the Applicants does not have to simultaneously litigate five separate proceedings.

Avangrid Renewables is either the owner of the facility or the sole member and manager of each of the limited liability companies (LLCs) that in turn own each of the renewable facilities involved in the Applicants' REN certification proceedings. Therefore, although the facilities themselves are different and the REN Applications are filed under the names of separate entities, Avangrid Renewables, as the parent company of and shared services provider to its wholly-owned subsidiaries, is the ultimate stakeholder in each of the REN Applications. Avangrid Renewables, as the owner of each of the facilities, seeks to obtain REN certification for each facility, so that the Applicants' renewable facilities can become qualifying energy resources and generate renewable energy credits.

To become a qualifying renewable energy resource under Ohio law, a renewable energy resource has to be a resource defined in R.C. 4928.01(A)(37) and has to satisfy the criteria set forth in R.C. 4928.64. If the renewable facility is located outside the state, to qualify as a renewable energy resource in Ohio, the facility is required to demonstrate that the energy produced at the facility "can be shown to be deliverable into this state." R.C. 4928.64(B)(3). According to Ohio

Adm.Code 4901:1-40-01(F), energy that is deliverable into the state may “include electricity originating from other locations, pending a demonstration that the electricity is physically deliverable to the state.” Therefore, to determine if a resource is deliverable into the state, pursuant to R.C. 4928.64(B)(3) and Ohio Adm.Code 4901:1-40-04, Commission Staff uses a deliverability test, first established in *In the Matter of Koda Energy LLC*.³ This test requires a power flow study that shows “the absolute value of a facility’s impact on a transmission line in Ohio must be greater than 5 percent and greater than 1 megawatt (MW).”⁴

The Commission affirmed the *Koda* Test for deliverability in its prior rulemaking proceeding. In that rulemaking proceeding, intervenors challenged the *Kodo* Test methodology for determining deliverability for the purposes of REN certification. The Commission rejected these challenges, holding:

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.”⁵

As the Commission noted in the most recent rulemaking proceeding, the Commission has already addressed challenges to the *Koda* Test for determining deliverability in multiple prior proceedings and decided to retain its test and uphold its interpretation of Ohio law. Given that rulemaking proceedings seem to be the proper forum to raise these issues, CSG’s challenge should be reserved for the next such review of the Commission’s rules, or CSG should request that a COI be opened

³ Case No. 09-0555-EL-REN, Finding and Order (Mar. 23, 2011). CSG’s Motion incorrectly identifies *Koda* as Case No. 05-0555-EL-REN.

⁴ See Case No. 21-0110-EL-REN, Staff Report (Mar. 1, 2021).

⁵ *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).

to address the issue if does not wish to wait for the next rulemaking proceeding. CSG should not be permitted to challenge the *Koda* Test in this routine REN certification case as it has done through its Motion.

In its Motion, CSG's attempts to challenge the *Koda* Test are based upon several misrepresentations. CSG first criticizes the *Koda* Test's use of flow studies, claiming that "[hypothetical] deliverability is not a substitute for actual deliverability."⁶ CSG seems to suggest that applicants falsify these flow studies, rendering the requirement "meaningless."⁷ CSG then falsely asserts that deliverability "has both a physical and financial dimension," and claims that the Commission should analyze contracts.⁸ Finally, CSG implies that the abstract and arbitrary boundaries of the PJM regional transmission authority preclude deliverability from facilities located outside of PJM.⁹

The Applicants do not believe that CSG's arguments warrant consideration during a routine REN application proceeding as the arguments lack merit. For example, CSG ignores that the applicants do not produce flow studies themselves, that "it is impossible to physically track energy from a specific generating facility to a specific load location,"¹⁰ that many facilities located in neighboring states which are outside of PJM are physically closer to Ohio than some facilities in more distant states located inside PJM, and that the so-called "financial dimension" of deliverability has no textual basis in R.C. 4928.64. However, CSG's intervention in the REN certification proceedings filed by Avangrid Renewables and its subsidiaries, as well as other REN

⁶ CSG's Motion at 4

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 5.

¹⁰ *In the Matter of Koda Energy LLC*, Pub. Util. Comm. Case No. 09-0555-EL-REN, Finding and Order at 3 (Mar. 23, 2011).

application proceedings, has served to delay these otherwise routine proceedings, as numerous applicants have withdrawn their applications rather than litigate the issue. Given the challenges and the current procedural schedules established, the Commission seems to be in a position where it must reach a ruling on CSG's challenge of the deliverability standard and test before it can continue to evaluate REN Applications.

The REN certification proceedings filed by Avangrid Renewables and its subsidiaries could be that forum if the cases are consolidated to resolve the threshold issue common to each of the five facilities first (i.e., the Commission's standard for evaluating whether electricity is "deliverable into this state."). After the threshold issue is resolved, the second issue, which is unique to each facility, can then be resolved (i.e., a demonstration that each facility meets the standard for deliverability previously established by the Commission). Reaching consistent and fair decisions as to the second issue requires first reaching a common determination as to the first, threshold issue. Consolidating the dockets as to the first issue will facilitate judicious and efficient determination of the second issue.

While the Applicants do not believe that this is the proper forum for CSG to challenge the *Koda* Test, or that it is proper to consolidate the cases for the full evidentiary hearing regarding each individual facility, it nonetheless respectfully moves this court for a limited consolidation of the cases to determine the threshold issue. To the extent that the Commission allows CSG to challenge its longstanding precedent outside of a COI or rulemaking proceeding, the Commission should consolidate the Applicants' REN certification proceedings for the purpose of addressing this challenge and allow all interested parties an opportunity to participate in the proceeding.

II. ARGUMENT

According to Ohio Adm.Code 4901-1-27(B), the Commission has the authority to regulate the course of a hearing, including ruling on procedural motions, and taking such actions as necessary to avoid unnecessary delay, prevent the presentation of irrelevant or cumulative evidence, and assure that the hearing proceeds in an orderly and expeditious manner.¹¹ “The Commission has the discretion to decide how, in light of its internal organization and docket considerations, it may best proceed to manage and expedite the orderly flow of its business, avoid undue delay and eliminate unnecessary duplication of effort.”¹² The Commission’s “broad authority to organize its own docket” extends to issues of consolidation.¹³

While the Commission has not established strict guidelines for consolidation, the Commission has considered certain factors in past cases. The Commission has favored consolidating cases when the “dockets involve the same matter,” such as separate proceedings involving the same company.¹⁴ The Commission also favors consolidation where “consolidation will enhance the efficiency of the proceedings.”¹⁵ Accordingly, “[the] Commission considers consolidation as a matter of administrative economy.”¹⁶ The Commission has held that “cases should be consolidated for purposes of hearing” where “the cases involve common issues of law and fact and no prejudice will result to any party from a consolidation.”¹⁷

¹¹ Ohio Adm.Code 4901-1-27(B)(4), (7).

¹² *Weiss v. Pub. Util. Comm’n of Ohio*, 90 Ohio St.3d 15, 19 (2000), citing *Toledo Coalition for Safe Energy v. Pub. Util. Comm.*, 69 Ohio St.2d 559, 560 (1982).

¹³ See, e.g., Case No. 21-110-EL-REN, Entry at ¶ 16 (June 3, 2021).

¹⁴ *In the Matter of Cardinal Asphalt Company, Notice of Apparent Violation and Intent to Assess Forfeiture*, Nos. 19-2240-TR-CVF, et al., Finding and Order at ¶ 9 (Dec. 2, 2020).

¹⁵ *In the Matter of the Inquiry into the 1989 Long-Term Forecast Report of the Ohio Gas Company*, Case No. 89-0874-GA-GCR, et al., Opinion and Order (June 26, 1989).

¹⁶ See Case No. 21-110-EL-REN, Entry at ¶ 15 (June 3, 2021).

¹⁷ *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges in its Entire Service Area Within the State of Ohio and to Change Regulations and Practices Affecting the Same*, Case Nos. 81-436-TP-AIR, et al., Entry at ¶ 3 (Feb. 17, 1982).

On the other hand, the Commission has avoided consolidating cases when doing so would “adversely affect a substantial right of any party,”¹⁸ or when “the issues in the two cases can be addressed separately.”¹⁹ In a previous motion to consolidate filed by CSG in a different set of REN cases,²⁰ the Commission denied consolidation, finding that doing so “would not enhance the efficiency of the proceedings” as the separate cases were “factually unique and [involved] different types of facilities, including both wind farms and solar facilities, as well as different facility owners, and are located in different states throughout the country.”²¹ Given these considerations articulated by the Commission regarding the prior CSG motion, a limited consolidation is proper in this instance.

Consolidation of the Applicants’ five REN certification proceedings for the limited purpose of ruling on the threshold issue is necessary to avoid unnecessary delay, prevent the presentation of irrelevant or cumulative evidence, and assure that the hearing proceeds in an orderly and expeditious manner.²² The Commission should consolidate these five certification proceedings for the purposes of hearing the threshold issue given that “the cases involve common issues of law and fact and no prejudice will result to any party from a consolidation.”²³

¹⁸ *In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need for the Construction of the Black River Substation*, Case No. 11-5856-EL-BTX, Entry at ¶ 4 (Jan. 5, 2012).

¹⁹ *In the Matter of the Complaint of Teleflex Aerospace*, Case No. 05-782-EL-CSS, Entry at ¶ 7 (Oct. 14, 2005).

²⁰ See Case No. 21-110-EL-REN, Motion For Leave to Intervene Out of Time, Motion to Consolidate, and Motion to Establish an memorandum in support a Procedural Schedule of Carbon Solutions Group, LLC (Apr. 7, 2021).

²¹ See Case No. 21-110-EL-REN, Entry at ¶ 16 (June 3, 2021).

²² See Ohio Adm.Code 4901-1-27(B)(4), (7).

²³ *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges in its Entire Service Area Within the State of Ohio and to Change Regulations and Practices Affecting the Same*, Case Nos. 81-436-TP-AIR, et al., Entry at ¶ 3 (Feb. 17, 1982).

As to the threshold issues, the Applicants' REN certification proceedings "involve the same matter" and pertain to the same company, the owner of the five renewable facilities.²⁴ Although the individual REN certification proceedings involve separate facilities, the facilities all share common ownership under Avangrid Renewables, either directly or through a subsidiary. Furthermore, Avangrid Renewables provides shared services, including the same regulatory and legal teams, to all Applicants. Additionally, before the Commission can make a factual determination regarding the deliverability based on the distinct factual background of each facility, the Commission must first determine which standard of deliverability is to apply. Therefore, a common determination of the initial threshold matter is first necessary in each of the Applicants' REN certification proceedings. Consolidation of these certification proceedings will allow the threshold matter, common to all five cases, to be addressed simultaneously.

By addressing this common threshold matter in a single proceeding, the Commission "will enhance the efficiency of the proceedings."²⁵ Currently, each of the five REN certification proceedings has a different procedural schedule, including separate intervention deadlines and prehearing dates. It is unclear which case will proceed to hearing first for the determination of the threshold issue. Therefore, any parties, including Avangrid Renewables, its subsidiaries, and Avangrid Renewables' counsel, seeking to participate in these proceedings must participate in five separate dockets, while preparing for each to move forward. Determining the threshold issue in one docket would eliminate the presentation of irrelevant or cumulative evidence, and assure that the hearing proceeds in an orderly and expeditious manner.²⁶ Once the threshold issue is settled,

²⁴ See Case Nos. 19-2240-TR-CVF, et al., Finding and Order at ¶ 9 (Dec. 2, 2020) (consolidation is proper when "dockets involve the same matter" with the same company).

²⁵ See *In the Matter of the Inquiry into the 1989 Long-Term Forecast Report of the Ohio Gas Company*, Case No. 89-0874-GA-GCR, et al., Opinion and Order (June 26, 1989).

²⁶ See Ohio Adm.Code 4901-1-27(B).

there will be no need for parties only interested in the threshold issue to participate in the second issue that is unique to each facility. Accordingly, resolving the threshold issue first will make the second part of the certification proceedings much more efficient.

Similarly, by consolidating the cases, the Commission will “avoid unnecessary delay.”²⁷ Consolidation of the Applicants’ REN certification proceedings for the limited purpose of the threshold issue regarding the *Koda* Test also will ensure that future REN certification application cases proceed expeditiously. Previously, these certification proceedings were routine. However, since CSG first intervened in Case No. 21-110-EL-REN, applicant after applicant have withdrawn rather than contest CSG’s challenge. This has prevented the issuance of new REN certifications, which is contrary to the purpose of Ohio law and has impacted the competitive market for renewable energy credits. Indeed, doing so seems to be CSG’s goal, as CSG noted in its Motion that CSG has an interest in artificially restricting the number of REN certificates on the market.²⁸

Furthermore, “no prejudice will result to any party from a consolidation,”²⁹ and consolidation will not “adversely affect a substantial right of any party.”³⁰ On the contrary, it will enable the Applicants, and other parties with an interest in ensuring the reasonable application of the deliverability standard and approval of REN certifications, to protect their interests. Currently, CSG’s improper Motion has completely stalled the process of certifying new, qualifying REN

²⁷ See Ohio Adm.Code 4901-1-27(B).

²⁸ See CSG’s Motion at 3-5 (After discussing how a lower number of REN certificates inflates the price for those on the market, CSG states: “[in] short, CSG’s interest is in preserving the value of RECs to renewable generators located in Ohio and PJM.”)

²⁹ *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges in its Entire Service Area Within the State of Ohio and to Change Regulations and Practices Affecting the Same*, Case Nos. 81-436-TP-AIR, et al., Entry at ¶ 3 (Feb. 17, 1982).

³⁰ *In the Matter of the Application of American Transmission Systems, Incorporated for a Certificate of Environmental Compatibility and Public Need for the Construction of the Black River Substation*, Case No. 11-5856-EL-BTX, Entry at ¶ 4 (Jan. 5, 2012).

facilities. Although Avangrid Renewables, by and through itself and its subsidiaries, is prepared to litigate this issue, as the shared service provider and sole owner of each of the Applicants, it is currently attempting to defend its position in five separate dockets. This causes needless duplication of the time, effort, and funds that Avangrid Renewables, by and through itself and its subsidiaries, must expend to defend its interests from CSG's baseless attack. Consolidation, on the other hand, will enable the Applicants to best protect their substantial rights by allowing the Applicants to focus on defending the Commission's longstanding precedent in a single docket, efficiently and in the most cost-effective manner.

It is important to note, however, that the facilities at issue in each of the Applicants' REN certification proceedings involve a discrete set of facts and data unique to each facility. As such, consolidation is only necessary and proper for resolution of the threshold issue—affirming the Commission's longstanding precedent regarding deliverability. Once the Commission has determined which standard applies, the Commission can then apply its standard expeditiously and efficiently to the individual facilities in their separate REN certification proceedings.

III. CONCLUSION

Therefore, the Applicants, Avangrid Renewables and its subsidiaries, respectfully ask that the Commission consolidate the Applicants' REN certification proceedings and establish a new procedural schedule for the limited purpose of determining the threshold issue—CSG's challenge to the Commission's test for deliverability pursuant to Ohio law. Consolidation for this limited purpose is necessary and proper to avoid unnecessary delay, prevent the presentation of irrelevant or cumulative evidence, and assure that the hearing proceeds in an orderly and expeditious manner.³¹ The Commission should consolidate these cases for the purposes of hearing CSG's

³¹ See Ohio Adm.Code 4901-1-27(B)(4), (7).

challenge to the Commission's test for deliverability, as "the cases involve common issues of law and fact and no prejudice will result to any party from a consolidation."³²

Respectfully Submitted,

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³² *In the Matter of the Application of The Ohio Bell Telephone Company for Authority to Amend Certain of its Intrastate Tariffs to Increase and Adjust its Rates and Charges in its Entire Service Area Within the State of Ohio and to Change Regulations and Practices Affecting the Same*, Case Nos. 81-436-TP-AIR, et al., Entry at ¶ 3 (Feb. 17, 1982).

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 August 6, 2021 upon the parties listed below.

/s/ Angela Paul Whitfield

Angela Paul Whitfield (0069402)

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Summary: Motion Amended Joint Motion To Consolidate By Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind II LLC, Buffalo Ridge II LLC, Barton Windpower LLC, and Avangrid Renewables, LLC electronically filed by Mrs. Angela Whitfield on behalf of Avangrid Renewables, LLC and Moraine Wind LLC and Elm Creek Wind II LLC and Buffalo Ridge II LLC and Rugby Wind LLC and Barton Windpower LLC