

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Quilt Block) Case No. 21-576-EL-REN
Wind Farm for Certification as an Eligible)
Ohio Renewable Energy Resource Generating)
Facility.)

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

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 this proceeding.

Respectfully submitted,

/s/ Kimberly W. Bojko

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On May 12, 2021, in the above-captioned case, an application was filed for Quilt Block Wind Farm (Quilt Block) 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 May 20, 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. On June 1, 2021, Carbon Solutions Group, LLC (CSG) filed a motion to intervene, motion to consolidate, and objections to the application filed in the above-captioned proceeding.¹ CSG simultaneously sought to intervene in fourteen other cases involving separate REN applications with different facility owners in different states.² While five of the cases concern facilities that share the same owner, Avangrid Renewables, LLC (Avangrid),³

¹ See Motion to Intervene, Motion to Consolidate, and Motion to Establish a Procedural Schedule of Carbon Solutions Group, LLC (June 1, 2021) (Motion).

² See Motion at 2.

³ *In the Matter of The Application of Moraine Wind LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-0516-EL-REN; *In the Matter of The Application of Rugby Wind LLC for*

the other nine cases concern different applicants. Despite this, and despite the fact that CSG has filed additional motions⁴ to consolidate that seem to conflict as they are requesting different consolidations, CSG moved to consolidate the fourteen cases in this docket and establish a procedural schedule in the consolidated proceeding in order to challenge the legal basis for granting REN certifications to the fourteen facilities in the fourteen proceedings.⁵ In its Motion, CSG asserted a general interest in the precedent that may be established in the proceedings, stating that its “interest is in preserving the value of [renewable energy credits] to renewable generators located in Ohio and PJM.”⁶ To this end, CSG challenges the Commission’s long-standing policy and precedent regarding the determination of “deliverability” pursuant to R.C. 4928.64.⁷

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 (including Blue Delta’s intervention).⁸ But the Commission denied CSG’s motion to consolidate in the prior case.⁹ Subsequently, the Commission issued a second Entry in the above-captioned

Certification as an Eligible Ohio Renewable Energy Resource Generating Facility, Case No. 21-517-EL-REN; *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; *In the Matter of The Application of Buffalo Ridge Wind II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-532-EL-REN; and *In the Matter of The Application of Barton Windpower 1 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-0544-EL-REN.

⁴ See, e.g., *See In the Matter of the Application of Wessington Springs Wind Energy Center for Certification as an Eligible Ohio 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 (Apr. 7, 2021); Case No. 21-0516-EL-REN, Motion to Intervene, Consolidate, and Establish a Procedural Schedule of Carbon Solutions Group, LLC (May 7, 2021).

⁵ Note that CSG improperly filed its June 1, 2021 consolidation request only in the above-captioned case under the above-captioned case.

⁶ Motion at 6.

⁷ *Id.* at 5-6.

⁸ See Case No. 21-110-EL-REN, Entry at ¶¶ 14, 16, 20 (June 3, 2021).

⁹ *Id.* at ¶¶ 15-16.

case, which established a procedural schedule for this case.¹⁰ The Entry scheduled a telephonic prehearing conference on August 17, 2021, and extended the intervention deadline to August 10, 2021.¹¹

While Blue Delta does not believe that this case or any of the other REN certification cases are the proper forum for CSG to raise its 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 and associated entities. 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, commenters also 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.”¹²

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

¹⁰ See Entry (June 16, 2021).

¹¹ 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).

¹² *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).

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.¹³ 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 regarding the definition of deliverability and/or the methodology used for determining deliverability.

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. Blue Delta also has a direct, real, and substantial interest in the challenges to the Commission precedent raised by CSG. CSG seeks to interject novel statutory interpretations and policy arguments into this proceeding regarding the Commission's determination of deliverability, which Blue Delta has a unique interest in opposing.¹⁴

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

¹³ Case Nos. 12-2156-EL-ORD, *et al.*, Finding and Order at ¶ 181 (Dec. 19, 2018).

¹⁴ 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 ¶ 14 (June 3, 2021).

clients, in obtaining REN certifications in Ohio. In the majority of applications with which Blue Delta has been integrally involved in the applications and Commission filings, 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, as well as prior Commission precedent adopting such standards and methodology. 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 certification to out-of-state facilities in order to increase the demand for Ohio renewable energy credits generated from in-state resources and other resources within PJM primarily to bolster the value of Ohio renewable energy credits owned by CSG, thereby furthering its business model and to garner a competitive advantage over other renewable generators and the renewable energy credit market.¹⁵ 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, Blue Delta has an interest in a case that challenges the deliverability definition and standard and Staff's long-standing methodology for determining

¹⁵ See Motion at 3-6.

deliverability, as well as the Commission's precedent adopting such definition, standards, and methodology.

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. 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 Quilt Block maintains an interest in obtaining certification for its own facility in the instant proceeding, Blue Delta's interest includes, but extends beyond the instant application, and 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 in the current proceeding.¹⁶

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.'"¹⁷ According to CSG, the focus on hypothetical, rather than actual delivery means that the test holds no merit today.¹⁸ 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,"¹⁹ this accusation lacks any merit and is simply false.

Second, CSG's criticism of hypothetical physical delivery (a demonstration of delivery via power flow studies) 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."²⁰ The Commission

¹⁶ 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 ¶ 14 (noting that the nature of Blue Delta's interest in CSG's policy arguments warrants extraordinary circumstances to grant intervention).

¹⁷ Motion at 5.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *In the Matter of Koda Energy LLC*, Case No. 09-0555-EL-REN, Finding and Order at 3 (Mar. 23, 2011).

has also concluded: “We continue to believe that ‘a demonstration of delivery via a power flow study and/or deliverability study should be necessary.’”²¹

CSG’s arguments about the physical deliverability also directly conflict with CSG’s self-serving focus on assets within PJM.²² 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. In fact, physical proximity and interconnectedness do 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 one regional transmission organization, 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.

Third, CSG makes misleading arguments as to the “contract” deliverability of a facility’s energy to Ohio.²³ Ohio law and the Commission’s rules allow certification of facilities outside the state if “the electricity is physically deliverable to the state.”²⁴ CSG conveniently ignores the word “physically” from the definition of “deliverable into this state”²⁵ in an attempt to inject a novel “financial dimension” to the Commission’s test and to rewrite Ohio law.²⁶ However, as CSG noted

²¹ *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).

²² 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.”).

²³ Motion at 4-5.

²⁴ Ohio Adm.Code 4901:1-40-01(F).

²⁵ See Motion at 3-4.

²⁶ Motion at 4 (“The concept of “deliverability” under R.C. 4928.64 has both a physical and financial dimension.”).

in its Motion,²⁷ and as the Commission confirmed in a prior rulemaking case,²⁸ the contract element (based on financial agreements) is not part of the Staff's consideration. Ohio rules similarly address physical, not contract, deliverability. CSG is attempting to rewrite Ohio law to suit its own ends.

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.²⁹ The Commission has also rejected applications and declined to grant certifications to facilities physically connected at the distribution level, rather than the transmission level.³⁰ The Commission has applied this test many times, and has both approved and denied applications based on the outcomes of the test.

Blue Delta should be allowed to intervene in this proceeding as Blue Delta will contribute to the full development and equitable resolution of the issues in this proceeding by representing diverse interests and opinions. 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. As the Commission extended the deadline for intervention in response to CSG's Motion, Blue Delta's intervention will not create any additional delay.³¹ Moreover, the Commission has granted intervention to Blue Delta and Blue

²⁷ Motion at 5 ("Staff's focus on whether energy from a facility is 'physically deliverable' into Ohio ignores the contract path of electricity within PJM.").

²⁸ 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.").

²⁹ See, e.g., *In re Hecate Energy Cherrydale LLC*, Case No. 17-2074-EL-REN, Finding and Order (Mar. 14, 2018); *In re Hecate 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).

³⁰ See *In re Invenergy Illinois Solar I, LLC*, Case No. 19-0067-EL-REN, Finding and Order (Jan. 13, 2021).

³¹ See also *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 ¶ 14 (June 3,

Delta has participated in prior proceedings before the Commission concerning REN certification applications.³²

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.

Furthermore, if the Commission intends to entertain CSG's Motion and allows CSG to challenge the Commission's deliverability standard and test in this proceeding, as stated in Blue Delta's Motion to Intervene in Case No. 21-516-EL-REN filed on July 30, 2021 and at the July 22, 2021 prehearing conference in Case No. 21-531-EL-REN, Blue Delta supports the request by Avangrid, the owner of Rugby Wind LLC and the other four facilities, to consolidate the five cases concerning facilities owned by Avangrid into one proceeding for the limited purpose of resolving the threshold issue raised by CSG's challenge of the Commission's longstanding precedent for determining deliverability to certify qualifying renewable energy resources as set forth in R.C. 4928.01, R.C. 4928.64 and Ohio Adm.Code 4901:1-40-04.³³

2021) (Blue Delta's intervention is proper where "no party will be unduly prejudiced by granting [the motion] to intervene.").

³² See *id.* (The Commission granted Blue Delta's intervention, stating: "extraordinary circumstances exist to grant the motions to intervene, given the novelty of the arguments presented in this proceeding and the nature of the interests presented by the parties in their motions.").

³³ See Case No. 21-516, Amended Joint Motion to Consolidate (Aug. 6, 2021).

Consolidation of the Avangrid REN Cases, differs from CSG's other attempts to consolidate separate dockets for the purpose of challenging longstanding Commission precedent. Given that the five facilities are owned by Avangrid and that the five Avangrid REN certification proceedings appear to be proceeding to hearing simultaneously, consolidation for the limited purposes of resolving CSG's challenge will favor judicial efficiency and resource economy, while protecting the rights of the applicants and intervenors, by enabling the parties to most effectively protect their substantial interests. Furthermore, consolidation for a limited purpose will allow the Commission to resolve this challenge as CSG's interventions in the individual REN cases have led to several applicants withdrawing their applications rather than litigate the issue. For those reasons, to the extent the Commission hears CSG's challenge regarding the deliverability standard and test in an REN certification proceeding rather than in a rulemaking or Commission-ordered investigation proceeding, Blue Delta supports consolidation of the five Avangrid REN certification proceedings to determine the threshold issue before proceeding to hearings in other REN certification cases, such as this one.

Except for consolidation of the five Avangrid cases for the limited purpose of determining the threshold issue, consolidation of different REN certification proceedings remains inappropriate. In the present case, as in the past, CSG has sought to consolidate other REN cases that involved different facility owners, facilities in different states, and different case procedural schedules.³⁴ In the past, as here, Blue Delta has opposed such consolidation³⁵ and the Commission has rejected it.³⁶

³⁴ See, e.g., *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 ¶¶ 15-16 (June 3, 2021).

³⁵ See Case No. 21-110-EL-REN, Motion for Leave to Intervene Out of Time and Motion for Leave to File Memorandum Contra (May 13, 2021).

³⁶ Case No. 21-110-EL-REN, Entry at ¶¶ 15-16 (June 3, 2021).

While the Commission has not established strict guidelines for consolidation, the Commission has avoided consolidating cases where doing so would “adversely affect a substantial right of any party,”³⁷ or when “the issues in the two cases can be addressed separately.”³⁸ The Commission has been more open to consolidating cases when the “dockets involve the same matter,”³⁹ or where “consolidation will enhance the efficiency of the proceedings.”⁴⁰ These factors do not favor CSG’s request for consolidation.

CSG does not have a real and substantial interest in any of the fourteen facilities, only in challenging Commission precedent in order to artificially limit market participation.⁴¹ CSG’s interest is one of general policy. Additionally, each of the cases that CSG seeks to consolidate involves a separate facility with a unique owner and distinct and individual technical characteristics. Consolidating cases involving fourteen distinct facilities across different states would create a delayed and convoluted proceeding, which would only serve to convenience CSG, at the expense of the efficiency of the proceeding, Commission, Staff, and every other party to the proceeding.

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

³⁷ *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).

³⁸ *In the Matter of the Complaint of Teleflex Aerospace*, Case No. 05-782-EL-CSS, Entry at ¶ 7 (Oct. 14, 2005).

³⁹ *In the Matter of Cardinal Asphalt Company, Notice of Apparent Violation and Intent to Assess Forfeiture*, Case Nos. 19-2240-TR-CVF, Finding and Order at ¶ 9 (Dec. 2, 2020).

⁴⁰ *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).

⁴¹ See CSG’s Motion at 5 (“In short, CSG’s interest is in preserving the value of RECs to renewable generators located in Ohio and PJM.”).

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,

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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 4, 2021, upon the parties listed below.

/s/ Kimberly W. Bojko
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Case No(s). 21-0576-EL-REN

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