

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Moraine)
Wind LLC for Certification as an Eligible Ohio) Case No. 21-516-EL-REN
Renewable Energy Resource Generating)
Facility.)
)
In the Matter of The Application of Rugby)
Wind LLC for Certification as an Eligible Ohio) Case No. 21-517-EL-REN
Renewable Energy Resource Generating)
Facility.)
)
In the Matter of The Application of Elm Creek)
II for Certification as an Eligible Ohio) Case No. 21-531-EL-REN
Renewable Energy Resource Generating)
Facility.)
)
In the Matter of The Application of Buffalo)
Ridge II for Certification as an Eligible Ohio) Case No. 21-532-EL-REN
Renewable Energy Resource Generating)
Facility.)
)
In the Matter of The Application of Barton)
Windpower 1 for Certification as an Eligible) Case No. 21-544-EL-REN
Ohio Renewable Energy Resource Generating)
Facility.)

**REPLY
BY
APPLICANTS MORAINE WIND LLC, RUGBY WIND LLC,
ELM CREEK WIND II LLC, BUFFALO RIDGE II LLC,
BARTON WINDPOWER LLC, AND AVANGRID RENEWABLES, LLC**

Respectfully Submitted,

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**BEFORE
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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
)	
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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I. INTRODUCTION

Through each of the above-captioned certification proceedings, Avangrid Renewables, LLC (Avangrid Renewables) and its wholly-owned subsidiaries, Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Barton Windpower 1, and Buffalo Ridge II Wind LLC

(collectively, the Applicants) filed applications demonstrating that the out-of-state facilities satisfy the requirements to qualify for certification as renewable energy (REN) resource generating facilities (collectively, Avangrid Renewables REN Cases).¹

In each of the Avangrid Renewables REN Cases, Commission Staff issued a Report and Recommendation (collectively, Staff Reports), recommending that the Commission approve each application for REN certification.² The Staff Reports noted that each of the facilities satisfied the renewable energy resource, placed-in-service, and deliverability requirements for certification.³ In response, the Commission invited “interested persons” to file comments regarding Staff’s recommendations in these cases.⁴ Accordingly, Applicants,⁵ Blue Delta Energy, LLC (Blue Delta),⁶ and 3Degrees Group Inc. (3Degrees)⁷ filed initial comments supporting Staff’s

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 I for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-544-EL-REN, Application (May 4, 2021).

² 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, Staff Report (Aug. 20, 2021) (Moraine Staff Report); *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, Staff Report (Aug. 20, 2021) (Rugby Staff Report); *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, Staff Report (Aug. 20, 2021) (Elm Creek Staff Report); *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, Staff Report (Aug. 20, 2021) (Buffalo Ridge Staff Report); *In the Matter of The Application of Barton Windpower I for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-544-EL-REN, Staff Report (Aug. 20, 2021) (Barton Staff Report).

³ *Id.*

⁴ See Entry at ¶ 9 (Oct. 19, 2021).

⁵ See Comments of Applicants Moraine Wind, LLC, Rugby Wind, LLC, Elm Creek Wind II, LLC, Buffalo Ridge II, LLC, Barton Windpower, LLC, and Avangrid Renewables, LLC (Nov. 18, 2021) (Applicants Comments).

⁶ See Comments of Blue Delta Energy, LLC (Nov. 18, 2021) (Blue Delta Comments).

⁷ See Initial Comments of 3Degrees Group, Inc. to the Review and Recommendation (Nov. 18, 2021) (3Degrees Comments).

conclusions and recommendations. The Applicants,⁸ Blue Delta,⁹ 3Degrees,¹⁰ Vistra Corp.,¹¹ and Commission Staff¹² also filed reply comments supporting Staff's conclusions and recommendations. The initial and reply comments submitted by Applicants, Blue Delta, 3Degrees, Vistra Corp., and Commission Staff all demonstrate that each of the facilities in the five Avangrid Renewables REN Cases should be certified as a qualified resource pursuant to R.C. 4928.64(B)(3) and Ohio Adm.Code 4901:1-40-01(F) and 4901:1-40-04. In addition, the Carbon Solutions Group, LLC (CSG) filed initial comments and reply comments on November 18, 2021 and December 8, 2021, respectively.¹³

In the Applicants' reply comments, the Applicants explained that CSG does not have a valid interest in these cases and stated that CSG essentially admitted as such in its responses (or lack thereof) to the Applicants' discovery requests. More specifically, Applicants explained that CSG responded to each interrogatory and request for production with two objections:

1. The purpose of discovery is to enable parties to prepare for hearing. The Commission has not scheduled a hearing. Therefore, this discovery request is premature.
2. CSG's business and operations, in Ohio or elsewhere, are irrelevant to whether any applicant meets the criteria for certification as an Ohio renewable energy resource. Nor is such information reasonably calculated to lead to the discovery of admissible evidence.¹⁴

⁸ See Reply Comments of Applicants Moraine Wind, LLC, Rugby Wind, LLC, Elm Creek Wind II, LLC, Buffalo Ridge II, LLC, Barton Windpower, LLC, and Avangrid Renewables, LLC (Dec. 8, 2021) (Applicants Reply Comments).

⁹ See Reply Comments of Blue Delta Energy, LLC (Dec. 8, 2021) (Blue Delta Reply Comments).

¹⁰ See Reply Comments of 3Degrees Group, Inc. To The Review and Recommendation (Dec. 8, 2021) (3Degrees Reply Comments).

¹¹ See Reply Comments of Vistra Corp. (Dec. 8, 2021) (Vistra Reply Comments).

¹² See Reply Comments Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Dec. 8, 2021) (Staff Reply Comments).

¹³ See Initial Comments of Carbon Solutions Group, LLC (Nov. 18, 2021) (CSG Comments); Reply Comments of Carbon Solutions Group, LLC (Dec. 8, 2021) (CSG Reply Comments).

¹⁴ See Applicants Reply Comments at 14-16; *id.* at Attachment A, CSG Responses to Avangrid Discovery Requests.

With these objections and by not providing responses, Applicants argued that CSG has essentially admitted it has no interest in these cases.¹⁵ These nonresponses also demonstrate that CSG either cannot, or refuses to, provide any sort of evidence in support of its arguments.¹⁶ As such, the Applicants noted that CSG’s continued participation in this case is improper.¹⁷

In response to the Applicants’ reply comments, in a desperate final effort to remedy its fatal misstep, CSG filed a procedurally improper “memorandum contra.”¹⁸ CSG filed a memorandum contra reply comments. Such a pleading is not authorized under the Commission’s rules, nor did the Commission establish a sur-reply comment deadline. Therefore, CSG’s “Memorandum Contra” is improper and should be rejected. It is nothing more than another procedurally improper and factually baseless attempt to further delay certification. Ohio Adm.Code 4901-1-12(B)(1) does not authorize CSG to submit memorandum contra in response to reply comments, and the Commission should strike this improper pleading from the record. However, to the extent the Commission does consider the pleading, the Applicants submit the following reply pursuant to Ohio Adm.Code 4901-1-12(B)(2).

II. ARGUMENTS

A. CSG’s lack of interest precludes its intervention and participation in this case.

In order to intervene and participate in a case, Ohio law and Commission regulations require that a prospective intervenor demonstrate a direct, real, and substantial interest in the case. R.C. 4903.221(B)(1) requires “[that] the commission, in ruling upon applications to intervene in its proceedings, shall consider...[the] nature and extent of the prospective intervenor's interest.”

¹⁵ *Id.* at 15-16.

¹⁶ *Id.* at 14-15.

¹⁷ *Id.* at 14-16.

¹⁸ *See* Memorandum Contra Applicants’ Motion to Strike (Dec. 17, 2021) (CSG Memo Contra).

For Commission proceedings in general, Ohio Adm.Code 4901-1-11(A)(2) states that a “person shall be permitted to intervene in a proceeding upon a showing that...[the] person has a real and substantial interest in the proceeding.” In REN certification cases in particular, Ohio Adm.Code 4901:1-40-04(D)(1) specifies that an “interested person may file a motion to intervene and file comments and objection.”

Although the Commission has not yet ruled on CSG’s intervention in these cases, the Commission specifically directed that “applicants and *interested persons* be permitted to file comments in response to Staff’s recommendations.”¹⁹ Pursuant to Ohio law and Commission regulations, for CSG to intervene and file comments, it must demonstrate a direct, real, and substantial interest in each of these cases. It remains unable to do so.

Previously, CSG argued that its “interest is in preserving the value of RECs to renewable generators located in Ohio and PJM” since CSG’s clients use RECs “in the development and financing of renewable generation resources.”²⁰ Thus, as it pertains to CSG’s intervention and participation in these cases, CSG’s actual interest is directly relevant to these proceedings. Therefore, to the extent that CSG has any interest in these cases, information and documents pertaining to “CSG’s business and operations, in Ohio or elsewhere”²¹ are directly relevant to that interest. However, when Applicants requested discovery relevant to this supposed interest, CSG only replied that such supposed interests “are irrelevant to whether any applicant meets the criteria for certification as an Ohio renewable energy resource.”²²

¹⁹ Entry at ¶ 9 (Oct. 19, 2021) (emphasis added).

²⁰ See Motion to Intervene, Motion to Consolidate, and Motion to Establish a Procedural Schedule of Carbon Solutions Group, LLC at 3-5 (May 7, 2021).

²¹ Applicants Reply Comments at Attachment A, CSG Responses to Avangrid Discovery Requests.

²² *Id.*

In response to the Applicants noting that CSG has disclaimed any interest in these proceedings through its discovery responses, CSG argues that “[the] Applicants never explain the relevance of this accusation to any legal standard relevant to a motion to strike.”²³ First, this argument is irrelevant, as the Applicants have not filed a motion to strike. Second, it is factually incorrect. Ohio law and Commission regulations require a prospective intervenor to demonstrate a direct, real, and substantial interest in the outcome of a case.²⁴ The Commission specifically authorized only “applicants and *interested persons*” to file comments.²⁵ The Applicants have noted, throughout this proceeding, that CSG has failed to demonstrate an interest in these cases.²⁶ As such, CSG does not qualify as an interested person.

Since CSG now argues that its purported interest is “irrelevant to whether any applicant meets the criteria for certification as an Ohio renewable energy resource,”²⁷ its further participation in these proceedings is also improper. CSG has failed to demonstrate an interest sufficient to warrant its intervention or the filing of comments.

CSG cannot have it both ways. Either it has an interest that warrants its full participation in this case (including the obligation to respond to discovery) or it has no interest at all and its pleadings should be rejected, and its intervention denied. In response to its admitted lack of interest

²³ CSG Memo Contra at 2.

²⁴ See R.C. 4903.221(B)(1) (“That the commission, in ruling upon applications to intervene in its proceedings, shall consider...[the] nature and extent of the prospective intervenor's interest.”); Ohio Adm.Code 4901-1-11(A)(2) (A “person shall be permitted to intervene in a proceeding upon a showing that...[the] person has a real and substantial interest in the proceeding...”); Ohio Adm.Code 4901:1-40-04(D)(1) (An “interested person may file a motion to intervene and file comments and objections...”).

²⁵ Entry at ¶ 9 (Oct. 19, 2021) (emphasis added).

²⁶ See Motion for Leave To File, Instantner, Memorandum Contra Carbon Solutions Group, LLC's Motion For Leave To Intervene, Consolidate, And Establish A Procedural Schedule, and Memorandum in Support By Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind II LLC, Buffalo Ridge II LLC, Barton Windpower LLC, and Advangrid Renewables, LLC (Aug. 20, 2021); see also Applicants Reply Comments at 15-16.

²⁷ *Id.*

through discovery, CSG attempts to submit a procedurally improper “memorandum contra” in an attempt to attack the Applicants’ reply comments.

B. CSG’s memorandum contra is procedurally improper.

CSG’s so-called “Memorandum Contra” is simply an inappropriate attempt to file additional pleadings to delay these cases. The Commission has established a clear procedural schedule. An October 19, 2021 Entry directed interested persons to file initial comments by November 18, 2021, and reply comments by December 8, 2021.²⁸ The Commission did not afford interested persons (or anyone else) an opportunity to respond to reply comments.²⁹

The Applicants did not file a motion pursuant to Ohio Adm.Code 4901-1-12; they filed initial and reply comments pursuant to the Commission’s directive. Requesting that the Commission make a specific finding during the course of a Commission-ordered comment period does not convert those comments into a “motion” as described by Ohio Adm.Code 4901-1-12. Parties regularly request that the Commission make a specific finding in their filed comments, such as to reject, deny, or strike an argument or position. CSG itself has done so repeatedly. For example, in its own reply comments, CSG requested that the Commission exclude the Applicants’ filed Expert Report from the record, while simultaneously stating that “CSG does not believe a motion to strike...is necessary.”³⁰ CSG also requested that the Commission deny the Applications, grant intervention, and schedule a hearing.³¹ These requests do not convert CSG’s reply comments, or any other comments, into a motion to strike, motion to dismiss, motion to schedule a hearing, or motion to intervene.

²⁸ Entry at ¶ 9 (Oct. 19, 2021).

²⁹ *See id.*

³⁰ Reply Comments of Carbon Solutions Group, LLC, at 4-6 (Dec. 8, 2021).

³¹ *Id.* at 10.

As such, CSG should not be afforded an opportunity to respond to reply comments under the guise of a “memorandum contra” a request by a party in comments. The Commission, therefore, should strike CSG’s procedurally improper “Memorandum Contra” from the record. The pleading is simply an attempt to respond to the Applicants’ reply comments, which has not been authorized by the Commission or its rules. Nonetheless, to the extent the Commission does not strike this pleading as improper, the Applicants will also respond substantively to the numerous errors, omissions, and misrepresentations present in CSG’s Memorandum Contra (a theme in CSG’s pleadings).

C. CSG’s memorandum contra blatantly misrepresents the Applicants’ discovery requests and pleadings.

CSG’s “Memorandum Contra” continues CSG’s habit of misrepresenting basic facts about these proceedings, Ohio law and Commission regulations, and the pleadings filed by the Applicants. Whether by design or by accident, CSG’s continued misrepresentations demonstrate that its participation in these cases is not helpful and is only intended to cause delay. While the Applicants believe CSG’s pleading should be stricken, they will nonetheless correct these misrepresentations. First, when referring to the Applicants’ discovery requests, CSG makes the following claim:

CSG objected accordingly and those objections speak for themselves. But the discovery requests do not—the Applicants have not attached them, nor have they offered the slightest clue what information in “Applicants’ discovery” they are talking about. It is impossible to draw any conclusions about the objections without the accompanying requests for context.³²

This argument is bizarre and factually incorrect. Attachment A to the Applicants’ reply comments is clearly a copy of CSG’s responses and objections to the Applicants discovery requests, which

³² See CSG Memo Contra at 4.

includes the requests themselves.³³ Attachment A contains the full text of both the Applicants' discovery requests and CSG's objections to them.³⁴ Each discovery request is typed out in full in this document, and attached to the pleading CSG purportedly responds to.³⁵ It is impossible for CSG to argue otherwise. It seems that CSG either did not read the Applicants' reply comments and attachments, or seeks to mislead the Commission.

Additionally, even if the discovery requests were not attached—which they are—it is clear that the Applicants are referring to the document in its entirety. CSG submitted the same exact objections to each and every interrogatory and request for production.³⁶ Presumably, before submitting CSG's objections, CSG took the time to read the discovery requests and understands what information was requested—although perhaps, at this stage, this is an unfair assumption.

Second, CSG also seeks to argue that the timing of the Applicants' discovery requests precludes the need to respond.³⁷ This is also untrue. Ohio law states that “intervenors shall be granted ample rights of discovery.”³⁸ Ohio Adm.Code 4901-1-17(A) allows discovery to “begin immediately after a proceeding is commenced” and to continue up until “the commencement of the hearing.” As these proceedings have commenced, and no hearing has yet been scheduled, the discovery period is plainly ongoing. CSG's reference to the filing of initial comments³⁹ is

³³ See Applicants Reply Comments at Attachment CSG Memo Contra at A, CSG Responses to Avangrid Discovery Requests.

³⁴ Applicants Reply Comments at Attachment A, CSG Responses to Avangrid Discovery Requests.

³⁵ *Id.*

³⁶ Applicants Reply Comments at Attachment A, CSG Responses to Avangrid Discovery Requests.

³⁷ See CSG Memo Contra at 4 (“This brings us to CSG's responses to discovery served *after* the Applicants' filed initial comments. This timing alone is an implied acknowledgment that no information in CSG's possession is relevant to whether the Applicants meet the certification standards. CSG objected accordingly and those objections speak for themselves.”) (emphasis original).

³⁸ R.C. 4903.082.

³⁹ See CSG Memo Contra at 4 (“This brings us to CSG's responses to discovery served *after* the Applicants' filed initial comments.”) (emphasis original).

meaningless as well—the Applicants could have used the responsive information (if any information was actually provided by CSG) in drafting reply comments as well as future pleadings or in a hearing if one is scheduled.

Third, CSG places the blame for continued procedural delays on the Applicants.⁴⁰ Again, this is simply untrue. According to CSG, “[the] The Applicants were the last parties to secure counsel and enter an appearance in these cases,” which caused the delay. This is an absurd claim to make. The Applicants did not anticipate CSG’s baseless attempt to intervene and stall with a year-long litigation battle over routine REN certification applications when the facilities at issue all easily satisfy the *Koda* Test. The Applicants have in-house counsel, but, pursuant to Ohio law and the Commission’s rules, they had to obtain Ohio counsel to represent them in this matter before the Commission. Had CSG not intervened and objected to the applications, the Applicants would not have necessarily needed to secure local counsel. Furthermore, CSG sought intervention in other REN certification cases filed prior to the above-captioned applications, which could have been the venue for addressing CSG’s threshold issues in lieu of the Applicants’ cases had those applications not been withdrawn.

CSG seems to think that it has not delayed these routine REN certification cases, despite refusing to respond to discovery, failing to provide any evidence unless a hearing is scheduled,⁴¹

⁴⁰ CSG Memo Contra at 4 (“To the extent there has been any ‘undue delay’ in these proceedings, the culprit is staring at the Applicants in the mirror.”).

⁴¹ Initial Comments of Carbon Solutions Group, LLC at 3 (Nov. 18, 2021) (“The premise underlying *Koda* is that deliverability cannot be directly observed, but it may be inferred by power flow studies. (CSG does not necessarily agree with this premise, but the Commission may accept it for now.)”); *id.* at 3, fn.4 (“At a hearing, CSG would present evidence demonstrating the shortcomings of *Koda* and alternative approaches to more accurately determine physical deliverability. For present purposes, these comments will focus on Staff’s flawed attempt to apply *Koda*.”); *id.* at 8 (“Questions about the validity of the data Staff relied on can be left for another day.”); Reply Comments of Carbon Solutions Group, LLC at 3 (Dec. 8, 2021) (“The Commission may deny the applications based solely on the Staff Reports, but it cannot grant the applications over CSG’s unheard objections. ‘Comments’ are not a substitute for CSG’s right to present evidence or cross examine the Applicant’s evidence.”); *id.* at 6 (“If the Commission wants to get to the bottom of whether the Applicants’ generation is deliverable into Ohio, it should schedule a hearing.”).

and filing procedurally improper filings. The Applicants have not delayed these proceedings by opposing CSG's extralegal attacks and defending their Applications. The Applicants have the right to do so. And given that CSG now admits to having no interest in these proceedings, CSG should not be afforded any further participation.

III. CONCLUSION

The Applicants have met their burden to demonstrate that the facilities in each of the Avangrid Renewables REN Cases qualifies for REN certification pursuant to R.C. 4928.64(B)(3) and Ohio Adm.Code 4901:1-40-01(F) and 4901:1-40-04. The DFAX studies performed by PJM at the Applicants request, the Staff Reports, and the initial and reply comments filed by the Applicants, Blue Delta, 3Degrees, Vistra Corp., and Commission Staff all demonstrate why the Staff's application of the *Koda* Test properly demonstrates physical deliverability pursuant to Ohio Adm.Code 4901:1-40-01(F). CSG, in failing to respond to discovery requests, has disavowed any interest in this case, and should, therefore, not be afforded further participation.

Additionally, CSG's procedurally improper "Memorandum Contra" is nothing but a desperate attempt to circumvent the Commission's procedural schedule in order to try and correct its fatal error with sur-reply comments. The Commission should not allow CSG to do so. CSG's "Memorandum Contra" should be rejected, its intervention denied, and its pleadings stricken from the record.

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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 December 23, 2021 upon the parties listed below.

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REN, 21-0544-EL-REN**

Summary: Reply BY APPLICANTS MORAINÉ 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 Buffalo Ridge
II LLC and Elm Creek Wind II LLC and Barton Windpower LLC and Rugby Wind
LLC