

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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
	)	
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 II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility.	)	Case No. 21-532-EL-REN
	)	
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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**MOTION TO COMPEL RESPONSES TO DISCOVERY  
BY  
APPLICANTS MORAINE WIND LLC, RUGBY WIND LLC,  
ELM CREEK WIND II LLC, BUFFALO RIDGE II LLC,  
BARTON WINDPOWER LLC, AND AVANGRID RENEWABLES, LLC**

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Avangrid Renewables, LLC (Avangrid Renewables) and its wholly-owned subsidiaries, Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Barton Windpower 1, and Buffalo Ridge II Wind LLC (collectively, the Applicants) submitted applications for certification as renewable energy (REN) resource generating facilities in the above-captioned cases

(collectively, Avangrid Renewables REN Cases).<sup>1</sup> As stated by the Review and Recommendation filed by Commission Staff in each of the Avangrid Renewables REN Cases, each of the facilities satisfies the renewable energy resource, placed-in-service, and deliverability requirements for certification.<sup>2</sup> As such, Commission Staff recommended approval of each REN certification application.<sup>3</sup> However, Carbon Solutions Group, LLC (CSG) seeks to delay the issuance of REN certifications to qualifying resources to serve its own business interests. To stop the Applicants from obtaining certification in order to manipulate the renewable energy credit (REC) market, CSG sought intervention, stating that its interest is in “the value of RECs to renewable generators located in Ohio and PJM.”<sup>4</sup>

Throughout these proceedings, CSG has failed to present any evidence that any of the facilities does not satisfy the three statutory requirements to receive REN certification. Nor does CSG even attempt to articulate any sort of alternative to the Commission’s deliverability test, first

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<sup>1</sup> 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).

<sup>2</sup> 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).

<sup>3</sup> *Id.*

<sup>4</sup> See Motion to Intervene, Consolidate, and Establish a Procedural Schedule of Carbon Solutions Group, LLC at 5 (May 7, 2021).



established in *In the Matter of Koda Energy LLC* (the *Koda Test*).<sup>5</sup> CSG claims it will present evidence at some indeterminate point in the future, but refuses to identify what that evidence is or provide that evidence in discovery even though CSG is required to do so.

Instead, it has become abundantly clear that CSG's only real goal in this case is to manipulate the market by stopping certification approvals. CSG and its clients benefit at the expense of Ohio consumers for each day that CSG is able to stall and delay REN certification approvals in these proceedings.<sup>6</sup> CSG, and its counsel, appear to have no alternative standard or test, no plausible legal arguments, and no evidence to support its position.

Thus, in order to facilitate a just and expeditious resolution of the above-captioned proceedings, on November 11, 2021, the Applicants issued their First Set of Discovery (Discovery Requests) to CSG.<sup>7</sup> CSG failed to provide any substantive responses, or any legally valid objections. When asked to supplement their responses pursuant to Ohio law and Commission regulations, CSG improperly refused to do so. CSG continues to attempt to delay the inevitable by refusing, without any legal basis, to participate in any form of discovery. In response to one attempt to resolve the discovery dispute, CSG's counsel simply responded: "I refer you to the Law of Holes: When you're in one, stop digging."<sup>8</sup>

R.C. 4903.082 provides "[a]ll parties and intervenors" with "ample rights of discovery" and directs the Commission to ensure that parties are allowed "full and reasonable discovery"

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<sup>5</sup> *In the Matter of the Application of Koda Energy LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-0555-EL-REN (*Koda*), Finding and Order (Mar. 23, 2011). CSG's Motion incorrectly identifies *Koda* as Case No. 05-0555-EL-REN.

<sup>6</sup> 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 at 17-18 (Nov. 18, 2021); Comments of Blue Delta Energy, LLC at 12-16 (Nov. 18, 2021).

<sup>7</sup> See Affidavit of Angela Paul Whitfield in Support of Motion to Compel Responses to Discovery (Whitfield Affid.), attached hereto as Exhibit 1; see also Attachment A to Whitfield Affid., Discovery Requests.

<sup>8</sup> See Attachment F to Whitfield Affid., CSG's January 3, 2022 Reply Email to Second Discovery Deficiency Letter.

under its rules. Discovery rights have been liberally construed to allow for broad discovery of any unprivileged matter relevant to the subject matter of the pending proceeding.<sup>9</sup>

Ohio Adm.Code 4901-1-23 authorizes the Commission to compel a party to respond to discovery requests when the party has failed to do so upon a motion to compel of the requesting party. An evasive or incomplete answer is treated as a failure to answer.<sup>10</sup> A motion to compel is to be accompanied by a memorandum in support setting forth the basis of the motion and authorities relied upon, a brief explanation of how the information sought is relevant, and responses to objections raised by the party from whom the discovery is sought.<sup>11</sup> Copies of the discovery requests and the responses are to be attached.<sup>12</sup> Finally, Ohio Adm.Code 4901-1-23(C) also requires the party seeking discovery to file an affidavit explaining how it has exhausted all other reasonable means of resolving the differences with the party from whom the discovery is sought.

The Applicants have detailed in the attached affidavit, consistent with Ohio Adm.Code 4901-1-23(C)(3), the efforts undertaken to resolve this discovery dispute.<sup>13</sup> At this point, it is abundantly clear that CSG will not respond sufficiently and completely to the Applicants' valid discovery requests without being compelled to do so.

Therefore, the Applicants respectfully request that the Commission grant their Motion to Compel Responses to Discovery and issue an order directing CSG to respond to Applicants' discovery requests.

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<sup>9</sup> *Ohio Consumers' Counsel v. Pub. Util. Comm.* (2006), 111 Ohio St.3d 300, ¶83, citing to *Moskovitz v. Mt. Sinai Med. Ctr.* (1994), 69 Ohio St.3d 638, 661; *Disciplinary Counsel v. O'Neill* (1996), 75 Ohio St. 3d 1479.

<sup>10</sup> Ohio Adm.Code 4901-1-23(B).

<sup>11</sup> See Ohio Adm.Code 4901-1-23(C)(1).

<sup>12</sup> Ohio Adm.Code 4901-1-23(C)(2).

<sup>13</sup> See Exhibit 1, Whitfield Affid.

For the reasons set forth in the attached Memorandum in Support, the Applicants respectfully request that the Commission grant this Motion to Compel.

Respectfully Submitted,

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**MEMORANDUM IN SUPPORT**

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**I. INTRODUCTION**

Throughout the pendency of these proceedings, CSG has improperly sought to delay the certification of the Avangrid Renewables REN facilities in an effort to undermine fair competition, artificially limit the market, and increase the price of RECs for its own benefit. CSG has done everything in its power to delay these cases—and now it refuses to provide any evidence to support its arguments. This is true despite the fact that CSG admitted in a pleading that it had such

evidence.<sup>14</sup> For example, CSG opposed holding a bifurcated hearing on the issue of the *Koda* Test, arguing that the “Applicants are not entitled to a ruling *before any comments are filed or evidence presented*.”<sup>15</sup> The Commission subsequently gave parties the opportunities to file comments and present evidence, and CSG refused to present any.

Rather than attempt to contest the data submitted by Staff and the Applicants, CSG claims that “[questions] about the validity of the data Staff relied on can be left for another day.”<sup>16</sup> Instead of presenting an alternative to the *Koda* Test’s use of power flow studies, CSG just generously stated that it “does not necessarily agree with this premise, but the Commission may accept it for now.”<sup>17</sup> Rather than presenting any evidence, CSG simply stated it would do so at a later, indeterminate date,<sup>18</sup> and that “CSG is confident that at a hearing” PJM would present hypothetical evidence supporting CSG’s claims,<sup>19</sup> despite the fact that these claims blatantly contradict the actual process.<sup>20</sup> And finally, when the Applicants supplied a comprehensive Expert Report supporting the continued use of the *Koda* Test, CSG nonsensically argued that the evidence is “simultaneously too late and too early for the Commission to consider.”<sup>21</sup> Simply put, CSG seems to argue that the proper time to present evidence in these cases is never. CSG seems to be aware

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<sup>14</sup> Initial Comments of Carbon Solutions Group, LLC at 3, fn.4 (Nov. 18, 2021) (“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.”).

<sup>15</sup> See Memorandum Contra Amended Joint Motion to Consolidate and Memorandum Contra Joint Motion for Leave to File Memorandum Contra CSG’s Motion to Intervene at 9 (Aug. 23, 2021) (emphasis original).

<sup>16</sup> Initial Comments of Carbon Solutions Group, LLC at 8 (Nov. 18, 2021).

<sup>17</sup> *Id.* at 3.

<sup>18</sup> *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.”).

<sup>19</sup> *Id.* at 8.

<sup>20</sup> See Reply Comments of Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek II LLC, Buffalo Ridge II LLC, Barton Windpower LLC, and Avangrid Renewables, LLC at Part II.C. (Dec. 8, 2021).

<sup>21</sup> Reply Comments of Carbon Solutions Group, LLC at 4 (Dec. 8, 2021).

that once discovery is complete, it will be clear that no genuine issue of material fact will remain in these proceedings at all.

CSG's latest and lowest delaying tactic is a blatant, improper, and unlawful refusal to participate in any sort of discovery, which is permissible under Ohio law and the Commission's rules. On November 11, 2021, the Applicants served CSG with their First Set of Discovery.<sup>22</sup> The Applicants requested a variety of relevant and discoverable information, including: (i) information regarding CSG's business interests in the REC market; (ii) information supporting CSG's claim that energy is not deliverable between MISO and PJM; (iii) information supporting CSG's claim that "the output of a power flow study is heavily influenced by the inputs;"<sup>23</sup> (iv) information regarding CSG's description of a "contract path" for electricity; (v) information regarding the effect of REC prices on resource development; and (vi) any charts, data, or analysis that CSG relied on in making its claims to the Commission in the case.

CSG refused to provide any of this information or to present a lawful reason for objecting. Instead, CSG responded to each and every interrogatory and request for production with the same 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.<sup>24</sup>

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<sup>22</sup> See Attachment A to Whitfield Affid., Applicants' First Set of Discovery to CSG ("Discovery Requests").

<sup>23</sup> See Motion to Intervene, Consolidate, and Establish a Procedural Schedule of Carbon Solutions Group, LLC at 4 (May 7, 2021).

<sup>24</sup> See Attachment B to Whitfield Affid., CSG's Objections to Applicants' Discovery Requests.

As a result of CSG's failure to respond substantively, the Applicants sent a discovery deficiency letter to CSG seeking to resolve the discovery dispute.<sup>25</sup> The discovery deficiency letter explained that these objections are legally and factually incorrect, and requested that CSG properly supplement its responses pursuant to Ohio law and Commission regulations. CSG refused. In a reply email, CSG's counsel asserted (incorrectly) that discovery could not proceed until a hearing was scheduled.<sup>26</sup> The Applicants attempted yet again to resolve this ongoing dispute by sending a second discovery deficiency letter, explaining that if CSG would not work with the Applicants, they would be forced to file this Motion to Compel Discovery.<sup>27</sup> CSG's counsel did not substantively respond to this letter. Instead, he sent an unprofessional, one-sentence email refusing to cooperate in any way: "I refer you to the Law of Holes: When you're in one, stop digging."<sup>28</sup>

Given CSG's misconduct in discovery, this Motion to Compel is necessary. Ohio Adm.Code 4901-1-23 allows a party to move for an order compelling discovery with respect to a failure to answer an interrogatory or a failure to produce a requested document.<sup>29</sup>

## **II. LAW AND ARGUMENT**

### **A. The Applicants are entitled to discovery of the requested information.**

The Applicants have requested discoverable information from CSG to which they have a right. Ohio law and Commission regulations convey broad rights of discovery. The Ohio Revised Code maintains that all "intervenors shall be granted ample rights of discovery."<sup>30</sup> According to Ohio Adm.Code 4901-1-16(A), the purpose of discovery "is to encourage the prompt and

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<sup>25</sup> See Attachment C to Whitfield Affid., December 21, 2021 Discovery Deficiency Letter.

<sup>26</sup> See Attachment D to Whitfield Affid., CSG's December 22, 2021 Reply Email to Discovery Deficiency Letter.

<sup>27</sup> See Attachment E to Whitfield Affid., January 3, 2022 Second Discovery Deficiency Letter.

<sup>28</sup> See Attachment F to Whitfield Affid., CSG's January 3, 2022 Reply Email to Second Discovery Deficiency Letter.

<sup>29</sup> Ohio Adm.Code 4901-1-23(A)(1), (2).

<sup>30</sup> R.C. 4903.082.



expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings.”

The Commission has previously ruled that “the policy of discovery is to allow the parties to prepare cases and to encourage them to prepare thoroughly without taking undue advantage of the other side’s industry or efforts.”<sup>31</sup> As such, the relevant discovery rules “do not create an additional field of combat to delay trials or to appropriate the Commission’s time and resources; they are designed to confine discovery procedures to counsel and to expedite the administration of the Commission proceedings.”<sup>32</sup> Accordingly, discovery may begin immediately after a proceeding is commenced and is to be completed as expeditiously as possible.<sup>33</sup> These rules are also designed to “minimize Commission intervention in the discovery process.”<sup>34</sup>

Any party to a proceeding “may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.”<sup>35</sup> Relevant information is discoverable if it is reasonably calculated to lead to the discovery of admissible evidence. Pursuant to Ohio Adm.Code 4901-1-16, the Applicants have requested non-privileged information relevant to the subject matter of this proceeding.<sup>36</sup>

First, the Applicants requested information relevant to CSG’s purported interest in these proceedings. CSG seeks to intervene in this case, which, pursuant to R.C. 4903.221, Ohio Adm.Code 4901-1-11, and Ohio Adm.Code 4901:1-40-04, requires that CSG demonstrate a direct,

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<sup>31</sup> *In the Matter of the Investigation into the Perry Nuclear Power Plant*, Case No. 85-521-EL-COI, Entry at 23 (Mar. 17, 1987).

<sup>32</sup> *Id.*, citing *Penn Central Transportation Co. v. Armco Steel Corp.* (C.P. 1971), 27 Ohio Misc. 76.

<sup>33</sup> Ohio Adm.Code 4901-1-17(A).

<sup>34</sup> Ohio Adm.Code 4901-1-16(A).

<sup>35</sup> Ohio Adm.Code 4901-1-16(B).

<sup>36</sup> *See also* Ohio Adm.Code 4901-1-23(C)(1)(b) (The memorandum in support shall set forth “[a] brief explanation of how the information sought is relevant to the pending proceeding.”).

real, and substantial interest in this case.<sup>37</sup> 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.”<sup>38</sup> As it pertains to CSG’s intervention and participation in this case, CSG’s interest is directly relevant to these proceedings.

This information is also relevant to CSG’s ulterior motives in this case. It has become abundantly clear that CSG seeks to block or delay approvals of the present REN certification cases for the purpose of manipulating the REC market for its own benefit. Information regarding CSG’s business interests demonstrates that CSG’s arguments in this case are not aimed at developing a reasonable, equitable standard. Instead, CSG seeks to implement a self-serving standard that will limit entry into the Ohio REC market to the benefit of CSG and its clients, or at the very least, to stall certification of additional REN facilities to drive up the price of existing RECs. The bad-faith motives underlying CSG’s pleadings are relevant to demonstrating that CSG’s arguments are not reasonable or workable, and should be disregarded.

Second, the Applicants requested information relevant to proving or disproving CSG’s various claims. CSG has raised a number of arguments regarding the *Koda* Test,<sup>39</sup> power flow

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<sup>37</sup> 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...”).

<sup>38</sup> 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). The Commission has not yet ruled on this Motion to Intervene.

<sup>39</sup> See Initial Comments of Carbon Solutions Group, LLC at 2 (Nov. 18, 2021) (“Staff only looked at PJM power flow data within Ohio, without considering how the generation behind these power flows would or could get to Ohio in the first place.”); Reply Comments of Carbon Solutions Group, LLC at 7 (Dec. 8, 2021) (“Staff’s deliverability determination is not based on actual power flows modeled by the two RTOs.”).

studies,<sup>40</sup> the REN certification process,<sup>41</sup> and the basic structure and operation of the electric grid.<sup>42</sup> Many of these statements contradict information contained in the Staff Review and Recommendation filed in each of the Avangrid Renewables REN cases, the Expert Report sponsored by the Applicants, and other sources. However, CSG declined, repeatedly, to present any data, analysis, documents, or other information supporting its claims.<sup>43</sup> In order to address the validity of these arguments, the Applicants, and the Commission, need to be able to review whatever supporting documentation, if any, that CSG possesses. As such, the Discovery Requests included interrogatories and requests for production of documents seeking the factual basis for a number of these claims. The requested information is relevant to assessing whatever merit, if any, supports CSG's dubious arguments.

This information, therefore, is relevant to CSG's participation and arguments in the above-captioned proceedings. Additionally, none of the information requested by the Applicants is privileged. CSG acknowledged as much and waived such argument when it failed to raise any

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<sup>40</sup> See Motion to Intervene, Consolidate, and Establish a Procedural Schedule of Carbon Solutions Group, LLC at 4 (May 7, 2021) ("CSG is prepared to show that, like any modelling technique, the output of a power flow study is heavily influenced by the inputs. By massaging the inputs, an applicant can produce a study showing that renewable energy generated just about anywhere is 'deliverable into this state.' These flawed power flow studies render the 'deliverability' requirement meaningless.").

<sup>41</sup> See Initial Comments of Carbon Solutions Group, LLC at 8 (Nov. 18, 2021) ("CSG is confident that at a hearing, PJM would testify that it performed these "studies" as a courtesy to Staff, and not because they demonstrate anything of relevance to PJM—including whether the power flows it modelled are deliverable into PJM.").

<sup>42</sup> See Motion to Intervene, Consolidate, and Establish a Procedural Schedule of Carbon Solutions Group, LLC at 4 (May 7, 2021) ("Load centers within PJM do not contract for renewable resources generated outside the PJM region because of line losses, transmission costs, and a host of other factors."); Initial Comments of Carbon Solutions Group, LLC at 9 (Nov. 18, 2021) ("Staff's discussion begins with a failure to acknowledge that the applicants' 'grid-connected' facilities are connected to a different grid."); *id.* ("The facilities are connected to MISO but nothing is known about the transmission path—if there is one—from these facilities to an interconnection with PJM.").

<sup>43</sup> See Initial Comments of Carbon Solutions Group, LLC at 3, fn.4 (Nov. 18, 2021) ("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) ("Comments' are not a substitute for CSG's right to present evidence or cross examine the Applicant's evidence.").

privilege objections when responding to the Applicants' Discovery Requests.<sup>44</sup> Since the information is relevant, and non-privileged, and the discovery time period has begun, the Applicants are entitled to the information sought in their Discovery Requests pursuant to Ohio Adm.Code 4901-1-16, 4901-1-17, and 4901-1-23.

**B. CSG's objections lack any factual or legal basis.**

While the Applicants have presented the legal and factual grounds supporting their right to the requested information, CSG has utterly failed to back up its objections to the Discovery Requests with any legal or factual support. As mentioned above, CSG responded to each and every interrogatory and request for production with two, and only 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.<sup>45</sup>

Both of these objections are legally incorrect. Objection No. 1 asserts that a scheduled hearing is required for discovery to proceed. This is simply incorrect. According to Ohio Adm.Code 4901-1-16(A), the purpose of discovery "is to encourage the prompt and expeditious use of prehearing discovery in order to facilitate thorough and adequate preparation for participation in commission proceedings." Ohio Adm.Code 4901-1-17(A) allows discovery to begin immediately after a proceeding is commenced and to be completed expeditiously as

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<sup>44</sup> See Attachment B to Whitfield Affid., CSG's Objections to Applicants' Discovery Requests. CSG only raised the two, previously-mentioned objections of relevancy and timeliness.

<sup>45</sup> See Attachment B to Whitfield Affid., CSG's Objections to Applicants' Discovery Requests.

possible. Discovery rights are generally broad, as the Ohio Revised Code maintains that all “intervenors shall be granted ample rights of discovery.”<sup>46</sup>

As such, the Commission routinely affords parties full discovery rights, even in proceedings without scheduled hearings.<sup>47</sup> In fact, the Commission has recently rejected this exact same argument. In that proceeding, the Attorney Examiner granted a motion to compel discovery over the objections of a utility which argued that the Commission had not yet determined “whether there might be a hearing or not.”<sup>48</sup>

CSG’s second objection is legally incorrect as well. Any party to a proceeding “may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.”<sup>49</sup> Relevant information is discoverable if it is reasonably calculated to lead to the discovery of admissible evidence. Although CSG now attempts to argue that information regarding its business interests is irrelevant, CSG has previously argued that those interests *are* relevant to these proceedings. CSG simply attempts to argue whatever suits it at the time. Previously, CSG has 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

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<sup>46</sup> See R.C. 4903.082.

<sup>47</sup> See, e.g., *In the Matter of the Commission’s Investigation into PALMco Power OH, LLC DBA Indra Energy and PALMco Energy OH, LLC DBA Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI Entry at ¶ 15 (Mar. 9, 2020) (scheduling a discovery conference in a Commission investigation prior to granting any stakeholder intervention or determining that a hearing would be held); *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Service Supplier*, Case Nos. 11-5886-EL-CRS, et al., Entry at ¶ 11 (Mar. 3, 2020) (establishing a deadline to respond to discovery requests in a Commission investigation before granting any stakeholder intervention or determining that a hearing would be held).

<sup>48</sup> See *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 17-2474-EL-RDR, Transcript at 18, 24 (Apr. 19, 2021).

<sup>49</sup> Ohio Adm.Code 4901-1-16(B).

financing of renewable generation resources.”<sup>50</sup> CSG also has stated that it initially “got involved in these proceedings” because “in recent years, the Commission has approved more applications by generators in non-contiguous states than it has denied.”<sup>51</sup> Given that CSG now refuses to respond to discovery regarding these exact issues, it is apparent that CSG’s underlying motive can only be an attempt to delay and restrict the creation of new qualifying resources that can become certified to generate Ohio RECs. This motive is directly relevant to the disposition of these proceedings.

Additionally, as discussed above, the information requested by the Applicants in their Discovery Requests is not privileged. CSG has failed to raise this objection, or any other objections, when responding to the Applicants’ Discovery Requests,<sup>52</sup> or its subsequent correspondence with the Applicants. In fact, in its Objections to Applicants’ Discovery Requests, CSG does not provide *any* citation to Ohio law, Commission regulations, or past precedent, to support its arguments.<sup>53</sup> CSG does not provide any additional citations or arguments in its first Reply Email, instead attempting, unsuccessfully, to shift the blame for its own stalling to the Applicants.<sup>54</sup> CSG’s second Reply Email contains no effort to address the issue at all.<sup>55</sup> Despite CSG’s utter refusal to participate in discovery, it has yet to provide a single shred of legal support for its objections in the docket. As such, the Applicants have a right to the requested information through properly issued discovery.

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<sup>50</sup> 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).

<sup>51</sup> Reply Comments of Carbon Solutions Group, LLC, at 9 (Dec. 8, 2021).

<sup>52</sup> See Attachment B to Whitfield Affid., CSG’s Objections to Applicants’ Discovery Requests. CSG only raised the two, previously-mentioned objections of relevancy and timeliness.

<sup>53</sup> See Attachment B to Whitfield Affid., CSG’s Objections to Applicants’ Discovery Requests.

<sup>54</sup> See Attachment D to Whitfield Affid., CSG’s December 22, 2021 Reply Email to Discovery Deficiency Letter.

<sup>55</sup> See Attachment F to Whitfield Affid., CSG’s January 3, 2022 Reply Email to Second Discovery Deficiency Letter.

**C. The Applicants have exhausted all other reasonable means of resolving this dispute.**

Pursuant to Ohio Adm.Code 4901-1-23(C), there clearly are no reasonable means of resolving this discovery dispute absent Commission intervention. As outlined in the attached Affidavit,<sup>56</sup> the Applicants submitted their Discovery Requests to CSG. In turn, CSG refused to provide any of the requested information. Instead, CSG responded to each and every interrogatory and request for production with two objections, both lacking any citation to applicable law, regulations, or precedent.<sup>57</sup>

The Applicants first attempted to resolve the dispute by sending a discovery deficiency letter to CSG, which explained the legal grounds for the Applicants' Discovery Requests, as well as citations to the law, regulations, and Commission precedent contravening CSG's unsupported objections.<sup>58</sup> CSG replied by sending a brief email, which once again lacked any citation to relevant authority.<sup>59</sup> The Applicants further attempted to resolve this ongoing dispute by sending a second discovery deficiency letter.<sup>60</sup> Again, this letter contained citations to relevant authority supporting the Applicants' Discovery Requests and their responses to CSG's objections, and explaining that the Applicants would otherwise be forced to file this Motion.<sup>61</sup> In response, CSG simply sent a brief email, refusing to engage further and containing a veiled insult to the Applicants.<sup>62</sup>

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<sup>56</sup> See Exhibit 1, Whitfield Affid., including Attachments A-F thereto.

<sup>57</sup> See Attachment B to Whitfield Affid., CSG's Objections to Applicants' Discovery Requests.

<sup>58</sup> See Attachment C to Whitfield Affid., December 21, 2021 Discovery Deficiency Letter.

<sup>59</sup> See Attachment D to Whitfield Affid., CSG's December 22, 2021 Reply Email to Discovery Deficiency Letter.

<sup>60</sup> See Attachment E to Whitfield Affid., January 3, 2022 Second Discovery Deficiency Letter.

<sup>61</sup> *Id.*

<sup>62</sup> See Attachment F to Whitfield Affid., CSG'S January 3, 2022 Reply Email to Second Discovery Deficiency Letter.

It is clear that no reasonable grounds of resolving this dispute exist absent Commission intervention. CSG's counsel continues to delay and stall by refusing to cooperate with basic Discovery Requests. The Applicants cannot resolve this dispute without an order from the Commission because CSG and/or CSG's counsel refuses to listen to reason or comply with legal authority, and does not provide any legal basis for the refusal to do so. This behavior is consistent with CSG's habit of raising baseless and unsupported arguments and accusations throughout the pendency of these proceedings.

### **III. CONCLUSION**

The Applicants, under Ohio law and Commission regulations, have a right to discover the information requested in their Discovery Requests. The requested information is relevant to the pending proceedings.<sup>63</sup> CSG has failed to raise any legally sound objections to the Discovery Requests,<sup>64</sup> and no reasonable means of resolving this dispute remain.<sup>65</sup> As such, the Applicants respectfully request that the Commission grant this Motion to Compel Responses to Discovery.

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<sup>63</sup> See Ohio Adm.Code 4901-1-23(C)(1)(a), (b).

<sup>64</sup> See Ohio Adm.Code 4901-1-23(C)(1)(c).

<sup>65</sup> See Ohio Adm.Code 4901-1-23(C).



Respectfully Submitted,

/s/ Angela Paul Whitfield

Angela Paul Whitfield (0069402)

Thomas V. Donadio (0100027)

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(willing to accept service by email)

*Counsel for Applicants Moraine Wind LLC, Rugby  
Wind LLC, Elm Creek Wind II LLC, Buffalo Ridge II  
LLC, Barton Windpower LLC, and Avangrid  
Renewables, 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 February 1, 2022 upon the parties listed below.

*/s/ Angela Paul Whitfield*

Angela Paul Whitfield (0069402)

*Counsel for Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Buffalo Ridge II Wind LLC, and Avangrid Renewables, LLC*

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**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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
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 II for Certification as ) an Eligible Ohio Renewable Energy ) Resource Generating Facility. ) )	Case No. 21-532-EL-REN
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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**AFFIDAVIT OF ANGELA PAUL WHITFIELD IN SUPPORT OF MOTION TO  
COMPEL RESPONSES TO DISCOVERY**

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I, Angela Paul Whitfield, attorney for Avangrid Renewables, LLC (Avangrid Renewables) and its wholly-owned subsidiaries, Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Barton Windpower 1, and Buffalo Ridge II Wind LLC (collectively, the Applicants) in the above-captioned cases, being first duly sworn, depose and state that, based on knowledge and information, the following efforts have been made to resolve the discovery dispute with Carbon Solutions Group, LLC (CSG):

1. On November 11, 2021, the Applicants issued their First Set of Discovery (Discovery Requests) to CSG pursuant to Ohio Adm.Code 4901-1-16, 4901-1-17, 4901-1-19, 4901-1-20, and 4901-1-22. A true and correct copy of those Discovery Requests is attached hereto as Attachment A.

2. Under Ohio Adm. Code 4901-1-19(A), 4901-1-20(C), and 4901-1-22(B), CSG's responses to the Applicants' Discovery Requests were due December 1, 2021.

3. On December 1, 2021, CSG served its Objections and Responses to Discovery on the Applicants. A true and correct copy of CSG's Objections and Responses to Discovery is attached hereto as Attachment B.

4. CSG did not substantively respond to any of the Interrogatories or Requests for Production of Documents contained with the Discovery Requests. Instead, CSG replied to each Interrogatory and Request for Production of Documents with two objections. CSG asserted that discovery is premature, as a hearing has not yet been scheduled, and that CSG's business operations are irrelevant to these proceedings. CSG did not provide legal authority to support either assertion.

5. As a result of CSG's failure to comply with the discovery rules, the Applicants responded by sending a discovery deficiency letter to CSG. A true and correct copy of my letter to CSG's counsel, Mark Whitt, dated December 21, 2021 is attached hereto as Attachment C. The discovery deficiency letter explained that these objections are legally and factually incorrect, and requested that CSG properly supplement its responses pursuant to Ohio law and Commission regulations.

6. CSG replied, via email, to the first discovery deficiency letter, reiterating the same objections, and again failing to provide any relevant legal authority. A true and correct copy of

CSG's counsel, Mark Whitt's email to me dated December 22, 2021 is attached hereto as Attachment D.

7. In one final attempt to resolve this discovery dispute short of motion and Commission intervention, on January 3, 2022, the Applicants sent a second discovery deficiency letter, again containing citations to relevant authority supporting the Applicants' Discovery Requests and their responses to CSG's objections. A true and correct copy of my January 3, 2022 letter to Mr. Whitt is attached hereto as Attachment E. The second discovery deficiency letter also explained that if CSG did not cooperate with discovery, the Applicants would be forced to file a motion to compel pursuant to Ohio Adm.Code 4901-1-23.

8. In response, CSG's counsel simply sent a brief, flippant email, refusing to engage further and failing to address the discovery dispute. A true and correct copy of Mr. Whitt's January 3, 2022 email to me is attached hereto as Attachment F.

9. As set forth above, despite the Applicants' reasonable efforts to resolve this discovery dispute, resolution cannot be achieved without the Commission's intervention.

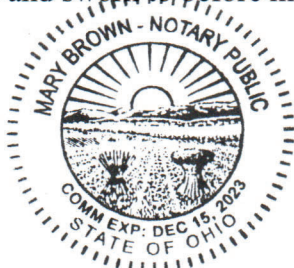
FURTHER AFFIANT SAYETH NAUGHT.


  
\_\_\_\_\_  
Angela Paul Whitfield

STATE OF OHIO            )  
                                      ) SS:  
COUNTY OF FRANKLIN )

The undersigned, being of lawful age and duly sworn on oath, hereby certifies, deposes and state the following:

Subscribed and sworn to, before me this 25<sup>th</sup> day of January 2022.



  
\_\_\_\_\_  
Notary Public



**BEFORE****THE PUBLIC UTILITIES COMMISSION OF OHIO**

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
	)	
	)	
	)	
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 II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility.	)	Case No. 21-532-EL-REN
	)	
	)	
	)	
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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**FIRST SET OF DISCOVERY  
PROPOUNDED UPON CARBON SOLUTIONS GROUP, LLC  
BY MORaine WIND LLC, RUGBY WIND LLC,  
ELM CREEK WIND II LLC, BUFFALO RIDGE II LLC,  
BARTON WINDPOWER LLC, AND AVANGRID RENEWABLES, LLC**

**November 11, 2021**

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Applicant Avangrid Renewables, LLC (Avangrid Renewables), and its wholly-owned subsidiaries, Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind II LLC, Buffalo Ridge II LLC, and Barton Windpower LLC (collectively, the Applicants) submit the following

First Set of Interrogatories, Requests for Production of Documents, and Requests for Admission pursuant to Ohio Adm. Code 4901-1-16, 4901-1-17, 4901-1-18, and 4901-1-20 for response from Carbon Solutions Group, LLC (CSG). All responses should be sent to:

Angela Paul Whitfield (0069402)  
Thomas V. Donadio (0100027)  
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280 North High St.  
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(willing to accept service by email)

*Counsel for Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind II LLC, Buffalo Ridge II LLC, Barton WindPower LLC, and Avangrid Renewables, LLC*

CSG must follow the instructions provided below in responding to these discovery requests. Responses to these requests must be supplemented in accordance with Ohio Adm. Code 4901-1-16.

### **DEFINITIONS**

1. “Communication” and “Communicate” are used herein in their broadest possible sense and shall mean any occurrence in which information is transmitted or relayed between persons by means of an oral, graphic, pictorial, or written statement, including, without limitation, any meeting, conversation, correspondence, letter, memoranda, discussion, negotiation, telephone conversation, voicemail message, electronic mail message, proposal, or presentation, in whatever form.

2. “CSG” means Carbon Solutions Group, LLC and its officers, directors, agents, employees, and any others acting on its behalf.

3. “Document” or “Documentation” are used herein in their broadest possible sense and mean any information memorialized or recorded in any way, upon any medium, however stored, including, but not limited to, bills, correspondence, electronic mail, memoranda, notes, writings, meeting minutes, notebooks, diaries, calendars, agreements, reports, analyses, spreadsheets, worksheets, work papers, presentations, slides, graphs, charts, and drafts of any of the foregoing, computer files, audio recordings, and photographs, or other data compilations, in whatever form.

4. “Identify” means:

a. When used in reference to an individual, to state the full name, the present or last-known address, phone number, and the present or last-known employer or business affiliation of the person;



b. When used in reference to an entity, department, or division, to state the full name of the entity, department, or division, the present or last-known address and phone number of the entity, department, or division, and to identify the individual(s) who represents such entity, department, and division, in connection with the above-captioned proceeding;

c. When used in reference to a Document, to state the date, author, addressor, addressee, type of Document, title, if any, or some other means of identifying the Document, a general description of its subject matter, and its present or last known location and custodian;

d. When used in reference to a Communication, to state all Persons involved in the communication, the time, date, and location of the Communication, a general description of the subject matter of the Communication, and the nature of the Communication (e.g., telephone, e-mail, in person).

e. When used in reference to an act, to state the time, date, and place of performance of the act, the identity of the actor, a general description of the act, and all other persons present.

5. “Person” includes any firm, corporation, joint venture, association, entity, or group of natural individuals, unless the context clearly indicates that only a natural individual is referred to in the discovery request.

6. “PUCO” or “Commission” means the Public Utilities Commission of Ohio, including its Commissioners, personnel (including Persons working for the PUCO Staff as well as in the Public Utilities Section of the Ohio Attorney General’s Office), and offices.

7. “REC” means all rights, title, and interest in any and all credits, benefits, emission reductions, offsets, and allowances, however titled, resulting from the avoidance of the emission

of any gas, chemical, or other substance attributable to the generation of electricity, associated with energy generated from renewable energy resource generating facilities.

8. “Relates to” and “relating to” are intended to include referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, or constituting.

9. “RPS” means a state’s renewable portfolio standard, such as Ohio’s established pursuant to R.C. 4928.64.

10. “You,” “Your,” and “Yourself” refer to the party requested to produce the documents (“CSG”) and any present or former director, officer, agent, consultant, contractor, advisor, employee, partner, of such party.

### **INSTRUCTIONS**

1. “And” or “Or” shall be construed conjunctively or disjunctively as necessary to make any request inclusive rather than exclusive.

2. Each singular shall be construed to include its plural, and vice versa, so as to make the request inclusive rather than exclusive.

3. Words expressing the past tense shall be deemed to express the present tense and vice versa.

4. All information is to be divulged which is in your possession or control, or within the possession or control of your attorney, agents, or other representatives of yours or your attorney.

5. You are required to choose one or more of Your employees, officers, or agents to respond to the following interrogatories and requests for production, who shall furnish all such information which is known or available to You.

6. If You claim any form of privilege as a ground for not completely answering any interrogatory or request for production of documents, state the nature of the privilege and the general subject of the information withheld.

7. For any Document that You decline to produce because of a claim of privilege or any other reason, provide the date, author, and type of Document, the name of each Person to whom the Document was sent or shown, a summary of the contents of the Document, and a detailed description of the grounds for the claim of privilege or objection to producing the Document. If a claim of privilege is made only to certain portions of a Document, please provide that portion of the Document for which no claim of privilege is made.

8. If any Document responsive to a request for production of documents is no longer in Your possession or control, please state why the Document is no longer in Your possession or control, explain the circumstances surrounding the disposition of the Document, identify the Person responsible for the disposition of the Document, and state whether the Document or copies thereof still exist.

9. Please identify all responses to requests for production of documents by the number of the request.

### **INTERROGATORIES**

INT-01-001: Do You currently own or operate any renewable energy resource generating facilities located in the state of Ohio?

**RESPONSE:**

INT-01-002: If the answer to INT-01-001 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in Ohio?

**RESPONSE:**

INT-01-003: If the answer to INT-01-001 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in other states (please identify the facility and the state(s) for which each such facility is certified)?

**RESPONSE:**

INT-01-004: Do you currently own or operate any renewable energy resource generating facilities located in any states other than Ohio?

**RESPONSE:**

INT-01-005: If the answer to INT-01-004 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in Ohio?

**RESPONSE:**



INT-01-006: If the answer to INT-01-004 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in other states (please identify the facility and the state(s) for which each such facility is certified)?

**RESPONSE:**

INT-01-007: Do You currently have contracts to purchase RECs from any Ohio certified renewable energy resource generating facilities located in the state of Ohio?

**RESPONSE:**

INT-01-008: If the answer to INT-01-007 is affirmative, which Ohio certified renewable energy resource generating facilities located in Ohio do you have REC contracts with?

**RESPONSE:**

INT-01-009: If the answer to INT-01-007 was affirmative, what is the aggregate amount of RECs from Ohio certified facilities located in Ohio that you have agreed to purchase for each year for 2021, 2022, and 2023?

**RESPONSE:**

INT-01-010: Do you currently have contracts to purchase RECs from any renewable energy resource generating facilities certified in Ohio that are located in any states other than Ohio?

**RESPONSE:**

INT-01-011: If the answer to INT-01-010 is affirmative, which Ohio certified renewable energy resource generating facilities located in states other than Ohio do you have REC contracts with?

**RESPONSE:**

INT-01-012: If the answer to INT-01-010 is affirmative, what is the aggregate amount of RECs from Ohio certified facilities not located in Ohio that you have agreed to purchase for each year for 2021, 2022, and 2023?

**RESPONSE:**

INT-01-013: Do you currently have contracts to purchase RECs from any renewable energy resource generating facilities not certified in Ohio that are located in Ohio?

**RESPONSE:**

INT-01-014: If the answer to INT-01-013 is affirmative, which renewable energy resource generating facilities located in Ohio that are not certified in Ohio do you have REC contracts with?

**RESPONSE:**

INT-01-015: If the answer to INT-01-013 is affirmative, what is the aggregate amount of RECs from facilities located in Ohio that are not certified in Ohio that you have agreed to purchase for each year for 2021, 2022, and 2023?

**RESPONSE:**

INT-01-016: When the Toledo Edison, Ohio Edison, and the Cleveland Electric Illuminating Company (collectively, FirstEnergy) and Duke Energy Ohio electric distribution utilities switched their participation in regional transmission organizations and moved from MISO to PJM, was there any change to the grid that resulted in substantially more or less power being physically delivered from PJM to FirstEnergy or Duke Ohio electric distribution utilities?

**RESPONSE:**

INT-01-017: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for the statement: “CSG is prepared to show that, like any modelling technique, the output of a power flow study is heavily influenced by the inputs?”

**RESPONSE:**

INT-01-018: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for the statement: “there is no indication that these facilities have or intend to actually deliver electricity into Ohio?”

**RESPONSE:**

INT-01-019: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for claiming that “‘deliverability’ under R.C. 4928.64 has both a physical and financial dimension?”

**RESPONSE:**

INT-01-020: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, does CSG maintain that the “contract path of electricity” demonstrates actual physical deliverability of that electricity?

**RESPONSE:**

INT-01-021: If the answer to INT-01-020 is affirmative, please explain how the “contract path of electricity” demonstrates actual physical deliverability of that electricity.

**RESPONSE:**

INT-01-022: Referring to page 5 of the Motion to Intervene filed by CSG in the above-captioned cases, which “[load] centers within PJM do not



contract for renewable resources generated outside the PJM?”  
(Please identify with specificity.)

**RESPONSE:**

INT-01-023: Referring to page 5 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for the statement: “[load] centers within PJM do not contract for renewable resources generated outside the PJM?”

**RESPONSE:**

INT-01-024: Are You aware of any new renewable energy resource generating facility projects that have gone into planning, development, or construction in response to the increased price for RECs which would not have gone into development absent the increased price for REC?

**RESPONSE:**

INT-01-025: If the answer to INT-01-024 was affirmative, please identify each such project.

**RESPONSE:**

INT-01-026: If the answer to INT-01-024 was negative, at what cost would you expect the increased price for RECs to begin incentivizing new development?

**RESPONSE:**

INT-01-027: State the names, addresses, telephone numbers, place of employment, and job title of every person whom You have retained to advise You and/or assist with drafting comments in this matter.

**RESPONSE:**

INT-01-028: Identify each expert witness You will call or may call at hearing in relation to this matter and describe each expert's qualifications, the subject matter on which each expert is expected to testify and the substance of the facts and opinions to which each expert is expected to testify, and a summary of each experts' anticipated testimony. To the extent You have not made a final determination as to which witnesses it intends to call to testify on its behalf, please supplement this response when the final determination is made.

**RESPONSE:**

INT-01-029: Identify each Person that You will call or may call as a lay witness at hearing in relation to this matter state the subject matter upon which each such witness is expected to testify, and summarize each such witness's anticipated testimony. To the extent You have not made a final determination as to which witnesses it intends to call to testify on its behalf, please supplement this response when the final determination is made.

**RESPONSE:**

**REQUESTS FOR PRODUCTION OF DOCUMENTS**

RFP-01-001: Please provide copies of all responses to interrogatories, data requests, and documents that CSG has provided or produced to any other party in the above-captioned proceedings.

**RESPONSE:**

RFP-01-002: Please provide copies of all responses to data requests and documents that CSG has provided or produced to Staff in the above-captioned proceedings.

**RESPONSE:**

RFP-01-003: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-017.

**RESPONSE:**

RFP-01-004: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-018.

**RESPONSE:**

RFP-01-005: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-019.

**RESPONSE:**

RFP-01-006: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-020.

**RESPONSE:**

RFP-01-007: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-021.

**RESPONSE:**

RFP-01-008: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-023.

**RESPONSE:**

RFP-01-009: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-027.

**RESPONSE:**

RFP-01-010: Produce and attach all documents you intend to refer to, rely on, or admit as an exhibit at hearing on this matter.

**RESPONSE:**

RFP-01-011: Produce and attach each and every report or other document reviewed or relied upon by the person retained by You listed in response to INT-01-027 related to this proceeding.

**RESPONSE:**

RFP-01-012: Produce and attach each and every report or other document prepared by the person retained by You listed in response to INT-01-027 related to this proceeding.

**RESPONSE:**

RFP-01-013: Produce and attach each and every report or other document reviewed or relied upon when drafting CSG's comments to be filed in this proceeding.

**RESPONSE:**

RFP-01-014: Produce and attach each and every report or other document prepared by the expert listed in response to INT-01-028 relating to any testimony or potential testimony to be submitted in this proceeding.

**RESPONSE:**

RFP-01-015: Produce and attach each and every report or other document reviewed or relied upon by the expert listed in response to INT-01-028 related to any testimony or potential testimony to be submitted in this proceeding.

**RESPONSE:**

RFP-01-016: Produce and attach each and every report or other document prepared by the non-expert listed in response to INT-01-029 relating to any testimony or potential to be submitted in this proceeding.

**RESPONSE:**

RFP-01-017: Produce and attach each and every report or other document reviewed or relied upon by the non-expert listed in response to INT-01-029 related to any testimony or potential testimony to be submitted in this proceeding.

**RESPONSE:**

RFP-01-018: For each Person identified in response to INT-01-027 and INT-01-028, please produce a copy of that Person's resume and/or curriculum vitae and of all articles or other published written documents authored by that Person.

**RESPONSE:**



**REQUESTS FOR ADMISSION**

RFA-01-001: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-516-EL-REN, finding that energy from the Moraine Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:**

RFA-01-002: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-516-EL-REN, recommending approval of the application of Moraine Wind, LLC.

**RESPONSE:**

RFA-01-003: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-517-EL-REN, finding that energy from the Rugby Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:**

RFA-01-004: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-517-EL-REN, recommending approval of the application of Rugby Wind, LLC.

**RESPONSE:**

RFA-01-005: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-531-EL-REN, finding that energy from the Elm Creek II Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:**

RFA-01-006: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-531-EL-REN, recommending approval of the application of Elm Creek II Wind, LLC.

**RESPONSE:**

RFA-01-007: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-532-EL-REN, finding that energy from the Buffalo Ridge II Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:**



RFA-01-008: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-532-EL-REN, recommending approval of the application of Buffalo Ridge II Wind, LLC.

**RESPONSE:**

RFA-01-009: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-544-EL-REN, finding that energy from the Avangrid Renewables, LLC and Barton Windpower, LLC facility is physically deliverable into Ohio.

**RESPONSE:**

RFA-01-010: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-544-EL-REN, recommending approval of the application of Avangrid Renewables, LLC and Barton Windpower, LLC.

**RESPONSE:**

RFA-01-011: Please admit that power placed into the transmission grid operated by MISO is physically deliverable to Ohio.

**RESPONSE:**

RFA-01-012:

Please admit that power placed into the transmission grid operated by PJM is physically deliverable to Ohio.

**RESPONSE:**

/s/ Angela Paul Whitfield

Angela Paul Whitfield (0069402)

Thomas V. Donadio (0100027)

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*Counsel for Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind II LLC, Buffalo Ridge II LLC, Barton WindPower LLC, and Avangrid Renewables, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of the foregoing was served upon the parties of record via electronic mail on November 11, 2021.

/s/ Angela Paul Whitfield  
Angela Paul Whitfield (0069402)

**BEFORE****THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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 II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility. ) Case No. 21-532-EL-REN

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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**RESPONSES AND OBJECTIONS TO FIRST SET OF DISCOVERY  
PROPOUNDED UPON CARBON SOLUTIONS GROUP, LLC  
BY MORaine WIND LLC, RUGBY WIND LLC,  
ELM CREEK WIND II LLC, BUFFALO RIDGE II LLC,  
BARTON WINDPOWER LLC, AND AVANGRID RENEWABLES, LLC**

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## **INTERROGATORIES**

INT-01-001: Do You currently own or operate any renewable energy resource generating facilities located in the state of Ohio?

**RESPONSE:** CSG objects to this interrogatory for the following reasons:

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.

INT-01-002: If the answer to INT-01-001 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in Ohio?

**RESPONSE:** See objections to INT-01-001

INT-01-003: If the answer to INT-01-001 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in other states (please identify the facility and the state(s) for which each such facility is certified)?

**RESPONSE:** See objections to INT-01-001

INT-01-004: Do you currently own or operate any renewable energy resource generating facilities located in any states other than Ohio?

**RESPONSE:** See objections to INT-01-001

INT-01-005: If the answer to INT-01-004 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in Ohio?

**RESPONSE:** See objections to INT-01-001

INT-01-006: If the answer to INT-01-004 is affirmative, which, if any, of these facilities are certified as eligible renewable energy resource generating facilities in other states (please identify the facility and the state(s) for which each such facility is certified)?

**RESPONSE:** See objections to INT-01-001



INT-01-007: Do You currently have contracts to purchase RECs from any Ohio certified renewable energy resource generating facilities located in the state of Ohio?

**RESPONSE:** See objections to INT-01-001

INT-01-008: If the answer to INT-01-007 is affirmative, which Ohio certified renewable energy resource generating facilities located in Ohio do you have REC contracts with?

**RESPONSE:** See objections to INT-01-001

INT-01-009: If the answer to INT-01-007 was affirmative, what is the aggregate amount of RECs from Ohio certified facilities located in Ohio that you have agreed to purchase for each year for 2021, 2022, and 2023?

**RESPONSE:** See objections to INT-01-001

INT-01-010: Do you currently have contracts to purchase RECs from any renewable energy resource generating facilities certified in Ohio that are located in any states other than Ohio?

**RESPONSE:** See objections to INT-01-001

INT-01-011: If the answer to INT-01-010 is affirmative, which Ohio certified renewable energy resource generating facilities located in states other than Ohio do you have REC contracts with?

**RESPONSE:** See objections to INT-01-001

INT-01-012: If the answer to INT-01-010 is affirmative, what is the aggregate amount of RECs from Ohio certified facilities not located in Ohio that you have agreed to purchase for each year for 2021, 2022, and 2023?

**RESPONSE:** See objections to INT-01-001

INT-01-013: Do you currently have contracts to purchase RECs from any renewable energy resource generating facilities not certified in Ohio that are located in Ohio?

**RESPONSE:** See objections to INT-01-001

INT-01-014: If the answer to INT-01-013 is affirmative, which renewable energy resource generating facilities located in Ohio that are not certified in Ohio do you have REC contracts with?

**RESPONSE:** See objections to INT-01-001

INT-01-015: If the answer to INT-01-013 is affirmative, what is the aggregate amount of RECs from facilities located in Ohio that are not certified in Ohio that you have agreed to purchase for each year for 2021, 2022, and 2023?

**RESPONSE:** See objections to INT-01-001

INT-01-016: When the Toledo Edison, Ohio Edison, and the Cleveland Electric Illuminating Company (collectively, FirstEnergy) and Duke Energy Ohio electric distribution utilities switched their participation in regional transmission organizations and moved from MISO to PJM, was there any change to the grid that resulted in substantially more or less power being physically delivered from PJM to FirstEnergy or Duke Ohio electric distribution utilities?

**RESPONSE:** See objections to INT-01-001

INT-01-017: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for the statement: “CSG is prepared to show that, like any modelling technique, the output of a power flow study is heavily influenced by the inputs?”

**RESPONSE:** See objections to INT-01-001

INT-01-018: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for the statement: “there is no indication that these facilities have or intend to actually deliver electricity into Ohio?”

**RESPONSE:** See objections to INT-01-001

INT-01-019: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for claiming that “‘deliverability’ under R.C. 4928.64 has both a physical and financial dimension?”

**RESPONSE:** See objections to INT-01-001

INT-01-020: Referring to page 4 of the Motion to Intervene filed by CSG in the above-captioned cases, does CSG maintain that the “contract path of electricity” demonstrates actual physical deliverability of that electricity?

**RESPONSE:** See objections to INT-01-001

INT-01-021: If the answer to INT-01-020 is affirmative, please explain how the “contract path of electricity” demonstrates actual physical deliverability of that electricity.

**RESPONSE:** See objections to INT-01-001

INT-01-022: Referring to page 5 of the Motion to Intervene filed by CSG in the above-captioned cases, which “[load] centers within PJM do not contract for renewable resources generated outside the PJM?” (Please identify with specificity.)

**RESPONSE:** See objections to INT-01-001

INT-01-023: Referring to page 5 of the Motion to Intervene filed by CSG in the above-captioned cases, what is the factual basis and/or support for the statement: “[load] centers within PJM do not contract for renewable resources generated outside the PJM?”

**RESPONSE:** See objections to INT-01-001

INT-01-024: Are You aware of any new renewable energy resource generating facility projects that have gone into planning, development, or construction in response to the increased price for RECs which would not have gone into development absent the increased price for REC?

**RESPONSE:** See objections to INT-01-001

INT-01-025: If the answer to INT-01-024 was affirmative, please identify each such project.

**RESPONSE:** See objections to INT-01-001

INT-01-026: If the answer to INT-01-024 was negative, at what cost would you expect the increased price for RECs to begin incentivizing new development?

**RESPONSE:** See objections to INT-01-001

INT-01-027: State the names, addresses, telephone numbers, place of employment, and job title of every person whom You have retained to advise You and/or assist with drafting comments in this matter.

**RESPONSE:** See objections to INT-01-001



INT-01-028: Identify each expert witness You will call or may call at hearing in relation to this matter and describe each expert's qualifications, the subject matter on which each expert is expected to testify and the substance of the facts and opinions to which each expert is expected to testify, and a summary of each experts' anticipated testimony. To the extent You have not made a final determination as to which witnesses it intends to call to testify on its behalf, please supplement this response when the final determination is made.

**RESPONSE:** See objections to INT-01-001

INT-01-029: Identify each Person that You will call or may call as a lay witness at hearing in relation to this matter state the subject matter upon which each such witness is expected to testify, and summarize each such witness's anticipated testimony. To the extent You have not made a final determination as to which witnesses it intends to call to testify on its behalf, please supplement this response when the final determination is made.

**RESPONSE:** See objections to INT-01-001

#### **REQUESTS FOR PRODUCTION OF DOCUMENTS**

RFP-01-001: Please provide copies of all responses to interrogatories, data requests, and documents that CSG has provided or produced to any other party in the above-captioned proceedings.

**RESPONSE:** CSG objects to this request for production for the following reasons:

1. The purpose of discovery is to enable parties to prepare for hearing. The Commission has not scheduled a hearing in these matters. 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.

RFP-01-002: Please provide copies of all responses to data requests and documents that CSG has provided or produced to Staff in the above-captioned proceedings.

**RESPONSE:** See objections to RFP-01-001

RFP-01-003: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-017.

**RESPONSE:** See objections to RFP-01-001

RFP-01-004: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-018.

**RESPONSE:** See objections to RFP-01-001

RFP-01-005: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-019.

**RESPONSE:** See objections to RFP -01-001

RFP-01-006: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-020.

**RESPONSE:** See objections to RFP-01-001

RFP-01-007: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-021.

**RESPONSE:** See objections to RFP-01-001

RFP-01-008: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-023.

**RESPONSE:** See objections to RFP-01-001

RFP-01-009: Please produce any documents, spreadsheets, workpapers, calculations, data, or notes relied on or used in Your Response to INT-01-027.

**RESPONSE:** See objections to RFP-01-001

RFP-01-010: Produce and attach all documents you intend to refer to, rely on, or admit as an exhibit at hearing on this matter.

**RESPONSE:** See objections to RFP-01-001

RFP-01-011: Produce and attach each and every report or other document reviewed or relied upon by the person retained by You listed in response to INT-01-027 related to this proceeding.

**RESPONSE:** See objections to RFP-01-001

RFP-01-012: Produce and attach each and every report or other document prepared by the person retained by You listed in response to INT-01-027 related to this proceeding.

**RESPONSE:** See objections to RFP-01-001

RFP-01-013: Produce and attach each and every report or other document reviewed or relied upon when drafting CSG's comments to be filed in this proceeding.

**RESPONSE:** See objections to RFP-01-001

RFP-01-014: Produce and attach each and every report or other document prepared by the expert listed in response to INT-01-028 relating to any testimony or potential testimony to be submitted in this proceeding.

**RESPONSE:** See objections to RFP-01-001

RFP-01-015: Produce and attach each and every report or other document reviewed or relied upon by the expert listed in response to INT-01-028 related to any testimony or potential testimony to be submitted in this proceeding.

**RESPONSE:** See objections to RFP-01-001

RFP-01-016: Produce and attach each and every report or other document prepared by the non-expert listed in response to INT-01-029 relating to any testimony or potential to be submitted in this proceeding.

**RESPONSE:** See objections to RFP-01-001

RFP-01-017: Produce and attach each and every report or other document reviewed or relied upon by the non-expert listed in response to INT-01-029 related to any testimony or potential testimony to be submitted in this proceeding.

**RESPONSE:** See objections to RFP-01-001



RFP-01-018: For each Person identified in response to INT-01-027 and INT-01-028, please produce a copy of that Person's resume and/or curriculum vitae and of all articles or other published written documents authored by that Person.

**RESPONSE:** See objections to RFP-01-001

### **REQUESTS FOR ADMISSION**

RFA-01-001: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-516-EL-REN, finding that energy from the Moraine Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:** Admitted

RFA-01-002: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-516-EL-REN, recommending approval of the application of Moraine Wind, LLC.

**RESPONSE:** Admitted

RFA-01-003: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-517-EL-REN, finding that energy from the Rugby Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:** Admitted

RFA-01-004: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-517-EL-REN, recommending approval of the application of Rugby Wind, LLC.

**RESPONSE:** Admitted

RFA-01-005: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-531-EL-REN, finding that energy from the Elm Creek II Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:** Admitted

RFA-01-006: Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-531-

EL-REN, recommending approval of the application of Elm Creek II Wind, LLC.

**RESPONSE:**       **Admitted**

RFA-01-007:       Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-532-EL-REN, finding that energy from the Buffalo Ridge II Wind, LLC facility is physically deliverable into Ohio.

**RESPONSE:**       **Admitted**

RFA-01-008:       Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-532-EL-REN, recommending approval of the application of Buffalo Ridge II Wind, LLC.

**RESPONSE:**       **Admitted**

RFA-01-009:       Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation on August 20, 2021, in Case No. 21-544-EL-REN, finding that energy from the Avangrid Renewables, LLC and Barton Windpower, LLC facility is physically deliverable into Ohio.

**RESPONSE:**       **Admitted**

RFA-01-010:       Please admit that the Staff of the Public Utilities Commission of Ohio issued a Review and Recommendation, on August 20, 2021, in Case No. 21-544-EL-REN, recommending approval of the application of Avangrid Renewables, LLC and Barton Windpower, LLC.

**RESPONSE:**       **Admitted**

RFA-01-011:       Please admit that power placed into the transmission grid operated by MISO is physically deliverable to Ohio.

**RESPONSE:**       CSG cannot admit or deny this request based on the limited information provided. Numerous factors influence whether electricity generated from facilities within MISO is physically deliverable to Ohio. This is why Commission Staff evaluate physical deliverability on a case-by-case basis.

RFA-01-012:       Please admit that power placed into the transmission grid operated by PJM is physically deliverable to Ohio.

**RESPONSE:** CSG cannot admit or deny this request based on the limited information provided. Numerous factors influence whether electricity generated from facilities within PJM is physically deliverable to Ohio. This is why Commission Staff evaluate physical deliverability on a case-by-case basis.

Dated: December 1, 2021

As to objections,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)

Lucas A. Fykes (0098471)

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Attorneys for Carbon Solutions Group, LLC

**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served upon the parties of record via electronic mail on December 1, 2021.

/s/ Lucas A. Fykes  
On of the Attorneys for  
Carbon Solutions Group, LLC



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December 21, 2021

Via Electronic Mail

Mark A. Whitt  
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88 East Broad Street  
Columbus, Ohio 43215

**RE: Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)**

Mr. Whitt:

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) received responses from Carbon Solutions Group, LLC (CSG) to the Applicants' First Set of Discovery in the above-referenced proceedings before the Public Utilities Commission of Ohio (Commission). For the reasons described below, the Applicants believe that CSG's objections were improper and its responses deficient, and request that CSG cure its responses immediately.

CSG did not provide any substantive responses to any of the Applicants' interrogatories or requests for production of documents. Instead, 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.

Objection No. 1 is legally incorrect. According to Ohio Adm.Code 4901-1-16(A), the purpose of discovery "is to encourage the prompt and expeditious use of prehearing discovery in



order to facilitate thorough and adequate preparation for participation in commission proceedings” (emphasis added). Ohio Adm.Code 4901-1-17(A) allows discovery to begin immediately after a proceeding commences and to be completed expeditiously as possible. Discovery rights are generally broad, as the Ohio Revised Code maintains that all “intervenors shall be granted ample rights of discovery.” See R.C. 4903.082.

As such, the Commission routinely affords parties full discovery rights, even in proceedings without scheduled hearings. See, e.g., *In the Matter of the Commission’s Investigation into PALMco Power OH, LLC DBA Indra Energy and PALMco Energy OH, LLC DBA Indra Energy’s Compliance with the Ohio Administrative Code and Potential Remedial Actions for Non-Compliance*, Case No. 19-2153-GE-COI Entry at ¶ 15 (Mar. 9, 2020) (scheduling a discovery conference in a Commission investigation prior to granting any stakeholder intervention or determining that a hearing would be held); *In the Matter of the Application of Verde Energy USA Ohio, LLC for Certification as a Competitive Retail Electric Service Supplier*, Case Nos. 11-5886-EL-CRS, et al., Entry at ¶ 11 (Mar. 3, 2020) (establishing a deadline to respond to discovery requests in a Commission investigation before granting any stakeholder intervention or determining that a hearing would be held). Accordingly, the Commission recently rejected the exact same argument raised by CSG. In a recent case, the Commission granted a motion to compel discovery over the objections of a utility which argued that the Commission had not yet determined “whether there might be a hearing or not.” See *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 17-2474-EL-RDR, Transcript at 18, 24 (Apr. 19, 2021).

Additionally, in CSG’s comments filed in this case, CSG claimed that it “would present evidence demonstrating the shortcomings of *Koda* and alternative approaches to more accurately determine physical deliverability.”<sup>1</sup> However, in a memorandum contra filed by CSG, CSG stated that “no information in CSG’s possession is relevant to whether the Applicants meet the certification standards.”<sup>2</sup> While it remains unclear if CSG actually has any information relevant to this proceeding, to the extent CSG possesses or knows of such information and/or intends to present such as evidence, it must substantively respond to the Applicants’ discovery requests and provide the relevant documents and information.<sup>3</sup> If CSG did not possess any responsive information at the time of its responses, but later such information becomes known or is found to exist, CSG must supplement its responses within five business days of discovering the new information.<sup>4</sup>

Objection No. 2 directly contradicts CSG’s position in this case. CSG sought intervention in this case, which, pursuant to R.C. 4903.221, Ohio Admin. Code 4901-1-11, and Ohio Admin.

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<sup>1</sup> See Initial Comments of Carbon Solutions Group, LLC at 3, fn.4 (Nov. 18, 2021).

<sup>2</sup> See Memorandum Contra Applicants’ Motion to Strike at 4 (Dec. 17, 2021).

<sup>3</sup> See Ohio Adm.Code 4901-1-16(B) (“[Any] party to a commission proceeding may obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding. It is not a ground for objection that the information sought would be inadmissible at the hearing, if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.”).

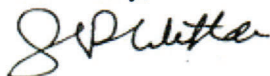
<sup>4</sup> Ohio Adm.Code 4901-1-16(D), (E).

Code 4901:1-40-04, requires that CSG demonstrate a direct, real, and substantial interest in these cases.<sup>5</sup> 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.”<sup>6</sup> As it pertains to CSG’s intervention and participation in these cases, CSG’s purported 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” are directly relevant to that interest and are required to be produced. Ohio Adm.Code 4901-1-16(B) specifically authorizes “discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding.” Unless CSG seeks to argue that its supposed interest is “irrelevant to whether any applicant meets the criteria for certification as an Ohio renewable energy resource,” then the requested information is relevant to this case, and therefore, discoverable.

Pursuant to the Commission’s discovery rules and precedent, the Applicants’ timely<sup>7</sup> and properly issued reasonable requests pertain to discoverable information and documents that should be produced. As explained above, the Applicants disagree with both of the objections provided by CSG regarding all of the interrogatories and requests for production of documents, and thereby request that CSG supplement its responses. Pursuant to Ohio Adm.Code 4901-1-16(A) and 4901-1-23(C), the Applicants are making a good faith effort to resolve this discovery dispute without Commission intervention. Should CSG fail to supplement its responses as required by Ohio law and Commission regulations, the Applicants will pursue a resolution of this dispute through all procedural methods permitted by the Ohio law and Commission regulations, including, but not limited to, a motion to compel or sanctions against CSG. The Applicants look forward to receiving your supplemental responses.

Sincerely,



Angela Paul Whitfield

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<sup>5</sup> 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...”).

<sup>6</sup> 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).

<sup>7</sup> Pursuant to Ohio Adm.Code 4901-1-17(A), discovery in this proceeding may continue up to the commencement of hearing.



**Angela Paul Whitfield**

---

**From:** Mark Whitt <whitt@whitt-sturtevant.com>  
**Sent:** Wednesday, December 22, 2021 11:47 AM  
**To:** Karla LeBeau; Lucas Fykes; Valerie Cahill  
**Cc:** Angela Paul Whitfield; Thomas V. Donadio  
**Subject:** Re: Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)

Angie –

I am responding to your December 21, 2021 letter requesting CSG to withdraw its objections to your clients' discovery requests. CSG declines.

Your letter argues that Objection No. 1 is improper because the rules permit discovery immediately after a proceeding commences. This general rule does not prohibit objections appropriate to a particular case. In complaint cases and enforcement proceedings, for example, parties routinely engage in discovery before a hearing is scheduled. The question in those cases is not if a hearing will occur, but when. That is why discovery was permitted in the *Palmco* and *Verde* matters cited in your letter. Here, however, Avangrid has consistently argued that a hearing is *not* appropriate for a "routine" REN application. If the Commission ultimately agrees, then Avangrid's discovery is moot. CSG is not required to undertake the time and expense of responding to discovery that will become moot if Avangrid's position about a hearing prevails.

Regarding Objection No. 2, your letter does not explain the relevance of CSG's business and operations in Ohio to certification standards that apply to Avangrid. You instead tie the relevance of the discovery to "CSG's intervention and participation in these cases." The relevance of that issue was addressed months ago in the briefing on CSG's motion to intervene. It is far too late to attempt to re-open that issue now. If Avangrid believed it needed discovery to respond to CSG's motion to intervene, it should have requested leave to serve discovery before responding to CSG's motion.

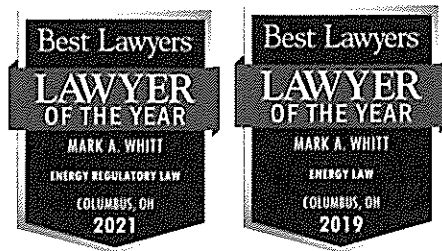
I really do not see the point of elevating this dispute to the Attorney Examiner. Suppose you file and win a motion to compel – then what? What do supplemental responses get you? If your plan is to cite supplemental responses as grounds to re-open briefing on CSG's motion to intervene, surely you must know that CSG would object. What will your answer be when the Attorney Examiner asks why you waited until after comments were filed to raise these issues? And how would you square this explanation with Avangrid's persistent claims of "undue delay" on CSG's part? It appears you have much to lose and little to gain by filing a motion to compel, but I leave that choice to you.

**Mark A. Whitt**

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---

**From:** Karla LeBeau <lebeau@CarpenterLipps.com>

**Date:** Tuesday, December 21, 2021 at 2:14 PM

**To:** Mark Whitt <whitt@whitt-sturtevant.com>, Lucas Fykes <fykes@whitt-sturtevant.com>, Valerie Cahill <cahill@whitt-sturtevant.com>

**Cc:** Angela Paul Whitfield <paul@CarpenterLipps.com>, Thomas V. Donadio <donadio@CarpenterLipps.com>

**Subject:** Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)

Counsel,

Attached is a copy of Avangrid Discovery Deficiency Letter, which we are serving upon you on behalf of Angela Paul Whitfield and Thomas V. Donadio in the referenced matter.

Karla LeBeau  
Legal Assistant to Angela Paul Whitfield  
Carpenter Lipps & Leland LLP  
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[lebeau@carpenterlipps.com](mailto:lebeau@carpenterlipps.com)  
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WRITER'S DIRECT NUMBER

Paul@carpenterlipps.com  
(614) 365-4112

January 3, 2022

Via Electronic Mail

Mark A. Whitt  
Whitt Sturtevant LLP  
The KeyBank Building, Suite 1590  
88 East Broad Street  
Columbus, Ohio 43215

**RE: Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)**

Dear Mark:

Please allow this letter to respond to your December 22, 2021 email, which purportedly attempted to address Applicants' December 21, 2021 letter detailing the multiple deficiencies in Carbon Solutions Group, LLC's (CSG) discovery responses. However, your email falls woefully short of addressing and rectifying CSG's discovery deficiencies. Instead, your email continues to ignore well-established Commission precedent entitling Applicants to discover the requested information. In essence, you argue, without legal basis, that CSG can continue to refuse to provide substantive discovery responses because Applicants' only recourse is to elevate the issue to the Commission with a motion to compel. And, such recourse would contradict Applicants' complaints of undue delay. In reality, however, it is CSG's delay and stall tactics and strategy that are causing the delay to the self-serving benefit of only CSG.

Specifically, regarding Objection No. 1, you ignore the fact, as noted by Applicants, that the Commission has routinely ordered discovery to proceed even when the Commission had not yet determined "whether there might be a hearing or not." See *In the Matter of the Review of the Distribution Modernization Rider of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company*, Case No. 17-2474-EL-RDR, Transcript at 18, 24 (Apr. 19, 2021). Contrary to your suggestion, it does not matter that the Commission has yet to determine whether it will hold a hearing in the proceeding.

Regarding Objection No. 2, CSG has repeatedly argued that its business interests in Ohio and elsewhere are relevant to CSG's intervention and participation in these cases. If it is now your position that CSG does not have an interest relevant to whether any applicant meets the criteria for

Mark A. Whitt  
Whitt Sturtevant LLP  
January 3, 2022  
Page 2

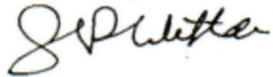
certification as an Ohio renewable energy resource, then please confirm. It is abundantly clear, however, that CSG is simply trying to manipulate the REN market for its own benefit. Information regarding CSG's business interests are entirely relevant to demonstrating the bad faith underlying its intervention.

At this stage in the proceedings, your repeated refusals to provide *any* substantive responses to lawful and timely discovery requests are disappointing, but not altogether surprising. Throughout these proceedings, you have refused to provide any sort of argument or evidence in the comment period, misstated basic facts pertaining to REN certification, and misrepresented pleadings filed by other parties. Given this pattern of misconduct, we are confident that the Commission would side with Applicants should a motion to compel be necessary.

In short, Ohio law and Commission regulations require CSG to supplement its responses to the Applicants' discovery requests. Should CSG fail to do so, Applicants will be forced to escalate this matter to the Commission. As such, we hereby request that CSG provide supplemental responses to the discovery requests immediately, and in any event, no later than, Monday, January 10, 2022.

We look forward to hearing from you.

Sincerely,



Angela Paul Whitfield

Cc: Lucas Fykes, Esq.  
Thomas Donadio, Esq.



**Angela Paul Whitfield**

**From:** Mark Whitt <whitt@whitt-sturtevant.com>  
**Sent:** Monday, January 3, 2022 2:59 PM  
**To:** Angela Paul Whitfield; Karla LeBeau; Lucas Fykes; Valerie Cahill  
**Cc:** Thomas V. Donadio  
**Subject:** Re: Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)

I refer you to the Law of Holes: When you're in one, stop digging.

**Mark A. Whitt**

**whittsturtevant** LLP

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[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)



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**From:** Angela Paul Whitfield <paul@CarpenterLipps.com>  
**Date:** Monday, January 3, 2022 at 2:35 PM  
**To:** Mark Whitt <whitt@whitt-sturtevant.com>, Karla LeBeau <lebeau@CarpenterLipps.com>, Lucas Fykes <fykes@whitt-sturtevant.com>, Valerie Cahill <cahill@whitt-sturtevant.com>  
**Cc:** Thomas V. Donadio <donadio@carpenterlipps.com>  
**Subject:** RE: Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)

Mark:

Please see the attached correspondence.



**From:** Mark Whitt <whitt@whitt-sturtevant.com>

**Sent:** Wednesday, December 22, 2021 11:47 AM

**To:** Karla LeBeau <lebeau@CarpenterLipps.com>; Lucas Fykes <fykes@whitt-sturtevant.com>; Valerie Cahill <cahill@whitt-sturtevant.com>

**Cc:** Angela Paul Whitfield <paul@CarpenterLipps.com>; Thomas V. Donadio <donadio@CarpenterLipps.com>

**Subject:** Re: Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)

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**Date:** Tuesday, December 21, 2021 at 2:14 PM

**To:** Mark Whitt <[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)>, Lucas Fykes <[fykes@whitt-sturtevant.com](mailto:fykes@whitt-sturtevant.com)>, Valerie Cahill <[cahill@whitt-sturtevant.com](mailto:cahill@whitt-sturtevant.com)>

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**Subject:** Avangrid Renewables REN Certification Cases (Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN)

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**in**

**Case No(s). 21-0516-EL-REN, 21-0517-EL-REN, 21-0531-EL-REN, 21-0532-EL-  
REN, 21-0544-EL-REN**

Summary: Motion to Compel Responses to Discovery electronically filed by Mrs.  
Angela Whitfield on behalf of Moraine Wind LLC and Rugby Wind LLC and Elm  
Creek Wind II LLC and Buffalo Ridge II LLC and Barton Windpower LLC