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**

ENTRY

Entered in the Journal on April 5, 2022

{¶ 1} In this Entry, the attorney examiner grants the pending motions to intervene, grants the motion to compel, sets a procedural schedule, and schedules the evidentiary hearing for 10:00 a.m. on September 12, 2022.

{¶ 2} On various dates in April 2021, Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Buffalo Ridge II Wind LLC, and Avangrid Renewables LLC (Applicants) filed the applications in the above-captioned cases, pursuant to Ohio

Adm.Code 4901:1-40-04(D), for the certification of each named facility as an eligible Ohio renewable energy resource generating facility as defined in R.C. 4928.01.

{¶ 3} By Entries filed on May 5, 2021, and May 6, 2021, the attorney examiner suspended the automated approval process for these applications pursuant to Ohio Adm.Code 4901:1-40-04(D), which provides that upon good cause shown, the Commission may suspend the certification of an application to allow the Commission and its Staff to further review the application.

{¶ 4} A separate telephonic prehearing conference was conducted for each of these cases on various days in July and August 2021.

{¶ 5} On August 20, 2021, Staff filed its review and recommendation in each respective docket. In each report, Staff recommended the application be approved. Specifically, Staff determined that each facility satisfies the Commission's requirements for certification as a renewable energy facility.

{¶ 6} On October 19, 2022, an Entry was filed inviting Applicants and interested persons to file comments in response to Staff's recommendations.

{¶ 7} Initial comments were timely filed by Blue Delta Energy, LLC (Blue Delta), 3Degrees Group, Inc. (3Degrees), Carbon Solutions Group, LLC (Carbon Solutions), and Applicants on November 18, 2021. On December 8, 2021, reply comments were timely filed by Vistra Corp., Staff, Carbon Solutions, Applicants, 3Degrees, and Blue Delta.

{¶ 8} On December 17, 2021, Carbon Solutions filed a memorandum contra to Applicants' reply comments, which it characterizes as "basically a motion to strike." On December 23, 2021, Applicants filed a reply to the memorandum contra, clarifying that they did not file a motion to strike. Applicants argue that the memorandum contra is an improper attempt to respond to its reply comments and should be stricken from the record.

{¶ 9} At this time, no ruling on a motion to strike is needed, as the Applicants have made clear that they did not file a motion to strike in their reply comments. The December 17, 2021 memorandum contra and December 23, 2021 reply will not be stricken from the record, but the Commission will not consider the arguments in these filings, as no memorandum contra or reply was warranted.

{¶ 10} On May 7, 2021, in each of the above-captioned cases, Carbon Solutions filed motions to intervene, motions to consolidate, and motions to establish a procedural schedule in the above-captioned cases. As to the motions to intervene, Carbon Solutions argues that it has a right to intervene as a party that is adversely affected by a Commission proceeding, pursuant to R.C. 4903.221. Carbon Solutions states that it is a development and advisory firm whose clients include renewable energy developers and facilities throughout Ohio and the PJM region. It states that none of the Applicants' facilities are located within PJM, and it has an interest in preserving the value of renewable energy credits to those generators located in Ohio and PJM.

{¶ 11} On August 20, 2021, Applicants filed a motion for leave to file, instanter, a memorandum contra to Carbon Solutions' motion to intervene. Applicants argue that good cause exists to accept their memorandum contra out of time because of the unique circumstances and novel challenge to long-standing Commission precedent. As to the issue of intervention, the Applicants argue that Carbon Solutions does not have a direct, real, or substantial interest in the cases. Applicants assert that Carbon Solutions' goal is to block REN certifications, which will limit the market, exclude competitors, and strengthen its own bottom line. Applicants also argue that Carbon Solutions' intervention will unduly prolong and delay the proceedings.

{¶ 12} On August 23, 2021, Carbon Solutions filed a memorandum contra, asserting that the Applicants have not shown good cause to file their opposition to the intervention request out of time.

{¶ 13} On August 30, 2021, Applicants filed a reply, stating that extensions of time to file pleadings may be granted for good cause shown, in accordance with Ohio Adm. Code 4901-1-13(A).

{¶ 14} On various dates, motions to intervene in all or some the above-captioned cases were filed by Blue Delta, 3Degrees, and Northern Indiana Public Service Company LLC (NIPSC). No memoranda contra were filed as to these intervention requests.

{¶ 15} At this time, it is not clear that Carbon Solutions has a direct interest in the outcome of these specific proceedings. The Commission has long held that an interest in the precedential value of a case is insufficient justification for intervention in a proceeding. *See In re Complaint of Mark A. Whitt*, Case No. 15-697-EL-CSS, Entry (Nov. 18, 2015) at 3, 5; *In re Ohio Schools Council, et al. v. FirstEnergy Solutions Corp.*, Case No. 14-1182-EL-CSS, Entry (Sep. 4, 2014) at 3-4; *In re Complaint of the City of Cleveland,* Case No. 01-174-EL-CSS, Entry (Mar. 29, 2001) at 4. Although Carbon Solutions' interest in these proceedings appears to be tenuous at this time, intervention is to be construed liberally. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 111 Ohio St.3d 384, 2006-Ohio-5853, 856 N.E.2d 940, ¶¶ 16, 18. After a full consideration of the arguments in the motions to intervene, memorandum contra, and reply brief, all pending motions to intervene are hereby granted. Intervention in future, similar cases will be subject to further review at that time, and the facts that are developed through these proceedings will guide the attorney examiners' rulings in future proceedings.

{¶ 16} As stated above, on May 7, 2021, in each of the above-captioned cases, Carbon Solutions filed motions to intervene, motions to consolidate, and motions to establish a procedural schedule in the above-captioned cases. As to the motions to consolidate, Carbon Solutions argues that all five of the applications implicate the same legal and factual issues. It asserts that the flaw of relying on a power flow study is common across all five applications.

{¶ 17} On August 3, 2021, Avangrid Renewables, LLC, the owner of all five Applicants, filed a motion to consolidate the cases. On August 6, 2021, Applicants, rather than their parent company, filed an amended joint motion to consolidate. In the amended motion, Applicants emphasize that these proceedings are not the proper forum for Carbon Solutions to challenge the Commission deliverability test. However, Applicants state that consolidation for the limited purpose of addressing Carbon Solutions' challenge would promote judicial efficiency and fairness and would be cost-effective for the Applicants. Applicants state that they all share common ownership under Avangrid Renewables. The Applicants also state that each of the five facilities involve a discrete set of facts, so consolidation is only necessary for resolution of the threshold deliverability issue that Carbon Solutions is challenging.

{¶ 18} On August 23, 2021, Carbon Solutions filed a memorandum contra the motion to consolidate, stating that it seeks a full consolidation of the cases rather than just consolidation of the deliverability issue. As an aside, Carbon Solutions asserts that the Applicants do not have standing or capacity to seek certifications because some of the Applicants are not registered to do business in Ohio.

{¶ 19} On August 30, 2021, Applicants filed a reply, stating that consolidation will expedite the resolution of the issue, which is important because the Applicants are being financially impacted by the delay in certification. Applicants also emphasize that the deliverability test has been challenged and considered by the Commission previously.

{¶ 20} On August 18, 2021, Blue Delta filed a memorandum in support of the joint motion to consolidate. Blue Delta argues that the limited consolidation of cases, on the specific issue of deliverability, would avoid unnecessary delay and prevent duplicative evidence. It states that while it opposes consolidating applications with different, unrelated applicants, it supports the consolidation of these five cases upon motion of the Applicants with shared ownership.

{¶ 21} At this time, the attorney examiner finds that the above-captioned cases should be fully consolidated in the spirit of administrative efficiency. Consolidation will promote efficiency in the resolution of these cases, and no party will be prejudiced by the consolidation. Additionally, no party has filed objections to the consolidation, although the parties disagree as to the scope of the consolidation. As to the disagreement between full consolidation and limited consolidation, the common issue for all five cases is the deliverability issue. It is clear that the specific data for each of the facilities will be different and will be decided on an individual basis. However, consolidation of the cases will promote judicial efficiency as to the common, challenged issue of deliverability. Motions to intervene already filed in at least one of the above-captioned cases will be treated as a motion to intervene in all the cases.

{¶ 22} At this time, the attorney examiner finds that it is appropriate to set a procedural schedule and schedule the evidentiary hearing for the issues raised in the comments. The deadline for the service of discovery shall be set for August 5, 2022. Additionally, the Applicants should file testimony by August 12, 2022, and intervenors should file testimony by August 26, 2022. The evidentiary hearing shall commence at 10:00 a.m. on September 12, 2022, at the offices of the Commission, 180 East Broad Street, 11th Floor, Hearing Room 11-A, Columbus, Ohio 43215. The parties should register at the lobby desk and then proceed to the 11th floor to participate in the hearing.

{¶ 23} Any accommodations necessary to ensure availability of social distancing and plexiglass dividers should be made in advance of the hearing. As pandemic restrictions are evolving, additional instructions regarding further safety requirements or accommodations for the hearing room will be forthcoming, either posted on the Commission's website or communicated to the parties.

{¶ 24} On February 1, 2022, Applicants filed a motion to compel responses to discovery. Applicants state that Carbon Solutions has objected to every interrogatory and request for production with the same two objections: (1) the discovery request is premature

because a hearing has not been scheduled; and (2) Carbon Solutions' business and operations are irrelevant. Applicants disagree with the first objection, noting that it is entitled to ample rights of discovery, pursuant to R.C. 4903.082, and discovery may begin immediately after a proceeding is commenced and is to be completed as expeditiously as possible, pursuant to Ohio Adm.Code 4901-1-17(A). The Applicants also state that the Commission routinely affords parties full discovery rights, even in proceedings without scheduled hearings. As to Carbon Solutions' second objection, Applicants argue that aspects of Carbon Solutions' business and operations are relevant to the question of Carbon Solutions' right to intervene and motivations for participation in the proceedings. Applicants point out that Carbon Solutions argued that its business interests are relevant to the proceedings in its motion to intervene, yet now claims that its business interests are irrelevant when confronted with discovery requests. Applicants also state that some of their discovery requests seek the factual basis for Carbon Solutions' claims rather than information regarding business and operations, so the second objection is not applicable to all of its requests. Applicants assert that none of the requested information is privileged and note that Carbon Solutions did not object to any discovery requests on the grounds of privilege. Applicants point out that Carbon Solutions provided no citation to Ohio law, Commission regulations, or past precedent to support its objections. Applicants also attached an affidavit and email communications demonstrating that they have exhausted all other reasonable means of resolving the dispute.

{¶ 25} On February 16, 2022, Carbon Solutions filed a memorandum contra to the motion to compel. Carbon Solutions states that Ohio Adm.Code 4901-1-17(A) provides for a party's right to serve discovery but does not require the served party to provide substantive responses if it objects. As to its first objection, Carbon Solutions argues that discovery is premature, as the Commission has not yet scheduled a hearing or determined if a hearing will be necessary. As to its second objection, it asserts that information about its own business operations is irrelevant to the subject matter of the proceeding, which is whether the Applicants meet the certification requirements. Carbon Solutions also states

that any information regarding its business operations as it relates to its motion to intervene is untimely, as that issue has already been briefed.

{¶ 26} On February 23, 2022, Applicants filed a reply emphasizing that they are within their rights to file a motion to compel responses for any failure to respond to a discovery request, pursuant to Ohio Adm.Code 4901-1-23(A), 4901-1-19(A), and 4901-1-20(C). As to the first objection, Applicants reiterate their assertion that discovery may properly commence at the beginning of a proceeding and continue until hearing. As to the second objection, Applicants state that of the twenty-nine interrogatories and eighteen requests for production, four interrogatories and all requests for production have nothing to do with Carbon Solutions' business and operations, so the objection is inapplicable. As for the other interrogatories, Applicants assert that Carbon Solutions' business and operations is relevant because the responses would show that Carbon Solutions' challenge to the deliverability test would benefit Carbon Solutions and its clients. Applicants state that the information would show that Carbon Solutions' proposals are not reasonable or equitable but, rather, are biased and self-serving.

{¶ 27} At this time, the attorney examiner finds that the motion to compel discovery should be granted. Carbon Solutions' first objection no longer applies, as the proceeding has now been scheduled for hearing. But even before a hearing is scheduled, Ohio Adm.Code 4901-1-17(A) allows discovery to "begin immediately after a proceeding is commenced." As to the second objection, R.C. 4903.082 ensures "ample rights of discovery" and Ohio Adm.Code 4901-1-16(B) requires information to be produced "if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." The attorney examiner is persuaded that the discovery requests meet the lenient threshold of being reasonably calculated to lead to the discovery of admissible evidence. For these reasons, Carbon Solutions should answer the interrogatories and provide the requested documents within two weeks of the date of this Entry.

{¶ 28} It is, therefore,

{¶ 29} ORDERED, That the motions to intervene filed by Carbon Solutions, Blue Delta, 3Degrees, and NIPSC be granted.

{¶ 30} ORDERED, That the above-captioned cases be consolidated, as set forth in Paragraph 21. It is, further,

{¶ 31} ORDERED, That the procedural schedule be set in accordance with Paragraph 22. It is, further,

{¶ 32} ORDERED, That the evidentiary hearing be scheduled to commence at 10:00 a.m. on September 12, 2022, at the Commission offices. It is, further,

{¶ 33} ORDERED, That Applicants' motion to compel be granted and that Carbon Solutions provide substantive responses within two weeks. It is, further,

{¶ 34} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

GAP/kck

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

Summary: Attorney Examiner Entry granting the motions to intervene filed by Carbon Solutions, Blue Delta, 3Degrees, and NIPSC; ordering that the above-captioned cases be consolidated, as set forth in Paragraph 21; ordering that the procedural schedule be set in accordance with Paragraph 22; ordering that the evidentiary hearing be scheduled to commence at 10:00 a.m. on September 12, 2022, at the Commission offices and ordering that Applicants' motion to compel be granted and that Carbon Solutions provide substantive responses within two weeks. electronically filed by Kelli C. King on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio