

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Barton )  
Windpower, LLC for Certification as an ) Case No. 22-380-EL-REN  
Eligible Ohio Renewable Energy Resource )  
Generating Facility. )  
)  
)

---

**MEMORANDUM CONTRA MOTION FOR LEAVE TO INTERVENE AND MOTION  
TO CONSOLIDATE OF CARBON SOLUTIONS GROUP, LLC**

---

**I. INTRODUCTION**

The improper Motion for Leave to Intervene and Motion to Consolidate (Motion)<sup>1</sup> filed by Carbon Solutions Group, LLC (CSG) before the Public Utilities Commission of Ohio (Commission) should be rejected outright. CSG’s Motion is another delay tactic designed to waste additional resources of the Applicant and the Commission. CSG’s actions over the past year have demonstrated that it has no intention to “contribute to full development and equitable resolution of the factual issues.”<sup>2</sup> Instead, CSG’s potential intervention will serve only to “unduly prolong or delay the proceedings.”<sup>3</sup> CSG only seeks to participate in this case for the purpose of delaying certification for facilities owned by Applicant Avangrid Renewables, LLC (Avangrid Renewables), and its wholly-owned subsidiary, Barton Windpower LLC (collectively, the Applicants).

---

<sup>1</sup> Motion for Leave to Intervene and Motion to Consolidate of Carbon Solutions Group, LLC (May 3, 2022) (CSG Motion).

<sup>2</sup> See R.C. 4903.221(B)(4).

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

CSG asserts that this application “raises common issues of law and fact” with the other proceedings regarding REN certification applications filed by Avangrid Renewables and its subsidiaries (collectively, the Avangrid REN Cases).<sup>4</sup> Yet, after more than a year and numerous pleadings, CSG has yet to produce any argument or potential evidence pertaining to these alleged common issues of law and fact despite being ordered to do so by the Commission. To prevent further unjust and undue delay, the Applicants respectfully request that the Commission reject CSG’s request for consolidation, deny its Motion for leave, and deny its Motion to intervene in their entirety, and allow this case to proceed in a just and expeditious manner.

## **II. ARGUMENT**

### **A. The Commission should not allow CSG to intervene.**

CSG seeks leave to file its Motion to Intervene, but CSG’s Motion fails to satisfy the relevant standards for leave and also fails to satisfy the intervention standard set by R.C. 4903.221, Ohio Adm.Code 4901-1-11 and 4901:1-40-04(D). Pursuant to R.C. 4903.221, a person “who may be adversely affected” by a Commission proceeding is entitled to seek intervention in that proceeding. R.C. 4903.221(B) further requires the Commission to consider the nature and extent of the prospective intervenor’s interest, the legal position advanced by the prospective intervenor and its probable relation to the merits of the case, whether the intervention by the prospective intervenor will unduly prolong or delay the proceeding, and whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.

---

<sup>4</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) (collectively, Avangrid REN Cases).

Only an affected party who demonstrates a real and substantial interest in the proceeding and who is so situated that the disposition of the proceeding may impair or impede its ability to protect that interest and whose interest is not adequately represented by an existing party may intervene under Ohio Adm.Code 4901-1-11. CSG may be seeking leave as it simply cannot satisfy any of the criteria necessary for the Commission to even consider intervention.

Nonetheless, assuming CSG is permitted by the rules to seek intervention, CSG also has not demonstrated that it meets any of the intervention criteria. First, CSG is unable to articulate any real or substantial interest in the outcome of the instant proceeding, let alone the other five certification proceedings with which it seeks to consolidate this case. CSG also fails to demonstrate any nexus to the particular application or REN facilities or facts surrounding the deliverability of the individual facilities. Additionally, CSG has not demonstrated that the disposition of this individual REN certification application may impair or impede its ability to protect any interest. Finally, CSG's participation in numerous REN certification proceedings has in fact already unduly prolonged and delayed the proceedings and has not led to a just and expeditious resolution of the issues involved. As such, CSG cannot satisfy the intervention standard for this application.

**1. CSG does not have a direct, real, or substantial interest in the above-captioned case.**

CSG does not even attempt to articulate an interest in the particular REN certification proceeding that was filed in the above-captioned case. CSG only states that "CSG's interests are distinct from Applicants" without attempting to elaborate on what that interest actually is.<sup>5</sup> In other cases, CSG has attempted to make a much broader policy position of preserving the value of

---

<sup>5</sup> CSG Motion at 2.

RECs to all renewable generators located in Ohio and PJM.<sup>6</sup> CSG has made vague, contradictory arguments about the Commission’s standards for determining deliverability.<sup>7</sup>

CSG cannot claim that interest in this particular REN certification case. In fact, even CSG’s broader policy arguments must fail as CSG has declined to intervene in other REN certification cases involving out-of-state, non-PJM facilities, when those facilities are not owned by Avangrid Renewables.<sup>8</sup> Indeed, since July 2021, CSG stopped intervening and attempting to participate in other REN certification cases, until Avangrid Renewables filed the instant application.

As such, CSG has not demonstrated that it has a direct, real, or substantial interest in the REN facility at issue in this case. Not only does CSG not have a direct, real, or substantial interest in the facility at issue here, it does not have a direct, real, or substantial interest in any of the five Avangrid Renewables’ REN certification proceedings that CSG is seeking to consolidate or in any other certification proceeding CSG has intervened in as, to Avangrid Renewables’ knowledge, it does not own the facilities, is not a consultant to the facilities, does not have a contractual relationship with the facilities, or was not part of the application process. Instead, at best, CSG

---

<sup>6</sup> Avangrid REN Cases, Motion to Intervene, Motion to Consolidate, and Motion to Establish a Procedural Schedule of Carbon Solutions Group, LLC at 5 (May 7, 2021) (“In short, CSG’s interest is in preserving the value of RECs to renewable generators located in Ohio and PJM.”).

<sup>7</sup> See, e.g., Avangrid REN Cases, Memorandum Contra Amended Joint Motion to Consolidate and Memorandum Contra Joint Motion for Leave to File Memorandum Contra CSG’s Motion to Intervene of Carbon Solutions Group, LLC at 9 (Aug. 23, 2021) (arguing that “[t]he Applicants are not entitled to a ruling before any comments are filed or evidence presented that the Koda test is the only proper way to determine whether energy from their facilities is ‘physically deliverable’ into Ohio.”); Initial Comments of Carbon Solutions Group, LLC at 3 (Nov. 18, 2021) (“At a hearing, CSG would present evidence demonstrating the shortcomings of *Koda* and alternative approaches to more accurately determine physical deliverability.”); *id.* at 10 (“CSG did not intervene in these cases to challenge the *Koda* test or certification process.”); Reply Comments of Carbon Solutions Group, LLC at 5 (Dec. 8, 2021) (“There is no basis to conclude whether the *Koda* test, in theory or as applied here, is a reliable proxy for deliverability because the test has never been litigated.”).

<sup>8</sup> See, e.g., *In the Matter of the Application of Harvest Ridge Wind Farm for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-987-EL-REN, Finding and Order at ¶ 1 (Dec. 1, 2021) (“The Commission approves the application of Harvest Ridge Wind Farm for certification as an eligible Ohio renewable energy resource generating facility.”).

will raise the same vague, baseless, unsubstantiated, and unsupported policy arguments against the *Koda* Test, the Commission’s long-standing precedent regarding deliverability pursuant to R.C. 4928.64(B)(3) and Ohio Adm.Code 4901:1-40-01(F). At worst, CSG will simply seek to continue and delay the Applicants’ REN certification by continuing to file meritless, copy-pasted pleadings and refusing to respond to Commission-ordered discovery. CSG’s purported interest in this case is simply not a direct, real, or substantial interest in the REN certification of the Applicants’ facility.

Moreover, CSG will not be “adversely affected”<sup>9</sup> by the facility receiving certification as a qualifying REN resource. CSG has shown that it is not concerned with the certification of this particular REN facility, or with REN facilities in general, just Avangrid Renewables facilities. To the extent CSG wishes to challenge the *Koda* Test, the Commission has already granted it its day in court in the other Avangrid REN Cases. Since CSG does not have a direct, real, or substantial interest in this proceeding, its intervention is improper pursuant to R.C. 4903.221(B) and Ohio Adm.Code 4901-1-11 and should be denied.

**2. CSG’s intervention will unduly prolong and delay this proceeding, and will not contribute to full development and equitable resolution of the factual issues.**

CSG’s intervention would serve no purpose but delay. CSG’s actions in the other Avangrid REN Cases have demonstrated this fact. Typically, a REN certification case would be resolved in a few months without need for a hearing. The Avangrid REN Cases have been pending for more than a year, and will likely not be resolved until after the September evidentiary hearing.<sup>10</sup> This

---

<sup>9</sup> See R.C. 4903.221.

<sup>10</sup> See Avangrid REN Cases, Entry at ¶ 32 (Apr. 5, 2022).

has resulted in thousands of dollars in unnecessary litigation expenses for the Applicants, lost REC value, and other lost opportunity costs for the facilities who have not yet received certification.

And despite having been granted its day in court, CSG has still yet to present any cognizable argument or concrete potential evidence to support its vague claims. Despite the Commission granting the Applicants' motion to compel,<sup>11</sup> CSG continues to refuse to respond to discovery. CSG has been given the opportunity to participate, and has abused that opportunity to needlessly delay proceedings. Granting intervention in yet another REN certification proceeding would unreasonably and unnecessarily delay this facility's certification.

Since CSG began intervening in numerous REN certification proceedings, multiple applicants have withdrawn their certifications rather than expend the significant resources required to defend against CSG's meritless challenge.<sup>12</sup> Once the Applicants' began fighting back, CSG began stalling, while ceasing to intervene in other REN certification cases. As such, CSG has been able to effectively block the Applicants' REN certification proceedings in the other five cases, precluding a full development and equitable resolution of the factual issues involved in those cases as well as many other REN certification proceedings. CSG, by intervening now in this case, is attempting to block and unduly delay the instant REN certification application. As such, CSG's request for intervention fails to meet the standard required by R.C. 4903.223(B).

**3. CSG does not advance any legal position related to the merits of the case.**

Although CSG does not attempt to articulate its legal position or interest in this case, presumably, it will attempt to raise the same issues it has attempted to raise in the other Avangrid REN Cases. However, any challenge to the long-standing Commission precedent and Commission

---

<sup>11</sup> See Avangrid REN Cases, Entry at ¶ 33 (Apr. 5, 2022).

<sup>12</sup> See, e.g., Case No. 21-0110-EL-REN, Notice of Withdrawal of Application (June 29, 2021).

Staff’s application of the *Koda* Test—if it even warrants addressing at all—is more suited for a COI or rulemaking proceeding. CSG’s challenge of the existing deliverability standard and test, which lacks any support from Ohio law, regulations or Commission precedent, is a broad policy-based attack on Commission precedent, rather than a challenge to the merits of or supporting the certification of any of the Applicants’ specific facilities, including the instant application. As such, CSG’s challenge does not belong in the proceedings in which CSG seeks to intervene.

Moreover, in the other Avangrid REN Cases, despite originally claiming it would raise arguments against the *Koda* Test,<sup>13</sup> CSG appears to have abandoned that position,<sup>14</sup> instead alternatively arguing it would challenge the *application* of the *Koda* Test.<sup>15</sup> CSG likely did so because CSG realized its initial argument had no merit. Yet despite abandoning this argument, CSG has yet to present a new one, whether based on general policy or technical arguments or the specific facts of any relevant facility, as to why the *application* of the *Koda* Test is flawed. Although CSG claims its position will help resolve “the issue of whether electricity from the facility is ‘deliverable into this state’” CSG does not even attempt to articulate how it will do so.<sup>16</sup>

Even if CSG *did* have a coherent legal position to advance—which it does not—a REN proceeding is not the proper venue to raise that position. Presumably, CSG attempts to challenge

---

<sup>13</sup> Avangrid REN Cases, Memorandum Contra Amended Joint Motion to Consolidate and Memorandum Contra Joint Motion for Leave to File Memorandum Contra CSG's Motion to Intervene of Carbon Solutions Group, LLC at 9 (Aug. 23, 2021) (arguing that “[t]he Applicants are not entitled to a ruling before any comments are filed or evidence presented that the *Koda* test is the only proper way to determine whether energy from their facilities is ‘physically deliverable’ into Ohio.”); Initial Comments of Carbon Solutions Group, LLC at 3 (Nov. 18, 2021) (“At a hearing, CSG would present evidence demonstrating the shortcomings of *Koda* and alternative approaches to more accurately determine physical deliverability.”).

<sup>14</sup> See generally CSG Motion (making no mention of the *Koda* Test); see also Avangrid REN Cases, Reply Comments of Carbon Solutions Group, LLC at 2 (Dec. 8, 2021).

<sup>15</sup> Avangrid REN Cases, Reply Comments of Carbon Solutions Group, LLC at 6 (Dec. 8, 2021) (“Whether *Koda* is a reasonable test and whether Staff properly applied it are different questions, and the Applicants have not addressed the latter.”).

<sup>16</sup> CSG Motion at 2.

the *Koda* Test, or its application, in REN proceedings because the Commission has already rejected the challenge in past rulemaking proceedings when it instead affirmed the *Koda* Test for deliverability. As the Commission noted in the most recent rulemaking proceeding, the Commission has already addressed challenges to the *Koda* Test for determining deliverability in multiple prior proceedings and decided to reject these challenges and retain its long-standing precedent.

For example, where intervenors challenged the *Koda* Test, the Commission rejected these challenges by holding:

the comments regarding the definition of “deliverable into this state” have been thoroughly addressed in previous rulemaking cases, and the Commission maintains its position that this definition does not need to be expanded to include any generation originating within the PJM or MISO transmission systems. We continue to believe that “a demonstration of delivery via a powerflow study and/or deliverability study should be necessary, although not to the extent of requiring signed contracts.”<sup>17</sup>

The fact that attacks on the Commission’s *Koda* Test have failed in the proper procedural context does not grant CSG authority to try again in a different, improper procedural context. REN proceedings are not the proper venue for this challenge, and the Commission has rejected this challenge in past rulemaking proceedings. Simply put, CSG *has* no cognizable legal position to raise in this proceeding. As such, the Commission should deny CSG’s Motion.

**B. Consolidation of this case with the remaining Avangrid REN Cases is inappropriate.**

For the reasons discussed above, the Commission should deny CSG’s request to intervene in this case outright, and allow the case to proceed. However, in addition to CSG’s participation

---

<sup>17</sup> *In the Matter of the Commission’s Review of its Rules for Energy Efficiency Programs Contained in Chapter 4901:1-39 of the Ohio Administrative Code*, Case Nos. 12-2156-EL-ORD, *et al.*, Finding and Order at ¶ 181 (Dec. 19, 2018).



being improper, consolidation of this case with the remaining Avangrid REN Cases also would be extremely prejudicial to the Applicants.

The remaining Avangrid REN Cases have been proceeding for nearly a year. The Applicants have issued discovery, and filed a motion to compel, which the Commission has granted (although CSG has violated that order by failing to respond to discovery). The REN Cases are now set for hearing. Consolidating this case with the others will not help any of them proceed more expeditiously, and will only serve to cause more unnecessary delay. Accordingly, CSG's request to consolidate this case with the other five Avangrid REN Cases should be rejected.

### **III. CONCLUSION**

CSG's Motion fails to demonstrate that CSG has a real and substantial interest in the proceeding, that its participation will contribute to a just and expeditious resolution of the proceedings, or that its intervention will not unduly delay or prolong the proceeding. CSG's Motion also fails to demonstrate that the disposition of the Applicants' REN certification may impair or impede its ability to protect its interest. Additionally, CSG fails to articulate a legal position in any way related to this position.

The Commission has already given CSG the opportunity to present its arguments regarding the Commission's deliverability test, and CSG has failed to do so. CSG has selectively opposed this Avangrid REN application, as well as five other Avangrid REN applications, while failing to obey Commission-ordered discovery or to present any cognizable arguments. CSG's intervention in the other Avangrid REN Cases has served only to cause delay. As such, pursuant to R.C. 4903.221, and Ohio Adm.Code 4901-1-11 and 4901:1-40-04(D), the Commission should reject CSG's attempt to intervene in the above-captioned case and to consolidate this case with the other Avangrid REN Cases that have already been set for hearing.

Respectfully Submitted,

/s/ Angela Paul Whitfield

Angela Paul Whitfield (0068774)  
CARPENTER LIPPS & LELAND LLP  
280 Plaza, Suite 1300  
280 North High St.  
Columbus, Ohio 43215  
Telephone: (614) 365-4112  
[paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)

*Counsel for Applicants  
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 May 18, 2022 upon the parties listed below.

*/s/ Angela Paul Whitfield*  
\_\_\_\_\_  
Angela Paul Whitfield (0068774)

*Counsel for Applicants  
Barton WindPower LLC and  
Avangrid Renewables, LLC*

[cahill@whitt-sturtevant.com](mailto:cahill@whitt-sturtevant.com)  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[fykes@whitt-sturtevant.com](mailto:fykes@whitt-sturtevant.com)  
[Stuart.siegfried@puc.state.oh.us](mailto:Stuart.siegfried@puc.state.oh.us)  
[David.hicks@puco.ohio.gov](mailto:David.hicks@puco.ohio.gov)  
[Jacqueline.St.John@puco.ohio.gov](mailto:Jacqueline.St.John@puco.ohio.gov)

**This foregoing document was electronically filed with the Public Utilities  
Commission of Ohio Docketing Information System on**

**5/18/2022 4:36:14 PM**

**in**

**Case No(s). 22-0380-EL-REN**

Summary: Memorandum Contra Motion For Leave To Intervene And Motion To Consolidate Of Carbon Solutions Group, LLC electronically filed by Mrs. Angela Whitfield on behalf of Barton Windpower LLC and Avangrid Renewables, LLC