

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

**IN THE MATTER OF THE APPLICATION OF
BARTON WINDPOWER, LLC FOR
CERTIFICATION AS AN ELIGIBLE OHIO
RENEWABLE ENERGY RESOURCE
GENERATING FACILITY.**

CASE NO. 22-380-EL-REN

ENTRY

Entered in the Journal on June 28, 2022

{¶ 1} In this Entry, the attorney examiner grants Carbon Solutions Group LLC's (Carbon Solutions) motion to intervene, grants the motion to consolidate, and changes the procedural schedule as set forth below.

A. *Original Cases*

{¶ 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 (Original Applicants) filed the applications in Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, and 21-544-EL-REN (Original 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 the applications in the Original Cases 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 the Original Cases in July and August 2021.

{¶ 5} On August 20, 2021, Staff filed its review and recommendation in each respective docket of the Original Cases. 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 May 7, 2021, in each of the Original Cases, Carbon Solutions filed motions to intervene, motions to consolidate, and motions to establish a procedural schedule in the above-captioned cases. On August 20, 2021, Original Applicants filed a motion for leave to file, *instanter*, a memorandum contra to Carbon Solutions' motion to intervene. Carbon Solutions timely filed a memorandum contra, and Original Applicants timely filed a reply.

{¶ 7} On August 3, 2021, Avangrid Renewables, LLC, the owner of Original Applicants in the Original Cases, filed a motion to consolidate the cases. On August 6, 2021, Original Applicants, rather than their parent company, filed an amended joint motion to

consolidate. Carbon Solutions timely filed a memorandum contra, and Original Applicants filed a timely reply. Additionally, Blue Delta Energy, LLC (Blue Delta) filed a memorandum in support of the joint motion to consolidate.

{¶ 8} On April 5, 2022, the attorney examiner consolidated the Original Cases, granted the motions to intervene filed by Blue Delta, 3Degrees Group, Inc. (3Degrees), Carbon Solutions, and Northern Indiana Public Service Company LLC (NIPSC). The Entry also set a procedural schedule and scheduled an evidentiary hearing to take place on September 12, 2022.

{¶ 9} On April 13, 2022, Avangrid Renewables, LLC and its wholly-owned subsidiary, Barton Windpower, LLC (Barton 2) (together, Applicants) filed an application in Case No. 22-380-EL-REN pursuant to Ohio Adm.Code 4901:1-40-04(D) for the certification of the facility as an eligible Ohio renewable energy resource generating facility as defined in R.C. 4928.01.

{¶ 10} On May 2, 2022, the attorney examiner suspended the 30-day approval process for Case No. 22-380-EL-REN, pursuant to Ohio Adm.Code 4901:1-40-04(D).

{¶ 11} On May 3, 2022, Carbon Solutions filed a motion for leave to intervene and motion to consolidate. As to the motion 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, as with the Original Cases, the same “deliverability” issues are implicated, and it has interests distinct from the Applicants’ interests. It states that Applicants’ facilities are located in Iowa, and granting intervention will not cause delay. As to the motion to consolidate, Carbon Solutions states that the case shares the same legal and analogous factual issues as the Original Cases. Carbon Solutions states that all facilities are located outside of PJM, and a final order in the Original Cases would resolve the issues for Barton 2, as well. Carbon Solutions states that it would serve judicial economy to consolidate Case No. 22-380-EL-REN with the Original Cases.

{¶ 12} On May 18, 2022, Applicants filed a memorandum contra, arguing that the Commission should not grant the motion to intervene and should not consolidate this case with the Original Cases. As to the motion to intervene, Applicants argue that Carbon Solutions fails to satisfy R.C. 4903.221, Ohio Adm.Code 4901-1-11 and 4901:1-40-04(D). Applicants argue that Carbon Solutions does not articulate any real or substantial interest in the outcome of this proceeding, noting that Carbon Solutions merely noted that its interests are distinct from Applicants. Applicants also argue that granting intervention will unduly prolong and delay the proceeding, noting that these cases are typically resolved within a few months but the Original Cases have been pending for more than a year. Applicants also add that Carbon Solutions does not articulate its legal position or interest in this case, and challenging Staff's application of a specific test is more suited for a Commission ordered inquiry or rulemaking case.

{¶ 13} On May 20, 2022, Carbon Solutions filed a reply, asserting that its intervention would not cause undue delay because there is already an existing procedural schedule for the Original Cases. Carbon Solutions states that the same deliverability issue is applicable to this proceeding, as well as the Original Cases. Carbon Solutions also argues that consolidation with the Original Cases would be appropriate. Additionally, Carbon Solutions requests that all parties who support certification should be required to file testimony on August 12, 2022, rather than all intervenors being required to file testimony by August 26, 2022, which Carbon Solutions states would allow it to offer responsive testimony to all adverse parties.

{¶ 14} On June 24, 2022, Applicants filed a notice of withdrawal of their memorandum contra motion to consolidate. While Applicants explain that they still oppose Carbon Solutions' intervention in the case, they do not oppose the motion to consolidate if the Commission intends to allow Carbon Solutions to participate in this case, as it has in the Original Cases.

{¶ 15} At this time, the attorney examiner finds that the above-captioned cases should be 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, Applicants withdrew their objections to the consolidation. Intervenors in at least one of the above-captioned cases will be treated as intervenors in all the cases. The procedural schedule for the Original Cases will apply to all of the above-captioned cases.

{¶ 16} Additionally, Carbon Solutions' motion to intervene should be granted for the same reasons that the attorney examiner granted Carbon Solutions' motion to intervene in the Original Cases. However, it is important to also note that it is not clear that Carbon Solutions has a direct interest in the outcome of this 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. 14-1182EL-CSS, Entry (Sep. 4, 2014) at 3-4; *In re Complaint of the City of Cleveland*, Case No. 01-174EL-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. 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.

{¶ 17} Additionally, the attorney examiner finds that the procedural schedule should be adjusted. All parties that support certification should file testimony on August 12, 2022. This directive does not apply to any testimony filed by Staff, whose testimony deadline will continue to be August 26, 2022. The attorney examiner also notes that any future requests should be filed as a motion and not buried in a reply brief.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That the above-captioned cases be consolidated, as set forth in Paragraph 15. It is, further,

{¶ 20} ORDERED, That Carbon Solutions' motion to intervene be granted. It is, further,

{¶ 21} ORDERED, That all parties that support certification should file testimony by August 12, 2022. It is, further,

{¶ 22} ORDERED, That a copy of this Entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

/s/ Jacky Werman St. John

By: Jacky Werman St. John
Attorney Examiner

GAP/hac

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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, 22-0380-EL-REN**

Summary: Attorney Examiner Entry ordering that the above-captioned cases be consolidated; that Carbon Solutions' motion to intervene be granted; and, that all parties that support certification should file testimony by August 12, 2022 electronically filed by Heather A. Chilcote on behalf of Jacky Werman St. John, Attorney Examiner, Public Utilities Commission of Ohio