

**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
)	
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

**MOTION FOR SANCTIONS
BY
APPLICANTS MORaine WIND LLC, RUGBY WIND LLC,
ELM CREEK WIND II LLC, BUFFALO RIDGE II LLC,
BARTON WINDPOWER LLC, AND AVANGRID RENEWABLES, LLC**

Without any sort of legal justification, Carbon Solutions Group, LLC (CSG) continues to disobey the Public Utilities Commission of Ohio's (Commission) April 5, 2022 Entry compelling

CSG to respond substantively to discovery requests. Three months have passed and CSG still refuses to comply with the Commission's directive and produce the requested information.

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 and Barton Windpower (collectively, the Applicants) have continued to attempt to work with CSG to reach a good-faith resolution of this dispute in accordance with the Commission's Entry. CSG has refused to do so.

The Applicants submitted applications for certification as renewable energy (REN) resource generating facilities in the above-captioned cases (collectively, Avangrid Renewables REN Cases).¹ To date, in five of the Avangrid Renewables REN Cases,² Commission Staff filed a Review and Recommendation finding that each of the facilities satisfies the renewable energy resource, placed-in-service, and deliverability requirements for certification, and recommending approval of each application.³

¹ See *In the Matter of The Application of Moraine Wind LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-516-EL-REN, Application (Apr. 30, 2021); *In the Matter of The Application of Rugby Wind LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-517-EL-REN, Application (Apr. 30, 2021); *In the Matter of the Application of Elm Creek II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-0531-EL-REN, Application (May 3, 2021); *In the Matter of The Application of Buffalo Ridge II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-532-EL-REN, Application (May 3, 2021); *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, Application (May 4, 2021); and *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, Application (Apr. 13, 2022).

² Applicants filed their application in Case No. 22-380-EL-REN after the Staff Reports were issued in the other Avangrid Renewables REN Cases. However, the Commission subsequently consolidated Case No. 22-380-EL-REN with the other cases on the previously-established procedural schedule.

³ 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*

Notwithstanding the Staff recommendations and findings, CSG intervened in the Avangrid REN Cases to delay the issuance of REN certifications to qualifying resources to manipulate the renewable energy credit (REC) market and to serve its own business interests. CSG stated that its interest is in “the value of RECs to renewable generators located in Ohio and PJM.”⁴ After more than a year since its intervention, CSG has yet to present any evidence or articulate any argument that any of the facilities does not satisfy the three statutory requirements to receive REN certification. Despite claiming it will present evidence at some indeterminate point in the future,⁵ CSG still refuses to provide that evidence in discovery despite the Commission’s April 5, 2022 Entry ordering them 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 (as well as competitors) for each day that CSG is able to stall and delay REN certification approvals in these proceedings.⁶ CSG, and its counsel, appear to have no alternative standard or test, no plausible legal arguments, and no evidence to support its position.

Given the lack of clarity on what, if any, legal positions, evidence, or arguments that CSG seeks to advance, the Applicants issued their First Set of Discovery (Discovery Requests) to CSG

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).

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

⁵ 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.”).

⁶ 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); see also Initial Comments of 3Degrees Group, Inc. to the Review and Recommendation at 5 (Nov. 18, 2021); Reply Comments of Vistra Corp. at 5 (Dec. 8, 2021).

on November 11, 2021 pursuant to their statutory right to discovery.⁷ 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” 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.⁸ Despite the Applicants’ clear statutory right to discovery, CSG’s Objections to Applicants’ Discovery Requests (Initial Objections) failed to provide substantive responses or legally proper objections.⁹ CSG continued to improperly refuse to provide substantive answers despite the Applicants’ numerous attempts to resolve the dispute, including two Discovery Deficiency Letters.¹⁰

Accordingly, the Applicants filed a Motion to Compel Responses to Discovery on February 1, 2022. Subsequently, following a reply period, the Attorney Examiner issued an Entry granting the Applicants’ Motion to Compel, and finding that “[CSG] should answer the interrogatories and provide the requested documents within two *weeks*.”¹¹ More than *three months* later, CSG has failed to do so.

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.¹² If a party disobeys a

⁷ See Motion to Compel Responses to Discovery and Memorandum in Support, Exhibit 1 (Affidavit of Angela Paul Whitfield in Support of Motion to Compel Responses to Discovery) (Feb. 1, 2022); *see also* Attachment A, Discovery Requests.

⁸ *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.

⁹ See Motion to Compel, Attachment B, CSG’s Objections to Applicants’ Discovery Requests.

¹⁰ See Motion to Compel, Exhibit 1 (Whitfield Affid.) and Attachments C-F.

¹¹ See Entry at ¶ 27 (Apr. 5, 2022) (emphasis added).

¹² Ohio Adm.Code 4901-1-23(B).

Commission order compelling discovery, the Commission may impose a number of sanctions.¹³ Possible sanctions include, but are not limited to, prohibiting the disobedient party from further participating in the pending proceeding;¹⁴ prohibiting the disobedient party from supporting or opposing designated claims or defenses;¹⁵ or prohibiting the disobedient party from introducing evidence or conducting cross-examination on designated matters.¹⁶

As such, for the reasons set forth in the attached Memorandum in Support, the Commission should issue sanctions against CSG for continued, willful, bad-faith violation of the Commission's April 5, 2022 Entry compelling discovery. The Commission should prohibit CSG from further participating in this proceeding pursuant to Ohio Adm.Code 4901-1-23(F)(2). Alternatively, the Commission should prohibit CSG from presenting evidence, cross examining witnesses, or otherwise supporting its position regarding the *Koda* Test and the Commission's deliverability standards pursuant to Ohio Adm.Code 4901-1-23(F)(3).

Therefore, the Applicants respectfully request that the Commission grant their Motion for Sanctions for the reasons set forth in the attached Memorandum in Support.

¹³ Ohio Adm.Code 4901-1-23(F).

¹⁴ Ohio Adm.Code 4901-1-23(F)(2).

¹⁵ Ohio Adm.Code 4901-1-23(F)(3).

¹⁶ *Id.*

Respectfully Submitted,

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MEMORANDUM IN SUPPORT

I. INTRODUCTION

The Commission issued a clear, unambiguous directive to CSG. Despite several good faith attempts by Applicants to resolve the issues for three months, CSG continues to refuse to comply

with that clear, unambiguous directive.¹⁷ In its April 5, 2022 Entry, the Commission disposed of CSG's only two objections to the Applicants' Discovery Requests, and directed CSG to respond within two weeks:

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.¹⁸

Although CSG submitted "Supplemental Responses," which did not "answer the interrogatories and provide the requested documents" as required,¹⁹ but instead provided further evasive answers and unlawful objections.²⁰ Despite waiving its right to further object to the Applicants' Discovery Requests, CSG attempted to raise additional, novel objections in response to the Commission's Entry.²¹ CSG also made the bizarre argument throughout its responses "that it is unable to speak for its counsel."²²

Once again, the Applicants made a good faith effort to resolve the discovery dispute. In reply to CSG's deficient, non-compliant "Supplemental Responses," the Applicants served CSG with a Third Discovery Deficiency Letter.²³ CSG, again unsurprisingly, feigned ignorance

¹⁷ See Affidavit Of Angela Paul Whitfield In Support Of Motion For Sanctions, attached hereto as Exhibit 1.

¹⁸ Entry at ¶ 27.

¹⁹ *Id.*

²⁰ See Exhibit 1, Attachment A, Supplemental Responses and Objections to First Set of Discovery.

²¹ See *id.* at 6-11.

²² See generally, *id.*

²³ See Exhibit 1, Attachment B, Third Discovery Deficiency Letter.

regarding the continued deficiencies in its discovery responses. In unprofessional correspondence, CSG asked Applicant's counsel, "What 'deficiencies' are you talking about?" and advised that the Applicants "knock it off."²⁴ CSG also questioned whether the Applicants took issue with the answers or the objections, attempted to distinguish information known to CSG from that known to its counsel, and attempted to argue that various interrogatories were irrelevant.²⁵ The Applicants sent an additional email to CSG's counsel, advising CSG that its attempts to distinguish between evasive answers and unlawful objections and between information known to CSG and its counsel were irrelevant, and that the Commission had directed CSG to respond.²⁶ CSG, unsurprisingly, still refused to provide the responsive information as ordered by the Commission.²⁷ In subsequent correspondence, CSG again feigned ignorance, stating the following: "What information did you ask for that has not been provided? If you cannot answer that question, then you may report that we are at an impasse."²⁸

Since CSG's counsel appeared unable to grasp the deficiencies in CSG's own "Supplemental Responses," the Applicants made one final effort to resolve the dispute in good faith. The Applicants went through each and every Discovery Request, and created a comprehensive chart explaining the deficiencies in each non-response, the reason that a non-response was unlawful or inappropriate, and the information necessary to cure each non-response.²⁹

²⁴ See Exhibit 1, Attachment C, Email from Mark Whitt Dated May 25, 2022.

²⁵ *Id.*

²⁶ See Exhibit 1, Attachment D, Email from Angela Paul Whitfield Dated June 13, 2022.

²⁷ See Exhibit 1, Attachment E, Email from Mark Whitt Dated June 13, 2022.

²⁸ *Id.*

²⁹ See Exhibit 1, Attachment F, Discovery Deficiency Chart; Attachment G, Email from Angela Paul Whitfield Dated June 16, 2022.

CSG, predictably, did not provide any additional information.³⁰ Despite requesting clarification from the Applicants, and despite the Applicants making good faith efforts to provide such clarification, CSG simply raised additional non-sequitur arguments.³¹

At this point, it has become abundantly clear that CSG has never had any intent of responding to Applicants' Discovery Requests. CSG has repeatedly attempted to raise new arguments and new objections despite being unambiguously directed by the Commission to respond to the requests. CSG has repeatedly asked for clarification from the Applicants only to feign ignorance when the Applicants provide the requested clarification. It has become clear that the parties are again at an impasse and the Commission's involvement is necessary in order for Applicants to receive substantive responses to their discovery prior to the testimony deadlines established. Without such discovery, Applicants will be prejudiced at the hearing. Without the cooperation of the only party challenging certification, it is necessary to terminate or limit CSG's participation in this proceeding.

II. LAW AND ARGUMENT

A. CSG continues to refuse to respond to the Applicants' Discovery Requests without any legal justification.

The Commission's April 5, 2022 Entry granting the Applicants' Motion to Compel should have expeditiously resolved this discovery dispute. The Commission reviewed the Applicants' Discovery Requests, CSG's objections, counsel's attempts to resolve the issues, and the pleadings filed by both parties. The Commission then determined that all of the Applicants' Discovery Requests sought relevant information, that CSG's objections were without merit, and that CSG should properly respond to the Discovery Requests within two weeks of the Entry. Instead, CSG

³⁰ See Exhibit 1, Attachment H, Email from Mark Whitt Dated June 20, 2022.

³¹ *Id.*

provided evasive and/or incomplete supplemental answers and improperly raised novel objections to the following Discovery Requests: INT-01-017, INT-01-018, INT-01-019, INT-01-024, INT-01-025, RFP-01-011, RFP-01-012, RFP-01-013, and RFP-01-014.³²

For example, in its “Supplemental Responses” to multiple Discovery Requests, CSG raised new objections. CSG did not raise these objections in its Initial Objections. As a matter of law, it cannot do so now.

Commission regulations, set forth in the Ohio Administrative Code, plainly require a party to provide its objections to interrogatories and requests for production within twenty days after service of the requests.³³ It is a basic legal principle that a party waives an objection to a discovery request when it fails to raise the objection in a timely fashion.³⁴ In CSG’s initial responses, 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.³⁵

However, the Commission rejected each of these objections in its April 5, 2022 Entry:

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

³² See Exhibit 1, Attachment F, Discovery Deficiency Chart; *see also* Attachment A, Supplemental Responses and Objections to First Set of Discovery.

³³ See Ohio Adm.Code 4901-1-19(A), 4901-1-20(C).

³⁴ See, e.g., *U.S. v. Hatchett*, 862 F.2d 1249, 1251-52 (6th Cir. 1988); *Early v. Toledo Blade*, 130 Ohio App.3d 302, 315 (6th Dist. 1998); R.C. 4903.083.

³⁵ See Motion to Compel, Attachment B, CSG’s Objections to Applicants’ Discovery Requests.

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.”³⁶

Other than these two objections that the Commission soundly rejected, CSG did not raise any other objections to in its initial responses. Nor did CSG reserve the right to raise additional objections. Despite this, CSG continues to defy the Commission’s clear and unambiguous directive by raising novel objections months after the Commission conclusively ruled on the issue.

Despite being initially served with the Discovery Requests on November 11, 2021, and despite having a chance to argue against the Applicants’ Motion to Compel in February 2022, CSG raised a number of novel objections for the first time in its April 19, 2022 Supplemental Responses. More than six months after first receiving the Discovery Requests, CSG asserted, for the first time, that various Requests were objectionable for various reasons, including falsely asserting that the factual basis for its arguments are apparent from CSG’s subsequent motions, responses, and comments;³⁷ or that explanation of an argument or evidentiary support would require disclosure of information constituting attorney work product.³⁸ CSG also objected to the relevance of various Discovery Requests,³⁹ despite the Attorney Examiner explicitly stating “that the discovery requests meet the lenient threshold of being reasonably calculated to lead to the discovery of admissible evidence.”⁴⁰

Commission regulations require parties to raise objections to discovery requests within twenty days. CSG continues to raise novel objections after *six months*, despite the fact that the

³⁶ Entry at ¶ 27 (Apr. 5, 2022).

³⁷ See Exhibit 1, Attachment A, Supplemental Responses and Objections to First Set of Discovery at INT-01-019.

³⁸ *Id.*

³⁹ See *id.* at INT-01-017, INT-01-018, and INT-01-019.

⁴⁰ Entry at ¶ 27 (Apr. 5, 2022).

Commission directed CSG to answer the Applicants' Discovery Requests. CSG's additional objections and refusal to answer the Requests directly violates the Commission's April 5, 2022 Entry and Ohio Adm.Code 4901-1-23(F).

In addition to its improper and unlawful objections, CSG's "Supplemental Responses" by and large fail to actually respond to Applicants' Discovery Requests. According to the Commission, Ohio Adm.Code 4901-1-23(B) "sets the standard for answering a request for discovery."⁴¹ Under this standard, "an evasive or incomplete answer shall be treated as a failure to answer."⁴² A party violates this standard where "the objections and answers are not adequate and that they range from being misdirected to frivolous" and "no serious attempt [is] made to provide the requested responses."⁴³ The Commission has also found that a party violates this standard if it "incompletely responded to...the request at issue and [it] failed to provide any justification for [its] response."⁴⁴ Numerous "Supplemental Responses" from CSG plainly violate the standard adopted by the Commission and the Commission's April 5, 2022 Entry.

For example, at numerous points throughout its "Supplemental Responses" CSG asserts that various factual assertions in its pleadings were made by its attorneys, and that CSG "is unable to speak for its counsel."⁴⁵ This is a preposterous statement. Every pleading filed by a party is made on behalf of the party itself. Counsel speaks on behalf of the client throughout all of its pleadings. The client cannot then take the position in discovery that it cannot speak for its counsel

⁴¹ *In the Matter of the Complaint of Michael W. Martin, Complainant, v. The Ohio Bell Telephone Company, Respondent*, Case No. 84-1024-TP-CSS, 1985 WL 1171695, Entry at 1 (Jan. 15, 1985).

⁴² Ohio Adm.Code 4901-1-23(B).

⁴³ *In the Matter of the Investigation into the Perry Nuclear Power Station*, Case No. 85-521-EL-COI, 1987 WL 1466831, Entry at 3 (Mar. 17, 1987).

⁴⁴ *In the Matter of the Complaint of Michael W. Martin, Complainant, v. The Ohio Bell Telephone Company, Respondent*, Case No. 84-1024-TP-CSS, 1985 WL 1171695, Entry at 1 (Jan. 15, 1985).

⁴⁵ See, e.g., Exhibit 1, Attachment A, Supplemental Responses and Objections to First Set of Discovery at INT-01-017.

or that somehow counsel asserted a claim or made a statement in its pleadings that the client itself had not authorized. If CSG has no factual knowledge of the truthfulness of the statements asserted or made in its pleadings, then counsel was not authorized to make such statements in the name of the party and the pleadings must be stricken. Counsel is not a party to the proceeding, CSG is and CSG is responsible for every pleading filed in its name as a party.

Other so-called supplemental responses simply avoid answering a Discovery Request altogether. For example, in INT-01-024, the Applicants asked whether CSG was aware of any specific 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 RECs.⁴⁶ Instead of simply identifying specific facilities, or simply replying “no,” CSG provided a convoluted non-answer:

Subject to these objections, CSG states: RECs are a source of capital to renewable energy developers, so developers consider the current and projected value of RECs when evaluating project economics. Behavioral economists have come to accept that the producer of any good or commodity has an incentive to increase output when supplies are scarce and prices are high, and to curtail output when supplies are abundant and prices are low. There is no reason to believe that renewable energy developers respond to price signals any differently. Therefore, it is reasonable to assume that REC prices directly influence whether certain projects are built, and that there is a positive correlation between renewable energy development and REC prices.⁴⁷

While CSG argues it “it is reasonable to assume that REC prices directly influence whether certain projects are built,” it simply refuses to provide the responsive information, or acknowledge whether or not that information exists and is known to CSG. Unfortunately for CSG, it is not simply “reasonable to assume” this fact—CSG must provide information relevant to the case to support its assumptions. CSG continues to refuse to do so.

⁴⁶ Exhibit 1, Attachment A, Supplemental Responses and Objections to First Set of Discovery at 12.

⁴⁷ *Id.*

CSG's non-responses violate the standard for answering a request for discovery set by Ohio Adm.Code 4901-1-23(B).⁴⁸ CSG's objections and non-answers violate the Commission's discovery rules as they "range from being misdirected to frivolous" and CSG makes "no serious attempt" "to provide the requested responses."⁴⁹ Moreover, by and large, CSG "failed to provide any justification for [its] response."⁵⁰ It is clear, then that CSG's "Supplemental Responses" violate Ohio Adm.Code 4901-1-23(B), 4901-1-23(F), and the Commission's April 5, 2022 Entry. Given the multiple efforts made by the Applicants to resolve these issues over the last eight months, it is clear that no resolution is possible and Applicants will be prejudiced by the lack of discovery obtained in order to prepare for its case in chief.

B. The Applicants have exhausted all other means of resolving this dispute.

As outlined in their Motion to Compel, the affidavits, and the deficiency letters, the Applicants long ago exhausted all other reasonable means of resolving this dispute absent Commission intervention.⁵¹ Before filing their Motion to Compel, the Applicants sent multiple discovery deficiency letters 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.⁵² CSG responded with brief, uncompromising, and unprofessional emails, forcing the Applicants to file their Motion to Compel.

⁴⁸ See *In the Matter of the Complaint of Michael W. Martin, Complainant, v. The Ohio Bell Telephone Company, Respondent*, Case No. 84-1024-TP-CSS, 1985 WL 1171695, Entry at 1 (Jan. 15, 1985).

⁴⁹ See *In the Matter of the Investigation into the Perry Nuclear Power Station*, Case No. 85-521-EL-COI, 1987 WL 1466831, Entry at 3 (Mar. 17, 1987).

⁵⁰ See *In the Matter of the Complaint of Michael W. Martin, Complainant, v. The Ohio Bell Telephone Company, Respondent*, Case No. 84-1024-TP-CSS, 1985 WL 1171695, Entry at 1 (Jan. 15, 1985).

⁵¹ See Motion to Compel at 11-12; see also Ohio Adm.Code 4901-1-23(C).

⁵² See Motion to Compel, Attachment C, December 21, 2021 Discovery Deficiency Letter; Motion to Compel, Attachment E, January 3, 2022 Second Discovery Deficiency Letter

After the Commission rejected CSG’s arguments and granted the Motion to Compel in its April 5, 2022 Entry, CSG continued to violate the Ohio Administrative Code and the Commission’s clear directive. Again, however, the Applicants attempted, in good faith, to reach a resolution with CSG. CSG refused to cooperate.

First, the Applicants attempted to resolve the dispute by serving CSG with a Third Discovery Deficiency Letter.⁵³ CSG again reacted with surprise to the Applicants’ concerns, and insisted that Applicants stop seeking the requested information.⁵⁴ The Applicants again attempted to explain the deficiencies to CSG.⁵⁵ When CSG still refused to provide the responsive information as ordered by the Commission, and asked for specific concerns with its “Supplemental Responses,”⁵⁶ the Applicants provided CSG with a detailed chart, explaining the deficiencies in the non-responses to each Discovery Request, the reason that non-response was unlawful, and the information necessary to cure each non-response.⁵⁷

CSG has still not provided any additional information.⁵⁸ Although the Applicants provided the requested clarification on multiple occasions, CSG continues to raise new arguments.⁵⁹ After eight months of discovery disputes, a Commission Entry directing CSG to respond, and countless hours spent by Applicants’ counsel in good-faith efforts to resolve this dispute, there is still no end in sight to CSG’s noncompliance, despite the fact that the evidentiary hearing in this case is only a few weeks away.

⁵³ See Exhibit 1, Attachment B, Third Discovery Deficiency Letter.

⁵⁴ See Exhibit 1, Attachment C, Email from Mark Whitt Dated May 25, 2022.

⁵⁵ See Exhibit 1, Attachment D, Email from Angela Paul Whitfield Dated June 13, 2022.

⁵⁶ See Exhibit 1, Attachment E, Email from Mark Whitt Dated June 13, 2022.

⁵⁷ See Exhibit 1, Attachment F, Discovery Deficiency Chart; Exhibit 1, Attachment G, Email from Angela Paul Whitfield Dated June 16, 2022.

⁵⁸ See Exhibit 1, Attachment H, Email from Mark Whitt Dated June 20, 2022.

⁵⁹ *Id.*

C. CSG's continued violations cause substantial prejudice for the Applicants.

At this point, every day that passes without substantive responses to the Applicants' Discovery Requests—issued eight months ago—significantly harms and substantially prejudices the Applicants. Without substantive responses to their Discovery Requests, the Applicants will be unable to properly prepare for the evidentiary hearing in this case.

Moreover, if CSG does not reveal its supporting evidence, or even its legal theories, in advance of the hearing, two scenarios are possible. Either CSG will attempt to introduce surprise evidence at the hearing, leading to further delays and expenses for the Applicants, or CSG will not introduce any evidence, forcing the Applicants to waste time and money preparing for a needless evidentiary hearing where the party challenging certification does not introduce any contrary evidence.

The Applicants have already spent thousands of dollars litigating this case. Additionally, they have already lost millions of dollars due to the delays in REC certification. Throughout this case, the Applicants have warned that CSG's goal is simply to delay and stall certification, benefiting CSG and its clients at the expense of its competitors, such as the Applicants. CSG has succeeded in turning what used to be a brief, straightforward certification process into a convoluted and expensive proceeding that has lasted nearly two years. Despite this costly and significant delay, CSG has yet to actually provide any sort of substantive arguments, yet CSG continues to benefit from the increased price of RECs. The Commission should finally put an end to this mockery of the certification process by imposing sanctions on CSG and its counsel for failure to comply with the Commission's April 5, 2022 Entry.

D. The Commission should impose sanctions against CSG.

Given CSG's continued noncompliance with the Commission's April 5, 2022 Entry compelling CSG to respond to the Applicants' Discovery Requests, the Applicants are left with no

reasonable means of resolving this dispute. Moreover, every day that passes with this eight-month discovery dispute ongoing prejudices the Applicants by wasting time and money, and impairing their ability to prepare for the upcoming evidentiary hearing. CSG's pattern of bad-faith, noncompliant behavior leaves the Applicants with no choice but to request sanctions.

Under Ohio Adm.Code 4901-1-23 the Commission may impose a number of sanctions on a party that disobeys a Commission directive compelling discovery.⁶⁰ The Commission may prohibit the disobedient party from further participating in the pending proceeding;⁶¹ prohibit the disobedient party from supporting or opposing designated claims or defenses;⁶² or prohibit the disobedient party from introducing evidence or conducting cross-examination on designated matters.⁶³

As such, the Commission should issue sanctions against CSG for continued, willful, bad-faith violation of the Commission's April 5, 2022 Entry compelling discovery responses. The Applicants respectfully request that the Commission prohibit CSG from further participating in these proceedings pursuant to Ohio Adm.Code 4901-1-23(F)(2). CSG's bad-faith participation has run afoul of the standard under which the Commission allowed CSG to intervene in these proceedings in the first place.

Under R.C. 4903.221(B), the Commission considers 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

⁶⁰ Ohio Adm.Code 4901-1-23(F).

⁶¹ Ohio Adm.Code 4901-1-23(F)(2).

⁶² Ohio Adm.Code 4901-1-23(F)(3).

⁶³ Ohio Adm.Code 4901-1-23(F)(3).

significantly contribute to full development and equitable resolution of the factual issues. CSG's interest in this case continues to be to delay certification of six facilities, manipulating the price of RECs for its own benefit. CSG has yet to provide any substantial argument or evidence related to the merits of the case or the development or resolution of factual issues. CSG has caused significant undue delay, including an eight-month discovery dispute, which has stretched what is typically a straightforward certification process into a nearly two-year proceeding. In order to prevent further undue delay, and prejudice to the Applicants, the Commission should prohibit CSG from further participating in these proceedings.

Alternatively, the Commission should prohibit CSG from presenting evidence, cross examining witnesses, or otherwise supporting its position—whatever that may be—regarding the *Koda* Test and the Commission's deliverability standards pursuant to Ohio Adm.Code 4901-1-23(F)(3). CSG has yet to articulate how exactly the Commission's application of the *Koda* Test is flawed, or to respond substantively to any discovery on the matter, despite the Commission directing them to do so. The Applicants have been requesting this information for eight months, and the evidentiary hearing is only a few weeks away. It would be extremely prejudicial to the Applicants to allow CSG to introduce surprise evidence or fabricate theories at this point, or to further delay the proceedings. Therefore, in the event the Commission does not prohibit CSG from participating in this proceeding altogether, it should limit CSG's participation in this proceeding to the information contained within the Applications, the Applicants' Expert Report.

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 or could be

relevant to the pending proceedings.⁶⁴ CSG has failed to raise any legally sound objections to the Discovery Requests,⁶⁵ and no reasonable means of resolving this dispute remain.⁶⁶ Despite the Commission's April 5, 2022 Entry compelling CSG to respond to the Discovery Requests, CSG continues to raise unlawful objections and provide evasive or incomplete answers. As such, the Applicants respectfully request that the Commission grant this Motion for Sanctions.

Respectfully Submitted,

/s/ Angela Paul Whitfield

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Counsel for Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind II LLC, Buffalo Ridge II LLC, Barton Windpower 1, Avangrid Renewables, LLC, and Barton Windpower LLC.

⁶⁴ See Ohio Adm.Code 4901-1-23(C)(1)(a), (b).

⁶⁵ See Ohio Adm.Code 4901-1-23(C)(1)(c).

⁶⁶ See Ohio Adm.Code 4901-1-23(C).

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 July 11, 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, Barton Windpower I, Avangrid Renewables, LLC, and Barton Windpower 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
)	
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
)	

**AFFIDAVIT OF ANGELA PAUL WHITFIELD IN SUPPORT OF
MOTION FOR SANCTIONS**

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, Barton Windpower LLC, 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 February 1, 2022, the Applicants filed a Motion to Compel Responses to Discovery and Memorandum in Support (Motion to Compel). On January 25, 2022, I signed an Affidavit in Support of the Motion to Compel, which the Applicants attached as Exhibit 1 to the Motion to Compel. I hereby incorporate the statements made in the January 25, 2022 Affidavit in Support of the Motion to Compel herein.

2. On April 5, 2022, the Attorney Examiners issued an Entry, granting the Applicants' Motion to Compel and holding that CSG should answer the interrogatories and provide the requested documents within two *weeks*.

3. On April 19, 2022, CSG submitted their Supplemental Responses and Objections to First Set of Discovery (Supplemental Responses). A true and correct copy of CSG's Supplemental Responses is attached hereto as Attachment A.

4. CSG did not fully or properly respond to a number of Interrogatories or Requests for Production of Documents contained within the Discovery Requests. Despite waiving its right to further object to the Applicants' Discovery Requests, CSG attempted to raise additional, novel objections in response to the Commission's Entry. CSG also made the bizarre argument throughout its responses "that it is unable to speak for its counsel."

5. CSG produced additional information via email on May 9, 2022, following the execution of a Protective Agreement between the parties. This information failed to cure the discovery deficiencies in CSG's Supplemental Responses.

6. In an effort to resolve the discovery dispute, the Applicants served CSG with a Third Discovery Deficiency Letter. A true and accurate copy of that Letter, dated May 24, 2022, is attached hereto as Attachment B.

7. CSG's counsel responded with an unprofessional email, asking Applicants' counsel "What 'deficiencies' are you talking about?" and advising that the Applicants "knock it off." A true and accurate copy of that email, dated May 25, 2022, is attached hereto as Attachment C.

8. In response to CSG's refusal to cure the discovery deficiencies in its Supplemental Responses, the Applicants sent an email to CSG's counsel, advising CSG that its attempts to distinguish between evasive answers and unlawful objections and between information known to CSG and its counsel were irrelevant, and that the Commission had directed CSG to respond. A copy of that email, dated June 13, 2022, is attached hereto as Attachment D.

9. CSG still failed to cure the discovery deficiencies by providing the responsive information as ordered by the Commission. In a reply email, CSG's counsel again feigned ignorance, stating the following: "What information did you ask for that has not been provided? If you cannot answer that question, then you may report that we are at an impasse." A true and accurate copy of that email, dated June 13, 2022, is attached hereto.

10. In a good faith effort to clear up any potential confusion regarding the requested information, the Applicants went through each and every Discovery Request, and created a comprehensive chart explaining the deficiencies in each non-response, the reason that a non-response was unlawful or inappropriate, and the information necessary to cure each non-response. A true and accurate copy of this chart is attached hereto as Attachment F.

11. The Applicants emailed this chart to CSG's counsel on June 16, 2022. A true and accurate copy of that email is attached hereto as Attachment G.

12. Despite requesting additional clarification on the scope of the discovery deficiencies from the Applicants, and despite the Applicants expending time and resources to provide CSG with a thorough explanation of the deficiencies, CSG did not provide any additional information. In an email, CSG's counsel instead attempted to raise further issues regarding the relevancy of the requested information (despite the Commission already ruling on the relevancy issue) and arguing that CSG is unable to provide information supporting the claims made by its counsel in pleadings. A true and accurate copy of that email, dated June 20, 2022, is attached hereto as Exhibit H.

13. As set forth above, despite the Applicants' reasonable efforts to resolve this discovery dispute, CSG continues to disobey the Commission's April 5, 2022 Entry directing CSG to substantively respond to the Applicants' Discovery Requests by April 19, 2022.

FURTHER AFFIANT SAYETH NAUGHT.

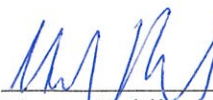


Angela Paul Whitfield

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 11 day of July 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
)	
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)	
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In the Matter of The Application of Buffalo Ridge II for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility.)	Case No. 21-532-EL-REN
)	
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)	
In the Matter of The Application of Barton Windpower 1 for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility.)	Case No. 21-544-EL-REN
)	
)	

**SUPPLEMENTAL 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**

Attachment

A

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. To the extent this interrogatory seeks information pertaining to the nature and extent of CSG's interest in these proceedings, the April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
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.

Subject to these objections, CSG states: No.

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.

SUPP. RESPONSE: See answer and 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

SUPP. RESPONSE: See answer and 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 objection to INT-01-001.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. To the extent this interrogatory seeks information pertaining to the nature and extent of CSG's interest in these proceedings, the April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
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.

Subject to these objections, CSG states: No.

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.

SUPP. RESPONSE: See answer and objections to INT-01-004.

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.

SUPP. RESPONSE: See answer and objections to INT-01-004.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. To the extent this interrogatory seeks information pertaining to the nature and extent of CSG's interest in these proceedings, the April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
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.

Subject to these objections, CSG states: Yes.

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.

SUPP. RESPONSE: Subject to the objections in response to INT-01-007, CSG will provide information responsive to this interrogatory upon execution of a mutually acceptable Protective Agreement.

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.

SUPP. RESPONSE: Subject to the objections in response to INT 01-007, CSG will provide information responsive to this interrogatory upon execution of a mutually acceptable Protective Agreement.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. To the extent this interrogatory seeks information pertaining to the nature and extent of CSG's interest in these proceedings, the April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
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.

Subject to these objections, CSG states: Yes.

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.

SUPP. RESPONSE: Subject to the objections listed in response to INT 01-010, CSG will provide information responsive to this interrogatory upon execution of a mutually acceptable Protective Agreement.

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

SUPP. RESPONSE: Subject to the objections listed in response to INT 01-010, CSG will provide information responsive to this interrogatory upon execution of a mutually acceptable Protective Agreement.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. To the extent this interrogatory seeks information pertaining to the nature and extent of CSG's interest in these proceedings, the April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
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.

Subject to these objections, CSG states: No.

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.

SUPP. RESPONSE: See answer and objections to INT-01-013.

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.

SUPP. RESPONSE: See answer and objections to INT-01-013.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The interrogatory fails to define “the grid,” which in the context presented could mean the transmission systems managed by PJM, transmission systems managed by MISO, the MISO and PJM transmission systems combined, or the combined transmission systems serving North America. The interrogatory is therefore vague and ambiguous.
2. The interrogatory fails to quantify what constitutes a “substantial” change in power deliveries from PJM to FirstEnergy or Duke, and is therefore vague and ambiguous.
3. This interrogatory is vague, ambiguous and overbroad because “any change to the grid” encompasses not only physical changes to “the grid” but external changes that impact the operating characteristics of the grid, such as: changes in customers and load; changes in utility and RTO tariffs; changes in state and federal regulatory requirements; weather events; maintenance; and other external factors.

Subject to these objections, CSG states that, to its knowledge, FirstEnergy and Duke’s change of RTO membership from MISO to PJM did not materially impact these utilities’ ability to meet their native load obligations.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
2. The phrase quoted in this interrogatory is an argument, not a statement of fact, and the “factual basis and/or support” for the argument is apparent from CSG’s subsequent motions, responses, and comments filed in this proceeding. Accordingly, this interrogatory is improper under Rule 4901-1-16(G) (“A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.”).
3. The phrase quoted in this interrogatory is from a legal filing prepared by CSG’s legal counsel. To the extent the “factual basis and/or support” for the statement is not apparent from the motion to intervene or subsequent filings, any further explanation of the statement would require disclosure of information constituting attorney work product.

Subject to these objections, CSG states that it is unable to speak for its counsel.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
2. The phrase quoted in this interrogatory is an argument, not a statement of fact, and the “factual basis and/or support” for the argument is apparent from CSG’s subsequent motions, responses, and comments filed in this proceeding. Accordingly, this interrogatory is improper under Rule 4901-1-16(G) (“A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.”).
3. The phrase quoted in this interrogatory is from a legal filing prepared by CSG’s legal counsel. To the extent the “factual basis and/or support” for the statement is not apparent from the motion to intervene or subsequent filings, any further explanation of the statement would require disclosure of information constituting attorney work product.

Subject to these objections, CSG states that, while it is unable to speak for its counsel, none of the Applications contain information demonstrating that electricity from any Applicants’ facility will be actually delivered into Ohio.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.

2. The phrase quoted in this interrogatory is an argument, not a statement of fact, and the “factual basis and/or support” for the argument is apparent from CSG’s subsequent motions, responses, and comments filed in this proceeding. Accordingly, this interrogatory is improper under Rule 4901-1-16(G) (“A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.”).
3. The phrase quoted in this interrogatory is from a legal filing prepared by CSG’s legal counsel. To the extent the “factual basis and/or support” for the statement is not apparent from the motion to intervene or subsequent filings, any further explanation of the statement would require disclosure of information constituting attorney work product.

Subject to these objections, CSG states that while it is unable to speak for its counsel, the interrogatory appears to mischaracterize the referenced statement.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
2. The phrase quoted in this interrogatory is an argument, not a statement of fact, and the “factual basis and/or support” for the argument is apparent from CSG’s subsequent motions, responses, and comments filed in this proceeding. Accordingly, this interrogatory is improper under Rule 4901-1-16(G) (“A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the pending proceeding. Before serving any discovery

request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.”).

3. The phrase quoted in this interrogatory is from a legal filing prepared by CSG’s legal counsel. To the extent the “factual basis and/or support” for the statement is not apparent from the motion to intervene or subsequent filings, any further explanation of the statement would require disclosure of information constituting attorney work product.

Subject to these objections, CSG states: No.

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.

SUPP. RESPONSE: See objections and answer to INT 01-020.

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

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
2. The phrase quoted in this interrogatory is an argument, not a statement of fact, and the “factual basis and/or support” for the argument is apparent from CSG’s subsequent motions, responses, and comments filed in this proceeding. Accordingly, this interrogatory is improper under Rule 4901-1-16(G) (“A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the pending proceeding. Before serving any discovery

request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.”).

3. The phrase quoted in this interrogatory is from a legal filing prepared by CSG’s legal counsel. To the extent the “factual basis and/or support” for the statement is not apparent from the motion to intervene or subsequent filings, any further explanation of the statement would require disclosure of information constituting attorney work product.

Subject to these objections, CSG states that while it is unable to speak for its counsel, the statement does not refer to specific facilities.

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The April 5, 2022 Entry granting intervention to CSG renders the information requested irrelevant and not reasonably calculated to lead to the discovery of admissible evidence.
2. The phrase quoted in this interrogatory is an argument, not a statement of fact, and the “factual basis and/or support” for the argument is apparent from CSG’s subsequent motions, responses, and comments filed in this proceeding. Accordingly, this interrogatory is improper under Rule 4901-1-16(G) (“A discovery request under rules 4901-1-19 to 4901-1-22 of the Administrative Code may not seek information from any party which is available in prefiled testimony, prehearing data submissions, or other documents which that party has filed with the commission in the pending proceeding. Before serving any discovery request, a party must first make a reasonable effort to determine whether the information sought is available from such sources.”).
3. The phrase quoted in this interrogatory is from a legal filing prepared by CSG’s legal counsel. To the extent the “factual basis and/or support” for the statement is not apparent from the motion to intervene or subsequent filings, any further explanation of the statement would require disclosure of information constituting attorney work product.

Subject to these objections, CSG states that it is unable to speak for its counsel. However, the statement is consistent with CSG's general observation, informed by CSG's experience in the relevant market

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.

SUPP. RESPONSE: CSG objects to this interrogatory for the following reasons:

1. The interrogatory is vague and overbroad because, among other reasons, it fails to identify a time period, geographic location, or type of renewable energy resource; fails to define "planning, development, or construction;" and erroneously assumes that REC prices are the only factor project owners consider in determining whether to develop projects.
2. Answering this interrogatory would require CSG to have personal knowledge of the extent to which REC prices influenced the decision to construct the tens of thousands of renewable energy facilities currently operating in the United States, or for which "planning, development, or construction" is currently underway. CSG does not have such knowledge.

Subject to these objections, CSG states: RECs are a source of capital to renewable energy developers, so developers consider the current and projected value of RECs when evaluating project economics. Behavioral economists have come to accept that the producer of any good or commodity has an incentive to increase output when supplies are scarce and prices are high, and to curtail output when supplies are abundant and prices are low. There is no reason to believe that renewable energy developers respond to price signals any differently. Therefore, it is reasonable to assume that REC prices directly influence whether certain projects are built, and that there is a positive correlation between renewable energy development and REC prices.

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

RESPONSE: See objections to INT-01-001.

SUPP. RESPONSE: See objections and response to INT-01-24.

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.

SUPP. RESPONSE: See objections and response to INT 01-024.

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.

SUPP. RESPONSE: To the extent CSG or its counsel have retained or employed non-testifying experts or other individuals to assist CSG in anticipation of litigation or preparation for hearing, the identity of such individuals and their work product is beyond the scope of discovery. *See DMS Constr. Enterprises, L.L.C. v. Homick*, 2020-Ohio-4919, ¶¶ 29-36.

Subject to this objection, CSG states: Rory Gopaul, Managing Partner, Carbon Solutions Group, 2045 W. Grant Ave. Suite B, Chicago, IL 60612. Mr. Gopaul may be contacted through counsel.

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.

SUPP. RESPONSE: To the extent CSG or its counsel have retained or employed non-testifying experts or other individuals to assist CSG in anticipation of litigation or preparation for hearing, the identity of such individuals and their work product is beyond the scope of discovery. *See DMS Constr. Enterprises, L.L.C. v. Homick*, 2020-Ohio-4919, ¶¶ 29-36.

Subject to this objection, CSG states that it will disclose testifying experts, if any, in accordance with the procedural schedule in this matter.

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.

SUPP. RESPONSE: Rory Gopaul.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: No responsive documents identified.

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.

SUPP. RESPONSE: CSG will exchange exhibit lists in accordance with the procedural schedule in this proceeding.

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.

SUPP. RESPONSE: CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege.

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.

SUPP. RESPONSE: CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege.

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.

SUPP. RESPONSE: CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege.

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.

SUPP. RESPONSE: CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege.

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.

SUPP. RESPONSE: No experts were listed.

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.

SUPP. RESPONSE: No non-experts were listed.

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.

SUPP. RESPONSE: No non-experts were listed.

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.

SUPP. RESPONSE: No Persons were identified.

Dated: April 19, 2022

As to objections,

/s/ Mark A. Whitt

Mark A. Whitt (0067996)

Lucas A. Fykes (0098471)

WHITT STURTEVANT LLP

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88 East Broad Street

Columbus, Ohio 43215

Telephone: (614) 224-3946

whitt@whitt-sturtevant.com

fykes@whitt-sturtevant.com

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 April 19, 2022.

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

CARPENTER LIPPS & LELAND LLP

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(614) 365-4112

May 24, 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 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 I, and Buffalo Ridge II Wind LLC (collectively, the Applicants) received supplemental 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). Once again, those responses are improper, and bordering on bad faith. The Applicants demand that CSG cure its deficient responses immediately.

As you know, Avangrid Renewables sent a deficiency letter regarding CSG's discovery responses on December 21, 2021, and sent a second deficiency letter to CSG on January 3, 2022 to try to resolve those discovery deficiencies. Because CSG refused to cure its deficiencies, Avangrid Renewables was left no choice but to file a Motion to Compel with the Commission, to compel CSG to answer timely and reasonable data requests. On April 5, 2022, the Commission granted the Applicants' Motion to Compel in its entirety. As the Commission noted in its Entry, CSG responded to each and every interrogatory and request for production with the same two baseless objections. The Commission held "that the discovery requests meet the lenient threshold of being reasonably calculated to lead to the discovery of admissible evidence" and that CSG "should answer the interrogatories and provide the requested documents."

Despite this clear and unambiguous directive from the Commission, CSG has once again failed to provide good-faith responses to reasonable and lawful discovery requests. Instead, CSG

Attachment

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attempts to raise entirely novel objections to the discovery requests in clear violation of the Commission's April 5, 2022 Entry, which compelled CSG to respond despite previous objections to the requests. Furthermore, CSG makes the ridiculous claim "that it is unable to speak for its counsel."

First, as a matter of law, CSG is unable to raise further objections at this time. Ohio Adm.Code 4901-1-19(A) and 4901-1-20(C) requires a party to provide its objections to interrogatories and requests for production within twenty days after service of the requests. It is a basic legal principle that a party waives an objection to a discovery request when it fails to raise the objection in a timely fashion. *See, e.g., U.S. v. Hatchett*, 862 F.2d 1249, 1251-52 (6th Cir. 1988); *Early v. Toledo Blade*, 130 Ohio App.3d 302, 315 (6th Dist. 1998); R.C. 4903.083.

In CSG's initial responses, beyond the two objections the Commission rejected in its April 5, 2022 Entry, CSG did not provide any further objections to the Applicants' November 11, 2021 discovery requests. Nor did CSG reserve the right to raise additional objections. It has been nearly six months since the Applicants served their discovery requests, and over a month since the Commission directed CSG to answer those requests, in their entirety. CSG cannot continue to defy the Commission's clear and unambiguous order by raising novel objections months after the fact.

At any rate, even if it could raise additional objections at this time, which it cannot, CSG's objections, once again, lack any support in Ohio law or Commission regulations. CSG continues to falsely claim that it will present arguments and evidence regarding the *Koda* Test for deliverability, yet refuses to even articulate what those arguments and evidence are. Underlying evidence and supporting documents are not work product, and even if they were, the party asserting work product privilege has the burden of proving it. *State ex rel. National Broadcasting Co., Inc. v. City of Cleveland*, 57 Ohio St.3d 77 (1991). The factual basis of CSG's claims are "not apparent from the motion to intervene or subsequent filings" because they are entirely nonsensical and without basis in fact or law.

Furthermore, CSG's assertion that it is "unable to speak" for its own counsel is, frankly, absurd and has no basis in law. Pleadings filed by attorneys on behalf of their clients, are actions taken by the clients. An attorney has no ability to act outside the representation of its clients. A party cannot avoid its discovery obligations by making such an unfounded claim.

Additionally as you are aware, Ohio Civ.R. 11 requires that an attorney shall not sign a pleading unless "to the best of the attorney's or party's knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay." The same attorney who signed CSG's initial and supplemental discovery responses also signed each and every other pleading CSG filed. Either that attorney routinely signs documents without grounds to support them, the attorney did not have the client's knowledge or consent to file said documents and the arguments contained therein, and/or the attorney knowingly signed incorrect pleadings and discovery responses. At any rate, the assertion that a party can hide behind statements made by its counsel as being made by a third party is illogical and without any legal basis.

By refusing to comply with the Commission's discovery order, CSG and its counsel may be subject to sanctions and/or may be required to withdraw from the proceeding. Ohio Adm.Code 4901-1-23(F) states that if any party disobeys an order of the Commission compelling discovery, the Commission may prohibit the disobedient party from further participating in the pending proceeding, prohibit the disobedient party from supporting or opposing designated claims or defenses, or from introducing evidence or conducting cross-examination on designated matters, or take any such other action as the Commission deems necessary. Furthermore, Ohio Civ.R. 11 enables the Commission to assess financial sanctions against an attorney who signs a pleading in violation of a rule.

Lastly, the confidential supplemental responses that CSG provided on May 10, 2022, do not cure the deficiencies described in this letter. Those additional responses to INT-01-007 through INT-01-012 also fail to address the concerns raised to the Commission with regard to CSG's objections and lack of responses identified by the Applicants in this letter.

Simply put, the Commission directed CSG to respond to the Applicants' discovery requests. It did not direct CSG to continue to delay the discovery process and invent new, baseless objections that fly in the face of Ohio law. To the extent CSG continues to refuse to comply with the Commission's April 5, 2022 Entry, the Applicants will seek sanctions against CSG and its counsel. As such, the Applicants hereby demand that CSG cure its deficient discovery responses immediately.

Sincerely,

A handwritten signature in black ink, appearing to read "AP Whitfield", written in a cursive style.

Angela Paul Whitfield

Angela Paul Whitfield

From: Mark Whitt <whitt@whitt-sturtevant.com>
Sent: Wednesday, May 25, 2022 1:56 PM
To: Madison Kingseed
Cc: Angela Paul Whitfield
Subject: Re: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Angie,

If there is a genuine issue with the discovery that you wish to resolve in good faith, I need you to: (1) tell me which specific requests you are talking about and why the information sought is relevant to the proceeding; and (2) explain why you believe the response is improper, deficient, etc. If you cannot or will not provide this information to me, how am I supposed to help you? The attorney examiner won't be able to help you either, because the information I'm asking for is the same information you would need to provide in a motion to compel.

Your letter takes issue with CSG stating that it is "unable to speak for its counsel," so I assume the responses to Interrogatory Nos. 17 through 23 are among the responses you have a problem with. Each of these interrogatories partially quotes a legal argument or contention from GSG's intervention memoranda and asks for the "factual basis and/or support for" the contention. I wrote these legal memoranda, not CSG. CSG responded to your interrogatories to the best of its knowledge, with the caveat that it is "unable to speak for its counsel." Apart from this caveat, what is your problem with CSG's answers to these interrogatories? Moreover, now that the intervention issue has been decided, how are these interrogatories relevant to the case?

You also say that the confidential responses to Interrogatory Nos. 7 through 12 "do not cure the deficiencies described in this letter." What "deficiencies" are you talking about? Throughout your letter you complain about objections being lodged to some of the requests, but you fail to acknowledge that subject to these objections, CSG has responded. So what is the problem: the objections, the responses, or both? Would withdrawing certain objections without modifying the response resolve any of your concerns? You need to give me something to work with. What will *not* work with me are continued baseless claims of bad faith and spurious threats of sanctions. You should understand that threatening someone with sanctions and not following through is itself sanctionable conduct. No one wants to go down that road so knock it off.

Let me ask as clearly as I can ask it: what information do you want or need from CSG that you don't have? That seems to be a more productive place to work from than continuing to fight over discovery requests that were not very well thought-out to begin with.

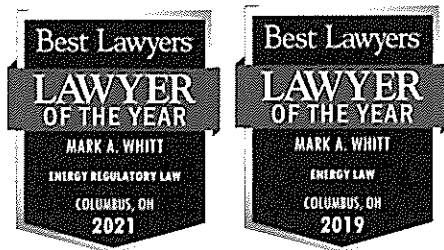
Mark A. Whitt

Attachment

C

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614.804.6034 (mobile)

whitt@whitt-sturtevant.com



From: Madison Kingseed <kingseed@CarpenterLipps.com>
Date: Tuesday, May 24, 2022 at 9:31 AM
To: Mark Whitt <whitt@whitt-sturtevant.com>
Cc: Angela Paul Whitfield <paul@CarpenterLipps.com>
Subject: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Mr. Whitt,

Please see attached on behalf of Angela Paul Whitfield.

Madison Kingseed
Legal Assistant
Carpenter Lipps & Leland LLP
280 N. High Street
Columbus, Ohio 43215
Columbus – Chicago – Washington D.C.
(614) 300-4007
(614) 365-9145 – Fax
kingseed@carpenterlipps.com

Angela Paul Whitfield

From: Angela Paul Whitfield
Sent: Monday, June 13, 2022 8:37 AM
To: Mark Whitt
Subject: RE: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Mark,

The issue is simple: The Attorney Examiner ordered CSG to respond to Avangrid's discovery requests. Yet, CSG continues to refuse to do so. Your efforts to appear unaware of your client's discovery obligations are a red herring. The Attorney Examiner already ruled on the relevance of the information Avangrid is seeking. CSG has been compelled to respond and produce the requested information. Period. Your continued attempts to delay and deflect are improper and frankly sanctionable.

First, your attempt to distinguish between evasive answers and unlawful objections is irrelevant. You ask "what is the problem: the objections, the responses, or both?" The problem is both, because at this point, CSG cannot object or evade, yet CSG chooses to do both. As we previously explained, CSG cannot lawfully raise any objections at this time. Your client previously lodged only two objections, and the Attorney Examiner soundly rejected them both. Moreover, CSG cannot provide evasive answers, as Commission regulations make it clear that "an evasive or incomplete answer shall be treated as a failure to answer." See Ohio Adm.Code 4901-1-23(B).

Second, your attempts to distinguish between information known to you and information known to your client is irrelevant. You submitted pleadings in this case on behalf of your client. You argue that your client submitted the discovery responses, but you signed them and presumably reviewed them. Unless you are signing discovery responses without reviewing them, you are very capable of supplementing the information known to your client. There are simply no grounds in statutory law, Commission regulations, Ohio rules, or court or Commission precedent for a party to argue that it does not know the grounds on which its counsel made legal and factual representations.

Third, you ask, "now that the intervention issue has been decided, how are these interrogatories relevant to the case?" If you wish to understand why these interrogatories are relevant, feel free to read Avangrid's Motion to Compel filed February 1, 2022, or Reply in Support filed February 23, 2022. Avangrid thoroughly explained its arguments as to relevance therein. However, your own belief as to whether or not those interrogatories are relevant is meaningless, as the Attorney Examiner already accepted Avangrid's arguments, found them relevant, and directed your client to respond. Your failure to grasp the relevance is not a lawful reason to disobey a Commission order.

Therefore, to provide the information necessary to cure the discovery deficiencies, you must go through each and every discovery response and provide a substantive answer. You cannot continue to object. You cannot continue to provide evasive answers. Read each request, and either provide the responsive information, or state that no such information exists. This is not difficult. We know you are a capable lawyer. We should not need to explain further how to respond to discovery requests. These requests are straightforward, and the Attorney Examiner has directed your client to respond.

Please respond fully and completely to the discovery requests as ordered, or state that your client has no responsive information and documents.

Thank you.

Angie

Attachment

D

Angela Paul Whitfield
Carpenter Lipps & Leland LLP
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(614) 365-4100
(614) 365-4112 (Direct Dial)
(614) 365-9145 (Facsimile)
paul@carpenterlipps.com

From: Mark Whitt <whitt@whitt-sturtevant.com>
Sent: Wednesday, May 25, 2022 1:56 PM
To: Madison Kingseed <kingseed@CarpenterLipps.com>
Cc: Angela Paul Whitfield <paul@CarpenterLipps.com>
Subject: Re: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Angie,

If there is a genuine issue with the discovery that you wish to resolve in good faith, I need you to: (1) tell me which specific requests you are talking about and why the information sought is relevant to the proceeding; and (2) explain why you believe the response is improper, deficient, etc. If you cannot or will not provide this information to me, how am I supposed to help you? The attorney examiner won't be able to help you either, because the information I'm asking for is the same information you would need to provide in a motion to compel.

Your letter takes issue with CSG stating that it is "unable to speak for its counsel," so I assume the responses to Interrogatory Nos. 17 through 23 are among the responses you have a problem with. Each of these interrogatories partially quotes a legal argument or contention from GSG's intervention memoranda and asks for the "factual basis and/or support for" the contention. I wrote these legal memoranda, not CSG. CSG responded to your interrogatories to the best of its knowledge, with the caveat that it is "unable to speak for its counsel." Apart from this caveat, what is your problem with CSG's answers to these interrogatories? Moreover, now that the intervention issue has been decided, how are these interrogatories relevant to the case?

You also say that the confidential responses to Interrogatory Nos. 7 through 12 "do not cure the deficiencies described in this letter." What "deficiencies" are you talking about? Throughout your letter you complain about objections being lodged to some of the requests, but you fail to acknowledge that subject to these objections, CSG has responded. So what is the problem: the objections, the responses, or both? Would withdrawing certain objections without modifying the response resolve any of your concerns? You need to give me something to work with. What will *not* work with me are continued baseless claims of bad faith and spurious threats of sanctions. You should understand that threatening someone with sanctions and not following through is itself sanctionable conduct. No one wants to go down that road so knock it off.

Angela Paul Whitfield

From: Mark Whitt <whitt@whitt-sturtevant.com>
Sent: Monday, June 13, 2022 4:38 PM
To: Angela Paul Whitfield
Subject: Re: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Angie-

Avangrid served 29 interrogatories. Of these, 7 do not require a response because a previous interrogatory was not answered in the affirmative, and an additional 6 asked a "yes" or "no" question to which a "yes" or "no" answer was provided. Additionally, 2 interrogatories asking about the identify of witnesses were answered. This leaves a pool of 14 interrogatories and responses as potential candidates for dispute, but all of these were answered. Many of the answers are subject to objections, but the objections raised have not been ruled on and, more importantly, will never need to be ruled on unless Avangrid seeks to enter the answers into evidence. Merely characterizing unspecified answers to unspecified interrogatories as "evasive" does not advance the ball.

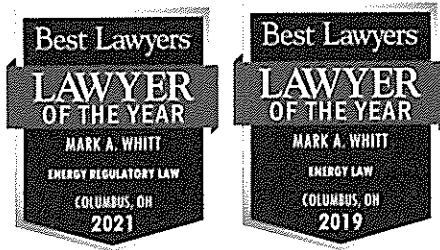
Accordingly, I will ask you again: what information did you ask for that has not been provided? If you cannot answer that question, then you may report that we are at an impasse.

Mark A. Whitt

whittsturtevant LLP

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614.804.6034 (mobile)

whitt@whitt-sturtevant.com



Attachment

E

	Discovery Request	CSG Response	Deficiency
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?’”	CSG raised three objections and stated that “subject to these objections, CSG states that it is unable to speak for its counsel.”	Please provide any facts, information, or theories which demonstrate that “the output of a power flow study is heavily influenced by the inputs” and how you believe these inputs are manipulated, or acknowledge that you have no such information in your possession. Additionally, as previously discussed, you have waived the right to object further to these discovery requests.
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?’”	CSG raised three objections and stated that “subject to these objections, CSG states that, while it is unable to speak for its counsel, none of the Applications contain information demonstrating that electricity from any Applicants’ facility will be actually delivered into Ohio.”	The question did not refer to the Applications. Rather, they referred to your statement that “there is no indication.” Please provide any facts, information, or theories supporting your assertion that the power flow studies do not demonstrate that electricity will actually be delivered into Ohio. Additionally, as previously discussed, you have waived the right to object further to these discovery requests.
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?’”	CSG raised three objections and stated that “Subject to these objections, CSG states that while it is unable to speak for its counsel, the interrogatory appears to mischaracterize the referenced statement.”	This statement is a direct quote from your pleading, and the interrogatory does not characterize it in any way, it simply requests that you provide evidentiary support for the statement that “‘deliverability’ under R.C. 4928.64 has both a physical and financial dimension.” Please either specifically identify the facts supporting that argument, or

Attachment

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			<p>acknowledge that you have no such information in your possession. Additionally, as previously discussed, you have waived the right to object further to these discovery requests</p>
IN-01-024	<p>“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?”</p>	<p>“Subject to these objections, CSG states: RECs are a source of capital to renewable energy developers, so developers consider the current and projected value of RECs when evaluating project economics. Behavioral economists have come to accept that the producer of any good or commodity has an incentive to increase output when supplies are scarce and prices are high, and to curtail output when supplies are abundant and prices are low. There is no reason to believe that renewable energy developers respond to price signals any differently. Therefore, it is reasonable to assume that REC prices directly influence whether certain projects are built, and that there is a positive correlation between renewable energy development and REC prices.”</p>	<p>This interrogatory did not ask about your theory, it asked whether you are aware of any specific projects that have proceeded due to the increased price in RECs. If you are not aware of any specific projects, please say “no.” Additionally, as previously discussed, you have waived the right to object further to these discovery requests</p>

INT-01-025	"If the answer to INT-01-024 was affirmative, please identify each such project."	"See objections and response to INT-01-24."	Please identify specific projects. If you cannot identify specific projects, please say so. Additionally, as previously discussed, you have waived the right to object further to these discovery requests
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."	"CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege."	As previously discussed, you have waived the right to object further to these discovery requests. Please provide the responsive documents.
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."	"CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege."	As previously discussed, you have waived the right to object further to these discovery requests. Please provide the responsive documents.
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."	"CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege."	As previously discussed, you have waived the right to object further to these discovery requests. Please provide the responsive documents.
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."	"CSG objects to this request because responsive documents, if any, constitute attorney work product or are subject to attorney client privilege."	As previously discussed, you have waived the right to object further to these discovery requests. Please provide the responsive documents.

Angela Paul Whitfield

From: Angela Paul Whitfield
Sent: Thursday, June 16, 2022 11:19 AM
To: Mark Whitt
Subject: RE: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.
Attachments: Chart of CSG Discovery Deficiencies (859092xB33A3).pdf

Mark:

We will try this one final time. As we previously explained, CSG cannot lawfully raise any objections at this time. Your client previously lodged only two objections, and the Attorney Examiner soundly rejected them both. Moreover, CSG cannot provide evasive answers, as Commission regulations make it clear that "an evasive or incomplete answer shall be treated as a failure to answer." *See* Ohio Adm.Code 4901-1-23(B).

Furthermore, you submitted pleadings in this case on behalf of your client. You argue that your client submitted the discovery responses, but you signed them and presumably reviewed them. Unless you are signing discovery responses without reviewing them, you are very capable of supplementing the information known to your client. There are simply no grounds in statutory law, Commission regulations, Ohio rules, or court or Commission precedent for a party to argue that it does not know the grounds on which its counsel made legal and factual representations.

Please go through each and every discovery response, as identified in this chart, and provide a substantive answer. You cannot continue to object. You cannot continue to provide evasive answers. Please either provide the responsive information, or state that no such information exists. These requests are straightforward, and the Attorney Examiner has directed your client to respond.

Please respond fully and completely to the discovery requests as ordered, or state that your client has no responsive information and documents.

Angie

Angela Paul Whitfield
Carpenter Lipps & Leland LLP
280 Plaza, Suite 1300
280 North High Street
Columbus, Ohio 43215
(614) 365-4100
(614) 365-4112 (Direct Dial)
(614) 365-9145 (Facsimile)
paul@carpenterlipps.com

From: Mark Whitt <whitt@whitt-sturtevant.com>
Sent: Monday, June 13, 2022 4:38 PM
To: Angela Paul Whitfield <paul@CarpenterLipps.com>
Subject: Re: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Angie-

Attachment

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Avangrid served 29 interrogatories. Of these, 7 do not require a response because a previous interrogatory was not answered in the affirmative, and an additional 6 asked a "yes" or "no" question to which a "yes" or "no" answer was provided. Additionally, 2 interrogatories asking about the identify of witnesses were answered. This leaves a pool of 14 interrogatories and responses as potential candidates for dispute, but all of these were answered. Many of the answers

Angela Paul Whitfield

From: Mark Whitt <whitt@whitt-sturtevant.com>
Sent: Monday, June 20, 2022 3:56 PM
To: Angela Paul Whitfield
Subject: Re: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Angie –

Sorry for not getting back to you on this before the end of the week. I'll start by responding to the issues you've raised and conclude by suggesting an alternate path to another discovery motion.

It's important to consider the discovery requests and original objections/responses in context. At the time the discovery was served, CSG did not know whether it would be permitted to remain in the proceeding or, if so, what the proceeding would look like. Avangrid served its discovery before these issues were decided. CSG objected to incurring the time and expense to respond to this discovery until it knew whether it be permitted to remain in the case. CSG did not raise specific objections to individual requests because that is exactly what it was trying to avoid –spending a lot of time and energy (and money) gather information and drafting responses and objections, only to be ruled against later and told that intervention would be denied, or that intervention was being granted but the applications decided based on the Staff Reports and not a hearing. The objections were not a hard “No” to discovery, but a “Not yet.”

Let's imagine that what CSG said could happen (and which Avangrid argued should happen) had actually happened—a ruling came down denying intervention, or granting intervention but also granting the applications. Would Avangrid have cared that it did not have discovery responses? Would Avangrid have filed a motion to compel? Of course not. Avangrid would have gone about its business. Yet, for whatever reason, Avangrid decided it couldn't wait for a determination of whether discovery responses would actually be of any use in the case and proceeded with its motion to compel.

The April 5, 2022 Entry granted intervention, consolidated the cases, and set a procedural schedule and hearing date. This rendered CSG's objections about timing moot, and CSG was ordered to respond in two weeks. CSG did so, and when it did, it raised objections that were not ripe previously, but became ripe when CSG was directed to serve substantive answers. CSG had no obligation to “preserve” objections that the rules grant CSG has a matter of right, and which were not “waived” in the first place by CSG properly asserting only ripe objections.

You are also confusing and conflating the rights and obligations of parties and their counsel. The fact that I wrote and submitted a legal document on CSG's behalf does not require CSG to explain the “factual basis and/or support” for statements in that document. This line of questions is essentially directed to me (since I wrote the statements), and CSG is not required to answers these questions on my behalf. Nor am I required to “supplement” what CSG knows with my legal knowledge. CSG is required to disclose what it knows, not explain (to its lay understanding) what its counsel meant by certain legal arguments. To be clear, I sign off on the objections to the questions, not the answers.

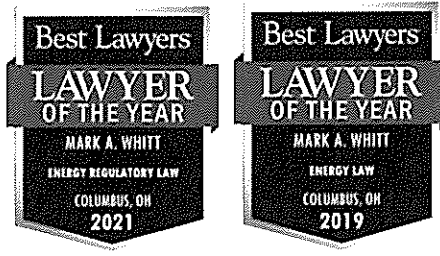
A discovery motion might resolve an argument between counsel about what the rules require, but there are more important considerations here than our pride. At the end of the day, we seem to be fighting about things that either no longer matter, or should be fought at a later date. I have no interest in playing “hide that ball” and will extend the benefit of the doubt that you do not, either. We now have a schedule in place that allows you to present your clients' evidence about deliverability, for my client to respond, and for both of us to make witnesses available for cross examination at hearing. If you would like to talk about deposing witnesses between the time they file testimony and appear at hearing, I'd be happy to have that discussion. If we can agree that the end game here should be for both sides to avoid surprises, surely we can find a better way to make that happen than fight about discovery from an earlier stage of the proceeding.

Mark A. Whitt

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614.804.6034 (mobile)

whitt@whitt-sturtevant.com



From: Angela Paul Whitfield <paul@CarpenterLipps.com>
Date: Thursday, June 16, 2022 at 11:18 AM
To: Mark Whitt <whitt@whitt-sturtevant.com>
Subject: RE: 2022-5-24 Letter Regarding Case No. 21-516-EL-REN et al.

Mark:

We will try this one final time. As we previously explained, CSG cannot lawfully raise any objections at this time. Your client previously lodged only two objections, and the Attorney Examiner soundly rejected them both. Moreover, CSG cannot provide evasive answers, as Commission regulations make it clear that "an evasive or incomplete answer shall be treated as a failure to answer." *See* Ohio Adm.Code 4901-1-23(B).

Furthermore, you submitted pleadings in this case on behalf of your client. You argue that your client submitted the discovery responses, but you signed them and presumably reviewed them. Unless you are signing discovery responses without reviewing them, you are very capable of supplementing the information known to your client. There are simply no grounds in statutory law, Commission regulations, Ohio rules, or court or Commission precedent for a party to argue that it does not know the grounds on which its counsel made legal and factual representations.

Please go through each and every discovery response, as identified in this chart, and provide a substantive answer. You cannot continue to object. You cannot continue to provide evasive answers. Please either provide the responsive information, or state that no such information exists. These requests are straightforward, and the Attorney Examiner has directed your client to respond.

Please respond fully and completely to the discovery requests as ordered, or state that your client has no responsive information and documents.

Angie

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

7/11/2022 4:04:31 PM

in

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: Motion Motion for Sanctions by Applicants Moraine Wind LLC, Rugby Wind LLC, Elm Creek Wind LLC, Buffalo Ridge II LLC, Barton Windpower LLC, and Avangrid Renewables, LLC electronically filed by Mrs. Angela Whitfield on behalf of Avangrid Renewables, LLC and Moraine Wind LLC and Rugby Wind LLC and Elm Creek Wind II LLC and Buffalo Ridge II LLC and Barton Windpower LLC