

**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. 21-0516-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. 21-0517-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. 21-0531-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. 21-0532-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. 21-0544-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. 22-0380-EL-REN
)	

**MEMORANDUM IN OPPOSITION OF
PJM INTERCONNECTION L.L.C. TO
CARBON SOLUTION GROUP, LLC'S
MOTION FOR SUBPOENA DUCES TECUM**

On November 21, 2022, Carbon Solutions Group, LLC (“CSG”) filed a motion requesting that the Public Utilities Commission of Ohio (“Commission”) issue a subpoena *duces tecum* to Aaron Berner, Manager of Transmission Planning for PJM Interconnection L.L.C. (“PJM”). CSG’s subpoena seeks copies of any distribution factor (“DFAX”) studies PJM has provided to Commission Staff since 2021 and any related documents in PJM’s possession. CSG also seeks to examine Mr. Berner at hearing on December 6, 2022, regarding the DFAX studies’ purpose, methodologies, scope and limitations. (*See* CSG Subpoena.)

Although the Commission’s rules could be read to suggest that only a “party” may oppose a motion in a Commission proceeding (*see* Ohio Adm.Code 4901-1-12(B)(1)), the Commission has

held that it is nonetheless “appropriate that the person subject to a subpoena be permitted to file a pleading objecting to the subpoena.” *Consolidated Duke Energy Ohio, Inc., Rate Stabilization Plan Remand and Rider Adjustment Cases*, Case Nos. 03-93-EL-ATA, *et al.*, Entry ¶ 9 (Jan. 2, 2007).

Accordingly, PJM is filing this Memorandum for the limited purpose of opposing CSG’s motion.¹

CSG’s Motion is without merit for two reasons. First, CSG’s motion failed to comply with the Commission’s procedural requirements for issuance of a subpoena *duces tecum*. CSG’s request for expedited treatment of its subpoena does not satisfy the requirements of Ohio Adm.Code 4901-1-25(A)(2). (Motion at 1.) To obtain expedited treatment, CSG was required to submit the subpoena “in person to the attorney examiner assigned to the case, or to the legal director or a designee, for signature * * *,” and then file and serve the motion *after* it was signed. Ohio Adm.Code 4901-1-25(A)(2). Instead, CSG filed an unsigned copy. (Motion at 2.) For that reason, CSG’s request for expedited treatment should be denied.

In addition, CSG was required to deposit at the Commission “a check made payable to the person subpoenaed sufficient to cover the required witness fees and mileage expenses for one day’s attendance[.]” unless CSG first obtained an order waiving the deposit requirement. Ohio Adm.Code 4901-1-25(F). Instead, CSG simply promised that it would “arrange for * * * payment of applicable witness fees.” (Motion at 2.) When the movant does not “include the required check[] for witness fees and mileage expenses with the subpoena[],” the subpoena is “not properly requested.” *In the Matter of the Complaint of Brenda and Gerard Fitzgerald v. Duke Energy Ohio, Inc.*, Case No. 10-791-EL-CSS, Entry ¶ 8 (Apr. 25, 2011). For this reason, too, CSG’s Motion should be denied.

Second and finally, the Commission should deny CSG’s Motion because the testimony it seeks is either irrelevant or cumulative. Under longstanding Commission precedent, “any applicant

¹ By filing this Memorandum, PJM does not concede the Commission’s personal jurisdiction over PJM, and does not waive any rights it may have to contest that jurisdiction.

seeking to demonstrate the physical deliverability of energy into Ohio from a generating facility located outside of Ohio * * * may do so with a power flow study, performed by an RTO * * * .” *In the Matter of the Application of Koda Energy LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, No. 09-555-EL-REN, Finding and Order, ¶ 8 (May 23, 2011). “If the study shows an impact on a transmission line in Ohio that is greater than five percent and greater than one megawatt,” the applicant “satisf[ies] the statutory criteria that the electricity is physically deliverable into Ohio.” *Id.* The Commission has applied this test for over a decade and continues to apply it currently. *See, e.g., In the Matter of the Application of Nickelson Solar, LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 20-1790-EL-REN, Finding and Order (Mar. 23, 2022). If the Commission wishes, nonetheless, to reconsider its reliance on DFAX studies, the parties to this proceeding have presented ample testimony on the subject. (*See, e.g.,* Testimony of John Chiles on behalf of Applicants (Aug. 12, 2022); Supplemental Testimony of John Chiles on behalf of Applicants (Nov. 14, 2022).) CSG has not explained why PJM’s testimony on the DFAX studies would not be cumulative of the testimony that has already been filed. Whether PJM’s testimony would be irrelevant or cumulative, the Attorney Examiner has the authority to decide not to permit CSG to subpoena that testimony. *See* Ohio Adm.Code 4901-1-27(B)(7)(b) (authorizing presiding hearing officers to “[t]ake such actions as are necessary to * * * [p]revent * * * cumulative[] or irrelevant cross-examination.”). *See also* Ohio Adm.Code 4901-1-25(A)(1) (stating that an attorney examiner will sign a subpoena only “if appropriate”).

Because Carbon Solutions Group LLC failed to comply with the Commission’s requirements for subpoenaing witnesses, and because the testimony and information ultimately sought would be either irrelevant or cumulative, the Commission should deny CSG’s Motion for Subpoena Duces Tecum.

Alternatively, should the Commission ultimately grant CSG's Motion For a Subpoena Duces Tecum, PJM respectfully requests that the Commission grant it an additional two weeks to prepare to present testimony. PJM has not been a party to these consolidated proceedings and would require additional time either to confirm that Mr. Berner is the appropriate witness to testify or to find another person to testify and then prepare that person for hearing.

Respectfully submitted,

/s/ Eric B. Gallon

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CERTIFICATE OF SERVICE

In accordance with Rule 4901-1-05, Ohio Administrative Code, the PUCO's e-filing system will electronically serve notice of the filing of this document upon all parties. In addition, I hereby certify that a copy of this *Memorandum in Opposition to Motion for Subpoena Duces Tecum* was sent by, or on behalf of, the undersigned counsel to the following parties of record on December 2, 2022, via electronic mail.

/s/ Eric B. Gallon

Eric B. Gallon

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REN, 21-0544-EL-REN, 22-0380-EL-REN**

Summary: Memorandum in Opposition to Carbon Solution Group, LLC's Motion for Subpoena Duces Tecum electronically filed by Mr. Eric B. Gallon on behalf of PJM Interconnection, L.L.C.