

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of The Application of Moraine)
Wind LLC for Certification as an Eligible Ohio) Case No. 21-516-EL-REN
Renewable Energy Resource Generating)
Facility.)

In the Matter of The Application of Rugby)
Wind LLC for Certification as an Eligible Ohio) Case No. 21-517-EL-REN
Renewable Energy Resource Generating)
Facility.)

In the Matter of The Application of Elm Creek)
II for Certification as an Eligible Ohio) Case No. 21-531-EL-REN
Renewable Energy Resource Generating)
Facility.)

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

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

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

**POST-HEARING BRIEF
BY
APPLICANTS MORAINE WIND LLC, RUGBY WIND LLC,
ELM CREEK WIND II LLC, BUFFALO RIDGE II LLC, BARTON WINDPOWER 1,
BARTON WINDPOWER, LLC, AND AVANGRID RENEWABLES, LLC**

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LLC, Barton Windpower I, Avangrid Renewables,
LLC, and Barton Windpower LLC*

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POST-HEARING BRIEF

I. INTRODUCTION

In each of these cases, the Staff of the Public Utilities Commission of Ohio (Commission) reviewed and analyzed the applications and supporting documents, and concluded in each instance that certification was warranted:

Staff has determined that the Facility satisfies the Commission’s requirements for certification as a renewable energy facility. Therefore, Staff recommends that the Facility’s application be approved.¹

And, at the evidentiary hearing of these consolidated matters, Staff remained steadfast in its position that these applications should be approved and certification should be issued for all of the facilities. More specifically, Staff concluded that each of the facilities satisfied the deliverability requirement in Ohio law by applying the Commission’s *Koda* Test:² “each of the facilities meets the deliverability standard established by the Commission in 2011.”³

Staff is absolutely correct. The record evidence clearly demonstrates that Applicants Avangrid Renewables, LLC (Avangrid Renewables) and its wholly-owned subsidiaries, Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Barton Windpower 1, Buffalo Ridge II Wind LLC, and Barton Windpower (collectively, the Applicants) have met their burden in demonstrating that the Applicants’ applications for certification as renewable energy (REN) resource generating facilities (collectively, the Applications) satisfy Ohio law and the Commission’s rules, and are just and reasonable. The Applicants have also demonstrated that their REN facilities satisfy the Commission’s *Koda* Test.

Faulty arguments to the contrary made by Carbon Solutions Group, LLC (CSG), serve no purpose but to further delay and distract from the overwhelming record evidence in these cases and should be rejected. CSG failed to offer any evidence demonstrating that the Applicants did not meet the three statutory requirements for REN certification or the Commission’s rules or the Commission’s precedent, including the application of the *Koda* Test to the facilities at issue in this

¹ Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report (emphasis added).

² See *In the Matter of the Application of Koda Energy LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-0555-EL-REN (*Koda*), Finding and Order (Mar. 23, 2011).

³ Staff Ex. 2, Prefiled Testimony of Kristin Clingan (Aug. 26, 2022) (Clingan Testimony) at 2.

proceeding. Indeed, CSG conceded that Applicants' facilities all satisfied two of those three statutory requirements.⁴ CSG also failed to demonstrate that the statutory provisions, Commission's rules, or *Koda* Test should be interpreted or applied by the Commission in a manner different than it has for the last ten-plus years. CSG further failed to demonstrate that the *Koda* Test is an improper test or that an alternative test should be utilized by the Commission. Simply stated, the Applicants met their burden to demonstrate that each facility satisfied the statutory requirements to obtain REN certification, including deliverability, and CSG failed to present any convincing evidence to explain why or how the Commission should modify its longstanding precedent regarding deliverability or otherwise challenge the Applicants' proof or Staff's conclusions. Accordingly, the Commission should grant the Applications and Applicants' REN facilities should be certified as eligible Ohio renewable energy resource generating facilities.

II. FACTS AND BACKGROUND

Avangrid Renewables and its wholly-owned subsidiaries are the owners of each of the facilities at issue in the Applications. Each of the facilities is a wind farm, located in a non-contiguous state, and connected to the Midcontinent Independent System Operator, Inc. (MISO), a regional transmission organization (RTO).⁵ The six facilities are as follows:

1. Moraine I Wind Energy Facility (Moraine I) is a wind facility located at 4 151st Street in Woodstock, Minnesota.⁶ Moraine I has a generating capacity of 51 megawatts (MW).⁷ Moraine I was placed in service on November 15, 2003.⁸
2. The Rugby Wind Power Project (Rugby Wind) is a wind facility located at 3210 74th Street Northeast in Rugby, North Dakota.⁹ Rugby Wind has a generating

⁴ Tr. Vol. II at 303 (Stewart).

⁵ See Applicants Ex. 7, Direct Testimony of Pete Landoni (Aug. 12, 2022) (Landoni Testimony) at 4-5.

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.* at 6.

⁹ *Id.* at 4.

capacity of 149 MW.¹⁰ Rugby Wind Power was placed in service on December 1, 2009.¹¹

3. The Elm Creek II Wind Energy Facility (Elm Creek II) is a wind facility located at 83481 600th Avenue in Alpha, Minnesota.¹² Elm Creek II has a generating capacity of 148 MW.¹³ Elm Creek II was placed in service on December 29, 2010.¹⁴
4. The Buffalo Ridge II Wind Project (Buffalo Ridge II) is a wind facility located at 47894 197th Street in Astoria, South Dakota.¹⁵ Buffalo Ridge II has a generating capacity of 210 MW.¹⁶ Buffalo Ridge II was placed in service on December 31, 2010.¹⁷
5. Barton Windpower 1 is a wind facility located at 1143 410th Street in Kensett, Iowa.¹⁸ Barton Windpower 1 has a generating capacity of 80 MW.¹⁹ Barton Windpower 1 was placed in service on June 25, 2009.²⁰
6. Barton Windpower 2 is a wind facility located at 970 410th Street in Kensett, Iowa.²¹ Barton Windpower 2 has a generating capacity of 78 MW.²² Barton Windpower 2 was also placed in service on June 25, 2009.²³

The Applicants filed the Applications in order to obtain REN certification for each of the facilities.²⁴ A facility is authorized to obtain REN certification if it satisfies three statutory criteria:

¹⁰ Applicants Ex. 7, Landoni Testimony at 4.

¹¹ *Id.* at 6

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ *Id.* at 6.

¹⁵ *Id.* at 5

¹⁶ *Id.*

¹⁷ *Id.* at 7.

¹⁸ *Id.* at 6.

¹⁹ *Id.*

²⁰ *Id.* at 7.

²¹ *Id.* at 6.

²² *Id.*

²³ *Id.* at 7.

²⁴ See Applicants Ex. 1, Application of Moraine Wind LLC; Applicants Ex. 2, Application of Rugby Wind LLC; Applicants Ex. 3, Application of Elm Creek II Wind LLC; Applicants Ex. 4, Application of Buffalo Ridge Wind II LLC; Applicants Ex. 5, Application of Barton Windpower 1; and Applicants Ex. 6, Application of Barton Windpower 2.

(1) the energy from the facility must be deliverable to the state of Ohio, (2) the facility must use a renewable resource/technology, and (3) the facility must have been placed in service after a certain date.²⁵ Here, the record evidence demonstrates that all six of Applicants' renewable wind facilities satisfy the three statutory criteria.

After certification, the Applicants' renewable facilities will be authorized to participate in the renewable energy credit (REC) markets in MISO and in PJM Interconnection LLC (PJM), including the Ohio market.²⁶ Applicants Witness Pete Landoni, an asset manager for Avangrid Renewables at the time, assisted in the preparation of the REN Applications, including providing necessary information and data regarding the generating facilities in order to satisfy the requirements in Ohio law and the Commission's rules and process for obtaining REN certification.²⁷

Applications for REN certification in Ohio are submitted through an online portal, and subject to automatic, 30-day approval.²⁸ However, Staff may suspend an application, which results in an application being filed on the Commission's docketing system in a new case, so that Staff may present a written review and recommendation on the application.²⁹ Staff has certified over 500 REN facilities since the beginning of 2022 alone, but only files applications on the docketing system and initiates cases when it suspends the automatic approval process.³⁰ Staff typically suspends the automatic approval process for applications to certify facilities located in non-

²⁵ R.C. 4928.01(A)(37); R.C. 4928.64(A)(1); R.C. 4928.64(B)(3); *see also* Applicants Ex. 7, Landoni Testimony at 5-6.

²⁶ Applicants Ex. 7, Landoni Testimony at 2.

²⁷ *Id.* at 5.

²⁸ Tr. Vol. III at 404 (Clingan). *See also* Applicants Ex. 7, Landoni Testimony at 5.

²⁹ Tr. Vol. III at 404 (Clingan).

³⁰ *Id.*

contiguous states because Staff requires the applicants to provide supplemental information in those instances in order to review additional data to make a determination about whether the facility can satisfy the Commission’s deliverability standard.³¹

Given the location of the Applicants’ REN facilities, Staff suspended the automatic approval of each of the Applications, which led to the initiation of the above-captioned cases to review additional data to make a determination about whether the facility can satisfy the deliverability standard.

In order to determine whether the facilities satisfied the deliverability standard, Staff contacted the Applicants and requested power flow (DFAX) studies for each of the facilities.³² Staff uses these DFAX studies to perform the deliverability analysis for the facilities pursuant to the *Koda* Test.³³ On April 28, 2021 and May 3, 2021, Stuart Siegfried and Kristen Clingan from Commission Staff sent emails to Zena Parks of Avangrid, requesting DFAX studies for the Moraine I, Rugby, Buffalo Ridge II, and Elm Creek II facilities.³⁴ Applicants Witness Landoni recommended that Ms. Parks contact Anthony DiDonato, Avangrid’s representative at PJM—the RTO serving Ohio. On May 3, 2021, Ms. Parks contacted Mr. DiDonato, to request the DFAX study.³⁵ PJM sent the DFAX study results, cover sheet, and summary letter for the four facilities to Avangrid on May 19, 2021.³⁶ That same day, Avangrid forwarded the DFAX study results, cover sheet, and summary letter for the four facilities to Staff.³⁷

³¹ Tr. Vol. III at 404 (Clingan).

³² *Id.* at 376; *see also* Staff Ex. 2A, Emails and DFAX Reports for Moraine, Rugby, Buffalo Ridge II, and Elm Creek; Staff Ex. 2B, Emails and DFAX Reports for Barton 1; Staff Ex. 2C, Emails and DFAX Reports for Barton 2.

³³ Tr. Vol. III at 377 (Clingan).

³⁴ Tr. Vol. III at 468-70 (Landoni); Applicants Ex. 9, Emails between Avangrid and PJM, dated May 19, 2021.

³⁵ Tr. Vol. III at 470 (Landoni); Applicants Ex. 9, Emails between Avangrid and PJM, dated May 19, 2021.

³⁶ Tr. Vol. III at 472 (Landoni); Applicants Ex. 9, Emails between Avangrid and PJM, dated May 19, 2021.

³⁷ Tr. Vol. III at 473-74 (Landoni); Applicants Ex. 8, Emails between Avangrid and Staff, dated May 19, 2021.

Subsequently, Ken Nelson, president of Blue Delta Energy, LLC (Blue Delta),³⁸ contacted Mark Kuras at PJM, and requested the DFAX study for Barton 1 on behalf of the Applicants.³⁹ Although Staff had not yet requested it, Mr. Nelson then forwarded the DFAX study results for the Barton 1 facility from PJM, cover sheet, and summary letter to Staff (Staff Witness Clingan noted that while she or someone on her team requested DFAX studies for the other five facilities, but “in the case of Barton 1 . . . the DFAX was just provided.”).⁴⁰ On April 13, 2022, Staff Witness Clingan sent an email to James Reyes and Jose Suarez of Avangrid, requesting DFAX studies for the Barton II facility.⁴¹ Avangrid forwarded the DFAX study results from PJM, cover sheet, and summary letter for the Barton II facility to Staff on July 27, 2022.⁴²

The DFAX study results that Staff, Avangrid, and Joint Witness Chiles reviewed for the six facilities are the same DFAX study results for the applicable facilities that the Applicants and Blue Delta obtained from PJM and forwarded to Staff, which were included in the Corrected Attachments to the three pieces of testimony that were entered into the record at the evidentiary hearing.⁴³

At the hearing, Applicants and Blue Delta submitted Corrected Attachments, which “contain[] corrected DFAX spreadsheets for the Barton 1, Buffalo Ridge II, Elm Creek II, Rugby, and Moraine facilities.”⁴⁴ The spreadsheets contained in the Corrected Attachments contain the

³⁸ Blue Delta has a contractual interest in one of the facilities at issue. *See* Tr. Vol. I at 126 (Nelson Cross).

³⁹ Tr. Vol. I at 131 (Nelson).

⁴⁰ Tr. Vol. III at 464 (Nelson); *See also* Tr. Vol. III at 376 (Clingan) (“Q. And with respect to each of the applications here, did you or someone on your team request DFAX studies? A. Yes, although it appeared in the case of Barton 1 that the DFAX was just provided. I did not find record of us requesting it.”).

⁴¹ Tr. Vol. III at 473-74 (Landoni); Applicants Ex. 10, Emails between Avangrid and Staff, dated July 27, 2022.

⁴² *Id.*

⁴³ Tr. Vol. III at 463 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson).

⁴⁴ Applicants Ex. 7A, Corrected Attachment A to Landoni Testimony; Applicants Ex. 7B, Corrected Attachment B to Landoni Testimony; Blue Delta Ex. 1A, Corrected Attachment A to Nelson Testimony; Joint Ex. 1A, Corrected

same data as the spreadsheets forwarded to Staff, reviewed by Staff, and reviewed by Avangrid and Blue Delta and their witnesses for the six applicable facilities.⁴⁵ Although Applicants' counsel inadvertently attached the incorrect spreadsheets to the comments and testimony when the document was compiled and filed, Applicants Witness Landoni, Joint Witness Chiles, and Blue Delta Witness Nelson reviewed the correct spreadsheets when performing their analysis and drafting their testimony,⁴⁶ and the incorrect spreadsheets were not sent to Staff.⁴⁷ Nonetheless, the correct PJM cover sheets and summary reports, which summarized the conclusions of the spreadsheets, were properly attached to the comments and testimony that were filed.⁴⁸

Avangrid, its witnesses, and the witnesses for Blue Delta all based their review and analysis regarding REN certification on the correct DFAX cover sheets, summary reports, and spreadsheets for the six facilities.⁴⁹ As such, their conclusions and recommendations remained unchanged with the Corrected Attachments attached to the three pieces of testimony submitted in the record.⁵⁰ Staff also reviewed the correct spreadsheets in performing its deliverability analysis.⁵¹

Staff reviewed the results of the correct DFAX studies to confirm that energy from the six facilities is deliverable into Ohio. In doing so, Staff removed from the spreadsheets any DFAX

Attachment A to Chiles Testimony; Tr. Vol. III at 463 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson).

⁴⁵ Tr. Vol. III at 464 (Landoni); Tr. Vol. III at 341-43 (Clingan); Tr. Vol. III at 355, 390-94 (Clingan); Tr. Vol. III at 420-22 (Cross); Tr. Vol. III at 430 (Chiles); Tr. Vol. III at 451 (Nelson); Staff Ex. 2A, Emails and DFAX Reports for Moraine, Rugby, Buffalo Ridge II, and Elm Creek; Staff Ex. 2B, Emails and DFAX Reports for Barton 1; Staff Ex. 2C, Emails and DFAX Reports for Barton 2.

⁴⁶ Tr. Vol. III at 465 (Landoni); Tr. Vol. III at 430 (Chiles) (“I used the information from Exhibit 1A because those were the only files I had received.”).

⁴⁷ Tr. Vol. III at 354 (Clingan); Tr. Vol. III at 420-21 (Cross).

⁴⁸ *Id.*

⁴⁹ Tr. Vol. III at 465 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson).

⁵⁰ *Id.*

⁵¹ Tr. Vol. III at 390-93 (Clingan).

values from lines which are located outside of Ohio by taking “the name of the line that PJM provided, the bus number and line name, and...cross referenc[ing] that with their system map.”⁵²

Staff Witness Cross explained the process for reviewing the results of the DFAX studies:

I receive the DFAX from the REN team that was filed by the Applicant. I pull up that DFAX. I filter out values that are greater than 5 percent of the DFAX value and then I come back and I look at the lines that those DFAX values are associated with. I look for ones that are in Ohio, at least one point is in Ohio. I do my analysis on one point and two points. I make sure that those are above 5 percent. Once they are above 5 percent, I take the output of the facility, the energy, and I do a calculation multiplying with that DFAX. And if it's above 1 megawatt, then it meets our second test, and it's deliverable to Ohio.⁵³

After completing its analysis and applying the Commission's *Koda* Test, Staff issued a review and recommendation (Staff Report) in each case, recommending that the Commission approve each facility's Application for REN certification.⁵⁴ The Staff Reports noted that each of the facilities satisfied the renewable energy resource, placed-in-service date, and deliverability requirements for certification,⁵⁵ and Staff found that the facilities should be certified.⁵⁶

Although Staff recommended approval of the Applications, CSG ignored the record evidence of the cases and opposed approval of the Applications. While CSG's intervention in the above-captioned proceeding has produced nearly two years of delay, CSG has not articulated any legitimate reason why the Applications should not be approved. CSG did not offer any evidence

⁵² Tr. Vol. III at 417 (Cross) (“I took the name of the line that PJM provided, the bus number and line name, and I cross referenced that with their system map to verify that that line was not in Ohio.”).

⁵³ Tr. Vol. III at 422-23 (Cross).

⁵⁴ Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report; Tr. Vol. III at 346 (Clingan); Joint Ex. 1, Chiles Testimony at 5; Applicants Ex. 7, Landoni Testimony at 9; Blue Delta Ex. 1, Nelson Testimony at 8.

⁵⁵ Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

⁵⁶ Staff Ex. 2, Clingan Testimony at 7.

to suggest that the facilities were not renewable energy resources, or did not satisfy the applicable placed-in-service date requirement.⁵⁷

CSG only offered testimony from one witness at the hearing, which was limited in scope to general issues concerning deliverability. CSG's witness did not challenge or offer testimony about what type of renewable resources the Applicants' facilities are, or when they were placed into service. Nor did CSG's witness object to the actual results of the DFAX studies themselves. CSG only offered testimony that challenged the Commission's precedent as it is currently applied, rather than the actual facts supporting the Applications.

Moreover, CSG's sole witness seemed unfamiliar with basic facts and precedent directly relevant to the cases at issue and even that which was included in his own prefiled testimony. At the hearing, CSG's sole witness did not appear to have reviewed previous Commission rulemaking cases regarding deliverability, the *Koda* Test, and REN certification.⁵⁸ Moreover, CSG Witness Stewart stated that there is "more detail in MISO BPM 11, [and] there is similar detail in the PJM Manual 14A" to support his arguments regarding system impact studies and deliverability.⁵⁹ While the witness cited to these documents "in their entirety," when asked if he was familiar with them at the hearing, he stated that he was "generally" familiar with the documents.⁶⁰

Although CSG had pre-filed testimony of one of its employees, the employee did not appear at hearing for cross examination and the testimony was withdrawn and not admitted into

⁵⁷ Tr. Vol. II at 303 (Stewart).

⁵⁸ See Tr. Vol. II at 238-39 (Stewart) ("Q: [I]s this one of the orders that you may have reviewed in preparation of your testimony? A. I don't recall, counsel."); *id.* at 240 ("Q: Okay. So you don't believe you reviewed the Commission's decision in this regarding the rulemaking surrounding the deliverability standard? A. I'm not -- I don't believe that I reviewed this 2009 order.").

⁵⁹ Tr. Vol. II at 200-01 (Stewart).

⁶⁰ Tr. Vol. II at 204, 207 (Stewart). See also Tr. Vol. II at 212 ("MR. WHITT: Well, let the record reflect it is a 211-page document. EXAMINER HICKS: So are you submitting that he didn't review it and cited it in his testimony?").

the record in this proceeding. Accordingly, the pre-filed testimony of the CSG employee cannot be considered in this case.

CSG's opposition to certification appears to be based on the deliverability requirement, but CSG has not offered any evidence to explain how the facilities do not satisfy the Commission's deliverability test, to demonstrate that the *Koda* Test should be modified, or to suggest an alternative test that the Commission should apply. As such, the Commission should reject CSG's baseless opposition, and grant REN certification to the Applicants' facilities.

III. ARGUMENT

To obtain REN certification in Ohio, a facility must meet three statutory criteria: the energy from the facility must be deliverable to the state of Ohio, the facility must use a renewable resource/technology, and the facility must have been placed in service after a certain date.⁶¹ More specifically, under R.C. 4928.64(B)(3), a qualifying renewable energy resource must either have a facility located in Ohio, or be deliverable into Ohio.⁶² Additionally, R.C. 4928.64(A) requires that the facility be a "renewable energy resource" as defined by R.C. 4928.01(A)(37), which includes wind energy.⁶³ Lastly, the facility must satisfy one of the applicable statutory provisions pertaining to the placed-in-service date, which includes facilities placed in service after January 1, 1998.⁶⁴ There are no other criteria for REN certification in Ohio.⁶⁵ The record evidence

⁶¹ R.C. 4928.01(A)(37); R.C. 4928.64(A)(1); R.C. 4928.64(B)(3); *see also* Staff Ex. 2, Clingan Testimony at 2-3; Applicants Ex. 7, Landoni Testimony at 5-6; Joint Ex. 1, Testimony of John Chiles (Aug. 12, 2022) (Chiles Testimony) at 7; Blue Delta Ex. 1, Testimony of Ken Nelson (Aug. 12, 2022) (Nelson Testimony) at 4-5; Tr. Vol. II at 190-91 (Stewart).

⁶² *Id.*, *see also* R.C. 4928.64(B)(3).

⁶³ *See* R.C. 4928.01(A)(37)(ii).

⁶⁴ R.C. 4928.64(A)(1)(d); *see also* Moraine Staff Report at 3; Rugby Staff Report at 3; Elm Creek Staff Report at 3; Buffalo Ridge Staff Report at 3; Barton Staff Report at 3.

⁶⁵ *See* Staff Ex. 2, Clingan Testimony at 2-3; Applicants Ex. 7, Landoni Testimony at 5-6; Joint Ex. 1, Chiles Testimony at 7; Blue Delta Ex. 1, Nelson Testimony at 4-5; Tr. Vol. II at 190-91 (Stewart).

demonstrates that all six of Applicants’ renewable wind facilities satisfy the three statutory criteria. Additionally, record evidence demonstrates that all six of Applicants’ renewable wind facilities satisfy the applicable Commission regulations and longstanding precedent of the Commission, including the deliverability test (aka the *Koda* Test).

A. Energy from each facility is deliverable into Ohio.

Ohio statutory law, Commission regulations and longstanding precedent, and record evidence submitted by the Applicants, Staff, and Blue Delta all support the Commission’s standard for evaluating deliverability, and all demonstrate that each of the facilities satisfies this standard. As such, the facilities satisfy the first statutory criterion to receive REN certification regarding deliverability.

1. The Commission applies the *Koda* Test to determine whether electricity from a facility is deliverable into Ohio.

Pursuant to Ohio Adm.Code 4901:1-40-01(F), electricity from an applicant facility is considered deliverable into Ohio “pending a demonstration that the electricity is physically deliverable to the state.” To determine whether energy from the facility is “physically deliverable to the state,”⁶⁶ and therefore satisfies the deliverability requirement,⁶⁷ the Commission applies the longstanding *Koda* Test.⁶⁸

The Commission first adopted the deliverability test in *In the Matter of the Application of Koda Energy LLC for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 09-0555-EL-REN (*Koda*). In that case, the Commission noted that pursuant to R.C. 4928.64 and 4928.645, “in order to qualify as a certified eligible Ohio renewable energy

⁶⁶ See Staff Ex. 2, Clingan Testimony at 2-3; Applicants Ex. 7, Landoni Testimony at 5-6; Joint Ex. 1, Chiles Testimony at 7; Blue Delta Ex. 1, Nelson Testimony at 4-5; Tr. Vol. II at 190-91 (Stewart).

⁶⁷ See R.C. 4928.64(B)(3); Ohio Adm.Code 4901:1-40-04(C)(2).

⁶⁸ See *Koda*, Finding and Order (Mar. 23, 2011); see also Blue Delta Ex. 9, *Koda* Staff Report.

resource generating facility, a facility must demonstrate” that the energy produced from the facility is deliverable into the state of Ohio.⁶⁹ Staff noted that after the Commission adopted regulations regarding deliverability in Ohio Adm.Code 4901:1-40-04(F), “Staff began an investigation into defining a process and approach that could be employed to demonstrate deliverability for a facility located outside of Ohio or a contiguous state.”⁷⁰ Noting that “it is impossible to physically track energy from a specific generating facility to a specific load location,” Staff recommended a methodology based on distribution factors or power flow studies.⁷¹ Staff devised two standards for determining if the results of such studies demonstrated deliverability: “to be determined deliverable, the absolute value of the impact on a transmission line in Ohio must be greater than 5% and greater than 1 MW.”⁷² The Commission determined that Staff’s proposed standards were “reasonable and should be adopted.”⁷³

More specifically, under the *Koda* Test, Staff evaluates the results of DFAX studies provided by PJM for each facility.⁷⁴ At the request of an applicant, PJM models the change in power flows across the transmission system due to the change in generation,⁷⁵ and PJM then provides its results in the form of spreadsheets, a cover letter, and a summary report to the requesting party, who then submits it to Staff.⁷⁶ Although the facilities are located in MISO, “PJM

⁶⁹ *Koda*, Finding and Order at ¶ 2 (Mar. 23, 2011).

⁷⁰ Blue Delta Ex. 9, *Koda* Staff Report.

⁷¹ *Id.* at 5.

⁷² *Id.* at 6-7.

⁷³ *Koda*, Finding and Order at ¶ 8 (Mar. 23, 2011).

⁷⁴ Blue Delta Ex. 9, *Koda* Staff Report at 4.

⁷⁵ See Blue Delta Ex. 9, *Koda* Staff Report at 5.

⁷⁶ See Joint Ex. 2, Supplemental Testimony of John Chiles (Nov. 14, 2022) (Chiles Supplemental Testimony) at 5.

has, or is able to obtain, all the requisite information it needs to run power flow studies across RTOs (e.g., a source in MISO and a sink in PJM).”⁷⁷

These DFAX studies measure Transfer Distribution Factor (TDF), or the percentage of a transaction between a point of injection and a point of withdrawal that flows across a particular element of a transmission system.⁷⁸ When evaluating these power flow studies, Staff considers both the highest value for a transmission line with *either* a start or end point in Ohio, and the highest value for a transmission line with *both* a start and an end point in Ohio.⁷⁹ Staff Witness Cross explained the Commission’s application of the *Koda* Test in detail:

The DFAX analysis displays the percentage of impact the facility would have on transmission lines on the electric grid. DFAX values from transmission lines where at least one segment is located within Ohio are reviewed based on the highest absolute percentage.

1. If no DFAX values on Ohio transmission lines are greater than 5%, facility is considered not deliverable into Ohio.
2. If DFAX values greater than 5% exist on transmission lines in Ohio, then the first criterion has been met.
 - a. To check if the second criterion is met, the following criteria is applied.
 - i. Multiply the DFAX value by the applicant’s facility’s nameplate capacity (DFAX percentage * Facility Capacity = Capacity).
 - b. If the Capacity is greater than 1 MW the facility meets the second criterion and is deliverable into Ohio.⁸⁰

⁷⁷ Staff Ex. 2, Clingan Testimony at 6-7, *citing* Staff Ex. 8, Barton 2 Staff Report at 1.

⁷⁸ Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶ 3.2.

⁷⁹ *See id.* at ¶ 4.1.1 (“The DFAX impact column contains two values. The first value is the highest DFAX for the case where either the start or end of the line is in Ohio. The second value is the highest DFAX for a transmission line which has both a starting point and end point in Ohio.”); *id.* at ¶ 4.2.1 (“The MW impact column contains two values. The first value is based on the highest DFAX for the case where either the start or end of the line is in Ohio. The second value is based on the highest DFAX for a transmission line which has both a starting point and end point in Ohio.”).

⁸⁰ Staff Ex. 1, Prefiled Testimony of Jason Cross (Aug. 26, 2022) (Cross Testimony) at 1-2; *see also* Joint Ex. 1, Chiles Testimony at 8-9.

Staff has consistently applied the *Koda* Test for over a decade, and the Commission has adopted Staff’s application of the test. As noted by Staff Witness Clingan:

[i]ncluding *Koda*, Staff has reviewed 28 applications from facilities located in states noncontiguous to Ohio. Applying the same deliverability methodology consistently in each case, Staff recommended 16 applications be denied, and 12 applications be approved. The Commission issued an Order in 25 cases, with 3 cases auto approved based on Staff’s recommendation.⁸¹

2. CSG failed to demonstrate that the *Koda* Test is an improper measurement of whether a facility is deliverable into Ohio.

CSG failed to present evidence to demonstrate that the Commission’s application of the *Koda* Test is improper and that the Commission should modify its longstanding precedent. Although CSG claims it is “not recommending a specific ‘test’ for deliverability that the Commission” may use, it nonetheless takes issue with the *Koda* Test as currently applied.⁸² CSG’s sole witness claimed to offer a “range of options for the Commission to consider if you would like to demonstrate deliverability,”⁸³ but, in reality, CSG did not propose any workable alternatives.

For example, CSG Witness Stewart attempted to argue in favor of the Commission considering a financial or contractual element to deliverability. However, he acknowledged that he had not reviewed previous Commission rulemaking decisions on the issue where the Commission rejected such arguments and declined to consider financial or contractual elements.⁸⁴ Specifically, the Commission “rejected the assertion that deliverability requires a financial element when it rejected the argument that deliverability relies on the ‘contract path’ of electricity.”⁸⁵ The

⁸¹ Staff Ex. 2, Clingan Testimony at 5.

⁸² See Tr. Vol. II at 293 (Stewart), *citing* CSG Ex. 3, Testimony of Travis Stewart (Nov. 26, 2022) at 11.

⁸³ Tr. Vol. II at 293 (Stewart).

⁸⁴ See Tr. Vol. II at 238-44 (Stewart).

⁸⁵ Joint Ex. 1, Chiles Testimony at 9, *citing In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928.66, Revised Code, as Amended by Amended Substitute Senate Bill No. 221*, Case No. 08-888-ELORD, Opinion and Order at 27-28 (Apr. 15, 2009); *In the Matter of the*

Commission held that “a demonstration of delivery via a power flow study...should be necessary, although not to the extent of requiring signed contracts.”⁸⁶ CSG’s sole witness simply ignored prior Commission discussion and rulings on the issues in preparing his testimony.⁸⁷

Another illogical argument that CSG attempted to raise is that the inputs to DFAX studies might be subject to some unexplained influence or manipulation. However, as noted by Joint Witness Chiles, “CSG did not provide any substantive evidence as to how an applicant might influence these inputs.”⁸⁸ In fact, Joint Witness Chiles pointed out that power “factors are actually derived from the power flow model themselves because [they] are based upon the topology and impedance of the network” and are results of the model, rather than “inputs” that can be influenced.⁸⁹ Moreover, CSG Witness Stewart also admits that “modeling can be used to assert actual physical deliverability.”⁹⁰

CSG also attempted to argue that the change in RTO footprints somehow affects the viability of the *Koda* Test. But it does not. As noted by Staff, “PJM has, or is able to obtain, all the requisite information it needs to run power flow studies across RTOs (e.g., a source in MISO

Amendment of Ohio Administrative Code Chapter 4901:1-40 Regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315, Case Nos. 12-2156-EL-ORD, et al., Finding and Order at ¶ 180 (Dec. 19, 2018).

⁸⁶ Joint Ex. 1, Chiles Testimony at 9, citing *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928.66, Revised Code, as Amended by Amended Substitute Senate Bill No. 221*, Case No. 08-888-ELORD, Opinion and Order at 27-28 (Apr. 15, 2009); *In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40 Regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315*, Case Nos. 12-2156-EL-ORD, et al., Finding and Order at ¶ 180 (Dec. 19, 2018).

⁸⁷ See Tr. Vol. II at 238-39 (Stewart) (“Q: [I]s this one of the orders that you may have reviewed in preparation of your testimony? A. I don’t recall, counsel.”); *id.* at 240 (“Q: Okay. So you don’t believe you reviewed the Commission’s decision in this regarding the rulemaking surrounding the deliverability standard? A. I’m not -- I don’t believe that I reviewed this 2009 order.”).

⁸⁸ Joint Ex. 2, Chiles Supplemental Testimony at 6.

⁸⁹ Tr. Vol. I at 75 (Chiles).

⁹⁰ Tr. Vol. II at 195 (Stewart).

and a sink in PJM).”⁹¹ MISO was included as part of Staff’s review in *Koda* simply because “MISO was a transmission operator in Ohio at the time,” now that PJM is the sole RTO in Ohio, PJM models the DFAX studies.⁹² Joint Witness Chiles explained that due to the presence of tie lines between PJM and MISO, the change in which RTO operates in Ohio did not physically alter the structure of the electric grid.⁹³ These tie lines “facilitate the flow of electricity between two RTOs, including to RTOs outside the state of Ohio.”⁹⁴ The DFAX studies identify several tie lines between Ohio and MISO, and assuming that electricity flows across the tie lines is not the same as assuming deliverability as suggest by CSG Witness Stewart.⁹⁵ As further explained by Joint Witness Chiles, “[e]lectricity travels on the transmission network based upon the impedance of each physical element, and is not impacted by state boundaries or regional [RTO] boundaries.”⁹⁶

Based on Joint Witness Chiles’ expert analysis:

CSG Witness Stewart appears to be incorrectly assuming that the tie lines do not actually facilitate the flow of electricity into Ohio. Such an assumption is irrational and unsupported by how the system works and the purpose of tie lines.⁹⁷

At the hearing, CSG’s sole witness backtracked, and claimed it “was not [his] testimony” that the change in RTO footprints impacts the validity of the *Koda* Test.⁹⁸ Instead, he

⁹¹ Staff Ex. 2, Clingan Testimony at 6-7, *citing* Staff Ex. 8, Barton 2 Staff Report at 1.

⁹² Staff Ex. 2, Clingan Testimony at 6-7, *citing* Staff Ex. 8, Barton 2 Staff Report at 1.

⁹³ Joint Ex. 2, Chiles Supplemental Testimony at 4-6, 11 (“CSG Witness Stewart claims that the changes in RTO footprints and the status of operations has some bearing on the results of the DFAX studies performed by PJM. What he fails to recognize is that neither of the two issues he raises has any impact on the physical configuration of the transmission system, which is what the applicable RTO used to calculate the DFAX impacts in both regions.”).

⁹⁴ *Id.* at 4.

⁹⁵ *Id.* at 5, 8.

⁹⁶ Joint Ex. 2, Chiles Supplemental Testimony at 4.

⁹⁷ *Id.* at 7.

⁹⁸ Tr. Vol. II at 247 (Stewart).

acknowledged the interconnection between the two RTOs, including the Joint Operating Agreement and “robust seam” that they share.⁹⁹

In fact, CSG’s witness specifically noted that *Koda* “does apply to external non-Ohio-based facilities and noncontiguous states...[r]egardless of RTO, nonmarket area, [and] market area.”¹⁰⁰ Although the witness had not reviewed the previous cases, he noted that the Commission has used the *Koda* Test to approve certification for facilities located on MISO in noncontiguous states.¹⁰¹ CSG Witness Stewart also acknowledged that the Commission did not decide the *Koda* case until 2011.¹⁰² Since the change in RTO footprints occurred in 2011 and 2012,¹⁰³ the Commission would have been aware of the impending change when it adopted the *Koda* Test, and could have modified the *Koda* Test in the subsequent decade had the change in RTOs materially impacted the application of the *Koda* Test. Instead, “it is important to note that the PUCO has continued to utilize the *Koda* Test after Ohio became a member of PJM in 2011...for eleven years.”¹⁰⁴

Moreover, in a prior rulemaking case, the Commission *also* specifically rejected the assertion that deliverability is determined by the regional transmission organization on which a facility is located. In that case, a pair of electric distribution utilities argued that the definition of “deliverable into this state” should “be revised to include electricity originating from a source

⁹⁹ *Id.* at 202.

¹⁰⁰ Tr. Vol. II at 251 (Stewart).

¹⁰¹ *Id.* at 253-56, citing *In the Matter of the Application of Harvest Ridge Wind Farm for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case No. 21-0987-EL-REN, Finding and Order (Dec. 1, 2021).

¹⁰² Tr. Vol. II at 304 (Stewart).

¹⁰³ *Id.* at 247-49.

¹⁰⁴ Joint Ex. 2, Chiles Supplemental Testimony at 11; Tr. Vol. II at 250 (Stewart).

located in MISO or PJM.”¹⁰⁵ Instead, the Commission chose to continue applying the *Koda* Test, finding that the definition of deliverability “does not need to be expanded to include any generation originating within the PJM or MISO transmission systems.”¹⁰⁶ Again, this rulemaking case occurred after the change in RTO footprints, and the Commission did not modify the *Koda* Test in light of the change in circumstances. CSG’s sole witness did not review or rely on prior Commission discussion and rulings on the very issues that CSG attempts to raise, and simply ignored the adverse precedent in preparing his testimony.¹⁰⁷

In addition to failing to explain why DFAX studies should not be used to demonstrate deliverability, CSG Witness Stewart claims to propose a “range of options” which all rely on power flow studies anyways. For example, he presents market-to-market flowgate tests used to qualify facilities as PJM capacity resources as an alternative.¹⁰⁸ However, an RTO cannot perform a market-to-market flowgate test or a system impact study unless it conducts a DFAX or power flow study in the first place, and Ohio law does not require a REN facility to qualify as a capacity resource.¹⁰⁹ He also offers transmission service reservations or transmission service requests (TSR) or system impact studies as an option to determine deliverability.¹¹⁰ Again, however, a TSR

¹⁰⁵ Joint Ex. 1, Chiles Testimony at 10, citing *In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40 Regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315*, Case Nos. 12-2156-EL-ORD, et al., Finding and Order at ¶ 180 (Dec. 19, 2018).

¹⁰⁶ *In the Matter of the Amendment of Ohio Administrative Code Chapter 4901:1-40 Regarding the Alternative Energy Portfolio Standard, to Implement Am. Sub. S.B. 315*, Case Nos. 12-2156-EL-ORD, et al., Finding and Order at ¶ 181 (Dec. 19, 2018).

¹⁰⁷ See Tr. Vol. II at 238-39 (Stewart) (“Q: [I]s this one of the orders that you may have reviewed in preparation of your testimony? A. I don’t recall, counsel.”); *id.* at 240 (“Q: Okay. So you don’t believe you reviewed the Commission’s decision in this regarding the rulemaking surrounding the deliverability standard? A. I’m not -- I don’t believe that I reviewed this 2009 order.”).

¹⁰⁸ CSG Ex. 3, Stewart Testimony at 6.

¹⁰⁹ Tr. Vol. II at 216, 219-22 (Stewart); Blue Delta Ex. 6, PJM Dynamic Transfers: Market-to-Market Flowgate Test (May 2019) at 2.

¹¹⁰ CSG Ex. 3, Stewart Testimony at 5.

or system impact study first requires a DFAX study to be performed as the basis for determining deliverability, and a TSR does not guarantee that power will flow across a facility, as it “only demonstrates that the transmission customer has been granted the right by the transmission owner to schedule power on the transmission systems between a point of receipt and a point of delivery.”¹¹¹ Since the TSR requires a DFAX value, and “since DFAX value is based on the transmission network configuration...the DFAX would be the same across every system element between the two studies.”¹¹²

Ohio statutory law, Commission regulations and longstanding precedent, and record evidence submitted by the Applicants, Staff, and Blue Delta all support the Commission’s use and application of the *Koda* Test. As noted by Joint Witness Chiles, “DFAX studies represent a reasonable, well-accepted, and commonly used methodology of determining physical deliverability in a variety of contexts, including REN certification.”¹¹³ Staff has long used this test to evaluate physical deliverability, and the Commission has long endorsed its use, while specifically rejecting arguments to the contrary in other cases. Arguments put forth by CSG merely reassert previously rejected arguments and ignore basic facts. CSG also does not offer any sort of workable alternative. As such, the Commission’s use and application of the *Koda* Test remains prudent and reasonable, and under the *Koda* Test, each of the Applicants’ facilities are deemed to be deliverable into Ohio.

¹¹¹ Joint Ex. 2, Chiles Supplemental Testimony at 9-10 (“Having a Firm Point to Point Transmission Service Reservation only demonstrates that the transmission customer has been granted the right by the transmission owner to schedule power on the transmission systems between a point of receipt and a point of delivery.”). *See also* Tr. Vol. II at 200-03, 228-29 (Stewart).

¹¹² Joint Ex. 2, Chiles Supplemental Testimony at 8.

¹¹³ *Id.*

3. Each facility satisfies the *Koda* Test.

As discussed above, for each of the six facilities at issue in this proceeding, Applicants “provided a DFAX power flow study which was performed by PJM.”¹¹⁴ The Applicants and Blue Delta requested these studies from PJM and forwarded them to Staff for review.¹¹⁵ Each DFAX study evaluated the impact of the facility’s injection of energy on power flows across approximately 3,000 electric system transmission facilities in Ohio and the surrounding areas.¹¹⁶

When reviewing the DFAX studies provided by the Applicants and Blue Delta for the facilities, Staff filtered values that are greater than five percent, and looked at the lines that those DFAX values are associated with.¹¹⁷ Staff removed any results from lines that are not located in Ohio.¹¹⁸ Staff performed this analysis and looked for the highest value on each facility with at least one end point in Ohio, and with both endpoints located in Ohio.¹¹⁹ Once Staff identified lines with a DFAX value above five percent, it multiplied the DFAX percentage by the output of each facility to find the megawatt equivalence.¹²⁰ If a facility had both a DFAX impact of five percent or more and megawatt equivalence of one megawatt or more, the facility was deemed to have satisfied both elements of the *Koda* Test.¹²¹

¹¹⁴ See Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

¹¹⁵ See Tr. Vol. III at 376 (Clingan); Tr. Vol. III at 468-70 (Landoni); Tr. Vol. III at 464 (Nelson); Applicants Ex. 8, Emails between Avangrid and Staff, dated May 19, 2021; Applicants Ex. 9, Email dated May 19, 2021; Applicants Ex. 10, Emails between Avangrid and Staff, dated July 27, 2022.

¹¹⁶ See Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

¹¹⁷ Tr. Vol. III at 422-23 (Cross); Staff Ex. 1, Cross Testimony at 2; Joint Ex. 1, Chiles Testimony at 12-13; Applicants Ex. 7, Landoni Testimony at 7.

¹¹⁸ Tr. Vol. III at 417 (Cross).

¹¹⁹ Tr. Vol. III at 422-23 (Cross).

¹²⁰ Tr. Vol. III at 422-23 (Cross); Staff Ex. 1, Cross Testimony at 2; Staff Ex. 2, Clingan Testimony at 4-5; Joint Ex. 1, Chiles Testimony at 12-13; Applicants Ex. 7, Landoni Testimony at 7.

¹²¹ Tr. Vol. III at 422-23 (Cross); Staff Ex. 1, Cross Testimony at 2; Joint Ex. 1, Chiles Testimony at 12-13; Applicants Ex. 7, Landoni Testimony at 7.

After applying the *Koda* Test to Applicants' six facilities, Staff concluded: "each of the facilities meets the deliverability standard established by the Commission in [*Koda*]."¹²² Even using the lower of the two DFAX values (between the value of a line located entirely in Ohio, and a line with one endpoint located in Ohio), each of the six facilities still easily satisfies both elements of the *Koda* Test. The results are as follows:

1. Moraine I has a DFAX percentage of 16.37% and a MW equivalent of 8.35 MW;
2. Rugby Wind Power has a DFAX percentage of 16.44% and a MW equivalent of 24.50 MW;
3. Elm Creek II has a DFAX percentage of 16.50% and a MW impact of 24.55 MW;
4. Buffalo Ridge II has a DFAX percentage of 16.38% and a MW impact of 34.40 MW;
5. Barton Windpower 1 has a DFAX percentage of 17% and a MW impact of 13.60 MW;
6. Barton Windpower 2 has a DFAX percentage of 17% and a MW impact of 13.26MW.¹²³

The results of the DFAX studies for each of the facilities demonstrate that each facility satisfies the *Koda* Test, and that energy from each facility is deliverable into Ohio. Given these results and its own analysis, Staff concluded that each of the six facilities satisfied the deliverability requirement.¹²⁴

¹²² Staff Ex. 2, Clingan Testimony at 2.

¹²³ Applicants Ex. 7, Landoni Testimony at 9-10; Joint Ex. 1, Chiles Testimony at 16-17; Staff Ex. 1, Cross Testimony at 3; Staff Ex. 2, Clingan Testimony at 7; Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

¹²⁴ Staff Ex. 1, Cross Testimony at 3; Staff Ex. 2, Clingan Testimony at 7; Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

4. CSG failed to demonstrate that the energy from each facility was not deliverable into Ohio.

Although CSG attempted to contend that the *Koda* Test does not demonstrate physical deliverability for the six facilities, CSG failed to explain how each facility did not satisfy the Commission’s *Koda* Test or how energy from the facilities was otherwise not deliverable into Ohio. CSG’s sole witness acknowledged that the DFAX studies do not “assume 100 percent of that generation is deliverable to the end point in Ohio,” and that the DFAX studies model power flow into the State of Ohio, rather than presupposing deliverability.¹²⁵ As such, CSG could not overcome the fact that Applicants did prove that the facilities passed the *Koda* Test and that energy from the facilities is deliverable in Ohio.

The results of the DFAX studies for each of the facilities plainly demonstrates that each facility satisfies the *Koda* Test, and that energy from each facility is deliverable into Ohio. Given the results of the DFAX studies and its own analysis, Staff also concluded that each of the six facilities satisfied the deliverability requirement.¹²⁶ Accordingly, the Commission should find that the six renewable facilities passed the *Koda* Test, and therefore satisfy the deliverability requirement.

B. Each facility is a renewable energy resource.

Record evidence also demonstrates that the six facilities are each eligible renewable energy resources. R.C. 4928.64(A) requires that a facility seeking REN certification be a “renewable

¹²⁵ Tr. Vol. II at 227-28 (Stewart).

¹²⁶ Staff Ex. 1, Cross Testimony at 3; Staff Ex. 2, Clingan Testimony at 7; Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

energy resource.” Pursuant to R.C. 4928.01(A)(37), the definition of a renewable energy resource includes wind energy.¹²⁷

As noted in the Applications,¹²⁸ and as explained by Applicants Witness Landoni, who at the time was the asset manager for Avangrid with oversight over the facilities, “[e]ach of the facilities at issue in this proceeding is a wind energy generation facility.”¹²⁹ CSG did not contest this criterion.¹³⁰ In fact, CSG Witness Stewart acknowledged that the source of electricity for each of the DFAX studies is a renewable energy resource.¹³¹ Staff also concluded that each of the six facilities satisfied this requirement for REN certification.¹³² Accordingly, the Commission should find that the six renewable facilities satisfy the renewable energy resource requirement as the six facilities are all wind generation facilities.

C. Each facility satisfies the applicable placed-in-service date.

Finally, each of the six facilities at issue in the Applications satisfies the placed-in-service date for wind energy generation facilities. R.C. 4928.64(A)(1)(d) requires that a wind facility seeking REN certification must have been placed in service after January 1, 1998. Each of the facilities meets this requirement. As explained by Applicants Witness Landoni, and as noted in each Application, the wind generation facilities were placed in service on the following dates:

¹²⁷ R.C. 4928.01(A)(37)(ii).

¹²⁸ Applicants Ex. 1, Application of Moraine Wind LLC; Applicants Ex. 2, Application of Rugby Wind LLC; Applicants Ex. 3, Application of Elm Creek II Wind LLC; Applicants Ex. 4, Application of Buffalo Ridge Wind II LLC; Applicants Ex. 5, Application of Barton Windpower 1; and Applicants Ex. 6, Application of Barton Windpower 2.

¹²⁹ Applicants Ex. 7, Landoni Testimony at 6. *See also* Blue Delta Ex. 1, Nelson Testimony at 7-8.

¹³⁰ Tr. Vol. II at 303 (Stewart).

¹³¹ *Id.* at 227.

¹³² Staff Ex. 1, Cross Testimony at 3; Staff Ex. 2, Clingan Testimony at 7; Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

1. Moraine I was placed in service on November 15, 2003;¹³³
2. Rugby Wind Power was placed in service on December 1, 2009;¹³⁴
3. Elm Creek II was placed in service on December 29, 2010;¹³⁵
4. Buffalo Ridge II was placed in service on December 31, 2010;¹³⁶
5. Barton Windpower 1 was placed in service on June 25, 2009.¹³⁷
6. Barton Windpower 2 was also placed in service on June 25, 2009.¹³⁸

Staff confirmed the placed-in-service dates for each of the facilities and concluded that the wind generation facilities satisfied this criterion of Ohio law.¹³⁹ Once again, CSG did not contest this criterion.¹⁴⁰ Accordingly, the Commission should find that the six renewable facilities satisfy the placed-in-service date requirement.

D. CSG has prejudiced the Applicants by causing undue delay.

Overall, CSG has failed to present a coherent argument during the evidentiary hearing, or throughout the nearly two-year pendency of these cases. However, CSG has nonetheless succeeded in causing undue delay, which prejudices the Applicants while benefitting CSG. The Commission should put an end to this undue, prejudicial delay and certify the facilities as eligible Ohio renewable energy resource generating facilities as soon as practicable.

¹³³ Applicants Ex. 7, Landoni Testimony at 6; Applicants Ex. 1, Application of Moraine Wind LLC.

¹³⁴ Applicants Ex. 7, Landoni Testimony at 6; Applicants Ex. 2, Application of Rugby Wind LLC.

¹³⁵ Applicants Ex. 7, Landoni Testimony at 6; Applicants Ex. 3, Application of Elm Creek II Wind LLC.

¹³⁶ Applicants Ex. 7, Landoni Testimony at 7; Applicants Ex. 4, Application of Buffalo Ridge Wind II LLC.

¹³⁷ Applicants Ex. 7, Landoni Testimony at 7; Applicants Ex. 5, Application of Barton Windpower 1.

¹³⁸ Applicants Ex. 7, Landoni Testimony at 7; Applicants Ex. 6, Application of Barton Windpower 2.

¹³⁹ Tr. Vol. III at 363-64 (Clingan).

¹⁴⁰ Tr. Vol. II at 303 (Stewart).

For example, after CSG began challenging various REN certification cases and asking the Commission to consolidate unrelated cases,¹⁴¹ the Applicants filed a motion instead proposing that the Commission consolidate their cases for the limited purpose of addressing the deliverability question and CSG's challenge to the *Koda* Test.¹⁴² CSG opposed that motion, forcing the parties to participate in a full evidentiary hearing, even though the six cases each concern separate facilities.¹⁴³

Despite claiming it was raising challenges to the *Koda* Test, CSG failed to respond to discovery requests seeking information supporting those challenges. The Applicants were forced to file a motion to compel discovery in February 2022.¹⁴⁴ CSG subsequently ignored multiple Commission orders compelling discovery, causing further delay in the proceeding.¹⁴⁵

Moreover, rather than provide the required supplemental discovery responses, CSG filed a procedurally improper and legally unsupported interlocutory appeal, causing additional delay in the proceeding. As the Applicants explained in their memorandum contra the interlocutory

¹⁴¹ See, e.g., *In the Matter of The Application of Quilt Block Wind Farm for Certification as an Eligible Ohio Renewable Energy Resource Generating Facility*, Case Nos. 21-0576-EL-REN, et al., Motion to Intervene, Motion to Consolidate, and Motion to Establish a Procedural Schedule (June 1, 2021) (asking the Commission to consolidate five of the Applicants' cases with nine other REN certification cases).

¹⁴² Blue Delta Ex. 2, Supplemental Testimony of Ken Nelson (Nov. 14, 2022) (Nelson Supplemental Testimony) at 3. See also Amended Joint Motion To Consolidate and Memorandum in Support (Aug. 6, 2021).

¹⁴³ Blue Delta Ex. 2, Supplemental Testimony of Ken Nelson (Nov. 14, 2022) (Nelson Supplemental Testimony) at 3. See also Amended Joint Motion To Consolidate and Memorandum in Support (Aug. 6, 2021).

¹⁴⁴ See Motion to Compel Responses to Discovery and Memorandum in Support (Feb. 1, 2022).

¹⁴⁵ See Entry (Apr. 5, 2022) at ¶ 33 (“ORDERED, That Applicants’ motion to compel be granted and that Carbon Solutions provide substantive responses within two weeks.”); Entry (Sept. 1, 2022) at ¶¶ 15, 30 (“The attorney examiner clearly ordered Carbon Solutions to “answer the interrogatories and provide the requested documents within two weeks.” No party filed an interlocutory appeal of that ruling. Carbon Solutions does not get another bite at the apple by making additional objections after their first round of objections were rejected....ORDERED, That Carbon Solutions provide substantive responses to the pending discovery requests within seven days, as set forth in Paragraph 15.”); Entry (Nov. 1, 2022) at ¶ 27 (“The time to provide meaningful responses to the discovery requests has come.”).

appeal¹⁴⁶ and the Commission explained in its September 1, 2022 Entry,¹⁴⁷ the Commission ordered CSG to provide supplemental discovery in April. CSG waited until September to appeal the discovery order, despite the fact that a party must file an interlocutory appeal within five days of a decision.¹⁴⁸ CSG also failed to follow the requirements of Ohio Adm.Code 4901-1-15(B). CSG's appeal was so procedurally deficient that it cannot be said to serve any purpose beyond further delay.

CSG's repeated refusal to comply with the Commission's multiple orders led to the Commission delaying the evidentiary hearing in this case.¹⁴⁹ After this delay, CSG asked the Commission to *again* reschedule the hearing.¹⁵⁰

CSG's actions resulted in delays in the procedural schedule which only rewarded CSG and prejudiced the Applicants by keeping the Applicants' facilities out of the Ohio REC market. The Applicants have already lost millions of dollars in revenue due to the delays in REN certification and spent thousands of dollars defending against frivolous and unnecessary litigation. Moreover, the delays in certification have impacted the Ohio REC market in a way that financially benefits CSG while prejudicing its competitors, including the Applicants, and Ohio customers.¹⁵¹ The Commission should approve the Applications as soon as practicable, to put an end to this undue, prejudicial delay.

¹⁴⁶ Memorandum Contra Carbon Solutions Group, LLC's Interlocutory Appeal of Barton Windpower, LLC and Moraine Wind LLC and Elm Creek Wind II LLC and Rugby Wind LLC and Buffalo Ridge II LLC and Barton Windpower LLC and Avangrid Renewables, LLC (Sept. 12, 2022) at 5.

¹⁴⁷ Entry (Sept. 1, 2022) at ¶ 15.

¹⁴⁸ Ohio Adm.Code 4901-1-15(C).

¹⁴⁹ Entry (Sept. 1, 2022) at ¶ 27 (“At this time, the attorney examiner finds it appropriate to reschedule the evidentiary hearing and extend the procedural schedule to allow time for the above issues to be resolved.”).

¹⁵⁰ Blue Delta Ex. 2, Nelson Supplemental Testimony at 3. *See also* Carbon Solutions Group, LLC's Interlocutory Appeal of the September 1, 2022 Entry (Sept. 6, 2022) at 15.

¹⁵¹ Blue Delta Ex. 1, Nelson Testimony at 11-14.

IV. CONCLUSION

Record evidence clearly demonstrates that each of the Applicants' facilities at issue in each of the Applications satisfies the requirements for REN certification in Ohio. The energy from each facility is deliverable into the state pursuant to R.C. 4928.64(B)(3) and Ohio Adm.Code 4901:1-40-01(F) and 4901:1-40-04. Each facility also satisfies the definition of a "renewable energy resource" under R.C. 4928.01(A)(37) and the applicable placed-in-service date under R.C. 4928.64(A)(1).

After reviewing the Applications, data provided by the Applicants regarding the facilities themselves, and the DFAX studies, Staff concluded that the six facilities each satisfied the three statutory requirements for REN certification. As such, Staff recommended approval of the six Applications.¹⁵²

Although CSG has managed to delay this proceeding for nearly two years, CSG has utterly failed to introduce any record evidence that contradicts the fact that the Applicants' six facilities each meet the requirements for REN certification in Ohio. CSG has not provided any evidence to suggest that the facilities do not pass the *Koda* Test, and has not made a convincing argument against the validity of the test itself. Nor has CSG challenged the clear fact that the facilities each satisfy the renewable energy resource and placed-in-service requirements.

As such, the weight of the record evidence shows that the Applications meet the standards for REN certification required by Ohio law, and Commission rules and precedent. Accordingly, the Applicants respectfully request that the Commission grant their Applications for REN

¹⁵² Staff Ex. 1, Cross Testimony at 3; Staff Ex. 2, Clingan Testimony at 7; Staff Ex. 3, Moraine Staff Report; Staff Ex. 4, Rugby Staff Report; Staff Ex. 5, Elm Creek Staff Report; Staff Ex. 6, Buffalo Ridge Staff Report; Staff Ex. 7, Barton 1 Staff Report; Staff Ex. 8, Barton 2 Staff Report.

certification pursuant to Ohio Adm.Code 4901:1-40-04(D) and certify Applicants' six facilities as eligible Ohio renewable energy resource generating facilities as soon as practicable.

Respectfully Submitted,

/s/ Angela Paul Whitfield

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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 cases. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on January 17, 2023 upon the parties listed below.

/s/ Angela Paul Whitfield

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Summary: Brief Post-Hearing Brief electronically filed by Mrs. Angela Whitfield on behalf of Barton Windpower, LLC and Moraine Wind LLC and Elm Creek Wind II LLC and Buffalo Ridge II LLC and Barton Windpower LLC and Avangrid Renewables, LLC and Rugby Wind LLC