

**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
BLUE DELTA ENERGY, LLC
AND
NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC**

Respectfully Submitted,

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POST-HEARING BRIEF

I. INTRODUCTION

Blue Delta Energy, LLC (Blue Delta)¹ and Northern Indiana Public Service Company LLC (NIPSCO)² urge the Public Utilities Commission of Ohio (Commission) to grant the applications for certification as renewable energy (REN) resource generating facilities (Applications) filed in the above-captioned cases by the 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, and Buffalo Ridge II Wind LLC and Barton Windpower (collectively, the Applicants). The record demonstrates that the Applicants have met their burden of proof, and demonstrated that their Applications meet the statutory and regulatory requirements for REN certification. Moreover, the Commission should affirm its 2011 precedent for determining deliverability of out-of-state resources under Ohio Adm.Code 4901:1-40-01(F), the *Koda* Test.³

The evidence submitted at the evidentiary hearing in this proceeding demonstrates that the Commission should uphold this time-honored precedent with regard to the deliverability standard and approve the Applications pursuant to that precedent. Any attempts by Carbon Solutions Group, LLC (CSG) to argue against the Commission's respected precedent are without merit and should be rejected. CSG's sole purpose in these cases was to delay REN certification of the six facilities in order to profit from less renewable energy credits (RECs) being offered for sale in the Ohio REC market. The Commission should put an end to CSG's obstruction for personal gain by rejecting CSG's baseless arguments and approving the Applications in their entirety.

¹ See Motion for Leave to Intervene and Memorandum in Support by Blue Delta Energy, LLC (July 15, 2021); Entry (Apr. 5, 2022) at ¶ 29.

² See *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, Northern Indiana Public Service Company LLC's Petition for Leave to Intervene (July 15, 2021); Entry (Apr. 5, 2022) at ¶ 29.

³ 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); see also Blue Delta Ex. 9, *Koda* Staff Report.

II. REGULATORY FRAMEWORK

Ohio law and the Commission's rules allow qualifying renewable generation facilities to apply for and obtain REN certification.⁴ Once a facility obtains REN certification, it can participate in the REC markets by selling RECs in Ohio.⁵ To obtain certification, the facility must satisfy three statutory requirements. The facility must use a renewable technology, it must have been placed in service after a certain date, and energy from the facility must be deliverable to the state of Ohio.⁶

The first two requirements of Ohio law are straight forward and were not challenged in this proceeding. R.C. 4928.64(A) requires that the facility be a renewable facility, which is defined in R.C. 4928.01(A)(37) as including wind energy. R.C. 4928.64(A)(1)(d) requires that the wind facility seeking REN certification was placed in service after January 1, 1998.

The third requirement regarding deliverability is at issue in this proceeding. In order to qualify as a certified eligible Ohio renewable energy resource generating facility, R.C. 4928.64(B)(3) requires that the facility demonstrate that the energy produced from the facility is deliverable into Ohio. Ohio Adm.Code 4901:1-40-01(F) explains that the electricity from a facility is considered deliverable into Ohio if it demonstrates that the electricity is physically deliverable to the state. The Commission uses the *Koda* Test to determine whether electricity is “physically

⁴ R.C. 4928.01(A)(37); R.C. 4928.64(A)(1); R.C. 4928.64(B)(3); *see also* Applicants Ex. 7, Direct Testimony of Pete Landoni (Aug. 12, 2022) (Landoni Testimony) at 5-6.

⁵ Applicants Ex. 7, Landoni Testimony at 2.

⁶ 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.

deliverable”⁷ sufficient for REN certification.⁸ The Commission has consistently applied the *Koda* Test since it was adopted in Case No. 09-0555-EL-REN more than a decade ago.⁹

In that case, the Commission explained that to qualify as an eligible Ohio renewable energy resource pursuant to R.C. 4928.64 and 4928.645, an applicant must demonstrate that energy produced from the facility is deliverable into the state of Ohio.¹⁰ Given that the Commission had not yet adopted a test for determining physical deliverability, Staff created a methodology that “could be employed to demonstrate deliverability for a facility located outside of Ohio or a contiguous state.”¹¹ Staff’s methodology that it recommended was based on distribution factor (DFAX) or power flow studies, since “it is impossible to physically track energy from a specific generating facility to a specific load location.”¹² As explained by Staff, a “DFAX study is a computer model of the transmission systems that measures the change in power flows across a flowgate due to a change in generation.”¹³

If the DFAX studies show a significant impact in Ohio, Staff would consider this impact as evidence of deliverability.¹⁴ Staff’s proposed methodology for evaluating the impact of a DFAX study involved comparing the results of a DFAX study for the facility against two benchmarks. In

⁷ 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.

⁸ *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); *see also* Blue Delta Ex. 9, *Koda* Staff Report.

⁹ *Id.*

¹⁰ *Koda*, Finding and Order at ¶ 2 (Mar. 23, 2011).

¹¹ Blue Delta Ex. 9, *Koda* Staff Report.

¹² *Id.* at 5.

¹³ Blue Delta Ex. 9, *Koda* Staff Report at 5.

¹⁴ *Id.*

Koda, Staff recommended that “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.”¹⁵

The Commission determined that Staff’s proposed methodology was reasonable and adopted it.¹⁶ With the Commission’s approval, Staff continued to apply the *Koda* Test when it evaluated out-of-state facilities seeking REN certification.¹⁷ At the evidentiary hearing in the present case, Staff Witness Cross explained how Staff applies these benchmarks to the results of DFAX studies that they receive from an applicant in order to perform the *Koda* Test:

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.¹⁸

The DFAX studies used by Staff to perform the *Koda* Test are modeled by PJM Interconnection LLC (PJM), the regional transmission organization (RTO) for Ohio. PJM provides the DFAX studies to applicants who then submit the results of the DFAX studies—the cover sheet, summary report, and spreadsheets—to Staff.¹⁹ Although the Applicants’ facilities at issue are located on the Midcontinent Independent System Operator, Inc. (MISO), “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 and a sink in PJM).”²⁰ Staff then runs its analysis and issues a Staff Report, explaining whether a facility satisfies the three requirements of Ohio law to receive Ohio REN

¹⁵ Blue Delta Ex. 9, *Koda* Staff Report at 6-7.

¹⁶ *Koda*, Finding and Order at ¶ 8 (Mar. 23, 2011).

¹⁷ See Staff Ex. 2, Prefiled Testimony of Kristin Clingan (Aug. 26, 2022) (Clingan Testimony), at 5.

¹⁸ Tr. Vol. III at 422-23 (Cross).

¹⁹ See Joint Ex. 2, Supplemental Testimony of John Chiles (Nov. 14, 2022) (Chiles Supplemental Testimony) at 5.

²⁰ Staff Ex. 2, Clingan Testimony at 6-7, *citing* Staff Ex. 8, Barton 2 Staff Report at 1.

certification, including the deliverability requirement per the *Koda* Test, and recommends whether the Commission should grant REN certification to an applicant.

III. PROCEDURAL BACKGROUND

Until CSG began opposing REN applications for the purpose of disrupting the certification process, REN certification was a relatively straightforward and simple process. Facilities seeking REN certification submit their applications to Staff through an online portal.²¹ Although applications are subject to a 30-day automatic approval, automatic approval may be suspended and a Commission proceeding may be initiated by Staff.²² Staff typically initiates proceedings for applications of facilities located in non-contiguous states in order to more fully review and apply the *Koda* Test.²³ Although Staff has certified over five-hundred facilities since the beginning of 2022, the majority of these cases are subject to automatic approval and formal Commission proceedings are not initiated.²⁴

The Applicants submitted their applications under this simple process. Moraine I Wind Energy Facility (Moraine I) is a 51 megawatts (MW) wind facility located in Woodstock, Minnesota, which was placed in service on November 15, 2003.²⁵ The Rugby Wind Power Project (Rugby Wind) is a 149 MW wind facility located in Rugby, North Dakota, which was placed in service on December 1, 2009.²⁶ The Elm Creek II Wind Energy Facility (Elm Creek II) is a 148 MW wind facility located in Alpha, Minnesota, which was placed in service on December 29,

²¹ Tr. Vol. III at 404 (Clingan Redirect). *See also* Applicants Ex. 7, Landoni Testimony at 5.

²² Tr. Vol. III at 404 (Clingan Redirect).

²³ Applicants Ex. 7, Landoni Testimony at 4, 6.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

2010.²⁷ The Buffalo Ridge II Wind Project (Buffalo Ridge II) is a 210 MW wind facility located in Astoria, South Dakota, which was placed in service on December 31, 2010.²⁸ Barton Windpower 1 (Barton 1) is an 80 MW wind facility located in Kensett, Iowa, which was placed in service on June 25, 2009.²⁹ Finally, Barton Windpower 2 (Barton 2) is a 78 MW wind facility located in Kensett, Iowa, which was also placed into service on June 25, 2009.³⁰ Since each of the facilities is located in a non-adjacent state, and is located in MISO, Staff applies the *Koda* Test to determine whether the facility satisfies Ohio’s deliverability requirement.³¹

The Applicants submitted the applications for Moraine I, Rugby Wind, Elm Creek II, Buffalo Ridge II, and Barton 1 in April and May of 2021.³² After suspending the automatic approval process, Staff requested DFAX studies for the facilities.³³ Staff members Stuart Siegfried and Kristen Clingan sent emails to a former Avangrid employee on April 28, 2021 and May 3, 2021, requesting DFAX studies for the Moraine I, Rugby, Buffalo Ridge II, and Elm Creek II facilities.³⁴ On May 3, 2021, Avangrid contacted Avangrid’s representative at PJM to request the studies.³⁵ On May 19, 2021, PJM sent the DFAX study results—including the cover sheet,

²⁷ Applicants Ex. 7, Landoni Testimony at 4, 6.

²⁸ *Id.* at 5, 7.

²⁹ *Id.* at 6-7.

³⁰ *Id.*

³¹ *See id.* at 4-5.

³² *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; and Applicants Ex. 5, Application of Barton Windpower 1.

³³ Tr. Vol. III at 376 (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.

summary letter, and spreadsheets—to Avangrid.³⁶ Avangrid forwarded the DFAX study results for the four facilities to Staff on the same day.³⁷

Although Staff had not yet requested a DFAX study for Barton 1, Blue Delta’s President, Ken Nelson, contacted PJM, and requested the study on behalf of the Applicants.³⁸ Blue Delta, as well as NIPSCO, both have an interest in Barton 1 and have assisted clients previously with the Commission’s REN certification process.³⁹ After Mr. Nelson received the DFAX study results, cover sheet, and summary letter from PJM for Barton 1, he forwarded the Barton 1 documents to Staff.⁴⁰

After this proceeding had been pending for nearly a year, the Applicants filed the application for the Barton 2 facility in April 2022.⁴¹ On April 13, 2022, Staff Witness Clingan requested a DFAX study for the Barton 2 facility from Avangrid.⁴² Avangrid forwarded the DFAX study results, cover sheet, and summary letter for the Barton 2 facility to Staff on July 27, 2022.⁴³

The Applicants and Blue Delta provided the same DFAX studies that they received from PJM to Staff for the Applicants’ facilities.⁴⁴ Blue Delta Witness Nelson, Joint Witness Chiles, and Applicants Witness Landoni each testified that they also reviewed the same DFAX studies for the

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.

³⁸ Tr. Vol. I at 131 (Nelson).

³⁹ See Tr. Vol. I at 126 (Nelson); Blue Delta Ex. 1, Testimony of Ken Nelson (Aug. 12, 2022) (Nelson Testimony) at 6-7.

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 Applicants Ex. 6, Application of Barton Windpower 2.

⁴² Tr. Vol. III at 473-74 (Landoni); Applicants Ex. 10, Emails between Avangrid and Staff, dated July 27, 2022.

⁴³ *Id.*

⁴⁴ Tr. Vol. III at 390-93 (Clingan).

facilities that the Applicants and Blue Delta received from PJM and provided to Staff.⁴⁵ It is important to note that due to an inadvertent document compilation error, some of the DFAX spreadsheets that had been forwarded to Staff, reviewed by Staff, and reviewed by Avangrid and Blue Delta and their witnesses were not properly attached to the pre-filed comments and testimony, although the correct PJM cover sheets and summary reports were.⁴⁶ Nevertheless, the Applicants, Blue Delta, and Staff witnesses all testified that although counsel for the Applicants discovered a “document compilation error with respect to [certain] attachments” submitted with comments and testimony, they reviewed the correct spreadsheets for the Applicants’ facilities and relied on the correct data when compiling their testimonies.⁴⁷

The corrected Attachments, which “contain[] corrected DFAX spreadsheets for the Barton 1, Buffalo Ridge II, Elm Creek II, Rugby, and Moraine facilities”⁴⁸ were admitted into the record as 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; and Joint Ex. 1A, Corrected Attachment A to Chiles Testimony. These corrected DFAX spreadsheets represent the correct facilities’ data reviewed by Staff, Blue Delta, the Applicants, and their respective witnesses, and as such, filing the corrected exhibits did not change the analysis or testimony performed by the various witnesses.⁴⁹

⁴⁵ Tr. Vol. III at 463 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson).

⁴⁶ Tr. Vol. III at 463 (Landoni); Vol. III at 354 (Clingan); Tr. Vol. III at 420-21 (Cross).

⁴⁷ Tr. Vol. III at 463 (Landoni).

⁴⁸ 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 Attachment A to Chiles Testimony; Tr. Vol. III at 463 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson).

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

After receiving and reviewing the DFAX spreadsheets, cover letters, reports, Staff performed its analysis to determine if each facility satisfied Ohio’s three requirements for REN certification, including the application of the *Koda* Test to determine whether the facility satisfied Ohio’s deliverability requirement.⁵⁰ CSG began intervening in other REN cases around the same time that the Applicants submitted their first two applications in the Commission’s web portal and the Staff suspended the applications and initiated formal cases.⁵¹ Rather than face a costly legal battle with CSG, several applicants withdrew their applications.⁵² Other facilities declined to file new certification applications altogether.⁵³ Shortly after, CSG intervened in this case as well. This led to delays in facilities receiving REN certification, uncertainty in the REC market, and an increase in REC prices.⁵⁴ Notably, however, the increase in REC prices did not lead to more renewable projects being sited in Ohio.⁵⁵ Although CSG has managed to delay certification for nearly two years at this point, CSG has yet to explain a reasonable basis for its challenge.

Instead, over the course of this proceeding, “CSG has offered various contradictory statements about” what exactly its position is.⁵⁶ Blue Delta Witness Nelson summarized the various positions that CSG has taken throughout the pendency of this proceeding, including: that Staff improperly focused on physical deliverability instead of the contract path of electricity;⁵⁷ that it is not opposing the *Koda* Test, but “Staff’s approach is not at all consistent with *Koda*;⁵⁸ that

⁵⁰ Tr. Vol. III at 390-394 (Clingan).

⁵¹ Blue Delta Ex. 1, Testimony of Ken Nelson (Aug. 12, 2022) (Nelson Testimony) at 12.

⁵² *Id.* at 11.

⁵³ *Id.* at 12.

⁵⁴ *Id.*

⁵⁵ *Id.* at 13-14.

⁵⁶ *Id.* at 9.

⁵⁷ Blue Delta Ex. 2, Supplemental Testimony of Ken Nelson (Nov. 14, 2022) (Nelson Supplemental Testimony) at 8.

⁵⁸ *Id.* (citations omitted).

the PUCO should “modify or change” the *Koda* Test;⁵⁹ that the PUCO has never heard arguments for or against the so-called *Koda* test;⁶⁰ that the Staff’s method of determining deliverability “is not binding on the PUCO;”⁶¹ and that the Applicants were “massaging the inputs” to arrive at a desired result.⁶² In addition to these contradictory arguments, Blue Delta Witness Nelson explained other ways that CSG has delayed the proceeding:

For example, the Applicants filed a motion asking the PUCO to consolidate their cases for the limited question of addressing the deliverability question and CSG’s challenge to the PUCO’s *Koda* Test. CSG opposed that motion, forcing the parties to participate in a full evidentiary hearing, even though the six cases each concern separate facilities. At the same time, CSG has also failed to meaningfully respond to discovery, despite multiple orders from the PUCO, leading to the evidentiary hearing being further delayed in this case. After the hearing was delayed, CSG filed a motion, asking the attorney examiner to again reschedule the hearing.⁶³

Ultimately, despite challenges by CSG, Staff issued a review and recommendation (Staff Report) recommending that the Commission certify each facility as an eligible Ohio REN resource generating facility.⁶⁴ The Staff Reports noted that each of the facilities were a renewable energy resource, were placed-in-service after January 1, 1998, and satisfied the deliverability requirement for certification.⁶⁵ As such, Staff found that each of the facilities should be certified as qualified REN facilities.⁶⁶

⁵⁹ Blue Delta Ex. 1, Nelson Testimony at 10 (citations omitted).

⁶⁰ Blue Delta Ex. 2, Nelson Supplemental Testimony at 8.

⁶¹ Blue Delta Ex. 2, Nelson Supplemental Testimony at 8 (citations omitted).

⁶² *Id.* (citations omitted).

⁶³ *Id.* at 2.

⁶⁴ 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 Direct); Joint Ex. 1, Chiles Testimony at 5; Applicants Ex. 7, Landoni Testimony at 9; Blue Delta Ex. 1, Nelson Testimony at 8.

⁶⁵ 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.

⁶⁶ Staff Ex. 2, Clingan Testimony at 7.

The parties participated in an evidentiary hearing beginning on December 5, 2022. Record evidence presented by the Applicants, Blue Delta, and Staff demonstrated that the Applicants' facilities each satisfy each of the requirements for REN certification. Moreover, they demonstrated the reasonableness and practicality of the Commission's longstanding *Koda* Test.

On the other hand, at the evidentiary hearing, CSG did not offer any evidence to contradict the Applications or the conclusions of Staff regarding the renewable resource requirement or the placed-in-service date requirement.⁶⁷ CSG, however, attempted to oppose certification based on the deliverability requirement, but failed to present evidence sufficient to justify not granting certification, or the Commission abandoning the longstanding *Koda* Test, or to even suggest a reasonable alternative. Accordingly, Blue Delta respectfully requests that the Commission approve the applications and reject CSG's baseless arguments to the contrary.

IV. ARGUMENT

A. Each of the facilities satisfies the three requirements for REN certification.

As discussed above, the three requirements for REN certification in Ohio are 1) the technology used at the facility must be renewable, 2) the facility's placed in-service date must be after January 1, 1998 for a wind facility, and 3) the output from the renewable facility must be deliverable to Ohio.⁶⁸

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.⁶⁹ Additionally, R.C. 4928.64(A)

⁶⁷ Tr. Vol. II at 303 (Stewart).

⁶⁸ R.C. 4928.01(A)(37); R.C. 4928.64(A)(1); R.C. 4928.64(B)(3); *see also* Staff Ex. 2, Prefiled Testimony of Kristin Clingan (Aug. 26, 2022) (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).

⁶⁹ *Id.*, *see also* R.C. 4928.64(B)(3).

requires that the facility be a “renewable energy resource” as defined by R.C. 4928.01(A)(37), which includes wind energy.⁷⁰ Lastly, the facility must satisfy one of the applicable statutory provisions pertaining to the placed-in-service date, which is after January 1, 1998 for wind facilities.⁷¹ There are no other requirements for REN certification in Ohio.⁷²

As to the first requirement, record evidence demonstrates that the Applicants’ facilities are each an eligible renewable energy resource as the facilities utilize wind energy as the technology: As explained by Applicants Witness Landoni, “[e]ach of the facilities at issue in this proceeding is a wind energy generation facility.”⁷³ Based on this fact, Staff found that each of the facilities satisfied this requirement for REN certification.⁷⁴ CSG did not offer any evidence to contradict this assertion.⁷⁵ Instead CSG’s sole witness acknowledged that the source of electricity for each of the DFAX studies is a renewable energy resource.⁷⁶ As such, each of the facilities satisfies the renewable energy resource requirement for REN certification.

As for the second requirement, record evidence demonstrates that each of the facilities also satisfies the applicable placed-in-service date requirement. Pursuant to R.C. 4928.64(A)(1)(d), a wind facility seeking REN certification must have been placed in service after January 1, 1998.

⁷⁰ See R.C. 4928.01(A)(37)(ii).

⁷¹ 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.

⁷² 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).

⁷³ Applicants Ex. 7, Landoni Testimony at 6. *See also* Blue Delta Ex. 1, Nelson Testimony at 7-8; 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.

⁷⁴ 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.

⁷⁵ Tr. Vol. II at 303 (Stewart).

⁷⁶ *Id.* at 227.

The Applications and Applicants Witness Landoni explained that the facilities were placed in service after this date.⁷⁷

Staff confirmed the placed-in-service dates for each of the facilities and found that each of the wind facilities was placed in service after January 1, 1998.⁷⁸ CSG did offer evidence to contradict this conclusion.⁷⁹ As such, each of the facilities satisfies the placed-in-service date requirement for REN certification.

As for the third requirement, pursuant to Ohio Adm.Code 4901:1-40-01(F), for an out-of-state facility in a non-adjacent state, energy is deemed deliverable into Ohio “pending a demonstration that the electricity is *physically* deliverable to the state.”⁸⁰ The Commission uses the *Koda* Test to evaluate the results of DFAX studies for the applicable facilities to determine whether electricity from those facilities is “physically deliverable”⁸¹ sufficient for REN certification.⁸²

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.⁸³ When evaluating these power flow studies, Staff considers two values: the highest value for the highest value for a transmission line with one end point in

⁷⁷ Applicants Ex. 7, Landoni Testimony at 6; 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.

⁷⁸ Tr. Vol. III at 363-64 (Clingan).

⁷⁹ Tr. Vol. II at 303 (Stewart).

⁸⁰ Ohio Adm.Code 4901:1-40-01(F) (emphasis added).

⁸¹ *Id.*

⁸² 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); see also Blue Delta Ex. 9, *Koda* Staff Report.

⁸³ Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶ 3.2.

Ohio, and the highest value for a transmission line with both end points in Ohio.⁸⁴ Staff Witness Cross explained the Commission’s application of the *Koda* Test in detail in his testimony, explaining the DFAX analysis and the required resulting impacts on transmission lines located in Ohio:

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.⁸⁵

Applying the *Koda* Test to each of the facilities at issue in this case demonstrates that each facility satisfies the deliverability requirement for REN certification. Applicants and Blue Delta “provided a DFAX power flow study which was performed by PJM” for each facility.⁸⁶ They requested these studies from PJM and forwarded them to Staff for review.⁸⁷ Each DFAX study evaluated the impact of the facility’s injection of energy on power flows across approximately

⁸⁴ 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.”).

⁸⁵ 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.

⁸⁶ 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.

⁸⁷ 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.

3,000 electric system transmission facilities in Ohio and the surrounding areas.⁸⁸ Even taking the lower of the two DFAX values that Staff examined,⁸⁹ each of the facilities easily satisfies both elements of the *Koda* Test.⁹⁰

In addition to failing to discredit the *Koda* Test or to present a reasonable alternative as discussed above, CSG failed to present any evidence to contradict the results of the *Koda* Test itself for each of Applicants' facilities. As such, energy from each of the facilities is deliverable into Ohio, and therefore satisfies the deliverability requirement of REN certification. Since the facilities each satisfied the third statutory requirement for REN certification, Staff recommended approval of the Applications.⁹¹

B. The Commission should reaffirm its longstanding *Koda* Test.

As outlined above, the *Koda* Test represents more than a decade of Commission precedent, and each of the facilities at issue in these cases passes the *Koda* Test. However, the practical implications of the *Koda* Test also demonstrate its reasonableness and prudence. As such, it represents well-reasoned precedent which the Commission should continue to apply.

Joint Witness Chiles explained in his Expert Report that the North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC) regularly utilize and rely on DFAX studies and the results thereof to promulgate rules and standards. Additionally, Joint Witness Chiles explains that when evaluating interchange transactions between

⁸⁸ 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.

⁸⁹ The value for a line with both endpoints in Ohio.

⁹⁰ 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.

⁹¹ 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.

balancing authorities and for calculating the ability to move power between locations, NERC employs DFAX studies.⁹² NERC also recommends using DFAX to analyze real-time loading on the bulk electric system.⁹³ FERC has also supported NERC's use of DFAX, as well as supported the use of DFAX studies to evaluate expansion planning cost allocation.⁹⁴

Moreover, RTOs such as PJM and MISO also promulgate rules and standards based on DFAX studies. For example, as noted by Joint Witness Chiles, under their Joint Operating Agreement, both RTOs employ DFAX studies to examine the impact of proposed facilities on their transmission networks.⁹⁵ Both RTOs use DFAX studies to evaluate interconnection requests. Both RTOs use DFAX studies to calculate available transfer capability.⁹⁶ While these RTOs also apply the same five percent threshold as Staff does, other RTOs use even lower minimal DFAX thresholds when evaluating impacts of new facilities.⁹⁷

CSG failed to present any evidence to suggest that the Commission should overturn or even modify the use of the *Koda* Test, the *Koda* Test itself, or the Commission's longstanding precedent for evaluating Ohio law's three requirements for REN certification. In fact, CSG's sole witness admitted as such. When asked if he was challenging the *Koda* Test, CSG Witness Stewart stated responded: "I think the demonstration of deliverability could be maybe a bit more clear, but I am not challenging the precedent."⁹⁸ The DFAX analysis seems to be clear to all parties except CSG, which offered several misleading statements that fail to withstand scrutiny.

⁹² Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶¶ 5.2.1, *citing* NERC Standard MOD-030-3, R2.1.1, R2.1.2, and R2.1.4.1, available at <https://www.nerc.com/files/MOD-030-3.pdf> (Nov. 13, 2014).

⁹³ *Id.*, Expert Report at ¶ 3.1.1.

⁹⁴ *Id.*

⁹⁵ Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶ 4.1.

⁹⁶ *Id.* at ¶ 5.2.2.

⁹⁷ *Id.* ¶ 4.1

⁹⁸ Tr. Vol. II at 295 (Stewart).

For example, CSG Witness Stewart argues that “RTOs do not exist primarily to conduct simulations, experiments, and academic research about the nature of electromagnetism and that their work is done in service of the ultimate goal of ensuring actual physical deliverability.”⁹⁹ However, although CSG Witness Stewart has never worked for an RTO, and did not testify on behalf of RTOs,¹⁰⁰ he acknowledges that RTOs do use modeling—such as DFAX studies—to determine actual physical deliverability.¹⁰¹ Modeling is necessary because it is impossible to track actual physical electrons.¹⁰²

CSG also attempts to argue that the inputs to DFAX studies might be subject to some unexplained influence or manipulation. However, Joint Witness Chiles pointed out that “CSG did not provide any substantive evidence as to how an applicant might influence these inputs.”¹⁰³ In fact, these 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.¹⁰⁴

Similarly, CSG attempts to argue that unlike in *Koda*, the DFAX studies performed by PJM “presupposed deliverability” from MISO into PJM.¹⁰⁵ However, in *Koda*, the RTOs only modeled facilities in Ohio,¹⁰⁶ just as Staff only examined the impact on Ohio facilities in the current case. In fact, in *Koda*, the RTOs only modeled the impact on 77 lines.¹⁰⁷ In the current case, PJM

⁹⁹ CSG Ex. 3, Testimony of Travis Stewart (Aug. 26, 2022) (Stewart Testimony) at 5.

¹⁰⁰ Tr. Vol. II at 192 (Stewart).

¹⁰¹ *Id.* at 195.

¹⁰² *Id.* at 197. *See also* Blue Delta Ex. 9, *Koda* Staff Report at 5.

¹⁰³ Joint Ex. 2, Chiles Supplemental Testimony at 6.

¹⁰⁴ Tr. Vol. I at 75 (Chiles).

¹⁰⁵ CSG Ex. 3, Stewart Testimony at 9.

¹⁰⁶ Tr. Vol. II at 296-98 (Stewart), *citing* Blue Delta Ex. 9, *Koda* Staff Report at 6.

¹⁰⁷ *Id.*

modeled more than 3,000 transmission facilities.¹⁰⁸ Due to the presence of tie lines between PJM and MISO, the change in RTO footprints did not physically alter the structure of the electric grid, and electricity flows between the RTOs.¹⁰⁹ The Commission has also specifically rejected the assertion that deliverability is determined by the regional transmission organization on which a facility is located.¹¹⁰

Moreover, at the hearing, CSG Witness Stewart claimed it “was not [his] testimony” that the change in RTO footprints impacts the validity of the *Koda* Test.¹¹¹ Instead, he argues that *Koda* requires DFAX studies from both PJM and MISO.¹¹² Again, this is a flawed argument.

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 and a sink in PJM).”¹¹³ Staff used both MISO and PJM power flow studies in *Koda* simply because “MISO was a transmission operator in Ohio at the time.”¹¹⁴ Since PJM is now the sole RTO in Ohio, PJM models the DFAX studies for Ohio.¹¹⁵

Moreover, even if CSG *did* succeed in arguing against the Commission’s longstanding precedent—which it did not—CSG does not present any actual alternative for determining deliverability of out-of-state resources. Although Witness Stewart himself acknowledges that he

¹⁰⁸ 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.

¹⁰⁹ Joint Ex. 2, Chiles Supplemental Testimony at 4-6, 11.

¹¹⁰ 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).

¹¹¹ Tr. Vol. II at 247 (Stewart).

¹¹² *Id.*

¹¹³ Staff Ex. 2, Clingan Testimony at 6-7, citing Staff Ex. 8, Barton 2 Staff Report at 1.

¹¹⁴ *Id.*

¹¹⁵ *Id.*

is “not recommending any specific ‘test’ for deliverability,”¹¹⁶ he is just providing a “range of options” for the Commission to consider.¹¹⁷ None of these options represent a more coherent approach than the *Koda* Test.

For example, CSG Witness Stewart suggests that RTOs use transmission service reservations or transmission service requests (TSRs) to determine deliverability.¹¹⁸ However, TSRs rely on DFAX studies as the basis for determining deliverability.¹¹⁹ In fact, the PJM and MISO documents that CSG Witness Stewart claims “addresses these topics in detail” both specifically require power flow studies and use similar thresholds as the *Koda* Test.¹²⁰

CSG Witness Stewart also refers to market-to-market flowgate tests used to qualify facilities as PJM capacity resources.¹²¹ Again, there are several flaws in this alternative. First, an RTO cannot perform a market-to-market flowgate test or a system impact study without first conducting a DFAX study or other power flow study.¹²² Second, the law and Commission’s rules do not require a facility to qualify as a capacity resource in order to obtain REN certification.

Another ‘option’ CSG Witness Stewart presents is the use of “historical settlement data” or a purchase power agreement to demonstrate deliverability.¹²³ Once again, this ‘option’ ignores basic facts. First, the existence of contractual terms in no way guarantees that electrons actually

¹¹⁶ CSG Ex. 3, Stewart Testimony at 11.

¹¹⁷ Tr. Vol. II at 293 (Stewart).

¹¹⁸ CSG Ex. 3, Stewart Testimony at 5.

¹¹⁹ Tr. Vol. II at 200-03 (Stewart).

¹²⁰ *Id.* at 204-08, 213-25; Blue Delta Ex. 3, PJM Manual 14A (Aug. 24, 2021) at 23-25 (“A New Service request that contributes to the loading of an existing overload is reported if that New Service request increases the loading by at least 1 percent and contributes at least 5 megawatts or has at least a 5 percent distribution factor.”); Blue Delta Ex. 4, MISO Business Practice Manual 11 (Aug. 15, 2022) at 88-89.

¹²¹ CSG Ex. 3, Stewart Testimony at 6.

¹²² Tr. Vol. II at 219-22 (Stewart); Blue Delta Ex. 6, PJM Dynamic Transfers: Market-to-Market Flowgate Test (May 2019) at 2.

¹²³ CSG Ex. 3, Stewart Testimony at 10-11.

flow across the path prescribed by the contract.¹²⁴ Moreover, CSG’s witness simply ignores the fact that the Commission has specifically rejected the argument that contracts are a prerequisite for deliverability in two separate previous rulemaking proceedings.¹²⁵ In fact, as noted by Blue Delta Witness Nelson, “there is no mention anywhere in [Ohio law] that would link REN certification and RPS eligibility to...contract paths.”¹²⁶ Moreover, CSG itself claimed in discovery that deliverability does not have a financial element.¹²⁷

Overall, CSG fails to point out any flaws in the Commission’s application of the *Koda* Test. Any alternatives it proposes are either unfeasible, still rely on power flow studies, or both. As such, CSG has not presented a reasonable or persuasive argument that the Commission should abandon or even modify its longstanding precedent and utilize a different deliverability test. On the other hand, Blue Delta, the Applicants, and Staff each presented evidence supporting the use of the *Koda* Test. As such, the Commission should affirm its longstanding precedent. Moreover, when the Commission’s precedent is applied in this case, it is clear that all of the facilities meet the requirements for REN certification.

V. CONCLUSION

Despite causing nearly two years of delay, CSG has ultimately failed to present sufficient evidence to suggest that the Applicants’ facilities do not meet the three requirements in Ohio law for REN certification. CSG’s arguments challenging the *Koda* Test do not offer any reason to

¹²⁴ Tr. Vol. II at 234, 238 (Stewart).

¹²⁵ See *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); *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-EL-ORD, Opinion and Order at 28 (Apr. 15, 2009); Tr. Vol. II at 238-39 (Stewart) (the witness is unable to determine if he reviewed these decisions.).

¹²⁶ Blue Delta Ex. 2, Nelson Supplemental Testimony at 9.

¹²⁷ See Blue Delta Ex. 2, Nelson Supplemental Testimony, Attachment A, INT-01-020.

modify or abandon the Commission's precedent. Additionally, CSG did not present *any* evidence to suggest that the facilities do not pass the three statutory requirements for REN certification as they are currently applied by the Commission.

On the other hand, evidence presented by Blue Delta, the Applicants, and Staff demonstrates that each of the Applicants' facilities 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 is a "renewable energy resource" under R.C. 4928.01(A)(37); and each facility was placed in service after January 1, 1998 pursuant to R.C. 4928.64(A)(1).

As such, the weight of the record evidence shows that the applications should be approved. The Applicants' facilities each meet the standards for REN certification required by Ohio law, the Commission's rules, and Commission precedent. Blue Delta and NIPSCO respectfully request that the Commission grant the Applicants' Applications for REN certification pursuant to Ohio Adm.Code 4901:1-40-04(D).

Respectfully Submitted,

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