

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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

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

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

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**REPLY BRIEF**  
SUBMITTED ON BEHALF OF THE STAFF OF  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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**On Behalf of the Staff of  
The Public Utilities Commission of Ohio**

**February 7, 2023**

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## **INTRODUCTION**

This case concerns applications by six entities for the certification of each named facility as an eligible Ohio renewable energy resource generating facility as defined in R.C. 4928.01. Staff determined that each facility meets the criteria for certification under the Commission-approved test. Staff therefore recommended that the Commission approve the applications.

At the evidentiary hearing, the Applicants and Staff demonstrated that each facility meets the criteria for certification. Pursuant to the schedule established by the Attorney Examiners, the parties filed initial post-hearing briefs on January 17, 2023. In this Reply Brief, Staff responds to certain arguments made by Carbon Solutions Group, LLC (Carbon Solutions).

## **PROCEDURAL HISTORY**

On various dates, Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Buffalo Ridge II Wind LLC, Avangrid Renewables LLC, and Barton Windpower LLC (Applicants) filed their applications pursuant to Ohio Adm.Code 4901:1-40-04(D), for the certification of each named facility as an eligible Ohio renewable energy resource generating facility as defined in R.C. 4928.01.

The attorney examiner suspended the automated approval process for the applications pursuant to Ohio Adm.Code 4901:1-40-04(D), which provides that upon good cause shown, the Commission may suspend the certification of an application to allow the Commission and its Staff to further review the application. Prehearing conferences were conducted on various days in July and August, 2021.

Staff filed its review and recommendation in each respective docket. In each report, Staff recommended the application be approved. Specifically, Staff determined that each facility satisfies the Commission's requirements for certification as a renewable energy resource generating facility.

On May 7, 2021, Carbon Solutions filed motions to intervene, motions to consolidate, and motions to establish a procedural schedule. On August 3, 2021, Avangrid Renewables, LLC, the owner of Applicants, filed a motion to consolidate the cases. On August 6, 2021, Applicants, rather than their parent company, filed an amended joint motion to consolidate.

On April 5, 2022, the Attorney Examiner consolidated these cases, granted motions to intervene, and established a procedural schedule. The schedule was modified by the Attorney Examiner in an entry dated September 1, 2022.

The evidentiary hearing began on December 5, 2022. At the hearing, Applicants presented the testimony of Pete Landoni, John Chiles, and Ken Nelson. Carbon Solutions presented the testimony of Travis Stewart. Staff presented testimony by Kristin Clingan and Jason Cross. At the conclusion of the hearing, the Attorney Examiners established a briefing schedule. This reply brief is timely submitted in accordance with that schedule on behalf of the Commission Staff.

## **ARGUMENT**

### **I. Each Facility meets the criteria for certification.**

As explained in Staff's initial brief, renewable facilities wishing to participate as renewable energy resource generating facilities under Ohio's renewable portfolio

standard (RPS) must be certified by the Commission. A facility's participation in Ohio's RPS is voluntary, but participation requires certification. (Staff Ex. 2 at 2.) Ms. Clingan described the certification process in her testimony. Staff's consideration of applications for certification of renewable energy resource facilities consists primarily, but not exclusively, of three statutory criteria regarding: (1) the resource/technology used at the facility, (2) the facility's placed in-service date, and (3) the deliverability of the facility's output to the state of Ohio. (Staff Ex. 2 at 2-3.) Under Commission rules, Staff also confirms: (A) the facility is registered with, or commits to register with, an attribute tracking system recognized by the Commission, (B) the facility's output is measured by a utility-grade meter for facilities with a generating capacity over 6 kW, and (C) other administrative details as delineated in the certification application. *See* Ohio Adm.Code 4901:1-40-04(C)(2).

No party has argued that the applicants do not meet the requirements for the resource/technology or the in-service date. The only contested issue is deliverability. Carbon Solutions challenges the deliverability of the facilities' electricity output into Ohio. The evidence produced at the hearing, however, demonstrates that each facility meets the Commission's standard for deliverability. Carbon Solutions did not offer any evidence to explain how the facilities do not satisfy the Commission's deliverability test, to demonstrate that the test should be modified, or to suggest an alternative test that the Commission should apply.

As Staff explained in its initial brief, deliverability is addressed in the Commission's rules. Ohio Adm.Code 4901:1-40-01(F) defines "deliverable into this state" as facilities within a state contiguous to Ohio. It may also include electricity

originating from other locations, pending a demonstration that the electricity is physically deliverable to the state. Ohio Adm.Code 4901:1-40-01(F). This definition has only been slightly modified since inception of the administrative rules implementing the RPS statute. In approving the 2009 definition, the Commission noted, “the rule as currently drafted reflects a reasonable balance between regulatory efficiency and maintaining the deliverability requirement explicit under Section 4928.64(B)(3), Revised Code. The rule does not automatically prohibit participation by facilities in certain geographic locations and, therefore, it does not necessarily limit access to certain resources that may be competitively priced.”<sup>1</sup>

As explained by Ms. Clingan, the deliverability standard for a facility located in a noncontiguous state was established by the Commission in 2011 in Case No. 09-0555-EL-REN, known as the *Koda* decision. *In re 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 (March 23, 2011). The methodology recommended by Staff in *Koda*, and ultimately approved by the Commission, is that a demonstration of deliverability may include a power flow study performed by the transmission operator(s) which offers evidence of any significant impact on power flows over transmission lines located in the state of Ohio and serving loads connected to distribution lines located in Ohio due to electricity produced at the renewable generating

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<sup>1</sup> *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, Entry on Rehearing at 22 (June 17, 2009).*



facility's location. *Koda* at 2-3. If any significant impact was evident in the studies, Staff would consider this as evidence of deliverability. *Koda* at 2-3.

The Commission has consistently used the *Koda* test when considering applications from facilities in non-contiguous states. Carbon Solutions has not presented any evidence to demonstrate that the Commission's use of the *Koda* Test is improper and that the Commission should modify its long-standing precedent. Carbon Solutions' sole witness suggested looking at other factors. However, Carbon Solutions did not propose any viable alternatives to the *Koda* test.

Mr. Stewart suggested consideration of contractual obligations in assessing deliverability. However, in the course of rule-making proceedings, the Commission has rejected financial or contractual requirements.<sup>2</sup> As recently as 2018, the Commission found, "we continue to believe that a demonstration of delivery via a power flow study and/or deliverability study should be necessary, although not to the extent of requiring signed contracts."<sup>3</sup> As the Commission has recognized, physical deliverability is not determined by contractual arrangements.

As Staff explained in its initial brief, it is impossible to physically track energy from a specific generating facility to a specific load location. (Staff Ex. 2 at 4.) Therefore, computer models that measure change in power flows are widely used in the power industry. (Staff Ex. 2 at 4.) Power flow analysis, also known as distribution factor

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<sup>2</sup> *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 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).*

<sup>3</sup> *Id.*

(DFAX) analysis, measures the effects of a generator putting its power onto the system. (Staff Ex. 2 at 4.) When assessing deliverability, Staff has consistently relied upon a DFAX analysis performed by the regional transmission operator, PJM Interconnection, LLC (PJM). (Staff Ex. 2 at 4).

Carbon Solutions criticizes this reliance on a DFAX analysis. Carbon Solutions points out certain limitations of a DFAX analysis and argues that it does not ensure deliverability in terms of the requirements set by wholesale energy and capacity markets. However, as noted above, the Commission has never held renewable generating facilities participating in Ohio's RPS to the standards set for participation in wholesale energy and capacity markets. There is a critical distinction in that the RPS statute refers to "deliverable" rather than "delivered." As such, efforts to apply a requirement of actual delivery to Ohio are not reasonable in this context. While CSG asserts that "deliverable" means actual, physical delivery to Ohio, that interpretation is not supported by the relevant statutory language. (Staff Reply Comments at 4).

Carbon Solutions also raises questions about the submission of the DFAX reports from PJM. Carbon Solutions contends that the reports are untrustworthy because they did not come directly from PJM. Historically, Staff's position has been that it is incumbent upon the applicant to provide all the information necessary for a complete application. It is not Staff's responsibility to obtain it. As a point of clarification, there is no way for the applicant to submit the DFAX study in the Commission's online application in Salesforce. As such, there was nothing unusual about the way these DFAX studies were submitted to Staff. Nevertheless, Staff is committed to improving its process for reviewing applications submitted by facilities located in noncontiguous states going

forward, including but not limited to those noted in Staff's reply comments and obtaining future DFAX studies directly from PJM.

## CONCLUSION

As demonstrated above and in Staff's initial brief, Staff has consistently applied the *Koda* methodology since it was approved by the Commission in 2011 and has consistently relied on DFAX studies to conduct its analysis. Each applicant meets the requirements adopted by the Commission for certification as renewable resource generating facilities. Carbon Solutions has failed to show otherwise. Therefore, Staff recommends approval of each application.

Respectfully submitted,

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**On Behalf of the Staff of  
The Public Utilities Commission of Ohio**

## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via United States mail or electronic mail, upon the following Parties of Record, this 7<sup>th</sup> day of February 2023.

*/s/ Thomas G. Lindgren* \_\_\_\_\_

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of PUCO