

**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.)

**REPLY 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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February 7, 2023

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REPLY BRIEF

I. INTRODUCTION

The overwhelming record evidence demonstrates that the six renewable wind facilities qualify for certification as renewable energy (REN) resource generating facilities. 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, LLC (collectively, the Applicants) have all satisfied their burden of proof to demonstrate that the Applicants' facilities should be certified as REN facilities. The Applications,¹ Staff Review and Recommendations (Staff Reports),² testimony, record evidence, and briefs submitted in this case all demonstrate that each of the six facilities satisfies Ohio law and the Commission's rules, including the Commission's *Koda* Test for deliverability,³ and are just and reasonable. The Public Utilities Commission of Ohio (Commission) should therefore grant the Applications for REN certification without further delay.

The Applicants own six wind farms, each located in a non-contiguous state and connected to the Midcontinent Independent System Operator, Inc. (MISO), a regional transmission organization (RTO)⁴ which coordinates with PJM Interconnection LLC (PJM) pursuant to their Joint Operating Agreement.⁵ The Applicants are seeking REN certification for each of the six facilities. A facility is authorized to obtain REN certification if it satisfies three statutory criteria: (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

¹ 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.

² 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.

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).

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

⁵ Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Appendix D (Joint Operating Agreement).

date.⁶ Here, the record evidence demonstrates that all six of Applicants' renewable wind facilities satisfy the three statutory criteria. The six facilities are:

1. Moraine I Wind Energy Facility (Moraine I) is a wind facility located at 4 151st Street in Woodstock, Minnesota.⁷ Moraine I has a generating capacity of 51 megawatts (MW).⁸ Moraine I was placed in service on November 15, 2003.⁹
2. The Rugby Wind Power Project (Rugby Wind) is a wind facility located at 3210 74th Street Northeast in Rugby, North Dakota.¹⁰ Rugby Wind has a generating capacity of 149 MW.¹¹ Rugby Wind Power was placed in service on December 1, 2009.¹²
3. The Elm Creek II Wind Energy Facility (Elm Creek II) is a wind facility located at 83481 600th Avenue in Alpha, Minnesota.¹³ Elm Creek II has a generating capacity of 148 MW.¹⁴ Elm Creek II was placed in service on December 29, 2010.¹⁵
4. The Buffalo Ridge II Wind Project (Buffalo Ridge II) is a wind facility located at 47894 197th Street in Astoria, South Dakota.¹⁶ Buffalo Ridge II has a generating capacity of 210 MW.¹⁷ Buffalo Ridge II was placed in service on December 31, 2010.¹⁸

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.

⁷ Applicants Ex. 7, Landoni Testimony at 4.

⁸ *Id.*

⁹ *Id.* at 6.

¹⁰ *Id.* at 4.

¹¹ *Id.*

¹² *Id.* at 6

¹³ *Id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.* at 6.

¹⁶ *Id.* at 5

¹⁷ *Id.*

¹⁸ *Id.* at 7.

5. Barton Windpower 1 is a wind facility located at 1143 410th Street in Kensett, Iowa.¹⁹ Barton Windpower 1 has a generating capacity of 80 MW.²⁰ Barton Windpower 1 was placed in service on June 25, 2009.²¹
6. Barton Windpower 2 is a wind facility located at 970 410th Street in Kensett, Iowa.²² Barton Windpower 2 has a generating capacity of 78 MW.²³ Barton Windpower 2 was also placed in service on June 25, 2009.²⁴

Staff, after reviewing the Applications, obtaining distribution factor (DFAX) power flow studies from the Applicants, and analyzing the results, issued Staff Reports for each facility. In each Staff Report, “Staff...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.”²⁵

Following the evidentiary hearing, the Applicants,²⁶ Commission Staff,²⁷ and jointly Blue Delta Energy, LLC (Blue Delta) and Northern Indiana Public Service Company LLC (NIPSCO)²⁸ submitted briefs recommending that the Commission find that the Applicants’ facilities each satisfy all three of the statutory requirements for REN certification and urging the Commission to grant the Applications. 3Degrees Group, Inc., also filed a statement in support of this conclusion.²⁹

¹⁹ Applicants Ex. 7, Landoni Testimony at 6.

²⁰ *Id.*

²¹ *Id.* at 7.

²² *Id.* at 6.

²³ *Id.*

²⁴ *Id.* at 7.

²⁵ 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.

²⁶ See Post-Hearing Brief of 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 (Jan. 17, 2023) (Applicants Brief).

²⁷ See Initial Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Jan. 17, 2023) (Staff Brief).

²⁸ See Joint Post-Hearing Brief by Blue Delta Energy, LLC and Northern Indiana Public Service Company LLC (Jan. 17, 2023) (Blue Delta/NIPSCO Brief).

²⁹ See 3Degrees Group, Inc.’s Notice of Support of Applicants’ Post-Hearing Briefs (Jan. 17, 2023).

Only Carbon Solutions Group, LLC (CSG) opposes the Applications.³⁰ CSG's own post-hearing brief, however, does not offer any convincing or even coherent argument as to why the six facilities do not satisfy the three statutory requirements for REN certification. Instead, CSG relies on a misstatement of the facts, Applications, regulations, laws, and applicable standards. CSG's brief is largely devoid of references to or reliance on actual record evidence. Rather, CSG relies on self-contradictory and easily disproven claims. As it has throughout these cases, CSG serves no purpose but to confuse the record in order to delay the proceeding. The Commission should reject the arguments made by CSG as meritless, find that the Applicants have met their burden of proof for REN certification, and approve the Applications.

II. ARGUMENT

As explained by the Applicants,³¹ Staff,³² and Blue Delta/NIPSCO,³³ REN certification in Ohio requires that a facility satisfy 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.³⁴ 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.³⁵ For out-of-state applicants located in MISO, the Commission applies the *Koda* Test to determine deliverability to the state of Ohio.³⁶ Additionally, R.C. 4928.64(A)

³⁰ See Initial Post-Hearing Brief of Carbon Solutions Group, LLC (Jan. 17, 2023) (CSG Brief).

³¹ Applicants Brief at 11-12.

³² Staff Brief at 2-3.

³³ Blue Delta/NIPSCO Brief at 3-6.

³⁴ 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 at 2-3 (Aug. 26, 2022) (Clingan Testimony); 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 at 4-5 (Aug. 12, 2022) (Nelson Testimony); Tr. Vol. II at 190-91 (Stewart).

³⁵ *Id.*, see also R.C. 4928.64(B)(3).

³⁶ Staff Brief at 3-4.

requires that a facility be a “renewable energy resource” as defined by R.C. 4928.01(A)(37), which includes wind energy.³⁷ Lastly, a 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, 1998.³⁸ There are no other statutory criteria for REN certification in Ohio.³⁹

Notably, CSG’s Argument section of its brief consists of only two divisions. One argues that the Applicants’ resources are not physically deliverable into Ohio, because the DFAX reports do not demonstrate deliverability.⁴⁰ The other argues that there are alleged “procedural irregularities” in the proceeding.⁴¹ Thus, the only statutory criterion that CSG is challenging is deliverability as no portion of CSG’s brief contests either of the other two statutory requirements for REN certification.⁴²

A. Each facility is a renewable energy resource.

Pursuant to R.C. 4928.64(A), a facility seeking REN certification must be a “renewable energy resource.” R.C. 4928.01(A)(37) in turn defines a renewable energy resource as including wind energy.⁴³ The Applicants,⁴⁴ Staff,⁴⁵ and Blue Delta/NIPSCO,⁴⁶ explained that each facility satisfies the first statutory requirement.

³⁷ See R.C. 4928.01(A)(37)(ii).

³⁸ 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.

³⁹ 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).

⁴⁰ CSG Brief at 9.

⁴¹ CSG Brief at 15.

⁴² *See generally*, CSG Brief.

⁴³ R.C. 4928.01(A)(37)(ii).

⁴⁴ Applicants Brief at 23-24.

⁴⁵ Staff Brief at 3, 6; 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.

⁴⁶ Blue Delta/NIPSCO Brief at 13.

As noted in the Applications,⁴⁷ 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.”⁴⁸ Again, no part of CSG’s brief contests this conclusion, and CSG did not offer any evidence against it.⁴⁹ Instead, CSG Witness Stewart acknowledged that the source of electricity for each facility is a renewable energy resource.⁵⁰ 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.

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

Secondly, each of the six facilities at issue in the Applications satisfies the applicable placed-in-service date. 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. Again, as explained by Applicants,⁵¹ Staff,⁵² and Blue Delta/NIPSCO,⁵³ each of the facilities meets this requirement. As noted above, the facilities at issue in this proceeding were placed in service on the following dates:

1. Moraine I was placed in service on November 15, 2003;⁵⁴
2. Rugby Wind Power was placed in service on December 1, 2009;⁵⁵

⁴⁷ 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.

⁴⁸ Applicants Ex. 7, Landoni Testimony at 6. *See also* Blue Delta Ex. 1, Nelson Testimony at 7-8.

⁴⁹ *See generally*, CSG Brief; *see also* Tr. Vol. II at 303 (Stewart).

⁵⁰ *Id.* at 227.

⁵¹ Applicants Brief at 24-25.

⁵² Staff Brief at 3, 6; Tr. Vol. III at 363-64 (Clingan); 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.

⁵³ Blue Delta/NIPSCO Brief at 14.

⁵⁴ Applicants Ex. 7, Landoni Testimony at 6; Applicants Ex. 1, Application of Moraine Wind LLC.

⁵⁵ Applicants Ex. 7, Landoni Testimony at 6; Applicants Ex. 2, Application of Rugby Wind LLC.

3. Elm Creek II was placed in service on December 29, 2010;⁵⁶
4. Buffalo Ridge II was placed in service on December 31, 2010;⁵⁷
5. Barton Windpower 1 was placed in service on June 25, 2009.⁵⁸
6. Barton Windpower 2 was also placed in service on June 25, 2009.⁵⁹

Once again, CSG did not contest this conclusion in its brief, or offer any contrary evidence.⁶⁰ Accordingly, the Commission should find that the six renewable facilities satisfy the placed-in-service date requirement.

C. Energy from each facility is deliverable into Ohio.

Finally, the Applicants,⁶¹ Staff,⁶² and Blue Delta/NIPSCO⁶³ explained that each of the facilities at issue in this case satisfies the *Koda* Test for deliverability, and therefore, the third statutory requirement for REN certification is met. A qualifying renewable energy resource must be located in Ohio or generate electricity deliverable into Ohio.⁶⁴ For facilities located in a state that is not contiguous to Ohio, electricity may be deemed deliverable “pending a demonstration that the electricity is physically deliverable to the state.”⁶⁵

Staff explained the methodology the Commission has adopted to determine if electricity is “physically deliverable” to Ohio:

⁵⁶ Applicants Ex. 7, Landoni Testimony at 6; Applicants Ex. 3, Application of Elm Creek II Wind LLC.

⁵⁷ Applicants Ex. 7, Landoni Testimony at 7; Applicants Ex. 4, Application of Buffalo Ridge Wind II LLC.

⁵⁸ Applicants Ex. 7, Landoni Testimony at 7; Applicants Ex. 5, Application of Barton Windpower 1.

⁵⁹ Applicants Ex. 7, Landoni Testimony at 7; Applicants Ex. 6, Application of Barton Windpower 2.

⁶⁰ Tr. Vol. II at 303 (Stewart).

⁶¹ Applicants Brief at 12-23.

⁶² Staff Brief at 3-5.

⁶³ Blue Delta/NIPSCO Brief at 12-16.

⁶⁴ Staff Brief at 3, *citing* R.C. 4928.64(B)(3).

⁶⁵ Ohio Adm.Code 4901:1-40-01(F); Staff Brief at 3; Applicants Brief at 12; Blue Delta/NIPSCO Brief at 12.

[T]he deliverability standard was established by the Commission in 2011 in Case No. 09-0555-EL-REN, known as the *Koda* decision. The *Koda* facility, located in Minnesota, was the first application received from a state noncontiguous to Ohio following enactment of Ohio’s RPS laws in 2008. Therefore, the applicant needed to demonstrate physical deliverability to Ohio. The methodology recommended by Staff, 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 facility’s location. If any significant impact was evident in the studies, Staff would consider this as evidence of deliverability.⁶⁶

In order to determine if a facility has a “significant impact” on a transmission line located in Ohio, Staff recommended a methodology in *Koda*, which the Commission adopted then and has continuously applied in subsequent cases.⁶⁷ The methodology requires that the power flow studies show that the absolute value of the facility’s impact on a transmission line in Ohio must be greater than 5% and greater than 1 MW.⁶⁸

Therefore, the Applicants “provided a DFAX power flow study which was performed by [PJM]” to Staff for each facility.⁶⁹ At the suggestion of Staff, Applicants and Blue Delta requested these studies from PJM.⁷⁰ Each DFAX study “displays the percentage of impact the facility would have on transmission lines located in and around Ohio,”⁷¹ and evaluated approximately 3,000 electric system transmission facilities.⁷² The studies measure the percentage of a transaction

⁶⁶ Staff Brief at 3-4 (citations omitted).

⁶⁷ Staff Brief at 4; Applicants Brief at 12-13; Blue Delta/NIPSCO Brief at 4-5; Staff Ex. 2, Clingan Testimony at 4.

⁶⁸ Staff Brief at 4; Applicants Brief at 14-15; Blue Delta/NIPSCO Brief at 4-5; Blue Delta Ex. 9, *Koda* Staff Report at 6-7; *Koda*, Finding and Order at ¶ 8 (Mar. 23, 2011); Staff Ex. 2, Clingan Testimony at 4.

⁶⁹ 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.

⁷⁰ 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.

⁷¹ Staff Brief at 5, *citing* Staff Ex. 1, Cross Testimony at 3.

⁷² 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.

between a point of injection and a point of withdrawal that flows across a particular element of a transmission system.⁷³ Staff considers both the highest DFAX 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.⁷⁴

Staff summarized the process:

[I]n each of these cases, Staff applied the deliverability standard approved by the Commission in the *Koda* decision. Each applicant meets the requirements adopted by the Commission for certification as renewable resource generating facilities. Therefore, Staff recommends approval of each application.⁷⁵

As the Applicants pointed out in their brief, even by taking the lower of the two values that Staff considers, each of the six facilities still easily satisfies both elements of the *Koda* Test.⁷⁶ 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;

⁷³ Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶ 3.2.

⁷⁴ Staff Brief at 5; Applicants Brief at 15; Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report 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.”).

⁷⁵ Staff Brief at 6; *see also* Staff Ex. 2, Clingan Testimony at 2 (“each of the facilities meets the deliverability standard established by the Commission in [*Koda*].”).

⁷⁶ Applicants Brief at 21-22.

6. Barton Windpower 2 has a DFAX percentage of 17% and a MW impact of 13.26MW.⁷⁷

As such, the Applicants,⁷⁸ Staff,⁷⁹ and Blue Delta/NIPSCO⁸⁰ each concluded that each of the six facilities meets both elements of the Commission's longstanding *Koda* Test. Each of these parties therefore determined that the facilities satisfy the statutory deliverability requirement for REN certification.⁸¹ As such, each of these parties also recommended that the Commission approve each Application as filed.⁸²

CSG is the only party challenging certification of the six facilities and it is only challenging the deliverability requirement of the Applications in its brief.⁸³ Regarding the deliverability requirement, CSG falsely claims that "there is no evidence" of deliverability. In support of its argument, CSG asserts that the DFAX reports are unreliable and that they "assume" deliverability.⁸⁴ Neither argument is supported by the record evidence in this proceeding, and both should be rejected by the Commission.

⁷⁷ 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.

⁷⁸ Applicants Brief at 21-22.

⁷⁹ Staff Brief at 5-6.

⁸⁰ Blue Delta/NIPSCO Brief at 14-16.

⁸¹ Applicants Brief at 21-22; Staff Brief at 5-6; Blue Delta/NIPSCO Brief at 14-16.

⁸² Applicants Brief at 28-29; Staff Brief at 5-6; Blue Delta/NIPSCO Brief at 21-22.

⁸³ See CSG Brief at 9-15.

⁸⁴ See *id.* at 9, 14.

1. The DFAX reports are reliable.

Extensive record evidence demonstrates that Staff,⁸⁵ Blue Delta Witness Nelson,⁸⁶ Applicants Witness Landoni,⁸⁷ and Joint Witness Chiles⁸⁸ all received and reviewed the correct DFAX studies in preparation of their analysis and testimony. This record evidence also demonstrates that the DFAX studies are the same DFAX studies prepared and provided by PJM.⁸⁹ The Applicants and Blue Delta/NIPSCO provided a detailed explanation of the trail of the DFAX studies: starting with Staff's requests to the Applicants, then to the Applicants and Blue Delta requesting the studies from PJM, then to PJM preparing and providing the DFAX studies, and finally to the Applicants and Blue Delta forwarding the studies to Staff.⁹⁰

While incorrect versions of certain DFAX spreadsheets were inadvertently filed on the docket, the Applicants' and Blue Delta's witnesses testified that they reviewed the correct spreadsheets and their conclusions remained unchanged when the corrected attachments were admitted into the record at the hearing.⁹¹ The incorrect spreadsheets were not sent to Staff, and were therefore not part of Staff's analyses and recommendations that each of the six facilities be approved for REN certification.⁹²

⁸⁵ Tr. Vol. III at 390-93 (Clingan).

⁸⁶ Tr. Vol. III at 451 (Nelson).

⁸⁷ Tr. Vol. III at 465 (Landoni).

⁸⁸ Tr. Vol. III at 430-34 (Chiles) ("I used the information from Exhibit 1A because those were the only files I had received.").

⁸⁹ See Applicants Ex. 8, Emails between Avangrid and Staff, dated May 19, 2021; Applicants Ex. 9, Emails between Avangrid and PJM, dated May 19, 2021; Applicants Ex. 10, Emails between Avangrid and Staff, dated July 27, 2022; 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.

⁹⁰ Applicants Brief at 6-9; Blue Delta/NIPSCO Brief at 7-10.

⁹¹ Tr. Vol. III at 465 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson).

⁹² Tr. Vol. III at 354 (Clingan); Tr. Vol. III at 420-21 (Cross); 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.

CSG asks the Commission to ignore the DFAX studies as unreliable due to hearsay concerns.⁹³ To support its claim, CSG asserts, without any evidence, that “[n]one of the Evid. R. 803 exceptions to hearsay apply.”⁹⁴ First, CSG appears to be improperly challenging the Attorney Examiners’ admissibility ruling at the hearing in its brief. Ohio Adm.Code 4901-1-27(D) states that to object to a ruling made at a hearing, “at the time the ruling or order is made,” the party must make “known the action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.” The Supreme Court of Ohio has routinely held that challenges to rulings “which arise during the course of a trial, which are not brought to the attention of the court by objection or otherwise, are waived and may not be raised.”⁹⁵ CSG had the option to challenge the admissibility of the DFAX studies during the hearing, but *chose to withdraw such challenge during the hearing*.⁹⁶ The DFAX studies were admitted into the record at the hearing with no objection by CSG.⁹⁷ CSG appears to be second guessing its decision to forego such challenge and asks the Commission to overturn the Attorney Examiners’ ruling. Without challenging at the time of the ruling and offering a proffer into the record, CSG is without such recourse. CSG’s argument is an improper interlocutory appeal.

Nonetheless, even assuming an interlocutory appeal of the evidentiary ruling was properly preserved and this issue is properly before the Commission (which it is not), the DFAX studies do not constitute hearsay as two exceptions under Evid.R. 803 apply. Pursuant to Evid.R. 803, a

⁹³ CSG Brief at 9-10.

⁹⁴ *Id.* at 10.

⁹⁵ *Stores Realty Co. v. City of Cleveland Bd. of Bldg. Standards and Bldg. Appeals*, 41 Ohio St.2d 41, 43, 322 N.E.2d 629 (1975), citing *Snyder v. Standford*, 15 Ohio St.2d 31, 238 N.E.2d 563 (1968) and *Oney v. Needham*, 6 Ohio St.2d 154, 216 N.E.2d 625 (1966).

⁹⁶ Tr. Vol. III at 481 (“EXAMINER ST. JOHN: With that note on the record, are you objecting to the admission of these exhibits? MR. WHITT: No.”).

⁹⁷ *Id.* at 482.

statement is not excluded by the hearsay rule, regardless of the availability of the declarant, if the statement is a record of a regularly conducted activity. A statement is an exception if it constitutes:

A memorandum, report, record, or data compilation, in any form, of acts, events, or conditions, made at or near the time by, or from information transmitted by, a person with knowledge, if kept in the course of a regularly conducted business activity, and if it was the regular practice of that business activity to make the memorandum, report, record, or data compilation, all as shown by the testimony of the custodian or other qualified witness...unless the source of information or the method or circumstances of preparation indicate lack of trustworthiness.⁹⁸

Similarly, a statement is a public records exception if it consists of:

Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth (a) the activities of the office or agency, or (b) matters observed pursuant to duty imposed by law as to which matters there was a duty to report...unless the sources of information or other circumstances indicate lack of trustworthiness.⁹⁹

The DFAX studies satisfy both of these exceptions. The DFAX studies constitute a “report, record, or data compilation,” made by PJM. PJM has the knowledge of flow across the transmission system, including parts of the transmission system served by MISO,¹⁰⁰ and regularly uses these DFAX studies in a variety of contexts.¹⁰¹ Various qualified witnesses testified as to their familiarity with the studies.¹⁰² Additionally, Joint Witness John Chiles testified extensively to the use of these same DFAX studies in a variety of other contexts from PJM and MISO, other RTOs, the North American Electric Reliability Corporation (NERC), and the Federal Energy

⁹⁸ Evid.R. 803(6).

⁹⁹ Evid.R. 803(8).

¹⁰⁰ Staff Ex. 2, Clingan Testimony at 6-7, citing Staff Ex. 8, Barton 2 Staff Report at 1 (“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).”).

¹⁰¹ Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶¶ 4.1, 4.1, 5.2.2.

¹⁰² See Staff Ex. 2, Clingan Testimony at 6-7, citing Staff Ex. 8, Barton 2 Staff Report at 1; Staff Ex. 1, Prefiled Testimony of Jason Cross (Aug. 26, 2022) (Cross Testimony) at 1-2; Joint Ex. 1, Chiles Testimony at 8-9; Tr. Vol. III at 463 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson); Tr. Vol. III at 354 (Clingan); Tr. Vol. III at 420-21 (Cross).

Regulatory Commission (FERC).¹⁰³ Finally, PJM records the data pursuant to the Commissions’ deliverability standard pursuant to R.C. 4928.64(B)(3) and Ohio Adm.Code 4901:1-40-01(F). PJM is responsible for “consultation and coordination regarding power flows [with Staff and the Commission]...as PJM is [Ohio’s] transmission operator.”¹⁰⁴

Moreover, even if the DFAX studies did not constitute a hearsay exception, the Commission is not strictly bound by the Ohio Rules of Evidence.¹⁰⁵ The Commission is able to weigh hearsay evidence appropriately.¹⁰⁶ For example, the Commission has ignored hearsay concerns when it reviews information in a format solicited by Staff.¹⁰⁷ In this case, Staff developed a methodology relying on PJM DFAX studies, requested that the Applicants obtain PJM DFAX studies, and received familiar PJM DFAX studies from the Applicants.¹⁰⁸ The Commission would be entirely within its discretion and capability to consider information that the Applicants submitted in a format requested by Staff.

CSG also attempts to portray the PJM DFAX studies as unreliable on the grounds that they are not authentic. CSG argues that “the absence of testimony by PJM dramatically increases the importance of questions about the authenticity, reliability, and accuracy of these reports and the

¹⁰³ See Blue Delta/NIPSCO Brief at 17; Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶¶ 3.1.1, 4.1, 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)), and 5.2.2.

¹⁰⁴ Staff Ex. 2, Clingan Testimony at 6.

¹⁰⁵ *Greater Cleveland Welfare Rights Org., Inc., v. Pub. Util. Comm.*, 2 Ohio St.3d 62 (1982).

¹⁰⁶ *In the Matter of the Application of Ohio Power Company and Columbus Southern Power Company for Authority to Merge and Related Approvals*, Case No. 10-2376-EL-UNC, Opinion and Order at 13 (Dec. 14, 2022).

¹⁰⁷ *Id.* at 14 (“Further, we note that with the implementation of Rule 4901:1-10-10, O.A.C, Staff was actively involved in the development of the survey. Thus, the Commission will not overturn the Attorney Examiners’ ruling in this instance on the basis that it is hearsay.”).

¹⁰⁸ Tr. Vol. III at 376 (Clingan); 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; 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.

credibility of the witnesses who testified about them.”¹⁰⁹ Again, any authentication challenges go to the admissibility of the evidence. The Attorney Examiners already considered arguments regarding the admissibility of the documents (if any) and ruled upon the admissibility of the documents and allowed such documents to become a part of the record.¹¹⁰ CSG cannot now argue against the admissibility of the DFAX studies based upon authentication concerns.

Nonetheless, even assuming that CSG could challenge the admissibility of the DFAX studies in its brief, CSG’s arguments are without merit. Pursuant to Evid.R. 901(B)(1), among other methods, a party may authenticate evidence with testimony from a witness with knowledge “that a matter is what it is claimed to be.” Again, witnesses with knowledge of the origin, applications, and format of the PJM DFAX studies testified extensively that the documents are in fact, PJM DFAX studies.

Various witnesses for the Applicants, Staff, and Blue Delta testified as to the chain of custody of these studies.¹¹¹ They also testified as to their familiarity with these studies, their format, and their applications.¹¹² It does not matter that the witnesses do not know which PJM employee prepared each PJM DFAX study, or whether each study is “a complete and exhaustive list[] of all of the PJM facilities.”¹¹³ Witnesses for the Applicants, Blue Delta, and Staff testified

¹⁰⁹ CSG Brief at 2, 10.

¹¹⁰ Tr. Vol. III at 481-82.

¹¹¹ Tr. Vol. III at 376 (Clingan); 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; 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.

¹¹² See Staff Ex. 2, Clingan Testimony at 6-7, *citing* Staff Ex. 8, Barton 2 Staff Report at 1; Staff Ex. 1, Prefiled Testimony of Jason Cross (Aug. 26, 2022) (Cross Testimony) at 1-2; Joint Ex. 1, Chiles Testimony at 8-9; Tr. Vol. III at 463 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson); Tr. Vol. III at 354 (Clingan); Tr. Vol. III at 420-21 (Cross); Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶¶ 3.1.1, 4.1, 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)), and 5.2.2.

¹¹³ CSG Brief at 8 (citations omitted).

extensively about their familiarity with DFAX studies, the reliability of those studies, and the applicability of those studies to the facilities at issue in this proceeding.

Even CSG's sole witness seems to recognize that disputes over the authenticity of the DFAX studies are unreasonable. When asked if he had "any reason to believe [that the DFAX studies] didn't come from PJM," CSG Witness Stewart recognized that there is no factual basis for this argument.¹¹⁴ He responded: "I have no—there's nothing that was independently provided to me that indicates that there was an imposter or somebody else."¹¹⁵

CSG also falsely claims that the Applicants should have submitted some other evidence of deliverability in addition to the DFAX studies.¹¹⁶ This is untrue. The 5% and 1 MW equivalence thresholds are the *only* standards established and required by the Commission. In *Koda*, the Commission held that:

Under Staff's recommended definition, an impact would be deemed significant, and thus physically deliverable into Ohio under Staff's proposed methodology, if the impact exceeds a DFAX value of greater than five percent and is greater than one megawatt.

The Commission finds that Staff's proposed methodology and recommended definition of "significant impact" are reasonable and should be adopted. Accordingly, any applicant seeking to demonstrate the physical deliverability of energy into Ohio from a generating facility located outside of Ohio or a contiguous state may do so with a power flow study, performed by an RTO, offering evidence of a significant impact on power flows over transmission lines located in the state of Ohio.¹¹⁷

If the Commission had intended for applicants to use some *other* method to prove deliverability, it would have done so, either in *Koda*, or in the multiple cases, including rulemaking

¹¹⁴ Tr. Vol. II at 224 (Stewart).

¹¹⁵ *Id.*

¹¹⁶ See CSG Brief at 5, 15 ("The Applicants chose to rely solely on DFAX reports; they were not *required* to do so. *Koda* does not state that deliverability may *only* be shown by "a power flow study," that a DFAX study is the *only* appropriate power flow study, or that the thresholds applied are the *only* appropriate measure of deliverability.").

¹¹⁷ *Koda*, Finding and Order at 3-4.

proceedings, over the following decade. The Commission clearly did not. Instead, the Commission only stated that if a facility satisfied those two standards, it would be considered deliverable. The reality is that the *Koda* Test is the deliverability analysis, not just in this case, but in previous cases. When asked if Staff considers other information in REN cases, Staff Witness Clingan noted that “[t]he power flow study was established as the means by which to demonstrate deliverability.”¹¹⁸

2. CSG misrepresents the DFAX reports.

Since it is unable to contest the DFAX reports, or the *Koda* Test itself, CSG instead attempts to distinguish the *Koda* Test from the current case, by misrepresenting the nature of the Test and its current applicability. CSG claims “[i]t is not possible to draw any conclusion about physical deliverability...without understanding power flows in MISO and PJM,”¹¹⁹ yet makes a number of misleading and confusing claims about those very subjects.

According to CSG, the change in RTOs has made it impossible for PJM to model power flows from MISO.¹²⁰ CSG makes this argument by misrepresenting what DFAX models actually show.¹²¹ However, the DFAX models do not “assume” any level of deliverability. Staff Witness Clingan noted that 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).”¹²² Joint Witness Chiles

¹¹⁸ Tr. Vol. III at 366 (Clingan).

¹¹⁹ CSG Brief at 15.

¹²⁰ CSG Brief at 5-6 (“The *Koda* approach recognizes that potential deliverability does not equate to probable deliverability. In developing the thresholds, Staff understood that because the facility was connected to the grid in an RTO region that at the time partially covered Ohio (i.e, MISO), it was possible this new resource would affect transmission in Ohio.”).

¹²¹ *Id.* at 9 (“This means the Applicants must explain how resources are deliverable from Location A (the applicable MISO and SPP regions of Minnesota, the Dakotas, and Iowa) to Location B (the MISO/PJM ‘seam’) to Location C (Ohio transmission). The DFAX reports expressly assume delivery from Locations A to Location B and model ‘physical deliverability’ from Location B to Location C.”).

¹²² Staff Ex. 2, Clingan Testimony at 6-7, *citing* Staff Ex. 8, Barton 2 Staff Report at 1.

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.¹²³

Joint Witness Chiles also explained that PJM and MISO have a Joint Operating Agreement in place that allows them to share information and coordinate interconnections. Both RTOs employ DFAX studies to examine the impact of proposed facilities on their transmission networks, to evaluate interconnection requests, and to calculate available transfer capability.¹²⁴ Witness Chiles highlighted that:

PJM and MISO participate in joint planning through the MISO-PJM Interregional Planning Stakeholder Advisory Committee (IPSAC) and the PJM MISO Joint Operating Agreement. PJM studies *do* include a MISO system representation and MISO studies *do* include a PJM system representation. This common model development process and regional coordination is consistent with prudent utility practice. Given the joint planning between MISO and PJM, I believe that CSG Witness Stewart’s characterization of PJM modeling of the MISO system is simply incorrect.¹²⁵

CSG’s argument also does not hold up to common sense. PJM, MISO, other RTOs, NERC, and FERC all use DFAX studies to promulgate rules and standards and manage interconnections.¹²⁶ If these DFAX studies did not actually measure how much power can flow between RTOs, then they would be useless for managing the transmission grid as a whole.

The Commission has recognized since *Koda* that DFAX studies do not need to be performed by a specific RTO. The Commission held that “any applicant seeking to demonstrate

¹²³ Applicants Brief at 16, *citing* Tr. Vol. I at 75 (Chiles).

¹²⁴ Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶¶ 4.1, 5.2.2.

¹²⁵ Joint Ex. 2, Supplemental Testimony of John Chiles at 12-13 (Nov. 14, 2022) (Chiles Supplemental Testimony) at 5.

¹²⁶ *See* Blue Delta/NIPSCO Brief at 17; Joint Ex. 1A, Corrected Attachment A to Chiles Testimony, Expert Report at ¶¶ 3.1.1, 4.1, 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)), and 5.2.2.

the physical deliverability of energy into Ohio from a generating facility located outside of Ohio or a contiguous state may do so with a power flow study, *performed by an RTO.*”¹²⁷ Notably, the Commission did *not* specify that the DFAX study needed to be performed by MISO, or by PJM, or by *any* specific RTO. Additionally, in subsequent rulemaking cases, the Commission has refused to define deliverability based on the RTO on which a facility was located.¹²⁸ 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.”¹²⁹

Even CSG’s sole witness recognizes the lack of evidence for CSG’s position. When asked if “the DFAX studies presuppose a certain distribution factor impact on Ohio transmission lines,” CSG Witness Stewart simply replied “No.”¹³⁰ CSG’s sole evidence for this argument seems to be the word choice of the DFAX study cover letters.¹³¹ However, CSG’s fixation on the word “if” in one sentence of the cover letters does not overcome extensive record evidence about what DFAX studies actually measure.

CSG also seems to believe that an increased number of findings of deliverability are the result of some grand conspiracy.¹³² CSG argues that since the *Koda* Test has led to the Commission

¹²⁷ *Koda*, Finding and Order at 3-4 (emphasis added).

¹²⁸ 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).

¹²⁹ *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).

¹³⁰ Tr. Vol. II at 227-28.

¹³¹ *See* CSG Brief at 15.

¹³² CSG Brief at 5-6 (“Between the time *Koda* was decided in 2011 until 2020, most resources in non-contiguous states could not satisfy the *Koda* threshold. Applications in 15 cases were denied during this period and only 2 approved. This pattern flipped with applications filed in 2020 and later: the Commission has granted certificates in unopposed applications in 10 cases, denied 1 application, and Staff is recommending approval in these 6 cases.”).

rejecting applications in cases in the past, the Commission errs by certifying facilities today. CSG's position is not based in reality. The truth is that the expansion in deliverability is the predictable (and in fact, intended) result of years of development and investment in the transmission grid and renewable generation.

First, the size of the projects at issue is relevant. In *Koda*, the facility at issue had a nameplate capacity of 15 MW.¹³³ The facilities at issue in this proceeding range from 51 MW to 210 MW.¹³⁴ It is predictable and obvious that facilities with 3.4 to 14 times¹³⁵ the generating capacity as the facility at issue in *Koda* would have a larger impact on the transmission grid than *Koda*. In fact, had the facility at issue in *Koda* had the same capacity as the smallest facility at issue in this case, with the DFAX values remaining the same, the facility in *Koda* could have met the MW equivalence standard required by Staff instead of failing to meet it.¹³⁶

Second, as noted by Blue Delta Witness Nelson, “the regional flow of power across the Eastern Interconnect is becoming more important rather than less important.”¹³⁷ Mr. Nelson explained how the United States Department of Energy released its “Building a Better Grid Initiative” with the specific intent of reducing bottlenecks to increase the deliverability of power between regions:

Transmission is critical to addressing the climate crisis through the decarbonization of the power sector and electrification of transportation and other sectors. The climate crisis accelerates the need for the United States to modernize its electric grid... Multiple pathways exist for the United States to meet these clean energy goals, but all require upgrading and expanding the Nation's transmission

¹³³ Blue Delta Ex. 9, *Koda* Staff Report at 7.

¹³⁴ Joint Ex. 1, Chiles Testimony at 16.

¹³⁵ 51 MW divided by 15 MW results in a quotient of 3.4. 210 MW divided by 15 MW results in a quotient of 14.

¹³⁶ Staff found that the facility in *Koda* had a MW equivalence impact of 0.375 MW. Blue Delta Ex. 9, *Koda* Staff Report at 7. Multiplying this impact by the quotient of 3.4 would result in a MW equivalence of 1.275 MW, greater than the 1 MW standard required by the *Koda* test.

¹³⁷ Blue Delta Ex. 2, Supplemental Testimony of Ken Nelson at 5 (Nov. 14, 2022) (Nelson Supplemental Testimony).

infrastructure. In particular, they require deploying interstate high-voltage lines connecting areas with significant renewable energy resources to demand centers and linking together independently operated grid regions.¹³⁸

CSG also argues that the DFAX studies in the current proceeding fall short of the standard established in *Koda*. However, CSG is completely mistaken in its analysis of the difference between the DFAX studies in *Koda* and the DFAX studies in the current proceeding. Either CSG did not actually compare the *Koda* analysis to the current case, or CSG is intentionally misrepresenting the facts. CSG implies that because PJM (rather than MISO) modeled the DFAX studies for the six facilities, it had “assumed deliverability into the PJM region” from the generation facilities, unlike MISO in *Koda*.¹³⁹

When CSG Witness Stewart actually reviewed the *Koda* Staff Report at the hearing, he noted that “PJM evaluated the impact on ten transmission lines located in Ohio and MISO evaluated the impact on sixty-seven transmission lines located in Ohio.”¹⁴⁰ Moreover, CSG Witness Stewart recognized that in *Koda*, “while the generation was modeled outside of Ohio, they are specifically monitoring transmission lines located within the State of Ohio.”¹⁴¹ In other words, despite the fact that MISO at the time operated in Ohio, MISO and PJM did not actually model MISO lines outside of Ohio.

The record objectively demonstrates that PJM performed more modeling in the proceeding currently before the Commission. In the current proceeding, PJM modeled more than 3,000 transmission facilities.¹⁴² Moreover, PJM modeled facilities that have only one endpoint in Ohio,

¹³⁸ Blue Delta Ex. 2, Nelson Supplemental Testimony at 6, *citing* Federal Register, Vol. 87, No. 12 at 2769 (January 19, 2022).

¹³⁹ Tr. Vol. II at 298 (Stewart).

¹⁴⁰ Tr. Vol. II at 297 (Stewart); *citing* Blue Delta Ex. 9, *Koda* Staff Report at 6.

¹⁴¹ Tr. Vol. II at 299 (Stewart).

¹⁴² *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.

and therefore transport electricity into Ohio. Staff noted that the “The DFAX analysis displays the percentage of impact the facility would have on transmission lines *located in and around Ohio.*”¹⁴³

CSG falsely attempts to portray the use of PJM DFAX reports as some scheme concocted by the Applicants:

The Applicants were thinking of ways to “maximize the value of their assets” (code for “making more money”) when they crossed paths with Blue Delta, a consultant in the renewable space that does the same type of work as Carbon Solutions Group, LLC (CSG). Blue Delta believed it had a way to get around the deliverability barrier for MISO-based resources—just get PJM to issue a DFAX report showing how electricity generated by a facility would affect transmission lines in Ohio if (and only if) the facility’s generation were delivered into Ohio. Blue Delta had recently procured such reports for other clients and Staff accepted them as proof of deliverability, and the hat trick worked again when reports were submitted for the Applicants’ facilities.¹⁴⁴

There is nothing in the record to support this imaginary version of events. Instead, there is much to actively disprove it. Staff explained why both MISO and PJM performed DFAX studies in *Koda*:

When the *Koda* application was submitted in 2009, transmission in Ohio was split between two RTOs, MISO and PJM. MISO is referenced in the *Koda* decision because MISO was a transmission operator in Ohio at the time. In addition, because *Koda* was the first application received from a state noncontiguous to Ohio, the methodology to demonstrate deliverability into Ohio was developed concurrently with the *Koda* application review. Both RTOs managing transmission in Ohio at that time provided information to assist Staff in developing its approach to deliverability.¹⁴⁵

Staff also explained that for the last decade, only PJM has performed the DFAX studies necessary for the application of the *Koda* Test:

¹⁴³ Staff Brief at 5, *citing* Staff Ex. 1, Cross Testimony at 3 (emphasis added).

¹⁴⁴ CSG Brief at 1.

¹⁴⁵ Staff Ex. 2, Prefiled Testimony of Kristin Clingan at 6 (Aug. 26, 2022) (Clingan Testimony).

Since 2012, all transmission in Ohio has been operated by PJM. Therefore, consultation and coordination regarding power flows since 2012 has been done with PJM, as PJM is our transmission operator.¹⁴⁶

Contrary to CSG’s arguments, Blue Delta did not come up with the idea for PJM to perform the DFAX studies. Not only has Staff been utilizing such DFAX studies from PJM since 2012, emails between Staff and the Applicants demonstrate that Staff explained that the Applicants would need to provide a DFAX study from PJM.¹⁴⁷ For example, on April 28, 2021, Staff member Stuart Seigfried stated that “if the facility is not located in Ohio or a state contiguous to Ohio, then the applications will need to include a demonstration of physical deliverability to the state of Ohio. Such demonstration has typically taken the form of a power flow study (i.e., distribution factor analysis or “dFax”) performed by PJM.”¹⁴⁸

CSG’s initial version of events lacks any citation to factual evidence. This is unsurprising, given that it is entirely made up by CSG. However, what is surprising is that later in CSG’s brief, it acknowledges what *actually happened*:

Staff’s correspondence with the Applicants advised them that they needed to include a “*demonstration of physical deliverability*” and the [*sic*] “[s]uch demonstration has typically taken the form of a power flow study (i.e., distribution factor analysis or ‘dFax’) performed by PJM.”¹⁴⁹

It is unclear why CSG would knowingly present two, entirely different versions of the facts, especially when one version lacks any record evidentiary support. What *is* clear, however, is that CSG’s willingness to present imaginary narratives casts serious doubt on CSG’s credibility.

¹⁴⁶ Staff Ex. 2, Clingan Testimony at 6.

¹⁴⁷ 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.

¹⁴⁸ See Applicants Ex. 8, Emails between Avangrid and Staff dated May 19, 2021.

¹⁴⁹ CSG Brief at 7.

CSG's arguments against deliverability rely on a misunderstanding of the *Koda* Test, DFAX reports, and the transmission grid as a whole. Just as CSG failed to present any workable alternative to the Test,¹⁵⁰ CSG now fails to explain the distinctions it attempts to make. The Commission should reject CSG's attempts to confuse the record.

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

CSG has managed to unduly delay these six cases for nearly two years, yet has still failed to make a cognizable argument against certification for any of the six facilities. Now, CSG attempts to argue that it has been prejudiced by "procedural irregularities," despite the fact that it has failed again and again to participate in good faith in this proceeding. For example, CSG recently did not serve its post-hearing brief on the counsel for Applicants, and CSG accused Commission Staff of unauthorized practice of law.¹⁵¹

As discussed above, while incorrect versions of certain DFAX spreadsheets were inadvertently filed on the docket, the Applicants' and Blue Delta's witnesses reviewed the correct spreadsheets, and their conclusions remained unchanged when the corrected attachments were submitted during the hearing and entered into the record at hearing.¹⁵² The Applicants, Blue Delta, and Staff all relied on the correct spreadsheets, rather than the ones filed on the docket, when conducting their analyses and drafting their testimony. The incorrect spreadsheets were not sent to Staff, and were therefore not part of Staff's analyses and recommendations that each of the six facilities be approved for REN certification.¹⁵³

¹⁵⁰ Applicants Brief at 19-20.

¹⁵¹ See CSG Brief at 16, n.83,

¹⁵² Tr. Vol. III at 465 (Landoni); Tr. Vol. III at 434 (Chiles); Tr. Vol. III at 451 (Nelson).

¹⁵³ Tr. Vol. III at 354 (Clingan); Tr. Vol. III at 420-21 (Cross); 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.

CSG bemoans “the failure to include the DFAX studies with the applications or file them in the dockets,”¹⁵⁴ and simply ignores the fact that the Applicants moved to enter the corrected attachments into the record as soon as they recognized the error, which they brought to the Commission’s attention.¹⁵⁵ The corrected DFAX studies were admitted into the record, and subsequently filed in the docket at the conclusion of the hearing.¹⁵⁶ While the Applicants regret that the incorrect versions were filed due to an inadvertent document compilation error, CSG’s counsel never indicated it may have received and reviewed incorrect DFAX studies, and did not provide any detailed analysis of any of the studies themselves in testimony.

Additionally, CSG’s attempt in its brief to appeal the Commission’s rulings on discovery and denial of CSG’s request for a subpoena is, yet again, procedurally improper. Ohio Adm.Code 4901-1-27(D) states that to object to a ruling made at a hearing, “at the time the ruling or order is made,” the party must make “known the action which he or she desires the presiding hearing officer to take, or his or her objection to action which has been taken and the basis for that objection.” CSG neither objected to the admission of the emails during the hearing, nor preserved its rights on the record to challenge the ruling.¹⁵⁷ Similarly, CSG neither objected at the time the Commission rejected the requested subpoena and the Attorney Examiners issued their ruling on the record, nor preserved its rights on the record to challenge the ruling.¹⁵⁸

¹⁵⁴ CSG Brief at 17.

¹⁵⁵ 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).

¹⁵⁶ Tr. Vol. III at 481-82; 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.

¹⁵⁷ Tr. Vol. III at 481-82.

¹⁵⁸ See Tr. Vol. I at 12.

Moreover, CSG’s complaints about the production of emails in its brief is bizarre given that CSG demanded evidence of the chain of custody for the first time on the first day of hearing. The Applicants had asked for CSG to explain the basis of its challenge in discovery; CSG refused to do so, even after the Commission granted the Applicants’ motion to compel and deferred ruling on two motions for sanctions.¹⁵⁹ CSG responded that it would explain its challenges in testimony, but never raised issues of authenticity in that testimony.

Additionally, CSG never *asked* for these emails. Pursuant to Rule 34(B), and Ohio Adm.Code 4901-1-20(B) a request for production “shall set forth the items to be inspected either by individual item or by category and describe each item and category with reasonable particularity.” Neither CSG’s general discovery instructions nor CSG’s specific requests indicated with reasonable particularity that CSG was requesting communications, or even indicated the category of documents CSG believed it was requesting.

At any rate, Ohio Adm.Code 4901-1-23 establishes procedure for parties to follow when they believe discovery responses are insufficient. Upon “reasonable notice to all other parties and any persons affected thereby”¹⁶⁰ and after exhausting “all other reasonable means of resolving any differences with the party or person from whom discovery is sought”¹⁶¹ a party may seek a motion to compel. CSG sent a discovery demand letter to the Applicants, which did not mention requests for emails. Moreover, a motion to compel must explain the specific basis for the motion and a brief

¹⁵⁹ See Entry at ¶ 33 (Apr. 5, 2022) (“ORDERED, That Applicants’ motion to compel be granted and that Carbon Solutions provide substantive responses within two weeks.”); Entry at ¶¶ 15, 30 (Sept. 1, 2022) (“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 at ¶ 27 (Nov. 1, 2022) (“The time to provide meaningful responses to the discovery requests has come.”).

¹⁶⁰ Ohio Adm.Code 4901-1-23(A).

¹⁶¹ Ohio Adm.Code 4901-1-23(C).

explanation of how the information sought is relevant.¹⁶² Again, in its Motion to Compel, CSG did not object to the Applicants response to RFP No. 6, which requested “documents supplied to or received from persons involved in performing or preparing each DFAX study referenced in each Staff Report.”¹⁶³ At no time in this proceeding has CSG indicated, through its discovery requests, correspondence with the Applicants, or pleadings, that it was requesting the production of communications with Staff or PJM.

Finally, the Commission’s denial of the subpoena was proper. As the Applicants and Blue Delta explained in their Joint Motion to Quash,¹⁶⁴ CSG did not provide a memorandum in support, or any other explanation demonstrating why a subpoena of a non-party PJM representative is necessary or warranted, or why expedited treatment was necessary, in violation of Ohio Adm.Code 4901-1-12(A) and (C). However, “there is no indication” that the individual “has had any involvement in or knowledge of the” applications at issue in this proceeding, or that he “could contribute any input of value by his appearance.”¹⁶⁵ As such, the Commission found that “no real demonstration made as to why this nonparty witness is necessary or warranted outside of a—and I will quote, ‘believed to be knowledgeable about certain studies.’”¹⁶⁶ Moreover, despite the fact that the Applicants’ certification proceedings have been pending for almost two years,¹⁶⁷ and that the hearing had been rescheduled, CSG requested to introduce an additional witness on the eve of

¹⁶² Ohio Adm.Code 4901-1-23(C).

¹⁶³ See CSG Motion to Compel at 9 and Exhibit A at 25.

¹⁶⁴ Joint Motion to Quash, Joint Memorandum Contra Motion to Permit Remote Testimony, and Request for Expedited Treatment and Memorandum in Support (Dec. 2, 2022).

¹⁶⁵ See *In the Matter of the Complaint of Brenda Fitzgerald and Gerard Fitzgerald*, Case No. 10-791-EL-CSS, Entry at ¶ 7 (Apr. 25, 2011).

¹⁶⁶ Tr. Vol. I at 11.

¹⁶⁷ See *In the Matter of the Complaint of the Ohio Consumers' Counsel, Stand Energy Corporation, Incorporated, Northeast Ohio Public Energy Council, and Ohio Farm Bureau Federation*, Case No. 10-2395-GA-CSS, Entry at ¶ 9 (Nov. 2, 2011).

hearing. The Commission noted since “these cases have been pending for nearly two years, [it is] somewhat prejudicial...to have a witness that would come in here to testify having never been deposed, having never been noticed for a deposition to testify, and have no one else prepared as to any sort of testimony.”¹⁶⁸

Finally, despite its claims of prejudice, CSG is the party that has been causing prejudice through undue delay. As the Applicants explained in their initial brief, CSG’s ‘participation’ in this proceeding has turned a simple, straightforward application process into a two-year ordeal.¹⁶⁹ 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. This has cost the Applicants millions of dollars, and has impacted the Ohio REC market in a way that harms CSG’s competitors, including the Applicants, and Ohio customers.¹⁷⁰ The Commission should reject CSG’s arguments as meritless and put an end to this delay.

III. CONCLUSION

The briefs filed by the Applicants,¹⁷¹ Staff,¹⁷² and Blue Delta/NIPSCO¹⁷³ explained that the Applicants have met their burden of proof to demonstrate that their facilities each satisfy all three of the statutory requirements for REN certification. 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

¹⁶⁸ Tr. Vol. I at 11.

¹⁶⁹ Applicants Brief at 24-27.

¹⁷⁰ Blue Delta Ex. 1, Nelson Testimony at 11-14.

¹⁷¹ See Applicants Brief.

¹⁷² See Staff Brief.

¹⁷³ See Blue Delta/NIPSCO Brief.

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). In its brief, CSG failed to raise any coherent argument against certification.

Accordingly, the Applicants respectfully request that the Commission grant their Applications for REN 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,

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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 February 7, 2023 upon the parties listed below.

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Summary: Brief Reply 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 electronically filed by Mrs. Angela Whitfield on behalf of Moraine Wind LLC and Rugby Wind LLC and Elm Creek Wind II LLC and Buffalo Ridge II LLC and Barton Windpower 1 and Barton Windpower, LLC and Avangrid Renewables, LLC