

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

Respectfully Submitted,

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CONTENTS

I.	INTRODUCTION	1
II.	ARGUMENT	3
A.	CSG’s post-hearing brief relies on flawed and incorrect facts and arguments.	3
1.	PJM DFAX studies demonstrate deliverability into Ohio.	9
2.	The <i>Koda</i> Test remains applicable.....	11
B.	Each of the facilities satisfies the three requirements for REN certification, including deliverability.	13
III.	CONCLUSION.....	18

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POST-HEARING REPLY BRIEF

I. INTRODUCTION

The resounding evidentiary record clearly supports approving the applications for certification as renewable energy (REN) resource generating facilities (Applications). The briefs filed by 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 (the Applicants),¹ as well as by Staff,² and jointly by Blue Delta Energy, LLC (Blue Delta) and Northern Indiana Public Service Company LLC (NIPSCO),³ undoubtedly demonstrate that the Applicants have succeeded in meeting their burden of proof for certification in this proceeding. As such, Blue Delta and NIPSCO once again urge the Public Utilities Commission of Ohio (Commission) to affirm its 2011 precedent for determining deliverability for out-of-state resources under Ohio Adm.Code 4901:1-40-01(F), the *Koda* Test,⁴ and to approve the Applications as Applicants' facilities satisfy all three statutory criteria for REN certification.

Carbon Solutions Group, LLC (CSG) has failed to offer any contrary evidence and, instead, offers more incoherent and unconvincing arguments.⁵ The testimony offered by CSG's sole witness does little but advance misleading and inaccurate statements about the *Koda* Test and the transmission grid. Moreover, the brief submitted by CSG relies on unsupported conclusions, false assertions of fact, and purported contradictory evidence that simply does not exist. When confronted with the actual evidentiary record, Ohio law, and Commission precedent, CSG's arguments fail. The Commission should reject CSG's futile protests, reaffirm its precedent, and approve the Applications for REN certification.

¹ 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).

² See Initial Post-Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio (Jan. 17, 2023) (Staff Brief).

³ See Post-Hearing Brief by Blue Delta Energy, LLC and Northern Indiana Public Service Company LLC (Jan. 17, 2023) (Blue Delta and NIPSCO Brief).

⁴ 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.

⁵ See Initial Post-Hearing Brief of Carbon Solutions Group, LLC (Jan. 17, 2023) (CSG Brief).

II. ARGUMENT

A. CSG's post-hearing brief relies on flawed and incorrect facts and arguments.

The factual and legal errors and falsities that pervade CSG's arguments—and its entire case to date—become obvious about halfway through the first page of its brief. By the time it reaches the third paragraph of its pleading, CSG resorts to simply inventing backstory. This serves as a fitting introduction that sets the tone for the remainder of its brief, the first half of which largely consists of inaccurate and unsupported statements about the factual and procedural history of the case.

In that first page, CSG falsely accuses Blue Delta of coming up with a scheme “to get around the deliverability barrier for MISO-based resources” by proposing that the Applicants “get PJM to issue a DFAX report” instead of MISO.⁶ The problem with this argument is that it directly conflicts with the record evidence (and reality). Tellingly, CSG does not cite to any part of the record to support its claim.

Staff explained that PJM has in fact performed *all* DFAX studies for Staff's deliverability analysis for Ohio since 2012:

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.⁷

Further, Blue Delta did not propose to the Applicants that PJM perform the DFAX studies. Rather, Staff directed the Applicants to do so.⁸ For example, an April 28, 2021 email from Staff stated that “the applications will need to include a demonstration of physical deliverability to the

⁶ CSG Brief at 1.

⁷ Staff Ex. 2, Prefiled Testimony of Kristin Clingan at 6 (Aug. 26, 2022) (Clingan Testimony).

⁸ 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.

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.”⁹ Later in its brief, CSG implicitly concedes that its earlier assertion was false, when it recounts the true version of events, supported with factual citations:

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.”¹⁰

CSG also complains of what it perceives to be “the casual approach typically taken in REN certification proceedings, where applications are typically processed ‘under the radar’ without the involvement of legal counsel—not even for the applicant.”¹¹ CSG also incorrectly argues that Staff’s docketing of these Applications “constitutes the unauthorized practice of law.”¹²

Again, Staff Witness Clingan explained the real reason why these applications are typically not docketed: “Since 2020, the only applications that are filed in the DIS docketing system are the ones that are suspended from [the] auto approval process” so that Staff may file a written review and recommendation.¹³ This purported “casual approach” is not some grand conspiracy; it is a necessary approach to timely certify the number of REN facilities that seek certification in order to participate in the Ohio renewable energy credit (REC) market. Staff has “certified over 500 facilities in 2022” alone.¹⁴ Requiring a two-year, formal Commission process for each of these facilities would drain administrative resources and grind the REN certification process to a halt,

⁹ See Applicants Ex. 8, Emails between Avangrid and Staff dated May 19, 2021.

¹⁰ CSG Brief at 7.

¹¹ *Id.* at 1.

¹² *Id.* at 16.

¹³ Tr. Vol. III at 403 (Clingan).

¹⁴ *Id.*

affecting the REC market. Of course, CSG would be fine with that outcome. As Blue Delta Witness Nelson pointed out, “CSG’s sole purpose is to disrupt the REC market,”¹⁵ and its “participation in this case is purely a manufactured controversy in an attempt to raise the cost of Ohio RECs to financially benefit CSG at the expense of its competitors and Ohio ratepayers.”¹⁶

Moreover, CSG now claims that it has been somehow harmed by “procedural irregularities,” despite the fact that it has failed again and again to participate in good faith in this proceeding.¹⁷ CSG appears to be inappropriately rearguing the admissibility of evidence that the Attorney Examiners already ruled upon at the hearing. For example, CSG criticizes what it perceives to be “the failure to include the DFAX studies with the applications or file them in the dockets.”¹⁸ However, after the Applicants discovered and brought to the Commission’s attention the document compilation error that had led to incorrect spreadsheets being filed unintentionally in the docket, the Applicants moved to admit the corrected documents into the record,¹⁹ which was granted without objection.²⁰ Before this occurred, CSG had never indicated that it had received or reviewed incorrect DFAX studies—in fact, it seems CSG did not even look at the studies themselves. The Applicants provided CSG with the correct studies as soon as they were made aware of the clerical error. Importantly, Blue Delta, as well as the Applicants, sent Staff the correct spreadsheets when Blue Delta and the Applicants submitted the DFAX studies to Staff in support

¹⁵ Blue Delta Ex. 1, Direct Testimony of Ken Nelson at 6 (Aug. 12, 2022) (Nelson Testimony).

¹⁶ Blue Delta Ex. 2, Supplemental Testimony of Ken Nelson at 9 (Nov. 14, 2022) (Nelson Supplemental Testimony).

¹⁷ See CSG Brief at 15-20.

¹⁸ *Id.* at 17.

¹⁹ 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).

²⁰ Tr. Vol. III at 481-82.

of the Applications. Staff never received the incorrect spreadsheets.²¹ Moreover, witnesses for Staff, Blue Delta, and the Applicants testified that they all reviewed the correct spreadsheets, and their conclusions remained unchanged when the corrected attachments were admitted into the record.²² As such, the information from the spreadsheets pertinent to this proceeding was correctly reviewed and utilized in the analyses offered by various witnesses through their testimony.

Similarly, CSG makes unfounded and inappropriate complaints about the discovery process.²³ But the discovery process has ended and CSG failed to raise these issues prior to the hearing. CSG is improperly attempting to make a motion to compel after the conclusion of the hearing, but CSG waived such right to do so.²⁴ CSG did not request documentation regarding the chain of custody for the DFAX studies until the first day of hearing.

Even if CSG did properly communicate its challenges to the applications or any chain of custody issues (which it did not), it failed to request the communications between Blue Delta and Staff, as well as Applicants and Staff, that demonstrate the chain of custody. In fact, CSG did not request any interrogatories or requests for production of documents from Blue Delta or NIPSCO. More specifically, at no time in this proceeding did CSG request through discovery from Blue Delta or NIPSCO correspondence with Staff or PJM regarding DFAX studies.

²¹ Tr. Vol. III at 390-93 (Clingan).

²² Tr. Vol. III at 465 (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); 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.

²³ CSG Brief at 15-17.

²⁴ See Ohio Adm.Code 4901-1-27(D) (“Formal exceptions to rulings or orders of the presiding hearing officer are unnecessary if, *at the time the ruling or order is made, the party makes 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.”) (emphasis added); *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. Stanford*, 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) (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.”).

As Blue Delta Witness Nelson pointed out, CSG had never explained the specific basis for its challenge to the Applications.²⁵ Mr. Nelson noted that:

CSG has at various times argued that:

- That Staff improperly focused on physical deliverability instead of the contract path of electricity;
- That it is not opposing the *Koda* Test, but “Staff’s approach is not at all consistent with *Koda*;”
- That the PUCO has never heard arguments for or against the ‘so-called’ *Koda* Test; and
- That the Staff’s method of determining deliverability is not binding on the PUCO.

In other words, at times it seems as though CSG is signaling they could ‘support’ the *Koda* Test, but that Staff is not applying it correctly; but at other times, CSG seems to be asking the PUCO to reject the use of the *Koda* Test altogether. CSG has never stated its position clearly.²⁶

Finally, the Commission’s denial of the subpoena of a non-jurisdictional entity, PJM, was proper. As Blue Delta and the Applicants explained in their Joint Motion to Quash,²⁷ 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). CSG only asserted that the individual was “believed to be knowledgeable of the DFAX studies.”²⁸ However, “there is no indication” that the individual “has had any involvement in or knowledge of the” applications at

²⁵ See Blue Delta Ex. 1, Nelson Testimony at 9-10.

²⁶ Blue Delta Ex. 2, Nelson Supplemental Testimony at 7-9.

²⁷ Joint Motion to Quash, Joint Memorandum Contra Motion to Permit Remote Testimony, and Request for Expedited Treatment and Memorandum in Support (Dec. 2, 2022).

²⁸ Motion for Subpoena Duces Tecum and Motion to Permit Remote Testimony in Lieu of Live Appearance (Nov. 21, 2022) at 2.

issue in this proceeding, or that he “could contribute any input of value by his appearance.”²⁹ Moreover, despite the fact that the Applicants’ certification cases have been pending for almost two years,³⁰ and that the hearing had been rescheduled, CSG requested to introduce an additional witness on the eve of hearing, without affording the parties an opportunity to prepare.

Blue Delta Witness Nelson explained how CSG’s conduct in this case has created additional difficulties for Blue Delta and NIPSCO over the past two years:

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. On top of this, as I described in my previous testimony, CSG has offered various contradictory statements about what it plans to argue or what its position is in this proceeding, making it nearly impossible to understand what CSG’s concerns or arguments actually are regarding the PUCO’s deliverability test.³¹

All of this procedural delay has served to benefit CSG at the expense of the CSG’s competitors in the REC market (including Blue Delta and NIPSCO) and Ohio ratepayers. As noted by Blue Delta Witness Nelson, “CSG is a for-profit business that stands to profit from higher REC prices.”³² By unduly delaying this proceeding, “CSG’s ability to delay REC certification (and dissuade new applicants from applying) has led to higher REC prices.”³³

²⁹ 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).

³⁰ 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).

³¹ Blue Delta Ex. 2, Nelson Supplemental Testimony at 2.

³² *Id.* at 4.

³³ *Id.*

Notwithstanding the above, it is important to explain that CSG’s attempts to raise discovery issues and “procedural irregularities” at this late stage of the proceeding are improper³⁴ and merely red herrings in an attempt to distract the Commission from the real issues at hand—whether the renewable wind facilities at issue in this proceeding have satisfied the statutory criteria to be certified as eligible Ohio REN facilities.

1. PJM DFAX studies demonstrate deliverability into Ohio.

CSG’s flawed legal and factual assertions continue in its portrayal of the PJM DFAX studies. CSG seems to believe that the change in RTOs has made it impossible for PJM to model power flows from MISO into Ohio.³⁵ Based on this mistaken belief, CSG claims that “PJM has modelled power flows in its region ‘if’ the energy is delivered into PJM but PJM did not model power flows in MISO.”³⁶ CSG’s entire argument about the DFAX results themselves is premised on nitpicking the word choice from the PJM cover letters.³⁷

The reality is that the DFAX models *do* show power flowing between RTOs and being deliverable into Ohio. They do not assume it. In reality, 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.³⁸ As such,

³⁴ See *See Ohio Adm.Code 4901-1-27(D); 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).

³⁵ 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.”), 15.

³⁶ *Id.* at 15.

³⁷ *Id.*

³⁸ Applicants Brief at 16, *citing* Tr. Vol. I at 75 (Chiles).

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).”³⁹

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.⁴⁰ If DFAX studies did not actually measure how much power can flow between RTOs, then they would be useless for managing the transmission grid.

CSG Witness Stewart acknowledged that CSG’s assertion about the DFAX studies is false. At the hearing, when asked if “the DFAX studies presuppose a certain distribution factor impact on Ohio transmission lines,” CSG Witness Stewart simply replied “No.”⁴¹

Additionally, in three adjacent states—Kentucky, Indiana, and Michigan—“the majority of power generation assets are *not* located within PJM.”⁴² Despite this, the Commission’s REN certification rules explicitly classify these facilities as deliverable into Ohio.⁴³ “Arguing that power from one of those states is somehow less ‘deliverable’ to Ohio than power from a PJM facility located in a state like North Carolina or New Jersey makes little sense and cuts against any deliverability arguments that CSG appears to be making.”⁴⁴

Despite claims to the contrary, PJM’s modeling was in fact far more robust in this case than the modeling in *Koda*. CSG Witness Stewart noted that in *Koda*, “PJM evaluated the impact on ten transmission lines located in Ohio and MISO evaluated the impact on sixty-seven

³⁹ Staff Ex. 2, Clingan Testimony at 6-7, *citing* Staff Ex. 8, Barton 2 Staff Report at 1.

⁴⁰ *See* Blue Delta and 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.

⁴¹ Tr. Vol. II at 227-28.

⁴² Blue Delta Ex. 2 at 6.

⁴³ *Id.*

⁴⁴ *Id.*

transmission lines located in Ohio.”⁴⁵ In that case, “while the generation was modeled outside of Ohio, they are specifically monitoring transmission lines located within the State of Ohio.”⁴⁶ In other words, despite the fact that MISO at the time operated in Ohio, MISO and PJM did not actually model any MISO lines located outside Ohio.

The record objectively demonstrates that PJM performed more modeling in this case. In the current case, PJM modeled more than 3,000 transmission facilities.⁴⁷ Moreover, PJM modeled facilities that have only one endpoint in Ohio, 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*.”⁴⁸

2. The *Koda* Test remains applicable.

The *Koda* Test is the appropriate deliverability analysis, which has been used by Staff and the Commission in numerous cases since 2011 to determine whether a REN facility is deliverable into the state. When asked if Staff considers other information in REN cases, Staff Witness Clingan correctly noted that “[t]he power flow study was established as the means by which to demonstrate deliverability.”⁴⁹ CSG attempts to distinguish “[b]etween the time *Koda* was decided in 2011 until 2020” with the current application of the test. But as explained above, CSG misrepresents how the DFAX studies themselves are performed. CSG also misrepresents the findings of deliverability from these studies.

⁴⁵ Tr. Vol. II at 297 (Stewart); *citing* Blue Delta Ex. 9, *Koda* Staff Report at 6.

⁴⁶ Tr. Vol. II at 299 (Stewart).

⁴⁷ *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.

⁴⁸ Staff Brief at 5, *citing* Staff Ex. 1, Cross Testimony at 3 (emphasis added).

⁴⁹ Tr. Vol. III at 366 (Clingan).

CSG seems to believe that increased findings of deliverability is the result of some grand conspiracy. In essence, CSG argues that the *Koda* Test is not being properly applied, since unlike in *Koda*, more applicants are passing the Test.⁵⁰ However, an increase in deliverability from renewable facilities in other states is not a fluke, or a conspiracy; it is the result of developments in generation assets and transmission infrastructure in the electric grid.

For example, the facilities at issue today are significantly larger than the *Koda* facility, which had a nameplate capacity of 15 MW.⁵¹ The Applicants' facilities range in nameplate capacity from 51 MW to 210 MW.⁵² Facilities with 3.4 to 14 times⁵³ the generating capacity as the *Koda* facility (all else being equal) *should* increase the likelihood that energy from a facility is deliverable to Ohio. For example, Staff found that the facility in *Koda* had a DFAX value of 2.5% and a MW equivalence impact of 0.375 MW.⁵⁴ If the facility in *Koda* had a 51 MW capacity rather than a 15 MW capacity, then the MW equivalence increases to 1.275 MW, which is above the 1 MW threshold.⁵⁵

Additionally, developments in the transmission grid will also increase the amount of electricity deliverable into Ohio. Blue Delta Witness Nelson correctly pointed out that “the regional flow of power across the Eastern Interconnect is becoming more important rather than less important.”⁵⁶ Mr. Nelson explained how the United States Department of Energy released its

⁵⁰ CSG Brief at 5-6.

⁵¹ *Koda* Staff Report at 7.

⁵² Chiles Testimony at 16.

⁵³ 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.

⁵⁴ *Koda* Staff Report at 7.

⁵⁵ .025 * 51 MW equals 1.275 MW.

⁵⁶ Blue Delta Ex. 2, Nelson Supplemental Testimony at 5.

“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 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.⁵⁷

CSG argues, based on the findings in *Koda*, that it “intuitively makes sense given the hundreds of miles separating Minnesota and Ohio” that a facility located in Minnesota would not be deliverable into Ohio.⁵⁸ CSG simply ignores the factual differences between the application in *Koda* and the applications in this proceeding. While the *method* for evaluating deliverability that the Commission adopted in *Koda* is binding on this proceeding, the Commission’s fact-specific *finding* regarding deliverability in *Koda* is not. Here, Staff evaluated the wind facilities and applied the *Koda* Test to the specific facts of each facility and determined that the energy from all of the facilities was in fact deliverable to Ohio.

B. All of the facilities fulfill the three requirements for REN certification, including deliverability.

Once one disposes of CSG’s flawed, inconsistent, and unreasonable arguments regarding deliverability and procedural red herrings, the outcome is clear. The facilities meet the three requirements for REN certification in Ohio. As previously discussed by Blue Delta and NIPSCO,⁵⁹

⁵⁷ Blue Delta Ex. 2, Nelson Supplemental Testimony at 6, *citing* Federal Register, Vol. 87, No. 12, page 2769 (January 19, 2022).

⁵⁸ CSG Brief at 5.

⁵⁹ Blue Delta and NIPSCO Brief at 3-6.

as well as the Applicants⁶⁰ and Staff,⁶¹ the wind facilities at issue fulfill the requirements of the law: 1) the technology used at the facilities is renewable, 2) the wind facilities' placed in-service dates are after January 1, 1998, and 3) the output from the renewable facilities are deliverable to Ohio.⁶²

More specifically, R.C. 4928.64(A) requires that the facility be a “renewable energy resource” as defined by R.C. 4928.01(A)(37), which includes wind energy.⁶³ Additionally, 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.⁶⁴ Lastly, 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.⁶⁵ There are no other statutory requirements for REN certification in Ohio.⁶⁶

As to the first requirement, record evidence demonstrates that all of the facilities are eligible renewable energy resources as the facilities utilize wind energy as the technology: Staff found that all of the facilities are wind facilities and satisfy this requirement for REN certification.⁶⁷

⁶⁰ Applicants Brief at 11-12.

⁶¹ Staff Brief at 2-3.

⁶² 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).

⁶³ *See* R.C. 4928.01(A)(37)(ii).

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

⁶⁵ *Id.*, *see also* R.C. 4928.64(B)(3).

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

⁶⁷ 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.

Blue Delta and NIPSCO,⁶⁸ as well as the Applicants⁶⁹ and Staff,⁷⁰ all explained that the facilities satisfy the first statutory requirement as they are wind facilities. CSG did not offer any evidence to contradict this assertion,⁷¹ and did not contest it in its brief. As such, all of the facilities satisfy the renewable energy resource requirement for REN certification.

As for the second requirement, record evidence demonstrates that all of the facilities also satisfy 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. Staff confirmed the placed-in-service dates for all of the wind facilities were placed in service after January 1, 1998.⁷² Blue Delta and NIPSCO,⁷³ as well as the Applicants⁷⁴ and Staff,⁷⁵ explained in the briefs that all of the facilities satisfy this requirement. CSG again did not offer evidence to contradict this conclusion,⁷⁶ and did not contest it in its brief. As such, all of the facilities satisfy 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

⁶⁸ Blue Delta and NIPSCO Brief at 13.

⁶⁹ Applicants Brief at 23-24.

⁷⁰ 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.

⁷¹ Tr. Vol. II at 303 (Stewart).

⁷² Tr. Vol. III at 363-64 (Clingan).

⁷³ Blue Delta and NIPSCO Brief at 14.

⁷⁴ Applicants Brief at 24-25.

⁷⁵ 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.

⁷⁶ Tr. Vol. II at 303 (Stewart).

demonstration that the electricity is *physically* deliverable to the state.”⁷⁷ 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”⁷⁸ sufficient for REN certification.⁷⁹ As discussed above, CSG’s arguments against the *Koda* Test itself or the applicability of the *Koda* Test rely on a misrepresentation of how the DFAX studies are performed and how the *Koda* Test is applied.⁸⁰ CSG did not offer any evidence that the DFAX studies performed by PJM for the facilities were somehow completed incorrectly or in error.

On the other hand, Blue Delta and NIPSCO,⁸¹ as well as the Applicants⁸² and Staff,⁸³ explained in detail how all of the facilities at issue in this proceeding satisfy the *Koda* Test for deliverability. Accordingly, the third statutory requirement for REN certification is satisfied. Blue Delta and the Applicants “provided a DFAX power flow study which was performed by PJM” for each facility.⁸⁴ They requested these studies from PJM and forwarded them to Staff for review.⁸⁵ All of the DFAX studies evaluated the impact of the facilities’ injection of energy on power flows

⁷⁷ Ohio Adm.Code 4901:1-40-01(F) (emphasis added).

⁷⁸ *Id.*

⁷⁹ 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.

⁸⁰ CSG Brief at 9-15.

⁸¹ Blue Delta and NIPSCO Brief at 12-16.

⁸² Applicants Brief at 12-23.

⁸³ Staff Brief at 3-5.

⁸⁴ 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.

⁸⁵ 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.

across approximately 3,000 electric system transmission facilities in Ohio and the surrounding areas.⁸⁶ Staff summarized the applications and conclusions of the test for all of the facilities:

[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.⁸⁷

As previously mentioned, 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 Ohio, and the highest value for a transmission line with both end points in Ohio.⁸⁸ As parties noted in their briefs, even by taking the lower of the two values Staff considers, all of the facilities still easily satisfy both elements of the *Koda* Test.⁸⁹

Applying the *Koda* Test to all of the facilities at issue in this proceeding demonstrate that the facilities satisfy the deliverability requirement for REN certification. While CSG fails to discredit the *Koda* Test, it also fails to offer any evidence against the application of the Test to the facilities at issue in this proceeding.

As such, the Applicants have met their burden to demonstrate that the facilities qualify for REN certification. In post-hearing briefs, Blue Delta and NIPSCO,⁹⁰ as well as the Applicants⁹¹

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 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*].”); 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.

⁸⁸ 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.”).

⁸⁹ Blue Delta and NIPSCO Brief at 16; Applicants Brief at 21-22.

⁹⁰ Blue Delta and NIPSCO Brief at 3-6.

⁹¹ Applicants Brief at 11-12.

and Staff,⁹² summarized the overwhelming record evidence demonstrating that the facilities meet the three statutory requirements for certification. In its own brief, CSG fails to make any compelling argument otherwise. As such, the Commission should approve the Applications and grant REN certification to the Ohio eligible wind facilities.

III. CONCLUSION

The record is clear. The energy from all of the wind facilities 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; the facilities are “renewable energy resources” under R.C. 4928.01(A)(37); and the facilities were all placed in service after January 1, 1998 pursuant to R.C. 4928.64(A)(1).

CSG, despite raising countless inconsistent and false arguments over the course of this lengthy proceeding, has failed to demonstrate that the facilities do not satisfy the three requirements for REN certification in Ohio law. Additionally, CSG has failed in its quest to discredit the *Koda* Test, and has also failed to offer any evidence contesting the fact that the facilities satisfy the *Koda* Test.

⁹² Staff Brief at 2-3.

As such, the weight of the record evidence shows that the applications should be approved. The facilities 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 Applications for REN certification pursuant to Ohio Adm.Code 4901:1-40-04(D), ending nearly two years of undue delay caused by CSG.

Respectfully Submitted,

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Summary: Reply Post-Hearing Reply Brief By Blue Delta Energy, LLC And Northern
Indiana Public Service Company LLC electronically filed by Ms. Cheryl A. Smith on
behalf of Blue Delta Energy, LLC and Northern Indiana Public Service Co. LLC