THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF MORAINE WIND LLC FOR CERTIFICATION AS AN ELIGIBLE OHIO RENEWABLE ENERGY RESOURCE GENERATING FACILITY.	**CASE NO. 21-516-EL-REN**
IN THE MATTER OF THE APPLICATION OF RUGBY WIND LLC FOR CERTIFICATION AS AN ELIGIBLE OHIO RENEWABLE ENERGY RESOURCE GENERATING FACILITY.	**CASE NO. 21-517-EL-REN**
IN THE MATTER OF THE APPLICATION OF ELM CREEK II FOR CERTIFICATION AS AN ELIGIBLE OHIO RENEWABLE ENERGY RESOURCE GENERATING FACILITY.	**CASE NO. 21-531-EL-REN**
IN THE MATTER OF THE APPLICATION OF BUFFALO RIDGE II FOR CERTIFICATION AS AN ELIGIBLE OHIO RENEWABLE ENERGY RESOURCE GENERATING FACILITY.	**CASE NO. 21-532-EL-REN**
IN THE MATTER OF THE APPLICATION OF BARTON WINDPOWER 1 FOR CERTIFICATION AS AN ELIGIBLE OHIO RENEWABLE ENERGY RESOURCE GENERATING FACILITY	**CASE NO. 21-544-EL-REN**
IN THE MATTER OF THE APPLICATION OF BARTON WINDPOWER, LLC FOR CERTIFICATION AS AN ELIGIBLE OHIO RENEWABLE ENERGY RESOURCE GENERATING FACILITY.	**CASE NO. 22-380-EL-REN**

OPINION AND ORDER

Entered in the Journal on September 20, 2023

I. SUMMARY

{¶ 1} The Commission approves the applications of Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Buffalo Ridge II Wind LLC, Avangrid Renewables LLC, and Barton Windpower LLC for certification as eligible Ohio renewable energy resource generating facilities.

II. DISCUSSION

A. Applicable Law

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

{¶ 3} R.C. 4928.64 and 4928.645 contain the renewable energy resource requirements for electric utility and electric services companies providing electric retail generation in Ohio. R.C. 4928.01(A)(37) defines the types of renewable energy resource generating facilities that qualify in meeting the statutory mandates. Pursuant to Ohio Adm.Code 4901:1-40-04(D), any entity that desires to be designated an eligible renewable energy resource generating facility for the state of Ohio shall file an application for certification that demonstrates the facility satisfies the requirements of R.C. 4928.64 and 4928.645.

{¶ 4} Pursuant to R.C. 4928.64 and 4928.645, in order to qualify as a certified eligible Ohio renewable energy resource generating facility, a facility must demonstrate in its application that it has satisfied all of the following criteria:

(a) The generation produced by the renewable energy resource generating facility can be shown to be deliverable into the state of Ohio, pursuant to R.C. 4928.64(B)(3);

(b) The resource to be utilized in the generating facility is recognized as a renewable energy resource pursuant to R.C. 4928.64(A)(1) and 4928.01(A)(37), or a new technology that may be classified by the Commission as a renewable energy resource pursuant to R.C. 4928.64(A)(2); and

(c) The facility must satisfy the applicable placed-in-service date, delineated in R.C. 4928.64(A)(1), which requires that a facility has been placed-in-service on or after January 1, 1998, or has been modified or retrofitted to create a renewable energy resource after January 1, 1998.

B. Procedural History

{¶ 5} On various dates, Applicants filed their applications pursuant to Ohio Adm.Code 4901:1-40-04(D), for the certification of each named facility as an eligible Ohio renewable energy resource generating facility as defined in R.C. 4928.01.

{¶ 6} The attorney examiner suspended the automated approval process for the applications pursuant to Ohio Adm.Code 4901:1-40-04(D), which provides that upon good cause shown, the Commission may suspend the certification of an application to allow the Commission and its Staff to further review the application.

{¶ 7} Prehearing conferences were conducted on various days in July and August 2021.

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

{¶ 9} On May 7, 2021, Carbon Solutions Group, LLC (Carbon Solutions) filed motions to intervene, motions to consolidate, and motions to establish a procedural schedule.

{¶ 10} On various dates, motions to intervene in all or some the above-captioned cases were filed by Blue Delta Energy, LLC (Blue Delta); 3Degrees Group, Inc. (3Degrees); and Northern Indiana Public Service Company LLC (NIPSCO).

{¶ 11} On August 3, 2021, Avangrid Renewables, LLC, the owner of Applicants, filed a motion to consolidate the cases. On August 6, 2021, Applicants, rather than their parent company, filed an amended joint motion to consolidate.

{¶ 12} By Entry dated October 19, 2021, the attorney examiner invited Applicants and interested persons to file comments in response to the Staff's recommendations by November 18, 2021, and reply comments by December 8, 2021.

{¶ 13} On November 18, 2021, initial comments were filed by 3Degrees, Carbon Solutions, the Applicants, and Blue Delta. On December 8, 2021, reply comments were filed by Vistra Corp., Staff, Carbon Solutions, Applicants, 3Degrees, and Blue Delta.

{¶ 14} On April 5, 2022, the attorney examiner consolidated Case Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, and 21-544-EL-REN and granted the motions to intervene filed by Blue Delta, 3Degrees, Carbon Solutions, and NIPSCO. The Entry also set a procedural schedule; scheduled an evidentiary hearing

to take place on September 12, 2022; granted Applicants' motion to compel; and ordered that Carbon Solutions provide substantive responses within two weeks.

{¶ 15} On April 13, 2022, Barton Windpower, LLC filed an application pursuant to Ohio Adm.Code 4901:1-40-04(D), for certification as an eligible Ohio renewable energy resource generating facility as defined in R.C. 4928.01, which was assigned Case No. 22-380-EL-REN. The attorney examiner suspended the automated approval process for the application pursuant to Ohio Adm.Code 4901:1-40-04(D) on May 2, 2022.

{¶ 16} On May 3, 2022, Carbon Solutions filed a motion for leave to intervene and motion to consolidate Case No. 22-380-EL-REN with the previously consolidated cases. On May 18, 2022, Applicants filed a memorandum contra. On May 20, 2022, Carbon Solutions filed a reply. On June 24, 2022, Applicants filed a notice of withdrawal of their memorandum contra the motion to consolidate.

{¶ 17} On June 28, 2022, the attorney examiner consolidated all the above-captioned cases and ruled that the procedural schedule already established will apply to all the consolidated cases. The attorney examiner also adjusted the procedural schedule, determining that parties supporting certification should file testimony by August 12, 2022.

{¶ 18} On July 11, 2022, Applicants filed a motion for sanctions against Carbon Solutions, arguing that Carbon Solutions refused to comply with a Commission directive to answer and produce discovery. Carbon Solutions filed a memorandum contra, and Applicants filed a reply.

{¶ 19} On July 18, 2022, Carbon Solutions filed a motion to compel discovery. On August 1, 2022, Applicants filed a memorandum contra, and on August 8, 2022, Carbon Solutions filed a reply.

{¶ 20} Blue Delta and Applicants filed testimony on August 12, 2022. Staff and Carbon Solutions filed testimony on August 26, 2022.

{¶ 21} On September 1, 2022, the attorney examiner issued an entry that deferred the Applicants' motion for sanctions, ordered Carbon Solutions to provide discovery responses within seven days, granted Carbon Solutions' motion to compel, and rescheduled the hearing to take place on December 5, 2022.

{¶ 22} On September 6, 2022, Carbon Solutions filed a request for an interlocutory appeal pursuant to Ohio Adm.Code 4901-1-15(A) to vacate the attorney examiner's September 1, 2022 Entry. On September 12, 2022, Applicants filed a memorandum contra.

{¶ 23} On October 11, 2022, Applicants filed a renewed motion for sanctions, alleging Carbon Solutions continued to fail to produce discovery responses. On October 25, 2022, Carbon Solutions filed a memorandum contra.

{¶ 24} On November 1, 2022, the attorney examiner issued an entry that denied the interlocutory appeal, deferred Applicants' renewed motion for sanctions, and ordered Carbon Solutions to provide substantive responses to the pending discovery requests within three days.

{¶ 25} On November 21, 2022, Carbon Solutions filed a motion for subpoena duces tecum and motion to permit remote testimony. The motion for subpoena duces tecum asked for permission to direct Aaron Berber or another officer, agent, employee or other person designated by PJM Interconnection Inc. (PJM), to appear at the hearing to testify about PJM's power flow (DFAX) studies. On December 2, 2022, Applicants moved to quash Carbon Solutions' motion for subpoena duces tecum and filed a memorandum contra to Carbon Solutions' motion to permit remote testimony. PJM filed a memorandum in opposition to Carbon Solutions' motion for subpoena duces tecum on December 2, 2022, arguing that Carbon Solutions failed to comply with the Commission's

procedural requirements for issuance of a subpoena duces tecum, that Carbon Solutions did not include the required check for witness fees and mileage expenses, and that the testimony sought would be either irrelevant or cumulative.

{¶ 26} Applicants filed a second renewed motion for sanctions on November 23, 2022, requesting expedited treatment. The motion asserted that Applicants believed the motion was filed and served on November 14, 2022, but was not appearing as filed on the case docket. On November 30, 2022, Carbon Solutions filed a memorandum contra.

{¶ 27} On December 5, 2022, a hearing was held. At the hearing, the attorney examiners denied Carbon Solutions' motions for subpoena duces tecum and motion for remote testimony. The hearing continued on December 6, 2022 and December 8, 2022.

{¶ 28} Initial and reply post-hearing briefs were filed on January 17, 2023, and February 7, 2023, respectively.

C. Evidentiary Hearing

{¶ 29} As detailed below, an evidentiary hearing began on December 5, 2022, and continued on December 6, 2022, and December 8, 2022. Applicants presented the testimony of Pete Landoni, John Chiles, and Ken Nelson. Carbon Solutions presented the testimony of Travis Stewart. Staff presented the testimony of Kristin Clingan and Jason Cross.

D. Post-Hearing Briefs

{¶ 30} In its initial post-hearing brief, Applicants emphasize that Staff has reviewed and analyzed the applications and other documents, determined that each facility satisfies the Commission's requirements for certification, and recommends that the applications be approved. Applicants also emphasize that each facility satisfies the deliverability standard set forth in *In re Koda Energy LLC*, Case No. 09-0555-EL-REN

(*Koda*), Finding and Order (Mar. 23, 2011). Applicants assert that Carbon Solutions' witness did not challenge the DFAX study results and only challenged the Commission's precedent rather than specific facts regarding the applications. Applicants argue that Carbon Solutions has not offered evidence that the facilities do not satisfy the deliverability test, demonstrate that the *Koda* test should be modified, or suggest an alternative test for deliverability.

{¶ 31} Applicants assert that the energy from each facility is deliverable into Ohio. Applicants argue that the Commission-applied *Koda* test demonstrates that the energy from each facility is deliverable into Ohio. Because it is impossible to track energy from a generating facility to a specific load location, Applicants explain that Staff devised the deliverability standard that the impact on a transmission line in Ohio must be greater than five percent and greater than one megawatt (MW), which the Commission found reasonable and adopted in *Koda*. Applicants point out that Staff has applied this same deliverability test consistently for over a decade, citing Staff Ex. 2 at 5. Applicants also assert that Carbon Solutions did not demonstrate that the *Koda* test is improper nor provide workable alternatives to the test. Although Carbon Solutions' witness Stewart proposed adding a financial or contractual element to the deliverability test, Applicants point out that the Commission has previously rejected that suggestion, citing *In re the Adoption of Chapters 4901:5-1, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code*, Case No. 08-888-EL-ORD, Opinion and Order at 27-28 (Apr. 15, 2009); *In re the Amendment of Ohio Administrative Code Chapter 4901:1-40*, Case Nos. 12-2156-EL-ORD, et al., Finding and Order at ¶ 180 (Dec. 19, 2018). Applicants also argue that a DFAX study is still accurate when modeling power flows between regional transmission organizations (RTO) PJM and Midcontinent Independent System Operator (MISO) and note that Carbon Solutions' witness seemed to admit the same, citing Tr. Vol. II at 251, 253-256. Additionally, Applicants point out that the alternative tests proposed by Carbon Solutions' expert witness rely on power flow studies, at least in part. Furthermore, Applicants state that each facility passes the *Koda* deliverability test, as confirmed by Staff's analysis.

Applicants argue that Carbon Solutions failed to explain how the facilities do not satisfy the *Koda* test or how energy from the facilities is otherwise not deliverable into Ohio.

{¶ 32} Applicants note that, of the three criteria in R.C. 4928.64, Carbon Solutions is not challenging whether the Applicants have met two of the three necessary criteria and is only challenging the deliverability criterion, citing Tr. Vol. II at 303. Applicants point out that the facilities are wind energy generation facilities, and R.C. 4928.01(A)(37) includes wind energy as a renewable energy resource. As to the third criterion, Applicants state that each facility was placed in service after January 1, 1998, thus fulfilling this requirement. The Applicants also encourage the Commission to approve the applications as soon as possible because it contends that Carbon Solutions' actions have caused undue and prejudicial delays.[1]

{¶ 33} In its initial brief, Staff asserts that all six facilities meet the criteria for certification as eligible Ohio renewable energy resource generating facilities. Staff advanced several arguments paralleling those of Applicant. Staff stated that the DFAX studies must show a "significant impact" in order to satisfy the deliverability requirement. Staff explained its analysis of the deliverability requirement, which involved reviewing the DFAX study completed by PJM and examining the DFAX values from transmission lines where at least one segment is located within Ohio to determine if the value on the lines is greater than five percent. After determining whether DFAX values greater than five percent exist on transmission lines, Staff stated they proceed to analyze the MW requirement. Staff calculates the MW requirement by multiplying the DFAX value by the facility's nameplate capacity (DFAX percentage * facility capacity = MW equivalence), citing Staff Ex. 1 at 3. Staff argues that all of the Applicants' facilities

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[1] 3Degrees filed a notice of support for the Applicants' post-hearing brief and will not submit its own brief for purposes of brevity. In sum, 3Degrees supports certification of each of the applications and the Staff Reports.

meet the absolute impact requirements of greater than five percent and greater than one MW. Thus, Staff recommends approval of all the applications.

{¶ 34} Blue Delta and NIPSCO also urge approval of the applications. In their initial brief, Blue Delta and NIPSCO note that Staff's methodology for measuring deliverability from the *Koda* case, the one contested requirement in the proceeding, involves DFAX studies. Blue Delta and NIPSCO mention that the North American Electric Reliability Corporation (NERC) and Federal Energy Regulatory Commission (FERC) utilize and rely on DFAX studies. They add that RTOs also promulgate rules and standards based on DFAX studies as well. In response to Carbon Solutions' complaints that the DFAX studies in this case presupposed deliverability from MISO to PJM, Blue Delta and NIPSCO explain that the physical structure of and electricity flow through the electric grid was unchanged by the change in RTOs. Blue Delta and NIPSCO emphasize that while the DFAX studies in this case used modeling from Ohio's RTO rather than from the location of Applicants' facilities, PJM can obtain all of the requisite information it needs to run power flow studies across RTOs. Blue Delta and NIPSCO add that Carbon Solutions did not present a reasonable alternative to the *Koda* test and did not contradict the results of the *Koda* tests performed for each of the Applicants' facilities. Finally, Blue Delta and NIPSCO also assert that prior to intervening in this case, Carbon Solutions began intervening in other REN cases, and point out that other facilities have declined to file new certification applications altogether. They claim that Carbon Solutions' interventions have worked to delay REN certifications, create uncertainty in the REC market, and increase REC prices.

{¶ 35} In its initial post-hearing brief, Carbon Solutions argues that the Applicants did not provide adequate evidence demonstrating that their energy would be physically deliverable into Ohio, as required by Ohio Adm.Code 4901:1-40-04(D) and R.C. 4928.64(B)(3)(b). Carbon Solutions explains that the rules require facilities located in non-contiguous states to affirmatively demonstrate "that the electricity is physically

deliverable to" Ohio, citing Ohio Adm.Code 4901:1-40-01(F). Carbon Solutions contends that while it is impossible to trace electrons in order to show deliverability, "it is possible to predict and measure the impact that electrons generated in a specific location will have on transmission lines in a different location." Specifically, Carbon Solutions alleges that the Applicants failed to demonstrate the reliability of the DFAX reports. While Carbon Solutions acknowledges that "power flow studies, including DFAX reports, may be used to figure out whether energy is physically deliverable from one area to another" it takes issue with the DFAX reports Applicants used. Specifically, Carbon Solutions asserts that the DFAX reports assume that the energy would be able to flow from MISO into PJM as opposed to proving the energy would flow into PJM. Carbon Solutions emphasizes language from the cover letter of PJM's DFAX study which states that the values represent impacts to Ohio transmission by the Applicants' facilities "if they were to deliver their energy into PJM," citing Staff Ex. 2A, DFAX Analysis of Renewable Resources for Avangrid, Cover Letter at 1.

{¶ 36} In reply, Applicants point out that of all the intervenors in these proceedings, Carbon Solutions is the only party in opposition to certification, and the only statutory criteria Carbon Solutions challenges is the deliverability requirement. Applicants note that the deliverability standard, adopted by the Commission, is the *Koda* test. Applicants emphasize that they provided those power flow studies in the form of DFAX reports that demonstrate each facility meets that criterion. Additionally, Applicants argue that the five percent and one MW thresholds are the only standards established and required by the Commission, so any additional standard proposed by Carbon Solutions is not required to establish deliverability. Applicants also dispute Carbon Solutions' claim that PJM cannot model power flows from MISO into PJM, noting that a joint operating agreement allows the two organizations to share information and coordinate interconnections. Additionally, Applicants point out that *Koda* specifically states that deliverability can be demonstrated by a power flow study performed by an RTO, and the order did not specify which RTO must perform the study. Applicants also

argue that the DFAX studies do not presume deliverability and rather test whether the power is deliverable into Ohio. Further, Applicants state that Carbon Solutions never requested the email communications with Staff or PJM and never filed a motion to compel.

{¶ 37} Staff's reply brief maintains its recommendation to the Commission to approve six applications. Staff argues that Carbon Solutions did not offer any evidence to explain how the facilities do not satisfy the Commission's deliverability test, did not put forth any proof demonstrating how the test should be modified, and did not recommend an alternative test that the Commission should apply. Staff notes that the Commission has consistently used the *Koda* test while reviewing applications from facilities located in non-contiguous states. Additionally, Staff explained that computer models measuring changes in power flows are widely used in the power industry because it is impossible to physically track energy from a specific generating facility to a specific load location, citing Staff Ex. 2 at 4. Staff acknowledges that Carbon Solutions' witness suggested looking at other factors outside the *Koda* test but contends that Carbon Solutions did not propose any viable alternatives to the *Koda* test. Staff notes that the Commission has already rejected adding financial or contractual requirements to the deliverability assessment and stated that the Commission has recognized that physical deliverability is not determined by contractual arrangements, citing *In the Matter of the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations, and Review of Chapters 4901:5-1, 4901:5-5, and 4901:5-7 of the Ohio Administrative Code, Pursuant to Chapter 4928.66, Revised Code, as Amended by Amended Substitute Senate Bill No. 221*, Case No. 08- 888-EL-ORD, Opinion and Order at 27-28 (Apr. 15, 2009); and *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). Additionally, Staff disagrees with Carbon Solutions' interpretation of Ohio's renewable portfolio standard statute which uses the word "deliverable" as opposed to "delivered." Staff asserts that Carbon

Solutions' claim that "deliverable" means actual, physical delivery to Ohio is not supported by the language in the statute. Finally, in response to Carbon Solution's questions about PJM's submission of the DFAX, Staff contends that there was nothing unusual about how the DFAX studies were submitted. Staff states that applicants are unable to submit the DFAX study in the Commission's online application in Salesforce.

{¶ 38} In their reply brief, Blue Delta and NIPSCO emphasize that the PJM DFAX studies demonstrate deliverability into Ohio and apply the *Koda* test as the appropriate authority for determining deliverability. While doing so, Blue Delta and NIPSCO push back against Carbon Solutions' factual contentions and legal arguments. Blue Delta and NIPSCO emphasize that Staff directed Applicants to request the DFAX studies from PJM, not Blue Delta. Countering Carbon Solutions' contention that PJM cannot model power flows from MISO into Ohio after the post-*Koda* change of RTOs in Ohio, Blue Delta and NIPSCO argue that the modeling in the DFAX was robust. They state that PJM modeled more than 3,000 transmission facilities, and specifically facilities with only one endpoint in Ohio, thereby transporting electricity into the state. This amount of modeling, Blue Delta and NIPSCO argue, exceeds the modeling done in *Koda*, which Carbon Solutions testimony held up as an appropriate amount of demonstration. Next, Blue Delta and NIPSCO point out the high volume of REN certification applications the Commission receives and approves each year and insist that a more drawn-out process as preferred by Carbon Solutions would halt the Commission's work on approving any REN applications. Further, Blue Delta and NIPSCO argue against Carbon Solutions' position that it was prejudiced by procedural irregularities. First, they state that the failure to include the correct DFAX studies in the applications or file them in the docket was unintentional and immediately remedied upon Applicant's realization, before even Carbon Solutions seemed to notice the error.

{¶ 39} In its reply brief, Carbon Solutions maintains that the Applicants have not adequately demonstrated deliverability. Carbon Solutions states that the *Koda* test itself

is not the problem, rather Carbon Solutions asserts the data used by Staff while applying the *Koda* test was incomplete. Specifically, Carbon Solutions contests the validity of the DFAX values Staff used in its analysis. Carbon Solutions asserts that the DFAX values only showed the impact of the Applicants' resources on "transmission lines between the MISO/PJM seam … and Ohio transmission." Carbon Solutions believes that there also should have been an analysis assessing the impact the facilities would have on power flows within MISO. In response to Staff's recommendation to conclude the facilities meet the deliverability requirement, Carbon Solutions notes that Staff's recommendations are not binding on the Commission, citing *Ideal Transp. Co. v. Pub. Utilities Comm.*, 42 Ohio St. 2d 195, 199 (1975). (Carbons Solutions Reply Br. at 2.) In response to Applicants, Carbon Solutions contends (1) that the DFAX reports assumed rather than proved the energy from the facilities would be deliverable into PJM, (2) that the Applicants view the *Koda* test as a rule of evidence as opposed to test for deliverability, and (3) that *Koda* defeats the Applications rather than supports their approvability. Carbon Solutions first highlights language from the cover letters of the DFAX reports stating, "it was confirmed that there were a number of EHV [extra high voltage] transmission facilities on which at least 5 percent of the energy from these wind resources would be expected to flow if they were to deliver their energy into the PJM." (Carbon Solutions Reply Br. at 3.) Carbon Solutions alleges that this language indicates that PJM's DFAX reports assume delivery into Ohio rather than prove it. Regarding its second argument, Carbon Solutions explains that merely applying the *Koda* test does not establish deliverability; the power flow study and DFAX values must be accurate for the *Koda* test to be appropriately applied. Here, Carbon Solutions distinguishes the DFAX study in this case from the DFAX report in *Koda*. Carbon Solutions alleges that the *Koda* report was adequate because the RTO in that case did not assume deliverability from a neighboring RTO. Instead, Carbon Solutions argues that the data utilized in this case was improper, and therefore cannot meet *Koda*'s standard for deliverability. Carbon Solutions asserts the DFAX studies assume that electricity from the Applicants' facilities will travel through MISO to the PJM

border, but there is no evidence that PJM is capable of modelling power flows within MISO. In response to Blue Delta's arguments in its brief, Carbon Solutions reiterates that the DFAX study lacks a power flow study from MISO, the RTO region where the facilities are located.

E. Conclusion

{¶ 40} As noted above, the Commission's consideration of applications for certification of a renewable energy resource facility consists primarily, but not exclusively, of three statutory criteria: (1) the deliverability of the facility's output to the state of Ohio, (2) the resource/technology used at the facility, and (3) the facility's placed in-service date (Staff Ex. 2 at 2-3). In addition to satisfying these criteria, Ohio Adm.Code 4901:1-40-04(C)(3) provides that renewable energy resource generating facilities must be registered with an approved attribute tracking system for the facility's renewable energy credits (REC) to be used for compliance with Ohio's alternative energy portfolio standards. Further, Ohio Adm.Code 4901:1-40-04(C)(2)(e) requires that facilities above six kilowatts measure their renewable output with a utility-grade meter.

{¶ 41} As acknowledged by the parties, there is no dispute as to whether the facilities satisfy two of the three statutory criteria (Tr. Vol. II at 303). We agree that the second and third criteria have been met for all facilities in question. Specifically, we note that the resource to be utilized by the generating facilities, wind energy, is expressly recognized as a renewable resource pursuant to R.C. 4928.01(A)(37). Further, the facilities meet the placed-in-service requirement in R.C. 4928.64(A)(1), as all six facilities were placed-in-service after January 1, 1998. In addition to meeting the first two criteria, the Applicants indicate that they are registered with M-RETS, an approved attribute tracking system which has been confirmed by Staff. Further, in its report, Staff also explains that the meters described in the applications satisfy this rule requirement. (Staff Ex. 3 at 3; Staff Ex. 4 at 3; Staff Ex. 5 at 3; Staff Ex. 6 at 3; Staff Ex. 7 at 3; Staff Ex. 8 at 3.)

{¶ 42} As such, the only issue that remains is whether the facilities, which are in states non-contiguous to Ohio, can be shown to be deliverable into this state, pursuant to R.C. 4928.64(B)(3).

{¶ 43} We must first analyze what is meant to be "deliverable into this state," as the phrase is used in R.C. 4928.64(B)(3). It is indisputable that our primary goal must be to determine the intent of the General Assembly and to follow it. Where it is discernable from the face of the statute, using the words either based on their ordinary meaning or based on their technical or statutory meaning, we need go no farther. *In re the Complaint of WorldCom, Inc., AT&T Corp., KMC Telecom III, LLC, and LDMI Telecommunications, Inc. v. City of Toledo*, Case No. 02-3207-AU-PWC, et al., Opinion and Order (May 14, 2003).

{¶ 44} Decisions of the Supreme Court of Ohio can be found to similar effect and emphasize that, when construing a statute, the paramount concern is legislative intent. "In determining legislative intent, the court first looks to the language in the statute and the purpose to be accomplished." If the meaning of the statute is unambiguous and definite, it must be applied as written and no further interpretation is necessary. *State ex rel. Savarese v. Buckeye Local School District Board of Education*, 74 Ohio St. 543, 545, 660 N.E.2d 463, 465 (1996). Further, when confronted with an ambiguous statute, i.e., subject to more than one reasonable interpretation, the Court has provided very clear guidance on the methodology to be used to construe the intent of the General Assembly:

> Accordingly, we must now look beyond the words of the statute and construe [the statute] in a manner that reflects the purpose of the General Assembly. We are guided by the rule that when a statute is ambiguous, the court, in determining the intent of the General Assembly, may consider the objective of the statute and the consequences of any particular construction. We, therefore, must construe the statute liberally to give effect to its legislative purpose.

Clark v. Scarpelli, 91 Ohio St. 3d 271, 274-5, 744 N.E.2d 719, 724 (2001).

{¶ 45} While there is no technical definition of "deliverable" in the Revised Code, we can turn to the plain meaning of the term. The Oxford English Dictionary defines "deliverable" as "that can or may be delivered." Oxford University Press (2023), *Oxford English Dictionary*, https://www.oed.com/search/dictionary/?scope=Entries&q=deliverable. Further, the Cambridge Dictionary defines "deliverable" as "able to be delivered." Cambridge University Press and Assessment (2023), *Cambridge Dictionary*, https://dictionary.cambridge.org/us/dictionary/english/deliverable. For purposes of R.C. Chapter 4928, we will likewise define "deliverable" as being capable of delivery. As there is no ambiguity on the face of the statute, once this definition is in place, this ends our analysis of this term. See, e.g., *WorldCom*, Opinion and Order (May 14, 2003) at 13-19. While Applicants, Blue Delta, and NIPSCO argue that Carbon Solutions attempts to modify the intent behind the statutory language to require a demonstration of actual delivery of the generation produced by the facility into Ohio, Carbon Solutions readily admits in its brief that it is impossible to trace electrons in order to show deliverability and instead, notes that "it is possible to predict and measure the impact that electrons generated in a specific location will have on transmission lines in a different location." (Carbon Solutions Initial Br. at 5). Staff acknowledged the impossibility to physically track energy from a specific generating facility to a specific load location, thus, necessitating a method to discern whether a facility's generation has an impact on transmission lines located in Ohio (Staff Ex. 2 at 4). *Koda*, Finding and Order (Mar. 23, 2011) at 3. As such, we agree that the statutory language is clear and unambiguous in that it requires that the generation produced from a facility to be capable of being delivered into Ohio, which appears to be undisputed in these proceedings.

{¶ 46} Our interpretation has aligned with the statutory language by requiring a study to "demonstrate that some portion of the facility's generation is capable of being

physically delivered to the state." *In re the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations*, Case No. 08-888-EL-ORD, Entry on Rehearing (June 17, 2009) (where the Commission rejected commenters' recommendation to offer a blanket presumption of deliverability for any and all generation facilities within PJM and MISO, and, instead, relied on the use of power flow studies to demonstrate deliverability). The Commission also noted that, in approving that initial definition of deliverability in our rules, the rule reflected "a reasonable balance between regulatory efficiency and maintaining the deliverability requirement explicit under Section 4928.64(B)(3), Revised Code. The rule does not automatically prohibit participation by facilities in certain geographical locations and, therefore, it does not necessarily limit access to certain resources that may be competitively priced." *Id*. at 22. To date, we note that the *Koda* test[2] has been utilized by this Commission in the subsequent evaluation of applications for 28 separate facilities, only 12 of which were granted certificates as renewable energy resource generating facilities (Staff Ex. 2 at 5; Tr. Vol. III at 368-369).[3] See, e.g., *In re the Application of Pioneer Trail Wind Farm, LLC*, Case No. 20-1821-EL-REN, Finding and Order (Mar. 24, 2021); *In re the Application of Kathleen Solar LLC*, Case No. 20-1789-EL-REN, Finding and Order (Sept. 23, 2021); *In re the Application of Red Toad 5840 Buffalo Road, LLC*, Case No. 20-1793-EL-REN, Finding and Order (Sept. 23, 2021); *In re the Application of Red Toad 4451 Buffalo Road, LLC*, Case No. 20-1792-EL-REN, Finding and Order (Sept. 23, 2021); *In re the Application of Bay Branch Solar LLC*, Case No. 20-1788-EL-REN, Finding and Order (Sept. 23, 2021); *In re the Application of Shelter Solar LLC*, Case No. 20-1791-EL-REN, Finding and Order (Sept. 23, 2021); *In re the Application of Anthony Harrington*, Case No. 17-2039-EL-REN, Finding and Order (Mar. 14, 2018);[4] *In*

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[2] Upon Staff's initial application of its methodology, the facility in *Koda* was denied certification. *Koda*, Finding and Order (Mar. 23, 2011) at 4.

[3] Staff witness Clingan acknowledges some applications were approved on an automatic basis.

[4] We note that the applicant in this case failed to produce a power flow study for Staff's or the Commission's consideration; however, the Commission adopted Staff's findings that the applicant had, thus, failed to demonstrate deliverability pursuant to the *Koda* test.

re the Application of the Superior Wind Project, Case No. 20-1637-EL-REN, Finding and Order (Dec. 16, 2020); *In re the Application of the Lakota Wind Project*, Case No. 20-1638-EL-REN, Finding and Order (Dec. 16, 2020); *In re the Application of Invenergy Illinois Solar I, LLC*, Case No. 19-67-EL-REN, Finding and Order (Jan. 13, 2021); *In re the Application of Rail Splitter Wind Farm, LLC*, Case No. 20-1692-EL-REN, Finding and Order (Jan. 13, 2021); *In re the Application of Harvest Ridge Wind Farm*, Case No. 21-987-EL-REN, Finding and Order (Dec. 1, 2021); *In re the Application of Nickelson Solar, LLC*, Case No. 20-1790-EL-REN, Finding and Order (Mar. 23, 2022);[5] *In re the Application of Laurel Wind Farm*, Case No. 09-836-EL-REN, Finding and Order (Oct. 12, 2011);[6] *In re the Application of Rippey Wind Farm*, Case No. 20-1761-EL-REN, Finding and Order (Feb. 10, 2021); *In re the Application of Hecate Energy Cherrydale LLC*, Case No. 17-2074-EL-REN, Finding and Order (Mar. 14, 2018); *In re the Application of Hecate Energy Clarke County LLC*, Case No. 17-1996-EL-REN, Finding and Order (Mar. 14, 2018); *In re the Application of Endeavor Solar Farm*, Case No. 10-322-EL-REN, Finding and Order (Sept. 20, 2011); *In re the Application of Elk Wind Farm*, Case No. 09-835-EL-REN, Finding and Order (Oct. 12, 2011);[7] *In re the Application of Discovery Solar Farm*, Case No. 10-313-EL-REN, Finding and Order (Oct. 3, 2011);[8] *In re the Application of the Orchard Hills Landfill Gas Generating Facility*, Case No. 16-2049-EL-REN, Finding and Order (Mar. 14, 2018); *In re the Application of Grand Ridge Energy LLC*, Case No. 17-2104-EL-REN, Finding and Order (Mar. 14, 2018). The

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[5] We note that, despite Carbon Solutions' intervention in this proceeding, Carbon Solutions elected not to file any responsive comments to the Staff Report when provided an opportunity to do so, despite Staff's use of the *Koda* test in its determination that the generation produced by the facility was not deliverable into Ohio. In that case, Staff appropriately utilized a DFAX power flow study performed by PJM, even though the facility, located in Wallace, North Carolina, appears to lie outside of the footprint of PJM.

[6] Similarly, we note that the applicant in this case failed to provide a power flow study, but Staff utilized a MISO DFAX analysis conducted in 2010 that revealed the facility did not meet the *Koda* criteria.

[7] Like *Laurel Wind Farm*, Staff determined, after evaluating a DFAX analysis conducted by MISO, that the facility did not meet the *Koda* deliverability criteria.

[8] In addition to finding that the facility did not meet the *Koda* deliverability criteria, the Commission again agreed with Staff that power produced anywhere on the PJM transmission grid is not necessarily considered deliverable into Ohio.

long-standing precedent and the testimony presented by Staff witnesses Clingan and Cross demonstrate Staff's intimate familiarity with these types of applications and the use of a power flow studies like DFAX reports to assist with its deliverability analysis (Staff Ex. 1; Staff Ex. 2).

{¶ 47} Notably, even Carbon Solutions agrees that the *Koda* test is an appropriate means to determine deliverability, acknowledging further that "power flow studies, including DFAX reports, may be used to figure out whether energy is physically deliverable from one area to another." (Carbon Solutions Initial Br. at 14). While Carbon Solutions proffers various alternatives for the Commission to consider, in substitution of or conjunction with the *Koda* test, we agree with Staff that the proposed alternatives are not viable. Specifically, we have already rejected adding financial or contractual requirements to the deliverability assessment and have expressly recognized that physical deliverability is not determined by contractual arrangements. *In re the Adoption of Rules for Alternative and Renewable Energy Technology, Resources, and Climate Regulations*, Case No. 08-888-EL-ORD, Opinion and Order (Apr. 15, 2009) at 27-28; *In re 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 (Dec. 19, 2018) at ¶ 180. Carbon Solutions provides no basis to question the long-standing precedent, or the methodology utilized therein, to determine whether a facility complies with the statutory criteria set forth in R.C. 4928.64(B).

{¶ 48} What appears to be the main issue raised by Carbon Solutions is the use of the specific DFAX studies utilized by the Applicants and their alleged assumption that energy would be able to flow from MISO into PJM as opposed to proving the energy would flow into PJM. In support of this argument, Carbon Solutions emphasizes language from the cover letter of PJM's DFAX study which states that the values represent impacts to Ohio transmission by the Applicants' facilities "if they were to deliver their energy into PJM," (Carbon Solutions Initial Br. at 2, citing Staff Ex. 2A at 1).

However, this argument is in direct contradiction with its earlier concession that the statute does not require a demonstration of actual delivery, but rather that the generation produced is capable of being physically delivered into Ohio. Further, to Carbon Solutions' point that the applicant in *Koda* produced DFAX analyses from both MISO and PJM, we note that our well-established precedent requires a power flow study to be performed by an RTO, with no additional requirement as to which RTO performs the study and certainly no requirement that multiple studies be produced. As argued by Applicants and Staff, the main objective is to determine the impact of the generation produced by the facility on power flows over transmission lines located in Ohio, consistent with the statute. Additionally, we emphasize, at the time of the *Koda* decision, there were two RTOs operating in Ohio: MISO and PJM. *Koda*, Finding and Order (Mar. 23, 2011) at 3. This is obviously no longer the case, as noted by Carbon Solutions; however, this circumstance may have been a contributing factor as to why both studies were generated in that case. Regardless, it makes no difference for our analysis in these proceedings, as we have highlighted instances in which this Commission has exclusively used the studies produced by either PJM or MISO when evaluating if the generation produced by a facility is deliverable into Ohio. In fact, Staff applied its methodology for the first time in that *Koda* decision by utilizing the DFAX study performed by MISO. *Koda*, Finding and Order (Mar. 23, 2011) at 4. Ultimately, the burden lies on an applicant to demonstrate satisfaction of the statutory criteria, including deliverability, and in these proceedings, Applicants produced the information necessary for Staff to determine deliverability. We decline to abandon a sound and long-standing rationale for determining deliverability simply because the Commission has seen an influx of these types of applications, as alleged by Carbon Solutions (Carbon Solution Initial Br. at 5-6). Accordingly, we find that our use of the *Koda* test continues to be reasonable and no additional modifications to the test are necessary at this time.

{¶ 49} As we have determined that the continued use of the *Koda* test represents a reasonable method for determining whether the facilities can be shown to be deliverable

into this state, pursuant to R.C. 4928.64(B)(3), we now apply this test to the six facilities requesting certification. As noted above, the requisite finding for these facilities to demonstrate deliverability is whether the respective power flow studies show an impact on a transmission line in Ohio that is greater than five percent and an energy delivery value greater than one MW. *Koda*, Finding and Order (Mar. 23, 2011) at 4. Notably, this threshold has not been contested in these proceedings. We continue to find that Staff's methodology, including the use of this threshold, represents a reasonable method for determining whether the generation produced at a facility located in a state non-contiguous to Ohio has a significant impact on power flows over the transmission lines located within Ohio and, thus, demonstrates deliverability pursuant to R.C. 4928.64(B)(3).

Facility Name	**Impact on Transmission Line**	**Energy Delivery Value**	***Koda* Criteria Met?**
Moraine Wind, LLC	16.37 %	8.35 MWs	Yes
Rugby Wind, LLC	16.44 %	24.5 MWs	Yes
Elm Creek II Wind, LLC	16.50 %	24.5 MWs	Yes
Buffalo Ridge II Wind, LLC	16.38 %	34.4 MWs	Yes
Barton Windpower 1	17.00 %	13.6 MWs	Yes
Barton Windpower 2	17.00 %	13.26 MWs	Yes

{¶ 50} As reflected above, Staff notes that Applicants provided power flow studies, performed by PJM, that show the facilities have met the thresholds established in *Koda*. These values were not contested during the hearing and Staff relied on these values, among other things, in its ultimate determination that the facilities met the deliverability requirement. (Staff Ex. 3 at 2; Staff Ex. 4 at 2; Staff Ex. 5 at 2; Staff Ex. 6 at 2; Staff Ex. 7 at 2; Staff Ex. 8 at 2). Therefore, the Commission finds that the applications satisfy the statutory requirement that the generation produced by the facilities be physically deliverable to Ohio.

{¶ 51} Accordingly, the Commission finds reasonable Staff's recommendation that the applications for certification be approved. In the event of any substantive changes in the facilities' operational characteristics, or significant changes in the information provided in the applications, the Applicants or owners must notify the Commission within 30 days of such changes. Failure to do so may result in revocation of the certification.

{¶ 52} Finally, any arguments not specifically addressed in this Opinion and Order have been thoroughly considered by the Commission and are, hereby, rejected.

F. Procedural Issues

{¶ 53} In its briefs, Carbon Solutions argues that it was prejudiced by certain "procedural irregularities," namely Applicants' failure to include the applicable DFAX studies with the applications or file them on the dockets. Carbon Solutions also notes that the correct DFAX reports were only produced after the Applicants and Blue Delta rested their case. Finally, Carbon Solutions contends that the DFAX reports are hearsay and, relatedly, argues that it was further prejudiced when its request to subpoena PJM was denied.

{¶ 54} As background, Applicants state that the incorrect DFAX spreadsheets were attached to the comments and testimony filed in the case, but the correct DFAX cover sheets and summary reports were properly attached to the comments and testimony filed before hearing. Applicants further explain that at hearing, Applicants submitted corrected DFAX spreadsheets for the facilities, which contain the same data as the spreadsheets that were sent to Staff and were reviewed by Applicant and Blue Delta witnesses. As to Carbon Solutions' challenge to the DFAX studies based on hearsay concerns, Applicants note that Carbon Solutions withdrew its admissibility challenge at the hearing and thus waived the challenge, citing Tr. III at 481. Applicants assert that challenges to rulings during the course of a hearing that a party does not object to are

waived and cannot be later raised, citing *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); *Snyder v. Standford*, 15 Ohio St.2d 31, 238 N.E.2d 563 (1968); *Oney v. Needham*, 6 Ohio St.2d 154, 216 N.E.2d 625 (1966). Further, Applicants state that the DFAX studies are not hearsay because they meet two exceptions to the hearsay rule: they are a record of a regularly conducted activity, and they are a public record. Applicants add that even if the DFAX studies do not constitute a hearsay exception, the Commission is not bound by the Ohio Rules of Evidence, citing *Greater Cleveland Welfare Rights Org., Inc., v. Pub. Util. Comm.*, 2 Ohio St.3d 62 (1982). Applicants also point to the Commission's prior ruling rejecting a hearsay objection when it reviewed information solicited by Staff, citing *In re the Ohio Power Company and Columbus Southern Power Company*, Case No. 10-2376-EL-UNC, Opinion and Order (Dec. 14, 2022) at 14. Applicants emphasize that Staff developed a methodology relying on PJM DFAX studies and requested that the Applicants obtain those studies, so the Commission has the discretion to consider the DFAX studies on that basis alone. As to Carbon Solutions' argument that the DFAX studies are unreliable because there was no testimony from PJM, Applicants contend that it is too late for Carbon Solutions to make such a challenge because authenticity goes to admissibility, which Carbon Solutions did not challenge at hearing. However, Applicants still assert that the documents were properly authenticated by witnesses noting the chain of custody and their familiarity with the studies, which Applicants say meets the requirement of Ohio Rule of Evidence 901(B)(1), citing Tr. Vol. III at 376; Applicants Ex. 8; Applicants Ex. 9; Applicants Ex. 10; Staff Ex. 2A; Staff Ex. 2B; Staff Ex. 2C.

{¶ 55} Blue Delta and NIPSCO argue that complaints about the discovery process are stale and/or waived. Additionally, Blue Delta and NIPSCO buttress the Commission's denial of a subpoena of PJM, an entity over which the Commission does not exercise jurisdiction, arguing such denial was proper because Carbon Solutions' subpoena did not comply with Ohio Adm.Code 4901-1-12(A), requiring a motion to be

accompanied by a memorandum in support, which would have argued why subpoenaing a non-party representative was necessary or warranted.

{¶ 56} Carbon Solutions complains about due process, however, Carbon Solutions was granted intervention and provided ample due process to raise its objections to the applications, engage in discovery within the parameters of the Commission's rules, and present testimony and evidence to demonstrate why it believed the Applicants failed to demonstrate satisfaction of the statutory criteria. With respect to the administrative error associated with Applicants' failure to initially include the correct versions of the DFAX studies with its comments submitted in these cases, we note that the correct versions were produced and admitted into the record at the hearing, and Carbon Solutions had the ability to reference these studies during the briefing period as well during questioning of Staff witness Cross. Notably, this minor error did not impact the arguments made by Carbon Solutions during the hearing or in its briefs. Most importantly, Staff had access to the correct studies in its review of the applications (Staff Ex. 2A; Staff Ex. 2B; Staff Ex. 2C; Tr. Vol. III at 420-421).

{¶ 57} Additionally, while Carbon Solutions briefly touched on hearsay when the exhibits were first introduced at hearing, it did not object to the admission of those exhibits at the conclusion of Staff's testimony (Tr. Vol. III at 407-408). As such, we will not address the arguments raised by Carbon Solutions regarding hearsay. *In re the Application of Duke Energy Ohio, Inc.*, Case Nos. 14-375-GA-RDR, et al., Opinion and Order (Apr. 20, 2022) at ¶ 47. Regardless, Carbon Solutions is well aware that this Commission is not strictly bound by the Ohio Rules of Evidence and routinely relies on publications and reports generated by PJM. Specifically, and as noted by the testimony presented at hearing, our Staff has routinely and consistently relied upon DFAX studies performed by PJM as part of the process in assessing deliverability. (Staff Ex. 2 at 4; Tr. Vol. III at 411, 414-415, 422-423.)

{¶ 58} Moreover, with Staff housing a specialized knowledge of these routine analyses, we find that Carbon Solutions was not prejudiced by the denial of its November 21, 2022 motion for subpoena for a representative of PJM. In fact, we agree completely with the attorney examiner's rationale provided at the hearing, specifically noting that Carbon Solutions failed to either provide any demonstration warranting the presence of an out-of-state nonparty witness or attempt to show that the Commission has the authority to issue an enforceable subpoena to compel an out-of-state nonparty witness to appear in person at hearing before the Commission. (Tr. Vol. I at 9-12.) However, given the objections raised by Carbon Solutions, the Commission directs Staff, in the future, to request and obtain future DFAX studies directly from PJM. If Staff obtains the DFAX studies directly from PJM, Staff experts will be able to sponsor the DFAX studies, without any question of the need for a witness from PJM, because the DFAX studies provide only one input in the determination of deliverability and the recommendation whether the test for deliverability is met is made by Staff pursuant to *Koda*, not by the DFAX studies.

{¶ 59} Moreover, the Commission notes that it would have been permissible to take administrative notice of the DFAX studies utilized by Staff in its deliverability analysis. Though we are not strictly bound by the Ohio Rules of Evidence, Ohio Evid.R. 201 provides "[a] judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally known within the territorial jurisdiction of the trial court or (2) *capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned*." (emphasis added). Carbon Solutions' witness acknowledged the accuracy of the DFAX study when modeling power flows, even those between RTOs (Tr. Vol. II at 251, 253-256). Additionally, it is not uncommon for the Commission to take administrative notice of the actions of PJM that directly impact the cases before us, if appropriate to do so. See, e.g., *In re the Procurement of Standard Service Offer Generation as Part of the Fourth Elec. Security Plan for Customers of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 16-776-EL-UNC, et al., Second Entry on Rehearing (Feb. 24, 2021) at ¶ 22. The Supreme Court of Ohio has held that there is neither

an absolute right for nor a prohibition against the Commission's taking administrative notice of facts outside the record in a case. Instead, each case should be resolved on its facts. The Court further held that the Commission may take administrative notice of facts if the complaining parties have had an opportunity to prepare and respond to the evidence and they are not prejudiced by its introduction. *Canton Storage and Transfer Co. v. Pub. Util. Comm.*, 72 Ohio St.3d 1, 8, 647 N.E.2d 136 (1995) citing *Allen v. Pub. Util. Comm.*, 40 Ohio St.3d at 186, 532 N.E.2d 1307. As demonstrated by these proceedings, Carbon Solutions was undoubtedly provided an opportunity to prepare and respond to the findings in the DFAX studies, as well as Staff's ultimate recommendations regarding deliverability. While we note that this may be the appropriate course of action moving forward, we find nothing improper with the historical practice of requiring an applicant to obtain such studies, as the burden ultimately falls on the applicant to satisfy the statutory criteria and the Commission's rules.

{¶ 60} As a final matter, we find it necessary to address Applicants' various motions for sanctions, which had been deferred by the attorney examiners. As noted above, and astutely observed by the attorney examiners presiding over the hearing, both Applicants and Carbon Solutions have alleged procedural discovery and evidentiary missteps on the part of the other during these proceedings. (Tr. Vol. III at 382-384.) Both parties were provided ample latitude during their respective cross-examination of witnesses to remediate any allegations of unfairness. Furthermore, Ohio Adm.Code 4901-1-16 promotes minimal Commission intervention in the discovery process. Nonetheless, as noted above, these proceedings required an unnecessary level of intervention on the part of attorney examiners. It does not escape our attention that these proceedings have been pending for some time, with the earliest application having been filed in April 2021. As such, parties should have resolved any and all discovery issues by the time the evidentiary hearing was conducted in December 2022. We expect parties before the Commission to work cooperatively with each other during the discovery process and abide by the attorney examiners' rulings on any discovery disputes, if such

rulings are necessary. While the record reflects that the circumstances in these cases may have gone well beyond a standard discovery dispute, we disagree that the behavior rises to the level of sanctionable conduct. Consequently, the Commission will deny Applicants' various motions to assess forfeitures for violations of the Commission's discovery rules.

III. ORDER

{¶ 61} It is, therefore,

{¶ 62} ORDERED, That the applications be approved. It is, further,

{¶ 63} ORDERED, That the Applicants be issued certificates as eligible Ohio renewable energy resource generating facilities. It is, further,

{¶ 64} ORDERED, That Applicants' motions for sanctions be denied. It is, further,

{¶ 65} ORDERED, That a copy of this Opinion and Order be served upon each party of record.

COMMISSIONERS:
Approving:
Jenifer French, Chair
Daniel R. Conway
Dennis P. Deters
John D. Williams

CRW/dr

Summary: Opinion & Order approving the applications of Moraine Wind LLC, Rugby Wind LLC, Elm Creek II Wind LLC, Buffalo Ridge II Wind LLC, Avangrid Renewables LLC, and Barton Windpower LLC for certification as eligible Ohio renewable energy resource generating facilities. electronically filed by Ms. Mary E. Fischer on behalf of Public Utilities Commission of Ohio.