BEFORE
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. 21-0516-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. 21-0517-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. 21-0531-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. 21-0532-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. 21-0544-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. 22-0380-EL-REN

APPLICATION FOR REHEARING OF CARBON SOLUTIONS GROUP, LLC

Dated: October 20, 2023

TABLE OF CONTENTS

Page

I. APPLICATION FOR REHEARING 1

II. MEMORANDUM IN SUPPORT 1

A. INTRODUCTION 1

B. ARGUMENT 2

1. The conclusion that energy from the Applicants' facilities is "deliverable into this state" within the meaning of R.C. 4928.64 is against the manifest weight of the evidence and clearly unsupported by the record. 3

a) The deliverability standard described in the Order requires actual evidence of deliverability. 3

b) The PJM studies relied on here do not satisfy this standard. 4

c) The Order fails to properly "apply" the Koda test. 6

2. The statutes and rules governing the proceeding were not followed and Carbon Solutions Group LLC (CSG) was unduly prejudiced. 7

III. CONCLUSION 12

I. APPLICATION FOR REHEARING

The September 20, 2023 Opinion and Order (Order) in these proceedings approves REN applications by six wind generation facilities located in the MISO and Southern Power Pool (SPP) RTO regions. The Order is unreasonable and unlawful in the following respects:

1. The finding that energy from the Applicants' facilities is "deliverable into this state" within the meaning of R.C. 4928.64(B)(3) is against the manifest weight of the evidence and clearly unsupported by the record, in violation of R.C. 4903.09. The evidence relied on as the basis for this finding does not demonstrate deliverability under the standard set forth in the Order or R.C. 4928.64.

2. The statutes and rules governing the proceeding were not followed and Carbon Solutions Group LLC (CSG) was unduly prejudiced. The finding that CSG was "provided ample due process" (Order ¶ 56) is contrary to law and ignores record violations of R.C. 4903.082, R.C. 4905.26, and O.A.C. Chapters 4901-1 and 4901:1-40.

The Commission should grant rehearing, vacate the Order, and issue an order on rehearing denying the applications.

II. MEMORANDUM IN SUPPORT

A. INTRODUCTION

The issue is these cases is whether energy from the Applicants' six renewable energy facilities, spread across North and South Dakota, Minnesota, and Iowa, are "deliverable into this state" within the meaning of R.C. 4928.64(B)(3). "The issue of delivery is a mixed question of law and fact."[1] The Order recites the correct legal standard for "deliverable," but fails to apply this standard to the facts of this case. The legal conclusions regarding deliverability are based on assumptions, not evidence, thus violating the very principle the Order purports to enunciate—that deliverability must be demonstrated and proven, not assumed.

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[1] *Akin v. Cont'l Ins. Co.,* No. 00-CA-00064, 2000 WL 1886305, at *3 (Ohio Ct. App. Dec. 26, 2000). *See also In re Est. of Kenney,* No. 13384, 1993 WL 169113, at *1–2 (Ohio Ct. App. May 13, 1993) (In dispute over validity of a will, "delivery . . . is a mixed question of law and fact that must be determined from all the facts and circumstances.").

The Order finds that electricity is "deliverable into" Ohio from a non-contiguous state if the electricity is "capable of being physically delivered" to Ohio, and that this capability must be demonstrated by a power flow study showing the facility has an actual, non-negligible impact on transmission lines in Ohio based on DFAX values. (Order ¶¶ 45, 47.) The PJM cover letters accompanying the DFAX values Staff reviewed *do not* measure what impact, if any, the Applicants' facilities have on transmission lines *anywhere* in PJM, let alone in Ohio. These studies merely model the impact to transmission lines in Ohio "if" these facilities "were to deliver their energy into PJM." (*Id*. ¶ 48.) The DFAX values in these reports do not measure *actual* transmission line impacts caused by the Applicants' facilities, so the values offer no support for the Applicants' claims of deliverability.

To the extent the legal standard for deliverability incorporates a requirement to demonstrate satisfaction of the standard with a specific type of evidence (*i.e.,* a power flow study prepared by an RTO), the Commission must examine that evidence and determine whether it supports Staff's conclusions. Staff's recommendations necessarily assume deliverability from MISO and SPP into PJM, and pointing this out is not an assault on "precedent." "The Public Utilities Commission must base its decision in each case upon the record before it."[2] The record *in this case* does not support Staff's recommendations and the Order is unreasonable and unlawful by adopting them.

B. ARGUMENT

"In determining whether any order of the commission is unlawful and unreasonable, inquiry should therefore be made, not only into the evidence, to determine whether the order is properly supported by the evidence, but also into the proceedings during the course of the hearing, to determine whether the statutes relative to procedure have been followed and whether the law applicable to the proceeding has been properly applied."[3] The Order recites the correct legal standard for deliverability but the evidence does not support a finding that the standard has been meet, and the statutes applicable to procedure have not been followed.

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[2] *Tongren v. Pub. Util. Comm.,* 1999-Ohio-206, 85 Ohio St. 3d 87, 91, 706 N.E.2d 1255, 1258.

[3] *Vill. of St. Clairsville v. Pub. Util. Comm.* (1921), 102 Ohio St. 574, 579, 132 N.E. 151, 152.

1. The conclusion that energy from the Applicants' facilities is "deliverable into this state" is against the manifest weight of the evidence and clearly unsupported by the record.

This Application for Rehearing does not challenge the Commission's legal conclusions regarding the meaning of the term "deliverable," or the type of evidence needed to demonstrate deliverability. These issues present questions of law and the Commission has answered these questions. The dispute in this case centers around questions of fact: whether the power flow studies submitted *in this case* satisfy the deliverability standard explained in *Koda* and adopted in the Order.[4] The Order acknowledges that "the main issue raised by [CSG] is the use of the specific DFAX studies utilized by the Applicants," but does not satisfactorily address this issue. (Order ¶ 48.)

a) The deliverability standard described in the Order requires actual evidence of deliverability.

To participate in Ohio's REC market, R.C. 4928.64 requires out of state facilities to show that electricity from the facility is "deliverable into this state." This statutory deliverability requirement presents a question of law, and because the statute pertains to "highly specialized issues," the Commission's interpretation is entitled to deference.[5] Despite the flawed application of the rules of statutory construction, [6] the Order eventually lands on the same technical meaning of

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[4] *See Koda Energy LLC*, Case No. 09-555-EL-REN, March 31, 2011, Finding and Order.

[5] *In re Application of Ohio Power Co.,* 2015-Ohio-2056, ¶ 14, 144 Ohio St. 3d 1, 4, 40 N.E.3d 1060, 1064 ("[W]e may rely on the expertise of a state agency in interpreting a law where highly specialized issues are involved and where agency expertise would, therefore, be of assistance in discerning the presumed intent of our General Assembly [.]") (Internal quotations omitted).

[6] The dictionary definitions of "deliverable" cited in Paragraph 45 of the Order may be "unambiguous" but the application of this term in the relevant statutory context is not; that is why the Commission commenced the rulemaking discussed in Paragraph 46. *See also* R.C. 1.42 ("Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.")*; Youngstown Sheet & Tube Co. v. Lindley* (1978), 56 Ohio St.2d 303, 309, 383 N.E.2d 903 ("It is established law in Ohio that, where a word has a technical definition differing from its dictionary definition, it shall be construed according to the former."); *State v. Rentex, Inc.*, 51 Ohio App.2d 57, 365 N.E.2d 1274 (8th Dist.1977) ("Where a statute regulates a specialized industry utilizing terms which have acquired a technical meaning in the industry, the words of the statute require a technical interpretation considered in the light of the statutory purpose.").

"deliverable" that CSG has argued all along.[7] "By predicating its analysis solely on a single word in a definition from a single dictionary, PUCO provides a good example of how dictionaries can be misused."[8]

In the rulemaking following enactment of R.C. 4928.64, the Commission recognized that renewable resources in neighboring states *could* be deliverable into Ohio based on the physical proximity of these resources to the state, but specifically rejected "a blanket presumption of deliverability for any and all generation facilities within PJM and MISO [.]" (Order ¶ 46.) Commission rules therefore define "deliverable" as "physically deliverable."[9] Proof of "actual delivery" is not required, but there must be *actual evidence* of deliverability, and this evidence must consist of a power flow study demonstrating the *actual impact* of the facility on Ohio transmission. The mere presence of a facility in MISO or PJM is not sufficient.

b) The PJM studies relied on here do not satisfy this standard.

The issue here is whether the Applicants' facilities in MISO and SPP are "deliverable into" Ohio, and under the deliverability standard described in the Order, that question may only be answered with power flow studies showing that these facilities generate electricity that migrates from MISO/SPP into PJM, and across PJM transmission to lines that begin or end in Ohio. That is not what the studies they submitted show.

The PJM studies Staff relied on purport to represent transmission line impacts in Ohio "if" the Applicants' facilities "were to deliver their energy into PJM." (Order ¶ 48.) PJM could have explained what it meant by "deliver" but CSG was not permitted to obtain testimony from PJM. Nevertheless, the data accompanying the cover letters in which this statement appears confirms that PJM did *not* attempt to analyze whether the Applicants' facilities generate power flows that impact transmission in PJM. As discussed below, the DFAX values in these reports assume deliverability into PJM and model the hypothetical impact of these facilities on Ohio transmission. The studies do not measure the actual, demonstrable impact of the facilities on transmission *anywhere*. Thus, the studies

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[7] *See* CSG Initial Brief at 4-6.

[8] *In re Ohio Edison Co.,* 2019-Ohio-2401, ¶ 66, 157 Ohio St. 3d 73, 89–90, 131 N.E.3d 906, 922–23 (subsequent history omitted).

[9] O.A.C. 4901:1-40-01(F).

offer no factual support for the conclusion that electricity from these facilities is "capable of being physically delivered" from MISO or SPP to Ohio.

The Order confirms that REN applicants in non-contiguous states are not entitled to "a blanket presumption of deliverability for any and all generation facilities within PJM and MISO [.]" (Order ¶ 46.) PJM's studies are predicated on exactly such a presumption, and by accepting these studies as evidence of deliverability, Staff's recommendations incorporate this presumption.

The discussion at Paragraph 48 of the Order is not responsive to the evidentiary gap in the Applicants' case. Calling attention to what the purported evidence of deliverability *actually says* is not a "direct contradiction" to any legal argument about "actual delivery." (*See id*.) CSG never claimed the Applicants must produce contracts or other evidence of "actual delivery" into PJM. To meet the standard explained in the Order, they must produce a power flow study showing that their facilities *actually impact* transmission in PJM. The studies they submitted are based on a presumption of deliverability into PJM, not an analysis of what if any impact the facilities have on transmission in PJM. Requiring evidence of an *actual impact* on Ohio transmission is not the same thing as requiring evidence of "actual delivery."

Next, the Order notes that "our well-stablished 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." (Order ¶ 48.) The problem with the studies Staff relied on has nothing to do with the entity that prepared them. The Order fails to consider the purpose of requiring power flow studies in the first place—to distinguish between facilities that *may* impact Ohio transmission based on their proximity to the state from facilities where such impact is *actually shown* by a power flow study quantifying *actual* transmission line impacts. In *Koda*, the power flow study showed that the applicant's MISO-based facility had only a nominal impact on MISO transmission in Ohio, and therefore could not be considered "deliverable into" Ohio.[10] The MISO study did no purport to analyze power flows from the Applicant's facility into PJM, or take a wild guess at power flows and transmission line impacts within MISO. The study presented actual, quantifiable transmission line impacts. The studies here did not.

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[10] *Koda* Staff Report at 7-8.

Here, unlike *Koda*, the Applicants' facilities are in RTOs that do not manage transmission in Ohio. This is an undisputed fact, not an "argument," and *Koda* does not specifically address this situation. *Koda* says nothing about which entity or entities should prepare power flow studies if the facility is not in an RTO that provides transmission in Ohio. The principles and methods discussed in *Koda* must be applied to this case, and the facts are different. CSG has *not* argued that this factual distinction disqualifies the Applicants' facilities from participating in the Ohio REC market. But by the same token, this factual distinction does not relieve the Applicants of their burden to demonstrate that energy from their facilities is "capable of being physically delivered" to Ohio. In the context of the deliverability standard, "capable" does not mean theoretically possible—that notion was shut down in the rulemaking. (*See* Order ¶ 46.) Capability must be proven with a power flow study that measures the actual impact of the facility on Ohio transmission, and no such studies were produced here.

"The Public Utilities Commission must base its decision in each case upon the record before it."[11] As an evidentiary fact, the assumption of delivery into PJM is unrebutted. To the extent power flow studies are the only acceptable evidence of deliverability, *the facts of this case* do not meet the legal standard the Order so vigorously defends. None of the discussion in Paragraph 48 of the Order (or elsewhere) is responsive to this failure of proof. The Commission has failed to "explain its rationale, respond to contrary positions, and support its decision with appropriate evidence."[12]

c) The Order fails to properly "apply" the *Koda* test.

The Order purports to "apply" the *Koda* test to the Applicants' facilities through the rote exercise of confirming that the DFAX values in the PJM studies meet or exceed the *Koda* thresholds. (Order ¶ 49.) These values are meaningless here.

To properly "apply" the *Koda* test, the purpose of the test and rationale for its development must also be considered. DFAX values are presumed to represent the actual impact of a facility on Ohio transmission. That is why Staff developed the test—because the test confirms whether facilities that *might* have an impact on Ohio transmission *do* have an impact on Ohio transmission sufficient to establish

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[11] *Tongren v. Pub. Util. Comm.,* 1999-Ohio-206, 85 Ohio St. 3d 87, 91, 706 N.E.2d 1255, 1258.

[12] *In re Application of Columbus S. Power Co.,* 2011-Ohio-1788, ¶ 30, 128 Ohio St. 3d 512, 519.

deliverability. The validity of this test depends entirely on the integrity of the DFAX values. If figures represented as "DFAX values" are not the product of a study that measured or estimated actual transmission line impacts from the generation source to Ohio, then the values are not reliable indicators of deliverability. The unreliability of the figures at issue here is confirmed by the chart in paragraph 49 of the Order, which shows virtually the same impact from a half dozen facilities spread across four states and two RTOs.[13] The Barton 1 and 2 facilities were modelled *together* and resulted in the same impact to the same line when Barton 2 was studied separately.[14] These "DFAX values" do not satisfy the *Koda* test for physical deliverability.

CSG has not asked the Commission to "abandon a sound and long-standing rationale for determining deliverability" (Order ¶ 48), nor has it "proffer[ed] various alternatives for the Commission to consider." (*Id*. ¶ 47.) The legal standard for deliverability requires an applicant to demonstrate that energy from the facility is capable of being physically delivered into Ohio, and this capability must be proven with power flow study showing the actual transmission line impacts of the facility. The evidence does not support a conclusion that this standard has been met, and the Order makes no attempt to explain otherwise. The order on rehearing must address the actual evidence in this case, and not merely the legal standard or test for evaluating this evidence.

2. The statutes and rules governing the proceeding were not followed and Carbon Solutions Group LLC (CSG) was unduly prejudiced.

The procedural law governing this proceeding was not followed and CSG was prejudiced. The attempts to explain-away these procedural irregularities only magnify their prejudicial effect.

Given the requirement to prove deliverability with power flow studies, these studies are the most importance piece of evidence in any REN proceeding involving an applicant/facility in a non-contiguous state. CSG entered the proceeding with an inherent information disadvantage. Commission rules require REN applicants to supply evidence of deliverability with their applications, but the

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[13] *See* CSG Initial Brief at 8-9.

[14] *See* Tr. III at 358:4-359:7.

Applicants did not do so.[15] Nor did the applicants in the 10 previous applications approved since 2020.[16] CSG's participation in this proceeding brought to light serious issues with data integrity and transparency that the Order appropriately recognizes need to change.[17]

Commission rules allow "any interested person" to intervene and object to "any application" for REN certification.[18] The grant of intervention gave CSG discovery rights under R.C. 4903.082. "One of the purposes of the Rules of Civil Procedure is to eliminate surprise."[19] It is without dispute that CSG made a discovery request for all information the Applicants relied on as evidence of deliverability, that the PJM studies were responsive to this request, and that the Applicants produced incomplete or inaccurate studies throughout this proceeding.[20] Complete and accurate studies involving the correct facilities did not surface until *after* the Applicants presented their case. (*See* Order ¶ 56.)

When the Commission elected to hold an evidentiary hearing, CSG's right "to be heard" and "to have process to enforce the attendance of witnesses" was triggered under R.C. 4905.26. Courts recognize that even in agency proceedings, "the failure to allow a party to present witnesses or otherwise develop their case is grounds for reversing the decision [.]"[21] Unable to make complete sense of the information provided *prior* to hearing, CSG elected to solicit testimony directly

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[15] O.A.C. 4901:1-40-04(D). The rule directs "the entity seeking facility qualification" to "file an application" that "shall include a determination of deliverability to the state in accordance with paragraph (F) of rule 4901:1-40-01 of the Administrative Code."

[16] *See* CSG Initial Brief at 5-6.

[17] The Order directs Staff to obtain power flow studies directly from the RTO who prepared them (as opposed to obtaining them second hand through the applicant, as was done here). Order ¶ 58. Staff filed a copy of the study for the last application in this proceeding (Case No. 22-380) and this practice should continue as well (as opposed to honoring an applicant's request to treat the studies as confidential, as was done here for the other five applications). *See* CSG Initial Brief at 7.

[18] O.A.C. 4901:1-40-04(D).

[19] *Jones v. Murphy*, 12 Ohio St.3d 84, 86, 465 N.E.2d 444, 446 (1984).

[20] *See* CSG Initial Brief at 7-8.

[21] *Kappan v. Dep't of Job & Fam. Servs.,* 2013-Ohio-4964, ¶ 14, 4 N.E.3d 1082, 1084.

from the source and, importantly, notified the parties and hearing examiners of its intent to do so several weeks prior to both scheduled hearing dates.[22] In both instances, CSG's inquiries into the preferred protocol for getting the subpoena signed were not addressed. As a result, no subpoena was signed or served to PJM.

The Order dismisses the Applicants' failure to provide complete and accurate copies of the most important evidence in the case as a "minor error" that doesn't really matter anyway—"*[m]ost importantly*, Staff had access to the correct studies in its review of the applications" and the Commission could have taken "administrative notice" of these studies in any event. (Order ¶¶ 56, 59.) As for testimony from PJM, Staff's "specialized knowledge" of these "routine analyses" rendered testimony from the entity that performed the analysis unnecessary, according to the Order. (*Id*. at ¶¶ 56, 58.) None of these rationalizations address the basic point: this was a contested proceeding, and *all* parties were entitled to a meaningful opportunity to challenge the evidence and build a record. Whether Staff was prejudiced by actions that clearly prejudiced CSG is irrelevant.

The discussion in the Order of "administrative notice" is entirely misplaced. While it is certainly true that "the Commission may take administrative notice of facts *if the complaining parties have an opportunity to prepare and respond to the evidence* and they are not prejudiced by its introduction" (Order ¶ 59), CSG had *no opportunity* to respond to accurate and complete DFAX studies until halfway through hearing, and even then, the belated attempts to "correct" the record took several tries. To then say that CSG "was undoubtably provided an opportunity to prepare and respond to" these studies is truly remarkable. (*Id*.) That (allegedly) complete and correct studies were "admitted into the record *at hearing*" and CSG was allowed to cross-examine Staff is not an adequate substitute for "thorough and adequate preparation for participation in commission proceedings."[23] (*See Id*. ¶ 56 (emphasis added).) Staff's possession of the correct information does not cure the prejudice to CSG of not having it.

As for the subpoena to PJM, merely giving CSG notice of the hearing and inviting it to show up did not satisfy CSG's right "to enforce the attendance of witnesses." R.C. 4905.26. The Order first claims that CSG "failed to either provide any demonstration warranting the presence of an out-of-state nonparty witness or

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[22] *See* CSG Initial Brief at 17-20.

[23] O.A.C. 4901-1-16(A). *See also* R.C. 4903.082 ("All parties and intervenors shall be granted ample rights of discovery.")

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." (Order ¶ 58.) The relevance and materiality of testimony from PJM cannot be reasonably questioned—the Commission is essentially relying on PJM's alleged determination of deliverability, not Staff's, and testimony about what assumption of deliverability stated in the DFAX reports is not only relevant to the issue in dispute, but dispositive. In other administrative contexts, "[t]here is abundant case law that it is unreasonable for a hearing officer to give more credence to uncorroborated hearsay evidence than to sworn testimony"[24] and this principle applies with equal force here.

The Order also ignores the correspondence to the bench and parties specifically proposing alternatives to a "live" appearance at hearing through a pre-hearing deposition and submission of the transcript, or by participation at hearing via zoom or teleconference, both of which are routinely offered to accommodate out-of-state witnesses.[25] As for enforcement of the subpoena, that issue is irrelevant because no subpoena was issued in the first place. By the time this issue was argued *at* hearing, it was impossible to give reasonable and sufficient notice *prior* to hearing. In any event, had CSG issued a subpoena and had it become necessary to enforce the subpoena, enforcement of out-of-state subpoenas is governed by the law of the state where the witness is located.[26] Whether the Commission itself could enforce the subpoena is irrelevant and, frankly, CSG's problem, not the Commission's. All CSG asked of the Commission was to sign a subpoena so the process of service and enforcement (if necessary) could commence.

The Commission—not Staff or PJM—is responsible for deciding whether energy from the Applicants' facilities is "deliverable into this state" and this decision must be based on the record evidence *in this case*. The Commission is supposed to serve as a neutral fact-finder and adjudicator, not an advocate for Staff

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[24] *Kappan v. Dep't of Job & Fam. Servs.,* 2013-Ohio-4964, ¶ 21, 4 N.E.3d 1082, 1085 (internal quotation omitted).

[25] CSG Initial Brief at 18-19.

[26] *See id.* at 19 n.91.

recommendations.[27] Staff's recommendations here are certainly relevant, but they are by no means conclusive, and the very purpose of the adversarial process is for parties with competing interests to challenge each other's evidence and present competing views. This process is especially beneficial where, as here, issues of first impression are involved. Neither *Koda* nor the REN proceedings that followed were actually litigated and few, if any, even involved an appearance of counsel. To repeatedly call this prior history "precedent" is to fundamentally misunderstand the meaning of the term. "When an issue is not actually litigated and decided in the previous proceeding, collateral estoppel cannot apply."[28]

The Commission has not only the authority to reject Staff recommendations lacking "evidence and sound reasoning," but an affirmative obligation to do so.[29] The deliverability recommendations made here lack both, and testimony from PJM would have confirmed this. "PUCO staff's wishful thinking cannot take the place of real requirements, restrictions, or conditions imposed by" statutory deliverability requirements.[30] "Of course, PUCO can adopt reports prepared by its staff and incorporate them into its order, but these reports must satisfy the requirements of the statute [.]"[31]

This was the first contested proceeding to address the proper interpretation and application of the statutory deliverability standard. Had the statutes and rules governing contested proceedings been followed, the correct reports would have been served prior to hearing and the author of these reports would have been

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[27] *See E. Ohio Gas Co. v. Pub. Utilities Comm'n of Ohio,* 133 Ohio St. 212, 221–22, 12 N.E.2d 765, 771 (1938) ("The commission, being a fact-finding body, had in some respects the same function as a jury."). Moreover, Attorney Examiner rulings and recommendations are not binding on the Commission, either. "The findings and recommendations of such examiners are advisory only and do not preclude the commission from taking further evidence." R.C. 4901.18.

[28] *In re Application of E. Ohio Gas Co.,* 2014-Ohio-3073, ¶ 33, 141 Ohio St. 3d 336, 345, 24 N.E.3d 1098, 1105. *See also O'Keeffe v. McClain*, 2021-Ohio-2186, 166 Ohio St. 3d 25, 28, 182 N.E.3d 1108, 1113, quoting *Natl. Cable Television Assn., Inc. v. Am. Cinema Editors, Inc.*, 937 F.2d 1572, 1581 (Fed.Cir.1991) ("When an issue is not argued or is ignored in a decision, such decision is not precedent to be followed in a subsequent case in which the issue arises.").

[29] *In re Ohio Edison Co.,* 2019-Ohio-2401, 157 Ohio St. 3d 73, 78, 131 N.E.3d 906, 914.

[30] *Id.* ("The PUCO staff's wishful thinking cannot take the place of real requirements, restrictions, or conditions imposed by the commission for the use of DMR funds.").

[31] *In re Application of FirstEnergy Advisors,* 2021-Ohio-3630, 166 Ohio St. 3d 519, 524–25, 188 N.E.3d 140, 146, ¶ 22 (internal quotes omitted) (referring to R.C. 4903.09).

permitted to testify. Questions about the form or substance of these reports would have been answered, the record would be complete, and the Commission could make a reasonable, rational, and evidence-based conclusion as to whether the legal standard for deliverability has been met. Decisions rendered in this manner are properly characterized as "precedent." The precedent set in this case—especially regarding procedural matters—is not a very good one.

III. CONCLUSION

The Commission has decided that power flow studies are the *only* acceptable evidence of deliverability and CSG is not challenging that decision. But the statutory purpose of the deliverability requirement cannot be fulfilled in an individual case by focusing on the form of the applicant's power flow study rather than its substance. The studies submitted in this case do not satisfy the deliverability standard the Order purports to endorse. The record in this proceeding leaves the Commission with no alternative but to issue an order on rehearing denying the applications.

Dated: October 20, 2023

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Carbon Solutions Group, LLC's Application for Rehearing was served by electronic mail this 20th day of October 2023, to the following:

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Summary: App for Rehearing Application for Rehearing of Carbon Solution Group LLC. electronically filed by Mr. David Weru on behalf of Carbon Solution Group LLC..