SLIP OPINION NO. 2026-OHIO-3103

IN RE APPLICATION OF MORAINE WIND, L.L.C., FOR CERTIFICATION AS AN ELIGIBLE OHIO RENEWABLE ENERGY RESOURCE GENERATING FACILITY; CARBON SOLUTIONS GROUP, L.L.C., APPELLANT; PUBLIC UTILITIES COMMISSION, APPELLEE; AVANGRID RENEWABLES, L.L.C., ET AL., INTERVENING APPELLEES; BLUE DELTA ENERGY, L.L.C., INTERVENING APPELLEE; NORTHERN INDIANA PUBLIC SERVICE COMPANY, L.L.C., INTERVENING APPELLEE.

[Until this opinion appears in the Ohio Official Reports advance sheets, it may be cited as *In re Application of Moraine Wind, L.L.C.*, Slip Opinion No. 2026-Ohio-3103.]

Public utilities—Public Utilities Commission's order approving applications of six out-of-state wind farms as eligible Ohio renewable-energy-resource-generating facilitates is not against the manifest weight of the evidence or contrary to law—Commission's order affirmed.

(No. 2024-0098—Submitted June 25, 2025—Decided August 18, 2026.)

APPEAL from the Public Utilities Commission, Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN, and 22-380-EL-REN.

DORRIAN, J., authored the opinion of the court, which KENNEDY, C.J., and DEWINE, HAWKINS, and SHANAHAN, JJ., joined. FISCHER, J., concurred in part and dissented in part, with an opinion joined by WILLAMOWSKI, J. JULIA L. DORRIAN, J., of the Tenth District Court of Appeals, sat for BRUNNER, J. JOHN R. WILLAMOWSKI, J., of the Third District Court of Appeals, sat for DETERS, J.

DORRIAN, J.

{¶ 1} In the proceedings below, six wind farms located in four different states in the Upper Midwest filed applications with appellee, the Public Utilities Commission of Ohio (the "commission" or "PUCO"), to be certified as eligible Ohio renewable-energy-resource-generating facilities. The six wind farms are intervening appellees Moraine Wind, L.L.C., Rugby Wind, L.L.C., Elm Creek II Wind, L.L.C., Buffalo Ridge II Wind, L.L.C., Barton Windpower 1, and Barton Windpower, L.L.C. (collectively, "the applicants"). The wind farms are wholly owned subsidiaries of intervening appellee, Avangrid Renewables, L.L.C.

{¶ 2} The commission approved each application and issued a certificate to each wind farm as an eligible Ohio renewable-energy-resource-generating facility. Under Ohio law, once a generating facility is certified as a qualifying renewable-energy resource, it can sell renewable energy in Ohio.

{¶ 3} Appellant, Carbon Solutions Group, L.L.C. ("CSG"), whose clients include Ohio-based renewable-energy developers and facilities, appealed the commission's order issuing the certificates. CSG argues that the record does not support the commission's findings that the facilities meet the criteria to be certified as a renewable-energy resource and that the commission violated R.C. 4903.09 when it failed to address CSG's claim that the record lacked sufficient evidence supporting the decision to issue the certificates. CSG also argues that the commission failed to follow certain statues and rules governing the proceeding. We find that CSG's arguments lack merit. Therefore, we affirm the commission's order.

I. CRITERIA TO BE A QUALIFYING RENEWABLE-ENERGY RESOURCE

{¶ 4} R.C. 4928.64(B)(1) requires electric-distribution utilities and electric-services companies supplying retail-electric service in Ohio to provide a portion of the electricity supplied to retail customers from a "qualifying renewable energy resource," such as solar power or wind energy, *see* R.C. 4928.01(A)(37) (defining "renewable energy resource" to include solar power and wind energy); R.C. 4928.64(A)(1) (indicating that as used in R.C. 4928.64, a "qualifying renewable energy resource" is defined in R.C. 4928.01). Electric-distribution utilities may purchase renewable-energy resources from both in-state and out-of-state qualifying generating facilities through contracts with electric suppliers or through the purchase of renewable-energy credits. R.C. 4928.64(B)(1) and (3); R.C. 4928.645; Adm.Code 4901:1-40-04(C).[1] A generating facility seeking to supply renewable-energy resources in Ohio must file an application with the commission to be certified as a qualifying renewable-energy resource. *See* Adm.Code 4901:1-40-04(D).

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1. A renewable-energy credit is created for each megawatt hour of electricity generated by a renewable-energy resource. Adm.Code 4901:1-10-01(AA).

> Once electricity generated from a renewable-energy resource is delivered to the power grid, it becomes indistinguishable from electricity generated from traditional resources, such as coal or natural gas. A [renewable-energy credit] is a nontangible, tradable commodity that serves as a mechanism for utilities and regulators to track renewable-energy purchases.

In re Rev. of Alternative Energy Rider Contained in Tariffs of Ohio Edison Co., 2018-Ohio-229, ¶ 6.

{¶ 5} To be certified as a qualifying renewable-energy resource, one of the criteria a facility located outside Ohio must prove is that the renewable energy generated "can be shown to be deliverable into this state." R.C. 4928.64(B)(3)(b). For facilities that are in states not contiguous to Ohio, the commission's rules define "[d]eliverable into this state" to "include electricity originating from other locations, pending a demonstration that the electricity is physically deliverable to the state." Adm.Code 4901:1-40-01(F).

{¶ 6} Because tracking energy from a generating facility to a specific load location would be impossible, the commission adopted a test in 2011 that it uses to determine whether energy from a facility in a noncontiguous state is deliverable into Ohio. *See generally In re Application of Koda Energy, L.L.C.*, PUCO No. 09-555-EL-REN, 2011 WL 1144649 (Mar. 23, 2011). In *Koda*, the commission utilized distribution-factor ("DFAX") or power-flow studies conducted by PJM Interconnection ("PJM") and the Midcontinent Independent System Operator ("MISO"), which were the two regional-transmission organizations ("RTO") operating in Ohio at that time.[2] *Id.* at *2. A DFAX analysis is a computer model of the transmission system that measures the change in power flows across a transmission line caused by a generating facility's adding power onto the transmission system. The commission uses these studies to determine whether power flows modeled within PJM and MISO from generating facilities located outside Ohio and its contiguous states have an impact on power flows over transmission lines within Ohio. *Id.*

{¶ 7} Under the test developed in *Koda*, the generating facility must have a "significant impact" on a transmission line in Ohio, which the commission defined

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2. MISO and PJM are two RTOs that are designated by the Federal Energy Regulatory Commission to coordinate the movement of wholesale electricity within an assigned region. *See Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-5853, ¶ 5-6. MISO no longer operates in Ohio, and PJM is currently the sole manager of the wholesale-electricity market in Ohio. *See Cleveland Elec. Illum. Co. v. Cleveland*, 2021-Ohio-4463, ¶ 5.

as exceeding a threshold DFAX value of greater than 5 percent and the megawatt equivalence[3] of the impact is greater than one megawatt. *Id*. Thus, a facility located in a noncontiguous state can prove that its renewable energy is physically deliverable into Ohio by presenting an RTO's power-flow study that shows a significant impact to an Ohio transmission line, i.e., one that exceeds a DFAX value of 5 percent and the megawatt equivalence of the impact is greater than one megawatt. *Id.* at *2-3.

II. FACTS AND PROCEDURAL HISTORY

{¶ 8} The applicants are six out-of-state wind-energy-generating facilities. The Moraine Wind and Elm Creek II Wind facilities are in Minnesota, Rugby Wind's facility is in North Dakota, Buffalo Ridge II Wind's facility is in South Dakota, and the two Barton facilities are in Iowa. Each applicant filed an application with the commission to be certified in Ohio as a qualifying renewable-energy resource. CSG intervened and opposed each application. Avangrid Renewables and two interested companies, intervening appellees Blue Delta Energy, L.L.C., and Northern Indiana Public Service Company, L.L.C. ("NIPSCO"), also intervened and supported each application.

{¶ 9} The commission held a three-day evidentiary hearing in December 2022. At the hearing, the commission heard testimony from witnesses on behalf of the applicants, CSG, and the commission's staff. The parties filed initial and posthearing briefs in early 2023.

{¶ 10} In September 2023, the commission issued an order approving all six applications. PUCO Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN, and 22-380-EL-REN, 2023 WL 6247423, ¶ 1, 62 (Sept. 20, 2023). The commission reviewed the applications to determine whether each facility satisfied three statutory criteria: (1) R.C.

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3. The megawatt equivalence of the impact is calculated by multiplying the DFAX value by the facility's nameplate capacity. *Koda* at *2.

4928.64(B)(3)(b)'s requirement that the facility's generation resources be deliverable into Ohio, (2) the requirement that the facility be recognized as a renewable-energy resource in accordance with R.C. 4928.64(A)(1) and 4928.01(A)(37), and (3) R.C. 4928.64(A)(1)(a)'s requirement that the facility was placed in service on or after January 1, 1998. No party challenged the second or third statutory criteria, so the only issue before the commission was whether the renewable energy generated by the facilities was "shown to be deliverable into this state" as required by R.C. 4928.64(B)(3)(b).

{¶ 11} To decide this issue, the commission relied on dictionary definitions to determine the plain meaning of the word "deliverable" because no technical definition is provided in the Revised Code. 2023 WL 6247423 at ¶ 45. For purposes of R.C. Ch. 4928, the commission defined "'deliverable' as being capable of delivery." *Id.* According to the commission, it "appears to be undisputed in these proceedings" 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." *Id.* The commission further noted that its prior interpretation of "deliverable" "has aligned with the statutory language by requiring a study [of facilities in noncontiguous states] to 'demonstrate that some portion of the facility's generation is capable of being physically delivered to the state.'" *Id.* at ¶ 46, quoting *In re Adoption of Rules for Alternative and Renewable Energy Technology, Resources, & Climate Regulations*, PUCO No. 08-888-EL-ORD, 2009 WL 1759671, 22-23 (June 17, 2009).

{¶ 12} In its order, the commission reaffirmed the use of the *Koda* test as the method for determining whether generation produced by an out-of-state facility is deliverable into Ohio as required by R.C. 4928.64(B)(3)(b). 2023 WL 6247423 at ¶ 48-49. The commission applied that test to each of the six applications and, based on power-flow studies conducted by PJM, determined that each facility met the thresholds established in *Koda*. *Id.* at ¶ 49-50. Accordingly, the commission determined that each applicant's wind farm satisfied the statutory requirement that the generation produced by the facility be physically deliverable into Ohio and issued a certificate to each wind farm. *Id.* at ¶ 49-51. On January 17, 2024, CSG filed a notice of appeal with this court from the commission's September 2023 order.[4]

III. STANDARD OF REVIEW

{¶ 13} "R.C. 4903.13 provides that a PUCO order shall be reversed, vacated, or modified by this court only when, upon consideration of the record, the court finds the order to be unlawful or unreasonable." *Constellation NewEnergy, Inc. v. Pub. Util. Comm.*, 2004-Ohio-6767, ¶ 50. The appellant bears the burden of demonstrating that the commission's order is unlawful or unreasonable. *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 51 Ohio St.3d 150, 154 (1990).

{¶ 14} A commission order is unlawful if it rests on an erroneous interpretation of the law or if the commission fails to follow procedures prescribed by statute or commission rule. *In re Application of Firelands Wind, L.L.C.*, 2023-

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4. CSG applied to the commission for rehearing on October 20, 2023. On November 16, the commission issued an entry granting CSG's rehearing application "for the limited purpose of further consideration of the matters specified therein." PUCO Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN, and 22-380-EL-REN, 2023 WL 8118256, ¶ 19 (Nov. 16, 2023).

CSG's appeal to this court from the commission's September 2023 order was filed while CSG's rehearing application was under further consideration by the commission. The commission filed a motion to dismiss for lack of jurisdiction, arguing that the matter was still pending before it on rehearing. CSG filed a response in opposition, claiming that its rehearing application was denied by operation of law under R.C. 4903.10 and that the appeal was therefore ripe for review. In August 2024, we held that the commission is prohibited from granting a rehearing application for the limited purpose of further considering the matters raised in the application. *In re Application of Moraine Wind, L.L.C.*, 2024-Ohio-3224, ¶ 2-3 ("*Moraine Wind I*"). We determined that rehearing applications granted for this limited purpose—and that are not otherwise granted within 30 days of filing—are denied by operation of law under R.C. 4903.10. *Id.* at ¶ 3. Accordingly, we concluded that CSG's appeal was timely filed and denied the commission's motion to dismiss. *Id*. at ¶ 28.

Before we issued that decision, the commission issued a second rehearing entry on February 21, 2024, in which it substantively addressed the issues raised in CSG's application for rehearing. However, given that we held in *Moraine I* that CSG's application for rehearing was denied by operation of law 30 days after it was filed, the February 21, 2024 entry is a nullity and unreviewable on appeal.

Ohio-2555, ¶ 12. This court conducts a de novo review of questions of law. *Id.* at ¶ 13. This court has “complete and independent power of review as to all questions of law” in appeals from the commission. *Ohio Edison Co. v. Pub. Util. Comm.*, 1997-Ohio-196, ¶ 16.

{¶ 15} A commission order is unreasonable when it is manifestly contrary to the evidence in the record or when the evidence is clearly insufficient to support the order. *Firelands* at ¶ 16. Likewise, an order is unreasonable when it is internally inconsistent. *Id.*, citing *Ridgeview Ctr., Inc. v. Lorain Cty. Bd. of Revision*, 42 Ohio St.3d 30, 31 (1989).

{¶ 16} In adjudicating whether a commission order is unreasonable, we do not reweigh the evidence or second-guess the commission on questions of fact. *In re Complaints of Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 2017-Ohio-7566, ¶ 35, citing *Ohio Consumers' Counsel v. Pub. Util. Comm.*, 2007-Ohio-4276, ¶ 29. We will not disturb the commission's factual determinations when the record contains sufficient probative evidence to show that the commission's order was not “‘manifestly against the weight of the evidence and is not so clearly unsupported by the record as to show misapprehension, mistake or willful disregard of duty.’” *Monongahela Power Co. v. Pub. Util. Comm.*, 2004-Ohio-6896, ¶ 29, quoting *AT&T Communications of Ohio, Inc. v. Pub. Util. Comm.*, 2000-Ohio-422, ¶ 27. Finally, an order is unreasonable when the commission's exercise of its discretion in making determinations within broad statutory criteria falls outside the zone of permissible statutory construction. *Firelands* at ¶ 15.

IV. ANALYSIS

{¶ 17} CSG raises two propositions of law on appeal. Under its first proposition of law, CSG challenges the commission's determination that the applicants' generating resources are deliverable into Ohio. In its second proposition of law, CSG argues that the commission failed to follow certain statutes and rules governing the certification proceeding. The commission has filed a merit brief in defense of the commission's order. Two briefs urging affirmance of the commission's order were filed—one by the applicants and Avangrid Renewables and one by Blue Delta Energy and NIPSCO.

A. CSG's first proposition of law: Whether the commission's determination that the applicants' generation resources are "deliverable into this state" is against the manifest weight of the evidence and contrary to law

{¶ 18} CSG argues that the commission erred in finding that the generation resources from each applicant's out-of-state wind farm are deliverable into Ohio.

1. The commission's determination that deliverability criteria had been met

{¶ 19} In the proceedings below, each applicant provided the commission's staff with a DFAX power-flow report performed by PJM for its generating facility. The staff reviewed the DFAX reports and determined that each facility met the deliverability thresholds established in *Koda*. Accordingly, the staff concluded that the generation resources were physically deliverable into Ohio and recommended that the commission grant each application.

{¶ 20} CSG challenged the commission staff's recommendations, arguing that the applicants had failed to provide sufficient evidence demonstrating that their renewable energy is deliverable into Ohio as required by R.C. 4928.64(B)(3)(b). CSG asserted that because the applicants' wind farms are located in areas where MISO administers transmission assets—while PJM manages transmission assets in Ohio—the applicants had to submit evidence showing how their renewable energy is deliverable from their generation facilities in MISO into the PJM-transmission region and then into Ohio. CSG questioned the reliability of the applicants' DFAX reports, asserting that the data in those reports was incomplete because PJM did not model power flows on transmission lines within MISO but instead assumed that the energy from the generation facilities was deliverable across MISO to the PJM border. In making this argument, CSG relied on the cover letters that PJM had attached to the DFAX reports, which state that the power-flow values in the reports represent impacts to Ohio transmission lines by the generation facilities "*if* they were to deliver their energy into PJM." (Emphasis added.) Absent evidence that the generating facilities are capable of delivering energy from MISO into PJM, CSG maintained that the DFAX reports do not show that the renewable-energy resources have any impact on transmission lines in PJM, let alone Ohio.

{¶ 21} The commission rejected CSG's allegation that the DFAX reports "assum[ed] that energy would be able to flow from MISO into PJM as opposed to proving the energy would flow into PJM." 2023 WL 6247423 at ¶ 48. The commission also noted that the *Koda* test requires only "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." *Id.* The commission then determined that the applicants had provided the necessary information for the commission staff to determine deliverability. *Id.*

{¶ 22} The commission proceeded to adopt its staff's recommendations, agreeing that the applicants had provided power-flow studies from PJM showing that each facility met the thresholds established in *Koda*. *Id.* at ¶ 50-51. According to the commission, no party contested the impact values from the PJM power-flow studies during the hearing, and its staff relied on these values in determining that the facilities met the deliverability requirement. *Id.* at ¶ 50. Accordingly, the commission determined that the applicants satisfied the statutory requirement that the generation produced by the facilities be physically deliverable into Ohio, and it approved the applications for certification. *Id.* at ¶ 50-51, 62-63.

2. CSG's two-fold argument in support of its first proposition of law

{¶ 23} CSG presents two arguments in its merit brief to support its first proposition of law. First, CSG contends that the DFAX reports do not support the commission staff's deliverability findings and recommendations. More specifically, CSG contends that the DFAX values in the reports that the staff used to calculate the *Koda* deliverability thresholds are "meaningless" and do not show "real transmission line impacts" from MISO to PJM to Ohio and, instead, show only hypothetical impacts between PJM and Ohio. Second, CSG contends that the commission's order fails to address the "evidence of non-deliverability."

a. CSG's contention that the evidence does not support the commission staff's deliverability findings and recommendations is without merit

{¶ 24} We first address CSG's argument that the DFAX reports performed by PJM do not support the commission staff's deliverability findings and recommendations.

{¶ 25} The commission's order states in relevant part:

> 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.

2023 WL 6247423 at ¶ 50.

{¶ 26} Paragraph 50 of the commission's order references six exhibits, which are the commission staff's review and recommendation approving each applicant's facility application. On the second page of each exhibit, the commission staff stated regarding each respective application that "[a]s the Facility satisfies both the 5 percent and 1 [megawatt] criteria, *Staff concludes that the Facility is physically deliverable to the state of Ohio*." (Emphasis added.)

{¶ 27} As noted above, the commission's order states that its staff relied on the provided values. 2023 WL 6247423 at ¶ 50. The order also stated that commission's 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." *Id.* at ¶ 33.

{¶ 28} In support of its determination that the deliverability requirement had been met, the staff submitted the prefiled testimony of commission staff members Jason A. Cross and Kristin Clingan. Cross and Clingan also testified in person at the evidentiary hearing.

{¶ 29} In his prefiled testimony, Cross was asked whether "the facilities applying for certificates in [the] cases meet the Commission approved deliverability standard." Cross answered, "Yes." When questioned by CSG's attorney at the hearing, Cross confirmed that he was the person who had reviewed each of the PJM cover letters and spreadsheets and determined the values that the staff considered. He further testified that he reviewed the DFAX report that was provided by the applicant and did his own analysis to make sure the values meet the deliverability requirements. Specifically, Cross confirmed when asked by the hearing examiner that he based his analysis on the full DFAX study rather than the one-to-two-page narrative provided by the applicants.

{¶ 30} In her prefiled testimony, Clingan stated that "it is staff's understanding that PJM has, or is able to obtain, all the requisite information it needs to run power flow studies across RTOs (e.g., a source in MISO and a sink in PJM)." When cross-examined by CSG at the hearing about how she formed her belief to make that statement, Clingan testified, "Because PJM runs the power flow study and if they need inputs to that study, they would obtain it or else they wouldn't be able to run the model."

{¶ 31} CSG argues that "the Commission may not base its decision solely on its Staff's recommendations or reports." However, we have held that if the commission finds that a staff recommendation contains sufficient factual findings and conclusions of law, it may adopt the same. *See In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator,* 2021-Ohio-3630, ¶ 22 (noting that the commission can adopt reports prepared by its staff into its order if the reports contain sufficient factual findings and conclusions of law). The commission noted that "the testimony presented by Staff witnesses Clingan and Cross demonstrate Staff's intimate familiarity with these types of applications and the use of . . . power flow studies like DFAX reports to assist with its deliverability analysis." 2023 WL 6247423 at ¶ 46.

{¶ 32} In light of Cross's testimony and his independent analysis of the DFAX reports, rather than the cover letter, and Clingan's testimony, specifically that PJM would not have been able to run the model if it did not have the inputs required, we find no merit in CSG's contention that the evidence does not support the staff's deliverability findings and recommendations. There is sufficient evidence in the record to show that the commission's order is not manifestly against the weight of the evidence and is not so clearly unsupported by the record to show misapprehension, mistake, or willful disregard of duty. *See Lycourt-Donovan*, 2017-Ohio-7566, at ¶ 35.

b. CSG's contention that the commission's order fails to address evidence of nondeliverability is without merit

{¶ 33} We next address CSG's argument that the commission's order failed to address evidence of nondeliverability. In support of this argument, CSG asserts that the commission (1) did not apply the *Koda* test correctly, and (2) did not address the evidentiary gap as required under R.C. 4903.09. We begin with whether the commission correctly applied the *Koda* test.

i. The commission correctly applied the *Koda* test

{¶ 34} The commission's order states as follows:

> We continue to find that Staff's methodology, including the use of [the *Koda*] 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).

2023 WL 6247423 at ¶ 49.

{¶ 35} As a preliminary matter, we note that CSG has argued in its merit brief that this court need not address whether the *Koda* test continues to be reasonable or whether additional modifications are necessary. It states that "for purposes of this appeal, the Court may presume that the *Koda* test is *a* proper framework for demonstrating this capability even if other methods discussed by CSG's expert would also satisfy R.C. 4928.64." (Emphasis in original.) We will accept CSG's concession and focus instead on its argument that the commission erroneously applied *Koda* to the facts of this case.

{¶ 36} As referenced above and explained in more detail below, CSG argues that the DFAX reports in this case were insufficient to show deliverability under the *Koda* test because the studies were conducted solely by PJM. CSG argues, and its expert witness, Travis Stewart, testified, that the commission should have also required a DFAX report conducted by MISO or some other method to demonstrate deliverability from each applicant's facility to the PJM region and then to Ohio.

{¶ 37} But Stewart specifically testified that the purpose of his testimony was not to make a specific recommendation to replace the *Koda* test but, rather, to note for the commission that other options were available. He noted several options to demonstrate deliverability in addition to an "affected system study," including a "Firm Point to Point Transmission Service Reservation," a series of interconnection studies, and historical settlement data based on a contract or a financial transaction.

{¶ 38} The commission disagreed and concluded that the DFAX studies performed by PJM and submitted by the applicants were sufficient for the commission staff to determine deliverability. 2023 WL 6247423 at ¶ 48. The commission noted its "well-established precedent [that] 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." *Id*. The commission also noted that "even [CSG] agrees that the *Koda* test is an appropriate means to determine deliverability [by] acknowledging . . . that 'power flow studies, including DFAX reports, may be used to figure out whether energy is physically deliverable from one area to another.'" *Id*. at ¶ 47, quoting CSG's initial posthearing brief, 14. It explained, "[CSG] 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)." *Id*.

{¶ 39} Additionally, the commission expressly addressed in its order what is meant by "deliverable into this state" for purposes of R.C. 4928.64(B)(3)(b). In particular, the commission noted CSG's admission that "it is impossible to trace electrons in order to show deliverability" and its concession 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.'" 2023 WL 6247423 at ¶ 45, quoting CSG's initial posthearing brief at 5. The commission also noted that its staff "acknowledged the impossibility [of] physically track[ing] 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." *Id.* The commission concluded that R.C. 4928.64(B)(3)(b) requires that the generation resources produced from a facility "be capable of being delivered into Ohio," *id.*, and that conclusion appears to be undisputed in these proceedings. The commission noted that CSG had conceded that R.C. 4928.64(B)(3)(b) "does not require a demonstration of actual delivery, but rather that the generation produced is capable of being physically delivered into Ohio." *Id.* at ¶ 48.

{¶ 40} Despite its concession, CSG appears to challenge the adequacy of the DFAX reports to determine deliverability of energy from one RTO to another. But the commission in its order outlined the arguments regarding the interregional transmissibility of resources between RTOs, including: (1) the applicants' contention that "a DFAX study is still accurate when modeling power flows between regional transmission organizations," which CSG's "witness seemed to admit," 2023 WL 6247426 at ¶ 31; (2) the explanation by Blue Delta and NIPSCO that "the physical structure of and electricity flow through the electric grid was unchanged by the change in RTOs," *id.* at ¶ 34; (3) the explanation by Blue Delta and NIPSCO that "PJM can obtain all of the requisite information it needs to run power flow studies across RTOs," *id.*; and (4) the statement by Blue Delta and NIPSCO in their posthearing reply brief "that PJM modeled more than 3,000 transmission facilities, and specifically facilities with only one endpoint in Ohio, thereby transporting electricity into the state," which "exceeds the modeling done in *Koda*," *id.* at ¶ 38. Additionally, the commission noted in its order that the applicants pointed out that MISO and PJM have "a joint operating agreement [that] allows the two organizations to share information and coordinate interconnections." *Id.* at ¶ 36.

{¶ 41} Taking all this into consideration, we conclude that on the facts of this case, the commission correctly applied the *Koda* test to the applicants' DFAX reports and determined that the energy generated by the applicants' facilities met the deliverability criteria. We acknowledge the commission's agreement with its staff that CSG's "proposed alternatives are not viable" and that the commission had "already rejected adding financial or contractual requirements to the deliverability assessment and . . . expressly recognized that physical deliverability is not determined by contractual arrangements." 2023 WL 6247423 at ¶ 47. We also acknowledge that the commission noted that "[the commission's] 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." *Id.* at ¶ 48. In this particular case, we find that it was not against the manifest weight of the evidence or contrary to law for the commission to determine that the deliverability standard was met without a MISO DFAX study or other evidence. However, at this time, we do not wish to preclude the commission in future cases from requiring DFAX studies from multiple RTOs, evidence in the form of an alternative affected system study, or other evidence as it determines may be necessary when considering whether the deliverability standard is met.

{¶ 42} This observation is supported by the plain language of *Koda*, which reads:

> A demonstration of deliverability *may* include a power flow study performed by the transmission operator*(s)* which offers evidence of any significant impact on power flows over transmission lines located in the state of Ohio and serving loads connected to distribution lines located in Ohio due to electricity produced at the renewable generating facility's location.

Koda, 2011 WL 1144649, at *2. (Emphasis added.)

ii. The commission complied with R.C. 4903.09 in addressing the evidentiary gap

{¶ 43} We turn now to the question whether the commission's order meets the requirements of R.C. 4903.09, which provides:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

{¶ 44} "The purpose of R.C. 4903.09 is to provide the court with sufficient details to enable it to determine how the commission reached its decision." *Allnet Communications Servs., Inc. v. Pub. Util. Comm.*, 1994-Ohio-460, ¶ 27. "In order to meet the requirements of R.C. 4903.09, . . . the PUCO's order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the PUCO in reaching its conclusion." *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312 (1987). However, "[s]trict compliance with the terms of R.C. 4903.09 is not required." *Tongren v. Pub. Util. Comm.*, 1999-Ohio-206, ¶ 7.

{¶ 45} CSG references Stewart's testimony to support its argument that an evidentiary gap existed. As relevant here, Stewart testified:

> Q: Okay. So when there is an impact, a DFAX study impact that's greater than a certain percentage, the one RTO has to notify the other RTO; is that correct?
>
> A: Yeah. Inside that process, I believe the threshold that [was previously identified during the hearing] was 3 percent and to

> my understanding that is—that's accurate. And what happens is MISO informs PJM that they have identified an impact on PJM's system, and PJM performs what is referred to as an affected system study. And there is no affected system studies associated with these MISO-based facilities inside of these applications.
>
> Q: Sure. And is—is that required by Ohio law or the Commission's rules, the second study that you are talking about?
>
> A: If you are demonstrating deliverability and you would like to comply with Koda to provide your power flow studies, if an affected system study was triggered, then it should have been provided.

{¶ 46} In support of its argument that the commission did not satisfy R.C. 4903.09 in not addressing Stewart's testimony, CSG points to *In re Application of FirstEnergy Advisors*, in which this court found that the commission violated R.C. 4903.09 by using a "bare-bones order," 2021-Ohio-3630, at ¶ 3, and deferring a required finding to a separate ongoing PUCO procedure, *id.* at ¶ 4. Furthermore, this court noted that the commission staff in that case issued a "two-paragraph report," *id.* at ¶ 14, and two weeks after receiving the staff's report, the commission entered an order finding that no hearing was necessary, adopting the staff report, and approving an application for certification as a competitive retail-electric-service power broker and aggregator in Ohio. This court concluded that the commission (1) did not explain how the applicant met the statutory criteria at issue and (2) did not cite any facts in the record to support its conclusions. *Id.* at ¶ 25.

{¶ 47} The case before us is readily distinguishable from *In re Application of FirstEnergy Advisors.* At 27 pages long, the commission's order is far from "bare bones." Furthermore, as discussed above, the record in this case includes staff reports, prefiled testimony, and hearing testimony of staff and other witnesses.

The DFAX study and cover letter were also filed as evidence. After summarizing the evidence and testimony presented, the commission explained in its order its reasoning and the evidentiary findings on which it relied. The fact that the commission did not credit CSG's evidence regarding nondeliverability does not mean the commission's order lacked sufficient findings or an explanation sufficient to determine on what basis the commission made its decision.

{¶ 48} R.C. 4903.09 requires the commission to set forth the reasons for its orders and prohibits summary rulings and conclusions that do not develop the supporting rationale or that are not supported by the record. *MCI Telecommunications Corp*., 32 Ohio St.3d at 311-312; *In re Application of Ohio Power Co.*, 2018-Ohio-4698, ¶ 24; *see also In re Application of Columbus S. Power Co.*, 2016-Ohio-1608, ¶ 66. Although the commission in its order could have articulated its reasons in a more methodical manner, the commission did address its reasoning as well as the facts on which it relied as summarized above.

3. CSG's first proposition of law is rejected

{¶ 49} Based on the foregoing and the facts of this case, we reject CSG's first proposition of law. We hold that the commission's determination as set forth in its order that the applicants' generation resources are "deliverable into this state" is not against the manifest weight of the evidence. We also hold that the order is not contrary to law as it outlined the commission's reasoning consistent with the requirements of R.C. 4903.09 and included sufficient information for this court to determine how it reached its decision. *See Allnet Communications Servs., Inc.*, 1994-Ohio-460, at ¶ 27-28.

B. CSG's second proposition of law: Whether the commission followed the statutes and rules governing the proceedings

{¶ 50} CSG argues under its second proposition of law that the commission failed to follow certain statutes and rules governing the proceedings. More specifically, CSG argues on appeal that when the commission's attorney examiner denied its motion for a subpoena, its rights to be heard and to enforce the attendance of witnesses were violated because it was not allowed to call a material witness to rebut the applicants' and the commission staff's claims of deliverability. CSG also argues that the DFAX reports that the applicants submitted contained unreliable hearsay. We reject CSG's arguments.

1. CSG's challenge to the denial of its motion for a subpoena

{¶ 51} On November 21, 2022, CSG filed a motion under Adm.Code 4901-1-25 for the commission to issue a subpoena to Aaron Berner, the manager of transmission planning for PJM. CSG sought to examine Berner at an evidentiary hearing. At the beginning of the hearing, the commission's attorney examiner denied CSG's motion. The attorney examiner cited several reasons for the denial. First, the attorney examiner found that CSG had offered no real explanation for why it was necessary or warranted to require an out-of-state nonparty witness to testify against his will at the hearing, noting that PJM had filed a motion to quash the subpoena. Second, the attorney examiner noted CSG's delay in requesting the subpoena in a case that had been pending for nearly two years. Third, the attorney examiner found that it would be prejudicial to allow a witness to testify who had not been deposed and who no other party was prepared to examine. Fourth, the attorney examiner faulted CSG for failing to demonstrate that the commission has the power to enforce a subpoena to compel an out-of-state nonparty witness to appear before the commission. Finally, the commission determined that CSG was essentially seeking to subpoena a corporation to testify at the hearing, which was contrary to Adm.Code 4901-1-21.

{¶ 52} The commission affirmed the attorney examiner's rationale for denying CSG's motion for subpoena, specifically noting that CSG had failed to show that (1) the presence of an out-of-state nonparty witness was warranted and (2) the commission has the authority to issue an enforceable subpoena to compel an out-of-state nonparty witness to appear in person at a commission hearing. 2023

WL 6247423 at ¶ 58. The commission also noted that it would have been appropriate to take administrative notice of the DFAX reports that its staff utilized to analyze deliverability. *Id.* at ¶ 59. Moreover, the commission found that CSG was given an opportunity to prepare and respond to the findings in the DFAX reports and to its staff's recommendations regarding deliverability. *Id.*

{¶ 53} When the attorney examiner denied CSG's motion for a subpoena at the outset of the evidentiary hearing, CSG's counsel remained silent. CSG did not raise any objection regarding that decision until it filed its posthearing brief. By failing to object when its motion was denied, CSG deprived the commission of an opportunity to cure any error when it reasonably could have. *See In re Complaint of Smith v. Ohio Edison Co.*, 2013-Ohio-4070, ¶ 48; *In re Application of Buckeye Wind, L.L.C.*, 2016-Ohio-5664, ¶ 13-19; *Parma v. Pub. Util. Comm.*, 1999-Ohio-141, ¶ 22. Thus, the issue is waived.

2. CSG's claim that the commission relied on inadmissible hearsay evidence

{¶ 54} CSG alleges that the commission relied entirely on hearsay in finding that the generation resources were deliverable into Ohio. CSG did not, however, raise this argument in its application for rehearing before the commission as required by R.C. 4903.10.

{¶ 55} An appellant is jurisdictionally barred from raising a claim on appeal that was not specifically set forth in an application for rehearing of the commission's order. *See* R.C. 4903.10; *In re Application of Ohio Power Co.*, 2014-Ohio-4271, ¶ 45. CSG mentioned the word "hearsay" only once in its rehearing application and only then in passing. CSG's single mention of the word "hearsay" in its rehearing application is not enough to satisfy the requirements of R.C. 4903.10. We therefore lack jurisdiction to consider this claim on appeal. *See In re Letter of Notification Application of Columbia Gas of Ohio, Inc.*, 2024-Ohio-4747, ¶ 15-16.

3. CSG's second proposition of law is rejected

{¶ 56} Because we hold that CSG waived its argument that the commission erred in denying its motion for a subpoena and is jurisdictionally barred from raising on appeal its argument that the commission relied on inadmissible hearsay evidence, we reject CSG's second proposition of law.

V. CONCLUSION

{¶ 57} For the foregoing reasons, we reject CSG's propositions of law and affirm the commission's order.

Order affirmed.

FISCHER, J., joined by WILLAMOWSKI, J., concurring in part and dissenting in part.

{¶ 58} I agree with the majority's resolution of appellant Carbon Solutions Group, L.L.C.'s ("CSG") second proposition of law, in which the majority rejects CSG's challenge to appellee the Public Utilities Commission of Ohio's denial of CSG's motion to subpoena the manager of transmission planning for PJM Interconnection ("PJM") and rejects CSG's challenge to the commission's reliance on alleged hearsay. *See* majority opinion, ¶ 56.

{¶ 59} I disagree, however, with the majority's resolution of CSG's first proposition of law regarding whether the commission erred in determining that the generation resources of intervening appellees Moraine Wind, L.L.C., Rugby Wind, L.L.C., Elm Creek II Wind, L.L.C., Buffalo Ridge II Wind, L.L.C., Barton Windpower 1, and Barton Windpower, L.L.C. (collectively, "the applicants") are "deliverable into this state" under R.C. 4928.64(B)(3)(b). In my view, the majority ignores the commission's clear violation of R.C. 4903.09. Furthermore, the majority errs in determining that sufficient evidence exists in the record to support the commission's decision. In affirming the commission's order, the majority has acted far beyond the scope of our appellate authority in reviewing commission orders. Specifically, the majority engages in its own fact-finding by relying on witness testimony that was not cited by the commission in its order. Moreover, the majority inexplicably treats the commission's summary of the parties' arguments and evidence that the commission set forth in its order as factual findings of the commission. For these reasons, I concur in part and dissent in part.

ANALYSIS

{¶ 60} To be certified as a qualifying renewable-energy resource, a generating facility located outside Ohio must show that its renewable energy "can be shown to be deliverable into this state," R.C. 4928.64(B)(3)(b). For facilities that are located in states not contiguous to Ohio, the commission's rules define "[d]eliverable into this state" as including electricity that "originat[es] from other locations, pending a demonstration that the electricity is physically deliverable to the state." Adm.Code 4901:1-40-01(F). Under the test set forth in *In re Application of Koda Energy, L.L.C.*, a generating facility located in a noncontiguous state can show that its energy is physically deliverable into Ohio through a power-flow study conducted by a regional-transmission organization that shows an impact over an Ohio transmission line exceeding a distribution-factor ("DFAX") value of 5 percent and the megawatt equivalence of an impact greater than one megawatt. PUCO No. 09-555-EL-REN, 2011 WL 1144649, *2-3 (March 23, 2011).

{¶ 61} In the proceedings below, the applicants each provided the commission staff with a DFAX power-flow report performed by PJM Interconnection ("PJM"), a regional-transmission organization, for each applicant's generating facility. The staff reviewed the DFAX reports and determined that each facility met the deliverability thresholds established in *Koda*. Accordingly, the staff concluded that the generation resources were physically deliverable into Ohio and recommended that the commission grant the applicants' applications to be certified as eligible Ohio renewable-energy-resource-generating facilities.

{¶ 62} CSG challenged the staff's recommendations, arguing that the applicants had failed to provide sufficient evidence demonstrating that their renewable energy is deliverable into Ohio as required by R.C. 4928.64(B)(3)(b). CSG asserted that because the applicants' generating facilities are located in areas where the Midcontinent Independent System Operator ("MISO") administers transmission assets—while PJM manages transmission assets in Ohio—the applicants had to submit evidence showing how their renewable energy is deliverable from their generating facilities in MISO into the PJM-transmission region and then into Ohio. CSG questioned the reliability of the applicants' DFAX reports, asserting that the data in the reports was incomplete because PJM did not model power flows on transmission lines within MISO. CSG relied on the cover letters that PJM had attached to the DFAX reports, claiming that the applicants failed to satisfy the 5 percent DFAX value threshold under the *Koda* test. CSG cited specifically PJM's disclaimer in the cover letters, which stated that PJM "confirmed that . . . at least 5% of the energy from these wind resources *would be expected to flow [into Ohio] if they were to deliver their energy into PJM*." (Emphasis added.) CSG thus maintained that the DFAX reports failed to demonstrate that energy was deliverable from MISO into Ohio because the reports hypothetically assumed that energy from the out-of-state facilities was deliverable across MISO and into PJM. Absent evidence in the DFAX reports showing that the renewable-energy resources have any impact on transmission lines in PJM, CSG maintained that the applicants failed to carry their burden of showing that the generating facilities are capable of delivering energy into Ohio.

{¶ 63} The commission rejected CSG's allegation that the DFAX reports "assum[ed] that energy would be able to flow from MISO into PJM as opposed to proving the energy would flow into PJM." PUCO Nos. 21-516-EL-REN, 21-517-EL-REN, 21-531-EL-REN, 21-532-EL-REN, 21-544-EL-REN, and 22-380-EL-REN, 2023 WL 6247423, ¶ 48 (Sept. 20, 2023). The commission noted that CSG "readily admit[ted] in its brief that it is impossible to trace electrons in order to show deliverability" and that it was "undisputed" that the statutory language requires a facility's generation be only "capable of being delivered into Ohio." *Id.* at ¶ 45. According to the commission, CSG's "argument is in direct contradiction with its earlier concession that [R.C. 4928.64(B)(3)(b)] does not require a demonstration of actual delivery, but rather that the generation produced is capable of being physically delivered into Ohio." *Id.* at ¶ 48. The commission also noted that the *Koda* test requires only "a power flow study to be performed by [a regional-transmission organization], with no additional requirement as to which [regional-transmission organization] performs the study and certainly no requirement that multiple studies be produced." *Id.* The commission then determined that the applicants had provided the necessary information for commission staff to determine deliverability. *Id.*

{¶ 64} The commission proceeded to adopt its staff's recommendations, agreeing that the applicants had provided power-flow studies from PJM showing that each generating facility met the thresholds established in *Koda*. *Id.* at ¶ 50-51. According to the commission, no party contested the impact values from the PJM power-flow studies during the hearing and its staff relied on these values in determining that the facilities met the deliverability requirement. *Id.* at ¶ 50. Accordingly, the commission found that the applicants satisfied the statutory requirement that the generation produced by the facilities be physically deliverable into Ohio and approved the applications for certification. *Id.* at ¶ 50-51, 62.

{¶ 65} CSG presents two specific arguments under its first proposition of law. First, CSG argues that the commission's findings that the applicants' resources are deliverable into Ohio are against the manifest weight of the evidence because the DFAX reports do not support the staff's deliverability findings and recommendations. Second, CSG argues that the commission violated R.C. 4903.09

when it determined that the renewable-energy resources were deliverable into Ohio without adequately addressing in its order CSG's challenges to the DFAX reports.

{¶ 66} The majority holds that CSG's argument that the commission violated R.C. 4903.09 lacks merit. Majority opinion at ¶ 49. In my view, the commission violated R.C. 4903.09 and its order should be reversed and the matter should be remanded to the commission for further consideration.

R.C. 4903.09

{¶ 67} R.C. 4903.09 provides:

> In all contested cases heard by the public utilities commission, a complete record of all of the proceedings shall be made, including a transcript of all testimony and of all exhibits, and the commission shall file, with the records of such cases, findings of fact and written opinions setting forth the reasons prompting the decisions arrived at, based upon said findings of fact.

"The purpose of R.C. 4903.09 is to provide the court with sufficient details to enable it to determine how the commission reached its decision." *Allnet Communcations Serv., Inc. v. Pub. Util. Comm.*, 1994-Ohio-460, ¶ 27. Although strict compliance with the terms of the statute is not required, "[i]n order to meet the requirements of R.C. 4903.09, . . . the [commission's] order must show, in sufficient detail, the facts in the record upon which the order is based, and the reasoning followed by the [commission] in reaching its conclusion," *MCI Telecommunications Corp. v. Pub. Util. Comm.*, 32 Ohio St.3d 306, 312 (1987).

{¶ 68} CSG argues that the commission failed to comply with R.C. 4903.09 when it determined that the renewable-energy resources were deliverable into Ohio without adequately addressing CSG's challenge to the DFAX reports. According to CSG, the cover letters to the DFAX reports expressly confirmed that PJM simply assumed that the applicants' generating facilities would deliver their energy across MISO and into PJM. As CSG explains, *Koda* requires evidence showing transmission-line impacts along the entire delivery path, from the source of the generation and into Ohio. CSG maintains that because the DFAX reports contained no evidence showing that the energy from the generating facilities is deliverable along the path from the generating facilities in MISO into PJM, the reports fail to show that the energy is deliverable from PJM into Ohio. CSG contends that the commission violated R.C. 4903.09 when it failed to address the evidentiary gap in the DFAX reports. As discussed below, CSG is correct that the commission failed to address this issue in any relevant way.

{¶ 69} The commission must explain its decisions. R.C. 4903.09 requires the commission to set forth the reasons for its decisions and prohibits summary rulings and conclusions that do not develop the supporting rationale or record. *MCI Telecommunications* at 312; *In re Application of Ohio Power Co.*, 2018-Ohio-4698, ¶ 24; *see also In re Application of Columbus S. Power Co.*, 2016-Ohio-1608, ¶ 66 (the commission's lack of response to utility's claims constituted failure to explain its decision). Although the commission acknowledged CSG's argument and purported to explain why it was rejected, the commission never addressed CSG's argument in any meaningful way.

{¶ 70} The commission rejected CSG's challenge to the DFAX reports on the grounds that CSG's argument was contradicted by its earlier concession that R.C. 4928.64(B)(3)(b) does not require a demonstration of actual delivery but instead requires only that the generation produced is capable of being physically delivered into Ohio. 2023 WL 6247423 at ¶ 48. The commission's analysis misses the mark. CSG quoted the cover letter of PJM's DFAX report for each applicant in arguing that the results of the DFAX reports did not show that the resources were deliverable into Ohio, because PJM's analysis had assumed, without any evidentiary basis, that the generating facilities would "'deliver their energy into

PJM,'" *id.* CSG maintained that because the DFAX reports failed to show that the renewable energy was deliverable from the location of the facilities in MISO into PJM, the reports were not reliable evidence showing that the energy will have any impact on transmission lines in Ohio. CSG did not claim that R.C. 4928.64(B)(3)(b) requires a demonstration of actual delivery, and the commission's order does not explain the relationship between CSG's concession and its actual argument.

{¶ 71} In my view, the commission's reliance on CSG's professed concession is not responsive to CSG's argument. And the commission's failure to address CSG's claims left several relevant questions unanswered, namely (1) whether PJM assumed that the out-of-state energy would be delivered into PJM, as alleged by CSG based on the cover letters to the DFAX reports, (2) whether *Koda* requires evidence of transmission-line impacts from the generation source in MISO into PJM, and (3) if so, whether the record in these cases contained such evidence.

{¶ 72} The commission noted that while *Koda* requires a power-flow study from a regional-transmission organization, there is no additional requirement as to which regional-transmission organization conducts the study or that multiple power-flow studies be produced. 2023 WL 6247423 at ¶ 48. But CSG never argued that *Koda* requires a specific regional-transmission organization to produce the power-flow study or that *Koda* requires multiple studies. CSG's argument focuses on what the DFAX reports in this case showed—or did not show—and not on who produced the reports.

{¶ 73} The commission's failure to adequately explain a material matter violates R.C. 4903.09 and warrants reversal. *See In re Comm. Rev. of Capacity Charges of Ohio Power Co.*, 2016-Ohio-1607, ¶ 56-57 (reversing order in which the commission failed to address utility's challenges to commission staff's calculation of an energy credit); *In re Application of Duke Energy Ohio, Inc., for Approval of its Fourth Amended Corporate Separation Plan*, 2016-Ohio-7535,

¶ 19-22 (finding a violation of R.C. 4903.09 when the commission failed to explain how a utility's corporate separation plan complied with the relevant statute), *abrogated on other grounds by In re Application of Dayton Power & Light Co.*, 2025-Ohio-2953, ¶ 97; *In re Application of FirstEnergy Advisors for Certification as a Competitive Retail Elec. Serv. Power Broker & Aggregator*, 2021-Ohio-3630, ¶ 27 (the commission violated R.C. 4903.09 by failing to provide a reasoned explanation of the basis of its decision); *Consumers' Counsel v. Pub. Util. Comm.*, 2006-Ohio-5789, ¶ 31 (remanding a commission order setting certain cost-component baselines when "[i]t [was] impossible to make any determination about the reasonableness of the[] components without evidence and explanation from the commission").

{¶ 74} Here, the commission failed to address CSG's specific challenge to the DFAX reports, making it impossible for us to determine the reasonableness of the commission's order. Because the commission failed to address CSG's challenge, the commission's order lacks sufficient reasoning and thus violates R.C. 4903.09. *See FirstEnergy Advisors* at ¶ 31-32. Accordingly, I would reverse the commission's order and remand this matter to the commission to address CSG's argument.

The Majority's Determination That the Commission's Order Complied with the Requirements of R.C. 4903.09

{¶ 75} The majority holds that the commission's order satisfied R.C. 4903.09. The majority first determines that this case is "readily distinguishable from *In re Application of FirstEnergy Advisors*" because "[a]t 27 pages long, the commission's order is far from 'bare-bones.'" Majority opinion at ¶ 47. The majority further notes that "the record in this case includes staff reports, prefiled testimony, and hearing testimony of staff and other witnesses[, as well as t]he DFAX study and cover letter . . . ." *Id.* The majority then notes that "[a]fter summarizing the evidence and testimony presented, the commission explained in its order its reasoning and the evidentiary findings on which it relied." *Id.*

{¶ 76} R.C. 4903.09 is a mandatory statute; it requires commission orders to contain sufficient detail for us to determine the factual basis and reasoning relied on by the commission. *In re Application of Ohio Power Co.*, 2024-Ohio-2890, ¶ 32. Thus, it is not clear to me how the length of the commission's order is relevant to determining whether R.C. 4903.09 was violated. The commission often issues lengthy orders, some exceeding 50 or even 100 pages. If the length of the order were a relevant requirement under R.C. 4903.09, the commission would rarely violate the statute.

{¶ 77} Nor is it clear how the filing of prehearing direct testimony, staff testimony, or the commission's summary of testimony satisfies R.C. 4903.09. Testimony is filed in every case in which the commission conducts an evidentiary hearing. Moreover, the commission routinely provides a summary of testimony and other evidence in its orders.

{¶ 78} The majority purports to address CSG's contention that the commission violated R.C. 4903.09 when it failed to address the evidentiary gap in the DFAX reports created by the assumption of delivery of resources into PJM. The majority summarily dismisses CSG's argument, however, by stating, "The fact that the commission did not credit CSG's evidence regarding nondeliverability does not mean the commission's order lacked sufficient findings or an explanation sufficient to determine on what basis the commission made its decision." Majority opinion at ¶ 47. But, the majority never actually addresses the merits of CSG's argument.

{¶ 79} Under R.C. 4903.09, the commission's reasoning and the factual basis supporting its determination must be discernable from its orders. *See Ohio Consumers' Counsel*, 2006-Ohio-5789, at ¶ 35-36. The commission never substantively addressed CSG's challenge to the reliability of the DFAX reports.

The commission's failure to address a material matter constitutes a clear violation of R.C. 4903.09. *See id.* at ¶ 31; *Duke Energy Ohio*, 2016-Ohio-7535, at ¶ 19-23; *FirstEnergy Advisors*, 2021-Ohio-3630, at ¶ 21-27.

{¶ 80} More concerning is that the majority determines that the commission satisfied R.C. 4903.09 by summarizing the parties' arguments and evidence in the commission's order. By way of background, the commission's practice is to include in its orders a summary of the arguments and evidence contained in the parties' posthearing briefs. This summary section generally precedes a separate analysis section of the order in which the commission addresses the merits of the parties' arguments and renders its decision on issues under review. Consistent with that practice, the commission's order in this case provided a summary of the parties' arguments and evidence, followed by an analysis section. *See* 2023 WL 6247423 at ¶ 30-39 (Part II(D), "Post-Hearing Briefs"); *id.* at ¶ 40-52 (Part II(E), "Conclusion").

{¶ 81} For reasons that are unclear, the majority cites the commission's summary of the parties' arguments and evidence as proof that the commission complied with R.C. 4903.09. The majority appears to treat this summary as the commission's factual findings and rationale supporting its decision in this case. To my knowledge, this court has never relied on the commission's summary of the parties' arguments and evidence for this purpose. And for good reason: when the commission provides a summary of the parties' arguments and evidence, it is not considering the merits of the arguments, engaging in fact-finding, resolving questions of law, or rendering a decision on the issues before it. That is, the commission's summary contains none of the details required under R.C. 4903.09—the facts in the record on which the order is based and the reasoning followed by the commission in reaching its decision—that would enable this court to determine how the commission reached its decision. *See FirstEnergy Advisors*, 2021-Ohio-3630, at ¶ 21-22; *Duke Energy Ohio*, 2016-Ohio-7535, at ¶ 19-23; *Ohio*

Consumers' Counsel, 2006-Ohio-5789, at ¶ 22-36. Thus, contrary to the majority's determination, the commission did not satisfy the requirements of R.C. 4903.09 by including a summary of the parties' arguments and evidence in its order.

The Majority's Determination That the Commission's Findings Were Not Against the Manifest Weight of the Evidence

{¶ 82} Given the commission's clear violation of R.C. 4903.09, I would determine that CSG's remaining arguments under its first proposition of law are moot. However, because the majority addresses the remaining arguments, I feel compelled to do so as well. CSG's manifest-weight argument hinges on its assertion that the DFAX reports are not reliable evidence, because PJM assumed delivery of the energy from MISO into PJM and thus the reports do not show delivery of the renewable energy into Ohio. And CSG's claimed violation of R.C. 4928.64(B)(3)(b) hinges on the merits of its manifest-weight claim. The commission's failure to address CSG's challenge to the DFAX reports makes it impossible for us to determine the lawfulness and reasonableness of the commission's order, including whether the order was against the manifest weight of the evidence and, by extension, whether the applicants failed to meet the requirements under R.C. 4928.64(B)(3)(b). *See Tongren v. Pub. Util. Comm.*, 1999-Ohio-206, ¶ 19-20.

{¶ 83} The majority, however, has addressed CSG's manifest-weight argument and found that it lacks merit. Majority opinion at ¶ 41. Because the majority engages in de novo fact-finding in concluding that the commission's order was supported by sufficient evidence in the record, I also dissent from the majority's resolution of this issue.

{¶ 84} The majority addresses whether the DFAX reports submitted by the applicants supported the commission staff's deliverability findings and recommendations to issue the renewable-energy-resource certificates in this case. According to the majority, sufficient evidence exists in the record to show that the commission's order is not against the manifest weight of the evidence based on the following: (1) the commission staff relied on the values set forth in the DFAX reports submitted by PJM, which showed that the generating facilities met the *Koda* thresholds, (2) the values in the DFAX reports were not contested during the hearing, and (3) the commission relied on evidence beyond the staff reports and the DFAX reports from staff members Cross and Clingan.

{¶ 85} The majority first quotes the commission's order, in which it stated that the applicants provided power-flow studies conducted by PJM—referring to the DFAX reports—that showed that the facilities met the *Koda* thresholds. Majority opinion at ¶ 25. According to the commission, "*[t]hese 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." (Emphasis added.) 2023 WL 6247423 at ¶ 50. Based on the foregoing, the commission determined that the applicants had satisfied the statutory requirements that the generation produced by their facilities is physically deliverable into Ohio. *Id.*

{¶ 86} Contrary to the commission's determination and as mentioned above, CSG did contest these values during the proceedings below. Given that the DFAX values were contested and given the commission's failure to substantively address CSG's challenge to the reliability of the DFAX reports, the majority's reliance on the commission staff's reports as evidence supporting the commission's deliverability determination is puzzling.

{¶ 87} Of greater concern, however, is the majority's assertion that the commission supported its decision in this case with evidence from staff members Cross and Clingan. The majority cites specific pages of the prefiled direct testimony of Cross and Clingan. The majority then concludes that "[i]n light of Cross's testimony and his independent analysis of the DFAX reports, rather than the cover letter, and Clingan's testimony, specifically that PJM would not have been able to run the model if it did not have the inputs required, we find no merit in CSG's contention that the evidence does not support the staff's deliverability findings and recommendations." *Id.* at ¶ 32.

{¶ 88} Contrary to the majority's determination, the commission cited no testimony from Cross or Clingan in support of its deliverability determination. The pertinent part of the commission's order contains a single citation to the prefiled direct testimony presented by Clingan and Cross, which the commission offered for the general proposition that its staff "is intimate[ly] familiar[] with these types of applications and the use of . . . power flow studies like DFAX reports to assist with its deliverability analysis." 2023 WL 6247423 at ¶ 46. However, in the section of the order addressing CSG's challenges to the specific DFAX reports used in this case, the commission made no mention of any testimony from Cross or Clingan, let alone cite the specific testimony that the majority references above.[5]

{¶ 89} In determining whether a commission order is unreasonable, our function is not to reweigh the evidence or second-guess the commission on questions of fact. *In re Complaints of Lycourt-Donovan v. Columbia Gas of Ohio, Inc.*, 2017-Ohio-7566, ¶ 35. Moreover, our role is not to substitute our own opinion for that of the commission on questions of fact. *Payphone Assn. v. Pub. Util. Comm.*, 2006-Ohio-2988, ¶ 16. Rather, in conducting a manifest-weight-of-the-evidence review, we determine whether the fact-finder—here, the commission—clearly lost its way, resulting in a miscarriage of justice. *In re Rev. of the Power-*

5. The commission discussed the deliverability issue in its conclusion section, citing Clingan's testimony three times, but none of her testimony serves to rebut CSG's challenge to the DFAX reports. *See* 2023 WL 6247423 at ¶ 40 (citing Clingan's testimony to reference the three statutory criteria for considering applications for certification); *id.* at ¶ 45 (citing Clingan's testimony to reference the impossibility of physically tracking energy from a specific generating facility to a specific load location and the need for a method to determine a facility's impact on transmission lines in Ohio); *id.* at ¶ 46 (citing Clingan's testimony to reference the number of applications the commission has evaluated under *Koda* and the number of certificates granted). The commission's only other references to the testimony of Cross and Clingan appear in Part II(F) of its order, in which the commission discussed the procedural issues that are the subject of CSG's second proposition of law on appeal. *See id.* at ¶ 54, 56-57, 60.

Purchase-Agreement Rider of Ohio Power Co. for 2018 & 2019, 2026-Ohio-1485, ¶ 20. The commission, in its role as fact-finder, is required under R.C. 4903.09 to set forth in its order the evidence relied on in reaching its decision. *Ohio Power Co.*, 2018-Ohio-4698, at ¶ 24. Mindful of our limited role in commission appeals, we cannot engage in our own fact-finding by searching the record for evidence that would support the commission's decision—when the commission itself has failed in that regard—and then uphold the commission's order based on what we have found. By relying on evidence that the commission itself never relied on, the majority has usurped the commission's role as fact-finder and effectively substituted its judgment for that of the commission on a question of fact. Accordingly, I dissent from the majority's opinion regarding CSG's first proposition of law.

CONCLUSION

{¶ 90} R.C. 4903.09 requires the commission's reasoning and factual basis supporting its decision to be discernible from its orders. In this case, the commission violated R.C. 4909.03 by failing to address a material matter, namely CSG's challenge that the DFAX reports were not reliable evidence of deliverability. The majority's determination that the commission complied with R.C. 4903.09 because the commission's order contained a summary of arguments and evidence is not supported by R.C. 4903.09 or our case law. Moreover, the majority ignores this court's limited role in reviewing commission orders by engaging in its own fact-finding in rejecting CSG's manifest-weight challenge.

{¶ 91} Given the commission's failure to comply with R.C. 4903.09, I would reverse the commission's order and remand this matter to the commission with instructions for the commission to address CSG's challenge to the reliability of the DFAX reports. Because the majority does otherwise, I dissent from that portion of the majority opinion resolving CSG's first proposition of law. I concur, however, with the majority's resolution of CSG's second proposition of law. Therefore, I respectfully concur in part and dissent in part.

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