

**BEFORE
THE OHIO POWER SITING BOARD**

In the Matter of the Application of)	
Hecate Energy Highland LLC for a)	Case No. 18-1334-EL-BGN
Certificate of Environmental)	
Compatibility and Public Need to)	
Construct a Solar-Powered Electric)	
Generating Facility in Highland)	
County, Ohio)	

**HECATE ENERGY HIGHLAND LLC'S
MEMORANDUM IN OPPOSITION TO MARK S. PARTIN'S
PETITION TO INTERVENE**

In accordance with Ohio Administrative Code Section 4906-2-12, Hecate Energy Highland LLC ("Hecate") respectfully requests that the Ohio Power Siting Board ("OPSB" or "the Board") deny the March 6, 2019 Petition to Intervene (the "Petition") filed by Mark S. Partin ("Mr. Partin") in the March 26, 2019 adjudicatory hearing for the above-captioned matter. Mr. Partin's Petition is not only untimely pursuant to Ohio Administrative Code Section 4906-2-12(A)(2)(b), but also fails to demonstrate good cause for why his intervention in the proceeding is necessary, as required by Ohio Administrative Code Section 4906-2-12(B). Mr. Partin will have the ability to testify at the public hearing on March 19, 2019 and may submit written comments on the OPSB website, even if he does not become a party to these proceedings.

For these reasons, which are set forth in more detail below, Hecate respectfully requests that the Board deny Mr. Partin's Petition to Intervene.

I. Mr. PARTIN'S PETITION TO INTERVENE IS UNTIMELY.

Mr. Partin filed his Petition to Intervene ("Petition") on March 6, 2019. The thirty (30) day deadline to file any petition to intervene in the above-captioned proceedings was March 1, 2019. See Ohio Administrative Code 4906-2-12 (stating that "[f]iling said petition within thirty days after the date of publication of the notice required in accordance with paragraph (A)(1) of rule

4906-3-09 of the Administrative Code . . .”); *see also* Administrative Law Judge’s Entry (Jan. 15, 2019). This deadline was made clear in Hecate’s initial “Notice of Proposed Major Utility Facility” required by Ohio Administrative Code Section 4906-3-09(A)(1), which was mailed on January 29, 2019 by 2-day Federal Express to landowners and affected tenants in the surrounding Project area. *See* Proof of Initial Public Notice (January 30, 2019). The notice specified that the public would be given an opportunity to comment on the proposed Project and that “[p]etitions to intervene in the adjudicatory hearing would be accepted up to 30 days following publication of the notice required by R.C. 4906.06(C), or by March 1, whichever is later.” *Id.* at Attachment A. Mr. Partin was mailed this exact notice at his property on Hess Road. *Id.* at Attachment C. His Petition was untimely nonetheless, and there has been no showing of extraordinary circumstances justifying the granting of his Petition. *See* Ohio Administrative Code 4906-2-12(C) (providing that “[t]he board or the administrative law judge may, in extraordinary circumstances and for good cause shown, grant a petition for leave to intervene . . . who failed to file a timely notice of intervention or petition for leave to intervene.”); *see also In re Application of Cleve. Elec. Ill. Co.*, Case No. 83-1343-HT-ATA, Entry (Feb. 17, 1984) at 1 (denying untimely petition to intervene, which did not allege extraordinary circumstances). Mr. Partin, along with others in the surrounding Project area, received the exact same notice and were allotted the same amount of time to intervene. Mr. Partin failed to file a timely notice, and for this reason alone, his Petition should be denied.

II. MR. PARTIN’S PETITION TO INTERVENE DOES NOT DEMONSTRATE GOOD CAUSE FOR INTERVENTION.

Notwithstanding the untimeliness of Mr. Partin’s Petition, Mr. Partin also fails to demonstrate good cause for his participation as a party to these proceedings. Indeed, Mr. Partin has failed to articulate *any* reason why his intervention in the proceedings is necessary. *See* Ohio Administrative Code 4906-2-12(B) (stipulating that “[t]he board or the administrative law judge

shall grant petitions for leave to intervene *only* upon a showing of good cause.”) (emphasis added). Mr. Partin’s Petition merely states that he would like “to intervene . . . on behalf of myself and other residents who live in the community and are adjacent to the project as am I.” *See* Partin Pet. to Intervene (March 6, 2019). However, this is not a showing of good cause to intervene but rather a statement of the status that Mr. Partin shares with multiple other residents in the community. In addition, his suggestion that he somehow represents others is improper and unsupported.

Pursuant to Ohio Administrative Code Section 4906-2-12(B)(1), [i]n deciding whether to permit intervention . . . the board or the administrative law judge may consider” the following:

- (a) The nature and extent of the person's interest.
- (b) The extent to which the person's interest is represented by existing parties.
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding.
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

See Ohio Administrative Code 4906-2-12(B)(1)(a)-(d). As it currently stands, Mr. Partin has not provided any detail or information on the above factors. It is also not apparent whether his interests could be represented by an existing intervenor or how his involvement as an intervenor will contribute to a just and expeditious resolution rather than unduly delay the proceedings. Because Mr. Partin has failed to articulate any reason for why his intervention is necessary, his Petition should be denied.

III. Mr. PARTIN MAY STILL PARTICIPATE IN THE PROCEEDINGS WITHOUT INTERVENING.

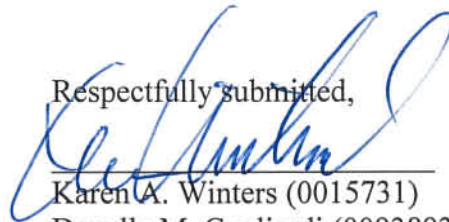
If Mr. Partin wishes to participate in the Board’s review of Hecate’s Application, he may file written public comments on the OPSB website, or testify at the public hearing on March 19, 2019 without officially intervening. Again, Mr. Partin has been advised of his ability to participate in the initial “Notice of Proposed Major Utility Facility” mailed on January 29, 2019 and the

second "Notice of Proposed Major Utility Facility" which was mailed on March 6, 2019 and published in in the Hillsboro Times-Gazette, Highland County Press, and Brown County Press on March 8 through March 10, 2019, respectively. *See* Proof of Initial Public Notice (January 30, 2019); *see also* Proof of Second Public Notice (March 14, 2019). Finally, Hecate plans to reach out to Mr. Partin directly to determine what his concerns are with respect to the Project and whether they can be resolved. However, Mr. Partin is simply not an appropriate party to these proceedings.

IV. CONCLUSION

For the above reasons, Hecate respectfully requests that the Board **DENY** Mark S. Partin's Petition to Intervene in the proceedings.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The Public Utilities Commission of Ohio's e-filing system will automatically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned certifies that a copy of the foregoing document is also being sent via Regular U.S. Mail on March 14, 2019 to:

Mark S. Partin
1515 Hess Road
Sardinia, Ohio 45171



Karen A. Winters (0015731)
Attorney for Hecate Energy Highland LLC

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3/14/2019 3:50:23 PM

in

Case No(s). 18-1334-EL-BGN

Summary: Memorandum in Opposition to Mark S. Partin's Petition to Intervene electronically filed by Ms. Karen A. Winters on behalf of Hecate Energy Highland LLC