

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Dayton)
Power & Light Company for Amendment of)
Its 2009 Solar Energy Resource Benchmark,)
Pursuant to O.R.C. Section 4928.64(C)(4))

Case No. 09-1989-EL-ACP

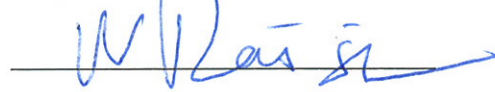
**MOTION TO INTERVENE
BY THE
OHIO ENVIRONMENTAL COUNCIL**

This case concerns the alternative energy requirements established by Senate Bill 221 (“S.B. 221”). R.C. 4928.64(B)(2) provides that electric utilities shall obtain 0.004% of their energy from solar resources in 2009. The Dayton Power & Light Company (“DP&L”) has requested that the Commission use its *force majeure* authority to grant a waiver of DP&L’s 2009 Solar Energy Resource (“SER”) benchmarks. As more fully discussed in the accompanying memorandum, the Ohio Environmental Council (“OEC”) has a real and substantial interest in this proceeding to ensure that solar power resources are deployed in this state according to the clear requirements and timetables provided by S.B. 221 and to ensure that this Application is properly scrutinized in light of the letter and intent of S.B. 221. The interests of OEC, Ohio’s largest non-profit environmental advocacy organization, are not represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved. OEC’s participation will not unduly delay the proceeding or unjustly prejudice any existing party.

Accordingly, OEC hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene in the above captioned matter.

Respectfully Submitted,



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MEMORANDUM IN SUPPORT

R.C. Section 4903.221 provides that any “person who may be adversely affected by a public utilities commission proceeding may intervene in such proceeding.” The OEC is a non-profit, charitable organization comprised of a network of over 100 affiliated member groups whose mission is to secure a healthier environment for all Ohioans. Throughout its 40-year history, OEC has been a leading advocate for fresh air, clean water, and sustainable land and energy use. OEC was an active participant in the effort that led to the passage of S.B. 221, including the inclusion of energy efficiency and renewable generation requirements. OEC has a real and substantial interest in assuring that the renewable generation benchmarks established by R.C. 4928.64(B)(2) are properly calculated and that robust, long-term sources of renewable electricity generation are sited in Ohio. The attainment or non-attainment of these benchmarks will have a direct effect on the air quality within Ohio and the amount of renewable generation distributed in the state. There can be no question that OEC has an interest in and may be adversely affected by the disposition of this case.

R.C. 4903.221(B) outlines four factors that the Commission shall consider when ruling on a motion to intervene in a proceeding. First, pursuant to R.C. 4903.221(B)(1), the Commission shall consider “The nature and extent of the prospective intervenor’s interest.” OEC has several distinct interests in the disposition of this case. First, OEC is interested in the

proper calculation of utility solar deployment. This application represents one of the first applications for a waiver of alternative energy requirements filed under the provisions of S.B. 221, and consequently the disposition of this case will inform how future applications are considered by the Commission. OEC, as an environmental advocacy organization, has a special interest in the outcome of this case because of the direct impact that decisions on the calculation of these benchmarks will have on the current and future implementation and effectiveness of S.B. 221, and thus, the further deployment of cleaner sources of electricity in Ohio.

Second, pursuant to R.C. 4903.221(B)(2), the Commission shall consider “The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.” Although OEC does not outline detailed legal arguments in this section, OEC maintains that DP&L’s request for a *force majeure* determination should be subject to high scrutiny because of the clear language and intent behind S.B. 221’s solar production requirement.

Third, pursuant to R.C. 4903.221(B)(3), the Commission shall consider “Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.” OEC has significant experience dealing with electric utilities questions before the Commission and will not seek to delay the proceeding. OEC has been consistently involved in the development and enactment of S.B. 221 and the associated rules, including as a party in numerous cases before the Commission. OEC’s intervention will not unduly prolong or delay these proceedings; to the contrary, OEC’s expertise and unique interest will add value to the development of this case.

Fourth, pursuant to R.C. 4903.221(B)(4), the Commission shall consider “Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.” OEC has actively participated in the implementation of the efficiency,

peak demand reduction, and renewable energy benchmarks established by S.B. 221. As an active participant in cases before the Commission, the OEC has developed expertise that will contribute to the full development of the legal questions involved in this proceeding. Finally, as Ohio's leading environmental advocate, OEC will be able to assure that the environmental impacts of benchmark calculations are fully developed.

OEC also satisfies the intervention requirements outlined in the Commission's rules. The criteria for intervention established by O.A.C. 4901-1-11(A) are identical to those provided by R.C. 4903.221, with the exception that the rules add a fifth factor that the Commission shall consider when ruling on a motion to intervene. Pursuant to O.A.C. 4901-1-11(A)(5), the Commission shall consider "The extent to which the [intervenor's] interest is represented by existing parties." OEC's interest is not fully represented by the existing parties. OEC is the leading advocate for Ohio's environment. No other party to this proceeding has the mission of securing healthy air for all Ohioans, and no other party has been a continuous participant in cases before the Commission for the specific purpose of furthering this mission.

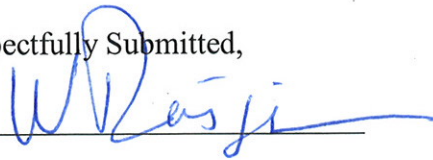
Finally, we point out that it is the Commission's stated policy "to encourage the broadest possible participation in its proceedings."¹ The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

OEC meets all the criteria established by R.C. 4903.221 and O.A.C. 4901-1-11(A)(5) and therefore should be granted intervenor status in this proceeding.

WHEREFORE, OEC respectfully requests that the Commission grant its motion to intervene in the above captioned matter.

¹ *Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail this 19th day of January, 2010.


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Summary: Motion Motion to Intervene with Memorandum in Support electronically filed by Mr. Will Reisinger on behalf of Ohio Environmental Council