

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The
Dayton Power and Light Company for an
Amendment of the 2009 Solar Energy
Resource Benchmark, Pursuant to Section
4928.64(C)(4), Ohio Revised Code

Case No. 09-1989-EL-ACP

**MOTION TO INTERVENE
BY
THE VOTE SOLAR INITIATIVE**

The Vote Solar Initiative (“Vote Solar”) moves to intervene in this case in which The Dayton Power and Light Company (“DP&L”) filed for a *force majeure* determination related to the 2009 solar energy resource requirements, as specified under Section 4928.64, Revised Code.

As more fully discussed in the accompanying memorandum, Vote Solar has a real and substantial interest in this proceeding, and the disposition of this case may impede its ability to protect that interest. The interests of Vote Solar are not currently represented by any existing party, and its participation in this proceeding will contribute to a just and expeditious resolution of the issues involved. Vote Solar’s participation will not unduly delay the proceeding or unjustly prejudice any existing party. Accordingly, Vote Solar hereby moves to intervene in this proceeding pursuant to R.C. 4903.221 and O.A.C. 4901-1-11.

WHEREFORE, Vote Solar respectfully requests that the Commission grant its motion to intervene.

Respectfully Submitted on behalf of The
Vote Solar Initiative,

/s/ Todd M. Williams

Todd M. Williams

Williams & Moser, L.L.C.

PO Box 6885

Toledo, OH 43612

p. (419) 215-7699

f. (419) 474-1554

toddm@williamsandmoser.com – Email

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The
Dayton Power and Light Company for an
Amendment of the 2009 Solar Energy
Resource Benchmark, Pursuant to Section
4928.64(C)(4), Ohio Revised Code

Case No. 09-1989-EL-ACP

MEMORANDUM IN SUPPORT

I. MOTION TO INTERVENE

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.” Vote Solar is a non-profit organization with the mission of removing barriers for the widespread adoption of solar energy. Since 2002, Vote Solar has worked on policy to develop stable and sustainable solar markets in states across the country. Vote Solar has individual members across the country including over 800 members in Ohio. Vote Solar members are ratepayers in the State of Ohio and will be adversely affected by the decisions of this Commission on solar policy. Vote Solar members are residential solar energy systems owners, business persons in the solar industry and engaged citizens concerned about developing and meeting solar energy requirements for all intents and purposes of the Ohio Alternative Energy Portfolio Standard (AEPS).

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.” Vote Solar is concerned about actions that will undermine the solar requirements of the AEPS and create unnecessary obstacles in the development of solar resources. The implementation of

the solar requirement as specified by state law and Commission rules of the AEPS is critical to necessary investment and deployment of solar resources in a predictable and measured manner.

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.” Vote Solar does not outline its full legal argument in this section. Vote Solar seeks to assure the actions undertaken by DP&L are in compliance with the language and intent of S.B. 221, and the Commission Rules on the development on solar energy resource. The implementation of the solar requirement is critical to the development of necessary investment and deployment of solar resources in a predictable and measured manner. Allowing the waiver of this requirement in its very first year would have a deleterious effect.

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.” Vote Solar has been granted intervenor status in proceedings before the Utilities Commission in Ohio, California, Nevada, and Florida. Vote Solar has experience in providing timely filings in these matters and assures that they will not unduly prolong and delay the proceedings.

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.” Vote Solar is nationally recognized for their experience in developing sound and sustainable policies for the development of solar energy resources and the subsequent economic and job growth accompanying well-designed solar policy. Vote Solar has extensive experience in the generation, distribution, technology differentiation and incentive structures of successful solar energy programs.

Vote Solar 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." Vote Solar is in a unique position to provide perspective on the resulting outcomes of policy decisions based on knowledge of and experience in solar markets that can aid the decision making of the Commission. Vote Solar's intervention in the above referenced docket will bring the knowledge and experience of the organization in solar energy program design that is not represented by any other parties involved in this proceeding.

Finally, it is the Commission's stated policy "to encourage the broadest possible participation in its proceedings" (*see, e.g., Cleveland Elec. Illum. Co.*, Case No. 85-675-EL-AIR, Entry dated January 14, 1986, at 2). The Commission should not apply its intervention criteria in a manner that would favor one environmental or consumer advocate to the exclusion of others.

Vote Solar 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, Vote Solar respectfully requests that the Commission grant its motion to intervene.

Respectfully Submitted on behalf of The
Vote Solar Initiative,

/s/ Todd M. Williams

Todd M. Williams

Williams & Moser, L.L.C.

PO Box 6885

Toledo, OH 43612

p. (419) 215-7699

f. (419) 474-1554

toddm@williamsandmoser.com – Email

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been served upon the following parties by first class mail, postage prepaid, or for those parties who have consented, by electronic mail, this 8th day of February, 2010.

/s/ Todd M. Williams

Todd M. Williams

SERVICE LIST

Randall V. Griffin
Judi L. Sobecki
The Dayton Power and Light Company
1065 Woodman Drive
Dayton, OH 45432
Randall.Griffin@DPLINC.com
Judi.Sobecki@DPLINC.com

Michael Heintz
Environmental Law & Policy Center
1207 Grandview Avenue, Suite 201
Columbus, OH 43212
mheintz@elpc.org

Will Reisinger
Nolan Moser
Trent A. Dougherty
The Ohio Environmental Council
1207 Grandview Avenue, Suite 201
Columbus, Ohio 43212-3449
will@theOEC.org
nolan@theOEC.org
trent@theOEC.org

Samuel C. Randazzo
Lisa G. McAlister
Joseph M. Clark
MCNEES WALLACE & NURICK LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com
lmcaster@mwncmh.com
jclark@mwncmh.com

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/8/2010 4:26:54 PM

in

Case No(s). 09-1989-EL-ACP

Summary: Motion Motion to Intervene electronically filed by Mr. Todd M Williams on behalf of
The Vote Solar Initiative