

THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION
OF BIRCH SOLAR, LLC FOR A
CERTIFICATE OF ENVIRONMENTAL
COMPATIBILITY AND PUBLIC NEED.

CASE NO. 20-1605-EL-BGN

ENTRY

Entered in the Journal on August 13, 2021

{¶ 1} Birch Solar, LLC (Birch Solar or Applicant) is a person as defined in R.C. 4906.01.

{¶ 2} R.C. 4906.04 provides that no person shall construct a major utility facility in the state without first obtaining a certificate for the facility from the Ohio Power Siting Board (Board).

{¶ 3} On November 3, 2020, Applicant filed a preapplication notification letter with the Board, consistent with Ohio Adm.Code 4906-3-03(A), regarding its proposed construction of a 300 megawatt solar-powered electric generation facility in Allen and Auglaize counties, Ohio (Facility).

{¶ 4} On November 20, 2020, and November 23, 2020, Birch Solar held public information meetings using virtual technology to discuss the proposed project with interested persons and landowners; the company filed its affidavit of publication with the Board on November 18, 2020.

{¶ 5} On February 12, 2021, Birch Solar filed an application with the Board for a certificate of environmental compatibility and public need to construct the proposed Facility. Pursuant to Ohio Adm.Code 4906-3-06, a determination of completeness of Birch Solar's application was due on April 13, 2021.

{¶ 6} On March 25, 2021, March 31, 2021, and April 5, 2021, Birch Solar filed supplements to its application.

{¶ 7} On April 13, 2021, Staff filed a motion to suspend the finding of completeness and a request for an expedited ruling asserting that it was unable to determine the application's completeness due to the supplementation to the application.

{¶ 8} On April 30, 2021, the administrative law judge (ALJ) granted Staff's motion for extension of completeness review, extending the deadline until June 14, 2021.

{¶ 9} On June 2, 2021, a petition for leave to intervene was filed on behalf of: Against Birch Solar LLC, Linda M. Beckstedt, Jesse M. Bott and Kacie Rison, Ryan and Stacy Brenneman, Patricia Buzard, Cherly M. Counts, Ann Marie R. and Christopher H. Fisher, Deed Hall, Allyshia and Kyle Kuhbander, Angie M. and Kenneth R. McAlexander, Alexandra and Timothy Rostorfer, Susan and William Walters, Althea A. and Mark Wellman, and Ellen Wieging (collectively, Against Birch Solar).¹ In seeking intervention, Against Birch Solar describes that Against Birch Solar LLC is an organization of more than 100 members who claim that they will be directly and adversely affected by the Facility, which will be constructed and operated near their homes and properties. Further, Against Birch Solar indicates that its members, including those named individually in the petition to intervene, include persons who own or live on properties adjacent to the solar project.

{¶ 10} On June 9, 2021, Against Birch Solar filed a motion for an in-person informational meeting and postponement of Staff's completeness determination of the application and an accompanying memorandum in support of the motion.

{¶ 11} On June 14, 2021, the ALJ stayed the deadline for Staff to make its completeness determination of the application.

{¶ 12} On July 7, 2021, the ALJ (1) granted intervention to Against Birch Solar and the Kuhbanders, (2) ordered that Birch Solar conduct an in-person public information

¹ On June 11, 2021, counsel for Against Birch Solar filed a notice of withdrawal from representation of Allyshia and Kyle Kuhbander (collectively, Kuhbanders), indicating that, while he was no longer representing them, the Kuhbanders continue to seek intervention in the case.

meeting, and (3) set the deadline for Staff to file its determination of completeness by July 14, 2021.

{¶ 13} By letter dated July 14, 2021, the Board notified Applicant that its application was compliant and provided sufficient information to permit Staff to commence its review and investigation. Pursuant to Ohio Adm.Code 4906-3-06 and 4906-3-07, the Board's July 14, 2021 letter directed Applicant to serve appropriate government officials and public agencies with copies of the complete, certified application and to file proof of service with the Board. The letter further instructed Applicant to submit its application fee pursuant to R.C. 4906.06(F) and Ohio Adm.Code 4906-3-12.

{¶ 14} On August 10, 2021, Applicant filed a certificate of service of its accepted and complete application and filed proof that it submitted its application fee to the Treasurer of the State of Ohio as required by Ohio Adm.Code 4906-3-07.

{¶ 15} Ohio Adm.Code 4906-3-08(A) states that, once the applicant has complied with Ohio Adm.Code 4906-3-07, the Board or the ALJ shall file an entry indicating the date on which the accepted, complete application is deemed filed. Additionally, once the effective date is established, the ALJ must promptly fix the dates for public hearings. Under R.C. 4906.07(A), the public hearing must be held not less than 60 nor more than 90 days after the effective date of the application.

{¶ 16} The ALJ finds that the effective date of the application shall be August 13, 2021. The ALJ further finds that a local public hearing in this matter shall be held at the Allen County Fairgrounds Youth Activities Building, 2750 Harding Highway, Lima, Ohio 45804 on November 4, 2021, at 6:00 p.m., and the evidentiary hearing shall commence at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, Hearing Room 11-C on November 30, 2021, at 10:00 a.m.

{¶ 17} Petitions to intervene in this proceeding will be accepted by the Board up to 30 days following the service of the notice required by Ohio Adm.Code 4906-3-09 or by October 1, 2021, whichever is later.

{¶ 18} In accordance with Ohio Adm.Code 4906-3-09, Applicant should issue public notices of the application and hearings. Pursuant to the same rule, in addition to other required information, that notice shall include a statement that the public hearing in this case shall consist of two parts and will be held in-person:

- (a) A local public hearing, pursuant to R.C. 4906.08(C), where the Board shall accept written or oral testimony from any person at the Allen County Fairgrounds Youth Activities Building, 2750 Harding Highway, Lima, Ohio 45804 on November 4, 2021, at 6:00 p.m.
- (b) An evidentiary hearing commencing at the offices of the Public Utilities Commission of Ohio, 180 East Broad Street, Columbus, Ohio 43215-3793, Hearing Room 11-C on November 30, 2021, at 10:00 a.m.

{¶ 19} Further, under R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, the initial notice shall include the following language:

Petitions to intervene in the evidentiary hearing will be accepted by the Board up to 30 days following service of the notice required by R.C. 4906.06(C) and Ohio Adm.Code 4906-3-09, or October 1, 2021, whichever is later. However, the Board strongly encourages interested persons who wish to intervene in the adjudicatory hearing to file their petitions as soon as possible. Petitions should be addressed to Docketing Division, the Ohio Power Siting Board, 180 East Broad Street, Columbus, Ohio 43215-3793 and cite the above-listed case number.

{¶ 20} Individuals are not required to register online in order to testify at the local public hearing on November 4, 2021. Rather, a sign-in sheet will be available at the facility

and witnesses will be taken in the order in which they register to testify on the sign-in sheet. If individuals wish to supplement their testimony with an exhibit for the Board's consideration, a copy of the document should be provided to the ALJ during the local public hearing. Testimony to be provided will be limited to five minutes in duration

{¶ 21} Persons attending the evidentiary hearing on November 30, 2021, should register at the lobby desk and then proceed to the 11th floor.

{¶ 22} On May 17, 2021, the Director of the Ohio Department of Health issued an Order indicating that, "except in certain limited circumstances, fully vaccinated persons may safely do most activities without a facial covering and without socially distancing." This Order was intended to align the state of Ohio's health orders with new guidance from the Center for Disease Control (CDC). These new guidelines became effective in the state of Ohio on June 2, 2021.

{¶ 23} Any accommodations necessary to ensure availability of social distancing and plexiglass dividers should be made in advance of the hearing. As pandemic restrictions are evolving, additional instructions regarding further safety requirements or accommodations for the hearing room will either be posted on the Commission/Board website or communicated to the parties.

{¶ 24} Applicant shall issue public notice of the hearings and application in this matter. The notice should be published in newspapers of general circulation in those municipal corporations and counties in which the chief executive officer received service of a copy of the application pursuant to Ohio Adm.Code 4906-3-07. The notice should be published with letters not less than ten-point type, bear the heading "Notice of Proposed Major Utility Facility" in bold type not less than one-fourth inch high or 30-point type, and include the following information: the name and a brief description of the project; a map showing the location and general layout of the proposed facility; a statement, including the assigned docket number, that an application for a certificate to construct, operate, and maintain said facility is pending before the Board; the date and time of the evidentiary and

local public hearings; and a statement that the public will be given an opportunity to comment on the proposed facility. Additionally, the notice shall include the following statement: "Consistent with CDC Guidelines and the May 17, 2021 Ohio Department of Health Order, unless otherwise specified by the facility, individuals who are not fully vaccinated should continue to wear a face covering and socially distance. Please contact the legal department at 614-466-6843 to ask any questions or request accommodations related to health protocols."

{¶ 25} Ohio Adm.Code 4906-2-09 provides that the ALJ shall regulate the course of the hearing. In so doing, the ALJ may require expert or factual testimony to be offered at Board proceedings to be reduced to writing and filed with the Board according to a schedule established by the ALJ. Accordingly, the ALJ establishes the following procedural schedule and process:

- (a) Pursuant to Ohio Adm.Code 4906-3-06(C), Staff shall file its report of investigation on or before October 20, 2021.
- (b) On or before November 12, 2021, each party shall file a list of issues citing specific concerns about which they may be interested in pursuing cross-examination of witnesses at the evidentiary hearing.
- (c) All expert and factual testimony to be offered by the Applicant shall be filed by November 12, 2021. All expert and factual testimony to be offered by the intervenors and Staff shall be filed by November 19, 2021.
- (d) Any stipulation entered into by the parties shall be filed by noon on November 26, 2021, along with the associated testimony supporting the stipulation.

{¶ 26} The ALJ encourages the parties to arrange for electronic service of testimony and other pleadings among themselves. If electronic service is agreed to, the parties are also directed to provide an electronic copy to the ALJ.

{¶ 27} It is, therefore,

{¶ 28} ORDERED, That the hearings in this matter be scheduled in accordance with Paragraph 16. It is, further,

{¶ 29} ORDERED, That the notice of the application and hearings be published by the Applicant in accordance with Paragraphs 18, 19, and 24. It is, further,

{¶ 30} ORDERED, That the parties observe the filing deadlines set forth in Paragraph 25. It is, further,

{¶ 31} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

THE OHIO POWER SITING BOARD

/s/ Jesse M. Davis

By: Jesse M. Davis
Administrative Law Judge

MJA/hac

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 20-1605-EL-BGN

Summary: Administrative Law Judge Entry ordering that the hearings in this matter be scheduled in accordance with Paragraph 16; that the notice of the application and hearings be published by the Applicant in accordance with Paragraphs 18, 19, and 24; and, that the parties observe the filing deadlines set forth in Paragraph 25 electronically filed by Heather A. Chilcote on behalf of Jesse Davis, Administrative Law Judge, Ohio Power Siting Board