

**BEFORE  
THE OHIO SITING BOARD**

**In the matter of the Application of Birch  
Solar 1, LLC for a Certificate of  
Environmental Compatibility and Public  
Need to Construct a Solar-Powered Electric  
Generation Facility in Allen and Auglaize  
Counties, Ohio.** )  
)  
)  
)  
)  
)

**Case No. 20-1605-EL-BGN**

**TESTIMONY OF**

**Everett Lacy**

**on behalf of**

**Allen Auglaize Coalition for Reasonable Energy**

**May 11, 2022**

1     **1. Please state your name.**

2     Everett Lacy

3

4     **2. Please state your address.**

5     I live at 407 South Blackhoof Street, Apartment 112, Wapakoneta, Ohio 45895.

6

7     **3. Please summarize your background and relationship to the Birch Solar project.**

8     I am a member of the Allen Auglaize Coalition for Reasonable Energy (the “Coalition”) which  
9     advocates for the approval of the Birch Solar 1 project (the “Project”). The Coalition is a formal  
10    grassroots coalition of individuals and landowners residing in Allen and Auglaize Counties that  
11    seeks to educate and engage with the community to inform and dispel misconceptions about solar  
12    energy and the Project. I am also a landowner with an agreement to lease my property to the  
13    developer of the Project.

14

15    **4. Please summarize your position on whether the Birch Solar project should be approved.**

16    The Project should be approved because it supports private property rights.

17

18    Ohio has traditionally had strong private property rights. Landowners have had the option to lease  
19    their land to oil and gas drilling companies, lease or develop the land for feedlots, grow whatever  
20    crops they please, and use their land for its highest and best use. Additional income from these  
21    activities supports Ohio’s farming community.

22

23 Historically, agricultural land was put to use for energy production during the oil and gas boom of  
24 the late 19<sup>th</sup> and early 20<sup>th</sup> centuries, creating legacy problems with abandoned wells that Ohio is  
25 still addressing today. This time around, farmers can enjoy opportunities to farm energy while  
26 they actively preserve the agricultural character of their properties and improve, rather than  
27 degrade, the environment. As the Ohio Farmers Union stated, “Climate change mitigation will  
28 provide new economic opportunity for farmers.” Exhibit A. The OPSB should approve the  
29 Project permit and allow Ohio’s farmers to benefit from their unique position while advancing  
30 Ohio’s efforts to combat climate change and improve the environment for its citizens.

31

32 Failing to approve the Project would mean taking away our private property rights. The Ohio  
33 Farmers Union also strongly objected to this “brazen usurpation ... of constitutionally protected  
34 landowners’ rights.” Exhibit A, at 2. The Ohio Farmers Union also stated that “this proposed  
35 solar ban represents a governmental seizure of private property rights.” Exhibit A, at 2. Solar  
36 projects can provide farmers with “comfortable retirements” or a “life preserver for their operation  
37 in hard times.” Exhibit A, at 2. Just as in earlier times farmers exercised their right to lease their  
38 land for oil and gas development to supplement their agricultural activities, today’s farmers should  
39 have the opportunity to supplement their income with leases for renewable energy without  
40 unnecessary government interference.

41

42 Farmers are inherently concerned about the sustainability of their land. Passing land on to future  
43 generations is a treasured legacy of farming in Ohio. My dad bought the family farm back in the  
44 1950's and in 1993, he passed the farm on to me. I have tilled the fields, and over the years, many

45 businesses have tried to use our land. Some farmland could have become a landfill, but no farmer  
46 sold ground to them as we did not want that in our community. Oil companies have come wanting  
47 us to lease our ground to them. The leases as written would have given them the authority to do  
48 whatever they wanted to the fields and woods. They could have sold our mineral rights to another  
49 company without our consent. We said, “No.” Next came the wind companies, but it seemed as  
50 though it was the same thing; the lease was all for them with nothing for us or our community.  
51 We have had large hog, chicken, and turkey operations want us to put buildings up for them on our  
52 property, but we did not want to use all the water from the water table, or have our neighbors put  
53 up with the smell. Now, reassuringly, Lightsource BP has worked with OPSB to adequately  
54 condition the Project to ensure that the land will be re-vegetated and restored to its agricultural  
55 condition when they decommission the Project. The Project, as conditioned, will leave a much  
56 smaller imprint on the environment than the oil and gas leasing of Ohio’s past. The OPSB should  
57 approve the Project and allow today’s farmers to benefit from environmentally sound energy  
58 development.

59

60 **5. Does this conclude your testimony?**

61 Yes.

**CERTIFICATE OF SERVICE**

In accordance with OAR 4906-2-02(D)(6), this document has been filed electronically and OPSB's e-filing system will electronically serve notice of the filing of this document on the parties referenced in the service list of the docket who have electronically subscribed to this case. Such notice constitutes service of this document.

*/s/John Heer* \_\_\_\_\_

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# EXHIBIT A

# OHIO FARMERS UNION

## 2022 SPECIAL ORDERS OF BUSINESS

### As Adopted by the Delegates to the 88th Annual Convention

#### Special Order of Business

2022-02

#### Climate Change

According to the National Oceanographic and Atmospheric Administration (NOAA) carbon dioxide (CO<sub>2</sub>) levels in the Earth's atmosphere peaked at 418 parts per million level in June 2021—the highest level in the past 3.6 million years of Earth history. The concentration of CO<sub>2</sub> in the atmosphere now increases every year and the rate of increase is accelerating. These sharp increases in CO<sub>2</sub> have triggered an era of global warming and climate change which will have profound effects on agriculture in the immediate present and which may hamper the ability of future generations to survive on this planet. The Ohio Farmers Union recognizes that climate change is based on sound science and has been caused by human activity since the dawn of the industrial revolution.

Last year's Glasgow Congress of Parties on Climate change recognized that even limiting global warming to 1.5°Celsius (2.7 degrees Fahrenheit) requires rapid, deep, and sustained reductions in global greenhouse gas emissions, including reducing global carbon dioxide emissions by 45 per cent by 2030 relative to the 2010 level and to net zero around mid-century. As such, world and US agriculture must become part of the solution and we believe Ohio farmers and rural communities can also play an outsized role in leading the transition from a carbon -intense agricultural economy to a cleaner, more sustainable one. We offer our strong support to the NFU's creation of its new Climate Change Policy Advisory Committee, a sixteen-member family farmer panel—to include Ohio's own Bill Miller-- which will advise the NFU on climate related legislation.

Climate change mitigation will provide new economic opportunity for farmers.

Agriculture stands to gain through our unique ability to sequester carbon in our soils while still improving crop productivity and enhancing soil health. Although climate change is a global problem, OFU believes that it should be addressed by federal legislation incentivizing voluntary "climate smart" agricultural practices, such as cover crops, on-farm carbon capture and storage, re-forestation, soil conservation assistance and regenerative agriculture. OFU also believes there should be a price put on utility and industrial CO<sub>2</sub> emissions that would penalize those emissions and incentivize economic activities that sequester or reduce atmospheric CO<sub>2</sub> emissions.

#### Special Order of Business

2022-03

#### Renewable Energy in Rural Ohio

The Ohio Farmers Union recognizes that solar and wind development provides unique benefits to farmers and to Ohio's rural economy. Utility-scale solar and wind projects require the voluntary leasing or sale of real estate, usually farmland, which provides cash income for the farmer and provides much-needed funding for local schools. These projects also provide hundreds of local jobs in construction and maintenance. Further, newer integrated farming methods can ensure that wind and solar projects will leave the underlying soils improved and not depleted after the turbines or solar panels are removed.

The transition from coal-fired electric generation to carbon-free wind and solar gener-

ation is a necessary step in our response to global climate change. Yet Ohio legislators continue to place unfair regulatory obstacles on wind and solar projects (E.g., Ohio Senate Bill 52 in 2021) that are not applicable to coal, natural gas, or nuclear facilities

To this end, OFU urges the Ohio General Assembly and the Ohio Public Utilities Commission to provide and maintain sensible, legal pathways for prompt regulatory approval of properly sited solar and wind generation projects in rural Ohio. In addition, Ohio's Rural Electric Cooperatives should show leadership by transitioning their electric generation from coal to renewable energy sources.

Biofuels, including ethanol, biodiesel, and renewable diesel, also provide a wide range of economic and environmental benefits in rural Ohio. We support a four-year extension of the federal tax credits for existing biobased fuels. We also support extending those tax credits to newly approved formulations of Sustainable Aviation Fuels, to provide new uses for farm products and to begin the de-carbonization of the aviation industry.



# OHIO FARMERS UNION

## 2022 SPECIAL ORDERS OF BUSINESS

### As Adopted by the Delegates to the 88th Annual Convention

#### Special Order of Business

2022-01

#### Landowners' Rights in Ohio

Based on legislation passed in The Ohio Legislature last year, the Union County Commissioners are now considering a total ban on solar energy development throughout the unincorporated (rural) areas of the county. If passed, farmers wishing to lease or sell their ground for large scale solar farming will be permanently prohibited from doing so.

The Ohio Farmers Union objects to this brazen usurpation (theft) of constitutionally protected landowners' rights. Farmers— and NOT local politicians — should determine when they can lease their land for clean, safe, and climate-friendly renewable energy projects.

The Fifth Amendment to the United States Constitution, along with Article I Section 19 of the Ohio Constitution, states that "... private property shall not be taken for public use without just compensation...". While the Union County Commissioners' solar ban scheme is not a straightforward condemnation action, the punitive effects on the landowner's ability to develop his or her land for its highest and best use as a solar farm, is real and permanent— and without compensation.

There is no straight-faced argument that a solar ban as proposed by Union County is legally justifiable under the County's power to regulate land use under their "health, safety and welfare" powers. The County cynically singles out solar development while turning a blind eye to far more odious land uses such as oil and gas drilling, fracking, coal mining, CAFOs, and fertilizer manufacturing. Heavy handed measures like the proposed ban are simply the latest attempt by state and local politicians to tip the scales in favor of fossil fuels and against renewable energy sources in our electric generation portfolio.

Arguments that solar development should be stopped "to preserve farmland" are simply short-sighted and wrong. A properly managed 25–30-year solar lease, which maintains perennial grasses and pollinator crops under the panels, will leave the soils far better suited for farming in the next generation, when compared with the typical corn and soybean mono cropping prevalent in the most counties today. Ag research is demonstrating that long term solar farming gives depleted soils a needed rest, enhancing their productivity into the future.

At its core, this proposed solar ban represents a governmental seizure of private property rights, without compensation to the farmer. Make no mistake, for farmers approaching retirement, the opportunity to enter into a solar farm lease could mean the difference between a comfortable retirement, and a forced sale of their land to outside developers. And for family farmers of any age, the cash flow from a solar lease of even a small portion of their farm could be a life preserver for their operation in hard times.

The OFU strongly opposes the proposed ban, urges the Union County Board of Commissioners to vote "No" on the proposal, and cautions other jurisdictions to avoid such misguided legislation.