

**BEFORE  
THE OHIO POWER SITING BOARD**

In the Matter of the Application of Birch Solar, LLC )  
for a Certificate of Environmental Compatibility and )  
Public Need to Construct a Solar-Powered Electric ) Case No: 20-1605-EL-BGN  
Generation Facility in Allen and Auglaize Counties, )  
Ohio. )

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**MOTION FOR WAIVER AND REQUEST FOR APPROVAL OF AN  
ALTERNATIVE METHOD FOR THE PUBLIC INFORMATION MEETING  
REQUEST FOR EXPEDITED RULING  
AND MEMORANDUM IN SUPPORT**

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Pursuant to Ohio Administrative Code (“O.A.C.”) Rule 4906-3-01(B), Birch Solar, LLC (“Applicant”) files this motion requesting that the Ohio Power Siting Board (“Board”) grant, on an expedited basis, a waiver of O.A.C. Rule 4906-3-03(B), insofar as it requires that the Applicant’s public informational meeting (“PIM”) “be held in the area in which the project is located.” Through this motion, the Applicant is requesting that it be permitted to use an alternative method for complying with the PIM requirement under the rule.

On March 9, 2020, the governor issued Executive Order 2020-01D declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. This state of emergency is ongoing and it is anticipated that it will continue for some time into the future.

Since the COVID-19 pandemic is very much a concern for all Ohioans, the Applicant requests a limited waiver and proposes an alternative method for holding the PIM. As described in further detail in the memorandum in support, the alternative method will provide the maximum information about the project to the public and will enhance the PIM notice requirements set forth

in the O.A.C. to ensure that the public is aware of the alternative PIM and that the public will be able to fully participate.

Finally, the Applicant asserts that, for the reasons more fully set forth in the following memorandum in support, good cause exists to grant this motion on an expedited basis, in accordance with O.A.C. Rule 4906-2-27(C). The Applicant's proposed public information program envisions several elements including, as a substitute for the traditional in-person PIM, two presentation and question and answer ("Q&A") sessions with options for attendees to join either by web or telephone ("Virtual PIMs").

The Applicant has tentatively scheduled the Virtual PIMs for November 20 and 23, 2020. Therefore, the Applicant requests that the Board rule on this motion by October 26, 2020, to enable the Applicant to issue the required notices prior to the Virtual PIMs.

Accordingly, the Applicant respectfully moves that the Board grant this motion for waiver on an expedited basis.

Respectfully submitted,  
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**MEMORANDUM IN SUPPORT OF  
MOTION FOR WAIVER AND  
REQUEST FOR APPROVAL OF AN  
ALTERNATIVE METHOD FOR THE PUBLIC INFORMATION MEETING AND  
REQUEST FOR EXPEDITED RULING**

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**I. Background**

The Applicant is preparing to file an application with the Board for a certificate of public convenience and necessity to construct the Birch Solar project, a 300-megawatt alternating current (“ac”), solar-powered electric generation facility in Allen and Auglaize Counties, Ohio.

As a result of the COVID-19 pandemic that has negatively affected not only the state of Ohio but the entire nation and world, state policy currently restricts the types of gatherings typically held, which includes such meetings as the PIM required under O.A.C. Rule 4906-3-03(B). The public has been strongly advised to maintain social distancing and avoid public gatherings. In addition, it is anticipated that for some time in the future there will be individuals that are apprehensive about attending public meetings and individuals that have high-risk conditions or other reasons that make it not possible for them to attend a public gathering.

Prior to the COVID-19 pandemic, the Applicant had already taken several steps to engage with the Board and the community in Allen and Auglaize Counties. The Applicant and the Board’s Staff (“Staff”) attended a pre-application conference on September 17, 2020, in accordance with O.A.C. Rule 4906-3-02.

Additional community engagement activities are planned. We are planning the following:

- An in-person Community Open House on October 27, 2020, where we have mailed invitations to about 200 local residents near the proposed project area, as well as key local stakeholders. The open house will be a ‘drop in’ format from 3-8 p.m. to be able

to keep groups spread out and small in order to facilitate safe social distancing, with masks required.

- Two live virtual PIMs, where the community can participate either by phone or web, and interactively ask questions.
- A project website, where will be posting information about the Community Open House, PIMs, and other relevant information:

<https://www.lightsourcebp.com/us/projects/birch-solar-project/>

More information about each of these activities is provided in Section IV below.

## **II. Public Information Meeting Requirements in O.A.C.**

While there is no statutory requirement that a PIM be held, the Board has established rules requiring that, prior to filing a standard certificate application, the applicant must hold at least one PIM. Specifically, O.A.C. Rule 4906-3-03(B) provides that:

1. No more than 90 days prior to submitting its application, the applicant hold an informational meeting open to the public “in the area in which the project is located.”
2. Not more than 21 days or fewer than 7 days prior to the PIM, the applicant publish notice of the PIM in newspapers of general circulation in the project area.
3. At least 21 days before the PIM, the applicant send a letter to each property owner and affected tenant.
4. At the PIM, the applicant present maps showing the proposed facility.
5. At the PIM, the applicant solicit written comments from the attendees and summarize those comments in its application.

In accordance with the rule, PIMs are typically held on a weekday, for a two-hour period, at a venue located in the project area that can accommodate large groups of individuals.<sup>1</sup> At the PIM, the applicant usually provides hard copy materials explaining the project. In addition, there are stations staffed by subject matter experts placed around the venue where the public can ask questions and obtain answers to questions they may have about different aspects of the project, including ecological, sociological, engineering etc. Large maps showing the proposed facility at a scale that allows an affected property owner to identify the location of their property to the facility are also provided in accordance with the rules.

### **III. Current State of Emergency in Ohio**

As previously noted by the Board, on March 9, 2020, the governor signed Executive Order 2020-01D, declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19.<sup>2</sup> Pursuant to Ohio Revised Code (“R.C.”) 3701.13, on March 12, 2020, the Director of the Ohio Department of Health (“ODH”) issued an order to prevent the spread of COVID-19 in the state of Ohio, urging all persons to maintain social distancing of approximately 6 feet from other people. Subsequently, on March 22, 2020, as amended on April 2, 2020, the Director of the ODH issued a stay home order directing that, from March 23, 2020, until May 1, 2020, “all individuals currently living within the State of Ohio are ordered to stay at home or at their place of residence” (“Stay Home Order”).<sup>3</sup> Subsequently, the Stay Home Order was extended to May 29, 2020. As of the filing of this motion, the Stay Home Order has been somewhat lifted and

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<sup>1</sup> See e.g., *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Preapplication Letter (Sept. 11, 2019); *In re Application of Big Plain Solar, LLC*, Case No. 19-1823-EL-BGN, Preapplication Letter (Oct. 4, 2019); and *In re Application of Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Preapplication Letter (Oct. 18, 2020).

<sup>2</sup> *In re Proper Procedures and Process for the Board’s Operations and Proceedings During the Declared State of Emergency*, Case No. 20-601-GE-UNC, et al. (“*Declared State of Emergency*”), Entry (Mar. 17, 2020).

<sup>3</sup> *Declared State of Emergency*, Entry (Apr. 16, 2020) at ¶6.

the governor has implemented Responsible Restart Ohio protocols (“Protocols”)<sup>4</sup> aimed at responsibly restarting Ohio’s economy during the ongoing COVID-19 pandemic. These Protocols include wearing facemasks<sup>5</sup> and limiting the capacity of gatherings to meet social distancing guidelines of 6 feet, with special care given to protect individuals with high-risk conditions. It is anticipated that, while there will be a gradual return back to normal practices, the necessity for social distancing and the caution against holding large public gatherings will continue for the foreseeable future.

#### **IV. Proposed Alternative Public Information Program**

O.A.C. Rule 4906-3-01(B) provides that the Board may grant a waiver of any requirement in that chapter, other than a requirement mandated by statute. Therefore, in recognition of the ongoing COVID-19 pandemic and the continued state of emergency in Ohio, the Applicant requests that the Board grant this waiver and, in lieu of an in-person PIM in the project area as set forth in O.A.C. Rule 4906-3-03(B), the Board authorize the Applicant to implement an alternative public information program, which includes the primary elements outlined below.

##### **(1) Power Point**

The Applicant will prepare a power point presentation of the project by the Applicant’s experts, as well as the Staff, that will include information and explanations regarding:

1. The Applicant’s organizational structure and history.
2. The Applicant’s involvement in the community.
3. The need for the project.

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<sup>4</sup> <https://coronavirus.ohio.gov/wps/portal/gov/covid-19/responsible-restart-ohio/Responsible-Protocols/>

<sup>5</sup> On July 24, 2020, the Interim Director of ODH issued an order requiring individuals in the state of Ohio to wear facial coverings at all times when: in any indoor location that is not a residence; outdoors and not able to maintain a distance of 6 feet or more; and for public transportation purposes.

4. A description of the project including the location, size, and nameplate capacity.
5. The project schedule.
6. The preliminary project engineering and facilities (e.g., modules, inverters, tracker models under consideration, substation, laydown yard, collection system, access roads etc.).
7. An explanation of the types of studies used for the project relating to ecological, socioeconomic, environmental, cultural, transportation, sound, geotechnical.
8. Maps showing the proposed facility at a scale that allows affected property owners to identify the location of their property in relation to the facility.
9. The Board's review and certification process.
10. Contact information for the Applicant (i.e., website, Facebook, mailing and email address, contact telephone number).
11. Contact information for the Board (i.e., website, mailing address, contact telephone number).

**(2) Pre-Recorded Presentation**

An audio and video recording of the Power Point presentation described above will be available. The Applicant will narrate the presentation. The Staff will also be invited to participate in the Pre-Recorded presentation and provide further information on the Board's process. The Pre-Recorded presentation will be available on the Applicant's website and by alternative methods upon request.

**(3) Project Website**

The website will contain the following information:

1. The Power Point presentation that will include a map of the project area.
2. The Pre-Recorded presentation.
3. Dates and times of the two combination Telephone PIM and Web-based PIMs (see below), as well as information on how to access and participate

4. Contact information and instructions for submitting questions to the Applicant regarding the project.
5. Summary of frequently asked questions (“FAQ”) and responses from the Applicant’s subject matter experts.
6. Instructions on how to request more information, including paper copies of the Power Point presentation and access to the Pre-Recorded presentation.
7. The website, mailing and email addresses, and telephone number to contact the Board.
8. Information on: how to submit comments to the Board; how to participate in the proceeding before the Board; and how to request notification of the public hearing.
9. Contact information for the Applicant including the mailing and email addresses, and telephone.

**(4) Combination Telephone and Web Based PIMs**

The Applicant will host two live conference calls with members of the community to discuss the project. Each participant will be able to hear a live presentation about the project and be able to ask questions by pressing \*3 on their touchtone phone. In addition to a toll-free number and access code, a URL will also be provided for residents who have internet service and prefer to join via web. For those who join via web, the PIM will be a live video presentation.

1. The PIM will begin with an introduction of the Applicant’s subject matter experts and a brief description of the project as detailed in the Power Point presentation. In addition, Staff will be invited to participate. Participants joining the Web-based PIM via the project website will have access to the Power Point presentation described above, which will include a map of the project.
2. The PIM will be hosted through a platform capable of hosting up to 2,000 participants, by phone and/or web. The platform will allow participants to connect by telephone or an internet link. The platform will function across desktop, browser, and mobile devices. For the Q&A portion of the web-based PIM:
  - a. Participants will be able to interact with the subject matter experts and Staff via a moderated process.



- b. Participants will be able to ask questions at any time either by pressing \*3 on their touchtone phone, or by typing their questions into a Q&A box on the web platform.
- c. Questions will be addressed on a first-come, first-served basis.
- d. Any questions that the Applicant is not able to be address during the PIM will be addressed after the PIM via telephone, email, mail, and updates to the FAQ section of the Applicant’s website.

**(5) Small Group Meetings**

Opportunities for members of the community to meet informally with representatives of the Applicant in small group settings, either in-person or via phone are also available. Instructions for requesting and scheduling such meetings will be provided in the direct mailers and on the project website.

**V. Notices for the Proposed Alternative Public Information Program**

**A. Method of Notification**

O.A.C. Rules 4906-3-(B)(1) and (2) require the Applicant to:

- 1. Provide one public notice of the PIM in newspapers of general circulation in the project area not more than 21 day or less than 7 days prior to the PIM.
- 2. At least 21 days before the PIM, send a letter to each property owner and affected tenant that is within the project area or contiguous to the project area.

In addition to the written and newspaper notice required under the rules, the Applicant will also be providing notice: on the Applicant’s website and social media pages.

**B. Who will be Served Written Notice**

O.A.C. Rule 4906-3-03(B)(2)(a) through (d) requires that a letter for a generation facility be sent by first class mail to each property owner and affected tenant:

- 1. Within the planned site for the proposed facility.
- 2. Contiguous to the planned site of the proposed facility.

3. Who may be approached by the applicant for any additional easement necessary for the construction, operation, or maintenance of the facility.
4. If the property owner's address is not the same as the address affected by the proposed facility, then the applicant shall also send a letter to the affected property.

In addition to the individuals that the Applicant is required to serve under the rules, the Applicant will be enhancing notification of the PIMs by sending written notice to the following:

1. County commissioners.
2. Township Trustees for the project area.
3. The head of each public agency charged with the duty of protecting the environment or planning land use in the project area.
4. The county engineer.
5. The superintendent and board for the school district for the project area.
6. The main public library in the project area.
7. Emergency responders in the project area.
8. Local chamber of commerce.

**C. Content of Notification**

The Applicant proposes to comply with the notice requirements set forth in O.A.C. Rule 4906-3-03 in full by including the following information in the both the published and written notices:

1. A brief description of the project.
2. A description of the need for the project.
3. The project schedule.
4. The design of the facility.
5. The Applicant's website.

6. The Board's website, mailing address, email address, and telephone number.

In addition to above-noted information that is required under the rules to be included in the notices, the Applicant will include the following information:

1. Map of the project area
2. How to participate in the proceeding.
3. How to request notification of the public hearing.
4. A description of the certification process.
5. Instructions on how to submit questions prior to, during, and after the telephone and Web-based PIMs.
6. Instructions on how to access the PIMs.
7. Contact information for the Applicant in the event someone will not be able to access the PIMs via the internet so that the Applicant can send them a hard copy, CD, or thumb drive of the Presentation.
8. The Applicant's, mailing and email address, and contact telephone number

#### **VI. Good Cause Exists to Grant the Motion for Waiver**

The purpose of a PIM, which is held prior to the Applicant filing its application with the Board, is to inform the community about the Applicant's intent to file an application. In addition, the PIM provides an opportunity for the Applicant to answer questions from interested persons and gather information regarding any concerns the community might have so that the Applicant can consider the questions and concerns in its application. The public information program proposed by the Applicant, accomplishes these goals.

This motion for waiver is limited to a request to hold the PIM in the project area, all other requirements under the Board's rules will be met and exceeded as set forth in detail herein. Understanding the purpose of the PIM and the need to provide the community with information on

the project, as well as the Applicant's need to receive constructive feedback on the plans for the project, the public information program proposed by the Applicant, satisfies the intent of the requirements in O.A.C. Rule 4906-3-03. In fact, the proposed program goes beyond the requirements in the Board's rules and ensures that a larger range of individuals will not only receive notice of the project and the PIMs, but will be given an opportunity to have their questions answered in an effective and timely manner.

If the Board does not granted this limited waiver of the requirement for the PIM to be held in-person in the project area, it is not known when the PIM will be able to be held given the necessity for social distancing to protect the public. Such a delay will harm not only the Applicant, but the community where the project will be located. Landowners and tenant farmers may be financially harmed by disruptions in their planned farming activities caused by delays or changes in the Board's power siting process. Given the current state of the economy resulting from the COVID-19 pandemic, it is essential that the public information program move forward as expeditiously as possible, so that the Applicant is in a position to file its Application in the near future and the community can begin realizing the benefits from operation of the facility.

Granting this motion for waiver will not diminish any interested stakeholder's rights to participate in or provide comments on the Applicant's project. Rather, the public information program is just an initial step toward providing an avenue for outreach and input in the process. Individuals may file comments in the above-captioned proceeding at any time. In addition, later in the process, once the Applicant files the application, the Board will provide stakeholders an opportunity to intervene in the proceeding and become involved in the evidentiary hearing, or to testify at a public hearing.

Finally, the Applicant notes that this motion for waiver is consistent with the General Assembly's legislation enabling public bodies to convene virtual public meetings and hearings.<sup>6</sup> In addition, the Supreme Court of Ohio is currently holding oral arguments remotely.<sup>7</sup> In fact, the Board itself has found that motions for waiver allowing virtual PIMs similar to the program proposed by the Applicant herein should be granted.<sup>8</sup> Moreover, citing Am. Sub. H.B. 197, the Board has scheduled the local public and the adjudicatory hearing in a case currently pending before the Board; both of which have been held using remote access technology that facilitated participation by telephone and/or live video on the internet.<sup>9</sup>

## **VII. Conclusion**

Therefore, the Applicant requests the Board authorize the Applicant to implement the proposed alternative public information program, which includes a detailed Power Point presentation on the project and process, a presentation of the Power Point from the subject matter experts, live web-based and teleconference Q&A PIMs, and access to the Applicant's website that contains information on the project. Not only does this program substantially comply with the Board's rules, but it enhances the public information program required by O.A.C. Rule 4906-3-03. In addition, the notification efforts the Applicant proposes to use comply with and enhance the notice provisions required under the rules for PIMs. Therefore, in light of the continued state of emergency in Ohio and the need for social distancing to protect the public, the Applicant respectfully requests that the

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<sup>6</sup> Am. Sub. H.B. 197.

<sup>7</sup> See e.g., *In re Complaint of Direct Energy Business, L.C.C. v. Duke Energy Ohio, Inc.*, Case No. 2019-1058, Oral Argument (June 2, 2020) found at <https://ohiochannel.org/video/supreme-court-of-ohio-case-no-2019-1058-in-re-complaint-of-direct-energy-business-llc-v-duke-energy-ohio-inc>

<sup>8</sup> See e.g., *In re Application of Yellowbud Solar, LLC*, Case No. 20-972-EL-BGN, Entry (May 26, 2020); *In re Application of Arche Energy Project, LLC*, Case No. 20-979-EL-BGN, Entry (May 26, 2020); *In re Application of Fox Squirrel Soar, LLC*, Case No. 20-931-EL-BGN, Entry (June 30, 2020).

<sup>9</sup> *In re Application of The Ohio State University*, Case No. 19-1641-EL-BGN, Entry (May 22, 2020).

Board grant this motion for waiver, insofar as O.A.C. Rule 4906-3-03(B) requires that the Applicant's informational meeting "be held in the area in which the project is located."

The Applicant has tentatively scheduled the Virtual PIMs for November 20 and 23, 2020. The Applicant submits that good cause exists to grant this motion on an expedited basis, in accordance with O.A.C. Rule 4906-2-27(C), and requests that the Board consider this motion as expeditiously as possible to enable the Applicant to begin issuing notices of the Virtual PIMs by October 29, 2020.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The Ohio Power Siting Board'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 card who have electronically subscribed to these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 16<sup>th</sup> day of October, 2020.

/s/ Christine M.T. Pirik

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Summary: Motion for Waiver and Request for Approval of an Alternate Method for Public Information Meeting Request for Expedited Ruling and Memorandum in Support electronically filed by Christine M.T. Pirik on behalf of Birch Solar, LLC