

## THE OHIO POWER SITING BOARD

IN THE MATTER OF THE APPLICATION OF  
BIRCH SOLAR, LLC, FOR A CERTIFICATE  
OF ENVIRONMENTAL COMPATIBILITY  
AND PUBLIC NEED FOR THE  
CONSTRUCTION OF A SOLAR-POWERED  
ELECTRIC GENERATION FACILITY IN  
ALLEN AND AUGLAIZE COUNTIES, OHIO.

CASE NO. 20-1605-EL-BGN

### ENTRY

Entered in the Journal on October 26, 2020

{¶ 1} Birch Solar, LLC (Birch Solar or Company) 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 from the Ohio Power Siting Board (Board).

{¶ 3} On March 9, 2020, the governor signed Executive Order 2020-01D (Executive Order), declaring a state of emergency in Ohio to protect the well-being of Ohioans from the dangerous effects of COVID-19. As described in the Executive Order, state agencies are required to implement procedures consistent with recommendations from the Department of Health (DOH) to prevent or alleviate the public health threat associated with COVID-19. Additionally, all citizens are urged to heed the advice of the DOH regarding this public health emergency in order to protect their health and safety. The Executive Order was effective immediately and will remain in effect until the COVID19 emergency no longer exists. The DOH is making COVID-19 information, including information on preventative measures, available via the internet at [coronavirus.ohio.gov/](https://coronavirus.ohio.gov/).

{¶ 4} Pursuant to R.C. 3701.13, the DOH has supervision of “all matters relating to the preservation of the life and health of the people” and the “ultimate authority in matters of quarantine and isolation.” On March 12, 2020, the Director of the DOH issued an Order indicating that “all persons are urged to maintain social distancing (approximately six feet away from other people) whenever possible.”

{¶ 5} On October 16, 2020, Birch Solar filed a motion for waiver from certain provisions of the Board's rule requirements, contending that good cause exists for granting its request. The company further requested that the Board grant its motion on an expedited basis.

{¶ 6} Birch Solar is proposing to construct a 300 megawatt (MW) solar-powered electric generation facility in Allen and Auglaize counties, Ohio (Project). The Company states in its motion and memorandum in support that due to the COVID-19 emergency and the associated social distancing guidelines, it is impractical to hold public information meetings in the area in which the project is to be located, as required by Ohio Adm.Code 4906-3-03(B). The Company further states that while the stay-at-home restrictions in the DOH are gradually being lifted, the necessity for social distancing and a limitation on large social gatherings will continue for the foreseeable future.

{¶ 7} In lieu of traditional public information meetings, Birch Solar proposes to meet the Ohio Adm.Code 4906-3-03(B) requirement through a multi-pronged approach. As outlined in its motion and memorandum in support, the Company intends to: (i) conduct a "drop in" community open house where invited local residents and stakeholders can gather Project information while respecting safety guidelines as to wearing masks and social distancing; (ii) make available on its website a Power Point presentation with Project information; (iii) provide a pre-recorded presentation to provide Project information on its website; (iv) maintain a Project website; (v) send direct Project information mailers to adjoining landowners and area stakeholders; (vi) hold two live, web-based virtual information meetings; and (vii) host small group meetings with community members, either in-person or via phone. The Company seeks Board approval of its proposal as detailed in its motion.

{¶ 8} No memoranda contra Birch Solar's motion for waiver were filed in this proceeding.

{¶ 9} On October 26, 2020, Staff filed a letter indicating that, under the unique circumstances created by the COVID-19 emergency, it did not object to Birch Solar's October 16, 2020 request for waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 10} Ohio Adm.Code 4906-3-01(B) provides that the Board may waive any provisions in Ohio Adm.Code Chapter 4906-3 upon an application or a motion filed by a party, other than a requirement mandated by statute.

{¶ 11} Upon consideration of the unique circumstances of this case and the state of emergency, the administrative law judge (ALJ) finds that Birch Solar's October 16, 2020 limited request to waive the requirement that the public information be held in the area where the project is to be located is reasonable and should be granted. However, while granting this limited waiver request, the ALJ further notes that the Board is not endorsing nor objecting to the actual manner in which the public information meeting is proposed to be held, as detailed in the motion and memorandum in support. If Birch Solar wishes to proceed with planning and holding the public information meeting in the manner it proposes, it carries with it the risk associated with doing so. The ALJ encourages Birch Solar to ensure that all those who may wish to participate in the company's planned meetings and calls, or who wish to access the other Project information resources, have the opportunity to do so, just as they would under normal circumstances. This must include the creation of a process by which members of the public may request reasonable accommodations to obtain access to the public information meetings and information. The details of this process, and all requests for accommodation received, should be forwarded to Board staff upon receipt. Such shared information shall include any proposed resolutions from Birch Solar.

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That Birch Solar's October 16, 2020 motion for waiver be granted to the extent it is requesting to waive the Board's requirement that a public information meeting be held in the area in which the project is to be located. It is, further,

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

THE OHIO POWER SITING BOARD

*/s/Michael L. Williams*

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By: Michael L. Williams  
Administrative Law Judge

JRJ/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 Birch Solar's October 16, 2020 motion for waiver be granted to the extent it is requesting to waive the Board's requirement that a public information meeting be held in the area in which the project is to be located electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Administrative Law Judge, Ohio Power Siting Board