

**BEFORE
THE OHIO POWER SITING BOARD**

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

**MOTION FOR EXTENSION OF TIME FOR DETERMINING THE
APPLICATION’S COMPLETENESS, WAIVER OF OHIO ADM.CODE 4906-03-
06(A), AND
REQUEST FOR EXPEDITED TREATMENT
SUBMITTED ON BEHALF OF THE STAFF OF
THE OHIO POWER SITING BOARD**

The Staff of the Ohio Power Siting Board (“Staff”) respectfully moves the Ohio Power Siting Board (“Board”) for an order finding that the application filed by Birch Solar, LLC (“Applicant”) on February 12, 2021, supplemented on March 25, 2021, supplemented March 31, 2021, and supplemented on April 5, 2021, be extended for consideration of a finding of a complete application. Staff moves the Board for an order waiving Ohio Adm.Code 4906-03-06(A)’s requirement of a completeness determination within a sixty-day timeline. Birch Solar, LLC (“Applicant”) filed its initial application on February 12, 2021, supplemented it on March 25, 2021, supplemented the application again on March 31, 2021, and filed a third supplement to its application on April 5, 2021. In order to appropriately analyze the application, its supplements, and other information filed recently, Staff requests that the Board grant it more time to consider the

completeness of the application and therefore waive Ohio Adm.Code 4906-03-06(A).

Staff also requests, pursuant to Ohio Adm.Code 4906-2-27(C), that the Board expedite its ruling on this Motion. Good cause for this Motion is set forth in the accompanying Memorandum in Support.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John Jones
Section Chief

/s/ Jodi Bair

Jodi Bair

Kyle Kern

Assistant Attorneys General

Public Utilities Section

30 East Broad Street, Floor 26th

Columbus, OH 43215-3793

614.644.8599 (telephone)

866.431.1581 (fax)

jodi.bair@ohioattorneygeneral.gov

kyle.kern@ohioattorneygeneral.gov

**On Behalf of the Staff of the
Ohio Power Siting Board**

**BEFORE
THE OHIO POWER SITING BOARD**

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

MEMORANDUM IN SUPPORT

On February 12, 2021, Birch Solar, LLC (“Applicant”) filed an application for a Certificate of Environmental Compatibility and Public Need to build up to a 300-megawatt alternating current solar-powered electric generation facility to be located in Allen and Auglaize Counties, Ohio (“Facility”). According to the application, the Facility would consist of photovoltaic (PV) solar panels, inverters, collector lines, a substation, and internal access roads, encompassed by a security fence. The Applicant supplemented its application on March 25, 2021, March 31, 2021 and April 5, 2021. Furthermore, Applicant has to-date responded to four separate data requests from Staff. These responses occurred on March 12, 2021, April 6, 2021, April 9, 2021 and the most recent response submitted on April 12, 2021. On April 13, 2021, Staff submitted a fifth data request to the Applicant requesting a response by April 28, 2021.

Pursuant to Ohio Adm.Code 4906-3-06(A), the chairman shall, within sixty days of receipt of an application, either accept the application as complete and complying with the requirements of R.C. 4906.06, or reject it as incomplete. As such, the sixty day review period currently expires on April 13, 2021.

Staff represents that it is working diligently to determine whether the application is compliant with R.C. 4906.06. However, Staff believes that the current time prescription – April 13, 2021 – is inadequate in order to make that determination given the supplements to the application in conjunction with the responses to Staff’s data requests that have occurred. Moreover, the Applicant responded to the most recent Staff data request on April 12, 2021. Staff anticipates thoroughly reviewing this contemporaneously with the broader application, supplements, and data responses to further assist Staff in its completeness determination. Therefore, Staff requests additional time to review the application for completeness. The Board has previously allowed more time for Staff review in order to determine whether an application is in compliance with R.C. 4906.06, and thus complete or incomplete. *See In the Matter of the Application of Atlanta Farms Solar Project, LLC*, Case No. 19-1880-EL-BGN, Entry filed April 30, 2020. *See also, In the Matter of the Application of Seneca Wind, LLC*, Case No. 18-0488-EL-BGN, Entry filed September 18, 2018. *See also, In the Matter of Big Plain Solar, LLC*, Case No. 19-1823-EL-BGN, Entry filed August 3, 2020.

Staff provided reasons demonstrating good cause to waive Ohio Adm.Code 4906-03-6(A) and extend the time to determine the completeness of the application. In addition, Staff requests that the Administrative Law Judge permit this additional time before fixing the date for the public hearing. While the Board’s rule requires that the hearing date be set “promptly,” R.C. 4906.07(A) requires that the Board fix the date “not less than sixty nor more than ninety days” after the application is deemed to be complete.

Staff needs more time to review the application in order to make a recommendation regarding completeness.

Respectfully submitted,
Dave Yost
Ohio Attorney General

John Jones
Section Chief

/s/ Jodi Bair

Jodi Bair

Kyle Kern

Assistant Attorneys General

Public Utilities Section

30 East Broad Street, Floor 26th

Columbus, OH 43215-3793

614.644.8599 (telephone)

866.431.1581 (fax)

jodi.bair@ohioattorneygeneral.gov

kyle.kern@ohioattorneygeneral.gov

**On Behalf of the Staff of the
Ohio Power Siting Board**

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **Motion for Extension of Time for Determining the Application’s Completeness, Waiver of Ohio Adm.Code 4906-03-06(A), and Request for Expedited Treatment**, submitted on behalf of the Staff of the Ohio Power Siting Board, was served via electronic mail upon the following parties of record, this 13th day of April 2021.

/s/ Jodi Bair

Jodi Bair

Assistant Attorney General

Parties of Record:

Christine M.T. Pirik

(Counsel of Record)

Terrence O’Donnell

Matthew C. McDonnell

Dickinson Wright PLLC

150 East Gay Street, Suite 2400

Columbus, Ohio 43215

614.591.5461 (telephone)

cpirik@dickinsonwright.com

todonnell@dickinsonwright.com

mmcdonnell@dickinsonwright.com

Jack A. Van Kley

Van Kley & Walker, LLC

132 Northwoods Blvd., Suite C-1

Columbus OH 43235

614.431.8900 (telephone)

614.431.8905 (fax)

jvankley@vankleywalker.com

Counsel for Birch Solar 1, LLC

Administrative Law Judge:

michael.williams@puco.ohio.gov

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

4/13/2021 4:57:10 PM

in

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

Summary: Motion for Extension of Time for Determining the Application's Completeness, Waiver of Ohio Adm.Code 4906-03-06(A), and Request for Expedited Treatment, submitted on behalf of the Staff of the Ohio Power Siting Board electronically filed by Mrs. Kimberly M Naeder on behalf of OPSB