

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

Pursuant to R.C. 4906.08(A)(3) and Ohio Administrative Code (“OAC”) § 4906-2-12,

Against Birch Solar LLC (“Against Birch Solar”),
5650 West Breese Road
Lima, OH 45806

Linda M. Beckstedt
4495 West Breese Road
Lima, OH 45806

Jesse M. Bott and Kacie L. Rison
22705 South Kemp Road
Cridersville, OH 45806

Ryan and Stacy Brenneman
3695 South Kemp Road
Lima, OH 45806

Patricia A. Buzard
4415 West Breese Road
Lima, OH 45806

Cheryl M. Counts
4055 South Kemp Road
Lima, OH 45806

Ann Marie R. and Christopher H. Fisher
11678 Zerkle Road
Cridersville, OH 45806

Deed Hall
4198 State Route 501¹
Lima, OH 45806

Allyshia and Kyle Kuhbander
4161 South Kemp Road
Lima, OH 45806

Angie M. and Kenneth R. McAlexander
3840 State Route 501
Lima, OH 45806

Alexandra and Timothy Rostorfer
11852 Zerkle Road
Cridersville, Ohio 45806

Susan and William Walters
4775 Bowsheer Road
Lima, Ohio 45806

Althea A. and Mark Wellman
5675 West Breese Road
Lima, OH 45806

Ellen Wiegand
5880 West Hume Road
Lima, OH 45806

A memorandum in support of this petition is provided below.

**MEMORANDUM IN SUPPORT OF
PETITION FOR LEAVE TO INTERVENE**

OAC 4906-2-12(B) provides that the Ohio Power Siting Board (“Board”) or administrative law judge may consider the following criteria when considering petitions to intervene:

- (a) The nature and extent of the person’s interest;

¹ State Route 501 is also known as Wapakoneta Road.

- (b) The extent to which the person's interest is represented by existing parties;
- (c) The person's potential contribution to a just and expeditious resolution of the issues involved in the proceeding; and
- (d) Whether granting the requested intervention would unduly delay the proceeding or unjustly prejudice an existing party.

For the following reasons, there is good cause under these criteria to grant intervenor status to these proposed Petitioners in these proceedings.

Nature and extent of interest:

Against Birch Solar's purpose is to advocate for its members in order to address the problems posed by the Birch Solar 1 project ("Project") proposed by Birch Solar 1, LLC ("Birch Solar"), including the participation in this proceeding at the Board. Against Birch Solar has more than 100 members who will be directly and adversely affected by the Project, which will be constructed and operated near their homes and properties:

The 21 individuals who seek intervention are members of Against Birch Solar. Linda M. Beckstedt, Jesse M. Bott and Kacie L. Rison, Ryan and Stacy Brenneman, Patricia A. Buzard, Cheryl 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, and Susan and William Walters own and live on properties adjacent to the Project Area for the Project. Allyshia and Kyle Kuhbander's home is bordered on and adjacent to the Project Area on four sides. The properties of Linda M. Beckstedt, Jesse M. Bott and Kacie L. Rison, Patricia A. Buzard, Cheryl M. Counts, Ann Marie R. and Christopher H. Fisher, Deed Hall, and Alexandra and Timothy Rostorfer are adjacent to the Project Area on two sides. Ellen Wieging resides on property that is surrounded by and adjacent to the Project Area on four sides. Mark Wellman is the proprietor of the Winona Lake Water Park and Campground on land owned by Althea A. Wellman. This land is adjacent to the Project Area on two sides.

Against Birch Solar has standing to participate as an intervenor through associational standing, because one or more of its members have standing to participate as intervenors. See *Fraternal Order of Police v. City of Columbus*, 10 Ohio App.3d 1 (10th Dist. 1983) (ruling that an association has the right to bring legal action on behalf of its members).

The Project will have serious adverse impacts on the Petitioners' homes and properties that will spoil the enjoyment of living and working there. The Petitioners will present evidence about the following respects, among others, in which Birch Solar's application fails to protect their properties and their enjoyment of living and working there.

- The Petitioners' views of hundreds of acres of solar panels and fences surrounding the Petitioners' properties and on the public roads near the Petitioners' properties will spoil their visual and aesthetic enjoyment of living and working there. The application fails to commit to specific measures that will be taken to protect the Petitioners' views, but instead leaves those details to be determined after the certificate is issued rather than properly and fairly adjudicating them in this proceeding. The application does not provide adequate or sufficiently detailed commitments for planting vegetation barriers between the solar project structures and equipment and Petitioners' properties to minimize visual impacts.
- The application does not provide vegetative barriers in the setbacks between the Project Area and neighboring properties that are adequate to protect the aesthetic enjoyment of the neighbors' properties. In addition, while the application calls for planting some vegetation inside and

outside of the Project Area, it fails to provide for adequate measures to sustain the vegetation or keep it alive. Moreover, the application fails to prevent the intrusion of invasive plant species and other weeds in the area whose seeds may be contained in the mixtures of seeds used to plant the land in the Project.

- Birch Solar failed to conduct the required studies to identify the species of mammals, birds, bats, and plants in and near the Project Area. Birch Solar also failed to conduct an adequate study of the Project's adverse effects on wildlife. Birch Solar's study also failed to evaluate the adverse effects of the Project's fences on wildlife species that currently travel from their places of residence inside and outside of the Project Area throughout the Project Area to forage and hunt. The study failed to evaluate and address the adverse effects on wildlife that will no longer be able to travel from one pocket of wildlife-friendly habitat to another due to the obstructions from the Project's fences.
- The application does not sufficiently provide for the identification, protection, and repair of drainage tiles that are damaged by the Project's construction.
- The application does not protect the existing storm water drainage patterns that protect the Petitioners' land from being flooded by runoff from the Project Area.
- The application fails to identify the specific locations for the solar panels, night lights, and other Project components, leaving this task to a

later day subsequent to the certificate's issuance. This failure deprives the Board and the Petitioners of the opportunity to determine whether the night lights will be an annoyance to the Petitioners, and whether the Project's components will be in the line of sight from the Petitioners' lands and homes.

- The setbacks proposed between the neighboring properties (including the Petitioners' properties) and the Project's fences and components are too short to protect the neighboring properties.
- The application fails to adequately evaluate and protect against noise from the Project's components, including but not limited to the inverters. In particular, the Project's inverters are proposed for locations that are too close to Petitioners' homes and yards, so that the inverters' humming noises will be heard at annoying levels there.
- The solar panels and inverters are located too close to Mark Wellman's Winona Lake Water Park and Campground, thus threatening its ability to attract patrons due to the presence of the solar project, including the annoyance of glare from the solar panels, noise from installing the solar panels and operating the solar equipment (especially the inverters), surface water runoff, and the aesthetic impairment of the water park and campground from nearby views of solar equipment.

The Petitioners should be granted intervention so that they can address these and other problems with the application.

Extent to which interests are represented by existing parties and potential contribution to the just and expeditious resolution of these proceedings:

No other party represents, or can represent, the Petitioners' interests in protecting themselves and their property from the impacts of the solar project. As adjacent landowners surrounded by and near the Project Area, their participation in the case is necessary to the just and expeditious resolution of this proceeding.

Potential for undue delay or unjust prejudice:

Granting intervenor status to the Petitioners will not unduly delay the proceedings or cause unjust prejudice to the Applicant. The Petitioners will comply with whatever case management schedule that the Board establishes. Moreover, the Petitioners will be represented in these proceedings by counsel experienced in practice before the Board.

For the foregoing reasons, the Petitioners request the Board to grant this Petition for Leave to Intervene.

Respectfully submitted,

/s/ Jack A. Van Kley

Jack A. Van Kley (0016961)
Van Kley & Walker, LLC
132 Northwoods Blvd., Suite C-1
Columbus, Ohio 43235
(614) 431-8900 (telephone)
(614) 431-8905 (facsimile)
Email: jvankley@vankleywalker.com
(willing to accept service by email)

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 this case. In addition, I hereby certify that, on June 2, 2021, a copy of the foregoing document also is being served by electronic mail on the following: Christine M.T. Pirik at cpirik@dickinsonwright.com; Terrence O'Donnell at todonnell@dickinsonwright.com; Matthew C. McDonnell at mmcdonnell@dickinsonwright.com; Jodi Bair at jodi.bair@ohioattorneygeneral.gov; and Kyle Kern at kyle.kern@ohioattorneygeneral.gov.

/s/ Jack A. Van Kley _____
Jack A. Van Kley

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

Summary: Petition to Intervene electronically filed by Mr. Jack A Van Kley on behalf of Against Birch Solar LLC