

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 for the Construction) Case No. 20-1605-EL-BGN  
of a Solar-Powered Electric Generation Facility )  
in Allen and Auglaize Counties, Ohio )

---

**MOTION OF AGAINST BIRCH SOLAR LLC, 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 KUH BANDER, ANGIE M. AND KENNETH R. McALEXANDER, ALEXANDRA AND TIMOTHY ROSTORFER, SUSAN AND WILLIAM WALTERS, ALTHEA A. AND MARK WELLMAN, AND ELLEN WIEGING FOR AN ORDER DIRECTING APPLICANT BIRCH SOLAR, LLC TO HOLD AN IN PERSON INFORMATIONAL MEETING IN THE AREA IN WHICH THE PROJECT IS LOCATED AND TO HOLD THE STAFF’S DETERMINATION OF THE APPLICATION’S COMPLETENESS IN ABEYANCE**

---

Against Birch Solar LLC and the other Petitioners named above (collectively “Petitioners”) hereby move for an order directing Birch Solar, LLC (“Birch Solar”) to hold an in person public informational meeting “in the area in which the project is located” as required by Ohio Administrative Code (“OAC”) 4906-3-03(B). Petitioners further move that the Administrative Law Judge (“ALJ”) direct the Staff to delay its determination of the application’s completeness under OAC 4906-3-03(A) until such time as the in person informational meeting has been held and the application has been amended to “summarize in its certificate application how many and what types of comments were received” during the in person public informational meeting as required by OAC 4906-3-03(B)(4).

A memorandum in support of this petition is provided below.

**MEMORANDUM IN SUPPORT**

On October 26, 2020, the Administrative Law Judge (“ALJ”) issued an Entry granting Birch Solar’s motion to waive the requirement in OAC 4906-3-03(B) that Birch Solar’s public

informational meeting “be held in the area in which the project is located.” This waiver was based on restrictions on in-person mass gatherings in a Governor’s Executive Order and an Ohio Department of Health’s (“ODH’s”) COVID-19 order. Birch Solar then conducted two web-based public informational meetings virtually on the internet on November 20 and 24, 2020.

These virtual meetings did not satisfy the objectives of a public informational meeting as provided in OAC 4906-3-03. The virtual presentations were plagued with logistical problems, including the inaccessibility of the website to some members of the public at times, website freezing, hard-to-read power point slides, blurry connections, and poor audio.

The web-based format used for the virtual meeting also restricted the public’s ability to comment or ask questions about the proposed facility. Birch Solar used a chat function to receive comments and questions, which limited the public’s opportunities to ask follow-up questions in order to obtain complete answers. The chat function also limited the number of characters in a question, reducing the scope of the questions. Birch Solar did not answer many of the public’s questions, thus restricting the information necessary to educate the public about the project.

OAC 4906-3-03(B)(4) requires Birch Solar to “summarize in its certificate application how many and what types of comments were received” during the public informational meeting. The application’s summary of comments was incomplete, as it did not address all of the topics raised by the public in the November 2020 public informational sessions.

Birch Solar now is able to hold an in person informational meeting in the area in which the project is located, because ODH’s COVID-19 order restricting mass gatherings expired on June 2, 2021 and was not renewed. Because Birch Solar’s virtual informational meetings were

inadequate, the Petitioners request the ALJ to issue an order directing Birch Solar to conduct such in person meeting.

The Petitioners note that such an order would be consistent with the Board's rulings granting waivers of in person informational meetings in other pending cases prior to the June 2, 2021 expiration of ODH's COVID-19 order restricting mass gatherings. Those rulings have stated that, in the event that statewide health orders prohibiting mass gatherings are lifted or otherwise eliminated, and the applicant is able to hold an in-person public information meeting, the applicant should evaluate and file an update on the record regarding the possibility of providing an opportunity of an in-person meeting for those who wish to do so. *In re Palomino Solar*, Case No. 21-41-EL-BGN, Entry of April 21, 2021, ¶ 12; *In re Border Basin I*, Case No. 21-0277-EL-BGN, Entry of April 20, 2021, ¶ 14; *In re Nottingham Solar*, Case No. 21-270-EL-BGN, Entry of April 9, 2021, ¶ 14; *In re Cepheus Energy*, Case No. 21-293-EL-BGN, Entry of April 9, 2021, ¶ 11.

On April 30, 2021, the ALJ issued an Entry at the Staff's request to extend the Staff's deadline for determining the application's completeness under OAC 4906-3-03(A). The grounds for this postponement was to provide the Staff with more time to evaluate additional information being submitted by Birch Solar in response to the Staff's data requests. The new deadline is June 14, 2021.

Because OAC 4906-3-03(B)(4) requires Birch Solar to "summarize in its certificate application how many and what types of comments were received" during the public informational meeting, the application will not be complete until the application contains such a summary from an in person informational meeting. Therefore, the Petitioners request that the ALJ direct the Staff to postpone its determination of the application's completeness under OAC

4906-3-03(A) until such time as the in person informational meeting has been held and the application has been amended to “summarize in its certificate application how many and what types of comments were received” during the in person public informational meeting as required by OAC 4906-3-03(B)(4).

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](mailto: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 9, 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](mailto:cpirik@dickinsonwright.com); Terrence O’Donnell at [todonnell@dickinsonwright.com](mailto:todonnell@dickinsonwright.com); Matthew C. McDonnell at [mmcdonnell@dickinsonwright.com](mailto:mmcdonnell@dickinsonwright.com); Jodi Bair at [jodi.bair@ohioattorneygeneral.gov](mailto:jodi.bair@ohioattorneygeneral.gov); and Kyle Kern at [kyle.kern@ohioattorneygeneral.gov](mailto:kyle.kern@ohioattorneygeneral.gov).

/s/ Jack A. Van Kley \_\_\_\_\_  
Jack A. Van Kley

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**6/9/2021 2:41:13 PM**

**in**

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

Summary: Motion for In Person Informational Hearing and Postponement of Staff  
Completeness Determination for Application electronically filed by Mr. Jack A Van Kley on  
behalf of AGAINST BIRCH SOLAR LLC