

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 )

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**REPLY IN SUPPORT OF 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, 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**

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Although Birch Solar LLC (“Birch Solar”) has conducted a number of local events in an attempt to compensate for its inability to hold an in person informational meeting prior to the termination of the State’s COVID emergency orders, its efforts did not accomplish the purposes of OAC 4906-3-03(B). This provision provides:

No more than ninety days prior to submitting a standard certificate application to the board, the applicant shall conduct at least one informational meeting open to the public to be held in the area in which the project is located. If substantial changes are made to the application after the informational meeting, the executive director of the board shall have the authority to require another informational meeting at his/her discretion.

As stated in the rule, the public informational meeting is supposed to be held no earlier than 90 days prior to submittal of the application. This ensures that the information provided to the public will not be out-of-date and that the public will have the opportunity to comment on a project design that is not outdated by that time. The second sentence of OAC 4906-3-03(B)

reinforces this principle by allowing the Board to require another informational meeting if the application changes substantially after the first informational meeting.

In this case, Birch Solar submitted the application to the Board on February 12, 2021, so the community outreach meetings and literature distributions more than 90 days earlier as mentioned in Birch Solar's memorandum did not comport with the rule's goals. Thus, Birch Solar's references to these events do not obviate its obligation to hold an effective informational meeting within 90 days prior to submitting the application.

Although Birch Solar held two virtual meetings in an attempt to inform the public about the project within this 90-day period, in both meetings there were citizens who could not obtain admission to the website hosting the meetings despite their efforts to access the meetings. Although the administrative law judge's waiver allowed Birch Solar to dispense with an in person meeting, Birch Solar was still required to provide everyone with access to such a meeting. Because that did not occur, and since in person meetings are now feasible, Birch Solar should be required to hold an in person meeting so that technological shortcomings or malfunctions will not block access by any person who wishes to attend. The application should not be determined complete until Birch Solar has held the in person informational meeting, has completely responded to the public's questions, and has added a compliant summary of comments to its application.

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)

**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 18, 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

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

Summary: Reply in Support of Motion to Require Informational Meeting and to Hold Application Completeness Determination in Abeyance electronically filed by Mr. Jack A Van Kley on behalf of AGAINST BIRCH SOLAR LLC