

## 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 July 7, 2021

{¶ 1} Birch Solar, LLC (Birch Solar or Applicant) 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). In seeking a certificate, applicants must comply with the filing requirements outlined in R.C. 4906.04, as well as Ohio Adm.Code Chapters 4906-2 and 4906-4.

{¶ 3} On November 3, 2020, Birch Solar filed a pre-application letter with the Board regarding its proposed 300 megawatt solar-powered electric generation facility in Allen and Auglaize counties, Ohio (Facility).

{¶ 4} On November 20, 2020, and November 23, 2020, Birch Solar held public information meetings using virtual technology to discuss the proposed project with interested persons and landowners; the company filed its affidavit of publication with the Board on November 18, 2020.

{¶ 5} On February 12, 2021, Birch Solar filed its application with the Board for a certificate of environmental compatibility and public need to construct the proposed Facility. Pursuant to Ohio Adm.Code 4906-3-06, a determination of completeness of Birch Solar's application was due on April 13, 2021.

{¶ 6} On March 25, 2021, March 31, 2021, and April 5, 2021, Birch Solar filed supplements to its application.

{¶ 7} On April 13, 2021, Staff filed a motion to suspend the finding of completeness and a request for an expedited ruling asserting that it was unable to determine the application's completeness due to the supplementation to the application.

{¶ 8} On April 30, 2021, the administrative law judge (ALJ) granted Staff's motion for extension of completeness review, extending the deadline until June 14, 2021.

{¶ 9} On June 2, 2021, a petition for leave to intervene was filed on behalf of: Against Birch Solar LLC, Linda M. Beckstedt, Jesse M. Bott and Kacie Rison, Ryan and Stacy Brenneman, Patricia 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, Susan and William Walters, Althea A. and Mark Wellman, and Ellen Wieging (collectively, Against Birch Solar).<sup>1</sup> In seeking intervention, Against Birch Solar describes that Against Birch Solar LLC is an organization of more than 100 members who claim that they will be directly and adversely affected by the Birch Solar project, which will be constructed and operated near their homes and properties. Further, Against Birch Solar indicates that its members, including those named individually in the petition to intervene, include persons who own or live on properties adjacent to the solar project.

{¶ 10} Upon review, the ALJ grants intervention to Against Birch Solar and the Kuhbanders, finding that they have a substantial interest in the proceeding, and that their participation as parties contributes to the just and expeditious resolution of the matter without causing undue delay or prejudice. Ohio Adm.Code 4906-2-12.

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<sup>1</sup> On June 11, 2021, counsel for Against Birch Solar filed a notice of withdrawal from representation of Allyshia and Kyle Kuhbander (collectively, Kuhbanders), indicating that, while he was no longer representing them, the Kuhbanders continue to seek intervention in the case.

{¶ 11} On June 9, 2021, Against Birch Solar filed (1) a motion for an in-person informational meeting and postponement of Staff completeness determination of application, and (2) a memorandum in support of the motion. Against Birch Solar alleges that Applicant's virtual public information meetings on November 20 and November 24<sup>2</sup>, 2020, were deficient due to (1) inconsistent website accessibility, (2) website freezing, (3) power point slide legibility concerns, (4) audio and video clarity, (5) use of a chat function that limited public opportunity to obtain information about the project. Based on these alleged shortcomings, Against Birch Solar contends that Applicant cannot comply with its obligation to summarize the number and types of comments that were derived from the virtual public information meetings.

{¶ 12} On June 11, 2021, Birch Solar filed a memorandum contra motion to hold an additional in-person public information meeting and to hold Staff's determination of completeness in abeyance. Birch Solar disputes that its virtual public information meetings were deficient, claiming that the combined meetings lasted nearly eight hours and were attended by nearly 500 participants. Further, Applicant disputes claims that there were internet connectivity deficiencies as to the public information meetings.

{¶ 13} On June 14, 2021, the ALJ stayed the deadline for Staff to make its completeness determination of the application.

{¶ 14} On June 21, 2021, Against Birch Solar filed a reply in support of its motion dated June 9, 2021. Against Birch Solar continues to assert that some citizens were unable to access the website that hosted the public information meetings such that the meetings were noncompliant with the requirements in Ohio Adm.Code 4906-3-03.

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<sup>2</sup> Against Birch Solar describes that the second virtual meeting occurred on November 24, 2020. However, Applicant describes that the meeting occurred on November 23, 2020. While not determinative of the pending issue, the ALJ clarifies that the meeting occurred on November 23, 2020. (Proof of Publication of Public Information Meetings (Nov. 18, 2020); Application (Feb. 12, 2021) at 20.)

{¶ 15} Ohio Adm.Code 4906-3-03 requires that an applicant for a Certificate of Environmental Compatibility and Public Need must conduct a public information program in anticipation of filing an application before the Board. Such public information program must include an informational meeting that shall be open to the public. The information provided at the public information meeting shall address the project's anticipated function, equipment size, approximate areal extent, general location, schedule, and purpose of the project. Moreover, at the informational meeting, the applicant shall (1) present maps showing the proposed facility at a scale that allows affected property owners to identify the location of their properties in relation to the facility, and (2) solicit written comments from attendees, which the applicant must summarize as part of its certificate application.

{¶ 16} The ALJ initially notes that, on May 17, 2021, the Director of the Ohio Department of Health issued an Order indicating that "except in certain limited circumstances, fully vaccinated persons may safely do most activities without a facial covering and without socially distancing." This Order was intended to align the state of Ohio's health orders with new guidance from the Centers for Disease Control and Prevention. These new guidelines became effective in the state of Ohio on June 2, 2021. In light of the updated health-safety guidelines and to afford the public an in-person opportunity to receive information regarding the proposed Project, the ALJ orders that an in-person local public information meeting be held near the area of the proposed Project. Applicant is directed to supplement its application with a summary of the in-person public information meeting comments, as provided in Ohio Adm.Code 4906-3-03(B)(4).

{¶ 17} Further, the ALJ finds that it is now appropriate to set the time for Staff's determination of completeness. Accordingly, Staff shall file its determination of completeness by July 14, 2021.

{¶ 18} It is, therefore,

{¶ 19} ORDERED, That Against Birch Solar and the Kuhbanders be granted intervention as described in Paragraph 10. It is, further,

{¶ 20} ORDERED, That Birch Solar be required to conduct an in-person public information meeting as described in Paragraph 16. It is, further,

{¶ 21} ORDERED, That Staff shall file its determination of completeness by July 14, 2021, as described in Paragraph 17. It is, further,

{¶ 22} 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

By: Michael L. Williams  
Administrative Law Judge

NJW/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 Against Birch Solar and the Kuhbanders be granted intervention as described in Paragraph 10; that Birch Solar be required to conduct an in-person public information meeting as described in Paragraph 16, and that Staff shall file its determination of completeness by July 14, 2021, as described in Paragraph 17 electronically filed by Heather A Chilcote on behalf of Michael L. Williams, Administrative Law Judge, Ohio Power Siting Board