

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)

**LIST OF ISSUES FOR CROSS-EXAMINATION SUBMITTED BY
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, AND SUSAN AND WILLIAM
WALTERS, ALTHEA A. AND MARK WELLMAN, AND ELLEN WIEGING**

The above-named Intervenors hereby submit their list of issues about which they may pursue cross-examination at the hearing. These issues are the following:

1. The Intervenors' views of hundreds of acres of solar panels in the Birch Solar Project ("Project") surrounding the Intervenors' properties and on the public roads near the Intervenors' properties will spoil their visual and aesthetic enjoyment of living and working there. Birch Solar's application for a certificate ("Application") fails to commit to specific measures that will be taken to protect the Intervenors' views, but instead leaves those details to be determined after the certificate is issued rather than properly and fairly adjudicating them in this proceeding.
2. The Application does not sufficiently provide for the protection and repair of drainage tiles and surface waterways that are damaged by the Project's construction or operation.
3. Birch Solar failed to conduct an adequate study of the Project's adverse effects on wildlife. The applicant'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 (including those living on the Intervenors' land) throughout the Project Area to forage and hunt. The study failed to evaluate 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.

4. The Application fails to identify reasonable measures that are necessary to protect birds and other wildlife. The proliferations of fencing in the Project, by preventing wildlife movement, will congregate and cause the overpopulation of wildlife on the Intervenors' land, and other habitat areas inside and outside of the Project Area. The crowding of wildlife, such as deer, in smaller areas will increase adverse impacts such as grazing on the crops and plants in Intervenors' fields and yards.

5. 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 from the Project into the surrounding community.

6. Dirt tracked on the public roads, airborne dust, and traffic will be intrusive during the Project's construction.

7. The Application does not provide adequate measures for protecting and repairing public roads, traffic signs, storm sewer conduits, culverts, and underdrains damaged by construction or construction traffic.

8. The Application does not protect the existing storm water drainage patterns that protect the Intervenors' land from being flooded by runoff from the Project Area.

9. 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 Intervenors of the opportunity to determine whether the panels and other components will displace or injure streams, wildlife habitat, and other natural resources, whether the night lights will be an annoyance to the Intervenors, and whether the Project's components will be in the line of sight from the Intervenors' land and home.

10. The economic impact study in the Application is incomplete and marred with flaws. The study does not identify or quantify the adverse economic impacts of the Project, such as the reduced values of neighborhood properties, the adverse economic impact of the proposed facility on local commercial and industrial activities, the loss of crop production on the local economy, or the loss of property taxes to schools and other governmental entities from the potential application of the Payment in Lieu of Tax ("PILOT") program, thus violating OAC 4906-4-06(E)(4).

11. The setbacks proposed between the neighboring properties (including the Intervenors') and the Project's fences and components are too short to protect the neighboring properties, yards, and homes.

12. The Application fails to provide a fence design adequate to allow wildlife movement and to minimize the fences' aesthetically displeasing characteristics.

13. The Application fails to identify measures to protect the solar panels from high wind, hail, lightening, fire, and other natural disasters, as well as to protect Intervenors from flying debris and toxic materials that could be released by these disasters.

14. The Application does not account for or provide for adequate emergency services to address emergencies at the Project.

15. The Application does not adequately provide for decommissioning upon the closure of the Project, including financial assurance (e.g., bonding) and the disposal of solar panels and other equipment or structures.

16. The Application fails to adequately and accurately evaluate, and fails to protect the Intervenor from, the noise impacts of Project construction and operation, including noise from pile driving equipment, earthmoving machinery, inverters, tracking motors, and transformers.

17. The Application fails to provide the information necessary for the Board to examine the nature and economics of the various alternatives to the Project as required by R.C. 4906.10(A)(3).

18. The Application does not provide for a Project that is consistent with local land use plans.

19. The Application does not provide a description or design of the equipment and structures in the interconnection of the solar facility to the regional electric power grid that is required by OAC 4906-4-05.

20. The Application contains no commitments for financial assurance to guarantee the decommissioning of the Project, nor does it identify the type of financial assurance mechanism that will be used.

21. The Application fails to describe the necessary coordination with appropriate authorities for temporary or permanent road closures, lane closures, road access restrictions, and traffic control necessary for construction of the Project as required by OAC 4906-4-06(F)(4),

including procedures necessary to prevent the interference with the movement of farm machinery on the roads.

22. The Application fails to protect neighbors from adverse effects from construction laydown areas.

23. The Application does not contain the information on water quantity and water quality required by OAC 4906-4-07(C)(1)(b), (1)(d), (1)(e), (2)(a), (2)(b), (2)(c), 2(d), 2(e), 3(a), 3(b), and 3(d).

24. The Application contains no estimate of the volume of solid waste and debris generated during construction, or the debris' disposal destination, as required by OAC 4906-4-07(D).

25. The Application does not describe how the proposed Project incorporates maximum feasible water conservation practices considering available technology and the nature and economics of the various alternatives that is required by OAC 4906-4-07(C)(3)(e).

26. The Application fails to protect the groundwater supplies on which the Intervenors rely. The Application does not contain measures to protect the Intervenors' water supply wells from the Project's uses of groundwater and drawdown of the aquifers.

27. The Application fails to comply with OAC 4906-4-08(A)(1)(e), because it does not describe the fire protection, safety, and medical emergency plan(s) to be used during construction and operation of the Project and the Application does not describe how such plan(s) will be developed in consultation with local emergency responders.

28. The Application does not contain descriptions of equipment and procedures that will mitigate the effects of noise emissions from the proposed Project during construction and operation as required by OAC 4906-4-08(A)(3)(d).

29. The Application fails to provide the adequate and accurate preconstruction background noise study of the Project Area required by OAC 4906-4-08(A)(3)(e).

30. The Application does not contain the literature surveys of plant and animal life within the Project Area and within one-fourth mile of the Project Area that is required by OAC 4906-4-08(B)(1)(c).

31. The Application does not contain the field surveys of plant and animal life within the Project Area and within one-fourth mile of the Project Area that are required by OAC 4906-4-08(B)(1)(d).

32. The Application does not provide information regarding potential impacts to ecological resources such as deer and other animals during operation and maintenance of the Project as required by OAC 4906-4-08(B)(3).

33. Contrary to the purpose and intent of OAC 4906-4-08(C)(1)(b), the Application fails to identify the locations or owners of the structures listed in the tables provided under 4906-4-08(C)(1)(b), thus defeating the main purpose of OAC 4906-4-08(C)(1)(b) to advise neighboring landowners about how close their land and structures are to the proposed solar equipment.

34. The Application fails to adequately identify, and provide mitigation of the Project's adverse effects on, cultural resources. The Application does not include the investigations of cultural and archaeological resources required by OAC 4906-4-08(D). The Application does not describe and evaluate the Project's visual impacts on the cultural and archaeological resources surrounding the Project Area.

35. The Application fails to provide much of the information required by OAC 4906-4-08(D)(4) about the Project's visual impacts. The Application does not comply with the

mandate in OAC 4906-4-08(D)(4)(e) to “[p]rovide photographic simulations or artist's pictorial sketches of the proposed Project from public vantage points that cover the range of landscapes, viewer groups, and types of scenic resources found within the study area.” In particular, the Application fails to include photographic simulations or artist sketches of the proposed Project that reveal the Project’s appearance to the Intervenors and other nearby neighbors as seen from their homes and yards.

36. While OAC 4906-4-08(D)(4)(f) requires Birch Solar to describe measures that will be taken to minimize any adverse visual impacts created by the Project, including but not limited to visual screening, the Application provides inadequate visual screening or other minimization measures to reduce the neighbors’ and the public’s views of solar equipment.

37. The Application fails to evaluate the visual impact of the Project’s lightning as required by OAC 4906-4-08(D)(4) and fails to commit to implementing measures required by OAC 4906-4-08(D)(4)(f) to minimize adverse visual impacts of the Project’s lighting.

38. The Application does not contain a description of mitigation procedures required by OAC 4906-4-08(E)(2)(c) to be utilized by the applicant during construction, operation, and maintenance to reduce impacts to agricultural land, structures, and practices, because it fails to provide for the prevention and eradication of noxious and invasive plant species and weeds in the Project Area.

39. The Application violates OAC 4906-4-08(E)(2), because it does not contain a description of mitigation procedures to be utilized during construction, operation, and maintenance to avoid and minimize damage to field tile drainage systems and to timely repair damaged field tile systems to their original condition.

40. The Application fails to provide for measures to prevent the Project from interfering with signals from cell phones, internet, radio, global positioning systems, or real-time kinematic devices.

41. The Application does not provide for groundwater testing and other measures adequate to protect the groundwater from contamination from metals and other pollutants from the solar panels and other Project components.

42. The Application fails to protect the neighbors from electromagnetic fields.

43. The Application fails to adequately protect the neighbors and motorists from glare from solar panels.

44. The Application does not contain the procedures necessary to restore the soils in the Project Area in a manner that makes them suitable for agriculture after the Project has ceased operation.

45. 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.

46. The Application fails to provide for adequate measures to find and lawfully plug abandoned oil and gas wells and abandoned water wells.

47. The Application does not contain much of the information required by the Board's rules, and thus is not complete.

48. The Neighboring Landowner Financial Benefit described in the Application does not adequately compensate the Intervenor for the loss of property value of their properties and the damage that the Project will cause to them and their properties.

49. The evidence in the evidentiary record, including the testimony and exhibits at the hearing, also lacks the information described in Paragraphs 1-48 above. Therefore, the Application and the evidentiary record as a whole lacks the information necessary under the statutory criteria of R.C. 4906.10(A) to (a) determine the nature of the Project's probable environmental impact, (b) find that the Project will serve the public interest, convenience, and necessity, (c) determine that the Project will comply with Chapters 3704., 3734., and 6111. of the Revised Code and all rules and standards adopted under those chapters, and (d) represent the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations. The conditions included in the Staff Report also fail to provide for the attainment of these statutory criteria.

50. Birch Solar has not complied with the public information requirements of OAC 4906-3-03.

51. The staff recommendations recommend that, if a certificate is issued, then many of the plans necessary to protect the public will be made after the certificate is issued. This deprives the Board and the Intervenor of the opportunity to determine whether these plans will protect the Intervenor from harm.

52. The Intervenor also plan to cross-examine witnesses about any issues that are discussed in the witnesses' testimony, as well as any issues and concerns raised by the applicant and other parties to this proceeding.

Respectfully submitted,

/s/ Jack A. Van Kley
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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 November 12, 2021, a copy of the foregoing document also is being served by electronic mail on the following:

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/s/ Jack A. Van Kley
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Summary: Notice of List of Issues electronically filed by Mr. Jack A. Van Kley on behalf of Against Birch Solar LLC and Members