

BEFORE THE OHIO POWER SITING BOARD

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In the Matter of the :
Application of Birch Solar, :
LLC for a Certificate of : Case No.
Environmental Compatibility : 20-1605-EL-BGN
and Public Need to Construct a :
Solar-Powered Electric :
Generation Facility in Allen :
and Auglaize Counties, Ohio. :

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PROCEEDINGS

Before Michael Williams and Jesse Davis,
Administrative Law Judges, held at the offices
of the Public Utilities Commission of Ohio at
180 East Broad Street, Hearing Room 11-C,
Columbus, Ohio, on Tuesday, November 30, 2021,
at 10:00 A.M.

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APPEARANCES:

Dickinson Wright, PLLC
By Ms. Christine Pirik
and
Mr. Matthew McDonnell
150 East Gay Street, Suite 2400
Columbus, Ohio 43221

On behalf of the Applicant.

Ms. Jodi Bair
Assistant Attorney General
30 East Broad Street, 16th Floor
Columbus, Ohio 43215

On behalf of the Staff of the
Ohio Power Siting Board.

Ms. Amy Milam
280 North High Street, 6th Floor
Columbus, Ohio 43218

On behalf of the Ohio Farm
Bureau Federation.

Van Kley & Walker
By Mr. Jack A. Van Kley (via telephone)
132 Northwoods Boulevard, Suite C-1
Columbus, Ohio 43235

On behalf of the Interveners.

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Tuesday Morning,
November 30, 2021.

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ALJ WILLIAMS: The Ohio Power
Siting Board as scheduled for hearing at this
time and place Case No. 20-1605-EL-BGN which is
captioned In the Matter of the Application of
Birch Solar 1, LLC for a Certificate of
Environmental Capability and Public Need to
Construct a Solar-Powered Electric Generation
Facility in Allen and Auglaize Counties, Ohio.

My name is Michael Williams, and
with me is Judge Jesse Davis. We are
the Administrative Law Judges and we will be
conducting today's hearing.

Pursuant to the entries dated August
13 and November 12, 2021, we are opening the
record today. Consistent with the November 12,
2021 entry the parties are aware of the intent
to, one, take party appearances; two discuss in
general terms the status of settlement
negotiations; three consider the length of time
necessary and appropriate as to scheduling, A
testimony and stipulations deadlines, and B the
evidentiary hearing.

1 And finally, four, adjourn today's
2 hearing with the expectation that we will
3 reconvene pursuant a subsequent scheduling
4 entry.

5 Let's go off the record.

6 (DISCUSSION OFF THE
7 RECORD)

8 ALJ WILLIAMS: We were off the
9 record for just a minute while I telephoned
10 attorney Jack Van Kley who represents
11 interveners that are against Birch Solar in this
12 case.

13 Attorney Van Kley called me prior to
14 this morning's hearing, sometime within the last
15 half hour or so, indicating that he
16 misinterpreted today's entry participating
17 virtually. I have asked the parties whether
18 they have any problem with attorney Van Kley
19 participating via the speaker on my cell phone,
20 and I have not heard any objections.

21 So, with that we will proceed with
22 taking appearances of the parties beginning with
23 the Applicant.

24 MS. PIRIK: Thank you, your Honor.
25 On behalf of Birch Solar 1, LLC, the law firm of

1 Dickinson Wright by Christine Pirik and Matt
 2 McDonnell, 150 East Gay Street, Columbus, Ohio
 3 43215.

4 ALJ WILLIAMS: Thank you, Ms. Pirik.
 5 On behalf of the Board.

6 MS. BAIR: Thank you, your Honor.
 7 On behalf of the Staff of the Power Siting
 8 Board, Jodi Bair and Kyle Kern, 30 East Broad
 9 Street, Columbus, Ohio 43215.

10 ALJ WILLIAMS: Thank you. On behalf
 11 of the Interveners in the case, initially
 12 against Birch Solar.

13 MR. VAN KLEY: This is Jack Van
 14 Kley, Van Kley & Walker, 132 Northwoods
 15 Boulevard, Suite C-1, Columbus, Ohio 43235.

16 ALJ WILLIAMS: I would reiterate
 17 for the record Jack Van Kely is participating
 18 via the speaker phone.

19 On behalf Auglaize County. No
 20 appearance on behalf of Auglaize County.

21 On behalf of Logan Township. No
 22 appearance on behalf of Logan Township.

23 Appearance on behalf of the Ohio
 24 Farm Bureau.

25 MS. MILAM: Good morning, your

1 Honors. Amy Milam on behalf of Ohio Farm Bureau
2 Federation, 280 North High Street, 6th Floor,
3 Columbus, Ohio 43215.

4 ALJ WILLIAMS. Thank you, Ms. Milam.
5 On behalf of Ryan and Matthew Kalnins. No
6 appearance.

7 On behalf of the Allen/Auglaize
8 County Reasonable Energy. No appearance.

9 On behalf of the International
10 Brotherhood of Electrical Workers. No
11 appearance.

12 And lastly on behalf Shawnee
13 Township. No appearance.

14 So next Judge Davis and I invite
15 general updates as to the status of settlement
16 negotiations. I do want to caution against
17 disclosing details of any negotiation positions
18 or offers. We are only seeking to establish
19 negotiations for purposes of determining when
20 it's reasonable to advance the case further in
21 terms of setting the next set of deadlines in
22 the case.

23 Who would like to offer any updates?

24 MS. PIRIK: Your Honor, we can offer
25 an update. We are in the process, I am really

1 glad Mr. Van Kley is on the phone, because we
2 are in the process of working with Mr. Van Kley
3 on a non-disclosure agreement to cover the
4 settlement discussions that we will be having
5 with the parties in this case. Our intent is to
6 work with each of the parties on a separate
7 non-disclosure agreement to the extent
8 appropriate.

9 So I know at this point, and there
10 has been a holiday, so it's been, you know,
11 difficult I am sure for Mr. Van Kley, and I
12 don't know if he can hear me.

13 ALJ WILLIAMS: Can you hear, Mr. Van
14 Kley?

15 MR. VAN KLEY: Yes, your Honor.

16 MS. PIRIK: So, I know that he is
17 reviewing. We had provided him a revised
18 version last Tuesday, and he is reviewing it,
19 but again it was a holiday, so I don't know what
20 the status of that document is.

21 ALJ WILLIAMS: Okay. Mr. Van Kley,
22 any idea, the pre-negotiation, negotiating a
23 non-disclosure agreement, so what's the status
24 of that, if you can tell us?

25 MR. VAN KLEY: Yes, your Honor, I

1 can. I reviewed it, it looks fine to me. We
2 did have several, a couple of drafts that went
3 back and forth, but I believe it's at a stage
4 now where it's acceptable. And I have sent it
5 to my clients to take a look at, and waiting to
6 hear comments.

7 ALJ WILLIAMS: Thank you. So it
8 seems as though that issue is about ready to
9 fall by the by and now will be proceeding into
10 the actual details of negotiations.

11 Has Applicant negotiated with any
12 party to this stage?

13 MS. PIRIK: We have had initial
14 discussions with Mr. Van Kley and his clients.
15 But, at this point in time we have not shared a
16 draft stipulation because we are waiting to
17 initiate and finalize and execute non-disclosure
18 agreements.

19 ALJ WILLIAMS: Okay. And
20 the parties have more experience in the progress
21 of negotiations and expectations, and I know the
22 Applicant and attorney Van Kley have a lot of
23 experience relative to these types of
24 negotiations. So, moreso than the Bench does.

25 How long is a reasonable period of

1 time to let the parties continue to negotiate?
2 This is roughly December 1. January 15, is
3 that a reasonable time to say that is as good as
4 we are going to get?

5 MS. PIRIK: Given the holidays, I
6 don't know. I don't know that that will be
7 sufficient time. I know in talking with
8 the Applicant as early as yesterday they are
9 very interested in talking with, and there is
10 quite a few individual residents and parties
11 that have intervened in the case to find out
12 specifically what their issues are, because to a
13 great extent they vary depending on who the
14 individual or who the party is.

15 They want to understand them so they
16 can feed those into any conditions that are part
17 of the certificate, and to make accommodations
18 as best as they can.

19 So, that will take some time. And
20 they are willing to come here and meet in person
21 with whoever is available at various times.
22 But, so that will take some time.

23 Our recommendation would be that you
24 set a date where we would give you an update as
25 to where we are in the process and how we are

1 moving forward, and that the parties would
2 jointly come to an understanding of when
3 negotiations are as far as they can possibly be.
4 Whether that's in January or February, the
5 Applicant wants to work with the community in
6 the case. So it may be later rather than
7 January 15th, but --

8 ALJ WILLIAMS: My sense is the Board
9 doesn't want to leave it open ended like that.
10 So my sense is the Board is going to say you
11 need to do all you are going to do as feverishly
12 as possible, and prepare for a date on or about
13 February 1st.

14 So, I don't have a firm date on my
15 calendar yet. Candidly I was looking to set
16 this sometime mid-January or mid-February, but
17 hearing the Applicant describe the progress of
18 negotiations, and frankly respecting the bundle
19 of holidays there are, I am going to go ahead
20 and look at dates after February 1st.

21 But I think it's imperative on the
22 parties to move as quickly as possible. There
23 is obviously a lot of time in December, a lot of
24 time in January. So, you guys can as parties
25 turn towards preparing for hearing knowing that

1 you will have that sort of firm backstop.

2 Attorney Van Kley, you heard and
3 processed all that, sir?

4 MR. VAN KLEY: Yes, your Honor.

5 ALJ WILLIAMS: So, let's do this
6 then. I don't have any handle on, and frankly
7 there is a lot of moving pieces in my calendar
8 that are mostly work related, there is a lot of
9 moving pieces on our hearing calendars that
10 involve virtual and in-person hearing rooms.

11 And so I am not going to commit to a
12 date today, but I would like to have an
13 understanding as to everybody's calendars during
14 the three weeks on and after February 1st,
15 beginning with the Applicant.

16 MS. PIRIK: Your Honor, you know,
17 honestly I don't have the Applicant's, the
18 Company's calendar. And, of course, you know,
19 if there is not a full stipulation then we will
20 have a number of witnesses. So I don't have
21 theirs.

22 But, you know, as far as the law
23 firm is concerned, we will made accommodations
24 to be sure that we are available whenever you
25 set the hearing.

1 ALJ WILLIAMS: Okay. Any conflicts
2 on behalf of the Staff?

3 MS. BAIR: No, your Honor. February
4 works for us.

5 ALJ WILLIAMS: Farm Bureau.

6 MS. MILAM: I have a conflict on
7 February 14th and February 16th.

8 ALJ WILLIAMS: Okay. Attorney Van
9 Kley, understanding obviously there is a lot of
10 moving parts here still, do you have anything
11 currently booked between 2/1 and 2/22?

12 MR. VAN KLEY: On February 2 I have
13 a couple hearings in another case involving a
14 different administrative agency. Everything
15 between the 3rd and the 11th is open. And then
16 we have the beginning of the South Branch Solar
17 hearing at the Board on February 14.

18 I think that case is probably going
19 to settle, so that 14th would probably be the
20 only date for that hearing, but I can't be sure.

21 So, I would think that between
22 the 14th and probably the 23rd or so should
23 probably stay blocked out for the South Branch
24 hearing.

25 ALJ WILLIAMS: I will tell you what

1 I am going to do. I am going to block off 2/14
2 to 2/16. If South Branch goes it will be a
3 three-day hearing as well. And that also
4 accommodates the Farm Bureau with their 2/14,
5 2/16 block.

6 So at this juncture the dates
7 the Board is currently considering are from
8 February 1st, I will go ahead and say through
9 February 25th, basically the whole month of
10 February except for the 28th. And we are
11 currently going to take off the table 2/14 to
12 2/16, and as well as 2/2.

13 And then beyond that, well, frankly
14 in all likelihood just issue a scheduling entry
15 sometime in the next couple weeks. If there is
16 an issue with this accommodation it will be a
17 three-day block. We will certainly expect the
18 clients or the Applicant to really move
19 mountains to try to get witnesses here, and if
20 they can't then we will entertain some motion
21 for extraordinary leave in that regard.

22 MS. PIRIK: Your Honor, we would
23 request that the schedule reflect that testimony
24 would be due in early February within, you know,
25 appropriate dates in February for the hearing.

1 That way we can plan on if we can finalize a
2 stipulation before the end of January we can get
3 that to you and provide you testimony that
4 supports that, or the appropriate testimony for
5 the hearing.

6 ALJ WILLIAMS: Again, I am taking
7 all these issues under advisement. I am
8 disinclined to grant that request because now my
9 hearing is starting the middle part of February
10 and I want to keep open the ability to have
11 the hearing start on or about February 1st.

12 What's the holiday or the Monday
13 holiday in January? It's the 24th, I assume?
14 Anybody know? I believe it's Martin Luther King
15 day. Let's go ahead and go off the record.

16 (DISCUSSION OFF THE RECORD)

17 ALJ WILLIAMS: So while we were off
18 the record we tried to get a firm handle on
19 calendar dates in January. The January state
20 holiday, Federal holiday is January 17th.

21 Again, we will issue a subsequent
22 entry that clearly delineates or firms these
23 dates up. But we are in all likelihood looking
24 at Applicant filing its testimony roughly
25 January 24th, with Staff and intervener

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CERTIFICATE

I do hereby certify that the foregoing
is a true and correct transcript of the
proceedings taken by me in this matter on
November 30, 2021, and carefully compared with
my original stenographic notes.

Michael O. Spencer,
Registered Professional
Reporter.

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**This foregoing document was electronically filed with the Public Utilities
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Case No(s). 20-1605-EL-BGN

Summary: Transcript November 30th 2021 In the Matter of the Application of Birch Solar, LLC for a Certificate of Environmental Compatibility and Public Need to Construct a Solar-Powered Electric Generation Facility in Allen and Auglaize Counties, Ohio. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Spencer, Michael O. Mr.