

**BEFORE  
THE OHIO POWER SITING BOARD**

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

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**JOINT MOTION TO EXTEND THE DATE FOR  
RECOMMENCEMENT OF THE EVIDENTIARY HEARING AND TO  
EXTEND DEADLINES FOR FILING ALL TESTIMONY AND STIPULATIONS AND  
REQUEST FOR AN EXPEDITED RULING AND  
MEMORANDUM IN SUPPORT**

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Pursuant to Ohio Administrative Code (“O.A.C.”) Rules 4906-2-07 and 4906-2-27, Birch Solar 1, LLC, as well as the Ohio Farm Bureau Federation (“OFBF”), Ryan and Michelle Kalnins (“the Kalnins”), the Allen Auglaize Coalition for Reasonable Energy (“AACRE”), the International Brotherhood of Electrical Workers Local Union 32 (“IBEW”), and Against Birch Solar LLC (“ABS”)<sup>1</sup> (collectively, “Joint Movants”), respectfully request that the Board or its Administrative Law Judge (“ALJ”) extend the date for recommencement of the evidentiary hearing in this proceeding that is currently scheduled for February 9, 2022, for the reasons set forth in detail below in the memorandum in support. The Joint Movants also move to extend deadlines for the filing of all testimony and any stipulations in this case, which, pursuant to the ALJ’s December 7, 2021 Entry, are currently set for: January 28, 2022 for Applicant’s testimony; February 4, 2022 for the testimony for intervenors and the Board’s Staff; and February 7, 2022 for stipulations.

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<sup>1</sup> ABS includes the following members: Linda M. Beckstedt, Jesse M. Bott and Kacie Rison, Ryan and Stacy Brennehan, 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.

Joint Movants have consulted with the Board Staff and the Board Staff does not oppose the request for expedited treatment. Joint Movants have also consulted with Board of County Commissioners of Auglaize County (“County Commissioners”) and the Board of Township Trustees of Logan Township (“Logan Township”). The County Commissioners and Logan Township do not oppose the motion. Joint Movants contacted the Board of Township Trustees of Shawnee Township (“Shawnee Township”) regarding the motion and the request for expedited ruling, but did not receive a response.

Therefore, Joint Movants submit that, for the reasons more fully set forth in the following memorandum in support, good cause exists to grant this motion on an expedited basis, in accordance with O.A.C. Rule 4906-2-27(C).

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**MEMORANDUM IN SUPPORT OF  
JOINT MOTION TO EXTEND THE DATE FOR  
RECOMMENCEMENT OF THE EVIDENTIARY HEARING AND TO  
EXTEND DEADLINES FOR FILING ALL TESTIMONY AND STIPULATIONS AND  
REQUEST FOR AN EXPEDITED RULING**

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On February 12, 2021, as supplemented, the Applicant filed an application with the Board for a certificate to construct a solar-powered electric generation facility in Allen and Auglaize Counties, Ohio.

On November 4, 2021, the local public hearing was held in this matter. On November 30, 2021, the evidentiary hearing commenced and was called and continued to a date to be set by a subsequent entry. On December 7, 2021, the ALJ issued an entry which, among other things, set the following deadlines: January 28, 2022 for the filing of the Applicant's testimony; February 4, 2022 for the filing of testimony by intervenors and the Board Staff; and February 7, 2022 for the filing of any stipulations.

Joint Movants submit that there is good cause to extend the procedural schedule established by the December 7, 2021 entry for an additional 90 days. Support for this joint motion is three-fold.

First, the additional time is essential to enable the Board Staff and the parties in this case to review and consider certain archaeological and oil and gas well information that was recently filed in the docket. On October 20, 2021, the Board Staff issued its Staff Report of Investigation ("Staff Report") in this case. Two of the conditions recommended by the Board Staff required: the submission of an additional Phase I Archaeological Survey and Report ("Archaeological Report") for the portion of the Project Area covered in the Programmatic Agreement with the State Historic Preservation Office ("SHPO") (Condition 33); and the submission of an Engineering

Constructability Report (“ECR Report”) (Condition 44) that would include information on the oil and gas wells in the Project Area. While both of those surveys and corresponding reports have been in progress for some time, at the time the Staff Report was issued, the reports had not yet been finalized and filed in the docket. However, since that time, the reports have been completed. Therefore, coincident with the filing of this Joint Motion, the Applicant has filed the final Archaeological Report and the ECR Report in this case. These reports include hundreds of pages of information that Joint Movants and the Board Staff are in the process of reviewing and considering in this case. Therefore, in order to provide the State Historic Preservation Office (“SHPO”) sufficient time to review the Archaeological Report and provide its response, which takes 30 days, and in order to permit sufficient time for the intervenors and the Board Staff to review and have further settlement discussions regarding these reports with the Applicant, Joint Movants request an extension of the procedural schedule.

Second, the parties in this matter are in the process of considering and discussing the draft stipulation provided by the Applicant. The Applicant has had numerous discussions with the other Joint Movants, intervenors, and the Board Staff and believes that progress is being made toward resolution of the issues in this matter. However, given the number of parties in this case, additional time is needed for the parties to discuss and share proposed settlement terms in order to potentially resolve the issues in this matter.

Third, Joint Movants are sad to note that an integral member of the ABS team, the proprietor of the Winona Lake Campground, Mr. Wellman, unexpectedly passed way last week. While ABS and the Applicant will continue settlement discussions with the other members of ABS, out of respect for the family of Mr. Wellman, discussions regarding the Winona Lake Campground property will recommence at a later time. Therefore, Joint Movants request an

extension of the procedural schedule to enable time for further discussions with Mr. Wellman's family in order to resolve any issues pertaining to the Winona Campground.

In light of the fact that the Applicant's testimony supporting the Application is due in January and the other parties' testimony is due shortly thereafter, and that testimony and witness preparation requires extensive time to prepare, Joint Movants request an expedited ruling on this Joint Motion. Specifically, Joint Movants requests that the Board or ALJ extend the deadlines for the parties' testimony and stipulations, as well as the recommencement of the evidentiary hearing for at least 90 days to April 2022. During this 90-day period, Joint Movants will provide the ALJs with periodic updates on the progress of settlement discussions. At the conclusion of the 90-day period, Joint Movants will provide the ALJs with proposed dates for the procedural schedule after which that ALJs would then issue an entry reestablishing the procedural schedule. In the event the ALJs decide to set a new procedural schedule at this time, Joint Movants request the Applicant's testimony not be due until April 2022, with the remaining procedural schedule being scheduled for thereafter.

Given the short time frame before the Parties' testimony and stipulations are currently due, Joint Movants request that this motion be granted on an expedited basis for good cause shown.

Respectfully submitted,

**BIRCH SOLAR 1, LLC**

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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 these cases. In addition, the undersigned certifies that a copy of the foregoing document is also being served upon the persons below this 30<sup>th</sup> day of December, 2021.

*/s/ Christine M.T. Pirik*

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

Summary: Motion - Joint Motion To Extend The Date For Recommencement Of The Evidentiary Hearing And To Extend Deadlines For Filing All Testimony and Stipulation and Request For An Expedited Ruling and Memorandum In Support electronically filed by Christine M.T. Pirik on behalf of Birch Solar 1, LLC