

BEFORE THE OHIO POWER SITING BOARD

- - -

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

- - -

PROCEEDINGS

before Mr. Michael Williams and Mr. Jesse Davis,
Attorney Examiner, at the Ohio Power Siting Board,
180 East Broad Street, Room 11-A, Columbus, Ohio,
called at 9:00 a.m. on Wednesday, May 18, 2022.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481

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APPEARANCES:

Dickinson Wright PLLC
By Mr. John Secrest,
Ms. Christine M.T. Pirik,
and Mr. David A. Lockshaw, Jr.
180 East Broad Street, 34th Floor
Columbus, Ohio 43215

On behalf of the Applicant.

Ohio Farm Bureau Federation
By Ms. Amy M. Milam
280 North High Street, 6th Floor
Columbus, Ohio 43215

On behalf of the Ohio Farm Bureau
Federation.

Fair Shake Environmental Legal Services
By Mr. John A. Heer
600 Superior Avenue E, Suite 1300
Cleveland, Ohio 44114

On behalf of the Allen Auglaize Coalition
for Reasonable Energy.

Dave Yost, Ohio Attorney General
By Ms. Jodi Bair,
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215

On behalf of the Staff of the PUCO.

- - -

1	INDEX		
2	- - -		
3	WITNESS	PAGE	
4	Shanelle Montana		
5	Direct Examination by Mr. Secrest	14	
6	James O'Dell		
7	Direct Examination by Ms. Bair	26	
8	Cross-Examination by Mr. Secrest	28	
9	Redirect Examination by Ms. Bair	56	
10	Examination by ALJ Williams	62	
11	Recross-Examination by Mr. Secrest	64	
12	- - -		
13	APPLICANT EXHIBIT	IDENTIFIED	ADMITTED
14	1 Application Filed on	16	21
15	February 12, 2021		
16	2 Application Large Exhibit A	16	21
17	Filed on February 17, 2021		
18	3 First Supplement to the	16	21
19	Application Filed on		
20	March 25, 2021		
21	4 Second Supplement to the	16	21
22	Application Filed on		
23	March 31, 2021		
24	5 Third Supplement to the	16	21
25	Application Filed on		
26	April 5, 2021		
27	6 Fourth Supplement to the	16	21
28	Application Filed on		
29	October 5, 2021		
30	7 Updated Second Supplement to	17	21
31	the Application Filed on		
32	February 9, 2022		
33	8 Fifth Supplement to the	17	21
34	Application filed on		
35	February 17, 2022		

INDEX (Continued)

- - -

APPLICANT EXHIBIT	IDENTIFIED	ADMITTED
9 Sixth Supplement to the Application Filed on May 4, 2022	17	21
10 Response to First Data Request Filed on March 12, 2021	17	21
11 Response to Second Data Request Filed on April 6, 2021	17	21
12 Response to Third Data Request Filed on April 9, 2021	17	21
13 Response to Fourth Data Request Filed on April 12, 2021	17	21
14 Response to Fifth and Sixth Data Requests filed on April 28, 2021	17	21
15 Response to Seventh Data Request Filed on June 7, 2021	17	21
16 Response to Eighth Data Request Filed on June 8, 2021	17	21
17 Response to Ninth Data Request Filed on September 27, 2021	17	21
18 Response to Tenth Data Request Filed on October 14, 2021	17	21
19 Response to Eleventh Data Request Filed on October 14, 2021	17	21
20 Response to Twelfth Data Request Filed on October 15, 2021	17	21
21 Response to Thirteenth Data Request filed on October 18, 2021	18	21

INDEX (Continued)

- - -

APPLICANT EXHIBIT	IDENTIFIED	ADMITTED
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22	Supplemental Response to Tenth Data Request Filed on December 30, 2021	18	21
----	--	----	----

23	Certificate of Service of the November 20 and 23, 2020, Public Information Meetings, Notice on Property Owners and Entities Filed on November 3, 2020, in Accordance with Ohio Adm. Code 4906-3-03	18	21
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24	Proof of Publication of the November 20 and 23, 2020, Public Information Meetings in the Lima News and Wapakoneta Daily News filed on November 18, 2020, in Accordance with Ohio Adm. Code 4906-3-03	18	21
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25	Certificate of Service of the August 19, 2021, Third Public Information Meeting, Notice on Property Owners and Entities Filed on August 6, 2021, in Accordance with Ohio Adm. Code 4906-3-03 and the ALJ's July 7, 2021, Entry	18	21
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26	Proof of Publication of the August 19, 2021 Third Public Information Meetings in the Lima News and Wapakoneta Daily News Filed on August 18, 2021, in Accordance with Ohio Adm. Code 4906-3-03 and the ALJ's July 7, 2021, Entry	18	21
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INDEX (Continued)

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APPLICANT EXHIBIT	IDENTIFIED	ADMITTED
27 Certificate of Service of the Accepted, Complete Application on Local Public Officials and Libraries Filed on August 5, 2021, in Accordance with Ohio Adm. Code 4906-3-07	18	21
28 Proof of Service and Proof of Publication in the Lima News and Wapakoneta Daily News of the Procedural Schedule, in Accordance with the ALJ's August 13, 2021, Entry, Filed on September 3, 2021	18	21
29 Proof of Second Service and Proof of Second Publication in the Lima News and Wapakoneta Daily News of the Procedural Schedule, in Accordance with the ALJ's August 13, 2021, Entry, Filed on November 1, 2021	18	21
30 Direct Testimony of Shanelle Montana Filed May 4, 2022	16	21
30A Supplemental Testimony of Shanelle Montana Filed May 16, 2022	16	21
31 Direct Testimony of Derek Brown Filed May 4, 2022	19	21
31A Supplemental Testimony of Derek Brown Filed May 16, 2022	19	21
32 Direct Testimony of Courtney Dohoney Filed May 4, 2022	19	21
32A Supplemental Testimony of Courtney Dohoney Filed May 16, 2022	19	21

INDEX (Continued)

- - -

APPLICANT EXHIBIT IDENTIFIED ADMITTED

33 Direct Testimony of Alyssa Edwards Filed May 4, 2022 19 21

33A Supplemental Testimony of Alyssa Edwards Filed May 16, 2022 19 21

34 Direct Testimony of Ryan J. Weller Filed May 4, 2022 19 21

34A Supplemental Testimony of Ryan J. Weller Filed May 16, 2022 19 21

35 Direct Testimony of Thomas Stewart Filed May 4, 2022 19 21

36 Direct Testimony of Thomas Cleveland Filed May 4, 2022 19 21

36A Supplemental Testimony of Thomas Cleveland filed May 16, 2022 19 21

37 Direct Testimony of Andrew Lines Filed May 4, 2022 19 21

38 Against Birch Solar Press Release 55 --

- - -

COALITION EXHIBIT IDENTIFIED ADMITTED

1 Testimony of A. Chappell-Dick Filed on May 11, 2022 22 23

2 Testimony of Michael Wildermuth Filed May 12, 2022 22 23

3 Testimony of Everett Lacy Filed May 12, 2022 23 23

- - -

INDEX (Continued)

- - -

COALITION EXHIBIT IDENTIFIED ADMITTED

4 Testimony of T. Rae Neal 23 23
Filed May 12, 2022

5 Testimony of Frank Caprilla 23 23
Filed May 12, 2022

- - -

STAFF EXHIBIT IDENTIFIED ADMITTED

1 Staff Report of Investigation 24 65

2 Prefiled Testimony of 24 65
James S. O'Dell Filed on
May 11, 2022

3 Prefiled Testimony of 24 65
Mark Bellamy filed on May 11,
2022

4 Prefiled Testimony of 25 65
Grant Zeto filed on May 11,
2022

5 Prefiled Testimony of 25 65
Jess Stottsberry filed on
May 11, 2022

6 Prefiled Testimony of 25 65
Eric Morrison Filed on
May 11, 2022

7 Prefiled Testimony of 25 65
Thomas Crawford Filed
on May 11, 2022

8 Prefiled Testimony of 25 65
Andrew Conway Filed on
May 11, 2022

9 Prefiled Testimony of 25 65
Tyler Conklin filed on
May 11, 2022

INDEX (Continued)

- - -

STAFF EXHIBIT

IDENTIFIED ADMITTED

10	Prefiled Testimony of Matthew Butler Filed on May 11, 2022	25	65
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JOINT EXHIBIT

IDENTIFIED ADMITTED

1	The May 16, 2021, Stipulation Signed on Behalf of the Applicant, the Coalition, the Auglaize County Commissioners, the Logan Township Trustees, IBEW Local 32, and the OFBF	16	21
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Wednesday Morning Session,
May 18, 2022.

- - -

ALJ WILLIAMS: We are on the record.

Good morning, everyone. We are here in
Case 20-1605-EL-BGN captioned 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 Construction
Facility in Allen and Auglaize Counties, Ohio.

My name is Michael William. With me is
Jesse Davis. We are the ALJs assigned to this case.

We will begin by taking appearances of
the parties beginning with Applicant.

MR. SECREST: Good morning, your Honor.
John Secrest of the law firm Dickinson Wright. With
me are my colleagues Christine Pirik and David
Lockshaw. We are at 180 East Broad Street, 34th
Floor, Columbus, Ohio 43215 representing the
Applicant Birch Solar I, LLC.

ALJ WILLIAMS: Thank you, sir.

Next, we will hear from Allen and
Auglaize Coalition for Reasonable Energy which I'll
call Coalition from here on. From the Coalition.

MR. WILDERMUTH: I am here, but our

1 attorney hasn't arrived yet.

2 ALJ WILLIAMS: Okay. If you will let us
3 know or he or she will let us know when they arrive.
4 And you said you are here. What's your name, sir?

5 MR. WILDERMUTH: Michael Wildermuth.

6 ALJ WILLIAMS: Let's go off record.

7 (Discussion off the record.)

8 ALJ WILLIAMS: All right. Back on
9 record.

10 We were taking appearances of the
11 parties, and Mr. Wildermuth advised us that his
12 counsel was in route as his counsel was arriving. So
13 if you would please make your appearance, sir.

14 MR. HEER: My name is John Heer.

15 ALJ WILLIAMS: And you are here on behalf
16 of the Coalition?

17 MR. HEER: Yes, sir.

18 ALJ WILLIAMS: And your firm is?

19 MR. HEER: My law firm is Fair Shake
20 Environmental Legal Services.

21 ALJ WILLIAMS: Address?

22 MR. HEER: 600 Superior Avenue, Suite
23 1300, Cleveland, Ohio 44114.

24 ALJ WILLIAMS: Thank you.

25 Anybody here for Auglaize County?

1 Anybody here for Logan Township? Anyone here for
2 Shawnee Township?

3 MR. HOLLY: Here. Russell Holly, Shawnee
4 Township Trustee.

5 ALJ WILLIAMS: Your counsel is not here,
6 correct, sir?

7 MR. HOLLY: Pardon?

8 ALJ WILLIAMS: You don't have counsel
9 here?

10 MR. HOLLY: No.

11 ALJ WILLIAMS: Thank you.

12 Anybody here for the Farm Bureau? IBEW
13 is also a party here. I know there were some
14 prehearing communications, and the parties are aware
15 IBEW counsel Mr. Dove has COVID and confirmed that
16 via e-mail to the parties yesterday. He's advised
17 that he wants the hearing to proceed and that IBEW
18 does not have any cross-examination of any witnesses
19 nor any witness testimony to present in the case, so
20 we will make that notation for the record and move
21 on.

22 And then on behalf of the Staff.

23 MS. BAIR: Thank you, your Honor. On
24 behalf of the Staff of the Power Siting Board, Jodi
25 Bair, Assistant Attorney General, 30 East Broad

1 Street, Columbus, Ohio 43215.

2 ALJ WILLIAMS: Thank you, Ms. Bair.

3 I note that the last entry in this case
4 is from April 28 of this year and that entry that set
5 us here this morning referenced that we are here on a
6 continuation of the hearing that began in this case
7 on November 30 of 2021.

8 I understand that the parties have
9 engaged in negotiations since that time which
10 resulted in the filing of a Joint Stipulation on
11 May 16 and supplemental testimony in support of the
12 Stipulation by six witnesses on behalf of the
13 Applicant also on May 16.

14 As I indicated while we were off record,
15 I understand much of the prefiled testimony is
16 intended for admission in this case via Stipulation
17 and I will ask the party that's offering that
18 testimony when it's their turn to mark it and then we
19 will bring it into the record confirming with those
20 parties that are here that it is admissible for
21 purposes of today's hearing.

22 With that I will turn to Applicant to
23 present their case.

24 MR. SECREST: Thank you, your Honor. May
25 the Applicant call Ms. Shanelle Montana.

1 ALJ WILLIAMS: Please.

2 MR. SECREST: Thank you. And may I also
3 approach the witness, your Honor?

4 ALJ WILLIAMS: You may. Ms. Montana,
5 before you sit, if I could go ahead and swear you.

6 (Witness sworn.)

7 ALJ WILLIAMS: Please be seated.

8 MR. SECREST: May I proceed, your Honor?

9 ALJ WILLIAMS: Please.

10 MR. JONES: Thank you.

11 - - -

12 SHANELLE MONTANA

13 being first duly sworn, as prescribed by law, was
14 examined and testified as follows:

15 DIRECT EXAMINATION

16 By Mr. Secrest:

17 Q. Ms. Montana, would you please state and
18 spell your full name for the record.

19 A. It's Shanelle Montana, S-H-A-N-E-L-L-E
20 M-O-N-T-A-N-A.

21 Q. Thank you. By whom are you employed?

22 A. Lightsource BP.

23 Q. And do you have in front of you a copy of
24 your direct testimony?

25 A. Yes, I do.

1 Q. And do you also have a copy of your
2 supplemental direct testimony?

3 A. Yes, I do.

4 Q. Are those true and accurate copies of
5 your direct and supplement direct testimonies filing
6 in these proceedings?

7 A. Yes, they are.

8 Q. Do you have any changes or revisions to
9 that testimony?

10 A. I do not.

11 Q. If the same questions that were supposed
12 to you in your direct and supplemental direct
13 testimony were asked to you today, would your
14 responses be the same?

15 A. Yes, they would.

16 Q. Do you also have in front of you what's
17 been -- the Joint Stipulation and Recommendation?

18 A. Yes, I do.

19 Q. Okay. Is that a true and accurate copy
20 of the Joint Stipulation and Recommendation filed in
21 this proceeding?

22 A. Yes, it is.

23 Q. Thank you.

24 MR. SECREST: Your Honors, may we have
25 marked as Applicant Exhibit 30, Ms. Montana's direct

1 testimony?

2 ALJ WILLIAMS: So marked.

3 (EXHIBIT MARKED FOR IDENTIFICATION.)

4 MR. SECREST: Thank you. May we also
5 have marked as Exhibit 30A, Ms. Montana's
6 supplemental direct testimony?

7 ALJ WILLIAMS: Also so marked.

8 (EXHIBIT MARKED FOR IDENTIFICATION.)

9 MR. SECREST: And may we have marked
10 Joint Exhibit 1 the Joint Stipulation and
11 Recommendation?

12 ALJ WILLIAMS: That's marked as well.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 MR. SECREST: Thank you, your Honor. Now
15 we have quite a few more to mark, if you will indulge
16 me. May we mark as Applicant Exhibit 1, the
17 application; as Exhibit 2 application large Exhibit A
18 filed February 17, 2021; Exhibit 3, first supplement
19 to application, March 25, '21; Exhibit 4, second
20 supplement to application March 30 -- 31, '21;
21 Exhibit 5, third supplement to application, April 5,
22 2021; Exhibit 6, fourth supplement to application,
23 October 5, 2021.

24 ALJ WILLIAMS: One second, please.

25 MR. SECREST: Certainly.

1 ALJ WILLIAMS: Continuing.

2 MR. SECREST: Exhibit 7, updated second
3 supplement to application filed February 9, 2022;
4 Exhibit 8, fifth supplement to application filed
5 February 17, 2022; Exhibit 9, sixth supplement to
6 application filed May 4, 2022; Exhibit 10, response
7 to first data request filed March 12, 2021;
8 Exhibit 11, response to second data request filed
9 April 6, 2021.

10 ALJ WILLIAMS: Hold on a second. Are
11 those 2021?

12 MR. SECREST: Yes, your Honor.

13 ALJ WILLIAMS: Okay. Please proceed.

14 MR. SECREST: Exhibit 12, response to
15 third data request, April 9, 2021; Exhibit 13,
16 response to fourth data request filed April 12, 2021;
17 Exhibit 14, response to fifth and sixth data requests
18 filed April 28, 2021; Exhibit 15, response to seventh
19 data request filed June 7, 2021; Exhibit 16, response
20 to eighth data request filed June 8, 2021;
21 Exhibit 17, response to ninth data request filed
22 September 27, 2021; Exhibit 18, response to tenth
23 data request filed October 14, 2021; Exhibit 19,
24 response to eleventh data request filed October 14,
25 2021; Exhibit 20, response to twelfth data request

1 filed October 15, 2021; Exhibit 21, response to
 2 thirteenth data request filed October 18, 2021;
 3 Exhibit 22, supplemental response to tenth data
 4 request filed December 30, 2021; Exhibit 23,
 5 certificate of service of the November 20 and 23,
 6 2020, public information meetings filed November 3,
 7 2020; Exhibit 24, proof of publication of November 20
 8 and 23, 2020, public information meetings in the Lima
 9 News and Wapakoneta Daily News filed November 18,
 10 2020; Exhibit 25, certificate of service of the
 11 August 19, 2021, third public information meeting
 12 filed October 6, 2021; proof of publication of the
 13 August 19, 2021, third publication -- third public
 14 information meeting in the Lima News and Wapakoneta
 15 News.

16 ALJ WILLIAMS: That's 26?

17 MR. SECREST: 26, yes, your Honor. That
 18 was filed August 18, 2021; Exhibit 27, certificate of
 19 service of the accepted complete application on local
 20 public officials and libraries filed August 5, 2021;
 21 Exhibit 28, proof of service and proof of publication
 22 in the Lima News and Wapakoneta Daily News on the
 23 procedural schedule in accordance with the ALJ's
 24 entry filed September 3, 2021; Exhibit 29, proof of
 25 second service and proof of second publication in the

1 Lima News and Wapakoneta Daily News of the procedural
2 schedule in accordance with the ALJ's entries filed
3 November 11, 2021.

4 We have already marked as Exhibits 30 and
5 30A, Ms. Montana's direct and supplemental direct
6 testimony; Exhibit 31 and 31A, Derek Brown's direct
7 testimony and supplemental direct testimony filed
8 May 4, 2022 and May 16, 2022, respectively;
9 Exhibit 32, Courtney Dohoney's direct testimony filed
10 May 4, 2022; Exhibit 32A, Courtney Dohoney's
11 supplemental direct testimony filed May 16, 2022;
12 Exhibit 33, Alyssa Edwards' direct testimony filed
13 May 4, 2022; Exhibit 33A, Alyssa Edwards'
14 supplemental direct testimony filed May 16, 2022;
15 Exhibit 34, Ryan Weller's direct testimony filed
16 May 4, 2022; Exhibit 34A, Ryan Weller's supplemental
17 direct testimony filed May 16, 2022; Exhibit 35,
18 Thomas Stewart's direct testimony filed May 4, 2022;
19 Exhibit 35A, Thomas Stewart's supplemental direct
20 testimony filed May 16, 2022; Exhibit 36, Thomas
21 Cleveland's direct testimony filed May 4, 2022;
22 Exhibit 36A, Thomas Cleveland's supplemental direct
23 testimony filed May 16, 2022; Exhibit 37, Andrew
24 Lines' direct testimony filed May 4, 2022;
25 Exhibit 37A, Andrew Lines' supplemental direct filed

1 May 16, 2022; and we have already marked Joint
2 Exhibit 1, the Joint Stipulation -- Joint Stipulation
3 and Recommendation that was filed May 16, 2022.

4 ALJ WILLIAMS: Let's go off the record
5 for one second.

6 (Discussion off the record.)

7 ALJ WILLIAMS: Back on record.

8 MR. SECREST: Thank you, your Honor.
9 Previously we had moved to mark as Applicant Exhibit
10 35A, Mr. Stuart's -- Mr. Thomas Stuart's supplemental
11 direct testimony. There is no supplemental direct
12 testimony filed on behalf of Mr. Stuart so we will
13 withdraw the request to mark that as 35A.

14 Similarly, we had moved to have marked as
15 Applicant Exhibit 37A Andrew Lines' supplemental
16 direct testimony. And there is no supplemental
17 direct testimony on behalf of Mr. Lines, so we
18 withdraw that request to have Mr. Lines' testimony so
19 marked.

20 ALJ WILLIAMS: Subject to those
21 clarifications, all of the exhibits that you just
22 went through are so marked.

23 (EXHIBITS MARKED FOR IDENTIFICATION.)

24 MR. SECREST: Thank you, your Honor.

25 ALJ WILLIAMS: Anything further on behalf

1 of the Applicant?

2 MR. SECREST: No, your Honor.

3 Ms. Montana is certainly available to answer any
4 questions the Bench may have.

5 ALJ WILLIAMS: Do any of the parties have
6 any cross of Ms. Montana?

7 MS. BAIR: No cross on behalf of Staff.

8 MR. HEER: No cross on behalf of the
9 Coalition.

10 ALJ WILLIAMS: Thank you.

11 Ms. Montana, you are excused. Thank you.

12 THE WITNESS: Thank you.

13 MR. SECREST: Your Honor, may we move for
14 admission of Applicant's Exhibits 1 through 37 as
15 well as Joint Exhibit 1?

16 ALJ WILLIAMS: Including the exhibits
17 that are 30A -- 30, 31, 32, 33, 34, and 36A, correct?

18 MR. SECREST: That's correct, your Honor.

19 ALJ WILLIAMS: Any objections to the
20 admission of all of those exhibits?

21 Hearing none, those are deemed admitted.

22 (EXHIBITS ADMITTED INTO EVIDENCE.)

23 ALJ WILLIAMS: Anything further on behalf
24 of the Applicant?

25 MR. SECREST: No, thank you, your Honor.

1 ALJ WILLIAMS: Thank you.

2 Turn now to the Coalition. Any?

3 MR. HEER: Your Honor, we would like to
4 move for the admission of the witness testimonies by
5 the Witnesses Neal, Wildermuth, Caprilla, Lacy, and
6 Chappell-Dick. And those were filed, I believe, on
7 the -- I think it was the 13th or 12th. They might
8 have been filed on the 12th.

9 ALJ WILLIAMS: You are going to have to
10 project, or we will have to find a microphone. I
11 think we will be okay if you project a little.

12 We have to go through some formalities
13 here. First, we would need to mark them. Do you
14 have any preference as to what testimony is marked in
15 what order?

16 MR. HEER: I don't, your Honor. It
17 doesn't matter, whatever fits for the Court.

18 ALJ WILLIAMS: All right. The Court will
19 then move forward marking the testimony of A.
20 Chappell-Dick filed May 11 of 2022, that will be
21 marked as Coalition Exhibit 1.

22 (EXHIBIT MARKED FOR IDENTIFICATION.)

23 ALJ WILLIAMS: The Court will also mark
24 the testimony of Michael Wildermuth filed May 12 of
25 2022 as Coalition Exhibit 2.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)

2 ALJ WILLIAMS: The Bench will also mark
3 the testimony of Everett Lacy filed May 12 of 2022 as
4 Coalition Exhibit 3.

5 (EXHIBIT MARKED FOR IDENTIFICATION.)

6 ALJ WILLIAMS: The Bench will mark the
7 testimony of T. Rae Neal filed May 12 of 2022 as
8 Coalition Applicant 4.

9 (EXHIBIT MARKED FOR IDENTIFICATION.)

10 ALJ WILLIAMS: And, finally, the Bench
11 will mark the testimony of Frank Caprilla filed
12 May 12 of 2022 as Coalition Exhibit 5.

13 (EXHIBIT MARKED FOR IDENTIFICATION.)

14 ALJ WILLIAMS: Any objections to those
15 markings?

16 Hearing none, those are so marked. And
17 now you are moving for the admission of that
18 testimony?

19 MR. HEER: We would like to move all
20 those testimonies you just listed be admitted.

21 ALJ WILLIAMS: Thank you.

22 Any objections?

23 Hearing none, those are all deemed
24 admitted.

25 (EXHIBITS ADMITTED INTO EVIDENCE.)

1 ALJ WILLIAMS: Anything further on behalf
2 of the Coalition?

3 MR. HEER: No, your Honor.

4 ALJ WILLIAMS: Turning now to Staff.

5 MS. BAIR: Thank you, your Honor. Staff
6 would like to move some testimony into the record,
7 and then we understand there is cross-examination for
8 Mr. O'Dell. So I thought I would move the testimony
9 into the record where there is no objection first,
10 unless you have another preference.

11 ALJ WILLIAMS: No. I think that makes
12 sense, Ms. Bair. Let's go ahead mark them first.

13 MS. BAIR: Okay. Well, I am going to
14 mark the Staff Report as 1.

15 ALJ WILLIAMS: Who is that witness?

16 MS. BAIR: Staff Report.

17 ALJ WILLIAMS: Okay.

18 (EXHIBIT MARKED FOR IDENTIFICATION.)

19 MS. BAIR: I won't move Mr. O'Dell, but
20 he is going to be Staff Exhibit 2, Mr. O'Dell's
21 testimony.

22 ALJ WILLIAMS: So marked.

23 (EXHIBIT MARKED FOR IDENTIFICATION.)

24 MS. BAIR: Staff Exhibit 3, Mark Bellamy.

25 ALJ WILLIAMS: Okay. So marked.

1 (EXHIBIT MARKED FOR IDENTIFICATION.)
2 MS. BAIR: Staff Exhibit 4, Grant Zeto.
3 ALJ WILLIAMS: So marked.
4 (EXHIBIT MARKED FOR IDENTIFICATION.)
5 MS. BAIR: Staff Exhibit 5, Jess
6 Stottsberry.
7 ALJ WILLIAMS: So marked.
8 (EXHIBIT MARKED FOR IDENTIFICATION.)
9 MS. BAIR: Staff Exhibit 6, Eric
10 Morrison.
11 ALJ WILLIAMS: So marked.
12 (EXHIBIT MARKED FOR IDENTIFICATION.)
13 MS. BAIR: Staff Exhibit 7, Thomas
14 Crawford.
15 ALJ WILLIAMS: So marked.
16 (EXHIBIT MARKED FOR IDENTIFICATION.)
17 MS. BAIR: Staff Exhibit 8, Andrew
18 Conway.
19 ALJ WILLIAMS: So marked.
20 (EXHIBIT MARKED FOR IDENTIFICATION.)
21 MS. BAIR: Staff Exhibit 9, Tyler
22 Conklin.
23 ALJ WILLIAMS: So marked.
24 (EXHIBIT MARKED FOR IDENTIFICATION.)
25 MS. BAIR: And the final Staff exhibit,

1 Matthew Butler, is 10. This Staff testimony was all
2 filed on May 11, 2022.

3 ALJ WILLIAMS: Those are all marked.

4 (EXHIBIT MARKED FOR IDENTIFICATION.)

5 MS. BAIR: Okay. And Staff calls James
6 O'Dell to the stand, please.

7 ALJ WILLIAMS: Good morning, Mr. O'Dell.

8 (Witness sworn.)

9 ALJ WILLIAMS: Please be seated.

10 MS. BAIR: Your Honor, may I approach the
11 witness?

12 ALJ WILLIAMS: You may, Ms. Bair.

13 MS. BAIR: Thank you.

14 - - -

15 JAMES O'DELL

16 being first duly sworn, as prescribed by law, was
17 examined and testified as follows:

18 DIRECT EXAMINATION

19 By Ms. Bair:

20 Q. Mr. O'Dell, do you have before you what
21 has been marked as Staff Exhibit 1?

22 A. Yes, I do.

23 Q. And what is that document?

24 A. The Staff Report of Investigation.

25 Q. What was your role in the preparation of

1 that?

2 A. I compiled and led the investigation for
3 this case.

4 Q. And do you have also what is marked as
5 Staff Exhibit 2 in front of you?

6 A. Yes, I do.

7 Q. And what is that?

8 A. That is my prefiled testimony.

9 Q. Was that prepared by you?

10 A. Yes, it was.

11 Q. Do you have any corrections to make to
12 that?

13 A. I do not.

14 Q. If I were to ask you the questions
15 contained in Staff Exhibit 2 today, would they be the
16 same as those in your refiled testimony?

17 A. Yes, they would.

18 MS. BAIR: And, your Honor, I move Staff
19 Exhibit 1 and 2 into evidence, subject to
20 cross-examination.

21 ALJ WILLIAMS: Thank you, Ms. Bair.

22 Applicant?

23 MR. SECREST: Thank you, your Honor.

24 - - -

25

CROSS-EXAMINATION

By Mr. Secrest:

Q. Good morning, Mr. O'Dell. How are you?

A. Good morning, sir.

Q. You just indicated that you compiled the Staff Report and participated in the investigation; is that right?

A. That is correct.

Q. What exactly does that mean?

A. What does compiling mean, sir?

Q. That's correct.

A. Compiling means that I work with members of the Power Siting Board Staff. We would assemble the Staff Report of Investigation for the report. We would conduct the investigation, and I would generally oversee that process.

Q. Okay. Fair to say you are familiar with the Staff Report?

A. Yes, sir.

Q. Okay. Is it accurate that the Staff Report recommended denial of the certificate based on Revised Code Section 4906.20(A)(2) and (A)(3) because of the need of an engineering and constructability report related to oil and gas wells?

A. That is correct.

1 Q. Okay. That's since been satisfied by the
2 Applicant to the Staff's satisfaction; is that
3 correct?

4 A. Yes, that's in my prefiled testimony,
5 sir.

6 Q. And it's accurate that the Staff Report
7 also recommended denial based on 4906.20(A)(2) and
8 (A)(3) because of the need for a phase I
9 archeological report, correct?

10 A. That is correct.

11 Q. And similarly that's been rectified to
12 the Staff's satisfaction.

13 A. That has.

14 Q. And I believe your testimony, in fact,
15 specifically says those two issues were rectified,
16 correct?

17 A. That is correct.

18 Q. Thank you. If you -- please turn to
19 what's been marked as Staff Exhibit 1, the Staff
20 Report. Specifically I am looking at page 47.

21 A. What page, sir?

22 Q. 47.

23 A. Thank you.

24 Q. Thank you. I am looking under the
25 heading "Recommended Findings." Do you recall, did

1 you author this portion of the Staff Report?

2 A. The Staff Report is authored and compiled
3 by the entire team.

4 Q. Okay. Page 47 of Staff Exhibit 1 states
5 "While Staff is concerned with the Applicant's
6 satisfaction of the requirements specified in Revised
7 Code 4906.10 Subsection (A) Subsection (6), pending
8 the submission of information, analyses, and
9 processes in this case, Staff recommends that the
10 Board find that the proposed facility would serve the
11 public interest, convenience, and necessity and
12 therefore complies with the requirements specified in
13 Revised Code 4906.10 subsection (A) subsection (6)."
14 Did I read that accurately?

15 A. I believe so.

16 Q. Is it accurate that the Staff Report
17 recommended that the Board find that the proposed
18 facility would serve the public interest?

19 A. Yes, but it also noted its concern.

20 Q. It did note concerns, but the only basis
21 for the recommendation of denial in the Staff Report
22 was under Subsections (A) (2) and (A) (3), not (A) (6);
23 is that correct?

24 A. That's correct.

25 Q. Okay. Thank you. Are you aware,

1 Mr. O'Dell, that, excuse me, Auglaize County has
2 entered into a DRUMA with the Applicant?

3 A. Yes, there is a Stipulation that I
4 believe they signed.

5 Q. Okay. And just for the record you
6 understand what DRUMA stands for?

7 A. Could you repeat that last question, sir?

8 Q. Sure. Just for the record do you
9 understand what DRUMA stands for?

10 A. Yes.

11 Q. It's drainage road use maintenance
12 agreement; is that right?

13 A. Yes.

14 Q. Okay. So since the time you submitted
15 testimony in this case, you have been aware -- made
16 aware that Auglaize County has entered into a DRUMA
17 with the Applicant; is that right?

18 A. Yes.

19 Q. And did you also note that there has been
20 a Memorandum of Understanding entered into between
21 Allen County and the Applicant?

22 A. Yes.

23 Q. Okay. When did you review the document
24 that contains the Memorandum of Understanding between
25 the Applicant and Allen County?

1 A. Go ahead, sir. I'm sorry.

2 Q. That's all right. You reviewed the
3 Memorandum of Understanding between the Applicant and
4 Allen County after you submitted your prefiled
5 testimony; is that correct?

6 A. That is correct.

7 Q. Okay. You reviewed the DRUMA entered
8 into between Auglaize County and the Applicant after
9 you submitted your prefiled testimony, correct?

10 A. I believe so.

11 Q. So fair to say when you filed your
12 prefiled testimony, those two documents and the
13 agreements entered into between the Applicant and the
14 counties did not factor into your testimony?

15 A. That is correct. They were filed
16 prior -- I mean, they were filed before my
17 testimony -- excuse me, after my testimony. I
18 apologize.

19 Q. That's okay. Do you have your prefiled
20 testimony in front of you, Mr. O'Dell?

21 A. Yes, sir.

22 Q. Thank you. And that's been marked as
23 Staff Exhibit 2?

24 A. It has.

25 Q. Will you please turn to page 4 of your

1 testimony -- excuse me, page 5 of your testimony.

2 A. I have it.

3 Q. Thank you. I'm looking at lines 13
4 through 17, and starting at 13, it states "While some
5 local opposition is common in many siting projects,
6 considering the above opposition filed in the docket
7 and expressed at local public meetings, Staff
8 recognizes that in this proceeding it has been
9 especially prominent, one sided, and compelling."
10 Did I read that accurately?

11 A. Yes, sir.

12 Q. When you are referring to opposition
13 expressed at local meetings, specifically what are
14 you referring to?

15 A. Opposition at local meetings, that would
16 be testimony from various members of the communities,
17 citizens, people of that nature.

18 Q. I'm sorry. Could you repeat that? I
19 missed the first part.

20 A. Okay. At the local meetings, typically
21 citizens will testify as to their feelings and
22 thoughts on the project.

23 Q. And those citizens that testified at the
24 local public meetings, do you know how many of them
25 were members of the Against Birch Solar group?

1 A. As far as represented by counsel?

2 Q. Just in general.

3 A. I would estimate in excess of 20. I
4 don't know the specific number.

5 Q. And Against Birch Solar was a group that
6 was opposed to this project, correct?

7 A. That is correct.

8 Q. Would you classify their opposition as
9 strong?

10 A. That is correct.

11 Q. Okay. And are you aware that since the
12 filing of your testimony in this case Against Birch
13 Solar has withdrawn from this proceeding?

14 A. Yes, I am.

15 Q. Would that indicate to you Against Birch
16 Solar concerns related to this project have been
17 addressed?

18 A. That's -- I would indicate I believe
19 that's accurate, sir.

20 Q. Okay. So any opposition at local public
21 meetings or testimony, comments from citizens who
22 were members of Against Birch Solar, those concerns
23 no longer exist, correct?

24 A. Regarding the folks that were represented
25 by counsel, by Mr. Van Kley, I believe, I believe

1 that would be true. There could be other folks that
2 still are opposed to the project who are not
3 represented by counsel who may perhaps still maintain
4 the same position, but as far as this group of
5 Against Birch Solar, that's true.

6 Q. When you say there may still be citizens
7 who maintain their opposition, you are speculating,
8 correct?

9 A. I don't know.

10 Q. Okay. You don't know if you are
11 speculating, or you don't know if there are still
12 members?

13 A. I don't know what their positions are.

14 Q. Okay.

15 A. They are not in the record.

16 Q. The fact that Allen County entered into
17 an MOU with the Applicant would indicate to you,
18 would it not, that their concerns similarly have been
19 addressed related to the project?

20 A. As far as the roads and bridges, that
21 type of issue, yes.

22 Q. Okay. And similarly Auglaize County
23 entering into the DRUMA would indicate their concerns
24 related to drainage, road use, and maintenance have
25 been addressed by the Applicant; is that accurate?

1 A. I would assume because they have signed
2 the Stipulation, yes.

3 Q. Okay. Your testimony refers to letters
4 received -- and feel free to look at page 5. It
5 refers to letters received in public opposition.
6 Those letters were received before Auglaize County
7 entered into the drainage and road use agreement,
8 correct?

9 A. To the best of my knowledge, there could
10 have been other letters that were received on the
11 docket after that point but that's true.

12 Q. When you reference letters, you are
13 referring to letters that were submitted on the -- in
14 the public comment section of the docket.

15 A. Yes, sir.

16 Q. Okay. Do you make any effort to verify
17 the authenticity of those letters?

18 A. No, sir. They are entered into the
19 record. I do not specifically take any independent
20 action to verify their authenticity.

21 Q. You made no effort to verify the
22 individual who signed that document actually authored
23 or drafted that document?

24 A. I did not.

25 Q. Okay. And those public comments were

1 entered into the docket prior to the time that the
2 DRUMA was entered into between Auglaize County and
3 Applicant, correct?

4 A. I believe so.

5 Q. And those public comments were filed in
6 the docket prior to the time that the MOU was
7 executed between Allen County and the Applicant,
8 correct?

9 A. I believe so.

10 Q. Okay. So as you sit here today, do you
11 know whether -- you can't say whether or not Allen
12 County still has concerns related to the project,
13 correct?

14 A. I know that they have not changed their
15 original position in a public manner by stating that
16 they are now not opposed to the project, but they
17 have signed the agreements that you talked about.

18 Q. Would signing the agreements indicate
19 lack of opposition to the project?

20 A. Signing the agreements would mean that
21 issue has been resolved by those folks, that
22 particular issue, whatever is contained in that
23 particular Stipulation. However, the general
24 opposition to the project, the local public officials
25 still have voiced opposition to the project.

1 Q. There's no local officials here today
2 sitting at counsel table and participating in these
3 proceedings, are there?

4 A. There are not -- I don't believe so.

5 Q. We've heard from the Coalition. And what
6 is the Coalition? Do you understand what that group
7 is?

8 A. Yes. I believe it's a coalition of folks
9 on the other side who are in favor of the project.

10 Q. When you say in favor of the project, you
11 are aware, are you not, that those are residents of
12 the counties Auglaize and Allen who are proponents of
13 the project, correct?

14 A. Yes.

15 Q. And they have actually filed to intervene
16 in this case; is that right?

17 A. Yes.

18 Q. In fact, they are the only local interest
19 represented in this case who has actually filed
20 testimony; is that right?

21 A. Yes.

22 Q. They are the only local residents who are
23 here today participating in this proceeding, correct?

24 A. Yes.

25 Q. So as of today, there is nobody sitting

1 in this room who is opposed to the project
2 participating in these proceedings, correct?

3 A. Sitting in the room.

4 Q. In terms of the Staff Report, it did not
5 recommend denial of the certificate based on public
6 interest, correct?

7 A. It noted our concern but did not
8 recommend denial.

9 Q. Okay.

10 A. Yes.

11 Q. Your testimony though does recommend
12 denial based upon public interest, correct?

13 A. My testimony does recommend denial based
14 upon public interest, convenience, and necessity.

15 Q. And since the filing of the Staff Report
16 and the filing of your prefiled testimony Against
17 Birch Solar has withdrawn from this action, correct?

18 A. Yes.

19 Q. Allen County has entered into a
20 Memorandum of Understanding with the Applicant,
21 correct?

22 A. Yes, sir.

23 Q. Auglaize County has entered into a DRUMA
24 with the Applicant.

25 EXAMINER PARROT: Objection, asked and

1 answered.

2 ALJ WILLIAMS: We will let the question
3 stand.

4 A. Yes, sir.

5 Q. Okay. Those would all be indicators of
6 lack of opposition to the project, would you not
7 agree?

8 A. Repeat your question, sir.

9 Q. Those would all be indicators of lack of
10 opposition to the project?

11 A. On those particular issues that they have
12 signed in their Stipulation, that's true.

13 Q. And you are aware that -- are you not,
14 that Logan Township entered into the DRUMA along with
15 Auglaize County?

16 A. Yes, sir.

17 Q. Okay. Are you familiar with the Joint
18 Stipulation entered into in this case?

19 A. Yes, sir.

20 Q. Okay.

21 MR. SECREST: Your Honor, may I approach
22 the witness?

23 ALJ WILLIAMS: You may.

24 MR. SECREST: Thank you.

25 Q. (By Mr. Secrest) Mr. O'Dell, I have

1 handed you what's been marked and admitted as Joint
2 Exhibit 1 in this action. Does this Joint
3 Stipulation incorporate all the Staff -- recommended
4 Staff conditions from the Staff Report with the
5 exception of the engineering and constructability
6 report and the phase I archeological report? Feel
7 free to take your time, Mr. O'Dell.

8 A. Thank you. Yes, sir.

9 Q. Thank you. And please refer back to
10 Staff Exhibit 2, your testimony. Looking at page 5
11 on line 15, the middle of the sentence, it begins
12 "Staff recognizes that in this proceeding it has been
13 especially prominent, one sided, and compelling." Do
14 you see that?

15 A. Yes, sir.

16 Q. And you are referring to the opposition
17 being one sided, correct?

18 A. Yes, sir.

19 Q. This Stipulation was signed not only by
20 Birch Solar but by the Coalition, correct?

21 A. Yes, sir.

22 Q. Okay. This was also signed by the Board
23 of County Commissioners of Auglaize County and Logan
24 County Trustees, correct?

25 A. Yes.

1 Q. It was signed by the Farm Bureau and IBEW
2 also, correct?

3 A. Yes.

4 Q. Did you consider the proponents of this
5 project, the stipulating parties, when you drafted
6 your testimony and stated that the opposition had
7 been one sided?

8 A. Yes. We weighed -- Staff weighed all the
9 testimony that we had available to it and all
10 positions advanced by all of the parties. And when I
11 was formulating my testimony, I took that into
12 account. There's also folks that have remained
13 opposed represented by local government officials,
14 Shawnee Township, for example, and Allen County who
15 subsequent to my testimony filed letters still
16 remaining opposed to the project, and those folks
17 represent the local constituents obviously.

18 Q. Did you make any effort to verify how
19 many local constituents those individuals had spoken
20 to or talked to?

21 A. No, I did not.

22 Q. And again, Against Birch Solar is made up
23 of residents of the counties, correct?

24 A. That's true.

25 Q. Okay. So Against Birch Solar also

1 represented the interests of the residents of the
2 counties, correct?

3 A. Yes, sir.

4 Q. Your testimony though specifically says
5 one sided. When looking at stipulating parties who
6 are proponents of the project, when looking at
7 Auglaize County who has indicated it has no
8 opposition to the project, that's not one sided, is
9 it?

10 A. They still have expressed the position
11 that the project -- they have been opposed to the
12 project. We're basing this upon the comments that
13 have been filed by those local government entities,
14 and they still remain -- either they've signed or
15 they remain opposed to the project, especially
16 Shawnee Township and the Allen County Commissioners
17 that have filed any testimony.

18 Q. I'm sorry. The County Commissioners that
19 filed testimony?

20 A. Shawnee Township and the Board of Allen
21 County Commissioners on May 10.

22 Q. Okay.

23 A. At line 1 in my testimony.

24 Q. You said -- you are referring to an Allen
25 County document from May 10. You're aware though

1 that the MOU between Allen County and the Applicant
2 was entered on May 12, 2022?

3 A. Yes.

4 Q. Other than reviewing public comments,
5 you've made no effort to verify that Allen County's
6 position as expressed in those letters remains their
7 position today; is that right?

8 A. Correct.

9 Q. And you do have the Stipulation in front
10 of you. You are aware that Auglaize County and Logan
11 Township stated they are not opposed to the project,
12 that they take no position; is that right?

13 A. Yes, sir.

14 Q. Okay. That's not opposition to the
15 project, correct?

16 A. No.

17 Q. With the conditions in the Staff Report,
18 Staff did not recommend denial of a certificate based
19 on property value issues, did it?

20 A. No, sir.

21 Q. Okay. Are you aware that the Applicant
22 has committed to a home value guarantee?

23 A. I recall something to that, sir.

24 Q. Are you aware of any solar project in
25 which the Applicant has committed to a home value

1 guarantee?

2 A. I can't specifically say whether that's
3 occurred in other solar projects, sir.

4 Q. Well, your testimony, your prefiled
5 testimony, outlines a number of projects that you've
6 personally been involved in. How many of those are
7 solar projects?

8 A. Be 10 or more, sir.

9 Q. Okay. As you sit here today, you can't
10 recall any of those 10 in which the Applicant has --

11 MS. BAIR: Objection.

12 Q. -- offered a home value guarantee?

13 MS. BAIR: Asked before. Answered
14 before.

15 ALJ WILLIAMS: I will let him answer.

16 A. Repeat your question, sir.

17 Q. Of those 10, as you sit here today, you
18 can't recall any in which the Applicant has offered a
19 home value guarantee; is that your testimony?

20 A. Not to my knowledge. I can't recall
21 anybody who is offered that.

22 Q. Okay. Are you aware that there is an
23 adjacent available financial benefit committed to by
24 the Applicant in this proceeding?

25 A. Am I aware? One more time, sir. My

1 hearing is not perfect.

2 Q. Are you aware there is an adjacent
3 neighbor financial benefit committed to by the
4 Applicant in this proceeding?

5 A. Yes, sir, I recall that.

6 Q. Okay. Staff did not recommend denial of
7 the certificate based upon any issues related to
8 contamination of land or water, correct?

9 A. No.

10 Q. Okay. Are you aware that the Applicant
11 is committing to a toxicity characteristic leaching
12 procedure for these solar panels?

13 A. Yes, sir.

14 Q. Staff did not recommend denial of the
15 certificate based upon any concern with regard to
16 hazard to humans; is that right?

17 A. No.

18 Q. Staff did not recommend denial based on
19 any concerns related to hazards to flora or fauna; is
20 that right?

21 A. That is correct.

22 MS. BAIR: Your Honor, I would object.
23 The document speaks for itself. Are we going to go
24 through every single condition that is already in the
25 record?

1 ALJ WILLIAMS: That's a reasonable
2 objection. If you could -- we don't need to provide
3 his testimony regarding what Staff's recommendations
4 to the report are unless they are distinct for
5 purposes of his testimony.

6 MR. SECREST: Sure. Okay.

7 Q. (By Mr. Secrest) Well, let me ask you
8 this, Mr. O'Dell, are you aware the Applicant is
9 committed to a revegetation plan?

10 A. Yes.

11 Q. Okay. And that's in Joint Stipulation
12 Condition 22 if you need to refer to it.

13 A. Yes, sir.

14 Q. Are you aware of any solar project in
15 which the Applicant has committed to a revegetation
16 plan?

17 A. Yes. It's quite common for them to enter
18 into landscape -- landscaping conditions. We've
19 addressed that in many solar projects.

20 Q. And in terms of this project, are you
21 aware that the Applicant has submitted to a minimum
22 setback of 300 feet from residences?

23 A. Yes.

24 Q. Okay. The 10 or so solar projects that
25 you've been involved in, are you aware of any that

1 have been approved in which the setback -- or any in
2 which the Staff recommended granting the certificate
3 in which the setbacks were less than 300 feet?

4 A. There were projects with less than
5 300 feet. There have been projects that I'm aware of
6 that were -- there was a 300-foot commitment to
7 setback. I don't believe those projects are approved
8 but I believe that those were the projects I had lead
9 on but I am aware 300 foot exists in other projects.

10 Q. Okay. Were there any projects you had
11 the lead on where Staff recommended granting the
12 certificate?

13 MS. BAIR: Your Honor, I would like to
14 object to the relevance of talking about all the
15 other solar cases. We are here for Birch. We are
16 here about the conditions in Birch. I don't know
17 what the relevance is of talking about other solar
18 cases.

19 ALJ WILLIAMS: I appreciate your
20 objection. I am going to overrule it. I am going to
21 allow some latitude allowing distinctions between
22 other projects that the Board has considered and how
23 this project may compare to some extent.

24 MR. SECREST: Thank you, your Honor.

25 Q. (By Mr. Secrest) Do you need me to repeat

1 the question?

2 A. Go ahead and repeat your question, sir.

3 Q. Okay. Were there any solar projects in
4 which you were the lead that you are aware Staff
5 recommending granting a certificate and the setbacks
6 were less than 300 feet?

7 A. Less than 300 feet.

8 Q. Yes, sir.

9 A. Yes.

10 Q. And when you testified that you are aware
11 of other projects and that it was common to have
12 revegetation plans, do you understand there is a
13 distinction between vegetation and revegetation
14 plans?

15 A. Yes.

16 Q. Turning back to your testimony,
17 Mr. O'Dell, page 5, I am looking at line 16,
18 beginning at line 16, the sentence "Staff believes
19 that the public opposition will create negative
20 impacts on the local community." Specifically what
21 public opposition are you referring to?

22 A. The public opposition both -- as
23 represented by individual folks in the community that
24 may participate and wrote comment to us as well as
25 the local government officials representing their

1 constituents and their opposition to the project.

2 Q. That sentence carries on -- well, I will
3 start from the beginning again. "Staff believes that
4 the public opposition will create negative impacts on
5 the local community. Board Staff believes that any
6 benefits to the local community are outweighed by
7 this overwhelming public opposition and, therefore,
8 the project would not serve the public interest,
9 convenience, and necessity." Did I read that
10 correctly?

11 A. That's correct, sir.

12 Q. Did you draft those two sentences?

13 A. That's correct. You read that correctly,
14 sir.

15 Q. My question is did you draft those two
16 sentences?

17 A. Yes, along with, as I have a stated
18 before, the Staff Report and all of the works are
19 collaborative efforts; but, yes, I drafted these two
20 sentences.

21 Q. Thank you. Other than the public
22 comments that were filed in this case, since the
23 issuance of the Staff Report and your testimony being
24 filed in this action, what changed the Staff's
25 position on public necessity?

1 A. Staff's position -- Staff was, as I
2 stated in my testimony, concerned at the time of the
3 Staff Report regarding the public interest,
4 convenience, and necessity. While Stipulations and
5 other actions have occurred, Staff still recognizes
6 that those positions are still maintained by those
7 local elected officials. There is a couple of
8 examples in my testimony obviously.

9 Q. At the time of the filing of the Staff
10 Report, there was opposition to this project,
11 correct?

12 A. At the time of the filing of the Staff
13 Report?

14 Q. Yes.

15 A. There was opposition to this project,
16 correct. There was opposition, yes.

17 Q. Yet Staff did not recommend denial based
18 upon public interest, correct?

19 A. Yes. You had asked me that question
20 before. Staff did note its concerns, and Staff
21 was -- at that point this is a process that we go
22 through, and so we realized that there were analyses
23 at that time of the Staff Report that was outstanding
24 such as the aforementioned concern over cultural
25 resources, the aforementioned concern over oil and

1 gas wells, and the concerns of the local governmental
2 officials in opposition to the project. So those
3 were all present at the time of the Staff Report. We
4 expressed those concerns in the Staff Report and
5 noted those.

6 Q. But at the time of the issuance of the
7 Staff Report, the local public official concerns were
8 not grounds in the Staff's minds for recommending
9 denial based upon public interest, correct?

10 A. We received many comments throughout the
11 local -- from local constituents throughout this
12 process. They are numerous. I can't recall them
13 all.

14 Q. But at the time of the issuance of the
15 Staff Report, staff was aware that certain local
16 public officials were opposed to the project,
17 correct?

18 A. Yes.

19 Q. Okay. But at the time of the issuance of
20 the Staff Report, the local public official
21 opposition was not deemed by Staff to be grounds to
22 deny the certificate based on public interest,
23 correct?

24 A. Staff expressed its concerns at that
25 time.

1 Q. If you could turn back to page 47 of the
2 Staff Report, Staff Exhibit 1. I am looking at the
3 section "Recommended Findings."

4 A. Page 47, sir?

5 Q. Yes, sir.

6 A. Okay. Go ahead.

7 Q. Actually if you look just above that
8 section, just above the "Recommended Findings"
9 section, the heading is "Effect of Revised Code
10 4906.10(A)(2) and (A)(3) Review." Do you see that?

11 A. Yes, sir.

12 Q. Those are probable environmental impact
13 sections, correct?

14 A. Yes. Referring to the nature of the
15 environment, prob -- the problem nature of the
16 environment, and minimum adverse impact.

17 Q. Okay. And then the recommended findings
18 also state "While Staff is concerned with
19 Applicant -- Applicant's satisfaction of the
20 requirements specified in Revised Code 4906.10(A)(6),
21 pending the submission of information, analyses, and
22 processes in this case, Staff recommends that the
23 Board find that the proposed facility would serve the
24 public interest." When you -- when the Staff Report
25 refers to "submission of information, analyses, and

1 processes," does that not refer to the archeological
2 report as well as the engineering and
3 constructability report?

4 A. Those were two of the analyses that Staff
5 did not have at the time. And those were two of the
6 areas being considered, yes.

7 Q. And those relate to the probable
8 environmental impact, correct?

9 A. Yes, sir.

10 MR. SECREST: Your Honor, may we have a
11 moment?

12 ALJ WILLIAMS: You may.

13 Let's go off the record.

14 (Discussion off the record.)

15 ALJ WILLIAMS: We are going to go back on
16 record.

17 As we do, I note that Ms. Milam has
18 appeared on behalf of the Farm Bureau. This is a
19 logical time to note her appearance in the case.

20 Ms. Milam.

21 MS. MILAM: Good morning. Amy Milam on
22 behalf of the Ohio Farm Bureau at 28 North High
23 Street, 6th Floor, Columbus, Ohio 43215.

24 ALJ WILLIAMS: Thank you, Ms. Milam.

25 MS. MILAM: Thank you.

1 ALJ WILLIAMS: And we took a short break
2 while Applicant gathered its thoughts relative to
3 cross-examination, and we will turn now back to
4 Applicant.

5 MR. SECREST: Thank you, your Honor.
6 Just a few more questions. May I approach the
7 witness?

8 ALJ WILLIAMS: You may.

9 MR. SECREST: Thank you.

10 Q. (By Mr. Secrest) Mr. O'Dell, you had
11 previously indicated being aware that Against Birch
12 Solar had withdrawn from this case and that -- were
13 you aware it actually issued a press release?

14 A. Yes. I saw this press release.

15 Q. Okay.

16 MR. SECREST: And, your Honor, what I
17 have handed Mr. O'Dell, may we have that marked as
18 Applicant Exhibit 38?

19 ALJ WILLIAMS: So marked.

20 (EXHIBIT MARKED FOR IDENTIFICATION.)

21 Q. (By Mr. Secrest) So is that a true and
22 accurate copy of the Against Birch Solar press
23 release which you reviewed -- previously reviewed?

24 A. It appears to be.

25 MR. SECREST: Okay. Thank you. No

1 further questions, your Honor.

2 Thank you, Mr. O'Dell.

3 ALJ WILLIAMS: Staff, any redirect?

4 MS. BAIR: Yes. We need a few minutes,
5 your Honor.

6 ALJ WILLIAMS: You may. You want 5?

7 MS. BAIR: 5, perfect.

8 ALJ WILLIAMS: All right. We will come
9 back at 8 after then.

10 (Recess taken.)

11 ALJ WILLIAMS: All right. We are going
12 to go back on the record.

13 Ms. Bair.

14 MS. BAIR: Yes, I have some redirect,
15 your Honor.

16 ALJ WILLIAMS: Please.

17 - - -

18 REDIRECT EXAMINATION

19 By Ms. Bair:

20 Q. Mr. O'Dell, I would like you to look at
21 the Joint Stipulation and Recommendation. I believe
22 the copy was provided to you. Or not? Here.

23 A. The Joint Stipulation, yes, I have it.

24 Q. You have it?

25 A. Joint Stipulation?

1 Q. Yes. And you're familiar with this
2 document, correct?

3 A. Yes.

4 Q. And what is the footnote 1 on page 1?

5 A. The footnote 1 says -- directs us to see
6 the Attachment A of the Stipulation.

7 Q. Okay. Could we look back at that. Could
8 you flip back there, please. And am I correct this
9 is from Auglaize County Commissioners and Logan
10 Township Trustees?

11 A. Yes, dated May 12, 2022.

12 Q. And do you believe that this indicates
13 that they like the project or is there anything in
14 there that indicates how those two parties feel about
15 the project?

16 A. No. I believe this is a continued
17 example of their opposition to the project. They --
18 go ahead.

19 Q. No. And how would you see this as
20 opposition when you are reading this letter?

21 A. For example, in sentence No. 4 they state
22 "But for the grandfather status, Birch's project
23 would be restricted under the authority given to the
24 county under Senate Bill 52" which indicates to me
25 that there is continued opposition to the project.

1 Q. Thank you. And I do not know if you have
2 a copy of Shanelle Montana's supplemental testimony.
3 Is that 30A?

4 A. I do not.

5 MS. BAIR: May I approach, your Honor?

6 ALJ WILLIAMS: You may.

7 MR. SECREST: And, yes, it is 30A.

8 MS. BAIR: 30A.

9 Q. (By Ms. Bair) Applicant Exhibit 30A,
10 Shanelle Montana's supplemental testimony. And in
11 her testimony she has attached an MOU. Do you see
12 that? Can you find that in the document? I don't
13 have a page number. It's the attachment.

14 A. Attachment SM-1, Resolution, Board of
15 County Commissioners, Allen County.

16 Q. Yes. And this is a Resolution of Al --
17 you just said that, Allen County Board of
18 Commissioners, correct?

19 A. Correct.

20 Q. And in that I am looking at the second
21 paragraph whereas. It's just one sentence. Do you
22 believe that that expresses opposition to the
23 project?

24 A. The sentence you are referring to,
25 "WHEREAS, in response to Developer's Application, the

County has expressed to the OPSB its desire to enact into a -- to enter into a formal agreement related to the use and repair of County roads and drainage systems with the Developer prior to the commencement of construction of the Project (a DRUMA), D-R-U-M-A, and only in the event the project," and only in the event the project "is approved by the Ohio Power Siting Board."

Q. And further down the one, two, three, four, fifth, "WHEREAS," that first sentence.

A. Yes. "BE IT RESOLVED THAT THE BOARD OF COUNTY COMMISSIONERS."

Q. No.

A. "ALLEN COUNTY."

Q. It says "The Parties desire to enter into a MOU to formalize their agreement."

A. Could you direct me to where you are referring to, please?

Q. It's the fifth WHEREAS clause.

A. Yes. This is -- this states "WHEREAS, the Parties desire to enter into a MOU to formalize their agreement that the Parties will continue to negotiate a DRUMA in good faith and, in the event Certificate -- and in the event that a Certificate is granted, the Parties will enter into the DRUMA that

1 is mutually acceptable to the Developer and the
2 County prior to the commencement of construction of
3 the Project. 'Continue good faith negotiations' will
4 be defined as using the DRUMA as executed by the
5 Allen County and development -- and Auglaize County
6 and Developer on May 5, 2022, as a baseline for the
7 Allen County DRUMA, acknowledging that the Allen
8 County has a greater portion of the project and
9 therefore has greater needs both regarding drainage
10 and road infrastructure."

11 Q. Thank you. Does that indicate support of
12 the project or how would you interpret that?

13 A. It merely indicates that they've agreed
14 in good faith if the Board issues a certificate, that
15 in these two particular issues, they would want the
16 Board to codify this and to approve this. It does
17 not mean that they approve of the project in its
18 entirety.

19 Q. Thank you. This is the Resolution.
20 Could we move on back to the actual memorandum in the
21 next page.

22 A. Memorandum of Understanding.

23 Q. And we are getting into the WHEREASes
24 again. I'm looking at the third WHEREAS. And this
25 is just an agreement strictly related to the repair

1 of road -- road and drainage systems, correct?

2 A. Correct.

3 Q. And further on down, the fifth WHEREAS,
4 could you please read that.

5 A. Yes, sir -- yes, ma'am. "WHEREAS, the
6 Parties acknowledge that DRUMA would be unnecessary
7 if the Certificate is not granted by the OPSB."

8 Q. Okay. And so there is nothing in either
9 the Resolution or the Memorandum of Understanding
10 that shows support of the project.

11 A. It simply means they've reached agreement
12 on those particular issues, but they still believe
13 those issues would not be necessary as they have
14 stated, and they would only be necessary in the event
15 that the Board granted a certificate. It doesn't
16 change the county's opposition.

17 Q. Thank you. And I wanted to touch on
18 another issue also. What was the date that your
19 testimony was filed? Is that May 11? It should say
20 on the front.

21 A. May 11.

22 Q. Okay. And the date of this Memorandum of
23 Understanding is May 12, correct? What you were just
24 reading.

25 A. Yes, that's correct.

1 Q. And also talking about the process that
2 has been the subject of today a lot, were there
3 public hearings after the Staff Report was filed?

4 A. Yes.

5 Q. And is that part of the process that you
6 are talking about?

7 A. Yes. There was a process of continuing
8 investigation that will occur throughout the
9 hearing -- the entire hearing process that we engage
10 in.

11 MS. BAIR: Thank you, your Honor. I have
12 nothing further.

13 ALJ WILLIAMS: Thank you.

14 I am going to have -- the Bench has a
15 couple of questions, and then we will let you recross
16 following our questions to make sure you are able to
17 be as thorough as you want to be.

18 - - -

19 EXAMINATION

20 By ALJ Williams:

21 Q. So, Mr. O'Dell, at the time of the Staff
22 Report, October 20 of 2021, do you recall, had you
23 heard from any or all of the local communities? By
24 local communities I am defining Shawnee Township,
25 Logan Township, and Allen and Auglaize Counties.

1 A. I believe so, sir.

2 Q. Okay. And have you heard from them at
3 all since that time?

4 A. Yes. As I've stated, the process is
5 ongoing, and the positions will -- the specific
6 issues will be addressed at some point, but the
7 process is ongoing and comments are entered into the
8 record and the local officials have made note of
9 their positions.

10 Q. Do you know if you or Staff have had
11 communications directly via e-mail or telephone or in
12 person with any or all of the local communities since
13 the time of the Staff Report issuance?

14 A. No, no, no direct communication, sir.

15 Q. Okay. And I know there was discussion
16 regarding an MOU and some DRUMAs. Is it your
17 understanding all four of those local government
18 entities remain opposed to the project?

19 A. It is my understanding they all remain
20 opposed to the project.

21 ALJ WILLIAMS: Okay. Thank you.

22 With that I will turn for any recross.

23 MR. SECREST: May we have a brief recess,
24 your Honor?

25 ALJ WILLIAMS: Sure. 5 minutes?

1 MR. SECREST: Yes, sir. Thank you.

2 ALJ WILLIAMS: Off the record.

3 (Recess taken.)

4 ALJ WILLIAMS: Back on the record.

5 Recross.

6 MR. SECREST: Yes, your Honor. Thank
7 you.

8 - - -

9 RECROSS-EXAMINATION

10 By Mr. Secrest:

11 Q. Mr. O'Dell, do you have Joint Exhibit 1
12 in front of you? It's the Joint Stipulation and
13 Recommendation.

14 A. Let me find it, sir.

15 Q. Certainly.

16 MS. BAIR: That's probably it. You had
17 it folded back to that resolution page.

18 A. I have it, sir.

19 Q. Thank you. Did I understand your
20 testimony on redirect that you believe that Auglaize
21 County and Logan Township are opposed to the project?

22 A. Yes.

23 Q. Okay. Will you please turn to page 2 of
24 Joint Exhibit 1. I'm looking at the last sentence on
25 that page. It carries over to page 3, and it states

1 "The Auglaize County Commissioners and the Logan
2 Township Trustees take no position on whether a
3 certificate should be issued for the facility but
4 request the inclusion of the conditions below in any
5 certificate that is issued by the Board." Did I read
6 that correctly?

7 A. Yes, sir.

8 Q. Okay. And Auglaize County and Logan
9 Township are signatories to the Joint Stipulation,
10 correct?

11 A. I believe so.

12 MR. SECREST: Thank you.

13 Nothing further. Thank you.

14 ALJ WILLIAMS: Thank you. Thank you,
15 Mr. O'Dell.

16 Staff, we will turn to your exhibits.

17 MS. BAIR: Yes, your Honor. I would like
18 to move Staff Exhibits 1 through 10 into evidence.
19 Do you want me to go through them again or? You've
20 already marked them.

21 ALJ WILLIAMS: They've been marked, so I
22 think we are all set.

23 Anybody have any opposition to the Staff
24 Exhibits 1 through 10?

25 Hearing none, those are admitted.

1 (EXHIBITS ADMITTED INTO EVIDENCE.)

2 ALJ WILLIAMS: Let's go off record for
3 just a second.

4 (Discussion off the record.)

5 ALJ WILLIAMS: Back on the record. We
6 were clarifying exhibits that had been admitted, and
7 the Bench's question was whether Joint Exhibit 1 had
8 been admitted. And it's been confirmed that it has.

9 And so I understand that pursuant to
10 Mr. O'Dell's cross-examination, one additional
11 exhibit was identified, Applicant Exhibit 38, and I
12 will let Applicant express whether they have any
13 action to request in regard to that exhibit.

14 MR. SECREST: We do, your Honor. May
15 Applicant move for the admission of Applicant
16 Exhibit 38?

17 ALJ WILLIAMS: Is there opposition to the
18 admission of that exhibit?

19 MS. BAIR: Yes. This was not properly
20 authenticated through Witness O'Dell and it shouldn't
21 come in through him. It should not be part of the
22 record.

23 ALJ WILLIAMS: I assume that's based on
24 hearsay?

25 MS. BAIR: Hearsay.

1 ALJ WILLIAMS: Thank you, Ms. Bair.
2 Applicant?

3 MR. SECREST: Sure. Mr. O'Dell had
4 testified that he was aware there was a press release
5 issued by Against Birch Solar that he had reviewed.
6 And then, in fact, when presented with Applicant's
7 Exhibit 38 confirmed that was a true and accurate
8 copy of what he had previously reviewed.

9 ALJ WILLIAMS: The Bench finds that this
10 exhibit is not admissible. We find it's hearsay.
11 His familiarity with it as a press release doesn't
12 bring it in for purposes of authentication as an
13 admissible exhibit, so we are going to deny the
14 request to admit.

15 Anything further from the parties
16 relative to exhibits?

17 Anything further from the parties
18 relative to the presentation of the case?

19 Hearing none, we are adjourned. This
20 matter is under advisement. Thanks, everybody.

21 (Discussion off the record.)

22 ALJ WILLIAMS: The Bench is recovering
23 from his gaff, but we did discuss off record the
24 filing of briefs, and the parties have agreed that
25 initial briefs will be due in this case on July 15,

1 and reply briefs will be due on July 29.

2 Now, is there anything else from the
3 parties?

4 MR. SECREST: No, thank you, your Honor.

5 ALJ WILLIAMS: Hearing none, now we are
6 adjourned. Thanks, everybody.

7 (Thereupon, at 10:34 a.m., the hearing
8 was adjourned.)

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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 Wednesday, May 18,
2022, and carefully compared with my original
stenographic notes.

Karen Sue Gibson, Registered
Merit Reporter.

(KSG-7282)

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

Summary: Transcript May 18th 2022 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 Construction Facility in Allen and Auglaize Counties, Ohio. electronically filed by Mr. Ken Spencer on behalf of Armstrong & Okey, Inc. and Gibson, Karen Sue Mrs.