

**BEFORE THE
OHIO POWER SITING BOARD**

In the Matter of the Application of : Case No. 20-1605-EL-BGN
Birch Solar 1, LLC for a Certificate of :
Environmental Compatibility and :
Public Need :

**INITIAL BRIEF FILED ON BEHALF OF THE STAFF OF THE OHIO
POWER SITING BOARD**

I. INTRODUCTION

On February 12, 2021, Applicant filed an application for Birch Solar 1, LLC (“Birch”) for a certificate of environmental compatibility and public need for the Birch 300 MW solar electric generation facility in Allen and Auglaize Counties, Ohio. Staff filed a report of investigation recommending denial of certificate on October 20, 2021. Staff recognizes that the Allen Auglaize Coalition for Reasonable Energy, the Board of County Commissioners of Auglaize County, the Board of Township Trustees of Logan Township, the International Brotherhood of Electrical Workers, Local Union 32, and the Ohio Farm Bureau Federation (jointly referred to a “Signatory Parties”), and the Applicant filed a stipulation adopting most of the conditions of the Staff Report. Staff hereby asks that the Board not grant a certificate. However, if the Board decides to grant a certificate, that it at least contain, and the Applicant be subject to the conditions set forth in that Joint Stipulation and Recommendation (“Stipulation”), Joint Ex. 1, (May 16, 2022).

II. THE BOARD ARGUMENT

A. The Board should reject this application because the facility will not serve the public interest, convenience, and necessity as required by R.C. 4906.10(A).

The Board shall only not grant a certificate if it finds and determines that “the facility will serve the public interest, convenience, and necessity” according to R.C. 4906.10(A). The General Assembly did not, however, define how the Board must interpret those terms.

The Board has not defined these terms. The Board has determined that public interest can be served in a number of ways. For instance, the Board has found that the public interest can be served by adding clean, sustainable generation capacity, and by benefitting the local economy through the addition of new jobs, wages, and local revenue.¹

This approach is consistent with traditional definitions of public interest. For example, Black’s Law Dictionary defines “public interest” as “1. The general welfare of a populace considered as warranting recognition and protection. 2. Something in which the public as a whole has a stake; esp., an interest that justifies governmental regulation.”²

However, there is no single factor, or set of factors, that defines “public interest, convenience and necessity.” Recently, Board decisions have clarified that that “[p]ublic

¹ *In the Matter of the Application of Hardin Solar Energy II, LLC for a Certificate of Environmental Compatibility and Public Need to Construct an Electric Generation Facility in Hardin County, Ohio*, Case No. 18-1360-EL-BGN, Opinion, Order and Certificate (16 May 2019), ¶64.

² Black’s Law Dictionary (11th ed. 2019).

interest, convenience, and necessity should be examined through a broad lens.”³ That lens must “encompass the local public interest, ensuring a process that allows for local citizen input, while taking into account local government opinion.” This requires that the Board “balance projected benefits against the magnitude of potential negative impacts on the local community.”⁴

In the *Republic* case, the Board acknowledged that “public benefits would potentially result from the Project,” both economic and environmental.⁵ Just as here, local governmental entities intervened in order to oppose the application. Ultimately, it was the concerns raised by the local elected officials that formed the basis for the Board’s decision to deny the application.

Staff respectfully submits that the Board should also deny the application in this case based on the opposition of the local elected officials. The Shawnee Township, Allen County, Ohio, the Board of County Commissioners of Auglaize County, Ohio, and the Board of Township Trustees of Logan Township, Auglaize, County, Ohio. In a letter, dated May 10, 2022, the Board of Allen County Commissioners wrote that “if it were not for the grandfather provisions of SB 52, the Birch solar I project would not be eligible for consideration, as it is located in an area that is now restricted for the development of such facilities.” In addition, on May 10, 2022, the Shawnee Township Chairman Spieles

³ *In the Matter of the Application of Republic Wind, LLC for a Certificate to Site Wind-Powered Electric Generation Facilities in Seneca and Sandusky Counties, Ohio*, Case No. 17-2295-EL-BGN, Opinion, Order & Certificate (June 24, 2021), ¶91.

⁴ *Id.*

⁵ *Id.*

summarized his opposition, stating, “[p]rojects of this size are not suitable for areas abutting residential properties in any jurisdiction.”

Staff witness O’Dell testified that these are locally elected officials responsible for representing and serving their communities.⁶ These entities have the responsibility for preserving the health, safety, and welfare of their communities; therefore, their interests in this case, and strong opposition to it, are compelling.⁷ Staff witness O’Dell noted that some local opposition is common; however, the opposition in this case is very prominent, one sided, and compelling.⁸ This public opposition will create negative impacts to the community and staff believes that any benefits to the local community are outweighed by the overwhelming public opposition and , therefore, the project would not serve the public interest, convenience, and necessity.

Staff considered all of the of local input, including comments at informational meetings, local public hearings, and in the public docket⁹, it was undeniably the opposition of local elected officials that ultimately tipped the scales in formulating a recommendation. There is general opposition to the project from local governmental bodies, in addition to active disagreement on the project between local citizenry. These governmental bodies are local elected officials charged with representing and serving their respective communities. They are responsible for representing the interests of all of the citizens within their respective jurisdictions, not just those registered to vote or those

⁶ O’Dell Testimony at 5 (May 11, 2022).

⁷ *Id.*

⁸ *Id.*

⁹ Staff Report of Investigation, Staff Ex. 1 at 43-44.

whose votes they ultimately received. It is their responsibility for preserving the health, safety, and welfare within their respective communities. The Staff Report stated that the local interest in and, in this case strong opposition to, the project is compelling.

As evidenced in the Staff Report, Staff was concerned that the local elected officials voiced formal position against the proposed project, claiming that the project will have negative impacts including aesthetic and visual impacts, health and safety, impacts to agricultural land residential land uses, drainage and runoff, wildlife, property value, fencing and lighting, setbacks, drinking and surface water, decommissioning, and population density.¹⁰

The Board recently recognized the importance of local opposition to such projects, especially where that opposition is unanimous. In denying an application of American Transmission Systems, Incorporated (ATSI) to construct an electric transmission facility the Board concluded that:

In consideration of the significant number of public comments received and the issues raised in the public comments . . . the Board finds that the requirements of R.C. 4906.10(A)(6) (that the facility will serve the public interest, convenience, and necessity) and part two of the three-part test (whether the stipulation, as a package, benefits ratepayers, and the public interest) used to evaluate stipulations have not been met. The local community has, post hearing, raised universal local opposition . . .¹¹

¹⁰ Staff Report at 46 (Oct. 20, 2021).

¹¹ *In the Matter of the Application of American Transmission Systems, Incorporated for a certificate of Environmental Compatibility and Public Need to Construct the Lincoln Park-Riverbend Transmission Line in Mahoning County, Ohio*, Case No. 19-1871-EL-BTX, Opinion, Order, and Certificate (May 19, 2022) at ¶ 81.

The Board found that the record in that case failed “to adequately establish that the Project will serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).”¹²

The local opposition in this case is clearly demonstrated the opposition of many of the local elected representatives of the affected communities. That opposition, in contrast to the *ATSI* case, was clearly voiced. The Board should recognize the importance of the public and the governmental bodies that represent the local people and deny Birch’s application.

B. If the Board approves the Application, Staff recommends that the Board adopt the conditions contained in the Stipulation and Recommendation.

Staff recommends that the Board deny the Application filed by Birch in this case; however, if the Board chooses to grant a certificate to Birch, Staff recommends that the Board adopt the conditions set forth in the Stipulation and Recommendation filed on May 16, 2022. Several of the conditions: paragraph 16 of the Staff Report and Stipulation, paragraph 22 of the Staff Report and Stipulation, paragraph 24 of the Staff Report and Stipulation, have been enhanced and provide more detail than what was contained in the Staff Report in order to satisfy signatory parties.

¹² *Id.* at ¶ 105.

III. CONCLUSION

The Board shall only not grant a certificate if it finds and determines that “the facility will serve the public interest, convenience, and necessity” according to R.C. 4906.10(A). Staff respectfully submits that any benefits to the local communities are outweighed by public opposition, and would therefore not serve the public interest, convenience, and necessity. Birch’s Application should be denied.

Respectfully submitted,

Dave Yost
Ohio Attorney General

John H. Jones
Section Chief

/s/ Jodi J. Bair

Jodi J. Bair
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 26th Floor
Columbus, Ohio 43215-3414
614.644. 8599 (telephone)
866.849.3176 (fax)
Jodi.Bair@OhioAGO.gov

**On Behalf of the Staff of the
Ohio Power Siting Board**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **Initial Brief** on behalf of the Staff of the Ohio Power Siting Board, has been served upon the below-named counsel via electronic mail, this 15th day of July 2022.

/s/ Jodi J. Bair

Jodi J. Bair

Assistant Attorney General

Parties of Record:

cpirik@dickinsonwright.com
mmcdonnell@dickinsonwright.com
jsecrest@dickinsonwright.com
epierce@auglaizecounty.org
RDove@keglerbrown.com
EChristensen@gdlaw.com
jlandfried@bdlaw.com
HJacobs@bdlaw.com
JReagan@bdlaw.com
amilam@ofbf.org
cendsley@ofbf.org
clay@cbalyeat.com
lcurtis@ofbf.org
jvankely@vankleywalker.com

Administrative Law Judges:

Michael.williams@puco.ohio.gov
Jesse.Davis@puco.ohio.gov

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Summary: Brief Initial Brief Filed on Behalf of the Staff of the Ohio Power Siting Board electronically filed by Mrs. Kimberly M. Naeder on behalf of OPSB