

# 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  
SOLAR-POWERED ELECTRIC  
GENERATION FACILITY IN ALLEN AND  
AUGLAIZE COUNTIES, OHIO.

CASE NO. 20-1605-EL-BGN

## OPINION AND ORDER

Entered in the Journal on October 20, 2022

### I. SUMMARY

{¶ 1} The Ohio Power Siting Board denies the application of Birch Solar 1, LLC, for a certificate of environmental compatibility and public need for the construction, operation, and maintenance of the proposed solar-powered electric generation facility.

### II. INTRODUCTION

{¶ 2} In this Opinion and Order, the Ohio Power Siting Board (Board) denies the application of Birch Solar 1, LLC (Birch Solar or Applicant) to construct, maintain, and operate the proposed solar-powered electric generation facility. Specifically, the Board concludes that Birch Solar does not satisfy R.C. 4906.10(A)(6), which requires that, in order to receive Board certification, a project must serve the public interest, convenience, and necessity.

### III. PROCEDURAL BACKGROUND

{¶ 3} All proceedings before the Board are conducted according to the provisions of R.C. Chapter 4906 and Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 4} Birch Solar is a person as defined in R.C. 4906.01.

{¶ 5} Pursuant to R.C. 4906.04, no person shall construct a major utility facility without first having obtained a certificate from the Board. In seeking a certificate, applicants

must comply with the filing requirements outlined in R.C. 4906.06, as well as Ohio Adm.Code Chapters 4906-3 and 4906-5.

{¶ 6} On October 16, 2020, Birch Solar filed a motion for waiver and a request for expedited ruling requesting an alternative method, as opposed to an in-person meeting, for the public information meeting required pursuant to Ohio Adm.Code 4906-3-03(B), for a yet to be proposed solar generation facility in Allen and Auglaize counties, Ohio.

{¶ 7} By Entry issued on October 26, 2020, the administrative law judge (ALJ) granted Birch Solar's motion for limited waiver of Ohio Adm.Code 4906-3-03(B).

{¶ 8} On November 3, 2020, Birch Solar, a wholly owned subsidiary of Lightsource Renewable Energy US, LLC (Lightsource US), filed a preapplication notification letter with the Board for a yet to be proposed project to construct, operate, and maintain an up to 300-megawatt (MW) solar-powered electric generation facility in Shawnee Township, Allen County, Ohio, and Duchouquet and Logan townships, Auglaize County, Ohio. In the letter, Birch Solar stated that it planned to hold its web-based and teleconference public information meetings on November 20 and 23, 2020. Applicant also explained that it expected to file its application with the Board within 90 days of its public information meetings and commence construction of the facility as early as the fourth quarter of 2021, resulting in commercial operations in the second quarter of 2023.

{¶ 9} Also on November 3, 2020, Birch Solar filed its notice of the public information meeting, in compliance with Ohio Adm.Code 4906-3-03(B)(2), to affected property owners and tenants within the project area. Birch Solar also sent the notice to local public officials, local agencies, local first responders, the local school district, and the local library.

{¶ 10} On November 18, 2020, Birch Solar filed its proof of publication for the public information meetings in both the *Lima News*, and the *Wapakoneta Daily News* on November 3 and November 7, 2020, respectively.

{¶ 11} On February 12, 2021, as supplemented on March 25, 2021, March 31, 2021, April 5, 2021, October 5, 2021, February 17, 2022, and May 4, 2022, Birch Solar filed its application for a certificate to construct an up to 300 MW solar-powered electric generation facility on approximately 1,410 acres in Shawnee Township in Allen County and Logan township in Auglaize County, Ohio (Project or Facility).<sup>1</sup>

{¶ 12} Pursuant to Ohio Adm.Code 4906-3-06, within 60 days of receipt of an application for a major utility facility, the Chair of the Board must either accept the application as complete and compliant with the content requirements of R.C. 4906.06 and Ohio Adm.Code Chapters 4906-1 through 4906-7 or reject the application as incomplete.

{¶ 13} On April 13, 2021, Staff filed a motion for an extension of time for determining completeness of Birch Solar's application. On April 30, 2021, the ALJ granted Staff's motion.

{¶ 14} On June 2, 2021, counsel for Against Birch Solar LLC (Against Birch Solar), filed a petition to intervene on behalf of Linda M. Beckstedt, Jesse M. Bott & Kacie L. Rison, Ryan & Stacy Brenneman, Patricia A. Buzard, Cheryl M. Counts, Ann Marie R. & Christopher H. Fisher, Deed Hall, Allyshia & Kyle Kuhbänder (Kuhbänders), Angie M. & Kenneth R. McAlexander, Alexandra & Timothy Rostorfer, Susan & William Walters, Althea A. and Mark Wellman, and Ellen Wieging.

{¶ 15} On June 9, 2021, Against Birch Solar filed a motion for an in-person informational meeting and postponement of the Staff completeness determination. On June 11, 2021, Birch Solar filed a memorandum contra Against Birch Solar Solar's motion.

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<sup>1</sup> Birch Solar's application indicates that it reduced the size of the proposed Facility by 1,190 acres after the initial public information meetings and the filing of the preapplication letter on November 3, 2020. As a result, the proposed Project would no longer include Duchouquet Township in Auglaize County. (App. Ex. 1 at 1.)

{¶ 16} On June 14, 2021, the ALJ ordered that the deadline for Staff to make its completeness determination be stayed from June 14, 2021.

{¶ 17} On June 21, 2021, Against Birch Solar filed a notice of withdrawal from representation of Kuhbanders. The notice provided that Kuhbanders intended to remain as intervenors in the case.

{¶ 18} On July 7, 2021, the ALJ ordered that Against Birch Solar and Kuhbanders be granted intervention, that Birch Solar be required to conduct an in-person public information meeting, and that Staff file its completeness determination by July 14, 2021.

{¶ 19} On July 14, 2021, Staff filed correspondence regarding the completeness of the application, as supplemented.

{¶ 20} On August 5, August 6, and August 10, 2021, Birch Solar filed: a certificate of service of the accepted, complete application; notice of the third public information meeting; and, notice of payment of the application fee, respectively.

{¶ 21} On August 13, 2021, the ALJ ordered that a local public hearing be held on November 4, 2021, and that an evidentiary hearing commence on November 30, 2021.

{¶ 22} On August 19, 2021, both the Board of Township Trustees of Logan Township (Logan Township), and the Board of County Commissioners of Auglaize County (Auglaize County) filed notices of intervention.

{¶ 23} On September 8, 2021, the Kuhbanders filed a notice of withdrawal.

{¶ 24} On September 29, 2021, counsel for the Ohio Farm Bureau Federation (OFBF) filed a motion to intervene and accompanying memorandum.

{¶ 25} Also on September 29, 2021, Ryan and Michelle Kalnins (Kalnins) filed a motion to intervene and accompanying memorandum.

{¶ 26} On October 1, 2021, both the Allen Auglaize Coalition for Reasonable Energy (AACRE), and the International Brotherhood of Electrical Workers, Local Union 32 (IBEW) filed petitions to intervene and accompanying memoranda.

{¶ 27} On October 20, 2021, the Shawnee Township Board of Trustees (Shawnee Township) filed a motion to intervene.

{¶ 28} Also on October 20, 2021, Staff filed its report of investigation (Staff Report).

{¶ 29} On November 2, 2021, the ALJ ordered (1) that Auglaize County, Logan Township, OFBF, AACRE, IBEW, Shawnee Township, and the Kalnins be granted intervention, and (2) that the Kuhbanders be removed as intervenors in the case.

{¶ 30} On November 4, 2021, the local public hearing was held as scheduled, during which 59 members of the public testified.

{¶ 31} On November 12, 2021, Birch Solar filed a motion to call and continue the evidentiary hearing and to extend the existing deadlines for filing of testimony and any stipulations in the case.

{¶ 32} Also on November 12, 2021, the ALJ ordered that (1) the deadlines for filing testimony be stayed, (2) the deadline for filing lists of litigation issues be extended to November 19, 2021, and (3) the hearing scheduled for November 30, 2021, be called and continued.

{¶ 33} On November 30, 2021, the evidentiary hearing was called and continued.

{¶ 34} On December 7, 2021, the ALJ ordered that the evidentiary hearing be rescheduled on February 9, 2022, and that new procedural deadlines be established in the case.

{¶ 35} On December 30, 2021, Birch Solar, OFBF, AACRE, Against Birch Solar, IBEW, and the Kalnins filed a joint motion to extend the procedural schedule as set in the Entry of December 7, 2021.

{¶ 36} On January 12, 2022, the ALJ ordered that the procedural schedule as set in the Entry of December 7, 2021, be modified such that the evidentiary hearing should recommence on May 18, 2022.

{¶ 37} On April 26, 2022, the Kalnins filed a notice of withdrawal as intervenors in the case.

{¶ 38} On May 4, May 11, May 12, and May 16, 2022, various witness testimony was filed by Birch Solar, AACRE, and Staff.

{¶ 39} On May 16, 2022, Against Birch Solar filed a notice of withdrawal on behalf of its members. Also on May 16, 2022, Birch Solar, Auglaize County, Logan Township, AACRE, OFBF, and IBEW filed a joint stipulation and recommendation (Stipulation). In the Stipulation, Birch Solar, AACRE, and IBEW (Stipulating Parties) recommend that the Board issue a certificate approving the Project. Auglaize County, Logan Township, and OFBF<sup>2</sup> (Partial Stipulating Parties) take no position on whether the Project should be certificated by the Board, though they request that conditions of the Stipulation be adopted if the Board issues a certificate. Further, Auglaize County and Logan Township indicate to the Board that the Project would be restricted from approval if Substitute Senate Bill 52 (SB 52), which gives local governments authority to restrict unincorporated areas from large wind and solar projects, were effective as to Birch Solar's application. (Stipulation at 2-3; Attachment A.) Further, Shawnee Township did not join in the Stipulation.

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<sup>2</sup> OFBF's position regarding the Stipulation is complex in that OFBF recommends that the Board issue a certificate for the Project subject to the Stipulation's conditions. Though OFBF joins Auglaize County and Logan Township in not agreeing to the Stipulation's Recommended Findings. Based on the lack of agreement to the Recommended Findings, the Board recognizes OFBF as a Partial Stipulating Party in its assessment of the case. (Joint Ex. 1 at 2-3.)

{¶ 40} On May 18, 2022, the evidentiary hearing resumed. During the hearing, Shanelle Montana, Vice President of Development at Lightsource US, testified in support of the Stipulation (Birch Solar Ex. 30A). Additionally, James O’Dell, a Senior Siting Specialist with the Power Siting Department, testified in opposition to the Stipulation (Staff Ex. 2). Further, at the hearing, the ALJ admitted multiple exhibits as submitted by Applicant, AACRE, and Staff, as well as the Joint Stipulation. (Tr. at 3-9; Joint Ex. 1.)

{¶ 41} On June 10 and June 16, 2022, counsel for AACRE filed a motion for admission pro hac vice and an amended motion for admission pro hac vice, respectively. Through these filings, Eric L. Christensen seeks permission to appear as co-counsel in the case. The attorney examiner has reviewed the filings, which are unopposed, and finds that they are sufficient to support attorney Christensen’s request. Accordingly, Eric L. Christensen is permitted to appear pro hac vice in this proceeding.

{¶ 42} In accordance with the briefing schedule established at the close of the May 18, 2022 hearing, Birch Solar, AACRE, IBEW, and Staff filed timely initial post-hearing briefs on July 15, 2022. Further, Birch Solar, AACRE, IBEW, and Staff filed timely reply briefs on July 29, 2022.

#### IV. PROJECT DESCRIPTION

{¶ 43} Birch Solar seeks certification to build a 300 MW solar-powered electric generation facility in Shawnee Township, Allen County, and in Logan Township, Auglaize County, Ohio. The Project would consist of large arrays of ground-mounted photovoltaic modules, commonly referred to as solar panels, on a racking system on approximately 1,410 acres within a 2,345-acre project area. The Project would also include associated facilities including 22.5 miles of gravel access roads, a possible operations and maintenance building, underground and aboveground electric collection lines, meteorological towers/weather stations, inverters and transformers, a collector substation, point of interconnection switchyard, and a 345 kilovolt generation interconnection electric transmission line. The Project would be secured by six-foot cedar post perimeter fencing. Applicant would ensure

that solar modules are setback a minimum of 300 feet from adjacent non-participating residences and Breese Road, and will provide for evergreen screening in order to limit impacts to neighboring viewsheds. (App. Ex. 1 at 2, 6-9; App. Ex. 30 at 6-7.)

## V. CERTIFICATION CRITERIA

{¶ 44} Pursuant to R.C. 4906.10(A), the Board shall not grant a certificate for the construction, operation, and maintenance of a major utility facility, either as proposed or as modified by the Board, unless it finds and determines all of the following:

- (1) The basis of the need for the facility if the facility is an electric transmission line or a gas or natural gas transmission line;
- (2) The nature of the probable environmental impact;
- (3) The facility represents the minimum adverse environmental impact, considering the state of available technology and the nature and economics of the various alternatives, and other pertinent considerations;
- (4) In the case of an electric transmission line or generating facility, that the facility is consistent with regional plans for expansion of the electric power grid of the electric systems serving this state and interconnected utility systems and that the facility will serve the interests of electric system economy and reliability;
- (5) The facility will comply with R.C. Chapters 3704, 3734, and 6111, as well as all rules and standards adopted under those chapters and under R.C. 4561.32;
- (6) The facility will serve the public interest, convenience, and necessity;



- (7) The impact of the facility on the viability as agricultural land of any land in an existing agricultural district established under R.C. Chapter 929 that is located within the site and alternate site of any proposed major facility; and
- (8) The facility incorporates maximum feasible water conservation practices as determined by the Board, considering available technology and the nature and economics of various alternatives.

## VI. SUMMARY OF EVIDENCE AND PUBLIC COMMENTS

### A. *Summary of Evidence Other Than Local Public Hearing Testimony*

{¶ 45} The record is uncontroverted as to the determination that Birch Solar's application satisfies the statutory requirements in R.C. 4906.10(A) in every respect except as to whether the Project serves the public interest, convenience, and necessity (Staff Ex. 1 at 40, 43, 48-49; Staff Ex. 2 at 4; Tr. at 29, 39; Stipulation at 17-18). As to that issue, Staff recommends a finding that the Project does not serve the public interest, convenience, and necessity (Staff Ex. 2 at 4; Tr. at 29, 39). Stipulating Parties recommend a finding that the Project does serve the public interest, convenience, and necessity (Joint Ex. 1 at 17-18). Partial Stipulating Parties and Shawnee Township, which did not participate in the Stipulation, do not make a recommendation as to this determination (Joint Ex. 1 at 2-3). Though, as described below, Auglaize County, Allen County, Shawnee Township, and Logan Township have each filed resolutions or correspondence indicating their opposition to either the Project, specifically, or the installation of large industrial solar facilities such as the Project, generally, outside of industrial areas in the communities that surround the Project. (See Paragraphs 63-66.)

{¶ 46} Consistent with R.C. 4906.07, Staff completed its investigation of the application and submitted the Staff Report. As described in the Staff Report, Staff initially recommended that the Board deny Birch Solar's application due to (1) concerns as to the

Project's probable environmental impact (and minimization thereof) with respect to locating and avoiding construction and operation impacts in areas where historic, unrecorded, oil and gas wells might exist, and (2) Applicant's failure to provide sufficient analysis to determine and mitigate potential adverse impacts to cultural resources. Staff explained that should the Project encounter one of these latent oil and gas wells, it could result in the release of petroleum or brine that could affect vegetation, ground water, or surface water, in the form of odors, gas vapors, or oil leakage. (Staff Ex. 1 at 23-29, 35-38; R.C. 4906.10(A)(2); R.C. 4906.10(A)(3).)

{¶ 47} In addition to the environmental impact concerns, Staff also described concerns regarding whether the Project serves the public interest, convenience, and necessity, as required by R.C. 4906.10(A)(6). Staff described that Birch Solar engaged the community using virtual and in-person public informational meetings where attendees could ask questions and provide feedback. Further, Birch Solar offered adjacent landowners a neighboring landowner financial benefit from \$10,000 to \$50,000 depending on proximity, for any home located within 500 feet of the Project. Applicant also offered a home value agreement for residences located closest to the Project. (Staff Ex. 1 at 44-47.)

{¶ 48} Despite Birch Solar's communication efforts and concessions to property owners in proximity to the Project, Staff described continued public opposition to the Project. Staff noted concerns regarding the opposition expressed by local elected officials, as described by the filings in public comment docket of (1) a Shawnee Township Resolution No. 91-20 opposing the Project on November 20, 2020, (2) a Logan Township Resolution opposing the Project on November 20, 2020, and (3) correspondence signed by the Allen County Commissioners expressing concerns regarding the Project filed on June 30 and July 6, 2021. In spite of its concerns, Staff ultimately recommended a finding that the Project satisfies the test as to public interest, convenience, and necessity, provided that it is subject to Staff's recommended certificate conditions. (Staff Ex. 1 at 44-47, 50-58.)

{¶ 49} Following the issuance of the Staff Report, Applicant submitted additional information addressing Staff's cultural resources concerns and an Engineering Constructability Report (ECR) that addressed Staff's environmental concerns resulting from the potential for the Project encountering and impacting latent oil and gas wells. Following its review of the ECR and additional cultural resources information, Staff concluded that Applicant sufficiently remedied those concerns such that the Project complies with the requirements of R.C. 4906.10 (A)(2) and (A)(3), subject to proposed conditions, as Applicant demonstrated improved awareness of the well locations within the project area and an acceptable plan for managing the construction and operation of the Project should it encounter any latent oil and gas wells. Nevertheless, Staff testified at the evidentiary hearing that it remains opposed to the Project, citing to local government opposition as evidenced by the intervention and filing of correspondence in opposition in the case by Shawnee Township, Logan Township, Auglaize County, and Allen County. (Staff Ex. 2 at 4-5.)

{¶ 50} Stipulating Parties<sup>3</sup> maintain that Staff's recommendation is deficient because (1) Staff fails to adequately consider the Project's favorable impact to the state and local community, (2) Staff disregards the mitigation impacts to the Project that result from the 40 conditions contained in the Stipulation; and (3) Staff's conclusion regarding the local community opposition to the Project is not supported by the evidence in the case. Stipulating Parties stress the Project's economic benefits, which include generating (1) approximately 900 construction jobs, (2) approximately 35 operation jobs, and (3) approximately \$2.5 million in annual PILOT payments to Allen and Auglaize counties. (Staff. Ex. 1 at 17-18.) Further, Stipulating Parties assert that the 40 conditions contained in the Stipulation are consistent with and build upon the recommendations in the Staff Report

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<sup>3</sup> The Board recognizes that Stipulating Parties are joined in the Stipulation by Partial Stipulating Parties, who advocate for the inclusion of the 40 conditions included in the Stipulation if the Board issues a Project certificate. But as Partial Stipulating Parties did not (1) support the Stipulation's Recommended Findings, and (2) file briefs in support of the Project or Stipulation, the Board finds that their position does not align with Stipulating Parties as to the identified challenges to Staff's recommendation.

such that the Project compares favorably with similar projects that the Board has considered and approved (App. Br. at 50-54). Further, Stipulating Parties note that, other than Staff, no party participated in the evidentiary hearing or admitted evidence contra the Project such that the record evidence supporting the Stipulation outweighs Staff's recommendation, which was based on non-evidentiary public comments in the case docket (App. Reply Br. at 15-23; AACRE Reply Br. at 4-10; IBEW Br. at 5-8).

**B. Summary of Local Public Hearing Testimony**

{¶ 51} During the local public hearing on November 4, 2021, 59 witnesses testified under oath and subject to the right of cross examination, with 21 witnesses supporting the Project, and 38 persons opposing the Project.<sup>4</sup>

{¶ 52} The witnesses testifying in opposition to the Project raised various concerns, including, but not necessarily limited to: the Project's impact to the viewshed (Public Hearing Tr. at 13, 20, 148, 249); the alleged lack of local input regarding the Project, and the long-term impact on local property values (Public Hearing Tr. at 13, 20, 40, 94, 171, 187, 202, 223, 246); doubts as to the number and quality of construction jobs and permanent employees (Public Hearing Tr. at 84); dangers of solar facilities attributable to chemical use and panel attachment (Public Hearing Tr. at 28, 151, 187, 230, 246); concerns that the Project's power will not be locally used (Public Hearing Tr. at 119); concerns for preserving the rural, rather than industrial, character of the community (Public Hearing Tr. at 171, 189); and, impacts to wildlife (Public Hearing Tr. at 13, 28, 130, 202, 220, 230, 249). Moreover, we note that two local elected officials, Allen County Commissioner Cory Noonan and Shawnee

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<sup>4</sup> The Board acknowledges that the number of opponent witnesses changed following Against Birch Solar's withdrawal from the case on May 16, 2022, as five Against Birch Solar members provided testimony adverse to the Project at the local public hearing. Despite the removal of that opposition testimony, the summary of issues discussed in witness testimony remains accurate, as each of the summarized positions were provided by multiple witnesses such that the removal from consideration of testimony of former Against Birch Solar members does not materially alter the arguments raised at the public hearing.

Township Trustee David Belton, testified under oath in opposition to the Project (Public Hearing Tr. at 119-124, 269-275).

{¶ 53} Witnesses testifying in support of the Project raised benefits including, but not necessarily limited to: increased funding to schools and local governments (Public Hearing Tr. at 61, 73, 84, 90, 238); the benefits of renewable energy and energy independence (Public Hearing Tr. at 77, 81, 141, 143); increased investment in the local economy through job creation and lease payments (Public Hearing Tr. at 61, 113, 132, 135, 158, 238); increasing the state's ability to attract business investments (Public Hearing Tr. at 238); and protecting the rights of individual landowners (Public Hearing Tr. at 35, 155).

### C. *Summary of Public Comments*

{¶ 54} In addition to the testimony provided at the public hearing, 450 public comments regarding the proposed Facility were received by the Board as of September 1, 2022.<sup>5</sup> A review of those comments demonstrates that (1) approximately 82 percent (371 comments) were in opposition to the Project, and (2) the issues raised in support and opposition to the Project are consistent with those raised during the local public hearing. Further, to the extent a commentator's proximity to the Project can be ascertained, it appears that opposition commentators are generally those who reside closer to the Project.

{¶ 55} Further, we note that state elected officials provided opposition statements in the public comments on behalf of their constituents. Specifically, Senate President Matt Huffman wrote in opposition to the Project on October 28, 2021, May 20, 2022, and September 26, 2022. Further, Representative Susan Manchester filed correspondence on July

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<sup>5</sup> The Board notes that while 450 public comments were docketed in the case, the actual number of opinions rendered by these comments is much higher, as several of the docketed comments contained rosters of signatures of persons expressing support or opposition to the Project. For example, Shawnee Township filed comments on July 29, 2022, which purported to represent 884 signatures in opposition to the Project (note that Against Birch Solar filed correspondence in the public comments docket on September 6, 2022, in which it described that 32 of those signatures should be disregarded because they were from persons whose opposition to the Project had ended). Similarly, AACRE filed comments on July 11, 2022, which purported to represent 267 signatures in support of the Project.

22, 2022, in which she expressed her strong opposition to the Project based on her representation of constituents and community leaders that would be impacted by the Project.

## VII. STATUTORY CRITERIA

{¶ 56} In order for the Board to issue a certificate to construct a major utility facility, the Board must make findings and determinations regarding each of the relevant factors outline in R.C. 4906.10(A). As noted in the Introduction, the Board finds that Birch Solar's application does not satisfy the statutory requirements of R.C. 4906.10(A)(6). Accordingly, the Board will address its reasoning for that determination.

### 1. PUBLIC INTEREST, CONVENIENCE, AND NECESSITY

{¶ 57} Pursuant to R.C. 4906.10(A)(6), the Board must determine that the facility will serve the public interest, convenience, and necessity.

#### *a. Arguments of the Parties*

##### **i. Project Supporters**

{¶ 58} As described in the Stipulation, Stipulating Parties unanimously support the application subject to the 40 conditions contained in the Stipulation. Further, Partial Stipulating Parties joined in the Stipulation as to requesting that, should the Board issue a certificate for the Project, the certificate should be subject to the 40 conditions described in the Stipulation.

{¶ 59} In addition to their support of the Stipulation, Stipulating Parties assert that the local and state government opposition to the Project should not scuttle the Board's approval of the Project. The positions of the three Stipulating Parties are closely aligned and focus on claims that (1) the Project enjoys widespread community support that outweighs any claims of opposition, (2) the Project, subject to the Stipulation conditions, sufficiently mitigates opposition concerns as to aesthetic and visual impacts, health and safety, agricultural and land uses, drainage and runoff, wildlife, property values, fencing and

lighting, setbacks, drinking and surface water, decommissioning, and population density, (3) the record in the case lacks evidence regarding local government opposition to the Project, and (4) Staff's recommendation contra certifying the Project errs in using unauthenticated hearsay in the public comments section of the docket in assessing the public interest, convenience, and necessity of the Project. (App. Reply Br. at 6-22; AACRE Br. at 5-8, 11; IBEW Br. at 5-11.)

{¶ 60} In terms of community support for the Project, Stipulating Parties claim that Staff mischaracterizes the level of local opposition to the Project. In addition to highlighting traditional benefits of renewable energy development, Birch Solar also emphasizes many of the Project's beneficial aspects to the local community, some of which include: protecting nearby property owners using neighboring landowner financial agreements for homes within 500 feet of solar panels; reducing the Project's footprint; increasing state and local business and labor opportunities, as well as revenues to local governments and schools; improving the long-term agricultural character of the area; and, ensuring safer development of areas where latent oil and gas wells might exist. (Birch Solar Br. at 43-47.) Moreover, Birch Solar stresses that its communications with local government entities were the impetus for Project modifications that address; additional screening and setbacks, Project layout modifications, fencing aesthetic changes, road use and maintenance agreements, and drainage changes. Further, Birch Solar expresses frustration with Shawnee Township's unwillingness to engage in discussions regarding the Project that might lead to some form of agreement about the Project. (Birch Solar Br. at 48-49.)

{¶ 61} In addition to highlighting beneficial aspects of the Project, Stipulating Parties also dispute the local government opposition claims of constituency opposition to the Project. Stipulating Parties rely heavily on a public opinion poll that Birch Solar conducted before filing the application, which supports that, in the Lima area, 59 percent of voters support solar development and welcome it in their community. (Birch Solar Br. at 50; App. Ex. 30A, Att. SM-3; AACRE Br. at 6-7; IBEW Reply Br. at 8-9.) Further, Stipulating Parties claim that the Project has "widespread support" in the community, a claim that they

support, in part, through the filing of 250 signatures that AACRE admitted into the case record. Stipulating Parties also argue that denying certification of the Project is improper because that result is essentially a retroactive application of SB 52, which is impermissible because the Project is grandfathered from that legislation. (IBEW Reply Br. at 6; AACRE Ex. 2, Ex. 2.)

{¶ 62} Additionally, Stipulating Parties draw from the local public hearing testimony and comments filed in the case docket to support their claims that the Project is viewed favorably by the local community. IBEW describes that, following Against Birch Solar's withdrawal from the case, which negates at least 5 opposing testimonies at the local public hearing, that the remaining local public hearing testimony reflected 32 opponents and 21 supporters of the Project. Further, IBEW discredits public comments in the case because they (1) are not evidence, (2) are sometimes duplicative, and (3) disregard bulk Project proponent signatures that were admitted as evidence in the case. (IBEW Reply Br. at 2-4.)

*b. Local Government Opposition*

*ii. Opposition by affected counties*

{¶ 63} Initially, we note that in this case there is some form of uniform opposition to the Project from each of the local governments where the Project would be located. The Allen County Commissioners and Auglaize County Commissioners have each indicated their opposition to the Project both prior to and following the issuance of the Staff Report in this case. Allen County officials filed correspondence in the case docket on June 30 and July 6, 2021, wherein they described that there are 1,278 residences, 4 schools, and 6 churches within one mile of the project area, and that "many" of the residents have shared concerns about the Project's (1) lack of dedicated local power, (2) impact on land use, (3) impact on property values, (4) decommissioning plan, (5) impact on drinking and groundwater, (6) road maintenance, (7) drainage, and (8) communication regarding negotiations as to distributing PILOT to local governments. Allen County's leadership reiterated its



opposition to the Project on May 10, 2022, when it filed correspondence and Resolution No. 238-22, which reaffirmed the county's opposition to the Project, indicating "our shared concerns that the large projects pose to Allen County" and declaring that "[i]t is important to note that if it were not for the grandfather provisions of SB 52, the Birch Solar 1 project would not be eligible for consideration, as it is located in an area that is now restricted for the development of such facilities." Further, Allen County's Commissioners joined in correspondence with the Shawnee Township Board of Trustees, filed as public comments on June 9, 2022, wherein they renewed their opposition to the Project.

{¶ 64} Auglaize County also expressed its formal opposition to large solar facility development such as is at issue in this case pursuant to its public comment filing on April 27, 2022. That filing was a resolution that Auglaize County's Board of Commissioners adopted on April 26, 2022, in which the county, in consideration of the input from all fourteen townships within the county's unincorporated areas, restricted the future development of large utility facilities such as the one at issue in this case. In adopting the resolution, the Auglaize County Board of Commissioners cited to the "numerous potential impacts on users and property owners in the vicinity of such developments" and "considered the potential impacts of development as well as the interest of property owners in making their land available for development." In consideration of these factors, pursuant to meetings that were open to the public in full compliance with applicable legal requirements, including R.C 121.22, the Board of County Commissioners determined that all of its unincorporated areas should be restricted from development such as what is contemplated by the Project in this case. (Resolution No. 22-208 (Apr. 26, 2022).) In addition to its resolution, Auglaize County's participation in the Stipulation as to the case is also noteworthy in that the county took no position as to whether the Project should receive Board certification, instead agreeing only as to the need for the 40 recommended conditions that the Board should impose if the Project is certificated.

### iii. **Opposition by affected townships**

{¶ 65} In addition to the lack of support from the two counties that are impacted by the Project, there was also opposition from the two townships impacted by the Project. Initially, Shawnee Township passed Resolution 91-20 on November 9, 2020, in which the township voted unanimously to oppose the Project.<sup>6</sup> Next, Shawnee Township's three trustees each filed separate correspondence opposing the Project on May 10, 2022. Further, Shawnee Township's trustees joined Allen County's commissioners in correspondence to the Board on June 7, 2022, in which the county and township reiterated their opposition to the Project due to its proposed location outside of the industrial solar zones that the Allen County Commissioners recognized following the passage of SB 52. And on July 27, 2022, Missy VanMeter, acting through a township email address and copying the three township trustees, filed further correspondence opposing the Project, which included 884 signatures of persons who purportedly signed petitions opposing the Project.<sup>7</sup>

{¶ 66} Further, on November 20, 2021, Logan Township also filed a unanimous resolution "to defeat the proposed solar project instituted by Birch Solar \*\*\* for the reason that the construction of the same will be adverse to the residents of the [t]ownship."<sup>8</sup>

#### *c. Board Conclusion*

{¶ 67} With respect to R.C. 4906.10(A)(6), the Board finds that the Project does not serve the public interest, convenience, and necessity.

{¶ 68} As we have indicated in recent decisions, the determination of public interest, convenience, and necessity must be examined through a broad lens and in

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<sup>6</sup> Shawnee Township's resolution is filed in the public comments docket on November 20, 2020, as the testimony of Mr. Russ Holly, et al.

<sup>7</sup> The email communication described only that the Shawnee Township Board of Trustees was forwarding information that it received without further information as to the manner in which the signatures were obtained. Further, as described earlier herein, Against Birch Solar filed subsequent comments in the case describing that 32 of the filed signatures attributable to its members should be disregarded as opposition in the case.

<sup>8</sup> This resolution is filed in the public comments docket on behalf of David Kritis and Sam Kellerman.

consideration of impacts, local and otherwise, from the Project. *In re Republic Wind*, Case No. 17-2295-EL-BGN, Opinion, Order, and Certificate (June 24, 2021) at ¶91; *In re American Transmission Systems, Inc.*, Case No. 19-1871, Opinion, Order and Certificate (May 19, 2022) at ¶79. As with all proposed solar facilities, the Board acknowledges that there are numerous public benefits including (1) the public's interest in energy generation that ensures continued utility services and the prosperity of the state of Ohio, (2) economic benefits relative to increased employment, tax revenues, and PILOT, (3) air quality and climate impact improvements relative to transitioning from fossil fuels to renewable energy resources, (4) protecting landowner rights, and (5) preserving agricultural land use. Juxtaposed against these benefits is the need to fully consider the impact on individuals who are most directly affected by a proposed project, primarily residents living near the project. Assessing these sometimes-competing interests is required in order to determine whether a project satisfies the requirement of R.C. 4906.10(A)(6).

{¶ 69} The primary concern surrounding the Project results from the uniform public opposition expressed by the local government entities whose constituents are impacted by the Project.<sup>9</sup> As described above, all four government entities with physical contacts to the Project acted to oppose its certification. Moreover, government opposition has remained consistent even after the Staff Report was issued in the case on October 20, 2021. Since that date, (1) Auglaize County filed a resolution on April 27, 2022, wherein the county, in consideration of input from each of its 14 townships, prohibited future large solar farm development in all unincorporated areas; (2) Allen County filed a resolution on May 10, 2022, wherein it reiterated that but for the grandfathering provisions in SB 52, the Project would be legally prohibited by the county, and correspondence together with Shawnee

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<sup>9</sup> The Board acknowledges that this case is not impacted by SB 52, which subjects solar projects that are filed after October 11, 2021 to increased county-level and township-level review and participation in the Board's certification process. Nevertheless, the Board's obligation to determine a project's compliance with the public interest, convenience, and necessity remains in effect as to Birch Solar's application. R.C. 4906.10(A)(6). Accordingly, the Board must consider, independent of SB 52, the manner and degree of opposition of the local governments impacted by the Project as it relates to whether the Project is in the public interest, convenience, and necessity.

Township on May 10 and June 9, 2022, wherein the two bodies expressed their continued opposition to the Project; (3) Shawnee Township filed various forms of correspondence on three occasions, May 10, June 10, and July 27, 2022, indicating continued opposition to the Project. (See Paragraphs 62-65.) In fact, the only local government entity that has not filed comments reinforcing its opposition to the Project is Logan Township, whose position is known to the Board based on its resolution from November 20, 2020, as well as its refusal to join in the Stipulation as to the recommended findings to the Board.<sup>10</sup>

{¶ 70} Additionally, the Board takes notice of the large number of public comments filed in the case, which disfavor the Project at a ratio of approximately 80 percent to 20 percent. While we recognize that public comments are not evidence that has been admitted to the case, and thus, are less reliable than the admitted evidence, we nevertheless uphold that they are relevant to our consideration of the matter. In so finding, we note that the opposition public comments reinforce issues raised in both the local public hearing and the local government communications that oppose the Project. Hence, the public comments reinforce, rather than contradict, the conclusions of government bodies that were formally considered at the local level, as well as those who testified at the local public hearing. Further, we note that the ratio of unfavorable versus favorable public comments is not necessarily inconsistent with Applicant's polling claims. While Applicant's polling demonstrates general support for alternative energy and solar development, the polling data does not demonstrate the Project's favorable reception at the state and local level in that (1) only 23 percent of those polled in the Lima area were even aware of the Project, (2) even after viewing information about the Project, local polling support for the Project increased to only 45 percent, (3) at 45 percent of support for the Project, the Project measures substantially below the community's measure of general support for local solar

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<sup>10</sup> The Board notes the arguments in briefs that, as Partial Stipulating Parties, Auglaize County and Logan Township demonstrated their support for the Project (App. Br. at 61; AACRE Reply Br. at 6). The Board rejects these arguments, finding that the actions of Partial Stipulating Parties demonstrate only their interest in ensuring that, should the Board certificate this Project, the Project would be subject to the community protections provided in the stipulated conditions.

development, which is measured at 59 percent,<sup>11</sup> and (4) in terms of statewide support for the Project, only 10 percent of those polled were even somewhat familiar with the Project (App. Ex. 30A, Attach. SM-2, SM-3 at pdf 42, 47, 54, 55). Thus, the Board concludes that the polling data that was submitted as evidence in the case reinforces the reliability of the public comments filed in the case, which was generally unfavorable to the Project.

{¶ 71} Further, the Board disagrees with Stipulating Parties regarding the claim that local government opposition to the Project has waned. In support of this claim, Stipulating Parties point to the fact that Auglaize County and Logan Township partially joined in the Stipulation. (App. Br. at 61; AACRE Reply Br. at 6.) We reject the conclusion that Partial Stipulating Parties have waived in their opposition to the Project. As noted above, Auglaize County enacted a further resolution on April 27, 2022, in consultation with all 14 of its local townships, including Logan Township, in which it reiterated its opposition to solar facility development in non-industrial areas. Further, we find that the limited joinder in the Stipulation is telling as to the positions of both Auglaize County and Logan Township. Obviously, each of those communities could have clearly delivered notice of their changed opposition to the Project by fully executing the Stipulation. By refusing to do so and only joining in the Stipulation as to including the protections provided by the 40 conditions should the Board certificate the Project, the two governmental Partial Stipulating Parties have expressed, at least, their continued lack of support for the Project.

{¶ 72} Based on the unanimous and consistent opposition to the Project by the government entities whose constituents are impacted by the Project, the Board finds that the Project fails to serve the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6).

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<sup>11</sup> This approval disparity is even more pronounced when compared with statewide approval of solar development within local communities, which is measured at 76 percent (App. Ex. 30A, Attach. 3 at pdf 33).

## 2. REMAINING STATUTORY CRITERIA

{¶ 73} Pursuant to R.C. 4906.10(A), the Board shall not issue a certificate for the construction, operation, and maintenance of a major utility facility unless it finds and determines all of the factors outlined in R.C. 4906.10(A)(1) through (8). Considering our conclusion regarding R.C. 4906.10(A)(6), the Board cannot issue a certificate for the construction, operation, and maintenance of this proposed electric generation facility. As such, determinations as to the remaining R.C. 4906.10(A) factors – (A)(2), (A)(3), (A)(4), (A)(5), (A)(7), and (A)(8) – are unnecessary. Moreover, we note that, while Staff did not join in the Stipulation, Staff’s only objection to the Project was in regard to R.C. 4906.10(A)(6).

## VIII. STIPULATION CONSIDERATION

{¶ 74} At the adjudicatory hearing, the Stipulation between Stipulating Parties and Partial Stipulating Parties was admitted into evidence, as was testimony in support of the Stipulation by 8 expert witnesses who testified on Applicant’s behalf, 5 witnesses who testified on AACRE’s behalf, and 8 Staff witnesses<sup>12</sup> (App. Ex. 30-37, 30A-34A; AACRE Ex. 1-5; Staff Ex. 2-10). Pursuant to the Stipulation, Stipulating Parties recommend that the Board issue the certificate requested by Birch Solar subject to 40 conditions contained in the Stipulation. Further, Partial Stipulating Parties did not join in the Stipulation as to whether a certificate should be issued by the Board, instead focusing on the propriety of the 40 conditions to the Stipulation that should be adopted should the Board issue the certificate. Further, Staff did not participate in the Stipulation based on its recommendation to deny the certification of the Project.

{¶ 75} Pursuant to Ohio Adm.Code 4906-2-24, parties before the Board are permitted to enter into stipulations concerning issues of fact, the authenticity of documents, or the proposed resolution of some or all of the issues in a proceeding. In accordance with Ohio Adm.Code 4906-2-24(D), no stipulation is binding on the Board. However, the Board

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<sup>12</sup> Staff presented testimony from 9 witnesses. Only witness James O’Dell testified in opposition to the Stipulation (Staff Ex. 2).

affords the terms of the stipulation substantial weight. The standard of review for considering the reasonableness of a stipulation has been discussed in numerous Board proceedings. See, e.g. *In re Hardin Wind, LLC*, Case No. 13-1177-EL-BGN (Mar. 17, 2014); *In re Northwest Ohio Wind Energy, LLC*, Case No. 13-197-EL-BGN (Dec. 16, 2013); *In re AEP Transm. Co., Inc.*, Case No. 12-1361-EL-BSB (Sept. 30, 2013); *In re Rolling Hills Generating LLC*, Case No. 12-1669-EL-BGA (May 1, 2013); *In re American Transm. Systems Inc.*, Case No. 12-1727-EL-BSB (Mar. 11, 2013). The ultimate issue for the Board's consideration is whether the agreement, which embodies considerable time and effort by the signatory parties, is reasonable and should be adopted. In considering the reasonableness of a stipulation, the Board has used the following criteria:

- (a) Is the settlement a product of serious bargaining among capable, knowledgeable parties?
- (b) Does the settlement, as a package, benefit ratepayers and the public interest?
- (c) Does the settlement package violate any important regulatory principal or practice?

{¶ 76} Upon review, the Board finds that the Stipulation does not meet the criteria used by the Board to evaluate and adopt a stipulation. Specifically, the Board's conclusion that the Project does not comply with R.C. 4906.10(A)(6) results in the conclusion that the Stipulation criteria are not fully satisfied.

{¶ 77} Initially, the Board concludes that the record evidence supports a finding that the Stipulation meets the first part of the three-part test. We note that all the parties were afforded the opportunity to participate in the negotiation of the Stipulation, were knowledgeable about the issues presented in this case, and were represented by counsel. Furthermore, many of the issues raised at the public hearing are addressed in the Stipulation. Accordingly, we find that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. (Joint Ex. 1 at 2-3; App. Ex. 30A at 7.)

{¶ 78} While the Stipulation satisfies the bargaining test, the Board concludes that the second and third criteria of the three-part test are not satisfied. As described above, our determination that the Project fails to comply with the public interest, convenience, and necessity as required by R.C. 4906.10(A)(6) necessitates findings that (1) the Stipulation, as a package, is not beneficial to the public interest, and (2) adoption of the Stipulation would violate an important regulatory principle or practice.

{¶ 79} As the Stipulation does not comply with parts two and three of the three-part test, the Board denies Birch Solar's application for a certificate of environmental compatibility and public need for the construction, operation, and maintenance of the solar-powered electric generation facility.

#### IX. FINDINGS OF FACT AND CONCLUSIONS OF LAW

{¶ 80} Birch Solar is a person under R.C. 4906.01(A).

{¶ 81} The proposed solar-powered electric generation facility is a major utility facility as that term is defined in R.C. 4906.01(B).

{¶ 82} On October 16, 2020, Birch Solar filed a motion for waiver of the requirement to conduct an in-person public information meeting. By Entry issued on October 26, 2020, the motion was granted.

{¶ 83} On November 3, 2020, Birch Solar filed a preapplication notification letter informing the Board of a public information meeting for a facility to be proposed.

{¶ 84} On November 3, 2020, Birch Solar filed its confirmation of notification to property owners and affected tenants of the date of the public informational meetings.

{¶ 85} On November 18, 2020, Birch Solar filed its proof of publication for the public information meetings in the *Lima News* and *Wapakoneta Daily News*.



{¶ 86} Birch Solar held two initial public information meetings using virtual technology regarding the proposed Project on November 20 and November 23, 2020.

{¶ 87} Pursuant to a motion filed by Against Birch Solar on June 9, 2021, the ALJ ordered that Birch Solar conduct a third public information meeting pursuant to an Entry on July 7, 2021. Birch Solar complied with legal notice requirements, and the third public information meeting was held as scheduled on August 19, 2021.

{¶ 88} On February 12, 2021, Birch Solar filed its application for a certificate of environmental compatibility and public need to construct the proposed solar-powered electric generation facility. Following its filing of the application, Birch Solar filed a total of six supplements to the application, with the sixth supplement being filed on May 4, 2021.

{¶ 89} By letter dated July 14, 2021, the Board notified Birch Solar that its application, as supplemented, had been found to be sufficiently complete to permit Staff to commence its review and investigation pursuant to Ohio Adm.Code Chapter 4906-1, et seq.

{¶ 90} On August 5, 2021, Applicant filed its proof of service that copies of the application had been served upon local public officials and libraries pursuant to Ohio Adm.Code 4906-3-07(A) and (B).

{¶ 91} On August 10, 2021, Applicant also filed notice that the application fee had been submitted to the Board pursuant to Ohio Adm.Code 4906-3-07(A).

{¶ 92} By Entry issued on August 13, 2021, the effective date of the application was established as August 13, 2021, and a procedural schedule was established in the case, with the local public hearing scheduled for November 4, 2021; and the evidentiary hearing scheduled to commence on November 30, 2021.

{¶ 93} On September 3, 2021, Birch Solar filed its first proof of publication of the proposed Project. The notice was published in the *Wapakoneta Daily News* and *Lima News* on August 21, and August 27, 2021, respectively. Further, Birch Solar declared that written

notice of the accepted, complete application to local officials, libraries, and affected property owners and tenants, pursuant to Ohio Adm.Code 4906-3-09(A)(1), was provided on August 18, 2021.

{¶ 94} Between June 2, 2021 and October 20, 2021, timely intervention pleadings were filed by Against Birch Solar, Kuhbanders, Auglaize County, Logan Township, OFBF, Kalnins, AACRE, IBEW, and Shawnee Township. By Entries on July 7 and November 2, 2021, the ALJ granted intervention to the pleading parties. Subsequently, Kuhbanders, Kalnins, and Against Birch Solar withdrew from the case on September 8, 2021, April 26, 2022, and May 16, 2022, respectively.

{¶ 95} The Staff Report was filed on October 20, 2021.

{¶ 96} On November 1, 2021, Applicant filed its proof of publication of the second public notice, in the *Wapakoneta Daily News* and *Lima News* on October 21, 2021, in compliance with Ohio Adm.Code 4906-3-09(A)(2). In addition, Birch Solar stated that written notice of the accepted, complete application to local officials, libraries, and affected property owners and tenants, pursuant to Ohio Adm.Code 4906-3-09(A)(2), was provided on October 26, 2021.

{¶ 97} The local public hearing was held, as scheduled, on November 4, 2021, in Lima, Ohio. Fifty-nine people testified at the hearing.

{¶ 98} On November 30, 2021, the evidentiary hearing was called and continued in response to a joint motion of the parties filed on November 12, 2021.

{¶ 99} On May 16, 2021, Applicant, AACRE, IBEW, OFBF, Auglaize County, and Logan Township filed a Stipulation in the case. In the Stipulation, Applicant, AACRE, and IBEW recommend that the Board issue the Project a certificate subject to 40 conditions set forth in the Stipulation. Auglaize County, Logan Township and OFBF take no position on whether the Project should receive a certificate, instead requesting that any certificate be subject to the 40 conditions described in the Stipulation. Along with the Stipulation, Birch

Solar filed the direct supplemental testimony of six witnesses in support of the application and Stipulation.

{¶ 100} On May 18, 2022, the evidentiary hearing was resumed and concluded, where the Stipulation was presented for the Board's consideration. The prefiled testimony of witnesses on behalf of Birch Solar, AACRE, and Staff were admitted into evidence, together with exhibits proffered by Birch Solar and the Staff Report. Further, witnesses Shanelle Montana, on behalf of Birch Solar, and Jim O'Dell, on behalf of Staff, testified in-person at the hearing.

{¶ 101} Adequate data on the proposed generation facility has been provided to make the applicable determinations required by R.C. 4906.10(A). The record evidence in this matter provides sufficient factual data to enable the Board to make an informed decision.

{¶ 102} The record establishes that the Project is not an electric transmission line or gas pipeline and, therefore, R.C. 4906.10(A)(1) is not applicable.

{¶ 103} The record establishes that the Project fails to serve the public interest, convenience, and necessity, consistent with R.C. 4906.10(A)(6).

{¶ 104} Based on the record, the Board finds that the Project should not receive a certificate of environmental compatibility and public need, pursuant to R.C. Chapter 4906, for the construction, operation, and maintenance of the solar-powered electric generation facility.

## X. ORDER

{¶ 105} It is, therefore,

{¶ 106} ORDERED, That AACRE's motion for admission pro hac vice of counsel, Eric L. Christensen, is granted as provided in Paragraph 41. It is, further,

{¶ 107} ORDERED, That Birch Solar's application for a certificate be denied and, accordingly, the Stipulation be rejected consistent with this Opinion and Order. It is, further,

{¶ 108} ORDERED, That a copy of this Opinion and Order be served upon all parties and interested persons of record.

BOARD MEMBERS:

*Approving:*

Jenifer French, Chair  
Public Utilities Commission of Ohio

Markee Osborne, Designee for Lydia Mihalik, Director  
Ohio Department of Development

Brittney Colvin, Designee for Mary Mertz, Director  
Ohio Department of Natural Resources

Drew Bergman, Designee for Laurie Stevenson, Director  
Ohio Environmental Protection Agency

Sarah Huffman, Designee for Dorothy Pelanda, Director  
Ohio Department of Agriculture

Gregory Slone  
Public Member

MLW/dmh

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

Summary: Opinion & Order denying the application of Birch Solar 1, LLC, for a certificate of environmental compatibility and public need for the construction, operation, and maintenance of the proposed solar-powered electric generation facility. electronically filed by Ms. Mary E. Fischer on behalf of Ohio Power Siting Board