STATE OF MICHIGAN
IN THE COURT OF APPEALS

In the matter, on the Commission's own motion, to open a docket to implement the provisions of Public Act 233 of 2023	PSC Case No. U-21547

ALMER CHARTER TOWNSHIP, et al. Appellants, v MICHIGAN PUBLIC SERVICE COMMISSION, Appellee and, MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL, INSTITUTE FOR ENERGY INNOVATION, CLEAN GRID ALLIANCE, and ADVANCED ENERGY UNITED, Proposed Intervening Appellees.	Court of Appeals No. 373259

APPENDIX

TO INTERVENING APPELLEES' BRIEF ON APPEAL

5	July 17, 2024 Comments of Michigan Townships Association, Case U-21547	025
6	Comments of Roger Johnson – Case U-21547	085
7	Comments of Clint Beach – Case U-21547	089
8	*In re Reliability Plans of Electric Utilities for 2017-2017*, unpublished per curiam opinion of the Court of Appeals, issued December 3, 2020 (Docket Nos. 340600 and 340607)	091

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HOUSE OF REPRESENTATIVES

COMMITTEE ON ENERGY, COMMUNICATIONS, AND TECHNOLOGY
REP. HELENA SCOTT
CHAIR

COMMITTEE MEETING MINUTES

Wednesday, October 18, 2023 9:00 AM Room 519, House Office Building

The House Committee on Energy, Communications, and Technology was called to order by Chair Scott.

The Chair requested attendance be called:
Present: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall, Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Absent: None.
Excused: None.

Representative Andrews moved to adopt the meeting minutes from October 11, 2023. There being no objection, the motion prevailed by unanimous consent.

The Chair laid HB 5120, HB 5121, HB 5122 and HB 5123 before the committee:

HB 5120	(Rep. Aiyash)	A bill to amend 2008 PA 295, entitled "Clean and renewable energy and energy waste reduction act," (MCL 460.1001 to 460.1211) by amending the title and by adding part 8.
HB 5121	(Rep. Puri)	A bill to amend 2006 PA 110, entitled "Michigan zoning enabling act," by amending section 205 (MCL 125.3205), as amended by 2018 PA 366.
HB 5122	(Rep. Skaggs)	A bill to amend 2008 PA 295, entitled "Clean and renewable energy and energy waste reduction act," (MCL 460.1001 to 460.1211) by amending the title and by adding part 8.
HB 5123	(Rep. Puri)	A bill to amend 2006 PA 110, entitled "Michigan zoning enabling act," by amending section 205 (MCL 125.3205), as amended by 2018 PA 366.

Mark Fosdick representing the Cohoctah Township Supervisor testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Deborah Hopkinson representing the White River Township testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Herasanna Richards representing the Michigan Municipal League testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Robert Scott representing the Montcalm County testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Donna Graham representing the Clinton County, Greenbush Township, Clinton County CIT United testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Sandra Tannehill representing the Michigan resident testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Mike Brown representing the Michigan resident testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Sarah Porter representing the Michigan resident testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Clint Beach representing the Michigan resident testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Dr. Wanda Iza representing the Ingham County citizens testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Jeremy Kwekel representing the Moncalm resident testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Madelyn Fata and Deena Bosworth representing the Michigan Association of Counties testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Liosa Cook-Gordon representing the Michigan resident testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

Kevon Martis representing the Our Home, Our Voice testified in opposition to HB 5120, HB 5121, HB 5122 and HB 5123.

The following people submitted a card with no position on HB 5120, but did not wish to speak:

Norman Stephens, representing the Michigan resident.

The following people submitted a card in opposition to HB 5120 and HB 5122, but did not wish to speak:

Shane Hernandez, representing the ABC of Michigan.

The following people submitted a card in opposition to HB 5121, but did not wish to speak:

James Mantey, representing the Almer Charter Township.

The following people submitted a card in opposition to HB 5120, HB 5121, HB 5122 and HB 5123, but did not wish to speak:

Sharon Wurster, representing the Milan.
Kelly Treiber, representing the Williamston.
Theresa Owen, representing the Clinton County Citizens United ADMIN.
Peter Klein, representing the St. Johns.
Mike Pattullo, representing the Caro.
Harold Defever, representing the Ashley.
Kathleen Defever, representing the Ashley.
Melissa Gallop, representing the Wales Township.
Rich Witgen, representing the Perry.
Julie Murphy, representing the Carleton.
Mike Hafner, representing the Chesaning.
Erin Harman, representing the Howell.
Kelly Ralko, representing the Perry.
Richard Mee, representing the Yale.
Patrick Porter, representing the Milan.
Ruth Miller, representing the Blissfield.
Kevin Murphy, representing the Howard City.
Pamela Hemmes, representing the Greenville.
Olga Mancik, representing the Milan Township.
Jeffery Benore, representing the Erie Township.
Cheryl Majors, representing the Milan Township.
Jack Gregory, representing the Milan Township.
Rosemary Murphy, representing the Howard City.
Mark Bogi, representing the Milan Township.
LouAnn Mogg, representing the Rosebush.
Carmell Pattullo, representing the Caro.
Tammy Hafner, representing the Chesaning.
Lisa Brown, representing the Fowlerville.
Nanci Jennings, representing the Perry.
Jessica Kwekel, representing the Lakeview.
Susan Spitzley, representing the Portland.
Charlene Purchase, representing the Six Lakes.
Kenneth Purchase, representing the Six Lakes.
Larry Kindel, representing the St. Johns.
Catherine Bohacz, representing the Bronson.
Carol Nowek, representing the Sherwood.
Randy Nowak, representing the Sherwood.
Joann Haas, representing the Fowlerville.
Sue Deer Dembowski, representing the Grand Ledge.
Representative Joseph Fox, representing the 101st House District.
Representative Timmy Beson, representing the 96th House District.
Judy Allen, representing the Michigan Townships Association.
Bruce Jennings, representing the Perry.

The following people submitted a card in support of HB 5120, HB 5121, HB 5122 and HB 5123, but did not wish to speak:

Carlee Knott, representing the Michigan Environmental Council.
Jessica Collingsworth, representing the NexAmp.
Mike Johnston, representing the Michigan Manufacturers Association.
Eli Isaguille, representing the Michigan Regional Council of Carpenters and Millwrights.

Representative Andrews offered the following amendment to HB 5120:
1. Amend page 18, following line 14, by inserting:
"**(4) Commission approval of a certificate does not confer the power of eminent domain and is not a determination of public convenience and necessity for the purposes of the power of eminent domain.**".

Representative Andrews moved to adopt the amendment to HB 5120. The motion prevailed 17-0-0:

FAVORABLE ROLL CALL
Yeas: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall, Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: None.
Pass: None.

Representative Hill offered the following amendment to HB 5120:
1. Amend page 12, line 10, after "**construction.**" by inserting "**For the purposes of this subdivision, public benefits include, but are not limited to, expected tax revenue paid by the energy facility to local taxing districts, payments to owners of participating property, community benefits agreements, local job creation, and any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state. In determining any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state, the commission may consider approved integrated resource plans under section 6t of 1939 PA 3, MCL 460.6t, renewable energy plans, annual electric provider capacity demonstrations under section 6w of 1939 PA 3, MCL 460.6w, or other proceedings before the commission, at the applicable regional transmission organization, or before the Federal Energy Regulatory Commission as determined relevant by the commission.**".

Representative Hill moved to adopt the amendment to HB 5120. The motion prevailed 10-7-0:

FAVORABLE ROLL CALL
Yeas: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Nays: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Pass: None.

Representative Hill offered the following amendment to HB 5120:
1. Amend page 2, line 27, after "**section**" by striking out "**226(4)**" and inserting "**226(5)**".

2. Amend page 10, line 14, after "**(1)**" by inserting "**When the commission determines under section 225 that an application is complete, the applicant shall make a one-time grant to each affected local unit for an amount determined by the commission but not more than $75,000 per affected local unit and not more than $150,000.00 in total. Each affected local unit shall deposit the grant in a local intervenor compensation fund to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate.**
(2)" and renumbering the remaining subsections.

3. Amend page 12, line 28, by striking out "**(6)(g)**" and inserting "**(7)(f)**".

Representative Hill moved to adopt the amendment to HB 5120. The motion prevailed 10-4-3:

FAVORABLE ROLL CALL
Yeas: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Nays: Reps. Wendzel, Outman, Aragona, Prestin.
Pass: Reps. BeGole, Greene, Schmaltz.

Representative Aragona offered the following amendment to HB 5120:
1. Amend page 15, line 27, after "**Sec. 227.**" by inserting "**(1)**".
2. Amend page 16, following line 24, by inserting:
"**(2) The applicant for a certificate must enter into a host community agreement with each city, village, or township where the energy facility is located. The host community agreement shall require that upon commencement of any operations, the energy facility owner shall annually pay to the city, village, or township the sum of $3,000.00 per megawatt of nameplate capacity within the local unit. The payments shall be used as determined by said local unit for any police or fire public safety, parks and recreation, or infrastructure. The host community agreement is legally binding. The host community agreement and the annual payments required thereby shall continue until the decommissioning of the energy facility. The commission shall enforce this requirement.**".

Representative Aragona moved to adopt the amendment to HB 5120. The motion did not prevail 7-2-8:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Churches.
Pass: Reps. Andrews, Coleman, Whitsett, Neeley, Byrnes, Hill, MacDonell, McFall.

Representative Wendzel offered the following amendment to HB 5120:
1. Amend page 19, line 1, after "**facility.**" by inserting "**This subsection does not apply to a limitation or requirement if, after the issuance of the certificate, the legislative body of**

the local unit of government adopts a resolution approving the application of the limitation or requirement to the energy facility that is the subject of the certificate.".

Representative Wendzel moved to adopt the amendment to HB 5120. The motion did not prevail 7-4-6:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Churches, MacDonell.
Pass: Reps. Coleman, Whitsett, Neeley, Byrnes, Hill, McFall.

Representative Outman offered the following amendment to HB 5120:
1. Amend page 12, line 22, by striking out all of subdivision **(e)** and relettering the remaining subdivision.
2. Amend page 12, line 28, by striking out "**(6)(g)**" and inserting "**(6)(e)**".

Representative Outman moved to adopt the amendment to HB 5120. The motion did not prevail 7-10-0:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Pass: None.

Representative Outman offered the following amendment to HB 5120:
1. Amend page 12, line 18, by striking out all of subdivision **(d)** and relettering the remaining subdivisions.
2. Amend page 12, line 28, by striking out "**(6)(g)**" and inserting "**(6)(e)**".

Representative Outman moved to adopt the amendment to HB 5120. The motion did not prevail 7-10-0:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Pass: None.

Representative Prestin offered the following amendment to HB 5120:
1. Amend page 15, line 27, after "**Sec. 227.**" by inserting "**(1)**".
2. Amend page 16, following line 24, by inserting:
"**(2) The applicant for a certificate must enter an agreement with the commission and each affected local unit on the size and location of the energy project within that affected local unit.**".

Representative Prestin moved to adopt the amendment to HB 5120. The motion did not

prevail 7-10-0:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Pass: None.

At 9:57 AM, the Chair laid the committee at ease.

At 9:57 AM, the Chair called the committee back to order.

Representative Neeley moved to report House Bill No. 5120 as amended, as substitute (H-1). The motion prevailed 9-7-1:

FAVORABLE ROLL CALL
Yeas: Reps. Scott, Andrews, Coleman, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Nays: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Pass: Rep. Whitsett.

Representative Churches moved to report out HB 5121 with recommendation. The motion prevailed 9-7-1:

FAVORABLE ROLL CALL
Yeas: Reps. Scott, Andrews, Coleman, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Nays: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Pass: Rep. Whitsett.

Representative Wendzel offered the following amendment to HB 5122:
1. Amend page 16, line 26, after "**facility.**" by inserting "**This subsection does not apply to a limitation or requirement if, after the issuance of the certificate, the legislative body of the local unit of government adopts a resolution approving the application of the limitation or requirement to the energy facility that is the subject of the certificate.**".

Representative Wendzel moved to adopt the amendment to HB 5122. The motion did not prevail 7-10-0:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Pass: None.

At 10:01 AM, the Chair laid the committee at ease.

At 10:02 AM, the Chair called the committee back to order.

Representative Outman offered the following amendment to HB 5122:

1. Amend page 11, line 27, by striking out all of subdivision **(e)** and relettering the remaining subdivision.
2. Amend page 12, line 4, by striking out "**(6)(g)**" and inserting "**(6)(e)**".

Representative Outman moved to adopt the amendment to HB 5122. The motion did not prevail 7-10-0:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Pass: None.

Representative Outman offered the following amendment to HB 5122:
1. Amend page 11, line 23, by striking out all of subdivision **(d)** and relettering the remaining subdivisions.
2. Amend page 12, line 4, by striking out **"(6)(g)**" and inserting "**(6)(e)**".

Representative Outman moved to adopt the amendment to HB 5122. The motion did not prevail 7-10-0:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Pass: None.

Representative Prestin offered the following amendment to HB 5122:
1. Amend page 13, line 23, after "Sec. 227." by inserting **"(1)**".
2. Amend page 14 following line 20, by inserting:
"(2) The applicant for a certificate must enter an agreement with the commission and each affected local unit on the size and location of the energy project within that affected local unit.".

Representative Prestin moved to adopt the amendment to HB 5122. The motion did not prevail 7-10-0:

UNFAVORABLE ROLL CALL
Yeas: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.
Nays: Reps. Scott, Andrews, Coleman, Whitsett, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.
Pass: None.

At 10:04 AM, the Chair laid the committee at ease.

At 10:05 AM, the Chair called the committee back to order.

Representative McFall moved to report out HB 5122 with recommendation. The motion prevailed 9-7-1:

FAVORABLE ROLL CALL

Yeas: Reps. Scott, Andrews, Coleman, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.

Nays: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.

Pass: Rep. Whitsett.

At 10:06 AM, the Chair laid the committee at ease.

At 10:06 AM, the Chair called the committee back to order.

Representative MacDonell moved to report out HB 5123 with recommendation. The motion prevailed 9-7-1:

FAVORABLE ROLL CALL

Yeas: Reps. Scott, Andrews, Coleman, Neeley, Byrnes, Churches, Hill, MacDonell, McFall.

Nays: Reps. Wendzel, Outman, Aragona, BeGole, Greene, Prestin, Schmaltz.

Pass: Rep. Whitsett.

There being no further business before the committee, Chair Scott adjourned the meeting at 10:07 AM.

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Representative Helena Scott, Chair

Molly Wingrove
Committee Clerk
mwingrove@house.mi.gov

Date Adopted: October 25, 2023

2

WHITE RIVER TOWNSHIP
TOWNSHIP BOARD

RESOLUTION NO. 72 - 2024

RESOLUTION TO ADOPT ZONING ORDINANCE AND MAP AMENDMENTS CREATING RENEWABLE ENERGY OVERLAY DISTRICT

At a meeting of the Township Board for White River Township, Muskegon County, Michigan, held on September 10, 2024, at 7:00 p.m. at Nellie B. Chisholm Middle School, 4700 Stanton Boulevard, Montague, MI 49437.

PRESENT: Dufresne, Anderson, Harris, Sargent, Bailey

ABSENT: None

The following preamble and resolution were offered by Sargent and seconded by Harris.

WHEREAS, the Michigan Zoning Enabling Act, Public Act 110 of 2006, MCL 125.3101 *et seq*., as amended, authorizes townships to adopt and amend zoning ordinances to regulate the use of land and structures within their zoning jurisdictions; and

WHEREAS, White River Township ("Township") has adopted such a zoning ordinance ("Zoning Ordinance") and zoning map ("Zoning Map"); and

WHEREAS, the Township Board desires to amend the Zoning Ordinance and Zoning Map to create a new overlay district for renewable energy land uses; and

WHEREAS, the Township Planning Commission held a duly noticed public hearing at a meeting on August 12, 2024 to consider amendments to the Zoning Ordinance and Zoning Map regarding a renewable energy overlay district ("Proposed Amendments"); and

WHEREAS, the Township Planning Commission recommended adoption of the Proposed Amendments, as described in Ordinance No. 60-2024, An Ordinance to Amend the Zoning

Ordinance and Zoning Map to Establish the Renewable Energy Overlay District (the "Ordinance"); and

WHEREAS, the Township Board finds that undeveloped brownfield properties are especially conducive sites for renewable energy land uses because they provide an opportunity for renewable energy production while making use of otherwise vacant land; and

WHEREAS, the Township Board finds that certain brownfield properties in the Township are located near substations and existing transmission infrastructure necessary for renewable energy projects; and

WHEREAS, the Township Board finds that siting renewable energy land uses in an overlay district encompassing brownfield properties is in the best interest of the health, safety, and welfare of the Township's residents and the general public.

NOW, THEREFORE, the Township Board of the Township of White River resolves as follows:

1. Ordinance No. 60-2024, An Ordinance to Amend the Zoning Ordinance and Zoning Map to Establish the Renewable Energy Overlay District, attached as **Exhibit A**, is hereby adopted.

2. The Ordinance shall be filed with the Township Clerk.

3. The Township Clerk is directed to publish a notice of adoption within 15 days after adoption of the Ordinance.

4. A copy of the Ordinance shall be available for examination at the office of the Township Clerk, and copies may be provided for a reasonable charge.

5. Any resolutions that conflict with this Resolution are repealed to the extent necessary to give this Resolution full force and effect.

A vote on the above Resolution was taken and was as follows:

YEAS: Dufresne, Anderson, Harris, Sargent, Bailey
NAYS: None
ABSENT: None
ABSTAINING: None

RESOLUTION DECLARED ADOPTED.

STATE OF MICHIGAN)
)
COUNTY OF MUSKEGON)

I, the undersigned, the duly qualified and acting Clerk for the Township of White River, Muskegon County, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Township Board of said Township at a meeting held pursuant to the Open Meetings Act on September 10, 2024.

Patti Sargent, Township Clerk

EXHIBIT A

WHITE RIVER TOWNSHIP
MUSKEGON COUNTY
MICHIGAN

ORDINANCE NO. 60-2024

AN ORDINANCE TO AMEND THE ZONING ORDINANCE AND ZONING MAP TO ESTABLISH THE RENEWABLE ENERGY OVERLAY DISTRICT

The Township of White River ordains:

Section 1. New Chapter 14A, "REO Renewable Energy Overlay District."

A new Chapter 14A, entitled "REO Renewable Energy Overlay District," is added to the White River Township Zoning Ordinance after Chapter 14 and reads in its entirety as follows:

CHAPTER 14A REO RENEWABLE ENERGY OVERLAY DISTRICT

SECTION 14A.01 PURPOSE

It is the purpose of this District to promote the public health, safety, and general welfare by providing areas in the Township for renewable energy land uses while also protecting the Township's open space, natural habitats, and farmland.

SECTION 14A.02 PERMITTED USES

All uses specifically permitted in the underlying zoning district are permitted in the REO District. Uses not specifically permitted in the underlying zoning district are prohibited.

SECTION 14A.03 SPECIAL LAND USES

All uses specifically allowed as a special land use in the underlying zoning district are allowed as special land uses in the REO district, subject to approval by the Planning Commission as a Special Land Use in accordance with the procedures of Chapter 16.

Land and/or buildings in the REO District may also be used for the following special land uses, subject to approval by the Planning Commission as a Special Land Use in accordance with the procedures of Chapter 16.

A. Wind energy conversion systems, subject to Section 16.06(LL).

B. Utility-scale solar energy systems, subject to Section 16.06(MM).

C. Utility-scale battery energy storage systems, subject to Section 16.06(NN).

SECTION 14A.04 DELINEATION OF REO DISTRICT

The REO District covers the following area:

Parcel No. 61-01-136-100-0001-00

Section 2. Amendment to Section 4.02.

Section 4.02 of the White River Township Zoning Ordinance is amended by the addition of the following row to the table in Section 4.02:

REO	Renewable Energy Overlay	Chapter 14A

Section 3. Amendment of Zoning Map.

The White River Township Zoning Map is amended by the addition of a Renewable Energy Overlay District ("REO") as depicted in **Exhibit A**.

Section 4. Validity and Severability.

If any portion of this Ordinance is found invalid for any reason, such holding will not affect the validity of the remaining portions of this Ordinance.

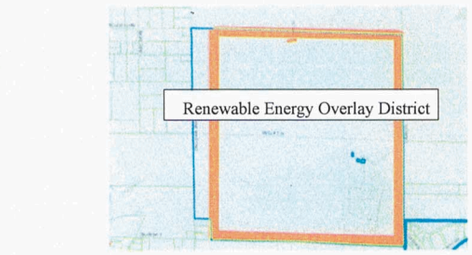
Section 5. Repealer.

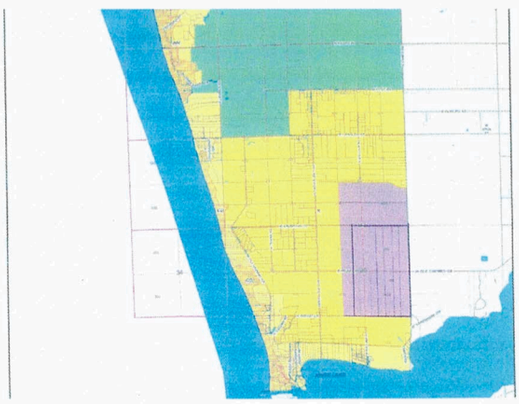
All other ordinances inconsistent with the provisions of this Ordinance are hereby repealed to the extent necessary to give this Ordinance full force and effect.

Section 6. Effective Date.

This Ordinance/ordinance amendment shall become effective seven (7) days after the adoption of this Ordinance/ordinance amendment (or summary thereof) appears in the newspaper as provided by law.

Exhibit A to Ordinance No. 60-2024





The vote to adopt this ordinance/ordinance amendment was as follows:

YEAS: Dufresne, Anderson, Harris, Sargent, Bailey

NAYS: None

ABSTAIN/ABSENT: None

THIS ORDINANCE/ ORDINANCE AMENDMENT IS HEREBY DECLARED ADOPTED_

CERTIFICATION

I hereby certify that the above is a true copy of an Ordinance/ordinance amendment adopted by the Township Board for White River Township at a meeting of said Board held on September 10, 2024.

Dated: September 10, 2024

Patti Sargent, White River Township Clerk

89418:00001:200815726-1

3

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

In the matter, on the Commission's own motion, to open a docket to implement the provisions of Public Act 233 of 2023.	))))	Case No. U-21547

At the February 8, 2024 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. Daniel C. Scripps, Chair
Hon. Katherine L. Peretick, Commissioner
Hon. Alessandra R. Carreon, Commissioner

ORDER

Background

Public Act 233 of 2023 (Act 233), signed by Governor Gretchen Whitmer on November 28, 2023, provides siting authority to the Commission for utility-scale solar, wind, and energy storage projects under specified conditions, effective November 29, 2024. As enacted, Act 233 is applicable to any solar energy facility with a nameplate capacity of 50 megawatts (MW) or more, any wind energy facility with a nameplate capacity of 100 MW or more, and any energy storage facility with a nameplate capacity of 50 MW or more and an energy discharge capability of 200 MW-hours (MWh) or more. *See*, MCL 460.1222. Applications may be filed with the Commission in instances when a local unit of government fails to approve or deny the request in a timely manner, denies the application even though it complies with the requirements of Section 226 of Act 233, amends its zoning ordinance after notice of a compatible renewable energy

ordinance and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in Section 226(8) of Act 233, or the local unit of government does not have a compatible renewable energy ordinance. *See*, MCL 460.1223(3)(c). Under Act 233, all siting requests must be initiated at the local level first, unless the local unit of government does not have a compatible renewable energy ordinance. *See*, MCL 460.1223 and MCL 460.1221(f).

Discussion

The Commission seeks to engage with local units of government, as well as experts and interested persons, in preparation for implementation of these statutory provisions and to begin this process as soon as possible in order to provide guidance to all who may be involved in these potential future cases ahead of any potential applications which could be filed after the effective date of Act 233. The Commission directs the Commission Staff (Staff) to engage with experts, local units of government, project developers, and other interested persons in transparent open meetings to consider issues relating to application filing instructions or guidelines, the potential use of consultants and assessment of application fees, whether and how pre-application consultations with the Staff would be helpful to potential applicants, guidance for use in the development of compatible renewable energy ordinances, as well as any additional issues that may arise during the engagement process from potential applicants and local units of government.

The Commission further directs the Staff to hold public meetings starting in March 2024 and to file recommendations on application filing instructions, guidance relating to compatible renewable energy ordinances, and any other issues in this docket by June 21, 2024. The Commission will accept comments on the Staff's recommendations until 5:00 p.m. (Eastern time (ET)) on July 17, 2024, and reply comments until 5:00 p.m. (ET) on August 9, 2024. Written

comments should be mailed to: Executive Secretary, Michigan Public Service Commission, P.O. Box 30221, Lansing, Michigan 48909. Comments submitted in electronic format may be filed via the Commission's E-Dockets website, or for those persons without an E-Dockets account, via e-mail to mpscedockets@michigan.gov. Any person requiring assistance prior to filing comments may contact the Staff at (517) 241-6180. All comments should be paginated and reference the above-captioned case, Case No. U-21547. All filed comments will become public information available on the Commission's website and subject to disclosure.

THEREFORE, IT IS ORDERED that:

A. The Commission Staff shall engage with interested persons in transparent open meetings, as described in this order.

B. The Commission Staff shall file recommendations on application filing instructions, guidance relating to compatible renewable energy ordinances, and any other issues in this docket by June 21, 2024.

C. Any interested person may file comments regarding the Commission Staff's recommendations in this docket. Comments shall be filed no later than 5:00 p.m. (Eastern time) on July 17, 2024, and reply comments shall be filed no later than 5:00 p.m. (Eastern time) on August 9, 2024.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance and notice of this order, pursuant to MCL 462.26. To comply with the Michigan Rules of Court's requirement to notify the Commission of an appeal, appellants shall send required notices to both the Commission's Executive Secretary and to the Commission's Legal Counsel. Electronic notifications should be sent to the Executive Secretary at mpscedockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at pungp1@michigan.gov. In lieu of electronic submissions, paper copies of such notifications may be sent to the Executive Secretary and the Attorney General - Public Service Division at 7109 W. Saginaw Hwy., Lansing, MI 48917.

MICHIGAN PUBLIC SERVICE COMMISSION

Daniel C. Scripps, Chair

Katherine L. Peretick, Commissioner

Alessandra R. Carreon, Commissioner

By its action of February 8, 2024.

Lisa Felice, Executive Secretary

PROOF OF SERVICE

STATE OF MICHIGAN)

Case No. U-21547

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on February 8, 2024 A.D. she electronically notified the attached list of this **Commission Order via e-mail transmission**, to the persons as shown on the attached service list (Listserv Distribution List).

Brianna Brown

Subscribed and sworn to before me
this 8th day of February 2024.

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2024

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MAC
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517-372-5374 Fax 517-482-4599
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Stephan W. Currie, Executive Director

July 17, 2024

Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

Members and Staff of the Michigan Public Service Commission,

The Michigan Association of Counties (MAC) is once again grateful for the opportunity to engage in the draft proposal process led by the commission (MPSC). As the effective date for Public Act 233 of 2023 draws near, local units of government are eagerly seeking guidance from the state on how best to adhere to the new law.

Overall, MAC is pleased with the recommendations put forth by the MPSC. We appreciate the consideration of MAC's feedback following the first period of public comment. There are a few items we would like to highlight in this final phase. It is our hope that the commission can provide clarity in certain areas to prevent counties from being exposed to legal challenges or penalties.

First, the rules must explicitly state what can and cannot be included in a compatible renewable energy ordinance (CREO). The MPSC recommends that "any provision in PA 233 is an acceptable provision in a CREO, as long as the requirement utilized by the ALU is not more restrictive than the requirement for the Commission outlined in the statute." The commission is afforded discretion when considering certain provisions, particularly 226(6). Will an ALU be able to make determinations based on the interest of the community without being considered more restrictive than the commission? Or will this render an ALU's CREO invalid?

There should be further recognition of local master plans throughout. Counties generate master plans to guide development by determining land uses, coordinate public services and transportation systems and manage their assets. Giving more consideration to master plans would be beneficial for both the developer and ALU.

MAC will continue to advocate for grant funds to be administered as a traditional grant. Unexpended funds should not be returned to the grantee.

Lastly, county road commissions are referenced on pages 14 and 45. Several counties have a road department, rather than a commission. The language should be changed to "county road agency" to ensure all appropriate entities are being consulted.

On behalf of Michigan's 83 counties, we urge the commission to consider these points before issuing its formal guidance.

Respectfully,

Madeline Fata

Madeline Fata
Governmental Affairs Associate

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TO: **Michigan Public Service Commission**

FROM: Michigan Townships Association

DATE: July 17, 2024

SUBJECT: Case No. U-21547 – Comments on MPSC Staff Draft Application Instructions and Procedures for Renewable Energy and Energy Storage Facility Siting pursuant to PA 233 of 2023

The Michigan Townships Association appreciates the opportunity to provide the attached comments on the MPSC Staff Draft Application Instructions and Procedures for Renewable Energy and Energy Storage Facility Siting under PA 233 of 2023.

On behalf of MTA and its legal counsel, we have attached comments, proposed changes and noted areas in the draft where additional clarification is necessary.

We appreciate the time and work of MPSC staff in the process. However, we stress that certainty on how the statute is implemented is preferable than having implementation through litigation. Thus, we ask the Commission to consider these comments and changes before issuing final guidance.

Should the Commission or staff have questions or seek clarification on the content provided, please do not hesitate to contact Judy Allen, Director of Government Relations at judy@michigantownships.org or 517.321.6467.

Thank you.

Act 233 Certificate for Solar Energy, Wind Energy, and Energy Storage Facilities

Pursuant to Public Act 233 of 2023

Application Instructions and Procedures

Staff Draft June 21, 2024

Table of Contents

Application Instructions for Renewable Energy & Storage Siting Certificate

These application instructions apply to an electric provider or independent power producer (applicant) application for Michigan Public Service Commission (MPSC or Commission) approval of a certificate for an energy facility under the provisions of MCL 460.1221, *et seq*. (effective November 29, 2024). The application shall be consistent with these instructions, with each item labeled as set forth below. Any additional information considered relevant by the applicant may also be included in the application.

Applicability

These application instructions are applicable to requests for a certificate from the MPSC as outlined in PA 233 with a nameplate capacity[1] measured in alternating current (AC):[2]

1. Solar facilities of 50 MW or more;
2. Wind facilities of 100 MW or more; or
3. Energy storage facilities of 50 MW or more with a discharge capability of 200 MWh or more.

MTA Comments - *MTA disagrees with the below hybrid interpretation, as such interpretation is not supported by the statutory language. This hybrid interpretation will certainly lead to litigation and delay in processing projects that may try to use this idea. We recognize that energy storage facilities are included in the definitions of solar facilities and wind facilities. The solar or wind facility must still be at least 50 MW solar or 100 MW wind respectively to fall under the legislation. The inclusion of energy storage facilities in those definitions is to recognize that energy storage does not have to be at least 50 MW capacity with 200 MWh of discharge capability to be in support of the qualifying wind or solar facility. Otherwise, the 50 MW solar project could not include energy storage if the energy storage did not qualify on its own (50 MW capacity, 200 MWh of discharge capability). For example, a 50 MW solar could have a 2 MW energy storage as part of its facility. This is NOT the same as saying a 10 MW solar qualifies if there is a 40 MW energy storage facility. In that case, neither would qualify under the legislation enacted into law. Further, battery name plate capacity is not the same as name plate capacity generation of solar or wind energy. For example, the definition of a solar facility is "a system that captures and converts solar energy into electricity, for the purpose of sale or for use in locations other than solely the solar energy facility property". This must be a facility that has at least 50 MW capturing and converting solar energy into electricity; an energy storage system does not perform this energy generation function. Also of note, the definition of an energy storage system does not include solar or wind facilities. A 50 MW energy storage facility does not get to include a 5 MW wind facility since the wind facility would need to be at least 100 MW to have the wind location determined by the state.*
The hybrid formula being proposed would allow the combination of a 2-megawatt wind facility and a 98-megawatt battery storage facility to equal the 100 megawatts for a wind energy facility. This is not supported by any legal interpretation of the statute. If combinations to achieve the minimum MW were allowed the statute could have easily provided such language by adding an extra paragraph d. to Section 222 that expressed this intent.

Guidance must also require that any smaller energy storage facilities (less than 50 MW, 200

MWh of discharge capability) that are part of a qualifying solar or wind facility must be specifically in compliance with NFPA 855. Any storage component that is part of ANY renewable energy facility under PA 233 should be subject to battery storage section – specifically, compliance with NFPA 855 - standard for the installation of stationary energy storage systems. In New York for example, there were a number of battery energy storage fires – some with 1 MW to 10 MW of storage.

Below are proposed revisions we believe align with the law and would ask the Commission consider:

Hybrid solar or wind facilities that include energy storage systems must still meet the minimum size thresholds for solar or wind respectively. The energy storage facilities component of these hybrid facilities are a part of the facility and do not need to meet the minimum size threshold for energy storage facilities. Further such energy storage facilities that are below the minimum size must still comply with the requirements of any renewable energy storage facility under PA 233 including compliance with NFPA 233. ~~Composed of multiple technologies should also meet the same minimum size thresholds in total when multiple technologies are combined for siting pursuant to PA 233. Hybrid facilities comprised of solar and storage facilities must have a combined nameplate capacity of at least 50 MW in total which is the same minimum size threshold for solar or storage. Hybrid projects which are comprised of wind facilities combined with solar and/or storage facilities much have a nameplate capacity of at least 100 MW in total which is the minimum size threshold for wind facilities.~~

[1] Nameplate capacity, as referred to throughout these application instructions, shall be measured in alternating current (AC).

[2] These application instructions are applicable in instances where landowners have been willing to participate in allowing a solar, wind, or energy storage facility project on their property. Participating or not participating in a renewable energy or energy storage project is a decision for individual landowners. Commission approval of a certificate under PA 233 does not confer the power of eminent domain or require landowners to participate against their wishes.

MTA Comments regarding below Flow Chart

Above the second red line:

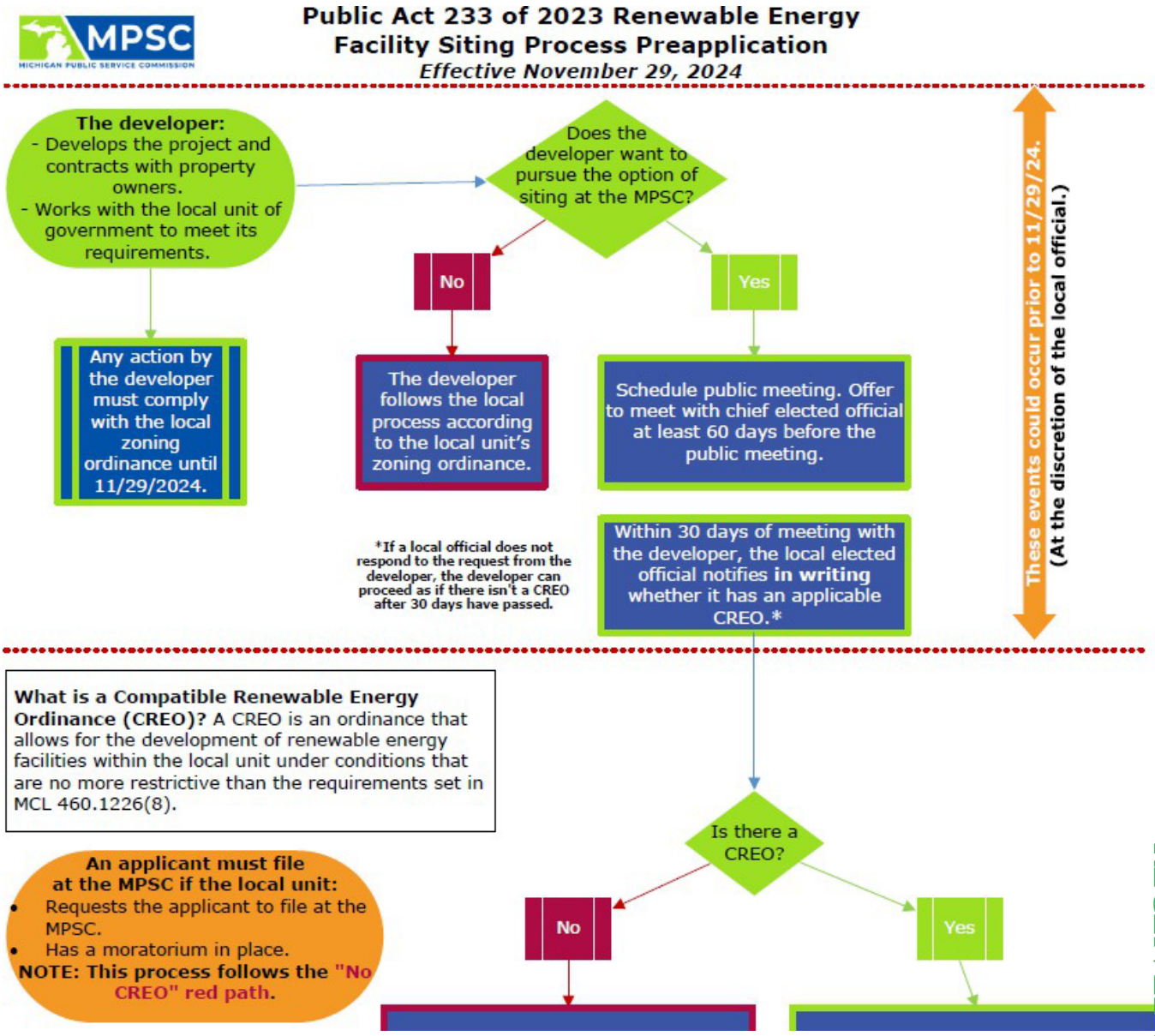
1. *The vertical orange line indicates "these events could occur prior to 11/29/24 (At the discretion of the local official)." We believe this statement is incorrect as the vertical line encompasses part of the flow chart explaining MPSC siting which cannot occur until 11/29/24 under any circumstance. The statutory process does not begin until then and the MPSC has no siting review authority until Act 233 becomes effective. We recommend the orange vertical line be removed. Further point of clarification, a local official does not make decisions for a Township Board; therefore, the provision within the parenthesis next to the orange line is also incorrect and should be corrected or removed.*
    a. *In this portion of the chart, it needs to be made clearer that the MPSC is not an option until November 29, 2024.*

Below the second red line:

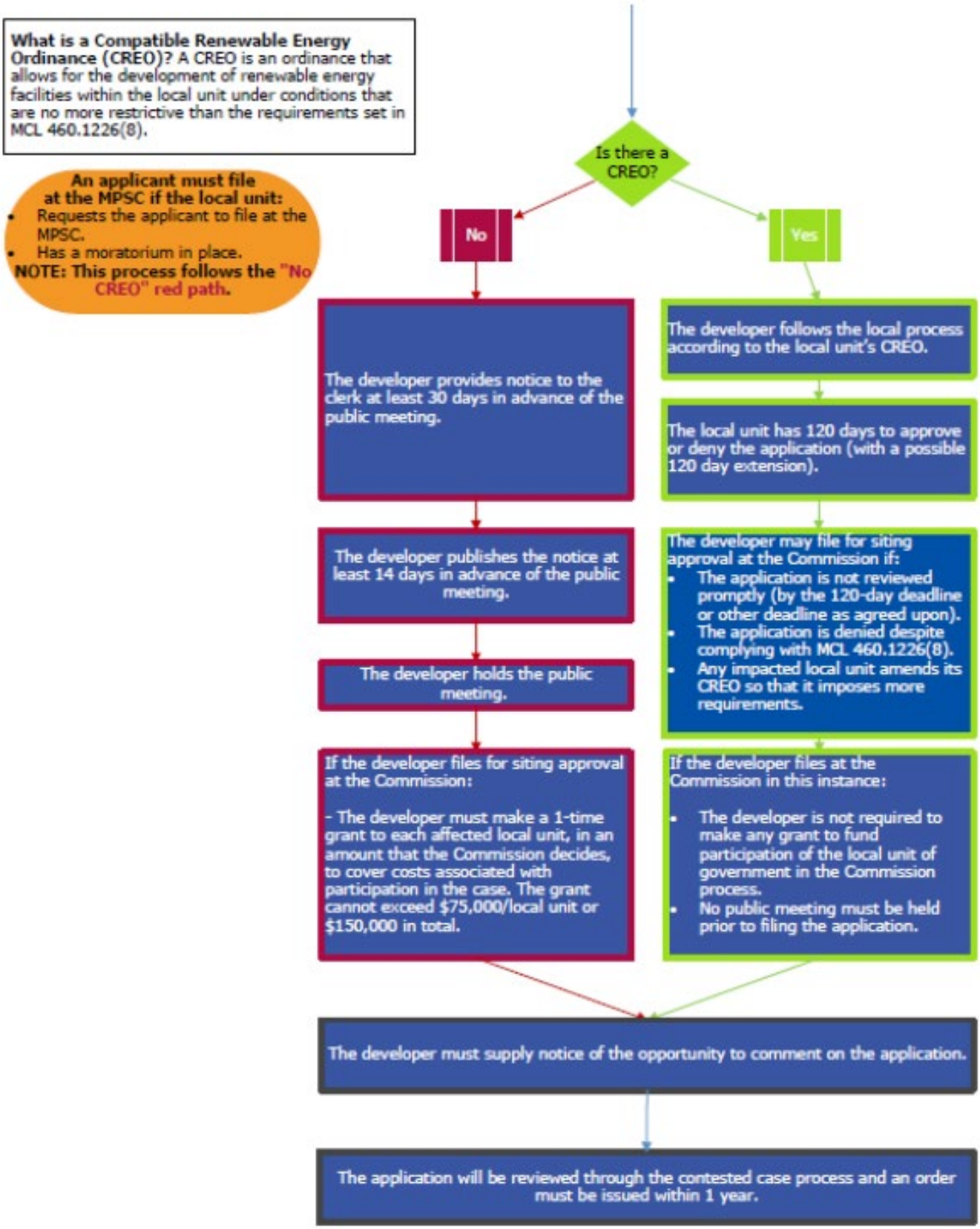
The second blue box on the right side of the flow chart should include language that indicates that the local unit has 120 days "from the date a complete application is filed" to approve or deny the application.

To be consistent with later MPSC interpretation, in the third blue box on the right side of the flow chart, a revision should be made to integrate later interpretation that a CREO can contain any provision in PA 233 as long as the requirement utilized by the affected local unit is not more restrictive than the requirement of the Commission outlined in the statute. This is a broader concept than just complying with MCL 460.1226(8) which is provided for in the statute. Again, to be consistent with the later MPSC interpretation, the second bullet point in this box should have at added at the end "or other requirements as determined by the MPSC and adopted locally". In the third bullet point also include at the end "than are allowed by statute and the MPSC".

Pre-Application Requirements



Pre-application flowchart continued on the next page.



Meeting with Chief Elected Official

MTA Revisions suggested below

The applicant's offer to meet with the chief elected official[3] shall be delivered by email and by certified U.S. mail at least 60 days before the public meeting in each affected local unit (ALU) including the city, township, or village, and the county, regardless of zoning authority and including areas that are unzoned. A copy of the offer to meet with the chief elected official must ~~should~~ be sent (in the same manner as above) to the entire board or legislative body of the ALU that exists within the jurisdiction in care of the body or board's secretary or clerk. The applicant may proceed as if there is not a Compatible Renewable Energy Ordinance (CREO) in the event that the local official has failed to respond to the offer to meet after thirty days following receipt of the certified mail have passed.

Compatible Renewable Energy Ordinance Notification

MTA General comments: *We ask the Commission make the guidance as clear as possible. We believe this section is not written clear enough and raises many issues with how to interpret the guidance below. These guidelines must clear up ambiguity in the statute—and not create its own ambiguities. The suggested revisions below are an attempt to better clarify and make consistent what has been expressed in these draft guidelines and are not necessarily the legal opinion of MTA.*

MTA Proposed Revisions Below:

Compatible renewable energy ordinance (CREO) means an ordinance that provides for the development of energy facilities within the ALU, the requirements of which are no more restrictive than the provisions included in section 226(8) of PA 233. An ALU is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction. If notification from chief elected local official(s) to the applicant states that the ALU has a CREO, then applicants must follow the ALU siting process in each ALU when notified by all jurisdictions that they have CREOs.

~~An unzoned area will be considered to have requirements for the development of energy facilities that are no more restrictive than the provisions included in Section 226(8) of PA 233. For purposes of Section 223 of PA 233, unzoned areas should be treated the same as ALUs with CREOs because they do not impose restrictions more stringent than those outlined in PA 233.~~

To harmonize PA 233 with provisions of the Michigan Zoning Enabling Act (MZEA), ~~in a project spanning multiple jurisdictions,~~ only ALUs with zoning jurisdiction will be required to have a CREO to require applicants to use the local siting process under Section 223(3) of Act 233. The Michigan Zoning Enabling Act states that a township that has enacted a zoning ordinance under the MZEA is not subject to an ordinance adopted by a county under the MZEA. *(For example, only the township would be required to have a CREO for a project located in a township that has a zoning ordinance (township not subject to county zoning ordinance). The corollary would also be true that only a county with zoning jurisdiction would be required to have a CREO for a project located in the*

township that does not have its own zoning ordinance.

An unzoned area cannot have a CREO since a CREO is effectuated through zoning jurisdiction.

For a project that is being sited in an area that horizontally crosses multiple jurisdictional boundaries, only ALUs with zoning jurisdiction will be required to have a CREO to require applicants to use the local siting process under Section 223(3).

A CREO may be an ordinance for a single technology such as wind, solar, or energy storage facilities or it may be an ordinance that addresses multiple technology types. To be considered a CREO, the ordinance must be no more restrictive than PA 233 for the technology type(s) addressed in the ordinance. Any provision in PA 233 is an acceptable provision in a CREO, as long as the requirement utilized by the ALU is not more restrictive than the requirement for the Commission outlined in the statute. This includes the considerations in Sections 226(7) and 226(8).

MTA comment on the above paragraph: *This paragraph seems to confuse the issue of a CREO being no more restrictive than PA 233. We are fully supportive of the guideline that any provision in PA 233 is an acceptable provision in a CREO, as long as the requirement utilized by the ALU is not more restrictive than the requirement for the Commission outlined in the statute. This allows a CREO to be most effective and pick up considerations that may be used by the Commission. The problem, however, is the definition states no more restrictive than Section 226(8). Again, while supportive, how does the MPSC justify this expansion so that ALU CREOs aren't all subject to challenge if they include considerations contained in Section 226(7)?*

If the Commission determines in a contested case that the ALU does not have a CREO, the ALU may choose

[3] The titles of chief elected officials may vary between jurisdictions. Chief elected officials include mayors, village presidents, township supervisors, and board chairs.

to amend its ordinance to become a CREO in the future, however, the amendments must be adopted to bring the ordinance into conformance with the statute prior to notifying any future applicants that the ALU has a CREO.

When a local ordinance does not meet the definition of a CREO, following the ALU siting process is still encouraged in areas that have a workable zoning ordinance. A workable zoning ordinance may not conform with the CREO definition, but it contains terms that allow for renewable energy projects to be sited in the ALU. Special land use approval processes in the zoning ordinance may ~~be another form that could~~ be considered workable. For example, if a developer wanted to site a hybrid project containing solar and storage facilities in an ALU, the local process should be utilized in any of the following circumstances:

1. The ALU has a zoning ordinance that contains ~~is a~~ CREO provisions addressing solar and storage facilities.
2. ~~The ALU has two separate ordinances that are CREOs addressing solar and storage facilities.~~
3. The ALU has zoning ~~an~~ ordinance provisions that contain ~~is a~~ CREO provisions either for solar or storage facilities and ~~a~~ workable zoning ordinance provisions that may include ~~or~~ special land use approval processes for the facilities not addressed in the CREO provisions that allow the facilities to be sited.
4. The ALU has workable zoning ordinance provisions that may include ~~s or~~ special land use approval processes for each technology that allow the facilities to be sited.

If a project is being sited in an area that horizontally crosses jurisdictional boundaries and one of the ALUs with zoning jurisdiction does not notify the applicant that it has a CREO or after attempts to site the project in one or more ALUs with zoning jurisdiction have failed, the applicant may file for a certificate pursuant to PA 233. If the ALU(s) that does not notify the applicant that it has a CREO has a workable local ordinance, the applicant is encouraged to pursue siting through the ALU process.

When a project is being sited in an area that horizontally crosses jurisdictional boundaries and one or more ALUs with zoning jurisdiction have CREOs or workable ordinances, and one or more ALUs with zoning jurisdiction do not have CREOs or workable ordinances or after attempts to site the project in the ALUs have failed, the MPSC will review the entire project if an application is filed, including the portions of the project that are in areas with CREOs or workable ordinances. By stipulation of the parties in a contested case, particularly the ALU(s) with CREOs or workable ordinances and the applicant, the CREO or workable ordinance may be considered by the Commission for those portions of the project.

Filing for a certificate while the applicant is in dispute with the ALU regarding its CREO status is discouraged. Should an applicant apply for siting approval at the MPSC while it is in dispute with the ALU regarding whether its ordinance is a CREO, the ALU, the Staff, or another intervenor, may file a motion to dismiss or stay, which will be adjudicated by the administrative law judge pursuant to the Commission's rules of practice and procedure. The administrative law judge's ruling could be appealed to the Commission

pursuant to the Commission's rules of practice and procedure. Further appeal may be taken according to law. Intervener funds shall be released during these procedures to be used by the ALU.

The applicant should retain records of the notification from the chief elected official regarding CREO status for later submission in a contested case.

If the chief elected local official(s) would like to request the Commission to require the developer to obtain a siting certificate for the proposed facilities from the Commission pursuant to PA 233 Section 222(2), the chief elected official should send its request to the Commission by contacting LARA-MPSC-Edockets@michigan.gov to the attention of the MPSC Executive Secretary and to the Staff at Siting-Certificate-Coordinator@michigan.gov with a copy of the request provided to the developer.

Public Meetings

The applicant must hold a public meeting in each city and township where the proposed facilities are located before filing an application with the Commission except in cities and townships where at least one of the following is true:[4]

- The ALU notified the applicant that it had a CREO and the application was subsequently not reviewed promptly by the ALU (by the 120-day deadline or other deadline as agreed upon).
- The ALU notified the applicant that it had a CREO and subsequently denied the application despite the proposed project complying with the statute.
- The ALU notified the applicant that it had a CREO and later amends its CREO so that it imposes requirements more restrictive than Section 226(8) and any other considerations of the commission.

Public meetings must be held in each city and township where the proposed project is located regardless of zoning authority and also serve to meet the requirement to hold a public meeting within the affected county as well as affected villages. Exceptions due to a lack of appropriate facilities to hold required public meetings within the city or township where the project is located will be considered on a case-by-case basis upon a showing of a good faith effort to hold the meetings as close to the project as feasible.

Unless otherwise requested by the chief elected local official, the public meeting shall start between 5:00 pm and 7:30 pm if held on a traditional workday of Monday through Friday.

The public meetings should be recorded or transcribed for later submission as evidence in siting cases filed pursuant to PA 233.

[4] Public meetings as outlined in PA 233 are not required when applicants are working to site facilities with ALUs utilizing workable ordinances and in those instances, the applicant should follow ~~file~~ the requirements of the ALU.

Public Notice for Public Meetings

Notice of the public meeting shall include the date, time, and location of the public meeting; a description and location of the proposed renewable energy and/or energy storage facilities; an internet site where the site plan is accessible to the public, and directions for submitting written comments to the developer for those unable to attend the public meeting.

The notice must be submitted to the clerk in each ALU at least 30 days in advance of the public meeting. A copy must be provided to the MPSC by emailing LARA-MPSC-Edockets@michigan.gov to the attention of the MPSC Executive Secretary and Siting-Certificate-Coordinator@michigan.gov on the same date in which the local clerk was provided notice.

At least 14 days prior to the public meeting, the developer shall publish notice of the meeting in a newspaper of general circulation in the ALU(s) or in a comparable digital alternative, and the developer shall send the notice of the public meeting by U.S. mail to postal addressees for all owners and occupants of properties within one mile of proposed solar or proposed energy facilities, and within two miles of proposed wind energy facilities, including to those addressees within those specified boundaries that are not located within the bounds of the ALU where the facilities will be located.

Pre-Application Meeting with Staff

Thirty days before filing an application for a certificate, the Applicant shall contact the Staff (Siting-Certificate-Coordinator@michigan.gov) to schedule a pre-application meeting to be held virtually using Microsoft Teams or other videoconferencing software. During the meeting, the applicant will discuss the following:

- Overview of project
- Map of project
- Status of project
- Expected application filing date
- Questions related to the contested case process
- Questions related to filing requirements
- Other items of interest

ALUs that have renewable energy projects or energy storage projects proposed within their boundaries may request meetings with Staff by contacting the Staff (Siting-Certificate-Coordinator@michigan.gov) to schedule a meeting to be held virtually using Microsoft Teams or other videoconferencing software. Staff will answer questions regarding the contested case process, the filing requirements, and discuss other items of interest to ALU, however, consultations with Staff are not a substitute for the advice of counsel.

Notice of MPSC Public Hearing

The notice of public hearing provided by the applicant shall be published in a newspaper of general circulation in each ALU unit or a comparable digital alternative. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the application and the words “NOTICE OF INTENT TO CONSTRUCT _____ FACILITY”, with the words “WIND ENERGY”, “SOLAR ENERGY”, or “ENERGY STORAGE”, as applicable entered into the blank space.

The applicant shall send the notice of the public meeting by U.S. mail to postal addressees for all owners and occupants of properties within one mile of proposed solar or proposed energy facilities, and within two miles of proposed wind energy facilities, including to those addressees within those specified boundaries that are not located within the bounds of the ALUs where the facilities will be located.

The Executive Secretary may provide further direction regarding public notice.

Application Schedule

The Commission shall grant the application and issue a certificate or deny the application not later than 1 year after a complete application is filed, pursuant to MCL 460.1226((5).

After receipt of an application, the Staff will determine whether the application is complete. If Staff determines that the application is incomplete, Staff will file a memo describing the application deficiencies in the case docket within 60 days of the application filing date. If a memo to notify the applicant that its application is incomplete is not filed in the docket timely, the application is considered to be complete.

The time for the Commission to issue a certificate or deny the application within 1 year begins at the point a complete application is filed in the docket.

Site Plan Copy to Affected Local Unit

When the application is submitted to the Commission, the applicant shall submit a copy of the Site Plan (or an internet address where the Site Plan can be reviewed) to the clerk of each ALU unless it is identical to the site plan previously provided to the clerk along with notice 30 days ahead of the public meeting.

Level 2 One-Time Grant to Affected Local Units

Contemporaneously with the filing of the application, the applicant must make a one-time grant[5] to each ALU unless at least one of the following is true:

- The ALU notified the applicant that it had a CREO and the application was subsequently not reviewed promptly by the ALU (by the 120-day deadline or other deadline as agreed upon).
- The ALU notified the applicant that it had a CREO and subsequently denied the application despite it complying with the statute.[6]
- The ALU notified the applicant that it had a CREO and later amends its CREO so that it imposes requirements more restrictive than statute~~226(8).~~

In the event that the proposed facilities are located in multiple ALUs, each ALU, including counties, cities, townships and villages, is eligible for a one-time grant. Only the specific ALUs where one of the above conditions is true would be ineligible to receive a one-time grant. The rest of the ALUs where those conditions are not true would still be eligible for one-time grants even if one specific ALU met the conditions above. The grant shall be used to cover the ALU's costs to participate in the contested case proceeding on the application for a certificate.

The Commission has, at this time, established the one-time grant amount as $150,000 with each ALU receiving no more than $75,000. The local grant amount shall be split equally among all ALUs, and the one-time grant to each ALU should be delivered contemporaneously with the application filed pursuant to PA 233. For a project that is being sited in an area that horizontally crosses multiple jurisdictional boundaries, the local grant amount shall be split among the ALU's proportionally based upon MW's in each ALU subject to the $75,000, $150,000 limitations. *(MTA Note – we agree with Commission's original proposed guidance.)*

Each ALU shall deposit the grant in a local intervenor compensation fund for use in covering costs associated with the ALU's participation in the contested case proceeding on the application for a certificate. ALUs may pool one-time grant funds allocated for the purposes of participating in the contested case proceeding.

Within 15 days following the pre-hearing, one-time grants to ALUs that have not intervened in the case shall be refunded to the applicant minus any costs incurred in determining whether or not to intervene. ALUs that have participated as intervenors in the case, are directed to file an official exhibit in the case prior to the conclusion of cross examination or the close of the record containing paid invoices for legal or other consultant services for participation in the case and an estimate for funds to be spent on such ~~legal~~ services for briefing and exceptions. Remaining one-time grant funds not utilized for participation in the case shall be refunded to the applicant within 60 ~~30~~ days following the

[5] Grants are intended to cover the cost of participation in the contested case proceeding for ALUs. Individual landowners seeking to participate in proceedings will continue to follow established processes for intervention, subject to MCL 460.1226(3), and public comment but are not eligible recipients for grant funding.

[6] ALUs that deny applications under a local ordinance that is not a CREO are eligible for one-time grants if an application for the facilities is filed with the MPSC pursuant to PA 233.

date on which answers to petitions for rehearing on the Commission's final order are due, when applicable. *[MTA questions why there is no reference to the funds also being used for any appeal. Appeal rights are part of the process and appeals should also qualify for use of the funds. Additionally, the expenditure of fees or estimates of fees to be expended should not have to be disclosed until the end; otherwise, disclosure during the case could expose confidential litigation strategy. Also, MTA questions the 15-day refund period in the first sentence as being too short. Intervention still could be granted later. We would ask more explanation be included in this section to explain the process and why the time lines are used.]*

Application Fees

The applicant[7] is required to pay an application fee designed to cover the Commission Staff's administrative cost in processing the evaluation, including the costs for retaining consultants on specialty issues outside of the commission Staff's expertise.

At the time of the prehearing, the applicant is required to pay a one-time Base Application Fee of $10,000 to the MPSC Executive Secretary. Payments must be made by check. Additional fees, such as contracting with subject matter expert consultants or costs pertaining to additional ongoing compliance may follow.

Once an application is deemed complete, within 30 days of initial evaluation of the application, Staff will provide an estimate of reasonable assessed fees, including the costs of consultants, and share this exhibit on the docket, labeled, "Fee Exhibit". The applicant has an opportunity to contest the final assessed fees after the evidentiary record is closed.

[7] MCL 460.112 provides a funding system where regulated utilities are assessed for the cost of regulation. Since regulated utilities are already subject to an annual assessment, the Public Utilities Assessment, they are exempt from the Base Application Fee described here. However, if the applicant is a regulated utility, it may still be subject to additional fees as described in the Fee Schedule table.

RENEWABLE ENERGY & STORAGE SITING APPLICATION FEE SCHEDULE	
Base Application Fee Applicable to third-party developers not regulated by the MPSC	
Contested case (includes up to 150 Staff hours)	$10,000
Additional Fees Applicable to both third-party developers and IOUs regulated by the MPSC	
Additional Staff hours [8]	Billed hourly above application fee
Consultant Expert testimony	Actual Fees
External Public Meetings	Actual Fees
Court Fees- including transcription & court reporting[9]	Actual Fees
Environmental Reporting & Testing[10]	Actual fees
Miscellaneous Filings & Additional Fees	
Miscellaneous maintenance following issuance of certificate	Actual fees billed hourly
Formal Complaints	$500
Requests for Exceptions to Standard Rules	$1,000

Further details about fees are included below:

1. At the cross-examination or final evidentiary hearing in a contested case proceeding, whichever is later, Staff shall file an exhibit containing the total assessed fee, labeled, **Exhibit S-1.**

2. Within 14 days of the filing and service of the Fee Exhibit, the applicant shall file any objections to the total assessed fees.

3. Within 14 days of any objections filed, Staff shall file a response indicating its position on the disputed issues.

4. If a dispute remains after the required filings, the administrative law judge (ALJ) who presided over the proceedings shall include a decision regarding the total assessed

[8] Includes MPSC staff time associated with the case proceeding through the completion of cross examination or final evidentiary hearing, whichever is later. This item also includes an additional forty (40) hours of MPSC staff time to allow for working on briefs, reply briefs, and exceptions to the PFD.
[9] All hearing costs associated with MPSC Staff hours will be included in Additional MPSC Staff hours, not in "Court Fees". The applicant will not be responsible for any attorney fees accrued by any third-party intervenors to a contested case proceeding. Fees associated with the attorneys representing MPSC Staff will not be included in any fees assessed to the applicant.
[10] Any fees in this category are limited to those necessary to satisfy the Commission's required agency review and environmental obligations under MEPA, Part 17 of MREPA, MCL 324.1701 et seq.

fees in the proposal for final decision (PFD) without further proceedings unless an additional hearing is deemed necessary.

5. The Commission may choose to "read the record", in which case a PFD will not be issued. In this event, the Commission reserves the right to address disputed issues and the total assessed fees in the final order.

6. If a contested case is settled prior to the issuance of a PFD, the applicant shall file any objection to the total assessed fees within 14 days of the filing and service of the Fee Exhibit.

7. The Commission will render a decision with regard to the total assessed fee in its final order.

8. Furthermore, if a contested case proceeding is settled by the parties and accrued Staff time does not exceed 150 hours, the base application fee of $10,000 must still be paid by the applicant, along with the additional fees.

9. There will be no reduction in the base application fee for a contested proceeding if Staff hours are less than 150 hours.

10. Environmental reporting and testing fees are limited to those related to the Commission's required agency review and environmental obligations.

11. Staff may provide a non-binding estimate of its expected hours and anticipated additional fees, upon the reasonable request of an applicant.

12. Staff should work informally with the applicant to give the applicant a sense of whether the fees associated with outside expert witnesses would be expected to support the Staff's case and the magnitude of such costs.

13. Fees associated with attorneys representing Staff will not be included in any fees assessed to the applicant under the provisions of MCL 460.1221 – 460.1232.

14. Staff hours associated with any appeal of a final Commission order will not be included in any fees assessed to the applicant under the provisions of MCL 460.1221 – 460.1232.

15. Staff hours included in the assessed fees for a contested case proceeding shall be hours associated with the contested case proceeding through the completion of cross examination, or final evidentiary hearing, whichever is later. Additionally, another 40 hours of Staff time will be included in assessed fees to account for Staff's efforts to work on initial briefs, reply briefs, and exceptions/replies to exceptions.

16. Staff may provide a summary of accrued Staff hours associated with a contested case proceeding and other known expenses that will be assessed as part of the additional fees, upon the reasonable request of an applicant.

17. The Commission may charge reasonable fees of ongoing Staff billable hours after a certificate has been granted for the lifetime of the project. Examples of such costs may include but are not limited to: environmental site analysis if site plan has been altered, any project follow-up considerations post construction & operation, other accounting, engineering, or legal aspects.

18. The cost for processing the application as a contested case shall not exceed $250,000, excluding costs for retaining consultation for specialty issues outside of MPSC expertise. Total costs for processing an application inclusive of consultation may exceed $250,000.[11]

Application Filing Requirements

The application shall include expert witness testimony and exhibits presenting the information listed below.

- The complete name, address, and telephone number of the applicant.
- Detailed schedule of planned construction activities supplemented by testimony describing each element within the construction schedule including planned construction start date and expected duration of construction.
- Description of the energy facility.
- Description of the expected use of the energy facility.
- Description of the portion of the community where the energy facility will be located.
- The percentage of land within the township, city, or village, and the percentage of land within the county dedicated to energy generation at the time of the application.
- Queue number or other information providing the ability to identify the proposed facility within the interconnection queue, copies of all studies completed by the regional transmission organization including feasibility studies, system impact studies, and any other studies completed by the regional transmission operator. If a generator interconnection agreement has been executed, the executed generator interconnection agreement may be submitted in lieu of the studies. The generator interconnection agreement and/or studies may be filed subject to a protective order and non-disclosure agreement.

[11] Costs incurred by the applicant for one-time grants, host and community agreements payments, or agreements with third-party independent monitors to comply with conditions of the permit (e.g. acoustics experts for sound modeling and measurements) are outside of the scope of application fees to process the contested case and are not included in the $250,000 cap.

- Site Plan **(Exhibit A-1: Site Plan)**
- Confirmation that the energy storage facility complies with the version of NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems"
- A description and copy of applicant's offer to meet with the chief elected official in each ALU, the chief elected official responses to the meeting request, and a summary of all meetings, including meeting dates held between the applicant and the chief elected officials. **(Exhibit A-2: Local Outreach)**
- A summary of the community outreach and education efforts undertaken by the applicant, including a description (copy of applicant's presentation, number of attendees, meeting length, number of commenters and topics) of the public meetings and meetings with elected officials. **(Exhibit A-2: Local Outreach)**
- Accommodations or changes made by the applicant to address the public comments received.
- A summary of consultations, before submission of the application, with federal, state, and local agencies including but not limited to the following list. At a minimum, the date and time the consultation took place, who participated in the consultation, and copies of correspondence listing necessary permits, next steps, and associated timeline should be provided for each consultation. Provide a justification for any consultations the applicant deemed not necessary. **(Exhibit A-2: Local Outreach)**
    - Federal agencies – where applicable
    - Michigan Department of Natural Resources
    - State Historic Preservation Office
    - Michigan Department of Environment, Great Lakes, and Energy
    - Michigan Department of Agriculture and Rural Development
    - County Drain Commission
    - County Road Commission
    - Owners of major facilities for electric, gas, or telecommunications lines
    - Michigan Department of Transportation – Aeronautics Commission (if applicable)
- A summary of tribal engagement, if applicable.
- The soil and economic survey report under section 60303 of the Natural Resources and Environmental Protection Act (NREPA). **(Exhibit A-3: Soil and Economic Survey Report)**
- If the energy facility is reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio, a plan to minimize and mitigate that impact.
    - An applicant for wind turbine facilities should provide evidence of prior consultation with nearby communication tower operators. If

communication issues arise post-construction, additional transmitter masts should be installed at the wind developer's expense or the developer should provide evidence that another mutually agreeable solution has been planned and implemented. Note that the Military Needs and Interest Assessment (MNIA) found that some military areas of operation, signal analysis, and radar footprints that are not publicly available could not be included in the Tool's military footprint and its notification functionality – but are still critical to national security and defense operations. Early coordination with local military liaisons is needed to identify when these features may be present at a site and can then be addressed on a case-by-case basis.

- A stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts and any additional guidance received during a consultation with the county drain commissioner. The assessment and plan may be preliminary. At a minimum, the date and time the consultation took place, who participated in the consultation, and copies of correspondence listing necessary permits, next steps, and associated timeline should be provided for each consultation. **(Exhibit A-4: Stormwater Assessment and Plan)**
- A report describing how the proposed energy facility complies with NREPA including Section 1705(2). **(Exhibit A-5: NREPA Compliance)**
- A description of the expected direct impacts of the proposed energy facility on the environment and natural resources and a plan describing how the applicant intends to address and mitigate these impacts.
- A statement and reasonable evidence that the proposed energy facility will not commence commercial operation until it complies with applicable state and federal environmental laws including NREPA.
    - Provide a list of all permits necessary prior to construction including the subject of the permit, the responsible agency to issue the permit, the date the permit application was or will be filed, and the date the permit was or is expected to be issued. Permits received prior to filing an application with the MPSC pursuant to PA 233 should be included following the list of necessary permits. **(Exhibit A-6: Permit List and Status)**
- Decommissioning Plan and Proposed Decommissioning Agreement (**Exhibit A-7: Decommissioning)**
- A description of the expected public benefits of the proposed energy facility including but not limited to the list below. Explain how the public benefits of the proposed energy facility justify its construction.
    - Expected tax revenue paid by the energy facility to local taxing districts
    - Payments to owners of participating property
    - Host community agreements and community benefits agreements

- Host community agreements or community benefits agreements are required for each ALU, including cities, townships, villages, and counties, according to the nameplate capacity located within the ALU, as defined in PA 233.[12] If host community agreements are not signed after good-faith negotiations with an ALU, community benefit agreements may be entered into with one or more community-based organizations in each ALU without a signed host community agreement.
- The applicant should include copies of all signed host community agreements and community benefit agreements in **Exhibit A-8 – Host and Community Agreements**. In the event that host community agreements or community benefits agreements were proposed and were not signed, those may be provided in lieu of signed host community agreements and/or community benefits agreements with an explanation of why the proposed agreements have not yet been executed.
- If there is a host community agreement, confirm that the host community agreement requires that, upon commencement of any operation, the energy facility owner must pay the host ALU $2,000.00 per megawatt of nameplate capacity located within the ALU. The payment shall be used as determined by the ALU for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the ALU and the applicant.
- If there is a community benefits agreement with 1 or more community-based organizations within, or that serve residents of, the ALU, the amount paid by the applicant must be equal to, or greater than, what the applicant would have paid pursuant to a host community agreement.
    - The topics and specific terms of the agreements may vary and may include, but are not limited to, any of the following:
        - Workforce development, job quality, and job access provisions that include, but are not limited to, any of the following:
            - Terms of employment, such as wages and benefits, employment status, workplace health and safety, scheduling, and career advancement opportunities.
            - Worker recruitment, screening, and hiring strategies and practices, targeted hiring planning and execution, investment in workforce training and education, and worker input and representation in decision making affecting employment and training.
        - Funding for or providing specific environmental benefits.

[12] Because each geographic location will have at least two ALUs, such as a township and a county, the provisions of PA 233 indicate that both of the ALUs, the township and the county, qualify for host benefit agreements in the amount of $2,000/MW each. If there is a portion of a facility in a village, that is also part of a township and a county, in that instance for that portion, each of the three ALUs would qualify for host benefit agreements in the amount of $2,000/MW each.

        - Funding for or providing specific community improvements or amenities, such as park and playground equipment, urban greening, enhanced safety crossings, paving roads, and bike paths.
        - Annual contributions to a nonprofit or community-based organization that awards grants.
    - Local job creation
        - Explain whether the applicant will enter into a project labor agreement or operate under a collective bargaining agreement for the work to be performed and provide a copy of project labor agreement or collective bargaining agreement if applicable.
    - When applicable, contributions to meeting Michigan's identified energy, capacity, reliability, or resource adequacy needs such as approved Integrated Resource Plans and Renewable Energy Plans.
- An explanation for how the proposed facility will not unreasonably diminish farmland, including, but not limited to prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops. Include the total amount of farmland in each ALU and the percentage of that farmland included in the proposed energy facility utilizing publicly available data.
- An explanation describing the effects of the proposed energy facility on public health and safety.
- If the proposed site of the energy facility is undeveloped land, the applicant must provide a description of feasible alternative developed locations, including, but not limited to, vacant industrial property and brownfields, and an explanation of why they were not chosen.
- The testimony shall include a commitment from the applicant to file a completion report before commencing commercial operations certifying compliance with the requirements of Act 233 of 2023 and any conditions contained in the Commission's certificate.
    - See Conditions section of these application instructions for more information.
- Other information reasonably required by the Commission.

Technical Conference

The applicant is encouraged to work with Staff to hold a technical conference with invitations provided to all intervening parties. The technical conference may be held virtually and is encouraged to be scheduled approximately 4 weeks following the pre-hearing. The purpose of the technical conference is to allow Staff and intervening parties to ask questions and view the site plan in an electronic format where the applicant can zoom in on specific areas where questions are arising. The goal of the

technical conference is to reduce the burden associated with multiple rounds of discovery questions and to allow for direct communication between case participants early in the case.

Completion Report

Before commencing commercial operations, the applicant shall file a completion report in the case docket certifying compliance with the statute as well as any conditions associated with an approved certificate. At a minimum, the completion report should include finalized site plans, finalized schematics, dimensioned drawings, and descriptions demonstrating compliance with Section 226(8) for the relevant technologies included within the facility, and a list of all permits received including the permitting agency, the date the permit was received, and special conditions attached to each permit.

SITE PLAN

SITE PLAN SECTION 1 – PLANNED FACILITIES

(a) Latest- or recent-edition USGS maps (1:24,000 topographic edition and should be created utilizing GIS mapping to the extent available),[13] of the proposed facilities showing:

(1) The proposed location of the facility and potential right-of-way extents, including proposed electric collection and transmission lines and interconnections, all fenced in or secured areas, as well as ancillary features located on the facility site such as roads, railroads, switchyards, energy generation, storage or regulation facilities, substations and similar facilities;

(2) The proposed location of any off-site utility interconnections that are available to the applicant at the time of application, including all electric transmission lines, communications lines, stormwater drainage lines, county and intercounty drains, and appurtenances thereto, to be installed connecting to and servicing the site of the facility;

(3) The proposed limits of clearing and disturbance for construction of all facility components and ancillary features, including laydown yards and temporary staging or storage areas;

[13] Geospatial source data used to create the maps submitted as part of the site plan shall be provided to MPSC Staff in KMZ, zipped shapefile, Geodatabase, or GeoPackage format upon request. The applicant shall provide the geospatial data to other parties to the case upon request and as practicable.

(4) Major institutions, parks, and recreational areas;
(5) Lakes, reservoirs, streams, canals, rivers, wetlands, and other waterbodies;
(6) Legal boundaries of cities, villages, townships, and counties;
(7) Sensitive receptors within 1000 feet of the site (such as occupied buildings);
(8) The location of inverters and other noise-emitting facilities showing the distance to sensitive receptors, property lines, and public rights-of-way;
(9) The area of the proposed site or right-of-way for the facility, and the identification of participating properties and adjacent properties; and
(10) The location of any deeded easement that exists within the footprint of the facility.

The applicant should ensure that all items provided are clear and legible which could entail providing some of the requested items on separate layers, separate pdf maps, or by showing some areas on another scale.

(b) An aerial photograph or a map using satellite imagery with depictions of planned facilities, fences, roads, occupied buildings, and planned screening, landscaping, and vegetative cover.

(c) A dimensioned drawing or map with dimensions added showing setbacks from the project boundary and fences to all structures on participating properties, road rights-of-way, waterways, wetlands, occupied buildings and structures on non-participating properties, and property lines of non-participating properties.

(d) A description of the maximum height of solar panels, wind turbines, storage facilities, and associated electrical equipment in relation to existing overhead communication and electric transmission lines.

SITE PLAN SECTION 2– AREA LAND USE INFORMATION

(e) Latest- or recent-edition USGS maps (utilizing GIS mapping to the extent available) showing the proposed facilities and surrounding area within 1000 feet of the perimeter:

(1) Maps clearly showing the location of the facility and all ancillary features not located on the facility site in relation to municipal boundaries and taxing jurisdictions, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.
(2) A map showing existing and proposed land uses within the facility and surrounding area including, but not limited to, the identification of land being utilized for agriculture including the cultivation of specialty crops.
(3) A map identifying the farmland, including but not limited to prime farmland in the city, village, or township, and the county, including the total number of acres

identified as farmland and the total number of acres identified as prime farmland in the jurisdictional area.

(4) A map of any existing overhead and underground major facilities for electric, gas, telecommunications transmission within the facility and surrounding area and a summary of any consultations with owners of major facilities for electric, gas or telecommunications that may be impacted by the facility (crossing existing utilities or otherwise).

(5) A map of all properties upon which any component of a facility or ancillary feature would be located, and for wind facilities, all properties within two thousand (2,000) feet of such properties, and for solar or storage projects, all properties within one thousand (1,000) feet, that shows the current land use, tax parcel number and owner of record of each property, and any publicly known proposed land use plans for any of these properties. Also identify any parcels within the project boundaries participating in farmland development rights agreements under Michigan's Farmland and Open Space Preservation Program (PA 116).

(6) A map of existing local zoning districts within the facility and surrounding area.

(7) Maps showing designated coastal areas, inland waterways, groundwater management zones, designated agricultural districts, flood-prone areas, and coastal erosion hazard areas, that are located within the facility and surrounding area.

(8) Maps showing recreational and other land uses within the facility and surrounding area that might be affected by the sight or sound of the construction or operation of the facility, interconnections and related facilities, including wild, scenic, and recreational river corridors, open space, and any known archaeological, geologic, historical, or scenic area, park, designated wilderness, forest lands, scenic vistas, conservation easement lands, federal or state designated scenic byways, nature preserves, designated trails, and public-access fishing areas, major communication and utility uses and infrastructure, and institutional, community and municipal uses and facilities.

(9) A map depicting the proposed facilities, adjacent properties, all structures within participating and adjacent properties, property lines, and the projected sound isolines along with the modeled sound isolines including the statutory limit and any limits that have been adopted in administrative rules by the MPSC (not applicable at this time).

(10) A map or schematic showing the area including sensitive receptors that will be impacted by shadow flicker for wind facilities, including isolines indicating areas expected to experience 30 hours or more per year of shadow flicker.

The applicant should ensure that all items provided are clear and legible which could entail providing some of the requested items on separate layers, separate pdf maps, or by showing some areas on another scale.

SITE PLAN SECTION 3 – EXPLANATORY INFORMATION

(f) Written explanations of the elements and features shown on all provided maps as well as other planned site/facility information including a description of the project area and the portion of the community where the project will be sited including socioeconomic and demographic profiles and major industries in the area. Examples of relevant project area information include: geography, topography, cities, villages, townships, counties, major industries, and landmarks.

(1) Provide justification for how the proposed project location, layout, construction methods, etc. minimize:
    a) Environmental impacts
    b) Noise
    c) Visual impacts
    d) Impacts to traffic
    e) Impacts to solid waste disposal capacity
    f) Impacts to county and intercounty drains and preliminary plans to minimize, mitigate, and repair drainage issues.
    g) Other impacts to non-participating property owners during construction and operation.

(2) The number of acres of the proposed site for the facility.

(3) Written descriptions explaining the relation of the location of the facility site, and all ancillary features not located on the facility site, to the ALUs of government.

(4) A qualitative assessment of the compatibility of the facility, including any off-site staging and storage areas, with existing, proposed and allowed land uses located within a 1,000-foot radius of the facility site. The assessment shall identify the nearby land uses of and shall address the land use impacts of the facility on residential areas, schools, civic facilities, recreational facilities, and commercial areas. The assessment and evaluation shall demonstrate that conflicts from facility-generated noise, traffic and visual impacts with current and planned uses have been minimized to the extent practicable.

(5) A description of the planned screening, landscaping, and vegetative cover. Describe the plan to establish and maintain vegetative ground cover for the life of the proposed facility. This information is not required if the proposed facility is located entirely on brownfield land.
    - Describe the plan to meet or exceed pollinator standards throughout the lifetime of the proposed facility as established by the “Michigan Pollinator Habitat Planning Scorecard for Solar Sites” developed by the Michigan State University Department of Entomology in effect on the effective date of the amendatory act that added this section or any applicable successor standards approved by the commission.
    - Explain how the seed mix used to establish pollinator plantings shall not include invasive species as identified by the Midwest Invasive Species

Information Network, led by researchers at the Michigan State University Department of Entomology and supporting regional partners.

(6) A written description of how planned fencing complies with the latest version of the National Electric Code.

(7) A report detailing the sound modeling results along with mitigation plans to ensure that sound emitted from the facilities will remain below the statutory limit throughout the operational life of the facilities in accordance with sound modeling and measurement procedures adopted by the Commission.[14] **(Appendix I – Sound Report)**

(8) Plans to comply with dark sky-friendly lighting solutions for solar or storage facilities and light-mitigation plans for wind facilities, including exemptions requested for during the construction period.

(9) A report detailing the flicker modeling results for wind facilities along with mitigation plans to ensure that flicker will remain below the statutory limit throughout the operational life of the facilities. The report must be prepared by a qualified third party using the most current modeling software available establishing that no Occupied Residence will experience more than thirty (30) hours per year, or more than thirty (30) minutes per day, of shadow flicker at the nearest external wall based on real world or adjusted case assessment modeling. The report must show the locations and estimated amount of shadow flicker to be experienced at all Occupied Residences as a result of the individual Turbines in the Project. **(Appendix II – Shadow Flicker Report for Wind Facilities)**

(10) An emergency response plan and fire response plan for the facilities. **(Appendix III – Emergency and Fire Response Plans)**

(11) The anticipated impacts and plans to mitigate impacts to the environment and natural resources, including, but not limited to, sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.

(12) An Unanticipated Discoveries Plan (UDP) including the following:

A. A set of procedures to be followed if cultural resources are discovered. Examples of cultural materials include, but are not limited to **(Appendix IV – Unanticipated Discoveries Plan)**:

(a) An accumulation of shell, burned rocks, or other food related materials
(b) Bones or small pieces of bone
(c) An area of charcoal or very dark stained soil with artifacts
(d) Stone tools or waste flakes (i.e., an arrowhead, or stone chips)
(e) Clusters of tin cans or bottles
(f) Logging or agricultural equipment that appears to be older than 50 years

[14] Procedures for modeling sound emissions from facilities are under development with the help of a consultant. When the sound modeling and measurement procedures are ready for review, Staff will request additional comments on the procedures.

(g) Buried railroad tracks, decking, or other industrial materials

B. A set of procedures to be followed if human remains are discovered

C. A contact list that includes the following:

(a) Contact for the State Historic Preservation Office

(b) Contacts for Tribal Historic Preservation Offices of Michigan

(c) Local, project specific, emergency contacts (i.e., County Sheriff, County Medical Examiner, etc.)

(13) A list of all parcels that are participating or adjacent to the proposed facilities, including land-owner information for each parcel. Land-owner information may be redacted and filed confidentially pursuant to protective order at the discretion of the applicant if the land-owner information is not available publicly. **(Appendix V – Participating Parcel List)**

(14) Proposed complaint resolution process for the site. The complaint process should include the name of a designated developer/operator representative provided with the authority to resolve local complaints, a dedicated phone number for complaints, an email address for complaints, and website information instructing the public on the complaint resolution process. The complaint process should include regular reporting of complaints received and how each complaint was resolved to be filed on a periodic basis in the docket. **(Appendix VI – Complaint Resolution Process)**

SITE PLAN SECTION 4 - CONSTRUCTION INFORMATION

(g) Describe the project's proposed installation methods. The proposed site clearing, construction methods, and reclamation operations, including:

(1) Soil Surveying and testing, pursuant to NREPA.
(2) Grading and excavation.
(3) Construction of temporary and permanent access roads, staging areas, and laydown areas and trenches.
(4) Stringing of cable and/or laying of pipe.
(5) Installation of electric transmission line poles and structures, including foundations.
(6) Depth of underground facilities.
(7) Post-construction restoration.
(8) Maps showing the following:

A. The planned routes (may be preliminary) for cranes and other heavy equipment.

B. The location of any existing deeded easement granted to any entity within the footprint of the facility.

C. The location of known existing and proposed county and intercounty drains, drain easements, and underground drainage tile including data provided by

the county drain commission or the property owner as applicable and to the extent available.

SITE PLAN SECTION 5–ALTERNATIVES

A map and description of each alternative site location, proposed site layout, or other alternatives that are or were considered, including rationale for why alternative locations were not selected for development.

SITE PLAN SECTION 6–CHANGES

A map and description of any known modifications or variations in the proposed site plan that are being considered at the time of filing, and that will be finalized prior to construction.

SITE PLAN MINOR CHANGE DEFINITION / GUIDANCE:

A minor change is any change within the project footprint that still allows the facilities to meet all of the criteria outlined in PA 233, does not create new or additional impacts or require new permits; however, a minor change does not include any of the following:

i. a change that would alter the footprint or perimeter of the site plan;
ii. a change in planned technologies (such as the addition of an energy storage facility to an existing site or other technological changes impacting noise or permit requirements);
iii. reduced setback distances from any part of the planned facilities to occupied structures, non-participating property lines, or rights-of-way;
iv. an increase in the height of the tallest equipment or structures; or
v. repowering.
vi. A change that would alter any water detention or retention, or other stormwater runoff.

Fire and Emergency Response Plans
[MTA Comment: *It will be very important to have the commission determine the sufficiency of these plans and condition approval on implementation of the plans and any needed revisions.]*

1. The application shall include an Emergency Response Plan (ERP). The ERP

shall include:

a. Evidence of consultation or a good faith effort to consult with local first responders and county emergency managers to ensure that the ERP is in alignment with acceptable operating procedures, capabilities, resources, etc.
b. An identification of contingencies that would constitute a safety or security emergency (fire emergencies are to be addressed in a separate Fire Response Plan);
c. Emergency response measures by contingency;
d. Evacuation control measures by contingency;
e. Community notification procedures by contingency;
f. An identification of potential approach and departure routes to and from the facility site for police, fire, ambulance, and other emergency vehicles;
g. A commitment to review and update the ERP with fire departments, first responders, and county emergency managers at least once every three (3) years;
h. An analysis of whether plans to be implemented in response to an emergency can be fulfilled by existing local emergency response capacity, and identification of any specific equipment or training deficiencies in local emergency response capacity; and
i. Other information the applicants finds relevant.

2. The application shall include a Fire Response Plan (FRP). The FRP shall include:
    a. Evidence of consultation or a good faith effort to consult with local fire department representatives to ensure that the FRP is in alignment with acceptable operating procedures, capabilities, resources, etc. If consultation with local fire department representatives is not possible, provide evidence of consultation or a good faith effort to consult with the State Fire Marshal or other local emergency manager.
    b. A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies.
    c. A description of all contingency plans to be implemented in response to the occurrence of a fire emergency.
    d. For energy storage projects, a commitment to offer to conduct, or provide funding to conduct, site-specific training drills with emergency responders before commencing operation, and at least once per year while the facility is in operation. Training should familiarize local fire departments with the project, hazards, procedures, and current best practices.
    e. For wind and solar projects, a commitment to conduct, or provide funding to conduct, site-specific training drills with emergency responders before commencing operation, and upon request while the facility is in operation. Training should familiarize local fire departments with the project, hazards, procedures, and current best practices.

f. A commitment to review and update the FRP with fire departments, first responders, and county emergency managers at least once every three (3) years.
g. An analysis of whether plans to be implemented in response to a fire emergency can be fulfilled by existing local emergency response capacity. The analysis should include identification of any specific equipment or training deficiencies in local emergency response capacity and recommendations for measures to mitigate deficiencies.
h. Other information the applicants finds relevant.

3. Changes to the design, type, manufacturer, etc. of facilities or equipment after the initial filing must be analyzed to determine if changes are necessary to the ERP or FRP. Additional consultation with local fire departments, first responders, and county emergency managers is required for amended plans.
4. In addition to the requirements above, applications for energy storage projects shall include the following in compliance with NFPA 855:
   a. Commissioning Plan (4.2.4 & 6.1.3.2)
   b. Emergency Operation Plan (4.3.2.1.4)
   c. Hazard Mitigation Analysis (4.4)

Decommissioning Plan and Proposed Decommissioning Agreement

Decommissioning plans submitted with applications must include the following elements:

1. An overview of the proposed energy facility including the following:
   (a) A detailed description of the proposed energy facility above and below ground and overview of the current land use of the site where the proposed energy facility will be located.
   (b) The expected useful life of the proposed energy facility.
   (c) A description of events which would trigger developer-initiated decommissioning.
   (d) A chemical analysis of the soil which can be used to ensure a soil is returned to its original condition.
   (e) A list of known hazardous substances at the time of development.
   (f) Appendix I - Energy Facility Layout

2. A description of the energy facility removal process including the following:
   (a) A proposed decommissioning schedule.
   (b) A description of facilities that will be removed and those that will be kept in place. To the extent any facilities are proposed to be kept, a full detailed explanation must accompany the description as to why it is being proposed.
   (c) A description of removal methods and site clearance activities.
   (d) A description of hazardous material use and removal from the site based

upon what is known at the time the application is filed.

(e) A description of planned materials management methods and transportation plans and an initial plan as to whether components will be sold, landfilled, recycled or other, with the understanding that such plans will be updated periodically as described in paragraph 9.
(f) A description of resources, conditions, or activities potentially affected by decommissioning and mitigation measures to be employed during the decommissioning process.

3. A description of the site restoration plan and process including PA 116 restoration requirements.

4. A commitment and plan to coordinate with landowners and ALUs, to the extent possible, prior to beginning decommissioning activities.

5. A list of expected necessary permits for demolition or new temporary construction which may be required for component removal and a statement that such permits will be obtained prior to the start date of decommissioning.

6. An assurance statement from the applicant that restoration will be in accordance with agreements with landowners. The applicant must attach all property leases, licenses and easements regarding property where any proposed facilities are to be located. **[MTA comment**: *These agreements are necessary to review to verify and understand what commitments have been made regarding restoration.]* The applicant must further identify the extent to which the agreements with the landowners are less stringent than the decommissioning requirements of the commission. ***[MTA comment**—landowner agreements must be a minimum standard and restoration must still comply with any more stringent requirements of the commission's decommissioning requirements and conditions. A landowner might not care about restoration after a 30-year lease but the state, local government and the citizens certainly do.]*

7. A decommissioning cost estimate for restoration of participating properties to useful condition similar to that which existed before construction, including removal of above-surface and below-surface facilities and infrastructure that have no ongoing purpose. The estimate must include the following:

(Appendix II - Detailed Decommissioning Cost Estimate):
(a) Detailed cost estimates for removal of energy facility equipment and infrastructure, land restoration and reclamation, and liability insurance requirements calculated by a third party with expertise in decommissioning.
(b) An estimate of salvage value for energy facility equipment and infrastructure calculated by a third party with expertise in decommissioning.
(c) An estimate of the cost to hire a decommissioning consultant to manage the

decommissioning process in the event of owner abandonment or bankruptcy.

8. Details describing the financial assurance:

(a) The type and manner of financial assurance the developer plans to provide (cash is prohibited), subject to the terms of any future Commission approval and Commission-approved decommissioning agreement:

i. Bond; or

ii. Parent company guarantee; or

iii. Irrevocable letter of credit.

(b) Such financial assurance shall be expressly held by and for the benefit of the Michigan Public Service Commission.
(c) A plan for annual proof to the Commission that the financial assurance remains sufficient and in effect.

9. A commitment to providing decommissioning plan and cost updates on a 5-year basis for the first 20 years of commercial operation and every 3 years thereafter:
(a) Decommissioning plans shall be updated to incorporate any improvements in the decommission process or necessary changes that could include changes to reflect new environmental considerations.
(b) The decommissioning cost estimate must be updated by a third party with expertise in decommissioning based on the updated decommission plan.
(c) The updated decommissioning plan and cost estimate shall be filed in the MPSC docket assigned to the energy facility.
(d) The financial assurance shall be updated according to such periodic updated cost estimates.

10. A decommissioning agreement addressing the decommissioning process. **(Appendix III – Proposed Decommissioning Agreement)**

11. A statement agreeing to provide a decommissioning completion report shall be provided:
(a) Within 60 days of completing decommissioning activities, the applicant must notify the Commission and submit a decommissioning report in the MPSC docket assigned to the project that includes a summary of decommissioning activities and a description of any mitigation measures used during decommissioning.

Appendix I – Energy Facility Layout
Appendix II – Detailed Decommissioning Cost Estimate
Appendix III – Proposed Decommissioning Agreement
(Provide the Sample Decommissioning Agreement with proposed changes in Track Change)

SAMPLE DECOMMISSIONING AGREEMENT

This Decommissioning Agreement is entered into between **[INSERT DEVELOPER NAME]** a **[INSERT BUSINESS STRUCTURE AND STATE OF ORGANIZATION]** at **[INSERT BUSINESS ADDRESS]** ("Developer") and the Michigan Public Service Commission (the "Commission" or "MPSC") at 7109 W Saginaw Hwy, Lansing, MI 48917.

WHEREAS, Public Act 233 of 2023 (the "Act") provides siting authority to the Commission for utility-scale solar, wind, and energy storage projects under specific conditions and requires applications under the Act to include a "decommissioning plan that is consistent with agreements reached between the applicant and other landowners of participating properties and that ensures the return of all participating properties to a useful condition similar to that which existed before construction, including removal of above-surface and below-surface facilities and infrastructure that have no ongoing purpose";

WHEREAS, the ACT provides that the "decommissioning plan shall include, but is not limited to, financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, but excluding cash";

WHEREAS, on **[INSERT APPLICATION DATE]** the Developer applied to the Commission for a certificate pursuant to MCL 460.1221 *et seq*. (the "Application") for a _____ megawatt **[INSERT ONE OF THE FOLLOWING: solar energy facility, wind energy facility, or energy storage facility]** referred to as **[INSERT NAME OF PROJECT]** located at **[INSERT PROJECT LOCATION]** (the "Project"); and

WHEREAS, the Commission opened a contested case pursuant to MCL 460.1226(3) entitled MPSC Case No. **[INSERT CASE NUMBER]** to conduct a proceeding on the Application and found, pursuant to MCL 460.1226(7), that the Application should be approved, subject to the conditions set forth in the Commission's **[INSERT ORDER DATE]** Order (Attachment A to this Agreement) and the Commission-approved decommissioning plan (Attachment B to this Agreement).

NOW, THEREFORE, the parties to this Agreement set forth the following terms and conditions of the Project decommissioning to which the parties, as well as any subsequent successors in interest, are bound:

1. **Term.** This Agreement is effective **[INSERT EFFECTIVE DATE]** and will continue until terminated as provided below.

2. **Decommissioning Obligations.** The Developer shall satisfy all obligations for decommissioning the Project as provided in this Agreement, the Commission order approving the Project certificate, and the Commission-approved Decommissioning Plan. These obligations shall ensure the return of all participating properties to a useful condition similar to that which existed before construction, including removal of above-surface and below-surface facilities and infrastructure that have no ongoing purpose. Specifically, these decommissioning obligations include:

   2.1. **[INSERT OTHER PROJECT-SPECIFIC DECOMISSIONING ACTIVITIES CONSISTENT WITH THE ORDER AND DECOMMISSIONING PLAN]**

   2.2. **State and Local Units of Government Requirements.** The Developer remains bound to obtain any permits or other authorizations required by the State or any local unit of government for purposes of decommissioning activities.

3. **Decommissioning Process.**

   3.1. **Initiation.** Decommissioning of the Project shall commence under any of the following conditions ("Decommissioning Trigger Events"):

      3.1.1. **Developer-Initiated Decommissioning.** The Developer may, subject to its agreements with the participating landowners and the terms of Commission approval, provide written notice to the parties of this Agreement and the affected local units of its intent to decommission the Project or a portion thereof.

      3.1.2. **Landowner Agreements.** The Developer has entered into separate agreements with the owners of the land on which the Project will be developed. To the extent these agreements require decommissioning within a stated period or upon specific events, decommissioning shall

commence no later than upon the triggering of such terms. This decommissioning agreement is intended to be consistent with applicable landowner agreements to the extent possible. To the extent there is any conflict between the terms of the commission's approval and the landowner agreements, the most stringent terms shall control.

3.1.3. **Depowering.** [**ADJUST THIS TERM BASED ON RESOURCE TYPE**] If the Project or portion of the project ceases to generate, store, or produce electricity for twelve (12) consecutive months, the project or relevant portion of the project shall be deemed depowered and decommissioning shall commence unless the Developer can demonstrate that the lack of generation, storage, or production is the result of a reasonable and temporary condition for which there is an appropriate remedy approved through a Commission proceeding. If a Project fails to generate, store, or produce electricity within 5 years of commencing construction, it shall be deemed depowered, and decommissioning shall commence unless the Developer can demonstrate through a Commission proceeding that generation, storage, or production will proceed within a reasonable time and manner. If the Project begins to generate, store, or produce electricity in accordance with the requirements of this Agreement and the Commission order approving the Project certificate before a decommissioning activity commences, the depowering may be deemed reversed pursuant to a Commission proceeding.

3.1.4 Failure of Financial Assurance. The developer must replace any expiring financial assurance instrument meeting the requirements of this Agreement and the Commission order approving the Project (including any Estimated Decommissioning Cost updates pursuant to Paragraph 4.2.3) no less than ninety (90) days prior to the expiration date of the financial assurance instrument**.** If the Developer fails to do so, then decommissioning shall commence; provided, that prior to commencing decommissioning for failure to replace the expiring financial assurance instrument, the Developer shall have at least thirty (30) days to cure such failure. If the Developer's financial assurance is to be revoked, terminated, or otherwise ceases to meet the requirements of the Act and Commission order approving the Project certificate, the Developer must immediately notify the parties to this Agreement. If the Developer cannot cure this inadequacy and bring the Project into conformance with the Act and Commission order approving the Project certificate within thirty (30) days, then decommissioning shall commence. [**MTA Comment**- *Who pays for decommissioning if the developer does not properly maintain its financial assurance and abandons the project.]*

3.1.5 Change of Ownership. If the ownership of the Project is transferred, the Developer seeks to dissolve, or the ownership structure of the Developer is otherwise changed, the Developer must immediately file a demonstration in the MPSC docket assigned to the Project confirming the continued compliance with the Project certificate and the continued validity of the financial assurance. If the Developer fails to make any such demonstrations within 30 days of the underlying change, then decommissioning shall commence. [**MTA Comment**- *What if developer does not confirm continued compliance or if they abandon the project? Does the state have enforcement powers?]*

3.1.6 Repowering. If the Developer attempts to repower the Project, as defined by MCL 460.1221(v), the Developer must seek a new certificate pursuant to MCL 460.1222. If the Developer begins repowering but fails to seek a new certificate, then decommissioning shall commence unless the Developer halts all repowering activities and initiates the procedures for seeking local approval or a certificate to the satisfaction of the Commission within thirty (30) days of the start of repowering activities.

3.2. **Decommissioning Notice.** Upon the occurrence of any of the above-specified Decommissioning Trigger Events, the Developer shall immediately provide written notice to the parties to this agreement and the affected local units of government and file such notice in the MPSC docket assigned to the Project.

3.3. **Completion Notice.** Within sixty (60) days of completing decommissioning activities, the Developer must notify the Commission and submit a decommissioning report that includes a summary of decommissioning activities and a description of any mitigation measures used during decommissioning in the MPSC docket assigned to the Project.

3.4. **Commission Decommissioning Authority.**

3.4.1. **Commission-Initiated Decommissioning.** If the Developer, its successors or assigns, or any other person controlling the Project fails, refuses, or neglects to initiate decommissioning within 180 days of any of the Decommissioning Trigger Events, the Commission shall itself have the right, but not the obligation, to perform the Developer's decommissioning obligations under this Agreement, the Commission order approving the Project certificate, and the Commission-approved Decommissioning Plan. In such event, the Developer (or its successors or

assigns) agrees to give the Commission and its contractors or agents the right to possess, dispose of, and otherwise decommission the property that makes up the Project and shall defend, hold harmless, and indemnify the Commission for any and all claims, liability, loss, or damage arising out of its exercise of its right to decommission the Project as provided for herein, except in cases of negligence by the Commission or any of its contractors or agents. The Commission shall not be required to expend funds beyond those funds provided through the financial assurances in order to perform the Developer's decommissioning obligations. In the event the Developer (or its successors or assigns) subsequently takes steps to initiate such activities and a decommissioning proceeding before the Commission within a reasonable time, the Commission may refrain from decommissioning activities and allow the Developer (or its successors or assigns) to commence the necessary actions**. [MTA Comment**- *What if developer does not confirm continued compliance or if they abandon the project? Does the state have enforcement powers? Agreement may not infer any obligation but should have liability. What if financial assurance lapsed? Who has responsibility? Developer and landowner may not care and walk away. Realistically, the current landowner could have liability if the developer is uncollectable.]*

3.4.2. **Access Representations.** The Developer hereby represents that it has the rights of ingress, egress, access, and possession to the Project location pursuant to its agreements with Landowners and that the Commission's rights under this Agreement are consistent with the terms of such agreements with the landowners. The Commission shall provide reasonable notice to the Developer and Landowner before entering the Project location if Commission-initiated decommissioning is warranted. The Developer hereby represents it possesses the authority to grant such authority pursuant to its lease agreements and property rights.

3.4.3. **Future Obligations.** The parties to this Agreement acknowledge and agree that appropriation of funds is a legislative function that the Commission cannot contractually commit itself to perform. The Commission's obligations under this Agreement will not constitute a general obligation of the State of Michigan and the Commission's obligations under this Agreement will not constitute either a pledge of the full faith and credit or the taxing power of the State of Michigan.

4. **Financial Assurance. [ADJUST THESE TERMS FOR IRREVOCABLE LETTERS OF CREDIT OR PARENT COMPANY GUARANTEES]**

4.1. **Estimated Decommissioning Cost.** Pursuant to MCL 460.1225(r) and

the Commission order approving the Project certificate, the estimated cost of decommissioning the project ("Estimated Decommissioning Cost"), which is

subject to the periodic updates described below, is initially $_____. The Estimated Decommissioning Cost is intended to include the following:

4.1.1. Costs for removal of energy facility equipment and infrastructure, above-ground and below-ground, land restoration and reclamation, and insurance requirements calculated by a third party with expertise in decommissioning.

4.1.2. Emergency decommissioning costs for energy storage projects.

4.1.3. Salvage value for energy facility equipment and infrastructure calculated by a third party with expertise in decommissioning.

4.1.4. The cost to hire a decommissioning consultant to manage the decommissioning process in the event of Developer abandonment or bankruptcy.

4.2. **Bond Acquisition. [ADJUST THIS TERM BASED ON APPROVED FINANCIAL ASSURANCE SCHEDULE]** No later than the start of construction, the Developer shall post a Decommissioning Bond in the amount of at least $_____ for the benefit of the Commission, which is 25% of the Estimated Decommissioning Cost. No later than one year from the beginning of construction, the Developer shall post a Decommissioning Bond in the amount of at least $_____ for the benefit of the Commission, which is 50% of the Estimated Decommissioning Cost. No later than the start of commercial operation, the Developer shall post a Decommissioning Bond in the amount of at least $_____ for the benefit of the Commission, which is 100% of the Estimated Decommissioning Cost. The bond shall conform to the Bond Agreement (Attachment C to this Agreement). The above amounts are the minimum amount of the Bond and such Bond requirement must be higher if needed to ensure that at all stages of construction the amount covers 100% of the decommissioning cost.

[MTA Comment—*Anything less than 100% puts everyone at risk that the Bond does not cover the decommissioning. We would ask the Commission to scale the Bond to what is actually being constructed. Another option would be to just require 100% from the start.]*

4.2.1. **Renewal.** The Developer or its successor in interest to the Project shall be responsible for renewing the Bond until the financial assurance requirement is terminated pursuant to this agreement and the Commission order approving the Project certificate. At the end of each bond term, the Developer shall renew the bond.

4.2.2. **Decommissioning Cost Update.** The Estimated Decommissioning Cost shall be updated as follows:

4.2.2.1. **Timeline.** For the first twenty (20) years of commercial operation, the Estimated Decommissioning Cost will be updated

every five (5) years. Starting in the twenty-first (21st) year of commercial operation and continuing until the financial assurance requirement is terminated pursuant to this agreement and the Commission order approving the Project, the Estimated Decommissioning Cost will be updated every three (3) years. The amount of any bond obtained subsequent to an Estimated Decommissioning Cost update must be based on such updated costs.

4.2.2.2. **Expert Review.** The Estimated Decommissioning Cost must be updated by a third party with expertise in decommissioning based on the updated decommissioning plan.

4.2.2.3. **Updated Decommissioning Plan.** Upon the Estimated Decommissioning Cost update, the Decommissioning Plans must be updated to incorporate any improvements in the decommissioning process or necessary changes. The Developer will file the updated Decommissioning Plan with the Commission in the MPSC docket assigned to the Project.

4.2.2.4. **Updated Financial Assurance.** Upon the Estimated Decommissioning Cost update, the financial assurance shall be updated according to such updated cost estimates.

4.3. **Use of Funds.** If a Decommissioning Trigger Event occurs, the financial assurance is called upon, and the Commission performs some or all of the Developer's decommissioning obligations, all funds received by the Commission through the Commission's claims on the financial assurances for the Project shall be used for reasonable costs incurred by the Commission in connection with performing the Developer's decommissioning obligations for the project and expenses related thereto (including, but not limited to, third-party consultant and administrator fees, litigation expenses, attorney fees, and expert fees).

5. **Annual Showing.** Every year, **no later than [ADD DATE SPECIFIED BY THE COMMISSION],** the Developer must file proof that the financial assurance requirements are satisfied in the MPSC docket assigned to the Project along with a summary of the power generated, stored, or produced for the proceeding twelve (12) month period and a description of any portions of the Project that have failed to generate, store, or produce electricity during the proceeding twelve (12) months, including the extent and length of such depowering.

6. **Termination.**

6.1. **Commission-Approved Decommissioning.** Upon completion of all decommissioning obligations described in this agreement, the Commission order approving the Project certificate, and the Commission-approved Decommissioning Plan, the Developer may apply to the Commission for termination of this Agreement. The Commission shall determine whether any outstanding obligations exist. Otherwise, the Commission shall terminate this Agreement.

6.2. **Financial Assurance Termination.** If the Developer applies for, and is granted, termination of this Agreement upon completion of all decommissioning obligations as addressed in the preceding paragraph, then the Commission may terminate the applicable financial assurance requirements.

7. **Miscellaneous.**

7.1. **Assignment.** No party may assign all or any part of this Agreement without the other parties' prior written consent. This Agreement inures to the benefit of the parties hereto and their successors and permitted assigns and is binding on each other and each other's successors and permitted assigns.

7.2. **Conflicts.** In the event of a conflict between the Commission order approving the Project certificate and this Agreement or any agreements between the Developer and Landowner, the Commission order shall control.

7.3. **Severability.** Any provision of this Agreement held to be void or unenforceable will not affect the validity of its remaining provision.

7.4. **Amendment.** This Agreement cannot be modified or waived in any way without express agreement signed by all parties.

7.5. **Counterparts.** This Agreement may be executed and delivered in counterparts and duplicate originals, including by a facsimile and/or electronic transmission thereof, each of which shall be deemed an original. Any document generated by the parties with respect to this Agreement, including this Agreement, may be imaged and stored electronically.

7.6.

7.7. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

[INSERT DEVELOPER NAME]

_____

Print Name:_____

MICHIGAN PUBLIC SERVICE COMMISSION

_____

Print Name:_____

Definitions

"Affected local unit" means a unit of local government in which all or part of a proposed energy facility will be located.

"Aircraft detection lighting system" means a sensor-based system designed to detect aircraft as they approach a wind energy facility and that automatically activates obstruction lights until they are no longer needed.

"Applicant" means an applicant for a certificate.

"Certificate" means a certificate issued for an energy facility under section 226(5).

"Community-based organization" means a workforce development and training organization, labor union, local governmental entity, Michigan federally recognized tribe, environmental advocacy organization, or an organization that represents the interests of underserved communities.

"Compatible renewable energy ordinance" means an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction.

"Construction" means any substantial action taken constituting the placement, erection, expansion, or repowering of an energy facility.

"Dark sky-friendly lighting technology" means a light fixture that is designed to minimize the amount of light that escapes upward into the sky.

"Energy facility" means an energy storage facility, solar energy facility, or wind energy facility. An energy facility may be located on more than 1 parcel of property, including noncontiguous parcels, but shares a single point of interconnection to the grid.

"Energy storage facility" means a system that absorbs, stores, and discharges electricity. Energy storage facility does not include either of the following:

(i) Fossil fuel storage.

(ii) Power-to-gas storage that directly uses fossil fuel inputs.

"Independent power producer", or "IPP", means a person that is not an electric provider but owns or operates facilities to generate electric power for sale to electric providers, this state, or local units of government.

"Light intensity dimming solution technology" means obstruction lighting that provides a means of tailoring the intensity level of lights according to surrounding visibility.

"Light-mitigating technology system" means an aircraft detection lighting system, a light intensity dimming solution technology, or a comparable solution that reduces the impact of nighttime lighting while maintaining night conspicuity sufficient to assist aircraft in identifying and avoiding collision with the wind energy facilities.

"Local unit of government" or "local unit" means a county, township, city, or village.

"Maximum blade tip height" means the nominal hub height plus the nominal blade length of a wind turbine, as listed in the wind turbine specifications provided by the wind turbine manufacturer. If not listed in the wind turbine specifications, maximum blade tip height means the actual hub height plus the actual blade length.

"Nameplate capacity" means the designed full-load sustained generating output of an energy facility. Nameplate capacity shall be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.

"Nonparticipating property" means a property that is adjacent to an energy facility and that is not a participating property.

"Occupied community building" means a school, place of worship, day-care facility, public library, community center, or other similar building that the applicant knows or reasonably should know is used on a regular basis as a gathering place for community members.

"Participating property" means real property that either is owned by an applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner of monetary compensation related to an energy facility regardless of whether any part of that energy facility is constructed on the property.

"Person" means an individual, governmental entity authorized by this state, political subdivision of this state, business, proprietorship, firm, partnership, limited partnership, limited liability partnership, co-partnership, joint venture, syndicate, business trust, labor organization, company, corporation, association, subchapter S corporation, limited liability company, committee, receiver, estate, trust, or any other legal entity or combination or group of persons acting jointly as a unit.

“Prime farmland” means land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest and, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content,

and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

"Project labor agreement" means a prehire collective bargaining agreement with 1 or more labor organizations that establishes the terms and conditions of employment for a specific construction project and does all of the following:

(i) Binds all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents.

(ii) Allows all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements.

(iii) Contains guarantees against strikes, lockouts, and similar job disruptions.

(iv) Sets forth the effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement.

(v) Provides other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health.

(vi) Complies with all state and federal laws, rules, and regulations.

"Repowering", with respect to an energy facility, means replacement of all or substantially all of the energy facility for the purpose of extending its life. Repowering does not include repairs related to the ongoing operations that do not increase the capacity or energy output of the energy facility.

“Specialty Crops” means land other than prime farmland that is used for the production of specific high value food and fiber crops. It has the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables. (Definition is adopted from the USDA definition of “Unique Farmland.”)

"Solar energy facility" means a system that captures and converts solar energy into electricity, for the purpose of sale or for use in locations other than solely the solar energy facility property. Solar energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: photovoltaic solar panels; solar inverters; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; utility lines and installations; generation tie lines; solar monitoring stations; and accessory equipment and structures.

"Wind energy facility" means a system that captures and converts wind into electricity, for the purpose of sale or for use in locations other than solely the wind energy facility property. Wind energy facility includes, but is not limited to, the following equipment and facilities to be constructed by an electric provider or independent power producer: wind towers; wind turbines; access roads; distribution, collection, and feeder lines; wires and cables; conduit; footings; foundations; towers; poles; crossarms; guy lines and anchors; substations; interconnection or switching facilities; circuit breakers and transformers; energy storage facilities; overhead and underground control; communications and radio relay systems and telecommunications equipment; monitoring and recording equipment and facilities; erosion control facilities; utility lines and installations; generation tie lines; ancillary buildings; wind monitoring stations; and accessory equipment and structures.

List of Acronyms

AC – Alternating Current

ALJ – Administrative Law Judge

ALU – Affected Local Unit

CREO – Compatible Renewable Energy Ordinance

MNIA - Military Needs and Interest Assessment

MPSC – Michigan Public Service Commission

MZEA – Michigan Zoning Enabling Act

NREPA – Natural Resources and Environmental Protection Act

PFD – Proposal for Decision

USGS – United States Geological Survey

Exhibit List

Each of the following exhibits and appendices must be included in the application using the exhibit or appendix number provided. If the Exhibit or Appendix is not applicable to the type of application, please include the exhibit or Appendix page and indicate "Intentionally left blank". If additional exhibits are necessary, they may be labeled using two or three letters and exhibit number beginning with 1. For example, ABC Solar could use ABC-1, 2, etc. to identify additional exhibits.

If additional Site Plan Appendices are necessary, they may be added to the end of the Appendix list.

Exhibit Number	Description
A-1	Site Plan
	Appendix I – Sound Report
	Appendix II – Shadow Flicker Report for Wind Facilities
	Appendix III – Emergency and Fire Response Plan
	Appendix IV – Unanticipated Discoveries Plan
	Appendix V – Participating Parcel List
	Appendix VI – Complaint Resolution Process
A-2	Local Outreach
	Chief Elected Official Meeting Offer, Response, and Meeting Summary
	Copy of Public Meeting Notice and Meeting Summary
	Summary of Public Outreach
	Summary of consultations with federal, state, and local representatives: Date, Attendees, Discussion summary, and Outcome
A-3	Soil and Economic Survey Report
A-4	Stormwater Assessment and Plan
A-5	NREPA Compliance
A-6	Permit List and Status
A-7	Decommissioning
	Appendix I - Energy Facility Layout
	Appendix II - Detailed Decommissioning Cost Estimate
	Appendix III - Proposed Decommissioning Agreement
A-8	Host Community Agreements and Community Benefits Agreements

Conditions

1. The applicant is encouraged to consider including proposals to meet the following conditions (**at a minimum**) when filing an application. Those participating in the case are encouraged to evaluate the efficacy of proposed conditions made by the applicant in its application and to propose modifications or additions to proposed conditions in contested cases filed pursuant to PA 233. An agreement from the applicant to obtain and comply with construction or building permits from the ALU for the renewable energy and energy storage facilities; or to enter into a third-party independent monitor agreement, funded by the applicant, where the monitor is selected in consultation with the Staff to be onsite during the periods when construction is taking place on a weekly basis to monitor the construction activities. The independent monitor would be granted authority to resolve complaints and request immediate cessation of activities the monitor can document are in material breach of any plan, permit or agreement pertaining to the construction of the facility. The third-party independent monitor shall provide periodic reports to the Staff, the ALU, and the applicant from the start of construction and continuing through the first 3 months of commercial operation. The cadence of the reports will be determined by the independent monitor in consultation with the Staff.
2. An agreement from the applicant to participate in a pre-construction meeting with the Staff and either the ALU who has issued a construction or building permit, or a third-party independent monitor, to ensure the Staff has access to the latest information and final documentation prior to construction for use in answering questions and assisting with complaints. Invitations to attend the pre-construction meeting should be extended to representatives of ALUs, however, their attendance would not be required. The certificate may also be conditioned on the applicant's agreement to file the final drawings, plans, and permits received in the docket prior to the start of construction. The filing of final drawings, plans, and permits received are for completeness and transparency in the record and the pre-construction meeting serves to ensure that the final plans conform with the certificate approved by the Commission.
3. An agreement by the applicant to repair or replace all public and private drainage systems, damaged from construction or decommissioning processes except for those drainage systems that are already specifically addressed in lease agreements or other agreements in place. This shall include county or intercounty drains in the event there are established county or intercounty drains that are part of the public drainage system.
4. An agreement by the applicant to file mechanical completion certificates for the facilities in the docket.
5. An agreement by the applicant to implement a complaint resolution process as approved by the Commission as a condition of certificate approval that includes the name of a designated developer/operator representative provided with the

authority to resolve local complaints, a dedicated phone number for complaints, an email address for complaints, and website information instructing the public on the complaint resolution process.

6. An agreement by the applicant to provide emergency contact information for the site in the docket and to file updated emergency contact information on an annual basis.
7. An agreement by the applicant to implement screening as approved by the Commission as a condition of the siting certificate.[15]
8. An agreement by the applicant to implement vegetative ground cover in consideration of Michigan State University's "Michigan Pollinator Habitat Planning Scorecard for Solar Sites" and avoiding invasive species as approved by the Commission as a condition to the siting certificate.
9. An agreement by the applicant to bury underground facilities to a depth of 4 feet or as approved by the Commission as a condition to the siting certificate.
10. An agreement by the applicant to contract with and pay for a third-party acoustics expert to conduct post-construction sound measurements in accordance with sound modeling and measurement procedures[16] adopted by the Commission and file the results in a report in the docket. An agreement that if the post-construction sound measurements do not meet the statutory requirements, noise mitigation plans will be implemented and the post-construction sound measurements will be repeated and the results will be filed in a subsequent report in the docket.
11. An agreement by the applicant to demonstrate compliance in accordance with sound modeling and measurement procedures adopted by the Commission with the sound provisions in the statute upon request by the MPSC in response to customer complaints and to maintain compliance with the sound provisions in the statute by implementing additional noise mitigation measures during facility operations should the sound levels be non-compliant with the statute.
12. An agreement by the applicant to mitigate shadow flicker that does not meet the statutory provisions, report to the Commission on the mitigation plans, and report to the Commission on the results of the mitigation to reduce the shadow flicker.
13. An agreement by the applicant to, at the applicant's cost, contract with a third party to conduct a pre-construction study of reception near planned installation of wind facilities and to remedy, at the applicant's cost, any impacts to reception caused by the wind energy facility and restore reception to at least the levels present before the wind energy facility began operations.
14. For battery storage projects, an agreement by the applicant to provide annual training for local fire departments and other first responders. For wind and solar projects, an agreement to conduct additional training for local fire departments and other first responders upon request.

[15] Brownfield sites may have unique requirements related to fencing, screening, landscaping, and vegetative cover.

[16] Sound modeling and measurement procedures are under development.

15. Approval contingent upon receiving approval for all necessary applicable state, federal, and local permits and all permits need to be obtained before beginning construction on the portion of the project for which the permit is necessary.
16. Approval contingent upon the execution of a decommissioning agreement approved by the Commission and an agreement by the applicant to demonstrate that financial assurance has been acquired and will be maintained throughout the operational life of the facilities, as outlined in the decommissioning agreement.
17. An agreement by the applicant to comply with all other applicable (non-zoning) ordinances throughout the operational life of the facilities that were in effect at the time the MPSC certificate was issued.
18. An agreement by the applicant to comply with the provision of periodic reports over time (as specified by the Commission as a condition of approval) on the amount of electricity produced per turbine or per parcel, a report listing complaints received during the time period as well as the developer/operators' response including resolution and/or plans for mitigation, a report outlining the operating condition and performance of the facilities on the site (including non-producing ancillary equipment, structures, fencing, locks, gates, screening, vegetative ground cover and other items specifically listed in the condition), a report listing any failures of equipment or structures that took place during the period as well as repairs that have been made during the time period or are planned or underway, and a report of any improvements made to the site or facilities during the period as well as any planned improvements or planned changes to the site or facilities including changes to fencing or ancillary equipment during the reporting period, to be filed in the docket.
19. An agreement by the applicant to provide annual maintenance plans and annual inspection results in the docket.
20. An agreement by the applicant to utilize a project labor agreement or operate under a collective bargaining agreement for the construction and maintenance work to be performed.
21. An agreement by the applicant to enter into an agreement with the County Road Commission or department regarding reimbursement for the repair and restoration of County roads modified or damaged during the construction process. **MTA Comment** – *some counties have County Road Commissions and others are a department under the County Commission.*
22. An agreement by the applicant confirming the applicant's acceptance and agreement to comply with all terms and conditions in the certificate.
23. An agreement by the applicant to comply with the ERP and FRP as approved by the Commission.

6

Case U21547 – Staff Draft Application Process

General Input / Comments

Page 6 – Public Meetings bullet point #2:

"The ALU notified the applicant that it had a CREO and subsequently denied the application despite the proposed project complying with the statute."

Also page 9 – One Time Grant, bullet point #2:

"The ALU notified the applicant that it had a CREO and subsequently denied the application despite the proposed project complying with the statute"

Q: Who decides that the 'proposed project complies with the statute'? Clearly a point of conflict between the ALU and the applicant

++++++++++

Page 27 – Decommissioning Plan

"e. A description of planned materials management methods and transportation plans and an initial plan as to whether components will be sold, landfilled, recycled or other . . . . .

Recycling is a *MUST*. The other options need to be deleted.

++++++++++

Page 43 – Conditions

"1. The applicant is encouraged to consider including proposals to meet the following conditions (at a minimum) when filing an application. Those participating in the case are encouraged to evaluate the efficacy of proposed conditions made by the applicant in its application . . . . . "

Words like "encouraged" are meaningless to a developer. In this case (and others) these words need changed to "shall" and "must".

++++++++++

General:

An addition of a requirement that the developer (and heirs, assigns, etc) must have a binding commitment to tax payments / PILTs that cannot be abrogated, abated, avoided for the life of the project.

-Roger Johnson

[redacted]

Deerfield, MI 49238 (Lenawee County)

[redacted]

[redacted]

Case U21547 – Staff Draft Application Process

Triage Suggestion and Parameters

Given that at some point, perhaps Spring 2025, MPSC could have a significant queue of applications to review and process – a simple triage/scoring process can help prioritize, perhaps at the Pre Application Meeting with Staff (or earlier).

-Does the project have ALU support or is it contested?

-Priority 1: Is the applicant an existing generator of power in Michigan with retail/commercial customers? Priority 2: Is the developer an IPP based in Michigan? Priority 3: A third-party developer based/owned elsewhere in the USA? Priority 4: Or with a foreign base and/or parent company?

(Michigan based utilities with existing customers would be most likely to keep community and customer interests in mind. Eliminating the profit margins of an IPP/3rd party developer would accrue to rate-payers, and taxpayer funded subsidies and tax incentives remain in the state. Experience shows that MI utilities are FAR more ethical in their approach to landowners and communities, and have a long-term interest in maintaining positive relationships. Most of the past resistance and project refusals in the State can be directly tied to carpetbagging developer lack of ethics, honesty and openness.)

-Is the siting proposed for 1: a brownfield, 2: non-agricultural ground or 3: farmland?

-Is the siting proposed for 1: publicly owned land, 2: farmer owned/occupied, or 3: absentee landowners, or 4: absentee out-of state investors?

(Publicly owned land has rental payments accruing to all residents of the ALU / State rather than a few. One example is the Consumer's / Muskegon 3 square mile project @ their wastewater treatment plant / brownfield. The reported $345/acre annual lease payment accrues to everyone in Muskegon

and does not disrupt the local agricultural economy; and also positively impacts kwh rates.

-Is there an existing workable grid connection, or does the project require additional transmission line & associated infrastructure that would mean imposing eminent domain to construct?

-How much acreage within the ALU is currently dedicated (or permitted) to energy generation / storage? Less than 5%, 5-10%, more than 10%?

Summary: On each parameter, scoring at the lowest end of the spectrum should relegate the project to rejected – or at a minimum, to the very end of the queue for MPSC consideration.

-Roger Johnson

[redacted]

Deerfield, MI 49238 (Lenawee Co.)

[redacted]

[redacted]

Case Comment
U-21547-0093-CC

Case Number
U-21547 (/s/case/5008y000009kJfbAAE/in-the-matter-on-the-commissions-own-motion-to-open-a-docket-to-implement-the-provisions-of-public-233-of-2023)

Initial Submitter Name
Clint Beach

Case Comment #
U-21547-0093-CC

Comment

Thank you for the opportunity to hear public comments regarding the draft for permitting guidelines of Solar, Wind and Battery Storage.

The point of local government zoning is to protect its residents and community. Ordinaces and guidelines are often set not only to encourage new development in communities but to also protect the residents and buisness therein. Limits and oversight are used to maintain quality and saftey for the community. Often this is seen as an obstacle or hurdle of the developer, but must be adhered to to maintain saftey standards.

One of the things that stand out in this draft, is there seems to be no limits to the number of LargeScale Industrial projects that can come into a community. Just one large scale industrial project, anything over nameplate of 50mw, can have a life long effect on the community, let alone 2 or 3 of said large scale projects within the same community or neighboring communities.

For example, in my community there are 3 large scale industrial energy developers searching to secure leases....each with projects needing approx 1,500 to 2,500 acres each. If each project gets approved, there will be a total of 6,000 to 8,000 acres of once viable farmland taken out of production for the next 3 generations. Thats around 10 square miles within a township which is only 6 x 6 miles. Obviously they would have to cross community borders. This would end up having industrial complexes larger than the townships they surround.

Our goal in zoning, is to create ethical, moral and protective guidelines for the residents and buisness owners within our jurisdiction.

I do not see where having no limits on the potential number of large scale industrial projects within a community is ethical, moral nor protective. Potentially Taking nearly all the viable farmland within a rural community out of production.

I also do not see where a non-participating resident cannot be potentially surrounded on all sides by large scale industrial projects. We have already seen some non-participating residents homes surrounded on all 4 sides by solar developers. This causes an unsafe environment with a very limited exit route in case of catastrophic fire or severe weather incidents. Michigan is prone to tornados, in line winds and other high wind events . While large scale industrial solar complexes have been known to catch fire or succumb to high wind events, having a limited escape route seems counter intuitive for saftey guidelines. Having guidelines for a non participating residents to only be surrounded on 2 sides or less seems like a safer standard.

I know this is a working draft, and a highly encourage you to listen to the public comments of those communities that will be most effected.

Clint A Beach
Cohoctah Twp Planning Commissioner

Comment Submitter (1)

FIRST NAME	Clint
LAST NAME	Beach
ON BEHALF OF COMPANY	
CITY	
STATE	
ZIP CODE	

Files (0)

2020 WL 7089873
Only the Westlaw citation is currently available.

UNPUBLISHED
Court of Appeals of Michigan.

IN RE RELIABILITY PLANS OF ELECTRIC UTILITIES FOR 2017-2021.
Association of Businesses Advocating Tariff Equity, Appellant,
v.
Michigan Public Service Commission, Consumers Energy Company, Energy Michigan, Inc., and Michigan Electric and Gas Association, Appellees.
In re Reliability Plans of Electric Utilities for 2017-2021.
Energy Michigan, Inc., Appellant,
v.
Michigan Public Service Commission, Consumers Energy Company, and Michigan Electric and Gas Association, Appellees.

No. 340600, No. 340607
|
December 3, 2020

Public Service Commission, LC No. 00-018197

Before: Meter, P.J., and Gadola and Tukel, JJ.

ON REMAND

Per Curiam.

***1** At the end of 2016, our Legislature enacted new electric utility legislation that included Act 341. That act added, among other statutory sections, MCL 460.6w. As part of its implementation of MCL 460.6w, the Michigan Public Service Commission (MPSC) issued an order in its Case No. U-18197. That order of the MPSC was appealed to this Court in Docket No. 340600, by appellant Association of Businesses Advocating Tariff Equity (ABATE), and in Docket No. 340607, by appellant Energy Michigan, Inc. (Energy Michigan). In these consolidated cases, [1] appellants contended that the MPSC erred by determining that it is empowered by the Legislature under 2016 PA 341 (Act 341) to impose a local clearing requirement upon individual alternative electric suppliers.

In Docket No. 340607, Energy Michigan additionally contended that the order of the MPSC purports to impose new rules upon electric providers in this state without the required compliance with Michigan's Administrative Procedures Act of 1969 (APA), MCL 24.201, *et seq.* In Docket No. 340600, ABATE contended that the MPSC's claim of a statutory delegation of authority allowing the imposition of an individual local clearing requirement does not include sufficient standards to guide the PSC's exercise of what amounts to legislative policy-making, and thus violates the nondelegation doctrine.

This Court determined that the MPSC erred by determining that it is empowered by the Legislature under Act 341 to impose a local clearing requirement upon individual alternative electric suppliers; we therefore reversed the MPSC's order. *In re Reliability Plans of Electric Utilities for 2017-2021*, 325 Mich. App. 207, 228, 235, 926 N.W.2d 584 (2018). In light of that decision, we concluded that it was unnecessary to reach the additional issues raised by Energy Michigan and ABATE, being whether the MPSC's determination resulted in the promulgation of rules without compliance with the APA and in violation of the nondelegation doctrine. *Id.* at 234-235.

Thereafter, our Supreme Court considered plaintiffs' application for leave to appeal to that Court and, in lieu of granting leave to appeal, reversed the judgment of this Court and remanded the case to us for further proceedings consistent with that Court's opinion, "including addressing whether the MPSC's order complied with the Administrative Procedures Act." *In re Reliability Plans of Electric Utilities for 2017-2021*, 505 Mich. 97, 129, 949 N.W.2d 73 (2020). We do so now, and hold that the MPSC neither issued the equivalent of administrative rules in violation of APA procedures, nor otherwise exercised legislative authority in violation of the nondelegation doctrine. We therefore affirm the order of the MPSC.

I. BACKGROUND FACTS

When this case was previously before this Court, we summarized the background facts underlying the appeal as follows:

***2** Michigan's Legislature previously enacted what was known as the Customer Choice and Electricity Reliability Act, MCL 460.10 *et seq.*, as enacted by 2000 PA 141 and 2000 PA 142, to "further the deregulation of the electric utility industry." *In re Application of Detroit Edison Co. for 2012 Cost Recovery Plan*, 311 Mich. App. 204, 207 n. 2, 874 N.W.2d 398 (2015). That act permitted customers to buy electricity from alternative electric suppliers instead of limiting customers to purchasing electricity from incumbent utilities, such as appellee Consumers Energy Company (Consumers). *Consumers Energy Co. v. Pub. Serv. Comm.*, 268 Mich. App. 171, 173, 707 N.W.2d 633 (2005). Among the purposes of the act, as amended by Act 341, is the promotion of "financially healthy and competitive utilities in this state." MCL 460.10(b).

[T]he Midcontinent Independent System Operator (MISO) is the regional transmission organization responsible for managing the transmission of electric power in a large geographic area that spans portions of Michigan and 14 other states. To accomplish this, MISO combines the transmission facilities of several transmission owners into a single transmission system. In addition to the transmission of electricity, MISO's functions include capacity resource planning. MISO has established ten local resource zones; most of Michigan's lower peninsula is located in MISO's Local Resource Zone 7, while the upper peninsula is located in MISO's Local Resource Zone 2.

Each year MISO establishes for each alternative electric supplier in Michigan the "planning reserve margin requirement." MISO also establishes the "local clearing requirement." Under MISO's system, there generally are no geographic limitations on the capacity resources that may be used by a particular supplier to meet its planning reserve margin requirement. That is, MISO does not impose the local clearing requirement on alternative electric suppliers individually but instead applies the local clearing requirement to the zone as a whole. Each individual electricity supplier is not required by MISO to demonstrate that its energy capacity is located within Michigan, as long as the zone as a whole demonstrates that it has sufficient energy generation located within Michigan to meet federal requirements.

MISO also serves as a mechanism for suppliers to buy and sell electricity capacity through an auction. This allows for the exchange of capacity resources across energy providers and resource zones. The MISO auction is conducted each year for the purchase and sale of capacity for the upcoming year. The auction allows suppliers to buy and sell electricity capacity and acquire enough capacity to meet their planning reserve margin requirement. The auction also allows each zone as a whole to meet the zone's local clearing requirement.

At the end of 2016, our Legislature enacted Act 341, in part adding MCL 460.6w, which imposes resource adequacy requirements on electric service providers in Michigan and imposes certain responsibilities on the MPSC. Under MCL 460.6w(2), the MPSC is required under certain circumstances to establish a "state reliability mechanism."

The parties agree that because the Federal Energy Regulatory Commission did not put into effect the MISO-proposed tariff, the MPSC is required by § 6w(2) to establish a state reliability mechanism. A "state reliability mechanism" is defined by the statute as "a plan adopted by the commission in the absence of a prevailing state compensation mechanism to ensure reliability of the electric grid in this state consistent with subsection (8)." MCL 460.6w(12)(h). The state reliability mechanism is to be established consistently with § 6w(8), which ... requires each alternative electric supplier, cooperative electric utility, and municipally owned electric utility to demonstrate to the MPSC that it has sufficient capacity to meet its "capacity obligations." The statute does not define "capacity obligations," but in § 6w(8)(c), the statute provides that:

> ***3** (c) In order to determine the capacity obligations, [the MPSC shall] request that [MISO] provide technical assistance in determining the local clearing requirement and planning reserve margin requirement. If [MISO] declines, or has not made a determination by October 1 of that year, the commission shall set any required local clearing requirement and planning reserve margin requirement, consistent with federal reliability requirements.

Section 6w(8)(b) also provides that municipally owned electric utilities are permitted to "aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision" and that cooperative electric utilities are permitted to "aggregate their capacity resources that are located in the same local resource zone to meet the requirements of this subdivision." Section 6w(8)(b) also permits a cooperative or municipally owned electric utility to "meet

> the requirements of this subdivision through any resource, including a resource acquired through a capacity forward auction, that [MISO] allows to qualify for meeting the local clearing requirement." Section 6w(8)(b), however, does not include a similar provision for alternative electric suppliers and is, in fact, silent as to whether alternative electric suppliers may aggregate their capacity resources that are located in the same local resource zone to meet the requirements of the subdivision.
>
> MCL 460.6w(3) directs the MPSC to establish a capacity charge that a provider must pay if it fails to satisfy the capacity obligations established under § 6w(8). Section 6w(6), however, directs that a capacity charge shall not be assessed against an alternative electric supplier who demonstrates "that it can meet its capacity obligations through owned or contractual rights to any resource that [MISO] allows to meet the capacity obligation of the electric provider...."
>
> After the enactment of Act 341, the MPSC worked collaboratively in a workgroup process to implement MCL 460.6w. On September 15, 2017, the MPSC issued an order in its Case No. U-18197, imposing new requirements on alternative electric suppliers as part of its implementation of MCL 460.6w. In that order, the MPSC determined that MCL 460.6w authorizes it to impose a local clearing requirement on individual alternative electric suppliers.... [*In re Reliability Plans*, 325 Mich. App. at 211-216, 926 N.W.2d 584 (footnotes omitted).]

As noted, ABATE and Energy Michigan appealed the order of the MPSC to this Court, challenging the order as an erroneous interpretation of MCL 460.6w. This Court agreed, and reversed the order of the MPSC. *In re Reliability Plans*, 325 Mich. App. at 235, 926 N.W.2d 584. The Michigan Supreme Court reversed the judgment of this Court, and remanded the consolidated cases to this Court for further proceedings consistent with the Supreme Court's opinion. *In re Reliability Plans*, 505 Mich. at 102, 129, 949 N.W.2d 73,

II. ANALYSIS

A. STANDARD OF REVIEW

Whether an agency policy is invalid because it was not promulgated as a rule under the APA is a question of law that we review de novo. *In re PSC Guidelines for Transactions Between Affiliates*, 252 Mich. App. 254, 263, 652 N.W.2d 1 (2002). Whether the Nondelegation Clause of the Michigan Constitution has been violated is a question of constitutional interpretation that we also review de novo. See *In re Certified Questions from U.S. Dist. Court*, —— Mich. ——, ——; —— N.W.2d —— (2020) (Docket No. 161492); slip op. at 4.

B. THE APA

***4** Energy Michigan contends that the MPSC erred when issuing its order in its Case No. U-18197 because the order essentially promulgates rules without complying with the formal rulemaking requirements of the APA. Energy Michigan argues that the MPSC's order essentially enacts rules because it establishes a formula for determining the total capacity obligation for each electric provider, restricts resort to MISO's planning resource auctions for that purpose, and sets the capacity obligations on the basis of a provider's peak load contributions. We conclude that the MPSC did not err by interpreting § 6w of Act 341 as calling for it to implement the provisions of § 6w without resorting to formal rulemaking under the APA.

The promulgation of administrative rules is governed by the APA, *Slis v. Michigan*, —— Mich. App. ——, ——; —— N.W.2d —— (2020) (Docket Nos. 351211, 351212); slip op. at 1, and the MPSC is authorized to promulgate rules under the APA. MCL 460.9(8). Under § 7 of the APA, MCL 24.207, "rule" is defined as:

> an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency....

An agency is obligated to employ formal APA rulemaking when establishing policies that "do not merely interpret or explain the statute or rules from which the agency derives its authority," but rather "establish the substantive standards implementing the program." *Faircloth v. Family*

Independence Agency, 232 Mich. App. 391, 404, 591 N.W.2d 314 (1998). A rule that is not promulgated under the APA is invalid and does not have the force of law. MCL 24.243; *Goins v. Greenfield Jeep Eagle, Inc.*, 449 Mich. 1, 10, 534 N.W.2d 467 (1995).

Excepted from the definition of a "rule" under the APA is a "rule or order establishing or fixing rates or tariffs," MCL 24.207(c), a "determination, decision, or order in a contested case," MCL 24.207(f), an "interpretive statement" or "guideline," MCL 24.107(h), or a "decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected," MCL 24.207(j); *In re Reliability Plans*, 325 Mich. App. at 233, 926 N.W.2d 584. The definition of "rule" under MCL 24.207 is broadly construed to reflect the APA's preference for policy determinations pursuant to rules, while the exceptions are narrowly construed. *AFSCME v. Dep't of Mental Health*, 452 Mich. 1, 10, 550 N.W.2d 190 (1996). In addition, an agency may not avoid the requirements for promulgating rules by issuing its directives under different labels. See *id.* at 9, 550 N.W.2d 190.

In this case, we conclude that the MPSC's exercise of authority under § 6w was an exercise of permissive statutory power, and thus not subject to the rulemaking requirements of the APA. See MCL 24.207(j). Section 6w requires the MPSC to establish the format for electric provider resource adequacy filings, and authorizes it to determine local clearing requirements and planning reserve margin requirements for electric providers. Section 6w also calls for contested cases under the circumstances set forth in subsections (1) and (2), and calls for the agency to determine a capacity charge under subsection (3). Subsection (8)(c) requires the MPSC to seek "technical assistance" from MISO "in determining the local clearing requirement and planning reserve margin requirement" for purposes of determining capacity obligations, and subsection (8)(d) requires the PSC to seek such assistance in "assessing resources to ensure that any resources will meet federal reliability requirements."

***5** The Legislature's specification of procedural methodology—contested case proceedings in Subsections (1), (2), and (3), and seeking technical assistance from MISO under Subsection (8)—indicates that, where the Legislature did not specify how to proceed, it expected the MPSC to do so within its own discretion. In addition, what the MPSC refers to as the "compressed timeline that Section 6w presents" suggests that the Legislature did not expect the MPSC to promulgate APA rules in implementing the new legislation.[2] See *Mich. Trucking Ass'n v. Pub. Serv. Comm.*, 225 Mich. App. 424, 430, 571 N.W.2d 734 (1997) (treating the impossibility of promulgating rules within the envisioned timeframe as indicating that the Legislature did not intend to require APA rulemaking). We therefore conclude that § 7(j) of the APA exempts the MPSC from implementing § 6w of Act 341 by resort to the rule-making procedures of the APA. This conclusion is further supported by the fact that § 6w does not specifically require the MPSC to promulgate rules before undertaking the tasks assigned to it under that section. See *Mich. Trucking Ass'n*, 225 Mich. App. at 430, 571 N.W.2d 734.

C. NONDELEGATION DOCTRINE

ABATE contends that the MPSC's exercise of authority under § 6w of Act 341 runs afoul of Michigan's nondelegation doctrine, which prohibits the Legislature from delegating policy-making authority to the Executive without meaningful standards or guiding principles. We disagree.

Michigan's Constitution provides that "[t]he legislative power of the State of Michigan is vested in a senate and a house of representatives." Const. 1963, art. 4, § 1. Our state Constitution further declares that no person "exercising the powers of one branch" of state government "shall exercise powers properly belonging to another except as expressly provided in this constitution." Const. 1963, art. 3, § 2. "These constitutional provisions have led to the constitutional discipline that is described as the nondelegation doctrine." *Taylor v. Gate Pharmaceuticals*, 468 Mich. 1, 8, 658 N.W.2d 127 (2003). "One of the settled maxims in constitutional law is, that the power conferred upon the legislature to make laws cannot be delegated by that department to any other body or authority." *In re Certified Questions*, —— Mich. at ——; slip op. at 12, quoting Cooley, Constitutional Limitations (1886), pp. 116-117. As noted, we review de novo whether the Nondelegation Clause of the Michigan Constitution has been violated. See *In re Certified Questions*, —— Mich. at ——; slip op. at 4. "Statutes are presumed to be constitutional, and we have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *Id.* (quotation marks and citations omitted).

Although the Legislature may not delegate its legislative power to the executive branch, the Legislature may delegate a task to an executive branch agency if the Legislature provides

"sufficient standards." *Taylor*, 468 Mich. at 10 n. 9, 658 N.W.2d 127. If sufficient standards accompany the delegation it is transformed into a proper exercise of executive power. See *Blue Cross & Blue Shield v. Governor*, 422 Mich. 1, 51-55, 367 N.W.2d 1 (1985). In other words, the Legislature's delegation of authority to an administrative agency is proper only when the controlling statute provides the agency with standards sufficient to turn the agency's decision from a legislative decision into an executive decision. *Taylor*, 468 Mich. at 10 n. 9, 658 N.W.2d 127.

In determining whether a statute contains sufficient standards, "we must be mindful of the fact that such standards must be sufficiently broad to permit efficient administration in order to properly carry out the policy of the Legislature but not so broad as to leave the people unprotected from uncontrolled, arbitrary power in the hands of administrative officials." *In re Certified Questions*, —— Mich. at ——; slip op. at 13, quoting *Dep't of Natural Resources v. Seaman*, 396 Mich. 299, 308-309, 240 N.W.2d 206 (1976).

***6** In evaluating legislative standards in the context of the nondelegation doctrine, our Supreme Court has explained that "(1) the act must be read as a whole; 2) the act carries a presumption of constitutionality; and 3) the standards must be as reasonably precise as the subject matter requires or permits." *Blue Cross & Blue Shield*, 422 Mich. at 51, 367 N.W.2d 1. "The preciseness of the standards will vary in proportion to the degree to which the subject regulated requires constantly changing regulation." *Associated Builders & Contractors v. Dep't of Consumer & Industry Servs. Dir. (On Remand)*, 267 Mich. App. 386, 391, 705 N.W.2d 509 (2005). The focus is "whether the *degree* of generality contained in the authorization for exercise of executive or judicial powers in a particular field is so unacceptably high as to *amount* to a delegation of legislative powers." *In re Certified Question*, —— Mich. at ——; slip op. at 13, quoting *Mistretta v. United States*, 488 Mich. 361, 419; 488 U.S. 361, 109 S. Ct. 647, 102 L. Ed. 2d 714 (1989) (SCALIA, dissenting). Thus, the question is whether the Legislature "supplied an intelligible principle to guide the delegee's use of discretion.... [T]he answer requires construing the challenged statute to figure out what task it delegates and what instructions it provides." *In re Certified Question*, —— Mich. at ——; slip op. at 13, quoting *Gundy v. United States*, 588 U.S. ——, ——; —— U.S. ——, 139 S. Ct. 2116, 2123, 204 L. Ed. 2d 522 (2019) (opinion by KAGAN, J.).

In this case, ABATE contends that the Legislature's directive to the MPSC in § 6w of Act 341 is not accompanied by sufficiently precise standards, and thus runs afoul of the nondelegation doctrine. Specifically, ABATE argues that the Legislature in § 6w directs the MPSC to adopt a "state reliability mechanism" defined by the act as a "plan ... to ensure reliability of the electric grid in this state...." MCL 460.6w(12)(h). ABATE further argues that the Legislature requires all electric providers in Michigan to "demonstrate to the commission, in a format determined by the commission, that ... [each electric provider has] sufficient capacity to meet its capacity obligations as set by the [MISO], or commission, as applicable." MCL 460.6w(8)(a). ABATE argues that because the statute does not define "capacity" or "capacity obligation," and also does not direct how to establish the capacity demonstration process, the Legislature provided insufficient standards.

We disagree that the statute provides insufficient standards. On the contrary, § 6w defines the scope and nature of the MPSC's review and sets standards directing the authority of the MPSC in some detail. For example, § 6w(12)(h) defines "state reliability mechanism" and § 6w(8) outlines numerous responsibilities of the MPSC if a state reliability mechanism is required under § 6w(2). Section 6w(8)(c) provides direction to the MPSC to determine capacity obligations by requesting technical assistance from the appropriate independent system operator in determining the local clearing requirement and the planning reserve margin requirement, terms defined by the statute, and otherwise to set those requirements consistent with federal reliability requirements. MCL 460.6w(8)(c).

As noted, in determining whether a statute contains sufficient standards we are mindful that although the standards cannot be so broad as to permit uncontrolled, arbitrary power in the hands of administrative officials, they must be sufficiently broad to permit efficient administration to properly carry out the policy of the Legislature. *In re Certified Questions*, —— Mich. at ——; slip op. at 13. Given that the preciseness of the standards by necessity varies with whether the subject being regulated requires constantly changing regulation, *Associated Builders (On Remand)*, 267 Mich. App. at 391, 705 N.W.2d 509, and given that the Legislature is presumed not to delegate the authority to act unreasonably, *In re Certified Questions*, —— Mich. at ——; slip op. at 16, we conclude that the standards provided were not so general as to amount to a delegation of legislative powers. See *id.* at ——; slip op. at 13.

***7** Affirmed.

All Citations

Not Reported in N.W. Rptr., 2020 WL 7089873

Footnotes

1 These appeals were consolidated on this Court's own motion. *In re Reliability Plans of Electric Utilities for 2017-2021*, unpublished order of the Court of Appeals, entered November 15, 2017 (Docket Nos. 340600; 340607).

2 The Office of Regulatory Reinvention's Rules Tracking Time Frame Report, p. 9, provides that the process for promulgating rules by entities within the Department of Licensing & Regulatory Affairs averages 572 days. Because it would be impossible for the MPSC to promulgate rules to determine annual capacity obligations with a rulemaking process that takes more than one year to accomplish, logic dictates that the Legislature did not intend the agency to use that procedure.

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