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 223 of 2023	PSC Case No. U-21547

ALMER CHARTER TOWNSHIP; ARGENTINE TOWNSHIP; AUGUSTA CHARTER TOWNSHIP; BEAVER TOWNSHIP (BAY COUNTY); BENGAL TOWNSHIP; BINGHAM TOWNSHIP (CLINTON COUNTY); BLISSFIELD TOWNSHIP; BRIDGEHAMPTON TOWNSHIP; BROCKWAY TOWNSHIP; CASCADE CHARTER TOWNSHIP; CATO TOWNSHIP; CLINTON COUNTY; COHOCTAH TOWNSHIP; COLUMBIA TOWNSHIP (VAN BUREN COUNTY); COLUMBUS TOWNSHIP (ST CLAIR COUNTY); CONWAY TOWNSHIP; COOPER CHARTER TOWNSHIP; DALLAS TOWNSHIP; DEERFIELD TOWNSHIP (LENAWEE COUNTY); DENMARK TOWNSHIP; DOUGLASS TOWNSHIP; DUPLAIN TOWNSHIP; EAGLE TOWNSHIP; EASTON TOWNSHIP; ELLINGTON TOWNSHIP; ELMWOOD TOWNSHIP; ESCANABA TOWNSHIP; FRANKENLUST TOWNSHIP; FREMONT TOWNSHIP (SANILAC COUNTY); GARDEN TOWNSHIP; GARFIELD TOWNSHIP (BAY COUNTY); GENOA TOWNSHIP; HANDY TOWNSHIP; IDA TOWNSHIP; INGHAM TOWNSHIP; IONIA COUNTY; IOSCO TOWNSHIP; ISABELLA TOWNSHIP; JOYFIELD TOWNSHIP; JUNIATA TOWNSHIP; KAWKAWLIN TOWNSHIP; KEENE TOWNSHIP; KIMBALL TOWNSHIP; LAKE TOWNSHIP (HURON COUNTY); LEROY TOWNSHIP (INGHAM COUNTY); MARION TOWNSHIP (LIVINGSTON COUNTY); MARION TOWNSHIP (SANILAC COUNTY); MILAN TOWNSHIP; MONITOR CHARTER

Court of Appeals No. _____

CLAIM OF APPEAL

ORAL ARGUMENT REQUESTED

TOWNSHIP; MONTAGUE TOWNSHIP; MONTCALM TOWNSHIP; MOORE TOWNSHIP; NORTH BRANCH TOWNSHIP; OGDEN TOWNSHIP; ORLEANS TOWNSHIP; RIGA TOWNSHIP; SANILAC COUNTY; SCHOOLCRAFT COUNTY; SEVILLE TOWNSHIP; SHIAWASSEE COUNTY; SIDNEY TOWNSHIP; SPEAKER TOWNSHIP; STOCKBRIDGE TOWNSHIP; SUMMERFIELD TOWNSHIP (MONROE COUNTY); TUSCOLA COUNTY; TYRONE TOWNSHIP (LIVINGSTON COUNTY); VENICE TOWNSHIP; WALES TOWNSHIP; WATERLOO TOWNSHIP; WATERTOWN TOWNSHIP (SANILAC COUNTY); WHITE OAK TOWNSHIP; WHITE RIVER TOWNSHIP; WILLIAMS CHARTER TOWNSHIP; WORTH TOWNSHIP; AND YORK CHARTER TOWNSHIP

Appellants,

v.

MICHIGAN PUBLIC SERVICE COMMISSION

Appellee.

Michael D. Homier (P60318)
Laura J. Genovich (P72278)
Leslie A. Abdoo (P78850)
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CLAIM OF APPEAL

THE APPEAL INVOLVES A RULING THAT A PROVISION OF THE CONSTITUTION, A STATUTE, RULE OR REGULATION, OR OTHER STATE GOVERNMENTAL ACTION IS INVALID.

Dated: November 8, 2024.

Appellants, through their counsel, FOSTER, SWIFT, COLLINS & SMITH, P.C., state as follows, pursuant to MCL 462.26:

Introduction

1. Appellants claim an appeal from the October 10, 2024 order (the "Order") of the Public Service Commission (the "PSC") implementing the provisions of Public Act 233 of 2023 ("PA 233"). The Order is attached as **Exhibit A**.

2. PA 233 confers powers and duties to the PSC regarding the siting of utility-scale solar energy facilities, wind energy facilities, and energy storage facilities—allowing developers, under limited circumstances, to bypass local zoning authorities when proposing qualifying developments.

3. The Order attempts to vastly expand the PSC's limited and enumerated jurisdiction in PA 233 and is both unlawful and unreasonable under MCL 462.26(8).

4. The Order is unlawful and unreasonable because, among other reasons:

   a. The PSC's issuance of the Order violates the Administrative Procedures Act, MCL 24.201 *et seq*;

   b. The Order unlawfully and unreasonably redefines key terms and concepts and creates processes and procedures that violate the Legislature's express and unambiguous intent.

5. This Court has jurisdiction over this appeal, filed within 30 days of the issuance of the PSC's Order. MCL 462.26(1).

PSC's Authority

6. PA 233 adds a new Part 8 to the Clean and Renewable Energy and Energy Waste Reduction Act, Public Act 295 of 2008.

7. Under Section 230 of PA 233, "[i]n administering this part, the [PSC] has only those powers and duties granted to the [PSC] under this part." Section 230 further provides that PA 233 controls in any conflict between it and any other Michigan law.

8. PA 233 gives the PSC the following specific powers:

a. prescribe the format and content of the notice required for certain public meetings. Section 223(1).

b. establish application filing requirements. Section 224(1).

c. reasonably require information to be contained in an application. Section 225(s).

d. conduct proceedings on applications. Section 226(3).

e. assess reasonable application fees. Section 226(4).

f. grant or deny applications and issue certificates. Section 226(5).

g. issue orders to protect the confidentiality of certain information. Section 228(2).

h. consolidate proceedings. Section 230(2).

9. More broadly, to promulgate rules or orders pursuant to the powers identified in Paragraph 8, the PSC must follow the Administrative Procedures Act, MCL 24.201 *et seq*. (the "APA").

10. 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 NW2d 314 (1998).

11. Under the APA, a rule is "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." MCL 24.207.

12. Although there is an exception to the above-quoted definition for "[a] determination, decision, or order in a contested case," the Order does not arise from a contested case.

13. A "contested case" is a "a proceeding, including rate-making, price-fixing, and licensing, in which a determination of the legal rights, duties, or privileges of a named party is required by law to be made by an agency after an opportunity for an evidentiary hearing." MCL 24.203(3).

14. Here, there are no named parties and there was no opportunity for an evidentiary hearing.

15. The Order is simply a rule by another name that did not go through the rulemaking process as required by the APA.

16. Because it is a rule that was not promulgated under the APA, was not entered in a contested case, and adjudicates matters outside of the PSC's limited jurisdiction granted to it in PA 233, the Order is not authorized by law.

Definition of "CREO"

17. In addition to these procedural problems, several substantive provisions of the Order are not authorized by law.

18. Among other things, PA 233 allows a local zoning jurisdiction to retain control over relevant siting decisions if the jurisdiction has a "compatible renewable energy ordinance," or "CREO." A CREO is defined by PA 233 as "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)."

19. In its Order, the PSC redefined "CREO". The PSC found that:

> [A] CREO under Act 233 means an ordinance that provides for the development of energy facilities within a local unit of government, the requirements of which are no more restrictive than the provisions included in Section 226(8). The Commission further specifies that a CREO may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of Act 233 and may not contain additional requirements more restrictive than those specifically identified in that section. [**Order**, 18.]

20. In other words, under the Order's definition, a CREO may only contain the exact requirements listed in Section 226(8) of Act 233 *and nothing else*.

21. Section 226(8) provides the maximum restrictions local units can place on specific topics including setbacks, fencing, height, noise, lighting, and environmental regulations. Neither section 226(8) nor any other section of PA 233 prohibits local units from imposing additional reasonable regulations on energy facilities.

22. This redefining of "CREO" violates the Legislature's intent.

23. The PSC acted outside its authority when it redefined "CREO" and its action is not authorized by law.

24. The PSC's redefining of "CREO" is unreasonable, as it entirely eliminates any local input in the regulation of energy facilities.

Definition of "Affected Local Unit"

25. The Order also purports to redefine "affected local unit," or "ALU." **Order**, 10.

26. Under PA 233, "'affected local unit' means a unit of local government in which all or part of a proposed energy facility will be located." Section 221(a).

27. The Act also defines "local unit of government" or "local unit" as a "county, township, city or village." Section 221(n).

28. The Order revises this definition by limiting "affected local units" to "include only those local units of government that exercise zoning jurisdiction."

29. The Legislature chose a specific and expansive definition of "affected local unit." The PSC's Order defies the Legislature's intent by attempting to narrow that definition.

30. The PSC acted outside its authority when it redefined "affected local unit" and its action is not authorized by law.

31. The PSC's redefining of "affected local" is unreasonable because it prohibits un-zoned communities from adopting and enforcing CREOs by police power.

Definition of "Hybrid Facility"

32. Additionally, the Order purports to illegally expand the PSC's jurisdiction to include applications for so-called "hybrid facilities." See **Order**, 5-6.

33. PA 233 contains explicit definitions for "solar energy facility," "wind energy facility," and "energy storage facility." Section 221(j), (w), and (x).

34. Under PA 233, an "energy storage facility" may be a component of a "solar energy facility" or a "wind energy facility." Section 221(w), (x).

35. According to Section 222(1), PA 233 applies to:

a. "Any solar facility with a nameplate capacity of 50 megawatts or more."

b. "Any wind facility with a nameplate capacity of 100 megawatts or more."

c. "Any energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more."

36. The phrase "hybrid facility," or any similar phrase, does not appear in PA 233. PA 233 does not confer jurisdiction to the PSC over projects that combine different facilities to reach the threshold requirements.

37. Yet the Order purports to expand the PSC's limited jurisdiction to projects that only "meet the statutory thresholds when multiple technologies are combined for siting," in a so-called "hybrid facility." **Order**, 4.

38. This expansion of the PSC's jurisdiction violates the Legislature's intent and is not authorized by law.

Conclusion

39. Appellants request the following relief:

a. That this court vacate the PSC's October 10, 2024 Order, or parts thereof;

b. That this court permanently enjoin the PSC from enforcing its October 10, 2024 Order, or parts thereof;

c. That this court preliminarily enjoin the PSC from enforcing its October 10, 2024 Order pending the outcome of this appeal; and

d. Any other relief the Court finds just and equitable.

40. No bond is required by this appeal.

41. In this appeal as of right, Appellants reserve the right to bring forth additional arguments that may entitle Appellants to relief.

Respectfully Submitted,

FOSTER, SWIFT, COLLINS & SMITH, P.C.
Attorneys for Appellants

Dated: November 8, 2024

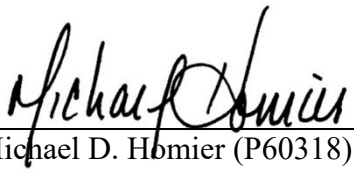
By: 

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EXHIBIT A

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 October 10, 2024 meeting of the Michigan Public Service Commission in Escanaba, Michigan.

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

ORDER

History of Proceedings

Public Act 233 of 2023 (Act 233), MCL 460.1221 *et seq.*, signed by Governor Gretchen Whitmer on November 28, 2023, provides a limited grant of siting authority under specified conditions to the Commission for certain utility-scale solar, wind, and energy storage facilities, effective November 29, 2024. Under specified conditions, Act 233 allows electric providers and independent power producers[1] (IPPs) to apply to the Commission to obtain a certificate for an eligible energy storage facility, solar energy facility, and/or wind energy facility, as defined. MCL 460.1222(2).

[1] An "independent power producer" is "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." MCL 460.1221(k).

On February 8, 2024, the Commission issued an order in this case (February 8 order) opening this docket and directing the Commission Staff (Staff) to file recommendations on application filing instructions, guidance relating to compatible renewable energy ordinances[2] (CREOs), and any other issues involving Act 233 by June 21, 2024. February 8 order, p. 3. Additionally, the Commission sought comments from interested persons regarding the Staff's recommendations and set deadlines for the filing of initial and reply comments for July 17, 2024, and August 9, 2024, respectively. *Id*.

On June 21, 2024, the Staff filed draft Application Instructions and Procedures (Staff Draft) in this docket. *See*, Case No. U-21547, filing #U-21547-0004. The Staff Draft was the culmination of the Staff's work following eight public meetings regarding implementation of Act 233 and a review of informal public comments received. *Id*. Throughout the public meetings, the Staff presented a series of straw proposals on topics contained in Act 233 and received feedback that informed the Staff Draft. [3]

On July 17, 2024, initial comments were filed by Liberty Power; the Michigan AFL-CIO; DTE Electric Company (DTE Electric); Orsted North America, LLC (Orsted); Consumers Energy Company (Consumers); Varnum LLP (Varnum); Invenergy Renewables, LLC (Invenergy); the Michigan Association of Counties (MAC); Energy Michigan; the Michigan Laborers' District Council (MLDC); and the Michigan Energy Innovation Business Council and Advanced Energy United (EIBC/United). *See*, Case No. U-21547, filing ##U-21547-0005 through U-21547-0015.

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[2] A compatible renewable energy ordinance is defined as "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)." MCL 460.1221(f).

[3] A copy of the meeting materials, recordings, and informal public comments received can be accessed at https://www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting (accessed October 9, 2024).

On August 9, 2024, reply comments were filed by EIBC/United, Consumers, DTE Electric, and Energy Michigan. *See*, Case No. U-21547, filing ##U-21547-0016 through U-21547-0019. Numerous public comments, including reply comments, were filed in the Case Comments section of this docket on behalf of individual landowners; developers; environmental groups, including the Sierra Club, the Michigan Environmental Council (MEC), Earthjustice, and the Natural Resources Defense Council; local officials; regulated utilities; trade groups, including the Michigan Townships Association (MTA), the Michigan Conservative Energy Forum (MICEF), the Great Lakes Renewable Energy Association (GLREA); labor union groups, including the International Brotherhood of Electrical Workers (IBEW), the Michigan Regional Council of Carpenters and Millwrights (MRCC); academic institutions, including the University of Michigan (U of M); and other interested persons. *See*, Case No. U-21547, filing ##U-21547-0001-CC through U-21547-0102-CC. Combined, over 100 comments were submitted in this case. While all comments were considered by the Staff and the Commission in the development of the filing requirements, not all comments have been specifically mentioned or addressed in this order due to the volume of comments received. The omission of specific comments in this order should not be construed such that those comments were not considered.

Additionally, the Staff worked with a consultant, RSG, Inc., to generate draft Sound Report Guidelines to provide the Commission with information necessary to assess whether an energy facility meets the noise limits outlined in Act 233. *See*, Case No. U-21547, filing #U-21547-0020. The Staff conducted a public engagement session on the draft Sound Report Guidelines on September 4, 2024, and invited comments from interested persons to be filed by September 11, 2024. *Id*. On September 11, 2024, the MTA, EIBC/United, Consumers, and DTE Electric filed comments on the draft Sound Report Guidelines. *See*, Case No. U-21547, filing ##U-21547-0022

through U-21547-0024. U of M and Black & Veatch Ltd. of Michigan (Black & Veatch) also filed case comments in response to the Sound Report Guidelines. *See*, Case No. U-21547, filing ## U-21547-0101-CC and U-21547-0102-CC.

The Staff also retained a consultant, Weston Solutions, Inc. (Weston), to provide recommendations for the Staff Draft and to develop an application checklist. Weston reviewed the Staff Draft and public comments received and provided organizational and substantive edits to add clarity to the requirements in the Staff Draft for prospective applicants.

The Commission appreciates the interested persons for providing extensive feedback and perspectives in this case, as demonstrated by the informative and voluminous record of public comments and case filings. This order provides a brief summary of comments (by topic) that pertain to the Staff Draft and the Sound Report Guidelines received in this docket, followed by further guidance on the implementation of Act 233.

Applicability

Section 222(1) of Act 233 provides that Act 233 applies to all the following: (1) any solar energy facility with a nameplate capacity of 50 megawatts (MW) or more, (2) any wind energy facility with a nameplate capacity of 100 MW or more, and (3) any energy storage facility with a nameplate capacity of 50 MW or more and an energy discharge capability of 200 megawatt-hours (MWh) or more. MCL 460.1222(1).

The Staff Draft adopts the applicability thresholds outlined in Section 222(1) of Act 233 and further proposes that hybrid energy facilities (i.e., energy facilities comprised of multiple technology types) should meet the statutory thresholds when multiple technologies are combined for siting. Staff Draft, p. 1.[4] Specifically, the Staff Draft proposes that "[h]ybrid facilities

[4] Page references to the Staff Draft will refer to the paginated portion of the document.

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." *Id*. The Staff Draft further proposes that "[h]ybrid projects which are comprised of wind facilities combined with solar and/or storage facilities must have a nameplate capacity of at least 100 MW in total which is the minimum size threshold for wind facilities." *Id*.

MTA comments that it disagrees with the Staff Draft's interpretation of the thresholds for hybrid facilities and that such an interpretation is unsupported by the statutory language used in Act 233. MTA argues that the Staff Draft's interpretation could lead to the applicability of the statute to combined energy facilities that would otherwise not qualify individually under the existing statutory thresholds. MTA's case comment, filing #U-21547-0088-CC, pp. 1-2.[5] MTA, in turn, proposes alternative language to the Staff Draft that specifies that solar or wind facilities that include energy storage systems must still meet minimum statutory size thresholds. *Id*., p. 2.

EIBC/United comment that the requirement to have hybrid facilities have a total nameplate capacity equivalent to the required minimum capacity for single-technology projects "makes logical sense," but argues that the Staff Draft's wording is confusing. As a result, EIBC/United propose minor language changes to the Staff Draft. EIBC/United's initial comments, filing #U-21547-0005, p. 9.

The Commission agrees with the Staff Draft's interpretation of the applicability of Act 233 to hybrid facilities and finds that interpretation to be reasonable and supported by Act 233's plain language. Importantly, the Commission finds that the statutory definitions for both "solar energy facility" and "wind energy facility" expressly include "energy storage facilities" as a part of these

[5] Page references to MTA's case comment, filing #U-21547-0088-CC, will refer to the paginated portion of the document.

facilities, and therefore, contemplate that hybrid energy storage facilities may be included in the statutory thresholds for solar and wind projects. *See*, MCL 460.1221(w) and (x).[6] Accordingly, the Commission adopts the Staff Draft's proposal for the applicability thresholds for hybrid facilities, with minor clarifying language changes.

Affected Local Unit Definition

Act 233 defines an "affected local unit" (ALU) to mean "a local unit of government in which all or part of a proposed energy facility will be located." MCL 460.1221(a). A "local unit of government" or "local unit," in turn, means "a county, township, city or village." MCL 460.1221(n). The Staff Draft's definition of ALU mirrors that found in Act 233 and further reads the definition in geographic terms to include a "city, township, or village, and the county, *regardless of zoning authority* . . . ." Staff Draft, p. 4 (emphasis added).

Additionally, Section 223(3) of Act 233 requires, in part, that the chief elected official (CEO) in each ALU to notify an electric provider or IPP, within 30 days following a meeting with that electric provider or IPP, if the ALU has a CREO. MCL 460.1223(3). If the CEO of each ALU notifies the electric provider or IPP that it has a CREO, then the electric provider or IPP is required to file for approval of the energy facility through each ALU's local siting process. *Id*. Importantly, however, under the Michigan Zoning Enabling Act (MZEA), Public Act 110 of 2006, the zoning jurisdiction of a county does not include areas subject to a township zoning ordinance. *See*, MCL 125.3102(x); MCL 125.3209. It is therefore impossible for a county to have an

[6] Though not determinative, the Commission further notes that the Staff Draft's interpretation of the applicability of Act 233 to hybrid facilities is consistent with the Michigan Department of Environment, Great Lakes, and Energy's (EGLE) eligibility requirements for the Renewables Ready Communities Award grant for hybrid facilities. *See*, https://www.michigan.gov/egle/-/media/Project/Websites/egle/Documents/Programs/MMD/Energy/renewables/RRCA-FAQs.pdf?rev=fb73f977e3124b248fdfed9c3c2a3f69&hash=4ACB6D8AE035D91A98112FE4CB8CEBE3 (accessed October 9, 2024).

applicable CREO if a township has enacted a CREO. *Id*. To harmonize Act 233 with this restriction, the Staff Draft interprets Section 223(3) of Act 233 to require "only ALUs with zoning jurisdiction [to] be required to have a CREO to require applicants to use the local siting process . . . ." Staff Draft, p. 4.

Several commenters take issue with the Staff Draft's geographic reading of ALU and instead advocate for the Commission to restrict the meaning of ALU to include only those local units of government that exercise zoning jurisdiction. EIBC/United, Energy Michigan, DTE Electric, GLREA, MICEF, and NGR all comment that the Staff Draft's geographic reading of ALU would be inconsistent with the purpose of Act 233.

EIBC/United argue that the Staff Draft incorrectly and inconsistently defines ALU to include local units that do not have zoning jurisdiction under the MZEA. According to EIBC/United, Act 233 represents a transfer of zoning authority from local governments to the Commission. As such, EIBC/United contend that "[Act 233] was intended to provide a new, alternative path for zoning approval rather than a different approval process outside of the zoning context. It is therefore to be read in the context of Michigan's established zoning law and interpreted to harmonize with the MZEA." EIBC/United's initial comments, filing #U-21547-0005, p. 4. Because the MZEA uses the term "local unit of government" to refer only to those local units with zoning jurisdiction, EIBC/United argue that the term ALU in Act 233 must be understood in the same way. *Id*., pp. 3-5. Additionally, EIBC/United assert that the Staff Draft inconsistently defines ALU in an arbitrary manner that would not be afforded respectful consideration under existing Michigan caselaw. *Id*., pp. 12-14.

Similarly, Energy Michigan comments that it agrees with the Staff Draft's harmonization of Section 223(3) of Act 233 with the MZEA, but objects to the treatment of ALU in Act 233's other

provisions as including local units without zoning jurisdiction. Like EIBC/United, Energy Michigan argues that it would be in accordance with the purpose of Act 233 to define ALU to include only those local units with zoning jurisdiction and that any variation in the term's meaning would be inconsistent. Energy Michigan's initial comments, filing #U-21547-0007, pp. 3-4.

DTE Electric also believes that the definition of ALU should be limited to local units that exercise zoning jurisdiction. DTE Electric argues that because Act 233 creates an alternate path to zoning approval from the local level, it is logical to interpret the meaning of ALU in the same manner as the MZEA. According to DTE Electric, applying this meaning would provide clarity to the implementation of Act 233, including provisions relating to meetings with CEOs, one-time grants, and host community agreements. DTE Electric's initial comments, filing #U-21547-0013, pp. 3-6.

GLREA provided a case comment that similarly commends the Staff Draft for harmonizing certain provisions of Act 233 with the MZEA but argues that ALU should be restricted to those local units with zoning jurisdiction throughout the Act. GLREA's case comment, filing #U-21547-0070-CC, pp. 2-3. According to GLREA, interpreting ALU more broadly "would give local units that have no say in local siting under the [MZEA] a role in the siting process established under [Act] 233, thus expanding the number of parties involved in a local approval process, contrary to the Legislative intent of wanting to expedite the siting approval process . . . ." *Id*., p. 5.

MICEF comments that limiting the definition of ALU to only those local units with zoning jurisdiction will clarify and streamline Act 233 and better reflect the legislative intent of the Act. MICEF's case comment, filing #U-21547-0094-CC, pp. 3-4.

In reply comments, EIBC/United and DTE Electric reiterate their arguments to limit the meaning of ALU to exclude local units without zoning jurisdiction. In its reply comment, Consumers also "supports the position that the Commission should adopt a single definition for [ALU] in the context of implementing Act 233 that, in alignment with the [MZEA], should be limited to units of government that have zoning jurisdiction." Consumers' reply comment, filing #U-21547-0017, pp. 3-4. Additionally, NGR submitted a reply comment strongly agreeing with EIBC/United and Energy Michigan's comments regarding the limited definition of ALU. NGR's case comment, filing #U-21547-00100-CC, p. 1.

The Commission has reviewed Act 233, the Staff Draft, and pertinent comments and agrees with the commenters' argument that the term ALU should be restricted to only those local units of government that exercise zoning jurisdiction. Importantly, Act 233 only transfers authority to site an energy facility from the local unit to the Commission under limited circumstances. These circumstances include when: (1) a local unit of government exercising zoning jurisdiction requests an electric provider or IPP to obtain a certificate from the Commission; (2) an ALU fails to approve or deny an application under the local siting process within 120 days; (3) an ALU, under the local siting process, denies an application that complies with Section 226(8) of Act 233; and (4) an ALU amends its zoning ordinance after its CEO notifies the electric provider or IPP that the ALU has a CREO, and the amendment imposes additional requirements that are more restrictive than those outlined in Section 226(8) of Act 233. *See*, MCL 460.1222(2); MCL 460.1223(3)(c). In addition, an ALU "is considered not to have a [CREO] if it has a moratorium on the development of energy facilities in effect within its jurisdiction." MCL 460.1221(f).

Critically, the Commission finds that all the circumstances that trigger the Commission's limited authority to site energy facilities necessarily require a local unit of government to exercise zoning jurisdiction. As such, although the statutory definition of ALU does not reference zoning jurisdiction, reading the term in light of the entire context of Act 233's statutory scheme to provide a limited transfer of siting authority to the Commission reveals that such a restriction is not only reasonable, but necessary. *See*, *Honigman Miller Schwartz & Cohn LLP v City of Detroit*, 505 Mich 284, 307; 952 NW2d 358 (2020), quoting *Sweatt v Dep't of Corr*, 468 Mich 172, 179; 661 NW2d 201 (2003) ("A statute should be interpreted in light of the overall statutory scheme, and '[a]lthough a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context.'").

Accordingly, the Commission finds that an ALU under Act 233 is limited to include only those local units of government that exercise zoning jurisdiction.

Pre-Application Requirements

1. Meeting with Chief Elected Official

Section 223(2) of Act 233 provides that "[a]t least 60 days before a public meeting held under subsection (1), the electric provider or IPP planning to construct an energy facility shall offer in writing to meet with the [CEO] of each [ALU], or the [CEO's] designee, to discuss the site plan." MCL 460.1223(2).

The Staff Draft provides that an electric provider or IPP's offer to meet with a CEO must be delivered by email and by certified U.S. mail at least 60 days before the public meeting in each ALU and that this offer must be sent to the entire board or legislative body of the ALU that exists within the jurisdiction. Staff Draft, p. 4. The Staff Draft further provides that "[t]he applicant may proceed as if there is not a [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." Staff Draft, p. 4.

EIBC/United comment that it can be difficult to find accurate, updated email addresses for an ALU's CEO and urge the Commission to revise the Staff Draft to only require "reasonable efforts" to contact an ALU's CEO via email. EIBC/United's initial comments, filing #U-21547-0005, p. 10.

Liberty Power questions whether CEOs are required to provide notification that the ALU has a CREO within 30 days of receiving an electric provider or IPP's offer to meet, and if the CEO fails to respond within that timeframe, whether the electric provider or IPP may proceed as if the ALU does not have a CREO. Liberty Power's initial comments, filing #U-21547-0015, p. 2.

In reply comments, Consumers supports comments requiring the Commission to clarify that "an ALU must respond within 30 days of receiving notification and if no response is received then the applicant can proceed as if there is no CREO in place." Consumers' reply comment, filing #U-21547-0017, p. 2.

The Commission agrees with comments that propose that, in addition to sending the notification via certified U.S. mail, an electric provider or IPP's reasonable efforts to obtain the email address of an ALU's CEO are sufficient to comply with the notification requirements in Section 223(2) of Act 233. Additionally, the plain language of Section 223(3) of Act 233 provides that an electric provider or IPP is only required to go through the local siting process if the CEO of each ALU notifies the electric provider or IPP that the ALU has a CREO. MCL 460.1223(3). As such, the Commission finds that the CEO of an ALU has an affirmative obligation to notify an electric provider or IPP of the existence of a CREO, and if that CEO fails to notify the electric provider or IPP of the existence of a CREO within 30 days following receipt of an offer to meet,

the electric provider or IPP may proceed as if an ALU does not have a CREO. *See*, MCL 460.1223(3).

2. Compatible Renewable Energy Ordinance

a. Definition and Scope

As noted above, Act 233 defines a CREO to mean "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)." MCL 460.1221(f). Additionally, Act 233 provides that "[a] local unit of government is considered not to have a [CREO] if it has a moratorium on the development of energy facilities in effect within its jurisdiction." MCL 460.1221(f).

The Staff Draft's definition of a CREO mirrors that found in Act 233 and further provides that:

> [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 [Act] 233 for the technology type(s) addressed in the ordinance. *Any provision in [Act] 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*.

Staff Draft, p. 4 (emphasis added).

Several commenters argue that the Staff Draft's definition of a CREO is too broad and that a CREO should be narrowed to preclude any additional restrictions beyond the requirements specifically outlined in Section 226(8) of Act 233.

EIBC/United comment that many local units are placing additional restrictions in their ordinances that amount to exclusionary zoning or are imposing onerous conditions that, in practice, impede the development of energy facilities within that local unit's jurisdiction.

EIBC/United contend that these actions run afoul of the statutory language and intent of Act 233. According to EIBC/United, "the Legislature has determined, as a matter of law, that an energy facility satisfying the Section 226(8) requirements (as applicable) does not present an unreasonable threat to public health or safety." EIBC/United's initial comments, filing #U-21547-0005, p. 7. EIBC/United, in turn, state that this determination categorically forecloses the ability of local units to impose additional zoning requirements in a CREO. Additionally, EIBC/United argue that the plain language of Act 233 limits a CREO's requirements to those outlined in Section 226(8) and preempts any additional restrictions imposed by a local unit. Moreover, EIBC/United urge the Commission "to clarify that any additional conditions or zoning restrictions beyond those included in Section 226(8) imposed on a project by an ALU, especially those that amount to exclusionary zoning, shall automatically disqualify the ALU's ordinance from being considered a CREO." EIBC/United's initial comments, filing #U-21547-0005, pp. 8-9.

DTE Electric also comments that the Staff Draft is too broad and does not appropriately limit the scope of a CREO. DTE Electric argues that the plain language of Act 233 expressly states that the requirements of a CREO can be "no more restrictive than the provisions included in Section 226(8)," and that to comply with this requirement, the Commission must specify that local ordinances cannot contain any additional requirements or restrictions to be considered a CREO. DTE Electric's initial comments, filing #U-21547-0013, p. 2. DTE Electric further contends that, without the Commission providing clarity on the scope of a CREO, the company anticipates that "CREO-related disputes will proliferate, which will lead to permitting delays, added costs, and burdensome and avoidable litigation for developers, [ALUs], and the Commission." DTE Electric's initial comments, filing #U-21547-0013, p. 2.

Similarly, Orsted states that the Staff Draft's proposal for a broad CREO "invites disputes and in extreme cases, could open the door for local units to stifle statutorily permissible renewable energy projects." Orsted's initial comments, filing #U-21547-0012, p. 2. Instead, Orsted argues that the Commission should read the statutory definition of a CREO as excluding all restrictions and requirements that a local unit could impose except for those specifically enumerated in Section 226(8) of Act 233. Orsted points to Section 223(3)(c)(ii) of Act 233, which states that electric providers and IPPs may apply to the Commission if a local unit denies an application that complies with the requirements outlined in Section 226(8) of Act 233, in support of a narrowed definition for a CREO. Orsted's initial comments, filing #U-21547-0012, pp. 3-4.

Energy Michigan argues that the Commission cannot avoid determining whether an ALU has a CREO, and that as such, the Commission should adopt a "safe harbor" for CREOs that does not permit a CREO to contain any deviations or additions to the restrictions outlined in Section 226(8) of Act 233. According to Energy Michigan, establishing a "safe harbor" would "dramatically decrease the number of disputes the Commission would have to adjudicate over whether or not an ALU ha[s] a CREO and would provide ALJs, applicants, and ALUs with a clear basis for review of any such disputes that did come to the Commission." Energy Michigan's initial comments, filing #U-21547-0007, p. 6.

In its comments, Varnum also advocates for a narrow interpretation of a CREO and argues that a CREO cannot contain any requirements not found in Section 226(8) of Act 233. Varnum argues that without such narrowing guidance, ALUs will argue that a CREO can contain additional restrictions that are aimed at preventing an electric provider or IPP from obtaining a permit for an energy facility (i.e., lot coverage maximums, siting overlays, and prohibitions on Part 361 of

Public Act 451 of 1994 (Act 116) lands). Varnum's initial comments, filing #U-21547-0010, pp. 1-2.

Unlike other commenters, MICEF advocates for a broad reading of a CREO. MICEF states that, from a historical and practical perspective, "a local ordinance addressing energy projects comprised only of the limited specifications in [Act] 233, Section 226(8) would be inadequate and irresponsible given the normal obligations local officials have under the MZEA to assure that development in their community is safe and appropriate." MICEF's case comment, filing #U-21547-0094-CC, p. 6. MICEF argues that as long as a local ordinance contains the requirements set forth in Section 226(8) of Act 233, the local ordinance is legally a CREO. Further, MICEF argues that only provisions that relate to the requirements contained in Section 226(8) are governed by Act 233 and that other restrictions unrelated to those requirements are acceptable provisions that may be contained in a CREO. According to MICEF, "[a]s long as these provisions are in the ordinance, despite the presence of other restrictive provisions, a [CEO] is legally justified in notifying a developer that the local unit has a CREO." MICEF's case comment, filing #U-21547-0094-CC, p. 6.

MTA is also supportive of the broad reading of a CREO in the Staff Draft. While acknowledging the restrictive language used in the statutory definition of a CREO, MTA states that it supports the inclusion of any provision that is in Act 233 as an acceptable provision of a CREO, and that permitting such additional provisions "allows a CREO to be most effective . . . ." MTA's case comment, filing #U-21547-0094-CC, pp. 10-11.

In reply comments, EIBC/United disagree with MICEF's contention that a limited CREO would be inadequate and irresponsible. Instead, EIBC/United state that:

> [t]he function of the definition of a CREO in [Act] 233 is simply to draw a line. On one side of that line, an ALU has complete authority to retain jurisdiction over

> local siting. On the other side of that line, a developer has the option to seek a certificate from the Commission. The definition of a CREO, therefore, is simply a safe harbor for an ALU that would protect it from having its siting jurisdiction transferred to the Commission under [Act] 233.

EIBC/United's reply comments, filing #U-21547-0016, p. 4.

EIBC/United further argue that siting an energy facility with the Commission is likely to be more expensive, more complex, and longer than the local siting process. As such, EIBC/United assert that developers of an energy facility will be incentivized to work with local units that have ordinances that allow facilities to be sited, even if they do not meet the definition of a CREO. According to EIBC/United, if the Commission adopts a narrow definition of a CREO:

> a type of practical "equilibrium" would emerge, whereby the Commission certification process is available to developers in the event that a local zoning ordinance is truly not practically [sic] workable but where developers would, in most cases, prefer to seek local approval if at all possible. The Commission certification process would—in this "equilibrium" scenario—thus be limited to situations where ALUs were truly acting to block renewable development by imposing unreasonable requirements, restrictions and conditions on that development. Outside of those situations, ALUs would remain free as a practical matter to pass and enforce ordinances that included requirements and conditions more restrictive than would be allowable under the narrow CREO definition (as limited to those terms contained in Section 226(8)). Were the ALU to include provisions that were so restrictive as to render development impracticable, however, the developer would always have recourse to the Commission process. This would serve as a backstop to discipline the local process, in line with the purposes of [Act] 233.

EIBC/United's reply comments, filing #U-21547-0016, pp. 4-5.

EIBC/United, in turn, contend that an ALU's decision to adopt a CREO would be of no legal or practical significance and that an ALU would continue to be able to carry out its obligations under the MZEA. EIBC/United's reply comments, filing #U-21547-0016, p. 5.

Consumers replies that the company supports other commenters' arguments that the definition of a CREO should be limited. Consumers argues that the Commission's implementation of Act 233 is meant to provide clarity and that the adoption of a broad reading of a CREO would

invite local units to adopt local ordinances that contain requirements exceeding the provisions of Section 226(8) that restrict the development of energy facilities and that permit a local unit to exceed its zoning authority. Consumers' reply comments, filing #U-21547-0017, pp. 2-3.

DTE Electric reiterates its assertion that a CREO must be read narrowly. DTE Electric maintains that a CREO cannot contain any requirements outside of the restrictions expressly outlined in Section 226(8) of Act 233 and that the addition of requirements beyond those outlined in Section 226(8) are inconsistent with the language used in Act 233. DTE Electric's reply comments, filing #U-21547-0018, pp. 2-3.

Energy Michigan also reiterates its position that a CREO must be limited to those restrictions outlined in Section 226(8) of Act 233. Energy Michigan argues that the plain language of the statutory definition of a CREO limits a CREO to the restrictions contained in Section 226(8) of Act 233 and that any additional requirements that are more restrictive are clearly incompatible. Energy Michigan, therefore, proposes that the Commission adhere to the statutory definition and clarify that a local ordinance that contains requirements outside of those expressed in Section 226(8) of Act 233 are incompatible and not a CREO. Energy Michigan's reply comments, filing #U-21547-0019, pp. 2-5.

As an initial matter, the Commission notes that nearly all commenters that commented on this issue agree that clarity and guidance are needed regarding the scope and definition of a CREO under Act 233. With respect to the competing viewpoints expressed in the comments, the Commission agrees that a narrow definition for a CREO is appropriate. The Commission finds that the plain language of the definition of a CREO in Act 233 expressly limits a CREO to requirements that "are no more restrictive than the provisions included in section 226(8)." MCL 460.1221(f). Other provisions in Act 233 reinforce this limitation. Specifically,

Section 223(3)(c)(ii) of Act 233 permits an electric provider or IPP to submit an application to the Commission if "the application *complies with the requirements of section 226(8)*, but an [ALU] denies the application." MCL 460.1223(3)(c)(i) (emphasis added). Similarly, Section 223(3)(c)(iii) of Act 233 provides that an electric provider or IPP may submit an application to the Commission if "[a]n [ALU] amends its zoning ordinance after the [CEO] notifies the electric provider or IPP that it has a [CREO], and the amendment *imposes additional requirements on the development of energy facilities that are more restrictive than those in section 226(8)*." MCL 460.1223(3)(c)(iii) (emphasis added). The plain language of these provisions demonstrates that a CREO may only contain those requirements expressly outlined in Section 226(8) of Act 233. Had the Legislature intended to permit local units to include additional requirements beyond those identified in Section 226(8) of Act 233, it would not have restricted the Commission's authority to site energy facilities, in part, on the basis that a local unit denied an application for reasons beyond "the requirements of section 226(8)."

Accordingly, the Commission finds that a CREO under Act 233 means an ordinance that provides for the development of energy facilities within a local unit of government, the requirements of which are no more restrictive than the provisions included in Section 226(8). The Commission further specifies that a CREO may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of Act 233 and may not contain additional requirements more restrictive than those specifically identified in that section.

b. Dispute Resolution Process

Pursuant to Section 223(3) of Act 233, if the CEO of an ALU notifies an electric provider or IPP that the ALU has a CREO, then the electric provider or IPP is required to follow that ALU's local siting process before applying to the Commission. MCL 460.1223(3). The ALU then has

120 days to approve or deny an application after receiving the electric provider or IPP's application, subject to an extension of up to an additional 120 days upon joint agreement between the applicant and the ALU. MCL 460.1223(3)(b).

The Staff Draft contemplates that electric providers and IPPs may disagree with a CEO's determination about whether an ALU has an applicable CREO. The Staff Draft, however, discourages electric providers and IPPs from filing an application for a certificate from the Commission "while the applicant is in dispute with the ALU regarding its CREO . . . ." Staff Draft, p. 5. Further, the Staff Draft provides:

> 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.

Staff Draft, p. 5.

In response to this proposal, several commenters advocate for the Commission to provide a dispute resolution process to resolve disagreements between electric providers/IPPs and ALUs prior to the expiration of the 120-day period provided in the statute for ALUs to make a determination on an application.

EIBC/United comment that they are concerned that an ALU may claim to have a CREO in bad faith to delay the development of an energy facility. Under this scenario, EIBC/United advocate for the Commission to provide for a dispute resolution process whereby electric providers and IPPs could request a declaratory ruling from the Commission outside of the contested case proceeding process that would result in a "CREO/no-CREO" finding that would be made on an expedited 30-day *ex parte* basis. EIBC/United's initial comments, filing #U-21547-0005, p. 16.

Energy Michigan also argues that electric providers and IPPs must have the ability to dispute a CEO's assertion that it has a CREO. According to Energy Michigan, requiring an electric provider or IPP to follow the 120-day local siting process relies entirely on a CEO's assertion that the ALU has a CREO and does not provide an opportunity to verify if that statement is accurate. Energy Michigan alleges that this, in turn, could lead to delays that Act 233 purportedly seeks to avoid. As such, Energy Michigan proposes that the Commission reject the Staff Draft's discouragement of filings during CREO disputes, and instead advocates for the Commission to encourage parties to seek resolution expeditiously in order to effectuate the timely and efficient development of energy facilities. Energy Michigan's initial comments, filing #U-21547-0007, pp. 4-6.

Varnum comments that, under the Staff Draft's proposal, ALUs are incentivized to claim the existence of a CREO to delay the development of energy facilities within their communities. As such, Varnum states that it is sensible for the Commission to resolve CREO disputes as soon as they arise and suggests that such a determination be made within 45 days of the submission of an application to the Commission. Varnum's initial comments, filing #U-21547-0010, p. 2.

Orsted comments that the Staff Draft suggests that an ALU's bad-faith CREO notification would be definitive and would effectively require an electric provider or IPP to proceed through a frivolous local siting process. Orsted argues that this would result in delays that would frustrate the purpose of Act 233. Additionally, Orsted argues that the Staff Draft's discouragement of filings with the Commission during CREO disputes does not absolve the Commission of its responsibility to resolve CREO disputes, but rather, merely delays such a decision. Accordingly, Orsted advocates for the Commission to permit electric providers and IPPs to request a declaratory ruling on an expedited basis. Orsted argues that providing such a process will allow electric

providers, IPPs, and ALUs to avoid expending resources on an unnecessary local siting process and provide clarity. Orsted's initial comments, filing #U-21547-0012, pp. 5-6.

DTE Electric agrees that delaying the resolution of CREO disputes may lead to additional costs and delays to parties. DTE Electric also argues that such delays undermine the intent of Act 233, which the company alleges is to streamline permitting and to create an alternative path to zoning for energy facilities. In turn, DTE Electric proposes that the Commission provide a procedure for resolving CREO disputes at the onset. DTE Electric's initial comments, filing #U-21547-0013, p. 3.

GLREA also comments that it is concerned that ALUs will allege in bad faith that they have a CREO in order to delay the development of energy facilities. As a result, GLREA requests that the Commission provide for an expedited dispute resolution process that would result in a "CREO/no-CREO" finding from the Commission on a 30-day *ex parte* review basis. GLREA's case comment, filing #U-21547-0070-CC, pp. 3-4.

Sierra Club, NRDC, MEC, and Earthjustice are also concerned about unreasonable delays and request that the Commission provide clear direction to ALUs and applicants when a local ordinance does not comply with the statutory definition of a CREO, including what steps an applicant can take to obtain Commission jurisdiction and review when an ALU asserts that it has a CREO and the applicant disagrees. Sierra Club, NRDC, MEC, and Earthjustice's case comment, filing #U-21547-0057-CC, pp. 2-4.

In reply comments, EIBC/United argue that Section 223(3) of Act 233 only enables a CEO to notify an electric provider or IPP if an ALU has a CREO, and that the section "does not give the [CEO] the right to make the underlying legal determination regarding whether or not a zoning ordinance is in fact a CREO." EIBC/United's reply comments, filing #U-21547-0016, p. 6.

Accordingly, EIBC/United argue that only the Commission is permitted to make a legal determination on the existence of a CREO, and that this determination must be made before the electric provider or IPP is required to go through the 120-day local siting process. EIBC/United's reply comments, filing #U-21547-0016, p. 6.

Consumers replies that it also agrees that the Staff Draft does not provide for the opportunity to appeal a CEO's CREO determination, and that the lack of such an appeals process could result in significant delays to the siting of energy facilities. Additionally, Consumers comments that the Commission should not discourage the use of a dispute resolution process, but instead should outline the process by which CREO disputes should be resolved, including the promulgation of rules clarifying when a local ordinance constitutes a CREO. Consumers' reply comments, filing #U-21547-0017, pp. 4-6.

Finally, in reply comments, DTE Electric states that it is in alignment with other commenters who agree that the Commission should develop a dispute resolution process for CREOs. DTE Electric maintains that the lack of such a dispute resolution process will result in delays that negate the purpose of Act 233. DTE Electric's reply comments, filing #U-21547-0018, pp. 3-4.

The Commission finds that Section 223(3) of Act 233 unambiguously provides that if the CEO of each ALU notifies an electric provider or IPP that the ALU has a CREO, "then the electric provider or IPP *shall* file for approval with each ALU." MCL 460.1223(3) (emphasis added). The only exception to this lies in the definition of CREO itself, which, as noted above, states that an ALU "is considered not to have a [CREO] if it has a moratorium on the development of energy facilities in effect within its jurisdiction." MCL 460.1221(f). Section 223 of Act 233 then expressly provides that the "local unit of government with which an application is filed under this subsection *shall* approve or deny the application within 120 days after receiving the application."

MCL 460.1223(3)(b) (emphasis added). The requirement to apply to each ALU that has notified an electric provider or IPP that it has a CREO is not optional; it is explicitly mandated by Act 233's plain language. *See*, *Costa v Cmty Emergency Med Servs, Inc*, 475 Mich 403, 409; 716 NW2d 236, 239 (2006) ("The Legislature's use of the word 'shall' in a statute generally indicates a mandatory and imperative directive.") (internal quotations omitted).

Additionally, the Commission disagrees with the assertion that it is necessarily required to determine whether an ALU has a CREO. Section 223 of Act 233 only allows an electric provider or IPP to file an application with the Commission if one of the following has occurred: (1) the ALU fails to timely approve or deny the application; (2) the ALU denies the application, but the application complies with the requirements of Section 226(8) of Act 233; or (3) after CEO notification that an ALU has a CREO, the ALU amends its local ordinance to impose additional requirements that are more restrictive than those outlined in Section 226(8) of Act 233. MCL 460.1223(3)(c). Importantly, with the exception of an ALU's post-notification amendment of its local ordinance, all of the circumstances that grant the Commission jurisdiction to site an energy facility necessarily involve the Commission's review of the *application*, and not an ALU's local ordinance. Moreover, the conditions that allow the filing of an application with the Commission only occur *after* the electric provider or IPP has engaged in the local siting process.

This process goes to the heart of the framework established by the Legislature regarding which applications are eligible for Commission review. Again, the Commission emphasizes that it is a limited transfer of siting authority given to the Commission, an authority that reaches only to wind, solar, and energy storage projects of a minimum size as defined by the statute and which, unless there is a moratorium in place or in instances in which the ALU requests that the applicant go directly to the Commission, must originate at the local level. Under this framework, the

Commission serves not as an appellate court reviewing the decisions of ALUs, but rather considers applications filed by electric providers or IPPs that meet these minimum statutory size requirements and which are filed with the Commission consistent with these statutory pathways. As such, contrary to the assertion of some commenters, the Commission finds that there is no need for a dispute resolution process for an expedited review of an ALU's local ordinance.

The Commission is also not persuaded that ALUs will be incentivized to notify an electric provider or IPP in bad faith that it has a CREO. Notably, Act 233 provides that electric providers and IPPs that submit an application to the Commission pursuant to the process outlined in Section 223 are not required to comply with Sections 223(1) or 226(1) of Act 233. MCL 460.1223(3)(d). Section 223(1) of Act 233 requires electric providers and IPPs to hold a public meeting in the ALU. MCL 460.1223(1). Additionally, Section 226(1) of Act 233 requires electric providers and IPPs to make a one-time grant of up to $75,000 to each ALU to cover costs associated with participation in the contested case proceeding. MCL 460.1226(1). As such, ALUs that notify electric providers and IPPs in bad faith of the existence of a CREO do so at their own peril and risk missing out on the benefit of a public meeting within their community or one-time grant funds that the ALU might otherwise receive.

Further, Section 223(5) of Act 233 states:

> If the commission approves an applicant for a certificate submitted under [Section 223(3)(c)], the local unit of government is considered to no longer have a [CREO], unless the commission finds that the local unit of government's denial of the application was reasonably related to the applicant's failure to provide information required by [Section 223(3)(a)].

MCL 460.1223(5). This essentially establishes a "one strike" policy by which an ALU can claim to have a CREO only up to the point where it denies or fails to timely approve or deny an application that is subsequently granted by the Commission as compliant with the provisions of

Section 226(8) of Act 233, at which point the ALU would be considered to no longer have a CREO.

Accordingly, the Commission disagrees with commenters and finds that the plain language of Act 233 does not support creation of a CREO dispute resolution process that would enable electric providers or IPPs to forgo filing for approval for an energy facility through the local siting process if the CEO in each ALU determines that the ALU has a CREO. Additionally, due to the Commission's limited jurisdiction over the siting of energy facilities, the Commission agrees with the Staff Draft and strongly discourages electric providers and IPPs from filing an application with the Commission while engaged in the local siting process required by and under the timelines stipulated by Section 223(3) of Act 233. The Commission further finds that resolving disputes between applicants and ALUs regarding CREOs is not within the Commission's jurisdiction.

c. Workable Ordinances

The Staff Draft addresses the scenario where an ALU's zoning ordinance may not meet the definition of a CREO, but it is still possible for an electric provider or IPP to site an energy facility through the local siting process. Specifically, the Staff Draft provides the following:

> When a local ordinance does not meet the definition of a CREO, following the ALU siting process is still encouraged in areas that have workable ordinances. A workable 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 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 single ordinance that is a CREO addressing solar and storage facilities.
> 2. The ALU has two separate ordinances that are CREOs addressing solar and storage facilities.
> 3. The ALU has an ordinance that is a CREO either for solar or storage facilities and a workable ordinance or special land use approval processes

for the facilities not addressed in the CREO that allow the facilities to be sited.

4. The ALU has workable ordinances 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 crosses jurisdictional boundaries and one of the ALUs does not notify the applicant that it has a CREO or after attempts to site the project in one or more ALUs 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 or has a workable local ordinance, the applicant is encouraged to pursue siting through the ALU process.

Staff Draft, p. 5.

Several commenters take exception to the Staff Draft's guidance regarding workable ordinances.

EIBC/United agree with the Staff Draft's acknowledgement that an energy facility can be sited through the local zoning process if an ALU has a workable ordinance but argue that the Commission lacks jurisdiction over workable ordinances or whether an electric provider or IPP chooses to site an energy facility through a workable ordinance. According to EIBC/United, under the requirements of Act 233, if an ALU does not have a CREO, an electric provider or IPP may apply to the Commission. Thus, while EIBC/United acknowledge that the Commission may encourage electric providers or IPPs to site energy facilities through a workable ordinance, they argue that the Commission may not mandate this process. EIBC/United's initial comments, filing #U-21547-0005, pp. 14-16.

Similarly, Invenergy comments that Act 233 does not give the Commission authority to determine when a local ordinance may be considered a "workable ordinance." Instead, Invenergy contends that the Commission has the responsibility to site an energy facility that meets the requirements of Act 233, even if the Commission believes that a local unit's zoning ordinance may be workable. Invenergy's initial comments, filing #U-21547-0007, p. 1.

Varnum argues that Act 233 makes no mention of a "workable ordinance" and instead requires an ALU to have a CREO in order to participate in the siting of an energy facility. As a result, Varnum argues that the Staff Draft should not "introduce a different concept that is contrary to [Act 233's] requirements. If anything, 'workable ordinance' will allow ALUs to argue that, despite not having a CREO, a developer must comply with a more restrictive local ordinance to obtain project approval." Varnum's initial comments, filing #U-21547-0010, p. 2. Accordingly, Varnum argues that the Commission should, at a minimum, clarify that the concept of a workable ordinance only applies when there is agreement between an ALU and an electric provider or IPP. Varnum's initial comments, filing #U-21547-0010, pp. 2-3.

Consumers comments that Act 233 does not provide any guidance to determine whether a local ordinance is considered workable. As a result, Consumers urges the Commission to clarify that, although encouraged, electric providers and IPPs are not required to site an energy facility through a workable ordinance. According to Consumers, absent such clarification, it could be interpreted that special circumstances exist whereby electric providers and IPPs would need to follow the local siting process, even when an ALU does not have a CREO. Consumers' initial comments, filing #U-21547-0011, pp. 3-4.

MICEF comments that the Staff Draft makes numerous references to a workable ordinance but does not provide a formal definition of the term. MICEF, in turn, argues that the lack of more detailed information about what constitutes a workable ordinance could lead to confusion or further disagreement. As a result, MICEF questions the value of referencing the concept of a workable ordinance in the Staff Draft. MICEF's case comment, filing #U-21547-0094-CC, p. 5.

In reply comments, Consumers maintains that it is committed to working with local units but reiterates its stance that the Staff Draft's inclusion of the concept creates confusion and is

inconsistent with Act 233. As such, Consumers urges the Commission to refrain from opining on local siting considerations that the company alleges is outside of the scope of the process outlined in Act 233. Consumers' reply comments, filing #U-21547-0017, p. 3.

DTE Electric, however, disagrees with commenters' suggestions to redefine or remove the concept of a workable ordinance from the Staff Draft. DTE Electric argues that Act 233 is meant to serve as a backstop if siting efforts at the local level fail but that electric providers and IPPs should not be prevented or discouraged from attempting to work with local units that have workable ordinances. DTE Electric's reply comments, filing #U-21547-0018, p. 6.

As previously explained, the Commission finds that its authority to site energy facilities under Act 233 is limited. Specifically, the siting process established by Act 233 is only utilized if an electric provider or IPP voluntarily chooses to seek to obtain a certificate from the Commission or if a local unit of government exercising zoning requests the Commission to require an electric provider or IPP to obtain a certificate, and where the energy facility meets the minimum size requirements included in the statute. MCL 460.1222(2). Absent these circumstances, the process outlined in Act 233, including the Commission's review of an application, is not triggered. In the event the Commission's jurisdiction is not triggered, electric providers and IPPs are required to site energy facilities in the same manner as they have prior to the enactment of Act 233– through the local siting process.

The Commission further finds that Act 233 does not provide the Commission with authority to require electric providers or IPPs to site an energy facility through a local unit with a workable ordinance. To the contrary, Act 233 only allows electric providers and IPPs to request a certificate from the Commission if specific requirements are met, including in instances where the applicant is first denied by the ALU. *See*, MCL 460.1223. As such, the option for an electric provider or

IPP to site an energy facility through the local siting process, and outside of the process established by Act 233, remains available. The Commission has no jurisdiction over—and therefore provides no guidance on—siting processes that fall outside the parameters of Act 233. The express limitation on the Commission's ability to review an application for a certificate under Act 233 only reinforces the continued availability of local approval paths. *See*, MCL 460.1222(2).

Accordingly, the Commission finds that Act 233 does not provide authority for the Commission to require an electric provider or IPP to site an energy facility through a workable ordinance.

d. Projects Located in Multiple Jurisdictions

The Staff Draft addresses how the Commission will handle a project that crosses multiple jurisdictions of local units and provides:

> When a project crosses multiple jurisdictional boundaries and one or more ALUs have CREOs or workable ordinances, and one or more ALUs do not have CREOs or workable ordinances or after attempts to site the project in 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.

Staff Draft, p. 5.

In comments, Orsted states that it appreciates the clarification in the Staff Draft regarding projects that span multiple jurisdictions but believes that Act 233 was meant to create an alternative zoning process that is only applicable to areas where the local siting process was unworkable. Accordingly, Orsted proposes that the Commission's review should be limited to only those portions of a project that are located in local units that do not have a CREO or where the project otherwise complies with Act 233, but the local unit has denied the electric provider or IPP's application. Orsted's initial comments, filing #U-21547-0012, pp. 6-7.

Similarly, DTE Electric proposes that the Commission should only review portions of a project that are located in jurisdictions without a CREO or a workable ordinance or where the local unit has denied a project that otherwise complies with Act 233. DTE Electric contends that the Commission's review of an entire project could impose additional burdens on electric providers and IPPs by requiring them to apply to the Commission where there would otherwise be an opportunity to work through the local siting process for a portion of the project. DTE Electric argues that this, in turn, would be inconsistent with other statements in the Staff Draft that encourage electric providers and IPPs to work through the local siting process. DTE Electric's initial comments, filing #U-21547-0013, p. 7.

The Commission agrees with the Staff Draft and finds that it is reasonable and appropriate for the Commission to review an entire project when the proposed energy facility spans multiple ALUs with zoning jurisdiction. The Commission finds that Act 233 expressly requires the Commission to grant an application and issue a certificate if it makes certain determinations regarding the "energy facility." *See*, MCL 460.1226(7)(a), (b), (e), (f), and (g). Further, the statute provides that "[b]efore beginning construction of an energy facility, an electric provider or [IPP] may, pursuant to this part, obtain a certificate for that energy facility from the commission." MCL 460.1222(2). Notably, the statutory text provides no basis for the Commission to make these determinations for a portion or subset of a given energy facility. Furthermore, as a practical matter, many of the required determinations would be difficult for the Commission to perform without a review of the entire project. For example, the Commission must determine whether the public benefits of a proposed energy facility justify its construction. MCL 460.1226(7)(a). If the Commission were to limit its review to only a portion of the proposed project, it would be difficult

to ascertain the full extent of public benefits that the entire energy facility may contribute to justify its construction.

Accordingly, the Commission finds that when a proposed project is located in multiple ALUs and one or more ALUs have CREOs, and one or more ALUs do not have CREOs, or after attempts to site the project in an ALU have failed, the Commission will review the entire proposed project, including the portions of the project that are located in an ALU that has a CREO.

e. Unzoned Areas

The Staff Draft addresses unzoned areas and provides that:

> [a]n 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 [Act] 233. For purposes of Section 223 of [Act] 233, unzoned areas should be treated the same as ALUs with CREOs because they do not impose restrictions more stringent than those outlined in [Act] 233.

Staff Draft, p. 4.

EIBC/United argue that the Staff Draft's proposal on unzoned areas is misguided. EIBC/United state that the only time the Commission's siting of an energy facility becomes relevant is if there is local zoning and the local unit with zoning jurisdiction has not established a CREO. EIBC/United, in turn, argue that Act 233 does not apply if there is no local zoning. EIBC/United contend that the only exception to this exclusion occurs when a local unit adopts a non-zoning restriction on the development of an energy facility, in which case, EIBC/United argue that the unzoned portion of the project should be reviewed by the Commission and the non-zoning restriction should be found to conflict with Act 233. EIBC/United's initial comments, filing #U-21547-0005, pp. 11-12.

DTE Electric comments that it believes that Act 233 does not apply to unzoned areas. According to DTE Electric, because Act 233 was intended to create an alternative zoning pathway

for the siting of energy facilities, zoning approval for unzoned areas is unnecessary because developers can, in most cases, simply proceed with the development of an energy facility in an unzoned area. As such, DTE Electric asserts that there is no indication that Act 233 was intended to create additional zoning requirements for unzoned areas. DTE Electric's initial comments, filing #U-21547-0013, pp. 6-7.

MICEF also comments that the Staff Draft's proposal for unzoned areas is inadvisable. MICEF argues that jurisdictions that have chosen to remain unzoned have "forsworn engagement in the zoning process enabled under state law," and that the Staff Draft "imparts a status upon these unzoned local units that is not otherwise afforded [to] them by law." As such, MICEF contends that there is no basis for the Commission to purposefully include unzoned jurisdictions in the Commission's siting process. MICEF's case comment, filing #U-21547-0094-CC, p. 5.

As previously explained, the Commission has determined that an ALU under Act 233 is limited to include only those local units of government that exercise zoning jurisdiction. *See*, Affected Local Unit Definition section *supra*. Accordingly, the Commission finds that because unzoned areas do not exercise zoning jurisdiction, an unzoned area is not an ALU under Act 233. As a result, unzoned areas are not subject to the same obligations and benefits as ALUs, including the obligation to notify an electric developer or IPP that it has a CREO. The Commission, therefore, rejects the Staff Draft's proposal that unzoned areas be treated the same as ALUs with CREOs.

Additionally, for the same reasons that the Commission will review the entire project for an energy facility that spans multiple ALUs, the Commission finds that Act 233 requires the Commission to review the entire project for an energy facility that spans multiple jurisdictions,

including portions of the project that are located in unzoned areas. *See*, Projects Located in Multiple Jurisdictions section *supra*.

3. Notice for Public Meetings

Prior to filing an application with the Commission, Section 223(1) of Act 233 requires an electric provider or IPP to hold a public meeting in each ALU. MCL 460.1223(1). The electric provider or IPP must, at least 30 days before the public meeting, notify the clerk of each ALU of the time, date, location, and purpose of the public meeting and must further provider a copy of the site plan for the proposed energy facility or the address of an internet site where the site plan is available for review. MCL 460.1223(1). Section 223(1) of Act 233 specifies the requirements for the public notice for the public meeting and provides, in pertinent part:

> At least 14 days before the meeting, the electric provider or IPP shall publish notice of the meeting in a newspaper of general circulation in the [ALU] or in a comparable digital alternative. The notice shall include a copy of the site plan or the address of an internet site where the site plan is available for review. The commission shall further prescribe the format and content of the notice.

MCL 460.1223(1).

In addition to the public notice for the public meeting, Act 233 requires an applicant to provide public notice of the opportunity to comment on an application for a proposed energy facility. Specifically, Section 226(2) of Act 233 provides:

> Upon filing an application with the commission, the applicant shall provide notice of the opportunity to comment on the application in a form and manner prescribed by the commission. The notice shall be published in a newspaper of general circulation in each affected local 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 applicant and the words "NOTICE OF INTENT TO CONSTRUCT _____ FACILITY", with the words "WIND ENERGY", "SOLAR ENERGY", or "ENERGY STORAGE", as applicable, entered in the blank space. The commission shall further prescribe the format and contents of the notice.

MCL 460.1226(2).

The Staff Draft outlines the requirements for the public notice for the public meeting and specifies that:

> [n]otice 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.

Staff Draft, p. 7.

The Staff Draft further provides that electric providers and IPPs must publish the public notice for the public meeting in a newspaper of general circulation in the ALU or in a comparable digital alternative at least 14 days in advance of the public meeting. Staff Draft, p. 7. Importantly, the Staff Draft also requires an electric provider or IPP, at least 14 days in advance of the public meeting, to provide certain direct mailings of the public notice and specifically requires the electric provider or IPP to:

> send the notice of the public meeting by U.S. mail to postal addressees 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.

Staff Draft, p. 7.

Consumers comments that it does not object to the Commission requiring direct mailings for the notice of the opportunity to comment required by Section 226(2) of Act 233 but argues that the Commission lacks authority to prescribe direct mailings for the public notice for the public meeting. Specifically, Consumers argues that Section 223(1) of Act 233 only permits the Commission to prescribe the format and content of the public notice for the public meeting, and not the manner in which the public notice is issued. Accordingly, Consumers contends that the Commission should not alter the prescribed manner of issuance identified in Section 223(1) of

Act 233, and that the manner of issuance for the public notice for the public meeting should be limited to publication in a newspaper of general circulation in the ALU or a comparable digital alternative. Consumers' initial comments, filing #U-21547-0011, pp. 4-5.

EIBC/United comment that they do not oppose, as a matter of policy, the Staff Draft's proposal that the public notice for the public meeting be directly mailed to certain local residents. However, EIBC/United argue that the distance requirements associated with the direct mailings proposed in the Staff Draft are outside normal public notice requirements outlined in existing local zoning ordinances and state law. Specifically, EIBC/United note that, in conformance with requirements of the MZEA, existing local zoning ordinances only require public notice to be provided to property owners and residents who are located within 300 feet of a proposed energy facility. Additionally, EIBC/United contend that the notice requirements contained in Public Acts 9 and 16 of 1929[7] "are noticeably less onerous than the Staff Draft's proposed requirements for renewable citing," and that Public Act 30 of 1995 (Act 30)[8] contains no specific requirements for public notice for a public meeting. EIBC/United's initial comments, filing #U-21547-0005, p. 18. Further, EIBC/United point to Case No. U-17041, where the Commission granted an application for a certificate under Act 30 and found that the public notice for public meetings was sufficient when the public notice was only published in a local newspaper and sent to property owners where the transmission line route intersected. Finally, EIBC/United note that the proposed

[7] Public Act 9 of 1929 regulates corporations, associations or persons engaged in the business of carrying and transporting natural gas through pipelines. *See*, MCL 483.101 *et seq.* Public Act 16 of 1929 regulates the business of carrying or transporting, buying, selling, or dealing in crude oil or petroleum products, or certain substances consisting primarily of carbon dioxide through pipelines. *See*, MCL 483.1 *et seq*.

[8] Public Act 30 of 1995 grants siting authority to the Commission for a certificate of public convenience and necessity for proposed transmission lines that are greater than five miles in length and transferred at 345 kilovolts or more. *See*, MCL 460.561 *et seq*.

public notice requirements for energy facilities exceed the requirements in other states, namely Minnesota and Ohio. As such, EIBC/United request the Commission to limit the requirements for the public notice for public meetings to residents located within 300 feet of a proposed energy facility. EIBC/United's initial comments, filing #U-21547-0005, pp. 17-20.

Similarly, DTE Electric expresses concern about the direct mailing distance requirements established in the Staff Draft. Like EIBC/United, DTE Electric notes that the MZEA only requires notice to be provided to property owners and residents who are within 300 feet of a proposed project. DTE Electric further notes that the Staff Draft's requirement to provide the public notice to addresses within one mile of a proposed solar energy facility is "unlikely to provide an incremental benefit, given that residents who are a mile away may not be impacted by or even see the project." DTE Electric's initial comments, filing #U-21547-0013, pp. 8-9.

GLREA also comments that the distance requirements proposed in the Staff Draft for public notices are too great. Like the other commenters, GLREA urges the Commission to use the 300-feet requirement contained in the MZEA. GLREA's case comment, filing #U-21547-0070-CC, p. 6.

In reply comments, Consumers maintains its position that Act 233 does not authorize the Commission to prescribe the manner of the public notice for public meetings, and that such notices should be limited to distribution through publication only. However, Consumers states that it agrees with EIBC/United that notice for the opportunity to comment on an application filed with the Commission should be consistent with the MZEA, and thus, limited to property owners and residents who are within 300 feet of a proposed energy facility. Consumers' reply comments, filing #U-21547-0017, p. 6.

The Commission agrees that Section 223(1) of Act 233 only authorizes the Commission to prescribe the format and content, and not the manner of distribution, of the public notice for the public meeting. MCL 460.1223(1). Accordingly, the Commission finds that an electric provider or IPP is not required to directly mail the public notice for the public meeting to property owners and residents, but rather, is only required to publish the public notice for the public meeting in a newspaper of general circulation in the ALU or in a comparable digital alternative. The Commission, however, agrees with the Staff Draft and finds that the public notice for the public meeting must include, at a minimum: (1) the date, time, and location of the public meeting; (2) a description and location of the proposed energy facility; (3) an internet site where the site plan is accessible to the public; and (4) directions for submitting written comments to the electric provider or IPP for those unable to attend the public meeting. *See*, MCL 460.1223(1).

Additionally, although not addressed in the Staff Draft, the Commission finds that Act 233 requires an applicant that submits an application to the Commission to provide public notice of the opportunity to comment on the application. MCL 460.1226(2). But unlike the public notice for the public meeting, the Commission finds that Section 226(2) of Act 233 expressly provides the Commission with the authority to prescribe the form and manner of the public notice of the opportunity to comment. MCL 460.1226(2). As such, in addition to filing the public notice in a newspaper of general circulation in each ALU or in a comparable digital alternative, the Commission finds that it is appropriate to require an applicant to send the public notice of the opportunity to comment by U.S. mail to all postal addresses within one mile of a proposed solar energy facility or proposed energy storage facility, and within two miles of a proposed wind energy facility. The direct mailings must include postal addresses that are within the

aforementioned distances, even if that postal address is not located within the boundaries of an ALU.

The Commission is not persuaded by comments advocating for a limit of 300 feet for direct mailings of the public notice. The Commission finds that states that have authority to site renewable energy projects have similar, and at times greater, distance requirements for direct mailings for public notices. *See*, e.g., N.Y. Comp. Codes R. & Regs. tit. 16, § 1100-1.6 (providing for written notice within one mile of a proposed solar facility and within five miles of a proposed wind facility). Additionally, the Commission finds that direct mailings are appropriate because they will provide notice to property owners and residents who are most likely to be interested in or impacted by a proposed energy facility, and further that direct mailings will increase the opportunity for public participation in the Commission's siting process. Accordingly, the Commission finds the distances proposed in the Staff Draft to be reasonable and adopts them as part of the requirements for the public notice of the opportunity to comment.

One-Time Grant to Affected Local Units

Upon filing an application with the Commission, Section 226(1) of Act 233 requires an applicant to "make a 1-time grant to each [ALU] for an amount to be determined by the commission but not more than $75,000 per [ALU] and not more than $150,000.00 in total." MCL 460.1226(1). Each ALU that receives a one-time grant must then deposit the one-time grant in a local intervenor compensation fund that is "to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate." MCL 460.1226(1).

The Staff Draft proposes to establish the one-time grant amount as $150,000, with each ALU receiving no more than $75,000. The Staff Draft provides that the one-time grant amount must be

split equally amongst eligible ALUs, and that the applicant should deliver the one-time grant contemporaneously with the filing of its application with the Commission. The Staff Draft further provides that one-time grants must be deposited for use in covering costs associated with the contested case proceeding and that ALUs may pool their respective one-time grants for this purpose. Additionally, the Staff Draft requires ALUs that have not intervened in the contested case proceeding to return their respective one-time grants to the applicant within 15 days following the pre-hearing in the contested case proceeding. Staff Draft, p. 9.

For ALUs that have participated as intervenors in the contested case proceeding, the Staff Draft requires the ALU to file an official exhibit in the contested case proceeding prior to the conclusion of cross-examination or the close of the record evidencing the paid invoices for legal services used as part of the ALU's participation in the contested case proceeding, as well as an estimate for funds the ALU anticipates it will spend on additional legal services for briefing and exceptions filed in the contested case proceeding. The Staff Draft then provides that any remaining unspent one-time grant funds must be refunded to the applicant "within 30 days following the date on which answers to petitions for rehearing on the Commission's final order are due, when applicable." Staff Draft, pp. 9-10.

EIBC/United, DTE Electric, and GLREA all comment that the Commission should specify that only an ALU with zoning jurisdiction should be eligible to receive a one-time grant.

EIBC/United reiterate their assertion that expanding the definition of an ALU to include local units without zoning jurisdiction would be a misreading of Act 233 and would impose responsibilities on local units that would otherwise not be involved in the siting process. EIBC/United's initial comments, filing #U-21547-0005, pp. 21-23.

Similarly, DTE Electric argues that the Staff Draft misinterprets the meaning of ALU to include those local units without zoning jurisdiction and that failing to limit one-time grants "could create inequities for local units with zoning authority and potentially increase costs for developers." DTE Electric's initial comments, filing #U-21547-0013, p. 5.

GLREA comments that it "has consistently stated that an [ALU] should be [a] local unit of government with zoning authority where the project is located," and that the Staff Draft "should be edited to reflect this definition." GLREA's case comment, filing #U-21547-0070-CC, p. 6.

MAC argues that one-time grant funds should be administered as a traditional grant and that any unexpended one-time grant funds should not be returned to the applicant. MAC's initial comments, filing #U-21547-0008, p. 1.

MTA comments that the Commission should split the one-time grant amounts amongst ALUs proportionally based on the respective number of nameplate capacity MW located in an ALU. MTA also suggests that ALUs that have not intervened in the contested case proceeding should not be required to return one-time grant funds that have been incurred in determining whether or not to intervene. Additionally, MTA believes that one-time grant funds should be permitted to be used for an appeal of the Commission's final order, and that the timeframe for an ALU to refund any remaining unspent one-time grant funds should be extended to 60 days following the date on which answers to petitions for rehearing on the Commission's final order are due. Finally, MTA argues that ALUs should not be required to disclose incurred or anticipated legal costs until the end of the contested case proceeding, as disclosure before this period could expose confidential litigation strategy. MTA's case comment, filing #U-21547-0088-CC, pp. 13-15.

In reply comments, EIBC/United disagree with MAC and argue that any one-time grant funds that are not used must be returned to an applicant. EIBC/United state that one-time grant funds are

only to be used for costs associated with participation in a contested case proceeding, and not broader uses. EIBC/United's reply comments, filing # U-21547-0016, pp. 2-3.

Similarly, DTE Electric opposes MAC's and MTA's contention that unused one-time grant funds do not need to be returned to an applicant. DTE Electric argues that the plain language of Section 226(1) of Act 233 limits the use of one-time grant funds to costs associated with participation in the contested case proceeding. According to DTE Electric, because of this limitation, MAC and MTA's proposals would be an unauthorized expansion of the statutory scope of the one-time grant. DTE Electric, in turn, requests that the Commission reject these proposals. DTE Electric's reply comments, filing #U-21547-0018, pp. 2-3.

As previously explained, the Commission has determined that an ALU is limited to only those local units that exercise zoning jurisdiction. *See*, Affected Local Unit Definition section *supra*. As such, the Commission finds that only local units that exercise zoning jurisdiction are eligible to receive the one-time grant required by Section 226(1) of Act 233. Additionally, the Commission agrees that the plain language of Section 226(1) of Act 233 restricts one-time grants "to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate." MCL 460.1226(1). Accordingly, the Commission agrees with the Staff Draft and finds that unexpended one-time grant funds must be returned to an applicant. The Commission further finds that the timeframes and circumstances proposed in the Staff Draft under which an ALU must return unexpended one-time grant funds are reasonable and, therefore, adopts them. Finally, the Commission respectfully disagrees with MTA's proposal to split the grant amounts amongst ALUs based on their proportional share of nameplate capacity, finding that such an allocation formula has little, if any, relationship to the costs associated with participation in the contested case proceeding.

Application Fees

Section 226(4) of Act 233 authorizes the Commission to "assess reasonable application fees to the applicant to cover the commission's administrative costs in processing [an] application, including costs for consultants to assist the commission in evaluating issues raised by the application." MCL 460.1226(4). Section 226(4) of Act 233 further provides that the Commission "may retain consultants to assist the commission in evaluating issues raised by the application and may require the applicant to pay the cost of the services." *Id*.

The Staff Draft requires applicants to pay an application fee to cover the Staff's administrative costs for processing an application, including the costs for retaining experts. The application fee includes a one-time base application fee in the amount of $10,000, which includes up to 150 hours for the Staff's involvement in the application's contested case proceeding and is due at the time of the prehearing conference.[9] Additionally, the Staff Draft provides that applicants may be subject to additional fees. These additional fees include additional hours for the Staff's involvement in the contested case proceeding (billed at an hourly rate); the actual fees associated with expert testimony, public meetings, court fees, and environmental reporting and testing; miscellaneous maintenance fees following the Commission's issuance of a certificate; formal complaints; and requests for exceptions to standard rules. The Staff Draft further requires the Staff to file a fee exhibit containing the total assessed application fee and provides applicants with an opportunity to file objections. The Commission's final order is then required to include a decision on the total assessed application fee. Finally, the Staff Draft caps costs for processing the application as a

[9] The Staff Draft provides that regulated utilities are exempt from the one-time base application fee since these utilities are already subject to an annual public utilities assessment. *See*, MCL 460.112. However, regulated utilities are still subject to additional fees, as described in the Staff Draft. *See*, Staff Draft, pp. 10-11.

contested case at $250,000, excluding the costs associated with retaining consultants for issues outside the Staff's expertise. Staff Draft, pp. 10-12.

EIBC/United encourage the Commission to cap the total cost of application fees at $150,000. In support of this position, EIBC/United point to Ohio regulations that cap costs at $150,000. EIBC/United state that "it is both reasonable to set an application fee cap and to align that fee cap with those set in other neighboring states such as Ohio." EIBC/United's initial comments, filing #U-21547-0005, p. 24.

DTE Electric comments that the Staff Draft's cap of $250,000 for the costs of application fees excludes costs for retaining subject-matter experts. As such, DTE Electric expresses concerns about the uncertainty of these costs and suggests that the Commission provide an additional cap on these costs as they relate to the application fee. DTE Electric's initial comments, filing #U-21547-0013, p. 9.

The Commission agrees with the Staff Draft's proposal on application fees and finds that proposal to be reasonable. The Commission finds that Act 233 expressly permits the Commission to assess reasonable application fees to cover the costs of processing an application. MCL 460.1226(4). The Commission further finds that application fees among states that have authority to site energy facilities vary widely and include application fees that are much higher than $250,000. As such, the Commission is not persuaded that the $150,000 application fee cap proposed by EIBC/United is warranted.

Additionally, the Commission finds that the Staff Draft's proposal to exclude the costs associated with retaining consultants for specialty issues outside of the Staff's expertise from the proposed application fee cap is reasonable and appropriate in light of the fact that Act 233 expressly grants the Commission authority to retain consultants and to further "require the

applicant to pay the cost of the services." MCL 460.1226(4). Accordingly, the Commission adopts the Staff Draft's proposal for application fees with minor changes.

Application Filing Requirements

Section 225 of Act 233 outlines the list of information that an applicant must include in an application for a certificate submitted to the Commission. MCL 460.1225(1). The information required in an application includes, among other things, the expected public benefits of the energy facility and a description of feasible alternative developed locations for a project. MCL 460.1225(1)(e) and (n).

1. Public Benefits of the Energy Facility

Section 225(1) of Act 233 requires an application for a certificate submitted to the Commission to contain the "[e]xpected benefits of the proposed energy facility." MCL 460.1225(1)(e). Additionally, pursuant to Section 226(7)(a) of Act 233, the Commission must grant an application if it determines:

> The public benefits of the proposed energy facility justify its construction. 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 . . . .

MCL 460.1226(7)(a).

a. Payments to Owners of Participating Property

The Staff Draft requires an applicant to include in its application a description of the expected public benefits of the proposed energy facility, including an explanation of any "[p]ayments to owners of participating property." Staff Draft, p. 15.

EIBC/United comment that "[p]ayments made to landowners are confidential in nature and an applicant should be allowed to file these confidentially in the docket. This should be clarified." EIBC/United's initial comments, filing #U-21547-0005, p. 26.

The Commission agrees with EIBC/United's comment that information pertaining to payments to participating property owners should be confidentially filed. Accordingly, the Commission clarifies that an applicant may file information related to payments to participating property owners if that information is provided to the Staff pursuant to a confidentiality agreement that will be superseded by a protective order, once such an order is entered. The Commission finds that this process matches how the Commission handles the filing of confidential materials to the Staff in other cases under the Commission's jurisdiction.

b. Community Benefits Agreements

Additionally, the Staff Draft requires an applicant to include an explanation of "[h]ost community agreements and community benefits agreements." Staff Draft, p. 15. The Staff Draft further provides that host community agreements and community benefits agreements "are required for <u>each</u> ALU, including cities, townships, villages, and counties, according to the nameplate capacity located within the ALU, as defined by [Act] 233." Staff Draft, p. 16 (emphasis in original).

Both EIBC/United and DTE Electric disagree that host community agreements and community benefits agreements need to be signed by each ALU. EIBC/United note that Act 233 requires a host community agreement and payment by "the applicant for a certificate." Because Act 233 provides that a local unit exercising zoning jurisdiction may require an applicant to obtain a certificate from the Commission, EIBC/United maintain that only this limited subset of local

units should be required to have a host community agreement. EIBC/United's initial comments, filing #U-21547-0005, pp. 26-25.

Similarly, DTE Electric encourages the Commission to consider the increased costs that could be imposed on an applicant if each ALU, regardless of zoning jurisdiction, were required to have a host community agreement. DTE Electric's initial comments, filing #U-21547-0013, p. 6.

The Commission has determined that an ALU is limited to only those local units that exercise zoning jurisdiction. *See*, Affected Local Unit Definition section *supra*. As such, and consistent with the Commission's definition of ALU, the Commission finds that Act 233 only requires applicants to enter into a host community agreement with local units that exercise zoning jurisdiction.

2. Feasible Alternative Developed Locations

The Staff Draft provides that, "[i]f 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." Staff Draft, p. 17.

EIBC/United posit that the Staff Draft's requirement for an applicant to describe alternative developed locations is presumably being adopted to conform to Michigan's Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994. EIBC/United use this assumption to urge the Commission to adopt similar language to that used in existing environmental regulations that have been promulgated to implement the NREPA. For example,

EIBC/United point to Mich Admin Code, R 281.922a[10] (Rule 2a) to argue that an applicant "should be able to assess whether or not alternatives exist that are feasible and prudent after taking into consideration cost, technology, and logistics (as described in R 281.922a)." EIBC/United's initial comments, filing #U-21547-0005, pp. 28, 32.

The Commission finds that Act 233 expressly requires an applicant to describe feasible alternative locations for a proposed energy facility if the proposed site for the energy facility is undeveloped land. MCL 460.1225(1)(n). As a result, the Commission is not persuaded by EIBC/United's proposal that the Commission should adopt the standards in existing environmental regulations for use in the alternatives analysis under Act 233. Importantly, the Commission finds that Rule 2a, which EIBC/United rely on in support of their argument, specifically pertains to alternatives associated with projects located in regulated wetlands. *See*, MCL 324.30303 *et seq*. But Act 233's environmental considerations are not limited to regulated wetlands. To the contrary, Act 233 expressly requires the Commission to determine if an applicant "has considered and addressed 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." MCL 460.1226(7)(c). Moreover, the laws and regulations governing projects in regulated wetlands specifically permit an applicant to consider the "feasible *and prudent* alternatives" of a proposed project. *See*, MCL 324.30311(4)(b) (emphasis added). However, Act 233 only provides for the consideration of feasible alternatives, and not whether such alternatives are prudent. *See*, MCL 460.1226(6). As such, the Commission

[10] Rule 2a requires applicants for a permit under Part 303, Wetlands Protection, of the NREPA to demonstrate that there are no feasible and prudent alternatives to the proposed activity. Mich Admin Code, R 281.922a(2)(b). Rule 2a specifically provides that an alternative is feasible and prudent if it is, among other things, "available and capable of being done after taking into consideration cost, existing technology, and logistics." Mich Admin Code, R 281.922a(6)(a).

rejects EIBC/United's proposal and finds that there is no basis to adopt the standards used in these specific environmental regulations in Act 233.

Minor Change Definition and Guidance

Section 222(3) of Act 233 provides that, if the Commission has issued a certificate, an electric provider or IPP "may make minor changes, as defined by the commission, to the site plan if the changes are within the footprint of the previously approved site plan." MCL 460.1222(3).

The Staff Draft defines a "minor change" and provides the following:

> A minor change is any change within the project footprint that still allows the facility to meet all of the criteria outlined in [Act] 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.

Staff Draft, p. 24.

EIBC/United comment that the Staff Draft's definition of a "minor change" is reasonable and will allow electric providers and IPPs to make minor changes to the site plan without needing to refile for a new certificate. EIBC/United, however, suggest that only changes that increase the footprint or perimeter of the site plan, changes in planned technologies that result in increases in noise or that impact permit requirements, and reductions in setbacks that violate the requirements of Act 233 should be omitted from the definition of a minor change. EIBC/United's initial comment, filing #U-21547-0005, pp. 33-34.

Like EIBC/United, DTE Electric comments that only changes that increase the footprint of a project should not be included in the definition of a minor change. Additionally, DTE Electric argues that a reduction in setbacks should only be excluded from the definition if those setbacks would violate the provisions of Act 233. DTE Electric's initial comments, filing #U-21547-0013, pp. 9-10.

U of M comments that the Staff Draft does not make it clear whether a change in noise is permissible so long as it is within the 55 decibel (dB) threshold established by Act 233. U of M's case comment, filing #U-21547-0087-CC, p. 24.

MTA proposes that "a change that would alter any water detention or retention, or other stormwater runoff" should be excluded from the definition. MTA's case comment, filing #U-21547-0088-CC, p. 30.

In reply comments, Consumers states that it agrees with EIBC/United's and DTE Electric's comments regarding reductions in the footprint of the project, as well as reductions in setbacks contained in the site plan, and that the company therefore supports these recommended changes to the definition of minor change. Consumers' reply comments, filing #U-21547-0017, pp. 6-7.

The Commission finds the changes recommended by the commenters to be well-reasoned and appropriate, and therefore, adopts the proposed changes. The Commission further finds that it is appropriate to specify that any changes to a project that increase noise impacts to non-participating structures or increase noise beyond the 55 dB statutory limit outlined in Section 226(8) of Act 233 are not included in the definition of a minor change.

Fire and Emergency Response Plans

Section 225(1)(q) of Act 233 requires an application for a certificate to contain an emergency response plan (ERP) and a fire response plan (FRP). MCL 460.225(1)(q). Accordingly, the Staff

Draft outlines the specific requirements that must be included in an ERP and FRP. *See*, Staff Draft, pp. 24-26. Included in these requirements is the obligation that an ERP contain "[e]vidence 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." Staff Draft, p. 25. Similarly, the Staff Draft requires an FRP to contain "[e]vidence 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." Staff Draft, p. 25. The Staff Draft also requires an FRP to contain "a commitment to offer to conduct, or provide funding to conduct, site-specific training drills with emergency responders before commencing operation" of an energy storage project, and further requires the applicant to review and update its ERP and FRP at least once every three years. Staff Draft, pp. 25-26.

Some commenters note that the Staff Draft fails to address site access for first responders in case of an emergency. *See*, filing ##U-21547-0010-CC and U-21547-0075-CC. Additionally, EIBC/United take issue with the Staff Draft's use of the terms ERP and FRP and instead advocate for the use of an emergency operations plan (EOP) instead of an ERP, and additionally state that an FRP should instead be called an ERP. EIBC/United's initial comments, filing #U-21547-0005, p. 34.

Consumers comments that an FRP is typically included in an ERP, and as such, in lieu of separate plans, only an ERP should be required. Consumers also argues that the requirement to update ERPs and FRPs should be changed to once every five years to "better match other updates that the Company is required to file, such as decommissioning studies," and that instead of requiring applicants to conduct site-specific drills for energy storage projects, only training should

be required before commencing operations. Consumers' initial comments, filing #U-21547-0011, pp. 7-8.

The Commission finds the Staff Draft's requirements for ERPs and FRPs to be reasonable and, therefore, adopts them. The Commission finds that it is reasonable to require applicants to include site access in their consultations with first responders, county emergency managers, and local fire department representatives. The Commission, however, disagrees with commenters' suggestions to use alternate terms for ERPs and FRPs, or to combine these plans into a single ERP, because the plain language of Act 233 expressly requires an application to contain both "[a] fire response plan *and* an emergency response plan." MCL 460.1225(1)(q) (emphasis added). The Commission further disagrees that applicants should only be required to update their ERPs and FRPs once every five years and that applicants do not need to offer to conduct on-site training, as the Commission finds both of these requirements to be reasonable.

Decommissioning Plan and Proposed Decommissioning Agreement

Section 225(1) of Act 233 lists the items that an applicant must include in an application that is submitted to the Commission. MCL 460.1225(1). The items listed in Section 225(1) of Act 233 include, among other things, the following:

> 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 facilities and infrastructure that have no ongoing purpose. 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. The amount of the financial assurance shall not be less than the estimated cost of decommissioning the energy facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning, hired by the applicant. However, the financial assurance may be posted in increments as follows:
>
> (i) At least 25% by the start of full commercial operation.
> (ii) At least 50% by the start of the fifth year of commercial operation.
> (iii) 100% by the start of the tenth year of commercial operation.

MCL 460.1225(1)(r).

The Staff Draft outlines the items that must be included in a decommissioning plan and requires the following:

> 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.
>   (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 [the Farmland and Open Space Preservation Program, Part 361 of Public Act 451 of 1994 (Act 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.

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 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.
    (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.

Staff Draft, pp. 26-28 (emphasis in original).

Additionally, the Staff Draft includes a sample decommissioning agreement that outlines the specific conditions that an applicant must comply with to decommission a proposed energy facility. Staff Draft, pp. 29-37. Of particular note, the sample decommissioning agreement requires an applicant to estimate the costs of decommissioning an energy facility and to secure financial assurance for the benefit of the Commission for those estimated costs. Staff Draft, pp. 33-35. The sample decommissioning agreement also specifies the process that an applicant must follow to decommission an energy facility, including the conditions that trigger decommissioning, and empowers, but does not obligate, the Commission to commence decommissioning of an energy facility in the event an applicant fails to initiate the decommissioning of a project. Staff Draft, pp. 30-33.

The Commission finds the requirements established by the Staff Draft, including those outlined in the sample decommissioning agreement, to be reasonable and aligned with the plain language of Section 225(1)(r) of Act 233. The Commission, therefore, adopts the Staff Draft's

proposals regarding decommissioning, as altered by the discussion of pertinent issues regarding decommissioning, below.

1. Applicability to Rate-Regulated Utilities

In comments, Consumers requests clarification about whether the requirements for the decommissioning plan and cost updates will be different for rate-regulated utilities as compared to other applicants. Consumers states that it would be most prudent for rate-regulated utilities to handle decommissioning costs and updates in the existing process through proceedings at the Commission. Additionally, Consumers requests that the Commission clarify that the requirement to include a sample decommissioning agreement as part of an application's decommissioning plan is not applicable to rate-regulated utilities. Consumers argues that rate-regulated utilities' decommissioning activities will already be subject to Commission review through the ratemaking process, and that applying the requirements contained in the sample decommissioning agreement will be redundant and unnecessary. Consumers' initial comments, filing #U-21547-0011, pp. 9-10.

In reply comments, EIBC/United concede that decommissioning costs and updates are already handled through proceedings at the Commission but argue that "it does not make sense to apply these requirements differently at the application stage." EIBC/United's reply comments, filing #U-21547-0016, p. 2. Similarly, EIBC/United argue that, although the Commission provides oversight over rate-regulated utilities, given that the passage of Act 233 represents the first time the Commission has oversight over the siting of these specific energy facilities, it is logical to apply the requirements for decommissioning consistently to all applicants. *Id*.

The Commission is not persuaded that the decommissioning requirements outlined in Act 233 and in the Staff Draft should not be applied to rate-regulated utilities. The Commission finds that

Act 233 represents the first time the Commission has been granted authority to site renewable energy and energy storage facilities in lieu of the local siting process. As such, the Commission finds that it is appropriate to apply Act 233's requirements to all applicants in a uniform manner. Accordingly, the Commission finds that the decommissioning requirements outlined in the Staff Draft, including the requirement to enter into a sample decommissioning agreement, apply to all applicants, including those applicants who are rate-regulated utilities.

2. Soil Chemistry

In comments, EIBC/United object to the Staff Draft's proposed requirement for an applicant to conduct a chemical analysis of the soil to ensure the soil is returned to its original condition. EIBC/United contend that it would be "very difficult to ensure an exact chemical match in soil after the project is decommissioned given the changes in temperature, rainfall, etc. that would be expected to occur over 20-30 years." EIBC/United's initial comments, filing #U-21547-0005, pp. 34-35. Additionally, EIBC/United assert that, for solar energy facilities, there is no scientific basis to support the contention that solar energy facilities cause contamination. As such, EIBC/United urge the Commission to remove this requirement. EIBC/United's initial comments, filing #U-21547-0005, pp. 34-35.

MICEF comments that the Staff Draft's requirement for an applicant to return the soil to "its original condition" is problematic. MICEF notes that soil under a solar energy facility or energy storage facility may be improved at the time of decommissioning due to vegetation management or the improvement of a brownfield site. Accordingly, MICEF urges the Commission to specify that an applicant must return soil to an improved condition or to a condition comparable to the soil immediately surrounding the energy facility at the time of decommissioning. MICEF's case comment, filing #U-21547-0094-CC, p. 10.

The Commission finds that Act 233 requires an applicant to submit a decommissioning plan that "ensures the return of all participating properties to a useful condition similar to that which existed before construction . . . ." MCL 460.1225(1)(r). The Commission agrees with commenters that the soil conditions of a particular site are apt to change over the life of the energy facility. As such, the Commission finds that returning the soil condition to its original condition may not be feasible. However, a plain reading of Section 225(1)(r) of Act 233 mandates that a property used to site an energy facility be returned to a useful condition. Accordingly, the Commission finds it appropriate to require applicants to establish a baseline of soil conditions through physical and chemical analyses, and further finds that an applicant is required to return the soil to a useful condition similar to that which existed before construction.

3. Duplicative Bonding Requirements

EIBC/United comment that they support the Staff Draft's proposal to require the financial assurance for decommissioning to be held by the Commission. EIBC/United state that such a requirement is consistent with the policy enacted by the Michigan Department of Agriculture and Rural Development (MDARD) for Act 116. Specifically, EIBC/United note that Act 116 requires a financial surety payable to the State of Michigan for the removal of solar facilities and the restoration of land covered by Act 116. As a result of this existing requirement, EIBC/United urge the Commission to include in the decommissioning plan requirements a methodology to ensure that duplicative bonds are not required. EIBC/United further contend that the Commission "must coordinate with MDARD and clearly communicate to applicants that if property for a proposed project will already be subject to a state decommissioning bond (i.e., because that property is subject to a Farmland and Open Space Preservation Program Agreement), that bond will suffice to

satisfy the Commission's requirements and a duplicate bond is not required." EIBC/United's initial comments, filing #U-21547-0005, pp. 35-36.

The Commission finds that certain lands proposed for the development of an energy facility may contain farmlands that are subject to Act 116 requirements, including the requirement to obtain financial assurance for the decommissioning of a solar energy facility and the restoration of land. The Commission agrees that applicants for which a proposed site is already bonded under Act 116 should not be required to also provide an additional bond for that portion of the land under Act 233. As such, the Commission finds that it is appropriate to clarify that applicants with energy facilities that include Act 116 farmland may, in consultation with MDARD, provide financial assurance pursuant to Act 233, which satisfies the requirements of both Act 116 and Act 233.

4. Above-Surface Facilities

In comments, MTA urges the Commission to require electric providers and IPPs to restore sites to their original conditions, including the removal of any below-surface facilities are part of the energy facility. MTA's case comment, filing #U-21547-0088-CC, pp. 35, 38-39.

In reply comments, Consumers argues that a requirement to remove below-surface facilities would be burdensome and contradictory to the language in Act 233. Consumers notes that Act 233 expressly provides that an application must include a decommissioning plan that "ensures the return of all participating properties to a useful condition similar to that which existed before construction, including removal of ***above-surface facilities*** and infrastructure that has no ongoing purpose." Consumers' reply comments, filing #U-21547-0017, p. 7 (citing MCL 460.1225(1)(r)) (emphasis in original). Additionally, Consumers argues that below-surface facilities typically do not need to be removed to restore a property to a useful condition and are typically not removed unless expressly requested by a landowner. As such, Consumers contends that MTA's proposal to

include below-surface facilities is unnecessary. Consumers' reply comments, filing #U-21547-0017, pp. 7-8.

The Commission finds that the plain language of Section 225(1)(r) of Act 233 only requires the removal of above-surface facilities and infrastructure that has no ongoing purpose. MCL 460.1225(1)(r). Accordingly, the Commission agrees with the arguments raised by Consumers and rejects MTA's proposal to include a requirement for an applicant to remove below-surface facilities as part of the required restoration efforts for the site where an energy facility is located.

5. Copies of Lease Agreements

With respect to an applicant's assurance that restoration will be conducted in accordance with landowner agreements, MTA urges the Commission to require applicants to attach "all property leases, licenses and easements regarding property where any proposed facilities are to be located." MTA's case comment, filing #U-21547-0088-CC, p. 35. MTA states that the Commission's review of these agreements is necessary to verify and understand what commitments have been made between an applicant and landowners regarding the restoration of a site. *Id*.

In reply comments, EIBC/United argue that "property leases are confidential agreements and include significant amounts of proprietary information." As a result, EIBC/United assert that it would be unreasonable to require an applicant to attach property leases to the decommissioning plan and, in turn, urge the Commission to reject such a requirement. EIBC/United's reply comments, filing #U-21547-0016, p. 11.

Similarly, DTE Electric argues that requiring an applicant to include copies of landowner agreements as part of the decommissioning plan would be overly burdensome and unnecessary. According to DTE Electric, "[t]hese agreements typically contain confidential and proprietary

information that cannot be publicly disclosed." Further, DTE Electric argues that the Staff Draft requires applicants to provide assurance that site restoration will be conducted in accordance with landowner agreements. As such, DTE Electric maintains that production of the landowner agreements is unnecessary. DTE Electric's reply comments, filing #U-21547-0018, p. 7.

The Commission agrees with EIBC/United and DTE Electric that it is unnecessary to require an applicant to include a copy of landowner agreements as part of the decommissioning plan. The Commission finds that a review of landowner agreements for a proposed energy facility is beyond the scope of Section 225(1)(r) of Act 233. Although Section 225(1)(r) of Act 233 requires a decommissioning plan to be "consistent with agreements reached between the applicant and other landowners of participating properties," the Commission finds that the assurance statement required in the Staff Draft is sufficient to ensure that decommissioning plans comply with the statutory requirement. *See*, MCL 460.1225(1)(r).

Conditions

Section 226(6) of Act 233 expressly authorizes the Commission to "condition its grant of the application on the applicant taking additional reasonable action related to the impacts of the proposed energy facility," and provides a non-exhaustive list of conditions that the Commission may include in a certificate. MCL 460.1226(6). The non-exhaustive list of conditions includes, but is not limited to: (1) establishing and maintaining ground cover; (2) meeting or exceeding pollinator standards; (3) providing for community improvements in the ALU; and (4) making a good-faith effort to maintain and provide proper care of the property during the construction and operation of the facility. MCL 460.1226(6)(a)-(d).

The Staff Draft encourages applicants to consider including proposals in their applications to meet a list of 21 proposed minimum conditions, or to provide an explanation justifying why any of

the proposed minimum conditions should not be applied to the energy facilities. This order will discuss two of these proposed minimum conditions related to third-party monitoring and obtaining approval for necessary permits to construct the energy facility.

1. Third-Party Monitoring

The Staff Draft requires applicants to consider including a proposal in their application 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.

Staff Draft, p. 43.

EIBC/United argue that energy facilities are exempt from the requirement to obtain building or construction permits pursuant to the Stille-Derossett-Hale Single State Construction Code Act, Public Act 230 of 1972, MCL 125.1501 *et seq*. However, despite this purported exemption, EIBC/United claim that some local units continue to require building and construction permits for energy facilities, and that electric providers and IPPs generally comply with these local requirements. As such, EIBC/United comment that they appreciate the Staff Draft's exemption from the third-party monitoring requirement so long as electric providers and IPPs comply with local construction and building permits. However, EIBC/United argue that the requirement to hire a third-party monitor to oversee construction activities is unnecessary and burdensome. EIBC/United claim that the Commission lacks authority over construction activities for an energy

facility and that compliance with zoning ordinances is typically completed through an inspection after construction has been completed, not while construction is occurring. Accordingly, EIBC/United urge the Commission to remove this proposed condition. EIBC/United's initial comments, filing #U-21547-0005, pp. 42-43.

DTE Electric also comments that the proposed requirement for third-party monitoring is unnecessary and overly burdensome. Like EIBC/United, DTE Electric argues that energy facilities are exempt from local permitting requirements. DTE Electric further states that, in the company's experience, requiring a third-party monitor is fraught with concerns, such as objectivity and cost. DTE Electric, therefore, advocates for the Commission to remove this proposed condition. In the alternative, DTE Electric proposes utilizing reports, such as a "Plan of the Day" report, for communicating construction details in lieu of the third-party monitoring requirement. DTE Electric's initial comments, filing #U-21547-0013, p. 10.

In reply comments, Consumers agrees with the comments made by EIBC/United and DTE Electric. Consumers further argues that the intent of Act 233 is to permit the Commission to authorize a certificate "before the construction" of energy facilities. Additionally, Consumers suggests that Act 233 already contains a process for the Commission to ensure compliance with applicable requirements, namely in the form of a completion report prior to an electric provider or IPP commencing commercial activities. *See*, MCL 460.1227a. As a result, Consumers advocates for the Commission to use the compliance monitoring process outlined in Section 227a of Act 233 in lieu of the third-party monitoring requirement. Consumers' reply comments, filing #U-21547-0017, p. 8.

The Commission finds that the Staff Draft's proposal encouraging applicants to consider third-party monitoring is appropriate, and therefore, adopts the proposal. The Commission finds that,

contrary to some commenters' assertions, Act 233 provides authority for the Commission to issue conditions related to the construction of an energy facility. In support of this finding, the Commission notes that Act 233 contains numerous provisions that directly relate to the construction of an energy facility. For example, an application for a certificate is required to identify the planned start date of construction and the expected duration of construction for a proposed energy facility. MCL 460.1225(1)(b). Act 233 also expressly requires the Commission to make determinations related to the entities that will be performing the construction or construction maintenance work on a proposed energy facility. MCL 460.1226(7)(e). Finally, and most importantly, Act 233 allows the Commission to condition the issuance of a certificate on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including the requirement to make "a good-faith effort to maintain and provide proper care of the property where the energy facility is proposed to be located *during construction and operation of the facility*." MCL 460.1226(6)(d) (emphasis added). The express terms of Act 233, therefore, support the conclusion that the Commission has authority to condition the grant of a certificate on conditions that relate to the construction of an energy facility.

2. Permit Approval Requirement

The Staff Draft also encourages applicants to consider a proposed condition that makes certificate "[a]pproval contingent upon receiving approval for all necessary applicable state, federal, and local permits and [that] all permits need to be obtained before beginning construction on the portion of the project for which the permit is necessary." Staff Draft, p. 45.

EIBC/United argue that the only authority granted to the Commission under Act 233 is for a "land-use permit for siting." Accordingly, EIBC/United state that electric providers and IPPs will "still need to seek all other permits required by law." EIBC/United contend that in similar siting

contexts, the Commission often includes standard language in its orders stating that the Commission's approval of the siting of a project does not obviate the need for an applicant to receive other permits required by law for the construction and operation of the project. EIBC/United, in turn, urge the Commission to adopt such a statement in its final orders for Act 233 certificates, as opposed to including a specific condition to that effect. EIBC/United's initial comments, filing #U-21547-0005, p. 44.

Invenergy comments that it is common to make a statement that applicants must comply with applicable laws and obtain all applicable permits for a project. Invenergy, however, further comments that:

> [i]t is not common to make any of the conditions of those laws, permits, etc. a condition of siting, because that can create a myriad of legal questions regarding what entity has enforcement authority/jurisdiction, what due process applies and what entity is required to provide it, and whether the judgments regarding compliance are independent (and if so, how to resolve conflicts, and if not, whether this creates pre-emption issues), etc.

Invenergy's initial comments, filing #U-21547-0009, p. 2. As a result, Invenergy argues for the elimination of the condition to avoid confusion. *Id*.

In reply comments, Consumers states that it agrees with Invenergy's comments and recommends that the Commission limit conditions to those included in Act 233 and instead include more generic language clarifying that an applicant must comply with other relevant, applicable laws. Consumers' reply comments, filing #U-21547-0017, p. 7.

The Commission finds that Act 233 expressly provides that the Commission's issuance of a certificate does not exempt an electric provider or IPP from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that is required by federal law, any other state law or rule, or a local ordinance. MCL 460.1231(5). Accordingly, the Commission finds the Staff Draft's proposed condition regarding permit approvals to be

appropriate and in conformance with Act 233's requirements. The Commission further finds that, regardless of a condition contained in a certificate, the issuance of a certificate under Act 233 does not obviate the need for electric providers and IPPs to comply with all other applicable laws, rules, or regulations related to the proposed energy facility.

Sound Modeling Guidelines

Act 233 requires the Commission to grant an application and issue a certificate if the Commission determines that the proposed energy facility does not present an unreasonable threat to public health or safety. MCL 460.1226(7)(g). Section 226(8) of Act 233, in turn, provides that an energy facility will not be deemed to present an unreasonable threat to public health or safety if, among other things, the energy facility "does not generate a maximum sound in excess of 55 average hourly [dB] as modeled to the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale[11] as designed by the American National Standards Institute [ANSI]." MCL 460.1226(8)(a)(iv); MCL 460.1226(8)(b)(iv); and MCL 460.1226(8)(c)(iii).

The Staff Draft includes draft Sound Report Guidelines that require an applicant to produce a preconstruction sound report that is intended to "provide the Commission with information necessary to assess whether [a proposed energy facility] meets the noise limits defined in [Section 226(8) of Act 233]." Sound Report Guidelines, filing #U-21547-0020, p. 6. The draft Sound Report Guidelines require all sound studies to be completed by or under the direction of a qualified noise control engineer that must be board certified through the Institute of Noise Control

[11] A-weighting "means adjusting the sound level spectrum to represent the sensitivity of the human ear to sounds of low to moderate level to produce a single value (in dBA) in accordance with ASA [Acoustical Society of America]/ANSI S1.4 Part 1." Sound Report Guidelines, filing #U-21547-0020, p. 1.

Engineering (INCE). If the engineer is not board certified, then the applicant must justify the engineer's qualifications in the application. *Id*.

As part of the preconstruction sound report, an applicant must perform preconstruction sound modeling that complies with specified modeling parameters, which include modeling parameters for tonal prominence[12] and façade pressure doubling. Specifically, sound modeling is required to provide for a "+ 5 dB tonal penalty to source sound power. The tonal penalty can be removed if it can be shown that the facility would not have a tonal prominence at a dwelling when the measured background sound of the lowest hourly L_{90} is added." *Id*., p. 7. The sound modeling is also required to add a "+6 dB to modeled free field outer wall sound pressure level." *Id*. The 6 dB addition is required to be included in the sound modeling to account for pressure doubling that occurs at the surface of the wall façade. *Id*., p. 7, n. 1.

In addition to sound modeling, an applicant must conduct preconstruction sound monitoring designed to provide for an understanding of potential noise impacts on the existing soundscape prior to the development of the proposed energy facility. The purpose of the preconstruction sound monitoring "is to determine the existing character of the area that is being considered for construction of an energy facility." *Id*., p. 8. Importantly, the preconstruction sound monitoring includes monitoring for biogenic sounds, which "are typically tonal and can have a pronounced effect on overall A-weighted sound levels." *Id*., p. 10.

Finally, an applicant is required to provide a postconstruction sound monitoring protocol as a part of its preconstruction sound report. *Id*., p. 11. The postconstruction sound monitoring is

[12] "'Tonal' means that a sound that [sic] has energy concentrated in a narrow frequency range. Tonal sounds of the same overall sound level are more noticeable than broadband sound. Sounds emissions from transformers, energy storage units, and inverters are typically tonal." Sound Report Guidelines, filing #U-21547-0020, p. 3.

designed to assess whether sound levels from the as-built energy facility meet the noise limits specified in Section 226(8) of Act 233. The draft Sound Report Guidelines specify that, unless otherwise directed by the Commission, the postconstruction sound monitoring must be conducted within the first year after the energy facility is constructed. *Id*., p. 12. "If results of the postconstruction study indicate that the facility sound levels exceed the noise limit, mitigation measures shall be detailed in the report along with a schedule of implementation." *Id*., p. 20.

1. Minimum Qualifications for Noise Control Engineer

EIBC/United comment that they agree that sound studies should be performed by a qualified engineer but recommend that the Commission permit additional demonstrations of skill beyond board certification by the INCE. Instead, EIBC/United contend that the primary qualification for engineers should be demonstrated skill and experience with noise modeling and measurements for energy facilities. EIBC/United propose that an engineer's degree and years of experience with noise modeling and measurements of renewable energy and energy storage facilities should be the basis for qualification and urge the Commission to permit applicants to provider qualifications beyond INCE certification. EIBC/United's comments, filing #U-21547-0022, pp. 3-4.

Consumers also advocates for an alternative demonstration for the qualification for the noise control engineer. Specifically, Consumers proposes a minimum of five years' experience in modeling and monitoring for energy facilities in lieu of the requirement for INCE board certification. Consumers' comments, filing #U-21547-0023, p. 2.

Black & Veatch comment that the INCE is a third-party body not under state review, such as a professional engineering board, and that the requirement for INCE board certification unduly

limits the pool of professionals that would be available to conduct the required studies in the draft Sound Report Guidelines. Black & Veatch's case comment, filing #U-21547-0102-CC, p. 6.[13]

The Commission agrees with commenters that board certification from the INCE should not be a strict requirement for noise control engineers who perform sound modeling and monitoring under the Sound Report Guidelines. The Commission finds that, although board certification through the INCE is preferred, applicants are permitted to justify the qualifications of the noise control engineer in materials submitted with the application for a certificate.

2. Tonal Prominence Penalty

DTE Electric opposes the +5 dB tonal penalty proposed in the draft Sound Report Guidelines. According to DTE Electric, the +5 dB tonal penalty, when coupled with the façade pressure doubling addition of 6 dB, could lead to an effective requirement of 44 dBA for an energy facility. DTE Electric argues that this lowered sound limit is contrary to the plain language of Act 233 and is therefore unnecessary. DTE Electric's comments, filing #U-21547-0024, p. 4.

The Commission notes that the draft Sound Report Guidelines incorporate numerous ANSI standards that an applicant may use when conducting sound studies for the proposed energy facility. *See*, Sound Report Guidelines, filing #U-21547-0020, pp. 4-5. The Commission finds the use of ANSI standards to determine, among other things, the sound generated by an energy facility to be appropriate given the fact that Act 233 itself relies on at least one ANSI standard. *See*, MCL 460.1226(8)(a)(iv); MCL 460.1226(8)(b)(iv); and MCL 460.1226(8)(c)(iii) ("Decibel modeling shall use the A-weighted scale as designed by [ANSI]."). As a result, the Commission finds that the proposed +5 dB tonal penalty is reasonable and appropriate because it is based on

[13] Page references to Black & Veatch's case comment, filing #U-21547-0102-CC, will refer to the paginated portion of the document.

ANSI standards, which the Commission finds to be a credible and reliable source of standards for sound modeling. *See*, Sound Report Guidelines, filing #U-21547-0020, p. 3 (referencing ANSI S12.9, Part 3). Accordingly, the Commission adopts the proposed use of a +5 dB tonal penalty as part of the sound modeling parameters required under Act 233.

3. Façade Pressure Doubling Method

EIBC/United oppose the proposed inclusion of a +6 dB addition due to façade pressure doubling and argue that such an increase would result in a 49 dB limit that is not justified by the plain language of Act 233. Although EIBC/United acknowledge that the statutory language used in Section 226(8) of Act 233 requires sound to be modeled at the nearest outer wall of the nearest dwelling, they argue that it is unlikely that the Legislature was concerned about the effects of an energy facility's sound on individuals who are located directly against the outer wall of their home. Instead, EIBC/United argue that it is more reasonable to interpret the statutory language in Section 226(8) of Act 233 as defining a simple measure of distance between an energy facility and the boundary of the outer wall of a dwelling. In turn, EIBC/United argue that the technical impacts of a dwelling façade's effect on sound should be disregarded. Additionally, EIBC/United argue that the inclusion of a façade pressure doubling method could contribute to confusion for local governments who would typically assess the effects of sound from an energy facility in the acoustic free field. Finally, EIBC/United argue that the proposed method is inconsistent with sound level evaluations for homes in Michigan and in other jurisdictions. EIBC/United's comments, filing #U-21547-0022, pp. 4-6.

Consumers also opposes the proposed façade pressure doubling method and argues that Section 226(8) of Act 233 does not contain such a requirement. Like EIBC/United, Consumers argues that utilizing this method could result in a lower sound limit that is inconsistent with the 55

dB limit specified in Act 233. Consumers, instead, argues that the 55 dB sound limit applies at the nearest outer wall as modeled by an approved method for a free-field condition. Accordingly, Consumers urges the Commission to reject the proposed façade pressure doubling method. Consumers' comments, filing #U-21547-0023, pp. 3-4.

DTE Electric also opposes the proposed method and argues that the clear intent of the sound limit established in Act 233 is to protect individuals from excessive noise inside their houses. DTE Electric argues that individuals do not conduct activities on the façade of their home and that the inclusion of the façade pressure doubling method would lead to illogical results. Further, DTE Electric argues that sound inside a house is attenuated substantially and that there is little question that individuals will not experience excessive sound inside their homes, regardless of the removal of the proposed method. As a result, DTE Electric urges the Commission to reject the proposed façade pressure doubling method. DTE Electric's comments, filing #U-21547-0024, pp. 3-4.

MTA comments that "[t]he draft guidelines addressing the measurement [from the façade] will provide guidance to communities that choose to adopt their own ordinances." MTA's initial comments, filing #U-21547-0021, p. 1.

U of M comments that its review of past workable ordinances confirmed that, at least in Michigan, it is uncommon to regulate sound at a dwelling's façade. U of M's review of ordinances showed that only one local unit of government referenced a dwelling's façade, but in that instance, the reference was only used to clarify that measurements should be taken "50 feet from the façade." U of M's case comment, filing #U-21547-0101-CC, p. 1.

The Commission finds the +6 dB façade pressure doubling method proposed in the draft Sound Report Guidelines to be well-supported and consistent with the plain language of Act 233. The Commission finds that Act 233 expressly sets a 55 average hourly dB sound limit "as modeled

at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property." MCL 460.1226(8)(a)(iv); MCL 460.1226(8)(b)(iv); and MCL 460.1226(8)(c)(iii) (emphasis added). Thus, although uncommon, the plain language of the statute requires an applicant to model sound at the outer wall, not at an alternative location.

Additionally, the Commission finds that the proposed +6 dB façade pressure doubling method conforms to and is supported by ANSI standards. *See*, Sound Report Guidelines, p. 7, n. 1. As previously explained, the Commission finds the use of ANSI standards to be appropriate. *See*, Tonal Prominence Penalty *supra*. Accordingly, the Commission adopts the +6 dB façade pressure doubling method proposed in the draft Sound Report Guidelines.

4. Preconstruction Sound Monitoring

EIBC/United oppose the draft Sound Report Guidelines' requirement that an applicant conduct preconstruction sound monitoring. EIBC/United argue that the 55 dB sound limit contained in Section 226(8) of Act 233 is based solely on modeled sound generated from the energy facility and that, consequently, preconstruction sound monitoring is unnecessary. Additionally, EIBC/United argue that preconstruction modeling would add significant costs to the sound studies. Accordingly, EIBC/United advocate for the Commission to strike any preconstruction monitoring requirement, or in the alternative, to make clear that preconstruction monitoring is voluntary. EIBC/United's comments, filing #U-21547-0022, pp. 1-3.

Consumers also opposes the requirement for an applicant to conduct preconstruction monitoring for a proposed energy facility. According to Consumers, the required monitoring is unnecessary, subjective, and vague, as there is no existing condition for the site that can be easily monitored. Consumers argues that existing sound levels for a proposed site vary widely and unpredictably and that, as a result, any monitoring is open to subjective interpretation that could

jeopardize the development of energy facilities. Additionally, like EIBC/United, Consumers argues that Act 233 contains no requirement for preconstruction monitoring since the 55 dB sound limit identified in the statute is based on modeled sound. Consumers' comments, filing #U-21547-0023, p. 4.

DTE Electric also argues that preconstruction monitoring is neither required by Act 233 nor necessary since the sound limitations in Section 226(8) are based on modeled sound. DTE Electric also argues that the requirement to conduct preconstruction monitoring will add additional time and cost to the application process with no clear purpose. Accordingly, DTE Electric urges the Commission to remove the requirement from the draft Sound Report Guidelines. DTE Electric's comments, filing #U-21547-0024, p. 5.

Unlike other commenters, MTA agrees with the draft Sound Report Guidelines' preconstruction requirements and states that the information garnered from preconstruction monitoring is necessary for the Commission to ensure an energy facility's compliance with Act 233. MTA's comments, filing #U-21547-0021, p. 1.

U of M argues that preconstruction studies are helpful for understanding if there are preexisting conditions at a site that are noisier than the proposed energy facility. U of M, however, acknowledges the cost for such studies and advocates for the Commission to only require an applicant to submit a preconstruction monitoring protocol with the application, with the monitoring only being conducted after the Commission has issued a certificate for the project. U of M's case comment, filing #U-21547-0101-CC, pp. 3-4.

The Commission finds that the plain language of Act 233 demonstrates that the 55 dB sound limit contained in Section 226(8) of Act 233 is based on an energy facility's modeled sound. MCL 460.1226(8)(a)(iv); MCL 460.1226(8)(b)(iv); and MCL 460.1226(8)(c)(iii). As a result, the

Commission agrees that preconstruction monitoring should not be a strict requirement for an applicant in order to assess whether a proposed energy facility complies with Act 233's sound limits. However, the Commission finds that preconstruction sound modeling can be a useful tool to assess the potential noise impacts of a proposed facility on the existing soundscape. Specifically, the Commission finds that preconstruction monitoring is a necessary tool to determine whether an energy facility's sound is tonal at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Consequently, although not a strict requirement, the Commission finds that if an applicant elects to demonstrate that an energy facility's potential tonal prominence is masked by a site's background sound, and therefore that a +5 dB tonal penalty should not apply, that applicant must conduct the preconstruction monitoring proposed in the draft Sound Report Guidelines.

5. Postconstruction Monitoring

Like the preconstruction monitoring requirements, EIBC/United oppose the draft Sound Report Guidelines' inclusion of a requirement to conduct postconstruction sound monitoring. EIBC/United argue that there are no statutory requirements for postconstruction sound measurements and that, instead, Act 233 merely requires an applicant to show compliance with sound limits through modeling. Additionally, EIBC/United argue that a requirement to conduct postconstruction sound monitoring would add significant costs to sound studies. EIBC/United's comments, filing #U-21547-0022, pp. 2-3.

DTE Electric also opposes a strict requirement to conduct postconstruction sound monitoring. Although it believes that postconstruction sound monitoring can be a productive tool to ensure compliance, DTE Electric argues that a requirement to conduct postconstruction monitoring should be limited to instances where a nonparticipating resident has complained about the sound

generated from an energy facility. DTE Electric asserts that requiring postconstruction monitoring as a matter of course is excessive and, as such, that any such requirement should be limited. DTE Electric's comments, filing #U-21547-0024, p. 5.

MTA comments that the requirement to conduct postconstruction monitoring "is one of the most significant provisions of the draft sound guidelines presented, and it will be beneficial for communities where facilities will be located. MTA supports the inclusion of the post-construction sound monitoring and its review in the application process . . . ." MTA's comments, filing #U-21547-0021, p. 1.

The Commission finds that postconstruction monitoring is a useful tool for assessing whether an electric provider or IPP has complied with the sound limits required by Section 226(8) of Act 233. Importantly, the Commission finds that Act 233 expressly permits the Commission to condition the grant of an application on an applicant taking additional reasonable actions related to the impacts of the proposed energy facility. MCL 460.1226(6). Further, the Commission finds that Act 233 requires an applicant to file a completion report before the commencement of commercial operations certifying compliance with the requirements of Act 233 and any conditions contained in the Commission's certificate. MCL 460.1227a. Based on these provisions, the Commission finds it reasonable and appropriate to require applicants to conduct postconstruction monitoring to assess compliance with the sound limits required in Section 226(8) of Act 233. Accordingly, the Commission adopts the proposal for postconstruction monitoring outlined in the draft Sound Report Guidelines.

Other Issues

1. Compliance with Labor Laws

The Michigan AFL-CIO, MLDC, IBEW, and MRCC urge the Commission to update the Staff Draft to reflect the requirements of Senate Bill 571 (Act 110)[14] and to work with the Department of Labor and Economic Opportunity (LEO) to enforce requirements and ensure that a prevailing wage is being paid on contracts involving energy facilities. Michigan AFL-CIO's initial comments, filing #U-21547-0014, p. 5; MLDC's initial comments, filing #U-21547-0006, p. 5; IBEW's case comment, filing #U-21547-0072-CC, p. 5; MRCC's case comment, filing #U-21547-0059-CC, p. 5. Michigan ALF-CIO, MLDC, IBEW, and MRCC also both urge the Commission to require applicants to consult with local interest groups, including labor unions, when seeking to site an energy facility locally or through the Commission. Michigan AFL-CIO's initial comments, filing #U-21547-0014, pp. 3-4; MLDC's initial comments, filing #U-21547-0006, pp. 4-5; IBEW's case comment, filing #U-21547-0072-CC, pp. 4-5; MRCC's case comment, filing #U-21547-0059-CC, pp. 4-5.

With respect to Act 110, EIBC/United argue that the Commission does not have jurisdiction over the statute, and that the law will instead be enforced by LEO. As such, EIBC/United assert that there is no statutory basis for the Commission to exert control over the legislation. EIBC/United's reply comments, filing #U-21547-0016, pp. 7-8.

Similarly, while acknowledging consistencies between Act 110 and Act 233, Consumers urges the Commission to proceed with caution as it relates to duplicating the requirements of Act 110 in

[14] Senate Bill 571 was signed into law as Public Act 110 of 2024 (Act 110), on July 23, 2024. Among other things, Act 110 requires prevailing wages for renewable energy projects and ensures that the Department of Labor and Economic Opportunity has the authority to enforce the requirement. *See*, MCL 408.1101 amended; MCL 408.1102a added.

the Commission's siting process. As a result, Consumers "suggests that it would be sufficient to include a reference that applicants comply with all other relevant rules, ordinances, or statutes including but not limited to [Act] 110." Consumers' reply comments, filing #U-21547-0017, p. 9.

As previously detailed, the Commission has determined that the issuance of a certificate under Act 233 does not obviate the need for electric providers and IPPs to comply with all other applicable laws, rules, or regulations relating to energy facilities. *See*, MCL 460.1231(5); *see also*, Permit Approval Requirement *supra*. As a result, the Commission finds that electric providers and IPPs are still required to comply with applicable laws, including Act 110, when developing an energy facility. The Commission further finds that consultation with local interest groups, including with labor union representatives, is a reasonable requirement. The Commission, therefore, adopts this requirement as part of an applicant's consultation requirements. *See*, MCL 460.1225(1)(k).

2. Additional Changes to Final Application Filing Instruction and Procedures

The Commission notes that the above discussion involves a non-exhaustive summary of comments received in this docket, with further guidance on specific issues relating to the implementation of Act 233. The Commission further notes, however, that additional language changes to the Staff Draft were proposed by commenters. The Commission finds that some of these additional proposed changes are reasonable and consistent with Act 233, and therefore adopts them as reflected in the final Application Filing Instructions and Procedures adopted in this order.

Additionally, the Commission notes that certain substantive and organizational amendments were made to the Staff Draft by the Staff's retained consultant, Weston. While the substance of the document remains largely the same, the Staff Draft was reorganized for improved flow from

the perspective of an applicant filing before the Commission. The Commission finds that these changes, as reflected in the final Application Filing Instructions and Procedures adopted in this order, are reasonable and consistent with the requirements of Act 233, and therefore adopts them.

The Commission may require the Staff and interested persons to periodically review the final Application Filing Instructions and Procedures.

THEREFORE, IT IS ORDERED that:

A. The Commission adopts the proposals in the Commission Staff's draft Application Filing Instructions and Procedures, as specified in this order.

B. The Commission adopts the final Application Filing Instructions and Procedures, attached to this order as Exhibit A, to be used by electric providers and independent power producers seeking to obtain a certificate from the Commission for authority to site an energy facility pursuant to Public 233 of 2023, MCL 460.1221 *et seq*.

C. This order applies to electric providers and independent power producers filing for a certificate from the Commission pursuant to Public Act 233 of 2023, MCL 460.1221 *et seq*., on or after November 29, 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 LARA-MPSC-Edockets@michigan.gov and to the Michigan Department of Attorney General - Public Service Division at sheac1@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

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Katherine L. Peretick, Commissioner

By its action of October 10, 2024.

_____

Lisa Felice, Executive Secretary

MICHIGAN PUBLIC SERVICE COMMISSION

MPSC Certificate for Solar Energy, Wind Energy, and Energy Storage Facilities

Pursuant to Public Act 233 of 2023

Application Filing Instructions and Procedures

October 10, 2024

Dan Scripps, Chair
Alessandra Carreon, Commissioner
Katherine Peretick, Commissioner

LARA
LICENSING AND REGULATORY AFFAIRS

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LIST OF ATTACHMENTS

1. APPLICATION INSTRUCTIONS FOR RENEWABLE ENERGY & 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 Renewable Energy or Storage Siting Certificate (Certificate) for an energy facility under the provisions of Michigan Compiled Laws (MCL) 460.1221, *et seq*. (effective November 29, 2024). The application shall be consistent with these instructions, and any additional information considered relevant by the applicant may also be included in the application.

1.1 OBJECTIVES

These instructions have been developed to assist the applicant with the entire process associated with obtaining and complying with a Certificate. These instructions will clarify:

1. Who and what are eligible to apply for a renewable energy or storage siting certificate (Section 2).
    i. What are the pre-application requirements (Section 3).
    ii. What fees must be paid (Section 5).
    iii. What application documents/exhibits are required (Section 6.2).
    iv. What information is necessary to complete the application exhibits (Section 6.3 and Section 7).
    v. How the application is to be submitted (Section 6.1).
    vi. How more information can be obtained (Section 1.4).

1.2 PRIMARY REGULATORY CITATIONS

MCL 460.1221, *et seq*. (effective November 29, 2024).

Mich Admin Code, R 792.10401-R 792.10448.

1.3 KEY DEFINITIONS

Additional definitions can be found in **Attachment B**.

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

"**Certificate**" means a certificate issued for an energy facility under section 226(5) of Public Act (PA) 233 of 2023.

"**Chief elected official**" means a local government official including mayors, village presidents, township supervisors, and board chairs.

"**Compatible renewable energy ordinance**" or "**CREO**" 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 CREO under Act 233 may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8), and may not contain additional requirements beyond those specifically identified in that section. A local unit of government is considered not to have a CREO if it has a moratorium on the development of energy facilities in effect within its jurisdiction.

"**MPSC**" or "**Commission**" means the state regulatory body in Michigan charged with serving the public by ensuring safe, reliable, accessible energy and telecommunications at reasonable rates.

"**MPSC Staff**" or "**Staff**" means the professional, independent, subject matter experts employed by the MPSC who are granted intervention by right in contested cases before the Commission.

1.4 MPSC CONTACT AND ADDITIONAL INFORMATION

For additional information on the Renewable Energy and Energy Storage Facility Siting Commission activities, additional resources and contact information visit: https://www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting.

2. APPLICABILITY – WHO AND WHAT IS ELIGIBLE?

(a) Projects eligible to obtain a Certificate from MPSC include those where:

1. Landowners are willing to participate in allowing a solar, wind, or energy storage facility project on their property[1].

2. Nameplate capacities, measured in alternating current (AC), meet the following criteria:

    i. Solar facilities, including hybrid or co-located facilities comprised of solar and storage facilities, having a nameplate capacity of 50 megawatts (MW) or more.

[1] 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.

ii. Wind facilities, including hybrid or co-located facilities comprised of wind with solar and/or storage having a nameplate capacity of 100 MW or more.

iii. Energy storage facilities of nameplate capacity of 50 MW or more with a discharge capability of 200 megawatt hours (MWh) or more.

3. PRE-APPLICATION REQUIREMENTS

(a) The applicant must first apply for siting approval with the affected local unit(s) (ALU) when it has received notification from the chief elected official(s) that each ALU in which the project is sited has a CREO.

The pre-application process requires meetings and details are provided in **Attachment C**. A Pre-application Notification checklist of required notifications to be made is below:

☐ Chief Elected Officials Meeting Offer – 60 days before public meeting.

☐ Public Meeting Notice each ALU – 30 days before meeting.

☐ Public Meeting Notice copy to MPSC – 30 days before meeting.

☐ Public Meeting Notice newspaper(s) (each city and township) – 14 days before meeting.

☐ MPSC Staff pre-application meeting – 30 days prior to application submittal.

4. APPLICATION SUBMITTAL AND APPROVAL SCHEDULE

(a) Upon receipt of an application through MPSC's Electronic Docket Filings System (E-Docket) system, the MPSC Staff (hereinafter referred to as Staff) will determine whether the application is complete.

1. Staff has 60 calendar days to determine completeness.

2. At the time of the application filing, the applicant shall set up a virtual technical conference to include Staff and ALUs to view the site plan in an electronic format and to ask questions.

3. At the time of application filing, 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.

4. If Staff determines that the application is incomplete, Staff will file a memo in the case docket describing the application deficiencies.

5. Once the application is considered complete, the Commission has one year from the time of the complete application filing date to issue a certificate or deny the application.

i. The application is considered complete if no memo notifying the applicant that its application is incomplete has been filed in the docket within 60 days.

(b) Concurrent with Staff's review for completeness, a prehearing will be scheduled, and a Notice of Hearing will be filed in the docket containing noticing requirements for the applicant, and information for how interested persons may petition to intervene, or otherwise participate in the prehearing.

(c) If the application is considered complete, the schedule for the case will be set by the administrative law judge (ALJ) presiding over the case at the prehearing. The adopted case schedule will be posted to the case docket.

(d) At the time of the prehearing, the applicant must pay the base application fee (**Section 5**).

5. APPLICATION FEES

(a) The applicant is required to pay an application fee designed to cover the Staff's administrative cost in processing the evaluation, and also pay the costs for retaining consultants on specialty issues outside of the Staff's expertise.

1. At the time of the prehearing, an applicant not regulated by the MPSC is required to pay a one-time Base Application Fee of $10,000 to the MPSC Executive Secretary; if the applicant is regulated by the MPSC, no application fee is required.[2]

   i. Payments must be made by check.

   ii. Additional fees, such as contracting with subject matter expert consultants or costs pertaining to additional ongoing compliance may follow.

(b) Within 30 days of the application being deemed complete, Staff will provide an estimate to the applicant of total estimated fees, which includes the costs of consultants retained by the Commission. **Exhibit S-1 "Fee Exhibit"** will be posted to the docket. The applicant has an opportunity to contest the final assessed fees after the evidentiary record is closed.

[2] 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.

Fees Schedule

RENEWABLE ENERGY & STORAGE SITING APPLICATION FEE SCHEDULE	
Base Application Fee - Applicable to applicants not regulated by the MPSC	
Contested case (includes up to 150 Staff hours)	$10,000
Additional Applicable to all applicants regardless if regulated by the MPSC	**Fees**
Additional MPSC Staff hours [3]	Billed hourly above application fee
Consultant Expert testimony	Actual Fees
External Public Meetings	Actual Fees
Court Fees- including transcription & court reporting[4]	Actual Fees
Environmental Reporting & Testing[5]	Actual fees
Miscellaneous Filings & Additional Fees	
Miscellaneous maintenance following issuance of certificate	Actual fees billed hourly
Formal Complaints[6]	$500

(c) Further details about fees are provided 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-1.1**.

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 ALJ who presided over the proceedings shall include a decision regarding the total assessed fees in the

[3] Includes 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 Staff time to allow for working on briefs, reply briefs, and exceptions to the PFD.
[4] All hearing costs associated with 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 Staff will not be included in any fees assessed to the applicant.
[5] 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 NREPA, MCL 324.1701 et seq.
[6] No formal complaint case fees will be assessed in cases which involve a regulated utility. Formal complaint cases which involve an applicant not regulated by the MPSC will have the fee paid by the applicant when the case is determined to be prima facie.

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

7. 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.

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

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

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

11. 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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, the following: environmental site analysis if site plan has been altered, any project follow-up considerations post construction and operation, and other accounting, engineering, or legal aspects.

17. 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.[7]

6. APPLICATION FILING REQUIREMENTS

6.1 OVERVIEW AND PROCEDURES

(a) The application is comprised of a series of Exhibits and associated testimony that is filed through E-Dockets. The Exhibits take the form of maps, narratives, and Appendices with supporting documentation. Exhibit A-1.1 through Exhibit A-1.16 is the Site Plan, which must be completed prior to the public meetings and outreach activities. Exhibits A-2 throughA-16 comprise the remaining components of the application.

(b) File the application which contains the required information and exhibits to the E-Docket. Each required exhibit must be addressed and should be numbered as listed in these guidelines.

(c) Submit a copy of the site plan (or an internet address where the site plan can be reviewed) to the clerk of each ALU.

(d) Make the one-time grant to each ALU. See **Section 6.4.1** for guidance.

(e) Provide notice of the opportunity to comment on the application as prescribed by the commission. The notice shall be published in a newspaper of general circulation in each ALU 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 applicant and the words “NOTICE OF INTENT TO CONSTRUCT _____ FACILITY”, with the words “WIND ENERGY”, “SOLAR ENERGY”, or “ENERGY STORAGE”, as applicable, entered in the blank space.

(f) The applicant shall send the notice of the public meeting by U.S. mail to postal addressees within one mile of proposed solar or energy storage facilities, and within two miles of proposed wind energy facilities, including to those addressees

[7] 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.

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.

6.2 EXHIBIT LIST

(a) Each of the exhibits in **Table 6-1** and **Table 6-2** must be included in the application using the exhibit identifier provided. If the exhibit is not applicable to the type of application, please include the exhibit page and indicate "Intentionally left blank".

Tables 6-1 and **6-2** outline the exhibits required in the application and references the section that provides detailed information that must be included for each exhibit.

Table 6-1
Site Plan Exhibits

Site Plan Exhibit Number	Description	Site Plan Drawings Guidelines Section	Site Plan Narrative Guidelines Section
	Site Plan	Section 7	
A-1.1	Exhibit A-1.1 – Planned Facilities	7.1	
A-1.2	Exhibit A-1.2 – Area Land Use Information	7.2 (a)(1)-(10)	
A-1.3	Exhibit A-1.3 – Explanatory Information and Associated Appendices		7.3
A-1.4	Exhibit A-1.4 – Construction Information	7.4 (8)	7.4 (1) & related to Exhibit F-2 7.4 (2)-(7)
A-1.5	Exhibit A-1.5 – Alternatives	7.5	7.5
A-1.6	Exhibit A-1.6 – Changes	7.6	7.6
A-1.7	Exhibit A-1.7 – Sound Report and Monitoring Protocol	7.2 (9)	7.7(a)
A-1.8	Exhibit A-1.8 – Shadow Flicker Report for Wind Facilities	7.2 (10)	7.8
A-1.9	Exhibit A-1.9 – Emergency Response Plan		7.9
A-1.10	Exhibit A-1.10 – Fire Response Plan		7.10
A-1.11	Exhibit A-1.11 – Commissioning Plan		7.11
A-1.12	Exhibit A-1.12 – Emergency Operation Plan		7.12
A-1.13	Exhibit A-1.13 – Hazard Mitigation Analysis		7.13
A-1.14	Exhibit A-1.14 – Unanticipated Discoveries Plan		7.14
A-1.15	Exhibit A-1.15 – Participating Parcel List		7.15
A-1.16	Exhibit A-1.16 – Complaint Resolution Process		7.16

(1) Energy Storage Facilities Only

Table 6-2
Summary of Additional Application Exhibits

Application Exhibit Numbers	Description	Guidance Section
A-2	Exhibit A-2 – Project Description	6.3.2
A-3	Exhibit A-3 – Project Schedule	6.3.3
	Exhibits A-4.1 through A-4.5 – Local Outreach	6.3.4
A-4.1	Exhibit A-4.1 Chief Elected Official	6.3.4(1)
A-4.2	Exhibit A-4.2 Summary of Community Outreach and Education Efforts	6.3.4(2)
A-4.3	Exhibit A-4.3 - Accommodations or changes	6.3.4(3)
A-4.4	Exhibit A-4.4 - Summary of Agency Consultations	6.3.4(4)
A-4.5	Exhibit A-4.5 - Summary of Tribal Engagement	6.3.4(5)
A-5	Exhibit A-5 – NFPA Stationary Energy Storage System Compliance(1)	6.3.5
	Exhibits A-6.1 through A.6.4 – Environmental Compliance	6.3.6
A-6.1	Exhibit A-6.1 - Soil and Economic Survey Report	6.3.6(a)(1)
A-6.2	Exhibit A-6.2 Environmental Compliance Report	6.3.6(a)(2)
A-6.3	Exhibit A-6.3 Permit List and Status	6.3.6(a)(3)
A-6.4	Exhibit A-6.4 Stormwater Mitigation Plan	6.3.6(a)(5)
A-7	Exhibit A-7 – Signal Mitigation Plan	6.3.6(a)(4)
	Exhibits A-8.1 through A-8.5 – Public Benefits	6.3.8
A-8.1	Exhibit A-8.1 Tax Revenue	6.3.8(a)(1)
A-8.2	Exhibit A-8.2 Payments to Landowners	6.3.8(a)(2)
A-8.3	Exhibit A-8.3 Host Community and Community Benefits Agreements	6.3.8(a)(3)
A-8.4	Exhibit A-8.4 Local Job Creation	6.3.8(a)(4)
A-8.5	Exhibit A-8.5 Energy Needs Contributions	6.3.8(a)(5)
A-9	Exhibit A-9 – Farmland Protection	6.3.9
A-10	Exhibit A-10 – Public Health and Safety	6.3.10
A-11	Exhibit A-11 – Dark Skies(1)	6.3.11
A-12	Exhibit A-12 – Transmission and Interconnection Agreements	6.3.12
	Exhibits A-13.1 through A-13.3 – Decommissioning	6.3.13
A-13.1	Exhibit A-13.1 - Decommissioning Plan	6.3.13(a)
A-13.2	Exhibit A-13.2 - Detailed Decommissioning Cost Estimate	6.3.13(b)
A-13.3	Exhibit A-13.3 - Proposed Decommissioning Agreement	6.3.13(c)
A-14	Exhibit A-14 - Conditions	6.3.14
A-15	Exhibit A-15 - Other Requested Information	6.3.15
A-16	Exhibit A-16 – Application Checklist	6.3.16

(1) Energy Storage Facilities Only

6.3 REQUIRED EXHIBITS

(a) The required document exhibits are described below. Additional details for each exhibit are provided in Attachments as needed.

6.3.1 Exhibit A-1.1 through A-1.16 – Site Plan

(a) See **Section 7** for detailed guidelines.

6.3.2 Exhibit A-2 – Project Description

(a) The Project Description shall include the following information:

1. Complete name, address, and phone number of the applicant and representative for the application.

2. A description of the facility, including the following:

   i. General description of size, purpose, and location.

   ii. General description of the community where the facility will be located (i.e. land use, population).

   iii. The percentage of land within the township, city, or village dedicated to energy generation at the time of the application. In addition, and the percentage of land within the county dedicated to energy generation at the time of the application.

   iv. Expected use.

6.3.3 Exhibit A-3 – Project Schedule

(a) The application shall include expert witness testimony and exhibits presenting the following information:

1. Detailed schedule of planned construction activities including planned construction start date and expected duration of construction.

2. Testimony describing each element within the construction schedule.

6.3.4 Exhibits A-4.1 through A-4.5 – Local Outreach

(a) The following local outreach documentation is to be provided:

1. Exhibit A-4.1 – Chief Elected Official Documentation:

   i. A copy of applicant's offer to meet with the chief elected official in each ALU.

   ii. Documentation of the chief elected official response(s) to the meeting request if provided.

iii. A summary of all meetings, including meeting dates held between the applicant and the chief elected officials.

2. **Exhibit A-4.2** – **Summary of Community Outreach and Education Efforts**

Provide a summary including a copy of all presentation or education materials, number of attendees for any public meetings or meetings with elected officials, meeting length, number of commenters and topics discussed during the meetings.

i. Outreach conducted to locally impacted community groups, environmental organizations, and labor union representatives. Include, at a minimum, the date and time the outreach took place, who participated in the consultation, and summary of findings.

3. **Exhibit A-4.3** – **Accommodations or changes** made to the project design to address the public comments received.

4. **Exhibit A-4.4** – **Summary of Agency Consultations**. Provide a summary for each federal, state and local agency consultation that includes, 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. Provide a justification for any consultations the applicant deemed not necessary.

i. Federal agencies – where applicable.

ii. Michigan Department of Natural Resources.

iii. State Historic Preservation Office.

iv. Michigan Department of Environment, Great Lakes, and Energy.

v. Michigan Department of Agriculture and Rural Development.

vi. County Drain Commission.

vii. County Road Agency.

viii. Owners of major facilities for electric, gas, or telecommunications lines.

ix. Michigan Department of Transportation – Aeronautics Commission (if applicable).

5. **Exhibit A-4.5 – Summary of Tribal Engagement**

    i. A summary of tribal engagement, including at a minimum, the communication and outreach conducted with each Tribe, date and time, who participated, and a summary of tribal input and outcomes if applicable.

6.3.5 Exhibit A-5 – NFPA Compliance (Facilities with Energy Storage Only)

(a) Provide documentation that the energy **storage** facility complies with the version of National Fire Protection Association (NFPA) 855 “Standard for the Installation of Stationary Energy Storage Systems in effect on November 29, 2024 or as adopted by the Commission.

6.3.6 Exhibits A-6.1 through A-6.4 – Environmental Compliance

(a) **Exhibits A-6.1 through A-6.4** are designed to demonstrate compliance with applicable state and federal environmental laws. Below is a list of the sub exhibits.

1. **Exhibit A-6.1: Soil and Economic Survey Report**.

2. **Exhibit A-6.2: Environmental Compliance Report**. This report describes how the proposed facility will comply with applicable state and federal laws, including the Natural Resources and Environmental Protection Act (NREPA), Public Act 451 of 1994, and Section 1705(2) of the Michigan Environmental Protection Act (MEPA), MCL 324.1705(2).

    i. Provide a description of the expected direct impacts of the proposed energy facility on the environment and natural resources and a plan describing how these impacts are proposed to be addressed and/or mitigated.

    ii. Provide a statement and reasonable evidence that the proposed facility will not begin commercial operation until it complies with applicable state and federal environmental laws including NREPA.

3. **Exhibit A-6.3 Permit List and Status.**

    i. Provide a list of all permits necessary prior to construction with the information identified below:

    - Subject.
    - Responsible Agency.
    - Date or Proposed Date Application Submitted.
    - Date Permit Issued or Expected to be Issued.

ii. Include any permits received prior to filing an application in this exhibit.

4. **Exhibit A-6.4 Stormwater Mitigation Plan.**

i. Conduct a stormwater assessment and prepare a plan that describes measures to minimize, mitigate, and repair any drainage impacts. The assessment and plan may be preliminary.

ii. The Plan shall address any guidance from consultation with the county drain commissioner and shall include 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 for each consultation.

6.3.7 Exhibit A-7 – Signal Mitigation Plan

i. If the 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, provide a plan to minimize and mitigate that impact.

ii. Wind turbine facilities should provide evidence of prior consultation with nearby communication tower operators, including those of the United States Defense Department.

6.3.8 Exhibits A-8.1 through A-8.5 – Public Benefits

(a) Provide 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.

1. **Exhibit A-8.1** - Expected tax revenue paid by the energy facility to local taxing districts.

2. **Exhibit A-8.2** - Payments to owners of participating property.

   These may be filed confidentially if provided to Staff pursuant to a confidentiality agreement that will be superseded by a protective order, once one is entered.

3. **Exhibit A-8.3** - Provide signed copies of host community agreements (which includes a payment provision of $2,000 per MW megawatt of nameplate capacity to the ALU upon commencement of operation) and/or community benefits agreements (which includes payment provisions as outlined in 6.2.10(a)(3)(ii) of this guidance).

i. Host community agreements or community benefits agreements are required for each ALU, according to the nameplate capacity located within the ALU.[8]

- 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 providing benefits within or serving the residents of each ALU without a signed host community agreement.

- In the event that agreements were proposed and were not signed, those may be provided in lieu of signed agreements with an explanation of why the proposed agreements have not yet been executed.

ii. Community benefits agreements with community-based organizations within, or that serve residents of, the ALU, must include provisions for payments that are equal to, or greater than, what 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.

- 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.

[8] 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.

- Annual contributions to a nonprofit or community-based organization that awards grants.

4. **Exhibit A-8.4** – **Local Job Creation.** Provide a project labor agreement or collective bargaining agreement if applicable.

5. **Exhibit A-8.5 – Energy Needs Contributions.** 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.

6.3.9 Exhibit A-9 – Farmland Protection

(a) Provide an explanation for how the proposed facility will not unreasonably diminish farmland.

(b) Provide the information below at both the local (township/city/village) and the county level using publicly available data, such as https://croplandcros.scinet.usda.gov/, as follows:

1. Type of farmland being utilized by the project (i.e. Standard, Prime, Specialty Crops).
2. Total acreage of farmland utilized by the project.
3. Farmland utilized by the project as a percentage of farmland in the township and county.
4. Current percentage of land within the township and county considered farmland, differentiated by type.
5. Total acreage of farmland within the township and the county, differentiated by type.

6.3.10 Exhibit A-10 – Public Health and Safety

Public health and safety impacts of the project are considered acceptable if the design criteria for the proposed facility are met. The following sections outline the applicable standards required for each type of proposed facility.

(a) **Solar Facility** – Describe how the proposed facility will meet the following standards:

1. Setbacks

    i. Occupied community buildings and dwellings on non-participating properties – 300 feet from nearest point on the outer wall.

ii. Public road right of way – 50 feet measured from the nearest edge of a public road right-of-way.

iii. Non-participating parties – 50 feet measured from the nearest shared property line.

2. Fencing – National Electric Code, most recent version.

3. Maximum height – Solar array may not exceed 25 feet above ground at full tilt.

4. Sound - Must not generate >55 decibel (dB); (average hourly) at nearest wall of nonparticipating property.

(b) **Wind Facility** – Describe how the facility will meet the following standards:

1. Setbacks

i. 2.1 x maximum blade height to nearest point on the outside wall of the structure.

ii. Residences and other nonparticipating parties – 1.1 x maximum blade tip height to nearest point on the outside wall of the structure.

iii. Nonparticipating property lines – 1.1 x maximum blade tip height to nearest point on the outside wall of the structure.

iv. Public right-of-way - 1.1 x maximum blade tip height to center line of the public road right-of-way.

2. Shadow Flicker – Occupied buildings or nonparticipating residences experience <30 hr/yr shadow flicker.

3. Maximum height – Wind tower blade tips may not exceed height allowed under a Determination of No Hazard to Air Navigation by the Federal Aviation Administration under 14 CFR Part 77.

4. Sound - Must not generate >55 decibel (dB); (average hourly) at nearest wall of nonparticipating property.

5. Radar Interference – “any standard” concerning radar interference.

(c) **Energy Storage Facility** – Describe how the facility will meet the following standards:

1. Setbacks

i. Occupied community buildings and dwellings on nonparticipating properties – 300 feet from nearest point on the outer wall.

ii. Public road right of way – 50 feet measured from the nearest edge of a public road right-of-way.

iii. Nonparticipating parties – 50 feet measured from the nearest shared property line.

2. Fire Protection – Facility complies with the latest version of NFPA 855 "Standard for the Installation of Station Energy Storage Systems."

3. Sound – Facility does not generate >55 decibel (dB; (average hourly) at nearest wall of nonparticipating property.

6.3.11 Exhibit A-11 – Dark Skies (Solar and/or Storage Facilities Only)

Provide plans to comply with dark sky-friendly lighting solutions for solar or storage facilities and light-mitigation plans for wind facilities as submitted to the Federal Aviation Administration, including exemptions requested for during the construction period.

6.3.12 Exhibit A-12 – Transmission and Interconnection Agreements

(a) Provide the following information related to power transmission and interconnection.

1. Queue number or other information providing the ability to identify the proposed facility within the interconnection queue.

2. Copies of all studies completed by the regional transmission organization including feasibility studies and system impact studies.

i. If a generator interconnection agreement has been executed, the executed generator interconnection agreement may be submitted in lieu of the studies.

ii. The generator interconnection agreement and/or studies may be filed subject to a protective order and non-disclosure agreement.

6.3.13 Exhibits A-13.1 through A-13.3 – Decommissioning

Exhibit A-13.1 – Decommissioning Plan. Submit a decommissioning plan that includes the following:

1. An overview of the proposed energy facility including:

i. A detailed description of the proposed energy facility above ground and overview of the current land use of the site where the proposed energy facility will be located.

ii. The expected useful life of the proposed energy facility.

iii. A description of events which would trigger applicant-initiated decommissioning.

iv. A physical and chemical analysis of the soil which can be used to ensure soil is returned to a useful condition.

v. A list of known hazardous substances at the time of development.

2. A description of the energy facility removal process including:

i. A proposed decommissioning schedule.

ii. A description of facilities that will be removed and those that will be kept in place including the reasoning and agreement with the property owner.

iii. A description of removal methods and site clearance activities.

iv. A description of anticipated hazardous substances used in the facility and removal from the site based upon what is known at the time the application is filed.

v. 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.

vi. 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 that returns the site to a useful condition similar to its pre-construction state. Process milestones and PA 116 restoration requirements should be detailed, including necessary steps to ensure soil is returned to at least as good or better condition.

4. 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.

5. Details describing the financial assurance:

i. 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:

a. Bond.

b. Parent company guarantee.

c. Irrevocable letter of credit.

ii. Such financial assurance shall be expressly held for the benefit of the Michigan Public Service Commission.

6. The following commitments and assurances shall be included in the decommissioning plan:

a. A commitment to provide decommissioning plan and financial assurance cost updates on a 5-year basis for the first 20 years of commercial operation and every 3 years thereafter.

b. An assurance statement from that restoration will be in accordance with agreements with landowners.

c. A commitment and plan to coordinate with landowners, ALUs, and local governments not exercising zoning authority in which all or part of a proposed energy facility will be located to the extent possible, prior to beginning decommissioning activities.

d. An assurance that decommissioning plan updates and cost estimates shall be filed in the MPSC docket assigned to the energy facility.

e. An assurance that the financial assurance shall be updated according to the required periodic decommission plan and cost estimate updates.

f. Assurance that the applicant will provide annual proof in the MPSC docket assigned to the energy facility that the financial assurance remains sufficient and in effect.

g. A statement agreeing to provide a decommissioning completion report within 60 days after decommissioning is complete.

Exhibit A-13.2 - Detailed Decommissioning Cost Estimate

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

i. 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 to restore to useful condition similar to before the energy facility.

ii. An estimate of salvage value for energy facility equipment and infrastructure calculated by a third party with expertise in decommissioning.

iii. An estimate of the cost to hire a decommissioning consultant to manage the decommissioning process in the event of owner abandonment or bankruptcy.

Exhibit A-13.3 - Proposed Decommissioning Agreement

1. Submit a Decommissioning Agreement between the applicant and each Business Structure and State of Organization. A copy of the proposed agreement is provided in **Attachment F** and a word file is available here. Any changes to the sample agreement shall be redlined.

6.3.14 Exhibits A-14 – Conditions

(a) Submit a completed Exhibit N regarding the proposed minimum conditions in **Attachment G.**

1. The applicant shall include proposals to meet the proposed minimum conditions when filing an application or provide an explanation justifying why any of the proposed minimum conditions should not be applied to the facilities. Those participating in the case are encouraged to evaluate the efficacy of the proposed conditions made by the applicant in the application and to propose modifications or additions to proposed conditions in contested cases filed pursuant to PA 233.

2. For each condition listed, consider how the project meets, plans to meet, or should not be required to meet, that condition. Either reference where in the application that condition is addressed or provide a response – either in the table or as an attachment to the table (i.e., Exhibit O-1).

6.3.15 Exhibit A-15 – Other Requested Information

(a) Provide other information identified during a pre-application meeting or requested by the Commission that is not otherwise included in the preceding exhibits.

6.3.16 Exhibit A-16 – Application Checklist

The checklist is available on the MPSC Renewable Energy and Energy Storage Facility Website. Staff may make non-substantive changes to this document over time to best accommodate the requirements as prescribed in the Application Filing Instructions and Procedures.

6.4 AFFECTED LOCAL UNIT COORDINATION AND GRANT

6.4.1 One-Time Grant to Affected Local Units

(a) When the application is filed, the applicant must make a one-time grant[9] to ***each*** ALU in which the project is located unless at least one of the following is true:

1. 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).

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

3. The ALU notified the applicant that it had a CREO and later amends the CREO so that it imposes requirements more restrictive than 226(8).

(b) If one ALU in the project area meets one of the criteria above, only that ALU in the project area is ineligible for the grant. All other ALUs in the project area remain eligible.

The Commission has established the one-time grant of $150,000, whereby each ALU receives no more than $75,000. The applicant shall split the one-time grant amount equally among all ALUs, and the one-time grant to each ALU should be delivered with a copy of the application within 24 hours of being filed pursuant to PA 233.

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. 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 services for participation in the case and an estimate for funds to be spent on 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 30 days following the

[9] 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.

date on which answers to petitions for rehearing on the Commission's final order are due, when applicable.

7. EXHIBITS A-1.1 THROUGH A1.16 – SITE PLAN

Site plans should be prepared using the latest or most recent edition USGS maps (1:24,000 topographic edition) and GIS mapping to the extent available. All items provided must be clear and legible, which could entail providing some of the requested items on separate layers, separate maps, or by showing some areas on another scale.

7.1 EXHIBIT A-1.1 – PLANNED FACILITIES

(a) Site Plans must, at a minimum, depict the following information:

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.

4. Major institutions, parks, and recreational areas within 1000 feet of the site.

5. Lakes, reservoirs, streams, canals, rivers, wetlands, and other waterbodies within 1000 feet of the site.

6. Legal boundaries of cities, villages, townships, and counties within 1000 fit of the site.

7. Occupied structures within 1000 feet of the site.

8. The location of inverters and other noise-emitting facilities showing the distance to occupied structures, 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.

10. The location of any deeded easement known to date that exists within the footprint of the facility.

    i. The existing site plan elements, including without limitation, project boundary(ies), parcel boundaries, public roads, railroads, public right-of-way, existing public utilities, and easement locations shall be shown as approximate locations based on readily available desktop/GIS/publicly available spatial data within the footprint of the facility.

(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.

7.2 EXHIBIT A-1.2 – AREA LAND USE INFORMATION

(a) Exhibit A-2 maps must show, at a minimum, the following information within the proposed facility (including all components and ancillary feature(s)) and within 1,000 feet of the proposed facility (including all components and ancillary feature(s)). 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 portable document format (pdf) maps, or by showing some areas on another scale.

1. Municipal boundaries and taxing jurisdictions, at a scale sufficient to determine and demonstrate relation of facilities to those geographic and political features.

2. 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 according to publicly available data.

3. Farmland, including, but not limited to, prime farmland within the facility and surrounding area within 1000 feet of the perimeter.

4. Existing overhead and underground major facilities for electric, gas, and telecommunications transmission.

5. A map of all properties upon which any component of a facility or ancillary feature would be located must show 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).

    i. For wind facilities, all properties within 2,000 feet of such facilities must be shown.

6. Existing local zoning districts.

7. Designated coastal areas, inland waterways, groundwater management zones, designated agricultural districts, flood-prone areas, and coastal erosion hazard areas.

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

9. Depict 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. Depict the area 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 and locations of occupied structures.

7.3 EXHIBIT A-1.3 – EXPLANATORY INFORMATION

(a) 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 the following:

    i. Environmental and Natural Resource impacts

    ii. Noise

    iii. Visual impacts

    iv. Impacts to traffic

    v. Impacts to solid waste disposal capacity

    vi. Impacts to county and intercounty drains and preliminary plans to minimize, mitigate, and repair drainage issues; and

    vii. Other impacts to non-participating property owners during construction and operation.

2. Provide the number of acres of the proposed site for the facility.

3. Provide 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. Provide 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 perimeter 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. Provide a description of the planned screening, landscaping, and vegetative cover. For solar developments, describe the plan to establish and maintain pollinator habitat and 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.

    i. 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 February 27, 2024, or any applicable successor standards approved by the commission.

ii. 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. Provide a written description of how planned fencing complies with the version of the National Electric Code in effect on November 29, 2024, or as approved by the Commission.

7.4 EXHIBIT A-1.4 – CONSTRUCTION INFORMATION

(a) Describe the project's proposed construction and installation methods including:

1. Soil surveying and testing plans, 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 infrastructure.
7. Post-construction restoration.
8. Maps showing the following:

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

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

   iii. 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.

7.5 EXHIBIT A-1.5 – ALTERNATIVES

(a) Provide 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.

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 for the project site.

7.6 EXHIBIT A-1.6 – CHANGES

(a) Provide a map and description of any known potential 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.

(b) Minor changes are not required to be submitted. 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 and does not require new permits; however, a minor change does ***not*** include any of the following:

1. A change that would expand the footprint or perimeter of the site plan.
2. A change in planned technologies (such as the addition of an energy storage facility to an existing site or other technological changes increasing noise or impacting permit requirements).
3. Reduced setback distances from any part of the planned facilities to occupied structures, non-participating property lines, or rights-of-way if the new setbacks violate any setback requirements in PA 233.
4. Any change that affects water detention or retention or other stormwater runoff.
5. An increase in the height of the tallest equipment or structures.
6. Repowering.
7. Any increase of noise impacts to non-participating structures above the 55 dB average hourly limit.

7.7 EXHIBIT A-1.7 – SOUND REPORT AND MONITORING PROTOCOL

(a) Exhibit A-7 Submit a report detailing the sound modeling results along with proposed preconstruction (optional) and postconstruction sound monitoring plans

to be completed upon receipt of a siting certificate from the Commission as well as mitigation plans to ensure that sound emitted from the facilities will remain below the statutory limit throughout the operational life of the facilities. An overview of the sound report requirements is provided below. See **Attachment D**, for further detail for Sound Report requirements.

1. Sound modeling must be conducted following the requirements of International Organization for Standardization (ISO) 9613-2 (2024), "Engineering method for the prediction of sound pressure levels outdoors."

2. The purpose of the Sound Report is to provide the Commission with information necessary to assess if the facility meets the noise limits defined in MCL 460. 1226.

3. All sound studies shall be completed by or under the direction of a qualified noise control engineer whose qualifications are documented in the report.

4. The sound monitoring should generally follow the requirements of the American National Standards Institute (ANSI) S12.18 and ANSI S12.9 Part 3, where applicable.

5. Reporting shall include, but is not limited to, the following:

    i. Facility Description

    ii. Maps and descriptions of sources and monitoring locations, including the distance from each to the nearest facility equipment.

    iii. Sound Modeling Results

    iv. Discussion including an assessment of the noise impacts and ability to meet MCL 460.1226.

6. Submit a Pre-construction Sound Monitoring Protocol (optional) in accordance with the guidance in **Attachment D**.

7. Submit a Post-construction Sound Monitoring Protocol in accordance with the guidance provided in **Attachment D**.

7.8 EXHIBIT A-1.8 – SHADOW FLICKER REPORT (WIND FACILITIES ONLY)

(a) Provide 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.

1. The report must be prepared by a qualified third party using the latest or most recent current modeling software available establishing that no Occupied

Residence will experience more than 30 hours per year, of shadow flicker at the nearest external wall based on real world or adjusted case assessment modeling.

2. 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.

7.9 EXHIBIT A-1.9 – EMERGENCY RESPONSE PLAN

(a) The Emergency Response Plan (ERP) shall include:

1. 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, site access, etc.

2. An identification of contingencies that would constitute a safety or security emergency (fire emergencies are to be addressed in a separate Fire Response Plan (FRP)).

3. Emergency response measures by contingency.

4. Evacuation control measures by contingency.

5. Community notification procedures by contingency.

6. An identification of potential approach and departure routes to and from the facility site for police, fire, ambulance, and other emergency vehicles.

7. A commitment to review and update the ERP with fire departments, first responders, and county emergency managers at least once every 3 years.

8. 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.

9. Other information the applicant finds relevant.

(b) 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. Additional consultation with local fire departments, first responders, and county emergency managers is required for amended plans.

7.10 EXHIBIT A-1.10 – FIRE RESPONSE PLAN (FRP)

(a) The FRP shall include the following:

1. 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.

2. A description of all on-site equipment and systems to be provided to prevent or handle fire emergencies.

3. A description of all contingency plans to be implemented in response to the occurrence of a fire emergency.

4. 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.

5. 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.

6. A commitment to review and update the FRP with fire departments, first responders, and county emergency managers at least once every 3 years.

7. 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.

8. Other information the applicants find relevant.

(b) 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 FRP. Additional consultation with local fire departments, first responders, and county emergency managers is required for amended plans.

7.11 EXHIBIT A-1.11 – COMMISSIONING PLAN (FACILITIES WITH STORAGE ONLY)

(a) For energy storage projects, provide a Commissioning Plan in compliance with NFPA 855 (4.2.4 & 6.1.3.2).

7.12 EXHIBIT A-1.12 – EMERGENCY OPERATIONS PLAN (FACILITIES WITH STORAGE ONLY)

(a) For energy storage projects, provide an Emergency Operations Plan in compliance with NFPA 855 (4.3.2.1.4).

7.13 EXHIBIT A-1.13 – HAZARD MITIGATION ANALYSIS (FACILITIES WITH STORAGE ONLY)

(a) For energy storage projects provide a Hazard Mitigation Analysis in compliance with NFPA 855 (4.4).

7.14 EXHIBIT A-1.14 – UNANTICIPATED DISCOVERIES PLAN

(a) Submit an Unanticipated Discoveries Plan (UDP) that addresses 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. The UDP must include:

1. A set of procedures to be followed if cultural resources are discovered. Examples of cultural materials include, but are not limited to, the following:

    i. An accumulation of shell, burned rocks, or other food-related materials

    ii. Bones or small pieces of bone

    iii. An area of charcoal or very dark stained soil with artifacts

    iv. Stone tools or waste flakes (i.e., an arrowhead, or stone chips)

    v. Clusters of tin cans or bottles

    vi. Logging or agricultural equipment that appears to be older than 50 years

    vii. Buried railroad tracks, decking, or other industrial materials

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

4. A contact list that includes the following:

    i. Contact for the State Historic Preservation Office

    ii. Contacts for Tribal Historic Preservation Offices of Michigan

iii. Local, project-specific, emergency contacts (i.e., County Sheriff, County Medical Examiner.)

7.15 EXHIBIT A-1.15 – PARTICIPATING PARCEL LIST

(a) Provide a list of all parcels that are participating or adjacent to the proposed facilities, including land-owner information for each parcel. Landowner 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.

7.16 EXHIBIT A-1.16 – COMPLAINT RESOLUTION PROCESS

(a) Provide a complaint resolution process for the site. The complaint process should include:

1. The name of a designated applicant representative provided with the authority to resolve local complaints.
2. A dedicated phone number for complaints.
3. An email address for complaints.
4. Website information instructing the public on the complaint resolution process.
5. Procedures for regular reporting of complaints received and how each complaint was resolved to be filed on a periodic basis in the docket.

8. POST CERTIFICATE REQUIREMENTS AND INFORMATION

8.1 COMPLETION REPORT (REQUIRED)

(a) Before commencing commercial operations, 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:

1. Finalized site plans, finalized schematics, and dimensioned drawings.
2. Descriptions demonstrating compliance with Section 226(8) for the relevant technologies included within the facility.
3. A list of all permits received including the permitting agency, the date the permit was received, and conditions attached to each permit.

4. Submit a Postconstruction Sound Monitoring Report as part of the required Completion Report. The report must include the information set forth in **Attachment D**, **Section 2.4** of these instructions.

8.2 AS-BUILT SURVEY

Within 90 days of achieving the project Commercial Operation Date (COD), submit a letter in the case docket that confirms that an ALTA/ACSM (American Land Title Association/American Congress on Surveying and Mapping) as-built survey was submitted to the Affected Local Unit(s).

8.3 DECOMMISSIONING AND FINANCIAL ASSURANCE

(a) Updates to the Decommissioning Plan and/or Financial Assurance must be filed in the MPSC docket for the project.

(b) Proof that the financial assurance remains sufficient and in effect must be filed in the MPSC docket for the project annually.

8.3.1 Decommissioning

(a) Decommissioning plans shall be updated to incorporate any improvements in the decommission process or necessary changes, including, but not limited to, changes to address any newly identified hazardous substances that would increase cost.

(b) Notify MPSC within 60 days of completing decommissioning activities 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.

8.3.2 Financial Assurance

(a) Submit initial proof of financial assurance to the MPSC docket assigned to the project prior to commencing construction. Financial assurance may be in the form of a:

1. Bond.
2. Parent company guarantee.
3. Irrevocable letter of credit.

(b) Applicants with facilities which include PA 116 farmland may, in consultation with the Michigan Department of Agriculture and Rural Development (MDARD), provide

financial assurance pursuant to PA 233 which satisfies the requirements of both PA 116 and PA 233.

(c) When decommissioning plans are updated, the decommissioning cost estimate must be updated by a third party with expertise in decommissioning based on the updated decommission plan.

(d) Submit proof of financial assurance to the MPSC docket assigned to the project annually.

1. Changes to the amount of the financial assurance is only required when the costs are revised from decommissioning plan updates.

ATTACHMENT A

LIST OF ACRONYMS

AC	alternating current
ACSM	American Congress on Surveying and Mapping
ALJ	Administrative Law Judge
ALTA	American Land Title Association
ALU	affected local unit
ANSI	American National Standards Institute
COD	commercial operation date
CREO	Compatible Renewable Energy Ordinance
dB	decibel
E-Docket	Electronic Docket Filings System
ERP	Emergency Response Plan
FRP	Fire Response Plan
IEC	International Electrotechnical Commission
IOU	investor-owned utility
ISO	International Organization for Standardization
MCL	Michigan Compiled Laws
MDARD	Michigan Department of Agriculture and Rural Development
MEPA	Michigan Environmental Protection Act
MNIA	Military Needs and Interest Assessment
MPSC	Michigan Public Service Commission
MZEA	Michigan Zoning Enabling Act
MW	megawatts
NFPA	National Fire Protection Association
NREPA	Natural Resources and Environmental Protection Act
PA	Public Act
pdf	portable document format
PFD	Proposal for Decision

UDP	Unanticipated Discoveries Plan
USGS	United States Geological Survey

ATTACHMENT B

DEFINITIONS

"**Affected local unit”** means a unit of local government exercising zoning authority 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) of PA 233 of 2023.

"**Community-based organization**" means a workforce development and training organization, labor union, local governmental entity, 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 CREO under Act 233 may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8), and may not contain additional requirements beyond those specifically identified in that section. A local unit of government is considered not to have a CREO 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.

“Chief Elected Official” means a local government official including mayors, village presidents, township supervisors, and board chairs

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

“**Electric Provider**” means a corporation, person, agency, authority, or other legal entity or instrumentality aligned with distribution facilities for delivery of electric energy for use

primarily by the public. Included are investor-owned electric utilities, municipal and State utilities, Federal electric utilities, and rural electric cooperatives.

"**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.

“MPSC” or **“Commission”** means the Michigan Public Service Commission, the state regulatory body in Michigan charged with serving the public by ensuring safe, reliable, accessible energy and telecommunications at reasonable rates.

“MPSC Staff” or **“Staff”** means the professional, independent, subject matter experts employed by the MPSC who are granted intervention by right in contested cases before the Commission.

"**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**” is defined in the same manner as is done by the U.S. Department of Agriculture’s Natural Resource Conservation Service and is shown in the online database by the same entity (see 7 CFR 657.5). 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 beyond its original contract. Repowering does not include repairs or replacements 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.

ATTACHMENT C

PRE-APPLICATION SUPPORTING INFORMATION

C-1 MEETING WITH CHIEF ELECTED OFFICIAL

The applicant must offer to meet with each affected local unit's (ALU) chief elected official[10] to establish if the ALU has a compatible renewable energy ordinance (CREO). If the ALU has a CREO, then applicants must follow the ALU siting process in each ALU. CREOs are described in the following section of this attachment.

The applicant's offer to meet shall be delivered by email and by certified U.S. mail at least 60 days before the scheduled public meeting in each affected local unit (ALU). ALUs include the city, township, village, or county, exercising zoning jurisdiction over the project location. Reasonable efforts to obtain email addresses for the CEO should be made by reviewing the website of the affected local unit and if necessary, by contacting the office of the ALU. A local unit of government in a zoned jurisdiction that does not exercise zoning jurisdiction is not considered an ALU.

A copy of the offers to meet with the chief elected officials should be sent to the entire board or other legislative body of the ALU.

The applicant may proceed as if there is not a CREO if the chief elected official has failed to respond to the offer to meet and has not provided notice of a CREO thirty days following receipt of the certified mail.

C-2 COMPATIBLE RENEWABLE ENERGY ORDINANCE NOTIFICATION

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.

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. 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 official(s) from each ALU to the applicant states that the ALU has a CREO, then applicants must

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

follow the ALU siting process in each ALU. CREOs are not required in unzoned areas because there is no ALU exercising zoning jurisdiction in an unzoned area.

When a local ordinance does not meet the definition of CREO, the applicant may still choose to follow the ALU siting process if the ALU process allows the facilities to be sited. If an applicant chooses to follow an ALU's siting process, including a special land use approval process, a siting certificate from the MPSC is not required.

For example, if an applicant 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 single ordinance that is a CREO addressing solar and storage facilities.

2. The ALU has two separate ordinances that are CREOs addressing solar and storage facilities.

If a project is being sited in an area that crosses jurisdictional boundaries and one of the ALUs does not notify the applicant that it has a CREO or after attempts to site the project in one or more ALUs have failed, the applicant may file for a certificate pursuant to PA 233. When a project crosses multiple jurisdictional boundaries and one or more ALUs have CREOs, and one or more ALUs do not have CREOs, or after attempts to site the project in 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 and areas without CREOs, including unzoned areas, if the facilities do not meet the minimum size thresholds without the inclusion of the unzoned areas. By stipulation of the parties in a contested case, particularly the ALU(s) and the applicant, the ALU's approvals pursuant to an ALU siting process may be considered by the Commission for those portions of the project included in the stipulation.

Resolving disputes between applicants and ALUs regarding CREOs is not within the Commission's jurisdiction. 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.

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

If an ALU 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 ALU 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 LARA-MPSC-Siting@michigan.gov with a copy of the request provided to the developer.

If notification from chief elected local official(s) from each ALU to the applicant states that the ALU has a CREO, then applicants must follow the ALU siting process in each ALU.

C-3 REQUIREMENTS FOR PUBLIC NOTICE AND 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:[11]

- 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).

Public meetings must be held in each ALU; however, a public meeting held in a township is considered to be held in each village located within the township. Exceptions due to a lack of appropriate facilities to hold required public meetings within the ALU 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 official, the public meeting should 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.

[11] Public meetings as outlined in PA 233 are not required when applicants are working to site facilities with ALUs, the applicant should follow the requirements of the ALU.

C-3.1 PUBLIC NOTICE FOR PUBLIC MEETINGS

The applicant shall provide a notice of the public meeting that includes 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 applicant for those unable to attend the public meeting.

The notice of public meeting provided by the applicant shall be published in a newspaper of general circulation in each ALU unit or a comparable digital alternative at least 14 days prior to the public meeting(s). The applicant shall publish notice of the meeting in a newspaper of general circulation in the ALU(s) or in a comparable digital alternative.

The public meeting 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.

Additionally, 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 LARA-MPSC-Siting@michigan.gov on the same date in which the local clerk/s was provided notice.

The Executive Secretary may provide further direction regarding public notice.

C-4 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:

1. Overview of project.
2. Map of project.
3. Status of project.
4. Labor and employment considerations.
5. Expected application filing date.
6. Questions related to the contested case process.
7. Questions related to filing requirements.

8. 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 (LARA-MPSC-Siting@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.

C-5 PUBLIC NOTICE OF THE OPPORTUNITY TO COMMENT ON THE APPLICATION

The applicant is required to provide public notice of the opportunity to comment on the application. This notice shall be filed as a public notice in a newspaper of general circulation in each ALU or in 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 applicant 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 also send the notice of the opportunity to comment on the application by U.S. mail to postal addressees within one mile of proposed solar or proposed energy storage 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 and local governments not exercising zoning authority where the facilities will be located.

C-6 TECHNICAL CONFERENCE

The applicant shall work with Staff to hold a technical conference with invitations provided to all intervening parties and local governments not exercising zoning authority. The technical conference may be held virtually and should 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. 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.

ATTACHMENT D

SOUND REPORT REQUIREMENTS

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D1.0 PRECONSTRUCTION SUBMISSION REQUIREMENTS (Exhibit A-1.7)

All sound studies shall be completed by or under the direction of a qualified noise control engineer. The preferred qualification is Board Certification through the Institute of Noise Control Engineering (INCE). If the preparer is not Board Certified, then qualifications shall be justified and submitted with the application. A professional engineering license alone is not sufficient qualification to prepare the preconstruction or postconstruction noise studies.

The purpose of the preconstruction sound report is to provide the Commission with information necessary to assess whether the facility meets the noise limits defined in MI MCL 460.1226.

D1.1 Sound modeling (Exhibit A-1.7)

D1.1.1 Modeling Parameters

Sound modeling shall be conducted following the requirements of ISO 9613-2 (2024), “Engineering method for the prediction of sound pressure levels outdoors.”

For modeling wind turbine sound, ANSI/ACP 111-1 (2022), “Wind Turbine Sound Modeling,” and Annex D of ISO 9613-2 (2024) provide additional guidance for the calculation of sound pressure levels from wind turbines. Where any ambiguity exists, the parameters in Table 1 must be used.

Table 1
Sound Modeling Parameters

PARAMETER	VALUE
G (Ground factor)	0.0 over water and large areas of hard ground, 0.5 everywhere else
Modeling uncertainty adjustment	Minimum of +2 dB for wind projects, Minimum of +0 dB for all other sources
Receptor/grid height	4.0 m for wind projects, otherwise, • 4.0 m for two- or more-story dwellings (default) • If sound barriers are proposed, the height of the highest window for each dwelling • 1.5 m for property boundaries and one-story dwellings
Source height	For wind turbines, hub height.

	For all other sources, top of the sound source
Receptors	All dwellings within 1 mile of any facility sound source
Temperature/Humidity	10°C, 70%
Sound power level	See below
Source directivity	For wind turbines, omnidirectional. For all other sources, directionality of sound power may be considered, if known.
C_{met} (meteorological adjustment)	0 (none)
Include all sources within	8,000 m
Dense vegetation	No foliage attenuation allowed to be considered outside of Project-controlled parcels
Tonal prominence	+ 5 dB tonal penalty to source sound power. The tonal penalty can be removed if it can be shown that the facility would not have a tonal prominence at a dwelling when the measured background sound of the lowest hourly L_{90} is added.
Façade pressure doubling[1]	+6 dB to modeled free field outer wall sound pressure level
Other energy facilities	Other energy facilities that have an application submitted prior to this facility, approved, or built, within two miles of the facility must be included in a separate cumulative impact model run.

D1.1.2 Source Sound Power

The sound power level of equipment shall be based on the following in this order of preference:

1) Data from the manufacturer, such as those based on IEC 61400-11 or IEC TS 61400-14 for wind turbines, or similar standards used for other equipment. For wind turbines, the maximum “apparent” sound power at any wind speed must be used. For other equipment, the maximum sound power of any applicable operational mode must be used. For example, for a solar project, the inverters would be assumed to be operating at full power and the substation transformer fans would be operating. For an energy storage facility, the higher of the charging or discharging sound emissions would be used. If an energy storage project is coupled with a solar project, then both daytime and nighttime scenarios should be modeled to assess the worst case.

2) If manufacturer data is not available, then tests of the same or similar equipment can be used, or standards for the piece of equipment can be used, such as NEMA TR-1 which specifies the maximum sound emissions for liquid-immersed transformers.

3) If sound power data are otherwise not available, the published sound power levels for similar equipment can be used. The applicant must demonstrate that the equipment proposed to be used is substantially similar.

4) If none of these are available, the application must justify and explain the alternative method to determine sound power.

Some manufacturers only provide a sound pressure level at a certain distance, rather than a sound power level. Care should be taken in converting this to a sound power level, especially with larger devices such as transformers and central inverters. Standards such as IEEE C57.12.90 or an applicable selection from the ISO 3740 series (such as ISO 3744 or ISO 3746) should be used to take into account the measurement area around the source.

D1.2 Sound Monitoring (Exhibit A-1.7)

D1.2.1 Purpose

Preconstruction sound monitoring provides an understanding of potential noise impacts on the existing soundscape prior to development of an energy facility. The purpose of preconstruction sound monitoring is to determine the existing character of the area that

is being considered for construction of an energy facility. The sound monitoring should generally follow the requirements of ANSI S12.18 and ANSI S12.9 Part 3, where applicable.

D1.2.2 Equipment

Sound level meters shall meet the ANSI/IEC Class 1 performance requirements (i.e., IEC 61672-1 and ANSI S1.4 Part 1) and log 1/3 octave band equivalent sound pressure levels. The microphone shall be protected by a 7-inch diameter hydrophobic windscreen or equivalent. If possible, sound level meters should be coupled with audio recorders to aid in sound source identification and soundscape characterization.

Each sound level meter shall be field calibrated with an acoustical calibrator meeting the requirements of IEC 60942 Class 1 immediately before and after each monitoring period. Any calibration drift above 0.5 dB will be noted and addressed with respect to ANSI S12.18. Each sound level meter and field calibrator shall have been calibrated within two years and one year, respectively, of the completion of monitoring by a National Institute of Standards and Technology traceable facility.

Anemometers must be located adjacent to each monitoring station at microphone height to measure wind speed.

D1.2.3 Siting

At least two sound monitors shall be sited representative of the nonparticipating residential receptors with the highest modeled sound levels from the future facility. Preconstruction monitoring locations should be analogous to and applicable for the postconstruction study. Projects covering larger areas with more than two soundscape types should monitor at additional locations.

The monitor locations shall be outdoors and acoustically representative of a nearby residence. Specifically, monitoring equipment shall, to the extent practically possible, be placed at a similar distance from prominent soundscape sources such as roadways, heavy vegetation, and stationary equipment. The microphone shall either be façade mounted or in the free-field at least 25 feet from any building, and approximately 1.2 m to 1.5 m above ground level.

D1.2.4 Data Collection and Analysis

The target sound level metric and averaging time for assessment of noise compliance are the one-hour equivalent continuous level (L_{1h}). Sound levels shall be logged at a finer interval than one-hour to provide the fidelity to enable source characterization through 1/3 octave band spectrograms and the calculation of statistical sound levels over the course of an hour, i.e. 10th percentile (L_{10}), median (L_{50}), and 90th percentile (L_{90}) sound levels. To this end, 1/3 octave band data should be logged at least once per minute; a one-second measurement interval is preferred.

D1.2.4.1 Data Exclusions

To ensure an acoustically valid dataset, periods during which any of the following conditions occur shall be excluded from analysis:

- **High wind gusts** – Ground-level wind gust speeds above 5 m/s (11.2 mph).
- **Precipitation** – Snow, rain, and thunderstorm events identified through regional data and inspection of acoustic data.
- **Anomalies** – The presence of short-term contaminating sound caused by human or other activity that is atypical of the site or directly attributable to the presence of the equipment.
- Temperature or humidity outside the specification of the sound level meter or microphone.

If more than half of a one-hour aggregation period was not acoustically valid, (due to high winds or precipitation, for example), the entire one-hour period should be excluded from the analysis.

D1.2.4.2 Biogenic Sound

Biogenic sounds (particularly insects, birds, and amphibians) are typically tonal and can have a pronounced effect on overall A-weighted sound levels. If biogenic sounds are a dominant aspect of the soundscape during monitoring, their influence on overall sound level should be quantified.

The “ANS” frequency-weighting (ANSI/ASA S12.100) should be applied to spectral sound levels to filter out high-frequency biogenic sound. ANS filters out sound above the 1 kHz

octave band. Ideally, ANS weighting should only be used when tonal sounds, indicative of seasonal biogenic sound, are detected.

When the effect of biogenic sound is significant, that is, the overall A-weighted sound level is at least 3 dB greater than the ANS-weighted sound level, then both A-weighted and ANS-weighted sound level results shall be reported.

D1.3 Monitoring and Modeling Documentation to submit (Exhibit A-1.7)

A preconstruction noise assessment study shall include, but is not limited to, the following:

1) Facility Description

2) Maps and descriptions of sources and monitoring locations, including the distance from each to the nearest facility equipment.

3) Sound Modeling Results

    a. Model configuration and inputs

    b. Sound power level source data (by 1/1 or 1/3 octave band, if available)

    c. Tonality assessment for each source

    d. Maps of sound level isolines depicting the maximum one-hour equivalent sound level contributions to the surrounding area

    e. Table of sound level representing the maximum facility one-hour equivalent sound level at the walls of each dwelling within 1 mile of the facility.

4) Sound Monitoring Results

    a. Narrative description of the soundscape, i.e., diurnal fluctuations, common sources of sounds, anthropogenic vs. biogenic sounds, etc.

    b. Summary of overall day and night A-weighted sound level metrics (L_{eq}, L_{10}, L_{50}, and L_{90}).

    c. Overall A-weighted time history sound levels (one-hour L_{eq}, L_{10}, L_{50}, L_{90}) and meteorological data at the monitoring stations

    d. ANS weighted results for the above, if substantive biogenic sound is found.

e. A comparison of modeled sound levels to the existing background sound.

5) Discussion – An assessment of the facility's noise impacts and ability to meet the MCL 460.1226 noise limits, including a detailed description of all noise mitigation used or required to meet the noise limits.

D1.4 Postconstruction Sound Monitoring Protocol (Exhibit A-1.7)

Postconstruction Sound Monitoring Protocol - A Protocol shall be developed by the applicant for conducting postconstruction sound monitoring. The sound monitoring should generally follow the requirements of Section 1.2 of this document. The Protocol shall include details on:

1. Timing
2. Monitoring locations (maps of locations, wall-mounting or free field, etc.)
3. Equipment setup (sound level meter types, calibration methods, windscreens, etc.)
4. Data collection (including logging intervals, meteorological and operational criteria for valid periods, minimum number of valid periods, background measurements, etc.)
5. Data analysis (including background correction methods, data scrubbing methods, tonality assessments, etc.)
6. Reporting
7. Noise complaint response and resolution, detailing under what circumstances postconstruction sound monitoring would be conducted and how postconstruction monitoring would be done.

D1.5 Other documentation

Upon the request of Staff, sound modeling files and sound monitoring results shall be submitted in electronic format. Files with trade secrets or otherwise confidential information may be submitted under a confidential protective order.

D2.0 POSTCONSTRUCTION SOUND MONITORING

D2.1 Purpose

Postconstruction sound monitoring of the facility will be conducted to assess whether sound levels from the as-built facility meet the noise limits defined in MCL 460.1226. Sound monitoring should generally follow the requirements of IEC TC 61400-11-2 (for wind projects) and ANSI S12.9 Part 3, as applicable. Postconstruction sound monitoring shall be conducted in the first year after the facility is constructed, unless otherwise directed by the commission.

D2.2 Monitoring Guidelines

The noise limit for energy facilities, as defined in MCL 460.1226, is 55 dBA L_{1h} refers specifically to facility-produced sound. To ensure that facility operation is assessed in a variety of conditions, including those associated with maximum sound emissions from the facility, unattended long-term monitoring (at least seven to 10 days) should be completed, or until sufficient valid periods are obtained, as defined in the Protocol, whichever is later. Other potential avenues for demonstrating noise compliance with MCL 460.1226 are provided in Section 2.3.

D2.2.1 Equipment

Sound level meters shall meet the ANSI/IEC Class 1 performance requirements (i.e., IEC 61672-1 and ANSI S1.4) and log 1/3 octave band equivalent sound pressure levels. The microphone shall be protected by a 7-inch diameter or equivalent hydrophobic windscreen. Sound level meters should be coupled with audio recorders to aid in sound source identification and soundscape characterization. Audio recordings may be triggered by higher measured sound levels. If triggering is used, sound levels above 44 dBA should trigger recordings. Lower trigger levels may also be used.

Each sound level meter shall be field calibrated with an acoustical calibrator meeting the requirements of IEC 60942 Class 1 immediately before and after each monitoring period. Any calibration drift above 0.5 dB will be noted and addressed with respect to ANSI S12.18. Each sound level meter and calibrator shall have been calibrated within two years/one year, respectively, of the completion of monitoring, by a National Institute of Standards and Technology traceable facility.

Anemometers must be located adjacent to the monitoring station at microphone height to measure wind speed.

Additional meteorological data can be obtained from nearby National Weather Service station and/or facility logging systems.

D2.2.2 Siting

Monitors should be sited at representative locations for the two nonparticipating dwellings with the highest modeled sound level.

Additional monitors for residences with formal noise complaints regarding facility operation should also have monitoring equipment deployed. Up to three additional sound monitoring locations will be identified for monitoring, representing areas where any noise complaints were received. If more than three locations received complaints, then three will be selected based on the modeled sound levels of each location and how well a site can represent other complaint locations.[2] Consideration of whether monitoring will be done at a location will also be based on:

- The type of complaint (outdoor or indoor noise, tones, low frequency noise, amplitude modulation, vibrations, rumbles, rattles, etc., if available).
- Whether the complaint was due to a continuing operational issue or a non-recurring event.
- Whether the modeled free-field sound level is above 44 dBA (or dwelling wall is above 50 dBA).
- Whether the landowner cooperates with the study.

For facilities with centrally located equipment, like an energy storage facility or an isolated wind turbine, a “source” monitor, placed near the sound emitting equipment, can be utilized to correlate sound levels from the source.

Sound level meter microphones shall be placed outside, approximately 1.2 m to 1.5 m above the ground. The microphone shall not be placed such that any structure blocks the line of sight between the microphone and otherwise visible facility components nor in such a way that it is representative of the noise exposure at the monitoring location. A location on the nearest vertical surface of the residence can be utilized or, more commonly, a location in the free-field at least 25 feet from any building façade or other large reflective

objects. If a free-field location is chosen, then 6 dB must be added to the results to account for the pressure doubling at the wall of the dwelling.

Monitoring equipment should not be placed within dense vegetation and should be away from other contributing sources of transient and consistent sound (e.g., heating systems, roadways, stationary farm equipment).

If site access is denied by a landowner to measure near or on the dwelling, the sound monitor may be sited at the closest property line at the same or similar modeled sound isoline as the dwelling. If a location with a similar sound level cannot be obtained, then an additional sound level correction shall be extrapolated to the dwelling through use of sound propagation modeling.

The one-hour equivalent average (L_{1h}) is the target sound level metric and averaging time for assessment of noise compliance. Sound levels shall be logged at a finer interval than one-hour to provide the fidelity to enable source characterization through 1/3 octave band spectrograms and the calculation of statistical sound levels over the course of an hour, i.e. 10th percentile (L_{10}), median (L_{50}), and lower 10th percentile (L_{90}) sound levels. To this end, 1/3 octave band data should be logged at least once per minute; a one-second measurement interval is preferred.

Project operation logs (SCADA) and sound levels shall be collected to categorize operational states of the facility. If necessary, confidential facility operational data can be submitted to Staff under a confidential protective order.

D2.2.3 Data Processing and Analysis

D2.2.3.1 Data Exclusions

To ensure an acoustically valid dataset, periods during which any of the following conditions occur shall be excluded from analysis:

- High wind gusts – ground-level wind gust speeds above 5 m/s (11.2 mph).
- Precipitation – snow, rain, and thunderstorm events identified through regional data and inspection of acoustic data.
- Anomalies – The presence of short-term contaminating sound caused by human or other activity that is atypical of the site or directly attributable to the presence of the equipment.

- Temperature or humidity outside the specification of the sound level meter or microphone.

If more than half of a one-hour aggregation period was not acoustically valid, (due to high winds or precipitation, for example), the entire one-hour period should be excluded from the analysis (ANSI S12.9 Part 3).

D2.2.3.2 Biogenic Sound

Sound level data containing notable biogenic sound should be treated carefully and noted in the narrative description of the monitoring site and results.

Solar Energy and Energy Storage may contribute sound at frequencies above the 1 kHz octave band. Therefore, additional care should be taken when monitoring the sound of these facilities, including scheduling postconstruction monitoring during periods where insects and other biogenic sounds are less prominent, such as late fall through early spring.

Wind Energy facility contribution of sound above the 1 kHz octave band (the sound spectrum of most biogenic sound) is typically negligible. Thus, sound monitoring for wind facilities may be conducted at any time. However, wind turbine power output, and thus sound output, tends to be highest in the late fall through early spring.

D2.2.3.3 Tonality

A prominent discrete tone is assessed by comparing the total sound level in a given 1/3 octave band to the adjacent 1/3 octave bands for each minute. The difference between the 1/3 octave band sound level is compared to the arithmetic average of the sound levels in the adjacent 1/3 octave bands. If the difference is greater than the values listed below, a prominent discrete tone is present.

- 15 dB at low frequencies (1/3 octave band center frequencies 25 Hz to 125 Hz).
- 8 dB at middle-frequency bands (1/3 octave band center frequencies 160 to 400 Hz).
- 5 dB at high-frequency bands (1/3 octave band center frequencies 500 to 10,000 Hz).

Any one-minute period with prominent discrete tones shall have a tonal penalty of 5 dB applied to the data if the tone is audible.

D2.3 Facility Sound Level Analysis

D2.3.1 General Procedures

In general, sound levels attributable to the facility ("facility sound") can be determined by an operational shutdown-based methodology. Facility sound shall be calculated from the total (facility+ background) sound by quantifying the background sound immediately before or after a period of facility operation at the same location. The sound level attributed to facility operations shall be determined by subtracting, on an energy basis, the background sound level from the total sound level, by 1/3 octave band, consistent with ANSI S12.9 Part 3 Section 7.

The results for any free field monitoring locations shall have 6 dB added to account for the pressure doubling that would have been measured had the measurement been taken at the outer wall of the dwelling.

In some cases, long-term monitoring or facility shutdowns may not be practical due to operational characteristics or restrictions and alternatives to determine compliance with MI MCL 460.1226 are necessary.

- Short-term monitoring under worst-case meteorological and operational conditions where total free field sound levels are below 44 dBA (55 dBA noise limit with 5 dB tonality and the 6 dB façade correction) for at least three one-hour periods. No tonal or background corrections are necessary, or

- Measurements of individual sources to confirm manufacturer specifications and modeling inputs (e.g. 70 dBA at 1 meter or sound power using IEEE C57.12.90 or the applicable method in the ISO 3740 series), or

- Other methods consistent with ASA/ANSI S12.9 Part 3.

D2.3.2 Special Procedures for Wind Energy

To the extent possible, the assessment of wind turbine noise should conform to IEC TS 61400-11-2. The recommended application of the technical standard in Michigan includes practical simplifications to alleviate specialized equipment and high-fidelity SCADA data.

D2.3.2.1 Equipment, Siting, and Deployment

Monitors for assessment of wind turbines should either be mounted directly on wall or be at least 25 feet from any vertical reflecting surfaces, if possible, to minimize reflections

from a façade. If the wall mount is not used, a +6 dB correction shall be applied to the resulting facility only sound levels.

D2.3.2.2 Determination of Facility Sound

The method described herein applies the filtering method similar to that presented in IEC TS 61400-11-2. It includes scheduled nighttime wind turbine shutdowns to allow for the subtraction of background sound levels.

Maximum wind turbine sound shall be assessed at night. During nighttime hours, background sound (particularly anthropogenic and avian activity) is typically lowest and meteorological conditions for robust propagation of sound are most common.

All wind turbines within 1.5 miles of a monitor location shall be shut down four to eight times per night for 20 minutes at a time. One-hour periods of wind turbine operation before and after each shutdown shall be evaluated in 10-minute[3] intervals.

From logged data for each monitor, each 10-minute period is aggregated to determine the following:

- Overall A-weighted Leq.
- 1/3 octave band Leq.
- Maximum wind gust near the ground.
- Average wind speed near the ground.
- Wind direction[4].
- Hub-height wind speed[5].
- Wind turbine power production[6].
- Facility operational state (e.g., ON or OFF).

To qualify as a potential measurement of the maximum facility sound, the hour adjacent to a shutdown shall have at least half of the 10-minute periods meeting the target evaluation criteria to be “valid”:

- Data is acoustically valid (i.e. at least half not excluded for wind gusts, precipitation, anomalies).
- Wind turbines within 1.5 miles are operating at or within 1 dB of their maximum sound power output, expressed as an arithmetic average of those wind turbines.

- Average wind speed at microphone level is below 4 m/s and one minute wind gusts are below 5 m/s.
- The wind direction is either ±45 degrees downwind relative to the closest wind turbines or within ±45 degrees of the prevailing wind direction.

The total L_{1h} is calculated from no less than three valid 10-minute periods in the hour. The background sound level temporally adjacent shall then be logarithmically subtracted, on a 1/3 octave band basis, from the L_{1h} during operation, as described at the beginning of this section (ANSI S12.9 Part 3 Section 7) to determine the facility L_{1h}.

At least three valid facility L_{1h} periods must be collected. The highest facility L_{1h} shall be used for comparison to the MI MCL 450.1226 noise limit.

D2.3.2.3 Other Details

Since the L_{eq} is the metric of interest, ensuring that sound level data is free from anomalous and transient data during the target evaluation periods is critical to ensuring the accuracy of the study. Anomalous data shall be excluded from background and turbine operation periods.

The temporal filtering method assumes that wind speeds do not substantively change in the 20 minutes the facility is shut down. This can be confirmed qualitatively by comparing the turbine power production prior to the shutdown to the power production afterward. Alternatively, ground wind speeds measured at each monitor can be evaluated. If they are sufficiently similar, the background period can be assumed to be representative of the background conditions during the adjacent one-hour turbine operational periods. Otherwise, the one-hour periods around the background measurement cannot be used to calculate the facility L_{1h}.

If substation noise from a wind project is the subject of a noise complaint, then the substation sound would be measured in accordance with the General Procedures of Section 2.3.

D2.4 Documentation to Submit

A sound monitoring report shall be submitted within 60 calendar days of end of the field data collection.

Sound monitoring reports must include a facility site map identifying relevant project components and nearby features of interest, including the nearest dwellings and monitor locations.

For each monitoring location, the following information will be reported:

1) Identification of monitoring locations with pictures and on a map.

2) Narrative of monitoring results - soundscape characteristics and effects of site conditions on measurements as derived from site visits and monitored data, as well as any significant features of the data or the monitoring period, such as the presence of biogenic sound.

3) Time history results

    a. Overall A-weighted hourly sound level time histories for L_{10min} and L_{1h}. The one-hour L_{90}, L_{50}, and L_{10} sound level metrics can also be included.

    b. Ground-level wind speed and rainfall.

    c. Facility operational data (power output and shutdown dates/times if used).

4) Details for each compliance measurement period. For measurement methodologies that involve sound source shutdowns to establish the background sound levels, the compliance measurement period would be from one hour before the shutdown to one hour after the shutdown. Otherwise, the compliance measurement periods would consist of all valid periods under the protocol For each compliance measurement period, provide (in the report or in electronic format):

    a. 10-minute power output for individual sound sources.

    b. For wind facilities, hub height wind speed and wind direction for each wind turbine within 1.5 miles of the measurement location.

    c. Average wind speed and maximum wind gust from the monitor anemometer for each 10-minute period.

    d. Temperature and relative humidity (on site or from the nearest National Weather Service station).

    e. Unweighted 1/3 octave band and overall A-weighted sound levels for each 10-minute period.

f. Determination of whether the period is valid and, if not, the reasoning.

g. If the period is valid, the background-corrected facility 1/3 octave band and overall A-weighted sound level for each 10-minute period and for the entire one-hour period.

5) For wind facilities, the presence of icing as indicated through icing alarms or visual observation.

If results of the postconstruction study indicate that the facility sound levels exceed the noise limit, mitigation measures shall be detailed in the report along with a schedule of implementation.

Upon implementation of mitigation measures, the sound measurements shall be repeated under similar conditions as the exceedance(s), with the updated results filed to the docket.

D2.5 Other Documentation

Upon the request of Staff, all sound monitoring data and results shall be submitted in electronic format. If necessary, confidential data may be submitted with a confidential protective order.

D3.0 Definitions, abbreviations, and references

D3.1 Definitions

“1/3 octave band” means is a commonly used subdivision of the octave scale, which divides each octave into three bands. See “octave band.”

“**A-weighting”** means adjusting the sound level spectrum to represent the sensitivity of the human ear to sounds of low to moderate level to produce a single value (in dBA) in accordance with ASA/ANSI S1.4 Part 1.

“Ambient sound” is the total sound level, including the sound source of interest, of a wide range of sounds located near and far.

“Background sound" means sound from typical and existing elements of a soundscape, near and far, that does not include the source of interest (i.e., non-energy facility sound).

“Decibel” means 10 times the logarithm (base 10) of the ratio of a value to a reference value. In the case of sound pressure levels, the value is air pressure in Pascals (Pa) squared and the reference value is 20 micro-Pascals (μPa) squared.

“**Dwelling**” means an occupied or occupiable building where residents regularly sleep

"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.

“Equivalent continuous sound level” also “time-averaged sound level” means 10 times the logarithm (base 10) of the ratio of the time-mean-square frequency-weighted sound pressure signal during a stated time interval and expressed as a decibel. The shortened form is $L_{eq.}$ To indicate the time interval, the shortened form can be “L” with the time subscripted as in L_{1h} for a time period of one hour. See ASA/ANSI S1.1-2013.

“Frequency” means the number of times in a second one cycle of a waveform passes a fixed space. The perceived pitch of a sound is proportional to its frequency. The relationship between wavelength (l) and frequency (f) is dependent on the speed of sound (c) as f = c / l. The typical hearing range for young healthy individuals is roughly between frequencies of 20 Hz (1 Hertz is one cycle per second) and 20,000 Hz (also designated as 20 kHz, where 1 kHz is one thousand cycles per second). The distribution of frequencies in a sound are often referred to as spectral characteristics or a spectrum.

“Free-field” means an environment with negligible sound reflections.

“Low frequency sound” means, nominally, the 1/3 octave band frequencies between 20 Hz and 200 Hz, inclusive.

"Nonparticipating property" means a property that is nearby an energy facility and 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.

“Octave band” means a sound spectrum range whose upper frequency limit is twice its lower frequency limit (the same concept as an octave in music). The band is identified by its center frequency, as defined in ASA/ANSI S1.6-2016.

"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.

“Inverter” means a device to convert direct current (DC) power to alternating current (AC) power. It is a component of Solar Energy and Energy Storage facilities. Types include, but are not limited to, “central” and “string” inverters. In Energy Storage facilities, they are often referred to as or a component of a PCS (power conversion system).

“Project” means the facility that is the subject of the application to the commission that is proposed to be constructed or repowered.

“SCADA” means the Supervisory Control and Data Acquisition System that collects time-stamped information from field devices such as wind turbines, solar panels, inverters, transformers, and battery storage units.

"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.

“Sound power level” means the level of the acoustic energy radiated from a source. It is often expressed as SWL or L_w and expressed in decibels (dB) referenced to 1 picoWatt.

“Sound pressure level” means the fluctuating air pressure that constitutes sound as expressed in the logarithmic scale of decibels (dB) referenced to 20 micropascals.

“Tonal” means that a sound that has energy concentrated in a narrow frequency range. Tonal sounds of the same overall sound level are more noticeable than broadband sound. Sounds emissions from transformers, energy storage units, and inverters are typically tonal. Although multiple procedures exist for determining tonal prominences, the methods described in ANSI S12.9 Part 3, which utilizes 1/3 octave band data to assess tonal prominence, is specified herein.

"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

D3.2 List of Acronyms and Abbreviations

ACP – American Clean Power Association

ANS – A, Natural Sounds – an A-weighted decibel that eliminates sounds at and above the 1,600 Hz 1/3 octave band.

ANSI – American National Standards Institute

ASA – Acoustical Society of America

BESS – Battery energy storage system

dBA – A-weighted decibels

dBZ – Z-weighted (unweighted) decibels

G – The portion of ground that is porous, with 0 representing hard ground and 1 representing porous ground (as defined in ISO 9613-2)

Hz – Hertz, expressed as cycles per second

IEC – the International Electrotechnical Commission

ISO – the International Organization for Standardization.

INCE - the Institute of Noise Control Engineering

L_{eq} - equivalent continuous sound pressure level

L_{1h} – one-hour equivalent continuous sound pressure level

m – meters

m/s – meters per second

NEMA – National Electrical Manufacturers Association

D3.3 Standards Referenced in this Document

The following are standards referenced in this document as of the publication date. The applicant may use this version of the standard or, if the standard is updated after publication, the most recent version.

ASA/ANSI S1.1-2013. Acoustical Terminology

ASA/ANSI S1.4 Part 1-2014 / IEC 61672-1-2013. Electroacoustics – Sound Level Meters – Part 1: Specifications

ASA/ANSI S1.6-2016. Preferred Frequencies and Filter Band Center Frequencies for Acoustical Measurements

ASA/ANSI S12.9-2013 Part 3 (2023). Quantities and Procedures for Description and Measurement of Environmental Sound — Part 3: Short-term Measurements with an Observer Present

ASA/ANSI S12.9-2021 Part 4 (2021). Quantities and procedures for description and measurement of environmental sound — Part 4: Noise assessment and prediction of long-term community response.

ANSI/ASA S12.54-2011 / ISO 3744:2010 (2016). Acoustics – Determination of sound power levels and sound energy levels of noise sources using sound pressure – Engineering methods for an essentially free field over a reflecting plane

ANSI S12.56-2011 / ISO 3746:2010 (2016). Acoustics – Determination of sound power levels of noise sources using sound pressure – Survey method using an enveloping measurement surface over a reflecting plane

ANSI/ASA S12.100-2014 (2014). Methods to Define and Measure the Residual Sound in Protected Natural and Quiet Residential Areas

IEC 60942 (2017). Electroacoustics – Sound calibrators.

IEC 61400-11 (2012). Wind turbines – Part 11: Acoustic noise measurement techniques.

IEC TS 61400-14 (2005). Wind turbines – Part 14: Declaration of apparent sound power level and tonality values.

IEC TS 61400-11-2 (2024). Wind energy generation systems – Part 11-2: Acoustic noise measurement techniques – Measurement of wind turbine sound characteristics in receptor position.

IEEE C57.12.90 (2021). IEEE Standard test code for liquid-immersed distribution, power, and regulating transformers.

ISO 9613-2 (2024). Acoustics — Attenuation of sound during propagation outdoors — Part 2: Engineering method for the prediction of sound pressure levels outdoors.

NEMA TR 1-2013 (2019). Transformers, Step Voltage Regulators, and Reactors.

D3.4 MCL 460.1226

MCL 460.1226 (the “MI Noise Limit Statute”) states:

The commission shall grant the application and issue a certificate if it determines...[t]he [energy] facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

[1] MCL 460.1226 states that the noise limit is considered “at the nearest outer wall of the nearest dwelling.” In practice, this would be measured with a microphone mounted directly on the façade, that is, flush mounted on the vertical reflecting surface of a building. The pressure doubling at the surface with respect to the free-field condition leads to a 6 dB increase in sound level and is referred to as the “6-dB position” in ANSI S12.9 Part 3. Sound modeling conducted using ISO 9613-2 does not include the +6 dB adjustment. Therefore, 6 dB must be added to the sound modeling results to reflect what would be measured at the façade.

[2] This limit of three complaint locations only applies to the first postconstruction sound test. Complaint monitoring after this is defined in the complaint resolution process proposed in the application, and as approved by the commission.

[3] SCADA data from wind turbines is commonly available in 10-minute intervals, which sets the maximum time interval for data aggregation. Care should be taken to understand the timestamp of SCADA and meteorological data: they are often referred to as the ending time of the aggregation period (e.g., 03:10 = 03:00 to 03:10). Rather, time intervals shall be referred to as the starting time of the interval (e.g., 03:00 = 03:00 to 03:10).

[4] Wind direction data from the nacelle shall not be used for classifying the direction of the wind during that time when the facility is not operating.

[5] If the facility has a nearby weather station tower that collects hub height wind speed that is not in the direct wake of a turbine, the wind speed measured by the met tower at hub height is sufficient for determining when the facility is at or near maximum sound emissions.

[6] Normalized electric power output, i.e. the percent maximum power output of each turbine, can be used to compare turbines of different ratings together on a common axis.

ATTACHMENT E

SAMPLE DECOMMISSIONING AGREEMENT

SAMPLE DECOMMISSIONING AGREEMENT

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

WHEREAS, PA 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 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 Applicant 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 Applicant 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 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 Applicant 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. **Applicant-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 unit's chief elected official, of its intent to decommission the Project or a portion thereof.

        3.1.2. **Landowner Agreements.** The Applicant 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 to the extent not in conflict with the Commission Order. This decommissioning agreement is intended to be consistent with applicable landowner agreements to the extent not in conflict with the Commission Order.

        3.1.3. **Depowering.** [**ADJUST THIS TERM BASED ON RESOURCE TYPE**] If the Project ceases to generate, store, or produce electricity for twelve

(12) consecutive months, the project shall be deemed depowered and decommissioning shall commence unless the Applicant 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 Applicant 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 **applicant** 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 Applicant fails to do so, then decommissioning shall commence; provided, that prior to commencing decommissioning for failure to replace the expiring financial assurance instrument, the **Applicant** shall have at least thirty (30) days to cure such failure. If the **Applicant**'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 **Applicant** 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.

3.1.5. **Change of Ownership.** If the ownership of the Project is transferred, the Applicant 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 Applicant fails to make any such

demonstrations within 30 days of the underlying change, then decommissioning shall commence.

3.1.6. **Repowering.** If the Applicant 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 Applicant 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 Applicantr 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 Applicant, 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 Applicants decommissioning obligations under this Agreement, the Commission order approving the Project certificate, and the Commission-approved Decommissioning Plan. In such event, the Applicant (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 Applicant's decommissioning obligations. In the event the Applicant (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 Applicant (or its successors or assigns) to commence the necessary actions.

3.4.2. **Access Representations.** The Applicant 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 Applicant and Landowner before entering the Project location if Commission-initiated decommissioning is warranted. The Applicant 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, land restoration and reclamation, and insurance requirements calculated by a third party with expertise in decommissioning.

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

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

4.2. **Bond Acquisition. [ADJUST THIS TERM BASED ON APPROVED FINANCIAL ASSURANCE SCHEDULE]** No later than the start of construction, the Applicant 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 1 year from the beginning of construction, the Applicant 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 full commercial operation, the Applicant 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).

4.2.1. **Renewal.** The Applicant 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 Applicant 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 Applicant 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 Applicant'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 Applicant'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 Applicant 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 Applicant 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 Applicant 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. **Choice of Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

[INSERT APPLICANT NAME]

_____

Print Name: _____

MICHIGAN PUBLIC SERVICE COMMISSION

_____

Print Name: _____

ATTACHMENT F

EXHIBIT A-14 - CONDITIONS

PROPOSED MINIMUM CONDITIONS

The applicant shall include proposals to meet the proposed minimum conditions when filing an application or provide an explanation justifying why any of the proposed minimum conditions should not be applied to the facilities. Those participating in the case are encouraged to evaluate the proposed conditions made by the applicant in the application and to propose modifications or additions to proposed conditions in contested cases filed pursuant to PA 233.

1. 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 that 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 most recent 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 MPSC docket assigned to the project

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 its representative of the proposed facility in the MPSC docket assigned to the project and to file updated emergency contact information at a minimum on an annual basis or as necessitated by applicant personnel changes.

7. An agreement by the applicant to implement screening, including, but not limited to, vegetation, walls, and fencing berms, as approved by the Commission as a condition of the siting certificate.[12]

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 infrastructure to a minimum 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[13] adopted by

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

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

the Commission and file the results in a report in the MPSC docket assigned to the project. 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. For a wind project, 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. Such reports shall be filed in the MPSC docket assigned to the project

13. An agreement by the applicant to, at the applicant's cost, contract with a third party to conduct a pre-construction study of radio 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. If no impact is expected, provide support for why this is not necessary to include.

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. 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 MPSC docket assigned to the project.

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 Agency regarding reimbursement for the repair and restoration of County roads modified or damaged during the construction process. In lieu of an agreement with a County Road Agency, a signed letter from the County Road Agency indicating that an agreement is not necessary may be submitted.

P R O O F O F S E R V I C E

STATE OF MICHIGAN)

Case No. U-21547

County of Ingham)

Brianna Brown being duly sworn, deposes and says that on October 10, 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 10th day of October 2024.

Angela P. Sanderson
Notary Public, Shiawassee County, Michigan
As acting in Eaton County
My Commission Expires: May 21, 2030

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