COMMENTS RECEIVED ON STAFF DRAFT STRAW PROPOSALS

As part of the MPSC Staff's collaboration with local units of government, project developers, and other interested persons to develop application filing instructions and guidance for the Commission's consideration to implement the provisions of PA 233 of 2023 for renewable energy and energy storage facility siting, the MPSC Staff is requesting informal comments on the items presented in this document. This is a partial draft which will be refined over time based on comments received and further engagement with subject-matter experts and interested persons.

See Comment Request

On May 15 2024, MPSC Staff presented on partial drafts of the following:

a) Site plans and minor changes
b) Emergency response and fire response plans
c) Conditions for consideration

This document contains the comments received through June 12, 2024 in response to the staff draft straw proposals above and linked in the Comment Request. The comments received will be considered and will inform changes to the proposals prior to submission in Case No. U-21547 on June 21, 2024.

COMMENTS OF THE MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL AND ADVANCED ENERGY UNITED

May 28, 2024

Introduction and General Comments

The Michigan Energy Innovation Business Council ("Michigan EIBC") and Advanced Energy United ("United," collectively "Michigan EIBC/United") appreciate the opportunity to provide comments on the Michigan Public Service Commission ("Commission" or "MPSC") Staff's ("Staff") initial partial draft on decommissioning plans and decommissioning agreements ("Decommissioning Draft") to implement the provisions of Public Act 233 ("PA 233"). Michigan EIBC/United represent a large number of utility-scale solar, wind, and storage developers working on projects in Michigan and were deeply involved in the development and passage of PA 233.

Decommissioning Plans

#2: Description of removal process

In section 2(e), the Decommissioning Draft proposes to require "A description of disposal methods and transportation plans and whether components will be sold, landfilled, recycled or other." Michigan EIBC/United suggest that Staff modify this requirement to indicate that these are tentative plans which the project owner may change (e.g., as costs change). For example, the solar panel recycling industry is fairly nascent, especially in the Midwest. As such, in 2024, there may not be an opportunity to economically recycle certain solar panel components. However, in 25 or 30 years when a project is decommissioned, those opportunities may exist and may be the best, least cost use of the materials. As such, Michigan EIBC/United recommend that section 2(e) be revised to read: "A description of **planned** disposal methods and transportation plans and **an initial plan as to** whether components will be sold, landfilled, recycled or other**, with the understanding that the project owner may change such plans**."

In section 2(f), the Decommissioning Draft proposes to require "A description of resources, conditions, or activities potentially affected by decommissioning and mitigation measures to be employed." It is not immediately clear what Staff mean to include in this requirement. For example, it seems that environmental impacts (e.g., water quality or soil health) might be included, but it is unclear what "activities" means (e.g., farming activities? Construction activities? Road work activities?). As such, it would be helpful if Staff provided more details and clarity around this requirement.

In section 2(g), the Decommissioning Draft proposes to require "An emergency decommissioning plan for energy storage facilities." It is not immediately clear why an energy storage facility would require a separate and additional emergency decommissioning plan. Energy storage facilities must comply with the NFPA 855 "Standard for the Installation of Stationary Energy Storage Systems." Since the institution of these standards, there have been zero injuries associated with operational energy storage facilities in the U.S.[1] These standards require fire-resistant assemblies, fire suppression technologies, and the development of emergency fire plans in collaboration with local emergency management authorities. If there were to be a fire at an energy storage facility, these emergency management plans would be utilized. There is no reason to assume or expect that such an event would necessarily result in the decommissioning of the facility – instead, a limited portion of the facility would likely be impacted and, after repairs, the facility might resume operations. Alternatively, if the facility were to be irreparably damaged by a fire, there is no reason why the standard decommissioning requirements would not be sufficient to cover the procedure at the energy storage facility. As such, Michigan EIBC/United encourage the Commission Staff to reconsider this requirement as it seems superfluous, unnecessary, and, potentially, in conflict with the standard decommissioning requirements.

#4: Coordination with landowners and affected local units

Michigan EIBC/United agree that coordination should occur with landowners and affected local units of government prior to commencement of decommissioning activities. However, as described in detail in previous comments (e.g., those submitted on April 26th), Michigan EIBC/United continue to argue strongly that "affected local unit of governments" in PA 233 are those with zoning jurisdiction – especially because the law specifically references local units that "exercise zoning jurisdiction." Accordingly, Michigan EIBC/United recommend revising section 4 to read:

[1] Fire and Risk Alliance. "BESS Safety." MPSC Presentation. 4/18/2024.

"A commitment and plan to coordinate with landowners and affected local units **exercising zoning jurisdiction** prior to beginning decommissioning activities."

#6: Restoration in accordance with agreements with landowners

The Decommissioning Draft proposes that the plan should include "A commitment that restoration will be in accordance with easement agreements with landowners." In some cases, a developer or utility may have an easement agreement with a landowner (e.g., if there is a need to cross a landowner's property). However, it is just as common, in the case of project land that is not owned by a developer or utility, for there to be a lease agreement with the landowner. As such, Michigan EIBC/United recommend changing this requirement to read: "A commitment that restoration will be in accordance with **~~easement~~** agreements with landowners." In addition, section 6(a) should be modified to require that the decommissioning plan complies with individual landowner leases and easements.

#7: Decommissioning cost estimates

As laid out in PA 233, the financial assurance for decommissioning may be provided in increments with 25% provided at the start of commercial operation, 50% by the start of the fifth year of commercial operation, and 100% by the tenth year of commercial operation. Michigan EIBC/United recommend that the Commission adds a requirement to this section that an applicant indicate whether or not they plan to provide the financial assurance in these increments.

In section 7(b), the Decommissioning Draft proposes to require "An estimate of emergency decommissioning costs for energy storage projects." As detailed above, this seems unnecessary (given that if decommissioning is necessary, it will proceed according to the decommissioning plan, not according to some other plan). In addition, it seems that any such cost estimate would either be duplicative (i.e., identical to the cost estimates required in 7(a)) or highly speculative and dependent on multiple assumptions. Assuming the Decommissioning Draft imagines that energy storage may be subject to an emergency like a fire, the extent of the damage from such an emergency could be minimal (and easily repaired), it could be catastrophic (and require decommissioning), or it could be anywhere in between those two book ends. As such, it seems that any such additional “emergency decommissioning estimate” would be speculative, duplicative, unnecessary, and ultimately, unhelpful.

In section 7(d), the Decommissioning Draft proposes to require “An estimate of the cost to hire a decommissioning consultant to manage the decommissioning process in the event of owner abandonment or bankruptcy.” In general, in the normal course of affairs, a project owner would not directly manage the decommissioning process. Instead, a third-party contractor would be hired to manage the decommissioning process and the costs of hiring that firm would be included in the costs of decommissioning the project.[2] As such, it would be duplicative for the Commission to require the costs for hiring another third-party to be included in the decommissioning cost estimate (in the case of abandonment or bankruptcy). In other words, in the case of owner abandonment or bankruptcy, the Commission would not need to directly manage the decommissioning process itself – instead, the costs to hire a third-party to manage the decommissioning process would already be included in as part of the financial assurance and the Commission could move forward with hiring a contractor under the existing financial assurance.

#8: Details describing the financial assurance

Michigan EIBC/United agree with the Decommissioning Draft’s proposal to require that the financial assurance for a project sited through the Commission be held by and for the benefit of the Commission. Such a policy would be consistent with the policy enacted by the Michigan Department of Agriculture and Rural Development (“MDARD”) for the Farmland and Open Space Preservation Program[3] and as authorized in statute by Public Act 230 (“PA 230”) of 2023. Specifically, the statute and existing policy require that the financial surety for the removal of the solar facility and restoration of the land be payable to the State of Michigan. It would also be consistent with policies in other states such as those enacted recently in Louisiana.[4]

---

[2] *See for example* “Dodge County Wind Project – Third-Party Decommissioning Cost Estimate.” Available at: https://apps.commerce.state.mn.us/eera/web/project-file/12116.

[3] Michigan Department of Agriculture and Rural Development. “Solar Panel Approval Process.” Available at: https://www.michigan.gov/-/media/Project/Websites/mdard/documents/environment/farmland/pa_116_solar_panel_approval_process.pdf?rev=217fb1c423fe46e3ba462f3d2edc3785.

[4] Louisiana Public Act 555 of 2022. Available at: https://legis.la.gov/legis/ViewDocument.aspx?d=1289756.

In light of this requirement by MDARD and PA 230, it is also important that the Commission include in the decommissioning plan requirements a methodology to ensure that duplicative bonds are not required. In the case of land in the Farmland and Open Space Preservation Program with a solar facility, the decommissioning bond is required and held by the State and no additional local bond is required. 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.

Separately, it seems unnecessary to require annual proof to the Commission that the financial assurance is sufficient and in effect. Instead, this assurance could be provided in association with the cost updates which are proposed to be required every 5-years. This would reduce unnecessary work both by the applicant and by Staff while still ensuring that the financial assurance is adequate.

Similarly, Michigan EIBC/United encourage the Commission to require decommissioning plan and cost updates on a 5-year basis for the lifetime of a project. It does not seem necessary to require 3-year updates after the first 20 years of commercial operation. Instead, it seems that updates every 5 years should be sufficient to ensure that the data is accurate and the plan is updated.

Sample Decommissioning Agreement

Parties to Agreement

The Sample Decommissioning Agreement proposes to be entered into between the Developer, the Commission, and each individual landowner. Typically, for projects sited at the local level, a decommissioning agreement is entered into between a developer and the local unit of government with zoning authority and not with individual landowners. Instead, a lease agreement governs any obligations between a developer and a landowner, including those specific to decommissioning activities. The decommissioning plan then includes provisions to ensure alignment with those specific landowner agreements. Not only would it be cumbersome to sign decommissioning agreements with each individual landowner, but also, it would be duplicative and perhaps contractually complicated to have these agreements exist in addition to lease agreements.

Decommissioning Obligations

Section 2 of the Sample Decommissioning Agreement sets forth decommissioning obligations, including the removal of "above-surface facilities and infrastructure that have no ongoing purpose." While it may be implied that facilities and infrastructure that continue to have a purpose may be retained, Michigan EIBC/United recommend clarifying this by inserting the following sentence after the end of referenced sentence: "Notwithstanding the foregoing, a landowner, at the landowner's discretion, may opt to retain specific facilities and infrastructure either via agreement in the lease agreement or upon providing written notice of such to the Developer within 15 business days of the commencement of decommissioning activities." Such language is warranted because it is not uncommon for a landowner to prefer to retain certain facilities or infrastructure, such as, but not limited to, road, sheds, or fences, at the end of a project. There is no reason not to honor such a request.

Depowering

Section 3 of the Sample Decommissioning Agreement lists conditions under which decommissioning of the project "shall commence." Overall, it is important to consider that if decommissioning begins before the end of a project's lifetime, no one benefits – the utility loses energy/capacity, landowners lose a source of income, communities lose tax base, and ratepayers lose an investment. As such, it is important for all parties to work together to avoid decommissioning except under circumstances for which no other remedy can be found.

Specifically, one of the listed "Decommissioning Trigger Events" is "depowering," which states that "If the Project or a portion of project ceases to generate, store, or produce electricity for twelve (12) consecutive months, it shall be deemed depowered and decommissioning shall commence. . ." Although it does make sense to require a Developer to commence decommissioning or provide evidence that the condition is temporary if the Project has ceased to generate, store, or produce electricity for 12 consecutive months, it does not make sense to do so if only a *portion* of the project has ceased to generate, store, or produce electricity. There may be a valid reason why a portion of a project may no longer be operational and, given the proposed language in section 3.1.3, even the lack of operation of one solar panel could result in the decommissioning of an entire project. Instead of requiring the entire project to be operational, the Commission should simply require that the Project must continue to generate, store, or produce electricity. This would simply mean editing section 3.1.3 to read: "If the Project ~~**or a portion of project**~~ ceases to generate, store, or produce electricity for twelve (12) consecutive months, it shall be deemed depowered and decommissioning shall commence. . ."

If the Commission does not make this change, it could consider setting a threshold for power production (e.g., in megawatts or megawatt-hours). For example, Michigan EIBC/United members have agreed to local decommissioning agreements wherein a solar project must continue to generate at least 2 MW of electricity or decommissioning must commence.

In addition, section 3.1.3 indicates that a developer must demonstrate that the lack of electricity production is reasonable and temporary through a Commission proceeding. However, the proposed Sample Decommissioning Agreement does not indicate whether such a Commission proceeding must necessarily be a contested case process or whether such a filing could be made in an *ex parte* manner. Michigan EIBC/United suggest that there is no reason to automatically require such proceedings to be contested cases and instead, unless there are reasonable objections, believe that allowing *ex parte* filings would be a reasonable avenue for Commission review.

Decommissioning Notice

The Sample Decommissioning Agreement proposes that upon the occurrence of a Decommissioning Trigger Event, the Developer must initiate a decommissioning proceeding before the Commission. However, such a proceeding is not described in PA 233 nor is it described in the Decommissioning Draft requirements. Section 11 of the Decommissioning Draft indicates that when decommissioning is complete, the applicant must provide a report in the original Commission case docket. Michigan EIBC/United encourage Staff to clarify whether that is the report required by the Sample Decommissioning Agreement and, if not, what a "decommissioning proceeding" would entail.

Financial Assurance

As described above with reference to the proposed decommissioning plan, and for the reasons described above, Michigan EIBC/United do not believe that "Emergency decommissioning costs for energy storage projects" should be included.

Bond Acquisition

As described above, a Developer *may* post the financial assurance in increments. However, section 4.2 appears to require the posting of the financial assurance in increments. This should be clarified in case a project wishes to post the financial assurance according to a different (e.g., more rapid) schedule.

Comments from AES Clean Energy Development, LLC

May 28, 2024

AES Clean Energy Development, LLC ("AES Clean Energy" or "AES") appreciates the opportunity to comment on the Michigan Public Service Commission ("Commission") staff's initial partial draft regarding the decommissioning plan and agreements as part of the provisions required in Michigan Public Act 233 of 2023. AES Clean Energy is a utility scale renewable energy development company with a focus on various technologies including but not limited to solar, wind, energy storage, and green hydrogen. AES currently has three operating solar energy facilities and a robust pipeline of future development in the state of Michigan. AES is excited to bring valuable jobs, community benefits, economic investment, and clean energy to Michigan that together will help meet the recently passed renewable portfolio standards as established by the legislature in Public Act 235 of 2023.

Section 2(e) regarding the descriptions of the energy facility removal process and the "description of disposal methods and transportation plans and whether components will be sold, landfilled, recycled or other". AES Clean Energy would respectfully suggest that this requirement be tentative or indicate that this could change in the future. The industry is aware of the issues of landfilling solar facility components. AES along with other industry partners are excited about the prospects of creating a circular economy and having a robust solar recycling program put in place. However, the solar recycling industry is young and will take time to grow to scale for the current and future industry needs. Most solar facilities are also just starting their lifecycles and will be online generating power for an additional 15-30 years. This will allow ample time for the recycling industry to grow, and those opportunities may exist in the future. AES would respectfully request to change the language to include a "tentative plan" for the removal and transportation of components.

Section 2(f) "A description of resources, conditions, or activities potentially affected by decommissioning and mitigation measures to be employed". This part is unclear by what the Commission is seeking from developers in their plans. Usually, the decommissioning plan is to restore the site as close as possible to its original state thereby mitigating changes to the land. AES Clean Energy would respectfully request more clarification around this requirement.

Section 2(g) regarding "An emergency decommissioning plan for energy storage facilities". AES Clean Energy as a standard and complies with the NFPA 855 *Standards for the Installation of Stationary Energy Storage Systems*. These are robust standards that facilitate many aspects of energy storage including having fire suppression technologies and emergency fires plans in collaboration with local emergency authorities. AES Clean Energy would request a change to this requirement since we would already have an emergency plan in conjunction with the NFPA 855 requirements. Section 2(g) seems superfluous and would respectfully request reconsideration on this requirement.

Section 7(b) regarding “And estimate of emergency decommissioning costs for energy storage projects”. Our comments on this are the same as Section 2(g) whereas we would request reconsideration of this requirement.

Section 8(b) regarding details describing the financial assurance and “such financial assurance shall be expressly held by and for the benefit of the Michigan Public Service Commission”. AES Clean Energy supports the decommissioning bond be kept with the state to ensure the best security of decommissioning the site. This will also help to streamline the process as many of our facilities are spread across multiple landowners and multiple jurisdictions of local government. The state is best suited to manage this requirement. Other states such as Louisiana also require decommissioning bonds to be held by the state (Louisiana Public Act 555 of 2022). A similar program in the state of Michigan would be the policy enacted by the Michigan Department of Agriculture and Rural Development, whereas the Farmland and Open Space Preservation program has a requirement for the removal of a solar facility and restoration of the land to have financial surety be payable to the state of Michigan. AES would also encourage the Commission to include in the decommissioning requirements a procedure to ensure that duplicative bonds are not required at the local level in addition to the ones required by the state.

AES Clean Energy would like to thank the staff and the Michigan Public Service Commission for their dedication to the state of Michigan and including stakeholders in this process. We appreciate the opportunity to comment on these initial drafts and would like to be a resource for any questions you may have in the future. Please do not hesitate to reach out.

Respectfully submitted,

Frank Krawczel

Frank Krawczel
Director, Development
AES Clean Energy
Frank.Krawczel@aes.com

REQUEST FOR INFORMAL COMMENTS

As part of the MPSC Staff's collaboration with local units of government, project developers, and other interested persons to develop application filing instructions and guidance for the Commission's consideration to implement the provisions of PA 233 of 2023 for renewable energy and energy storage facility siting, the MPSC Staff is requesting informal comments on the items presented in this document. This is a ***partial draft*** which will be refined over time based on comments received and further engagement with subject-matter experts and interested persons. Today, we are seeking comments on the following initial Staff Straw Proposals included within this document:

a. Decommissioning plans
b. Decommissioning agreements

Comments responding to these draft straw proposals, which may be in the form of redlined suggestions, general comments, or the identification of other items that should be considered are requested from local units of government, project developers, subject matter experts, and interested members of the public.

Please submit your informal comments on these items by email to
colec1@michigan.gov and baldwinj2@michigan.gov
with Siting Comments in the subject line.
Your comments are requested on these items by May 28, 2024.

After further engagement, Staff plans to request comments on initial straw proposals addressing other items in the statute including site plans, decommissioning, and many other items at a future date. Comments received will help to inform what the Staff eventually files in Case No. U-21547 as Staff's proposal which is due to be filed by June 21, 2024.

If you have not already done so, please consider signing up for our email distribution list to receive future communications related to the implementation of PA 233 at the bottom of the Renewable Energy and Energy Storage Facility Siting webpage.

####### ATTORNEY-CLIENT PRIVILEGED INFORMATION #######

STAFF DRAFT STRAW PROPOSAL ON DECOMMISSIONING PLANS

Staff recommends the Commission consider adopting the following guidance related to decommissioning plans included in applications to the Commission, as outlined in PA 233 of 2023:

Sec. 225: (1) (r) 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.

Commented [JAK1]: DTE recommends that the Decommissioning Plan/Agreeement be limited to the Developer (applicant) and the MPSC.

DTE supports language from top of page 7: "This decommissioning agreement is intended to be consistent with applicable landowner agreements to the extent possible"

Staff recommends that decommissioning plans ~~submited~~submitted with applications include the following elements:

1. An overview of the proposed energy facility including the following:
   (a) A description of the proposed energy facility 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 decommissioning.

Commented [JAK2]: DTE recommends: add "a description of an applicant's ability to mitigate decommissioning timing if warranted"

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 or 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.
   (e) A description of disposal methods and transportation plans and whether components will be sold, landfilled, recycled or other.
   (f) A description of resources, conditions, or activities potentially affected by decommissioning and mitigation measures to be employed.
   (g) An emergency decommissioning plan for energy storage facilities.

Commented [JAK3]: DTE recommends: "at the time of an application filing, applicant to include a description of hazardous material use and removal from the site based on reasonable assumptions at the time of the filing."

Some of this info may not be known upfront/early in a project's life.

3. A description of the site restoration plan and process.

Commented [JAK4]: DTE recommends that Staff add; "including PA116 restoration requirements".

4. A commitment and plan to coordinate with landowners and affected local units 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. A commitment that restoration will be in accordance with easement agreements with landowners.

(a) Within 30 days of filing the application, the applicant shall meet with Commission Staff to demonstrate that the decommissioning plan complies with individual landowner easements.

7. A decommissioning cost estimate which includes the following:

(a) Detailed cost estimates for removal of energy facility equipment and infrastructure, land restoration and reclamation, and insurance requirements calculated by a third party with expertise in decommissioning.

(b) An estimate of emergency decommissioning costs for energy storage projects.

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

(d) 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 of financial assurance to be provided (cash is prohibited):

i. Bond; or

ii. Parent company guarantee; or

iii. Irrevocable leter 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.

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.

Commented [JAK5]: DTE: reword to "easement/lease"

As this can vary by developer

Commented [JAK6]: DTE: if there is a flood of applications, this 30-day window could be difficult due to limited bandwidth.

DTE recommends that this be replaced with an "assurance statement" from the developer and included in their application. If a developer's decommissioning plans are found out of compliance with landowner lease agreements, then a developer's application could be voided.

Commented [JAK7]: DTE: reword to "easement/lease"

As this can vary by developer

Commented [JAK8]: DTE: questions
(1) What will the insurance requirements cover since there is already bond?
(2) We know the duration of decom bond- is for the life of the project until decommissioning is completed; is there a duration for the insurance requirements?

Just trying to understand what Staff is looking for

Commented [JAK9]: DTE: are there assumptions for the need of emergency decommissioning for energy storage projects?

Not sure what these costs would be or how a developer would go about calculating them

Formatted: Font color: Red

Commented [JAK10]: DTE: assuming the Decommissioning Agreement is only between the applicant (developer) and MSPC (2-parties), we encourage Staff to also consider the benefits/needs of the community/municipality in some way

Appendix 1 – Figure showing energy facility layout
Appendix 2 – Detailed decommissioning cost estimate breakdown
Appendix 3 – Decommissioning Agreement

SAMPLE DECOMMISSIONING AGREEMENT

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

Commented [JAK11]: DTE: we strongly recommend Staff to remove landowners from this agreement.

Some renewable projects involve 100s of LOs and 100s of legal contracts. Many of these contracts are reviewed by a LOs attorney and there is no universal template. It can sometimes be a challenge to get signatures and this element adds significant complexity, volume, and time delays to the decommissioning process.

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

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

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

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

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

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

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

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

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

3. **Decommissioning Process.**

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

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

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

Commented [JAK12]: DTE: please consider honoring LO requests at the time of decommissioning. Also, need to comply with PA 116 restoration requirements to the extent applicable.

Note: some LOs will request an access road to remain as is and not returned to farm land.

Commented [JAK13]: DTE: Developer is responsible for all permits- not the LOs

Consider removing as this creates an unnecessary burden on LOs commence no later than upon the triggering of such terms. This decommissioning agreement is intended to be consistent with applicable landowner agreements to the extent possible.

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

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

3.1.5. Change of Ownership. If the ownership of the Project is transferred, the Developer seeks to dissolve, or the ownership structure of the Developer is otherwise changed, the Developer must immediately file a demonstration in the MPSC docket assigned to the Project confirming the continued compliance with the Project certificate and the continued validity of the financial assurance. If the Developer fails to make any such demonstrations within 30 days of the underlying change, then decommissioning shall commence.

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

3.2. Decommissioning Notice. Upon the occurrence of any of the above-specified Decommissioning Trigger Events, the Developer shall immediately provide written notice to the parties to this agreement and initiate a decommissioning proceeding before the Commission.

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

3.4. Commission Decommissioning Authority.

3.4.1. Commission-Initiated Decommissioning. If the Developer, its successors or assigns, or any other person controlling the Project fails, refuses, or neglects to initiate decommissioning within 180 days of any of the Decommissioning Trigger Events, the Commission shall itself have the right, but not the obligation, to perform the Developer's decommissioning obligations under this Agreement, the Commission order approving the Project certificate, and the Commission-approved Decommissioning Plan. In such event, the Developer (or its successors or assigns) and the Landowner (or any of the Landowner's heirs or assigns) agrees to give the Commission and its contractors or agents the right of reasonable access on the Landowner's property to decommission 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. For clarity, nothing in this Agreement shall infer any obligation or responsibility, financial or otherwise, to the Landowner (or any of the Landowner's heirs or assigns) for any costs of Decommissioning the Project. The Commission shall not be required to expend funds beyond those funds provided through the financial assurances in order to perform the Developer's decommissioning obligations. In the event the Developer (or its successors or assigns) subsequently takes steps to initiate such activities and a decommissioning proceeding before the Commission within a reasonable time, the Commission may refrain from decommissioning activities and let the Developer (or its successors or assigns) commence the necessary actions.

3.4.2. Access. The Developer and Landowner hereby grant rights of ingress, egress, access, and possession to the Project location and over the Project property should the Commission be authorized to initiate decommissioning activities, subject to the Commission providing reasonable notice to the Developer and Landowner before entering the Project location. The Developer and Landowner hereby represent they possess the authority to grant such rights pursuant to their 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

Commented [JAK14]: DTE: recommends this language be removed

The lease/easement agreement is between the Developer and the LO. The LO provides this access. It is the Developer's responsibility to get this access to the LOs property, not LO

Commented [JAK15]: Same as above

DTE: recommends this language be removed

The lease/easement agreement is btw the Developer and the LO provides this access

Commented [JAK16]: Same as above

DTE: recommends this language be removed

The lease/easement agreement is btw the Developer and the LO provides this access

This implies the need for LO consent for this agreement, but creates several challenges (approvals, signatures, and reviews…)

Commented [JAK17]: Same as above

DTE: recommends this language be removed

The lease/easement agreement btw the Developer and the LO 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.

4.1.1. Emergency decommissioning costs for energy storage projects.

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

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

4.2. Bond Acquisition. By the start of construction, the Developer shall post a Decommissioning Bond in the amount of at least $____________ for the benefit of the Commission, which is 25% of the Estimated Decommissioning Cost. After one year of construction, the Developer shall post a Decommissioning Bond in the amount of at least $____________ for the benefit of the Commission, which is 50% of the Estimated Decommissioning Cost. By the start of full commercial operation, the Developer shall post a Decommissioning Bond in the amount of at least $ ___________ for the benefit of the Commission, which is 100% of the Estimated Decommissioning Cost. The bond shall conform to the Bond Agreement (Attachment C to this Agreement).

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

4.2.2. Annual Showing. Every year, the Developer must file proof that the financial assurance requirements are satisfied in the MPSC docket assigned to the Project.

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

4.2.3. 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.

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

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

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

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

5. Termination.

5.1. Commission-Approved Decommissioning. Upon completion of all decommissioning obligations described in this agreement, the Commission order approving the Project certificate, and the Commission-approved

Decommissioning Plan, the Developer may apply to the Commission for termination of this Agreement. The Commission shall determine whether any outstanding obligations exist. Otherwise, the Commission shall terminate this Agreement.

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

6. Miscellaneous.

6.1. 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.

Commented [JAK18]: DTE recommends that the Decommissioning Plan/Agreement be limited to the Developer (applicant) and the MPSC.

Including LOs can create significant challenges and issues

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

Commented [JAK19]: Same

DTE recommends removal of "Landowner"

DTE recommends that the decommissioning plan to be limited to the Developer (applicant) and the MPSC.

Including LOs can create significant challenges and issues

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

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

6.5. 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.

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

[INSERT DEVELOPER NAME]	**MICHIGAN PUBLIC SERVICE COMMISSION**
______________________	______________________
Print Name: ____________	Print Name: ____________

Commented [JAK20]: DTE: we strongly recommend Staff to remove landowners from this agreement.

Some renewable projects involve 100s of LOs and 100s of legal contracts. Many of these contracts are reviewed by a LOs attorney and there is no universal template. It can sometimes be a challenge to get signatures and this element adds significant complexity, volume, and time delays to the decommissioning process.

[INSERT LANDOWNER'S NAME]

____

Print Name: ____________

GRAHAM SUSTAINABILITY INSTITUTE
CENTER FOR EMPOWERING COMMUNITIES
UNIVERSITY OF MICHIGAN

To: Cathy Cole & Jule Baldwin, Michigan Public Service Commission

From: Sarah Mills & Madeleine Krol, University of Michigan Center for EmPowering Communities

Date: May 30, 2024

RE: Staff Straw Proposal Batch 2 feedback

Dear Cathy and Julie,

Our apologies for the delay (though not as long as the first batch!) in submitting comments on the Straw proposals presented on May 15th. Our comments here are not as extensive since we (or specifically Sarah) have already weighed in on decommissioning at the April 5th meeting, drawing on the decommissioning provisions in the Michigan communities where there are existing wind or solar farms. Here we just underscore elements that we think deserve highlighting. Please do not hesitate to contact us if you have any questions or would like any clarification.

Sarah (sbmills@umich.edu)

Madeleine (krol@umich.edu)

Decommissioning Plans (Pages 1-3)

Overall, this provides much more thorough instructions than what is provided in statute so that applicants know what they are expected to provide. The combination of the decommission plan content and the decommissioning agreements appear to cover everything that is typically covered by local ordinances.

Commission staff may consider the following:

1(c): Since the decommission agreement spells out triggering events, would you want the applicant to focus here on "developer-initiated decommissioning (3.1.1)"?

2(b): The use of "or" in this requirement suggests the applicant has the choice of whether to list the facilities removed or those kept in place. It may be clearer to have the applicant list only the facilities/equipment that will be kept in place, since the public's assumption is likely that all facilities/equipment will be removed. Or, if it is beneficial for the Commission to have the developer enumerate the facilities that need to be removed, it might be better to replace the "or" with "and".

8(b): Having the MPSC hold the financial assurance for decommissioning seems consistent with the idea that the agreement is between the Commission and the applicant, and the MPSC would be the body enforcing when the project needs to be decommissioned.

9: The required timing of reviewing the costs seems reasonable.

10 and Appendix 3: Since you need one of these for each landowner, it would be shocking to us if you see any wind or solar applications with only one agreement. We suggest that you say "agreement(s)", but maybe also spell out that these are Decommissioning Agreements between the Developer, MPSC, and all landowners with infrastructure on their property [or some other designation]. From our research, we have found sometimes participating landowners don't have any assets on their property—they are participating to give the developer more flexibility in project placement (e.g., closer to their house or property line). It may not be necessary to have them provide site access in the case of decommissioning, but there may be other reasons we aren't thinking of for them to be part of the submission. The instructions should make clear who needs to complete a decommissioning agreement.

Sample Decommissioning Agreement (pages 1-9)

We are not familiar with decommissioning agreements but provide the following observations.

3.1.3: Initially, we were trying to reconcile the 12 months and 5 year numbers given in this paragraph. Our understanding is that 12 months seems to apply once the project is operational. The 5 years is the time given to get a new project operational once construction has commenced. Operational date is likely something that's easier to track than commencement of construction. If commencement of construction isn't defined elsewhere, it might be helpful to do so. [Originally, we thought perhaps pegging this to when the Commission issues the certificate would be a clearer way to measure projects were construction has stalled. But since Section 226(10) states that a Commission-issued certificate is invalid if construction hasn't commenced within 5 years of the certificate being issued, it just seems cleaner to just define "commencement of construction" for both the decommissioning agreement and Section 226(10).]

3.1.3: It might be helpful to spell out what is meant by "portion of a project". A single turbine? Solar panels in a single row, or all of the panels feeding a single inverter?

3.1.3: We might suggest that the Commission have the applicant annually file proof (perhaps at the same time that they file their financial assurance annual showing in 4.2.2) that the project is still operational to allow the Commission to assess whether the project or portion of the project has entered the "depowered" state. For this, it appears that the Commission may want daily or weekly summaries of generation, storage, and/or production so that they can determine when Day 0 of the depowered state begins. Or perhaps the Commission may only want monthly summaries and will request more information if the applicant ends the reporting period with some portion of the project depowered.

3.1.4: This stipulation, but also with ample warning, opportunity to cure, etc., seems like a good way to ensure that the financial assurance stays valid and would allow for it to be drawn upon in the case of abandonment.

4.2: While the phase-in of a decommissioning bond is not commonplace in Michigan, this appears to balance the concern we have heard from local officials that projects are most likely to go awry in construction, with the concern voiced by developers that having 100% posted as soon as the project is approved is challenging to finance.

6.1: Does this stipulation account for what happens if the landowner, who is a party in this agreement, sells their property? Do they need to get it in writing or does this agreement move with the land? [As non-lawyers, we're not sure what this is saying.] Relatedly, we have not studied wind or solar leases in any detail but have heard that they may not all "run with the land" (i.e., the land was sold but the original landowner kept the wind easement). It may be important to clarify which landowner is supposed to sign this agreement in such a case (or just verify with developers that their lease/easement agreements are non-severable).

Not in either section

In situations where maintaining soil quality characteristics are important (e.g., level of compaction, types of soil), where maintaining water quality or drainage is important, or where there is a particular concern about components of a facilities that are classified as hazardous waste, the commission could consider whether it wants to require any pre-construction baselines to alleviate disputes that may arise during decommissioning.

Michigan Sustainable Business Forum
Informal Comments on MPSC Staff Decommissioning Guidelines for PA 233 Renewable Energy Facility Siting
May 28, 2024

Michigan Sustainable Business Forum (MSBF) appreciates the opportunity to share these informal comments on MPSC staff's straw man decommissioning guidelines for the renewable energy facilities siting process under PA 233 of 2023.

MSBF is a nonprofit organization that promotes business practices that advance climate leadership, social justice and the creation of a circular economy. MSBF is Michigan's leading organization for sustainability practitioners, serving its most recognizable brands, largest employers and most innovative entrepreneurs, advocates, educators, and the public sector. Through campaigns and advocacy, MSBF serves partners and diverse stakeholders as a boundary organization committed to the development of sustainability practices, policies and partnerships.

MSBF recently undertook a research project funded by the Michigan Department of Environment, Great Lakes, and Energy to examine the current landscape and issues around a circular economy for energy materials, particularly end-of-life (EOL) photovoltaic solar panels. The report found that EOL solar panel management is still an emerging issue, with few Michigan solar developers, contractors, and customers having any experience in solar EOL. There is a limited record of solar reuse, recycling, and disposal activities in Michigan, as the Midwest continues to lag other regions in these trends. While current volumes are not yet considered sufficient to support dedicated recycling infrastructure, numerous trends will contribute to increasing volumes of EOL panels in the coming years. Ensuring circularity is important to minimizing hazardous wastes, conserving valuable resources, meeting climate goals, and providing for enhanced economic opportunities.

Given the significant proportion of total solar panels comprised by utility-scale facilities, decommissioning planning and utility regulation can play a key role in promoting circular practices. MSBF supports staff's proposal to require descriptions of plans for transportation, resale, recycling, landfill, or other methods of what may be called "materials management" - the term now preferred by EGLE and other stakeholders rather than "waste" or "disposal." It is important that solar owners investigate potential recycling costs and opportunities, which continue to mature as EOL panel volumes increase. While it's likely not feasible to identify a particular recycler during project development, a recycler's location will impact transportation costs and thus should be further refined during future decommissioning plan updates. Of course, plan updates should also account for the impact of evolving regulations, such as hazardous waste characterizations, bans on landfill disposal, or extended producer responsibility programs.

The inclusion of salvage value in decommissioning cost estimates is stipulated in law and in staff's proposal, but it is important for salvage values to be realistically and appropriately assessed. PV panels may maintain significant performance levels of 80+%, even after 25 years of service, and panel reuse is ideal for sustainability and economic reasons.[i] Panel resale and reuse would play a major role in early repowering, in which a utility opts to replace most or all of a facility's panels to upgrade performance and output, thereby turning over large volumes of still-usable panels. Industry stakeholders and early experiences both suggest that the vast majority of solar facilities will undergo repowering, either ahead of schedule or at the facility's projected end of life, rather than full decommissioning. As such, this gives relative emphasis to materials management activities over site restoration activities.

Still, the demand and market for used panels remains to be seen, given various challenges (including limited warranties, code requirements, and continued improvements in new panel costs & output). Market analysts report significant recent drops in the resale value for used panels.[ii] As such, salvage values premised on panel resale should be closely scrutinized per current markets and prospects.[iii] Based on current estimates, in the case of a 1 MW solar system with 4,000 panels, recycling could add more than $100,000 – or 20% - in overall decommissioning costs compared with landfill disposal. On the other hand, resale of used panels could potentially help recover up to $80,000 in salvage value; indeed, some reviewed decommissioning plans have projected net surpluses based on salvage values.[iv] All in all, it is likely that even as panel resale values decline over a panel's life, so too will recycling costs decrease. A balanced and flexible approach will ensure proper EOL management while not burdening solar deployment at scale.

The staff's proposed language to include repowering activities in decommissioning plans and reporting is sensible and effective. Where a developer reports that panels have been recycled, the Commission may want to request documentation (via a certificate of recycling) that materials have been managed responsibly.

The staff's proposal to require cost estimates for hiring a decommissioning consultant is prudent, given that an expert party would be more knowledgeable about current best practices and markets, thereby promoting more sustainable practices and potentially maximizing reuse opportunities (and reducing net costs).

Finally, while the staff's proposal makes strong strides in promoting circularity, legislators and stakeholders should consider the appropriateness of additional clarification to require recycling of solar materials where practicable; North Carolina recently enacted SL 2023-58 and promulgated guidance to that effect.[v]

---

[i] National Renewable Energy Laboratory - Best Practices at the End of the Photovoltaic System Performance Period

[ii] EnergyBin - 2023 PV Module Price Index - Secondary Solar Market

[iii] *Indeed, under a separate statutory program, Michigan Department of Agriculture and Rural Development (MDARD) guidance disallows the use of salvage credits "due to the unpredictability of future salvage values"* - Commercial Solar Facilities on PA 116 Land FAQ

[iv] Minnesota Public Utilities Commission - Decommissioning Report for Xcel Energy's Sherco Solar Project

[v] North Carolina Department of Environmental Quality - Utility-Scale Solar Management Program

From: Planning
To: Cole, Cathy (LARA); Baldwin, Julie (LARA)
Subject: Renewable Energy Siting and Decommissioning Comments
Date: Wednesday, May 22, 2024 12:19:04 PM

Hi there,
Below are some comments for consideration.
Thank you for your time,
Nancy Hawley

1. Battery Energy Storage Systems (BESS) according to FEMA & U.S. Fire Administration Report April 2019 can be a potential fire hazard attributed to thermal runaway, manufacturing defects, battery damage and/or improper installation. In 2023, New York State had a number of these fires, even 3 in two months (one was from a NextEra site), causing the State in February 2024 to update their energy storage fire safety standards. They addressed preventative and responsive measures as well as best practices, and included proposed requirements related to peer review of project permit application packages, emergency response planning, and local fire department training, among others. The recommendations identified ways to further improve the regulatory framework for BESS in New York, are intended to apply to lithium-ion BESS exceeding 600 kilowatt-hours (kWh). The recommendations were developed with a focus on outdoor systems, BESS in dedicated use buildings, and other grid-scale battery energy storage systems.
   Why reinvent the wheel, be proactive and apply similar standards to BESS siting in Michigan.

2. Should MPSC siting permits add "indemnification for townships" when renewable energy facilities are no longer in compliance with standard code?
   Local concerns and nuisance complaints come to the local government first. What procedure should they follow when they are not part of the permitting process?

3. A decommissioning plan should include funding for Drain Commissioner oversite to ensure stormwater runoff, and field drain tiles are maintained; and remaining subsurface panel support structures do not become conduits for groundwater pollution.

From:	Andrea Polverento
To:	Cole, Cathy (LARA); Baldwin, Julie (LARA)
Subject:	Siting Comments
Date:	Tuesday, May 28, 2024 4:57:01 PM

Re: Site Plan Section 3 – Explanatory Information

My concern is with designating a member of the developer/operator staff to be the clearinghouse for complaints. Any complaints about the project should be directed to the MPSC, and relayed promptly to the developer/operator to be addressed. By directing complaints to the developer, there is no oversight, no guarantee that complaints will be addressed.

It may be that the intent is to ensure that an individual with the developer is the responsible party for the MPSC to relay complaints, but that is not as clear as it could be. It should be noted that the MPSC will develop a complaint procedure to obtain and relay complaints to the appropriate responsible party.

My experience in hearing complaints from the public about developments in general is that the person making the complaint prefers to bring that to the governmental agency with regulatory control over the development, not to the developer directly.

Please don't hesitate to contact me with any further questions or if I can clarify this further.

Thank you,
Andrea

WATERTOWN
CHARTER TOWNSHIP

Andrea Z. Polverento, Planning Director
12803 S. Wacousta Road | Grand Ledge, MI 48837
Office: 517.626.6593 ext. 208 | Direct line: 517.925.2018
apolverento@watertownmi.gov
www.watertownmi.gov