

## **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 an ***initial 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. Pre-application process flowchart
- b. Public notice and community participation
- c. CREO guidance
- d. One-time grants to local units
- e. Application fees

Comments responding to these initial 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.

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**Please submit your informal comments on these items by email to [colec1@michigan.gov](mailto:colec1@michigan.gov) and [baldwinj2@michigan.gov](mailto:baldwinj2@michigan.gov) with Siting Comments in the subject line.**  
**Your comments are requested on these items by April 24, 2024.**

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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](#).

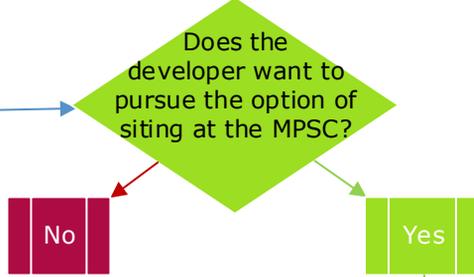
# Public Act 233 of 2023 Renewable Energy Facility Siting Process Preapplication

Effective November 29, 2024

**The developer:**

- Develops the project and contracts with property owners.
- Works with the local unit of government to meet its requirements.

A local unit of government may assert that this is the only step that can occur prior to 11/29/2024.



Schedule public meeting. Offer to meet with chief elected official at least 60 days before the public meeting.

Within 30 days of meeting with the developer, the local elected official notifies **in writing** whether it has an applicable CREO.\*

\*If a local official does not respond to the request from the developer, the developer can proceed as if there isn't a CREO after 30 days have passed.

These events could occur prior to 11/29/24. (At the discretion of the local official.)

**What is a Compatible Renewable Energy Ordinance (CREO)?** A CREO is an ordinance that allows for the development of renewable energy facilities within the local unit under conditions that are no more restrictive than the requirements set in PA 233.

**An applicant may also file at the MPSC if the local unit:**

- Requests the applicant to file at the MPSC.
- Has a moratorium in place.

**NOTE: This process follows the "No CREO" red path.**



Provide notice to the clerk at least 30 days in advance of the public meeting.

Publish the notice at least 14 days in advance of the public meeting.

Hold the public meeting.

If the developer files for siting approval at the Commission:

- The developer must make a 1-time grant to each affected local unit, in an amount that the Commission decides, to cover costs associated with participation in the case. The grant cannot exceed \$75,000/local unit or \$150,000 in total.

The local unit has 120 days to approve or deny the application (with a possible 120 day extension).

The developer may file for siting approval at the Commission if:

- The application is not reviewed promptly (by the 120-day deadline or other deadline as agreed upon).
- The application is denied despite complying with statute.
- Any impacted local unit amends its CREO so that it imposes more requirements.

If the developer files at the Commission in this instance:

- The developer is not required to make any grant to fund participation of the local unit of government in the Commission process.
- No public meeting must be held prior to filing the application.

The developer must supply notice of the opportunity to comment on the application.

The application will be reviewed through the contested case process and an order must be issued within 1 year.

## **STAFF DRAFT STRAW PROPOSAL ON PUBLIC NOTICE AND LOCAL COMMUNITY PARTICIPATION**

Staff recommends the Commission consider adopting the following guidance related to public notice and local community participation as outlined in PA 233 of 2023:

Sec. 223. (1) An electric provider or independent power producer that, at its option or as required by the commission, proposes to obtain a certificate for and construct an energy facility shall **hold a public meeting in each affected local unit.** At least 30 days before a meeting, the electric provider or IPP shall notify the clerk of the affected local unit in which a public meeting will be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan as described in section 224 or the address of an internet site where a site plan for the energy facility is available for review. 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 affected local unit 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. For the purposes of this subsection, a public meeting held in a township is considered to be held in each village located within the township.**

- *The Staff recommends that the statutory definition of affected local unit, “a unit of local government in which all or part of a proposed energy facility will be located,” be read to include all counties, cities, townships and villages in which all or a part of the proposed facility will be located.*
- *The Staff recommends that public meetings should be held in each city and township where the proposed project is located and also serve to meet the requirement to hold a public meeting within the affected county as well as affected villages.*
  - *Unless otherwise requested by the local official, the public meeting should be held outside of traditional workday hours of 8 am – 5 pm.*
  - *The applicant shall provide a copy of the notice submitted to the clerk in each affected local unit to the MPSC Executive Secretary on the same date in which the local clerk was provided notice.*
- *The Staff recommends that the notice of the public meeting should be sent by U.S. mail to postal addressees within 1 mile of proposed solar or proposed energy storage projects, and within 5 miles of a proposed wind energy project.*
  - *The notice shall include the date, time, and location of the public meeting; a description and location of the proposed project; and directions for submitting written comments for those unable to attend the public meeting.*

(2) At 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 **chief elected official** of each affected local unit, or the chief elected official’s designee, to discuss the site plan.

- *The Staff recommends that the titles of chief elected officials may vary between jurisdictions. Chief elected officials typically include mayors, village presidents, township supervisors, and board chairs.*
- *The Staff recommends that the offer to meet with the chief elected official be delivered by email and by certified U.S. mail.*
- *The Staff recommends that the offer in writing to meet with the chief elected official be submitted as evidence with an application filed pursuant to PA 233.*

(3) If, within 30 days following a meeting described in subsection (2), the chief elected official of each affected local unit notifies the electric provider or IPP planning to construct the energy facility that the affected local unit has a compatible renewable energy ordinance, then the electric provider or IPP shall file for approval with each affected local unit,...

- *The Staff recommends that when each chief local official notifies the applicant that it has a CREO, the MPSC does not have jurisdiction pursuant to PA 233 for facilities located in that local unit's area. The facilities may come before the MPSC due to a lack of a CREO in any one affected local unit with zoning jurisdiction, or by request of one affected local unit with zoning jurisdiction.*
- *Should an applicant apply for siting approval at the MPSC even though a local unit of government notified it has a CREO, the local unit of government, or another intervenor, may file a motion to dismiss the case to be ruled upon by the administrative law judge. The judge's ruling could be appealed to the Commission.*
- *The Staff recommends that the developer 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 have passed.*

As part of the application, the following shall be included: Section 225 (1)(j) A summary of the community outreach and education efforts undertaken by the electric provider or independent power producer, including a description of the public meetings and meetings with elected officials under section 223.

- *The Staff recommends that the following evidence be submitted with the application:*
  - *A copy of the notice published in the newspaper or online alternative for both the public meeting and the public notice that the applicant filed the case at the Commission.*
  - *A copy of the notice sent by U.S. Mail, via regular postage to addressees within 1 mile of a solar or energy storage project or within 5 miles of a wind project for both the public meeting and the public notice that the applicant filed the case at the Commission.*
  - *A list of all addressees that were mailed the notice of the public meeting and the notice of the case filed at the Commission.*

- *A list of those that attended the public meeting from those opting to sign in to the meeting along with a count of the total attendance.*
- *Minutes or a transcript from the public meeting.*
- *Copies of the written comments received at the public meeting or from those receiving the notice but were unable to attend.*
- *Expert witness testimony describing accommodations made or changes made by the applicant to address the public comments received.*

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## **STAFF DRAFT STRAW PROPOSAL ON CREO GUIDANCE**

Staff recommends the Commission consider adopting the following guidance related to compatible renewable energy ordinances as outlined in PA 233 of 2023:

1. “Compatible renewable energy ordinance” means an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction.
  - a. The MPSC should consider the requirements of MCL 460.1223(3) met as long as the entire footprint of the proposed project is covered by one or more effective ordinances meeting the requirements of MCL 460.1221(f) or is un-zoned, regardless of whether local units of government without zoning jurisdiction have an ordinance addressing siting.
  - b. Given concerns raised regarding jurisdictional issues between various local units of government, including townships’ authority to enact a zoning ordinance, the Staff recommends that the MPSC should not require a binding zoning ordinance in an affected local unit without zoning jurisdiction for the purposes of PA 233 compliance.
  - c. To be considered a CREO, the MPSC should not require the ordinance to include technology types that are not included in the proposed project. For instance, a CREO for solar technology is all that would be needed to consider a solar project. A hybrid solar plus storage project would need to meet the requirements outlined in one or more CREOs for solar and storage technologies. Local units should not be prohibited from including more than one technology in the same CREO, should it choose.
  - d. The Staff recommends that the MPSC should allow any provision specified in PA 233 to be considered by the Commission in a siting review as acceptable provisions in a CREO as long as the standard utilized by the local unit of government is not more restrictive than outlined in the statute.
  - e. Section 223 (5) says: “(5) If the commission approves an applicant for a certificate submitted under subsection (3)(c), the local unit of government is considered to no longer have a compatible renewable energy ordinance, 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 subsection (3)(a).” The Staff recommends that the MPSC should consider the local unit to no longer have a CREO only until the local unit has modified its ordinance to be compliant with the statute. Likewise, when a local unit lifts a moratorium and approves an ordinance in compliance with the statute, it should be considered that the local unit has a CREO until such time found otherwise.

## **ALTERNATIVE STAFF DRAFT STRAW PROPOSAL ON ONE-TIME GRANTS**

Staff recommends the Commission consider adopting the following guidance related to one-time grants to affected local units of government as outlined in PA 233 of 2023:

Sec. 226. (1) Upon filing an application with the commission, the applicant shall make a 1-time grant to each affected local unit for an amount determined by the commission but not more than \$75,000.00 per affected local unit and not more than \$150,000.00 in total. Each affected local unit shall deposit the grant in a local intervenor compensation fund to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate.

- ***The Staff recommends that the statutory definition of affected local unit, “a unit of local government in which all or part of a proposed energy facility will be located,” be read to include all local units defined in statute including counties, cities, townships and villages in which all or a part of the proposed facility will be located.***
  
- ***The Staff recommends the following calculation methodology for the 1-time grants:***
  - ***Grant \$5000 to each affected local unit, regardless of which local units may have zoning jurisdiction, contemporaneous with submitting an application pursuant to PA 233.***
  - ***Within 7 days following the pre-hearing, the remaining funds (\$150,000 minus the total of the \$5000 grants already made) would be granted to all affected local units that have intervened in the case as follows:***
    - ***An additional \$5000 to any intervening affected Counties which would cap intervening Counties at \$10,000 to preserve the bulk of the funds for the localities where the facility would be located regardless of whether the locality or the County has zoning jurisdiction; as well as setting aside \$5000 for Counties that have not intervened to maintain the availability of those funds in the event that a late intervention is approved; and***
    - ***The remaining portion of the \$150,000 should be divided by the nameplate MW of the project to calculate \$/MW. The \$/MW would be allocated to the affected local units other than Counties that have intervened based on the MW located within each local unit’s area subject to the \$75,000 cap per local unit.***
  
- ***Staff recommends that grants are intended to cover the cost of participation for local units of government. Individual landowners seeking to participate in proceedings will continue to follow established processes for intervention and public comment but are not eligible recipients for grant funding under***

**Sec. 226. Local landowners may work with the affected local units at the discretion of the local units and may seek alternate funding from other sources.**

- **Applicants and affected local units may consult with Staff on 1-time grant calculations ahead of filing the application at their discretion.**
- **Staff recommends that affected local units for a particular facility be allowed to pool funds allocated for the purposes of participating in the MPSC siting case.**
- **Staff recommends that affected local units should each file an exhibit in the case record prior to the close of the record containing the balance of unspent funds in the local intervenor compensation fund, outstanding unpaid invoices, and an estimate for funds to be used for briefing and exceptions. Remaining funds not utilized for intervention in the case will be refunded to the developer within 90 days of the close of the record. Any initial \$5000 one-time grants made to local units contemporaneous with the application that have not been granted intervention status shall also be refunded to the developer following the close of the record.**

**Examples:**

1. **A 150 MW project located in one County and 3 Townships (A, B, C). 20 MW is located Township A, 30 MW is located in Township B, and 100 MW is located in Township C.**
  - a. **\$5000 is given to each Township and County contemporaneous with the application totaling \$20,000.**
  - b. **The County and all 3 Townships intervene in the MPSC case.**
  - c. **The county is granted an additional \$5000 immediately following the prehearing.**
  - d. **The townships are granted the remaining funds based on the MW located in each local unit, capped at \$70,000 per local unit due to the \$5000 initial grant.  $\$125,000 \text{ remaining}/150 \text{ MW} = \$833.33/\text{MW}$ ; Additional grants are made with 16,666.67 to Township A (20 MW), \$24,999.90 to Township B (30 MW), and \$70,000 to Township C (100 MW).**
  - e. **Total 1-time grant amount =  $\$20,000 + \$5,000 + \$16,666.67 + 24,999.90 + 70,000 = \$136,666.57$**

- f. Funds granted but unspent at the close of the record minus an allowance for briefing and exceptions would be refunded to the developer following the close of the record.*
- 2. A 50 MW project located in one single township in one single county.**
- a. \$5000 is given to the county and \$5000 is given to the township at the time the application is filed at the MPSC.*
  - b. Both the county and the township intervene.*
  - c. An additional \$5000 is granted to the county and an additional \$70,000 is granted to the township following the pre-hearing.*
  - d. Total 1-time grant amount = \$85,000*
- 3. A 210 MW project located in Township A (50 MW) and Township B (60 MW) of County A and Township C (60 MW) and Township D (40 MW) of County B. County A and Township D have zoning jurisdiction and township C is unzoned.**
- a. \$5000 is given to each of 4 townships and each of 2 counties totaling \$30,000 contemporaneous with the application.*
  - b. Township B, Township C, and County A intervene.*
  - c. An additional \$5000 grant is made to County A following the pre-hearing. \$5000 is set aside but not granted for County B in case a late intervention request is granted for County B.*
  - d. \$150,000 minus – \$40,000 already granted (\$35,000) or set aside (\$5000)= \$110,000*
  - e. \$110,000/210 MW = \$523.81/MW; Township B (60 MW) is granted \$31,428.57 and Township C (60 MW) is granted \$31,428.57 following the pre-hearing.*
  - f. Total 1-time grant amount following through prehearing= \$97,857.14*
  - g. If late intervention requests are approved for County B, it would be granted \$5000 following approval of its intervention and if late intervention requests are approved for Township A or Township D, then they would be granted amounts based on the MW in their township following approval of the intervention.*
  - h. Funds granted but unspent at the close of the record minus an allowance for briefing and exceptions would be refunded to the developer following the close of the record. Funds initially granted to local units that have not intervened would also be refunded to the developer following the close of the record.*
- 4. A 75 MW project located entirely in Township A and it is unzoned.**
- a. \$5000 is given to Township A and \$5000 is given to the County.*
  - b. Neither intervene.*

- c. Total 1-time grant amount = \$10,000*
  - d. The Township and County would refund the \$5000 initial grants to the developer following the close of the record.*
- 5. A 200 MW project with 10 MW in Village A, 15 MW in Municipality B, 75 MW in Township A, 75 MW in Township B with the proceeding in County A and 25 MW in Township C in County B. Municipality B, Township A, Township B and Township C intervene.*
- a. \$5000 is given to 2 counties, one village, one municipality, and three townships totaling \$35,000.*
  - b. Interventions are approved for Municipality B, Township A, Township B, and Township C.*
  - c. \$5000 for each County that did not intervene is set aside but not granted to be available in case late intervention is requested and approved. (\$10,000)*
  - d.  $\$150,000 - \$45,000 = \$105,000$  and  $\$105,000/200 \text{ MW} = \$525/\text{MW}$*
  - e. Following the pre-hearing, Municipality B would be granted \$7,875 (15 MW), Township A would be granted \$39,375 (75 MW), Township B would be granted \$39,375 (75 MW), and Township C would be granted \$13,125 (25 MW). Total 1-time grant amount = \$134,750*
  - f. Funds granted but unspent at the close of the record minus an allowance for briefing and exceptions would be refunded to the developer following the close of the record. Funds initially granted to local units that have not intervened would also be refunded to the developer following the close of the record.*

## **STAFF DRAFT STRAW PROPOSAL ON SITING APPLICATION FEE STRUCTURE**

Staff recommends the Commission consider adopting the following guidance related to Application Fee structure for applications to the Commission, as outlined in PA 233 of 2023:

*Sec. 226: (4) The commission may assess reasonable application fees to the applicant to cover the commission's administrative costs in processing the application, including costs for consultants to assist the commission in evaluating issues raised by the application. 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.*

Staff recommends that the Fee Structure be similarly based off the structure of prescribed fees paid by a public utility in lieu of assessment pursuant to Public Act 299 of 1972; MCL 460.119, for pipeline applications under Public Act 9 of 1929 (PA 9) and Public Act 16 of 1929 (PA 16).

Background:

MCL 460.112 provides a funding system where regulated utilities are annually assessed for the cost of their regulation. Alternatively, for operators of natural gas or crude oil or petroleum pipelines that are subject to regulatory proceedings for siting pursuant to PA 9 or PA 16, the Commission has the authority to establish a fee schedule outside of annual assessments. This is intended to ensure that the public utilities are not unfairly subsidizing the cost of regulation for those operators that are not subject to an annual assessment.

Informed by the Commission's recommendations in its December 19, 2019 Order in Case No. [U-20634](#), Staff recommends the following process and fee structure for renewable energy and storage siting projects per PA 233 of 2023.

1. A process should be developed which provides the applicant an opportunity to object to any assessed fee(s) as part of a contested case proceeding including:
  - a. At the cross-examination or final evidentiary hearing in a contested case proceeding, whichever is later, the Staff shall file an exhibit containing the total assessed fee.
  - b. Within 14 days of the filing and service of the Fee Exhibit, the applicant shall file any objections to the total assessed fees.
  - c. Within 14 days of any objections filed, the Staff shall file a response indicating its position on the disputed issues.
  - d. If a dispute remains after the required filings, the administrative law judge (ALJ) who presided over the proceedings shall include a decision regarding the total assessed fees in the proposal for final decision (PFD) without further proceedings unless an additional hearing is deemed necessary.
  - e. 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.

- f. If a contested case is settled prior to the issuance of a PFD, the applicant shall file any objection to the total assessed fees within 14 days of the filing and service of the Fee Exhibit.
  - g. The Commission will render a decision with regard to the total assessed fee in its final order.
  - h. 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.
  - i. There will be no reduction in the base application fee for a contested proceeding if Staff hours are less than 150 hours.
2. Environmental reporting and testing fees are limited to those related to the Commissions' required agency review and environmental obligations.
3. The Staff may provide a non-binding estimate of its expected hours and anticipated additional fees, upon the reasonable request of an applicant.
4. The 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.
5. Fees associated with attorneys representing the Staff will not be included in any fees assessed to the applicant under the provisions of MCL 460.1221 – 460.1232
6. 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.
7. 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 the Staff's efforts to work on initial briefs, reply briefs, and exceptions/replies to exceptions.
8. The 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.
9. The Commission may charge reasonable fees of ongoing staff billable hours after a certificate has been granted for the lifetime of the project. Examples of such costs may include but are not limited to: environmental site analysis if site plan has been altered, any project follow-up considerations post construction & operation, other accounting, engineering, or legal aspects.
10. The Commission may consider capping the total cost of the application fees to \$250,000.

<b>PROPOSED RENEWABLE ENERGY &amp; STORAGE SITING APPLICATION FEE SCHEDULE</b>	
<b>Base Application Fee</b>	
Applicable to third-party developers not regulated by the MPSC	
Contested case (includes up to 150 Staff hours)	\$10,000
<b>Additional Fees</b>	
Applicable to both third-party developers and IOUs regulated by the MPSC	
Additional Staff hours <sup>1</sup>	Billed hourly above application fee
Consultant Expert testimony	Actual Fees
External Public Meetings	Actual Fees
Court Fees- including transcription & court reporting <sup>2</sup>	Actual Fees
Environmental Reporting & Testing <sup>3</sup>	Actual fees
<b>Miscellaneous Filings &amp; Additional Fees</b>	
Miscellaneous maintenance following certificate	Actual fees billed hourly
Formal Complaints	\$500
Requests for Exceptions to Standard Rules	\$1,000

- (1) 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.
- (2) All hearing costs associated with Staff hours will be included in Additional 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.
- (3) Any fees in this category are limited to those necessary to satisfy the Commission’s required agency review and environmental obligations under MEPA, Part 17 of MREPA, MCL 324.1701 et seq.