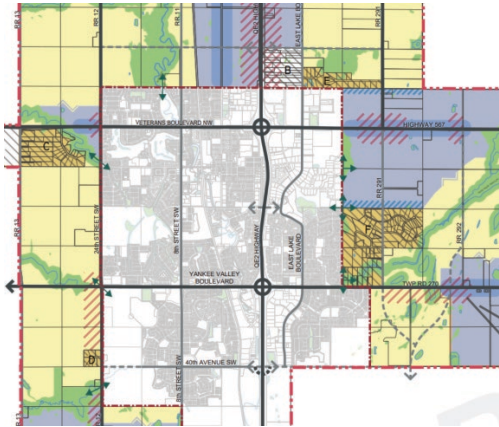


MPSC Renewable Energy and Energy Storage Facility Siting Meeting



MPSC Staff

March 7, 2024



Disclaimer

*The opinions
expressed today
are the
speaker's own
and do not
reflect the view
of the Michigan
Public Service
Commission or
the State of
Michigan.*

This meeting will be recorded and
the recording will be posted.

Agenda

- **Welcome and Intro**

Cathy Cole, MPSC

- MPSC overview & new siting law

Reka Holley, MPSC

- Local government & local community views

Dr. Sarah Mills, Center for EmPowering Communities, U of M

Judy Allen, Michigan Townships Association

Catherine Kaufman, Michigan Municipal Attorney

- Questions from the MPSC; Process for feedback

Cathy Cole and Julie Baldwin, MPSC Staff

- Open comment period

All meeting participants

- Next steps and closing

Julie Baldwin, MPSC

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

Implementation Process

Collaborate on solutions

Work collaboratively to develop potential draft guidance and application instructions

Public comment period

Public comment period in case docket followed by Commission order adopting application instructions and guidance

March

April-May

June

Summer

11/29/24

Solicit input

What questions and issues should the Commission address prior to the effective date?

File Staff proposal

File Staff proposed application instructions and guidance in docket June, 21, 2024

Implementation

The effective date of the new law is 11/29/24.

Agenda

- Welcome and Intro
Cathy Cole, MPSC
- **MPSC overview & new siting law**
Reka Holley, MPSC
- Local government & local community views
Dr. Sarah Mills, Center for EmPowering Communities, U of M
Judy Allen, Michigan Townships Association
Catherine Kaufman, Michigan Municipal Attorney
- Questions from the MPSC; Process for feedback
MPSC Staff
- Open comment period
All meeting participants
- Next steps and closing
Julie Baldwin, MPSC

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

Renewable Energy Facility Siting at the MPSC

An overview of Commission structure and decision-making processes and PA 233



Reka Holley Voelker

Communications Section
Manager

Legislative & Tribal Liaison

March 7, 2024



The Michigan Public Service Commission



Chair
Dan Scripps



Commissioner
Katherine
Peretick



Commissioner
Alessandra
Carreon



Independent, professional Staff serving the public
with expertise in

- Engineering
- Finance
- Auditing
- Law
- Economics
- Accounting

Our Mission

To **serve the public** by
ensuring safe, reliable, and
accessible **energy** and
telecommunications services
at reasonable rates

The MPSC: A Creature of Statute

- ❑ Commission only has authority provided by the legislature
- ❑ Possesses no common-law or equity powers
- ❑ Courts have clarified extent of MPSC authority, e.g.:
 - *Union Carbide Corporation v. Public Service Commission*, 431 Mich 135 (1988)
 - *Attorney General v. Public Service Commission*, 231 Mich. App. 76 (1998)
 - *Telephone Association of Michigan v. Public Service Commission*, 210 Mich App 662 (1995)
 - *In re Complaint of Rovas*, 482 Mich 90 (2008)



MPSC Decision Making Processes

Commission Decision Making Process



- ❑ MPSC makes decisions through:
 - Contested cases
 - Rulemaking
 - Declaratory rulings and ex parte rulings
 - Mediation and arbitration
- ❑ MPSC also provides guidance
 - Collaboratives and workgroups
 - Guidelines
 - ❑ E.g., rate case filing requirements

The Contested Case

- ❑ Contested cases are “quasi-judicial” or trial like
- ❑ Contested cases are governed by the Michigan Administrative Procedures Act (APA) and the Michigan Office of Administrative Hearings and Rules (MOAHR) Rules of Practice and Procedure specific to the Commission
- ❑ A commission case that is referred to MOAHR is a contested case that may require an evidentiary hearing and is assigned an Administrative Law Judge (ALJ)

The Contested Case: Who can Participate?

❑ Intervention by Right

- The Company, its staff and its legal representation
- MPSC Staff and staff attorneys
- Attorney General
- Other parties provided for in law

❑ Permissive Intervention

- Intervenors who have a direct interest in the case may file a petition to intervene and must meet the following criteria:
 1. the petitioner would likely suffer injury in fact (i.e., its interests are impacted or affected) and
 2. the petitioner's affected interests are within the zone of interest to be protected or regulated by the statutes involved (i.e. the ratemaking statutes applicable herein).
- If approved by ALJ, must file an entry of appearance

The Contested Case Process

Application & Notice

- Pre-filing announcement (in some cases)
- Application filed or the Commission initiates case on its own motion
- Notice of prehearing conference issued

Intervention & Prehearing

- Petitions to intervene are filed;
- Prehearing conference
- Audit & discovery commences

Testimony & Cross-Examination

- Staff & Intervenor Testimony filed
- Rebuttal Testimony filed
- Evidentiary hearing & Cross examinations

Briefing

- Briefs & reply briefs filed

Proposal for Decision

- ALJ issues proposal for decision (PFD)
- Exceptions to PFD and replies to exceptions are filed

Order & Appeals

- Commission issues final order
- Rehearing & appeals

Contested Case Decisions

- ❑ Must be supported by law and the facts in the evidentiary record with appropriate justification. The moving party bears the burden of proof.
- ❑ Parties can seek rehearing or reconsideration
 - Due 30 days from final order and governed by Rule 437
 - Must be based on claims of (1) error, (2) newly discovered evidence, facts or circumstances arising after the hearing, or (3) unintended consequences resulting from compliance
- ❑ Final order subject to judicial review
 - Court of Appeals for most contested case orders (circuit courts for customer complaints)



Rulemaking

“[The] commission shall have power and authority to make, adopt, and enforce rules and regulations for the conduct of its business and the proper discharge of its functions . . . [and to] make and prescribe regulations for the conducting of the business of public utilities, subject to the jurisdiction thereof. . . .”

Public Act 419 of 1919, MCL 460.55

☐ What is a rule?

- Establishes requirements for those who are regulated by or deal with the Commission and sets forth enforcement procedures for rule violations

☐ Rules apply generally, not individually

☐ Examples of Commission rules:

- Consumer Standards and Billing Practices for Electric and Natural Gas Utilities
- Gas safety standards
- Telecommunications discontinuance of service

☐ Rulemaking process set established in APA

MPSC Rulemaking Process

Draft Rules

- Initial rules are drafted by the Regulatory Affairs Division or Staff

RFR Submitted & Approved by LSB

- Draft Request for Rulemaking (RFR) and submit to the Michigan Office of Administrative Hearings and Rules (MOAHR)
- Submit draft rules to the MPSC's Regulatory Affairs Officer (RAO) at MOAHR
- Rules are informally approved by the Legislative Services Bureau (LSB) and ORR

Submit the RIS to the RAO

- A Regulatory Impact Statement (RIS) is drafted and submitted to the RAO
- Recommended changes sent back

Issue Order #1

- Gives brief history of rule set
- Sets dates for public hearing and for receipt of comments
- **MPSC STAFF CANNOT MAKE FURTHER CHANGES TO RULE SET**

Publicize and hold Public Hearing

- Public hearing notices must be published in at least three public newspapers
- Must publish 10-60 days before a hearing date
- RIS must be posted to MPSC website at least 10 days before public hearing

Issue Order #2

- Review verbal/written comments
- MPSC responds to each, explaining reasoning for adoption or denial of the recommended change
- Amend rules if, after discussing with Staff, public comments suggest valid rule changes

Submit JCAR Report

- Sent along with the order and final version of the rules to RAO; Submitted to the Joint Committee on Administrative Rules (JCAR).
- Wait for 15 joint session days.

Issue Order #3

- Formally adopts the rules and transmits them to ORR for filing with the Secretary of State
- Prepare and submit Certificate of Adoption

Collaboratives and Workgroups

Workgroups

[Home](#) > [Commission Activities](#) > [Workgroups](#)

About Workgroups

The MPSC has established workgroups with the purpose of investigating specific issues or developing and streamlining various regulatory activities. These workgroups can include participants from MPSC Staff, regulated utilities, industry experts, utility customers and others and are open to the public. On this page you will find information about current MPSC workgroups and about opportunities for participation.

MPSC Workgroups

Nuclear Feasibility Study

Public Act 166 of 2022 directed the Michigan Public Service Commission to engage an outside consulting firm to examine the feasibility of nuclear power generation in Michigan. Public Act 218 of 2022 provides for the parameters of the nuclear feasibility study. In response, on March 24, 2023, the Commission issued an order [Case No. U-21358](#) establishing the Nuclear Feasibility Study workgroup.

[View the Nuclear Feasibility Study Workgroup](#) >

Low-Income Energy Policy Board

The Low-Income Energy Policy Board guides the work of the Energy Affordability and Accessibility Collaborative and the Energy Waste Reduction Low-Income Workgroup and connects this work to other state agencies and efforts. With a focus on effectuating affordability, equity, access, and environmental justice, the group's goal is to connect the expertise, experience, and perspectives of members and provide recommendations to the Commission to better serve low-income and vulnerable households with their energy needs. Board membership is by invitation and meetings are open to the public.

[View the Low-Income Energy Policy Board Workgroup](#) >

Energy Affordability and Accessibility Collaborative

The Energy Affordability and Accessibility Collaborative is an open, working group committed to facilitating discussion and obtaining input from a broad range of stakeholders on existing and emerging policy issues related to energy assistance, customer protections and low-income energy waste reduction services. The group's goal is to connect the expertise, experience, and perspectives of participants and provide recommendations to the Commission to better serve low-income and vulnerable households with their energy needs.

[View the Energy Affordability and Accessibility Collaborative](#) >

Low Income Workgroup

The Low Income Workgroup is collaboratively working to identify and address low income specific energy issues, energy waste reduction measures, and create new

Energy Waste Reduction Collaborative

The goal of the Energy Waste Reduction collaborative is to make recommendations for improving energy waste reduction plans for

Energy Waste Reduction and Demand Response Statewide Potential Study

Public Act 341 of 2016 requires the Michigan Public Service Commission to periodically

PA 233 of 2023

Michigan's new renewable energy
facility siting law

PA 233 of 2023 – Summary Overview

PA 233 of 2023 creates a voluntary siting process at the MPSC for renewable energy facilities of statewide significance with provisions to ensure the protection of local interests.

Qualifying Projects

- ❑ Wind: 100 MW and greater
- ❑ Solar: 50 MW and greater
- ❑ Storage: 50 MW and 200 MWh and greater



Qualifying Applicants

- ❑ Electric Providers: Investor-Owned utilities, Municipal utilities, co-operative utilities, alternative electric suppliers
- ❑ Independent Power Producers: Owners or Operators of a facility that sell the energy to electric providers, the state, or local units of government

Renewable Energy Facility Siting Process: Pre-application activities

- ❑ Step 1: Developer plans project, develops site plan, and enters into contracts with property owners or purchases land for RE facilities
- ❑ Step 2: Developer schedules a public meeting in each impacted local unit of government and offers to meet with the chief elected official of each affected local unit.
 - 60 days before the public meeting, the developer offers to meet with the chief elected official of each local unit
 - Within 30 days of the meeting, the chief elected official must let the developer know if the local unit has a Compatible Renewable Energy Ordinance (CREO)

What's a CREO?

A Compatible Renewable Energy Ordinance is an ordinance that allows for development of renewable energy facilities within the local unit under conditions that are no more restrictive than the setback, noise, and other requirements in PA 233.

Renewable Energy Facility Siting Process: Pre-application activities

(Step 2 continued)

If the local unit does not have a CREO

- At least 30 days before the public meeting, the developer must provide the clerk of each affected local unit notice of the time, date, location, and purpose of the meeting and provide a copy of the site plan
- At least 14 days before the public meeting, the developer must publish notice of the meeting including a copy of the site plan or website where the site plan can be found

☐ Step. 3: The developer may file for siting approval at the Commission

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

Renewable Energy Facility Siting Process: Pre-application activities

(Step 2 continued)

If the local unit does have a CREO

- The developer submits an application to the local unit that is substantially similar to the application that would be filed at the Commission.
- The local unit has 120 days to approve or deny the application; the developer and local unit may jointly choose to extend the deadline.

□ Step. 3: The developer may file for siting approval at the Commission if

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

□ If the developer files at the Commission in this instance,

- No grant must be made by the developer 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 provide 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.
- If the Commission approves the application, the local unit is determined to no longer have a CREO unless the local unit's denial of the application was due to the developer filing an incomplete application.

Renewable Energy Facility Siting: The Commission Application

The application must contain several items including

- A description of the facility (including a site plan), expected use of the facility, area of the community in which the facility will be located
- Expected Public Benefits
- Environmental and natural resource impacts and mitigation plans
- A description of any anticipated effects on public health and safety
- A summary of outreach and education efforts (unless the application is being filed pursuant to a denial of an application under a CREO)
- Evidence of consultation with other state and federal departments and agencies
- Interconnection queue information
- If the proposed site is undeveloped land, feasible site alternatives
- Fire and emergency response plans
- Decommissioning plan

See Section 225 for a complete list of the application requirements

Site Plans and Decommissioning Plans

Site Plans

- ❑ Location and Description
- ❑ Description of anticipated impacts on the environment, natural resources, and solid waste disposal capacity
- ❑ Other information required by the Commission

Decommissioning Plans

- ❑ Must be consistent with agreements reached between developer and participating property owners
- ❑ Must ensure the return of all participating properties to “a useful condition similar to that which existed before construction”; Includes removal of above ground facilities and infrastructure with no ongoing purpose
- ❑ Must include financial assurance (bond, parent company guarantee, or an irrevocable letter of credit) of at least the estimated cost of decommissioning minus salvage value
 - May be posted over the first 10 years of commercial operation with 25% due at commencement of commercial operations.

Renewable Energy Facility Siting: The Commission Review Process

- ❑ The application will be reviewed through the contested case process.
 - Affected local units of government, participating property owners, and nonparticipating property owners have the right to intervene. MPSC Staff will also participate.
 - Other interested parties may petition to intervene.
- ❑ The Commission may assess reasonable application fees to the applicant including the cost of any consultants hired by the MPSC to assist in evaluating the application.

Renewable Energy Facility Siting: Issues for Commission Consideration

In its review, the Commission must consider

- ❑ Feasible alternative developed locations
- ❑ The impact of the proposed facility on local land use (including percentage of land within the local unit dedicated to energy generation)

And may condition approval on reasonable actions related to the impacts of the facility including

- ❑ Establishing and maintaining vegetative ground cover
- ❑ Meeting or exceeding pollinator standards
- ❑ Providing community improvements
- ❑ Making a good-faith effort to maintain and provide proper care for the property on which the facility is located.

Renewable Energy Facility Siting: Standard of Review

To approve an application, the Commission must find that

- ❑ The public benefits justify construction
- ❑ The project complies with NREPA
- ❑ Any environmental and natural resources impacts are addressed
- ❑ The project meets applicable labor standards including apprenticeship programs, prevailing wage, project labor agreements
- ❑ The developer has entered into Host Community Agreement or Community Benefits Agreements
- ❑ The project will not unreasonably diminish farmland
- ❑ The project does not present an unreasonable threat to public health or safety
 - A project meets this requirement if it meets the setback, lighting standards, and noise standards for each type of facility. These standards can be found in Section 226(8)

Effect of Commission Approval

- ❑ Overrides any conflicting local zoning
- ❑ Does not supersede other permitting requirements (environmental, construction, etc.)
- ❑ **NO EMINENT DOMAIN**
- ❑ Construction must begin within 5 years of the date that the application is granted; May be extended for an additional 5 years upon request by the applicant and a showing of good cause
 - Before commencing commercial operations, the developer must file a completion report certifying compliance with PA 233 and any conditions included in the approval .

Renewable Energy Facility Siting – Initial Implementation



MPSC Case No. [U-21567](#)

- ❑ Directs Staff to engage with interested parties to develop proposed policies and procedures, application filing instructions, and more.
- ❑ 5 engagement sessions are planned beginning March 7.
- ❑ Staff filing due June 21.

Agenda

- Welcome and Intro
Cathy Cole, MPSC
- MPSC overview & new siting law
Reka Holley, MPSC
- **Local government & local community views**
Dr. Sarah Mills, Center for EmPowering Communities, U of M
Judy Allen, Michigan Townships Association
Catherine Kaufman, Michigan Municipal Attorney
- Questions from the MPSC; Process for feedback
MPSC Staff
- Open comment period
All meeting participants
- Next steps and closing
Julie Baldwin, MPSC

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

Local Government & Local Community Views and Questions

Sarah Mills, Judy Allen, & Catherine Kaufman

Renewable Energy and Energy Storage Siting Meeting
March 7, 2024

Presentation

- **Local government planning and zoning**
- **Key ideas**
 - What's in a CREO matters
 - How MPSC will review proposals matters
 - The Process and Community Input matter
- **Closing Thoughts**

Current Planning / Zoning Framework

- **Master Plan is policy guide for future land use, development of local government MCL 125.3807, 125.3833**
 - Required to be reviewed, updated every 5 years MCL 125.3845
 - Master Plan process can take 1+ year to adoption
 - Local governments (some) dedicated time/energy to master planning for utility scale renewables
 - Prime farmlands
 - Protection of natural features
 - Community character
 - Allowing utility scale, within certain recognized local goals/objectives

Zoning for Utility Scale Renewables

- **Zoning follows the Plan. Zoning is one method of implementing a master plan. MCL 125.3203**
- **Locally adopted zoning ordinance regulations regarding utility scale renewables**
 - Location/zoning district
 - Approval process (special use/site plan approval) – if meets standards must be approved MCL 125.3501, MCL 125.3504
 - Requirements re setbacks, fencing, lighting, noise, panel height, co-location with other land uses (i.e., agriculture), decommissioning surety, PA 116 interaction
 - Special use approval may include reasonable conditions MCL 125.3501
 - Public safety equipment needed, road repairs, decommissioning bond, decommissioning agreement

“Compatible renewable energy ordinance” (CREO)

- CREO is an ordinance adopted by all affected local units transferring permitting authority to them instead of the State/MPSC
- **Each** affected local unit of government must have a CREO in order for applicant to be required to use it
 - This includes all townships, counties, villages, or cities where project is located
- **MZEA says county AND township can't both have zoning. MCL 125.3209**
 - Are CREOs zoning ordinances or police power (regulatory ordinances)? Or either?
 - What about unzoned areas?
- **CREO process is extremely short compared to current & state process**
 - Local units of government must approve or deny entire application within 120 days

Timeline: zoning ordinance amendment (MZEA)

- Draft ordinance – municipal attorney, municipal planner
- Planning Commission (PC) review/discussion
- PC Public Hearing –preceded by published notice in newspaper at least 15 days ahead of public hearing
- PC recommendation forwarded to legislative body
 - Townships – required by MZEA to forward to County Planning Commission for review (30 day wait period)

Timeline: zoning ordinance amendment (MZEA)

- **Legislative Body adopt Zoning Ordinance amendment**
 - Some municipalities require two readings of an ordinance (ie., two meetings, with published notice in between)
- **Publish notice of ordinance adoption within 15 days– zoning ordinance amendments effective 7 days after publication after adoption**
- **MZEA referendum in townships MCL 125.**
- **More detailed process for initial adoption of a zoning ordinance for a municipality**

Timeline: regulatory ordinance amendment

- **Regulatory (police power) Ordinance amendment** – Home Rule City Act, City Charter, General Law Village Act, General Law Township, Charter Township, County Boards of Commissioners
 - Draft ordinance – municipal attorney, municipal planner
 - No required public hearing, unless specifically required in City Charter or other applicable Act, provision
 - Legislative Body adopts the ordinance
 - Some municipalities require 2 readings of an ordinance – publication of notice of ordinance submission in between
 - Publish notice of ordinance adoption within 30 days
 - Effective date: If penalties/sanctions – 30 days after publication; if no penalty effective on publication or 1 day after publication
 - City charter, other specific variations (ie., effective 10 days after publication)

Key Ideas

- What's in a CREO matters
- How MPSC will review proposals matters
- The Process and Community Input matter (both short and long-term)

1) What's in a CREO matters

- **Few existing ordinances are CREO:** “an ordinance..the requirements of which are no more restrictive than the provisions in section 226 (8)”
 - Wind
 - 8 of 469 ordinances in wind-viable places match setbacks/noise/ height
 - Existing wind-farm communities’ ordinances not fully compliant on setback/noise/height
 - Solar
 - 50 of 252 ordinances match setbacks/height/noise
 - Storage
 - No more than a handful; likely don’t match
 - ALL existing ordinances have things beyond what’s listed in 226(8) or set location limitations (e.g., allowable districts)



1) What's in a CREO matters

- November 29, 2024 developers notify local units
- Local units have 30 days to declare CREO-status
 - Not enough time to make ordinance changes via MZEA
 - Claiming CREO status = high stakes
- Most hire consultants = labor shortage
- We have templates, but uncertain what guidance to provide!

Add to the Special Land Uses article of the ordinance, as a separate section, the large principal-use SES. Also add 'large principal-use SES' to the list of special districts where appropriate. See discussion on the Rural-to-Urban Transect above.

1. **Height:** Total height for a large principal-use SES shall not exceed the maximum height in which the system is located (or a lesser height, such as __ [e.g., 20] feet).
2. **Setbacks:** Setback distance shall be measured from the property line or the closest point of the solar array at minimum tilt and any SES components and devices.
 - a. In accordance with the setbacks for principal buildings or structures for the project site from __ [e.g., 50] feet from the property line of a non-participating lot.
 - b. __ [e.g., 100] feet from any existing dwelling unit on a non-participating lot.
3. **Fencing:** A large principal-use SES may [shall] be secured with perimeter fencing. If installed, perimeter fencing shall be a maximum of __ [e.g., equal to 7] feet in height. [Barbed wire is prohibited.] Fencing is not subject to the setbacks.
4. **Screening/Landscaping:** A large principal-use SES shall follow the screening standards for the zoning district of the project site. Any required screening shall be placed outside the perimeter fencing.
 - a. In districts that call for screening or landscaping along rear or side property lines, required where an adjoining non-participating lot has an existing residence.

A wide-angle photograph of a large solar farm. Rows of blue photovoltaic panels are mounted on metal racks, stretching across a flat landscape. In the foreground, there are some green bushes and tall grass. The sky is overcast with grey clouds. The text 'Lapeer Solar Park' is visible in the top right corner.

The cover features a photograph of a solar panel array in a field of tall grass and wildflowers. The Michigan State Extension logo is in the top left, and the MSU Extension logo is in the top right. The title 'PLANNING & ZONING FOR SOLAR ENERGY SYSTEMS' is prominently displayed in the center, with 'PLANNING & ZONING' in white and 'FOR SOLAR ENERGY SYSTEMS' in yellow. Below the title, the subtitle 'A GUIDE FOR MICHIGAN LOCAL GOVERNMENTS' is written in white.

- COMMENTARY:** Zoning requirements may impact the ability for the land to be returned to its use. For example, required berming, substantial vegetative screening, or on-site stormwater detention (which may be regulated by the Drain Commissioner, for example) may need to be re- altered in order to return the land to its previous use. In considering whether to reduce, waive, or vegetation and screening standards, communities should take landowner considerations relating into account. [End of commentary]

5. **Ground Cover:** A large principal-use SES shall include the installation of ground cover maintained for the duration of operation until the site is decommissioned. The applicant shall develop a ground cover vegetation establishment and management plan as part of the site plan. The establishment must include invasive plant species (and noxious weed, if local regulation applies). The following standards apply:
 - a. Sites bound by a Farmland Development Rights (PA 116) Agreement must follow the Department of Agriculture and Rural Development's Policy for Allowing Commercial Site Development on PA 116 Lands.
 - b. Ground cover at sites not enrolled in PA 116 must meet one or more of the four types defined in this ordinance.
 - i. Pollinator Habitat: Solar sites designed to meet a score of 76 or more on the Michigan Pollinator Habitat Planning Scorecard for Solar Sites.
 - ii. Conservation Cover: Solar sites designed in consultation with conservation organizations to focus on restoring native plants, grasses, and prairie with the aim of protecting species (e.g., bird habitat) or providing specific ecosystem services (e.g., carbon sequestration).
 - iii. Forage: Solar sites that incorporate rotational livestock grazing and forage production to maintain an overall vegetative maintenance plan.
 - iv. Agrivoltaics: Solar sites that combine raising crops for food, fiber, or fuel, and generate electricity within the project area to maximize land use. Project sites that are included in a plan adopted under the Brownfield Redevelopment Financing Act, PA 381 of 1996, as amended, that contain impervious surface at the time of construction or soils that cannot be disturbed, are exempt from ground cover requirements.
 - c. Project sites that are included in a brownfield plan adopted under the Brownfield Redevelopment Financing Act, PA 381 of 1996, as amended, that contain impervious surface at the time of construction or soils that cannot be disturbed, are exempt from ground cover requirements.

Regarding decommissioning guarantees, MDARD, as mentioned above, issued a letter of credit for solar development on PA 116 land to cover the cost of decommissioning and the restoration of the land to agricultural use. A community solar developer can obtain a decommissioning guarantee from MDARD below based on this requirement by MDARD or provide an independent decommissioning guarantee for land enrolled in PA 116.

A periodic review (such as every 3-5 years) of the decommissioning guarantees are available to cover decommissioning costs 20-30 years down the road if there is a change of ownership. The ordinance should specify which amount of the performance guarantee; the planning commission or the legislative body should make the final decision. When considering review how performance guarantees are handled for other types of guarantees, and discuss how this could be the same or different. They may prompt a different level of review. [End of commentary]

13. Repowering: In addition to repairing or replacing SES components to maintain the system, a large principal-use SES may at any time be repowered, without the need to apply for a new special land-use permit, by reconfiguring, renovating, or replacing the SES to increase the power rating within the existing project footprint.

a. A proposal to change the project footprint of an existing SES shall be considered a new application, subject to the ordinance standards at the time of the request. [Expenses for legal services and other studies resulting from an application to modify an SES will be reimbursed to the ____ [local unit of government] by the SES owner in compliance with established escrow policy.]

COMMENTARY: A fundamental zoning concept is that a zoning ordinance must allow for nonconformities—that is, the continuation of a land use or structure that was legally established before a change in zoning that no longer permits the use or structure location. Zoning ordinances have standards for replacement, reconstruction, and expansion of nonconformities. For example, the decision could be centered around the replacement components' monetary value—a new investment of 50% or more of the value of the project is a typical threshold for nonconformities. The zoning board of appeals or the planning commission, whichever is charged with making decisions on nonconformities, would decide the fate of the project based on the nonconforming standards in the ordinance, rather than following the original special land-use permit review process. A proposal to expand the footprint of the system could be at odds with ordinance rules for enlarging nonconformities. In that case, the ordinance may dictate that the proposal must be scaled back to meet the rules for replacing nonconformities, otherwise decommissioning may be the only option. If decommissioning is not the intended or desired outcome, a community has the option to amend the ordinance to allow for SES again, thereby releasing the project from nonconforming status. Communities should work with a municipal attorney to explore preferred options for the SES and how SES will be treated under an application to repower the system. [End of commentary]

Questions about CREOs (pt 1)

1. Section 223(3). Since counties and townships/cities are local units, does the use of “EACH” mean that, even if the project is in only 1 township, both the township AND county must have CREOs? If so, do they need to be identical? What process would a non-zoning entity go through to have a CREO?
2. Section 223 (1) & (3)c(iii). Does all of the ordinance need to be CREO to be considered CREO? [i.e., CREO for the technology the developer wants to develop, but not for all forms of large-scale renewable energy?]
3. CREO compliance – Will Commission review and if so, how will CREOs be evaluated? Will there be an appeal process if disagreement?
4. Section 223 (5). Once CREO is lost, is it lost forever, or can communities change their ordinance to come back into compliance? Related to above, is it lost for all forms?

Questions about CREOs (pt 2)

5. May any of these be included to count as a CREO:
 - Setbacks/noise limits for features not in the law?
 - Regulations or conditions related to things the Commission will consider (e.g. wildlife in Section 226(7)c and prime/specialty crop in Section 226(7)f)?
 - Regulation or conditions related to existing land use and amt of land dedicated to energy generation (section 226(6))—this implicates zoning districts and limitations on overall footprint
 - Other things customarily in zoning ordinances (e.g., screening/landscaping) but not mentioned anywhere in the law
6. Section 223 (3)a - How much latitude do local governments have to alter decommissioning requirements in a CREO? Can they differ from what is outlined in this section (or require the same things state asks for plus “other information necessary to determine compliance”). Section 225 (1)r. The plan must include “but is not limited to...”. Similarly, the amount of the bond “shall not be less than...”; may a CREO require more than that?

Questions about CREOs (pt 3)

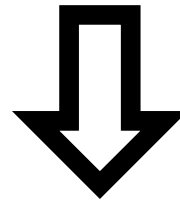
7. Section 224 (1)a. How much detail is expected on the site plan? Just outline of solar area? Location of panel arrays, collector lines, and fences? Engineering drawings of turbine foundations?
8. CREOs application requirements include, but are not limited to Section 225. Will MPSC share application instructions and requirements with local units?
9. Section 226 (4). May the local government also assess reasonable application fees and hire consultants to review a proposal submitted under a CREO? (*Typically part of process*)

Questions about CREOs (pt 4)

10. Clarity that this is a new option—that the developer can work with a non-CREO local ordinance. If a developer chooses to go through local zoning in a community that does not have a CREO (i.e., they haven't formally kicked off Section 223) and the project is denied, and then the developer chooses to start the Section 223 process, as long as the local government doesn't declare they have a CREO, would Section 223 (3)d (penalties for CREO places denying permits) kick in?
11. Section 223(3)b. The time clock for local approval starts with the application being filed rather than when it's deemed complete (the latter is the case for MPSC applications). What happens if the local government can't act within 120 days (or 240 days) because the developer hasn't provided a complete application or been responsive? If the local government denies the application because it isn't complete and the developer takes the project to the MPSC, will the penalty (in Section 223 (3)d) apply?
12. Sections 231 (3) & (5): How do Airport Zoning and Natural Rivers zoning factor in?

2) How MPSC will review proposals matters

- PA 233 as new option; locals can still zone without CREO
- Developers thinking: Which path is cheaper? Which path is quicker? Which path has less hoops?



- Locals thinking: What can I reasonably ask for before developer goes to MPSC?

2) How MPSC will review proposals matters

- **What sort of scrutiny will be given to application materials**
 - For example, evidence of meeting with MDARD/EGLE/DNR? OR showing how proposal is responsive to agency requests/feedback?
 - To “alternative developed locations”
- **What conditions will likely be applied**
 - Screening? Berming?
- **How standards will be applied**
 - Unreasonably diminish farmland?
 - Percentage of land in energy generation?
 - “Impact on local land use” – existing or planned?

Can locals do the same in a CREO?

Even if not, helps everyone understand state vs. local option

Questions about MPSC application of law (pt 1)

1. Section 224 (1)b. Mentions of impacts on the environment, natural resources and solid waste disposal capacity. What details should be included?
2. Section 225 (1) h. What information are you expecting? Its current use? How it is zoned? What the master plan calls for in terms of its future land use? Occupancy or demographic information of area residents?
3. Section 225 (1) k. [EGLE / DNR / MDARD consultation] Is evidence just the date of the meeting? Concerns raised? Will the applicant be asked to say how they responded to concerns?
4. Section 225 (1) n. [feasible alternatives on undeveloped land.] Same comment here about the rigor of this reporting.
5. Section 225 (1) p. [consultation with county drain commissioner] Same comment here about the rigor of this reporting. What information needs to be included?

Questions about MPSC application of law (pt 2)

6. Section 226 (6). If the project will impact local land use/percentage of land in energy generation, is the only remedy adding conditions (a-d), or is it denial or alteration of the project?
7. Section 226 (7) f. How will “unreasonably diminish farmland” be applied?
8. Section 226 (6) Will the commission consider not just existing local land use, but also future land use plans?
9. If the commission applies conditions in Section 226 (6) a & b. Is there a performance guarantee to make sure that this is established / maintained to the appropriate standard?
10. If the commission applies conditions in Section 226 (6) c. Are these anticipated to be beyond what is required in Section 227?

3) Community input and process matters for the long-haul

Why does R.E. social science matter?

“Research demonstrates that the **character and quality of the process of engaging the public** in the context of siting and permitting projects **will affect the pace and scale of decarbonization**...

If permitting reform includes significant reductions in meaningful opportunities for and forms of public engagement, then such reform would **create a real risk of slowing**, rather than hastening, the process of building out a net-zero infrastructure.”

- **National Academy of Sciences (2023)**. *Accelerating Decarbonization in the United States: Technology, Policy, and Societal Dimensions*



Source: Joe Rand, LBNL, at REWI









Land Use Policy
Volume 82, March 2019, Pages 754-762



2

Exploring landowners' post-construction changes in perceptions of wind energy in Michigan

[Sarah Banas Mills](#)^a  , [Douglas Bessette](#)^b  , [Hannah Smith](#)^a  

3) Community input and process matters for the long-haul

- **Follow-through on approved projects**
 - Building permit issuance
 - Maintenance, compliance with noise (for example)
 - Training of emergency personnel
 - Decommissioning

Questions about enforcement / follow-up

1. Section 222 (3). What is defined as a minor change? What will be the process for making that determination? Is moving fences or panels or collector lines? How many feet? What if the changes are within the footprint but no longer comply with law (e.g., noise or setbacks)? Is this intended for construction-term tweaks (so developer doesn't have to come back to the commission) or is it intended to impact future repowering?
2. Section 225 (1) r: In State process, who holds the decommissioning bond?
3. Who will be responsible for building permits/inspections (or just built-to-drawings) and then later enforcement of projects approved by the commission?
 - Who is checking for compliance with the labor provisions?
 - What happens if a commission-approved project is out of compliance with noise once it is built?
 - What is the enforcement mechanism if a vegetative ground cover / pollinator is not established or maintained for the life of the facility? (Section 226 (6)a/b)
4. Who is responsible for training emergency responders on how to respond and keeping their certifications up, especially if this is part of the fire response plan (Section 225 (1) q)—best practice suggests that annual training should be part of the plan?
 - Lots of concern about battery storage
5. Who is responsible for complaints / resolution of drainage issues?

3) Community input and process matters for the long-haul

- **Are there meaningful changes as a result of feedback?**
 - Meetings with local officials
 - How is feedback communicated to MPSC
 - Public Meeting
 - What's the format / goal?
 - Will MPSC attend?
 - How is feedback communicated?
 - Once there's a contested case
 - How is public comment used?
 - Questions about intervenor funds

Questions about process (pt 1)

1. Section 223 (1): What happens at the public meeting? Will Commission members or staff be present? Will / how will the developer report back on what went on? Will they be required to answer questions? Will they be required to show the commission how they were responsive to comments in their application?
2. Section 225 (1) j. Will this just be a summary of the public meetings, submission of all comments, applicant saying how their MPSC application responds to each comment?
3. Section 223(1) Who is the chief elected official in a township for purposes of notification?
4. Section 223(1) Public notice: How are you going to determine which newspaper is appropriate or which website to post in. What is an acceptable digital alternative?
5. Section 223 (1). If all local units have a CREO, does the applicant still hold the Section 223 public meeting, or does the local process kick in instead?

Questions about process (pt 2)

6. Section 226. (1) What happens if there are more than 2 affected local units of government? How is the grant to be divided? “cover the costs [of whose] participation in the contested case?” Just the local governments? Do other intervenors [Section 225 (3) (i.e., participating and non-participating property owners) have any claim to that grant? If a project is in 2 local units who have CREOs and one denies or fails to act so the project goes to MPSC, do both lose their grant? Does the whole project—or only the denied portion--go?
7. Section 226 (2) What is the format for the public comments sought in this section, and how do they factor into the process? Will these only be written, or will spoken comments be accepted?
8. Section 226 (3). Will the proceeding happen in Lansing? In the local unit of government? What if there is more than one local unit of government? Will there be participation via phone/web?

3) Community input and process matters for the long-haul

- **Not shortcutting early conversations / planning**
 - Site plan = too late
 - Consideration given to good-faith plans?
 - (Section 225 (1)h; Section 226 (6))
 - Not whether or not, but where / how
 - What would the commission want to see from communities' plans?

Questions about host community benefits

1. Section 227(1): Will each affected local unit get \$2k/MW? If a project is partially in a village, will the developer pay \$6k/MW for that portion (\$2k each to county, township, and village)?
2. Section 227(1): there is any restriction on the use of funds so long as it is “agreed to by the local unit and the applicant” (developer), or must there be an essential nexus?
3. Section 227 (1) and (2): Is it intentional that the Act distinguishes between who pays the 2k — in (1) it’s the project owner paying the local unit, in (2) it’s the applicant paying the local organization. Also, the sentence in 227 (2) seems to contain an error (?): “ The amount paid by the applicant under this subsection must be equal to, or greater than, what the applicant would pay to the affected local unit under subsection (1)” – as per (1), it wouldn’t be the applicant paying the local unit but the facility owner.

Questions about applicability

1. Section 221 (w & x): energy storage facilities are part of the definition of wind and solar. Are hybrid battery + wind /solar projects subject to storage rules, too, or only solar/wind rules? Also, for hybrid projects, how will their nameplate capacity be determined?
2. Section 221(o) and Section 222(1)a. Is the nameplate capacity of solar in DC or AC?
3. Section 231: Prohibition of limitations on MET towers applies to all governments, right? So is no one (beyond FAA) regulating them?
4. Section 222(2): Law allows zoning exercising jurisdiction to request the commission to require an applicant obtain a certificate. What is the process for that? Also, thoughts on when this would apply? When the zoning jurisdiction does have an ordinance, but it just prefers MPSC do it? When the local govt has chosen to be unzoned (so they can “exercise their power” by requiring the certificate)? That’s part of a bigger question of how—it at all—PA233 applies in unzoned places.

Closing thoughts

- **Answers ASAP allows everyone to plan/act**
 - Cognizant that you won't please everyone
 - Balancing priorities
- **Guidance and decisions will determine how much MPSC is a backstop vs. preferred path**
 - Limitation in CREOs will lead to MPSC as preferred path
- **Learn from what's worked—and not worked—in existing projects/processes**
 - Know that there's history in many places

Agenda

- Welcome and Intro
Cathy Cole, MPSC
- MPSC overview & new siting law
Reka Holley, MPSC
- Local government & local community views
Dr. Sarah Mills, Center for EmPowering Communities, U of M
Judy Allen, Michigan Townships Association
Catherine Kaufman, Michigan Municipal Attorney
- **Questions from the MPSC; Process for feedback**
MPSC Staff
- Open comment period
All meeting participants
- Next steps and closing
Julie Baldwin, MPSC

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

Questions from Staff

1. What guidance or information are local units of government and communities seeking from the MPSC about implementing the new siting law (Public Act 233)?
2. What lessons learned, resources, or expertise do local units of government and communities have to share with the MPSC?
 - 2a. What types of consultant specialties were needed and who are the consultants you worked with in your evaluation of past developer applications?
3. How can the MPSC incorporate local considerations into the process when a developer files an application at the MPSC?
 - 3a. How should the MPSC determine the amount of the 1-time grant (up to \$75,000 per affected local government and not more than \$150,000 in total) for local intervenor compensation?

Sign up for email distribution list:

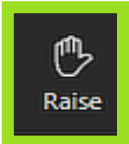
www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

How To Submit A Comment

Online

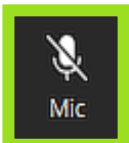
All attendees will be muted until called upon to speak which is on a first-come, first-serve basis.

To Be Called On:

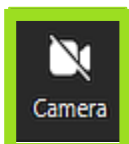


Raise your hand by clicking on the “Raise” icon.

When Called On:



Unmute your mic by clicking on the “Mic” icon.



You may turn on your camera by clicking on the “Camera” icon.

Written Comments

Email To:

Lara-mpsc-commissioners2@michigan.gov

Mail To:

Michigan Public Service Commission
Attn: Cathy Cole
P.O. Box 30221
Lansing, MI 48909

Agenda

- Welcome and Intro
Cathy Cole, MPSC
- MPSC overview & new siting law
Reka Holley, MPSC
- Local government & local community views
Dr. Sarah Mills, Center for EmPowering Communities, U of M
Judy Allen, Michigan Townships Association
Catherine Kaufman, Michigan Municipal Attorney
- Questions from the MPSC; Process for feedback
MPSC Staff
- Open comment period
All meeting participants
- **Next steps and closing**
Julie Baldwin, MPSC

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

Other State of Michigan Activities

- The Michigan Department of Environment, Great Lakes, and Energy (EGLE) Renewables Ready Communities Award
 - Renewables Ready Communities Award will grant up to \$5,000 per megawatt to Michigan municipalities involved in eligible renewable energy projects which attained local permits on or after October 1st, 2023
 - \$30 million available
 - Awards are intended for Michigan municipalities that permitted or expect to host any portion of a renewable energy project of at least 50 MW.
 - Grants may be used for certain projects which benefit the community.
 - See EGLE's [Renewable Ready Communities Award webpage](#) for more details.

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

Next Steps and Closing

- Thank you for your input and participation in today's meeting.
- Your input is needed:
 - No later than **March 11, 2024**, MPSC Staff will post a set of questions on the Renewable Energy and Storage Siting website and send them via the listserv (you can join the listserv from the link at the bottom of this slide)
 - **Please send your responses to the questions and comments by March 25, 2024**
 - All submissions will be posted on the Renewable Energy and Storage website

Written Comments

Email To:

Lara-mpsc-commissioners2@michigan.gov

Mail To:

Michigan Public Service Commission
Attn: Cathy Cole
P.O. Box 30221
Lansing, MI 48909

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting

Next Meeting

- Next Meeting: **Tuesday, March 19, 2024 at 1:30 PM** via Microsoft Teams
 - [Link to Meeting Information](#)
 - Meeting will include a panel with renewable energy and storage developers

Additional information:

www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting