

## **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.

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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 May 28, 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](#).

**##### 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.*

Staff recommends that decommissioning plans 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.
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.
3. A description of the site restoration plan and process.
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;
    - ii. Parent company guarantee;
    - iii. Irrevocable letter of credit.
  - (b) Such financial assurance shall be expressly held by and for the benefit of the Michigan Public Service Commission.
  - (c) A plan for annual proof to the Commission that the financial assurance remains sufficient and in effect.
9. A commitment to providing decommissioning plan and cost updates on a 5-year basis for the first 20 years of commercial operation and every 3 years thereafter:
  - a. Decommissioning plans shall be updated to incorporate any improvements in the decommission process or necessary changes.
  - b. The decommissioning cost estimate must be updated by a third party with expertise in decommissioning based on the updated decommission plan.
  - c. The updated decommissioning plan and cost estimate shall be filed in the MPSC docket assigned to the energy facility.
  - d. The financial assurance shall be updated according to such periodic updated cost estimates.
10. A decommissioning agreement addressing the decommissioning process.
11. A statement agreeing to provide a decommissioning completion report shall be provided:
  - (a) Within 60 days of completing decommissioning activities, the applicant must notify the Commission and submit a decommissioning report in the MPSC docket assigned to the project that includes a summary of decommissioning activities and a description of any mitigation measures used during decommissioning.

**Appendix 1** – Figure showing energy facility layout

**Appendix 2** – Detailed decommissioning cost estimate breakdown

**Appendix 3** – Decommissioning Agreement

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## 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]**.

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 DECOMMISSIONING 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

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

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

4.1.1.1. 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.

4.1.1.1. Emergency decommissioning costs for energy storage projects.

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

4.1.1.1. 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.

**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.

**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: \_\_\_\_\_

**[INSERT LANDOWNER'S NAME]**

\_\_\_\_\_  
Print Name: \_\_\_\_\_

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