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July 17, 2024

Executive Secretary  
Michigan Public Service Commission  
Attn: Ms. Cathy Cole

**RE: Public Act 233 – Public Comments on Draft Application Guidelines (Case #: U-21547)**

Dear Michigan Public Service Commission Staff,

Liberty Power appreciates the opportunity to comment on the Staff Draft Application Instructions filed in this docket on June 21, 2024 and thanks the staff for their work and responsiveness to past comments. Please see specific comments below.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in black ink that reads "G Kovacs". The signature is written in a cursive, flowing style.

Gabriella Kovacs

## **Summary of Comments on Staff Draft Application Instructions and Procedures**

### **Specific Comments of Concern for Consideration**

1. For projects whose permitting efforts have been obstructed by townships the last ~2 years, requiring ongoing lawsuits to schedule public hearings and appeals. How can an applicant make a case to the MPSC to be exempt from the pre-application process whereby an applicant must apply first to local units of government? What sort of documentation could be provided to provide evidence of public/community engagement?
2. What will be done about townships that are claiming to have conforming ordinances (CREOs) but have included requirements that are not considered in PA 233 and would zone out nearly all renewable development. An example of this is the adoption of wind overlay districts which zone out 90% of the turbines that would be accepted under PA 233. How is the MPSC preventing this circumvention of the law?
3. Some project may face height restrictions imposed by local airport zoning ordinances despite clearance from the FAA. With the adoption of PA 233, local airport zoning ordinances may provide another means for local officials to continue to obstruct the project. Will further guidance be provided with regard to the impact of PA 233 on local airport zoning ordinances to prevent them from impeding project development?
  - a. Staff should clarify that so long as an ALU complies with FAA and Michigan's Tall Structures Act then there should not be additional requirements for applicants to seek other or additional approvals from an airport operated by an ALU (e.g., a county or township airport)
4. Renewable energy projects will likely require other local permits - e.g. Road Use, Drain, Building, etc. What will prevent local officials from obstructing the project by withholding these permits despite receiving approval under PA 233?
5. For projects sited across multiple units of government (for example, with infrastructure in 2 or 3 townships) and one of the townships has a CREO and others do not, will the applicant be required to proceed with local approval with the township that has a CREO and then proceed to MPSC for the remainder of the project? How does MPSC plan to address these nuanced situations?

### **Pre-application Requirements**

1. How will the pre-application process be implemented in cases where townships have delayed decisions on active applications? (i.e., if a project is still 'pending' decision in a local jurisdiction will the applicant be required to 'start over' at the beginning of the preapplication process in order to file and application at MPSC)
2. Is the local jurisdiction required to provide the CREO notification within 30 days of the offer to meet or within 30 days of the meeting taking place? There is some confusion due to the guidance that if a local official does not respond within 30 days of the request an applicant can proceed as if there is no CREO.
3. Further to this, is there a requirement for when the local official must provide the CREO? Is that expected to occur at the same time as the CREO notification? There is



concern that a municipality will cause intentional delays by not providing an applicant with the CREO promptly.

4. Is an applicant required to hold a public meeting if proceeding through the local process?
5. If public meetings have previously been held in a municipality (i.e., during earlier stages of project development), is an application still required to hold the public meeting following the process outlined in the preapplication process?
- 6.

#### **Meeting with Chief Elected Official**

1. Under this guidance, the ALU definition includes each city/township/village/county regardless of zoning authority – does that mean that an applicant is required to host a public meeting in each township and also any villages within that township? Or will a meeting within the township satisfy the requirements to also host a meeting within the village?
2. The guidance provides a path forward in the event that there is *no response* to the request to meet with the chief elected official. If a local official responds to the request but refuses to meet with an applicant, will that also allow an applicant to proceed as if there is no CREO?

#### **Compatible Renewable Energy Ordinance Notification**

1. Will there be a option to request MPSC to make a determination whether an ALU has a CREO or not?
  - a. There is concern that an ALU will claim to have a CREO, but there will be provisions that exclude development of renewable energy projects (i.e., a renewable energy overlay district that is simply too small to accommodate a utility scale project).
2. With regard to following local zoning processes where there is a ‘workable ordinance’, but not a CREO – it should be at the option of the applicant as to whether to apply with the ALU and follow the local zoning process. There is concern that an ordinance would ‘allow for renewable projects to be sited’, but at a much smaller scale.
3. If a project is sited across jurisdictional boundaries and attempts to site the project in one or more of the ALUs has failed, can the applicant proceed directly to MPSC without following the preapplication steps regarding engagement with elected officials in ALUs? Will applicants who failed to site projects in local jurisdictions prior to November 29, 2024 be able to file an application with MPSC or be required to attempt to follow the local process again?
4. Will MPSC review projects sited in multiple townships as a whole, or only portions sited in jurisdictions without CREOs? This may complicate review processes and add time to project schedules.
5. When referencing filing an application when in dispute with an ALU – what is meant by a ‘dispute’?
6. If an applicant is in dispute with an ALU regarding CREO status will MPSC provide an avenue for requesting a determination as to whether an ordinance is considered a CREO?



### **Public Meetings**

1. Will public meetings be required to be held in each ALU when following the local process? Or is a public meeting only required if an applicant wishes to file an application with the MPSC?
2. If an application submitted prior to the effective date of PA 233 has not been reviewed promptly (i.e., an ALU has not held a public hearing on a pending application for over a year), will that exempt the applicant from requiring to hold a public meeting?
3. Would a 'open house' meeting and having members of the public sign in to the meeting satisfy the requirement for a public meeting? Or will a 'townhall' meeting with a presentation be required to meet the requirement for a public meeting?

### **Public Notice for Public Meetings**

1. Will public notice for public meetings be required to be provided to addresses within the prescribed distance of *project infrastructure* or *project boundaries*?

### **Application Schedule**

1. If all required items are submitted will MPSC staff grant a completeness notification?
2. Will staff communicate regularly during the 60 day timeline for completeness review?
3. Will applicants be given the opportunity to rectify any incompleteness determined by the MPSC and will there be designated timeframes within which an applicant must respond?

### **One-Time Grant to Affected Local Units**

1. Please clarify if applicants will be required to make one-time grants to all local jurisdictions or just those jurisdictions having zoning authority.
2. Will an applicant be required to 'top-up' local jurisdictions if costs to intervene exceed the \$75,000 grant?

### **Application Fees**

1. Will there be an option to pay a fee for expedited review?
2. How will qualifications of expert consultants hired by MPSC to review an application be determined?

### **Application Filing Requirements**

1. Please provide clarification on which ALUs will be eligible for host community agreements.

### **Technical Conference**

1. Will there be a prescribed format for the technical conference? If intervening parties are allowed to attend and participate, will there be an opportunity to request questions, comments and concerns ahead of time (where possible) in an effort to have effective discussion?



### **Site Plan Requirements**

1. How far out will maps need to show for required details on surround areas (i.e., land uses, recreational facilities, scenic areas etc...)?

### **Sample Decommissioning Agreement**

1. Will an applicant be provided to opportunity to amend the agreement if there are disagreements on some sample clauses provided?

### **Conditions**

1. Will an applicant be required to enter into a formal agreement with MPSC upon permit approval (as stated in each condition “an agreement from the applicant”), or will a statement agreeing to comply with proposed conditions be sufficient?
2. How will the qualifications for the “independent monitor” be determined and who will be responsible for ensuring the “independent monitor” is appropriately qualified?