

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of Michigan Transmission Company, LLC for an Act 30 certificate of public convenience and necessity for the construction of a major transmission line between Oneida Substation in Eaton County and Nelson Road Substation in Gratiot County, Michigan and between the Indiana/Michigan state border at Gilead Township in Branch County and the new Helix Substation in Calhoun County, Michigan.

Case No. U-21471

REVISED PETITION OF BRANCH SOLAR, LLC
FOR LEAVE TO INTERVENE OUT OF TIME

Branch Solar, LLC (“Branch Solar”), through its undersigned representative, hereby submits this revised Petition to more fully explain to the Michigan Public Service Commission (“MPSC” or “Commission”) the factual circumstances and legal bases for granting Branch Solar’s Petition for leave to intervene. In support of its revised Petition, Branch Solar states as follows:

1. On August 14, 2023, Michigan Electric Transmission Company, LLC (“METC”), filed two construction plans pursuant to Section 4(1) of the Electric Transmission Line Certification Act (“Act 30”), MCL 460.564(1), in preparation of requests for certificates of public convenience and necessity to construct two major transmission line projects. (U-21472-001.)
2. On July 15, 2024, METC filed its Application with Testimony in Cases No. U-21472 and U-21471 pursuant to Act 30, for a certificate of public convenience and necessity to construct two new proposed major transmission lines. (U-21472-0004.)¹

¹ The two cases were consolidated into Case No. U-21471 on September 6, 2024. (U-21472-0029.)

3. One of the two proposed major transmission lines is an approximately 55-mile, 345 kV transmission line (“Helix-Hiple transmission line”) running from a new substation (“Helix Substation”), collectively referred to herein as the “Helix-Hiple Project.” (*Id.*)

4. The proposed route of the Helix-Hiple Project begins in Clarence Township in Calhoun County and continues to the Michigan/Indiana state border at Gilead 4 Township in Branch County, Michigan. (*Id.*)

5. The proposed major transmission line contains a 200-foot right-of-way and a new substation, and would traverse Clarence, Lee, Marengo, Eckford, Clarendon, Tekonsha Townships in Calhoun County, and Girard, Union, Batavia, Bethel, and Gilead Townships in Branch County, Michigan. (*Id.*)

6. METC estimates that construction of the Helix-Hiple Project will begin with construction of the Helix Substation in the fall of 2025 and will be complete by mid-2030. (U-21472-0004, Capra Direct Testimony at p. 5.)

After years of planning, Branch Solar has begun constructing a more than \$300,000,000 solar electric generation facility.

7. Branch Solar is a Michigan limited liability company that in January 2020 started developing a solar electric generation facility (the “Branch Solar Project”) located in Branch County, Michigan.

8. The project, which is currently under construction, is a 200-megawatt solar farm on 1,546 acres.² The Branch Solar Project has an anticipated commercial operations date of November 1, 2025.

² Don Reid, Bethel Township Board approves 1,500-acre solar farm along Lockwood Road, February 17, 2023, available at <https://www.thedailyreporter.com/story/news/politics/government/2023/02/17/bethel-twp-approves-1500-acre-solar-farm/69905711007/>

9. To get the project approved and permitted, Branch Solar worked with the township for over two years and secured leases from Bethel Township property owners of 31 separate parcels.³ Branch Solar also spent more than 3 years trying to identify available land in Bethel Township and has determined that no additional land can be included in the Branch Solar Project.

10. To get the project interconnected with the regional transmission operator, Branch Solar submitted to the Midcontinent Independent System Operator, Inc. (“MISO”) an interconnection request in 2020 and MISO completed studies for approximately 3 years. In May 2023, Branch Solar, MISO, and METC executed the Generator Interconnection Agreement that includes METC building interconnection facilities and network upgrades to enable commercial operation of Branch Solar in 2025.

11. The Branch Solar project also offers a substantial source of economic development for the community, with long-term local tax revenue estimated at \$25.4 million over the project’s lifetime, with \$12 million for the districts’ schools and \$11.4 million for the county.⁴ The project is also estimated to bring 168 jobs with construction with ten permanent jobs, adding \$14.7 million to the economy during construction and \$410,000 annually.⁵

12. Planning for this project has been five years in the making and has generated over \$300,000,000 in committed investments.

After METC worked with Branch Solar and MISO to design Branch Solar Interconnection Facilities, METC filed an application for a second major transmission line to cut directly through the solar farm.

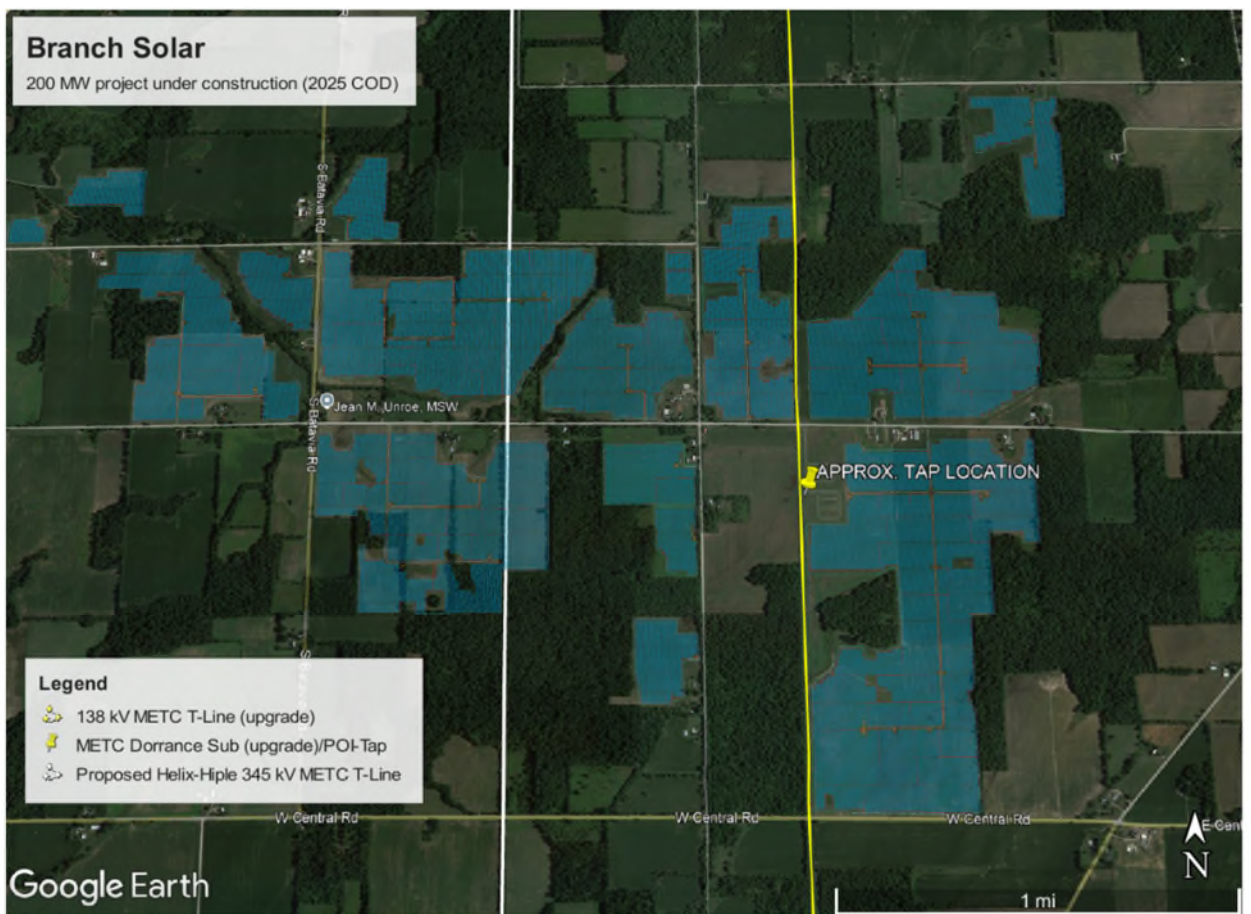
³ *Id.*

⁴ Don Reid, Major Bethel solar project ready for township final approval, January 26, 2023, available at <https://www.thedailyreporter.com/story/news/politics/government/2023/01/26/major-bethel-solar-project-ready-for-township-final-approval/69835250007/>.

⁵ *Id.*

13. The proposed route of the Helix-Hiple transmission line crosses the land upon which the Branch Solar Project is being developed and will adversely affect the Branch Solar Project.

14. As the image below demonstrates, the white line represents the proposed 345 kV Helix-Hiple transmission line, which runs directly through solar panels in the Branch Solar system that is currently under construction.



15. The yellow line in the above image represents the Dorrance 138 kV transmission lines, and the yellow pin represents the associated new Dorrance Substation (together, the “Branch

Solar Interconnection Facilities”) that METC is building, which are necessary under the Generator Interconnection Agreement for Branch Solar.

16. The Branch Solar Interconnection Facilities are located approximately 0.75 mile east of the proposed new Helix-Hiple 345 kV transmission line in question.

17. The project team for Branch Solar has been regularly coordinating with METC on these transmission line upgrades and substation work for the Branch Solar Interconnection Facilities. However, METC did not provide any updates on the Helix-Hiple Project as part of those regular communications.

Branch Solar will suffer an injury in fact and its interests are within the zone of those to be protected.

18. The Commission has long recognized the two-prong test for standing that requires a prospective intervenor to show (i) that it will suffer an injury in fact, and (ii) that the interests allegedly endangered are within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question. See *In re Application of The Detroit Edison Co for Authority to Increase its Rates*, Case Nos. U-15768 and U-15751 (January 11, 2010) (“*In re Detroit Edison*”); *Association of Data Processing Service Organizations, Inc. v Camp*, 397 US 150 (1970) (“*Data Processing*”); and *Drake v The Detroit Edison Company*, 453 F Supp 1123, 1127 (WD Mich 1978) (“*Drake*”).

19. Branch Solar meets the criteria for intervention as of right because it has both an injury in fact and its interests are within the zone of those to be protected or regulated.

20. Branch Solar meets the “injury in fact” test because the proposed path of the Helix-Hiple transmission linecuts directly through the middle of the Branch Solar Project, which threatens to negatively impact the Branch Solar Project in multiple ways.

21. First, the location of the proposed Helix-Hiple transmission line would require substantial changes in engineering design and plans for the Branch Solar Project that were approved after years of planning and negotiation to accommodate the 200-foot right-of-way surrounding the transmission line.

22. As noted, the Branch Solar Project is under construction and is fully committed and bound under contracts to be completed in 2025 as currently designed without the ability to accommodate the 200-foot right-of-way.

23. Because the Branch Solar Project will be operational before METC even starts to construct the Helix-Hiple transmission line, accommodating the proposed Helix-Hiple Project would require re-engineering and removal of a significant portion of the Branch Solar Project.

24. Not only would this potentially require additional approvals for the Branch Solar Project, but it would also lead to substantial additional future costs to re-engineer, remove, and reconstruct the solar system and to substantial production downtime and significant lost revenue associated with that downtime.

25. Second, construction of the Helix-Hiple Project, which is estimated to occur throughout 2025-2030, would disrupt the ongoing operation of the Branch Solar Project, which is currently estimated to be completed in 2025. This could cause additional temporal and monetary losses to the Branch Solar Project.

26. Third, the loss of the solar panels taken up by the 200-foot right-of-way will cause a significant decrease in solar megawatts (“MW”) capacity, i.e., a significant decrease in renewable energy production, which will cause Branch Solar Project to lose revenue from the project.

27. This loss in solar MW capacity could also cause Branch Solar to lose its capacity credits with Midcontinent Independent System Operator (“MISO”).

28. Fourth, both the future solar system downtime to re-engineer and modify the system installed in 2025 to accommodate the proposed right-of-way and the decrease in solar MW capacity jeopardize Branch Solar's ability to meet the conditions of its Power Purchase Agreement ("PPA"), which could result in significant damages to Branch Solar.

29. In other words, the proposed Helix-Hiple Project creates an injury in fact to Branch Solar because it is unreasonable for a major transmission line that is meant to *support* renewable energy projects to affirmatively require the *destruction* of a portion of a solar project.

30. Furthermore, Branch Solar is on an overall development timeline (to commercial operation) that is approximately 5 years ahead of the Helix-Hiple Project (the Branch Solar Project will be operational by 2025 and the Helix-Hiple Project will be operational by 2030), and METC had ample knowledge of the existence of Branch Solar and could have reasonably avoided impacting the Branch Solar Project with relatively small changes to its proposed route by adjusting the proposed Helix-Hiple transmission line over the short 2-mile stretch near the Branch Solar Project.

31. Branch Solar also meets the "zone of interests" test. Act 30 protects not only landowners and municipalities, but also the community at large. See, e.g. MCL 460.568(1); MCL 460.566 (requiring notice via publication in a local newspaper and a public meeting as a condition for a certificate application).

32. Moreover, Act 30 requires a "description and evaluation of 1 or more alternate major transmission line routes," and the Commission may not grant the application unless it determines that the "proposed or alternative route is feasible and reasonable." MCL 460.567(2)(c); MCL 460.568(4)(b). In other words, this case will specifically address what work is required and how transmission developers will work with solar developments to create a reasonable route.

33. Branch Solar has a particular interest in ensuring that there is a thoughtful discussion regarding the proposed route before the MPSC starts creating this policy, particularly given the Helix-Hiple transmission line's proposed location in the middle of the Branch Solar Project. Indeed, as discussed above, the proposed route threatens to significantly disrupt and detrimentally impact a more than \$300,000,000.00 investment in a project that will have far-reaching benefits for the local community and for Michigan's energy needs.

34. Indeed, METC itself has acknowledged Branch Solar's specific interest in this matter in this respect. In January 2024, METC reached out to Branch Solar because it had been "identified as a potential renewable developer within the general area of the LRTP projects" and asked Branch Solar to reach out "if you suspect that you may have rights to property along these routes." Branch Solar responded in February 2024 and notified METC that "the proposed transmission project will impact areas we currently have property rights."

35. Accordingly, Branch Solar's interests in advocating for an alternate route lie squarely within those to be protected by Act 30.

36. The fact that Branch Solar is a leaseholder rather than a landowner of the affected property does not change this analysis. The statutory presumption in MCL 460.568(2) that affected landowners and municipalities may intervene as of right does not exclude other parties from intervening, particularly those with significant property interests affected by the proposed route.

37. For example, as noted above, Act 30's notice provision requires not only notice to the affected landowners and municipalities, but also in a newspaper of general circulation in the area, and a public meeting must be held before an application may even be filed, demonstrating an intent to provide notice of a major transmission line to other interest holders in the community at large. MCL 460.568(1); MCL 460.566.

38. Indeed, the Commission has found that:

Two groups are specifically listed in Act 30 as recipients of full intervenor status in these proceedings: affected municipalities and affected landowners. However, the Legislature did not state that these two groups were to be the only ones allowed intervenor status. Instead, the Commission interprets the language within Act 30 as a starting point in determining who may participate within the proceedings.⁶

39. Moreover, as outlined above, Branch Solar's interests, particularly those related to its contractual obligations and lost revenue, are not adequately represented by any other parties to the case.

40. Finally, several non-landowners have already been granted leave to intervene in this case, and so Branch Solar's intervention as an additional non-landowner will not create an unworkable standard or vastly increase the number of intervenors. (See, e.g. U-21471-0028.)

The Commission also has discretion to grant Branch Solar's petition under its permissive intervention standards.

41. Even if Branch Solar did not satisfy the test for intervention as of right, Branch Solar should be permitted to intervene under the Commission's permissive intervention standards.

42. The Commission has the discretion to allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor's participation. *In re Michigan Consolidated Gas Co*, Case No. U-10150, at 5 (December 8, 1992) (finding that discretionary intervention was appropriate, and "a detailed discussion of the two-prong test is unnecessary").

⁶ *In the matter of the application of International Transmission Company, d/b/a ITC Transmission, for a certificate of public convenience and necessity for the construction of a major transmission line running from and through Sterling Heights, Troy, Clawson, and Royal Oak, Michigan*, order of the Public Service Commission, entered May 17, 2007 (Case No. U-14933), p. 9.

43. Furthermore, the Commission has recently stated that, “[t]he granting of permissive intervention without satisfying the two-pronged test is a long-established Commission practice.” *In re DTE Gas Co*, Case No. U17332, at 4 (May 13, 2014).

44. Here, any delay imposed by Branch Solar’s intervention will certainly be outweighed by the benefit of Branch Solar’s participation, which will provide the Commission with a more complete picture to weigh the effects of the proposed major transmission line, specifically the quantifiable and nonquantifiable impact of the current proposed trajectory.

45. In addition, Branch Solar may provide useful expertise and information on a range of applicable issues affecting the proposed projects.

Good Cause Exists to Grant This Petition, and Granting the Petition will Not Delay the Proceeding.

46. Rule 410 of the Commission’s Rules of Practice and Procedure allows for an untimely Petition for Leave to Intervene to be granted “upon a showing of good cause and a showing that a grant of the petition will not delay the proceeding or unduly prejudice any party to the proceedings.” R 792.10410(1).

47. Despite ongoing conversations with METC regarding the Branch Solar Interconnection Facilities, Branch Solar was unaware of the application in this case until a landowner for one of the leased properties constituting the Branch Solar Project received a notice from METC on the Act 30 filing proposed location of the Helix-Hiple Project.

48. Additionally, Branch Solar has a strong interest in being permitted to intervene in the proceeding. No other party adequately represents the interests of Branch Solar.

49. The grant of this Petition will not delay the proceeding or unduly prejudice any part as the deadline for seeking intervention has only recently passed and the remaining deadlines will not need to be adjusted to accommodate Branch Solar's intervention.

50. Branch Solar agrees to be bound by the record and procedural schedule developed before the granting of leave to intervene as required by R 792.10410(1).

PRAYER FOR RELIEF

WHEREFORE, Branch Solar respectfully requests that the Commission:

1. Grant Branch Solar's Petition for Leave to Intervene; and
2. Grant such other and further relief as is deemed lawful and appropriate.

Dated: September 20, 2024

WARNER NORCROSS + JUDD LLP

By: /s/ Ashley G. Chrysler

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