

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

FOR THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of MICHIGAN)
ELECTRIC 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)
Gratiot County, Michigan)

Case No. U-21471

In the matter of the application of MICHIGAN)
ELECTRIC TRANSMISSION COMPANY, LLC)
for an Act 30 certificate of public convenience)
and necessity for the construction of a major)
transmission line between the Indiana/)
Michigan state border at Gilead Township in)
Branch County and the new Helix Substation)
in Calhoun County, Michigan)

**RULING GRANTING REVISED PETITION TO INTERVENE OUT OF TIME OF
BRANCH SOLAR, LLC**

This ruling addresses the petition of Branch Solar, LLC to intervene in Case No. U-21471, which involves an application filed by Michigan Electric Transmission Company (METC) on July 15, 2024, under the Electric Transmission Line Certification Act (“Act 30”), MCL 460.561 *et sec.* for certificates to construct two major transmission lines.¹ On July 26, 2024, the Commission issued a Notice of Hearing, which stated that petitions to intervene must be filed by August 22, 2024, with the prehearing being scheduled for August 29, 2024.

¹ At the prehearing conferences on April 7, 2004, Case Nos. U-21471 and U-21472 were consolidated for the purpose of administrative efficiency. Despite the consolidation of the cases, two separate certificates are requested by the applicant.

The prehearing was held as scheduled on August 29, 2024. John Bulloch, Executive Director for North Star Clean Energy, appeared at the prehearing on behalf of Branch Solar, LLC. Mr. Bulloch stated that Branch Solar had only recently become aware of the proceedings and that Branch Solar would be obtaining counsel and filing a petition to intervene. On September 10, 2024, Branch Solar filed a Petition to Intervene Out of Time. On September 20, 2024, Branch Solar filed a Revised Petition to Intervene Out of Time. On October 4, 2024, METC filed an objection to the revised petition. On October 10, 2024, Branch Solar filed a Reply Brief to METC's objection to its revised petition. On October 14, 2024, METC filed a motion to strike Branch Solar's reply brief.

On October 21, 2024, oral argument was held regarding METC's motion to strike, METC's motion was granted and a date for oral argument regarding the revised petition was scheduled for October 28, 2024. Oral argument was held as scheduled on October 28, 2024. Both METC and Branch Solar were represented by Counsel who argued for their respective positions.

METC asserts that Branch Solar's petition is deficient in that it does not comply with the Commission's Rules of Practice and Procedure. METC cites Mich Admin Code, R 792.10432(5) which states in pertinent part:

(5) When a motion is based on facts not appearing on the record, the commission or presiding officer may hear the motion on affidavits presented by the parties or may direct that the motion be heard wholly or partly as oral testimony or deposition.

METC therefore asserts that because Branch Solar's petition for leave to intervene out of time does not have an affidavit attached to it, it does not have record facts to support the petition and there is therefore no evidentiary basis to grant the relief requested.

However, Mich Admin Code R 792.10405(1) states, “Unless otherwise provided by these rules, statute, or commission order, a pleading need not be verified or accompanied by an affidavit.” Further, Subpart B of the Rules specifically pertains to interventions.² In Mich Admin Code R 792.10410, There is no requirement that an affidavit be filed with a petition to intervene. Therefore, the undersigned does not find METC’s argument to be persuasive and does not find Branch Solar’s petition to be insufficient.

Two-prong test

Under the Commission’s established two-prong test for intervention as of right³, the Commission will grant intervention to a party who establishes that it is both within the zone of interest protected under a statute and that it has suffered an injury-in-fact. MCL 460.568(2) specifically states that affected municipalities and affected landowners shall be granted full intervenor status as of right. Branch Solar is not a landowner but has leases with landowners to construct its solar project. Therefore, the two-prong test will be applied to determine if Branch Solar can intervene as of right.

Injury-in-fact

Branch Solar asserts it meets the second prong of the test as it will suffer an injury-in-fact. It argues that it meets the injury in fact test because the proposed route of the Helix-Hiple transmission line runs through the middle of the solar project. Branch Solar contends that the proposed location of the Helix-Hiple line would require substantial changes to the design and plans for the solar project, which has already

² Mich Admin Code R 792.10410 through R 792.10413.

³ This test is based on the U.S. Supreme Court’s ruling in *Associated Data Processing Service Organization, Inc. v Camp*, 397 U.S. 150, 90 S Ct 827, 25 L ED 184 (1970).

begun construction and is contractually bound to be completed by 2025. Because the construction of the solar farm does not accommodate the 200-foot right of way surrounding the line. Branch Solar further argues that accommodating the Helix-Hiple line would require the solar project to be re-engineered and for a portion of it to be removed.

If the solar project were to be re-engineered and portions removed and reconstructed, Branch Solar argues it will be required to expend significant additional amounts and will experience lost revenue associated with production downtime resulting from the re-design. Branch Solar also notes that a re-design of the project could potentially result in the need for more approvals for the project to move forward. Additionally, Branch Solar contends that solar panels would have to be removed to accommodate the right-of-way for the line, and that removal of such would cause a significant decrease in solar MW capacity. Branch Solar also argues that the loss of solar MW capacity could cause it to lose its capacity credits with the Midcontinent Independent System Operator (MISO) and could jeopardize its ability meet the conditions of its Power Purchase Agreement (PPA).

Branch Solar asserts that the development of the solar project at hand began in 2020, with Branch Solar working with Bethel Township and landowners of 31 separate parcels for over two years to secure leases, approval and permits. It further states that Branch Solar submitted an interconnection request to MISO in 2020, that MISO conducted studies for approximately 3 years, and that 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.”⁴ Branch Solar additionally states that the solar project is expected to generate local tax revenue of \$25.4 million over the lifetime of the project, bring in 168 construction jobs and ten permanent jobs, and add \$14.7 million to the economy during construction and \$410,000 annually. Branch Solar also states that the solar project has been developed for five years and generated over \$300,000,000 in committed investments. Therefore, Branch Solar asserts it will suffer an injury-in-fact considering the path of the Helix-Hiple transmission line.

METC asserts that Branch Solar has not sufficiently alleged an injury-in-fact and notes Commission language in U-15628 stating that “An injury in fact must be an invasion of a legally protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical.”⁵ METC contends that Branch Solar has merely an interest in the outcome of the proceeding, and therefore its claimed future injury does not rise to the level of interest sufficient to satisfy the injury-in-fact requirement. METC quotes the Michigan Supreme Court in stating that an injury-in-fact exists when a “litigant has a special injury or right, or substantial interest, that will be detrimentally affected in a manner different from the citizenry at large.”⁶

The undersigned finds that Branch Solar has demonstrated that it will suffer an imminent injury-in-fact due to the route of the Helix-Hiple line. Branch Solar has shown that it has a substantial interest that will be detrimentally affected by the proposed Helix-Hiple route. Branch Solar has invested substantial time and funds into its solar project, and those interests will be affected in a manner different from the citizenry at large.

⁴ Revised Petition of Branch Solar, LLC for Leave to Intervene Out of Time, page 3.

⁵ METC, LLC’s Objection to Branch Solar, LLC’s Petition for Leave to Intervene Out of Time, page 5, quoting May 22, 2007 Opinion and Order Case No.U-15628, page 13.

⁶ Lansing Schools Ed Assoc v Lansing Bd of Ed, 487 Mich 349, 372; 792 NW2d 686 (2010).

Therefore, Branch Solar passes the injury-in-fact prong of the test for intervention by right.

Zone of Interest

As noted above, Branch Solar is currently constructing a 200 MW solar farm on 1,546 acres. According to its petition, this solar farm lies on the proposed route of the “Helix-Hiple” line and has an anticipated commercial operations date of November 1, 2025. Branch Solar, while acknowledging that it is not an affected landowner, asserts that it meets the zone of interest test arguing that Act 30 protects not only landowners and municipalities, but the community at large as well.

METC argues that Branch Solar does not fall within the zone of interest under Act 30, and therefore does not satisfy that prong of the test. METC asserts that Act 30 ultimately balances the necessity of the proposed transmission project with public interest and the impact on property ownership. Further, METC points out that Branch Solar is neither an affected municipality or landowner, and that the Commission language cited by Branch Solar in ¶ 38 of its petition regarding the groups listed in Act 30 as recipients of full intervention pertains to those seeking permissive intervention, not intervention by right. METC additionally contends that the plain language of Act 30 states that intervention by right is only for affected municipalities and landowners and that the community at large is not contemplated within Act 30’s zone of interest.

The undersigned agrees with the argument articulated by METC. The plain language of Act 30 lists affected municipalities and landowners as intervenors by right. The Commission language cited by Branch Solar in its petition does relate to permissive intervention and will be discussed further below. As the undersigned does

not find that Branch Solar meets the prong regarding the zone of interest, Branch Solar does not meet the requirements for intervention as of right.

Permissive Intervention

Branch Solar also contends it should be granted permissive intervention should it not satisfy the test for intervention by right. Branch Solar notes Case No. U-10150 (December 8, 1992) in stating that the Commission has discretion to “allow intervention whenever the resulting delay will likely be outweighed by the benefit of the intervenor’s participation.”⁷ Branch Solar goes on to state that any delay caused by its intervention will be outweighed by the benefit of its participation, which it asserts 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.”⁸

METC contends Branch Solar has not presented good reason for permissive intervention, and that its intervention would cause delay and additional expense. METC also claims that “Branch Solar cannot tie its alleged economic interest to Act 30’s requirements. No part of Act 30 suggests that economic harm to a proposed intervenor’s business venture is relevant to whether the Helix to Hiple Project will serve the public convenience and necessity.”⁹ METC further argues that Branch Solar is asserting that part of the Commission’s review of this matter will include Branch Solar’s future dealings with METC and how the two should work together, which has nothing to do with whether the Helix-Hiple line will fulfill a public purpose.

⁷ Revised Petition of Branch Solar, LLC for Leave to Intervene Out of Time, page 9.

⁸ Revised Petition of Branch Solar, LLC for Leave to Intervene Out of Time, page 10.

⁹ METC, LLC’s Objection to Branch Solar, LLC’s Petition for Leave to Intervene Out of Time, page 10-11.

Additionally, METC asserts that Branch Solar's request is analogous to prior cases involving Act 9 wherein the Commission denied intervention to parties seeking to protect their competitive advantage. METC claims Branch Solar "is competing for the right to use the land where the Helix to Hiple Project will traverse—that is not an sufficient basis to grant intervention."¹⁰

In Case No. U-14933, the Commission read the permissive intervention standard articulated by *Association of Data Processing Service Organizations, supra*, broadly, noting that the injury in fact caused by the challenged action could be "economic or otherwise," and indicating that, in addition to the zone of interests protected, there could also be "some good reason to permit them to intervene on a permissive basis."¹¹ Specifically, the Commission found that neither Detroit Edison, nor Consumers Energy, were working in transmission, and were not seeking to intervene as competitors to International Transmission Company's major transmission line request, further finding that, because Detroit Edison and Consumers would ultimately bear the burden of paying the \$30 million in construction fees, both should be granted permissive intervention.¹²

The undersigned finds this case to be informative when applied to the matter at hand. Although it was determined that Branch Solar does not fit within the zone of interest for intervention of right, as articulated above, its time and investment in the solar project which is already under construction provides it a good reason to allow it to intervene on a permissive basis. The undersigned does not find METC's argument that

¹⁰ METC, LLC's Objection to Branch Solar, LLC's Petition for Leave to Intervene Out of Time, page 12-13.

¹¹ Case No. U-14933, Order May 17, 2007, p. 8.

¹² Case No. U-14933, Order May 17, 2007, p. 8-10.

Branch Solar is competing for the same land to be persuasive. METC is in the business of providing transmission, Branch solar is in the business of generating solar power. As these two companies are in different areas of business, arguments relating to competition between the two must fail. For these reasons, it is appropriate to grant Branch Solar permissive intervention.

Good Cause for Late Filing

There is no dispute that Branch Solar did not file its petition to intervene by the time articulated by the Commission. At the prehearing, John Bulloch appeared for Branch Solar and stated that it had just become aware of the proceedings through a landowner who has a lease with Branch Solar.¹³ Branch Solar contends that it was unaware of the application proceedings despite being in communication with METC regarding this project. Branch Solar states that while aware of the project, it was not aware the application had been filed until it was notified of such by the landowner.

Additionally, Branch Solar asserts that its intervention will not delay these proceedings or unduly prejudice any party. Branch Solar further states that it agrees to be bound by the record and the schedule developed at the prehearing.

METC asserts Branch Solar has not presented good cause for its late intervention. It notes that Branch Solar filed its initial petition 19 days after the deadline for filing and 12 days after the prehearing. It further notes that Branch Solar's revised petition was filed 29 days after the deadline and 22 days after the prehearing. METC contends that the intervention should be considered filed on the date the revised

petition was filed and argues that Branch Solar fails to explain its weeks-long delay in filing the revised petition.

Additionally, METC argues that granting the petition will cause undue prejudice and delay. METC claims “that Branch Solar’s late intervention also means METC will be afforded less time to respond to any potential discovery requests that Branch Solar may serve.”¹⁴ Further, METC asserts that Branch Solar’s intervention will result in significant additional cost to METC as it will be required to respond to Branch Solar’s position.

The Commission has previously held that the requisite “good cause” can be met based upon a party being unaware of the proceedings, or their prospective interest in the matter, until after the deadline, as well as demonstrating a unique perspective or interest in the case. See, November 22, 2016 order in Case No. U-17691; see also, May 15, 2013 order in Case No. U-16200. Additionally, the Commission has held that permissive intervention is appropriate “if the litigant could be expected to bring helpful information to the Commission’s attention that might not otherwise be available.”¹⁵

In this matter, Branch Solar asserts it was unaware of the application proceedings until just before the prehearing, and after the time to file a timely intervention had passed. Therefore, the undersigned finds that Branch Solar has presented good cause for its late filing. Additionally, Branch Solar can reasonably be expected to bring helpful information to the Commission as the only solar developer involved in this matter. Regarding METC’s claims that Branch Solar’s intervention will cause undue delay, Branch Solar has agreed to and is bound by the dates and

¹⁴ METC, LLC’s Objection to Branch Solar, LLC’s Petition for Leave to Intervene Out of Time, page 16.

¹⁵ October 14, 2010 order in Case No. U-16200, p. 4.

timelines agreed to at the prehearing. METC will be required to respond to discovery requests in the same time frame as all other parties and will be bound to the dates for the submission of testimony and evidence. Therefore, the undersigned finds that Branch Solar has presented good cause for its late intervention and that such intervention will not cause undue delay or prejudice to the other parties.

CONCLUSION

Branch Solar, LLC's petition for intervention is GRANTED.

MICHIGAN OFFICE OF ADMINISTRATIVE
HEARINGS AND RULES
For the Michigan Public Service Commission

Christopher
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Christopher S. Saunders
Administrative Law Judge

Issued and Served:
October 30, 2024

STATE OF MICHIGAN

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

* * * * *

STATE OF MICHIGAN)
) SS.
County of Ingham)
_____)

Case No. U-21471

PROOF OF SERVICE

Meaghan Dobie, being duly sworn, deposes and says that on October 30, 2024 she served a copy of the attached Ruling Granting Revised Petition to Intervene Out of Time of Branch Solar, LLC via email and/or first-class mail to the persons as shown on the attached service list.



Meaghan Dobie

Subscribed and sworn to before me this
30th day of October 2024.



Brianna L. Brown
Notary Public, Gratiot County, Michigan
My Commission Expires July 4, 2028

**SERVICE LIST
CASE NO. U-21471**

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