

**STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the application of
BIRCH VALLEY SOLAR, LLC
for a Renewable Energy or Storage
Siting Certificate to construct a solar
energy facility.

Case No. U-22072

ALJ HON. JACQUELINE LANGWITH

INDEX OF EXHIBITS TO PETITION

EXHIBIT LETTER	DESCRIPTION
EXHIBIT A	<i>In re Implementing Provisions of Public Act 233 of 2023, opinion of the Court of Appeals awaiting publication, issued May 7, 2026 (Docket No. 373259); 2026 Mich. App. LEXIS 3854 (2026 WL 1261321)</i>
EXHIBIT B	Paragraph 20 Excerpt from Birch Valley Solar Application
EXHIBIT C	Excerpt from Birch Valley Public Outreach Appendix
EXHIBIT D	Paragraph 23 & 24 Excerpt from Birch Valley Solar Application
EXHIBIT E	Arbela Township Planning Commission Resolution Denying Application

Respectfully submitted,

ARBELA TOWNSHIP

Dated: May 29, 2026

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EXHIBIT

A



Caution

As of: May 27, 2026 8:05 PM Z

Mich. Pub. Serv. Comm'n v. Almer Charter Twp. (In re Implementing Provisions of Pub., Act 233 of 2023)

Court of Appeals of Michigan

May 7, 2026, Decided

No. 373259

Reporter

2026 Mich. App. LEXIS 3854 *; 2026 LX 202735; 2026 WL 1261321

In re IMPLEMENTING PROVISIONS OF PUBLIC, ACT 233 OF 2023. MICHIGAN PUBLIC SERVICE COMMISSION, Appellee, and MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL, INSTITUTE FOR ENERGY INNOVATION, CLEAN GRID ALLIANCE, and ADVANCED ENERGY UNITED, Intervening Appellees, v ALMER CHARTER TOWNSHIP, ARGENTINE TOWNSHIP, AUGUSTA CHARTER TOWNSHIP, BEAVER TOWNSHIP, BENGAL TOWNSHIP, BINGHAM TOWNSHIP, BLISSFIELD TOWNSHIP, BRIDGEHAMPTON TOWNSHIP, BROCKWAY TOWNSHIP, CASCADE CHARTER TOWNSHIP, CATO TOWNSHIP, CLINTON COUNTY, COHOCTAH TOWNSHIP, COLUMBIA TOWNSHIP, COLUMBUS TOWNSHIP, CONWAY TOWNSHIP, COOPER CHARTER TOWNSHIP, DALLAS TOWNSHIP, DEERFIELD TOWNSHIP, DENMARK TOWNSHIP, DOUGLASS TOWNSHIP, DUPLAIN TOWNSHIP, EAGLE TOWNSHIP, EASTON TOWNSHIP, ELLINGTON TOWNSHIP, ELMWOOD TOWNSHIP, ESCANABA TOWNSHIP, FRANKENLUST TOWNSHIP, FREMONT TOWNSHIP, GARDEN TOWNSHIP, GARFIELD TOWNSHIP, GENOA TOWNSHIP, HANDY TOWNSHIP, IDA TOWNSHIP, INGHAM TOWNSHIP, IONIA COUNTY, IOSCO TOWNSHIP, ISABELLA TOWNSHIP, JOYFIELD TOWNSHIP, JUNIATA TOWNSHIP, KAWKAWLIN TOWNSHIP, KEENE TOWNSHIP, KIMBALL TOWNSHIP, LAKE TOWNSHIP, LEROY TOWNSHIP, MARION TOWNSHIP, MARION TOWNSHIP, MILAN TOWNSHIP, MONITOR CHARTER TOWNSHIP, MONTAGUE TOWNSHIP, MONTCALM TOWNSHIP, MOORE TOWNSHIP, NORTH BRANCH TOWNSHIP, OGDEN TOWNSHIP, ORLEANS TOWNSHIP, RIGA TOWNSHIP, SANILAC COUNTY, SCHOOLCRAFT COUNTY, SEVILLE TOWNSHIP, SHIAWASSEE COUNTY, SIDNEY TOWNSHIP, SPEAKER TOWNSHIP, STOCKBRIDGE TOWNSHIP, SUMMERFIELD TOWNSHIP, TUSCOLA COUNTY, TYRONE TOWNSHIP, VENICE TOWNSHIP, WALES TOWNSHIP, WATERLOO TOWNSHIP, WATERTOWN TOWNSHIP, WHITE OAK TOWNSHIP, WHITE RIVER TOWNSHIP, WILLIAMS CHARTER TOWNSHIP, WORTH TOWNSHIP, YORK CHARTER TOWNSHIP, and PARIS TOWNSHIP, Appellants.

Notice: THIS OPINION IS UNCORRECTED AND SUBJECT TO REVISION BEFORE FINAL PUBLICATION IN THE MICHIGAN COURT OF APPEALS REPORTS.

Subsequent History: Modified by [In re Implementing Provisions of Pub. ACT 233 of 2023, 2026 Mich. App. LEXIS 4115 \(May 14, 2026\)](#)

Prior History: [*1] Public Service Commission. LC No. 00-021547.

[In re Implementing Provisions of Pub. ACT 233 of 2023, 2024 Mich. App. LEXIS 10289 \(Dec. 23, 2024\)](#)

Core Terms

energy, local unit, siting, certificate, ordinance, zoning, elected official, renewable, public meeting, notify, compatible, ripe, threshold, notice, timeline, wind, additional requirement, statutory definition, hybrid, statutory interpretation, zoning ordinance, technology, solar, rulemaking, storage, entity, statutorily, unambiguous, official's, promulgate

Case Summary

Overview

Key Legal Holdings

- The Public Service Commission (PSC) improperly limited the statutory definition of 'affected local unit' (ALU) to only local governments with zoning jurisdiction, when **PA 233** clearly defines ALU geographically as any local unit where an energy facility will be located, entitling all such units to statutory benefits including notice, comment rights, and host community agreement payments.
- Under **PA 233**, a compatible renewable energy ordinance may only contain setback, fencing, height, sound, and other requirements expressly outlined in [MCL 460.1226\(8\)](#), as adding additional requirement categories would inherently be more restrictive than the statutory provisions.
- The PSC properly recognized 'hybrid facilities' combining multiple energy technologies under **PA 233**, as the statutory definitions of solar and wind facilities expressly include energy storage facilities, contemplating hybrid combinations meeting applicable capacity thresholds.

Material Facts

- **PA 233** took effect November 29, 2024, establishing PSC certification authority for renewable energy facilities.
- Developers may choose either PSC certification or local zoning approval.
- Public Service Commission (PSC) held eight public meetings and received over 100 comments before issuing October 10, 2024 order.
- Some appellants received written meeting offers from developers.
- No applications had been filed with PSC as of February 7, 2025.

Controlling Law

- 2023 **PA 233** establishing Public Service Commission (PSC) certification authority for renewable energy facilities.
- [MCL 460.1221\(f\)](#) defining compatible renewable energy ordinances.
- [MCL 460.1221\(a\)](#) defining affected local units geographically.
- [MCL 460.1223\(3\)](#) establishing 30-day notification timeline following meetings.
- Administrative Procedures Act exempting interpretive statements from formal rulemaking.

Court Rationale

The court applied de novo review, finding Public Service Commission (PSC) correctly interpreted compatible renewable energy ordinance as limited to [MCL 460.1226\(8\)](#) requirements based on statutory language and legislative intent. However, PSC improperly rewrote the plain geographic definition of ALU by adding zoning jurisdiction requirements not in the statute. The court found hybrid facility recognition reasonable based on statutory definitions including energy storage. The timeline interpretation was incorrect as the statute clearly requires 30 days from actual meetings, not meeting offers. No Administrative Procedures Act of 1969 (APA) violation occurred as PSC engaged in statutory interpretation and exercised permissive powers.

Outcome**Procedural Outcome**

Affirmed in part, reversed in part, and remanded for further proceedings. The court did not retain jurisdiction and awarded no costs to any party due to public significance.

LexisNexis® Headnotes

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

HN1 Authorities & Powers, Environmental Oversight

The [Clean and Renewable Energy and Energy Waste Reduction Act, MCL 460.1001 et seq. PA 233](#) prescribes the powers and duties of the Public Service Commission to provide certification for the construction of wind, solar, and energy storage facilities.

Energy & Utilities Law > Administrative Proceedings > Preemption

HN2 Administrative Proceedings, Preemption

A developer may choose to seek zoning approval from a local unit of government instead of seeking certification from the Public Service Commission for the construction of an energy facility.

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Local Governments > Property

Energy & Utilities Law > Solar Power Industry

HN3 Zoning, Ordinances

An ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8) of Act 233. A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction. [MCL 460.1221\(f\)](#). An affected local unit means a unit of local government in which all or part of a proposed energy facility will be located, [MCL 460.1221\(a\)](#), while local unit of government or local unit means a county, township, city, or village. [MCL 460.1221\(n\)](#).

Energy & Utilities Law > Electric Power Industry > Electricity Distribution & Transmission > Electricity Generation

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

HN4 Electricity Distribution & Transmission, Electricity Generation

Under [MCL 460.1223\(1\)](#), an electric provider or independent power producer that, at its option or as required by the commission, proposes to obtain a certificate for and construct an energy facility shall hold a public meeting in each affected local unit. At least 30 days before a public meeting, the developer must notify an affected local unit's clerk regarding the time, date, location, and purpose of the public meeting and provide a copy of the site plan or the internet address at which the site plan is available. [MCL 460.1223\(1\)](#). The developer also must publish notice of the public meeting in a local newspaper or digital alternative at least 14 days before the public meeting. [MCL 460.1223\(1\)](#).

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

HN5 Authorities & Powers, Environmental Oversight

At least 60 days before the public meeting, the developer must offer in writing to meet with the chief elected official of each affected local unit, or the chief elected official's designee, to discuss the site plan. [MCL 460.1223\(2\)](#). If such a meeting occurs, and the chief elected official of each affected local unit notifies the developer within 30 days following such a meeting that the affected local unit has a compatible renewable energy ordinance, the developer generally must seek approval of the facility from that affected local unit. [MCL 460.1223\(3\)](#). An affected local unit must approve or deny the developer's application within 120 days, although the developer and the affected local unit may jointly agree to extend the deadline by up to another 120 days. [MCL 460.1223\(3\)\(b\)](#).

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

HN6 Zoning, Ordinances

Even if an affected local unit has a compatible renewable energy ordinance, a developer may seek certification from the Public Service Commission if: (1) an affected local unit fails to timely approve or deny the developer's application; (2) the application complies with the requirements of [Mich. Comp. Laws § 460.1226](#) but an affected local unit denies the application; or (3) an affected local unit amends its zoning ordinance after notifying the developer that the affected local unit has a compatible renewable energy ordinance and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in [MCL 460.1226\(8\)](#). [MCL 460.1223\(3\)\(c\)](#). If the Public Service Commission approves a developer's application in one of the circumstances listed in [MCL 460.1223\(3\)\(c\)](#), then the affected local unit is no longer considered to have a compatible renewable energy ordinance unless the Public Service Commission finds that the affected local unit's denial was reasonably related to the developer's failure to provide statutorily required information. [MCL 460.1223\(5\)](#).

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

HN7 Electric Power Industry, Siting of Facilities

A site plan required under [Mich. Comp. Laws § 460.1223](#) or [Mich. Comp. Laws § 460.1225](#) shall meet application filing requirements established by commission rule or order to maintain consistency between applications. [Mich. Comp. Laws § 460.1224](#).

Business & Corporate Compliance > ... > Regulators > Public Utility Commissions > Hearings & Orders
Energy & Utilities Law > Regulators > Public Utility Commissions > Hearings & Orders

Governments > Local Governments > Employees & Officials

HN8 Public Utility Commissions, Hearings & Orders

In addition to certain statutorily required language for the notice, the Public Service Commission is given authority to further prescribe the format and contents of the notice. [MCL 460.1226\(2\)](#). In addition to certain statutorily required language for the notice, the Public Service Commission is given authority to "further prescribe the format and contents of the notice." [MCL 460.1226\(2\)](#).

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

HN9 Authorities & Powers, Environmental Oversight

The Public Service Commission is required to conduct a proceeding on the application for a certificate as a contested case under the administrative procedures act of 1969, [MCL 24.201 to 24.328](#). [MCL 460.1226\(3\)](#). The Public Service Commission shall grant the application and issue a certificate or deny the application not later than 1 year after a complete application is filed. [Mich. Comp. Laws § 460.1226\(5\)](#). In evaluating the application, the Public Service Commission is required to consider feasible alternative developed locations if the proposed site is on undeveloped land, as well as the effect of the proposed facility on local land use, including the percentage of land dedicated to energy generation. [MCL 460.1226\(6\)](#). The Public Service Commission must also consider whether the proposed facility meets certain enumerated standards to ensure it does not pose an unreasonable threat to public health or safety. [MCL 460.1226\(7\)\(g\)](#) and [\(8\)](#).

Energy & Utilities Law > Electric Power Industry > Electricity Distribution & Transmission > Electricity Generation

HN10 Electricity Distribution & Transmission, Electricity Generation

[Mich. Comp. Laws § 460.1230](#) provides that, in administering this part, the commission has only those powers and duties granted to the commission under this part, with the Legislature specifying that this part shall control in any conflict between this part and any other law of this state. However, the electric transmission line certification act, 1995 PA 30, [MCL 460.561 to 460.575](#), controls in any conflict with this part," [MCL 460.1230\(3\)](#).

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

Governments > Local Governments > Ordinances & Regulations

HN11 Electric Power Industry, Siting of Facilities

If a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in

the commission's certificate. [MCL 460.1231\(3\)](#). However, a developer is not exempt from obtaining any other legally required license or permit regarding the construction or operation of an energy facility. [MCL 460.1231\(5\)](#).

Civil Procedure > Appeals > Standards of Review > De Novo Review

Constitutional Law > The Judiciary > Case or Controversy > Ripeness

Civil Procedure > ... > Justiciability > Ripeness > Imminence

Civil Procedure > ... > Justiciability > Ripeness > Rationale for Ripeness

Civil Procedure > ... > Justiciability > Ripeness > Tests for Ripeness

[HN12](#) Standards of Review, De Novo Review

The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained. A claim that rests on contingent future events is not ripe. In considering ripeness under a de novo standard of review, the timing of the action is a central focus. In fact, an issue may become ripe while the case is pending.

Civil Procedure > ... > Justiciability > Ripeness > Imminence

Constitutional Law > The Judiciary > Case or Controversy > Ripeness

Energy & Utilities Law > Administrative Proceedings > Judicial Review > Standards of Review

Civil Procedure > ... > Justiciability > Ripeness > Tests for Ripeness

[HN13](#) Ripeness, Imminence

A ripeness determination involves an assessment of whether the harm asserted has matured sufficiently to warrant judicial intervention. In making this assessment, the court must balance any uncertainty about whether a party will actually suffer future injury against the potential hardship of denying anticipatory relief. An issue is ripe if the Public Service Commission made a threshold determination, the resolution of which is not dependent on any further decision by the Public Service Commission.

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Governments > Legislation > Interpretation

Energy & Utilities Law > ... > Public Utility Commissions > Hearings & Orders > Judicial Review

Energy & Utilities Law > Administrative Proceedings > Judicial Review > Standards of Review

Administrative Law > Judicial Review > Standards of Review > Deference to Agency Statutory Interpretation

[HN14](#) Standards of Review, De Novo Standard of Review

The Public Service Commission lacks common-law powers and has only the authority granted to it by the Legislature. The Public Service Commission has the authority to interpret the statutes it administers and enforces,

which includes [PA 233](#). The Public Service Commission's statutory interpretations are subject to review de novo on appeal. The court respectfully considers the Public Service Commission's statutory interpretations, which will not be overturned in the absence of cogent reasons. The primary goal of statutory interpretation is to give effect to the Legislature's intent. Statutory interpretation begins with examining the plain language of the statute. When that language is clear and unambiguous, no further judicial construction is required or permitted. A cogent reason exists for overturning an agency's statutory interpretation when that interpretation essentially rewrites the plain language of a statute.

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Local Governments > Ordinances & Regulations

Energy & Utilities Law > Solar Power Industry

[HN15](#) Zoning, Ordinances

The Legislature defined compatible renewable energy ordinance as an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8) of Act 233. A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction. [[MCL 460.1221\(f\)](#)].

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

[HN16](#) Zoning, Ordinances

A developer may seek certification from the Public Service Commission when: (1) an affected local unit denies an application that complies with the requirements of [Mich. Comp. Laws § 460.1226](#); and (2) an affected local unit amends its zoning ordinance after notifying the developer that the affected local unit has a compatible renewable energy ordinance and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in [MCL 460.1226\(8\)](#), [MCL 460.1223\(3\)\(c\)\(ii\)](#) and [\(iii\)](#). The Public Service Commission reasoned that[t]he plain language of these provisions demonstrates that a compatible renewable energy ordinance may only contain those requirements expressly outlined in Section 226(8) of Act 233. Had the Legislature intended to permit local units to include additional requirements beyond those identified in Section 226(8) of Act 233, it would not have restricted the Commission's authority to site energy facilities, in part, on the basis that a local unit denied an application for reasons beyond "the requirements of section 226(8).

Business & Corporate Compliance > Real Property > Zoning > Ordinances
Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Local Governments > Ordinances & Regulations

Energy & Utilities Law > Solar Power Industry

HN17 Zoning, Ordinances

The fact that a developer may file an application in the Public Service Commission when an affected local unit denies an application that complies with the requirements of [MCL 460.1226\(8\)](#), or when an affected local unit amends its zoning ordinance to impose additional requirements more restrictive than those set forth in [MCL 460.1226\(8\)](#), supports the conclusion that a compatible renewable energy ordinance may not contain additional requirements more restrictive than those identified in that statutory provision, including by adding categories of requirements not found in [MCL 460.1226\(8\)](#).

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

Governments > Local Governments > Ordinances & Regulations

HN18 Electric Power Industry, Siting of Facilities

[MCL 460.1231\(3\)](#) provides, if a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate. Given the qualifying language at the beginning of [MCL 460.1231\(5\)](#), it is clear that [MCL 460.1231\(3\)](#) is controlling, and [MCL 460.1231\(3\)](#) preempts any local ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Local Governments > Ordinances & Regulations

Energy & Utilities Law > Solar Power Industry

HN19 Authorities & Powers, Environmental Oversight

[Mich. Comp. Laws § 460.1223](#) provides that an affected local unit may require other information necessary to determine compliance with the compatible renewable energy ordinance.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Legislation > Interpretation

Energy & Utilities Law > Solar Power Industry

Governments > Local Governments > Ordinances & Regulations

HN20 Authorities & Powers, Environmental Oversight

An affected local unit's entitlement to information does not alter the plain meaning of the statutory language defining a compatible renewable energy ordinance.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Local Governments > Ordinances & Regulations

Energy & Utilities Law > Solar Power Industry

HN21 Authorities & Powers, Environmental Oversight

[MCL 460.1223\(3\)\(c\)\(ii\)](#) provides that a developer may file an application with the Public Service Commission if an affected local unit denies an application that complies with the requirements of [MCL 460.1226\(8\)](#). If the Public Service Commission approves the application and issues a certificate in that situation, the affected local unit would no longer be considered to have a compatible renewable energy ordinance. [MCL 460.1223\(5\)](#).

Governments > Legislation > Interpretation

Governments > Local Governments > Property

HN22 Legislation, Interpretation

PA 233 defines an affected local unit as a unit of local government in which all or part of a proposed energy facility will be located. [MCL 460.1221\(a\)](#). Local unit of government or local unit means a county, township, city, or village. [MCL 460.1221\(n\)](#). The Legislature provided a purely geographic definition of an affected local unit, as being an affected local unit depends exclusively on whether a proposed energy facility will be located, even in part, within a local unit of government's borders. An agency cannot—just like a court cannot—rewrite the plain terms of a statute under the guise of statutory interpretation.

Governments > Legislation > Interpretation

HN23 Legislation, Interpretation

The primary task in enforcing a statute is to apply the plain meaning of statutory language, and when doing so judicial construction is neither necessary nor permitted. Statutory provisions cannot be read in isolation, as the context in which the words are used is also important. Under the doctrine of *in pari materia*, statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Legislation > Interpretation

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

HN24 Authorities & Powers, Environmental Oversight

The statutory definition of affected local unit is plain and unambiguous: it includes all local units of government where a proposed energy facility will be located. It does not refer to only those local units of government that have zoning jurisdiction; instead, when defining an affected local unit, the Legislature included within the definition all local units of government in which all or part of a proposed energy facility will be located. This definition is plain and unambiguous, requiring no interpretation. Quite simply, in crafting what jurisdictions will be entitled to a plethora of

statutory rights under [PA 233](#), the Legislature explicitly included all local units of government in which any part of an energy facility will be located. It is a straightforward and simple definition to apply.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

[HN25](#) Authorities & Powers, Environmental Oversight

The unambiguous definition of affected local unit furthers several other provisions within [PA 233](#). An affected local unit, that is, a local unit of government where an energy facility is proposed to be located, is entitled to notice of public meetings so that affected residents can hear about, and comment upon, the proposal. [MCL 460.1223\(1\)](#) and [MCL 460.1226\(2\)](#). An affected local unit is also entitled to review and comment upon proposed projects that would be located at least partially within its jurisdiction. [MCL 460.1224\(2\)](#). Additionally, an affected local unit is provided a right to intervene in a contested case proceeding, [MCL 460.1226\(3\)](#), while potentially receiving a one-time grant of funds from the developer to cover costs associated with participating in that proceeding. [MCL 460.1226\(1\)](#). Another important statutory benefit for ALUs is the developer's obligation to enter into a host community agreement with each affected local unit, under which the developer must pay the affected local unit \$2,000 for each megawatt of nameplate capacity located within the affected local unit, [MCL 460.1227\(1\)](#). These statutorily granted rights and benefits are all geared to benefit localities where the energy facility is proposed to be located, consistent with the statutory definition tied to the geographic location of the energy facility.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Legislation > Interpretation

[HN26](#) Authorities & Powers, Environmental Oversight

Both the plain text of the statutory definition and its context require the conclusion that an affected local unit is exactly what the Legislature said it was: a local unit of government in which all or part of a proposed energy facility is proposed to be located.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

[HN27](#) Authorities & Powers, Environmental Oversight

[MCL 460.1223\(3\)](#) requires a developer to seek siting approval from each affected local unit if the chief elected official of each affected local unit timely notifies the developer that the affected local unit has a compatible renewable energy ordinance.

Business & Corporate Compliance > Real Property > Zoning > Ordinances

Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

HN28 Zoning, Ordinances

The four circumstances in which siting authority transfers to the Public Service Commission are: (1) a local unit of government exercising zoning jurisdiction asks the Public Service Commission to require a developer to obtain a certificate from the Public Service Commission, [Mich. Comp. Laws § 460.1222](#); (2) an affected local unit fails to timely approve or deny a developer's application under the local siting process, [MCL 460.1223\(3\)\(b\)](#), [\(c\)\(i\)](#); (3) a developer's application under the local siting process complies with the requirements of [MCL 460.1226\(8\)](#), but an affected local unit denies the application, [MCL 460.1223\(3\)\(c\)\(ii\)](#); and (4) an affected local unit amends its zoning ordinance after its chief elected official notifies the developer that the affected local unit has a compatible renewable energy ordinance, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in [MCL 460.1226\(8\)](#), [MCL 460.1223\(3\)\(c\)\(iii\)](#).

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > Local Governments > Property

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

HN29 Authorities & Powers, Environmental Oversight

Through its broad definition the Legislature included local units of government with no zoning power as entities that are entitled to notice of public meetings, to provide comment on proposed facilities, and to intervene in contested cases involving a proposed facility that will be located within its boundary.

Business & Corporate Compliance > Real Property > Zoning > Ordinances

Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

HN30 Zoning, Ordinances

A county's zoning jurisdiction does not include areas subject to a township zoning ordinance. [MCL 125.3209](#) and [MCL 125.3102\(x\)](#). Under these provisions it is impossible for a township and a county to each have a compatible renewable energy ordinance in the same area.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

Energy & Utilities Law > Taxation Issues

HN31 Authorities & Powers, Environmental Oversight

[Mich. Comp. Laws § 460.1221](#) defines solar energy facility as including energy storage facilities, and [Mich. Comp. Laws § 460.1221](#) defines wind energy facility as including energy storage facilities.

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Governments > State & Territorial Governments > Claims By & Against

Energy & Utilities Law > Electric Power Industry > Siting of Facilities

HN32 Authorities & Powers, Environmental Oversight

No basis exists to exclude part of a facility's capacity when assessing whether the capacity threshold is met.

Business & Corporate Compliance > Real Property > Zoning > Ordinances

Real Property Law > Zoning > Ordinances

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

HN33 Zoning, Ordinances

Under [MCL 460.1223\(1\)](#), a developer must hold a public meeting in each affected local unit in which the developer proposes to obtain a certificate for and construct an energy facility. At least 60 days before the public meeting, the developer must offer in writing to meet with the chief elected official of each affected local unit, or the chief elected official's designee, to discuss the site plan. [MCL 460.1223\(2\)](#). If, within 30 days following a meeting between the developer and the chief elected official or the chief elected official's designee, the chief elected official of each affected local unit notifies the developer that the affected local unit has a compatible renewable energy ordinance, then the developer must file for siting approval with each affected local unit. [MCL 460.1223\(3\)](#). An affected local unit must approve or deny the application for siting approval within 120 days after receiving the application, although the affected local unit and the developer may jointly agree to extend the deadline by up to 120 days. [MCL 460.1223\(3\)\(b\)](#).

Energy & Utilities Law > ... > Public Utility Commissions > Authorities & Powers > Environmental Oversight

Energy & Utilities Law > Solar Power Industry

HN34 Authorities & Powers, Environmental Oversight

Under [MCL 460.1223\(3\)](#), the 30-day timeline begins not with the receipt of the offer to meet but with the actual meeting between the developer and the chief elected official or the official's designee. The statute indicates that the chief elected official has 30 days following the meeting itself to notify the developer of the existence of the compatible renewable energy ordinance and that, if such notice is provided, the developer must file for approval with the affected local unit.

Governments > Legislation > Interpretation

HN35 Legislation, Interpretation

Unambiguous statutory language must be enforced as written.

Administrative Law > Judicial Review > Standards of Review > De Novo Standard of Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

Administrative Law > Agency Rulemaking > State Proceedings

HN36 Standards of Review, De Novo Standard of Review

A court reviews de novo as a question of law whether an administrative policy is invalid because it was not promulgated as a rule under the Administrative Procedures Act.

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > Binding Effect

Administrative Law > Agency Rulemaking > State Proceedings

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > Validity

HN37 Rule Application & Interpretation, Binding Effect

Formal Administrative Procedures Act rulemaking is generally required when an agency establishes policies that do not merely interpret or explain the statute or rules from which the agency derives its authority but rather establish the substantive standards implementing the program. The Administrative Procedures Act outlines a formal process that must be followed for an agency to promulgate a rule that has the force and effect of law.

Governments > Legislation > Interpretation

HN38 Legislation, Interpretation

Under [Mich. Comp. Laws § 24.207 \(h\)](#) and [Mich. Comp. Laws § 24.207 \(j\)](#), an agency may interpret a statute or exercise a permissive statutory power without engaging in formal rulemaking.

Administrative Law > Agency Rulemaking > Rule Application & Interpretation > Binding Effect

HN39 Rule Application & Interpretation, Binding Effect

An executive agency's power derives from statute. Yet an agency has the authority to interpret the statutes it administers and enforces. The Public Service Commission has the authority to interpret the statutes it administers and enforces. An interpretive statement in itself lacks the force and effect of law because it is the underlying statute that determines how an entity must act, that is, that alters the rights or imposes obligations. Where an agency policy interprets or explains a statute or rule, the agency need not promulgate it as a rule even if it has a substantial effect on the rights of a class of people because an interpretive statement is not, by definition, a rule under the Administrative Procedures Act. Even if a regulated entity does not comply with the statement, the interpretive statement does not bind an administrative law judge to sanction an entity in an enforcement action, nor does it bind a court on judicial review. Statements explaining how an agency plans to exercise a discretionary power are usually considered to lack the force and effect of law. Statements announcing a policy the agency plans to establish in future adjudications generally lack the force and effect of law.

Administrative Law > Judicial Review > Standards of Review > Deference to Agency Statutory Interpretation

Governments > Legislation > Interpretation

HN40 Standards of Review, Deference to Agency Statutory Interpretation

An interpretive statement that goes beyond the scope of the law may be challenged when it is in issue in a judicial proceeding. An interpretation not supported by the enabling act is an invalid interpretation, not a rule.

Administrative Law > Agency Rulemaking > State Proceedings

HN41 Agency Rulemaking, State Proceedings

An agency's decision to exercise a permissive statutory power is not a rule subject to Administrative Procedures Act rulemaking requirements. [Mich. Comp. Laws § 24.207 \(j\)](#).

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Judges: Before: GADOLA, C.J., and MURRAY and M. J. KELLY, JJ.

Opinion by: Christopher M. Murray

Opinion

MURRAY, J.

Appellants, consisting of multiple townships and counties, appeal as of right an October 10, 2024 order of the Michigan Public Service Commission (PSC or Commission). The PSC's order implemented provisions of 2023 **PA 233**, which prescribes the powers and duties of the PSC to provide certification for the construction of certain wind, solar, and energy storage facilities. On appeal, appellants argue that the PSC exceeded its authority under **PA 233** by redefining statutory terms, creating a new category of facilities, modifying statutory timelines, and implementing a rule in derogation of the law. We hold that (1) the PSC incorrectly interpreted **PA 233** with respect to a statutory timeline, (2) the PSC improperly expanded the statutory definition of an affected local unit (ALU), but did not otherwise err in its interpretations of **PA 233**, and (3) the rulemaking requirements within the [Administrative Procedures Act of 1969 \(APA\)](#), [MCL 24.201 et seq.](#), do not [*2] apply to the PSC's order. We therefore affirm in part, and reverse in part, the PSC's order.

I. BACKGROUND

A. 2023 **PA 233**

HN1 PA 233 took effect on November 29, 2024, and added a new Part 8 to the [Clean and Renewable Energy and Energy Waste Reduction Act](#), [MCL 460.1001 et seq.](#) **PA 233** prescribes the powers and duties of the PSC to provide certification for the construction of wind, solar, and energy storage facilities. [MCL 460.1222\(2\)](#), which is part of the new Part 8 added by **PA 233**, provides that "[b]efore beginning construction of an energy facility, an electric provider or independent power producer may, pursuant to this part, obtain a certificate for that energy facility from the commission." The parties agree that the statute does not require a developer¹ to seek certification from the PSC in order to site an energy facility. **HN2** Rather, a developer may instead choose to seek zoning approval from a local unit of government.

The new Part 8 added by **PA 233** applies to "[a]ny solar energy facility with a nameplate capacity of 50 megawatts or more," [MCL 460.1222\(1\)\(a\)](#), "[a]ny wind energy facility with a nameplate capacity of 100 megawatts or more,"

¹ Like the parties, we use "developer" to refer to an electric provider or independent power producer.

[MCL 460.1222\(1\)\(b\)](#), and "[a]ny energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more," [MCL 460.1222\(1\)\(c\)](#). Pertinent [*3] to determining whether the PSC has authority to approve such facilities is whether a local unit of government lacks a "compatible renewable energy ordinance" (CREO), which is statutorily defined as:

HN3 an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction. [[MCL 460.1221\(f\)](#).]

An ALU "means a unit of local government in which all or part of a proposed energy facility will be located," [MCL 460.1221\(a\)](#), while "'Local unit of government' or 'local unit' means a county, township, city, or village," [MCL 460.1221\(n\)](#).

HN4 Under [MCL 460.1223\(1\)](#), "[a]n electric provider or independent power producer that, at its option or as required by the commission, proposes to obtain a certificate for and construct an energy facility shall hold a public meeting in each affected local unit." At least 30 days before such a public meeting, the developer must notify an ALU's clerk regarding the time, date, location, and purpose of the public meeting and provide [*4] a copy of the site plan or the internet address at which the site plan is available. *Id.* The developer also must publish notice of the public meeting in a local newspaper or digital alternative at least 14 days before the public meeting. *Id.*

HN5 At least 60 days before the public meeting, the developer must offer in writing to meet with the chief elected official of each ALU, or the chief elected official's designee, to discuss the site plan. [MCL 460.1223\(2\)](#). If such a meeting occurs, and the chief elected official of each ALU notifies the developer within 30 days following such a meeting that the ALU has a CREO, the developer generally must seek approval of the facility from that ALU. [MCL 460.1223\(3\)](#). An ALU must approve or deny the developer's application within 120 days, although the developer and the ALU may jointly agree to extend the deadline by up to another 120 days. [MCL 460.1223\(3\)\(b\)](#).

HN6 Even if an ALU has a CREO, a developer may seek certification from the PSC if: (1) an ALU fails to timely approve or deny the developer's application; (2) the application complies with the requirements of [MCL 460.1226\(8\)](#) but an ALU denies the application; or (3) an ALU amends its zoning ordinance after notifying the developer that the ALU has a CREO and "the [*5] amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in [[MCL 460.1226\(8\)](#)]." [MCL 460.1223\(3\)\(c\)](#). If the PSC approves a developer's application in one of the circumstances listed in [MCL 460.1223\(3\)\(c\)](#), then the ALU is no longer considered to have a CREO unless the PSC finds that the ALU's denial was reasonably related to the developer's failure to provide statutorily required information. [MCL 460.1223\(5\)](#).

HN7 "A site plan required under [[MCL 460.1223](#) or [460.1225](#)] shall meet application filing requirements established by commission rule or order to maintain consistency between applications." [MCL 460.1224\(1\)](#). Upon filing an application in the PSC, the developer is required to

provide notice of the opportunity to comment on the application in a form and manner prescribed by the commission. **HN8** The notice shall be published in a newspaper of general circulation in each affected local unit or a comparable digital alternative. [[MCL 460.1226\(2\)](#).]

In addition to certain statutorily required language for the notice, the PSC is given authority to "further prescribe the format and contents of the notice." *Id.*

HN9 The PSC is required to "conduct a proceeding on the application for a certificate as a contested case under the administrative procedures act of 1969, [*6] 1969 PA 306, [MCL 24.201 to 24.328](#)." [MCL 460.1226\(3\)](#). The PSC "shall grant the application and issue a certificate or deny the application not later than 1 year after a complete application is filed." [MCL 460.1226\(5\)](#). In evaluating the application, the PSC is required to consider feasible alternative developed locations if the proposed site is on undeveloped land, as well as the effect of the proposed facility on local land use, including the percentage of land dedicated to energy generation. [MCL 460.1226\(6\)](#). The

PSC must also consider whether the proposed facility meets certain enumerated standards to ensure it does not pose an unreasonable threat to public health or safety. [MCL 460.1226\(7\)\(g\)](#) and [\(8\)](#).

[HN10 MCL 460.1230\(1\)](#) provides that, "[i]n administering this part, the commission has only those powers and duties granted to the commission under this part," with the Legislature specifying that "[t]his part shall control in any conflict between this part and any other law of this state. However, the electric transmission line certification act, 1995 PA 30, [MCL 460.561 to 460.575](#), controls in any conflict with this part," [MCL 460.1230\(3\)](#). [HN11](#) Further, "[i]f a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional [*7] or more restrictive requirements than those specified in the commission's certificate." [MCL 460.1231\(3\)](#). However, a developer is not exempt from obtaining any other legally required license or permit regarding the construction or operation of an energy facility. [MCL 460.1231\(5\)](#).

Other statutes may also impact an application. For example, the [Michigan Zoning Enabling Act \(MZEA\)](#), [MCL 125.3101 et seq.](#), provides that "[e]xcept as otherwise provided under this act, a township that has enacted a zoning ordinance under this act is not subject to an ordinance, rule, or regulation adopted by a county under this act." [MCL 125.3209](#). Also, 2023 PA 234, which was signed into law at the same time as [PA 233](#), amended the MZEA to provide that a zoning ordinance is subject to "Part 8 of the clean and renewable energy and energy waste reduction act . . ." [MCL 125.3205\(1\)\(d\)](#). In other words, PA 234 provides that zoning ordinances are subject to the new Part 8 added by [PA 233](#).

B. PSC ORDER

The PSC opened a docket on its own motion to implement [PA 233](#), directing its staff to "engage with interested persons in transparent open meetings" and to "file recommendations on application filing instructions, guidance relating to compatible renewable energy ordinances, and any other issues in this docket by June 21, 2024." After [*8] holding eight public meetings, the PSC staff filed proposed application instructions and procedures on June 21, 2024.

On October 10, 2024, the PSC entered the challenged order. As relevant to this appeal, the PSC found "that a CREO under Act 233 means an ordinance that provides for the development of energy facilities within a local unit of government, the requirements of which are no more restrictive than the provisions included in Section 226(8)." The PSC elaborated "that a CREO may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of Act 233 and may not contain additional requirements more restrictive than those specifically identified in that section."

The PSC further noted that [PA 233](#) applies to solar energy facilities, wind energy facilities, and energy storage facilities having the respective capacities set forth in [MCL 460.1222\(1\)](#). In addition, the PSC approved the staff proposal "that hybrid energy facilities (i.e., energy facilities comprised of multiple technology types) should meet the statutory thresholds when multiple technologies are combined for siting," agreeing with its "interpretation of the applicability of Act 233 to hybrid facilities and [finding] that interpretation [*9] to be reasonable and supported by Act 233's plain language." The PSC reasoned "that the statutory definitions for both 'solar energy facility' and 'wind energy facility' expressly include 'energy storage facilities' as a part of these facilities, and therefore, contemplate that hybrid energy storage facilities may be included in the statutory thresholds for solar and wind projects."

Also noteworthy, according to the PSC, was that under the MZEA, "the zoning jurisdiction of a county does not include areas subject to a township zoning ordinance," and therefore it was viewed as "impossible for a county to have an applicable CREO if a township has enacted a CREO." Therefore, "the term ALU should be restricted to only those local units of government that exercise zoning jurisdiction." Additionally, "all the circumstances that trigger the Commission's limited authority to site energy facilities necessarily require a local unit of government to exercise zoning jurisdiction." According to the PSC, "although the statutory definition of ALU does not reference zoning jurisdiction, reading the term in light of the entire context of Act 233's statutory scheme to provide a limited transfer of siting authority [*10] to the Commission reveals that such a restriction is not only reasonable, but necessary." The PSC therefore concluded "that an ALU under Act 233 is limited to include only those local units of government that exercise zoning jurisdiction."

In addition, the PSC noted that because [MCL 460.1223\(3\)](#) requires a developer to follow a local siting process if the chief elected official of each ALU notifies the developer that the ALU has a CREO, the chief elected official of an ALU has an affirmative obligation to notify a developer of the existence of a CREO, and if the chief elected official fails to notify the developer of the existence of a CREO within 30 days after receiving an offer to meet, the developer may proceed as if the ALU does not have a CREO.

II. ANALYSIS

Appellants argue that the PSC exceeded its authority under [PA 233](#) by redefining statutory terms, creating a new category of facilities, and modifying statutory timelines. Before we turn to the merits of those arguments, we first address the PSC's argument that the appeal is not ripe for our review.

A. RIPENESS

[HN12](#) "The doctrine of ripeness is designed to prevent the adjudication of hypothetical or contingent claims before an actual injury has been sustained." [*11] [King v Mich State Police Dep't, 303 Mich App 162, 188; 841 NW2d 914 \(2013\)](#) (quotation marks and citation omitted). "A claim that rests on contingent future events is not ripe." *Id.* In considering ripeness under a de novo standard of review, the timing of the action is a central focus. *Id.*; see also [Van Buren Charter Twp v Visteon Corp, 319 Mich App 538, 553; 904 NW2d 192 \(2017\)](#) ("The doctrine of ripeness . . . focuses on the timing of the action.") (quotation marks and citation omitted). In fact, an issue may become ripe while the case is pending. See [Taxpayers of Mich Against Casinos v Michigan, 471 Mich 306, 333, 336; 685 NW2d 221 \(2004\)](#) (opinion by CORRIGAN, C.J.) (remanding for review of an issue that became ripe after the case was last considered by the lower courts); but see [id. at 349](#) (KELLY, J., concurring) (saying that Michigan law is unclear on this point and that "[f]ederal secondary authority suggests that a suit must be ripe when it is instituted[>").

[HN13](#) A ripeness determination involves an assessment of "whether the harm asserted has matured sufficiently to warrant judicial intervention." [In re Reliability Plans of Electric Utilities for 2017-2021, 325 Mich App 207, 218; 926 NW2d 584 \(2018\) \(In re Reliability Plans I\)](#), rev'd on other grounds [505 Mich 97; 949 N.W.2d 73 \(2020\)](#) (quotation marks and citation omitted). "In making this assessment, this Court must balance any uncertainty about whether a party will actually suffer future injury against the potential hardship of denying anticipatory relief." *Id.* An issue is ripe if the PSC made "a threshold determination, the resolution [*12] of which is not dependent on any further decision by the [PSC]." *Id.* (quotation marks and citation omitted).

The PSC takes the position that appellants have yet to suffer an injury, noting that [PA 233](#) took effect on November 29, 2024, three weeks after this appeal was filed. According to the PSC, as of February 7, 2025, no applications for siting certificates had been filed with it, and it has not yet imposed on appellants any of the interpretations set forth in its October 10, 2024 order.² For their part, appellants note that some of them have received written offers to meet from developers. The PSC responds that this does not establish that any application will necessarily be filed in the PSC, and that ALUs would have an opportunity to challenge the PSC's interpretations of [PA 233](#) if and when a contested case proceeding takes place, including in any appeal from an order that is appealable under [MCL 462.26\(1\)](#). The PSC thus opines that appellants' arguments are premised on contingent future events and are not at this juncture ripe.

[In re Reliability Plans I, 325 Mich App at 217-220](#), addressed an analogous situation. There, the PSC and Consumers Energy Company argued that an issue regarding the imposition of a local clearing requirement was not ripe [*13] because the PSC had merely announced its authority to impose a local clearing requirement and had not yet imposed such a requirement on an individual alternative electric supplier. *Id. at 217*. In rejecting the ripeness challenge, this Court stated that the PSC had "not merely announced that it has the authority to impose a local clearing requirement on individual alternative electric suppliers; it has announced its decision to assert that authority, leaving open only the methodology of exercising that authority." *Id. at 218-219*. The PSC's decision constituted "a threshold determination ripe for our consideration given that the resolution of the issue is not dependent on any further decision by the [PSC]." *Id. at 219* (quotation marks and citation omitted).

² At oral argument before this Court it was represented that there are at least 5 applications currently pending, though there was no substantiation of this.

Similar to *In re Reliability Plans I*, the PSC's order announced its interpretations of the statutory terms CREO and ALU, and set forth a new timeline within which an ALU must inform a developer that the ALU has a CREO. The PSC also used a new term, "hybrid facility," that would allow certain types of facilities to be subject to [PA 233](#). The PSC's order was essentially a threshold determination that was not dependent on any further decision by the PSC. Although the PSC [*14] will apply its interpretations to particular facts if and when any application for a siting certificate is filed, its order has already set forth interpretations with real-world implications, including what constitutes a CREO that would allow local siting in lieu of PSC siting, which local governmental entities qualify as ALUs and are entitled to statutory rights, what types of facilities fall within the ambit of [PA 233](#), and the timeline within which an ALU must take certain actions. Even if no application for a siting certificate has been filed, the PSC's order has implications for the actions of ALUs that wish to utilize a local siting process to avoid an application for a siting certificate from proceeding in the PSC and the ability of certain local governmental entities to receive statutory benefits such as grant funds. Because any uncertainty about whether appellants will actually suffer an injury is outweighed by the potential hardship of denying anticipatory relief, we conclude the matter is ripe for our review. See *In re Reliability Plans I*, 325 Mich App at 218-219.

B. THE PSC'S INTERPRETATION OF THE STATUTE

We now turn to the merits of appellants' arguments which, again, are that the PSC exceeded its authority by redefining [*15] the statutory terms CREO and ALU, creating a new category of hybrid facilities, modifying statutory timelines, and failing to comply with the APA.

[HN14](#) The PSC lacks common-law powers and "has only the authority granted to it by the Legislature." [In re Reliability Plans of Electric Utilities for 2017-2021](#), 505 Mich 97, 119; 949 NW2d 73 (2020) (*In re Reliability Plans II*). The PSC "has the authority to interpret the statutes it administers and enforces," *id*, which includes [PA 233](#). Of course, the PSC's statutory interpretations are subject to review de novo on appeal. [Id. at 118-119](#). This Court respectfully considers the PSC's statutory interpretations, which will not be overturned in the absence of cogent reasons. [Id. at 119](#).

The primary goal of statutory interpretation is to give effect to the Legislature's intent. Statutory interpretation begins with examining the plain language of the statute. When that language is clear and unambiguous, no further judicial construction is required or permitted. [*Id.* (citations omitted).]

Importantly, a cogent reason exists for overturning an agency's statutory interpretation when that interpretation essentially rewrites the plain language of a statute. *Bonter v Progressive Marathon Ins Co*, __ Mich __, __; 21 NW3d 908, 909 n 4 (2025), citing [In re Complaint of Rovas Against SBC Mich](#), 482 Mich 90, 93; 754 NW2d 259 (2008).

1. CREO

[HN15](#) With respect to appellants' argument that the PSC erred in its interpretation of the term CREO, the Legislature [*16] defined "CREO" as:

an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8). A local unit of government is considered not to have a compatible renewable energy ordinance if it has a moratorium on the development of energy facilities in effect within its jurisdiction. [[MCL 460.1221\(f\)](#)].

The PSC found "that a CREO under Act 233 means an ordinance that provides for the development of energy facilities within a local unit of government, the requirements of which are no more restrictive than the provisions included in Section 226(8)." More specifically, the PSC concluded "that a CREO may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of Act 233 and may not contain additional requirements more restrictive than those specifically identified in that section."

The PSC's interpretation is consistent with the statutory language indicating that the requirements of a CREO must be "no more restrictive than the provisions included in section 226(8)." [MCL 460.1221\(f\)](#). Appellants suggest that a CREO may contain requirements in categories beyond those set forth in [MCL 460.1226\(8\)](#), as the limiting language [*17] within [MCL 460.1221\(f\)](#) only restricts ALUs from exceeding the actual requirements set forth in

subsection 8, such as a particular setback requirement, noise level, etc. In other words, the limiting language is not a restriction on what subjects can be part of a CREO, it only limits a CREO to imposing more restrictive requirements than those contained within the subjects actually addressed within subsection 8. Though this is not an unreasonable reading of [MCL 460.1221\(f\)](#), it is not the correct one. The addition of requirements not contained in [MCL 460.1226\(8\)](#) would inherently be more restrictive, and the Legislature has commanded that a CREO not be more restrictive. And as the PSC correctly noted, its interpretation is supported by other provisions.

For example, [PA 233](#) identifies circumstances in which a developer may seek certification from the PSC even though the ALU has a CREO. [HN16](#) Among those circumstances are when: (1) an ALU denies an application that complies with the requirements of [MCL 460.1226\(8\)](#); and (2) an ALU amends its zoning ordinance after notifying the developer that the ALU has a CREO and the amendment "imposes additional requirements on the development of energy facilities that are more restrictive than those in [[MCL 460.1226\(8\)](#)]." [MCL 460.1223\(3\)\(c\)\(ii\)](#) and [\(iii\)](#). The PSC reasoned that

[t]he [*18] plain language of these provisions demonstrates that a CREO may only contain those requirements expressly outlined in Section 226(8) of Act 233. Had the Legislature intended to permit local units to include additional requirements beyond those identified in Section 226(8) of Act 233, it would not have restricted the Commission's authority to site energy facilities, in part, on the basis that a local unit denied an application for reasons beyond "the requirements of section 226(8)."

The PSC's analysis is sound. [HN17](#) The fact that a developer may file an application in the PSC when an ALU denies an application that complies with the requirements of [MCL 460.1226\(8\)](#), or when an ALU amends its zoning ordinance to impose additional requirements more restrictive than those set forth in [MCL 460.1226\(8\)](#), supports the conclusion that a CREO may not contain additional requirements more restrictive than those identified in that statutory provision, including by adding categories of requirements not found in [MCL 460.1226\(8\)](#).

Noting that "[PA 233](#), as PA 234 suggests, must be read in context with the MZEA," appellants reason that various provisions of the MZEA reflect that "[t]he Legislature knows how to limit local zoning authority," and there is no indication in [PA 233](#), PA 234, or the MZEA that energy projects [*19] subject to [PA 233](#) may be sited in any zoning district or any particular type of zoning district. As a result, appellants conclude that the PSC's definition of CREO is unduly narrow because "the Legislature expressed its intent that providers granted a certificate by the PSC must comply with local ordinances." [MCL 460.1231\(5\)](#).³

We are not convinced. [MCL 460.1231\(5\)](#), upon which appellants rely, begins by indicating that it is applicable "[e]xcept as provided in [[MCL 460.1231](#)]." [HN18](#) Notably, [MCL 460.1231\(3\)](#) provides, "If a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate." [*20] Given the qualifying language at the beginning of [MCL 460.1231\(5\)](#), it is clear that [MCL 460.1231\(3\)](#) is controlling, and [MCL 460.1231\(3\)](#) preempts any local ordinance "that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate." This is consistent with how [PA 233](#) treats the requirements in a CREO. See [MCL 460.1221\(f\)](#) and [MCL 460.1226\(8\)](#). In light of all this, we discern no merit in the argument that [PA 233](#) does not limit local zoning authority, and therefore the PSC did not unduly narrow the definition of CREO.

³ [MCL 460.1231\(5\)](#) provides:

Except as provided in this section, this part does not exempt an electric provider or IPP to whom a certificate is issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that is required by federal law, any other law of this state, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451, [MCL 324.101 to 324.90106](#), any rule promulgated under a law of this state, or a local ordinance.

In another avenue of challenge to the PSC's interpretation of the term CREO, appellants refer to [MCL 460.1226\(7\)\(g\)](#), which requires the PSC to grant an application and issue a siting certificate if it determines that "[t]he proposed energy facility does not present an unreasonable threat to public health or safety." Appellants observe that under [MCL 460.1226\(8\)](#), "[a]n energy facility meets the requirements of [[MCL 460.1226\(7\)\(g\)](#)] if it will comply with the" standards enumerated in [MCL 460.1226\(8\)](#). According to appellants, [MCL 460.1226\(8\)](#) merely defines what does not constitute "an unreasonable threat to public health or safety" under [MCL 460.1226\(7\)\(g\)](#), and that this is "only a small piece of the total information required by an application presented to the PSC." Continuing, [*21] appellants note that [MCL 460.1223\(3\)\(a\)](#) requires a developer's application filed with an ALU to contain information in addition to the requirements of [MCL 460.1226\(8\)](#), including some of the information required by [MCL 460.1225\(1\)](#). **HN19** [MCL 460.1223\(3\)\(a\)](#) further provides that an ALU "may require other information necessary to determine compliance with the [CREO]."

But the fact that a developer must provide certain information to an ALU does not establish that the PSC erred in its interpretation of the term CREO. **HN20** An ALU's entitlement to information does not alter the plain meaning of the statutory language defining a CREO. Appellants seem to suggest that an ALU should be allowed to deny an application on the basis of a developer's failure to provide information unrelated to the requirements of [MCL 460.1226\(8\)](#) and that an ordinance should not thereby lose its status as a CREO. **HN21** But [MCL 460.1223\(3\)\(c\)\(ii\)](#) provides that a developer may file an application in the PSC if an ALU denies an application that complies with the requirements of [MCL 460.1226\(8\)](#). If the PSC approves the application and issues a certificate in that situation, the ALU would no longer be considered to have a CREO. [MCL 460.1223\(5\)](#). It is thus **PA 233** itself, not the PSC's order, that leads to the result about which appellants complain.

In challenging the PSC's [*22] interpretation of the term CREO, appellants also rely on [In re Procedure & Format for Filing Tariffs Under Mich Telecom Act, 210 Mich App 533, 548-550; 534 NW2d 194 \(1995\)](#), where the PSC defined the phrase "access services" that was used in a telecommunications statute, *id. at 548*. Although the phrase "access services" was not statutorily defined, the term "access" was. *Id.* This Court stated that "[t]he Legislature used 'access' and 'access services' interchangeably in [the statute], and consequently there was no need for the PSC to establish a special definition for 'access service.'" *Id. at 549*. We held that "[t]he PSC's definition of 'access service' is erroneous to the extent that it departs from the definition of 'access' provided by the Legislature." *Id.* That holding has no relevance here, as the Legislature did not define a subcomponent of the term CREO and use that defined subcomponent interchangeably with the term CREO itself, and the PSC did not provide a definition of CREO that differed from the legislative definition. The PSC properly interpreted the term CREO in accordance with the statutory definition and the statute as a whole.⁴

Nor does [DeRuiter v Byron Twp, 505 Mich 130; 949 NW2d 91 \(2020\)](#), offer any help, as that case involved analysis of a form of implied preemption known as conflict preemption. *Id. at 140*. The [DeRuiter](#) Court considered whether a local zoning ordinance [*23] conflicted with provisions of the [Michigan Medical Marijuana Act, MCL 333.26421 et seq.](#), and was thus implicitly preempted. [DeRuiter, 505 Mich at 134-135](#). The present issue does not involve implied preemption. [DeRuiter](#) thus has no relevance here. Appellants' reliance on [Consumers Power Co v Pub Serv Comm, 460 Mich 148, 156; 596 NW2d 126 \(1999\)](#), is also misplaced, as the PSC's interpretation of CREO was properly based on the statutory language and the statute as a whole, not on improper weighing of economic or policy factors.

2. ALU

We now turn to appellants' argument that the PSC erred in interpreting the term ALU to include only those units of local government that exercise zoning jurisdiction. **HN22** To that point, **PA 233** defines an ALU as "a unit of local government in which all or part of a proposed energy facility will be located." [MCL 460.1221\(a\)](#). "Local unit of

⁴ The PSC did not admit that it adopted a narrower definition of CREO than that provided by the Legislature in **PA 233**, when it stated in the order that, "[w]ith respect to the competing viewpoints expressed in the comments, the Commission agrees that a narrow definition for a CREO is appropriate." Read in context, the PSC's remarks do not indicate that it was narrowing the legislative definition of CREO. Rather, the PSC used the term "narrow definition" in reference to the competing viewpoints expressed on this issue in the comments received by the PSC.

government' or 'local unit' means a county, township, city, or village." [MCL 460.1221\(n\)](#). Thus, the Legislature provided a purely geographic definition of an ALU, as being an ALU depends exclusively on whether a proposed energy facility will be located (even in part) within a local unit of government's borders.

As we noted earlier, an agency cannot—just like a court cannot—rewrite the plain terms of a statute under the guise of statutory interpretation. [HN23](#) For the primary task in enforcing a statute is to apply the plain [*24] meaning of statutory language, [People v Davis, 337 Mich App 67, 78; 972 NW2d 304 \(2021\)](#), and when doing so judicial construction is neither necessary nor permitted, [People v Gardner, 482 Mich 41, 50; 753 NW2d 78 \(2008\)](#). Of course, statutory provisions cannot be read in isolation, as the context in which the words are used is also important. [Honigman Miller Schwartz & Cohn LLP v Detroit, 505 Mich 284, 307; 952 NW2d 358 \(2020\)](#). Similarly, "[u]nder the doctrine [of *in pari materia*], statutes that relate to the same subject or that share a common purpose should, if possible, be read together to create a harmonious body of law." [People v Mazur, 497 Mich 302, 313; 872 NW2d 201 \(2015\)](#).

[HN24](#) The statutory definition of ALU is plain and unambiguous: it includes all local units of government where a proposed energy facility will be located. It does not refer to only those local units of government that have zoning jurisdiction; instead, when defining an ALU, the Legislature included within the definition *all* local units of government in which all or part of a proposed energy facility will be located. This definition is plain and unambiguous, requiring no interpretation. Quite simply, in crafting what jurisdictions will be entitled to a plethora of statutory rights under [PA 233](#), the Legislature explicitly included all local units of government in which any part of an energy facility will be located. It is a straightforward and simple definition [*25] to apply.

[HN25](#) This unambiguous definition also furthers several other provisions within [PA 233](#). For example, an ALU—that is, a local unit of government where an energy facility is proposed to be located—is entitled to notice of public meetings so that affected residents can hear about, and comment upon, the proposal. [MCL 460.1223\(1\)](#) and [MCL 460.1226\(2\)](#). An ALU is also entitled to review and comment upon proposed projects that would, again, be located at least partially within its jurisdiction. See [MCL 460.1224\(2\)](#). Additionally, an ALU is provided a right to intervene in a contested case proceeding, [MCL 460.1226\(3\)](#), while potentially receiving a one-time grant of funds from the developer to cover costs associated with participating in that proceeding, [MCL 460.1226\(1\)](#). Another important statutory benefit for ALUs is the developer's obligation to enter into a host community agreement with each ALU, under which the developer must pay the ALU \$2,000 for each megawatt of nameplate capacity located within the ALU, [MCL 460.1227\(1\)](#).⁵ These statutorily granted rights and benefits are all geared to benefit localities where the energy facility is proposed to be located, consistent with the statutory definition tied to the geographic location of the energy facility. [HN26](#) In other words, both the [*26] plain text of the statutory definition and its context requires the conclusion that an ALU is exactly what the Legislature said it was: a local unit of government in which all or part of a proposed energy facility is proposed to be located.

In reaching a different conclusion, the PSC focused its attention more on practicalities than the plain language of the statute. Rather than focusing on the plain language and context that we have just highlighted, the PSC placed more emphasis on whether a local unit had zoning jurisdiction, because only those jurisdictions can have a CREO and potentially have lawful input on the proposed energy facility through a CREO. See [HN27 MCL 460.1223\(3\)](#) (requires a developer to seek siting approval from each ALU if the chief elected official of each ALU timely notifies the developer that the ALU has a CREO).

Moreover, the PSC noted that [PA 233](#) transfers siting authority to the PSC in four limited circumstances, and each involve a local unit that has zoning jurisdiction. [HN28](#) Those four circumstances are: (1) "[a] local unit of government exercising zoning jurisdiction" asks the PSC to require a developer to obtain a certificate from the PSC,

⁵ Appellants also note that the funds paid under a host community agreement are for "police-power purposes" and "have nothing to do with zoning." Appellants point to [MCL 460.1227\(1\)](#), correctly arguing that the payment under the host community agreement "shall be used as determined by the [ALU] for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant," and that having zoning jurisdiction has no relation to whether a local unit of government may face potential emergency situations without the benefit of legislatively guaranteed funds.

[MCL 460.1222\(2\)](#); (2) an ALU fails to timely approve or [*27] deny a developer's application under the local siting process, [MCL 460.1223\(3\)\(b\)](#), [\(c\)\(i\)](#); (3) a developer's application under the local siting process complies with the requirements of [MCL 460.1226\(8\)](#), but an ALU denies the application, [MCL 460.1223\(3\)\(c\)\(ii\)](#); and (4) an ALU amends its zoning ordinance after its chief elected official notifies the developer that the ALU has a CREO, "and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in [[MCL 460.1226\(8\)](#)]," [MCL 460.1223\(3\)\(c\)\(iii\)](#). The PSC also quoted language from [MCL 460.1221\(f\)](#) stating that "[a] local unit of government is considered not to have a [CREO] if it has a moratorium on the development of energy facilities in effect within its jurisdiction."

The PSC determined "that all the circumstances that trigger *the Commission's* limited authority to site energy facilities necessarily require a local unit of government to exercise zoning jurisdiction," explaining that, "although the statutory definition of ALU does not reference zoning jurisdiction, reading the term in light of the entire context of Act 233's statutory scheme to provide a limited transfer of siting authority to the Commission reveals that such a restriction is not only reasonable, but necessary." Noting the commands [*28] of [Honigman Miller, 505 Mich at 307](#), the PSC concluded "that an ALU under Act 233 is limited to include only those local units of government that exercise zoning jurisdiction." But focusing only on those local units of government that do have zoning jurisdiction and therefore may cause PSC involvement with energy facility approval, ignores the entire context of the statute. Indeed, the PSC's revised definition of ALU ignores (1) that the statute was not passed solely out of concern for the PSC, and (2) that there may be some local units of government where the proposed facility may be located, but that do not have zoning authority.⁶ [HN29](#) Through its broad definition the Legislature included local units of government with no zoning power as entities that are entitled to notice of public meetings, to provide comment on proposed facilities, and to intervene in contested cases involving a proposed facility that will be located within its boundary. Applying the straightforward and more broad definition of ALU provided by the Legislature, which is our public policy making branch of government, results in all affected local units of government having some involvement in the process of a proposed energy facility, which appears consistent [*29] with the intent of the Legislature. The PSC's more limited definition effectively re-writes the statutory definition of ALU, impedes the legislative policy choice to include all affected local units of government in at least part of the process, and cannot stand.

C. HYBRID FACILITIES

Appellants next argue that the PSC improperly added the term "hybrid facilities" to the list of energy facilities to which [PA 233](#) applies, thereby inappropriately expanding its jurisdiction to include this new category of facilities.

As noted, [PA 233](#) explicitly applies to solar energy facilities, wind energy facilities, and energy storage facilities having the respective capacities set forth in [MCL 460.1222\(1\)](#). The PSC concluded that its staff proposal "that hybrid energy facilities (i.e., energy facilities comprised of multiple technology types) should meet the statutory thresholds when multiple technologies are combined for siting," was reasonable and supported by Act 233's plain language. Citing [MCL 460.1221\(w\)](#) and [\(x\)](#),⁷ the PSC observed "that the statutory definitions for both 'solar energy facility' and 'wind energy facility' expressly include 'energy storage facilities' as a part of these facilities, and therefore, contemplate that hybrid [*30] energy storage facilities may be included in the statutory thresholds for solar and wind projects."⁸ In other words, although [PA 233](#) itself does not use the term "hybrid energy facilities," the PSC's analysis was based on the statutory language, i.e., the PSC merely gave a name to a concept implicit in the statutory text.

⁶ [HN30](#) A county's zoning jurisdiction does not include areas subject to a township zoning ordinance. See [MCL 125.3209](#) and [MCL 125.3102\(x\)](#). Under these provisions it is impossible for a township and a county to each have a CREO in the same area.

⁷ [HN31](#) [MCL 460.1221\(w\)](#) defines "[s]olar energy facility" as including "energy storage facilities," and [MCL 460.1221\(x\)](#) defines "[w]ind energy facility" as including "energy storage facilities."

⁸ Although not determinative, the PSC also noted that its interpretation of the applicability of Act 233 to hybrid facilities is consistent with the Michigan Department of Environment, Great Lakes, and Energy's eligibility requirements for the Renewables Ready Communities Award grant for hybrid facilities.

Appellants' main challenge to the PSC planning for the existence of hybrid facilities is the absence of "a provision allowing solar and wind facilities to be combined." But at the same time appellants have not identified a reason why a facility comprised of multiple technology types (each of which are permitted by statute) may not fall within the PSC's jurisdiction under PA 233.

In an attempt to comply with the statutory energy capacities for each type of energy, the PSC provided that when multiple technology types are combined into a hybrid facility, the higher applicable capacity threshold is utilized to determine whether the PSC may assume jurisdiction. Consistent with the capacity threshold limits set forth in MCL 460.1222(1), the PSC's application filing instructions indicate that the 100-megawatt capacity threshold applies to any facility that includes wind technology and that [*31] the 50-megawatt capacity threshold applies to a facility that does not include wind technology. If, for example, a facility includes both wind and solar technologies, the higher capacity threshold applicable to wind technology will apply.

Appellants object to this method, suggesting that, by allowing multiple technology types to be used to meet the applicable capacity threshold, the PSC expanded its "authority over smaller projects that band together to avoid local zoning regulations." But appellants fail to articulate a reason why the relative proportion of each technology type may not be considered when determining whether the applicable capacity threshold has been satisfied. HN32 No basis exists to exclude part of a facility's capacity when assessing whether the capacity threshold is met. Overall, and in light of the statutory definitions, appellants fail to establish that the PSC erred with respect to the recognition of hybrid facilities.

D. TIMELINE

Turning next to appellants' challenge to the PSC's timeline, we agree that the PSC incorrectly interpreted PA 233 with respect to a statutory timeline.

HN33 Under MCL 460.1223(1), a developer must hold a public meeting in each ALU in which the developer proposes [*32] to obtain a certificate for and construct an energy facility. At least 60 days before the public meeting, the developer must "offer in writing to meet with the chief elected official of each [ALU], or the chief elected official's designee, to discuss the site plan." MCL 460.1223(2). If, within 30 days following a meeting between the developer and the chief elected official or the chief elected official's designee, the chief elected official of each ALU notifies the developer that the ALU has a CREO, then the developer must file for siting approval with each ALU. MCL 460.1223(3). An ALU must approve or deny the application for siting approval within 120 days after receiving the application, although the ALU and the developer may jointly agree to extend the deadline by up to 120 days. MCL 460.1223(3)(b).

The PSC's order noted that, under MCL 460.1223(3), a developer is required to follow a local siting process only if the chief elected official of each ALU notifies the developer that the ALU has a CREO. The PSC then found that the chief elected official

of an ALU has an affirmative obligation to notify [a developer] of the existence of a CREO, and if that [chief elected official] fails to notify the [developer] of the existence of a CREO within 30 [*33] days following receipt of an offer to meet, the [developer] may proceed as if an ALU does not have a CREO.

The PSC's timeline differs from that set forth in the statute. The PSC indicated that the chief elected official must notify the developer of the existence of a CREO within 30 days following the receipt of the offer to meet and that, absent such notification, the developer may proceed as if the ALU does not have a CREO. HN34 But under MCL 460.1223(3), the 30-day timeline begins not with the receipt of the offer to meet but with the actual meeting between the developer and the chief elected official or the official's designee. The statute indicates that the chief elected official has 30 days following the meeting itself to notify the developer of the existence of the CREO and that, if such notice is provided, the developer must file for approval with the ALU. The PSC thus incorrectly interpreted PA 233 with respect to the statutory timeline.

In their briefs on appeal, the PSC and intervening appellees express concern that an ALU could unreasonably delay meeting with a developer and thereby upend the entire PA 233 process. But our concern is what the statute

requires, and [MCL 460.1223\(3\)](#) unambiguously provides that [*34] the 30-day timeline begins with the meeting itself. [HN35](#) Unambiguous statutory language must be enforced as written, [In re Implementing Section 6w of 2016 PA 341 for Cloverland Electric Coop, 329 Mich App 163, 177-178; 942 NW2d 38 \(2019\)](#), and the PSC erred in implementing a timeline different than that required by law.

E. APA

For their final argument, appellants argue that the PSC's order is unlawful because it constitutes a rule that was not promulgated in compliance with the rulemaking requirements of the APA. [HN36](#) This Court reviews de novo as a question of law whether an administrative policy is invalid because it was not promulgated as a rule under the APA. [Faircloth v Family Independence Agency, 232 Mich App 391, 401; 591 NW2d 314 \(1998\)](#).

[HN37](#) Formal APA rulemaking is generally required when an agency establishes policies that "do not merely interpret or explain the statute or rules from which the agency derives its authority" but rather "establish the substantive standards implementing the program." [Faircloth, 232 Mich App at 404](#). "The APA outlines a formal process that must be followed for an agency to promulgate a rule that has the force and effect of law." [O'Halloran v Secretary of State, 515 Mich 606, 636; 29 NW3d 429 \(2024\)](#).

Under the APA, a "rule" is defined, in pertinent part, as follows:

"Rule" means an agency regulation, statement, standard, policy, ruling, or instruction of general applicability that implements or applies law enforced or administered by the agency, or that prescribes [*35] the organization, procedure, or practice of the agency, including the amendment, suspension, or rescission of the law enforced or administered by the agency. Rule does not include any of the following:

* * *

(h) A form with instructions, an interpretive statement, a guideline, an informational pamphlet, or other material that in itself does not have the force and effect of law but is merely explanatory.

* * *

[HN38](#) (j) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected. [[MCL 24.207](#).]Therefore, under [MCL 24.207\(h\)](#) and [\(j\)](#), an agency may interpret a statute or exercise a permissive statutory power without engaging in formal rulemaking.

[HN39](#) "An executive agency's power derives from statute. Yet an agency has the authority to interpret the statutes it administers and enforces." [O'Halloran, 515 Mich at 635-636](#) (citation omitted). The PSC thus "has the authority to interpret the statutes it administers and enforces." [In re Reliability Plans II, 505 Mich at 119](#). "[A]n interpretive statement in itself lacks the force and effect of law because it is the underlying statute that determines how an entity must act, i.e., that alters the rights or imposes obligations." [O'Halloran, 515 Mich at 637](#) (quotation marks and citation omitted). "[W]here an agency [*36] policy interprets or explains a statute or rule, the agency need not promulgate it as a rule even if it has a substantial effect on the rights of a class of people because an interpretive statement is not, by definition, a rule under the APA." [Faircloth, 232 Mich App at 404](#). "Even if a regulated entity does not comply with the statement, the interpretive statement does not bind an administrative law judge to sanction an entity in an enforcement action, nor does it bind a court on judicial review." [Mich Farm Bureau v Dep't of Environment, Great Lakes, & Energy, 515 Mich 481, 524; 28 NW3d 629 \(2024\)](#). Also, "statements explaining how an agency plans to exercise a discretionary power are usually considered to lack the force and effect of law." *Id.* "[S]tatements announcing a policy the agency plans to establish in future adjudications generally lack the force and effect of law." [Id. at 526](#).

In the challenged order, the PSC provided interpretations of provisions of [PA 233](#), including with respect to the statutory terms CREO and ALU and the concept of hybrid facilities. The fact that the PSC misinterpreted portions of the statute does not mean that the PSC enacted a rule subject to APA rulemaking requirements. [HN40](#) "[A]n interpretive statement that goes beyond the scope of the law may be challenged when it is in issue in a judicial

proceeding. [*37] An interpretation not supported by the enabling act is an invalid interpretation, not a rule." [O'Halloran, 515 Mich at 637-638](#) (quotation marks and citation omitted). Through this order the PSC did not establish a regulation or policy having the force and effect of law. Rather, the PSC interpreted the relevant statutes, which did not require rulemaking.

The PSC also exercised a permissive statutory power under [PA 233](#) by establishing application filing requirements by order. See [MCL 460.1224\(1\)](#) ("A site plan required under section 223 or 225 shall meet application filing requirements established by commission rule or order to maintain consistency between applications."). [HN41](#) An agency's decision to exercise a permissive statutory power is also not a rule subject to APA rulemaking requirements. [MCL 24.207\(j\)](#); see also [Mich Trucking Ass'n v Mich Pub Serv Comm \(On Remand\), 225 Mich App 424, 430; 571 NW2d 734 \(1997\)](#) (noting that a certain statute "directly and explicitly authorizes the PSC to implement, either by rule or order, a safety rating system for motor carriers" and thus holding that "[b]ecause the safety rating system is clearly an exercise of permissive statutory power, it is exempted from formal adoption and promulgation under the APA[]").

Appellants assert that the PSC could not proceed by order because no public hearing was held despite the general [*38] applicability of the order. Appellants cite [MCL 24.232\(6\)](#), which states:

If a statute provides that an agency may proceed by rule-making or by order and an agency proceeds by order instead of rule-making, the agency shall not give the order general applicability to persons that were not parties to the proceeding or contested case before the issuance of the order, unless the order was issued after public notice and a public hearing.

The procedural history significantly undercuts appellants' position.

In its October order the PSC noted that its staff held eight public meetings regarding the implementation of [PA 233](#), with the proposed application filing instructions and procedures being the culmination of the work following those eight public meetings and a review of informal public comments. Following the filing of the staff's proposed draft, more than 100 comments were submitted to the PSC, including comments from many stakeholders. The PSC and its staff considered all of the comments in developing the application filing requirements. In sum, the PSC engaged in both formal and informal public outreach, and did not unlawfully or unreasonably fail to comply with any applicable APA requirement.

Affirmed [*39] in part, reversed in part, and remanded for further proceedings. We do not retain jurisdiction. No costs to any party, the matter being of public significance.

/s/ Christopher M. Murray

/s/ Michael F. Gadola

/s/ Michael J. Kelly

EXHIBIT

B

15. The Project will consist of solar panels and inverters arranged in photovoltaic (“PV”) arrays. Associated facilities and infrastructure include the Project substation, operations and maintenance building (“O&M”), gen-tie to point of interconnection (“POI”), underground electrical cables (collection) to the Project substation, perimeter fencing, landscape screening, county drain improvements, and gravel access roads to each PV array and the Project substation.

16. Construction is expected to begin in 2027, with commercial operation anticipated in 2029. Exact construction and operation dates are dependent on receipt of necessary permits, equipment, and approvals. Construction is expected to take approximately eighteen months.

17. As sited, the Project optimizes efficient use of land to generate solar power while avoiding impacts to natural resources or existing land uses. Additionally, as designed, the Project avoids impacts to wetlands, streams, and floodplains to the greatest extent practicable.

18. Birch Valley Solar anticipates that the Project will benefit the local community through the creation of local jobs, tax revenue benefits, and energy needs contributions.

19. While Ranger Power is the developer of the Project, Birch Valley Solar is the owner of the Project.

IV. SUMMARY OF LOCAL TOWNSHIP PERMITTING EFFORTS

20. On December 4, 2024, pursuant to Section 233 of PA 233, Birch Valley Solar sent Arbela Township its offer to meet to discuss the Project’s site plan.

21. On December 27, 2024, Arbela Township advised that it had a Compatible Renewable Energy Ordinance (“CREO”) under PA 233.

22. Despite the Township’s claim to have adopted a CREO under PA 233, Arbela Township's zoning ordinance includes an acreage cap for solar energy systems that is smaller than Birch Valley's project footprint, and is, therefore, more restrictive than PA 233.

EXHIBIT

C

A-4.(a) – The following local outreach documentation is to be provided:

EXHIBIT A-4.1 – CHIEF ELECTED OFFICIAL DOCUMENTATION

- i. A copy of applicant’s offer to meet with the chief elected official in each ALU.**
- ii. Documentation of the chief elected official response(s) to the meeting request if provided.**
- iii. A summary of all meetings including meeting dates held between the applicant and the chief elected officials.**

Birch Valley Solar, LLC (“Birch Valley Solar”) made multiple documented good-faith efforts to meet with the chief elected official of Arbel Township (“Township”) to discuss the proposed Birch Valley Solar Project, ordinance compliance, and local permitting.

Beginning in May 2024, Birch Valley Solar initiated formal outreach to the Township Supervisor (Ed Hunt), including written requests, to review and discuss the Township’s Solar Energy Systems Ordinance and to coordinate on permitting the Project locally rather than through the State. These requests were not limited in scope and included discussion of ordinance compliance, project design, community impacts, and potential collaboration. On numerous occasions, Birch Valley Solar expressed its concerns with the Township’s ordinance, which includes multiple restrictive zoning requirements that are outside of the scope of Section 226(8) of PA 233 and would prevent the Project from being permitted locally, including, but not limited to, a limitation on maximum project acreage within the Township.

Date: May 28, 2024

- Location: Phone Call
- Meeting Length: Approximately 10 minutes
- Attendees: Ed Hunt (Arbela Township Supervisor) and Hope Winkler (Birch Valley Solar Representative)
- Key Discussion Points:
 - Birch Valley Solar’s review of the Township’s proposed solar ordinance
 - Noting there are a few amendments to the ordinance that Birch Valley Solar would like to propose that would allow the Project to continue the permitting process with the Township
 - Next Steps:
 - Birch Valley Solar will email Ed Hunt with the proposed amendments

for the Township’s review and consideration.

On December 4, 2025, Birch Valley Solar made a formal offer to meet to the chief elected official in the Township to further discuss the proposed Project and review preliminary site plans. The meeting between Birch Valley Solar and Township representatives was held on January 14, 2025, in which the Township confirmed they had adopted a compatible renewable energy ordinance (“CREO”), which Birch Valley Solar objected to, and continues to object to, on the basis of the Township’s restrictive zoning requirements. Birch Valley Solar’s counsel also made multiple attempts to discuss the Township’s CREO determination with the Township’s counsel, but Birch Valley Solar’s counsel did not receive a response. For documentation of the meeting minutes and email correspondence with the Township refer to **Appendix 2, Exhibit A-4.1** attachments and below.

Date: January 14, 2025

- Location: Arbela Township Hall, 8935 Birch Run Road, Millington, MI 48746
- Time/Meeting Length: 10:00 AM Eastern Time, approximately 1 hour
- Attendees:
 - Arbela Township: Ed Hunt (Supervisor), Tim Anderson (Trustee), Neil Hecht (Planning Commission Member), and Cindy Willson (Planning Commission Member)
 - Birch Valley Solar (“Ranger”): Hope Winkler and Drew Vielbig
- Key Discussion Points:
 - Overview of Project Development
 - Overview of Site Plan
 - Site Plan is designed to meet the requirements of P.A. 233
 - Ranger noted there are multiple requirements in Arbela Township’s ordinance that do not meet the requirements of P.A. 233 (4% cap on total township acreage, zoning districts, etc.)
 - Ranger stated it would be beneficial for our attorneys to further discuss with one another, but the Township denied this request.
 - Supervisor Hunt confirmed the Township has a solar CREO, but no storage ordinance
 - Solar project will be permitted with Arbela Township
 - Storage project will be permitted with the MPSC
 - Planning Commission Member expressed concerns related to the size of the Project.

- Ranger stated the procedural requirements outlined in PA 233, such that if Arbela Township were to deny our application or if the Township does not respond within 120 days of submittal, then Ranger would subsequently submit an application with the MPSC.
- Township Questions
 - Equipment components, lifespan, and recycling
 - Project siting
- Project Landscaping
 - Ranger to connect with adjacent project neighbors to discuss landscaping options
- Open House
 - Ranger plans to rent Township Hall late February/early March
- Host Community Agreement
 - Ranger will prepare a draft for the Township to review and provide feedback

Following submission of the Special Use Permit and Site Plan application, Birch Valley Solar continued to work in good faith with the Township, attempting to provide additional resources, including an offer to facilitate a tour of a nearby operational solar project, and attempting to schedule additional meetings with the Township Supervisor and Planning Commission Chair. The Township indicated that no further meetings would occur prior to the public hearing for the Project's local permit application. In a further effort of good faith, concurrent to its special use permit, Birch Valley Solar attempted to seek multiple zoning variances from the Township's Zoning Board of Appeals to allow for relief from multiple overly restrictive elements of the Township's solar ordinance. Despite these efforts, on October 29th, 2025, the Township's Planning Commission conducted a duly noticed public hearing and ultimately denied the application, which was memorialized in a formal resolution adopted by the Planning Commission.

Tuscola County Clerk

From: [Brittany Zachariahs](mailto:Brittany.Zachariahs@tuscolacounty.org)
To: clerk@tuscolacounty.org
Cc: [Ernest Schenk](mailto:Ernest.Schenk@tuscolacounty.org); [Eric Rademacher](mailto:Eric.Rademacher@tuscolacounty.org); [Drew Vielbig](mailto:Drew.Vielbig@tuscolacounty.org); hope@rangerpower.com
Subject: Birch Valley Solar - Soil and Economic Survey Report Request
Date: Wednesday, May 21, 2025 5:45:00 PM
Attachments: [image001.png](#)

Good afternoon,

This email is on behalf of Birch Valley Solar, a proposed utility-scale solar project being applied for in your County. Atwell was contracted by Birch Valley Solar, LLC, for assistance on the proposed project application and submittal. The Application is being submitted to the local municipalities for approval and is also in compliance with the Michigan Public Service Commission (MPSC) Public Act 233 and its requirements. As part of the MPSC application process, the Applicant is required to submit a "Soil and Economic Survey Report". Per the MPSC, this requires coordination with the County for the report.

The proposed project area (consisting of approximately 1,594-acres) exists within the east-central portion of the lower peninsula of Michigan within Arbela Township in Tuscola County.

Arbela Township (Township 10 North; Range 07 East; Sections 9, 10, 15-18, and 21)

Under the PA 233 application filing requirements, a soil and economic survey report is required to be submitted per the NREPA Act 451 of 1994 in Exhibit A-6.1. Atwell discussed this requirement with the MPSC, and on May 6, 2025, the commission recommended the Applicant contact the County for a copy of this report (or good faith effort to procure the report) to include with our application.

Under Sections 60302-60304 under the NREPA, the soil and economic survey report is defined as the following:

- *The soil and economic survey provided for in this part shall be conducted by counties; and the order in which the soil and economic survey is conducted shall be determined by the department. The purpose of the work is to procure and make available for public use information and data as to the character of the lands surveyed; their adaptability to agricultural purposes or similar uses; the various crops, if any, that may be profitably raised on those lands; and such other matters as are considered desirable and advantageous. The details of the work shall be under the direction and control of the department, which shall employ assistants as the department considers necessary. The compensation of these persons shall*

be established by the department, and paid as provided in this part. The employees of the department may be reimbursed only for money actually and necessarily expended in the performance of their duties under this part, such reimbursement to be made out of the fund created by this part. Upon completion of the soil and economic survey in any county, the department shall cause a full and detailed report of the soil and economic survey to be made. The department shall cause as many copies of the report to be printed as the department determines are necessary. The expense of the printing shall be paid out of the general fund in the same way that other state printing is, by law, required to be paid for. The report required under section 60303 to be made upon the soil and economic survey in each county, subject to this part, shall set forth such information and data as will fulfill the general purpose defined in section 60302. However, the report shall not state or represent the money value of land surveyed. Insofar as is possible and expedient, the land surveyed shall be classified as to its agricultural adaptability and general character and as to the uses to which it may be put. Maps shall be prepared and incorporated in the report as may be considered necessary for public information and convenience. A copy of the report shall be sent to every public library in the state, and the remainder of the copies shall be kept for distribution, subject to the rules and regulations pertaining to the report that the department may, from time to time, adopt.

Thank you in advance for your assistance and let us know if you have any questions.

Brittany Zachariahs

Associate Project Manager

ATWELL, LLC

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Local Solutions | National Presence



EXHIBIT

D

23. Nonetheless, since the Township claimed to have a CREO, Birch Valley Solar proceeded with the local process in good faith consistent with MPSC requirements, despite the fact that Birch Valley's special use permit application could not be approved locally without a variance due to the Project's exceedance of the Township's acreage cap.

24. Thereafter, on October 29, 2025, Arbel Township denied Birch Valley Solar's permit application despite the Project's compliance with the statute.

V. NARRATIVE, EXHIBITS, TESTIMONY, AND RESERVATION OF RIGHT TO AMEND

25. Concurrently with the filing of this Application, Birch Valley Solar is filing a summary Solar Energy Facility Siting Certification Narrative describing the Project (**Appendix 1**), supporting exhibits (**Appendix 2**), and written direct testimony (**Appendix 3**) in support of its Application. Reference to this material will provide additional details regarding the proposal and relief being sought. The relief described in the narrative, exhibits, and direct testimony should be considered as if specifically requested in this Application.

26. Birch Valley Solar reserves the right to revise, amend, or otherwise change the relief it is requesting in any way appropriate depending upon the duration and progress of hearings in this proceeding, the issuance of orders that have an impact upon this case, or the occurrence of other material events.

VI. REQUESTED RELIEF

WHEREFORE, Birch Valley Solar respectfully requests that the Michigan Public Service Commission approve the Application and grant Birch Valley Solar a Renewable Energy or Storage Siting Certificate consistent with the Project.

Dated: April 10, 2026

EXHIBIT

E

ARBELA TOWNSHIP PLANNING COMMISSION

RESOLUTION TO DENY SPECIAL USE PERMIT AND SITE PLAN FOR BIRCH VALLEY SOLAR PROJECT

RESOLUTION NO. 2025- 10-29-02

At a meeting of the Arbela Township Planning Commission (“Planning Commission”) held at the Arbela Township Hall located at 8935 Birch Run Rd, Millington, MI on October 29, 2025 at 6:00 PM.

PRESENT: Waelzlein, Higgins, Athey, Wilson, and Kribs

ABSENT: Hecht (conflict of interest), Weber (conflict of interest)

The following resolution was offered by Kathie Athey and supported by Cindy Wilson.

WHEREAS, Birch Valley Solar, LLC (a subsidiary of Ranger Power, LLC) (“Applicant”), submitted an application for a special use permit (“SUP”) and site plan approval for a Commercial Solar Energy System commonly referred to as the “Birch Valley Solar Project” (the “Project”). All materials submitted by Applicant for purposes of its Project SUP and site plan shall be considered its Application (“Application”); and

WHEREAS, Applicant’s application for a SUP and site plan approval includes the following documents: (1) A “Renewable Energy Land Use Application” dated July 3, 2025 prepared by Atwell, LLC consisting of eight pages and appendices A through R; (2) Appendix A, titled “Arbela Township Application Form for Special Use Permit”, which identifies pre-application requirements, application procedures, applicant information, project and property information, site plan information and requirements, and decommissioning plan requirements, consisting of eight pages; (3) Appendix B, titled “Preliminary Site Plan”, dated July 2, 2025, which includes Project site plans and drawings prepared by Atwell, LLC, consisting of 39 pages; (4) Appendix C, titled “Visual Simulation” dated June 24, 2025, which includes materials prepared by RVi Planning + Landscape Architecture, consisting of 17 pages; (5) Appendix D, titled “Pre-Construction Noise Analysis” dated July 9, 2025, which includes the Pre-Construction Noise Analysis prepared by Hankard Environmental, Inc., consisting of 31 pages; (6) Appendix E, titled “Decommissioning Estimate” dated June 27, 2025, which includes tables reflecting PC Plant Anticipated Disassembly Methods, Generation Substation Anticipated Disassembly Methods, and Probably Cost, consisting of five pages; (7) Appendix F, titled “Glare Study” dated June 25, 2025, which includes a Solar Glare Analysis prepared by Atwell, LLC, consisting of six pages; (8) Appendix G, titled “Dark Skies Lighting Plan” dated June 27, 2025, which includes a list of principles for responsible outdoor lighting, consisting of three pages; (9) Appendix H, titled “Fire Response Plan” dated July 9, 2025, which includes a fire protection program, local consultation, on-site equipment, contingency plans, and fire response training and plan outlines prepared by Atwell, LLC, consisting of six pages; (10) Appendix I, titled “Emergency Response Plan” dated July 9, 2025, which includes contingency plans, community notification procedures, and emergency response routes and plan updates, prepared by Atwell,

LLC, consisting of six pages; (11) Appendix J, titled “Environmental Impact Analysis”, which includes attachments A through D that provide preliminary constraints map, information for planning and consultation, Michigan natural features inventory results, and Michigan endangered species determination key, consisting of 48 pages; (12) Appendix K, titled “Draft Host Community Agreement” dated June 24, 2025, which includes a draft Host Community Agreement prepared by Atwell, LLC, consisting of five pages; (13) Appendix L, titled “Recorded Memorandums”, consisting of 95 pages; (14) Appendix M, titled “Soil and Economic Survey Report” dated June 25, 2025, which includes a custom Soil Resource Report for Tuscola County, Michigan Birch Valley Solar Project area and buffer, consisting of 243 pages; (15) Appendix N, titled “Stormwater Minimize, Mitigate, and Repair Plan” dated June 27, 2025, which includes measures implemented to minimize/avoid stormwater impacts, activities to mitigate unavoidable stormwater impacts, and plans to repair impacts during and after construction, consisting of 14 pages; (16) Appendix O, titled “Waste Characterization Study” dated June 27, 2025, which includes information on generated waste, training, and awareness, consisting of four pages; (17) Appendix P, titled “Agency Coordination” dated July 3, 2025, consisting of 196 pages; (18) Appendix Q, titled “Property Value Report” dated June 27, 2025, which includes a Real Estate Adjacent Property Value Impact Report prepared by CohnReznick Advisory LLC, consisting of 38 pages; (19) Appendix R, titled “Tax Benefit Memorandum” dated June 26, 2025, which includes a property tax impact of utility-scale solar development memorandum, consisting of six pages; and

WHEREAS, the Applicant has submitted a Preliminary Application Review Response. The Applicant’s Preliminary Application Review Response submittal includes the following documents: (1) A Memorandum, regarding “Birch Valley Solar Project – Preliminary Application Review Response” dated September 26, 2025, which lists out requested edits made to the Application, consisting of 11 pages; (2) A Special Use Permit Application Narrative, submittal date of July 07, 2025, and revision date of September 26, 2025, which includes a Solar Energy Systems Ordinance Checklist, project and applicant information, site plan approval and special uses information, and certifications, construction codes, and schedules, consisting of 41 pages; (3) An updated Appendix B, which includes two parts: (a) Titled, “Preliminary Site Plan” with a submittal date of July 6, 2025, and a revision date of September 26, 2025, prepared by Atwell, LLC, consisting of 51 pages; (b) Titled “Landscape Markups” with a submittal date of July 6, 2025, and a revision date of September 26, 2025, prepared by Atwell, LLC, consisting of 51 pages; (4) An updated Appendix F, titled “Glare Study: Birch Valley Solar Tuscola County, MI,” prepared by Atwell, LLC, which includes a solar glare analysis, fundamentals, and results, consisting of 1,004 pages; (5) An updated Appendix I, titled “Emergency Response Plan” dated September 18, 2025, prepared by Atwell, LLC, which includes contingency plans for electrical hazards, severe weather events, physical security breaches, mechanical failures, chemical spills, and community notification procedures, consisting of six pages; (6) An updated Appendix O, titled “Waste Analysis and Characterization Study” dated September 25, 2025, prepared by Atwell, LLC, which includes training and awareness information, types of waste generated, and information regarding waste handling and storage, consisting of four pages; (7) An updated Appendix P, titled “Agency Coordination” dated September 26, 2025, prepared by Atwell, LLC, which includes agency coordination, coordination outreach timeline information, status reports, and next steps, consisting of 205 pages; (8) Appendix S, titled “Maintenance Plan: dated September 18, 2025, prepared by Atwell, LLC, which includes information regarding fugitive dust management practices and vegetation maintenance plans, consisting of four pages; and

WHEREAS, the proposed Project generally consists of the following improvements: photovoltaic (PV) solar panels, racking and support structures, access roads, underground and above-ground electrical conduits, fencing, a facility substation and switch yard, an operation and maintenance building, and other ancillary facilities and structures. The proposed improvements are planned in a large portion of Arbela Township; and

WHEREAS, Arbela Township (“Township”) retained a professional planning consultant the Spicer Group, Inc. (“Planning Consultant”) and legal counsel Fahey Schultz Burzych Rhodes PLC (“FSBR”) (collectively, the “Township’s Consultants”) to review the Application and provide guidance to the Planning Commission to assist with zoning review of the Project; and

WHEREAS, Planning Consultant reviewed the Application for consistency with the Arbela Township Zoning Ordinance (“Zoning Ordinance”) and prepared a formal report dated October 29, 2025 (“Planning Consultant Report”) outlining its overview of the Project, findings, recommendations, and proposed conditions for approval of the Applicant’s request. This report followed an initial August 25, 2025 report prepared by the Planning Consultant also evaluating Project Application submittals for completeness and compliance with the Zoning Ordinance (“Initial Planning Consultant Report”). The Planning Consultant Report and Initial Planning Consultant Report identified certain characteristics of the Project that do not satisfy the Zoning Ordinance, and while the Commission may be able to impose conditions to satisfy the Zoning Ordinance, the Commission is not obligated to do so and therefore incorporates within this resolution those characteristics identified in the reports as a basis supporting the Planning Commission’s decision; and

WHEREAS, in accordance with Michigan law, the Planning Commission held a duly-noticed public hearing where it heard comments and input related to the Applicant’s Application from citizens, the Applicant, and the Township’s Consultants. After receiving public comments and input, the Planning Commission closed the public hearing to further study, deliberate, and review the Application based on the input it received at the public hearing; and

WHEREAS, after reviewing the Application and Planning Consultant Report, deliberating, and hearing recommendations from the Township’s Consultants and input from the public and stakeholders during public hearing, the Planning Commission has reviewed the Application and found it to be necessary to deny the SUP and site plan zoning requests for Applicant’s Project.

NOW, THEREFORE, BE IT RESOLVED the Arbela Township Planning Commission **DENIES** Applicant’s request for an SUP and site plan for the reasons set forth below.

- A. Incorporation of Supporting Materials:** All supporting information in the Planning Consultant Report, Initial Planning Consultant Report, all relevant information in the Application, and all information gleaned from the public hearing related to the Project shall be incorporated to support any and all findings in this decision.

- B. Special Use Permit, Discretionary Findings:** The Planning Commission makes the following findings to support denying Applicant’s SUP:

1. **Basis for Determination, Section 7.05.1.** The Zoning Ordinance requires all applicants to comply with the discretionary standards contained in Section 7.05.1, General Standards for Approval of Special Uses.

a) **Section 7.05.01(a): Zoning District:** The proposed Project is located in a zoning district that can authorize that land use, but the Project does not meet requirements to be approved by the Planning Commission.

b) **Section 7.05.01(b): SUP Standards:** The Proposed Project does not comply with applicable standards for its special use requirements.

c) **Section 7.05.01(c): The proposed special use will be consistent with the intent and purpose of the Township Master Plan, as well as the intent and purpose of the zoning district in which the proposed use will be located.** The Project, as submitted, is not consistent with the Township Master Plan. The Township's adopted 2014 Master Plan notes that "open space and natural areas are important to the quality of life in Arbelá Township" (page 28). An objective supporting this principle, "Protect and preserve farmland in Arbelá Township", is also identified on page 28 of the Master Plan. The Project anticipates occupying approximately 7.2% of the available land within the Township, nearly twice that allowed under the Solar Ordinance (4%). Approving the Project would greatly diminish the available farmland within the Township.

d) **Section 7.05.1(d): The proposed special use will not result in a material burden on police and fire services, nor on other public services and facilities.** The proposed Project will result in a material burden on police and fire services. The Applicant has submitted a fire response plan in Appendix H and an emergency response plan in Appendix I of the Application. The Applicant provides additional discussion on this requirement on page 29 and 30 of the application narrative dated September 26, 2025. Appendix P provides correspondence the Applicant has had with local emergency services. The Applicant has stated within the narrative, "Birch Valley Solar will continue to coordinate with local fire and emergency personnel prior to the commencement of operation to answer questions and establish knowledge of on-site emergency protocols". The Applicant submitted email correspondence in Appendix P between a representative of Ranger Power and the Tuscola County Emergency Manager. As outlined below, the fire response and emergency response plans do not account for input

and noteworthy outcomes from any consultations from emergency responders and do not appear to be completed and approved plans by first responders to ensure adequate emergency response to the Project.

- e) **Section 7.05.1(e): The proposed special use will not diminish the opportunity for adjacent property owners to use and develop their properties as zoned.** The proposed Project will diminish the opportunity for adjacent property owners to use and develop their properties as zoned. As stated above, the Project will occupy a significant portion of the available agricultural land within the Township, particularly in excess of the zoning policies of the Township. The area identified also consists of large tracts of prime agricultural land key for the Township's agricultural business practices. During the construction phase of the Project, there will be an increase in traffic as well as the use of large construction equipment which could disrupt the agricultural uses on nearby properties. Furthermore, due to sound non-compliance issues, neighboring properties will be adversely impacted from using their lands for land uses authorized in relevant zoning districts.

- f) **Section 7.05.1(f): The proposed special use will be designed, constructed, operated, and maintained so as not to negatively impact the character of land uses in the surrounding area.** Applicant has indicated that the Project will be designed, constructed, operated, and maintained so as not to negatively impact the character of land uses in the surrounding area. However, the Project does not meet the requirements of the Zoning Ordinance and Solar Ordinance. Notably, the Project will encompass an area that far exceeds the maximum allowed under the Solar Ordinance, which would significantly diminish the available farmland within the Township and change the character of the community.

- g) **Section 7.05.1(g): The proposed special use will not involve uses, activities, processes, materials, or equipment that will create a nuisance for other properties in the vicinity by reason of traffic, noise, smoke, fumes, glare, odors, or the accumulation of scrap or waste materials.** The Project will involve uses, activities, processes, materials, or equipment that will create a nuisance for other properties in the vicinity by reason of noise. The pre-construction sound study submitted by Applicant as Appendix D of the Application indicates that the Project would result in excessive noise that would negatively impact

neighboring properties—above levels that incorporated in PA 233 of 2023, the state siting bill for utility-scale renewable energy projects in Michigan.

C. Section 5.05.1 Standards for Site Plan Determination

1. **Section 5.05.1 (a): There must be a proper relationship between the proposed use and existing streets and highways within the vicinity of the proposed use.** As outlined below, no agreement has been entered with the Road Commission to moderate extensive construction traffic. Therefore, this standard is deemed to not have been met.
2. **Section 5.05.1 (b): Proposed driveway entrances and exits, parking areas, service drives, and other internal circulation routes must be located and arranged so as to assure the safety and convenience of pedestrian and vehicular traffic.** As discussed within this Resolution, the Application lacks information particularly related to Project laydown yards and secondary laydown yards as to parking and general access. Therefore, this standard is not met.
3. **Section 5.05.1 (c): All buildings, structures, driveways, internal circulation routes, parking areas, and storage areas must be designed and located so as to minimize potential adverse impacts on adjacent and nearby properties.** This standard is not met. The structures associated with this Project occur on lands too large under standards promulgated under the Solar Ordinance. Moreover, as discussed below, the Project will exceed sound standards required under state law and in the Solar Ordinance.
4. **Section 5.05.1 (d): As many natural features of the landscape as possible shall be incorporated into the design and layout of the site so as to buffer the site from adjacent incompatible land uses, to assist in preserving the general appearance of the surrounding area, and to help control erosion of the discharge of water. Reasonable buffer and open space areas may be required.** Landscaping standards intended to buffer the Project, have not been met and the Applicant has requested impermissible waivers from such standards. Moreover, the Applicant has not utilized natural features of the landscape for appropriate buffering to meet sound standards. A stormwater plan with the Tuscola County Drain Commissioner was also not finalized to help control water discharges.
5. **Section 5.05.1 (e):** Not applicable due to other landscaping requirements more specific to the land use.

6. **Section 5.05.1 (f): The land use subject to review and approval shall comply with all applicable provisions of this Ordinance.** This standard is not met for reasons identified within this Resolution related the Project's compliance with the Solar Ordinance (amendment to the Zoning Ordinance) and Zoning Ordinance standards.
7. **Section 5.05.1 (g): All buildings, structures, parking areas, and storage areas will be accessible to emergency vehicles at all times of the year.** Due to a lack of a finalized emergency response and fire response plan, the Planning Commission cannot find this standard met. Moreover, the lack of specificity as to the arrangement of laydown yards, including parking, where large groups of individuals will assemble for the land use does not allow the Planning Commission to find this standard to be met.
8. **Section 5.05.1 (h): The site plan as approved must be consistent with the intent and purpose of this Zoning Ordinance to promote the public health, safety, and general welfare.** This is not met. The land use does not comply with the Zoning Ordinance including the Solar Ordinance amendment intended to promote the public health, safety, and general welfare. Moreover, comments received by the public indicated extreme concerns with the Project as to the health, safety, and general welfare.

D. PA 233 as Incorporated by the Township Solar Ordinance – Noncompliance: Ordinance No. 3 of November 11, 2024 (“Solar Ordinance”) amended the Township Zoning Ordinance to address, among other things, regulations for Commercial Solar Energy Systems. Notably, the Solar Ordinance in Section G(C) and Section K requires the Application to adhere to the Solar Ordinance as well as relevant requirements within PA 233 of 2023, including MCL 460.1223(3)(a) requiring compliance with requirements of Section 225(1) of PA 233 except 225(1)(j) and (1)(s). Under that statute and the Solar Ordinance, Arbel Township can require other information necessary to determine compliance with the Solar Ordinance. The following findings below demonstrate non-compliance with the Solar Ordinance based on the text of PA 233 and Solar Ordinance standards requiring disapproval of the Application. Likewise, the findings also support the Application not being complete as required under state law and the Solar Ordinance.

1. **Sound, Solar Ordinance Sections H(iv), D(Q).** The Applicant has provided a pre-construction noise analysis in Appendix D of the application. The Arbel Township Zoning Ordinance limits noise levels to 55 dBA at the outer wall of the nearest dwelling located on an adjacent non-participating property. The study followed the sound modeling parameters established by the Michigan Public Service Commission, which include applying a +5 dBA correction to all equipment sound power levels to account for potential tonal noise from project

equipment, as well as a +6 dBA correction to account for pressure doubling between free-field noise levels and those measured on an external façade or outer wall of a dwelling. The study evaluated 172 noise-sensitive receptors, including 162 non-participating residences and 10 participating residences. The study found that predicted noise levels at the outer façades of dwellings on non-participating properties were below the 55 dBA limit, with the exception of five (5) dwellings (receptors 5, 6, 10, 13, and 14). See Appendix D, Section 3.2. The study identified potential mitigation measures for these receptors, including selecting inverters with lower noise emissions, installing noise-reducing hoods on the proposed inverter models, or relocating inverters farther from the affected receptors. Compliance was demonstrated in the noise analysis by modeling low-noise hoods over the inverters nearest the five receptors, which were assumed to achieve a reduction of six (6) dBA. However, detailed sound mitigation specifications from the inverter manufacturer were not available to verify this reduction. Eleven (11) inverters located nearest the identified receptors were modeled with this assumption. Under these conditions, the predicted noise levels at all non-participating residences were below the 55 dBA limit.

Within the Project application, the Applicant has not confirmed that the project design incorporates the sound mitigation measures identified in the study to ensure compliance with the 55 dBA threshold. Upon review of the site plans as noted in the Planning Consultant's Report, the inverter locations appear consistent with those shown in the sound study, indicating that relocation of the inverters to increase distance from affected dwellings was not implemented. Additionally, the inverter model referenced in the study prior to mitigation is the same model listed on Sheet No. 38 of the site plans, indicating that a quieter inverter was not selected for the Project. The application also makes no mention of noise-reduction hoods, which were necessary in the study to bring noise levels into compliance with the Ordinance at the five (5) non-participating dwellings identified above. This standard is not met.

- 2. MCL 460.1225(1)(c) (A description of the energy facility, including a site plan as described in section 224).** On pages 3 and 4 of the Application narrative dated September 26, 2025, it is stated "Refer to Section I above and the Preliminary Site Plan located in Appendix B for a description of the energy facility." Section I of the application narrative is titled, "Compliance with Permit" that notes conditions of ongoing permit compliance. It is not clear how Section I applies to a description of the energy facility noted.

3. **MCL 460.1225(1)(f) (The expected direct impacts of the proposed energy facility on the environment and natural resources and how the applicant intends to address and mitigate these impacts).** The Applicant provided an environmental impact analysis in Appendix J of the Application. Within the environmental impact analysis, the subconsultant, Atwell, identified five (5) federal or state threatened, endangered, or special concern plan animal species that could occur within a 1,000-foot radius of the Project area. When the Project area was evaluated, it was found that no suitable habitat was found for four (4) out of the five (5) species identified within the report. One (1) species identified, the tricolored bat, was found to have some suitable habitat within the Project Area. Atwell identified conservation measures may be needed for various bat species, including acoustic monitoring surveys throughout the 2025 monitoring season. Additional monitoring will need to be completed to understand the presence of the listed bat species. Similarly, as outlined in the Incompleteness Memorandum by the MPSC in U-21932-0012¹ (para 29), it is not apparent in Appendix J how the proposed Project complies with the Michigan Environmental Protection Act, MCL 324.1705(2) as the section is not referenced.
4. **MCL 460.1225(1)(g) (Information on the effects of the proposed energy facility on public health and safety).** The Applicant identifies that “the project will not adversely affect the public health, safety, and welfare of the community” as stated on pages 25 – 26 of the Application narrative dated September 26, 2025. The Applicant states that “the Project will preserve the character of the area through design measures such as perimeter fencing, landscape buffering, and planting of perennial vegetative ground cover throughout the site.” However, Applicant’s sound model as evaluated by the Planning Consultant's Report identifies sound levels above 55 dBA in the absence of mitigation measures, which are not depicted on actual Project plans. Again, upon review of the site plans, the inverter locations appear consistent with those shown in the sound study, indicating that relocation of the inverters to increase distance from affected dwellings was not implemented. The inverter model referenced in the study prior to mitigation is the same model listed on Sheet No. 38 of Appendix B, indicating that a quieter inverter was not selected for the project. The application also makes no mention of noise reduction hoods, which were necessary in the study to bring noise levels into compliance with the Solar Ordinance at five (5) non-participating dwellings. This standard is not met.

¹ For purposes of this Resolution, the Township finds the Incompleteness Memorandum in U-21932-0012 relevant as it evaluates the completeness of application submissions under incorporated standards of PA 233 of 2023. It also dealt with a similar utility-scale solar project submitted by Ranger Power.

5. MCL 460.1225(1)(i) (A statement and reasonable evidence that the proposed energy facility will not commence commercial operation until it complies with applicable state and federal environmental laws, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106). On page 26 of the Application narrative dated September 26, 2025, the Applicant states, “Birch Valley Solar recognizes the importance of complying with all relevant environmental regulations before commencing operations. Birch Valley Solar is committed to maintaining compliance and, as such, the proposed Project will not begin commercial operation until all applicable state and federal environmental laws, including NREPA, are met. This commitment is supported by evidence such as permit applications, environmental assessments, and correspondence with regulatory agencies, which will be maintained throughout the Project development process”. As outlined in the Incompleteness Memorandum by the MPSC in U 21932-0012 (para 33), “Cultural Resources” under Appendix J does not show that the formal consultation process with SHPO (State Historic Preservation Office) has been initiated and an archaeological assessment and historical survey have not begun or are incomplete. Based on the above Incompleteness Memorandum, the Applicant should have provided in greater detail the expected direct impacts of the proposed Project on cultural and historical resources, including sites; a plan describing how these impacts are proposed to be addressed and/or mitigated; and reasonable evidence that the proposed facility will not begin commercial operation until it complies with applicable state and federal law. A description of the expected direct impacts could have included a desktop survey of cultural and historical resources within the Project area and an appropriate buffer; and the plan to address and mitigate impacts / reasonable evidence for compliance with law may include a description of the Applicant’s plan and timeline for completing required field surveying. Each should have been conducted in consultation with SHPO or provide a justification for any consultation the Applicant deemed not necessary. As identified above, it is also not apparent in Appendix J how the proposed Project complies with the Michigan Environmental Protection Act, MCL 324.1705(2) as it is not referenced.

6. **MCL 460.1225(1)(k) (Evidence of consultation, before submission of the application, with the department of environment, Great Lakes, and energy and other relevant state and federal agencies before submitting the application, including, but not limited to, the department of natural resources and the department of agriculture and rural development).** The Township notes that Appendix P dated September 26, 2025, dealing with agency consultation, contains references to meetings not relevant to this Project. As it related to this standard, the Planning Consultant Report required proof of a meeting with MDNR and a summary of findings, as well as with MDARD and NRCS (Natural Resources Conservation Service), which is not contained for this project.

7. **MCL 460.1225(1)(n) (If the proposed site of the energy facility is undeveloped land, a description of feasible alternative developed locations, including, but not limited to, vacant industrial property and brownfields, and an explanation of why they were not chosen).** Pages 26 – 29 of the Project’s application narrative dated September 26, 2025, describes the process that Ranger Power goes through in developing solar energy projects and potential sites and breaks this process into three (3) phases. Each of the phases are described within the Application narrative. In the narrative the Applicant states, “Ranger Power, as a private developer, sought and evaluated prospective areas for solar energy development in Michigan and the Midwest. Ranger Power considered brownfields as well as greenfield sites. However, the proposed Project requires approximately 1,500 acres of nearly contiguous developable land in close proximity to existing transmission facilities. There were no brownfield sites identified in Michigan that meet these siting requirements.” In addition, the Applicant states, “Birch Valley Solar reviewed the Open and Closed Landfill/Brownfield Site Boundaries available throughout Tuscola County. Many sites less than 25 acres are scattered throughout the county.” To conclude the Applicant states, “two overriding siting principles that limit the practicable locations for utility scale solar developments are 1) having enough contiguous land to support a large-scale project (in the case of the Project, approximately 1,500 acres), and 2) immediate proximity to a viable grid interconnection point for the power. The brownfield sites Birch Valley Solar evaluated all fail to meet these two overriding siting principles.” As outlined in the Incompleteness Memorandum by the MPSC in U-21932-0012 (para 17), the MPSC requires a map and description of each alternative site location, proposed site layout, or other alternative that was considered for the proposed Project but was not ultimately selected for development, and requires rationale for why each such alternative was not selected. The same would assist the Township to determine whether alternative sites were considered, and failing to provide the information makes the Township not be able to find this requirement met for

purposes of siting within the Township. The Application generally outlines a process to identify this proposed Project site, but does not describe or provide detail on sites that were chosen to not be developed to allow independent evaluation as to why they are not feasible alternatives.

- 8. Solar Ordinance, Section D(C)(xi) and MCL 460.1225(1)(q) (A fire response plan and an emergency response plan).** The Applicant has submitted a fire response plan in Appendix H and an emergency response plan in Appendix I of the Application. The Applicant provides additional discussion on this requirement on page 29 and 30 of the application narrative dated September 26, 2025. Appendix P provides correspondence that the Applicant has had with local emergency services. The Applicant submitted email correspondence in Appendix P between a representative of Ranger Power and the Tuscola County Emergency Manager. No evidence of consultation between the Applicant and local fire and emergency responders was submitted other than obtaining contact information; and the language from the narrative indicates that a plan is not finalized to address on-site emergencies (which supports the Township not being able to approve the Project). Such evidence could include meeting dates, attendees, and any noteworthy outcomes or revisions to the fire response and emergency response plan as a result of such consultation. See generally, Incompleteness Memorandum by the MPSC in U-21932-0012 (paras 20 and 21) identifying similar issues from the same applicant on such plans and further noting substance on plans that the MPSC would require that are not addressed in the Applicant’s submittals.
- 9. Solar Ordinance, Section D(C)(xii) and MCL 460.1225(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 Applicant has provided a decommissioning estimate within Appendix E of the Application. In addition, page 30 of the Application narrative dated September 26, 2025, provides additional discussion on project decommissioning. The Applicant has identified that the decommissioning plan and estimate, “cover all essential aspects of safe removal of the facility and land restoration.” The Applicant states, “site restoration selection details steps to return the land to a state similar to its pre-construction condition, following PA 166 requirements.” The Applicant states that, “due to confidentiality requirements, the Applicant is prohibited from providing the entire lease agreement with the landowners; if requested by the Township, the Applicant can and will provide the Township with a general description of the requirements included in the Project’s easement agreements

relating to the Applicant's decommissioning obligations." The Township cannot evaluate the adequacy of the decommissioning plan to ensure that Applicant's plan is consistent with agreements between it and landowners. Applicant should have provided evidence of such information and could have done so by redacting confidential terms in any landowner agreement.

E. Special Use Permit Requirement Deficiencies. The Solar Ordinance in Sections G(C) and Section K required the Application to adhere to the Solar Ordinance as well as relevant requirements within PA 233 of 2023, including MCL 460.1223(3)(a) requiring compliance with requirements of Section 225(1) of PA 233 except 225(1)(j) and (1)(s). The Township may request more information necessary to determine compliance with the Solar Ordinance. See MCL 460.1223(3)(a) and Solar Ordinance, Section G(C). The Solar Ordinance requires various information under Section D related to issuance of a special use permit. Projects must include information included in application filing requirements developed by the MPSC, which includes the October 10, 2024 Application Filing Instructions and Procedures. See Solar Ordinance, Section H(vi) (requirements to follow more stringent standards by MPSC); see also MCL 460.1224 (site plans requiring filing requirements by the MPSC). The following have been found to be special use permit deficiencies under the authority above; however, previously mentioned deficiencies (e.g., overlapping site plan and PA 233 requirements) identified above are not repeated.

- 1. Parcel Identification, Solar Ordinance Section D(C)(ii).** Applicant provided information in Appendix L of the Application including copies of recorded lease memorandums. However, the Planning Consultant's Report found that some parcels within the memorandums did not match legal descriptions or parcels numbers utilizing Tuscola County's information system. According to the Planning Consultant's Report, the Applicant represented the errant information as typographical errors that were being corrected but had not yet been corrected. Therefore, this requirement has not been met. This also is a failure to meet MCL 460.1225(1)(h).
- 2. Ground Cover, Solar Ordinance Section D(M).** Although the Applicant has indicated that the site will be seeded with drought tolerant, perennial vegetative ground cover on Site Plan Sheet 32 of Appendix B, there is no reference to use of the Michigan Pollinator Habitat Planning Scorecard for Solar Sites as required under the October 10, 2024 Application Filing Instructions and Procedures in Section 7.3(5).
- 3. Landscaping, Solar Ordinance Section D(O).** As identified in the Planning Consultant's Report, the landscaping plan submitted by the Applicant does not comply with the Solar Ordinance as: (1) shrubs are too short at the time of

planting; (2) uses substitute existing vegetation in lieu of landscaping requirements; (3) there are varied locations of landscaping; and (4) the Applicant desires giving residents a one-time stipend to exempt landscape requirements, which is not provided by in the Solar Ordinance.

4. **(Variance Requested) Acreage Limitation, Solar Ordinance Section E.** The Project exceeds the Solar Ordinance's acreage cap. A variance request was submitted for, “the 4% maximum acreage limit only applies to the actual SES, excluding those areas on a parcel that are outside of the SES footprint.” This standard could only be met if a variance were to be granted. The Township limits the amount of land within that can used for Solar Energy Systems to four (4) percent, which equates to approximately 858 acres. The Project proposed by the Applicant is a total of 1,445 acres which equates to approximately 7.2% of the land within the Township. The Applicant outlines the basis for their variance request on page 18 of the submitted application narrative. The Township’s four (4) percent acreage cap is not inconsequential and was implemented as a means to limit excessive loss of agricultural land, ensuring that such land can be preserved for future use.² The Township’s adopted 2014 Master Plan notes that “open space and natural areas are important to the quality of life in Arbelá Township” (page 28). An objective supporting this principle, “Protect and preserve farmland in Arbelá Township,” is also identified on page 28 of the Master Plan. It should be noted that similar utility-scale solar projects in Michigan have been permitted and constructed at approximately 800 acres in size. An example is the Karn Solar Project, currently under construction in Hampton Charter Township, Bay County. The Karn Solar Project was approved for a total project acreage of 872.4 acres, 352.9 of which are located within the project fence lines.

- F. **Site Plan Requirement Deficiencies.** As stated above, the Solar Ordinance in Sections G(C) and Section K required the Application to adhere to the Solar Ordinance as well as relevant requirements within PA 233 of 2023, including MCL 460.1223(3)(a) requiring compliance with requirements of Section 225(1) of PA 233 except 225(1)(j) and (1)(s).

² In response to the need of land to meet Michigan’s legislative clean energy goals, Michigan Public Service Commission Chairman Scripps testified before the Senate Energy and Environment Committee indicating that, under high-end estimates, 0.55% of Michigan lands would be needed for renewable energy project developments. See <https://www.detroitnews.com/story/news/politics/2023/11/07/michian-solar-wind-powergeneration-electricity-100-clean-energy-mandate-2040-gretchen-whitmer/71491036007/>. Therefore, Arbelá Township, with a limited population of electric customers, has made available more than 7x on a proportional basis of its lands for renewable energy development than what is needed statewide and a Project could be sited that well exceeds 0.55% of Township lands if following the Solar Ordinance.

MCL 460.1225(1)(c) requires a site plan under Section 224 of PA 233. The Township may request more information necessary to determine compliance with the Solar Ordinance. See MCL 460.1223(3)(a) and Solar Ordinance, Section G(C). The Solar Ordinance outlines site plan requirements in Section D(C)(v) and the Zoning Ordinance includes general site plan requirements in Section 5.04. Site plans under PA 233 must include information included in application filing requirements developed by the MPSC, which includes the October 10, 2024 Application Filing Instructions and Procedures. See MCL 460.1224(1). The following have been found to be site plan deficiencies under the authority above; however, previously mentioned deficiencies (e.g., overlapping site plan and PA 233 requirements) identified elsewhere within are not repeated.

- 1. (Variance Request) Proposed Structures and Fencing, Solar Ordinance, Section (D)(C)(v)(b).** The Applicant on September 22, 2025, submitted a variance request for this site plan requirement. The Applicant has provided the location and height of proposed fencing and solar arrays, collection devices, and other components. A variance request was submitted for, “a waiver to provide required details related to setback information prior to the commencement of construction, and to waive requirements related to the dimensions and height of all existing buildings and structures entirely.” This requirement could only be met if a variance was granted. PA 233, Section 460.1224, which requires a site plan submittal. Information concerning the dimensions and height of existing buildings provides additional location context for the Project as it concerns relationships of those structures to existing dwellings and potential visual impacts of the Project to structures other than occupied dwellings and community buildings. See also MCL 460.1225(1)(c) (a description of the energy facility including a site plan as described in section 224) and MCL 460.1223(3)(a) (requirement for local application to comply with the requirements of section 225(1)). Notably, the MPSC's Application Filing Instructions and Procedures, Section 7.1(a)(7) also requires depictions of occupied structures within 1000 feet of the site.
- 2. Final Site Grading, Erosion Control, and Stormwater Drainage Plan, Solar Ordinance, Section (D)(C)(v)(f).** Preliminary site grading, erosion control and storm water drainage plans have been submitted; however, no plans are finalized. Lacking finalized plans is a site plan deficiency under the Solar Ordinance and due to PA 233, Section 460.1225(1)(p), which requires a stormwater assessment and plan to minimize, mitigate, and repair any drainage impacts at the expense of the electric provider or IPP. See October 10, 2024 Application Filing Instructions and Procedures, Exhibit A-6.4. The Township is unable to determine stormwater impacts without finalized plans.

- 3. Laydown Areas, Section (D)(C)(v)(i).** The Applicant has identified the location of a temporary laydown yard located near the project substation and Operations and Management Facility. It is noted on Sheet No. 38 that this laydown yard will be made of gravel and contain office trailers, construction equipment, construction materials, and a temporary bathroom; however, site plan sheets offer limited depictions on the layout of the laydown yard (e.g., parking, locations of construction trailers and driveways, etc...) other than its general location. This area will be restored to existing conditions following the completion of construction. In addition, the Applicant states that secondary laydown yards will be utilized in the PV areas during construction. Failure to expressly indicate the specific locations and make-up of secondary laydown yards or provide greater detail and depiction of the temporary laydown yard is a site plan deficiency under the cited Solar Ordinance section requiring identification of construction set-up/laydown areas. See also October 10, 2024 Application Filing Instructions and Procedures, Section 7.1(a)(3) (requiring depiction of proposed limits of clearing and disturbance for construction including laydown yards and temporary staging or storage areas) and Section 7.4(a)(3) (requiring description of staging areas and laydown areas). Omitting specifics as to what will occur on secondary laydown areas, and specifically where, does not allow the Township to evaluate potential impacts on nearby residences and land uses, among other things.
- 4. Legal Descriptions, Zoning Ordinance Section 5.04.1(d).** Applicant provided information in Appendix L of the Application including copies of recorded lease memorandums. However, the Planning Consultant's Report found that some parcels within the memorandums did not match legal descriptions or parcel numbers utilizing Tuscola County's information system. According to the Planning Consultant's Report, the Applicant represented the errant information as typographical errors that were being corrected but had not yet been corrected. Therefore, this requirement has not been met as the Township cannot determine correct legal descriptions associated with the Project. This also is a failure to meet MCL 460.1225(1)(h) requiring the Applicant to describe the portion of the community where the Project will be located.
- 5. Pavement Width, Zoning Ordinance Section 5.04.2(a).** As noted in the Planning Consultant's Report, no pavement width was identified for all roadways that adjoin or cross the Project property area, making this a site plan deficiency.
- 6. Parking, Zoning Ordinance Section 5.04.2(d).** Applicant has included proposed parking information in the site plans attached as Appendix B of the application. Applicant has proposed three (3) permanent parking spaces, and approximately 125 temporary parking spaces at temporary laydown yards within the Project

during the construction phase. Applicant has not provided information regarding a stormwater detention system for the proposed parking areas; nor to the site plan sheets generally depict the locations of parking spaces (or number the parking spaces) or direction of travel. Therefore, this requirement has not been met. See also findings on Laydown Areas, Solar Ordinance, Section (D)(C)(v)(i).

7. Lights, Zoning Ordinance Section 5.04.4(a). The Application lacks the required information regarding the height of the two proposed exterior lighting fixtures within the Project. Therefore, this requirement has not been met. Not knowing the heights of light fixtures also prevents the Township from determining whether lights will use dark-sky friendly lighting solutions under MCL 460.1226(8)(a)(v) and Solar Ordinance, Section H(v).

8. (Variance Requested) Zoning Ordinance Section 5.04.2(c). Applicants requested a variance on required setback information under the Zoning Ordinance. Section 5.04.2(c) of the Zoning Ordinance requires that Applicant submit the locations and dimensions of existing and proposed buildings and other structures. The Application, as submitted, lacks adequate detail to satisfy either Section 5.04.2(c) and cannot be found to meet this standard without a variance.

G. MPSC Condition Compliance. Under Section H(vi) of the Solar Ordinance, the Applicant must comply with any more stringent requirements adopted by the Michigan Public Service Commission (MPSC) as provided in MCL 460.1226(8)(a)(vi). The MPSC adopted a list of minimum conditions outlined in Attachment F (Exhibit A-14) of the Application Filing Instructions and Procedures on October 10, 2024. Accordingly, the Planning Commission makes the following findings under Section H(vi) of the Solar Ordinance related to relevant minimum conditions that apply to solar projects. For purposes of materials to be submitted to the MPSC for the state process, the below has been updated to comply with the Solar Ordinance to make submissions go to the Township.

1. (Attachment F, Condition #1) Building/ Construction Permit Agreement. Applicant has not submitted a proposed agreement to obtain and comply with construction and building permits from the Township or its agent, or to enter into a third-party independent monitor agreement at Applicant's expense. Therefore, this requirement has not been met.

2. **(Attachment F, Condition #2) Preconstruction Meeting/ Third-Party Independent Monitoring.** Applicant has not submitted information regarding a preconstruction meeting agreement with the Township to ensure that the Township has access to the most recent information and final documentation for the Project. Therefore, this requirement has not been met.
3. **(Attachment F, Condition #3) Drainage System Repair Agreement.** Applicant has not submitted a proposed agreement to repair or replace all private drainage systems damaged from construction or decommissioning processes, except those drainage systems that are already specifically addressed in lease agreements or other existing agreements. Therefore, this condition has not been met.
4. **(Attachment F, Condition #4) Mechanical Completeness Certificates Agreement.** Applicant has not submitted a proposed agreement to file mechanical completeness certificates for facilities connected with the Project once construction is completed. Therefore, this requirement has not been met.
5. **(Attachment F, Condition #5) Complaint Resolution Process.** Applicant has not submitted a proposed complaint resolution process, nor has Applicant submitted a proposed agreement to implement a complaint resolution process approved by the Township. Therefore, this requirement has not been met.
6. **(Attachment F, Condition #7) Screening.** Applicant has submitted proposed landscaping and screening plans as depicted in the site plan attached as Appendix B of the Application. However, the proposed landscaping and screening is insufficient under the Zoning Ordinance, lacks key information about screening measures to be taken along Tuscola County Drain easements, and does not specify which areas, if any, will utilize existing natural vegetation in place of landscape buffering. Therefore, this requirement has not been met.
7. **(Attachment F, Condition #8) Vegetative Ground Cover/ Michigan State University “Michigan Pollinator Habitat Planning Scorecard for Solar Sites”.** The Application fails to reference the Michigan Pollinator Habitat Planning Scorecard for Solar Sites. Therefore, this requirement has not been met.
8. **(Attachment F, Condition #9) Infrastructure Depth Agreement.** Applicant has not submitted a proposed agreement to bury underground infrastructure to a minimum depth of 4 feet or as approved by the Township, nor has Applicant submitted information regarding the depth of proposed underground infrastructure utilized in connection with the Project. Therefore, this requirement has not been met.

- 9. (Attachment F, Condition #10) Post-Construction Sound Study.** Applicant has submitted a pre-construction sound study as Appendix D of the Application. However, Applicant has not submitted any information regarding a post-construction sound study, nor has Applicant submitted a proposed agreement to implement a sound mitigation plan if post-construction studies reveal that the Project is not in compliance with the requirements of the Solar Ordinance. Therefore, this requirement has not been met.
- 10. (Attachment F, Condition #11) Sound Modeling Compliance Agreement.** Applicant has not submitted a proposed complaint resolution process, nor has it submitted a proposed noise mitigation agreement. Therefore, this requirement has not been met.
- 11. (Attachment F, Condition #14) First Responder Training.** Applicant has not submitted an agreement for local fire departments and other first responders.
- 12. (Attachment F, Condition #16) Decommissioning Agreement.** Applicant has not submitted a proposed decommissioning agreement to be approved by the Township, nor has Applicant submitted a proposed agreement to acquire and maintain financial assurance throughout the operational life of the Project as outlined in an approved decommissioning agreement. Therefore, this condition has not been met. Similarly, missing lease information does not allow the Township to determine the standards to which decommissioning is required.
- 13. (Attachment F, Condition #17) Ordinance Compliance Agreement.** Applicant has not submitted a proposed agreement providing the Applicant will comply with all applicable non-zoning ordinances throughout the operational life of the Project that were in effect when the Special Use Permit was granted. Therefore, this requirement has not been met.
- 14. (Attachment F, Condition #18) Periodic Reporting.** Applicant has not submitted any information regarding periodic reports on the performance and operation of the Project to be submitted to the Township. Therefore, this requirement has not been met.
- 15. (Attachment F, Condition #19) Annual Inspections and Maintenance.** Applicant has submitted a maintenance plan for the Project as Appendix S of the Application. However, the maintenance plan does not provide for annual inspection results to the Township or its agents. Therefore, this requirement has not been met.

16. (Attachment F, Condition #20) Project Labor Agreement / Collective Bargaining Agreement. Applicant has not submitted an agreement specifying that it will utilize a project labor agreement or operate under a collective bargaining agreement for the Project.

17. (Attachment F, Condition #21) Road Agreement. Applicant has not submitted an agreement with the Tuscola County Road Commission for road repair or restoration or a letter indicating such agreement is not necessary from the Road Commission. Therefore, this requirement has not been met.

H. Administrative

1. **Re-Application.** As Applicant has not met the standards of the Solar Ordinance, Zoning Ordinance, or PA 233 and MPSC standards as applicable to the Township, the Project was denied. Moreover, portions of the Application were incomplete. The Applicant may revise its Application for completeness and substance to comply with the above. Revised applications can be submitted to the Township for further consideration and review.
2. **MPSC Intervenor Funds.** Should the Applicant submit this Project to the MPSC for consideration, the Township shall be entitled to intervenor funds based on its proper denial of the Application as incomplete and in conflict with Section 226(8) of PA 233.
3. **Miscellaneous and Severability.** All prior resolutions inconsistent herewith are hereby rescinded. Further, the provisions in this resolution shall be deemed severable and the balance of this resolution should remain in full force and effect should any individual provision be deemed unenforceable by a court of competent jurisdiction.

YEAS: Gary Woelzlein, Dusfy Higgins, Kathie Athey, James Kribs & Cindy Wilson

NAYS: _____

ABSENT/ABSTAIN: Duane Weber and Neil Hechts

RESOLUTION DECLARED ADOPTED.

↓ Declared conflict of interest

James A Kribs
James Kribs, Chairman
Arbela Township Planning Commission

CERTIFICATION

I, the undersigned, the duly qualified and acting Secretary for the Arbela Township Planning Commission, Arbela Township, Michigan, DO HEREBY CERTIFY that the foregoing is a true and complete copy of certain proceedings taken by the Arbela Township Planning Commission at a meeting held on Oct 29th, 2025, and further certify that the above Resolution was adopted at said meeting.

A handwritten signature in cursive script, reading "Kathie Athey", is written over a horizontal line.

Kathie Athey
Planning Commission Secretary