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September 4, 2026

Via Electronic Filing

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 West Saginaw Hwy, 3rd Floor
Lansing, MI 48909

Re: Case U-21962 - *In the matter of the application of Washtenaw Solar Energy LLC for approval of a certificate for siting a solar energy facility in Saline Township, Washtenaw County.*

Dear Ms. Felice:

Enclosed for electronic filing please find Washtenaw Solar Energy LLC's Initial Brief and Proof of Service in the above-referenced matter.

Please contact me with any questions you may have.

Sincerely,

DYKEMA GOSSETT PLLC

Richard J. Aaron

Enclosures

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of)
WASHTENAW SOLAR ENERGY LLC for)
approval of a certificate for siting a solar) Case No. U-21962
energy facility in Saline Township,)
Washtenaw County.)

WASHTENAW SOLAR ENERGY LLC'S INITIAL BRIEF

TABLE OF CONTENTS

I.	INTRODUCTION	1
A.	Washtenaw Solar Seeks the Commission’s First Approval of a Fully Contested Case Under Public Act 233 of 2023.	1
B.	Summary of the Case/Relief Requested.	3
II.	HISTORY OF PROCEEDINGS	10
A.	Washtenaw Solar Worked for Years to Seek Local Siting Approval.....	10
B.	The Legislature Passes a State Siting Law, Creating Another Path for the Project to Move Forward.....	13
1.	Public Act 233 of 2023 Creates a Path for Siting Utility-Scale Solar Projects at the State Level.....	13
2.	The Commission’s Working Group Develops a Process for State Siting Cases and Comprehensive Filing Guidelines.	15
C.	Washtenaw Solar Resumes Its Push for Siting Approval, Pursuing Local and State Siting in Parallel.....	16
D.	As the Case Proceeds, the Township Attempts to Stall Proceedings.	22
E.	The Project’s Offtake Status Changed During the Course of This Proceeding....	24
F.	The Court of Appeals Issues an Opinion Clarifying Certain Provisions of Public Act 233 of 2023 and the Commission’s Filing Guidelines.....	25
G.	The Evidentiary Hearing and Record.	28
III.	LEGAL STANDARDS	28
A.	PA 233 Grants the Commission Jurisdiction Over This Case.	28
B.	Standard of Review.....	29
C.	Washtenaw Solar Meets and Exceeds Its Burden of Proof in This Case.....	31
IV.	WASHTENAW SOLAR HAS SATISFIED THE FILING REQUIREMENTS	31
A.	Washtenaw Solar Satisfies the Pre-Application Requirements Established in PA 233.....	31
1.	Washtenaw Solar Offered to Meet with the Affected Local Units’ Chief Elected Officials.....	32
2.	Saline Township Never Responded to Washtenaw Solar’s Request Asking Whether It Had a Compatible Renewable Energy Ordinance.	33
3.	Washtenaw Solar Properly Sent Public Meeting Notices.....	34
4.	Washtenaw Solar Held a Public Meeting for the Project in Saline Township, Washtenaw County.	36
5.	Washtenaw Solar Met with Staff at Least 30 Days Prior to Filing Its Application.....	37

B.	Washtenaw Solar Submitted a Complete Application to the Commission and Staff Agreed.....	38
1.	Washtenaw Solar’s Application Provided Its Complete Name, Address, and Telephone Number.....	39
2.	Washtenaw Solar’s Application Provided Its Planned Date for the Start of Construction and the Expected Duration of Construction.	39
3.	Washtenaw Solar’s Application Provided a Description of the Energy Facility, Including a Complete Site Plan.	40
4.	Washtenaw Solar’s Application Described the Project’s Expected Use. .	45
5.	Washtenaw Solar’s Application Included the Project’s Expected Public Benefits.	46
a)	Washtenaw Solar Will Create Significant Local Tax Benefits.....	46
b)	Washtenaw Solar Provides Generous Payments to Landowners..	50
c)	Washtenaw Solar Entered Into the Required Host Community and Community Benefits Agreements.....	51
d)	Washtenaw Solar Is Committed to Local Job Creation.	53
e)	Washtenaw Solar Demonstrates That it Will Contribute to the State’s Energy Needs.	54
6.	Washtenaw Solar’s Application Described the Project’s Expected Direct Impacts on the Environment and Natural Resources and How the Applicant Intends to Address and Mitigate Those Impacts.	55
7.	Washtenaw Solar’s Application Included Information on the Project’s Impact on Public Health and Safety.....	58
8.	Washtenaw Solar’s Application Described the Project’s Location Within the Community.....	61
9.	Washtenaw Solar Will Not Commence Commercial Operations Until It Meets State and Federal Compliance Commitments.	62
10.	Washtenaw Solar’s Application Summarized Washtenaw Solar’s Significant Community Outreach and Education Efforts.	64
11.	Washtenaw Solar’s Application Included Evidence of Consultation with Applicable State and Federal Agencies.	65
12.	Washtenaw Solar’s Application Included Washtenaw County’s Soil and Economic Survey Report.	67
13.	Washtenaw Solar’s Application Provided the Project’s Interconnection Queue Information.	68
14.	Washtenaw Solar’s Application Described the Project’s Alternative Locations Considered.....	70
15.	Washtenaw Solar’s Application Demonstrated That There Will Be No Impacts to Wireless Signals.	72

16.	Washtenaw Solar’s Application Included a Stormwater Assessment Resulting from Consultation with the Washtenaw County Water Resource Commissioner’s Office.	73
17.	Washtenaw Solar’s Application Included a Fire Response Plan and an Emergency Response Plan.	76
18.	Washtenaw Solar’s Application Included a Complete Decommissioning Plan.	78
V.	ARGUMENT	80
A.	Saline Township Had Opportunities to Shape This Case.	80
B.	The Record Demonstrates That Washtenaw Solar’s Public Benefits Justify Its Construction.	81
1.	Washtenaw Solar Is Expected to Increase Local Taxing Districts’ Tax Revenue.	82
2.	Washtenaw Solar’s Public Benefits Include Significant Payments to Participating Property Owners.	84
3.	Washtenaw Solar’s Public Benefits Include Host Community and Community Benefits Agreements Supporting Local Governments and Local Community Organizations’ Capacity Needs.	84
4.	Washtenaw Solar Is Committed to Supporting Local Job Creation.	86
5.	Washtenaw Solar Will Contribute to the State’s Energy, Capacity, Reliability, and Resource Adequacy Needs.	88
C.	The Record Demonstrates That Washtenaw Solar Complies with the Michigan Environmental Protection Act.	91
D.	The Record Demonstrates That Washtenaw Solar Considered and Addressed Impacts to the Environment and Natural Resources.	93
1.	Washtenaw Solar Will Not Impact Sensitive Habitats and Waterways. ..	95
2.	Washtenaw Solar Has Avoided, Minimized, and Mitigated Potential Impacts to Wetlands, Waterways or Floodplains.	96
3.	Washtenaw Solar Will Not Impact Wildlife Corridors.	99
4.	Washtenaw Solar Will Not Impact Parks.	100
5.	Washtenaw Solar Will Not Impact Historic and Cultural Sites.	100
6.	Washtenaw Solar Will Not Impact Threatened or Endangered Species.	101
E.	The Record Demonstrates That Washtenaw Solar Has Met All Conditions Required by Public Act 233 of 2023 and Is Committed to Meeting All Conditions Proposed by Staff.	102
F.	The Record Demonstrates that Washtenaw Solar Has Met the Labor and Construction Standards of Public Act 233 of 2023.	106
G.	The Record Demonstrates that Washtenaw Solar Will Not Unreasonably Diminish Farmland.	109

1.	The Record Demonstrates That Washtenaw Solar Will Maintain Soil Quality and Return the Land to Farmable Conditions.....	112
2.	The Record Demonstrates That Washtenaw Solar Will Not Diminish Prime Farmland Soils.....	116
3.	The Record Demonstrates That Washtenaw Solar Will Not Diminish the Cultivation of Specialty Crops.....	119
4.	The Commission Should Decline to Consider the Impact of the Project on Farming, As It Falls Outside the Considerations of Public Act 233 of 2023.....	120
H.	The Record Demonstrates that Washtenaw Solar Does Not Present an Unreasonable Threat to Public Health and Safety.	121
VI.	CONCLUSION AND RELIEF REQUESTED	122
EXHIBIT A - CERTIFICATE CONDITIONS		1
EXHIBIT B - GLOSSARY		1

I. INTRODUCTION

A. Washtenaw Solar Seeks the Commission’s First Approval of a Fully Contested Case Under Public Act 233 of 2023.

When the Legislature passed new laws increasing Michigan’s renewable energy requirement to eventually require 100% renewable energy, the Legislature recognized that some local governments may oppose renewable projects, even if landowners have voluntarily chosen to use their land for renewable energy projects. To solve the “not in my backyard” dilemma and ensure Michigan can develop sufficient renewable energy projects to meet the new statute’s requirements, the Legislature simultaneously passed Public Act 233 of 2023 (“PA 233”), which allows the Michigan Public Service Commission (“MPSC” or the “Commission”) to grant siting permission when a local government refuses to do so. Here, although residents opted to use their land for a solar farm, and Washtenaw Solar Energy LLC (“Washtenaw Solar” or the “Company”) diligently attempted to work with Saline Township (the “Township”) for years to reach agreement on local requirements, the Township took steps to block residents from using their land as they desire.

This case exemplifies why the Legislature passed PA 233 and presents the Commission with one of its first opportunities to apply PA 233 in a fully contested certificate proceeding. The record demonstrates that Washtenaw Solar satisfied each requirement for approval of its proposed 150 megawatt (“MW”) solar energy facility in Saline Township, Washtenaw County, Michigan (the “Project”). The Project is appropriately sited, carefully designed, supported by participating landowners, and consistent with the Legislature’s decision to create a statewide siting process for large-scale renewable energy facilities.

PA 233 directs the Commission to grant a certificate when an applicant meets the applicable statutory criteria. Washtenaw Solar has met the statutory criteria by submitting a comprehensive Application supported by thousands of pages of exhibits, studies, plans, and testimony addressing the Project's design, potential environmental impacts, sound levels, setbacks, fencing, emergency response, decommissioning, agricultural considerations, public benefits, and compliance with applicable legal requirements. After reviewing the record, Staff recommended approval of the Project's alternative layout discussed below. The record evidence in this case supports that recommendation.

The Project also advances the core purposes underlying PA 233. It will provide substantial public benefits, including tax revenue, landowner payments, community benefits, construction and operational employment opportunities, and additional renewable generation capacity. It is located near existing transmission infrastructure and is sited primarily on previously cleared agricultural lands. The record further shows that the Project will comply with PA 233's objective design requirements, will not unreasonably threaten public health or safety, will not pollute, impair, or destroy natural resources within the meaning of the Michigan Environmental Protection Act, and will not unreasonably diminish farmland.

This case is also about landowner choice. Whether Saline Township residents choose to use their land to farm corn, soybeans, wheat, or solar energy, their land use decisions should be respected. Here, the Project reflects participating landowners' voluntary decision to use their property for a solar farm, subject to PA 233's protections, conditions, and oversight. Unfortunately, a small but vocal minority seeks to supersede the will of dozens of local residents to use their property as they see fit. After years of local delay, PA 233 provides a forum for the

Commission to evaluate the Project on its merits and issue a certificate where, as here, the statutory standards are satisfied.

For ease of reference, a glossary of terms used herein is included as **Exhibit B**.

B. Summary of the Case/Relief Requested.

After attempting to work with the Township for over seven years, Washtenaw Solar comes to the Commission seeking approval of an up to 150 MW solar project proposed to be located in Saline Township, Washtenaw County, Michigan.¹ The Project is sited adjacent to existing transmission infrastructure, uses almost exclusively agricultural lands that have already been cleared, and represents the voluntary choice of over 34 participating families to shift the use of their land from row-crop agriculture to clean and renewable energy generation.² As one of the Commission's first contested cases under its new state siting process, this case represents the opportunity for landowners to freely decide how they want to utilize their land after years of repeated delays at the local level.

Washtenaw Solar's Application contains over 5,000 pages of detailed information regarding the Project. The Application contains everything from details on how the Project will voluntarily setback from water resources to how it will foster native and naturalized vegetation within the Project Area.³ The Application contains detailed information about the Project's planned technology and what sound levels can be expected from adjacent properties.⁴ Washtenaw Solar provided a thorough evaluation of the Project, answered hundreds of pages of discovery

¹ Durgan, Revised Direct Testimony at 7, 5 TR 651.

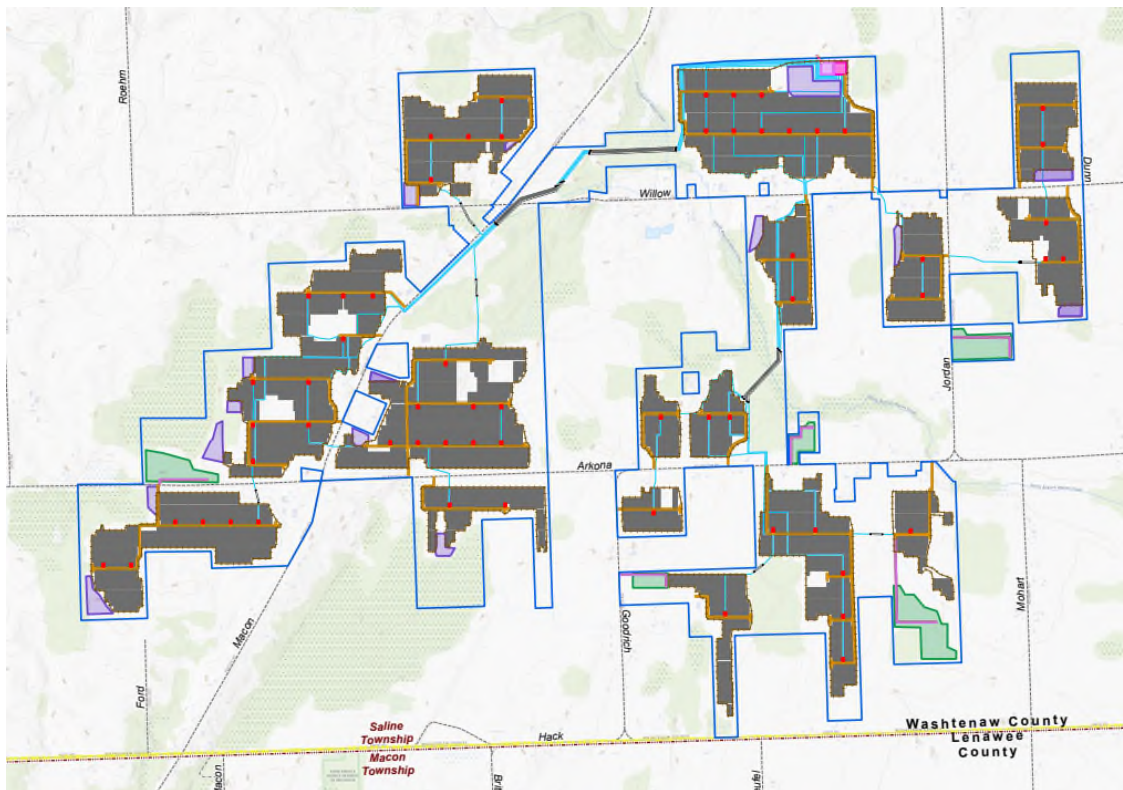
² *Id.*

³ Exhibit A-1.3 (TSD-1), 5 TR 565.

⁴ Exhibit A-1.7 (MH-2), 4 TR 77.

questions, and worked closely with Staff to ensure that the Project meets the rigorous standards of PA 233.

In its Application, the Project footprint as-filed and at its maximum extents has the following layout, generally utilizing existing agricultural lands and avoiding sensitive features like water resources and wetlands:⁵



In addition to the setbacks required under PA 233, the Project utilizes a 50-foot voluntary setback from water resources and a 300-foot setback from all residences (irrespective of their status as either participating or nonparticipating landowners).⁶ The Project complies with PA 233's design requirements, including setbacks, sound and height limits, and fencing requirements.⁷

⁵ Exhibit A-1.1 (KAP-1) at 7, 4 TR 232.

⁶ *Id.* at 17, 21, 4 TR 232.

⁷ Exhibit A-10 (KAP-4) at 4-9, 4 TR 136.

Participation in the Project is voluntary—PA 233 does not confer the authority to condemn lands.⁸ After nearly a decade in development and repeated local permitting delays, certain landowner agreements for the Project approached the end of their contractual terms.⁹ Washtenaw Solar strives to work with landowners to accommodate their concerns and encourage continued participation in the Project but that is not always feasible.¹⁰ It is not uncommon for landowner preferences to change over the lengthy project development timeline for, such as this one.¹¹ Delays in the development of a project, such as the uncertainty surrounding a controversial permitting process in this case, can be a deterrent for landowners in the face of strong opinions and pressure from neighbors and community members.¹² For Washtenaw Solar, over the course of these proceedings, certain landowners expressed their desire to not renew their agreements with the Company.¹³ Washtenaw Solar was responsive to those requests and terminated the applicable agreements but remains open to their future participation should they choose to reenter the Project.¹⁴

Accordingly, Washtenaw Solar requests that the Commission approve the Project's footprint as filed in its Application and depicted above. PA 233 provides no requirement that all parcels within a site plan be “participating parcels”—this term is used in PA 233 to establish applicable setback distances.¹⁵ Doing so confers no additional property rights to Washtenaw Solar

⁸ Durgan, Rebuttal Testimony at 7, 5 TR 688.

⁹ *Id.*

¹⁰ *Id.* at 8, 5 TR 689.

¹¹ *Id.* at 9, 5 TR 690.

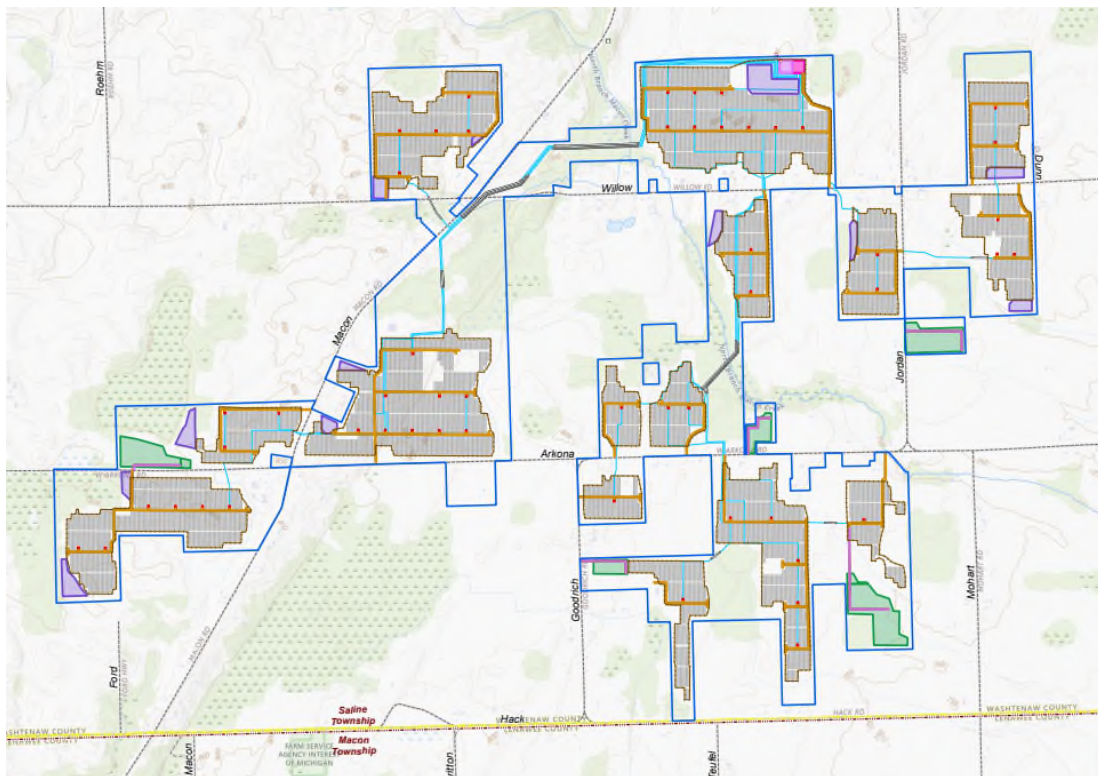
¹² *Id.*

¹³ *Id.* at 7-9, 5 TR 688-690.

¹⁴ *Id.* at 9, 5 TR 690.

¹⁵ MCL 460.1226.

other than those it already has and would allow previously participating landowners the option to reenter the Project post-certificate if they chose to do so.¹⁶ If Washtenaw Solar does not have an underlying agreement with a landowner, it simply cannot construct the Project on their land—irrespective of the Commission’s certificate.¹⁷ However, if the Commission decides not to approve the full Project as depicted in the Company’s Application, the Company is also amenable to the approval of a smaller footprint reflecting only those parcels to which the Company currently holds land rights. This smaller footprint, referred to as the “Opt-Out Layout,” is depicted below:¹⁸



¹⁶ Durgan, Rebuttal Testimony at 9, 5 TR 690.

¹⁸ Exhibit KAP-R-1, 4 TR 136.

In its direct testimony—prior to reviewing a visual depiction of the Opt-Out Layout—Staff expressed concerns regarding whether the removal of the parcels with agreements being terminated would result in a Project redesign that would significantly change the impacts of the Project as measured and explained in the Company’s Application.¹⁹ Similar to a utility in a rate case presenting cost recovery alternatives based on concerns raised by a party, Washtenaw Solar developed the Opt-Out Layout as an alternative to the Application for the Commission’s consideration to address Staff’s concerns. As shown above, the Opt-Out Layout does not materially depart in most respects from the as-filed Application, except for removing the five terminated parcels. The Project footprint remains materially unchanged in the Opt-Out Layout. After reviewing the Company’s depiction of the Opt-Out Layout and accompanying information regarding the incremental decrease in impacts resulting from the Opt-Out Layout, Staff recommended the Commission approve the Project’s Opt-Out Layout.²⁰

Beyond just approving or denying a certificate, PA 233 grants the Commission the authority to impose requirements on the Project and define the scope of its approval.²¹ The Commission can define what changes may be made to a site plan if the changes are within the footprint of the approved site plan.²² Here, the Company has requested the authority to make a number of changes to the Project as described in Exhibit A-1.6 (JMP-2). Staff disagrees that certain of these changes could be considered “minor changes” and would prefer the Commission to adopt these proposed changes as conditions to a certificate.²³ The Company is amenable to either

¹⁹ Mullkoff, Direct Testimony at 30-31, 5 TR 1034-35.

²⁰ Mullkoff, Surrebuttal Testimony at 6-7, 5 TR 1042-43.

²¹ MCL 460.1231.

²² MCL 460.1222.

²³ Glass, Direct Testimony at 65-75, 5 TR 1186-96.

approach but requests the ability to make these changes as the Project's design is further refined closer to construction. This practice is typical for the development of a project of this size and complexity. It is important to maintain the flexibility to respond to changing or new conditions on-the-ground, if necessary.

The Company also requests that the Commission not impose a specific or bright-line restriction on the use of farmland, prime farmland, or lands participating in the Michigan Farmland and Open Space Preservation Program ("PA 116"). The Project's use of farmland is temporary, maintains the soil health and condition during the Project, and returns the land to farmable condition after decommissioning, leaving the landowner to decide how best to use their land. Irrespective of the amount of farmland, prime farmland, or PA 116 lands used in the Project, this land is not "unreasonably diminished" as farmland.²⁴ The Company requests that the Commission decline to require the removal of participating properties through restrictions on the amount of farmland, prime farmland, or PA 116 land that may participate in the Project. A landowner that chooses to participate in a Project should be allowed to do so.

The Commission may also place conditions on a certificate.²⁵ The Company requests that the Commission approve the Company's Application as-filed but has worked with Staff to develop reasonable conditions to the extent the Commission deems such conditions appropriate. Accordingly, if the Commission determines that conditions are needed, Washtenaw Solar requests that the Commission adopt the conditions attached as **Exhibit A**. These conditions, with few exceptions noted herein, have been established over the course of these proceedings through

²⁴ Ignatowski, Rebuttal Testimony at 14-18, 4 TR 490-94.

²⁵ MCL 460.1226(6).

consultation with Staff and represent items of agreement and compromise on certain contested issues.²⁶

Opponents may raise that much of the Company's Application consists of preliminary or demonstrative exhibits—items that are not in a form to be issued-for-construction. The current level of detail is typical for this point in the Project's development and does not limit the Commission's ability to examine and scrutinize the Company's plans, commitments, and compliance with PA 233. That is particularly true because conditions the Commission adopts will inform the final design plans. The Commission and other parties will have multiple opportunities prior to the Project's construction to review and scrutinize updated documents such as decommissioning materials and stormwater plans.

Opponents may also raise the Court of Appeals opinion ruling on the Commission's Application Filing Instructions and Procedures ("AFIP") as a potential deficiency due to Washtenaw County's (the "County") lack of involvement in this case.²⁷ The Company has been in close contact with the County throughout this process. Washtenaw Solar discussed the Project with County officials prior to filing and served the County its Application in this case, as well as the notice of the prehearing conference, which included the process and timeline to intervene. The County chose not to intervene and notified the Commission that it does not intend to participate in this proceeding.²⁸ In light of the County's stated intent to not participate, the Commission should proceed based on the existing record in this case.

²⁶ Durgan, Rebuttal Testimony at 5, 5 TR 686.

²⁷ See *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; ___ NW3d ___ (2026) (Docket No. 373259).

²⁸ Letter from Washtenaw County to the Michigan Public Service Commission re Acknowledgement of Proceedings in Case No. U-21962, File No. 121 (June 30, 2026).

II. HISTORY OF PROCEEDINGS

A. **Washtenaw Solar Worked for Years to Seek Local Siting Approval.**

Michigan has a long history of interest in clean and renewable energy, and Invenergy is an important partner and participant in that history. Invenergy first began developing renewable energy projects in Michigan in the early 2000s, and its first renewable energy project, Gratiot Wind I and II, reached commercial operation in 2012.²⁹ Washtenaw Solar is an Invenergy project organized to support the development of a utility-scale solar project in the Township.³⁰

Washtenaw Solar first began working with local landowners to pursue a renewable energy project along the existing Majestic to LeMoyne 345 kilovolt (“kV”) transmission line in 2017.³¹ Washtenaw Solar’s analysis of the existing transmission infrastructure capable of supporting additional generation identified the Majestic to LeMoyne 345 kV line as a commercially reasonable place to interconnect to the transmission system.³² Additionally, during the initial site-identification phase, Washtenaw Solar conducted a number of analyses reviewing preliminary environmental data to determine the suitability of siting facilities.³³

Washtenaw Solar also reviewed local zoning ordinances and determined that local regulations were compatible with the development of a utility-scale solar project.³⁴ The Township passed its Solar Energy Systems zoning ordinance in February 2008 (the “2008 Ordinance”)—this

²⁹ Durgan, Revised Direct Testimony at 12-13, 5 TR 656-57.

³⁰ *Id.* at 7, 5 TR 651.

³¹ *Id.* at 14-15, 5 TR 658-59.

³² *Id.* at 14, 5 TR 658.

³³ *Id.* at 14-15, 5 TR 658-59.

³⁴ *Id.* at 15, 5 TR 659.

ordinance was in effect in 2017 when project development began.³⁵ Under the 2008 Ordinance, the Township’s zoning restrictions imposed 100-foot setbacks from non-participating parcel boundaries and public road rights-of-way.³⁶

In 2018, Washtenaw Solar began signing agreements with landowners to participate in a utility-scale solar project and engaging with the Township Board (the “Township Board”) and the Township Planning Commission (the “Planning Commission”).³⁷ Washtenaw Solar has engaged consistently with the Township since then, attending Township Board and Planning Commission meetings and engaging with locally impacted groups, environmental organizations, and labor unions.³⁸ The Township has been aware of the Company’s proposed solar project since its inception, and for three years in early development engaged positively with the Company.³⁹ At that time, the Company anticipated that construction for the proposed solar project would begin in 2022.⁴⁰

As development progressed, Washtenaw Solar initiated more detailed environmental and due diligence activities.⁴¹ The Company was clear and transparent with the Township regarding its plans to permit the proposed solar project and made Company representatives available at public meetings to answer the Township Board’s questions regarding its plans.⁴² Washtenaw Solar

³⁵ *Id.* at 15-16, 5 TR 659-660.

³⁶ *Id.* at 16, 5 TR 660.

³⁷ *Id.* at 15, 5 TR 659.

³⁸ *Id.* at 15-16, 5 TR 659-660; Exhibit A-4.1 (TSD-5); Exhibit A-4.4, (TSD-8), 5 TR 565.

³⁹ Durgan, Revised Direct Testimony at 15, 5 TR 659.

⁴⁰ *Id.* at 16, 5 TR 660.

⁴¹ *Id.*

⁴² Exhibit A-4.2 (TSD-6) at 50, 4 TR 53.

publicly informed the Township that it was finalizing its agreements with landowners and hoping to start the permitting process “by the end of Fall 2021.”⁴³

In September 2021, the Township introduced an amendment to its 2008 Ordinance to increase its setback requirement from 100 feet to 600 feet from non-participating parcel boundaries and public road rights-of-way.⁴⁴ The Company asked the Township not to adopt that restriction, explaining that the enlarged setbacks would require covering more parcels than necessary to achieve the planned Project capacity and would unfairly limit landowners with parcels under 40 acres from participation.⁴⁵ The Company also presented a comparison to the Township of how other more intensive uses, such as slaughterhouses, industrial uses, composting centers, and mining operations, were not subject to such burdensome setbacks within the Township.⁴⁶

In October 2021, the Township amended its 2008 Ordinance, adopting 600-foot setbacks from non-participating parcel boundaries and public road rights-of-way despite knowing that doing so would impede the Project (the “2021 Ordinance”).⁴⁷ Nevertheless, Washtenaw Solar continued its efforts to engage with the Township.⁴⁸ Company representatives attended public meetings, encouraged the Township to amend its 2021 Ordinance, and engaged with members of the community.⁴⁹

⁴³ *Id.*

⁴⁴ Durgan, Revised Direct Testimony at 16, 5 TR 660.

⁴⁵ Exhibit A-4.2 (TSD-6) at 58, 4 TR 53.

⁴⁶ *Id.* at 67-68, 4 TR 53.

⁴⁷ Durgan, Revised Direct Testimony at 16-17, 5 TR 660-61.

⁴⁸ *Id.* at 17, 5 TR 661; Exhibit A-4.2 (TSD-6) at 50, 4 TR 53.

⁴⁹ Durgan, Revised Direct Testimony at 16-17, 5 TR 660-61; Exhibit A-4.2 (TSD-6) at 75-84, 4 TR 53.

B. The Legislature Passes a State Siting Law, Creating Another Path for the Project to Move Forward.

While Washtenaw Solar consistently maintained its engagement at the local level and worked to find a way to permit the proposed solar project locally, the passage of Michigan's state siting law presented another opportunity for Washtenaw Solar and its development efforts.⁵⁰ Michigan's new state siting law provided a new path to permit the proposed solar project but also created a potential incentive for local municipalities to align their zoning ordinances with the state standard and maintain exclusive local control of renewable energy development within a particular jurisdiction.

1. Public Act 233 of 2023 Creates a Path for Siting Utility-Scale Solar Projects at the State Level.

On November 28, 2023, the Governor signed PA 233, authorizing the Commission to approve siting for certain utility-scale solar, wind, and energy storage facilities. PA 233 was passed because the "process for siting and permitting renewable energy resources in local governmental units ha[d] proven complex and ha[d] delayed the buildout of these resources."⁵¹ Michigan's new state siting process applies to only specific utility-scale renewable energy facilities, including solar facilities with a nameplate capacity of 50 MW or more, wind facilities with a nameplate capacity of 100 MW or more, and energy storage facilities with a nameplate capacity of 50 MW or more with a discharge capability of 200 megawatt-hour ("MWh") or more.⁵² A PA 233 certificate serves

⁵⁰ Durgan, Revised Direct Testimony at 17, 5 TR 661.

⁵¹ Senate Legislative Analysis, HB 5120 and HB 5121 (November 8, 2023), available at <https://www.legislature.mi.gov/documents/2023-2024/billanalysis/Senate/pdf/2023-SFA-5120-F.pdf>.

⁵² MCL 460.1222(1).

as approval to construct a particular renewable energy facility when the requirements of Michigan’s state siting law are met.⁵³

Following PA 233’s passage, Washtenaw Solar attended numerous Planning Commission and Township Board meetings to encourage officials to work with the Company to revise the 2021 Ordinance to more closely align with the state’s design standards, namely its 50-foot setback requirement.⁵⁴ The Company even offered to site the proposed solar project locally if the Township would agree to amend the 2021 Ordinance and implement a 100-foot setback requirement—double the standard established in PA 233.⁵⁵

There were signs of potential progress with the Township after the passage of PA 233. In 2025, the Township’s Planning Consultant was asked to prepare an amendment to the 2021 Ordinance that would reduce setbacks from 600 feet to 300 feet for solar energy systems.⁵⁶ During the consideration of this amendment, the Company again reiterated that it would be happy to work together on a 100-foot setback and move forward with local permitting.⁵⁷ On September 2, 2025, the Planning Commission voted to recommend the Township Board approve the amended solar ordinance, but revised the draft to change the proposed 300-foot setbacks to 600-foot setbacks—leaving the Township’s setbacks unchanged from the 2021 Ordinance.⁵⁸ At the meeting, Planning Commission Members expressed their preference for the larger setbacks in order to make the

⁵³ MCL 460.1222(2).

⁵⁴ Durgan, Revised Direct Testimony at 17, 5 TR 661.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

Project unworkable.⁵⁹ The Planning Commission Members also expressed their belief that the Commission would not approve a siting certificate for the proposed solar project, and that leaving the setbacks unchanged would effectively block the Project.⁶⁰ The Township Board adopted this amendment to the 2021 Ordinance on October 15, 2025, after the Company filed its application with the Commission.⁶¹

After more than seven years of trying to work with the Township to reach a reasonable set of zoning restrictions with which the Project could reasonably comply, the Company opted to proceed with the Commission’s state siting process, which offered a viable path forward for both the Company and its participating landowners.⁶²

2. The Commission’s Working Group Develops a Process for State Siting Cases and Comprehensive Filing Guidelines.

PA 233 provides that the Commission further detail the application process for renewable energy projects seeking siting approval at the state level through application filing requirements.⁶³ On February 8, 2024, the Commission issued an Order in Case No. U-21547 (the “February 8 Order”) to begin engaging with “local units of government, as well as experts and interested persons, in preparation for implementation of these statutory provisions and to begin this process as soon as possible in order to provide guidance to all who may be involved in these potential future cases ahead of any potential applications[.]”⁶⁴ The Commission directed Staff to “engage with experts, local units of government, project developers, and other interested persons in

⁵⁹ *Id.*

⁶⁰ *Id.* at 17-18, 5 TR 661-62.

⁶¹ Glass, Direct Testimony at 19, 5 TR 1140; Exhibit S-6.4 at 10, 5 TR 1120.

⁶² Durgan, Revised Direct Testimony at 18, 5 TR 662.

⁶³ MCL 460.1224(1).

⁶⁴ February 8 Order at 2.

transparent open meetings,” and to file its recommendations on the application filing instructions and other issues by June 21, 2024.⁶⁵

Staff consulted with all stakeholders, held a number of public meetings and working sessions, and filed its draft application filing instructions with the Commission on June 21, 2024.⁶⁶ Stakeholders filed their comments in response, recommending various changes and revisions to be adopted by the Commission. On October 10, 2024, the Commission issued its order in Case No. U-21547 (the “October 10 Order”), explaining its final revisions to the AFIP and adopting them in their final form.⁶⁷ The Commission uses the AFIP to determine whether an application filed under PA 233 is complete.⁶⁸

C. Washtenaw Solar Resumes Its Push for Siting Approval, Pursuing Local and State Siting in Parallel.

Given the lack of meaningful progress on siting a proposed solar project at the local level, upon the passage of PA 233, Washtenaw Solar began considering pursuing Michigan’s new state siting process.⁶⁹ Hopeful that permitting at the local level could still be achieved, Washtenaw Solar pursued local and state siting in parallel.⁷⁰ On May 23, 2025, Washtenaw Solar offered to meet with the chief elected official of the Township to discuss the Project’s Site Plan and establish whether the Township had a compatible renewable energy ordinance (“CREO”)—the first formal

⁶⁵ *Id.*

⁶⁶ MPSC Staff, *Memorandum re Case No U-21547 Staff Draft Application Instructions and Procedures for Renewable Energy and Energy Storage Facility Siting Pursuant to PA 233 of 2023*, File No. 4 (June 21, 2024).

⁶⁷ Order of the Commission in Case No. U-21547 (October 10, 2024).

⁶⁸ MCL 460.1225(2); AFIP, § 1 (“The application shall be consistent with these instructions[.]”).

⁶⁹ Durgan, Revised Direct Testimony at 17, 5 TR 661.

⁷⁰ *Id.*

step in pursuing the state siting process.⁷¹ Even after initiating this process, Washtenaw Solar attended Township Board and Planning Commission meetings and expressed its willingness to seek a local permitting solution if setbacks were reduced to 100 feet.⁷² These efforts were not met with any action by the Township.

On September 25, 2025, after completing all pre-filing requirements that the Commission deemed applicable, Washtenaw Solar submitted an application for a certificate to construct a proposed 150 MW solar energy facility on privately-owned land in the Township (the “Application”) to the Commission.⁷³ Washtenaw Solar’s Application contained over 5,000 pages of testimony and exhibits detailing the Project and providing the information required by PA 233, the AFIP, and other Project-specific specifications. The Application included testimony from the following witnesses:

- Company witness Tyler S. Durgan is the Project’s lead developer. He provides an overview of the Company’s request for siting approval for the Project and its eligibility for that approval. He also explains the Project’s history and Washtenaw Solar’s efforts to engage with the Township. Witness Durgan oversees a team of land agents engaged in the community and works with landowners seeking to develop their property as they see fit. Witness Durgan describes the Project, Washtenaw Solar’s local outreach efforts, and the Project’s public benefits of the Project. He also explains how the Project is not expected to interfere with any signals. Finally, he provides transmission

⁷¹ *Id.* at 8, 5 TR 662

⁷² *Id.* at 9, 5 TR 653; Exhibit A-4.2 (TSD-6) at 119, 4 TR 53.

⁷³ Durgan, Revised Direct Testimony at 12, 5 TR 656.

interconnection information and proposes a list of conditions and compliance measures that Washtenaw Solar expects to agree to with the Commission.⁷⁴

- Company witness Kirsten A. Polen is a Senior Staff Engineer at Invenergy and is responsible for the Project's initial design and engineering work. Witness Polen speaks to how Washtenaw Solar designed the Project and provides information regarding the Site Plan's planned facilities, area land use, alternatives considered, and possible minor changes to the facility.⁷⁵
- Company witness Julie M. Pierson is Washtenaw Solar's Project Manager. Witness Pierson reviews the construction methods that will be implemented for the Project, as well as the impacts of those construction activities on traffic, solid waste disposal capacity, drainage, and other property owners. Witness Pierson also describes why and how certain aspects of the Project are expected to require minor changes to the Project's design. Witness Pierson provides information related to the Project's emergency preparedness and response, including the development of a Fire Response Plan and an Emergency Response Plan. Witness Pierson also explains what steps Washtenaw Solar will take if it discovers cultural or natural resources not currently identified, pursuant to the Project's Unanticipated Discoveries Plan. Witness Pierson outlines the Project's schedule. Additionally, witness Pierson describes how the Project will comply with PA

⁷⁴ Durgan, Revised Direct Testimony; Durgan, Rebuttal Testimony; Exhibit A-1.3 (TSD-1); Exhibit A-1.15 (TSD-2); Exhibit A-1.16 (TSD-3); Revised Exhibit A-2 (TSD-4); Revised Exhibit A-4.1 (TSD-5); Exhibit A-4.2 (TSD-6); Exhibit A-4.3 (TSD-7); Confidential Exhibit A-4.4 (TSD-8); Exhibit A-7 (TSD-9); Confidential Exhibit A-8.2 (TSD -10); Revised Exhibit A-8.3 (TSD-11); Revised Exhibit A-8.5 (TSD-12); Exhibit A-14 (TSD-14); Exhibit A-16 (TSD-15); Exhibit A-17 (TSD-16), Exhibit A-17 (TSD-16), Exhibit A-18 (TSD-17); Exhibit TSD-1R; Exhibit TSD-2R.

⁷⁵ Polen, Direct Testimony; Polen, Rebuttal Testimony; Exhibit A-1.1 (KAP-1); Confidential Exhibit A-1.2 (KAP-2); Revised Exhibit A-1.5 (KAP-3); Exhibit A-10 (KAP-4); Exhibit KAP-R1; Exhibit KAP-R2; Exhibit KAP-R3.

233’s labor and employment provisions and local, state, and federal environmental laws with regard to certain construction activities. Witness Pierson provides information regarding how the Project will implement Dark Sky friendly lighting. Finally, witness Pierson proposes a Decommissioning Agreement to be entered into between Washtenaw Solar and the Commission.⁷⁶

- Company witness Amanda M. Ignatowski is a Director at Environmental Consulting & Technology, Inc. (“ECT”) and is the Project’s lead environmental consultant. Witness Ignatowski provides information regarding the resources mapped in the Project’s Site Plan, the land uses within and surrounding the Project Area, the expected impact of the Project on the environment and natural resources, the Project’s Unanticipated Discoveries Plan, and Washtenaw Solar’s plans for compliance with applicable state and federal environmental laws.⁷⁷
- Company witness James B. Sallee is a Senior Manager in Invenergy’s Environmental Compliance and Strategy Department. Witness Sallee describes the environmental surveys conducted for the Project. Specifically, witness Sallee explains how these studies informed elements of the Site Plan and discusses the environmental impacts summarized in the Explanatory Information that accompanies the Site Plan. Witness Sallee also provides details regarding the agency consultations conducted for the

⁷⁶ Pierson, Revised Direct Testimony; Pierson, Rebuttal Testimony; Exhibit A-1.4 (JMP-1); Exhibit A-1.6 (JMP-2); Exhibit A-1.9 (JMP-3); Exhibit A-1.10 (JMP-4); Exhibit A-1.14 (JMP-5); Revised Exhibit A-3 (JMP-6); Exhibit A-8.4 (JMP-7); Exhibit A-11 (JMP-8); Exhibit A-13.3 (JMP-9); Exhibit JMP-R1; Exhibit JMP-R2; Exhibit JMP-R3; Exhibit JMP-R4.

⁷⁷ Ignatowski, Direct Testimony; Ignatowski, Rebuttal Testimony; Exhibit A-6.1 (AMI-1); Confidential Exhibit A-6.2 (AMI-2); Exhibit A-6.3 (AMI-3); Exhibit A-9 (AMI-4); Exhibit A-19 (AMI-5); Exhibit AMI-R1; Exhibit AMI-R2; Exhibit AMI-R3; Exhibit AMI-R4.

Project with respect to environmental regulators. Finally, witness Sallee discusses the Project's plans for environmental compliance and permitting.⁷⁸

- Company witness Isaac B. Pallant is an Associate in Invenergy's Vegetation Management group. Witness Pallant discusses the Project's plans for land cover and screening. Witness Pallant discusses the vegetation management practices that will be employed during the Project's construction and operation.⁷⁹
- Company witness James E. Kampa is a Director of Renewable Civil and Structural Engineering at Invenergy. Witness Kampa sponsors the Project's preliminary Stormwater Mitigation Plan and details the Company's commitments regarding stormwater pollution and prevention plans and soil and erosion sediment controls.⁸⁰
- Company witness Tyler D. Barron is a Senior Manager of Community Affairs at Invenergy. Witness Barron summarizes the Company's engagement with federally recognized Native American tribes in Michigan. Witness Barron also summarizes some of Washtenaw Solar's community outreach and education efforts.⁸¹
- Company witness Michael T. Hebert is Operations Manager of Site Assessment and Remediation at ECT. Witness Hebert sponsors the Project's Decommissioning Plan and Decommissioning Cost Estimate.⁸²

⁷⁸ Sallee, Revised Direct Testimony; Sallee, Rebuttal Testimony; Exhibit JBS-R1.

⁷⁹ Pallant, Direct Testimony, 4 TR 385-395; Pallant, Rebuttal Testimony, 4 TR 396-414; Exhibit IBP-R1; Exhibit IBP-R2; Exhibit IBP-R3.

⁸⁰ Kampa, Direct Testimony, 4 TR 236-244; Kampa, Rebuttal Testimony, 4 TR 245-252; Exhibit A-6.4 (JEK-1), 4 TR 305; Exhibit JEK-R1.

⁸¹ Barron, Direct Testimony, 4 TR 41-52; Exhibit A-4.5 (TDB-1), 4 TR 53.

⁸² Hebert, Direct Testimony, 5 TR 569-582; Hebert, Rebuttal Testimony, 5 TR 583-613; Exhibit A-13.1 (MTH-1), 5 TR 640; Exhibit A-13.2 (MTH-2), 5 TR 640; Exhibit MTH-R1; Exhibit MTH-R2; Exhibit MTH-R3.

- Company witness Michael Hankard is the Principal Acoustical Consultant at Hankard Environmental, Inc. Witness Hankard sponsors the Sound Report prepared for the Project pursuant to PA 233. Specifically, witness Hankard provides testimony regarding sound modeling and results, preconstruction and postconstruction noise monitoring, and mitigation plans to ensure that sound emitting from the facilities will remain below the statutory limit throughout the Project's operational life. Witness Hankard demonstrates the Project's compliance with the Commission's noise level requirements for solar facilities.⁸³
- Company witness Dr. David G. Loomis is President at Strategic Economic Research. Dr. Loomis describes the significant economic benefits that will flow to the Township, County, and State of Michigan (the "State") as a result of the Project. Dr. Loomis also details the expected tax revenue paid by the energy facility to local taxing districts.⁸⁴

The Application represents Washtenaw Solar's commitment to developing renewable energy in Michigan and carrying through on its commitment to the over 30 families participating in the Project. These landowners made the highly personal, voluntary choice to participate in the Project.⁸⁵ These landowners chose to participate in the Project for many reasons, but many saw the opportunity to maintain a stable secondary income, to maintain soil health for future

⁸³ Hankard, Direct Testimony, 4 TR 54-68; Hankard, Rebuttal Testimony, 4 TR 69-76; Exhibit A-20 (MH-1), 4 TR 77; Confidential Exhibit A-1.7 (MH-2), 4 TR 77; Exhibit MH-R1; Exhibit MH-R2; Exhibit MH-R3.

⁸⁴ Loomis, Direct Testimony, 4 TR 310-318; Loomis, Rebuttal Testimony, 4 TR 319-333; Exhibit A-21 (DGL-1), 4 TR 381; Exhibit A-8.1 (DGL-2), 4 TR 381; Exhibit DGL-R1; Exhibit DGL-R2; Exhibit DGL-R3; Exhibit DGL-R4; Exhibit DGL-R5.

⁸⁵ Durgan, Revised Direct Testimony at 27, 5 TR 671.

generations for agricultural purposes after decommissioning, and to benefit the community through the associated tax benefits.⁸⁶

Washtenaw Solar kept the door open for a resolution resulting in a local siting solution as long as possible given the practical and commercial need to move the Project forward through the permitting process. After seven years of attempting to work with the Township, Washtenaw Solar determined that moving forward with the state siting process was ultimately the best solution for the Company, participating landowners, and other stakeholders.

D. As the Case Proceeds, the Township Attempts to Stall Proceedings.

PA 233 designed a thorough process by which Washtenaw Solar's Application is scrutinized by Staff, the Commission, and participating parties. Under PA 233, the Commission has a 60-day window to review an application for completeness.⁸⁷ Washtenaw Solar was the first complete application filed with the Commission under PA 233—Staff reviewed Washtenaw Solar's Application, found no deficiencies, and did not file an incompleteness memorandum in the docket within the statutory 60-day period.

On February 10, 2026, the Company filed revised exhibits and testimony of three witnesses to reflect the Project's change in offtake status (as further described in Section E, below) and revise the proposed Project schedule accordingly. In addition to filing this revision, the Company agreed to extend the date for filing Staff and Intervenor testimony by an additional two weeks.

On March 13, 2026, Staff and Intervenors filed their direct testimony. Staff filed testimony explaining that further information was needed regarding the potential removal of a number of parcels where landowner agreements had either expired or been terminated in order to recommend

⁸⁶ *Id.*

⁸⁷ MCL 460.1225(2).

Commission approval of the Project.⁸⁸ While there were no deficiencies found in many aspects of the Washtenaw Solar’s Application, Staff sought more information on the impacts of participating landowners withdrawing from the Project and further evidence “to demonstrate how the project complies with many of the requirements of PA 233.”⁸⁹

Intervenor Tabitha Pop, a nearby landowner, filed testimony asserting that “(1) the proposed screening does not align with Saline Township’s rural agricultural character, and is inadequate; (2) the Project does not align with Saline Township’s Master Plan; (3) wildlife obstruction; (4) poor soil conditions; (5) insufficient setbacks and the Project’s proximity to homes, farms and livestock; and (6) eagles within and around the Project area.”⁹⁰ Ms. Pop requested that the Commission not approve the Company’s request for a certificate to construct the Project.⁹¹

The Township filed the direct testimony of witnesses Dr. Zhenshan Chen and Christopher J. Doozan. Dr. Chen’s testimony asserted that the Project would negatively impact residential property values and local agricultural production.⁹² Mr. Doozan’s testimony alleged that the Project would not comply with the Township’s Master Plan and zoning ordinance and would unreasonably diminish the Township’s agricultural lands.⁹³

⁸⁸ Mullkoff, Direct Testimony at 30, 5 TR 1034.

⁸⁹ *Id.* at 30-31, 5 TR 1034-35.

⁹⁰ Pop, Direct Testimony at 2, 5 TR 796.

⁹¹ *Id.* at 8, 5 TR 802.

⁹² Chen, Direct Testimony at 8-9, 12, 5 TR 785-86, 789.

⁹³ Doozan, Direct Testimony at 22, 5 TR 771.

After stipulating to an additional schedule extension, on May 26, 2026, the Company filed rebuttal testimony providing the information requested by Staff in its direct testimony and responding to the Township and Ms. Pop’s arguments. In its rebuttal testimony, the Company offered to agree to a smaller footprint for the Project—without the inclusion of the parcels no longer participating in the Project—if the Commission is not inclined to approve the Company’s Application as-filed.⁹⁴ Township witness Doozan also filed rebuttal testimony, responding to Staff’s analysis of prime farmland in its direct testimony.⁹⁵

E. The Project’s Offtake Status Changed During the Course of This Proceeding.

On November 18, 2021, in Case No. U-20165, the Commission approved a Build-Transfer-Agreement (“BTA”) between Washtenaw Solar and Consumers Energy.⁹⁶ During these proceedings, the Project’s BTA was terminated. In light of that termination, Washtenaw Solar submitted revised testimony and exhibits on February 10, 2026, demonstrating the energy need for the Project notwithstanding the changed offtake status. Michigan’s growing need for clean and renewable energy is such that this Project continues to be marketable, and Washtenaw Solar anticipates that it will secure an offtaker for the Project before commencing construction.

Project delays related to permit approval and the change in offtake status also resulted in the need to revise the Project timeline.⁹⁷ In 2021, Washtenaw Solar and International Transmission Company d/b/a *ITCTransmission* (“ITC”) executed a Generator Interconnection Agreement (“GIA”).⁹⁸ At the time, the Project had a Commercial Operation Date (“COD”) of December 31,

⁹⁴ Durgan, Rebuttal Testimony at 4, 5 TR 648.

⁹⁵ *Id.* at 2-3, 5 TR 773-74.

⁹⁶ Glass, Direct Testimony at 55, 5 TR 1177.

⁹⁷ Revised Exhibit A-3 (JMP-6), 4 TR 135.

⁹⁸ Durgan, Revised Direct Testimony at 35, 5 TR 679.

2023, but no later than Midcontinent Independent System Operator, Inc. (“MISO”) Capacity Planning Year of May 31, 2024.⁹⁹ Project delays forced Washtenaw Solar to pursue a COD extension, including obtaining a waiver from the Federal Energy Regulatory Commission (“FERC”) to extend the COD under the GIA to December 31, 2028.¹⁰⁰ At the time of Application, FERC had granted a waiver extending the interconnection deadline.¹⁰¹

F. The Court of Appeals Issues an Opinion Clarifying Certain Provisions of Public Act 233 of 2023 and the Commission’s Filing Guidelines.

After the Commission adopted its October 10 Order implementing the provisions of PA 233, a coalition of townships appealed the order (the “Township Coalition”). While counsel for the Township appealed the October 10 Order, the Township did not participate in the appeal. The Township Coalition argued that the Commission exceeded its authority under PA 233 by redefining statutory terms, allowing for hybrid energy facilities, modifying statutory timelines, and failing to implement the AFIP through the rulemaking process established by Michigan’s Administrative Procedures Act of 1969, 1969 PA 306, as amended, MCL 24.201 *et seq.*¹⁰²

On May 7, 2026, in the midst of the Commission’s Washtenaw Solar proceedings, the Michigan Court of Appeals issued its opinion in the appeal brought by the Township Coalition, affirming in part, and reversing in part the Commission’s October 10 Order.¹⁰³ The Court upheld the AFIP and the Commission’s actions with two exceptions. *First*, the Court determined that the

⁹⁹ *Id.* at 35-36, 5 TR 679.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² Township Coalition, *Claim of Appeal*, File No. 27 (November 8, 2024), available at <https://mi-psc.my.site.com/sfc/servlet.shepherd/version/download/068cs00000LJypEAAT>.

¹⁰³ *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; ___ NW2d ___ (2026) (Docket No. 373259).

definition of Affected Local Unit (“ALU”) includes all local units of government where the proposed energy facility will be located—not just those local units with zoning authority.¹⁰⁴ For instance, the ALUs for Washtenaw Solar would be both the County and the Township. *Second*, the Court determined that the Commission erred with regard to its interpretation of the pre-application timeline. While the Commission’s October 10 Order provided that ALUs must notify applicants of a CREO within 30 days of receiving an invitation to meet, the Court determined that the notification must be provided within 30 days of the meeting.¹⁰⁵ Both the Township Coalition and the Commission appealed the Court of Appeals’ opinion, and these applications remain pending before the Michigan Supreme Court.

On June 18, 2026, in response to the Court of Appeals’ opinion in *In re Implementing Provisions of Public Act 233*, the Administrative Law Judge (the “ALJ”) ordered a status conference scheduled for June 30, 2026, to consider the following issues:

1. Considering the requirement for the developer to meet with all ALUs in the early stages of the process under PA 233 of 2023, does Staff still consider the Application of Washtenaw Solar Energy LLC to be complete?
2. Did the developer identify and meet with all ALUs as required by PA 233 of 2023?
3. Was proper notice provided to all ALUs?
4. If, based on the Opinion, any of the requirements for proceeding with a contested case before the Public Service Commission have not been met, what are the possible remedies?¹⁰⁶

¹⁰⁴ *Id.* at ____; slip op at 12.

¹⁰⁵ *Id.* at ____; slip op at 15.

¹⁰⁶ Notice to Parties to Appear at Status Conference, File No. 117 (June 18, 2026).

On June 26, 2026, consistent with the parties’ stipulation, Staff filed surrebuttal testimony recommending approval of the Project with a footprint that excludes the five parcels¹⁰⁷ to which the Company does not currently have land rights to construct the Project (the “Opt-Out Layout”).¹⁰⁸ Staff also proposed its final set of conditions for the Commission’s consideration.¹⁰⁹

On June 30, 2026, the County filed a letter regarding the Project in the docket for this case. The letter, signed by the Chair of the County Board of Commissioners, provided the following:

The County was notified by Washtenaw Solar of these proceedings and received notice of the prehearing and opportunity to comment. At this time, the County does not intend to intervene or otherwise participate in the proceedings. This determination should not be interpreted as expressing support for or opposition to the proposed project, nor should it be construed as a comment on the merits of the proceedings.

The County acknowledges that it was provided a link to a copy of the site plan and application for the Project. As the Chief Elected Official of the County, I can confirm that I received an invitation to meet with Washtenaw Solar and conferred with Washtenaw Solar regarding the Project.¹¹⁰

Later that day, the ALJ conducted the status conference on the issues raised in the status conference notice. Washtenaw Solar and Staff agreed that Washtenaw Solar’s Application remains complete, that Washtenaw Solar identified and met with all ALUs, and provided proper notice. The Township’s claimed that the Court of Appeals’ ruling rendered Washtenaw Solar’s

¹⁰⁷ The Opt-Out Layout removes parcels 47, 52, 42, 45, and 46 from the Project (although parcel 45 is still under agreement with Washtenaw Solar, it is not economical for facilities to be sited on it if the adjacent parcels 46 and 47 are not participating at the time construction begins). Durgan, Rebuttal Testimony at 6, 5 TR 687.

¹⁰⁸ Mullkoff, Surrebuttal Testimony at 6-7, 5 TR 1042-43.

¹⁰⁹ *Id.* at 7-11, 5 TR 1043-47.

¹¹⁰ Letter from Washtenaw County to the Michigan Public Service Commission re Acknowledgement of Proceedings in Case No U-21962, File No. 121 (June 30, 2026).

Application “defective and the Commission has no jurisdiction over this Application.”¹¹¹ The Township stated that it “intend[s] to file a motion on this” and that “the proper [] remedy here is dismissal.”¹¹² As of filing this brief, no motion has been filed.

On July 31, 2026, Washtenaw Solar further submitted revised Exhibits A-4.1 (TSD-5) and A-8.3 (TSD-11) reflecting the inclusion of additional information regarding the Company’s interactions with the County. Washtenaw Solar revised these exhibits to treat the County as an ALU, consistent with the opinion of the Court of Appeals.

G. The Evidentiary Hearing and Record.

The evidentiary hearing for this proceeding was held August 3 and 4, 2026.¹¹³ Washtenaw Solar’s Application contains thousands of pages of detailed information, providing for the Commission and the public abundant information about the Project. That information goes not only to support Washtenaw Solar’s burden of proof in this case, but also to Washtenaw Solar’s commitment to transparency and complying with the PA 233 process. The ALJ admitted the entirety of Washtenaw Solar’s evidence into the record and all parties had an opportunity to cross examine Washtenaw Solar’s witnesses during the evidentiary hearing in this case.

III. LEGAL STANDARDS

A. PA 233 Grants the Commission Jurisdiction Over This Case.

The Commission has jurisdiction over this case pursuant to Section 222 of PA 233. An inquiry into subject matter jurisdiction is limited to whether the body has the abstract power to try

¹¹¹ 3 TR 26.

¹¹² 3 TR 27.

¹¹³ 4 TR 31; 5 TR 542.

a case of the particular kind or character pending; it does not turn on the particular facts on the matter before the body.¹¹⁴

Section 222(1) of PA 233 establishes the Commission’s power to receive and review applications for certification. PA 233 applies to any solar energy facility with a nameplate capacity of 50 MW or more, any wind energy facility with a nameplate capacity of 100 MW or more, and any energy storage facility with a nameplate capacity of 50 MW or more and an energy discharge capability of 200 MWh or more.¹¹⁵ As a 150 MW solar energy facility, Washtenaw Solar meets this jurisdictional threshold.

B. Standard of Review.

The Michigan Constitution requires the Commission’s findings “be supported by competent, material and substantial evidence on the whole record.”¹¹⁶ Substantial evidence is evidence “that a reasoning mind would accept as sufficient to support a conclusion.”¹¹⁷ Expert testimony is “substantial” if it is offered by a qualified expert who has an informed and rational basis for his or her view, even if other experts disagree.¹¹⁸

¹¹⁴ See *In re Eddins*, 342 Mich App 529; 995 NW2d 604 (2022). See also *Winkler v Marist Fathers of Detroit, Inc*, 500 Mich 327, 341; 901 NW2d 566 (2017) (“The existence of subject matter jurisdiction turns not on the particular facts of the matter before the court, but *on its general legal classification*.” (emphasis added)).

¹¹⁵ MCL 460.1222(1).

¹¹⁶ Const 1963, art 6, § 28.

¹¹⁷ *Monroe v State Employees’ Retirement Sys*, 293 Mich App 594, 607; 809 NW2d 453 (2011).

¹¹⁸ *North Mich Land & Oil Corp v Mich Pub Serv Comm*, 211 Mich App 424, 439; 536 NW2d 259 (1995).

The preponderance of evidence¹¹⁹ standard applies in this proceeding.¹²⁰ Evidence cannot be disregarded simply because it stands in the way of the decision-maker's preference.¹²¹ The "preponderance of the evidence" standard is generally defined as follows:

The greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force; superior evidentiary weight that, though not sufficient to free the mind wholly from all reasonable doubt, is still sufficient to incline a fair and impartial mind to one side of the issue rather than the other. [Black's Law Dictionary 1301 (9th ed 2009).]

Washtenaw Solar has the initial burden to prove its case by a preponderance of the evidence. Once an applicant has satisfied its initial burden of proof, another party may challenge that evidence. At that point, the burden of going forward shifts to the opposing party to produce a meaningful showing to the contrary.¹²²

¹¹⁹ The preponderance of evidence standard is the lightest of all evidentiary standards when compared to the heightened "clear and convincing" standard or the "beyond a reasonable doubt" standard that is only applicable to criminal proceedings. *In re Moss*, 301 Mich App 76, 89-90; 836 NW2d 182 (2013); *Thangavelu v Dep't of Licensing & Regulation*, 149 Mich App 546, 554-555; 386 NW2d 584 (1986).

¹²⁰ See *Bunce v Secretary of State*, 239 Mich App 204, 218; 607 NW2d 372 (1999) ("[T]he requisite standard of proof in administrative proceedings is generally the same as that used in civil cases—a preponderance of the evidence."); See also *Mayor of Cadillac v Blackburn*, 306 Mich App 512, 522; 857 NW2d 529 (2014) ("Further, because the statute does not state the quantum of proof necessary . . . , the default standard in civil cases, the preponderance of the evidence, applies.").

¹²¹ Const 1963, art 6, § 28.

¹²² *In re Application of Upper Michigan Energy Resources Corp*, Order of the Commission in Case No. U-18224 at pp 14-15 (October 25, 2017), quoting *In re Application of The Detroit Edison Co*, Order of the Commission in Case Nos. U-15768 and U-15751 at p 38 (January 11, 2010). See also *In re Application of DTE Gas Co*, Order of the Commission in Case No. Case No. U-18999 at pp 113-114 (September 13, 2018).

C. Washtenaw Solar Meets and Exceeds Its Burden of Proof in This Case.

The record shows that Washtenaw Solar met its evidentiary burden by providing competent, material, and substantial evidence demonstrating that the Company complied with each element of each filing requirement listed in PA 233 and the Commission's AFIP as adopted in Case No. U-21547.¹²³ The Commission has explained that "[t]he burden of proof is carried by showing a preponderance of evidence, not perfection."¹²⁴ Any party wishing to challenge the completeness of Washtenaw Solar's Application must present meaningful evidence to the contrary. Notably, no party offered meaningful evidence that refutes the Application's completeness or refutes that the Company has met PA 233's requirements for the Commission to issue a certificate. Unsupported opinions and conjecture are not evidentiary support upon which the Commission may base its decision and the Company's rebuttal testimony thoroughly refutes the Township's criticisms. The Commission should thus approve Washtenaw Solar's Application as the Township has failed to carry its burden of going forward through evidence.

IV. WASHTENAW SOLAR HAS SATISFIED THE FILING REQUIREMENTS

A. Washtenaw Solar Satisfies the Pre-Application Requirements Established in PA 233.

PA 233 establishes a number of steps that an applicant must take prior to filing an application for a certificate with the Commission. Section 223 of PA 233 lays out these steps, which are further detailed in Attachment C of the AFIP.¹²⁵ Washtenaw Solar satisfied the requirements of PA 233 prior to filing its Application with the Commission.

¹²³ See MCL 460.1223; MCL 460.1224; MCL 460.1225.

¹²⁴ *In re DTE Electric Co*, Order of the Commission in Case No. U-18419 at p 10 (July 24, 2018).

¹²⁵ See MCL 460.1223.

1. Washtenaw Solar Offered to Meet with the Affected Local Units' Chief Elected Officials.

PA 233 requires that, at least 60 days before a public meeting for a project, an applicant “shall 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.”¹²⁶ The AFIP further provides that the applicant should use this correspondence to determine whether the ALU has a CREO.¹²⁷ The offer to meet must be delivered by email and certified mail and sent to the entire legislative body of the ALU.¹²⁸ If the ALU notifies the applicant that it has a CREO within 30 days of meeting with the applicant, the applicant must apply for local approval of the project.¹²⁹

Washtenaw Solar offered to meet with the Township's chief elected official on May 23, 2025, more than 60 days before the Project's August 18, 2025 public meeting in the Township.¹³⁰ Washtenaw Solar also sent copies of the offer to meet to the entire Township Board, sent courtesy emails to Township Board Members who have email addresses, and called Township Board Members who do not have publicly available email addresses.¹³¹ Mr. Durgan also attended the Township Planning Commission's July 8, 2025 meeting and the Township Board's July 9, 2025 meeting to reiterate the Company's offer in person.¹³²

¹²⁶ MCL460.1223(2).

¹²⁷ AFIP, Attachment C, C-1.

¹²⁸ *Id.*

¹²⁹ MCL 460.1223(3).

¹³⁰ Durgan, Revised Direct Testimony at 8; 5 TR 652; Exhibit A-4.1 (TSD-5).

¹³¹ *Id.*

¹³² *Id.*

In its letter to the Commission, the chief elected official of the County, Board of Commissioners Chair Katie Scott, stated that, “as the Chief Elected Official of the County, I can confirm that I received an invitation to meet with Washtenaw Solar and conferred with Washtenaw Solar regarding the Project.”¹³³ Exhibit A-4.4 (TSD-8) demonstrates that Washtenaw Solar also reached out to the County Clerk and Deputy County Administrator regarding the Project prior to filing its Application.

The Company has shown by a preponderance of the evidence that it sent offers to meet to the chief elected officials of the applicable ALUs. Staff witness Mullkoff testified that the Company met this requirement with regard to the Township,¹³⁴ and Staff agreed that the Company met this requirement with regard to the County.¹³⁵ No other party submitted testimony on this issue or otherwise introduced record evidence indicating that Washtenaw Solar did not meet the requirement to notify ALUs.

2. **Saline Township Never Responded to Washtenaw Solar’s Request Asking Whether It Had a Compatible Renewable Energy Ordinance.**

Under PA 233, if an ALU has a CREO, the applicant must seek local approval under certain circumstances.¹³⁶ As explained above, the applicant is required to ask the ALU whether it has a CREO to facilitate this process.¹³⁷

¹³³ Letter from Washtenaw County to the Michigan Public Service Commission re Acknowledgement of Proceedings in Case No U-21962, File No. 121 (June 30, 2026).

¹³⁴ Mullkoff, Direct Testimony at 15, 5 TR 1019.

¹³⁵ 3 TR 27-28.

¹³⁶ MCL 460.1223(3).

¹³⁷ AFIP, Attachment C at 42-43.

After Washtenaw Solar sent its May 23, 2025 correspondence to the Township, the Company received no written or oral response from the Township. Washtenaw Solar attended Township meetings in-person to reiterate its willingness to meet.¹³⁸ Mr. Durgan's direct testimony explains that the Township did not respond to any of the Company's offers to meet and did not indicate the existence of, or plans to adopt, a CREO.¹³⁹ Washtenaw Solar also separately reviewed the Township's ordinances and concluded that the Township does not have a CREO.¹⁴⁰ The County also did not indicate that it had a CREO.¹⁴¹

The Company has shown by a preponderance of evidence that neither ALU has a CREO and that no application to the local ALU was triggered as part of the PA 233 process in this case. Staff witness Mullkoff testified that the Company met this requirement.¹⁴² No other party submitted testimony on this issue.

3. Washtenaw Solar Properly Sent Public Meeting Notices.

Under PA 233, an applicant must give proper notice of its public meeting for a project.¹⁴³ The AFIP further prescribes the requirements of these public notices. The notice must be submitted to the clerk in each ALU and the Commission 30 days before the meeting and published in a newspaper of general circulation at least 14 days prior to the public meeting.¹⁴⁴ Washtenaw Solar's

¹³⁸ Durgan, Revised Direct Testimony at 8-9, 5 TR 652-53.

¹³⁹ *Id.*

¹⁴⁰ *Id.* at 9, 5 TR 653; Exhibit A-18 (TSD-17).

¹⁴¹ Letter from Washtenaw County to the Michigan Public Service Commission re Acknowledgement of Proceedings in Case No U-21962, File No. 121 (June 30, 2026).

¹⁴² Mullkoff, Direct Testimony at 15-16, 5 TR 1019-20.

¹⁴³ MCL 460.1223(1).

¹⁴⁴ AFIP, Attachment C at 45.

notices of the public meeting complied with Attachment C of the AFIP.¹⁴⁵ The notice also specified that the Site Plan was available on the Project's website: washtenawsolar.invenenergy.com/news-and-resources, and that comments could be submitted by mail or email to the addresses provided in the notice.¹⁴⁶

Washtenaw Solar posted its Site Plan online more than 30 days in advance of the public meeting and submitted its public meeting notice to the Township Clerk and by email to the Commission's Executive Secretary that same day, July 18, 2025.¹⁴⁷ The public meeting notice was published in the *Sun Times News* on July 20, 2025, more than 14 days before the public meeting.¹⁴⁸ Washtenaw Solar also sent the public meeting notice to all parcels within one mile of the Project.¹⁴⁹ In addition to these required notices, Washtenaw Solar sent invitations to the public meeting to landowners participating in the Project and local stakeholders.¹⁵⁰ Washtenaw Solar also sent its public meeting notice to the County Clerk.¹⁵¹

The Company has shown it gave proper notice of its public meeting. Staff witness Mullkoff testified that the Company met this requirement.¹⁵² No other party submitted testimony on this issue.

¹⁴⁵ Durgan, Revised Direct Testimony at 10-11, 5 TR 654-55.

¹⁴⁶ *Id.* at 10-11, 5 TR 654-55; Exhibit A-17 (TSD-16) at 3.

¹⁴⁷ Durgan, Revised Direct Testimony at 10-11, 5 TR 654-55; Exhibit A-17 (TSD-16) at 2.

¹⁴⁸ Durgan, Revised Direct Testimony at 10-11, 5 TR 654-55.

¹⁴⁹ *Id.* at 11, 5 TR 655; Exhibit A-4.2 (TSD-6).

¹⁵⁰ Durgan, Revised Direct Testimony at 11, 5 TR 655; Exhibit A-4.2 (TSD-6).

¹⁵¹ *Id.*

¹⁵² Mullkoff, Direct Testimony at 13-14, 5 TR 1017-18.

4. Washtenaw Solar Held a Public Meeting for the Project in Saline Township, Washtenaw County.

Under PA 233, “[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.”¹⁵³ The AFIP specifies that, “[u]nless otherwise requested by the chief elected official, the public meeting should start between 5:00 pm and 7:30 pm if held on a traditional workday of Monday through Friday.”¹⁵⁴ The AFIP also requires that the “public meeting[] should be recorded or transcribed for later submission as evidence in siting cases filed pursuant to PA 233.”¹⁵⁵

On August 18, 2025, Washtenaw Solar held a public meeting for the Project in the Township and County.¹⁵⁶ The public meeting began at 5:00 P.M. at the Township Hall, 5731 Braun Road, Saline, MI 48176, the formal presentation began at 5:45 PM, and the meeting lasted 2 hours and 45 minutes.¹⁵⁷ The public meeting was attended by over 40 people, including participating landowners, adjacent landowners, community members, and public officials.¹⁵⁸ Attendees asked questions orally and submitted written comments.¹⁵⁹ The public meeting was recorded and transcribed by a court reporter present at the meeting.¹⁶⁰

¹⁵³ MCL 460.1223(1).

¹⁵⁴ AFIP, Attachment C at 44.

¹⁵⁵ *Id.*

¹⁵⁶ Exhibit A-4.2 (TSD-6) at 182.

¹⁵⁷ *Id.*

¹⁵⁸ Durgan, Revised Direct Testimony at 11, 5 TR 655; Exhibit A-4.2 (TSD-6) at 171-176.

¹⁵⁹ Exhibit A-4.2 (TSD-6) at 178-180.

¹⁶⁰ *Id.* at 182-292.

The public meeting provided an opportunity for Township residents to review Project-related information and visuals and ask questions. The public meeting covered a wide range of topics, including: the Project's lifespan; the Project's impact on birds and insects; whether ongoing water quality tests will occur; the Project's impact on property values; the Project's noise levels and whether ongoing tests will occur; whether Washtenaw Solar is receiving government funding; Washtenaw Solar's policy on drain tile damage; the Project's acreage; how the Project will impact property taxes; the public notice radius; whether the solar panels are recyclable upon decommissioning; whether County drains will be utilized; and the Project's impact on farmland.¹⁶¹

The Company has demonstrated that its public meeting complied with PA 233 and the AFIP. Staff witness Mullkoff testified that the Company met this requirement.¹⁶² No other party submitted testimony on this issue.

5. Washtenaw Solar Met with Staff at Least 30 Days Prior to Filing Its Application.

The AFIP requires applicants to contact Staff to schedule a pre-application meeting at least 30 days before filing an application.¹⁶³ Washtenaw Solar met with Staff on July 16, 2025, more than 30 days in advance of Washtenaw Solar's filing to provide a Project overview, review Project maps, provide a Project status update, discuss labor and employment considerations, identify Washtenaw Solar's expected filing date, and discuss the contested case process and the Commission's AFIP.¹⁶⁴ The Company has shown that it satisfied the requirement to meet with Staff prior to filing its Application. No other party submitted testimony on this issue.

¹⁶¹ *Id.*

¹⁶² Mullkoff, Direct Testimony at 17, 5 TR 1021.

¹⁶³ AFIP, Attachment C at 45.

¹⁶⁴ Durgan, Revised Direct Testimony at 11-12, 5 TR 655-56.

B. Washtenaw Solar Submitted a Complete Application to the Commission and Staff Agreed.

Under PA 233, the Commission must within 60 days confirm whether the developer's application is complete.¹⁶⁵ The AFIP provides that Staff undertakes the completeness review and that, if "Staff determines that the application is incomplete, Staff will file a memo in the case docket describing the application deficiencies."¹⁶⁶ If no memo is filed in the docket within the 60-day window, the application is considered complete.¹⁶⁷ The fact that Commission Staff did not file an incompleteness memo within the 60-day window evidences that the Commission Staff considered the Company's Application complete. Staff subsequently explained that the Application remains complete irrespective of the Court of Appeals' ruling regarding the definition of ALU.¹⁶⁸

While Staff's direct and surrebuttal testimony concluded that it had insufficient evidence to approve the Project's as-filed layout, that concern goes to the ability to make the necessary conclusions for Commission approval under PA 233 and not completeness of the Application itself.¹⁶⁹ Notably, Staff does not raise this concern regarding the sufficiency of the evidence provided for the Opt-Out Layout and recommends the Commission approve the smaller footprint for the Project.¹⁷⁰

¹⁶⁵ MCL 460.1225(2).

¹⁶⁶ AFIP at 3.

¹⁶⁷ *Id.* at 4.

¹⁶⁸ 3 TR 27.

¹⁶⁹ Glass, Surrebuttal Testimony at 4-5, 5 TR 1206-07; Mullkoff, Direct Testimony at 30-31, 5 TR 1034-35.

¹⁷⁰ Mullkoff, Surrebuttal Testimony at 6-7, 5 TR 1042-43.

The evidence on the record supports that the Company provided the Commission with a complete Application. No other party filed testimony on this issue.

1. Washtenaw Solar’s Application Provided Its Complete Name, Address, and Telephone Number.

Washtenaw Solar’s Application satisfied PA 233’s requirement that an application contain its complete name, address, and telephone number.¹⁷¹ Staff witness Warner testified in agreement that the Company met this requirement.¹⁷² No other party filed testimony on this issue.

2. Washtenaw Solar’s Application Provided Its Planned Date for the Start of Construction and the Expected Duration of Construction.

Under PA 233, an application must contain “[t]he planned date for the start of construction and the expected duration of construction.”¹⁷³ Company witness Pierson testified that the planned start date for the Project’s construction is January 4, 2027, with construction activities anticipated to take about 24 months.¹⁷⁴ The Company provided a detailed Project schedule in Exhibit A-3 and witness Pierson’s revised direct testimony provided details regarding each item on the schedule.

The Company provided the Commission with the required project schedule information. Staff witness Warner testified in agreement that “the Company presents a schedule that references the key milestones in a logical and reasonable manner, while noting the project schedule is subject to unforeseen contingencies which could present additional delays. The Application contains the necessary details of milestones within the Project schedule.”¹⁷⁵ No other party filed testimony on this issue.

¹⁷¹ MCL 460.1225(1)(a).

¹⁷² Warner, Direct Testimony at 16, 5 TR 1103.

¹⁷³ MCL 460.1225(1)(b).

¹⁷⁴ Pierson, Revised Direct Testimony at 21, 4 TR 98.

¹⁷⁵ Warner, Direct Testimony at 17-18, 5 TR 1104.

3. Washtenaw Solar's Application Provided a Description of the Energy Facility, Including a Complete Site Plan.

Under PA 233, an application must contain “[a] description of the energy facility, including a site plan as described in section 224.”¹⁷⁶ Section 224 provides, in turn, that:

(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. The site plan shall include the following:

(a) The location and a description of the energy facility.

(b) A description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity, which may include records of consultation with relevant state, tribal, and federal agencies.

(c) Additional information required by commission rule or order that directly relates to the site plan.¹⁷⁷

The Commission's October 10 Order established that a complete site plan must include Exhibits A-1.1 through A-1.16, as described in detail in the AFIP.¹⁷⁸ Washtenaw Solar's Application provided a Project description as well as a complete Site Plan.¹⁷⁹ The Project as-filed is sited on approximately 2,412 acres of privately-owned land of 34 participating landowners.¹⁸⁰ As-filed, the Project would consist of 1,107.6 acres of land within the fence line.¹⁸¹ The lands on which the Project will be located, and the surrounding areas, are primarily agricultural.¹⁸²

¹⁷⁶ MCL 460.1225(1)(c).

¹⁷⁷ MCL 460.1224(1).

¹⁷⁸ AFIP at 22-32.

¹⁷⁹ Durgan, Revised Direct Testimony at 12, 5 TR 656; Exhibits A-1.1 to A-1.16.

¹⁸⁰ Durgan, Revised Direct Testimony at 7, 12, 5 TR 651, 656; Revised Exhibit A-2 (TSD-4) at 3-6.

¹⁸¹ Durgan, Revised Direct Testimony at 12, 5 TR 656; Revised Exhibit A-2 (TSD-4) at 4.

¹⁸² Durgan, Revised Direct Testimony at 12, 5 TR 656.

The Project will generate up to approximately 150 MW of electricity, which can power approximately 28,000 homes.¹⁸³ The Company is utilizing the most recent technology, including bifacial solar panels and advanced tracking systems, to maximize the efficiency of the solar arrays.¹⁸⁴ The Project's location was selected due to the existence of supportive property owners, advantageous access to the electric grid, consistent solar resources, and demand for electricity.¹⁸⁵

Consistent with the AFIP, Washtenaw Solar's Site Plan was prepared to the specifications required by the Commission. The Site Plan utilized the most recent edition of United States Geological Survey ("USGS") maps (1:24,000 topographic edition) and Geographic Information Systems ("GIS") mapping to visually depict the Project.¹⁸⁶ Washtenaw Solar's Site Plan consisted of the following exhibits: Exhibit A-1.1 (KAP-1), showing the Project's planned facilities; Exhibit A-1.2 (KAP-2), showing the applicable area land use information; Exhibit A-1.3 (TSD-1), providing a detailed narrative description of the Site Plan; Exhibit A-1.4 (JMP-1), providing detailed construction information for the Project; Exhibit A-1.5 (KAP-3), describing the alternatives that were considered for the Project; Exhibit A-1.6 (JMP-2), describing the potential changes to the Project that may occur between Commission approval and construction; Exhibit A-1.7 (MH-2), describing the results of the Sound Report and Modeling Protocol and how the Project will stay below the sound limits set in PA 233; Exhibit A-1.9 (JMP-3), describing the Project's Emergency Response Plan; Exhibit A-1.10 (JMP-4), describing the Project's Fire Response Plan; Exhibit A-1.14 (JMP-5), describing what the Company will do if it has an unanticipated discovery during construction; Exhibit A-1.15 (TSD-2), listing all participating landowners and adjacent

¹⁸³ *Id.* at 7, 5 TR 651.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*

¹⁸⁶ AFIP at 22. See e.g., Exhibit A-1.1 (KAP-1), 4 TR 136; Exhibit A-1.2 (KAP-2), 4 TR 136.

landowners; and Exhibit A-1.16, describing the Company’s complaint resolution process. The remaining Site Plan exhibits described in the AFIP do not apply to solar energy facilities and were not included in Washtenaw Solar’s Application per the Commission’s instructions.¹⁸⁷

In direct testimony, Staff concluded that the Company provided a description of the Project.¹⁸⁸ With regard to each Site Plan component, Staff concluded the following:

- Exhibit A-1.1: Staff concluded that “the site plan and facilities presented as Exhibit A-1.1 contain all the information required by Section 7.1 of the AFIP.”¹⁸⁹
- Exhibit A-1.2: Staff concluded that, “based on the information provided regarding area land use, presented as Exhibit A-1.2 and discussed in Company witness Polen’s direct testimony, the application materials contain all of the information required by Section 7.2 of the AFIP.”¹⁹⁰
- Exhibit A-1.3: Although Staff requested certain substantive changes related to the plans described in Exhibit A-1.3, Staff concluded that the Company provided a complete Exhibit A-1.3 describing the Project’s impacts.¹⁹¹
- Exhibit A-1.4: Staff concluded that, “based on the information provided regarding construction information, presented as Exhibit A-1.4 and discussed in the direct testimony of Company witness Pierson, the application materials contain all of the information required by and outlined in Section 7.4 of the AFIP.”¹⁹²

¹⁸⁷ AFIP at 8.

¹⁸⁸ Warner, Direct Testimony at 16-17, 5 TR 1103-04

¹⁸⁹ *Id.* at 7, 5 TR 1094.

¹⁹⁰ *Id.* at 10, 5 TR 1097.

¹⁹¹ Glass, Direct Testimony at 16-18, 5 TR 1138-1140.

¹⁹² Warner, Direct Testimony at 12, 5 TR 1099.

- Exhibit A-1.5: Staff concluded that “[t]he Company appears to have made legitimate and sufficient efforts to attempt to include alternative developed locations within its project. Staff would recommend the Commission find that feasible alternative developed locations for the project have been satisfactorily considered.”¹⁹³
- Exhibit A-1.6: Staff requested that certain proposed changes be posed as conditions rather than changes, but otherwise raised no concerns regarding compliance with the AFIP.¹⁹⁴
- Exhibit A-1.7: Staff concluded that each component of the Company’s sound modeling complied with the AFIP.¹⁹⁵
- Exhibit A-1.9 and A-1.10: Staff concluded that Exhibits A-1.9 and A-1.10 “satisfy the minimum requirements of 2023 PA 233 and the AFIP for this stage of the project.”¹⁹⁶
- Exhibit A-1.14: “Staff’s position is that the Applicant’s UDP meets the requirements established in Section 7.14 of the AFIP.”¹⁹⁷
- Exhibit A-1.15: Staff did not file testimony on this exhibit and raised no concerns.
- Exhibit A-1.16: Staff concluded that, “[w]ithin Exhibit A-1.16, the Company discussed materials required by the AFIP, including the procedures for appointing its designated representative to receive complaints, procedures for receiving complaints (including a

¹⁹³ Glass, Direct Testimony at 31, 5 TR 1152.

¹⁹⁴ *Id.* at 65-70, 5 TR 1186-91.

¹⁹⁵ Moaveni, Direct Testimony at 6-11, 5 TR 997-1002.

¹⁹⁶ Warner, Direct Testimony at 27, 5 TR 1114.

¹⁹⁷ Krupp, Revised Direct Testimony at 27, 5 TR 907.

complaint resolution form), and parameters for reporting complaints to the Commission.”¹⁹⁸

As discussed above, during this proceeding, Washtenaw Solar terminated the land agreements related to the Opt-Out Parcels. As a result of those terminations, Staff determined that it did not have enough information to determine whether the Company’s Site Plan complied with PA 233.¹⁹⁹ In its Application, Washtenaw Solar provided a comprehensive review of the Project at its maximum project footprint.²⁰⁰ While Washtenaw Solar’s Application, including its Site Plan, fully complied with PA 233, the Company provided Staff with additional information in rebuttal to assure Staff that the Project remained compliant with PA 233.²⁰¹ The Opt-Out Layout requires no changes in planned technology, no expansion of the footprint or perimeter of the Site Plan, no additional permits or approvals, and no increase in noise impacts.²⁰² Nor does the Opt-Out Layout result in the violation of any setback restrictions established in PA 233.²⁰³ Washtenaw Solar provided Staff with additional exhibits demonstrating what the Opt-Out Layout would look like when depicted to the specifications of the Site Plan.²⁰⁴

In surrebuttal, Staff concluded that, “[p]rovided with the comprehensive information in the Company’s rebuttal testimony and exhibits, Staff was able to conduct its analyses[.]”²⁰⁵ Staff was able to conclude that the Opt-Out Layout “is compliant with all statutory standards” that it had

¹⁹⁸ Mullkoff, Direct Testimony at 23, 5 TR 1027.

¹⁹⁹ *Id.* at 30-31, 5 TR 1034-35.

²⁰⁰ Durgan, Rebuttal Testimony at 11, 5 TR 692.

²⁰¹ *Id.* at 5-16, 5 TR 686-697.

²⁰² *Id.*

²⁰³ Polen, Rebuttal Testimony at 5, 4 TR 175.

²⁰⁴ Exhibit KAP-R2, 4 TR 136; Exhibit TSD-R2.

²⁰⁵ Mullkoff, Surrebuttal Testimony at 6, 5 TR 1042.

previously questioned, and Staff recommended the Commission approve the Project.²⁰⁶ The preponderance of the evidence on the record supports that the Company provided the Commission with a complete Project description and Site Plan. No other party filed testimony on this issue.

4. Washtenaw Solar’s Application Described the Project’s Expected Use.

Under PA 233, an application must provide “[a] description of the expected use of the energy facility.”²⁰⁷ Company witness Durgan explains the expected use of the Project in his direct testimony.²⁰⁸ The Project is planned as a utility-scale solar facility that will contribute to the state’s clean energy generating capacity and provide much-needed renewable energy to help meet the state’s resource adequacy needs.²⁰⁹ For Michigan to meet its renewable energy goals, it will need to develop as many locations suitable for utility-scale development as possible.²¹⁰ The Project has willing landowners with large lands suitable to develop a large solar resource, contains transmission infrastructure with adequate available capacity, and has limited potential impacts on the environment and public health and welfare.²¹¹

The preponderance of the evidence on the record supports that the Company provided the Commission with a description of the expected use of the energy facility. No other party filed testimony on this issue.

²⁰⁶ *Id.*

²⁰⁷ MCL 460.1225(1)(d).

²⁰⁸ Durgan, Revised Direct Testimony at 7, 5 TR 651.

²⁰⁹ Revised Exhibit A-2 (TSD-4) at 6.

²¹⁰ Revised Exhibit A-8.5 (TSD-12) at 8.

²¹¹ *Id.*

5. Washtenaw Solar’s Application Included the Project’s Expected Public Benefits.

Under PA 233, an application must include the “[e]xpected public benefits of the proposed energy facility.”²¹² Washtenaw Solar’s Application includes detailed information regarding the Project’s expected public benefits, including tax revenue,²¹³ payments to landowners,²¹⁴ host community and community benefits agreements,²¹⁵ local job creation²¹⁶ and energy needs contributions.²¹⁷

a) Washtenaw Solar Will Create Significant Local Tax Benefits.

The Project will provide significant local tax benefits for the surrounding area. The Project will support 251 new local jobs during construction for the County and 438 new local jobs during construction for the State.²¹⁸ During operation, the Project will support 13.1 new jobs for the County and 18.2 new jobs for the State.²¹⁹ These jobs will result in over \$24.7 million in earnings during construction for the County and over \$41.2 million in earnings during construction for the State.²²⁰ During operation, these jobs will result in over \$948,000 in earnings for the County annually and over \$1.3 million in earnings for the State annually.²²¹ In addition, the Project will increase the economic output in the State by \$92.4 million annually during construction and \$3

²¹² MCL 460.1225(1)(e).

²¹³ Exhibit A-8.1 (DGL-2), 4 TR 381.

²¹⁴ Exhibit A-8.2 (TSD-10).

²¹⁵ Revised Exhibit A-8.3 (TSD-11).

²¹⁶ Exhibit A-8.4 (JMP-7), 4 TR 135.

²¹⁷ Revised Exhibit A-8.5 (TSD-12).

²¹⁸ Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at 11, 4 TR 381.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

million annually during operation.²²² For the County, the Project will increase the economic output by over \$50.6 million during construction, and over \$2.1 million in new local long-term output.²²³

The Project has direct and significant impacts to the tax bases within the County, potentially resulting in over \$25 million in total property taxes for all taxing districts over the Project's life.²²⁴ The Project is anticipated to pay the 20-year property tax exemption for qualified solar facilities (the "Solar Energy Facilities Tax"), and then pay ordinary property taxes for the next 10 years.²²⁵ In Michigan, qualified solar facilities, excluding the transmission line, are exempt from property taxes for 20 years after applying for the exemption.²²⁶ The Solar Energy Facilities Tax is equivalent to \$7,000 per MW of nameplate capacity in most cases during operation.²²⁷ Assuming the nameplate capacity for the Project is projected as up to 150 MW and the Solar Energy Facilities Tax is allocated to the taxing jurisdictions according to their relative millage rates starting in 2028 and lasting for 30 years, the Project is projected to result in over \$7 million in total school district property taxes, and over \$6.5 million in total County property taxes over the Project's life.²²⁸

Local taxing districts impacted by the Project include the County, Clinton Community Schools Operating Fund, Clinton Community Schools Bond Fund, Saline Area School District Operating Fund, Saline Area School District Debt Fund, Lenawee Intermediate School District,

²²² *Id.*

²²³ *Id.*

²²⁴ *Id.*

²²⁵ *Id.*

²²⁶ *Id.* at 6, 4 TR 315; Exhibit A-8.1 (DGL-2) at 31, 4 TR 381.

²²⁷ *Id.* at 6-7, 4 TR 315-16; Exhibit A-8.1 (DGL-2) at 31, 4 TR 381.

²²⁸ *Id.* at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at 11, 4 TR 381.

Washtenaw Intermediate School District, Washtenaw Community College, the Township, Saline Township Roads, Saline Sinking Fund, Saline Recreation, Saline Fire District, and Saline District Library.²²⁹ Taxes will also be paid into the State Education Tax.²³⁰ Any reduction in the Project's real property improvements (for example, the use of a smaller Project footprint with the Opt-Out Layout) would result in a reduction in expected tax revenue.²³¹ A detailed chart of expected tax benefits is included below:²³²

Taxing Body	Total Revenue	Average Annual Revenue
Washtenaw County	\$6,545,784	\$218,193
Clinton Community Schools Operating Fund	\$5,571	\$186
Clinton Community Schools Bond Fund	\$259,553	\$8,652
Saline Area School District Operating Fund	\$86,640	\$2,882
Saline Area School District Debt Fund	\$6,054,143	\$201,805
Lenawee Intermediate School District	\$329,168	\$10,972
Washtenaw Intermediate School District	\$4,430,745	\$147,692
Washtenaw Community College	\$2,908,775	\$96,959
Saline Township	\$789,448	\$26,315
Saline Township Roads	\$864,274	\$28,809
Saline Sinking Fund	\$277,360	\$9,245
Saline Recreation	\$396,345	\$13,211
Saline Fire District	\$867,049	\$28,902
Saline District Library	\$919,584	\$30,653
State Education Tax	\$30,677	\$1,023
Administrative Fees	\$247,649	\$8,225

²²⁹ *Id.* at 7, 4 TR 316; Exhibit A-8.1 (DGL-2) at 31, 4 TR 381.

²³⁰ *Id.* at 7, 4 TR 316; Exhibit A-8.1 (DGL-2) at 34, 4 TR 381.

²³¹ Loomis, Rebuttal Testimony at 3, 4 TR 321.

²³² Exhibit A-8.1 (DGL-2) at 24-26, 4 TR 381.

The preponderance of the evidence on the record supports that the Company provided the Commission with detailed information regarding the tax revenue that the Project will generate. Staff determined that Washtenaw Solar’s Application “provided detailed projections of the tax revenue that will be generated by local taxing jurisdictions over the life of the [P]roject[.]”²³³ Staff also found that Washtenaw Solar “provided a sufficient narrative describing the impacts of the project to the funding of the local school districts, as the project will provide a direct revenue source that will be drawn through local school district millages.”²³⁴

Township witness Doozan asserted that Washtenaw Solar’s tax benefits were overstated in its Application because the Project will be able to apply for a 20-year property tax exemption.²³⁵ Witness Doozan asserts that the Project’s marginal tax benefits are reduced even further when compared to the land’s existing tax benefits in its current agricultural use.²³⁶

In rebuttal, however, Company witness Loomis describes the flaws in the Township’s analysis. Township witness Doozan mentions the 20-year property tax exemption that replaces ordinary property taxes with the fixed 20-year-per-megawatt amount, but he fails to state what the taxes would have been under ordinary property taxes.²³⁷ Instead of a decline in property taxes due to lower valuation caused by annual depreciation, the taxing bodies enjoy a leveled amount for all of 20 years.²³⁸ During the period of “exemption,” the Project will pay the taxing bodies more than

²³³ Lobodzinski, Direct Testimony at 6-7, 5 TR 963-64.

²³⁴ *Id.* at 8, 5 TR 965.

²³⁵ Doozan, Direct Testimony at 17-18, 5 TR 765-66.

²³⁶ *Id.*

²³⁷ Loomis, Rebuttal Testimony at 5-6, 4 TR 314-15.

²³⁸ *Id.*

\$21.4 million over 20 years on a nearly levelized annual amount.²³⁹ This levelized amount is much easier to budget for and assess.²⁴⁰ Township witness Doozan is correct in pointing out that the tax revenue will drop from \$1,067,946 in 2047 to \$360,512 in 2048—but only because there is a trade-off between receiving higher tax revenue in the first year but seeing it decline rapidly in future years versus receiving a nearly levelized amount over the first 20 years.²⁴¹ The record also demonstrates—and witness Doozan acknowledges—that the Project’s tax revenue exceeds the tax revenue the local government would collect for farming the same land.²⁴² In its Application, Washtenaw Solar provided the Commission with the tax revenue information required by PA 233 and the AFIP. The Township fails to prove otherwise. The record also demonstrates that the Project’s tax revenue will provide a significant benefit to the community—a benefit that does not exist absent the Project.

b) Washtenaw Solar Provides Generous Payments to Landowners.

The Project also provides public benefits through payments to landowners. Payments to landowners are generally standard across all Project agreements.²⁴³ Washtenaw Solar has signed a number of different types of agreements with landowners, including Solar Energy Easement Agreements, Collection Easement Agreements, Participation Easement Agreements, or an Option to Purchase Land.²⁴⁴ Each agreement provides fair, reasonable, and commercially practicable terms for participating landowners.

²³⁹ *Id.*

²⁴⁰ *Id.*

²⁴¹ *Id.*

²⁴² Doozan, Direct Testimony at 18, 5 TR 766.

²⁴³ Durgan, Revised Direct Testimony at 33, 5 TR 677.

²⁴⁴ *Id.*

The preponderance of the evidence on the record demonstrates that the Company has provided the parties with information regarding payments to landowners. Staff independently verified the payments that would be made to individual property owners over the Project’s life.²⁴⁵ After reviewing the evidence, Staff testified that “the public benefits of the proposed energy facility justify its construction with regard to payments to owners of participating property, as the participating property owners themselves considered these payments to be appropriate enough to willingly sign agreements with the Applicant.”²⁴⁶ No other party filed testimony on this issue.

c) Washtenaw Solar Entered Into the Required Host Community and Community Benefits Agreements.

Under PA 233, an applicant “shall enter into a host community agreement with each [ALU].”²⁴⁷ If an agreement is unable to be reached with an ALU, “the applicant may enter into a community benefits agreement with 1 or more community-based organizations within, or that serve residents of, the [ALU].”²⁴⁸ Each agreement must provide that, upon commencement of operation, the applicant will pay the ALU \$2,000 per MW of nameplate capacity located within the ALU.²⁴⁹ The Company has entered into a number of agreements with entities at the Township and County level.

²⁴⁵ Lobodzinski, Direct Testimony at 9, 5 TR 966.

²⁴⁶ *Id.*

²⁴⁷ MCL 460.1227(1).

²⁴⁸ MCL 460.1227(2).

²⁴⁹ MCL 460.1227(1).

The Township Board agreed to enter into a Host Community Agreement (“HCA”) with Washtenaw Solar on September 10, 2025.²⁵⁰ The HCA includes a one-time payment of \$300,000.²⁵¹ In addition, the Company presented a community benefits agreement (“CBA”) to the Saline Area Fire Department (the “SAFD”) that includes a one-time payment of \$110,000 for the SAFD to purchase equipment suited to respond to emergencies at the facilities.²⁵² The CBA also establishes a recurring annual payment to ensure resource needs continue to be met during the Project’s life, with the initial payment of \$5,000 escalating at two percent annually for the duration of the CBA.²⁵³ The CBA remains under consideration with the SAFD and its successor organization, the Saline Area Fire Authority.

Washtenaw Solar also presented an HCA to the County, which is currently under consideration. The total benefit offered by the HCA is \$300,000.²⁵⁴ The County has indicated its intent to approve the HCA in early fall 2026.²⁵⁵ Additionally, Washtenaw Solar has executed a CBA with the Saline Area Social Services (the “SASS”) in the event the County does not approve an HCA with Washtenaw Solar.²⁵⁶ The CBA with the SASS provides the same payment terms offered to the County of \$2,000 per MW of nameplate capacity upon commencement of operation.²⁵⁷ The SASS approved the CBA on July 28, 2026.²⁵⁸

²⁵⁰ Durgan, Revised Direct Testimony at 33, 5 TR 677.

²⁵¹ *Id.*

²⁵² *Id.* at 34, 5 TR 678.

²⁵³ *Id.*

²⁵⁴ Revised Exhibit A-8.3 (TSD-11) at 4.

²⁵⁵ *Id.*

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ *Id.*

The preponderance of the evidence on the record demonstrates that the Company has entered into the agreements required by Section 227 of PA 233. Staff agreed and concluded the Company provided evidence to demonstrate “that the public benefits of the proposed energy facility justify its construction with regard to host community agreements or community benefit agreements, as the Applicant has executed a host community agreement compliant with PA 233 with Saline Township.”²⁵⁹ No other party filed testimony on this issue.

d) Washtenaw Solar Is Committed to Local Job Creation.

Washtenaw Solar has demonstrated not only that it will create local jobs, but that it is committed to hiring local workers under the terms required by PA 233. Specifically, the Company provided evidence that the Project will create 251 new local jobs during the construction period for the County, 438 new local jobs during the construction period for the State, approximately 13 new local long-term jobs for the County, and approximately 18 new local long-term jobs for the State.²⁶⁰ Additionally, the Company is committed to requiring its Engineering, Procurement, and Construction (“EPC”) firm to execute a project labor agreement or collective bargaining agreement prior to the commencement of construction of the Project that complies with PA 233.²⁶¹ The Company provided the Commission with a form project labor agreement that meets the PA 233 requirements.²⁶²

The preponderance of the evidence on the record demonstrates that the Company has exhibited its public benefits through its commitment to local job creation. Staff agreed and found “the evidence sufficient to demonstrate that the public benefits of the proposed energy facility

²⁵⁹ Lobodzinski, Direct Testimony at 9, 5 TR 966.

²⁶⁰ Exhibit A-8.1 (DGL-2) at 18, 4 TR 381.

²⁶¹ Pierson, Revised Direct Testimony at 34-35, 4 TR 111-12.

²⁶² Exhibit A-8.4 (JMP-7) at App’x B, 4 TR 135.

justify its construction with regard to local job creation, as the project will create both temporary jobs during the construction period of the project and permanent jobs during the operational life of the project.”²⁶³ While Township witness Doozan claims that “there is no guarantee that any of these jobs will be filled by Saline Township residents,” he provides no evidence to the rebut the Company’s evidentiary showing in this case.²⁶⁴

e) Washtenaw Solar Demonstrates That it Will Contribute to the State’s Energy Needs.

The Company has also provided information showing that the Project will benefit the public by contributing to Michigan’s identified energy, capacity, reliability, and resource adequacy needs.²⁶⁵ The Project will provide up to 150 MW of clean energy to meet Michigan’s growing energy demands.²⁶⁶ The Company’s evidentiary showing in this case identifies how the proposed Project would advance the adoption of solar generation in Michigan, as well as help achieve economywide carbon neutrality in Michigan by 2050.²⁶⁷

The preponderance of the evidence on the record demonstrates that the Company has demonstrated its public benefits through contribution to the state’s energy, capacity, reliability, and resource adequacy needs. Staff agreed and found “the evidence sufficient to demonstrate that the public benefits of the proposed energy facility justify its construction with regard to meeting identified energy, capacity, reliability, or resource adequacy needs of this state, as the project will

²⁶³ Lobodzinski, Direct Testimony at 9-10, 5 TR 966-67.

²⁶⁴ Doozan, Direct Testimony at 16, 5 TR 764.

²⁶⁵ Durgan, Revised Direct Testimony at 34, 5 TR 678.

²⁶⁶ *Id.*

²⁶⁷ Revised Exhibit A-8.5 (TSD-12) at 10-68; Lobodzinski, Direct Testimony at 12, 5 TR 969.

meaningfully contribute to the renewable energy standards established by MCL 460.1028.”²⁶⁸ No other party filed testimony on this issue.

The preponderance of the evidence on the record supports that the Company provided the Commission with a description of the Project’s expected public benefits. Staff agreed and concluded that, “through their initial application and subsequent discovery requests made by Staff, it is Staff’s position that the Applicant has provided the expected public benefits of the proposed facility[.]”²⁶⁹ No party challenged the sufficiency of the Company’s case regarding the Project’s public benefits.

6. Washtenaw Solar’s Application Described the Project’s Expected Direct Impacts on the Environment and Natural Resources and How the Applicant Intends to Address and Mitigate Those Impacts.

Under PA 233, an application must include “[t]he 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.”²⁷⁰ The Company’s Application assesses these impacts and mitigation efforts in its Environmental Compliance Report (“ECR”).²⁷¹ The ECR reviewed the Project’s anticipated impacts on the environment and natural resources, including sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.

²⁶⁸ Lobodzinski, Direct Testimony at 12, 5 TR 969.

²⁶⁹ *Id.* at 6, 5 TR 963.

²⁷⁰ MCL 460.1225(1)(f).

²⁷¹ Ignatowski, Direct Testimony at 20-21, 4 TR 471-72.

The Application details how direct impacts are limited to the installation of underground collection lines beneath wetlands and streams, ground-disturbing activities, and tree clearing activities.²⁷² Those impacts are expected to be minimal and temporary.²⁷³ The Project will have no direct impact to wild and scenic rivers, state designated rivers, inland lakes, floodplains, coastal zones, coastal management areas, the Great Lakes, critical dunes, cultural resources, parks, public lands, critical habitat, air quality, state or federally listed threatened or endangered species, eagles, migratory birds, wildlife corridors, sensitive habitats, or farmland.²⁷⁴

The preponderance of the evidence on the record supports that the Company provided the Commission with expected direct impacts of the proposed energy facility on the environment and natural resources and how the Company intends to address and mitigate these impacts. Staff agreed and concluded that the Company had met this standard with regard to each area of concern, as well including (1) sensitive habitats and waterways, (2) wetlands (including waterways and waterbodies) and floodplains, (3) wildlife corridors, (4) parks, historic, and cultural sites, and (5) threatened or endangered species.²⁷⁵ Ms. Pop asserts that the Project will obstruct natural wildlife habitat and movement and disputes the low probability of nesting eagle occurrence within the Project Area. Ms. Pop has not made an evidentiary case sufficient to shift the Company's burden of proof. Ms. Pop's wildlife area of concern occurs outside the Project's fence line and any potential environmental impacts are anticipated to be minimal and temporary during construction.²⁷⁶

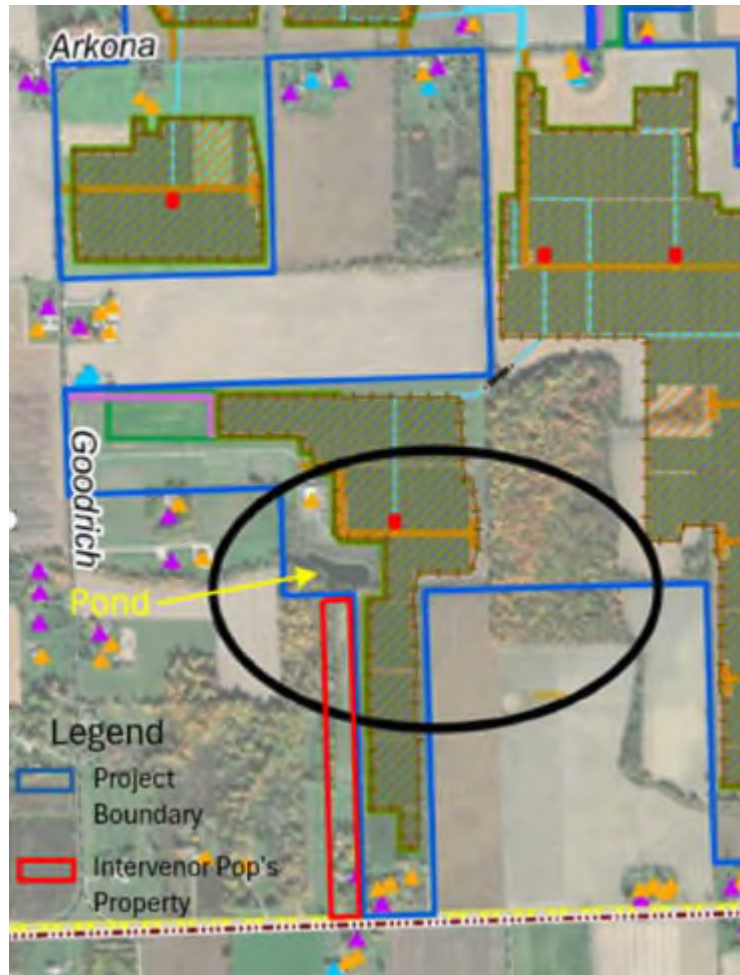
²⁷² *Id.* at 20, 4 TR 471.

²⁷³ *Id.*

²⁷⁴ *Id.*

²⁷⁵ Krupp, Direct Testimony at 8, 5 TR 888.

²⁷⁶ Pop, Direct Testimony at 5-6, 5 TR 799-800; Sallee, Rebuttal Testimony at 10, 4 TR 229.



The Project does not block wildlife from using the pond located north of Ms. Pop's property, as the Project perimeter fence is located on approximately half of the north side and the east side of the pond; all other sides of the resource remain open.²⁷⁷ Ms. Pop similarly does not provide evidence of any nesting eagles within the Project Area.²⁷⁸ Because Ms. Pop does not provide sufficient evidence demonstrating negative impacts within the Project Area, the Commission should adopt the Company's assessment of expected direct impacts to the environment and natural resources.

²⁷⁷ Sallee, Rebuttal Testimony at 10, 4 TR 229.

²⁷⁸ Pop, Direct Testimony at 8, 5 TR 802; Sallee, Rebuttal Testimony at 11, 4 TR 230.

7. Washtenaw Solar’s Application Included Information on the Project’s Impact on Public Health and Safety.

Under PA 233, an application must include “[i]nformation on the effects of the proposed energy facility on public health and safety.”²⁷⁹ Washtenaw Solar’s Application includes significant detail regarding the Project’s impact on public health and safety. The Project is designed to meet or exceed the setbacks required by MCL 460.1226.²⁸⁰ The Project is designed not to exceed the statutory 55 dB sound limit and has post-construction sound monitoring plans to ensure compliance.²⁸¹ The Project also uses fencing that complies with the latest version of the National Electric Code (the “NEC”).²⁸² Nor will any solar arrays exceed the Commission’s 25-foot height limitation.²⁸³ These measures in accordance with MCL 460.1226(7) indicate conclusively that the proposed Project does not present an unreasonable threat to public health and safety.

Moreover, the Company provides evidence that the construction methods proposed by Washtenaw Solar do not pose a risk to public health and safety.²⁸⁴ The construction methods proposed for the Project, such as the voluntary 50-foot water resource setback, are also designed to avoid and minimize environmental and natural resource impacts that could create a risk to public health and safety.²⁸⁵ Further, on a weekly basis, the Project will have a Third-Party Independent Monitor on site during the periods when construction is taking place to monitor the construction

²⁷⁹ MCL 460.1225(1)(g).

²⁸⁰ Polen, Revised Direct Testimony at 35, 4 TR 170.

²⁸¹ Exhibit A-1.7 (MH-2).

²⁸² Polen, Revised Direct Testimony at 35, 4 TR 170; Exhibit A-10 (KAP-4) at 6-7, 4 TR 136.

²⁸³ Polen, Revised Direct Testimony at 35, 4 TR 170; Exhibit A-10 (KAP-4) at 8, 4 TR 136.

²⁸⁴ Pierson, Revised Direct Testimony at 11, 4 TR 88.

²⁸⁵ *Id.* at 12, 4 TR 89.

activities.²⁸⁶ The Project will also use haul routes for heavy machinery and construction equipment that are approved by the Washtenaw County Road Commission, reducing impacts related to traffic and road safety.²⁸⁷ The Project will also conduct a glint and glare study closer to construction, the results of which will be mitigated if necessary.²⁸⁸

The Application also demonstrates that the Project’s predicted sound levels do not exceed the 55 A-weighted decibels (“dBA”) threshold at the nearest wall of nonparticipating properties.²⁸⁹ In fact, the Project’s predicted sound levels do not exceed 49 dBA at the nearest wall of nonparticipating properties.²⁹⁰ Fifty dBA is an extremely common noise level limit—one that is equivalent to existing sound levels in rural locations and used in local regulations across the country and also used by some states.²⁹¹ Moreover, the Project will produce noise primarily during daytime hours, when background noise is generally higher and when people are active and not as prone to being disturbed by noise.²⁹² Given this, the Project is designed to adequately protect public health and safety with regard to noise.²⁹³

The Company’s Application demonstrates that the fencing planned for the Project will comply with the NEC in effect on November 29, 2024, as statutorily required.²⁹⁴ As required by the NEC, the fencing planned for the Project’s photovoltaic (“PV”) area is a 7-foot-tall galvanized

²⁸⁶ *Id.* at 11, 4 TR 88.

²⁸⁷ *Id.* at 6-7, 4 TR 83-84; Exhibit 1.4 (JMP-1) at 7, 4 TR 135.

²⁸⁸ Exhibit A-1.3 (TSD-1) at 19, 4 TR 77.

²⁸⁹ Hankard, Direct Testimony at 14, 4 TR 67.

²⁹⁰ *Id.*

²⁹¹ *Id.*

²⁹² *Id.*

²⁹³ *Id.* at 14-15, 4 TR 67-68.

²⁹⁴ Exhibit A-10 (KAP-4) at 6, 4 TR 136.

woven wire fence.²⁹⁵ No electric fencing (or “shock” fencing) is planned for the Project.²⁹⁶ As required by the NEC, the fencing planned for the collector substation area is a 7-foot-tall chain link fence with an additional one-foot-high barbed wire topping.²⁹⁷

In addition, the Company’s Application demonstrates that the solar array’s maximum top edge height at full tilt is expected to be 10.5 feet, significantly less than the 25-foot maximum.²⁹⁸ Setbacks utilized for the Project include 300 feet from the nearest point on the outer wall of non-participating occupied buildings, 50 feet from public road rights-of-way, and 50 feet from nonparticipating properties.²⁹⁹

The preponderance of the evidence on the record supports that the Company demonstrated that the Project will not have an effect on public health and safety. Staff agreed that the Company demonstrated compliance with PA 233’s public health and safety requirements and recommended “no additional conditions” regarding issues of public health and safety.³⁰⁰ While Ms. Pop claims that the Project has insufficient setbacks, she utilized the setback standard in the Township’s zoning ordinance (600 feet), not the standards established in PA 233. Ms. Pop asserts that the 600-foot setback protects “nonparticipating parcels and landowners from having our lives and ideals infringed upon,” but provided no evidence that the Project presents a hazard to public health and safety. Ms. Pop’s testimony does not shift the Company’s evidentiary burden or disprove the

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ *Id.*

²⁹⁸ Exhibit A-1.1 (KAP-1) at 58, 4 TR 136.

²⁹⁹ Polen, Revised Direct Testimony at 30, 4 TR 165.

³⁰⁰ Cordero, Direct Testimony at 16, 5 TR 869.

significant evidence that the Company provided the Commission. Accordingly, the Commission should conclude that the Company has satisfied PA 233's public health and safety requirements.

8. Washtenaw Solar's Application Described the Project's Location Within the Community.

Under PA 233, an application must include a "description of the portion of the community where the energy facility will be located."³⁰¹ The Company's Site Plan shows the location of the Project in the Township relative to the County and surrounding townships.³⁰² Further, the Company provides a general description of the Township, including its size, population, current land use, and major industries.³⁰³ According to 2020 Census data, the Township has a population density of 65.5 people per square mile.³⁰⁴ The Township has a population of 2,277 people, and the population within the Township has a median age of 41 years old.³⁰⁵ The average yearly household income within the Township is \$94,226.³⁰⁶ The largest industry within the Township is agriculture, specifically traditional row crop agriculture.³⁰⁷ Based on the Township Master Plan, approximately 74.7% of the Township consists of agricultural land use.³⁰⁸ The Project is situated entirely on parcels that are zoned within agricultural districts.³⁰⁹

³⁰¹ MCL 460.1225(1)(h).

³⁰² Exhibit A-1.1 (KAP-1) at App'x A, 4 TR 136.

³⁰³ Revised Exhibit A-2 (TSD-4) at 4-5.

³⁰⁴ *Id.* at 4.

³⁰⁵ *Id.*

³⁰⁶ *Id.*

³⁰⁷ *Id.*

³⁰⁸ *Id.*

³⁰⁹ *Id.*; Exhibit A-1.3 (TSD-1) at 12.

The preponderance of the evidence on the record supports that the Company provided a description of the portion of the community where the energy facility will be located. Staff reviewed the Company's Application and agreed, finding that "the Company provided a detailed project description [including] . . . general descriptions of the project and of the community in which the project would be located."³¹⁰ No other party filed testimony on this issue.

9. Washtenaw Solar Will Not Commence Commercial Operations Until It Meets State and Federal Compliance Commitments.

Under PA 233, an application must include 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 ["NREPA"]."³¹¹ Washtenaw Solar's Application includes this commitment, and again offers that it will not begin commercial operation of the Project until it complies with all applicable state and federal environmental laws and rules, including NREPA.³¹² Environmental noncompliance creates legal, practical, and financial risk for Washtenaw Solar.³¹³ Compliance with state and federal law is consistent with Washtenaw Solar's obligations with its financing agreements and insurance obligations.³¹⁴ Finally, Washtenaw Solar has included in its proposed agreement regarding permit conditions with the Commission that any approval will be contingent on receiving approval for all necessary applicable state, federal, and local permits before beginning construction.³¹⁵

³¹⁰ Warner, Direct Testimony at 16, 5 TR 1103.

³¹¹ MCL 460.1225(1)(i).

³¹² Sallee, Revised Direct Testimony at 20, 4 TR 218.

³¹³ *Id.*

³¹⁴ *Id.*

³¹⁵ *Id.*; Exhibit TSD-R1 at 8.

The preponderance of the evidence on the record supports that the Company has committed to complying with applicable state and federal environmental laws. Staff concluded that “the information and proposed activities provided in Exhibits A-6.2 and A-6.3 as originally filed were sufficient to support this statement,” but required additional information given the potential for some landowners to not participate in the Project.³¹⁶ After the Company provided the additional incremental reduction in environmental impacts resulting from the Opt-Out Layout, Staff concluded that “the Applicant’s environmental impact assessment no longer impedes Staff from recommending approval for siting certification in the instant case.”³¹⁷ While Ms. Pop presented evidence regarding eagles in the Township, she presented no evidence that the Company would not comply with state and local environmental permitting requirements. Ms. Pop’s testimony does not shift the Company’s evidentiary burden or disprove the significant evidence that the Company provided the Commission.

The preponderance of the evidence on the record supports that there is no factual or proximate causation between the Project and environmental impacts to wetlands, waterways, vegetation, habitat, or other natural resources. The minimal tree clearing related to Project activities is not of a magnitude to create meaningful harm—the Project only requires 8.4 acres of tree clearing, representing less than one percent of the wooded area within a half-mile radius of the Project Area.³¹⁸ The remainder of the Project Area is located on agricultural lands that are already cleared and subject to agricultural practices. The Project will be set back 50 feet from all water resources and boring will take place under those resources when necessary—without

³¹⁶ Krupp, Direct Testimony at 39-40, 5 TR 919-20.

³¹⁷ Krupp, Surrebuttal Testimony at 7, 5 TR 946.

³¹⁸ Exhibit A-6.2 (AMI-2) at 18, 5 TR 565.

impacting the water resource.³¹⁹ The Project activities pose no meaningful harm to the environment and supports the production of clean and renewable energy in the state.

10. Washtenaw Solar’s Application Summarized Washtenaw Solar’s Significant Community Outreach and Education Efforts.

Under PA 233, an application must include a “summary of the community outreach and education efforts undertaken by the electric provider or independent power producer, including a description of the public meetings and meetings with elected officials under section 223.”³²⁰ Company witness Durgan explains in his direct testimony that the Company undertook stakeholder meetings, solicited feedback from residents, and provided several educational opportunities from the beginning of Project development and extending through the Project’s public meeting and afterward.³²¹ In addition to the discussion above, the Company’s significant community outreach and education efforts are detailed in Exhibit A-4.2 (TSD-6), and outreach efforts to local officials are detailed in Revised Exhibit A-4.1 (TSD-5) and Exhibit A-4.4 (TSD-8).

The preponderance of the evidence on the record supports that the Company provided the Commission with a summary of community outreach and education efforts, including a description of public meetings and meetings with elected officials. Staff agreed and concluded:

The Company refers to numerous, ongoing efforts to conduct outreach to impacted local community members from 2022 through the time of submitting its application to the MPSC. This includes outreach to concerned landowners, impacted community groups, environmental organizations, labor unions, the public, and local officials. The Company describes this process dating back to 2019 and extending through the public meeting on August 18, 2025; those efforts are detailed in the application in accordance with the requirements of the AFIP.³²²

³¹⁹ *Id.* at 13, 5 TR 565.

³²⁰ MCL 460.125(1)(j).

³²¹ Durgan, Revised Direct Testimony at 29, 5 TR 673.

³²² Mullkoff, Direct Testimony at 18, 5 TR 1022.

No other party filed testimony on this issue.

11. Washtenaw Solar’s Application Included Evidence of Consultation with Applicable State and Federal Agencies.

PA 233 requires an application to include “[e]vidence 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.”³²³ The AFIP further provides that consultations should include federal agencies, the Michigan Department of Natural Resources (“MDNR”), the State Historic Preservation Office (“SHPO”), the Michigan Department of Environment, Great Lakes, and Energy (“EGLE”), the Michigan Department of Agriculture and Rural Development (“MDARD”), the County Drain Commission, the County Road Agency, owners of major facilities for electric, gas, or telecommunications lines, and, if applicable, the Michigan Department of Transportation (“MDOT”) Aeronautics Commission.

Washtenaw Solar’s Application includes evidence of consultation with applicable state and federal agencies. As part of these consultations, Washtenaw Solar discussed necessary permits, next steps, and associated timelines.³²⁴ Washtenaw Solar also consulted with owners of nearby major facilities for electric, gas, and telecommunications lines.³²⁵ The Application’s summary of each federal, state, and local agency consultation includes: (1) the date and time the consultation took place; (2) the identity of those who participated; and (3) copies of correspondence identifying

³²³ MCL 460.1225(1)(k).

³²⁴ Exhibit A-4.4 (TSD-8) at 4.

³²⁵ *Id.*

necessary permits, next steps, and associated timelines.³²⁶ Washtenaw Solar consulted, or initiated the consultation process, with all entities identified in PA 233 and the AFIP, as well as a number of additional agencies.³²⁷ As a solar project, consultation with the MDOT Aeronautics Commission was not applicable.³²⁸

At the federal level, prior to filing its Application, Washtenaw Solar consulted with the United States Fish and Wildlife Service (“USFWS”) four times and with the United States Department of Agriculture (“USDA”) once.³²⁹ At the state level, prior to filing its Application, Washtenaw Solar consulted with the MDNR three times, SHPO twice, EGLE three times, MDARD twice, and MDOT.³³⁰ At the local level, prior to filing its Application, Washtenaw Solar consulted with the Washtenaw County Water Resources Commissioner’s Office (“WCWRC”) twice, the Washtenaw County Road Commission (“WCRC”), the Washtenaw County Office of the Sheriff – Emergency Services Division twice, SAFD seven times, the Washtenaw/Livingston Medical Control Authority & Huron Valley Ambulatory Services, the Washtenaw County Clerk, the Washtenaw County Conservation District, the Michigan Geological Survey, and the Brighton Transportation Service Center.³³¹

³²⁶ Durgan, Revised Direct Testimony at 31-32, 5 TR 675-76.

³²⁷ *Id.* at 32, 5 TR 676.

³²⁸ *Id.*

³²⁹ Exhibit A-4.4 (TSD-8) at 5-8.

³³⁰ *Id.* at 9-17.

³³¹ *Id.* at 8-26.

In addition, Washtenaw Solar consulted with owners of major facilities for electric, gas, and telecommunication lines, including DTE Energy, Enbridge Inc., Wolverine Pipe Line Company, Frontier Communications, and AT&T.³³²

The Company consulted with each agency required by PA 233 and the AFIP (with the exception of the Aeronautics Commission, which is inapplicable in this case). The preponderance of the evidence on the record demonstrates that the Company's Application includes the required evidence of consultation. The evidence of these consultations is provided for the Commission's review in Exhibit A-4.4 (TSD-8). Staff agreed that the Company completed all required consultations and provided evidence of these consultations consistent with the instructions in the AFIP.³³³ No other party filed testimony on this issue.

12. Washtenaw Solar's Application Included Washtenaw County's Soil and Economic Survey Report.

Under PA 233, an application must contain the "soil and economic survey report under section 60303 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.60303, for the county where the proposed energy facility will be located." "[T]o satisfy the requirement set forth in MCL 20 460.1225(1)(l), the Applicant must submit USDA-NRCS soil surveys for the county, at minimum, either obtained through the use of a public resource, such as a county office or public library if available, or through utilization of the USDA-NRCS Web Soil Survey to retrieve the relevant data."³³⁴

³³² *Id.* at 27-29.

³³³ Krupp, Direct Testimony at 30-31, 5 TR 910-11.

³³⁴ *Id.* at 28, 5 TR 908.

The Company's Application includes the County's Soil and Economic Survey Report (now referred to as the Custom Soil Resource Report) for all counties in the Project Area and within the 1,000 buffer designated as the Study Area.³³⁵ Staff concluded that the Company satisfied the requirement to include the relevant Soil and Economic Survey Report.³³⁶ Specifically, Staff testified that:

Exhibit A-6.1 includes a table summarizing the diligence efforts to receive this report, which includes the USDA, the [MDARD], EGLE, the Washtenaw County Clerk and County Conservation District, and two public libraries (Buchanan and Niles), prior to generating a custom soil resource report from the USDA-NRCS for Washtenaw County and Lenawee County. Therefore, Staff's position is that the Applicant has met the above-described standard and the requirement of MCL 460.1225(1)(l).³³⁷

No other party filed testimony on this issue. The preponderance of the evidence on the record demonstrates that the Company's Application includes the required Soil and Economic Survey Report.

13. Washtenaw Solar's Application Provided the Project's Interconnection Queue Information.

Under PA 233, an application must include "[i]nterconnection queue information for the applicable regional transmission organization."³³⁸ Washtenaw Solar's Application provides the Project's interconnection queue information. Washtenaw Solar will be constructed within the footprint of the MISO regional transmission system.³³⁹ Washtenaw Solar holds rights to

³³⁵ Exhibit A-6.1 (AMI-1) at 6, 5 TR 565.

³³⁶ Krupp, Direct Testimony at 29, 5 TR 909.

³³⁷ *Id.*

³³⁸ MCL 460.1225(1)(m).

³³⁹ Exhibit A-12 (TSD-13) at 3.

interconnect into the transmission system and has secured its Point of Interconnection for the Project.³⁴⁰ Washtenaw Solar’s MISO queue number for the Project is J1062.³⁴¹

On April 23, 2021, MISO, Washtenaw Solar, and ITC executed a GIA for the Project.³⁴² The GIA is provided in lieu of feasibility and system impact studies, pursuant to the AFIP.³⁴³ The GIA was set to lapse on December 31, 2026, and, due to Project delays related to the inability to secure local approval, the Project was not scheduled to be interconnected by that date.³⁴⁴ Accordingly, on February 26, 2025, Washtenaw Solar filed a Request for Waiver with FERC.³⁴⁵ On April 21, 2025, FERC granted the Request for Waiver, allowing for a 24-month extension of the GIA until December 31, 2028.³⁴⁶ A copy of FERC’s order granting the waiver request is also included in the Application.³⁴⁷

The preponderance of the evidence on the record demonstrates that the Company provided the interconnection queue information for the applicable regional transmission organization. Staff found that the Company’s Application complied with both PA 233 and the AFIP with regard to transmission and interconnection information.³⁴⁸ Staff concluded that “[t]he Company has

³⁴⁰ *Id.*

³⁴¹ *Id.*

³⁴² *Id.*

³⁴³ AFIP at 17.

³⁴⁴ Exhibit A-12 (TSD-13) at 3.

³⁴⁵ *Id.*

³⁴⁶ *Id.*

³⁴⁷ *Id.* at 135-41.

³⁴⁸ Warner, Direct Testimony at 23-24, 5 TR 1110-11.

provided a valid GIA as required by Section 6.3.12 of the AFIP.”³⁴⁹ No other party submitted testimony on this issue.

14. Washtenaw Solar’s Application Described the Project’s Alternative Locations Considered.

PA 233 requires an application to include, “[i]f 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.”³⁵⁰ Consistent with this requirement, the AFIP further requires applicants to “[p]rovide a map and description of each alternative site location, proposed site layout, or other alternatives that are or were considered, including rationale for why alternative locations were not selected for development.”³⁵¹ If the proposed site of the energy facility is undeveloped land, an applicant must “provide 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 for the project site.”³⁵²

Washtenaw Solar’s Application describes alternative parcels, layouts, and projects that were considered but ultimately not pursued in Exhibit A-1.5 (KAP-3).³⁵³ That exhibit includes a map showing the alternative locations and provides details regarding the environmental, engineering, and real estate limitations of these alternatives. This map is also excerpted below for ease of reference.

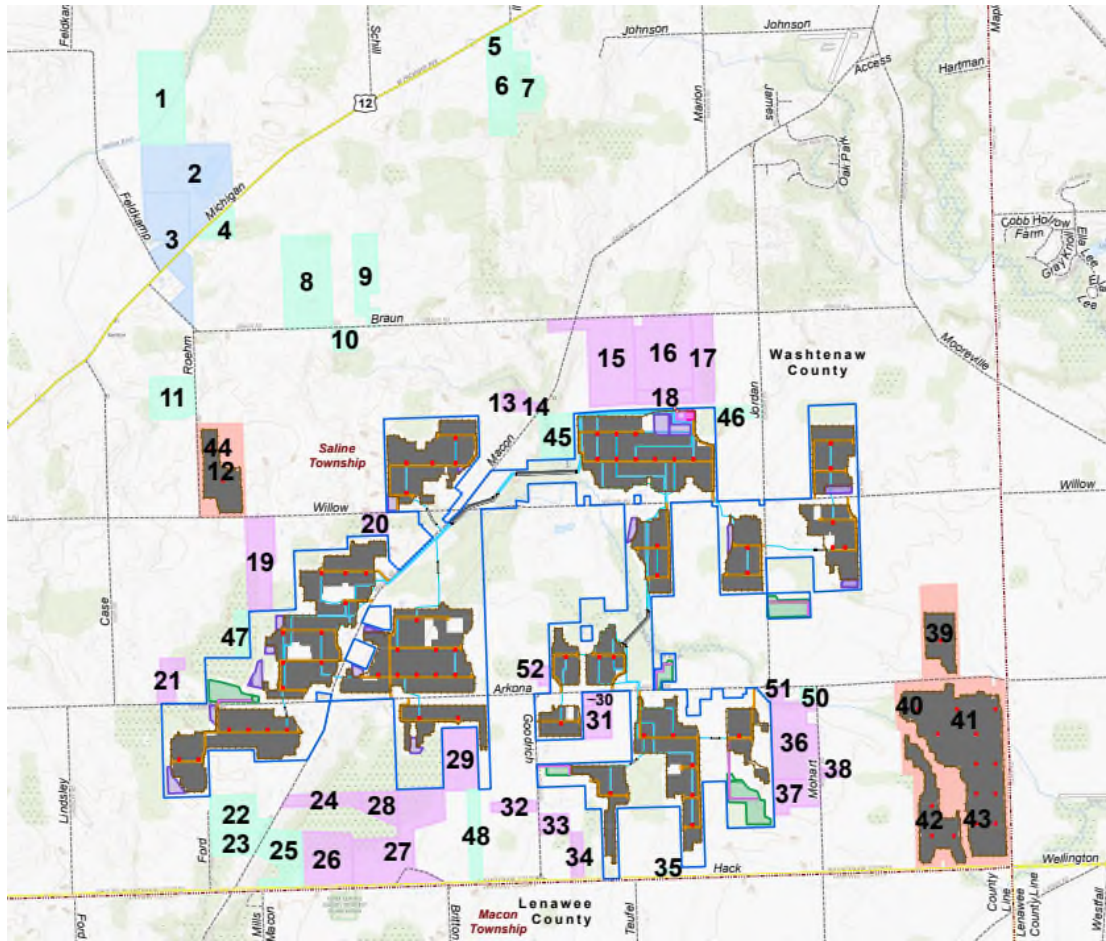
³⁴⁹ *Id.* at 24, 5 TR 1111.

³⁵⁰ MCL 460.1225(1)(n).

³⁵¹ AFIP at 27.

³⁵² *Id.*

³⁵³ Exhibit A-1.5 (KAP-3) at 5, 4 TR 136.



Specifically, Parcels 2 and 3 were not chosen because of their lack of proximity to the rest of the Project layout.³⁵⁴ Parcels 1, 4–11, 22, 23, 25, 35, 45–48, and 50 were not chosen because of physical or environmental characteristics that make them infeasible for the current Project layout, including unsuitably shaped or sized parcels, soil suitability, forested land requiring high rates of tree clearing, or a high prevalence of regulated wetlands.³⁵⁵ Finally, Parcels 12–21, 24, 26–38, and 51–52 were not chosen because the land rights acquired for these parcels include terms, limits, or

³⁵⁴ *Id.*

³⁵⁵ *Id.*

exclusions that make them infeasible and/or unable to host facilities compatible with the proposed Project design.³⁵⁶

The preponderance of the evidence on the record demonstrates that the Company has explained why alternative developed locations were not feasible and ultimately not selected for inclusion in the Project. Staff agreed and concluded that the Company “made legitimate and sufficient efforts to attempt to include alternative developed locations within its project. Staff would recommend the Commission find that feasible alternative developed locations for the project have been satisfactorily considered.”³⁵⁷ No other party submitted testimony on this issue.

15. Washtenaw Solar’s Application Demonstrated That There Will Be No Impacts to Wireless Signals.

Under PA 233, an application must include, “[i]f the energy facility is reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio, a plan to minimize and mitigate that impact.”³⁵⁸ Washtenaw Solar’s Application demonstrates that there will be no impacts to wireless signals. Washtenaw Solar assessed whether the Project is reasonably expected to have an impact on television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio.³⁵⁹ Washtenaw Solar consulted with its electrical engineers and determined that none of these impacts would result from the Project.³⁶⁰ Furthermore, no airfield navigational, communication, or radar systems are located

³⁵⁶ *Id.*

³⁵⁷ Glass, Direct Testimony at 26-31, 5 TR 1147.

³⁵⁸ MCL 460.1225(1)(o).

³⁵⁹ Durgan, Revised Direct Testimony at 32, 5 TR 676.

³⁶⁰ *Id.*; Exhibit A-7 (TSD-9) at 6.

within the Project Area.³⁶¹ Accordingly, no signal mitigation plan is necessary for inclusion in Washtenaw Solar's Application.

The preponderance of the evidence on the record demonstrates that the Company appropriately considered signal interference and determined that no signal mitigation plan is required. Staff "agrees with the Applicant's determination that, because the facility is not anticipated to impact television signals, microwave signals, agricultural global position systems, military defense radar, radio reception, or weather and doppler radio, the facility does not require a signal mitigation plan."³⁶² No other party submitted testimony on this issue.

16. Washtenaw Solar's Application Included a Stormwater Assessment Resulting from Consultation with the Washtenaw County Water Resource Commissioner's Office.

Under PA 233, an application must include a "stormwater assessment and a plan to minimize, mitigate, and repair any drainage impacts at the expense of the [applicant]."³⁶³ Further, PA 233 requires that "[t]he applicant shall make reasonable efforts to consult with the county drain commissioner before submitting the application and shall include evidence of those efforts in its application."³⁶⁴ The AFIP further requires the following:

(1) The Company must conduct a stormwater assessment and prepare a plan that describes measures to minimize, mitigate, and repair any drainage impacts. The assessment and plan may be preliminary.

(2) The Plan shall address any guidance from consultation with the county drain commissioner and shall include the date and time the consultation took place, who participated in the consultation, and

³⁶¹ Durgan, Revised Direct Testimony at 32, 5 TR 676.

³⁶² Cordero, Direct Testimony at 15, 5 TR 868.

³⁶³ MCL 460.1225(1)(p).

³⁶⁴ *Id.*

copies of correspondence listing necessary permits, next steps, and associated timeline for each consultation.³⁶⁵

The Company engaged Kimley-Horn to develop the preliminary stormwater assessment and Stormwater Mitigation Plan (the “Plan”) included in the Application.³⁶⁶ Company witness Kampa oversaw the Plan’s development and consulted with the WCWRC regarding its conclusions.³⁶⁷ The Plan summarizes the Company’s strategic approach to implementing measures that minimize, mitigate, and repair stormwater impacts to comply with the WCWRC’s Rules and Guidelines and is a representative analysis of a portion of the Project Area.³⁶⁸ The Company consulted with the WCWRC in early summer 2025 regarding the Plan.³⁶⁹ WCWRC provided its feedback during the consultation process and Washtenaw Solar revised the Plan to adopt the WCWRC’s guidance. The Plan describes the Company’s plan to install well-maintained vegetation underneath the panels and to use subsurface infiltration beds to meet the calculated infiltration requirement in the WCWRC’s Rules and Guidelines.³⁷⁰ The Plan also includes calculations of the potential runoff that may be generated during a first flush and a bankfull rain event.³⁷¹

³⁶⁵ AFIP at 13.

³⁶⁶ Exhibit A-6.4 (JEK-1) at 3, 4 TR 305.

³⁶⁷ Kampa, Direct Testimony at 5, 4 TR 240.

³⁶⁸ Exhibit A-6.4 (JEK-1) at 2-3, 4 TR 305.

³⁶⁹ Kampa, Direct Testimony at 6, 4 TR 241.

³⁷⁰ Exhibit A-6.4 (JEK-1) at 4, 4 TR 305.

³⁷¹ *Id.*

Ms. Pop provided testimony regarding flooding that currently occurs on her property (a nonparticipating parcel) and states that she is “concerned that the Project will add to that through runoff and soil erosion.”³⁷² In rebuttal testimony, Company witness Kampa clarified that the “Project does not add to the water in the Project Area” and that the “Project will not increase the current flooding conditions on Intervenor Pop’s parcel/property during the operational lifetime of the Project.”³⁷³ Indeed, the Plan demonstrates that the Project will “utilize a vegetative cover that reduces the Curve Number (“CN”) for the land from the current agricultural use. This means that the vegetation induces better infiltration through plant biological functions and reduces the speed of overland flow in comparison to the existing cover, thus reducing peak outflows—a common cause of flooding.”³⁷⁴

The preponderance of the evidence on the record demonstrates that the Company’s Application includes the required stormwater assessment and plan. Staff agrees that the Company’s preliminary Stormwater Mitigation Plan complies with PA 233’s requirements and the AFIP.³⁷⁵ Ms. Pop has not provided evidence that shifts the Company’s evidentiary burden in this case and Company witness Kampa’s response to Ms. Pop’s testimony makes clear that the Project will improve water flow and reduce flooding in the area.

³⁷² Pop, Direct Testimony at 6-7, 5 TR 800-801.

³⁷³ Kampa, Rebuttal Testimony at 7, 4 TR 251.

³⁷⁴ *Id.*

³⁷⁵ Warner, Direct Testimony at 19-20, 5 TR 1106-07.

17. Washtenaw Solar’s Application Included a Fire Response Plan and an Emergency Response Plan.

Under PA 233, an application must include a “fire response plan and an emergency response plan.”³⁷⁶ Washtenaw Solar’s Application includes both a Fire Response Plan and an Emergency Response Plan meeting the AFIP’s requirements. Washtenaw Solar has adopted a Fire Response Plan (the “FRP”) in the event of a fire emergency at the facility.³⁷⁷ Washtenaw Solar developed the FRP to specify the minimum requirements that it expects its EPC firm to implement prior to construction.³⁷⁸ The EPC firm will provide Washtenaw Solar with its site-specific FRP for review and approval prior to commencing construction activities, which will be consistent with the requirements of PA 233 and the AFIP.³⁷⁹ The Project’s EPC firm has not yet been selected.³⁸⁰ The FRP will be included in requests-for-proposals solicited for the Project with the expectation that the commitments in the Company’s Application will be upheld by both Washtenaw Solar and the EPC firm ultimately selected for the Project.³⁸¹

Washtenaw Solar will analyze any change the design, type, manufacture, etc. of facilities or equipment to determine if changes are necessary to the FRP.³⁸² Washtenaw Solar will consult further with the SAFD, or its successor, if the FRP is amended.³⁸³ Washtenaw Solar will also undertake a review and update of the FRP with the SAFD, or its successor, first responders, and

³⁷⁶ MCL 460.1225(1)(q).

³⁷⁷ Exhibit A-1.10 (JMP-4) at 5, 4 TR 135.

³⁷⁸ *Id.* at 3, 4 TR 135.

³⁷⁹ *Id.*

³⁸⁰ *Id.*

³⁸¹ *Id.*

³⁸² *Id.*

³⁸³ *Id.*

County emergency managers at least once every three years.³⁸⁴ Washtenaw Solar will provide a copy of the EPC firm's final FRP to Staff prior to starting construction and before training with first responders as described herein.³⁸⁵

Washtenaw Solar has also adopted an Emergency Response Plan (the "ERP") in the event of an emergency at the facility other than a fire emergency.³⁸⁶ The ERP is also the minimum requirements that the Company expects its EPC firm to implement prior to construction.³⁸⁷ The EPC firm will provide Washtenaw Solar with its site-specific ERP for review and approval prior to commencing construction activities.³⁸⁸

The ERP will also be included in requests-for-proposals solicited for the Project with the expectation that the commitments herein will be upheld by both Washtenaw Solar and the EPC firm ultimately selected for the Project.³⁸⁹ Washtenaw Solar will analyze any change to the design, type, manufacture, etc. of facilities or equipment to determine if changes are necessary to the ERP.³⁹⁰ Washtenaw Solar will consult further with first responders and County emergency managers if the ERP is amended.³⁹¹ Washtenaw Solar is committed to reviewing and updating the ERP with fire departments, first responders, and County emergency managers at least once every three years.³⁹²

³⁸⁴ *Id.* at 4, 4 TR 135.

³⁸⁵ *Id.*

³⁸⁶ Exhibit A-1.9 (JMP-3) at 4, 4 TR 135.

³⁸⁷ *Id.*

³⁸⁸ *Id.*

³⁸⁹ *Id.*

³⁹⁰ *Id.*

³⁹¹ *Id.*

³⁹² *Id.*

Washtenaw Solar's Application demonstrates that the Company completed the required consultations with regard to both the ERP and FRP.³⁹³ The Company also proposes to remedy any outstanding capacity shortfall identified by the SAFD or its successor prior to the commencement of construction so that the SAFD or its successor has the vehicles and equipment needed to access a medical emergency within the array areas.³⁹⁴

The preponderance of the evidence on the record demonstrates that the Company's Application includes the necessary ERP and FRP. Staff agrees that "the Company's filings satisfy the minimum requirements of PA 233 and the AFIP for this stage of the project."³⁹⁵ No other party filed testimony on this issue.

18. Washtenaw Solar's Application Included a Complete Decommissioning Plan.

PA 233 requires that an application include the following:

A decommissioning plan that is consistent with agreements reached between the applicant and other landowners of participating properties and that ensures the return of all participating properties to a useful condition similar to that which existed before construction, including removal of above-surface facilities and infrastructure that have no ongoing purpose. The decommissioning plan shall include, but is not limited to, financial assurance in the form of a bond, a parent company guarantee, or an irrevocable letter of credit, but excluding cash. The amount of the financial assurance shall not be less than the estimated cost of decommissioning the energy facility, after deducting salvage value, as calculated by a third party with expertise in decommissioning, hired by the applicant. However, the financial assurance may be posted in increments as follows:

- (i) At least 25% by the start of full commercial operation.
- (ii) At least 50% by the start of the fifth year of commercial operation.

³⁹³ Exhibit A-1.10 (JMP-4) at 4, 4 TR 135; Exhibit A-1.9 (JMP-3) at 6, 4 TR 135.

³⁹⁴ Exhibit A-8.3 (TSD-11) at 12.

³⁹⁵ Warner, Direct Testimony at 26-27, 5 TR 1113-14.

(iii) 100% by the start of the tenth year of commercial operation.³⁹⁶

The Company provided a Decommissioning Plan in compliance with this requirement.³⁹⁷

Consistent with the AFIP requirements, the Decommissioning Plan includes an overview of the Project facilities; the Project's expected useful life; a description of triggering events, facilities that will be removed as part of decommissioning activities, removal methods, site clearing activities, material management methods, and transportation plans; a baseline soil health survey; a list of known and anticipated hazardous substances; a proposed decommissioning schedule; a description of resources, conditions, or activities that will be potentially affected by decommissioning and mitigation measures to be employed during the decommissioning process; a site restoration plan; a list of expected necessary permits; details describing the financial assurance; and a list of commitments and assurances consistent with the Decommissioning Agreement.³⁹⁸

The preponderance of the evidence on the record demonstrates that the Company's Application includes a Decommissioning Plan that complies with both PA 233 and the AFIP. Staff concluded that the Company's Decommissioning Plan generally followed the requirements of the AFIP "with extensive soils health survey and environmental site assessments to indicate benchmark conditions."³⁹⁹ Staff testified regarding the Company's plans for dust control during decommissioning,⁴⁰⁰ as well as remediating any potential leaching from panels into the soils below.⁴⁰¹ With regard to planning for dust control, the Company simply accounted for the same

³⁹⁶ MCL 460.1225(1)(r).

³⁹⁷ Exhibit A-13.1 (MTH-1), 5 TR 640.

³⁹⁸ *Id.*

³⁹⁹ Krupp, Adopted Direct Testimony at 4, 5 TR 884.

⁴⁰⁰ *Id.* at 7, 5 TR 887.

⁴⁰¹ *Id.* at 6, 5 TR 886.

dust expense differently—it was included in the Soil Erosion and Sedimentation Control permitting costs rather than as a separate line item but is fully accounted for in the Decommissioning Plan and Cost Estimate.⁴⁰² Additionally, the potential for leaching is extraordinarily low, only applicable to certain panel types not typically procured by the Company, and requires a worst-case scenario that is not consistent with routine inspection, operation, and maintenance practices.⁴⁰³ To the extent Staff had remaining questions regarding the Company’s Decommissioning Plan, Staff proposed a number of decommissioning conditions that the Company has agreed to implement.⁴⁰⁴

V. ARGUMENT

A. Saline Township Had Opportunities to Shape This Case.

Washtenaw Solar attempted for over seven years to work with the Township to make meaningful progress on a local permitting solution for this Project both before and after beginning the state review process but the Township showed no interest in doing so. Washtenaw Solar’s experience exemplifies why PA 233 was needed as a legislative solution for renewable siting projects in Michigan. Lengthy development timelines have real, negative impacts on the Company and participating landowners, and it is advantageous for both parties to work together to reach mutually agreeable solutions.⁴⁰⁵ Indeed, the Company reached consensus with Staff on a number of contested issues in this case, finding reasonable solutions that work for both parties.⁴⁰⁶ The

⁴⁰² Hebert, Rebuttal Testimony at 21, 5 TR 603.

⁴⁰³ *Id.* at 10, 5 TR 592.

⁴⁰⁴ Exhibit S-2.4.

⁴⁰⁵ Durgan, Rebuttal Testimony at 8, 5 TR 689.

⁴⁰⁶ *Id.* at 5, 5 TR 686 (“Washtenaw Solar is agreeable to entering into conditions regarding the Project.”).

reality of renewable project development is that, when landowners choose to participate in a project, they join the developer on the permitting journey. Washtenaw Solar seeks to complete that journey and fulfill its commitments to those landowners.

While this is one of the Commission’s first renewable siting cases, it is also an opportunity for the Township to come to the table and make meaningful requests reflecting the needs of its constituents. The Company left the door open to a local permitting solution or other compromises even after commencing the PA 233 process before the Commission.⁴⁰⁷ The Township did not undertake discovery before the evidentiary hearing, proposed no suggested changes in its witnesses’ testimony, and provided no input regarding conditions the Commission could impose as part of the permit. Michigan’s state siting process under PA 233 is a process of last-resort and is designed to promote interaction and collaboration among parties. Washtenaw Solar remains open to working with the Township to develop Project parameters that benefit Township residents, but the Township has given no indication that it is interested in doing so.

B. The Record Demonstrates That Washtenaw Solar’s Public Benefits Justify Its Construction.

PA 233 requires the Commission to grant an application and issue a certificate if, in addition to other conditions, it determines that “[t]he public benefits of the proposed energy facility justify its construction.”⁴⁰⁸ For purposes of this determination, “public benefits include, but are not limited to, expected tax revenue paid by the energy facility to local taxing districts, payments to owners of participating property, community benefits agreements, local job creation, and any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this

⁴⁰⁷ Durgan, Revised Direct Testimony at 9, 5 TR 653; Exhibit A-4.2 (TSD-6) at 119.

⁴⁰⁸ MCL 460.1226(7)(a).

state.”⁴⁰⁹ The preponderance of the evidence on the record demonstrates that the Project’s public benefits, as delineated by PA 233, justify its construction. The Commission should find the same.

1. Washtenaw Solar Is Expected to Increase Local Taxing Districts’ Tax Revenue.

As contemplated by PA 233, the Project’s construction and operation will increase the tax revenues flowing into the local taxing bodies,⁴¹⁰ thereby creating a new revenue source for education and other local governmental services, including fire protection, parks, health, and safety.⁴¹¹ The local taxing districts that will benefit from the Project include the County, Clinton Community Schools Operating Fund, Clinton Community Schools Bond Fund, Saline Area School District Operating Fund, Saline Area School District Debt Fund, Lenawee Intermediate School District, Washtenaw Intermediate School District, Washtenaw Community College, the Township, Saline Township Roads, Saline Sinking Fund, Saline Recreation, Saline Fire District, and Saline District Library.⁴¹² Taxes will also be paid into the State Education Tax.⁴¹³

Washtenaw Solar engaged Dr. Loomis to provide information regarding the Project’s economic impacts on the Township, the County, and the State.⁴¹⁴ Dr. Loomis utilized the latest Impact Analysis for Planning (“IMPLAN”), which is an economic impact modeling software that combines economic, demographic, and industry data.⁴¹⁵ To calculate the expected tax revenue that Washtenaw Solar is expected to pay local taxing districts, Dr. Loomis applied the Solar Energy

⁴⁰⁹ *Id.*

⁴¹⁰ Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at App’x A at 21, 4 TR 381.

⁴¹¹ *Id.*

⁴¹² Loomis, Direct Testimony at 7, 4 TR 316; Exhibit A-8.1 (DGL-2) at App’x A at 21, 4 TR 381.

⁴¹³ *Id.*

⁴¹⁴ Loomis, Direct Testimony at 4, 4 TR 313; Exhibit A-8.1 (DGL-2) at 3, 4 TR 381.

⁴¹⁵ Loomis, Direct Testimony at 6, 4 TR 315; Exhibit A-8.1 (DGL-2) at App’x A at 15, 4 TR 381.

Facilities Tax,⁴¹⁶ assumed that the Project will be operational in 2028 and have a 30-year lifetime, and estimated that all tax rates will remain at their 2025 levels.⁴¹⁷ Dr. Loomis further assumed that, after the Solar Energy Facilities Tax expires at the end of 20 years, the total taxable industrial personal property will be \$215 million.⁴¹⁸

In total, Washtenaw Solar expects to contribute over \$25 million in property taxes to all local taxing districts during the Project's 30-year lifetime.⁴¹⁹ This constitutes an average of over \$833 thousand in property taxes paid by Washtenaw Solar per year.⁴²⁰ With regard to the ALUs, Washtenaw Solar is expected to pay the County more than \$6.5 million over the Project's lifetime, and the Township over \$789 thousand during the Project's 30 years in operation.⁴²¹

Staff found that, with regard to the expected tax revenue paid by Washtenaw Solar to the local taxing districts, the evidence presented by Washtenaw Solar was sufficient to demonstrate that the public benefits justify the Project's construction because "the project will provide millions of dollars of tax revenue."⁴²² Accordingly, the Commission should find that the Project is expected to increase the local taxing districts' tax revenue, thereby determining that the Project's public benefits justify its construction.

⁴¹⁶ Loomis, Direct Testimony at 6-7, 4 TR 315-16; Exhibit A-8.1 (DGL-2) at App'x A, 21, 4 TR 381. See also Solar Energy Facilities Taxation Act, 2023 PA 108, as amended, MCL 211.1157.

⁴¹⁷ Loomis, Direct Testimony at 6-7, 4 TR 315-16; Exhibit A-8.1 (DGL-2) at App'x A, 21, 4 TR 381.

⁴¹⁸ Loomis, Direct Testimony at 7, 4 TR 316; Exhibit A-8.1 (DGL-2) at App'x A, 21, 4 TR 381.

⁴¹⁹ Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at App'x A, Table 6.1, 23, 4 TR 381.

⁴²⁰ Exhibit A-8.1 (DGL-2) at App'x A, Table 6.1, 23, 4 TR 381.

⁴²¹ Exhibit A-8.1 (DGL-2) at App'x A, Tables 6.2-6.4, 24-26, 4 TR 381.

⁴²² Lobodzinski, Direct Testimony at 9, 5 TR 966.

2. Washtenaw Solar’s Public Benefits Include Significant Payments to Participating Property Owners.

As part of the Project’s development, Washtenaw Solar entered into real property agreements with participating property owners.⁴²³ Such agreements included Solar Agreements, Collection Agreements, Participation Easement Agreements, and Land Option Purchase Agreements.⁴²⁴

Staff found that, regarding the payments to participating property owners, the evidence presented by Washtenaw Solar was sufficient to demonstrate that the public benefits justify the Project’s construction because “the participating property owners themselves considered these payments to be appropriate enough to willingly sign agreements with [Washtenaw Solar].”⁴²⁵ Accordingly, the Commission should find that Washtenaw Solar has—and will continue to—pay participating property owners, thereby determining that the Project’s public benefits justify its construction.

3. Washtenaw Solar’s Public Benefits Include Host Community and Community Benefits Agreements Supporting Local Governments and Local Community Organizations’ Capacity Needs.

As contemplated by PA 233, Washtenaw Solar presented an HCA to the Township that proposed \$2,000 per MW of nameplate capacity upon the Project’s operational commencement.⁴²⁶ Because the Project proposes up to 150 MW of nameplate capacity, Washtenaw Solar offered the

⁴²³ Durgan, Revised Direct Testimony at 33, 5 TR 677; Exhibit A-8.2 (TSD-10) at 3.

⁴²⁴ Durgan, Revised Direct Testimony at 33, 5 TR 677; Exhibit A-8.2 (TSD-10) at App’x A, 6.

⁴²⁵ Lobodzinski, Direct Testimony at 13, 5 TR 970. Due to the confidential and proprietary nature of these payments, Staff conducted an on-camera review to verify that Washtenaw Solar would make payments to participating property owners over the Project’s operational life. *Id.*

⁴²⁶ Durgan, Revised Direct Testimony at 33, 5 TR 677; Exhibit A-8.3 (TSD-11) at 3; Exhibit A-8.3 (TSD-11) at App’x A.

Township a total of \$300,000.⁴²⁷ On September 10, 2025, the Township Board approved and executed the HCA.⁴²⁸

In response to the Michigan Court of Appeals’ finding that the statutory definition of ALU “includes all local units of government where a proposed energy facility will be located,” not “only those . . . that have zoning jurisdiction,”⁴²⁹ Washtenaw Solar proposed an HCA to the County that is identical to that approved by the Township.⁴³⁰ The County Board of Commissioners is expected to approve the HCA in late summer/early fall of 2026.⁴³¹

Beyond the HCAs, Washtenaw Solar has been engaged with the greater Saline community to ensure that local community organizations’ capacity needs are met, as well. For example, to meet the SAFD’s demonstrated capacity needs,⁴³² Washtenaw Solar proposed a CBA to provide the SAFD with a one-time payment of \$110,000 to purchase equipment suited to respond to emergencies that may occur between the solar arrays.⁴³³ The CBA also establishes a recurring annual payment to ensure that resource needs are met throughout the Project’s 30-year lifetime.⁴³⁴ The CBA is under consideration as the SAFD undergoes a reorganization into the Saline Area Fire Authority.

⁴²⁷ *Id.*

⁴²⁸ *Id.*

⁴²⁹ *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 373259); slip op at 12.

⁴³⁰ Revised Exhibit A-8.3 (TSD-11) at 3; *id.* at App’x B.

⁴³¹ *Id.* at 3; *id.* at App’x B.

⁴³² Durgan, Revised Direct Testimony at 33, 5 TR 677; Pierson, Revised Direct Testimony at 17, 4 TR 94; Exhibit A-1.10 (JMP-4) at 4, 4 TR 135.

⁴³³ Durgan, Revised Direct Testimony at 34, 5 TR 678; Revised Exhibit A-8.3 (TSD-11) at 3; *id.* at App’x C.

⁴³⁴ Durgan, Revised Direct Testimony at 34, 5 TR 678; Exhibit A-8.3 (TSD-11) at App’x C.

Additionally, if the County Board of Commissioners is unable to approve the HCA, Washtenaw Solar executed a CBA with the SASS.⁴³⁵ The terms are the same as those offered to the County and the Township—a payment of \$2,000 per MW of nameplate capacity upon the Project’s operational commencement.⁴³⁶ The SASS approved the CBA on July 28, 2026.⁴³⁷

Staff found that, in terms of host community and community benefits agreements, the evidence presented by Washtenaw Solar was sufficient to demonstrate that the public benefits justify the Project’s construction because “[Washtenaw Solar] has executed a host community agreement compliant with PA 233 with Saline Township.”⁴³⁸ Accordingly, the Commission should find that Washtenaw Solar has executed the required agreements supporting the Township and the County’s capacity needs, thereby determining that the Project’s public benefits justify its construction.

4. Washtenaw Solar Is Committed to Supporting Local Job Creation.

The Project will boost economic activity in the Township, the County, and the State by creating and supporting good paying jobs, both during construction and during the Project’s operational life.⁴³⁹ Dr. Loomis contemplated local job creation, in addition to money entering the local economy as a result of the new jobs.⁴⁴⁰

⁴³⁵ Revised Exhibit A-8.3 (TSD-11) at 3; *id.* at App’x D.

⁴³⁶ *Id.* at 3; *id.* App’x D.

⁴³⁷ *Id.* at 3; *id.* App’x D.

⁴³⁸ Lobodzinski, Direct Testimony at 14, 5 TR 971.

⁴³⁹ Loomis, Direct Testimony at 9, 4 TR 318.

⁴⁴⁰ Exhibit A-8.1 (DGL-2) at App’x A 19, 4 TR 381.

Dr. Loomis concluded that, during construction, the Project will support 251 new local jobs for the County and 438 new local jobs for the State.⁴⁴¹ During operation, the Project will support 13.1 new local jobs for the County and 18.2 new local jobs for the State.⁴⁴² In total, during construction, these jobs will result in over \$24.7 million in earnings for the County and over \$41.2 million in earnings for the State.⁴⁴³ Annually, during operation, these jobs will net over \$948,000 in earnings for the County and over \$1.3 million in earnings for the State.⁴⁴⁴ Additionally, the Project will increase the economic output in the State by \$92.4 million during construction and \$3 million annually during operation.⁴⁴⁵

Staff found that, with regard to the Project's local job creation, the evidence presented by Washtenaw Solar was sufficient to demonstrate that the public benefits justify the Project's construction because "the project will create both temporary jobs during the construction period of the project and permanent jobs during the operational life of the project."⁴⁴⁶ Accordingly, the Commission should find that Washtenaw Solar is committed to supporting local job creation, thereby determining that the Project's public benefits justify its construction.

⁴⁴¹ Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at App'x A, Table 5.1, 17, 4 TR 381.

⁴⁴² Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at App'x A, Table 5.1, 17, 4 TR 381.

⁴⁴³ Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at App'x A, Table 5.2, 19, 4 TR 381.

⁴⁴⁴ Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at App'x A, Table 5.2, 19, 4 TR 381.

⁴⁴⁵ Loomis, Direct Testimony at 8, 4 TR 317; Exhibit A-8.1 (DGL-2) at App'x A, Table 5.3, 20, 4 TR 381.

⁴⁴⁶ Lobodzinski, Direct Testimony at 15, 5 TR 972.

5. Washtenaw Solar Will Contribute to the State's Energy, Capacity, Reliability, and Resource Adequacy Needs.

In determining whether a proposed energy facility will contribute to meeting the identified energy, capacity, reliability, or resource adequacy needs of the State of Michigan, PA 233 provides that the Commission “may consider approved integrated resource plans under section 6t of 1939 PA 3, MCL 460.6t, renewable energy plans, annual electric provider capacity demonstrations under section 6w of 1939 PA 3, MCL 460.6w, or other proceedings before the commission, at the applicable regional transmission organization, or before the Federal Energy Regulatory Commission, as determined relevant by the commission.”⁴⁴⁷

In tandem with PA 233, the Legislature also enacted Public Act 235 of 2023 (“PA 235”), which increased the State’s clean energy targets to 80% by 2035 and 100% by 2040.⁴⁴⁸ Utility-scale solar energy facilities, like the Project, are critical to achieving the State’s clean energy targets and replacing energy currently produced by fossil fuels.⁴⁴⁹ The Project has willing landowners with sprawling properties suitable to develop a utility-scale solar energy facility, contains transmission infrastructure with adequate and available capacity, and has limited potential impacts on the environment and public health and welfare. The Project is necessary to meet the State’s energy goals.⁴⁵⁰

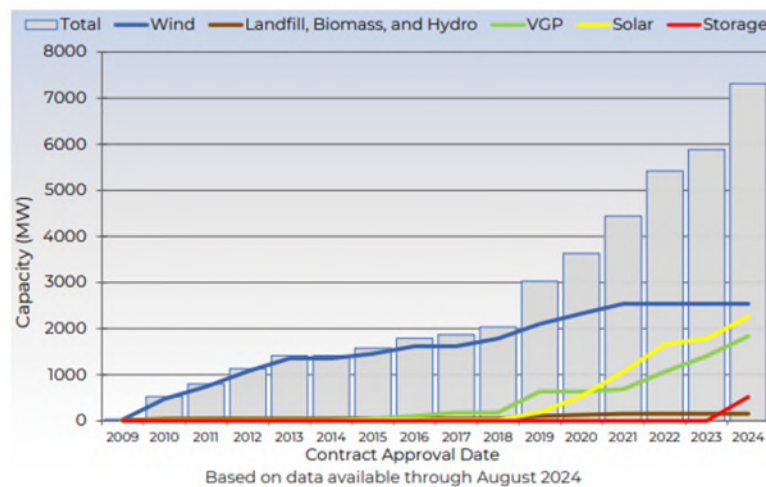
⁴⁴⁷ MCL 460.1226(7)(a).

⁴⁴⁸ Revised Exhibit A-8.5 (TSD-12) at 4. See also Clean and Renewable Energy and Energy Waste Reduction Act, 2023 PA 235, as amended, MCL 460.1051(1).

⁴⁴⁹ Revised Exhibit A-8.5 (TSD-12) at 4.

⁴⁵⁰ *Id.* at 8.

The Project will provide up to 150 MW of clean energy to meet the State’s growing energy demands.⁴⁵¹ As the figure below illustrates, the Commission anticipates that the State will have over 8,000 MW of renewable energy capacity operating by the end of 2026.⁴⁵² To determine this figure, the Commission considered anticipated capacity additions to the State based on integrated resource plan (“IRP”) projections that the Commission has currently approved,⁴⁵³ which is explicitly permitted by PA 233.⁴⁵⁴



Even with these significant strides, the MISO Planning Resource Auction for Planning Year 2025/26 still observed that new capacity additions in the region have not kept pace with reduced accreditation values, suspensions and retirements, and reduced imports.⁴⁵⁵ Therefore, the Project is imperative to help meet the State’s capacity needs.⁴⁵⁶

⁴⁵¹ Durgan, Revised Direct Testimony at 34, 5 TR 678; Exhibit A-8.5 (TSD-12) at 5.

⁴⁵² Revised Exhibit A-8.5 (TSD-12) at 5.

⁴⁵³ *Id.*; *id.* at App’x B.

⁴⁵⁴ MCL 460.1226(7)(a).

⁴⁵⁵ Revised Exhibit A-8.5 (TSD-12) at 5; *id.* at App’x C.

⁴⁵⁶ *Id.* at 5.

Notably, following System Impact Studies conducted during the MISO interconnection queue process, there is assurance that the Project will have no negative impacts on the State’s electrical reliability.⁴⁵⁷ The Project will require minor upgrades to ITC’s Majestic 345 kV station, but will require no distribution upgrades.⁴⁵⁸ Moreover, the Project will not create any reliability concerns as a result of its interconnection to the electric grid.⁴⁵⁹ Additionally, through its GIA with MISO and ITC, Washtenaw Solar has committed to satisfying any financial commitments related to the reliability needs created by the Project.⁴⁶⁰

The Project will also help meet an electric provider’s resource adequacy needs, including PA 235’s requirement that they achieve renewable energy credit portfolios.⁴⁶¹ However, even prior to the passage of PA 233 and PA 235, the State’s utilities made significant renewable resource commitments.⁴⁶² For example, in DTE’s 2022 IRP, it committed to adding 5,400 MW of solar by 2032.⁴⁶³ Similarly, in its last IRP, Consumers Energy committed to the addition of 8,000 MW of solar generation by 2040.⁴⁶⁴ As previously noted, though, MISO has established that new capacity additions are not keeping pace with the capacity lost.⁴⁶⁵ Therefore, the Project will help to meet

⁴⁵⁷ *Id.* at 6.

⁴⁵⁸ *Id.*

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*

⁴⁶¹ See Clean and Renewable Energy and Energy Waste Reduction Act, 2023 PA 235, as amended, MCL 460.1028.

⁴⁶² Revised Exhibit A-8.5 (TSD-12) at 7.

⁴⁶³ *Id.*

⁴⁶⁴ *Id.*

⁴⁶⁵ *Id.*

the resource adequacy needs as the State’s energy generation mix continues to shift more toward renewable generation and as its load growth increases.⁴⁶⁶

Staff found that, regarding how the Project will contribute to the State’s energy, capacity, reliability, and resource adequacy needs, the evidence presented by Washtenaw Solar was sufficient to demonstrate that the public benefits justify the Project’s construction because “the project will meaningfully contribute to the renewable energy standards established by MCL 460.1028.”⁴⁶⁷ Accordingly, the Commission should find that the Project will contribute to the State’s energy, capacity, reliability, and resource adequacy needs, thereby determining that the Project’s public benefits justify its construction.

C. The Record Demonstrates That Washtenaw Solar Complies with the Michigan Environmental Protection Act.

PA 233 requires that a project comply with the standard articulated in Section 1705(2) of the Michigan Environmental Protection Act, 1994 PA 451, Part 17, as amended, MCL 324.1705(2), which provides:

In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.⁴⁶⁸

⁴⁶⁶ *Id.*

⁴⁶⁷ Lobodzinski, Direct Testimony at 16, 5 TR 973.

⁴⁶⁸ MCL 324.1705(2).

The Company's Application details why the Project will not result in the pollution, impairment, or destruction of the air, water, or other natural resources, or the public trust in these resources.⁴⁶⁹ The Project requires de minimis tree clearing, is designed to have minimal impacts to the environment and natural resources, and utilizes mitigation measures where appropriate.⁴⁷⁰ The Project avoids and minimizes impacts to the air, water, and other natural resources, and Washtenaw Solar will employ necessary measures to mitigate any potential impacts identified in the future.⁴⁷¹

Staff's position is that the Project could potentially impact water resources in a manner that pollutes, impairs, or causes destruction.⁴⁷² The Company urges the Commission to reject this conclusion, as the Company has committed to either set back 50 feet from all water resources or bore under those resources using horizontal directional drilling ("HDD")—which will occur well beneath the resource, thereby causing no impact to the resource itself. Staff appears to agree that these measures are sufficient.⁴⁷³ Staff defers to EGLE's regulatory jurisdiction, concluding that "[w]ater resource impacts are under the regulatory purview of EGLE rather than the Commission. As such, the alleged conduct, including an analysis of feasible and prudent alternatives, will be addressed by separate permitting decisions."⁴⁷⁴

⁴⁶⁹ Saltee, Revised Direct Testimony at 19, 5 TR 217.

⁴⁷⁰ *Id.*

⁴⁷¹ *Id.*; Exhibit A-6.2 (AMI-2), 5 TR 565.

⁴⁷² Krupp, Direct Testimony at 42-43, 5 TR 922-923.

⁴⁷³ See Krupp, Direct Testimony at 13, 5 TR 893.

⁴⁷⁴ Krupp, Direct Testimony at 43, 5 TR 923.

The preponderance of the evidence on the record supports that the Project will not factually or proximately impact the environment or natural resources. The Commission should determine that, for the purpose of the Commission’s analysis under PA 233, the Project does not pollute, impair, or destroy the air, water, or other natural resources. Alternatively, if the Commission does find an impairment, it should conclude that the impact is not of the magnitude to create meaningful environmental harm and that the Company has established that there is no feasible or prudent alternative to the construction of the Project.

D. The Record Demonstrates That Washtenaw Solar Considered and Addressed Impacts to the Environment and Natural Resources.

Under PA 233, the Commission must find that the applicant “has considered and addressed impacts to the environment and natural resources, including, but not limited to, sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.”⁴⁷⁵ The Company is committed to avoiding and minimizing potential impacts to environmental and natural resources to the maximum extent practicable.⁴⁷⁶ As part of this commitment, the Company completed a comprehensive review of the environmental and natural resources within the Project’s vicinity.⁴⁷⁷ This comprehensive review informed the Project’s avoidance, minimization, and mitigation methods—designed to ensure that Project activities do not adversely affect the environment or natural resources.⁴⁷⁸ All construction and operational activities associated with the Project—including temporary actions, such as staging and grading, and permanent installations, such as solar panels and access roads—will take place

⁴⁷⁵ MCL 460.1226(7)(c).

⁴⁷⁶ Exhibit A-6.2 (AMI-2) at 9, 5 TR 565.

⁴⁷⁷ *Id.*

⁴⁷⁸ *Id.*

within an approximately 1,407-acre Limit of Disturbance (“LOD”).⁴⁷⁹ The LOD defines the maximum area where ground disturbance, soil movement, and infrastructure development may occur.⁴⁸⁰ The LOD is designed to avoid and minimize potential impacts to the environment and protect surrounding natural resources— by delineating the restricted area where potential impacts could occur.⁴⁸¹

The preponderance of the evidence on the record supports that the Company provided a complete and thorough assessment that both “considered and addressed” impacts to the environment.⁴⁸² Staff agreed and concluded that the “environmental impact assessment of the Opt-Out Layout complies with MCL 460.1226(7)(c).”⁴⁸³ The Company disagrees with this position to the extent Staff’s conclusion is restricted to only the Opt-Out Layout. The as-filed environmental impact assessment covers all of the impacts associated with the Project, including those related to the Opt-Out Layout, which falls within the larger Project footprint and were depicted in the as-filed environmental impact assessment. However, to the extent the Commission seeks to approve the Opt-Out Layout, the Company agrees with Staff that Washtenaw Solar’s evidentiary showing is sufficient regarding the smaller layout of the Project. Each category of environmental impact analysis is included below.

⁴⁷⁹ *Id.*

⁴⁸⁰ *Id.*

⁴⁸¹ *Id.*

⁴⁸² *Id.*

⁴⁸³ Krupp, Surrebuttal Testimony at 7, 5 TR 946.

1. Washtenaw Solar Will Not Impact Sensitive Habitats and Waterways.

The Company commissioned a Site Characterization Study (“SCS”) that included an extensive review of sensitive habitats within the SCS’s Study Area.⁴⁸⁴ Sensitive habitats are defined as areas that support rare, threatened, or endangered species, or contain unique ecological features that are vulnerable to disturbance, degradation, or destruction.⁴⁸⁵ These may include conservation and recreational lands, properties enrolled in the USDA Farm Service Agency Conservation Reserve Program (“CRP”) or the Conservation Reserve Enhancement Program (“CREP”), land enrolled in the Agricultural Conservation Easement Program (“ACEP”), important bird areas (“IBAs”), USFWS-designated critical habitats, or Michigan Natural Features Inventory (“MNFI”) records of natural communities.⁴⁸⁶

The Company did not identify any protected conservation or recreational lands, properties enrolled in the USDA Farm Service Agency CRP or CREP, land enrolled in the ACEP, IBAs, or USFWS-designated critical habitats within the SCS Study Area.⁴⁸⁷ In addition, MNFI data indicated that the SCS Study Area contains no records of high-quality native communities. The Project is not expected to have direct impacts on sensitive habitats.

The preponderance of the evidence on the record indicates that no direct impacts to sensitive habitats are expected and that the Company has considered and assessed these resources. “Staff’s opinion is that the Applicant provided a comprehensive review on sensitive habitats as

⁴⁸⁴ Exhibit A-6.2 (AMI-2) at 20, 5 TR 565.

⁴⁸⁵ *Id.*

⁴⁸⁶ *Id.*

⁴⁸⁷ *Id.*

defined above, and that the record evidence is sufficient to support this statement.”⁴⁸⁸ No other party filed testimony on this issue.

2. Washtenaw Solar Has Avoided, Minimized, and Mitigated Potential Impacts to Wetlands, Waterways or Floodplains.

The Company studied approximately 4,207 acres of land for wetlands, waterways, and floodplains in Washtenaw County, Michigan (“WRD Study Area”). The WRD Study Area encompassed the Project Area. Within the WRD Study Area, the Company identified a total of 118 wetlands totaling approximately 261 acres. Of these 118 wetlands, 71 were categorized as palustrine emergent (“PEM”), 38 were categorized as palustrine forested (“PFO”), seven were categorized as palustrine scrub-shrub (“PSS”), and two were categorized as palustrine unconsolidated bottom (“PUB”).⁴⁸⁹ A total of 87 of the 118 wetlands are likely regulated by EGLE under Part 303.⁴⁹⁰ The remaining 31 wetlands were designated as not likely to be regulated.⁴⁹¹ EGLE must make jurisdictional determinations and issue permits to Washtenaw Solar before impacts to any water resources occur, should they be planned.⁴⁹²

A total of 49 stream segments were identified within the WRD Study Area, which includes 20 ephemeral streams, 16 intermittent streams, and 13 perennial streams.⁴⁹³ These streams total approximately 48,268 linear feet within the WRD Study Area, and all 49 stream segments are likely to be regulated by EGLE.⁴⁹⁴

⁴⁸⁸ Krupp, Direct Testimony at 10, 5 TR 890.

⁴⁸⁹ Exhibit A-6.2 (AMI-2) at 13, 5 TR 565.

⁴⁹⁰ *Id.*

⁴⁹¹ *Id.*

⁴⁹² *Id.*

⁴⁹³ *Id.*

⁴⁹⁴ *Id.*

Based on review of the Federal Emergency Management Agency (“FEMA”) Flood Insurance Rate Maps (“FIRMs”), the entire WRD Study Area is within Zone X-Area of Minimal Flood Hazard; therefore, no floodways or floodplains were identified.⁴⁹⁵

Based on the preliminary site layout, impacts to wetlands and streams are expected to be limited to underground collection line crossings, which will be installed using HDD methods.⁴⁹⁶ All bore entry and exit points will occur outside of regulated streams and wetlands; therefore, the impacts to wetlands and streams will be minimal, indirect, and temporary.⁴⁹⁷

In addition, Washtenaw Solar will adhere to the following best management practices to ensure that Project activities avoid and minimize potential indirect impacts to water resources during construction.⁴⁹⁸ Prior to construction, the 50-foot setbacks from all regulated wetlands and streams will be flagged.⁴⁹⁹ Equipment wash-out/gray water dump stations, equipment storage, chemical storage, vehicle parking, and portable bathroom placement will be set back a minimum distance of 100 feet from all regulated wetlands and streams.⁵⁰⁰ Additionally, portable bathrooms will be properly secured to prevent tipping.⁵⁰¹ Activities associated with routine vehicle maintenance, refueling, and staging will be set back a minimum of 300 feet from the edge of regulated wetlands and streams, and construction materials will not be stockpiled or deposited near regulated wetlands and streams.⁵⁰² Tree clearing within 100 feet of regulated wetlands and streams

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*

⁴⁹⁷ *Id.*

⁴⁹⁸ *Id.* at 14, 5 TR 565.

⁴⁹⁹ *Id.*

⁵⁰⁰ *Id.*

⁵⁰¹ *Id.*

⁵⁰² *Id.*

will be avoided, where feasible.⁵⁰³ A Washtenaw Solar Environmental Representative (“ER”) will be present on-site during all tree clearing adjacent to regulated wetlands and streams.⁵⁰⁴ Tree clearing debris/byproducts, including, but not limited to, wood chips, branches, grubbed and chipped trees, and/or woody vegetation remnants, will be deposited only in upland areas.⁵⁰⁵ Work will be stopped immediately if any regulated wetlands or streams are impacted (by equipment or materials, including sediment entering the resource) without proper authorization.⁵⁰⁶ The contractor will notify the ER by the end of the day the impact occurred.⁵⁰⁷ Washtenaw Solar will make any agency notifications and communicate required corrective actions to the EPC firm.

Prior to construction, a drilling plan will be prepared for any boring or HDD activities associated with installation of underground collection lines.⁵⁰⁸ The drilling plan will establish operational procedures and responsibilities for the prevention, containment, and remediation of any inadvertent returns (frac-outs) that may occur in connection with the HDD as part of the Project’s construction.⁵⁰⁹ The drilling plan will include the process for responding to an inadvertent return (frac out) for HDD activities underneath regulated wetlands and streams.⁵¹⁰

⁵⁰³ *Id.*

⁵⁰⁴ *Id.*

⁵⁰⁵ *Id.*

⁵⁰⁶ *Id.*

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ *Id.*

The preponderance of the evidence on the record indicates that no direct impacts to wetlands, waterways, or floodplains are expected and that the Company has considered and assessed these resources. “Staff’s position is that the Applicant has sufficiently addressed these water resource impacts and mitigation strategies.”⁵¹¹

3. Washtenaw Solar Will Not Impact Wildlife Corridors.

The Company examined wildlife corridors in its SCS.⁵¹² The Project does not intersect any known migratory corridors and is not expected to impede wildlife movement.⁵¹³ Through strategic siting, limited tree clearing, protective setbacks, and a fencing approach that avoids sensitive crossings, the Project maintains landscape permeability for wildlife movements and supports the continued ecological function of the surrounding area.⁵¹⁴

The preponderance of the evidence on the record indicates that no direct impacts to wildlife corridors are expected and that the Company has considered and assessed these resources. “Staff identified no issues with the [Company’s] evaluation of wildlife corridor presence.”⁵¹⁵ Although Ms. Pop raises concerns regarding wildlife access to a pond in the Project Area, Washtenaw Solar will not fence-in that pond and does not expect any impacts to wildlife corridors.⁵¹⁶ No other party filed testimony on this issue.

⁵¹¹ Krupp, Direct Testimony at 13, 5 TR 893.

⁵¹² Exhibit A-6.2 (AMI-2) at 23, 5 TR 565.

⁵¹³ *Id.* at 24, 5 TR 565.

⁵¹⁴ *Id.*

⁵¹⁵ Krupp, Direct Testimony at 16, 5 TR 896.

⁵¹⁶ Sallee, Rebuttal Testimony at 9, 4 TR 228.

4. Washtenaw Solar Will Not Impact Parks.

No parks were identified within the Project Area using the USGS Protected Areas Database.⁵¹⁷ The closest park is Curtiss Park, a Saline municipal park approximately one mile northeast of the Project Area.⁵¹⁸ No impacts to parks are expected as Washtenaw Solar avoided parks during the planning and siting process.⁵¹⁹ The preponderance of the evidence on the record indicates that no direct impacts to parks are expected and that the Company has considered and assessed these resources. Staff agrees with this conclusion.⁵²⁰ No other party filed testimony on this issue.

5. Washtenaw Solar Will Not Impact Historic and Cultural Sites.

Direct impacts to cultural and historic architectural and archaeological resources are not currently anticipated.⁵²¹ No previously recorded archaeological sites, properties listed in the National Register of Historic Places, the National Historic Landmark Registry, or the Michigan Historic Markers database, cemeteries, or tribal lands were identified within the Project Area, and the Project layout currently avoids wetlands and waterways, which are one of the primary indicators when determining High Probability Zones (*i.e.*, locations where archaeological deposits are most likely to be found).⁵²² If cultural resources are inadvertently encountered during

⁵¹⁷ Exhibit A-6.2 (AMI-2) at 23, 5 TR 565.

⁵¹⁸ *Id.*

⁵¹⁹ *Id.*

⁵²⁰ Krupp, Direct Testimony at 16, 5 TR 896.

⁵²¹ Exhibit A-6.2 (AMI-2) at 22, 5 TR 565.

⁵²² *Id.*

construction activities, Washtenaw Solar will immediately implement the approved Unanticipated Discoveries Plan (the “UDP”) prepared for the Project.⁵²³

The preponderance of the evidence on the record indicates that no impacts to historic and cultural resources are currently expected and that the Company has considered and assessed these resources. Staff found “that expected direct impacts to historic and cultural sites have been addressed at the time of application, and mitigation measures for the discovery of cultural resources during pre-construction surveys and construction are also properly addressed.”⁵²⁴ No other party filed testimony on this issue.

6. Washtenaw Solar Will Not Impact Threatened or Endangered Species.

No direct impacts to federally threatened, endangered, proposed threatened, and candidate species are currently anticipated.⁵²⁵ Washtenaw Solar coordinated with USFWS in May 2022, June 2024, and March 2025.⁵²⁶ During the March 2025 coordination meeting, Washtenaw Solar provided a Project overview, Washtenaw Solar’s vegetation management strategy, and the SCS and water resources delineation results.⁵²⁷ Additionally, Washtenaw Solar reviewed the best management practices (“BMPs”) that the Project will implement during construction.⁵²⁸ USFWS and MDNR concurred that the Project is not likely to adversely affect federally or state listed species.⁵²⁹

⁵²³ *Id.* at 23, 5 TR 565.

⁵²⁴ Krupp, Direct Testimony at 17, 5 TR 897.

⁵²⁵ Exhibit A-6.2 (AMI-2) at 18, 5 TR 565.

⁵²⁶ *Id.*

⁵²⁷ *Id.*

⁵²⁸ *Id.*

⁵²⁹ *Id.*

The preponderance of the evidence on the record indicates that no direct impacts to threatened or endangered species are expected and that the Company has considered and assessed these resources. “Staff’s position is that, having had consultation from the USFWS and MDNR which concluded without permitting requirements, the [Company’s] proposed approach to threatened and endangered species protection is satisfactory as demonstrated in the record evidence.”⁵³⁰ While Ms. Pop alleges that there are bald eagles have appeared in the Project Area, such bald eagle observations are considered incidental rather than evidencing occupancy in the area. Ms. Pop did not demonstrate the existence of bald eagle nests in the Project Area and the Company’s SCS did not identify any documented occurrences of bald eagle nests within the Project Area. The Company has adopted federally compliant practices to protect such nests should any be discovered during the Project’s construction.⁵³¹ No other party filed testimony on this issue.

E. The Record Demonstrates That Washtenaw Solar Has Met All Conditions Required by Public Act 233 of 2023 and Is Committed to Meeting All Conditions Proposed by Staff.

PA 233 provides that the Commission shall grant an application and issue a certificate if, in addition to other requirements, it determines that an applicant “has met the conditions established by section 227.”⁵³² Section 227 of PA 233 requires an applicant to enter into an HCA with each ALU.⁵³³ The HCA must require that, “upon commencement of any operation, the energy facility owner must pay the affected local unit \$2,000.00 per megawatt of nameplate capacity located within the affected local unit.”⁵³⁴ The payment contemplated in the HCA must then “be

⁵³⁰ Krupp, Direct Testimony at 19, 5 TR 899.

⁵³¹ Exhibit A-6.2 (AMI-2) at 18, 5 TR 565.

⁵³² MCL 460.1226(7)(d).

⁵³³ MCL 460.1227(1).

⁵³⁴ *Id.*

used as determined by the affected local unit for police, fire, public safety, or other infrastructure, or for other projects as agreed to by the local unit and the applicant.”⁵³⁵ The preponderance of the evidence on the record demonstrates that Washtenaw Solar has met all of the conditions required by PA 233. The Commission should make the same determination.

Washtenaw Solar presented an HCA to the Township that proposed to pay \$2,000 per MW of nameplate capacity upon the Project’s operational commencement.⁵³⁶ Because the Project proposes up to 150 MW of nameplate capacity, Washtenaw Solar offered the Township a total of \$300,000.⁵³⁷ Washtenaw Solar and the Township did not agree to specific projects for which the money shall be used, so the Township will use the money at its discretion, for police, fire, public safety, or other infrastructure.⁵³⁸ On September 10, 2025, the Township Board approved and executed the HCA.⁵³⁹

In response to the Michigan Court of Appeals’ finding that the statutory definition of ALU “includes all local units of government where a proposed energy facility will be located,” not “only those . . . that have zoning jurisdiction,”⁵⁴⁰ Washtenaw Solar proposed an HCA to the County that

⁵³⁵ *Id.*

⁵³⁶ Durgan, Revised Direct Testimony at 33, 5 TR 677; Exhibit A-8.3 (TSD-11) at 3; Exhibit A-8.3 (TSD-11) at App’x A.

⁵³⁷ *Id.*

⁵³⁸ See Exhibit A-8.3 (TSD-11) at App’x A. See also MCL 460.1227(1).

⁵³⁹ Durgan, Revised Direct Testimony at 33, 5 TR 677; Exhibit A-8.3 (TSD-11) at 3; Exhibit A-8.3 (TSD-11) at App’x A.

⁵⁴⁰ *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___, ___, ___ NW3d ___ (2026) (Docket No. 373259); slip op at 12.

is identical to that approved by the Township.⁵⁴¹ The County Board of Commissioners is expected to approve the HCA in late summer/early fall of 2026.⁵⁴²

Beyond the HCAs, Washtenaw Solar has also proposed a CBA to meet the SAFD's demonstrated capacity needs.⁵⁴³ Washtenaw Solar offered to provide the SAFD with a one-time payment of \$110,000 to purchase equipment useful for responding to emergencies that may occur between the solar arrays.⁵⁴⁴ The CBA also establishes a recurring annual payment to ensure that resource needs are met throughout the Project's 30-year lifetime.⁵⁴⁵ The CBA is under consideration as the SAFD undergoes a reorganization.

Additionally, if the County Board of Commissioners is unable to approve the HCA, Washtenaw Solar executed a CBA with the SASS.⁵⁴⁶ The terms are the same as those offered to the County and the Township—a payment of \$2,000 per MW of nameplate capacity upon the Project's operational commencement.⁵⁴⁷ The SASS approved the CBA on July 28, 2026.⁵⁴⁸

Staff found that, in terms of host community and community benefits agreements, the evidence presented by Washtenaw Solar was sufficient to demonstrate that the public benefits justify the Project's construction because "[Washtenaw Solar] has executed a host community

⁵⁴¹ Exhibit A-8.3 (TSD-11) at 3; Exhibit A-8.3 (TSD-11) at App'x B.

⁵⁴² *Id.*

⁵⁴³ Durgan, Revised Direct Testimony at 33, 5 TR 677; Pierson, Revised Direct Testimony at 17, 4 TR 94; Exhibit A-1.10 (JMP-4) at 4, 4 TR 135.

⁵⁴⁴ Durgan, Revised Direct Testimony at 34, 5 TR 678; Exhibit A-8.3 (TSD-11) at 3; see also Exhibit A-8.3 (TSD-11) at App'x C.

⁵⁴⁵ Durgan, Revised Direct Testimony at 34, 5 TR 678; Exhibit A-8.3 (TSD-11) at App'x C.

⁵⁴⁶ Exhibit A-8.3 (TSD-11) at 3; *id.* at App'x D.

⁵⁴⁷ *Id.* at 3; *id.* at App'x D.

⁵⁴⁸ *Id.*

agreement compliant with PA 233 with Saline Township.”⁵⁴⁹ Accordingly, the Commission should find that Washtenaw Solar has met all of the conditions required by PA 233.

Additionally, the AFIP includes proposed minimum conditions that an applicant must meet to be issued a certificate.⁵⁵⁰ Washtenaw Solar and Staff developed a set of comprehensive and mutually agreeable conditions.⁵⁵¹ Other parties, specifically the Township and Ms. Pop, had an opportunity to weigh-in regarding conditions but did not do so. The preponderance of the evidence on the record demonstrates that Washtenaw Solar has agreed to meet all of the conditions proposed by Staff. The Commission should find the same.

Washtenaw Solar largely agreed to satisfy Staff’s Proposed Conditions.⁵⁵² In its rebuttal testimony, Washtenaw Solar indicated several minor revisions to Proposed Conditions 1, 2, 7, 8, 10, 11, 18, 25, and 28.⁵⁵³ In its surrebuttal testimony, Staff “generally agree[d] with [Washtenaw Solar’s] proposed condition language,”⁵⁵⁴ but presented several further modifications, including the following:

- Regarding Proposed Condition 2(j), Staff “understands ‘final’ to mean that compliance deliverables are based on the facility layout, equipment selections, and operational sound-source information that Washtenaw Solar intends to use for construction or operation, rather than preliminary or merely close-to-final information.”⁵⁵⁵

⁵⁴⁹ Lobodzinski, Direct Testimony at 14, 5 TR 971.

⁵⁵⁰ Michigan Public Service Commission, *MPSC Certificate for Solar Energy, Wind Energy, and Energy Storage Facilities: Application Filing Instructions and Procedures* (October 10, 2024), § 6.3.14, 20; *id.* at Attachment F; Exhibit A-14 (TSD-14).

⁵⁵¹ See Mullkoff, Surrebuttal Testimony at 7-11, 5 TR 1043-1047; *id.* at Exhibit S-2.3; *id.* at Exhibit S-2.4.

⁵⁵² Durgan, Rebuttal Testimony at 16, 5 TR 697.

⁵⁵³ *Id.*

⁵⁵⁴ Mullkoff, Surrebuttal Testimony at 9, 5 TR 1045.

⁵⁵⁵ *Id.* at 9-10, 5 TR 1045-1046.

- Regarding Proposed Condition 10, Staff “recommends retaining the requirement that Washtenaw Solar contract with and pay for the third-party acoustic expert prior to commencement of commercial operation.”⁵⁵⁶
- Regarding Proposed Condition 25(C), Staff “proposes additional changes to the condition language,”⁵⁵⁷ to address cleanup criteria.
- Regarding Proposed Condition 28, Staff “concludes that the condition should be removed.”⁵⁵⁸

Washtenaw Solar agrees to all of Staff’s proposed modifications, which can be found in full at Exhibit S-2.4 of Staff witness Mullkoff’s surrebuttal testimony and are included in Exhibit A.

The Company also acknowledges that the commitments and conditions applied herein would apply to any subsequent Project owner.⁵⁵⁹ Accordingly, if the Commission imposes conditions on a Project certificate, the Commission should find that Washtenaw Solar has committed to meeting all of the conditions proposed by Staff.

F. The Record Demonstrates that Washtenaw Solar Has Met the Labor and Construction Standards of Public Act 233 of 2023.

The Commission is required to grant an application and issue a certificate if the labor and construction standards set forth in PA 233 are met by the applicant. Specifically, PA 233 requires an applicant to comply with all of the following:

- (i) The installation, construction, or construction maintenance of the energy facility will use apprenticeship programs registered and in good standing with the United States Department of Labor under the national apprenticeship act, 29 USC 50 to 50c.

⁵⁵⁶ *Id.* at 10, 5 TR 1046.

⁵⁵⁷ *Id.* at 11, 5 TR 1047.

⁵⁵⁸ *Id.* at 11, 5 TR 1047.

⁵⁵⁹ Pierson, Rebuttal Testimony at 20, 4 TR 133.

- (ii) The workers employed for the construction or construction maintenance of the energy facility will be paid a minimum wage standard not less than the wage and fringe benefit rates prevailing in the locality in which the work is to be performed as determined under 2023 PA 10, MCL 408.1101 to 408.1126, or 40 USC 3141 to 3148, whichever provides the higher wage and fringe benefit rates.
- (iii) To the extent permitted by law, the entities performing the construction or construction maintenance work will enter into a project labor agreement or operate under a collective bargaining agreement for the work to be performed.⁵⁶⁰

The preponderance of the evidence on the record demonstrates that Washtenaw Solar has complied with PA 233's labor and construction standards. The Commission should come to the same conclusion.

Washtenaw Solar is committed to complying with each of the standards set forth above, as evidenced by the executed letter from Invenenergy LLC's Senior Vice President.⁵⁶¹ While Washtenaw Solar will not directly enter into a project labor agreement or collective bargaining agreement, its EPC contractor(s) will.⁵⁶² Washtenaw Solar commits to only using EPC contractor(s) that implement and guarantee that the project labor agreement is used and that PA 233's labor and construction requirements are met.⁵⁶³

⁵⁶⁰ MCL 460.1226(7)(e).

⁵⁶¹ Pierson, Revised Direct Testimony at 34, 4 TR 111; Exhibit A-8.4 (JMP-7) at 3, 4 TR 135; *id.* at App'x A, 4 TR 135.

⁵⁶² Pierson, Revised Direct Testimony at 34, 4 TR 111.

⁵⁶³ *Id.* at 35, 4 TR 112.

Washtenaw Solar's EPC contractor(s) will operate under and be bound by the National Maintenance Agreement ("NMA"),⁵⁶⁴ which Washtenaw Solar has confirmed qualifies as a project labor agreement under PA 233.⁵⁶⁵ Washtenaw Solar will further require assurance from its EPC contractor(s) that PA 233's labor and construction requirements are met.⁵⁶⁶

Staff found that the evidence presented by Washtenaw Solar was sufficient to demonstrate that it would comply with PA 233's labor and construction requirements.⁵⁶⁷ Additionally, Staff determined that the NMA qualifies as a project labor agreement pursuant to PA 233's definition.⁵⁶⁸ However, because Washtenaw Solar has not yet selected the Project's EPC contractor(s), a project labor agreement has not been executed.⁵⁶⁹ Therefore, Staff recommended that, "if the Commission grants approval of this siting certificate, it includes a condition that [Washtenaw Solar] will execute a project labor agreement or collective bargaining agreement with one or more labor organization(s) compliant with the statutory provisions of MCL 460.1221(u)(i-vi) and MCL 460.1226(7)(e)(i-iii) prior to work being performed."⁵⁷⁰ Washtenaw Solar has accepted and is committed to complying with this Proposed Condition 20. Accordingly, the Commission should find that Washtenaw Solar has met the labor and construction standards required by PA 233.

⁵⁶⁴ *Id.*; Exhibit A-8.4 (JMP-7) at 3, 4 TR 135; *id.* at App'x B, 4 TR 135.

⁵⁶⁵ Exhibit A-8.4 (JMP-7) at 4-5, 4 TR 135. See also MCL 460.1221(u) (PA 233's definition of "project labor agreement").

⁵⁶⁶ Pierson, Revised Direct Testimony at 35, 4 TR 112.

⁵⁶⁷ See Lobodzinski, Direct Testimony at 16-21, 5 TR 973-978.

⁵⁶⁸ *Id.* at 21-25, 5 TR 978-982.

⁵⁶⁹ Pierson, Revised Direct Testimony at 34, 4 TR 111.

⁵⁷⁰ Lobodzinski, Direct Testimony at 25, 5 TR 982.

G. The Record Demonstrates that Washtenaw Solar Will Not Unreasonably Diminish Farmland.

Washtenaw Solar has demonstrated that it has met PA 233's requirement that the Project "will not unreasonably diminish farmland, including, but not limited to, prime farmland and, to the extent that evidence of such farmland is available in the evidentiary record, farmland dedicated to the cultivation of specialty crops."⁵⁷¹ The term "farmland" is not defined in either PA 233 nor the AFIP. The AFIP does, however, adopt definitions for "prime farmland"⁵⁷² and "specialty crops"⁵⁷³ derived primarily from USDA definitions of similar terms. Neither PA 233 nor the AFIP establish a bright-line standard for what it means to unreasonably diminish farmland, either.

⁵⁷¹ MCL 460.1226(7)(f).

⁵⁷² AFIP at 39:

"Prime farmland" is defined in the same manner as is done by the U.S. Department of Agriculture's Natural Resource Conservation Service and is shown in the online database by the same entity (see 7 CFR 657.5). Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could be cropland, pastureland, rangeland, forest and, or other land, but not urban built-up land or water). It has the soil quality, growing season, and moisture supply needed to economically produce sustained high yields of crops when treated and managed, including water management, according to acceptable farming methods. In general, prime farmlands have an adequate and dependable water supply from precipitation or irrigation, a favorable temperature and growing season, acceptable acidity or alkalinity, acceptable salt and sodium content, and few or no rocks. They are permeable to water and air. Prime farmlands are not excessively erodible or saturated with water for a long period of time, and they either do not flood frequently or are protected from flooding. Examples of soils that qualify as prime farmland are Palouse silt loam, 0 to 7 percent slopes; Brookston silty clay loam, drained; and Tama silty clay loam, 0 to 5 percent slopes.

⁵⁷³ AFIP at 40:

"Specialty Crops" means land other than prime farmland that is used for the production of specific high value food and fiber crops. It has

To assess whether the Project would diminish farmland, as defined in the AFIP and the USDA,⁵⁷⁴ the Company examined how soils and farmlands will be managed throughout the Project's design, construction, operation, and decommissioning stages.⁵⁷⁵ Staff initially focused on the simple quantity of prime farmland used and proposed evaluating diminishment of farmland by quantifying the presence of one qualitative category of farmland classification offered by the AFIP: Prime Farmland.⁵⁷⁶

Staff's direct testimony proposes a benchmark for determining the unreasonable diminishment of farmland against the percentage of a township's total prime farmable land. Staff suggests that, "[i]f the land used by the project in a township is less prime on average than the farmable land in the township, the project has cleared the benchmark and should not be considered to unreasonably diminish prime farmland based on quality of farmland used. On the other hand, a project that proposes to use land that is more prime on average than the farmable land in the township should be subject to additional scrutiny, and potentially conditions to constrain the use of excess prime farmland."⁵⁷⁷ After applying this approach to the Project, Staff proposed removing a parcel from the Project and imposing a not-to-exceed benchmark of 31.3% of prime farmland

the special combination of soil quality, location, growing season, and moisture supply needed to economically produce sustained high quality and/or high yields of a specific crop when treated and managed according to acceptable farming methods. Examples of such crops are citrus, tree nuts, olives, cranberries, fruit, and vegetables. (Definition is adopted from the USDA definition of "Unique Farmland.")

⁵⁷⁴ See *supra* fn 572 and 573.

⁵⁷⁵ Ignatowski, Direct Testimony at 24, 4 TR 475.

⁵⁷⁶ Glass, Direct Testimony at 40, 5 TR 1161.

⁵⁷⁷ *Id.* at 41, 5 TR 1162.

within the Project’s fenced-in area.⁵⁷⁸ Staff’s proposed benchmark does not account for any other qualitative measures of farmland, including Prime Farmland If Drained. In surrebuttal, however, Staff abandons the benchmark condition because the Opt-Out Layout does not exceed the proposed benchmark of prime farmland usage.⁵⁷⁹

The Township does not propose a method for analyzing the unreasonable diminishment of farmland, focusing instead on the general “impact on agriculture in Saline Township” and suggesting “the project will unreasonably diminish the agricultural lands in the Township.”⁵⁸⁰ The Township’s conclusion appears to be based on its assertion that: (1) farmland outside the Project’s fenced-in area “cannot be efficiently farmed,”⁵⁸¹ (2) other development in the Township is utilizing agricultural lands,⁵⁸² and (3) farming will not resume after the Project is decommissioned.⁵⁸³

The Township opposes Staff’s use of a farmland benchmark because it does not account for farmland outside the Project’s fenced-in area that will be diminished as an agricultural resource.⁵⁸⁴ Specifically, the Township argues that the benchmark does not account for the following: (1) farmland outside the Project’s fenced-in area will be “fragmented,” (2) fragmented farmland will “interfere with drainage patterns,” (3) fragmented farmland will “not be as conducive to large-scale agricultural practices, and (4) fragmented farmland “will likely create equipment access impediments.”⁵⁸⁵

⁵⁷⁸ *Id.* at 48, 5 TR 1169.

⁵⁷⁹ Glass, Surrebuttal Testimony at 8-9, 5 TR 1210-1211.

⁵⁸⁰ Doozan, Direct Testimony at 18, 5 TR 767.

⁵⁸¹ *Id.* at 19, 5 TR 768.

⁵⁸² *Id.* at 20, 5 TR 769.

⁵⁸³ *Id.* at 20-21, 5 TR 769-770.

⁵⁸⁴ Doozan, Rebuttal Testimony at 2, 5 TR 774.

⁵⁸⁵ *Id.* at 2-3, 5 TR 774-775.

As detailed further in the sections below, the preponderance of the evidence on the record supports that the Project does not unreasonably diminish farmland. The Commission should approach each PA 233 application on a case-by-case basis and consider a combination of factors, including: (1) the amount and classification of farmland within the Project Area and the surrounding jurisdiction; (2) how soils are managed during the Project’s life, including vegetation management; and (3) the effectiveness of the decommissioning and restoration plan in returning the land to a useful, farmable condition.⁵⁸⁶ The Project creates no long-term or irreversible impacts and the farmland itself is not diminished.⁵⁸⁷ The farmland will remain as such, simply fallow and with perennial groundcover.⁵⁸⁸ While the farmland will not be used for row crop agriculture for a finite period, the Project is not determinative of an individual landowners’ private choice. Absent the Project, there is no promise that the landowner would continue row crop agriculture over some other use. The Commission’s analysis should remain focused on the language of PA 233 and assess the impacts to “farmland,” not to “farming.”⁵⁸⁹

1. The Record Demonstrates That Washtenaw Solar Will Maintain Soil Quality and Return the Land to Farmable Conditions.

In contrast to Staff’s analysis, the Company posits that the Project during its temporary occupation of active agricultural lands will not diminish farmland because the land will be maintained and returned to farmable conditions. The Commission requires applicants availing themselves of the PA 233 process to ensure that soil disturbed by the Project “is returned to a

⁵⁸⁶ Ignatowski, Rebuttal Testimony at 29, 4 TR 505.

⁵⁸⁷ *Id.* at 32, 4 TR 508.

⁵⁸⁸ *Id.*

⁵⁸⁹ MCL 460.1226(7)(f).

useful condition.”⁵⁹⁰ Further, because portions of the Project are sited on PA 116 lands, the facilities must be decommissioned and the soils must be restored such that the site may be returned to agricultural purposes. The Company’s Application reflects the Company’s commitment and preparation for meeting both these obligations. To protect soil health and maintain farmable conditions, Washtenaw Solar has voluntarily undertaken baseline soil health testing (the results of which are included in its Application) and uses a comprehensive approach to maintaining soil health over the Project’s life.

The Company’s decommissioning commitments include significant soil and farmland protections. The Baseline Soil Health Survey will be repeated at decommissioning to ensure the PA 233 standard is met.⁵⁹¹ The Company confirmed in rebuttal testimony that its decommissioning commitments will include applicable soil and farmland protections.⁵⁹² The Company also committed to “[d]e-compact soil, if required, to pre-construction condition, restore, and revegetate disturbed lands to pre-construction condition to the extent practicable.”⁵⁹³ The Company also committed to meeting all other soil protection requirements under NREPA, including obtaining permits under Part 91 of NREPA.⁵⁹⁴ Decommissioning obligations are formalized in an enforceable contract with the Commission upon conclusion of this case.⁵⁹⁵

⁵⁹⁰ AFIP at 17.

⁵⁹¹ Ignatowski, Rebuttal Testimony at 13, 4 TR 489.

⁵⁹² *Id.* at 12-13, 4 TR 488-489.

⁵⁹³ *Id.* at 13, 4 TR 489.

⁵⁹⁴ *Id.*

⁵⁹⁵ See Exhibit A-13.3 (JMP-9), 4 TR 135.

During the Project's life, the vegetation used for the Project will promote soil health. As part of the Project design phase, Washtenaw Solar will assess current vegetation on-site, including the presence of noxious and invasive species.⁵⁹⁶ Once vegetation is characterized, the results, in conjunction with soil sampling results, will be used to develop site-specific seed mixes that are aimed at providing ground cover.⁵⁹⁷ The seed mix will be developed to ensure consistency with natural conditions appropriate for the geography of the site and will not interfere with the performance of the infrastructure.⁵⁹⁸ These seed mixes will be developed specifically to the area's drainage class in which they will be planted and will include plant species that are flowering, deep rooted, and nitrogen fixers, all of which can support soil health.⁵⁹⁹ This approach can support soil health due to a reduction of soil structure disturbance, minimized vegetation harvest, and the reduction of herbicide and pesticide applications that may reduce the number of beneficial organisms present in the rooting zone of the soil profile.⁶⁰⁰

The Project facility will be revegetated with low-growing, perennial grasses and forbs.⁶⁰¹ After the vegetation is established, it will be mowed periodically throughout the year to ensure the safety and reliability of Project operations.⁶⁰² These management strategies allow the perennial vegetation to develop a robust root system.⁶⁰³ This practice will likely increase the aggregate strength and water stability of the soil structure and positively affect the water infiltration and

⁵⁹⁶ Exhibit A-9 (AMI-4) at 11, 5 TR 565.

⁵⁹⁷ *Id.*

⁵⁹⁸ *Id.*

⁵⁹⁹ *Id.*

⁶⁰⁰ *Id.*

⁶⁰¹ *Id.*

⁶⁰² *Id.*

⁶⁰³ *Id.*

retention properties of the soil profile.⁶⁰⁴ This will occur from the breakdown of organic matter to humus down through the soil profile, which aggregates soil particles to create soil structure.⁶⁰⁵ The distribution of the root channels within the soil profile will create macro pores, voids, and aggregate formations, which will improve soil aeration and drainage.⁶⁰⁶ The Company's commitment is also reflected through its robust evidence regarding vegetation and landcover and its commitment to meeting and/or exceeding a minimum score of 76 points on the Michigan State University ("MSU") Pollinator Scorecard (the "Pollinator Scorecard") for the Project, and developing a Project-specific plan that outlines vegetation management procedures, including how seed mixes will be developed, installed, and maintained.⁶⁰⁷ Therefore, the Project's operation is anticipated to improve the soil health conditions of the site throughout the Project's life cycle.⁶⁰⁸

The preponderance of the evidence demonstrates that the Company will protect soil health and return lands to farmable conditions upon decommissioning. Although there is no indication that the Project will result in hazardous substances released into soils, Staff requested a commitment from the Company to remediate any hazardous substances or releases created by the Project in its Proposed Condition 25.⁶⁰⁹ The Company does not believe such a condition is necessary, but is agreeable if the Commission would like further assurances.

⁶⁰⁴ *Id.* at 12, 5 TR 565.

⁶⁰⁵ *Id.*

⁶⁰⁶ *Id.*

⁶⁰⁷ Pallant, Direct Testimony at 9-10, 4 TR 393-394; Exhibit A-1.3 (TSD-1) at 24.

⁶⁰⁸ Exhibit A-9 (AMI-4) at 12, 5 TR 565.

⁶⁰⁹ Krupp, Adopted Testimony at 10, 5 TR 936.

2. The Record Demonstrates That Washtenaw Solar Will Not Diminish Prime Farmland Soils.

PA 233 requires that a proposed energy facility not diminish prime farmland.⁶¹⁰ Prime farmland is a soil designation the USDA uses—as reflected in the Commission’s definition of the term in the AFIP.⁶¹¹ Staff initially proposed a benchmark of no more than 31.3% prime farmland within the Project’s fenced-in area.⁶¹² Although Staff subsequently moved away from that benchmark in this case,⁶¹³ the Company does not believe the Commission should adopt such a benchmark as a standard in PA 233 cases. Prime farmland is a soil designation, and the land within the Project Area will remain Prime farmland during the Project’s lifespan and after decommissioning.

First, the designation of “prime farmland” is a USDA Natural Resources Conservation Service (“USDA-NRCS”) soil classification.⁶¹⁴ It is based on inherent soil properties, such as texture, structure, drainage class, slope, and parent material.⁶¹⁵ These characteristics do not change due to temporary construction activities.⁶¹⁶ While grading, trenching, and other earthwork will occur during construction and at decommissioning, those activities affect the upper soil horizons but do not alter the underlying soil series or remove the soil from its USDA-NRCS classification.⁶¹⁷ The soil will remain mapped as the same soil types throughout the Project’s

⁶¹⁰ MCL 460.1226(7)(f).

⁶¹¹ AFIP at 39. See 7 CFR 657.5; *supra* fn 572.

⁶¹² Glass, Direct Testimony at 48, 5 TR 1169.

⁶¹³ Glass, Surrebuttal Testimony at 8, 5 TR 1210.

⁶¹⁴ Ignatowski, Rebuttal Testimony at 17, 4 TR 493.

⁶¹⁵ *Id.*

⁶¹⁶ *Id.*

⁶¹⁷ *Id.*

life.⁶¹⁸ Prime farmland will not be diminished; rather, it will simply be put to a different land use for a defined period of time.⁶¹⁹

Second, State guidance recognizes that solar development is compatible with long-term farmland preservation.⁶²⁰ MDARD's guidance indicates that solar energy facilities are allowed on PA 116-enrolled lands when certain conditions are met, including the ability to return the land to agricultural use at the end of the Project's life.⁶²¹ Michigan agencies already acknowledge the compatibility of solar development and farmland preservation. This reflects the temporary, reversible nature of solar development and the preservation of agricultural capability, even when agricultural production is paused.⁶²² The Baseline Soil Health Survey and Exhibit A-13.1 (MTH-1) describe how soils will be evaluated and restored at the end of the Project's life, including decompaction, regrading, topsoil management, and reseeded.⁶²³

Third, Washtenaw Solar's Application describes the distribution of farmland types within the Project Area and the surrounding jurisdictions, including the presence of prime and potentially prime farmland as identified by USDA-NRCS.⁶²⁴ This information provides context for understanding how the Project fits within the broader agricultural landscape.⁶²⁵ A percentage-of-

⁶¹⁸ *Id.*

⁶¹⁹ *Id.*

⁶²⁰ *Id.* at 18, 4 TR 494.

⁶²¹ *Id.*

⁶²² *Id.*

⁶²³ *Id.*

⁶²⁴ *Id.*

⁶²⁵ *Id.*

Township or percentage-of-Project Area metric alone does not capture the distinctions between the Project and the broader agricultural land base within the Township and County.⁶²⁶

Fourth, the Project incorporates perennial vegetation management, which will maintain or improve soil health throughout the Project's life. Exhibit A-9 (AMI-4) explains how perennial vegetation can improve soil structure, infiltration, and organic matter relative to annual row-crop production. These long-term soil health considerations are not reflected in a simple acreage percentage.

Finally, the Company aligns with Staff in the desire for a clear and practical standard but requires flexibility to respond to circumstances and land characteristics that remain unknown to the Company at this time.⁶²⁷ If there is a circumstance beyond the Company's control that would result in a violation of the benchmark, there is no allowance for commercially reasonable efforts or a margin of error in the benchmark.⁶²⁸

Percentage-based land use metrics do not accurately reflect the Project's relationship to agricultural land or the measures in place to preserve farmland and soil health over the long term as contemplated under PA 233. Accordingly, the Commission should not adopt such a metric. During cross-examination, the Township seemed to suggest that, if land is not being used for farming, it cannot be "prime farmland" based on the AFIP definition of that term.⁶²⁹ The AFIP definition provides, in relevant part:

Prime farmland means land that has the best combination of physical and chemical characteristics for producing food, feed, forage, fiber, and oilseed crops, and is also available for these uses (the land could

⁶²⁶ *Id.*

⁶²⁷ Durgan, Rebuttal Testimony at 26, 5 TR 707.

⁶²⁸ *Id.*

⁶²⁹ 4 TR 353.

be cropland, pastureland, rangeland, forest and, or other land, but not urban built-up land or water).⁶³⁰

The Township's interpretation misses a key point in the definition, however, which provides that prime farmland can be cropland, pastureland, rangeland, forest, **or other land**. There is no restriction in the soil classification definition of prime farmland that the land be used for traditional row crop agriculture to retain that soil designation. In other words, fallow land that is temporarily used for a solar farm is precisely the type of "other land" included in the Commission's definition of prime farmland.

The preponderance of the evidence on the record demonstrates that the Project will not unreasonably diminish prime farmland. Approximately 14% of land classified as prime or potentially prime farmland within the Township, and approximately 1% of such land within the County, occurs within the Project Area.⁶³¹ If the Commission is inclined to approve only the Opt-Out Layout for the Project, the area within the Project's fence line would use 4.67% of the prime farmland in the Township and 0.31% of the prime farmland in the County.⁶³² The Commission should evaluate PA 233 applications on a case-by-case basis and decline to adopt a benchmark for prime farmland in this case and future cases.

3. The Record Demonstrates That Washtenaw Solar Will Not Diminish the Cultivation of Specialty Crops.

Approximately one acre within the Project Area consists of specialty crops,⁶³³ which is relatively insignificant. In Staff's opinion, the Project "does not present concerns regarding

⁶³⁰ AFIP at 39.

⁶³¹ Exhibit A-9 (AMI-4) at 17, 5 TR 565.

⁶³² Ignatowski, Rebuttal Testimony at 6, 4 TR 482.

⁶³³ Exhibit A-9 (AMI-4) at 15, 5 TR 565.

diminishment of specialty cropland.”⁶³⁴ No other party filed testimony on this issue. The preponderance of the evidence on the record supports that the Project will not diminish the cultivation of specialty crops.

4. The Commission Should Decline to Consider the Impact of the Project on Farming, As It Falls Outside the Considerations of Public Act 233 of 2023.

The Commission’s required analysis under PA 233 is whether the “farmland” will be unreasonably diminished.⁶³⁵ That analysis contemplates an inquiry into the condition of the land itself—not the *use* of the land. If the Legislature sought an analysis of the diminishment of farming, PA 233 would require an analysis of the diminishment of “farming” rather than “farmland.”⁶³⁶ Farmland remains farmland even if it is temporarily used for the Project or is simply fallow. Shifting the Commission’s analysis from the character and composition of the land to the use of the land would be inconsistent with PA 233’s plain text. Focusing on land use also requires assumptions regarding external factors outside the control of the Commission. Any farmer participating in the Project could decide to cease farming at any point—it is their right to decide what to do with their land. Indeed, participation in the Project often indicates concerns regarding succession planning and the economic considerations of continued farming activities.⁶³⁷ What the Company, the Project, and the Commission *can* control is the use and treatment of “farmland” over the course of the Project. Such an approach is consistent with PA 233’s plain language and

⁶³⁴ Glass, Direct Testimony at 64, 5 TR 1185.

⁶³⁵ MCL 460.1226(7)(f).

⁶³⁶ *In re Complaint of Rovas*, 482 Mich 90, 108; 754 NW2d 259 (2008) (“[T]he agency’s interpretation cannot conflict with the plain meaning of the statute.”).

⁶³⁷ Durgan, Rebuttal Testimony at 26, 5 TR 707.

the AFIP definitions. The Commission should limit its analysis of the diminishment of farmland to the realities of the land before it, rather than its hypothetical use.

H. The Record Demonstrates that Washtenaw Solar Does Not Present an Unreasonable Threat to Public Health and Safety.

Finally, PA 233 mandates the Commission to grant an application and issue a certificate if, in addition to other requirements, it determines that “[t]he proposed energy facility does not present an unreasonable threat to public health or safety.”⁶³⁸ PA 233 further provides that a proposed energy facility does not present an unreasonable threat to public health or safety if it complies with the following standards:

- (i) The following minimum setback requirements, with setback distances measured from the nearest edge of the perimeter fencing of the facility:

Setback Description	Setback Distance
Occupied community buildings and dwellings on nonparticipating properties	300 feet from the nearest point on the outer wall
Public road right-of-way	50 feet measured from the nearest edge of a public road right-of-way
Nonparticipating parties	50 feet measured from the nearest shared property line
- (ii) Fencing for the solar energy facility complies with the latest version of the National Electric Code as of the effective date of the amendatory act that added this section or any applicable successor standard approved by the commission as reasonable and consistent with the purposes of this subsection.
- (iii) Solar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.
- (iv) The solar energy facility does not generate a maximum sound in excess of 55 average hourly decibels as modeled at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. Decibel modeling shall use the A-weighted scale as designed by the American National Standards Institute.

⁶³⁸ MCL 460.1226(7)(g).

- (v) The solar energy facility will implement dark sky-friendly lighting solutions.
- (vi) The solar energy facility will comply with any more stringent requirements adopted by the commission. Before adopting such requirements, the commission must determine that the requirements are necessary for compliance with state or federal environmental regulations.⁶³⁹

The preponderance of the evidence on the record demonstrates that, as characterized by PA 233, the Project does not present an unreasonable threat to public health and safety. The Commission should find the same.

VI. CONCLUSION AND RELIEF REQUESTED

Washtenaw Solar respectfully requests the Commission:

A. Find that the Company's Application as-filed complies with PA 233 and approve the Application. Alternatively, find that the Opt-Out Layout complies with PA 233 and approve the Application, as reflected in the Opt-Out Layout and as recommended for approval by Staff with proposed conditions.

B. Issue the requested certificate authorizing the Project's construction, operation, and maintenance as described in this Application and supporting testimony and exhibits, with the approval to make minor changes as described herein.

C. Find that the Project does not, and is not likely to, pollute, impair, or destroy the air, water, or other natural resources, or the public trust in those resources, nor is there any factual or proximate causation between the Project and environmental impacts to the air, water, or other natural resources.

D. If inclined to place further conditions on a certificate, grant those conditions attached hereto as **Exhibit A**.

⁶³⁹ MCL 460.1226(7)(8)(a).

E. Grant such further and additional relief as the Commission may deem appropriate.

Respectfully submitted,

Dated: September 4, 2026

By: _____

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EXHIBIT A
CERTIFICATE CONDITIONS

1. The Applicant is required to enter into a third-party independent monitor agreement, funded by the applicant, where the monitor is selected in consultation with the Staff to be onsite during the periods when construction is taking place on a weekly basis to monitor the construction activities. The independent monitor would be granted authority to resolve complaints and request immediate cessation of activities that the monitor can document are in material breach of any plan, permit or agreement pertaining to the construction of the facility. The third-party independent monitor shall provide monthly reports to the Staff, the ALU, and the applicant from the start of construction and continuing through the first 3 months of commercial operation.

2. The applicant is required to participate in a pre-construction meeting with the Staff and a third-party independent monitor, to ensure the Staff has access to the most recent information and final documentation prior to construction for use in answering questions and assisting with complaints. The Applicant must extend invitations to attend the pre-construction meeting to representatives of ALU, however, their attendance would not be required. The Applicant agrees to file the final drawings, plans, and permits received in the docket prior to the start of construction. The filing of final drawings, plans, and permits received are for completeness and transparency in the record and the pre-construction meeting serves to ensure that the final plans conform with the certificate approved by the Commission. Prior to the pre-construction meeting, the Applicant is required to:
 - a. File final drawings, plans, and permits received into the E-docket for this case prior to the start of construction. Applicant is required to provide the finalized specifications information regarding the type of panels to be installed and identify whether panels are multi-crystalline silicon (mc-Si), Copper Indium Gallium Selenide (CIGS), amorphous silicon panels (A-S), or thin-film solar panels using cadmium telluride. Any confidential information contained in final drawings, plans or permits will be provided to MPSC Staff and parties in the case that have signed a nondisclosure agreement pursuant to the Protective Order in U-21962 but will not be filed publicly.
 - b. Provide the Phase II Environmental Health Assessment (ESA) report.
 - c. Provide final versions of the Emergency Response Plan (A-1.9) and Fire Response Plan (A-1.10).
 - d. Provide the final version of the Unanticipated Discoveries Plan (A-1.14), and materials resulting from the State Historic Preservation Office's review of the project.
 - e. At least 60 days prior to the preconstruction meeting, the Applicant is required to file a final decommissioning and site restoration plan, and a final third-party decommissioning cost estimate, that reflect the final facility layout, equipment quantities, final disrupted acreage, and final participating parcels, and follow the requirements of AFIP Exhibit A-13 and AFIP Section 8.

- f. At least 60 days prior to the pre-construction meeting, the Applicant is required to file a final noise modeling report, based on desktop modeling report demonstrating compliance using the final facility layout and final make and model of all operational sound sources, including inverter and transformer cooling systems and any auxiliary equipment, consistent with AFIP Attachment D requirements. Prior to the pre-construction meeting, the Applicant is further required to file a construction noise control plan describing major construction activities/equipment; standard work hours; exceptions/notice procedures; equipment maintenance/mufflers; idling limits; and specific controls for any high noise activities, if applicable. When a complaint reasonably indicates material construction noise impacts, the Applicant must promptly investigate and implement corrective actions consistent with the construction noise control plan. If effective corrective actions cannot be implemented promptly, the Applicant is required to implement reasonable interim controls and adjust operations as necessary to address the complained-of impacts until controls are implemented.
 - g. Provide the signed and executed project labor agreement or collective bargaining agreement consistent with Condition 20, and
 - h. Provide any plans required under NREPA, upon completion by the Applicant. This includes Spill Prevention Control, and Countermeasure Plan (SPCC), Pollution Incident Prevention Plan (PIPP), Soil Erosion and Sedimentation Control (SESC) plans, and Stormwater Pollution and Prevention Plans (SWPPP), as applicable, as well as any other applicable plan.
 - i. Provide the final version of the Michigan State University Pollinator Scorecard for Solar Sites, the final vegetation and soil management plan.
 - j. As used in this condition, “final” means the version of each deliverable based on the facility layout, equipment selections, and information the Applicant intends to use for construction or operation, as applicable. If a material change occurs after submission that affects a filed deliverable, including any change to the facility layout or operational sound-source make/model that could affect modeled sound levels, the Applicant must promptly file an updated deliverable in the docket before construction, installation, or operation of the affected facilities, as applicable.
3. The Applicant is required to repair or replace all public and private drainage systems, including county or intercounty drains, damaged from construction or decommissioning processes. Drainage systems already addressed in a separate agreement with the Applicant will be repaired or replaced pursuant to those pre-existing agreements.
4. The Applicant is required to file mechanical completion certificates for the facilities in the MPSC docket assigned to the project.
5. The Applicant is required to implement its complaint resolution process as provided in Exhibit A-1.16 (TSD-3) The Applicant is required to keep up to date the following

information: the name of a designated developer/operator representative provided with the authority to resolve local complaints, a dedicated phone number for complaints, an email address for complaints, and website information instructing the public on the complaint resolution process.

6. The Applicant is required file updated emergency contact information for the facility representative in the docket in Case No. U-21962 on an annual basis and as necessitated by applicant personnel changes.
7. The Applicant is required to implement vegetative screening consisting of evergreen trees and/or shrubs, with the evergreens planted a maximum of 15 feet apart , with a buffer width of at least 15 feet. The Applicant may include deciduous trees and/or shrubs at its option. The Applicant must implement such screening at each location identified in its Landscape Buffer Location Plan, except at the request of an adjacent participating or non-participating landowner, or if existing features obviate the need for new screening in a particular location. The Applicant is required to collaborate with all non-participating, adjacent residences and with Saline Township on planned vegetative screening through the commencement of project construction. The Applicant is required to comply with the requirements of item 8.03(C) of the Saline Township ordinance related to screening in effect at the time of the original filing of the application for this project with the Commission, to the extent practicable given the commercial availability of screening material at the time of procurement, prior to the time of installation.
8. The Applicant is required to avoid invasive species as discussed in its application and its responses to discovery presented as Staff Exhibit S-6.9. The Applicant is required to implement vegetative ground cover in consideration of Michigan State University's "Michigan Pollinator Habitat Planning Scorecard for Solar Sites" by implementing at least the steps described in its application, as well as the following minimum requirements:
 - a. The Applicant is prohibited from the on-site use of insecticide or pre-planting seed or plant treatments, except around buildings, electrical boxes, and similar.
 - b. The Applicant is required to communicate with local chemical applicators and register its site on <https://mi.driftwatch.org/map>.
 - c. The Applicant is required to plant. a seed mix dominated by wildflowers within appropriately located and sufficiently sized open buffer areas outside of arrays and within the permanent fence.
9. The Applicant is required to bury underground infrastructure to a minimum depth of 4 feet with the exception of areas where such infrastructure transitions to above ground.
10. Prior to commencement of commercial operation, the Applicant is required to contract with and pay for a third-party acoustic expert. Such expert is required to conduct postconstruction sound monitoring in accordance with AFIP Attachment D, ensuring that the facility operation is assessed in a variety of conditions, including those associated with

maximum sound emission from the facility. Post-construction sound monitoring must be conducted within 12 months after commencement of commercial operation, unless otherwise directed by the Commission. The Applicant is required to file the results in a report to the docket in Case No. U-21962. The post-construction sound monitoring report must be submitted within 60 days of the end of field data collection. If the post-construction sound measurements or complaint-triggered monitoring demonstrate exceedance of the statutory requirements, the Applicant must: file to the docket in Case No. U-21962 within 30 days a corrective action plan identifying source(s), mitigation measures, and schedule; implement noise mitigation plans as expeditiously as practicable, not to exceed 60 days; repeat measurements, consistent with AFIP Attachment D, with mitigation measures in place until the statutory limits are met; and file the results in a subsequent report to the docket in Case No. U-21962.

11. The Applicant is required to design and operate the facility in compliance with MCL 460.1226(8)(a)(iv), and to demonstrate compliance with that statutory requirement upon request by the MPSC in response to complaints.
12. (Not applicable to this project type)
13. (Not applicable to this project type)
14. The Applicant is required to conduct or provide funding for additional training for local fire departments and other first responders prior to beginning commercial operations, and then upon request, but no more than once annually.
15. The Applicant is required to receive approval for all necessary applicable state, federal, and local permits and all permits need to be obtained before beginning construction on the portion of the project for which the permit is necessary.
 - a. Within the Completion Report, the applicant is required to submit all agency required plans created after the issuance of the certificate.
16. The Applicant is required to execute the decommissioning agreement approved by the Commission. The applicant is required to demonstrate that financial assurance has been acquired and will be maintained throughout the operational life of the facilities, as outlined in the decommissioning agreement.
17. Removed
18. The Applicant is required to file annual reports to the docket in Case No. U-21962, with the first report due at the end of the year in which the project reaches commercial operation, containing the following:
 - a. The amount of electricity produced per acre on average;

- b. Complaints received, consistent with the process established in Exhibit A-1.16 (TSD-3), including Applicant's response and resolution and/or plans for mitigation;
 - c. The operating condition and performance of the facilities on the site (including nonproducing ancillary equipment, structures, fencing, locks, gates, screening, vegetative ground cover and other items specifically listed in the condition)
 - d. Any equipment or structural failures that took place during the period as well as repairs that have been made during the time period including cracked, broken, or otherwise damaged PV panels, and the Company's response to failures and damaged equipment, such as repairs and clean up that have been made during the time period, as well as repairs planned or underway;
 - e. A report of any improvements made to the site or facilities during the period as well as any planned improvements or planned changes to the site or facilities including changes to fencing or ancillary equipment during the reporting period;
 - f. Annual maintenance plans;
 - g. Annual inspection results.
19. (Incorporated above as item 18e)
20. The Applicant is required to execute a project labor agreement or collective bargaining agreement with one or more labor organization(s) compliant with the statutes of MCL 460.1221(u)(i-vi) and MCL 460.1226(7)(e)(i-iii)) prior to work being performed.
21. The Applicant is required to enter into an agreement with the Washtenaw County Road Commission regarding reimbursement for the repair and restoration of County roads modified or damaged during the construction process. If the WCRC determines that such an agreement is not necessary, the Applicant must provide a letter to the docket in Case No. U-21962 signed by a representative of the WCRC to verify this determination.
22. Upon notice to the Commission within a letter uploaded to the docket Case No. U-21962, the Applicant is authorized to make the following changes to the project, even if the changes would otherwise not fall within the discretion provided under the AFIP:
- a. The addition of a dedicated substation access road, as described in its application and responses to Staff discovery, presented as Staff Exhibit S-6.8, to the extent such a change would not create new or additional impacts on the environment and natural resources.
 - b. Changes to Crane and Heavy Equipment Routes, as described in its application and to the extent such changes are consistent with final agreements with MDOT and the Washtenaw County Road Commission.

- c. Changes to stormwater facilities for the project substation area, and to collection line locations related to county drain easement crossings, as described in its application, to the extent such changes are only non-minor because of the impacts on stormwater detention/retention/runoff and stormwater permitting, and to the extent such changes are consistent with final agreements with the Washtenaw County Water Resource Commissioner.
 - d. A change to the substation location within parcel R-18-23-300-001.
- 23. The Company is required to provide infrastructure records detailing locations and type of remaining infrastructure, including cable or drainage tiles, to the property owner within 45 days after decommissioning is completed.
- 24. Upon any transfer in ownership of project property or facilities, the Company is required to identify the new entity responsible for decommissioning of such property or facilities, through a letter submitted to the docket in the instant case.
- 25. The Company is required to include the following commitments in its final decommissioning plan and/or agreement, as well as a description of how it will meet such commitments:
 - a. A commitment to repeat its pre-application soil sampling, in a manner consistent with the baseline soil health survey plan, at decommissioning.
 - b. A commitment to restoration of the project area, including soils, to a useful condition similar to that which existed before construction.
 - c. A commitment to remediation of any hazardous substances introduced by project activities through a release defined by the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) 42 U.S.C. § 9601(14) and (22), and utilizing at a minimum, the Generic Residential Cleanup Criteria in R 299.46 under Part 201 of the Natural Resources and Environmental Protection Act (NREPA) to ensure the soil restoration standard in PA 233 is met, in addition to complying with any federal environmental laws or the environmental laws of this State more stringent than the criteria set forth in R 299.46.
- 26. The Company is required to provide separate dust monitoring and suppression costs separately and include them in decommissioning cost estimates.
- 27. The Company is required to include decommissioning costs associated with site investigation and remediation as a separate line item in decommissioning cost estimates.
- 28. The Applicant is required to account for removal of all facilities on land enrolled in Michigan's Farmland and Open Space Preservation Program, with no maximum depth, in all future decommissioning materials produced for the project. This includes updates to decommissioning cost estimates, decommissioning financial assurance, and within the

decommissioning plan and agreement. This condition applies unless and until the Applicant submits a letter signed by a representative of the Michigan Department of Agriculture and Rural Development's Farmland and Open Space Preservation Program confirming that the project is not subject to decommissioning to that standard. If such a letter is submitted, the Applicant is instead required to account for removal of all facilities to the standard indicated by that program, or to a depth of 47 inches below grade, whichever is greater.

29. The Applicant is required to exclude salvage value for facilities on land enrolled in Michigan's Farmland and Open Space Preservation Program in all future decommissioning materials produced for the project. This includes updates to decommissioning cost estimates, decommissioning financial assurance, and within the decommissioning agreement. This condition applies unless and until the Applicant submits a letter signed by a representative of the Michigan Department of Agriculture and Rural Development's Farmland and Open Space Preservation Program confirming that the Company may utilize a different methodology. If such a letter is submitted, the Company may use whichever methodology produces the lower estimate of salvage value, between the methodology allowed by MDARD and the methodology described in its application.

EXHIBIT B

GLOSSARY

(“**ACEP**”) - Agricultural Conservation Easement Program

(“**AFIP**”) - the Commission’s Application Filing Instructions and Procedures

(the “**ALJ**”) – the Administrative Law Judge

(“**ALU**”) - Affected Local Unit

(the “**Application**”) - Washtenaw Solar’s application for a certificate to construct a proposed 150 MW solar energy facility on privately-owned land in the Township

(“**BMPs**”) - best management practices

(“**BT**”) - a Build-Transfer-Agreement

(“**CBA**”) - community benefits agreement

(“**CN**”) - Curve Number

(“**COD**”) - Commercial Operation Date

(the “**County**”) - Washtenaw County

(“**CREO**”) - a compatible renewable energy ordinance

(“**CREP**”) - Conservation Reserve Enhancement Program

(“**CRP**”) - USDA Farm Service Agency Conservation Reserve Program

(“**dba**”) - A-weighted decibels

(“**ECR**”) - Environmental Compliance Report, Exhibit A-6.2 (AMI-2)

(“**ECT**”) - Environmental Consulting & Technology, Inc.

(“**EGLE**”) - the Michigan Department of Environment, Great Lakes, and Energy

(“**EPC**”) - Engineering, Procurement, and Construction

(the “**ERP**”) - Emergency Response Plan, Exhibit A-1.9 (JMP-3)

(the “**February 8 Order**”) - Commission Order in Case No. U-21547 issued on February 8, 2024

(“**FEMA**”) - Federal Emergency Management Agency

(“**FERC**”) - Federal Energy Regulatory Commission

(“**FIRMS**”) - Flood Insurance Rate Maps

(the “**FRP**”) – the Fire Response Plan, Exhibit A-1.10 (JMP-4)

(“**GIA**”) - a Generator Interconnection Agreement

(“**GIS**”) - Geographic Information Systems

(“**HCA**”) - Host Community Agreement

(“**HDD**”) - horizontal directional drilling
(“**IBAs**”) - important bird areas
(“**ITC**”) - International Transmission Company d/b/a *ITCTransmission*
(“**IMPLAN**”) - Impact Analysis for Planning
(“**IRP**”) - integrated resource plan
(“**kV**”) – kilovolt
(“**LOD**”) - Limit of Disturbance
(“**MISO**”) - Midcontinent Independent System Operator, Inc.
(“**MDARD**”) - the Michigan Department of Agriculture and Rural Development
(“**MDNR**”) - Michigan Department of Natural Resources
(“**MDOT**”) - Michigan Department of Transportation
(“**MNFI**”) - Michigan Natural Features Inventory
(“**MPSC**” or the “**Commission**”) - Michigan Public Service Commission
(“**MSU**”) - Michigan State University
(“**MW**”) - megawatt
(“**MWh**”) - megawatt-hour
(the “**NEC**”) - the National Electric Code
(“**NMA**”) - National Maintenance Agreement
(the “**October 10 Order**”) – the Commission Order in Case No. U-21547 issued on October 10, 2024
(the “**Opt-Out Layout**”) - the Project with a footprint that excludes the five parcels to which the Company does not currently have land rights to construct the Project
(“**PA 116**”) - Michigan Farmland and Open Space Preservation Program
(“**PA 233**”) - Public Act 233 of 2023
(“**PA 235**”) - Public Act 235 of 2023
(“**PEM**”) - palustrine emergent wetlands
(“**PFO**”) - palustrine forested wetlands
(the “**Plan**”) - the preliminary stormwater assessment and Stormwater Mitigation Plan for the Project
(the “**Planning Commission**”) – the Saline Township Planning Commission
(the “**Pollinator Scorecard**”) – the MSU Pollinator Scorecard
(the “**Project**”) - a proposed 150 MW solar energy facility in Saline Township, Washtenaw County, Michigan
(“**PSS**”) - palustrine scrub-shrub wetlands

(“**PUB**”) - palustrine unconsolidated bottom wetlands

(“**PV**”) - photovoltaic

(the “**SAFD**”) - Saline Area Fire Department

(the “**SASS**”) - Saline Area Social Services

(“**SCS**”) - Site Characterization Study

(“**SHPO**”) - State Historic Preservation Office

(the “**State**”) - State of Michigan

(the “**Solar Energy Facilities Tax**”) - the 20-year property tax exemption for qualified solar facilities

(the “**Township**”) - Saline Township

(the “**Township Board**”) – the Saline Township Board

(the “**Township Coalition**”) – the coalition of townships appealed the Commission’s October 10 Order implementing the provisions of PA 233

(the “**UDP**”) - Unanticipated Discoveries Plan

(“**USDA**”) - United States Department of Agriculture

(“**USFWS**”) - United States Fish and Wildlife Service

(“**USGS**”) - United States Geological Survey

(“**Washtenaw Solar**” or the “**Company**”) - Washtenaw Solar Energy LLC

(“**WCRC**”) - the Washtenaw County Road Commission

(“**WCWRC**”) - Washtenaw County Water Resources Commissioner’s Office

(“**WRD Study Area**”) - approximately 4,207 acres of land for wetlands, waterways, and floodplains in Washtenaw County, Michigan

(the “**2008 Ordinance**”) - the Township’s 2008 Solar Energy Systems zoning ordinance passed in February 2008

(the “**2021 Ordinance**”) - the Township’s 2021 Solar Energy Systems zoning ordinance passed in October 2021

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

In the matter of the application of	)	
Washtenaw Solar Energy LLC for	)	
approval of a certificate for siting a solar	)	
energy facility in Saline Township,	)	Case No. U-21962
Washtenaw County.	)	
	)	
	)	

PROOF OF SERVICE

Melissa A. Goodrich, an employee of Dykema Gossett PLLC, hereby certifies that on the 4th day of September, 2026, she served Washtenaw Solar Energy LLC's Initial Brief on the parties listed on the attached service list via electronic mail.

Melissa A. Goodrich

SERVICE LIST
MPSC CASE NO: U-21962

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