S T A T E O F M I C H I G A N

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, Washtenaw County. /	Case No. **U-21962** (e-file paperless)

MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S INITIAL BRIEF

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Anna B. Stirling (P84919)
Adam M. Cozort (P78363)
Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. APPLICABLE LAW 2

III. PROCEDURAL POSTURE 4

IV. PRE-APPLICATION REQUIREMENTS 5

A. The Applicant held a public meeting in each Affected Local Unit 5

B. The Applicant offered to meet with the Chief Elected Official of each Affected Local Unit. 7

C. The Township was not required to apply to the Township for siting authority under MCL 460.1223(3). 8

D. The Applicant provided an opportunity to comment on the siting application. 9

E. The applicant conducted local government, community, and tribal outreach activities in accordance with Act 233 and the AFIP requirements. 10

V. SITE PLAN 11

A. The project meets the eligible size threshold to apply for a siting certificate under Act 233. 12

B. Company Exhibit A-1.1 meets the requirements of Section 7.1 of the AFIP 12

C. Company Exhibit A-1.2 meets the requirements of Section 7.2 of the AFIP 13

D. Company Exhibit A-1.4 meets the requirements of Section 7.4 of the AFIP and Staff supports three related conditions. 15

E. The Company provided a project description in accordance with the AFIP 17

F. The Company provided a project schedule in accordance with Section 225(1)(b) of Act 233. 18

G. The Company provided a Stormwater Assessment and Plan in accordance with Act 233. 20

H. The Company provided necessary transmission and Interconnection Agreements. 20

VI. LAND USE CONSIDERATIONS 22

A. The Commission should not grant a certificate to the project as filed on September 25, 2025. Staff's recommendations relate to the modified project. 23

B. The project's visual impacts can be appropriately mitigated through Staff and the Company's consensus condition on vegetative screening. 25

C. The project's proper maintenance and care of the property can be ensured through Staff and Company's consensus conditions on vegetative cover. 29

D. The project's impacts are reasonable in light of the percentage of land within the township dedicated to energy generation. 31

E. The Applicant has considered land use alternatives, including feasible alternative developed locations 32

VII. IMPACT TO ENVIRONMENT AND PUBLIC RESOURCES 33

A. The Commission should determine the application complies with Section 1705(2) of the Natural Resources and Environmental Protection Act 35

B. The application considers and addresses impacts to the environment and natural resources. 38

1. The Applicant considered and addressed impacts to sensitive habitats and waterways. 38

2. The Applicant considered and addressed impacts to wetlands and floodplains. 40

3. The Applicant considered and addressed impacts to wildlife corridors, parks, and historic and cultural sites 42

4. The Applicant has considered and addressed impacts to threatened and endangered species. 44

5. The Applicant considered and addressed other applicable environmental and natural resource impacts 45

C. Staff recommends the Commission adopt conditions requiring the Applicant to receive all necessary state, federal, and local permits needed before construction 47

VIII. PUBLIC BENEFITS 48

A. The Applicant adequately detailed the tax revenue generated by the facility to the local taxing districts. 49

B. The Applicant provided payments to owners of participating properties 51

C. The Applicant provided proposed and executed Host Community and Community Benefits Agreements. 53

1. The executed and proposed host community benefits agreements and community benefits agreements meet the requirements of Act 233. 54

2. The Applicant executed a host community agreement with Saline Township. 55

3. The Applicant has extended an offer of a host community agreement to Washtenaw County. 55

4. The applicant has proposed a Community Benefits Agreement with Saline Area Fire Department (SAFD) 57

5. The Applicant executed a Community Benefits Agreement with Saline Area Social Services. 58

D. The project will create 438 new local jobs during construction and 13 new local long-term jobs. 59

E. The project contributes to energy, capacity reliability, and resource adequacy needs in Michigan. 61

IX. PROJECT LABOR REQUIREMENTS 62

A. The Applicant will execute a project labor agreement in compliance with Act 233. 62

B. The Applicant will comply with required project labor standards of Section 226(7) of Act 233. 64

X. FARMLAND ANALYSIS 66

A. The proposed energy facility will not unreasonably diminish farmland 66

B. Staff recommends the Commission apply conditions to address the use of PA 116 land 70

XI. PUBLIC HEALTH AND SAFETY 73

A. The proposed solar facility meets the setback requirements for occupied community buildings and dwellings on nonparticipating properties, public road right-of-way, and nonparticipating parties. 73

B. The proposed solar facility's planned fencing complies with the latest version of the National Electric Code 78

C. The proposed solar facility's solar panel components will not exceed a maximum height of 25 feet above ground when the arrays are at full tilt 81

D. Washtenaw Solar has complied with dark sky lighting requirements. 82

E. Staff recommends the Commission implement conditions for sound modeling. 83

1. The proposed facility will not generate a maximum sound in excess of 55 average hourly decibels at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property. 83

2. Staff recommends the Commission adopt its proposed conditions requiring a final compliance demonstration and post-construction verification monitoring 86

F. The Applicant should be required to file final versions of its Emergency Response Plan (ERP) and Fire Response Plan (FRP) 93

XII. DECOMMISSIONING 95

A. Staff recommends that the Commission adopt its recommended conditions for the proposed Decommissioning Plan to ensure the return of all participating properties to useful condition similar to that which existed before construction. 99

1. The Commission should adopt Staff's soil remediation conditions..........100

B. The Applicant should be required to provide infrastructure records to landowners after decommissioning is completed..........104

C. Upon any transfer in ownership of project property or facilities, the Company is required to identify the new entity responsible for decommissioning..........105

D. Staff recommends the Commission adopt its proposed conditions for the Decommissioning Cost Estimate..........107

1. Staff recommends the Commission condition a certificate on separate accounting for dust control in the Decommissioning Cost Estimate..........107

2. Staff recommends the Commission adopt a condition for site investigation and remediation in the Decommissioning Cost Estimate..........109

XIII. OTHER ISSUES..........111

A. Staff recommends conditions to ensure post-certificate compliance..........111

1. The Commission should direct the Applicant to file a completion report demonstrating compliance with the requirements of Act 233 and the Commission's conditions..........112

2. The Applicant's complaint resolution process complies with the requirements detailed in the AFIP and can be implemented through Staff and the Company's consensus condition..........113

3. Staff supports the Company's commitment to hiring a Third-Party Independent Monitor..........114

4. Staff recommends the Commission apply a condition that requires the Applicant to provide compliance filings ahead of the pre-construction meeting..........115

5. Staff recommends the Commission apply a condition addressing the content and cadence of periodic reports..........119

6. Staff recommends the Commission apply a condition addressing the requirement to file a mechanical completion report 121

7. Staff recommends the removal of a condition regarding ordinance compliance 121

B. Staff recommends the Commission approve certain identified changes to be made at the Applicant's discretion that could otherwise be considered non-minor. 122

C. Staff recommends the Commission require the Applicant to obtain necessary permits prior to the start of construction. 126

XIV. CONCLUSION 128

I. INTRODUCTION

The Michigan Public Service Commission Staff (Staff) has reviewed the application of independent power producer Washtenaw Solar Energy, LLC (Washtenaw Solar, the Company, or the Applicant) for approval of a certificate to construct a 150 megawatt (MW) solar facility in Saline Township, Washtenaw County.

When considering the Applicant's proposal, and intervenor recommendations in this case, Staff urges the Commission to keep in mind the overall purpose of Washtenaw Solar's request and the necessary balancing of the interests of local units of government, participating and neighboring property owners, and the State of Michigan. The MPSC's fact-findings must be supported by competent, material, and substantial evidence on the whole record. Mich Const § art 6, § 28. There is a broad range of reasonableness within which the MPSC may operate. *In re MCI Telecommunications, Inc*, 460 Mich 396, 425 (1999).

Staff reviewed the Company's Application, testimony and exhibits and proposes reasonable conditions to Washtenaw Solar Energy's certificate request. Staff's conditional language follows the direction of the Commission's past orders, allows Washtenaw Solar a reasonable opportunity to site its proposed project, and considers the interests of both participating property owners and local units of government.

II. APPLICABLE LAW

On November 28, 2023, Governor Gretchen Whitmer signed Public Act 233 of 2023 (Act 233 or the Act) into law. The law went into effect on November 29, 2024. Act 233 provides a limited grant of siting authority to the Commission for certain utility-scale solar, wind, and energy storage facilities. Act 233 allows electric providers or independent power producers (IPPs), referred to here as developers, to apply to the Commission to obtain a certificate for a solar energy facility with a nameplate capacity of 50 MW or more. MCL 460.1222(1)(a).

Under Section 223 of Act 233, a developer that proposes to obtain a certificate for and construct an energy facility must hold a public meeting in each affected local unit (ALU).[1] MCL 460.1223(1). The statute provides that at least 60 days before the public meeting, the developer must offer in writing to meet with the chief elected official (CEO) of each ALU to discuss the site plan. MCL 460.1223(2). If within 30 days following a meeting with the CEO, the CEO of each ALU notifies the developer that the ALU has a compatible renewable energy ordinance (CREO), then the developer must file for approval through the local siting process.

The requirements for a site plan and application to the Commission are contained in Sections 224 and 225 of Act 233. MCL 460.1224 *et al.* Section 224 of Act 233 allows the Commission to establish filing requirements by order to maintain consistency between siting applications. On October 10, 2024, the

[1] An "affected local unit" is defined by the statute as "a unit of local government in which all or part of a proposed energy facility will be located." MCL 460.1221(a).

Commission adopted final Application Filing Instructions and Procedures (AFIP). MPSC Case No. U-21547, 10/10/2024 Order, p 77. The Commission issued an Errata to that order on October 21, 2024 that is cited herein.

In addition to other interpretations, the Commission's October 10th Order in Case No. U-21547 provided guidance interpreting the term "affected local unit." *Id.* at 6-10. The Commission interpreted the term "affected local unit" under Act 233 as being " limited to include only those local units of government exercising zoning jurisdiction." *Id.* at 10. The Commission's interpretation was appealed and on May 7, 2026, the Michigan Court of Appeals overturned the Commission's interpretation of "affected local unit." The Court of Appeals found that the statutory definition of "affected local unit" includes "all local units of government where a proposed energy facility is located. It does not refer to only those local units of government that have zoning jurisdiction . . . ." *In re Implementing Provision of Public Act 233 of 2023*, ___ Mich App___ (2026) (Docket No. 373259); slip op at 11. Staff has applied the holding from the Court of Appeals May 7 Opinion where the interpretation of the term "affected local unit" impacts the regulatory requirements of Act 233.[2] Discussion of the impact of that decision is included in the analysis below, where applicable.

Sections 226(7)(a-g) of Act 233 provide that the Commission must grant a certificate for a solar facility if it determines, in short, the following:

[2] Staff notes that all parties have sought leave to appeal portions of the Court of Appeals May 7 Opinion. These applications are currently pending before the Michigan Supreme Court in Docket No. 170249.

(a) The public benefits of the proposed energy facility justify its construction;

(b) The energy facility complies with Section 1705(2) of the Natural Resources and Environmental Protection Act;

(c) The Applicant has considered and addressed impacts to the environment and natural resources;

(d) The Applicant has entered into host community or community benefits agreements;

(e) The project meets the labor requirements outlined in Section 226(7)(e)(i-iii) of Act 233;

(f) The proposed energy facility will not unreasonably diminish farmland;

(g) The proposed energy facility does not present an unreasonable threat to public safety as defined in Section 226(8)(a). [MCL 460. 1226(7)(a-g).]

Section 227 of Act 233 provides the requirements of Host Community Agreements and Community Benefits Agreements. MCL 460.1227 *et al*. Section 227a provides requirements for completion reports and compliance. MCL 460.1227a. Finally, Section 231 of Act 233 provides preemption language. MCL 460.1231(3).

III. PROCEDURAL POSTURE

On September 25, 2025, Washtenaw Solar filed its Application requesting the Commission accept its application for approval of a certificate for siting a 150 MW solar facility in Saline Township, Washtenaw County. A prehearing was held on November 25, 2025, before Administrative Law Judge Christopher S. Saunders at which Saline Township, and Tabitha Pop, adjacent landowner appearing *in pro per*, were granted intervention. Staff and Washtenaw Solar also participated in the prehearing. Washtenaw County did not intervene in this case. On February 10, 2026, the Applicant filed revised direct testimony and exhibits. On March 13, 2026, Staff, Saline Township, and Ms. Pop filed direct testimony and exhibits. On May 26, 2026, Saline Township and Washtenaw Solar filed rebuttal testimony. The Applicant's rebuttal testimony contained a revised site plan along with testimony and exhibits that incorporated the revised site plan. As such, on June 26, 2026, Staff filed surrebuttal testimony and exhibits limited the supplemental information presented in Washtenaw Solar's rebuttal testimony.

A hearing was held on August 3-5, 2026, at which cross-examination was conducted and evidence was bound into the record. While Staff sets forth to provide a detailed brief of the record evidence provided in this case, the Commission should not construe Staff's failure to address an issue as agreement with one or more of the parties on that issue.

In accordance with the schedule established for this case, Staff files the following initial brief on Washtenaw Solar's application for approval of a certificate for siting a solar energy facility in Saline Township, Washtenaw County.

IV. PRE-APPLICATION REQUIREMENTS

A. The Applicant held a public meeting in each Affected Local Unit.

Section 223(1) of Act 233 requires an electric provider or IPP to hold a public meeting in each ALU. MCL 460.1223(1). The electric provider or IPP must, at least 30 days before the public meeting, notify the clerk of each ALU of the time, date, location, and purpose of the public meeting and must further provide a copy of the site plan for the proposed energy facility or the address of an internet site where the site plan is available for review. *Id.*

In Exhibit A-4.2, the Applicant provided documentation showing that it submitted its notice of public meeting to the Saline Township Clerk on July 18, 2025, which was 30 days before the public meeting. (5 TR 1018.)

The Company filed a Revised Exhibit A-4.1 on July 31, 2026, which showed that Washtenaw County "was provided a link to a copy of the site plan and application for the Project." (Revised Exhibit A-4.1, Appendix I.) As the public meeting was held within Saline Township, it was also held within Washtenaw County.

In Exhibit A-4.2, the Company provides documentation showing that notice of the public meeting, which includes the notice of opportunity to comment, was published in the Sun Times News more than 14 days prior to the public meeting. (5 TR 654-655.) The Company also indicated that it sent the notice of public meeting to all residents within one-mile of the project, and the exhibit contains copies of all of the meetings, sign-ins, and summary of public comments. Further, the record shows that the public meeting was transcribed by a court reporter, and Exhibit A-4.2 contains a transcript of the public hearing.

Staff witness Sarah A. Mullkoff testified that the information required and contained in the application meets the requirements of Act 233 and, therefore, Staff recommends that the Commission find that the Company complied with the public meeting requirements of Section 223(1) of Act 233. (5 TR 1018; MCL 460.1223(1).)

B. The Applicant offered to meet with the Chief Elected Official of each Affected Local Unit.

Section 223(2) of Act 233 requires that at least 60 days before a public meeting held under subsection (1), the electric provider or IPP planning to construct an energy facility 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. MCL 460.1223(2).

In Exhibit A-4.1, the Company describes in detail its offer to meet with the CEO of Saline Township to discuss the site plan and to establish whether the Township had a CREO. Copies of the letter to Saline Township's CEO, Supervisor Marion, the mailing list to which the offer to meet was extended, and proof of correspondence are provided in the record. (5 TR 660-662.) The record in this case shows that copies of the offer to meet were also extended to several other township staff. Staff reviewed Exhibit A-4.1 showing that the offer was sent by certified mail and was sent to the township more than 60 days before the Project's public meeting, which was held on August 18, 2025. The Township CEO did not respond to the Company's request to meet. The record shows one in-person meeting was held between the township and the Company in 2021, though the Company's direct testimony describes that the CEO of Saline Township did not respond to the formal request to meet from the Company. (5 TR 653.) Staff understands the Company to have appropriately met the requirement to offer to meet with the CEO of Saline Township; this topic is uncontested.

In its updated Exhibit A-4.1, the Company provided evidence of its offer to meet with the CEO of Washtenaw County, Katie Scott (Chair of the Washtenaw County Board of Commissioners), as well as to numerous Washtenaw County officials. The Company provided a copy of a letter from Ms. Scott addressed to the Michigan Public Service Commission. The letter from Ms. Scott further stated that she "can confirm that [she] received an invitation to meet with Washtenaw Solar regarding the Project." (Exhibit A-4.1, Appendix I.) As stated above, Washtenaw County has not intervened in this case.

Staff reviewed this information and concluded that the Company met the burden of offering to meet with the CEO of each ALU of the project; Staff recommends the Commission find the same. (5 TR 1019.)

C. The Township was not required to apply to the Township for siting authority under MCL 460.1223(3).

Section 223(3) of Act 233 further provides that "[i]f within 30 days following a meeting, the CEO of each ALU notifies the electric provider . . . that the local unit has a compatible renewable energy ordinance [CREO], then the electric provider shall file for local approval. . . ." MCL 460.1223(3). Section 223(3)(c) of Act 233 provides the three criteria under which the electric provider may submit its application to the Commission. MCL 460.1223(3)(c).

The Township CEO was nonresponsive to the Company's request to meet to discuss the site plan. In its application, the Company states, "Saline Township did not respond to the Company's outreach and did not indicate the existence of or plans to adopt a CREO. Washtenaw Solar reviewed the Township's ordinance and concluded that the Township does not have a CREO." (5 TR 653.) Since the Township never notified the Applicant that the Township had a CREO, the Company was not obligated to submit the application locally. MCL 460.1223(3)(c)(i). This topic was uncontested on the record. Staff witness Mullkoff concludes that the Company met requirements to file the project at the MPSC; Staff recommends the Commission find the same. (5 TR 1020.)

D. The Applicant provided an opportunity to comment on the siting application.

Section 226(2) of Act 233 provides that "the applicant shall provide notice of the opportunity to comment on the application in a form and manner prescribed by the Commission." MCL 460.1226(2).

In Exhibit A-4.2, the Company provided evidence showing that it sent notices of the public meeting to all residents within one mile of the project, to all landowners participating in the project, and to local stakeholders. Further, the proof of service of the notice of hearing and notice of opportunity to comment was filed in the E-docket for this case. (5 TR 1021). No parties in the instant case contested this issue. Therefore, Staff recommends the Commission find that the Company properly provided notice of the opportunity to comment.

E. The applicant conducted local government, community, and tribal outreach activities in accordance with Act 233 and the AFIP requirements.

Section 225(1)(j) of Act 233 requires 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. AFIP Section 6.3.4 states that Exhibit A-4.2 should contain a summary of community outreach and education efforts, including; copies of all presentation or education materials, number of attendees for any public meetings, meeting length, number of commenters, and topics discussed during meetings. MPSC Case No. U-21547. 10/21/2024 Errata, p 11.

As Exhibit A-4.2 the Company filed information referring to numerous efforts conducting outreach to community members with Section 225(1)(j) of Act 233. Staff reviewed the exhibit and testimony of Company witness Tyler Durgan. The Company's Exhibit A-4.2 details engagements and provides a summary of all meetings that were held. The applicant provided sufficient details regarding the outreach that was conducted regarding this project. This topic is uncontested. As such, Staff has no further recommendations to the Commission.

Section 224(1)(b) of Act 233 requires that a site plan contain "[a] description of the anticipated effects of the energy facility on the environment, natural resources, and solid waste disposal capacity." MCL 460.1224(1)(b). This description may include records of consultation with relevant state, tribal, and federal agencies." *Id.* The AFIP further provides that Exhibit A-4.5 must contain "[a] summary of tribal engagement, including at a minimum, the communication and outreach conducted with each tribe, the date and time, who participated, and a summary of tribal inputs and outcomes if applicable." MPSC Case No. U-21547, 10/21/2024 Errata, p 12. The Company provided evidence and documentation of this outreach as directed. This issue is uncontested. As such, Staff has no further recommendations to the Commission.

V. SITE PLAN

Sections 224 and 225 of Act 233 include the requirements for what must be included in a site plan and application for certification for construction of an energy facility. Section 224(1) of Act 233 requires that "a site plan required under section 223 or 225 shall meet application filing requirements established by the [C]ommission rule or order to maintain consistency between applications." MCL 460.1224(1). In Case No. U-21547, the Commission adopted theAFIP, which contain specific requirements pertaining to the visual content contained within the Planned Facilities Exhibit, Exhibit A-1.1. (MPSC Case No. U-21574, 10/21/2024 Errata; 5 TR 1093.) These requirements include, in part, that a site plan must meet application filing requirements established by the Commission and include a description of the energy facility. MCL 460.1224(1)(a); MCL 460.1225(c). Staff reviewed the Company's application along with supporting testimony and exhibits and provides the below in support of the Commission's determination.

A. The project meets the eligible size threshold to apply for a siting certificate under Act 233.

Section 222(1) of Act 233 provides that Act 233 applies to all the following: (1) any solar energy facility with a nameplate capacity of 50 megawatts (MW) or more, (2) any wind energy facility with a nameplate capacity of 100 MW or more, and (3) any energy storage facility with a nameplate capacity of 50 MW or more and an energy discharge capability of 200 megawatt-hours (MWh) or more. Staff reviewed the Company's exhibit that described the Project as a 150 MW solar facilities, which exceeds the 50 MW size threshold for siting a solar facility under the above-referenced statute. (4 TR 1017). This topic is uncontested, therefore, Staff recommends the Commission find the project meets the size threshold to apply for a siting certificate under Act 233.

B. Company Exhibit A-1.1 meets the requirements of Section 7.1 of the AFIP.

As Exhibit A-1.1, the Company filed a series of detailed maps and images relating to planned facilities that correspond with the required information outlined by AFIP Section 7.1(a) subparts (1) through (10). These requirements correspond with Sections 224 and 225 of Act 233. MCL 460.1224; MCL 460.1225. Staff reviewed the exhibits and testimony of Company witness Kirsten A. Polen, the sponsoring witness. Exhibit A-1.1 indicates the proposed location of solar panels, inverters, collection lines, project substation, and point of interconnection. The proposed site includes five laydown yards and fifteen temporary staging areas located across the site. (Exhibit A-1.1, p 7.) The Company proposes a single axis tracking system that positions the panels to increase energy production throughout the day. (4 TR 149.) Exhibit A-1.1 depicts the following: the locations of two proposed stormwater basins; the proposed perimeter fence; existing structures that are adjacent to the site; the locations of existing utilities; environmental features such as wetlands, county drains, and waterbodies; and all occupied structures including the required setback. (Exhibit A-1.1, pp 7-56.) Staff witness Travis B. Warner testified that Exhibit A-1.1 of the site plans contains all of the information required by Section 7.1 of the AFIP, and the Commission should find the same; Staff has no further recommendations to the Commission regarding the requirements of Section 7.1. (5 TR 1094.)

C. Company Exhibit A-1.2 meets the requirements of Section 7.2 of the AFIP.

As Exhibit A-1.2, the Company filed a series of detailed maps and images relating to area land use that correspond with the required information outlined by AFIP Section 7.2. These requirements correspond with Sections 224 and 225 of Act 233. MCL 460.1224; MCL 460.1225. Staff reviewed the exhibit and testimony of Company witness Polen, the sponsoring witness. Exhibit A-1.2 contains information regarding components and ancillary features within the proposed facility and within 1,000 feet of the proposed facility, including: municipal boundaries and taxing jurisdictions; proposed land uses; farmland and prime farmland; existing overhead and underground facilities; current land uses, parcel information, and participation in agreements under Michigan's Farmland and Open

Space Preservation Program (PA 116); local zoning districts; hydrological characteristics; recreational land uses; and sound impacts and isolines. (Exhibit A-1.2, p 3.)

The testimony of Staff witness Warner points out an additional noteworthy item on the sheet labeled Exhibit A-1.2(a)(4) Area Land Use – Major Facilities. (5 TR 1096.) In the southwestern corner of the project footprint, the map depicts a line labeled "Enbridge Gas Pipeline" with an overlapping shaded area denoted as temporary staging area. (Exhibit A-1.2, p 19.) The map also shows array fencing in close proximity to the existing pipeline, which Staff estimates to be within 50 feet. (5 TR 1096.) In response to Staff's discovery question, the Company clarified that the referenced pipeline carries crude oil rather than natural gas after corresponding with the pipeline operator, and further notes that this will be corrected in Company witness Julie M. Pierson's testimony. (Exhibit S-9.2, p 1.) At the time of Staff's direct testimony filing, the revised testimony of Company witness Pierson did not include this correction. (5 TR 1096.) The Company also stated in its response that Washtenaw Solar will obtain crossing permissions from Enbridge prior to beginning construction on the affected parcel and will continue to work with Enbridge to ensure safety and coordination. (Exhibit S-9.2, p 1.) Lastly, the Company indicates that there are no anticipated impacts on the pipeline due to a crossing agreement that will be reached with Enbridge. *Id.* at 3. Staff witness Warner noted that the distinction between a pipeline carrying crude oil versus natural gas is important, and can result in differing considerations around worker safety, leak identification, and emergency response measures, and further, that the planned crossing agreement will allow Enbridge to help mitigate any impacts to the pipeline during construction and operation of the facility. (5 TR 1097.)

Staff witness Warner testified that the information provided in Exhibit A-1.2 contains all of the information required by Section 7.2 of the AFIP as well as requirements of Act 233, the Commission should find the same, and Staff has no further recommendations to the Commission on Section 7.2. *Id.*

D. Company Exhibit A-1.4 meets the requirements of Section 7.4 of the AFIP and Staff supports three related conditions.

As Exhibit A-1.4, the Company filed information relating to construction of the proposed project as required by AFIP Section 7.4. These requirements correspond with Sections 224 and 225 of Act 233. MCL 460.1224; MCL 460.1225. Staff reviewed the exhibit and testimony of Company witness Pierson, the sponsoring witness. Exhibit A-1.4 includes information such as: soil surveying and testing plans; grading and excavation; access roads, staging areas, laydown areas, and trenches; installation of piles, racking, and modules; stringing of cable and/or laying of pipe; installation of electrical components; depth of infrastructure; post-construction restoration; and construction maps. (Exhibit A-1.4, p 2.) With regard to grading and excavation, the Company notes that there will be minimal grading of the site to meet the tracker clearance requirements and that areas to be graded will be restored by applying the salvaged topsoil and seeding. *Id.* at 4. This operation will be followed by the construction of the temporary and permanent access roads, staging areas, and trenches for the stringing of cable. *Id.* at 5-8. The testimony of Company witness Pierson explains that the potential traffic impacts of construction and delivery on local roads is relatively minimal; however, Staff notes that the Project is anticipated to cause some disruption to the public roads, given the increased traffic and heavy trucks carrying materials. (5 TR 1100-1101.) The Company notes that most of the truck loads will be within the legal weight-bearing load limit, but there will be a small number of deliveries that will be oversized or overweight which will respect the seasonal restrictions in force at the time and may require vehicle permits. (4 TR 83.) Prior to construction, Washtenaw Solar has offered to enter into a Road Use Agreement with the Washtenaw County Road Commission (WCRC) regarding reimbursement for the repair and restoration of any County roads modified or damaged during the construction process. (Exhibit A-14, p 21.) Company witness Pierson further notes that haul routes for cranes and other heavy equipment are subject to approval by the WCRC. (4 TR 91.) The Company requests the ability to accommodate requests for changes from the WCRC regarding haul routes, which Staff opines is reasonable, and was discussed further by Staff witness Dr. Austin N. Glass in consideration of a potential design change. (5 TR 1190-1191.)

If the project is approved, Staff recommends three conditions relevant to construction and installation of the proposed facility consistent with Staff witness Warner's review and testimony. Staff Conditions 3, 9, and 21 were recommended by Staff witness Warner as modifications to proposed conditions in the Company's application. The Company did not refute Staff's recommended conditions, including them without amendment in its modified list of recommended conditions in rebuttal testimony. (Exhibit TSD-R1, pp 4-10.) Based on the foregoing, Staff recommends that the Commission apply the conditions, which are as follows:

> Proposed Condition 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.
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> Proposed Condition 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 above ground.
>
> Proposed Condition 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 verifying this determination.

E. The Company provided a project description in accordance with the AFIP.

As Exhibit A-2, the Company filed the project description in compliance with Section 225 of Act 233 and Section 6.3.2 of the AFIP. Staff reviewed the exhibit and testimony of Company witness Durgan. Revised Exhibit A-2 includes the address and phone number for the representative for the project and general descriptions of the project and of the community in which the project would be located. (Revised Exhibit A-2, pp 3-6.) The Company describes the number of facilities dedicated to energy production in Washtenaw County, which include three hydroelectric dams (Barton Dam, Ford Lake, Superior Dam); one solar energy center (Domino Farms Solar); two power plants (East Michigan University Heating Plant, University of Michigan); and one biomass power plant (GRS Arbor Hill). *Id.* The Company indicates that this represents between 0.0021 percent and 0.18 percent of the land in Washtenaw County. *Id.* Presently, there are no generation facilities within the geographical boundaries of Saline Township. *Id.* Exhibit A-2 notes that Washtenaw Solar is aware of Jupiter Power's Voyager Energy Storage Project, a 100 MW, 5-acre battery storage project proposed in Saline Township. The Company further notes that this facility is not yet operational and is an energy storage project rather than an energy generation project. *Id.* Staff points out that the Saline Township Board approved a special land use permit on July 23, 2025, to construct and utilize the Voyager Battery Energy Storage Facility. (5 TR 1104.) Staff witness Warner testified that Exhibit A-2 contains the information required and outlined in Section 6.3.2 of the AFIP as well as requirements of Act 233, the Commission should find the same. Staff has no further recommendations to the Commission on Section 6.3.2. *Id.*

F. The Company provided a project schedule in accordance with Section 225(1)(b) of Act 233.

As Exhibit A-3, the Company filed the anticipated project schedule in compliance with Section 225(1)(b) of Act 233 and Section 6.3.3 of the AFIP. Staff reviewed the exhibit and testimony of Company witness Pierson, the sponsoring witness. The project schedule includes details related to anticipated project milestones, such as the preliminary Geotechnical Report which was expected to be complete by January 15, 2026. (4 TR 103.) The Engineering Kickoff commences the work by the Engineer(s) of Record (EOR) and is expected to occur on June 8, 2026. (4 TR 98.) The Company anticipates securing discretionary permits by January 4, 2027, which is the planned start date for the approximately 24-month construction period. *Id.* The construction start date appropriately falls after the anticipated completion of this contested case proceeding. Mechanical completion is scheduled to take place by July 25, 2028, which is the date when the mechanical components of the Project have been installed. (4 TR 99.) The Company indicates an anticipated photovoltaic (PV) testing and commissioning phase to last four months and is expected to be complete by October 6, 2028. (4 TR 105.) Substantial Completion or Commercial Operation Date (COD) is anticipated to take place by December 29, 2028, and final Completion to take place by February 15, 2029. (4 TR 99.) Staff witness Warner notes that the Company presents a relatively compressed schedule to meet the requirements of the Generator Interconnection Agreement (GIA), which, as discussed further below, requires a COD of December 31, 2028. (Exhibit A-12, p 3.) Staff witness Warner testified that the Company presented 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. (5 TR 1105.) Staff's position is that the application contains all of the necessary details of milestones within the project schedule. The Commission should find the same. Staff has no further recommendations to the Commission on this issue.

G. The Company provided a Stormwater Assessment and Plan in accordance with Act 233.

As Exhibit A-6.4, the Company filed a stormwater mitigation plan in compliance with Section 225(1)(p) of Act 233. Staff reviewed the exhibit and testimony of Company witness James E. Kampa, the sponsoring witness. (4 TR 240-241.) The Company's plan includes information on consultation with the Washtenaw County Drain Commission and addresses guidance from the drain commission. Staff's position is that the Applicant's plan to minimize, mitigate, and repair any drainage impacts at the expense of the developer is reasonable and the Commission should find the same. As the Commission has provided that the stormwater assessment and plan may be preliminary, Staff has no further recommendations to the Commission on this issue.

H. The Company provided necessary transmission and Interconnection Agreements.

As Exhibit A-12, the Company filed information regarding Transmission and Interconnection Agreements in compliance with Section 225(1)(m) of Act 233. MCL 460.1225(1)(m). Staff reviewed the exhibit and testimony of Company witness Durgan, the sponsoring witness. (5 TR 679-680.) As described in Exhibit A-12, the relevant regional transmission organization is the Midcontinent Independent System Operator, Inc. (MISO). (Exhibit A-12, p 23.) The Company submitted the executed GIA that was entered into with MISO and the International Transmission Company (ITC) in lieu of submitting feasibility and system impact studies as the AFIP allows. *Id.* at 6-141. The project is associated with interconnection queue position J1062. *Id.* Company Exhibit A-12 indicates that the original COD in the GIA was December 31, 2023, but that MISO must terminate the GIA if the Project fails to achieve commercial operation by December 31, 2026, following a three-year extension period. *Id.* at 24. Thus, the Company notes in Exhibit A-12 that, "[t]he GIA was set to lapse on December 31, 2026, and, due to Project delays related to the inability to secure local approval, the Project would not have been interconnected by that date." *Id.* at 3. As stated in Exhibit A-12, "[a]ccordingly, on February 26, 2025, Washtenaw Solar filed a Request for Waiver with the Federal Energy Regulatory Commission ("FERC"). *Id.* On April 21, 2025, FERC granted the Request for Waiver, allowing for a 24-month extension of the GIA until December 31, 2028." *Id.* at 135. In Revised Exhibit A-3, Project Schedule, the Company indicates a Guaranteed Substantial Completion by December 29, 2028, which is in advance of the COD. (Revised Exhibit A-3, p 6.) Staff witness Warner testified that the Company has provided a valid GIA as required by Section 6.3.12 of the AFIP and Section 225(1)(m) of Act 233. (5 TR 1111.) Further, the GIA and COD align with the Project Schedule as presented as Revised Exhibit A-3. Staff recommends the Commission find the same and has no further recommendations on this issue. *Id.*

VI. LAND USE CONSIDERATIONS

Section 226(6) of Act 233 states that the Commission shall consider feasible alternative developed land locations, such as vacant industrial property and brownfields and the impact the proposed facility on local land use, including "the percentage of land within the local unit of government dedicated to energy generation. MCL 460.1226(6). This section further states that the Commission may condition its grant of the application on the applicant taking reasonable action related to the impacts of the proposed facility, including maintaining vegetative ground cover and meeting or exceeding pollinator standards through the lifetime of the facility.

The proposed project area is currently entirely zoned as "Agricultural." (5 TR 1137.) Agriculturally-zoned areas are commonly utilized for utility-scale solar facilities. *Id.* As discussed by Staff witness Glass and explained further below, Staff's position is that the use of agriculturally-zoned areas is appropriate for a solar project if the following are established, as required by statute. *Id.*

- That the impacts of the project on adjacent and nearby uses have been minimized, or can be mitigated through appropriate certificate conditions;
- That the project impacts are reasonable considering the percentage of land within the township used for energy generation;
- That developed alternatives have been considered and found infeasible; and,
- That the project does not unreasonably diminish farmland, consistent with Section 227(f) of Act 233.

Staff witness Glass provides Staff's assessment that the site plan without Opt-Out Parcels, also referred to as the "Modified Project" or "Modified Layout," complies with each of those four items, so long as appropriate conditions are attached; these conditions are discussed in turn below. (5 TR 1138, 1157, 1209.)

A. The Commission should not grant a certificate to the project as filed on September 25, 2025. Staff's recommendations relate to the modified project.

As a matter preliminary to the discussion of Staff's substantive review of the project, it is appropriate to address the project version to which Staff's recommendations relate. In its direct testimony, Staff analyzed the Washtenaw Solar project as it was submitted in its September 25, 2025 application to the Commission (the "project as-filed"). Prior to the time of Staff and intervenor testimony, Staff became aware that certain landowners had exercised a right or requested to withdraw from the proposed project. (Exhibit S-6.1.) The Company accommodated those withdrawals and terminated certain agreements to build facilities on those parcels. However, the Company failed to provide timely information to Staff regarding the modified version of the project including an up-to-date depiction of the proposed facilities. As a result, Staff was unable to analyze the compliance of the project as-filed with Act 233. Based on the information available at the time of its direct testimony, it was clear to Staff that the Company did not have sufficient site control to construct the project as-filed.

Following submission of Staff and intervenor direct testimony, the Company provided additional information relating to the modifications to the project, in response to Staff discovery. The Company included much of the same information in its rebuttal testimony. The information included an updated site plan for a modified version of the project which excludes five parcels affected by the terminated lease agreements (the Opt-Out Parcels). Staff refers to the modified project layout as the "Modified Layout." Between the time of the Company's rebuttal testimony and Staff's surrebuttal testimony, Staff was able to analyze the modified project's compliance with the Act 233. The updated project information addressed the percentage of land within the local unit of government dedicated to energy generation (MCL 460.1226(6)); impacts on the environment and natural resources (MCL 460.1226(7)(c)), compliance with the Michigan Environmental Protection Act (MEPA), section 1705(2) of the Natural Resources and Environmental Protection Act (NEPA), 1994 PA 451, MCL 324.1705 (MCL 16 460.1226(7)(b)); diminishment of farmland (MCL 460.1226(7)(f)); compliance with the National Electric Code (MCL 460.1226(8)(a)(ii)); and compliance with required setbacks (MCL 460.1226(8)(a)(i)), all matters that could have been impacted by the removal of the Opt-Out Parcels in the project as-filed.

Act 233 defines "participating property" as "real property that either is owned by an applicant or that is the subject of an agreement that provides for the payment by an applicant to a landowner of monetary compensation related to an energy facility . . . ." MCL 460.1221(s). Act 233 also provides a definition of "nonparticipating property" which means "a property that is adjacent to an energy facility and that is not a participating property." MCL 460.1221(r). A number of provisions of the Act then incorporate this dichotomy, with additional protections in place for nonparticipating properties. These provisions include intervention by right, setbacks, and sound modeling. See MCL 460.226(3); MCL 460.226(8)(a)(i, iv). Landowners of participating properties are also party to decommissioning agreements reached with the applicant. MCL 460.1225(r). By its definition, participating properties have agreed to monetary compensation related to this solar facility. Staff does not find it prudent to approve a project layout which the Company does not currently have sufficient site control and landowner agreements to construct. (5 TR 1207.) As such, Staff recommends that the Commission grant a certificate for only the Modified Project which excludes the Opt-Out Parcels. Staff does not recommend the Commission grant a certificate for the project as-filed on September 25, 2025. Staff's recommendations discussed herein relate to the Modified Layout, and otherwise-unspecified references to "the project" herein refer to that Modified Layout version.

B. The project's visual impacts can be appropriately mitigated through Staff and the Company's consensus condition on vegetative screening.

In recognition of the visual impacts of its proposed project, the Company developed a preliminary "Landscape Buffer Location Plan" (LBLP), presented in its application as Exhibit A-1.3. (5 TR 1138.) In addition to locations for proposed vegetative screening, the LBLP also provides the layout of and details on the proposed plantings. For example, the LBLP provides for a discontinuous row of evergreen trees. *Id.* Regarding the LBLP proposed screening locations, the Company caveats by stating that the LBLP shows only the "maximum potential extent of planted landscape buffers." *Id.* The LBLP does not clearly discuss planned species variety, and the Company, in response to Staff discovery, disclaimed compliance with a local ordinance standard that a screen must not exceed 30% of any single plant species. (5 TR 1144.) Per the Company's response to Staff discovery, "[t]he representative species list included in the preliminary LBLP generally specifies smaller minimum sizes at the time of installation for evergreen and deciduous trees and shrubs than what is required in Section 8.03(C) of the [Saline Township] ordinance." (5 TR 1144; Exhibit S-6.4, p 4.)

Staff's position is that the Company's LBLP, as proposed, would not satisfactorily minimize or mitigate the visual impacts of the project. (5 TR 1139.) This conclusion is primarily rooted in the misalignment with standards established by local ordinances and common industry practices in Michigan, the sparse planned screening schematic shown in the application, and the lack of clear commitment to implementation of proposed screening wherever it is the preference of adjacent residents. *Id.* Staff's position is that the LBLP is particularly deficient across four metrics – provided visual obstruction, location certainty, species variety, and height at time of planting.

Although Act 233 provides for the preemption of local ordinances by a Commission certificate, Staff witness Glass discusses that the Township's ordinance is the product of a years-long iterative process, conducted with Washtenaw Solar in mind. (5 TR 1139-1140; MCL 460.1231(3).) In Staff's assessment, the local ordinance is "generally thoughtfully developed and provides clear benchmarks and standards for screening." (5 TR 1141.) Staff asserts that "local ordinances provide critical insights into local preferences regarding renewable energy projects" and finds Saline Township's ordinance instructive here. (5 TR 1140.)

Saline Township's local ordinance contains detailed requirements for screening of solar facilities, including requirements across each of the four metrics discussed above. (5 TR 1141-1142.) Regarding visual obstruction, the Township ordinance provides for a continuous evergreen visual buffer. (5 TR 1143.) Regarding location certainty, the Township ordinance requires that the project be visually screened from adjacent properties. (5 TR 1142-1143.) Further, at this stage of development, Staff's opinion is that the Company should be able to clearly define locations for its proposed screening, modifiable only based on certain clearly-defined parameters. (5 TR 1146.) Regarding species variety, the Township ordinance provides that the screen must not exceed 30% of any single plant species. (Exhibit S-6.3, p 3.) Finally, regarding height at time of planting, the Township ordinance provides minimum sizes of 6 feet for evergreen trees, and 30 inches in height or 24 inches in spread for shrubs. (Exhibit S-6.3, p 3.)

In consideration of the impacts of the project on adjacent and nearby land uses, Staff proposed a condition requiring compliance with local standards across each of the four categories. (5 TR 1147-1148.) In rebuttal testimony, Company witnesses Durgan and Issac B. Pallant broadly agreed with Staff's motivations for its proposed screening requirements and found Staff's approach "acceptable to achieve a compromise that balances the Township's goal[s] . . . and . . . commercial reasonableness." (5 TR 701.) The Company suggested slight modifications to Staff's recommended condition language. (4 TR 407.) The version of the condition presented by the Company is:

> Proposed Condition 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, in addition to the evergreens. 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.

Staff accepts the modified version of this condition, as suggested by the Company, as being consistent with the framework it proposed in its direct testimony. (5 TR 1046.) Staff posits that, if a certificate is granted, a detailed condition regarding screening would minimize the visual impact of the project, reducing the impact on local land use. (5 TR 1139.) Thus, Staff recommends the above version of the condition, agreed to by the Company and Staff, be applied by the Commission if a certificate is granted.

C. The project's proper maintenance and care of the property can be ensured through Staff and Company's consensus conditions on vegetative cover.

The Company presented its proposed vegetative groundcover, including plans for pollinator habitat, in Exhibit A-1.3. (5 TR 1196.) "The Company has a multi-phased approach to establishing and maintaining all vegetative cover on the Project, including pollinator habitat." *Id.* The process involves creation of a site-specific Vegetation and Soil Management Plan prior to construction, which will, among other benefits, "reduce sediment and nutrient runoff… improve erosion control…" and allow "establishment of diverse pollinator habitat in the selected open buffer areas between the fenceline and arrays. *Id.*

The Company provided in Exhibit A-1.3 that it is committed to meeting and/or exceeding a minimum score of 76 points on the Michigan State University Pollinator Scorecard ("the scorecard"). (5 TR 1197; Exhibit A-1.3, p 24.) However, the Company did not provide a specific plan to meet the standards of the scorecard; instead, it merely identified some of the elements of the scorecard that it "may implement." (5 TR 1197.)

If the Company actually implements each element of the scorecard discussed in the list of items it may implement, the resulting plan would achieve 60 points. *Id.* The scorecard is clear that a minimum score of 76 points is needed to meet pollinator standards. *Id.* However, Staff's analysis is that actions in the sections *not* addressed by the Company could provide the remaining required points. (5 TR 1198.) The Company made commitments in response to Staff discovery regarding efforts to prevent the introduction and spread of invasive species. (5 TR 1199;

Exhibit S-6.9, pp 3, 6.) Staff proposes that the Commission adopt this commitment, and requirements to minimize insecticide risk, as conditions to assure the site meets pollinator standards.

To ensure that the Company meets its commitment to achieve a minimum score of 76 on the scorecard, Staff proposed in its direct testimony that Proposed Minimum Conditions 2 and 8 be modified to guarantee the Company takes the steps necessary to achieve a baseline score of 76 on the scorecard; ensure avoidance of prevention and spread of invasive species; finalize pollinator, vegetation, and soil management plans prior to construction; and keep the Commission and stakeholders informed regarding such further planning. (5 TR 1199.) In rebuttal, the Company found Staff's condition language acceptable, with one exception to generalize the requirements for pollinator planting locations. (4 TR 699.) Staff is supportive of this modification, in part because at the specified percentage, the portion of the site planned to be dominated by wildflowers would not result in a change in score achieved on the pollinator scorecard. (5 TR 1213-1214.)

Staff and the Company's consensus condition language is as follows:

> Proposed Condition 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.

Proposed Condition 2.i: Provide the final version of the Michigan State University Pollinator Scorecard for Solar Sites, the final vegetation and soil management plan.

For the reasons listed above, the Commission should adopt these proposed conditions.

D. The project's impacts are reasonable in light of the percentage of land within the township dedicated to energy generation.

The Company indicates in its application that there is no utility-scale energy generation in Saline Township and that less than 1% of land is dedicated to utility-scale energy generation in Washtenaw County. (Exhibit A-2, pp 5-6.) The existing land dedicated to energy generation in Washtenaw County is outlined in the site plan and discussed above. (See Section V.D of this Initial Brief.) According to Staff calculations, the Modified Layout of the Project would increase these percentages to 4.7% for Saline Township, and 0.4% for Washtenaw County. (Exhibit S-6.12, p 3.) These quantities are based on the fenced area of the project only, because these are the only areas that are dedicated to energy generation. (5 TR 1153.)

The law does not establish a standard threshold regarding the percentage of a township's land which can be dedicated to energy generation, and Staff does not recommend the Commission do so in general, or in the instant case. As described by Staff witness Glass, attempting to establish a single percentage standard that is to be applied statewide to every jurisdiction could be both imprudent and untenable. (5 TR 1153.) Size of townships in Michigan vary from 70 acres to over 376,000 acres, and the appropriate percentage of a given jurisdiction dedicated to energy generation varies widely depending on the willingness of the community to host such generation, as well as the use to which the land would otherwise be put. (5 TR 1153-1154.)

There is also no need to confront the question of a jurisdiction-specific limit in the instant case, because the project's proposed land dedicated to energy generation in Saline Township and Washtenaw County are below benchmarks based on national and international assessments of land needed for solar in a carbon-neutral future. *Id.* Resultantly, Staff recommends the Commission find that the project's impacts are reasonable in light of the percentage of land dedicated to energy generation.

E. The Applicant has considered land use alternatives, including feasible alternative developed locations.

In Exhibit A-1.5, the Company provided a description of 50 neighboring and nearby parcels of significant size that were considered for inclusion in its project but ultimately rejected. (5 TR 1147.) The alternative parcels are categorized into one of four designations, based on existing land use status and feasibility of inclusion in the project. (5 TR 1148.) A portion of the alternative parcels are unable to be included in the project based on environmental limitations or property rights limitations. (5 TR 1149.) The other parcels are categorized as alternative proposed layouts and developed lands. *Id.* In Staff's assessment, as presented by Staff witness Glass, "[t]he Company appears to have made legitimate and sufficient efforts to attempt to include alternative developed locations within its project." (5 TR 1152.)

In response to Staff discovery, the Company indicated that pathways were considered during the Project's land campaign to reach the alternative proposed layouts and, through them, the developed lands. (5 TR 1149-1150.) However, negotiations to include the parcels in the project were unsuccessful, because owners of intervening parcels were not interested in participating in the project. (5 TR 1150.) The Company's consideration of alternatives also includes area within its proposed project boundary. Although a direct current (DC) panel wattage of between 180 and 195 MW is all that is required to achieve the expected alternating current capacity of 150 MW, the Company's initially submitted plan includes panel area supporting an excess of 300 MW. (5 TR 1147-1148.) This has and will allow the Company flexibility to reduce its project area to minimize the project's impacts. *Id.*

Staff recommends the Commission find that land use alternatives, including feasible alternative developed locations, for the project have been satisfactorily considered.

VII. IMPACT TO ENVIRONMENT AND PUBLIC RESOURCES

Section 226(7)(b) of Act 233 states that the Commission must grant an application and issue a siting certificate if it determines that the energy facility complies with the standard in Section 1705(2) of the Natural Resources and Environmental Protection Act (NREPA). MCL 460.1226(7)(b).

Section 1705 of NREPA governs administrative, licensing, and other proceedings and states:

> 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. [MCL 324.1705.]

Additionally, Section 226(7)(c) of Act 233 requires the Commission must approve an application and issue a siting certificate if that the applicant has "considered and addressed impacts to 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." MCL 460.1226(7)(c).

Last, Section 226(8)(a)(vi) of Act 233 states that an energy facility meets the requirements of subsection (7)(g) if it will comply with, in part, the following standard: "[t]he solar energy facility will comply with any more stringent requirements adopted by the [C]ommission. Before adopting such requirements, the [C]omission must determine that the requirements are necessary for compliance with state or federal environmental regulations." MCL 460.1228(a)(vi).

A. The Commission should determine the application complies with Section 1705(2) of the Natural Resources and Environmental Protection Act

Section 1705 of NREPA, also known as the Michigan Environmental Protection Act (MEPA), requires the consideration of two main criteria in Section 1705(2). As stated above, in an administrative proceeding: (1) "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 (2) "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." MCL 324.1705.

Regarding the first criterion, the testimony of Company witness James B. Sallee posits that the project is unlikely to pollute, impair, or destroy the air, water, or other natural resources, or the public trust in those resources, reasoning that it requires *de minimis* tree clearing, minimal impacts to the environment and natural resources (as designed), and utilization of mitigation measures where appropriate. (4 TR 217.) In support of its application, Washtenaw Solar provided an Environmental Compliance Report (ECR) to identify and address expected impacts on the environment and natural resources and a description of applicable regulatory requirements, including requirements under NREPA and MEPA. (4 TR 241.) The evidence provided in the ECR indicates that the expected direct impacts to regulated environments or natural resources (i.e. impacts requiring permits) due to proposed activities, as anticipated by the Applicant, are limited to potential impacts on water resources. (5 TR 923.) Specifically, the ECR identifies temporary disturbance to wetlands and streams during installation of underground collection lines, and temporary ground-disturbing activities requiring a soil erosion and sedimentation control permit (5 TR 892-894.) Company witness Amanda Ignatowski states in direct testimony that avoidance of impacts to regulated features is preferrable, which could lead to the elimination of certain permits included in the Company's list of anticipated permits. (4 TR 473.) Company witness Ignatowski also identifies tree clearing as an expected direct impact of the proposed project activities. (4 TR 471.) Staff's position is that these impacts, if not avoided, represent "pollution, impairment, or destruction" of the environment, consistent with the conduct described in MEPA. Other potential impacts considered in the ECR due to the proposed project area's intersection with various habitats and natural resources are not anticipated by the Applicant based on avoidance, minimization, and mitigation methods, as well as through confirmation from appropriate agency consultations (i.e. the United States Fish and Wildlife Service (USFWS); Michigan Department of Natural Resources (MDNR); State Historic Preservation Office (SHPO); etc.), where consultations are noted as complete or ongoing. (5 TR 897-899.)

Regarding the second criterion, Company witness Sallee asserts that there is no feasible or prudent alternative to this project based on the generation of power relative to the project footprint, noting that that fossil fuel energy generation would create more pollution than this project, and that wind energy would not fit in the proposed geographic footprint. (4 TR 218.) Alternatives described in Exhibit A-

1.5 include a "No Build" alternative; wherein all impacts are avoided, but local long-term jobs, tax benefits, local earnings during construction, reliable carbon-free electricity, and incremental renewable energy delivery to the Michigan grid would all be forgone. (Exhibit A-1.5.) A smaller- scale alternative would have lower impact but also lower generating capacity and fewer local economic benefits. *Id.* Large scale alternatives are also described based on the acreage available through the Applicant's land rights, but such alternatives were constrained by environmental impacts and limited by the interconnection rights for the project. *Id.* These land use alternatives are discussed in Section VI, above. As described above, the application also contains satisfactory discussion of developed and/or industrial alternatives.

In consideration of the above analysis, Staff concludes that expected direct impacts to regulated water resources identified by the Applicant qualify as "pollution, impairment, or destruction," but recognize that these resources are protected under the regulatory purview of The Michigan Department of Environment, Great Lakes, and Energy (EGLE) rather than the Commission. As such, this alleged conduct and an analysis of "feasible or prudent alternative[s]," of regulated water resources will be addressed by separate state agency determinations outside of Commission jurisdiction. Later in this brief, Staff recommends a condition requiring, in part, approval for all necessary applicable state permits and the requirement to obtain such permits prior to beginning construction on the portion of the project for which the permit is necessary.

Requiring this condition would ensure that, if the Commission issues a siting certificate for the project, the proper analysis of water resource impacts would be conducted and permitted by EGLE in accordance with MEPA as applicable. Regarding tree clearing and other potential impacts to the environment and natural resources, the next sections summarize how the Applicant has considered and addressed these impacts.

B. The application considers and addresses impacts to the environment and natural resources.

1. The Applicant considered and addressed impacts to sensitive habitats and waterways.

The terms "sensitive habitats" and "sensitive waterways" are not uniformly defined in Act 233, state, or federal environmental regulations. Therefore, Staff reviewed the habitats and waterways identified by the Applicant as sensitive and whether impacts to those habitats and waterways were considered and addressed. The ECR considered environments that support rare, threatened, or endangered species, or contain unique ecological features that are vulnerable to disturbance, degradation, or destruction, and included a Site Characterization Study (SCS) within Exhibit A-6.2 that assessed protected conservation and recreational lands, properties enrolled in the United States Department of Agriculture (USDA) Farm Service Agency Conservation Reserve Program or the Conservation Reserve Enhancement Program , land enrolled in the Agricultural Conservation Easement Program (ACEP), Important Bird Areas , USFWS designated critical habitats, and Michigan Natural Features Inventory (MNFI) records of natural communities. The SCS did not identify any of these protected lands in its study area. (5 TR 889.) Regarding sensitive waterways, no protected wild and scenic rivers or state designated rivers exist within the project area based on data from the National and Wild Scenic River Systems and the Michigan Natural Rivers Program, respectively. *Id.* Additionally, coastal zone management areas, Great Lakes, or critical dune areas are limited to the coastal regions of Michigan and are not within the project area. *Id.* Company witness Ignatowski stated that "[n]o direct impacts are expected 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, or air quality." (4 TR 471.)

Additional habitats evaluated included bald eagle habitat and migratory bird habitat. Regarding eagles, the ECR indicates no anticipated direct impacts because eagles were not identified through MNFI, which is a database containing recorded occurrences of species, or through the Applicant's field surveying results, which indicate that eagles have low probability to occur within the project area based on habitat suitability. (5 TR 891.) However, the SCS indicates that the nearby Saline River may be a corridor for foraging bald eagles, and therefore areas outside the proposed project area have moderate potential for eagle occurrence. *Id.* During construction activities, the Applicant intends to apply a 660-foot setback from any eagle nests discovered during the breeding season, which is consistent with USFWS management guidelines. *Id.* Additionally, Washtenaw Solar proposed to apply a

0.5-mile setback from nests during the breeding season from construction activities that generate loud intermittent noises. *Id.* Regarding migratory birds, the USFWS Information for Planning and Consultation results for the SCS study area indicate 23 migratory bird species within range and designated as Birds of Conservation Concern. *Id.* The ECR states that the project could temporarily affect suitable nesting habitats for some migratory bird species during construction. *Id.* Proactive measures to avoid, minimize, and mitigate migratory impacts are proposed, including limited and selective tree clearing, performing tree-clearing outside of migratory bird breeding season, avoiding active nests, following Avian Power Line Interaction Committee guidelines to reduce the risk of bird collision and electrocution, and discouraging nesting in facility equipment and components. (5 TR 891-892.) Staff's opinion is that the Applicant provided a comprehensive review on sensitive habitats and waterways, identified potential impacts and provided plans for avoidance, minimization, and mitigation in compliance with MCL 460.1226(7)(c) and recommends the Commission find the same.

2. The Applicant considered and addressed impacts to wetlands and floodplains.

A Water Resources Delineation (WRD), including desktop and field surveys, was performed on the 4,207-acre WRD study area between August 19 and October 20, 2024. (5 TR 892.) The delineation report concluded that the study area contains 118 wetlands, 49 stream segments, no FEMA-mapped floodplains, and 14.54-acres of lake/pond features. *Id.* Regarding wetlands and waterways, the Applicant anticipates that impacts will be limited to underground collection line installation using horizontal directional drilling methods. *Id.* The project plan developed by the Applicant implements voluntary 50-foot setbacks from all wetlands and streams as practicable, which includes all panel arrays, access roads, fence lines, the substation, the switchyard, the gen-tie line, and temporary staging areas. *Id.* Additional best management practices (BMPs) are proposed by the Applicant to further avoid and minimize potential impacts to water resources during construction, as listed on page 6 of the ECR. (5 TR 893.) Regarding floodplains, no FEMA-mapped floodplains were identified by the Applicant, and it intends to avoid project activities in regulated floodplains that may be present as a result of its two-square-mile drainage review, however, if project activities cannot be avoided, the Applicant intends to address impact to floodplains through permitting with the Department of Environment, Great Lakes, and Energy (EGLE). *Id.* Staff's position is that the Applicant has considered and identified expected direct impacts to water resources; has addressed these water resource impacts through avoidance, minimization, and mitigation strategies; and has provided evidence that permitting requirements due to unavoidable impacts to water resources will be complied with as applicable, and recommends the Commission find the same.

3. The Applicant considered and addressed impacts to wildlife corridors, parks, and historic and cultural sites.

a. The Applicant considered and addressed impacts to wildlife corridors.

According to Company witness Sallee, wildlife corridors were not identified in the project area. (4 TR 216.) Evidence provided in support of these statements include a review of protected lands using the Protected Areas Database of the United States (PADUS), land cover data, and the SCS. (4 TR 497.) Regarding tree clearing, acreage is limited to approximately 7.9 acres as calculated by Staff based on the as-filed information noting that, of 1,407 acres of disturbance, 8.4 acres of that disturbance is due to proposed tree clearing, and rebuttal testimony of Company witness Sallee, which states that the opt-out parcel layout reduces tree clearing by about 0.5 acres. (4 TR 204; 4 TR 224.) Proposed tree clearing is generally limited to tree lines or isolated trees, with larger continuous wooded areas avoided in the site design. (4 TR 142.) The ECR also references strategic siting plans that included limited tree clearing, protective setbacks, and a fencing approach to avoid sensitive crossings in order to maintain landscape permeability for wildlife movement. (5 TR 895.) Based on the preceding, Staff's position is that the Applicant considered and addressed impacts to wildlife corridors.

b. No parks were identified within the project area.

According to the ECR, parks and public areas were not identified within the project area based on the PADUS. (5 TR 896.) Figure 7 of the Site Characterization

Study supports this statement, and Staff's position is that the Applicant considered and addressed impacts to parks *Id.*

c. The Applicant should be required to file final versions of the Unanticipated Discoveries Plan and materials resulting from the State Historic Preservation Office's (SHPO) completed review.

Regarding historic and cultural sites, the ECR indicates that archaeological sites, cemeteries, and tribal lands were not found in the project area based on a desktop review. *Id.* As of the time of preparation of direct testimony, Staff's understanding was that the Applicant is in the process of consulting with SHPO on further evaluation of cultural resources in the area of interest and would not receive final determinations prior to the closure of the evidentiary record. (5 TR 902- 903.) Consistent with that expectation, the Applicant has not provided any supplemental responses to Staff discovery regarding SHPO consultation since acknowledging its ongoing status. In the event that cultural resources are identified through field surveying, the avoidance, minimization, and mitigation measures are proposed to be conducted in coordination with SHPO. (5 TR 903.) Furthermore, the Applicant provided an Unanticipated Discoveries Plan (UDP) to account for discovered cultural resources or human remains discovered during ground-disturbing activities. (5 TR 897.) Therefore, Staff finds that the Applicant has considered impacts historic and cultural sites through desktop analysis and ongoing field surveying and has addressed impacts historic and cultural sites through its coordination with MISHPO and through implementation of the UDP. Because the finalized surveys and SHPO concurrence have not been presented to MPSC Staff, Staff recommended a condition that the Applicant should provide the final version of the UDP, and materials resulting from the State Historic Preservation Office's review of the project prior to the preconstruction meeting. (5 TR 907.) However, to further ensure that impacts to cultural resources are properly addressed, Staff proposes the following amended language to this condition subitem:

> Proposed Condition 2.d: Prior to the preconstruction meeting, the Applicant must . . . [p]rovide the final version of the Unanticipated Discoveries Plan (A-1.14), and materials resulting from the State Historic Preservation Office's (SHPO) completed review of the project, including evidence that any identified impacts to cultural resources have been addressed in the final site plan according to SHPO's recommendations.

Because the Applicant indicated its commitment to implement appropriate methods in coordination with SHPO within the ECR, Staff does not consider this a substantive change to its position. (5 TR 903.) Staff recommends the inclusion of Condition 2.d, as revised, if the Commission approves this certificate.

4. The Applicant has considered and addressed impacts to threatened and endangered species.

The evidence provided indicated that the following protected species have modeled suitable habitat in the study area: Indiana bat, northern long-eared bat, Mitchell's satyr butterfly, eastern Massasauga rattlesnake, and eastern prairie fringe orchid. (5 TR 898.) Evidence of documented species occurrence provided in the ECR listed orangethroat darter and prairie false indigo for the study area. *Id.* Of these species, results of the SCS indicate that all have a low probability of occurrence in the study area with the exception of the Indiana bat and Northern long-eared bat, which have a moderate probability of occurrence. *Id.* The ECR states that impact to threatened, endangered, proposed threatened, and candidate species is not anticipated. *Id.* In support of this position, the Applicant cites the SCS habitat suitability results, vegetation management strategy, water resource delineations, BMP implementation, and concurrence from USFWS and the MDNR that the project is not likely to adversely affect federally or state listed species. (5 TR 898-899.) The BMPs referenced here include limited tree-clearing, seasonal tree-clearing activities, and installing silt fences at the 50-foot setback from wetlands and waterbodies to preclude ground-disturbing activities near those water resources. (5 TR 899.) Regarding USFWS and MDNR concurrence, neither agency indicated the need for a permit based on three separate consultations with the Applicant. *Id.* Staff supports continued consultation with these agencies as needed throughout the project to avoid impact to protected species and verify compliance with applicable state and federal environmental regulations.

5. The Applicant considered and addressed other applicable environmental and natural resource impacts.

The Applicant also considered and addressed additional applicable environmental impacts, including but not limited to materials and waste management, pollution prevention, and air quality.

Regarding materials and waste management and pollution prevention, hazardous wastes are not anticipated to occur in bulk quantities. (5 TR 901.) The ECR states that the photovoltaic panels planned for use are not characterized as hazardous waste. *Id.* The Applicant has not yet procured PV modules for the proposed project but provided a sample safety data sheet representative of the anticipated modules to be installed and intends to comply with state and federal laws related to hazardous, toxic, or similar materials, including the Toxic Characteristic Leaching Procedure (TCLP). *Id.* The TCLP is a standard method used to determine if a waste exceeds the EPA-defined thresholds for certain toxic substances, including heavy metals such as lead, barium, silver, and cadmium. *Id.* For solids, such as PV panels, the procedure analyzes the leachate from a sample that has been reduced in particle size, such as through crushing, cutting, or grinding. (5 TR 901-902.) Waste that exceeds TCLP thresholds is considered hazardous. (5 TR 902.) Staff notes that the Applicant is responsible for managing its waste PV panels in accordance with federal Resource Conservation and Recovery Act regulations, under which the above-referenced TCLP thresholds are regulated. Evidence provided in discovery also indicates that the Applicant is contractually-obligated to comply with state and federal environmental regulations through its product supplier. *Id.* Further discussion on contamination and site restoration due to potential panel leaching is provided in the decommissioning portion of this brief. The proposed means for managing solid waste and used oil appear reasonable and consistent with NREPA requirements. (5 TR 901.)

Regarding air quality, the Applicant identified potential impacts from construction activities, which will generate emissions from vehicles, operating equipment, and fugitive particulate matter. (5 TR 902.) The impacts are described as temporary and minimization is proposed through activities such as dust suppression using water sprayers and utilizing equipment with appropriate emission controls. *Id.* Staff's opinion is that these measures are acceptable. Staff notes that the Soil Erosion and Sedimentation Control (SESC) permit that the Applicant must obtain under Part 91 of NREPA will typically require fugitive dust control measures. This permit is regulated by EGLE and administered by counties; in this instance through the Washtenaw County Water Resource Commission (WCWRC).

C. Staff recommends the Commission adopt conditions requiring the Applicant to receive all necessary state, federal, and local permits needed before construction.

In accordance with MCL 460.1226(8)(a)(vi), more stringent requirements may be adopted by the Commission if necessary for compliance with state or federal environmental regulations. As previously indicated, the project's activities may trigger applicability of several parts of NREPA, which is an Act to protect the environment and natural resources of the state and, in part, codifies laws to regulate certain activities and land uses. These regulations may require permitting and/or the implementation of plans established in accordance with the law. Regarding the latter, the Applicant has noted the potential applicability of a Stormwater Pollution Prevention Plan (SWPPP) and Spill Prevention Control and Countermeasure Plan (SPCC) at minimum. (4 TR 243; 5 TR 901). Because these types of plans may not be incorporated into other required permits, Staff recommends a condition that all such applicable plans under state or federal law be provided prior to the preconstruction meeting, including but not limited to plans identified in the application materials. No party rebutted this condition. As such, Staff recommends the inclusion of Condition 2.h as stated below if the Commission approves this certificate:

> Proposed Condition 2.h: Prior to the preconstruction meeting, the Applicant must . . . . [p]rovide 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.

In sum, if a siting certificate is granted, Staff recommends the Commission adopt the following Proposed Conditions to address findings from review of the Applicant's Environmental Compliance Report and associated evidence:

> Amended Proposed Condition 2.d: Prior to the preconstruction meeting, the Applicant must . . . [p]rovide the final version of the Unanticipated Discoveries Plan (A-1.14), and materials resulting from SHPO's completed review of the project, including evidence that any identified impacts to cultural resources have been addressed in the final site plan according to SHPO's recommendations.
>
> Proposed Condition 2.h: Prior to the preconstruction meeting, the Applicant must . . . [p]rovide 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.

VIII. PUBLIC BENEFITS

Section 226(7)(a) of Act 233 provides that the Commission must grant an application and issue a certificate if it determines, in part, that "[t]he public benefits of the proposed energy facility justify its construction." MCL 460.1226(7)(a). The Act states that for the purposes of this subdivision, 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 state. Staff has reviewed the Application materials and discovery responses from the Applicant and will address the public benefits of the project below. It is Staff's position that the public benefits of the proposed Washtenaw Solar Energy Facility justify its construction.

A. The Applicant adequately detailed the tax revenue generated by the facility to the local taxing districts.

In support of its application, Washtenaw Solar provided the direct testimony of Dr. David G. Loomis, the President of Strategic Economic Research, LLC, who sponsored the Facility's expected tax revenue calculations as Exhibit A-8.1. The Applicant projects the facility will introduce over $215 million in total taxable industrial personal property to be taxed through local millages. (4 TR 316; Exhibit A-8.1.) The calculations provided by the Applicant estimate that the Facility would generate over $25 million in tax revenue to local taxing districts over the operational life of the facility. (4 TR 317; Exhibit A-8.1.). Staff witness Joseph G. Lobodzinski opined that these projections were accurate. (5 TR 966-968.)

Christopher J. Doozan, AICP, filed direct testimony on behalf of Saline Township. Saline Township witness Doozan testified that if the Applicant is granted a 20-year property tax exemption that will allow the project to pay a solar energy facilities tax of $7,000 per megawatt of nameplate capacity, Saline Township would only receive $17,502 for its operations, based on a 0.8951 millage rate, during the facility's first year of commercial operation. (5 TR 767.)

Staff's opinion is that this testimony by Saline Township witness Doozan is misleading. First, the expected tax revenue projections sponsored by Company witness Loomis, calculate that the facility would pay $33,604 to Saline Township at a 0.9105 millage rate during the first year of commercial operation, should the facility be granted a Solar Energy Facility Exemption Certificate (SEFEC). (4 TR 315-316; Exhibit A-8.1, pp 24-26.) The facility would also pay $36,790 to Saline Township Roads, $11,914 to the Saline Sinking Fund, $17,025 to Saline Recreation, and $36,908 to Saline Area Fire Department during the first year alone. *Id.*

Second, under the Solar Energy Facilities Taxation Act, Public Act 108 of 2023, a qualifying solar energy facility not yet placed in service may apply for a Solar Energy Facility Exemption Certificate (SEFEC). MCL 211.1154(1). A SEFEC entitles a qualified solar energy facility to an exemption from *ad valorem* real and personal property taxes for a term of 20 years, substituting a payment of $7,000 per megawatt of nameplate capacity. MCL 211.1157; MCL 211.1159(2). A solar energy facility can only obtain a SEFEC if the local governmental unit has established a Solar Energy District and approves a developer's application for a SEFEC. MCL

211.1153. The local governmental unit holds the sole authority to create a Solar Energy District and to approve an application from a solar energy facility for a SEFEC. MCL 211.1155.

This means that Saline Township has the authority to deny the Applicant's application for a SEFEC if they intend for the Applicant to pay *ad valorem* taxes over the full operational life of the facility. Whether Saline Township approves or denies the Applicant's application for a SEFEC does not affect Staff's conclusion that the tax revenue generated by the facility to the local taxing districts justifies its construction.

Lastly, other local taxing bodies are also set to receive revenue through the Project. The Saline Area School District Debt Fund is expected to receive more than $6 million in tax revenue over the operational life of the facility, which will help the district pay back the $56,185,000.00 in qualified bonds issued by the Michigan Department of Treasury in 2025. (5 TR 967; Exhibit A-8.1, p 26.) Staff's position is that the Applicant's projection of tax revenue paid by the energy facility to local taxing districts is reasonable and recommends that the Commission consider the revenue paid to local taxing jurisdictions as a factor in weighing in favor of the public benefits of the project.

B. The Applicant provided payments to owners of participating properties.

Section 226(7)(a) of Act 233 states that public benefits of a project include payments to landowners of participating property. In accordance with AFIP Section

6.3.8(a)(2), the applicant provided payments to owners of participating property confidentially in Exhibit A-8.2. The Applicant demonstrated that the payments to participating landowners are sufficient for the facility to be constructed. In support of its application, Washtenaw Solar provided the direct testimony of Company witness Durgan, who sponsored the Company's payments to owners of participating properties, Exhibit A-8.2. Company witness Durgan testified that the Applicant executed 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. (5 TR 677; Exhibit A-8.2.)

On January 15, 2026, Staff witness Lobodzinski conducted an on-camera review of the Solar Energy Easement Agreements, Collection, Agreements, and Participation Agreements the Applicant executed with participating landowners. During the on-camera review, Staff witness Lobodzinski reviewed and verified the cumulative payments that would be made to individual landowners on an annual basis for the operational life of the facility. (5 TR 969-970.)

Saline Township witness Doozan testified that "[t]here will presumably be a loss of household income for the owners of participating parcels who cease farming." (5 TR 764-765.) He argues that by multiplying the most recent average annual household income figure from the U. S. Census by the number of households in the Project Area, there will be "an estimate of $2,305,574 in potential annual lost household income." *Id.*

In Staff's opinion, Saline Township witness Doozan's calculations are generally inaccurate. There is no evidence on the record confirming that participating landowners would be ceasing all farming activities on all of their land, rather than just on the land they have signed to participate within the Project Area. There is also no evidence on the record stating that the participating property owners have no other income-related activities outside of farming that would supplant their income besides the payments they are receiving from the Applicant or the relative size of those payments compared to the revenue no longer received from farming.

Based on the forgoing, Staff recommends the Commission find the public benefits of the proposed energy facility justify its construction with regard to payments to owners of participating property, as well as the fact that the participating property owners themselves considered these payments to be sufficient to execute agreements with the Applicant.

C. The Applicant provided proposed and executed Host Community and Community Benefits Agreements.

Section 226(7)(a) of Act 233 provides that the Commission must grant an application and issue a certificate if it determines that applicant has met the conditions established in Section 227 of Act 233. MCL 460.1226(7)(d). Section 227(1) of Act 233 states that "[t]he applicant for a certificate shall enter into a host community agreement with each affected local unit." MCL 460.227(1). The host community agreement must require that, upon commencement of any operation, the energy facility owner pay the affected local unit $2,000.00 per megawatt (MW) of nameplate capacity located within the affected local unit. *Id.* The payment must be 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.

Section 227(2) of Act 233 states that "[i]f an affected local unit refuses to enter into a host community agreement after good-faith negotiations with the applicant, the applicant may enter into a community benefits agreement with 1 or more community-based organizations within, or that serve the residents of, the affected local unit." MCL 460.1227(2). The amount paid by the applicant to a community-based organization must be equal to or greater than what the applicant would pay to an affected local unit under Section 227(1) of Act 233. *Id.* A community benefits agreement must prioritize benefits to the community in which the energy facility is to be located. *Id.*

1. The executed and proposed host community benefits agreements and community benefits agreements meet the requirements of Act 233.

Staff recommends the Commission find the Applicant has demonstrated that the public benefits of the proposed facility justify its construction as defined and required by MCL 460.1226(7)(a). The Applicant provided both an executed host community agreement with Saline Township and a proposed community benefits agreement with Saline Area Fire Department. (5 TR 677-678, 1117; Exhibit A-8.3.) The Applicant also provided to Staff its proposed host community agreement with

Washtenaw County and the community benefits agreement it executed with Saline Area Social Services. (S-10.1; Exhibit A-8.3.) Once all necessary agreements are executed, the Applicant will issue a cumulative total of at least $860,000 in payments to be utilized for public benefits within the affected local units, Saline Township and Washtenaw County. *Id.* This amount exceeds the minimum $2,000.00 per MW of nameplate capacity guaranteed to each ALU. *Id.*

2. The Applicant executed a host community agreement with Saline Township.

On September 10, 2025, the Applicant executed a host community agreement with Saline Township. (Exhibit A-8.3, Appendix A.) The host community agreement stipulates "Washtenaw Solar [the Applicant] shall pay three-hundred thousand dollars ($300,000.00), calculated on the basis of two thousand dollars ($2,000.00) per megawatt of nameplate capacity of the Project, upon commencement of operations ("COD") of the project." (5 TR 983-984.) Staff opines that the host community agreement executed between the Applicant and Saline Township is sufficient as defined and required by MCL 460.1227.

3. The Applicant has extended an offer of a host community agreement to Washtenaw County.

As stated above, the Court of Appeals May 7 decision overturned the Commission's interpretation of "affected local unit" and stated that the statutory definition of affected local unit "includes all local units of government where a proposed energy facility is located." *In re Implementing Provision of Public Act 233* *of 2023*, ___ Mich App___ (2026) (Docket No. 373259); slip op at 11. In this case the project is location in Saline Township and Washtenaw County. Washtenaw County is thus considered an ALU under the Court of Appeals opinion.

The Applicant has proposed a host community agreement with Washtenaw County, which, if executed, would require the Applicant to pay "two thousand dollars ($2,000.00) per megawatt of nameplate capacity of the Project upon the commencement of operations date ("COD") of the Project." (Exhibit S-10.1.)

In response to Staff discovery, the Applicant affirmed its intention "to enter into a Host Community Agreement … with Washtenaw County in light of the Court of Appeals decision specifying that an Affected Local Unit under PA 233 includes both township and county jurisdictions." *Id.* The Applicant further states that if it is "unable to come to an agreement with Washtenaw County on the terms of a Host Community Agreement, Washtenaw Solar [the Applicant] intends to provide the statutory payment to another local organization that serves the residents of that jurisdiction." *Id.*

If the proposed host community agreement is executed between the Applicant and Washtenaw County, the Applicant would pay Washtenaw County $2,000.00 per megawatt of nameplate capacity of the Project, for a cumulative total of $300,000.00. *Id.*

Staff's position is that the host community agreement proposed by the Applicant to Washtenaw County is sufficient as defined and required by MCL 460.1227, and recommends the Commission find the same.

4. The applicant has proposed a Community Benefits Agreement with Saline Area Fire Department (SAFD).

The Applicant has proposed a community benefits agreement with the Saline Area Fire Department, which, if executed, would require the Applicant to provide an initial payment of $110,000.00 from the Applicant to the SAFD within 30 days of final approval by the MPSC of a Certificate to own, construct, and operate the proposed project. (5 TR 985-986.) This initial payment would be used to equip the SAFD with proper equipment needed to address existing deficiencies in response capacity for possible emergency situations related to the proposed project, more specifically, 2026 Chevy Tahoe with the third row removed, a 4-person utility task vehicle (UTV), and a trailer. *Id.* The Applicant would also make an annual payment of $5,000.00 to the SAFD every year through life of the project until the date of decommissioning to cover the cost of any additional equipment and training needed to respond to emergency situations related to the proposed project. *Id.* If the proposed community benefits agreement is executed between the Applicant and the SAFD, the Applicant would pay the SAFD a cumulative total of at least $260,000 through the date of decommissioning of the facility. *Id.*

Since the Applicant has executed a host community agreement with Saline Township and has proposed a host community agreement with Washtenaw County, which Staff has recognized as the affected local units in this case, the proposal and the intended execution of the community benefits agreement by the Applicant to the SAFD is not necessary for the Commission to grant a siting certificate for the Facility under MCL 460.1227. Nevertheless, Staff does not object to the additional community benefits agreement proposed between the Applicant and the SAFD, or any other first responders.

5. The Applicant executed a Community Benefits Agreement with Saline Area Social Services.

On July 28, 2026, the Applicant executed a community benefits agreement with the Saline Area Social Services (SASS). (Exhibit A-8.3.) The community benefits agreement stipulates the Applicant will pay the SASS $2,000.00 per megawatt of nameplate capacity of the Project upon the Project's COD. *Id.*

The agreement further stipulates that the payment to the SASS is entirely conditional on Washtenaw County failing to approve aforementioned host community agreement offered by the Applicant before October 23, 2026. If Washtenaw County approves the host community agreement offered by the Applicant to Washtenaw County before October 23, 2026, the SASS will not receive any payments under the executed community benefits agreement. *Id.*

It is Staff's position that the community benefits agreement executed between the Applicant and the Saline Area Social Services is sufficient as defined and required by MCL 460.1227.

Staff's position is that the public benefits of both the proposed and executed host community agreements and community benefits agreements meet the requirements of Section 227 of Act 233. Staff recommends the Commission find that both its executed and proposed host community agreement and community benefits agreements justify the construction of the proposed energy facility.

D. The project will create 438 new local jobs during construction and 13 new local long-term jobs.

Section 226(7)(a) of Act 233 states that public benefits of the proposed energy facility include local job creation. MCL 460.1226(7)(a). The Applicant has detailed the construction and operation of the proposed energy facility will create a significant number of local jobs for the area. (4 TR 317; Exhibit A-8.1.) According to Company witness Loomis, the proposed facility is anticipated to result in 251 new local jobs during the construction period for Washtenaw County, 438 new local jobs during the construction period for the State of Michigan, approximately 13 new local long-term jobs for Washtenaw County, and approximately 18 new local long-term jobs for the State of Michigan. *Id.* Staff witness Lobodzinski opined that these job numbers were accurate. (5 TR 971-972.)

Saline Township witness Doozan testified with regard to jobs created during the construction and operation of the facility that "there is no guarantee that any of these jobs will be filled by Saline Township residents." (5 TR 765.) He also argues that the facility will result in the loss of 10 to 15 farm labor jobs, which amount to a total annual loss of farm laborer income between $377,752 and $566,280. (5 TR 564.)

Staff's opinion is that Saline Township witness Doozan's testimony with regard to local job creation job and farm labor jobs are both based on incorrect assumptions. First, the jobs created by the Applicant through the construction and maintenance of the facility will employ local workers. Within the National Maintenance Agreement (NMA), which Company witness Pierson testified to, the

Applicant will require its designated Engineering, Construction, and Procurement (EPC) contractor to sign as a project labor agreement with one or more labor organizations prior to the commencement of construction of the Facility. The NMA states within Article XIX that "the Employer agrees to hire Craft Workers in the area where the construction and maintenance work is to be performed." (4 TR 111-112; Exhibit A-8.4, p 26.) This means that the EPC contractor and the labor organization(s) or trade union(s) who are signatories to the NMA will recruit craft workers within their organizations that live in Saline Township or Washtenaw County at-large to work on the construction and maintenance of the facility. The Applicant's commitments to entering into project labor agreements or operating under a collective bargaining agreement for the work to be performed will be discussed further below.

Second, there is no conclusive evidence that 10 to 15 farm labor jobs that Saline Township witness Doozan states will be lost if the facility is constructed currently exist. The 10 to 15 farm labor jobs were calculated by Saline Township witness Doozan taking the "2,412 acres within Washtenaw Solar" and dividing the number by the assumption that "one farmer or farm laborer can manage between 160 and 250 acres of land on a mechanized, large-scale farming enterprise." (5 TR 764.) There is no evidence on the record that any of the participating landowners employ farm labor, that farm laborers are employed specifically to work the land at issue, or that any farm labor currently employed to work that land would be dismissed as a direct result of the construction of the facility.

Staff's opinion is that the public benefits of the proposed energy facility justify its construction with regard to local job creation, as the project will create both temporary local jobs during the construction period of the project and permanent jobs during the operational life of the project, and recommends the Commission find the same.

E. The project contributes to energy, capacity reliability, and resource adequacy needs in Michigan.

Section 226(7)(a) of Act 233 states that in determining any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of the state, the Commission may consider approved Integrate Resource Plans, renewable energy plans, annual electric provider capacity demonstrations, or other proceedings before the Commission, in the regional transmission organization, or before the Federal Energy Regulatory Commission. MCL 460.1226(7)(a).

Company witness Durgan testified that the Applicant has demonstrated the contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state justify construction of the proposed project through the Applicant's Exhibit A-8.5. (5 TR 678.)

Within its application, the Applicant provided a copy of the MI Healthy Climate Plan and identified how the proposed project would advance the adoption of solar generation in the state of Michigan, as well as help achieve economy-wide carbon neutrality in Michigan by 2050. (Exhibit A-8.5, pp 10-68.) Additionally, the Applicant provided a copy of the Status of Renewable Energy, Distributed

Generation and Legacy Net Metering in Michigan, published by the Michigan Public Service Commission on December 16, 2024. *Id.* at 69-109. The Applicant identified the project as a crucial resource in meeting the report's conclusion that the state of Michigan will need 8,000 MW of renewable energy capacity operating by the end of 2026. *Id.*

Staff's opinion is 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 meaningfully contribute to the renewable energy standards established by MCL 460.1028. Staff recommends the Commission find the same.

IX. PROJECT LABOR REQUIREMENTS

A. The Applicant will execute a project labor agreement in compliance with Act 233.

Section 221(u) of Act 233 defines a project labor agreement as "a prehire collective agreement with 1 or more labor organizations that establishes the terms and conditions of employment for a specific construction project." MCL 460.1221(u). Subsections (i)-(vi) of Section 221(u) further define a project labor agreement or collective bargaining agreement compliant with Act 233 as one that does the following:

i. Binds all contractors and subcontractors on the construction project through the inclusion of appropriate specifications in all relevant solicitation provisions and contract documents;

ii. Allows all contractors and subcontractors on the construction project to compete for contracts and subcontracts without regard to whether they are otherwise parties to collective bargaining agreements;

iii. Contains guarantees against strikes, lockouts, and similar job disruptions;

iv. Sets forth the effective, prompt, and mutually binding procedures for resolving labor disputes arising during the term of the project labor agreement;

v. Provides other mechanisms for labor-management cooperation on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and,

vi. Complies with all state and federal laws, rules, and regulations.

Staff has reviewed the Application materials and discovery responses from the Applicant and will address the proposed project labor agreement below. It is Staff's position that the Applicant will execute a project labor agreement compliant with the above definitions.

Within its Application, the Applicant provided a copy of the National Maintenance Agreement, which Company witness Peirson testifies the Applicant will require its designated EPC contractor to sign as a project labor agreement with one or more labor organizations prior to the commencement of construction of the Facility and "will require assurances from its EPC that the labor and employment requirements of PA 233 are met." (4 TR 112; Exhibit A-8.4, pp 10-33.) The Applicant listed the requirements of the statutes of MCL 460.1221(u)(i)-(vi) and identified the provisions within the NMA that satisfy the requirements of the statute. *Id.* at 4-5. Staff's position is that the NMA provided by the Applicant meets the definition of a project labor agreement as defined by MCL 460.1221(u), and that the identified provisions within the NMA meet the requirements of MCL 460.1221(u)(i)-(vi).

To assure these agreements are executed when an EPC is selected, Staff recommends the Commission attach Staff's proposed condition 20 if it grants the Applicant a siting certificate:

> Proposed Condition 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.

B. The Applicant will comply with required project labor standards of Section 226(7) of Act 233.

Sections 226(7)(e)(i-iii)) outline the project labor requirements for construction and maintenance work on an energy facility. Sections 226(7)(e)(i)-(iii) require that the Commission must grant an application and issue a certificate if it determines, in part, 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;

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; and,

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.

It is Staff's position that the Applicant will comply with the necessary project labor standards. The Applicant provided a Commitment Letter wherein the Applicant stated its commitment to comply with the requirements of MCL 460.1226(7)(e)(i)-(iii). (4 TR 111; Exhibit A-8.4, p 8.)

More specifically, the Applicant committed the use apprenticeship programs for the installation, construction, or construction maintenance as required by MCL 460.1226(7)(e)(i). *Id.*

The Applicant committed to paying 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 required by MCL 460.1226(7)(e)(ii). *Id.*

Finally, the Applicant committed to requiring that its contractors 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, as required by MCL 460.1226(7)(e)(iii). *Id.*

Staff's position is that the commitments provided by the Applicant within its Commitment Letter are evidence the Applicant will comply with the project labor standards defined and required by MCL 460.1226(7)(e)(i)-(iii). Staff recommends the Commission apply Proposed Condition 20, outlined above and Proposed Condition 2.g, outlined below, to assure the agreements in the Company's Construction Labor and Employment Commitments are executed following the selection of an EPC and prior to the start of construction. Staff recommends the

Commission adopt Condition 2.g which should state that once a project labor agreement or collective bargaining agreement is executed, the Applicant must submit:

> Proposed Condition 2.g: Provide the signed and executed project labor agreement or collective bargaining agreement consistent with Condition 20.

With the inclusion of the conditions outlined in this section, Staff's position is that the Company has committed to executing a labor agreement in compliance with the definition outlined in Section 221(u) of Act 233 and committed to the labor requirements for construction and maintenance work on an energy facility outlined in Section 226(7)(e). Staff recommends the Commission find the same, subject to the conditions outlined above.

X. FARMLAND ANALYSIS

Section 226(7)(f) of Act 233 provides that the Commission must grant an application and issue a certificate if it determines that "[t]he proposed energy facility 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." MCL 260.1226(7)(f).

A. The proposed energy facility will not unreasonably diminish farmland.

In evaluating the project against this standard, Staff first reviewed the Company's submitted exhibits and then conducted an independent analysis of the project's farmland usage. While the Company and Staff used the same data sources for farmland classification and land use, Staff's calculation of quantities of farmland utilized by the project differed from the Company's methodology in three ways.

First, Staff's analysis considered only the fenced area of the project, for reasons described in the testimony of Staff witness Glass. (5 TR 1157-1158.) In Staff's view, this approach provides a more accurate assessment of the farmland actually diminished by the project. Parcels used only for underground facilities (with no interference with agricultural activities following construction) and the area outside the fenceline that remains available for agricultural activities were excluded. (5 TR 1209-1212.) Staff notes that the Company adapted its methodology to Staff's approach on this matter when calculating farmland usage by the Modified Layout version of its project. (4 TR 483.)

The second and third methodological differences both relate to evaluation of farmland against current land uses. Staff, unlike the Company, evaluated the current land uses in both local jurisdictions to determine which areas are developed or water area, and excluded those areas from totals for both farmland in general and prime farmland. Staff's approach results in a more accurate estimate for farmland available and present in each jurisdiction, for reasons described by Staff witness Glass. (5 TR 1157.) In Staff's view, this methodology is consistent with the instructions of the AFIP for prime farmland, which states the following (emphsis added):

> 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*). [MPSC Case No. U-21547, 10/21/2024 Errata, p 39.]

Staff's most up-to-date assessment of the project's farmland usage is provided in Exhibit S-6.12. Exhibit S-6.12 summarizes that the project uses 5.0% of Saline Township's farmland, 4.9% of the Township's prime farmland, and no specialty cropland; and that the project area is 30.7% prime farmland, compared to Saline Township, in which 31.3% of farmable land is prime farmland.

Like percentage of land dedicated to energy generation, the Commission has not yet laid out a standard for how it will determine whether a project unreasonably diminishes farmland, including prime farmland. In Staff's opinion, the standard for farmland usage should be similar to the standard for percentage of land dedicated to energy generation. (5 TR 1170.) And, in Staff's opinion, the standard for prime farmland usage should be based on two separate analyses: an evaluation of the project's overall prime farmland quantity used, and an evaluation of the quality of farmland proposed to be enclosed by the project fence. (5 TR 1161.)

The record reflects extensive discussion of the merits of the project's farmland usage against the standard established by Act 233. The Company's position appears to be that its project does not diminish farmland at all and therefore does not unreasonably diminish farmland by definition. (5 TR 706.) The Company's position is motivated by its commitments to proper soil management practices and to restoration through project decommissioning. *Id.*

On the other hand, the Township's position appears to be that the project does diminish farmland, and that the diminishment is unreasonable. (5 TR 767-

771.) This position is based in part on the impact of the removal of farmland on the local agricultural economy, points which are rebutted by the Company. (4 TR 323.)

Staff's position is in the middle of these two ends – in Staff's view, the project diminishes farmland, including prime farmland, but not unreasonably so, based on comparisons to the quantity of farmland in affected local units and the quality of the farmland within the fenced area of the project.

While the Company's soil management techniques and decommissioning restoration standards are appropriate (when conditioned according to Staff's recommendations), these requirements are separate from, and do not alleviate, the usage of farmland by the project. The vast majority of the project is currently actively farmed, and by the Company's admission, the project will not have active agricultural operations within the fenced area after the project is built. (5 TR 739.) In Staff's opinion, this constitutes diminishment of farmland; the permanence or impermanence of that diminishment is only one factor in Staff's evaluation.

Staff's testimony on the project as-filed was that it did not unreasonably diminish prime farmland from a quantity perspective but did do so from a quality perspective. *Id.* That is because the project as initially submitted proposed to enclose a disproportionately higher percentage of prime farmland within its fenced area (35.7%) compared to the prime farmland percentage of farmland in Saline Township (31.3%). (5 TR 1166.) In its direct testimony, Staff recommended a condition be attached to limit the prime farmland usage of the project to below that benchmark. (5 TR 1169.) One of the ways that Staff noted the Company could achieve compliance with that condition is through removal of a particularly prime parcel. (5 TR 1167.) By coincidence, the parcel in question was one of the parcels removed in the Opt-Out Layout of the project. (5 TR 1210.) As a result, the Modified Layout of the project now proposes to enclose a proportionally lower fraction of prime farmland, compared with the overall fraction of Saline Township's farmland that is prime. The Modified Layout aligns with Staff's recommended benchmark for prime farmland diminishment. *Id.*

Based on the foregoing, in Staff's opinion, the Modified Layout of the project diminishes farmland, but that the diminishment is reasonable based on the analysis conducted by Staff. Staff agrees with the Company that the condition proposed by Staff in direct testimony is unnecessary for the Project if using the Modified Layout. (5 TR 707.) For the reasons above, Staff recommends the Commission find similarly.

B. Staff recommends the Commission apply conditions to address the use of PA 116 land.

The last type of farmland usage analyzed by Staff is usage of land enrolled in Michigan's Farmland and Open Space Preservation program, commonly known as "PA 116."[3] Most of the project land area is enrolled in the PA 116 program.

[3] Although still commonly referred to by its original legislative title Public Act 116 of 1974 (PA 116), the Farmland and Open Space Preservation Act was repealed by Public Act 59 of 1995. As part of Executive Reorganization Orders and the creation of Michigan's Department of Environmental Quality (now Department of Environment, Great Lakes, and Energy), the contents of PA 116 were included in the substantially same form as Part 361 of the Natural Resources and Environmental Protection Act. MCL 324.36101 *et al.*

(Exhibit S-6.12.) Staff does not find this level of enrollment of participating parcels in PA 116 to be a major obstacle to project approval, because there exist multiple pathways for placement of solar facilities on PA 116 land. (5 TR 1171.)

Public Act 230 of 2023 (Act 230) was signed into law simultaneously with Act 233 with an effective date of February 13, 2024. Act 230 amended the Farmland and Open Space Preservation Section of the Natural Resources and Environmental Protection Act (NREPA) to include solar facilities as a permitted use under an amended development rights agreement on PA 116 land. Act 230 provides the primary pathway for farmland enrolled in the PA 116 program to be used for utility-scale solar facilities. (MCL 324.36104e; 5 TR 1171.) The pathway under Act 230 involves amendment and temporary deferment of PA 116 agreements during the period of use for solar, which deferment is permissible if and only if the developer meets certain commitments under Act 230. See MCL 324.361043(2)(a-i). There are similarities between the requirements under Act 230 and Act 233; the biggest differences, as discussed in Staff testimony, relate to decommissioning. (5 TR 1171.)

Act 230 is implemented by the Michigan Department of Agriculture and Rural Development (MDARD). Because of differences in text between the two Acts, MDARD holds developers to different decommissioning standards than the decommissioning standards under Act 233. Namely, developers are not permitted to subtract salvage value of facilities on PA 116 from the project's decommissioning financial assurance for purposes of Act 230. Staff's understanding, accurate to the time of its direct testimony, is that MDARD requires removal of all above and below ground facilities on PA 116 land. (5 TR 1179-1180.) Staff recommends conditions to bind the Company to these requirements, unless the project can receive concurrence from MDARD that the project is not subject to MDARD's standards. (5 TR 1181-1183.) In such case, Staff's recommended conditions would fall back on the standards laid out in the Commission's AFIP.

The Company indicated no objection to Staff's recommended conditions, including them without amendment in its modified list of recommended conditions in rebuttal. (Exhibit TSD-R1, pp 12-13.) Staff recommends that, for the reasons above, the Commission apply the conditions, which are as follows:

> Proposed Condition 29: 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.
>
> Proposed Condition 30: 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.

XI. PUBLIC HEALTH AND SAFETY

Section 226(7)(g) requires that "[t]he proposed energy facility does not present an unreasonable threat to public health or safety." MCL 460.1226(7)(g). Section 226(8) states that a solar facility does not present an unreasonable threat to public health and safety if it meets the setback, fencing, height, sound, and lighting, requirements outlined in Section 226(8)(a).

A. The proposed solar facility meets the setback requirements for occupied community buildings and dwellings on nonparticipating properties, public road right-of-way, and nonparticipating parties.

Section 226(8)(a)(i) provides the following minimum setback requirements with setbacks to be measured from the nearest edge of the perimeter fencing of the facility:

Setback Description	Setback Distance
Occupied community buildings and dwellings on non-participating 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

In support of its application, Washtenaw Solar provided the direct testimony of Company Witness Polen who sponsored the Company's Planned Facilities as

Exhibit A-1.1 and Exhibit A-10, Public Health and Safety. (4 TR 139.) In Company witness Polen's direct testimony, she describes that the submitted Exhibit A-1.1 site plan contains a visual depiction of PV solar modules, single access tracking systems, DC cabling, inverter pads, underground AC collection line, bore pit, underground AC collection bore, fencing, transmission Line and interconnections, substation, switchyard, access roads, temporary access roads, laydown yard, temporary staging Areas, planed utility interconnections, gen-tie line, limits of clearing, limits of disturbance, wetlands and waterbodies, legal boundaries of cities, villages, townships, and counties within 1,000 feet of the project site, occupied structures, residences, participating properties and adjacent properties, known deeded easements, and a map with dimensions added showing setbacks. (See 4 TR 150-165.) This series of features, including other features not mentioned above, are present within Exhibit A-1.1 Appendix A through Appendix M. (Exhibit A-1.1, pp 1-58.)

Company witness Polen further stated that "Exhibit A-10 (KAP-4) provides a full description of how Washtenaw Solar will comply with applicable criteria and thereby ensure that public health and safety are protected." (4 TR 170.) For requirements pertaining to setbacks, Company witness Polen described that a 300-foot setback was applied from the outer wall of identified residences to the project fenceline. (4 TR 165.) Company witness Polen further described that a 50-foot setback was applied to the outer edge of identified road rights-of-way. *Id.* For nonparticipating parties, Company witness Polen described that a 50-foot setback was applied to the outer edge of identified nonparticipating property lines. Identification of each of these features occurred through an American Land Title Association/National Society of Public Surveyors land title survey. (4 TR 87.)

Staff witness Gustavo D. Cordero reviewed the Company's application, as filed on September 25, 2025. Staff witness Cordero reviewed the Company's Planned Facilities and Public Health and Safety exhibits. Staff witness Cordero opined that all required setback distances followed the statutory minimum distances found in MCL 460.1226(8)(a)(i). (5 TR 860.)

Staff witness Glass reviewed the Company's response to Staff's eighth discovery request, in which the Company confirmed the removal of three parcels that had previously been included as a part of the project. (5 TR 1128.) Staff witness Glass found that the Company's responses pertaining to the removal of these parcels and corresponding design impacts were devoid of sufficient details for Staff to adequately evaluate compliance with several Act 233 provisions, including provisions relating to setbacks. (5 TR 1130.) At the time of Staff's direct testimony submittal, Staff witness Glass and Staff witness Mullkoff could not recommend granting Washtenaw Solar a certificate given the lack of detail provided by the Company in its eighth discovery request.

Saline Township witness Doozan submitted direct testimony in which Mr. Doozan provided a brief comparison of Saline Township's setback requirement found in their zoning ordinance and Act 233 setback requirements. Saline Township witness Doozan emphasized that Washtenaw Solar's application was deficient in that the Company failed to show how far solar panels are set from the perimeter fencing. Ultimately, Saline Township witness Doozan concludes that Washtenaw Solar does not comply with Saline Township's setback requirements from public road right-of-way or property lines. (5 TR 756-757.)

Intervenor witness Tabitha Pop submitted direct testimony in which Ms. Pop discussed Washtenaw Solar's setbacks as insufficient. Ms. Pop emphasized that if the project were sited locally, Saline Township's setback requirements would have been significantly greater than the requirements found in Act 233. Ms. Pop also detailed that the Company failed to appropriately apply the setback to her livestock-occupied dwelling on her property. (5 TR 801.)

In rebuttal testimony, Company witness Polen states that "[p]roject facilities would be removed from the Opt-Out Parcels and a 50-foot non-participating setback around these parcels would be respected . . ." and that "Washtenaw Solar will still maintain all minimum setbacks required by PA 233." (5 TR 174.) Further, in response to Staff witness Glass' discussion that the removal of certain parcels may result in noncompliance with applicable setback requirements, Company witness Polen states that "Washtenaw Solar will meet all minimum setback distance requirements in the event of a minor change to the Project footprint." (5 TR 195.) Witness Polen further elaborated that "if the Opt-Out Parcels are removed from the final Project layout, the Project layout will be adjusted to maintain a new setback distance from parcel boundaries." *Id.*

In response to Ms. Pop, Company witness Polen states "Washtenaw Solar designed the site layout proposed in the Application based on the setbacks required by PA 233, with certain additional voluntary setbacks from water resources." (5 TR 180.) Witness Polen emphasized that "[t]he statute provides no guidelines with regard to setbacks from where livestock may roam throughout the day or any buildings livestock may occupy." *Id.*

Staff witness Mullkoff provided surrebuttal testimony in which she describes that Staff had to re-evaluate several areas of the Modified Project for compliance with Act 233, which includes the solar facility's setbacks consistent with MCL 460.1226(8)(a)(i). (5 TR 1041.) Staff witness Mullkoff states that Staff was able to perform a re-evaluation of required areas following multiple rounds of discovery requests to the Company. *Id.* Staff witness Mullkoff further states that following Staff's review of the responses, Staff concluded that the Modified Project complies with all statutory standards discussed in her surrebuttal testimony, which includes statutory setback standards. (5 TR 1042.)

In surrebuttal testimony, Staff witness Glass confirms that "Staff's re-review of the project related to compliance with . . . required setbacks did not result in questions or issues regarding the project's compliance with PA 233." (5 TR 1208-1209.) Staff witness Glass further states that, given the additional information provided by the Company through rebuttal and discovery requests, he is "able to recommend that a certificate . . . be granted for the Opt-Out Parcel Layout version of the project." (5 TR 1209.)

Based on the foregoing, Staff recommends that the Commission find that Washtenaw Solar has complied with setback requirements consistent with MCL 460.1226(8)(a)(i).

B. The proposed solar facility's planned fencing complies with the latest version of the National Electric Code.

Section 226(8)(a)(ii) of Act 233 requires that "fencing for a 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 consistent with the purposes of this subsection." MCL 460.1226(8)(a)(ii).

In support of its application, Washtenaw Solar provided the testimony of Company witness Polen who sponsored the Company's Exhibit A-10, Public Health and Safety. (4 TR 139.) In Exhibit A-10, the Company specified two fencing code requirements that pertain primarily to the Project's Substation and the Project's array area. For fencing pertaining to the Substation, the Company stated that "[s]ubstation fence grounding and bonding will be compliant with Article 250.194, Section (A)." (Exhibit A-10, p 6.) For fencing pertaining to the array area, the Company stated that "[f]encing around array areas are planned to be at least 20 feet away from all electrical equipment, so that the requirements in Article 250.194 do not apply. Instead, PV area fencing will comply with Article 691.11 and, by reference, Article 691.6." (Exhibit A-10, pp 6-7.)

Staff witness Cordero reviewed the Company's fencing details in Exhibit A-10 and concluded that the Company had met fencing requirements for its application as originally filled. (5 TR 863.)

Staff witness Glass reviewed the Company's response to Staff's eighth discovery request and determined that, due to a lack of detailed information regarding the removal of certain parcels originally a part of the project, it was unclear whether the project would have a fully enclosed project fenceline. Due to the lack of information available at the time of submitting direct testimony, Staff witness Glass concluded that Staff would not be able to determine compliance with fencing requirements with respect to the National Electric Code. (5 TR 1132-1135.)

In rebuttal testimony, Company witness Polen responded to Staff witness Glass' testimony regarding the fenceline given the removal of certain parcels with "any parcel removals proposed or any minor changes in the future of the Project, the Project will always maintain a fully enclosed complete fenceline around all PV areas in compliance with the NEC and consistent with the Company's commitments in Exhibit A 10." (4 TR 176.) Company witness Polen further affirms the Company's commitment to meeting the fencing requirements by responding to Staff witness Cordero's direct testimony with "[t]he Company remains committed to the fencing requirements in its Application in any project configuration and the Commission should concur with Staff witness Cordero that the Project meets the fencing requirements of PA 233." (4 TR 196.)

Staff witness Mullkoff provided surrebuttal testimony in which she describes that Staff had to re-evaluate several areas for compliance with Act 233, which includes the solar facility's fencing requirement consistent with Section 226(8)(a)(ii) of Act 233. MCL 460.1226(8)(a)(ii). Staff witness Mullkoff states that Staff was able to perform a re-evaluation of required areas following multiple rounds of discovery requests to the Company. (5 TR 1041.) Staff witness Mullkoff further states that, following Staff's review of the responses, Staff concluded that the modified project complies with all statutory standards discussed in her surrebuttal testimony, which includes statutory fencing standards.

In surrebuttal testimony, Staff witness Glass confirms that "Staff's re-review of the project related to compliance with the National Electric code... did not result in questions or issues regarding the project's compliance with PA 233." (5 TR 1208-1209.) Staff witness Glass further states that, given the additional information provided by the Company through rebuttal and discovery requests, he is "able to recommend that a certificate . . . be granted for the Opt-Out Parcel Layout version of the project." (5 TR 1209.)

Based on the foregoing, Staff recommends that the Commission find that Washtenaw Solar has complied with fencing requirements consistent with MCL 460.1226(8)(a)(ii).

C. The proposed solar facility's solar panel components will not exceed a maximum height of 25 feet above ground when the arrays are at full tilt.

Section 226(8)(a)(iii) of Act 233 requires that "[s]olar panel components do not exceed a maximum height of 25 feet above ground when the arrays are at full tilt." MCL 460.1226(8)(a)(iii).

In support of its application, Washtenaw Solar provided the testimony of Company witness Polen who sponsored the Company's Exhibit A-10, Public Health and Safety. (4 TR 139.) In Exhibit A-10, the Company discusses that the height of solar panels are dependent on the "ground clearance and freeboard . . . above the 24-hour, 100-year storm inundation flood depths." (Exhibit A-10, p 8.) The Company further stated that, in areas where no flooding is present, panel height would be "one hundred and two (102) inches above grade (8 feet, 6 inches) when at full tilt" and "areas where higher inundation depths are expected, the top edge of the panel will be less than twenty-five (25) feet." *Id.*

Staff witness Cordero reviewed the Company's solar component height details in Exhibits A-10 and A-1.1 and concluded that the Company had demonstrated compliance with statutory height requirements in its application. (5 TR 864.)

Company witness Polen provided rebuttal testimony to Staff witness Cordero's testimony, which reaffirmed the Company's commitment to meeting height requirement in Act 233, stating "Washtenaw Solar analyzed maximum projected Project height on a project-wide basis and any reduction in the footprint of the Project would not result in an increase in height higher than 25-feet." (4 TR 196.)

Based on the foregoing, Staff recommends that the Commission find that Washtenaw Solar has complied with height requirements consistent with MCL 460.1226(8)(a)(iii).

D. Washtenaw Solar has complied with dark sky lighting requirements.

Section 226(8)(a)(v) of Act 233 requires that "[t]he solar energy facility will implement dark sky-friendly lighting solutions." MCL 460.1226(8)(a)(v). In support of its application, Washtenaw Solar provided the testimony of Company witness Pierson who sponsored the Company's Dark Skies Plan as Exhibit A-11. In Exhibit A-11, the Company stated that the "site will need to have dusk-till-dawn lighting during both construction and operation phases for certain elements of the Project." (Exhibit A-11, p 3.) In outlining its Dark Skies plan, the Company specified lighting use pertaining to general work areas and construction lighting use. Specifically, the Company emphasized the need to use lighting to "to provide safe working conditions for equipment and labor constructing the [p]roject" and "work will occur between 7:00 AM and 7:00 PM or sunset (whichever is later)." *Id.* at 4. With regards to lighting need post construction of the solar facility, the Company stated "[p]ermanent lighting is required during facility operations around the Substation and Switchyard. This permanent lighting will be downward facing lighting for security purposes. These lights will be turned on either by a local switch, as needed, or by motion sensors that will be triggered by movement." *Id*. In informing the Company's Dark Skies plan, the Company states that the practices listed within the plan are guided by DarkSky International Principles and the plan adheres to these principles "where possible" *Id*. at 1.

Staff witness Cordero reviewed the Company's Dark Skies plan and supporting testimony of Company witness Pierson and found that the materials provided by the Company, including discovery responses regarding permanent lighting were in compliance with statutory requirements. (5 TR 867.)

Based on the foregoing, Staff recommends that the Commission find that Washtenaw Solar has complied with lighting requirements consistent with MCL 460.1226(8)(a)(v).

E. Staff recommends the Commission implement conditions for sound modeling.

1. The proposed facility will not generate a maximum sound in excess of 55 average hourly decibels at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property.

Section 226(8)(a)(iv) of Act 233 sets the applicable sound standard, requiring that a 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," and that "[d]ecibel modeling shall use the A-weighted scale as designed by the American National Standards Institute." MCL 460.1226(8)(a)(iv). The Commission's AFIP implements that standard in Attachment D, which requires preconstruction modeling under the

International Organization for Standardization (ISO) 9613-2:2024 and provides that where ambiguity exists the modeling parameters in Table 1 must be used. MPSC Case No. U-21547, 10/21/24 Errata, p 49. Those sound modeling parameters include receptors at all dwellings within one mile of any facility sound source. Table 1 contains a +5 Decibel (dB) tonal penalty to source sound power absent a showing that the facility would not have a tonal prominence; Table 1 also specifies the conditions under which the tonal penalty can be removed. Finally, Table 1 contains a +6 dB façade pressure doubling adjustment. (5 TR 996-997.)

In support of its application, Washtenaw Solar provided the direct testimony of Company witness Michael Hankard, an acoustical consultant with Hankard Environmental, Inc., who sponsored the Company's Sound Report as Exhibit A-1.7 The Applicant modeled the facility using ISO 9613-2:2024 as implemented in\ SoundPLAN v9.1, placing receptors at each of the 268 required receptor points located within one mile of the facility. (5 TR 997-998; Exhibit A-1.7, pp 3, 13.) The principal operational sound sources are inverters and associated cooling systems and the main step-up transformer and associated cooling systems at the substation. *Id.* Consistent with Attachment D, the Applicant applied a +5 dB tonal adjustment to relevant source sound power levels, assessing inverter tonality under the American National Standard Quantities and Procedures for Description and Measurement of Environmental Sound – Part 4: Noise Assessment and Prediction of Long-Term Community Response and treating the transformer as tonal, and compared modeled results to the statutory limit using a +6 dB façade adjustment.

(5 TR 998; Exhibit A-1.7, p 15). Predicted sound levels at the nearest wall of the modeled nonparticipating dwellings do not exceed 49 dBA (L_{eq}, 1-hour), leaving 6 dBA of modeled margin against the statutory limit. (5 TR 998-999; Exhibit A-1.7, p 16.)

The Applicant completed an ambient noise survey between November 6 and November 18, 2024, using one long-term and eight short-term measurement locations. (5 TR 999; Exhibit A-1.7, pp 5-12.) Exhibit A-1.7 also proposes a postconstruction protocol under which monitoring occurs within one year of commercial operation and lasts at least ten days or until sufficient valid data are obtained, with monitors at the two nonparticipating dwellings with the highest modeled sound levels and at up to three complaint locations, and describes a complaint-response process. (5 TR 999-1000; Exhibit A-1.7, pp 19-24.) Exhibit A-1.7 provides that a monitoring report follows field data collection; Company witness Hankard's direct testimony supplies the interval, stating that the report will be submitted within 60 calendar days of the end of field data collection. *Id.*

Staff witness Houtan Moaveni, a consultant from Grid Strategies LLC, reviewed the Applicant's sound filings, including the modeling approach, stated inputs, receptor selection, assumptions, and modeled results, together with the Attachment D Table 1 parameters and the monitoring and documentation provisions. (5 TR 997.) Staff does not dispute the Applicant's modeled results. The Applicant's filed preconstruction model predicts compliance with MCL 460.1226(8)(a)(iv) for the layout, equipment, and assumptions modeled. (5 TR

1000.) That showing does not by itself establish compliance of a materially different final configuration, which is the subject of Staff's recommended conditions below.

No intervenor filed testimony addressing sound. Subject to adoption of the conditions discussed below, Staff recommends the Commission find that the proposed energy facility will not generate a maximum sound in excess of 55 average hourly decibels at the nearest outer wall of the nearest dwelling located on an adjacent nonparticipating property.

2. Staff recommends the Commission adopt its proposed conditions requiring a final compliance demonstration and post-construction verification monitoring.

A preconstruction model is only as reliable as the layout and equipment it assumes. Sound levels at nonparticipating dwellings turn on where the Applicant ultimately sites the inverters and transformer and on the sound power of the equipment it ultimately procures. Exhibit A-1.7 rests on a preliminary layout and assumed makes and models. Staff therefore recommends conditions requiring a final compliance demonstration consistent with Attachment D using the final layout and final equipment make and model, postconstruction verification monitoring consistent with Attachment D, and enforceable mitigation and complaint-response obligations if monitoring or a complaint-triggered investigation shows an exceedance. (5 TR 1000-1001.) Four provisions of Staff's revised conditions, Exhibit S-2.4, carry those recommendations. (5 TR 1047; Exhibits S-2.3 and S-2.4.)

Condition 2.f requires the Applicant, at least 60 days before the pre-construction meeting, to file a final noise compliance modeling report, based on desktop sound modeling, demonstrating compliance using the final facility layout and final make and model of all operational sound sources, consistent with Attachment D. (5 TR 1001.) The same condition requires a construction noise control plan describing major construction activities and equipment, standard work hours, exceptions and notice procedures, equipment maintenance and muffler requirements, idling limits, and specific controls for any high-noise activities, and requires the Applicant to investigate promptly and take corrective action where a complaint reasonably indicates material construction noise impacts. (*Id.*; Exhibit S-2.4, pp 2-3.) Condition 2.j defines "final" as the version of each deliverable based on the layout, equipment selections, and information the Applicant intends to use for construction or operation, and requires an updated deliverable before construction, installation, or operation if a material change affecting modeled sound levels occurs after submission. (Exhibit S-2.4, p 3.)

Condition 10 supplies the field verification. It requires the Applicant, before commercial operation begins, to contract with and pay for a third-party acoustic expert; requires that expert to conduct postconstruction monitoring in accordance with Attachment D, ensuring that facility operation is assessed in a variety of conditions, including those associated with maximum sound emission from the facility; sets the monitoring window at 12 months after commencement of commercial operation unless the Commission directs otherwise; and requires the report within 60 days of the end of field data collection. If monitoring or complaint-triggered monitoring shows an exceedance, the Applicant must file a corrective action plan within 30 days, implement mitigation as expeditiously as practicable and within 60 days, repeat measurements with mitigation in place until the statutory limits are met, and file a subsequent report. (5 TR 1001-1002; Exhibit S-2.4, p 4.) Condition 11 requires the Applicant to design and operate the facility in compliance with MCL 460.1226(8)(a)(iv) and to demonstrate compliance upon the Commission's request in response to complaints. *Id.* The remainder of the original proposed minimum condition, which would require mitigation in response to non-compliance, duplicates the corrective-action sequence in Condition 10 and is thereby rendered unnecessary. (5 TR 1002.)

Company witness Hankard filed rebuttal on five sound subjects. (4 TR 70.) On most, the Company agrees with Staff. The Company agrees that a final compliance demonstration is appropriate, testifying that revising the prediction of operational noise emissions before construction using the most current data available is reasonable and that Staff's approach "is reasonable to the Company." (4 TR 73.) Staff clarified in discovery that it does not seek a duplicative second preconstruction ambient survey where the Applicant's preconstruction monitoring is already in the record. (Exhibit MH-R2.)

The Company nevertheless described Condition 2.j in terms Staff does not accept. Company witness Durgan described subsection 2.j as permitting the Applicant to provide "close-to-final documentation," and on that basis accepted Staff's 60-day lead time in Condition 2.f while stating a preference for 30 days. (5 TR 698-700.) The Commission should not adopt that characterization. Staff witness Mullkoff testified that "final" means the information the Applicant intends to use for construction or operation, rather than preliminary or merely close-to-final information, so that Staff, the affected local unit, and the Commission can evaluate the configuration that will actually be constructed or operated. (5 TR 1045-1046.) A sound model built on materially different inputs cannot demonstrate compliance for the facility the Applicant will build. Condition 2.j accommodates later changes on its own terms by requiring an updated deliverable whenever a material change affects modeled sound levels. That mechanism, not a relaxed definition of "final," is what gives the Applicant flexibility without weakening the compliance showing. Therefore, Staff recommends maintaining the 60-day lead time in condition 2.f and specification that 2.j indicates a substantially mature deliverable.

The Company, likewise, agreed to the construction noise control plan. Company witness Hankard first observed that PA 233 and the AFIP do not expressly require such a plan, (4 TR 74), but Section 226(6) authorizes the Commission to condition its grant of an application on the applicant taking additional reasonable action related to the facility's impacts, and that authority is not confined to actions the statute independently mandates. MCL 460.1226(6). In any event, after Staff identified the plan's six minimum elements in discovery, the Company agreed to develop the plan and file it in this docket and stated that the complaint-investigation provision "is acceptable to the Company," proposing no modification. (4 TR 74,76; Exhibit MH-R3.) Adopting Condition 2.f makes that commitment enforceable.

Staff agrees with the Company that the statutory limit governs operation rather than construction. Company witness Hankard noted that typical construction equipment produces roughly 80 to 85 dBA at 50 feet and understood the limit to reach only facility operation. (4 TR 75.) Staff supports striking "construct" from Condition 11 for that reason. (5 TR 1047.) Condition 2.f addresses construction-phase noise instead, through the construction noise control plan and its complaint and corrective-action provisions — a process distinct from the operational complaint process in Exhibit A-1.7, as Staff explained in discovery. (Exhibit MH-R3.)

Staff revised its recommended Condition 10 to address the Company's timing proposal. Company witness Hankard recommended conducting the survey in the first year of commercial operation rather than before commercial operation, so that the facility is fully in service when measured. (4 TR 75-76.) Staff agrees, and Condition 10 as now proposed by Staff requires monitoring within 12 months after commencement of commercial operation unless the Commission directs otherwise. (5 TR 1046.) Staff recommends retaining the requirement that the Applicant contract with and pay for the third-party expert before commercial operation begins, so that verification does not depend on a post-energization procurement. *Id.*

Staff's remaining observation — that the record would be clearer if the Applicant had expressly mapped baseline monitoring locations to the highest-modeled nonparticipating receptors — does not require resolution here. (5 TR 999;

4 TR 72-73.) The Applicant must demonstrate compliance through a final Attachment D modeling report using the layout, equipment selections, and sound-source information it intends to use for construction or operation under Conditions 2.f and 2.j, and must then verify that result on the as-built facility through postconstruction monitoring under Condition 10.

Finally, the alternative Opt-Out Parcel layout the Company presented in rebuttal does not change the sound analysis. Company witness Hankard testified that predicted levels at the occupied structures of changed participation status do not change, that no new or additional noise impact is anticipated, and that Exhibit MH-R1 shows no location modeled to exceed the statutory maximum. (5 TR 685-687; Exhibit MH-R1.) Staff's sound conditions are layout-neutral in any event: Conditions 2.f and 2.j key the compliance filing to the final layout and equipment, and Condition 10 verifies the result in the field.

Staff notes that Condition 2.f, as printed in Exhibit S-2.4, contains a clerical duplication in the phrase "a final noise modeling report, based on desktop modeling report demonstrating compliance." To avoid carrying that artifact into the Commission's order, Staff recommends the Commission adopt the corrected Condition 2.f set out below. The corrected text appears in Company witness Durgan's rebuttal and was accepted by Staff witness Mullkoff. (5 TR 700; 5 TR 1045.)

In sum, if a siting certificate is granted, Staff recommends the Commission adopt the following Proposed Conditions to address findings from review of the Applicant's Sound Report and Monitoring Protocol:

> Proposed Condition 2.f: At least 60 days prior to the pre-construction meeting, the Applicant is required to file a final noise compliance modeling report, based on desktop sound modeling, 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 the 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.

> Proposed Condition 2.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.

> Proposed Condition 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 post-construction 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.
>
> Proposed Condition 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.

F. The Applicant should be required to file final versions of its Emergency Response Plan (ERP) and Fire Response Plan (FRP)

As Exhibit A-1.9 and Exhibit A-1.10, the Company filed an Emergency Response Plan (ERP) and a Fire Response Plan (FRP) as required by Sections 7.9 and 7.10 of the AFIP, respectively, and Section 225(q) of Act 233. Staff reviewed the exhibits and testimony of Company witnesses Durgan. (5 TR 667-669.) Staff witness Travis Warner testified to Staff's position that the Company has provided sufficient evidence that it corresponded and met with the Washtenaw County Sheriff's Emergency Services Division, the Washtenaw Livingston Medical Control Authority, and the Huron Valley Ambulance with regard to the ERP and the capacity to respond to emergencies at the Project. (5 TR 1112.) Staff witness Warner also testified that the Company provided sufficient evidence of consultation with the Saline Area Fire Department to assess whether the FRP is in alignment with acceptable operating procedures, capabilities, and resources. *Id.* Based on consultations that had taken place at the time of Staff's direct testimony filing, neither the Company, nor the first responding agencies listed above, identified any capacity, training, or equipment deficiencies. (5 TR 1112-1113.) The Company explained that a separate consultation with the Saline Area Fire Department identified a need for additional equipment to respond to a medical emergency in the areas of the proposed solar arrays. *Id.*

As a result, the Company agreed to provide the fire department with annual funding for necessary equipment and training, and one-time funding for additional equipment, including a 2026 Chevy Tahoe, a 4-person utility task vehicle (UTV), and a trailer, which is discussed above in the Public Benefits section of this brief. *Id.* Staff witness Warner testified that Staff expects continued updates and improvements to the plans throughout the MPSC contested case process and as part of a compliance report prior to commencing construction, but that the ERP and FRP satisfy the minimum requirements of Act 233 and the AFIP for this stage of the project. (5 TR 1113-1114.)

If the project is approved, Staff recommends three conditions related to the ERP and FRP consistent with Staff witness Warner's review and testimony. Staff Conditions 2.c, 6, and 14 were recommended by Staff witness Warner as modifications to proposed conditions in the Company's application. The Company indicated no objection to these modified conditions recommended by Staff, including them without amendment in its modified list of recommended conditions in rebuttal. (Exhibit TSD-R1, pp 2-8.) Based on the foregoing, if the Commission grants approval of a certificate for this project, Staff recommends that the Commission apply those conditions, which are as follows:

> Proposed Condition 2.c: Prior to the pre-construction meeting, the Applicant is required to: Provide final versions of the Emergency Response Plan (A-1.9) and Fire Response Plan (A-1.10).
>
> Proposed Condition 6: The Applicant is required file updated emergency contact information for the facility representative in the docket in Case No. U21962 on an annual basis and as necessitated by applicant personnel changes.
>
> Proposed Condition 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.

XII. DECOMMISSIONING

Section 225(1)(r) of Act 233 requires that an application submitted to the Commission must contain a decommissioning plan that "ensures the return of all participating properties to useful condition similar to that which existed before construction, including removal of above-surface facilities and infrastructure that have no ongoing purpose." MCL 260.1225(1)(r). That section further requires that the decommissioning plan shall include financial assurance in the form of a bond, parent company guarantee, or irrevocable letter of credit that is not less than the estimated cost of decommissioning the energy facility, after deducting salvage value, as calculated by a third party. *Id.* The Company submitted its decommissioning plan as Exhibit A-13.1 and its proposed decommissioning agreement as Exhibit A-13.3.

In support of its application, Washtenaw Solar provided the direct testimony of Company witness Michael T. Hebert who sponsored the Company's Decommissioning Plan as Exhibit A-13.1 and a Detailed Decommissioning Cost Estimate as Exhibit A-13.2. The Company also sponsored testimony of witness Pierson who proposed a Decommissioning Agreement to be entered into between Washtenaw Solar and the Michigan Public Service Commission. (Exhibit A-13.3.)

Washtenaw Solar assesses the useful life of the Project Facilities to be at least 30 years. (5 TR 575.) As Company witness Hebert describes, the Company's proposed decommissioning plan contains events that would trigger Applicant-initiated decommissioning, which are consistent with the trigger events in the MPSC's form Decommissioning Agreement. The decommissioning plan describes the physical and chemical soil analysis used to develop a Baseline Soil Health and Survey Plan which will be repeated at decommissioning to determine how land can be returned to farmable conditions after the life of the project. (5 TR 575; Exhibit A-13.1, pp 11-12.)

The Decommissioning Plan also includes a proposed decommissioning schedule. The Company anticipates decommissioning will occur over a five-month period with restoration extending activities up to ten months. (5 TR 577; Exhibit A-13.1, Appendix B.) Witness Hebert testifies that "Project Facilities constructed above ground and any structures within forty-seven inches of the surface will be removed from the Project Site for disposal and/or recycling as part of the decommissioning activities." (5 TR 577.) Exceptions include access roads, driveways, and fencing on private property, as requested by property owners, and substation, transmission line, switchyard and interconnection facilities not owned by Washtenaw Solar at the time of decommissioning. *Id.*

Washtenaw Solar's decommissioning plan provides a description of removal methods, site clearing activities, and an initial plan for material disposal. The Company anticipates that "approximately 85% of the materials used will be recycled off site." (5 TR 578.) Washtenaw Solar will employ local firms if available and suitably qualified for decommissioning. Michigan Department of Transportation (MDOT) roads will be utilized to transport materials, and directions will be issued to avoid heavily populated areas, as practical. The decommissioning plan states that "[r]oad weight restrictions will be reviewed and followed pursuant to MDOT and Washtenaw County Road Commission requirements. Soil erosion controls will be used to prevent the distribution of soil during demolition. Finally, work will be limited to daylight hours." (5 TR 579; Exhibit A-13.1, p 17.)

Washtenaw Solar anticipates applying for road site lane closure permits, a soil erosion and sedimentation permit, electrical permits, and a demolition permit. A Stormwater Pollution Prevention Plan will be prepared to include BMPs for construction and decommissioning. (5 TR 579; Exhibit A-13.1, pp 19-20.)

Company witness Hebert states that Washtenaw Solar plans to seek a surety bond for financial assurance, consistent with its decommissioning agreement. (5 TR 580; Exhibit A-13.1, p 20; Exhibit A-13.2, p 15; Exhibit A-13.3, p 9.) Washtenaw Solar will provide a Decommissioning Plan, Decommissioning Cost Estimate, and financial assurance cost updates on a five-year basis for the first 20 years of commercial operation and every three years thereafter to be filed to the docket in this case along with annual proof that financial assurance remains sufficient and in effect. (5 TR 581.) The Company's Decommissioning Cost Estimate takes into account salvage value of the equipment and the cost if a decommissioning consultant is needed in the event of abandonment or bankruptcy. (5 TR 582.) The total net estimated decommissioning cost for the project is approximately $10,095,956. (5 TR 582; Exhibit A-13.2, p 14.) The Company plans to post the decommissioning bond in increments according to Section 225(r)(i-iii) of Act 233 with the first delivery occurring no later than the start of construction. (Exhibit A-13.2, p 15.)

Staff witness Greg Frer, a consultant from Weston Solutions, Inc. (Weston), reviewed the Company's application. Staff witness Frer reviewed the Company's Detailed Decommissioning Cost Estimate and discovery responses. Staff found that the Company has agreed to execute the decommissioning agreement and provide the required financial assurances described by the Commission in Proposed Minimum Condition 16. Staff recommends the Commission adopt Staff's amended Proposed Minimum Condition 16 if it approves a siting certificate in this case. Decommissioning conditions are described in more detail below.

A. Staff recommends that the Commission adopt its recommended conditions for the proposed Decommissioning Plan to ensure the return of all participating properties to useful condition similar to that which existed before construction.

Exhibit A-13.1 was prepared based on the project design available at the time of application. As such, Staff's position is that all decommissioning plans, terms, and commitments should be finalized by the Applicant in updated decommissioning documents, and associated information. The Applicant should be required to submit such documents, prior to the start of construction.

No party rebutted Staff's recommendation that a final decommissioning plan be filed. As such, Staff recommends the inclusion of Condition 2.e if the Commission approves this certificate. Condition 2.e states:

> Proposed Condition 2.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.

Regarding hazardous substances, the decommissioning plan provides a list of known hazardous substances on the site, of which none are bulk quantities, projected for use in the Project Facilities. (5 TR 578.) A Phase I Environmental Site Assessment (ESA) performed for the site found conditions associated with historic oil and gas exploration activities as well as the application of biosolids to areas within the proposed project area. (5 TR 597.) The Applicant has conducted a Phase II Environmental Site Assessment (ESA), which would further investigate the site to determine if the RECs support existing contamination, and was being finalized at the time that rebuttal submittal was submitted, according to Company witness Hebert. (5 TR 596.) The rebuttal testimony of Company witness Hebert indicates that Staff's recommended condition for the Company to provide a Phase II ESA was acceptable to Washtenaw Solar. (5 TR 595.) As such, Staff recommends that the Commission adopt its proposed condition 2.b. However, Staff made one grammar correction to the condition requirement that the Company provide the Phase II ESA prior to construction presented in Exhibit S-2.4. The original language of Condition 2 proposed in Exhibits S-2.1 through S-2.4 state that prior to the preconstruction meeting, per subitem (b), the Applicant is required to "Provide the Phase II Environmental **Health** Assessment (ESA) report." Staff corrected this condition subitem to read "Provide the Phase II Environmental **Site** Assessment (ESA) report." Staff does not consider this a substantive change. The correction has been included in the language below. The Phase II ESA should be provided prior to the preconstruction meeting as indicated in the condition, as it is a subitem of preconstruction requirements. Staff recommends the inclusion of the following Condition 2.b, as revised, if the Commission approves a certificate in this case:

> Proposed Condition 2.b: Prior to the preconstruction meeting, the Applicant must . . . [p]rovide the Phase II Environmental Site Assessment (ESA) report.

1. The Commission should adopt Staff's soil remediation conditions.

While the Company states in its decommissioning plan that the Baseline Soil Health Survey Plan is "repeatable" at decommissioning, it appears to stop short of actually making the commitment to repeat the surveying and conduct appropriate remediation. (5 TR 935.) Similarly, while Exhibit A-13.3 states that the decommissioning agreement is *intended* to "ensure the return of all participating properties to a useful condition similar to that which existed before construction," further reinforcement may be needed to produce that outcome, considering the Company's lack of specific description of its post-decommissioning actions in its decommissioning plan. *Id.* Soil testing and accordant action to return the soil to a useful condition, including hazardous material remediation steps as necessary, are critical to ensure project decommissioning according to the standard for the decommissioning plan set by Act 233. Furthermore, the Company did not address the potential for broken panels to leach non-hazardous concentrations of cadmium and/or other constituents of concern that, over time, could nonetheless preclude soils from being returned to their original condition without remediation. (5 TR 950.) Company witness Hebert stated in rebuttal testimony that the project's operational controls and existing regulatory framework address the issue of damaged and leaching panels. (5 TR 592.) Company witness Hebert further stated that any exceedances [of contaminant concentrations] attributable to project activities would be addressed in accordance with applicable regulatory standards, including Part 201 of NREPA, as required. (5 TR 601.) Regarding Staff's statement in direct testimony that "Staff anticipates that the Company would compare the results of such [soil] surveying and testing to the baseline, as well as to environmental standards in state and federal law, such as R 299.46 Generic soil cleanup criteria for the residential category – Table 2", Company witness Hebert generally agreed, but noted that different cleanup criteria may be used depending on various conditions under Part 201 regulations (5 TR 598-599.) Specifically, appropriate cleanup criteria may be selected based on generic human health risk assessment assumptions that are determined by [EGLE] to appropriately characterize patterns of human exposure associated with certain land uses (5 TR 954-955; MCL 460.20120a(3).) Through his rebuttal testimony, Company witness Hebert provided new information to describe the project's proposed compliance with Part 201 of NREPA, which is to utilize the typically applicable cleanup criteria under Part 201, including Residential, Limited Residential, Non-Residential, and Limited Non-Residential criteria based on the on-site conditions, land use, and regulatory applicability. (5 TR 599.)

Staff does not support Company witness Hebert's description of the Applicant's intended utilization of varying Part 201 cleanup criteria based on various conditions as listed. (5 TR 594.) While Staff appreciates the standard Part 201 process described above, Staff has a significant concern with this approach for the following two reasons. First, residential criteria provided in Table 2 of Michigan Administrative Code Rule 299.46 (Rule 46) establish whether a property is regulated pursuant to Part 201 of NREPA. Mich Admin Code R 299.46. Second, it is Staff's understanding that utilizing criteria less stringent than the residential criteria set forth in Rule 46 can result in restrictions on future land uses upon which the facility is proposed to be sited. Therefore, the current and future land use following cleanup standards other than residential would need to be zoned appropriately and restricted for certain uses, and restrictions would need to be placed on the property deed(s) to ensure they remain in place. (5 TR 955.) These restrictions may place additional burden on landowners, future lessees, and local units of government, as well as preclude the land from being restored to a useful condition similar to that which existed before construction *Id.*

Based on the preceding discussion, Staff recommends the inclusion of Condition 25 as presented in the surrebuttal of Staff witness Krupp, if the Commission approves a certificate in the instant case. Condition 25 states:

> Proposed Condition 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.

B. The Applicant should be required to provide infrastructure records to landowners after decommissioning is completed.

Company witness Hebert testifies that "Project Facilities constructed above ground and any structures within forty-seven inches of the surface will be removed from the Project Site for disposal and/or recycling as part of the decommissioning activities." (5 TR 577.) Exceptions include access roads, driveways, and fencing on private property, as requested by property owners, and substation, transmission line, switchyard and interconnection facilities not owned by Washtenaw Solar at the time of decommissioning. *Id.*

Staff testified that the Decommissioning Plan did not fully address the removal of components constructed deeper than 47" with no on-going purpose. (5 TR 931.) The Company's response to discovery request WS-3-6, presented in Exhibit S-3.1, stated deenergized alternating current (AC) collection cables would remain, as removal would be disruptive to farming. *Id.* Similarly, drain tiles would remain as a general drainage improvement. *Id.* Staff's opinion is that this response is reasonable and the result is unlikely to negatively impact farmable conditions. However, the presence of remaining cables or drainage tiles below that depth warrants consideration for future property owner activities and therefore recommends the Commission adopt Condition 23 as follows:

> Proposed Condition 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.

C. Upon any transfer in ownership of project property or facilities, the Company is required to identify the new entity responsible for decommissioning.

Staff testified that neither the Decommissioning Plan nor Company responses to Staff's discovery, presented in Exhibit S-3.1, adequately addresses the responsibility of decommissioning of facilities when facilities are transferred to another owner. (5 TR 932.) The Company states in its response to Staff discovery that ownership and responsibility for decommissioning will belong to a separate company, however, under item 3.1.5 of the Company's proposed decommissioning agreement, a transfer in ownership still requires "continued compliance with the project certificate." *Id.* It is unclear how the Company plans to ensure that facilities installed as a part of the project that are transferred to another owner will still be decommissioned to the appropriate standards, prompting Staff to draft a condition addressing this issue. Staff recommends the Commission adopt its proposed condition 24 to ensure the Decommissioning Plan remains consistent with agreements as approved by the Commission in transfer of ownership. Condition 24 requires:

> Proposed Condition 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.

No party filed rebuttal testimony on this issue. As such, Staff recommends the inclusion of Condition 24 if the Commission approves a certificate in the instant case.

If a siting certificate is granted, Staff recommends the Commission adopt the following Proposed Conditions to address findings from review of the Company's Decommissioning Plan and Decommissioning Agreement:

> Proposed Condition 2.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.
>
> **Amended** Proposed Condition 2.b: Prior to the preconstruction meeting, the Applicant must . . . [p]rovide the Phase II Environmental Site Assessment (ESA) report.
>
> Proposed Condition 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.
>
> Proposed Condition 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.

Proposed Condition 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.

D. Staff recommends the Commission adopt its proposed conditions for the Decommissioning Cost Estimate.

1. Staff recommends the Commission condition a certificate on separate accounting for dust control in the Decommissioning Cost Estimate.

In evaluating the Company's Decommissioning Cost Estimate, Staff witness Frer noted that the Company did not provide a line-item for insurance costs. (5 TR 874.) In response to discovery, Washtenaw Solar provided that "insurance costs are accounted for in the unit charges for the works to be performed and bonded." (5 TR 874-875; Exhibit S-5.1, p 4.) Staff's analysis of costs showed that the unit charges for work to be performed appear to be sufficient to include insurance. Therefore, Staff has no recommendations regarding insurance costs at this time.

Witness Frer also noted that the Company did not provide a line item for dust control in its Decommissioning Cost Estimate. (5 TR 875.) In rebuttal testimony, Company witness Hebert states that "[w]hile costs are not presented as a single standalone line item, the [Detailed Cost Estimate] does account for dust control." (5 TR 603.) Witness Hebert further provides that dust control costs are embedded within the specific decommissioning activities that generate dust, rather than being isolated as a lump-sum allowance as dust suppression is not necessarily an independent activity but occurs intermittently across multiple decommissioning tasks. *Id.* Witness Hebert asserts that "allocating dust control costs directly within applicable work elements often provides a more accurate and scalable representation of actual implementation requirements." *Id.* The Company recognized that Staff's witness offered another reasonable alternative for calculating decommissioning cost estimates. (5 TR 606.) However, the Company maintains that the "absence of a separate dust control line item does not indicate that these costs were omitted from the estimate." (5 TR 603.)

Witness Frer noted that in response to discovery, Washtenaw Solar indicated that "[t]he administration cost (3.21%) supports permits, which include dust monitoring and suppression requirements." (Exhibit S-5.1, p 5.) Exhibit A-13.2 states that administrative costs are to be used in the event of owner abandonment or bankruptcy. (5 TR 875; Exhibit A-13.2, pp 14-15.) Staff determined that it is unclear whether funds for dust mitigation measures would be available if there is owner abandonment or bankruptcy.

In rebuttal testimony, Witness Hebert states that "dust control costs were incorporated into the Project's administrative costs to ensure they are accounted for regardless of when work is conducted." (5 TR 603.) He further asserts that "[d]ust control costs are not dependent on administrative contingency funds reserved for owner abandonment or bankruptcy." (5 TR 605.) Witness Hebert concludes that "the [Decommissioning Cost Estimate] provides dust control through multiple mechanisms, and the absence of a standalone dust control line item or reliance solely on administrative contingency funds does not indicate that dust control would be unavailable or unfunded." (5 TR 604.)

In rebuttal testimony, the Company maintained that its approach to accounting for associated costs of implementation of dust control is reasonable but agreed that a condition requiring the Company to account for associated costs of implementation of a dust control plan is acceptable. Thus, Staff recommends the Commission adopt Proposed Condition 26 to account for costs associated with implementation of the Dust Control Plan as a separate line item in Decommissioning Cost Estimates.

2. Staff recommends the Commission adopt a condition for site investigation and remediation in the Decommissioning Cost Estimate.

The Company did not include costs associated with remediation necessary to return soil to its original condition as outlined in the Decommissioning Cost Estimate. (5 TR 876.) In response to Staff discovery, the Company stated that Washtenaw Solar has not yet made the final selection of panels to be used in the project. (5 TR 876; Exhibit S-5.1, p 1.) However, the potential PV modules "have been tested by the manufacturer and are defined as characteristically non-hazardous." *Id.* The Company states that crystalline silicon modules, such as those made by its preferred suppliers do not utilize cadmium telluride and generally would contain no or negligible amounts of cadmium. Staff asserts that as the potential for contamination could be present depending on the panel manufacturer, panel conditions during their operational life, and the length of time broken panels remain on site, and given the potential expenses involved with remediation, it is prudent that decommissioning costs for remediation be included in the decommissioning cost estimate.

In rebuttal testimony, Company witness Hebert states that although the Company had not determined which panel manufacturer will provide panels, the Company has contractual requirements to comply with federal and state laws regarding hazardous and toxic substances through its product supplier. (Exhibit S-7.10, p 10.) These obligations include the Toxic Characteristic Leaching Procedure (TCLP) discussed in the direct testimony of Staff witness Frer which applies to heavy metals including lead, barium, silver, and cadmium. (6 TR 607.) Company witness Hebert asserts in rebuttal testimony that panels that pass TCLP testing are classified as non-hazardous solid waste, indicating limited potential for site contamination. *Id.*

While the Company does not concede that there is a reasonable likelihood of soil contamination attributable to Project construction, operation, or decommissioning that warrant inclusion of remediation costs, the Company submits that Staff witness Frer offers a reasonable alternative for calculating decommissioning cost estimates. Staff recommends the Commission adopt Proposed Condition 27 to address site investigation and remediation in decommissioning costs.

If a siting certificate is granted, Staff recommends the Commission adopt the following Proposed Conditions to address findings from review of the Company's

Decommissioning Plan, Detailed Decommissioning Cost Estimate, and Decommissioning Agreement:

> Proposed Condition 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.
>
> Proposed Condition 26: The Company is required to provide dust monitoring and suppression costs separately and include them in decommissioning cost estimates.
>
> Proposed Condition 27: The Company is required to include costs associated with site investigation and remediation as a separate line item in decommissioning cost estimates.

XIII. OTHER ISSUES

A. Staff recommends conditions to ensure post-certificate compliance.

Section 226(6) of Act 233 expressly authorizes the Commission to “condition its grant of the application on the applicant taking additional reasonable action related to the impacts of the proposed facility, included but not limited to the following: (a) Establishing and maintaining for the life of the facility vegetative ground cover; (b) Meeting or exceeding pollinator standards throughout the lifetime of the facility, as established by the “Michigan Pollinator Habitat Planning Scorecard for Solar Sites”; (c) Providing for community improvements in the affected local unit; (d) Making a good-faith effort to maintain and provide proper care of the property where the energy facility is proposed to be located during construction and operation of the facility. MCL 460.1226(6).

Section 227a of Act 233 requires the applicant to file a completion report certifying compliance with the requirements of the Act and any conditions contained in the Commission's certificate. MCL 460.1227(a).

1. The Commission should direct the Applicant to file a completion report demonstrating compliance with the requirements of Act 233 and the Commission's conditions.

As Exhibit A-14, the Company filed a list of proposed agreements that describes how the Project plans to meet the minimum conditions, and provides annotated proposed minimum conditions, a table of condition commitments, and proposed agreements regarding the conditions. (Exhibit A-14 pp. 2-21.) Staff reviewed Exhibit A-14 and the testimony of Company witness Durgan, along with the revised exhibit (TSD-R1) provided in the Company's rebuttal filing. Staff witness Mullkoff provided Exhibits S-2.1 through S-2.4 compiling and tracking Staff's proposed conditions. Staff witness Mullkoff sponsors direct testimony on select conditions. The Commission should direct the Applicant to file a completion report demonstrating compliance with the requirements of Act 233 and the Commission's conditions.

2. The Applicant's complaint resolution process complies with the requirements detailed in the AFIP and can be implemented through Staff and the Company's consensus condition.

The AFIP requires that, as Exhibit A-14, the Company include proposals to meet the proposed minimum conditions adopted by the Commission when filing an application or a justification for why the proposed minimum condition should not be applied to the facility. (MPSC Case No. U-21547, 10/21/2024 Errata, p 79.) As Exhibit A-14, the Company included its proposals to meet the proposed minimum conditions adopted by the Commission. Proposed Minimum Condition 5 requires "an agreement by the applicant to implement a complaint resolution process as approved by the commission as a condition of certificate approval . . . ." *Id.* at 80.

The Applicant's condition and Staff's proposed minimum condition language are similar in that they both agree to maintain the complaint resolution process as provided in Exhibit A-16 (TSD-3), though the language differs slightly between them. Staff witness Mullkoff supported applying a condition to the project with respect to the Complaint Resolution Process and recommended that the Commission approve the Complaint Resolution Process and associated procedures in the application, and specifically includes the following language, which the Company did not disagree with:

> Proposed Condition 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." [5 TR 1027-1028.]

Staff recommends that the Commission adopt this condition language if a certificate is approved in this case.

3. Staff supports the Company's commitment to hiring a Third-Party Independent Monitor.

In Company Exhibit A-14, as Condition 2.1 the Company agreed to enter a third-party independent monitor (TPIM) agreement funded by the applicant and selected in consultation with the Staff. The TPIM will provide onsite monitoring, have authority to resolve complaints, have authority to request material cessation of activities, and provide periodic reports to MPSC Staff through the construction phase of the project. Staff witness Mullkoff reviewed this condition. Staff is generally supportive of this approach and had two points of clarification to add to the Company's proposal.

First, regarding the selection of the TPIM with Staff, Staff witness Mullkoff described that Staff "is engaging in 'active discussions with the Company'" to select a qualified engineering firm to serve as the TPIM. (5 TR 1029.) Second, Staff sought to amend the "periodic reports" described in the PMC to monthly reports during the first three months of operation, then annual reports thereafter. *Id.* In Washtenaw Solar's rebuttal testimony Company witness Durgan agrees that it is appropriate for the Company to assume responsibility for operational reporting instead of the TPIM and that it would be more efficient considering the Company's commitment to annual reporting in PC 18. (5 TR 698.) The Company proposes to strike the language "then annually thereafter," and also proposes to strike language that the TPIM may request immediate cessation of activities in material breach of any plan, permit, or agreement pertaining to the construction of the facility." *Id.* This phrase was inadvertently duplicated within Staff's proposed language. Staff agrees with the Company's proposed changes. The revised version of this condition is seen as Proposed Condition 1 in Staff's Exhibit S-2.4, and reads as follows:

> Proposed Condition 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.

Staff's recommendation is that if a certificate is granted, the Commission adopt the above condition pertaining to a TPIM.

4. Staff recommends the Commission apply a condition that requires the Applicant to provide compliance filings ahead of the pre-construction meeting.

In Company Exhibit A-14, Washtenaw Solar agreed to participate in a pre-construction meeting with MSPC Staff and the mutually-selected TPIM prior to construction of the project as Condition 2.2. The intent of this meeting is to ensure compliance with the final drawings, plans, and permits received and that these plans conform with the certificate approved by the Commission. (Exhibit A-14, pp

18-19; 5 TR 1030.) The Company also committed to inviting representatives of Saline Township, though not mandating their attendance, and providing final documentation to the instant MPSC case docket, noting certain protections for confidential materials." *Id.*

Act 233 requires that prior to commencing commercial operations, the Company file a completion report in the case docket certifying compliance with the statute as well as any conditions contained in the Commission's certificate. MCL 460.227a.

Staff recognizes that the Company provided detailed commitments to oblige both with its Proposed Condition 2.2 and items required of the completion report. (Exhibit A-14, p 6.) In addition to the completion report responsibilities, Staff recommends that if the application is approved and a certificate granted, the Company be required to provide additional specific items and plans 60 days prior to the pre-construction meeting. Staff proposed certain edits and additions to Proposed Condition 2.2, seen in the direct testimony of Staff witness Mullkoff. (5 TR 1031-1032; Exhibit S-2.4.) Staff's Proposed Condition 2 contains subitems (a) through (i) relating to: (a) final selection of panels; (b) Phase II ESA ; (c) Final versions of ERP (A-1.9) and FRP (A-1.10); (d) Final UDP and results from SHPO's review; (e) final decommissioning report and site restoration plan; (f) final baseline sound monitoring report, construction noise plan, and corrective action plans; (g) the signed copy of the project labor agreement or collective bargaining agreement; (h) any plans required under NREPA; and (i) the final versions of the MSU

Pollinator Scorecard for Solar Sites. These items are further supported throughout this brief.

The Company acknowledges its commitment to Proposed Condition 2 though discusses that those plans may not be final. (5 TR 699-700.) The Company has also recommended that the decommissioning plan and noise monitoring plan be made available to Staff 30 days prior to the pre-construction meeting rather than Staff's suggested 60-day lead time, that the noise modeling be based on desktop sound modeling, and that the term "final" intends to mean approved for construction along with procedures for filing an updated deliverable in the docket. In rebuttal however, the Company is prepared to provide close-to-final documentation as allowed under a newly revised section j to Staff's Proposed Condition 2. In its surrebuttal, Staff agrees with the reference in 2.f for noise modeling to be based on desktop modeling and regarding 2.j refining the term "final" to distinguish what compliance deliverables are based on. Staff provided revisions to Proposed Condition 2 which maintain the requested 60-day timeline. Consistent with the foregoing, if the Commission grants a certificate, Staff recommends it include a condition requiring the Company to file compliance reports ahead of the pre-construction meeting as follows:

> Proposed Condition 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 Site 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 SHPO's review of the project, including evidence that any identified impacts to cultural resources have been addressed in the final site plan according to SHPO's recommendations.

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 compliance 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 the 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.

5. Staff recommends the Commission apply a condition addressing the content and cadence of periodic reports.

In Company Exhibit A-14, as PC 2.18, the Company agrees to file periodic reports to the docket describing the requested information described in the AFIP proposed minimum condition number 16. Staff witness Mullkoff reviewed this exhibit and did not disagree that there should be periodic reporting requirements. Staff suggests that a standardized format be prescribed which includes a minimum cadence to help maintain consistent reporting expectations annually, throughout the life of the project. (5 TR 1032.) To that end, Staff proposes additional prescriptive language associated with PC that lists what an Annual Report should contain, which matches the language provided in the AFIP with a more prescribed cadence.

The Company did not disagree with Staff's proposal, though presented one change in rebuttal testimony. The Company suggests an amendment to subitem 18(a) to add "on average" for the sake of clarity based on the production metric that Washtenaw Solar can provide. (5 TR 705.) In Staff's opinion, this change is reasonable and therefore recommends that if the Commission grants a certificate of approval, that it include the following condition pertaining to periodic reports.

> Proposed Condition 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.

6. Staff recommends the Commission apply a condition addressing the requirement to file a mechanical completion report.

In Company Exhibit A-14, as PC 4, the Company agreed to file a Mechanical Completion Report in the E-docket in the instant case. Staff witness Mullkoff supported the inclusion of the language. (5 TR 1033.) Staff witness Mullkoff recommended the inclusion of an according condition as follows:

> Proposed Condition 4: The Applicant is required to file mechanical completion certificates for the facilities in the MPSC docket assigned to the project.

This topic is uncontested; thus, Staff recommends that if the Commission approves the application and grants a certificate, it includes this condition.

7. Staff recommends the removal of a condition regarding ordinance compliance.

In Exhibit A-14, Washtenaw Solar includes PC 2.15 stating "Applicant agrees to comply with all applicable (non-zoning) ordinances through the operational life of the Project in effect at the time the MPSC certificate for the Project is issued." Staff supported the intent of compliance with other applicable non-zoning ordinances. In its direct testimony, Staff recommended removal of this condition because a list of all potentially applicable non-zoning ordinances are not known. (5 TR 1033-1034.) Additionally, Staff points to the language contained in Section 231(3) of Act 233, which states:

> If a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in the commission's certificate. [MCL 460.1231(3).]

Staff considers the proposed condition duplicative of the language already stated in the act, which limits preemption through the terms of the Commission's certificate. This issue was not contested and the Company also proposed to strike it in its proposed conditions; for these reasons, if the Commission issues a certificate for the project, this condition should not be included.

B. Staff recommends the Commission approve certain identified changes to be made at the Applicant's discretion that could otherwise be considered non-minor.

Under Section 222(3) of Act 233, "[i]f the commission has issued a certificate for an energy facility, the electric provider or IPP may make minor changes, as defined by the commission, to the site plan if the changes are within the footprint of the previously approved site plan." MCL 460.1222(3). The Commission defined the distinction between minor and non-minor changes in the AFIP. MPSC Case No. U-21547, 10/21/2024 Errata p 27. However, as explained by Staff witness Glass, "[i]f a certificate is granted, future permitting processes, such as those for wetland impacts, stormwater design, endangered species impacts, and others, may necessitate changes to the project." (5 TR 1187.) As such changes may not be otherwise considered non-minor under the AFIP, the Company has provided a description of known potential modifications or variations in the proposed site plan that were being considered at the time of filing and will be finalized prior to construction. In certain circumstances such changes might improve the overall impacts of the project or be necessary to comply with other agency permits. *Id.*

The application in the instant case discusses changes that are reasonably likely to be required for the proposed project. (5 TR 1188-1196.) Staff performed an extensive review of the changes and determined that four of them could fall outside the minor change definition in the AFIP, but nonetheless improve the project's impacts. Staff recommends the Commission authorize the Company to make those changes, by attaching condition language to the certificate confirming: 1) that such changes have been reviewed and are a part of the project as approved; and 2) for the avoidance of doubt, that such changes are allowable under the Commission's minor change framework for the purposes of the project in the instant case.

The first change is the addition of a dedicated substation access road extending to the north of the proposed switchyard area. (5 TR 1189.) The new access road would be slightly over a third of a mile long, and traverse parcels already identified and discussed in the application as Alternative Areas. *Id.* The road is proposed to accommodate a possible request from ITC for a switchyard access road that does not go through the array area. (Exhibit A-1.6, p 6.) Staff evaluated the proposed access road with equal scrutiny to proposed features of the project, including an exchange of discovery on the exact location of the proposed access road. (Exhibit S-6.8.) Staff determined that the changed access road location would not be a concern in terms of impacts on farmland or natural resources, so long as the decommissioning procedures follow those for the project's other access roads. (5 TR 1189-1190.) Staff considers the road to be part of the proposed project, and, for avoidance of doubt, Staff supports condition language affording the Company discretion to build the access road as a project change.

The second change would involve changes to the Crane and Heavy Equipment Routes in response to agreements with the Michigan Department of Transportation (MDOT) and the WCRC, including the final project Road Use Agreement executed prior to construction. (5 TR 1190-1191.) In Staff's opinion, it is appropriate to defer to MDOT and the WCRC to determine appropriate changes for the same general reasons that Staff defers to these agencies for finalizing the proposed unchanged Road Use Agreement – they possess technical staff with relevant and local knowledge and experience to execute the permitting authority assigned to them over this aspect of project design. (5 TR 1191.) The change is not well-captured by the notion of changes within or outside the project footprint, so for avoidance of doubt, Staff supports condition language to afford the Company discretion to make the changes based on final agreements with MDOT and WCRC.

The third change encompasses changes to features within the scope of the Washtenaw County Water Resource Commissioner. The stormwater facilities for the project substation area, and the routing of planned collection lines with drain crossings, are subject to further review and approval by the WCWRC. (5 TR 1191-1192.) As discussed by Staff witness Glass, in Staff's view it is appropriate to defer to the WCWRC to determine the appropriate stormwater mitigation plan and measures, including related to the features subject to change. (5 TR 1192-1193.)

The fourth change encompasses a potential swapping of the substation location, at the request of ITC, limited to the parcel in which the substation is already proposed. (5 TR 1194.) The Company generally represents, and Staff agrees, that changes to the substation limited to the parcel in question are unlikely to create significant additional impacts, such as impacts to nearby residences. *Id.* Considering this, Staff supports granting the Company discretion to make the swap to the substation location at the request of ITC Transmission. *Id.*

Staff's recommended condition language is included below. The condition details the changes that Staff reviewed, clarifying that such changes are considered a part of the project as certified; or, in the alternative, that they are exceptions to the minor change framework granted based on the record provided in the instant case. The Company's condition list in rebuttal testimony included the same language. For the reasons above, the Commission should adopt the following condition:

> Proposed Condition 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.

C. Staff recommends the Commission require the Applicant to obtain necessary permits prior to the start of construction.

Some of the project's proposed activities may require state and local permitting. The application included permits which may be required for project impacts to regulated features in Exhibit A-6.3. (4 TR 473.) Staff recommends a condition be approved by the Commission requiring that the Applicant receive all necessary permits prior to beginning construction on the portion of the project for which the permit is necessary. Furthermore, the Applicant should be required to provide the agency-required plans associated with these permits within the Completion Report. No party rebutted Staff's recommendation regarding necessary state, federal, and local permits.

As such, Staff recommends that the Commission adopt its condition requiring the Applicant 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. This condition states:

> Proposed Condition 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.

XIV. CONCLUSION

Staff recommends that the Commission approve Washtenaw Solar's application for a certificate for siting a solar energy facility in Saline Township, Washtenaw County with the conditions outlined above. Staff's recommendations and conditions strike the right balance between Washtenaw Solar Energy's interests and the interests of local units of government, participating property owners, and the energy, capacity, and resource adequacy needs of the state of Michigan.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

Anna B. Stirling

Anna B. Stirling (P84919)
Adam M. Cozort (P78363)
Assistant Attorneys General
Public Service Division
7109 W. Saginaw Hwy., 3rd Floor
Lansing, MI 48917
Telephone: (517) 284-8140

Dated: September 4, 2026

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, Washtenaw County.	Case No. **U-21962** **(e-file paperless)**

______________________________________/

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

Erin Fielder-Attia, being first duly sworn, deposes and says that on **September 4, 2026,** she served a true copy of **Michigan Public Service Commission Staff's Initial Brief** upon the following parties **via email only:**

Washtenaw Solar Energy, LLC
Richard J. Aaron
Olivia R.C.A. Flower
Jason T. Hanselman
Rowan Conybeare
Melissa A. Goodrich
raaron@dykema.com
oflower@dykema.com
jhanselman@dykema.com
rconybeare@dykema.com
mgoodrich@dykema.com
mpscfilings@dykema.com

Administrative Law Judge
Hon. Christopher S. Saunders
saundersc4@michigan.gov

Tabitha Pop
tabbyfazecas@yahoo.com

Saline Township
Keith T. Brown
Laura J. Genovich
Michael D. Homier
kbrown@fosterswift.com
lgenovich@fosterswift.com
mhomier@fosterswift.com

E.M. Fielder-Attia

Erin Fielder-Attia

Subscribed and sworn to before me
this **4th** day of **September, 2026**.

Cherie A. R. Shea, Notary Public
State of Michigan, County of Jackson
Acting in the County of Eaton
My Commission Expires: 04-13-31