STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **ROUGET ROAD SOLAR FARM, LLC** for a Renewable Energy or Storage Siting Certificate to construct a solar energy facility.	Case No. **U-22003** **(e-file paperless)**

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MICHIGAN PUBLIC SERVICE COMMISSION STAFF'S RESPONSE TO PALMYRA TOWNSHIP'S APPLICATION FOR LEAVE TO APPEAL ALJ'S APRIL 2, 2026 ORDER DENYING TOWNSHIP'S MOTION FOR SUMMARY DISPOSITION

I. Introduction

A threshold issue has been raised in this case by Palmyra Township (Palmyra or the Township) as to whether the statutory requirement of Public Act 233 of 2023 (Act 233) to "hold a public meeting in each affected local unit" rises to the level of divesting the Commission of subject matter jurisdiction. In an April 2, 2026 written ruling (April 2 Ruling), the presiding officer, Administrative Law Judge Sally L. Wallace (ALJ), found that the statutory requirement to hold a public meeting in Palmyra Township is not jurisdictional and that, because there are issues of material fact as to whether there was an appropriate venue in Palmyra Township where a public meeting could be held, the cross-motion of Rouget Road requesting a judgement that it complied with the public meeting requirement of Act 233 was also denied.

On May 8, 2026, Palmyra Township sought leave to appeal the ruling of the ALJ to the Commission (Application for Leave to Appeal). For the reasons outlined below, the Michigan Public Service Commission Staff (Staff) asserts that the

Township's Application for Leave to Appeal should be granted while the relief requested therein should be denied and the April 2 Ruling upheld.

II. **Standard of Review**

Pursuant to the Commission's Rules of Practice and Procedure, during the course of a proceeding, a party may appeal a ruling of the presiding officer by filing an application for leave to appeal the ruling to the Commission. Mich Admin Code, R 792.10433(1).[1]

The burden of proof generally rests on the moving party in Commission cases. *See* MPSC Case No. U-21087, 12/21/2022, p 5; MPSC Case No. U-20829, 1/21/2021 Order, p 12; MPSC Case No. U-5979, 8/28/1975. In relevant part, the Commission's rules of practice and procedure state that the Commission shall grant an application and review the presiding officer's ruling if either of the following provisions apply:

> (a) A decision on the ruling before submission of the full case to the commission for a final decision will materially advance timely resolution of the proceeding; or
>
> (b) A decision on the ruling before submission of the full case to the commission for final decision will prevent substantial harm to the appellant or the public-at-large. [Mich Admin Code R 792.10433(1)(a-b).]

[1] According to Rule 433(1), an application must be filed 14 days after service of a written ruling. A ruling on this matter was served on April 2, 2026, and a ruling on the Motion for Reconsideration was made on April 24, 2026. This Application for Leave to Appeal was filed on May 8, 2026. Staff timely files this response 14 days after the service of the application, consistent with Rule 433(1).

Palmyra Township, as the moving party, addresses the above requirements for demonstrating that it should be granted application for leave to appeal. *See* Palmyra's Application for Leave to Appeal, pp 8-9. Staff agrees that a decision on Palmyra Township's Motion for Summary Disposition before submission of the full case to the Commission would materially advance timely resolution of this proceeding. Nonetheless, Staff asserts that the ALJ properly denied the Township's Motion for Summary Disposition and Motion for Reconsideration. The legal standard for a motion for summary disposition is addressed in further detail below.

III. Response to Palmyra Township's Application for Leave to Appeal

A. Procedural Background

On December 12, 2025, Rouget Road Solar Farm, LLC (Rouget Road or the Applicant) filed this case for approval of a 175 MW photovoltaic array to be located entirely in Palmyra Township in Lenawee County. On February 6, 2026, intervenor Palmyra Township filed a motion for summary disposition on the basis that the Applicant failed to properly invoke the Commission's jurisdiction under Act 233. The Township argued that Act 233 requires an applicant to hold a public meeting "in each affected local unit" before seeking a siting certificate from the Commission and "the Applicant failed to comply with a mandatory, jurisdictional prerequisite before submitting the Application. *See* Palmyra's Motion for Summary Disposition, pp 1-2. On that basis, the Township requested that the Commission grant summary disposition in favor of the Township pursuant to Michigan Administrative Code Rule 792.10426.

On March 6, 2026, Staff and Rouget Road filed responses to Palmyra Township's Motion for Summary Disposition. On March 10, 2026, Palmyra Township attempted to file a "Reply in Support" of its Motion for Summary Disposition.[2] A hearing was held on March 18, 2026, at which Palmyra Township, Rouget Road, and Staff presented oral argument on the Motion for Summary Disposition.

Subsequently, on April 2, 2026, the ALJ issued a written ruling which denied Palmyra Township's Motion for Summary Disposition. On April 16, 2026, Palmyra Township filed a motion for reconsideration of the ALJ's April 2 Ruling denying the Township's Motion for Summary Disposition (Motion for Reconsideration). On April 23, 2025, Staff and Rouget Road filed responses to the Township's Motion for Reconsideration. A hearing was held on May 5, 2026, at which all parties presented oral argument on the Motion for Reconsideration. At the hearing, the ALJ denied the Motion for Reconsideration, finding that "the motion for reconsideration is largely a rehash of the arguments already made . . . ." (3 TR 50.)

On May 8, 2026, Palmyra Township filed its Application for Leave to Appeal the ALJ's April 2 Ruling to the Commission. As stated above, and in the Township's Application, this appeal is properly taken under Rule 433(1) of the Michigan

[2] Staff notes that Palmyra Township was informed by the ALJ that there is no provision for a movant to file a reply brief in the Rules of Practice and Procedure before the Michigan Public Service Commission and filed one regardless of the instruction otherwise. (1 TR 12-13; April 2 Ruling, n 4.) As such, Palmyra Township's response was only considered to the extent it was read into the record by the Township. (2 TR 49; April 2 Ruling, n 4.)

Administrative Code. Staff uses the remainder of this response to respond to the substance of the Township's Application for Leave to Appeal.

B. **Legal Standard**

In its Application for Leave to Appeal, the Township moves under Michigan Administrative Code Rule 792.10426 (Rule 426), contained within the hearing rules for practice and procedure before the Commission which states, in part:

> A party may make a motion for summary disposition of all or part of the proceeding. If the presiding officer determines that there is no genuine issue of material fact or that there has been a failure to state a claim for which relief can be granted, the presiding officer may recommend, to the commission, summary disposition of all or part of the proceeding.

Palmyra also cites Michigan Court Rule 2.116(C)(4), which states that a party may move to dismiss all of a claim by a motion on the grounds that "[t]he court lacks jurisdiction of the subject matter." (MCR 2.116(C)(4); Application for Leave to Appeal, p 9.)

In support of its application, Palmyra Township cites to *Weishuhn* v *Catholic Diocese*, to assert that "[w]hen reviewing a motion under MCR 2.116(C)(4), the Commission must determine whether the pleadings demonstrate that the movant is entitled to judgment as a matter of law, or whether the affidavits and other proofs show that there is no genuine issue of material fact." Application for Leave to Appeal, p 9 (citing *Weishuhn v* Catholic Diocese of Lansing, 279 Mich App 150 (2008)). The Township also cites precedent that jurisdiction "cannot be conferred by consent, by conduct or by waiver or estoppel." Application for Leave to Appeal, p 9 (citing *In re AMB,* 284 Mich App 144, 166 (2001)). Finally, the Townships argue

that whether subject-matter jurisdiction is satisfied is a question of law. Application for Leave to Appeal, p 9 (citing *Phinney v Perlmutter*, 222 Mich App 513, 521 (1997)).

The language of MCR 2.116(C)(10), was invoked in *Weishuhn*, which allows for a motion for summary disposition when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment . . . as a matter of law." The Michigan Supreme Court, in *Maiden v Rozwood*, set forth the standard for evaluating a motion for summary disposition under MCR 2.116(C)(10) as follows:

> A motion under MCR 2.116(C)(10) tests the factual sufficiency of the complaint. In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. [*Maiden v Rozwood*, 461 Mich 109, 119-120 (1999).]

The Commission has recognized the standards of MCR 2.116(C)(10) and MCR 2.116(C)(8) are analogous to Rule 426. MPSC Case No. U-20829, 1/21/21 Order, p 12.

The grounds for the motion to dismiss on lack of subject matter jurisdiction and that there is no genuine issue of material fact should not be considered interchangeable. The Michigan Court Rules state that a motion must specify the grounds on which it is based. MCR 2.116(C). The standard for subject matter jurisdiction was addressed in full by the ALJ in her April 2 Ruling. In support of the ALJ's decision that there is a genuine issue of material fact at issue in this case, and for completeness of the record, both arguments are addressed in further detail below.

C. Arguments

Staff maintains that Rouget Road's Application for a renewable energy siting certificate falls squarely within the Commission's statutorily defined subject matter jurisdiction and that there is a genuine issue of material fact as to whether this is a lack of appropriate facilities to hold required public meetings within Palmyra Township and whether Rouget Road made a good-faith effort to hold the meetings as close to the project as feasible.

1. The ALJ correctly found that the Commission has subject matter jurisdiction over renewable energy siting cases.

The Commission has subject matter jurisdiction over applications for renewable energy siting certificates pursuant to Act 233. With respect to subject matter jurisdiction, the Michigan Court of Appeals has explained that "[s]ubject-matter jurisdiction concerns a body's abstract power to hear a case of the kind or character of the one pending and is not dependent on the particular facts of the case." *Ameritech Mich v Mich PSC*, 254 Mich App 675, 683 (2003) (citing *Campbell v St John Hosp*, 434 Mich. 608, 613–614 (1990)). The Michigan Supreme Court has further explained that:

> Subject-matter jurisdiction is a legal term of art that refers to the authority of the court to exercise judicial power over a class or category of cases. *See People v Washington*, 508 Mich 107, 121; 972 NW2d 767 (2021). If a law specifies that a court has the power to adjudicate a class or category of cases and a case falls within that class or category, the court has subject-matter jurisdiction to hear the case, even if the facts of the case do not entitle the plaintiff to relief. *See Winkler*, 600 Mich at 341 ("The existence of subject matter jurisdiction turns not on the particular facts of the matter before the court, but on its general legal classification.") Because subject-matter jurisdiction is a prerequisite for a court to hear and decide a claim, the court may consider it sua sponte at any time, and parties cannot confer subject-

> matter jurisdiction by their conduct, nor can they waive a subject matter-jurisdiction challenge by not raising it. *See Hillsdale Co Senior Servs, Inc v Hillsdale Co*, 494 Mich 46, 51 n 3; 832 NW2d 728 (2013). [*Michigan Farm Bureau v Department of Environment, Great Lakes, and Energy*, 515 Mich 481, 511-512 (2024).]

Palmyra Township argues, the Commission, "as a creature of statute, derives its authority from the underlying statutes and possesses no common-law powers." Application for Leave to Appeal, p 8 (citing *In re Public Service Comm'n*, 252 Mich App 254, 263 (2002)). The Township then lists limited authorities it derives from the statutory language of Act 233. This argument is misguided as subject matter jurisdiction is not conferred by the specific enumerated powers granted to the Commission by Act 233 and cited to by the Township. Rather, the Commission's subject matter jurisdiction is conferred by the statutory authority to review applications for renewable energy siting certificates.

As recognized by the ALJ on page 15 of her April 2 Ruling, the jurisdictional provisions of Act 233 are contained in Section 222(1) which states:

> (1) This part applies to all of the following:
>
> > (a) Any solar energy facility with a nameplate capacity of 50 megawatts or more.
> >
> > (b) Any wind energy facility with a nameplate capacity of 100 megawatts or more.
> >
> > (c) Any energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more. [MCL 460.1222(1).]

The ALJ stated that "[a]s such, the Commission's authority to issue a certificate under the Act is limited to: (1) wind, solar, and battery storage facilities; and (2)

only those renewable and battery storage projects that meet the size requirements under Section 222(1)(a)-(c). (April 2 Ruling, p 15.)

The Township has not asserted that the Commission is acting outside of its jurisdictional authority to hear cases of this class or category. In fact, the Township has stated in its motion that the Commission may "[g]rant or deny applications and issue certificates." (Application for Leave to Appeal, p 10 (citing MCL 460.1226(5)).) The Commission has the power to hear a case of the kind or character at issue here, as directed by the legislature. As the Michigan Court of Appeals has stated, subject matter jurisdiction is not fact dependent. *Ameritech Mich*, 254 Mich App at 683. The Township's arguments regarding the meeting location, therefore, have no bearing on the question of subject matter jurisdiction.

A motion for summary judgment on the basis that the Commission does not have subject matter jurisdiction should be denied.

2. The ALJ correctly found that there is a genuine issue of material fact in this case.

Palmyra also argues that summary disposition is appropriate pursuant to Mich Admin Code Rule 792.10426, which is analogous to Michigan Court Rule 2.116(C)(10). These rules provide grounds for summary disposition where "there is no genuine issue of material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." Further, the Michigan Supreme Court has established that:

> a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, in the light most favorable to the party opposing the motion. Where the proffered evidence fails to establish a genuine issue regarding any material fact,

> the moving party is entitled to judgment as a matter of law. [*Maiden*, 461 Mich at 120.]

With regard to Palmyra's claim that Rouget Road ignored a statutory mandate to hold a public meeting "in each affected local unit" before seeking a siting certificate from the Commission, there are two significant issues of material fact that have not been addressed in the Township's Application for Leave to Appeal. First, whether there are appropriate facilities to hold required public meetings within the ALU. Second, whether the Applicant made a good faith effort to hold the meetings as close to the project as feasible. Contrary to the allegation of the Township, there is indeed a genuine issue of material fact that prohibits dispositive relief at this juncture. As the ALJ stated in her April 2 Ruling, the cross-motion for a judgement that Rouget Road complied with the requirements of Act 233 was denied "[b]ecause there are issues of material fact as to whether there was an appropriate venue in Palmyra Township where a public meeting could be held." (April 2 Ruling, pp 18-19.) This is further evident upon review of Commission established exception of the public meetings requirement, as discussed further below.

3. The Commission established a reasonable and limited exception to the requirements that public meetings must be held in the ALU where the project is located.

In its Application for Leave to Appeal, Palmyra asserts that "Section 223(1) contains no exceptions. For instance, there is no exception that allows an Applicant to hold the required public meeting in a neighboring jurisdiction if there is not a meeting space of adequate size available in the ALU." (Palmyra's Application for

Leave to Appeal, p 12.) The Commission has provided for such an exception through its Application Filing Instructions and Procedures.

As Palmyra Township acknowledges, Act 233 "expressly grants the Commission limited authority in administering its provisions." (Application for Leave to Appeal, p 10.) Amongst the powers and duties granted to the Commission is establishing application filing requirements by rule or order to maintain consistency between applications. *See* MCL 460.1224(1).

Section 223(1) of Act 233 mandates that "an electric provider or independent power producer that … proposes to obtain a certificate for and construct an energy facility shall hold a public meeting in each affected local unit." MCL 460.1223(1). The Commission acknowledged this mandate in its October 10, 2024 Order, in MPSC Case No. U-21547. The Commission adopted a procedural exception to this requirement that states:

> Public meetings must be held in each ALU . . . Exceptions due to a lack of appropriate facilities to hold required public meetings within the ALU where the project is located will be considered on a case-by-case basis upon a showing of a good faith effort to hold the meetings as close to the project as feasible. [MPSC Case No. U-21547, 10/21/2024 Errata to the Commission's 10/10/2024 Order, p 44.]

In its Application for Leave to Appeal, the Township claims that "statute plainly requires location-specific meetings, among other things. These mandates are not subject to flexibility or interpretations such as 'substantial compliance'—they are clear, enforceable, and must be followed precisely." (Palmyra's Application for Leave to Appeal, p 12.)

Palmyra Township relies on the reasoning of the Court of Appeals (COA) in its recent opinion in Docket No. 373259, stating "the Court of Appeals held that the

Commission improperly construed portions of PA 233 in the Order." (Palmyra's Application for Leave to Appeal, pp 13-14.) As Staff iterated during oral argument on the Motion for Summary Disposition, and the ALJ acknowledged, the location of a public meeting was not at issue in COA Docket No. 373259. (2 TR 70-71; April 2 Ruling, p 14.) The Commission should disregard any attempt to expand the scope of that decision to all requirements of the Commission's Application Filing Instructions and Procedures.

The outstanding question remains whether there are appropriate facilities to hold required public meetings in Palmyra Township. The Township has not demonstrated in its Motion for Summary Disposition, Motion for Reconsideration, or this Application for Leave to Appeal, that there is an appropriate facility within the Township to hold the public meeting. Nor has it demonstrated that the Applicant did not show a good faith effort to hold the meetings as close to the project as feasible.

Complicating the absence of supporting evidence from the Township, Rouget Road asserts that, "[i]n July 2025, the Township instructed Rouget Road that the Township would 'not rent the [Township Hall] building' for a public meeting," and the Township clerk's seeming agreement that "the American Legion would be a good place" for a public meeting. Rouget Road's Response to Palmyra's Motion for Summary Disposition, p 1, Exhibit 1. There is also the acknowledgement by the ALJ that "[s]everal landowner intervenors stated that there were two buildings in Palmyra that were suitable for hosting the public meeting." (April 2 Ruling, p 14, n 37; 2 TR 72-74.)

Staff cannot speak at this time to the availability of facilities to hold the public meeting. Yet, what appears clear is that there are genuine issues of material fact as to whether there were appropriate facilities to hold the public meeting in this case. As the Township had not met the burden of proving otherwise, the motion for summary judgment underlying this Application for Leave to Appeal should be denied.

IV. **Conclusion**

Staff respectfully requests the Commission approve the Township's Application for Leave to Appeal as it would advance timely resolution of this proceeding. However, Staff argues that the relief requested therein should be denied because it incorrectly asserts that the Commission lacks subject matter jurisdiction and because there is a genuine issue of material fact that remains to be resolved in this case. As a result, summary disposition of this case pursuant to Mich Admin R 792.10426, which is analogous to Michigan Court Rule 2.116(C)(10), or MCR 2.116(C)(4), would be inappropriate.

Respectfully submitted,

MICHIGAN PUBLIC SERVICE COMMISSION STAFF

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DATED: May 22, 2026

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the application of **ROUGET ROAD SOLAR FARM, LLC.** for a Renewable Energy or Storage Siting Certificate to construct a solar energy facility. /	Case No. **U-22003** (e-file paperless)

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss
COUNTY OF EATON)

De Ann M. Payne, being first duly sworn, deposes and says that on **May 22, 2026,** she served a true copy of **Michigan Public Service Commission Staff's Response to Palmyra Township's Motion for Leave to Appeal** upon the following parties **via email only:**

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De Ann M. Payne

Subscribed and sworn to before me
this **22nd** day of **May, 2026**.

E. M. Fielder-Attia, Notary Public
State of Michigan, County of Jackson
Acting in the County of Eaton
My Commission Expires: 07-09-2031