

VARNUM

Bridgewater Place | Post Office Box 352
Grand Rapids, Michigan 49501-0352

Justin K. Ooms
Admitted in Illinois and Michigan

Direct 616 / 336-6374
jkooms@varnumlaw.com

August 7, 2026

Ms. Lisa Felice
Executive Secretary
Michigan Public Service Commission
7109 W. Saginaw Highway
P.O. Box 30221
Lansing, MI 48909

Re: MPSC Case No. U-22036

Dear Ms. Felice:

Attached for electronic filing in the above-captioned matter please find MI Energy Developments, LLC's Response to the Petition to Intervene of Sanilac County and Motion to Extend Act 233 Statutory Deadline along with Proof of Service of same.

Thank you for your assistance in this matter.

Very truly yours,

VARNUM



Justin K. Ooms

JKO/plf
Attachment(s)
c: Parties of record as noted

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of MI	)	
ENERGY DEVELOPMENTS, LLC for a	)	
certificate for the siting of a Wind Energy	)	Case No. U-22036
Facility in Fremont Township, Speaker	)	
Township, and Elk Township in Sanilac	)	
County, pursuant to Public Act 233 of 2023.	)	
_____	)	

MI ENERGY DEVELOPMENTS, LLC’S
RESPONSE TO THE
PETITION TO INTERVENE OF SANILAC COUNTY
AND
MOTION TO EXTEND ACT 233 STATUTORY DEADLINE

Justin K. Ooms
Timothy J. Lundgren
David T. Caldon
Haylee N. Skank
VARNUM LLP
Attorneys for the
MI Energy Developments, LLC
333 Bridge Street, NW, Suite 1700
Grand Rapids, MI 49504
(616) 336-6374

Contents

I.	INTRODUCTION AND BACKGROUND	1
II.	RESPONSE TO SANILAC COUNTY PETITION TO INTERVENE	3
III.	MOTION TO EXTEND STATUTORY DEADLINE	4
IV.	CONCLUSIONS AND PRAYER FOR RELIEF	7

STATE OF MICHIGAN
BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of MI	)	
ENERGY DEVELOPMENTS, LLC for a	)	
certificate for the siting of a Wind Energy	)	Case No. U-22036
Facility in Fremont Township, Speaker	)	
Township, and Elk Township in Sanilac	)	
County, pursuant to Public Act 233 of 2023.	)	
_____	)	

**MI ENERGY DEVELOPMENTS, LLC’S
RESPONSE TO THE
PETITION TO INTERVENE OF SANILAC COUNTY
AND
MOTION TO EXTEND ACT 233 STATUTORY DEADLINE**

I. INTRODUCTION AND BACKGROUND

MI Energy Developments, LLC (the “Applicant”), by its counsel, VARNUM LLP, hereby responds to the petition to intervene filed in this proceeding on July 27, 2026 by Sanilac County and moves for extension of the statutory deadline applicable to this case.

On February 2, 2026, the Applicant opened this proceeding by filing its application for a certificate for the siting of the Riverbend Wind energy facility (“Riverbend Wind” or the “Project”) pursuant to Public Act 233 of 2023 (“Act 233”). On March 20, 2026, the Michigan Public Service Commission Staff (“Staff”) filed an incompleteness memorandum indicating certain deficiencies with the Applicant’s February 2, 2026 application preventing the Staff from finding the application administratively complete. On April 30, 2026, the Applicant filed a revised application that addressed the deficiencies identified in the Staff’s incompleteness memorandum. On June 29, 2026, the 60-day administrative completeness review period under Act 233 expired, rendering the April 30, 2026 application complete by operation of law. MCL 460.1225(2) (“If the commission

fails to timely notify the applicant that an application is incomplete, the application is considered to be complete.”).

Meanwhile, on May 7, 2026, the Michigan Court of Appeals issued a published opinion in *In re Implementing the Provisions of Public Act 233 of 2023*, which affirmed in part and reversed in part the Michigan Public Service Commission’s (“MPSC” or “Commission”) order from October 10, 2024, in Case No. U-21547. Relevantly for the purposes of this proceeding, the Court of Appeals reversed the Commission’s finding that an “affected local unit” under Act 233 included only those local units of government with zoning jurisdiction over a proposed energy facility. Rather, the Court of Appeals found that all geographical local units of government in which a proposed energy facility would be located, regardless of whether or not such local units of government had zoning jurisdiction over the proposed project, are “affected local units” under Act 233. *In re Implementing Act 233*, slip op at 11–13 (See Appendix A). On June 18, 2026, appellants in *In re Implementing Act 233*, which include Sanilac County, filed an application for leave to appeal portions of the Court of Appeals’ May 7, 2026 opinion. (See Appendix B.) On July 16, 2026, the Commission and intervening appellees the Michigan Energy Innovation Business Council, the Institute for Energy Innovation, Clean Grid Alliance, and Advanced Energy United filed applications for leave to cross-appeal the Court of Appeals’ opinion, including the Court of Appeals’ holding that the scope of the statutory term “affected local unit” extends beyond local units of government with zoning jurisdiction. (See Appendices C & D.)

Under MCR 7.215(E)(1), “When the Court of Appeals disposes of . . . an appeal . . . its opinion or order is its judgment.” Under MCR 7.215(F)(1)(a), “[T]he Court of Appeals judgment is effective after the expiration of the time for filing an application for leave to appeal in the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme

Court.” Nonetheless, under MCR 7.215(C)(2), “A published opinion of the Court of Appeals has precedential effect under the rule of stare decisis. The filing of an application for leave to appeal in the Supreme Court or a Supreme Court order granting leave to appeal does not diminish the precedential effect of a published opinion of the Court of Appeals.” This tribunal thus now stands in the awkward procedural position of being bound both by an order of the Commission against which the Court of Appeals’ judgment has not yet been—and is not yet permitted to be—executed (per MCR 7.215(F)(1)(a)) and by a published opinion of the Court of Appeals that has “precedential effect” (per MCR 7.215(C)(2)) despite the pending appeals.

II. RESPONSE TO SANILAC COUNTY PETITION TO INTERVENE

On July 27, 2026, Sanilac County filed a Petition to Intervene (the “Petition”) on the basis of the Court of Appeals’ May 7, 2026 opinion, seeking to become an intervening party to this proceeding. In doing so, Sanilac County “does not concede that this Application is properly pending before the Commission, that MI Energy Developments complied with the mandatory pre-application procedures specified in PA 233, or that MI Energy Developments’s June 30, 2026, offer to meet with the Chair of the County Board of Commissioners satisfies those same requirements” and “reserves the right to seek dismissal of the Application on those bases and all others that may be appropriate.” *Id.*

Given the current murkiness present in the law governing this proceeding, and in order to avoid unnecessary procedural controversies and the corresponding waste of judicial and party resources in resolving such controversies, the Applicant does not object to Sanilac County’s being admitted as an intervening party to this proceeding. In doing so, however, the Applicant does not concede that Sanilac County is an affected local unit for purposes of Act 233 or that Sanilac County may intervene by right under Act 233, issues which remain pending before the Michigan Supreme Court. (See Appendices C & D.)

III. MOTION TO EXTEND STATUTORY DEADLINE

Alongside its request to intervene in this proceeding, Sanilac County has requested a “modification to the case schedule to allow it the full one-year period contemplated by PA 233 to litigate the case and to coordinate its efforts with current Intervenor Speaker Township and Fremont Townships.” Petition at 4.

Under Act 233, “The Commission shall grant the application and issue a certificate or deny the application not later than 1 year after a complete application is filed.” MCL 460.1226(5). By operation of law, the Applicant’s pending application, filed on April 30, 2026, was deemed complete on June 29, 2026, 60 days following its filing date. MCL 460.1225(2). The Commission is thus bound to issue a certificate or deny the application not later than April 30, 2027, one year after the Applicant’s complete application was filed.

As the Commission has explicitly recognized in the context of other proceedings that are subject to a statutory deadline:

[T]he filing utility is the only entity involved in a rate case (which *includes the parties, the presiding officer, and the Commissioners*) that is authorized to seek an extension of the 10-month rate case deadline per MCL 460.6a(5). As parties who practice before the Commission on a regular basis are aware, these statutory mandates are challenging to meet [and] inflexible.

July 10, 2025 Order in Case No. U-21637 at 36 (emphasis added). The Applicant thus has the exclusive right to seek an extension to the one-year statutory deadline applicable to this proceeding.

Given the unique circumstances created by the Court of Appeals’ May 7, 2026 opinion and Sanilac County’s resulting late intervention, the Applicant agrees to waive the statutory deadline provided in MCL 460.1226(5) conditioned on the Commission’s issuance of an order within 42 days of the deadline otherwise required by MCL 460.1226(5). This 42-day (*i.e.*, 6-week) extension to the statutory deadline applicable to this case is sufficient to place Sanilac County in substantially

the same position as the other intervenors under the current schedule. Measuring from July 1, 2026, the date on which the prehearing for the current application occurred, to August 10, 2026, the hearing at which Sanilac County is anticipated to be admitted as an intervenor to this proceeding, yields 41 days. Adding one additional day serves to ensure that extended filing dates remain on the same day of the week that they fall under the current schedule. Applying this extension to the current schedule yields the following revised schedule:

Schedule Filing	Current Schedule Date	Proposed Extended Schedule Date
Staff and Intervenor Testimony	October 1, 2026	November 12, 2026
Dispositive Motion – Lack of Jurisdiction; Failure to State a Claim (MCR 2.116(C)(1), (2), (8))	October 12, 2026	November 23, 2026
Rebuttal Testimony	October 30, 2026	December 11, 2026
Motions to Strike	November 5, 2026	December 17, 2026
Responses to Motions to Strike	November 12, 2026	December 23, 2026 ¹
Dispositive Motion – No Issue of Fact (MCR 2.116(C)(10))	November 23, 2026	January 4, 2027
Briefs	December 18, 2026	February 5, 2027 ²
Reply Briefs	January 22, 2027	March 5, 2027
PFD Target Date	March 5, 2027	April 16, 2027
Commission Order Deadline	April 30, 2027	June 11, 2027

¹ A 42-day extension of this deadline would yield a filing date of Christmas Eve, December 24. As such, the Applicant proposes to move the date up to December 23, 2026.

² In order to accommodate cross-examination around the holidays (and because additional time was previously built into the schedule between initial briefs and reply briefs for a similar reason), the Applicant proposes to move both the cross-examination hearings and initial briefs back 49 days/7 weeks.

Schedule Hearing		
Cross-Exam	November 18-20, 2026	January 6–8, 2027 ³

The Applicant therefore moves that this tribunal adopt the revised schedule set forth above, subject to the condition that the Commission issue its one-year order by June 11, 2027, and subject to additional reasonable changes that the parties may request and/or that the presiding officer may deem reasonable and necessary.

[Remainder of Page Intentionally Blank]

³ A 42-day extension of this deadline would yield hearing dates that include both New Year's Eve and New Year's Day. As such, the Applicant proposes to move the date of the hearings back to January 6–8, 2027.

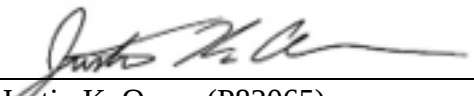
IV. CONCLUSIONS AND PRAYER FOR RELIEF

WHEREFORE, MI Energy Developments, LLC respectfully submits its non-objection to Sanilac County's being admitted as an intervening party to this case on the condition that its non-objection not be construed as a concession that Sanilac County is an affected local unit under Act 233. In addition, MI Energy Developments, LLC moves that the statutory deadline applicable to this case be extended for a maximum of 42 days and that the dates provided in the present schedule governing this case be modified accordingly and correspondingly.

Respectfully submitted,

VARNUM LLP
Attorneys for MI Energy Developments, LLC

August 7, 2026

By: 
Justin K. Ooms (P82065)
Timothy J. Lundgren (P62807)
David T. Caldon (P62828)
Haylee N. Skank (P88995)
333 Bridge Street NW
Suite 1700
Grand Rapids, MI 49504
(616) 336-6374

29549071.3

Appendix A

May 7, 2026 Order of Michigan Court of Appeals in *In re Implementing the Provisions of Public Act 233 of 2023*

See Attached.

STATE OF MICHIGAN
COURT OF APPEALS

In re IMPLEMENTING PROVISIONS OF PUBLIC
ACT 233 OF 2023.

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

FOR PUBLICATION
May 07, 2026
1:20 PM

and

MICHIGAN ENERGY INNOVATION BUSINESS
COUNCIL, INSTITUTE FOR ENERGY
INNOVATION, CLEAN GRID ALLIANCE, and
ADVANCED ENERGY UNITED,

Intervening Appellees,

v

ALMER CHARTER TOWNSHIP, ARGENTINE
TOWNSHIP, AUGUSTA CHARTER TOWNSHIP,
BEAVER TOWNSHIP, BENGAL TOWNSHIP,
BINGHAM TOWNSHIP, BLISSFIELD
TOWNSHIP, BRIDGEHAMPTON TOWNSHIP,
BROCKWAY TOWNSHIP, CASCADE CHARTER
TOWNSHIP, CATO TOWNSHIP, CLINTON
COUNTY, COHOCTAH TOWNSHIP, COLUMBIA
TOWNSHIP, COLUMBUS TOWNSHIP,
CONWAY TOWNSHIP, COOPER CHARTER
TOWNSHIP, DALLAS TOWNSHIP, DEERFIELD
TOWNSHIP, DENMARK TOWNSHIP,
DOUGLASS TOWNSHIP, DUPLAIN TOWNSHIP,
EAGLE TOWNSHIP, EASTON TOWNSHIP,
ELLINGTON TOWNSHIP, ELMWOOD
TOWNSHIP, ESCANABA TOWNSHIP,
FRANKENLUST TOWNSHIP, FREMONT
TOWNSHIP, GARDEN TOWNSHIP, GARFIELD

No. 373259
Public Service Commission
LC No. 00-021547

TOWNSHIP, GENOA TOWNSHIP, HANDY
TOWNSHIP, IDA TOWNSHIP, INGHAM
TOWNSHIP, IONIA COUNTY, IOSCO
TOWNSHIP, ISABELLA TOWNSHIP, JOYFIELD
TOWNSHIP, JUNIATA TOWNSHIP,
KAWKAWLIN TOWNSHIP, KEENE TOWNSHIP,
KIMBALL TOWNSHIP, LAKE TOWNSHIP,
LEROY TOWNSHIP, MARION TOWNSHIP,
MARION TOWNSHIP, MILAN TOWNSHIP,
MONITOR CHARTER TOWNSHIP, MONTAGUE
TOWNSHIP, MONTCALM TOWNSHIP, MOORE
TOWNSHIP, NORTH BRANCH TOWNSHIP,
OGDEN TOWNSHIP, ORLEANS TOWNSHIP,
RIGA TOWNSHIP, SANILAC COUNTY,
SCHOOLCRAFT COUNTY, SEVILLE
TOWNSHIP, SHIAWASSEE COUNTY, SIDNEY
TOWNSHIP, SPEAKER TOWNSHIP,
STOCKBRIDGE TOWNSHIP, SUMMERFIELD
TOWNSHIP, TUSCOLA COUNTY, TYRONE
TOWNSHIP, VENICE TOWNSHIP, WALES
TOWNSHIP, WATERLOO TOWNSHIP,
WATERTOWN TOWNSHIP, WHITE OAK
TOWNSHIP, WHITE RIVER TOWNSHIP,
WILLIAMS CHARTER TOWNSHIP, WORTH
TOWNSHIP, YORK CHARTER TOWNSHIP, and
PARIS TOWNSHIP,

Appellants.

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

MURRAY, J.

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

I. BACKGROUND

A. 2023 PA 233

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

The new Part 8 added by PA 233 applies to “[a]ny solar energy facility with a nameplate capacity of 50 megawatts or more,” MCL 460.1222(1)(a), “[a]ny wind energy facility with a nameplate capacity of 100 megawatts or more,” MCL 460.1222(1)(b), and “[a]ny energy storage facility with a nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more,” MCL 460.1222(1)(c). Pertinent to determining whether the PSC has authority to approve such facilities is whether a local unit of government lacks a “compatible renewable energy ordinance” (CREO), which is statutorily defined as:

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

An ALU “means a unit of local government in which all or part of a proposed energy facility will be located,” MCL 460.1221(a), while “ ‘Local unit of government’ or ‘local unit’ means a county, township, city, or village,” MCL 460.1221(n).

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

At least 60 days before the public meeting, the developer must offer in writing to meet with the chief elected official of each ALU, or the chief elected official’s designee, to discuss the site

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

plan. MCL 460.1223(2). If such a meeting occurs, and the chief elected official of each ALU notifies the developer within 30 days following such a meeting that the ALU has a CREO, the developer generally must seek approval of the facility from that ALU. MCL 460.1223(3). An ALU must approve or deny the developer's application within 120 days, although the developer and the ALU may jointly agree to extend the deadline by up to another 120 days. MCL 460.1223(3)(b).

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

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

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

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

The PSC is required to "conduct a proceeding on the application for a certificate as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328." MCL 460.1226(3). The PSC "shall grant the application and issue a certificate or deny the application not later than 1 year after a complete application is filed." MCL 460.1226(5). In evaluating the application, the PSC is required to consider feasible alternative developed locations if the proposed site is on undeveloped land, as well as the effect of the proposed facility on local land use, including the percentage of land dedicated to energy generation. MCL 460.1226(6). The PSC must also consider whether the proposed facility meets certain enumerated standards to ensure it does not pose an unreasonable threat to public health or safety. MCL 460.1226(7)(g) and (8).

MCL 460.1230(1) provides that, "[i]n administering this part, the commission has only those powers and duties granted to the commission under this part," with the Legislature specifying that "[t]his part shall control in any conflict between this part and any other law of this state. However, the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575, controls in any conflict with this part," MCL 460.1230(3). Further, "[i]f a certificate is issued, the certificate and this part preempt a local policy, practice, regulation, rule, or other ordinance that prohibits, regulates, or imposes additional or more restrictive requirements than those specified in

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

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

B. PSC ORDER

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

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

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

Also noteworthy, according to the PSC, was that under the MZEA, “the zoning jurisdiction of a county does not include areas subject to a township zoning ordinance,” and therefore it was viewed as “impossible for a county to have an applicable CREO if a township has enacted a CREO.” Therefore, “the term ALU should be restricted to only those local units of government that exercise zoning jurisdiction.” Additionally, “all the circumstances that trigger the Commission’s limited authority to site energy facilities necessarily require a local unit of government to exercise zoning jurisdiction.” According to the PSC, “although the statutory

definition of ALU does not reference zoning jurisdiction, reading the term in light of the entire context of Act 233’s statutory scheme to provide a limited transfer of siting authority to the Commission reveals that such a restriction is not only reasonable, but necessary.” The PSC therefore concluded “that an ALU under Act 233 is limited to include only those local units of government that exercise zoning jurisdiction.”

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

II. ANALYSIS

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

A. RIPENESS

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

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

The PSC takes the position that appellants have yet to suffer an injury, noting that PA 233 took effect on November 29, 2024, three weeks after this appeal was filed. According to the PSC, as of February 7, 2025, no applications for siting certificates had been filed with it, and it has not

yet imposed on appellants any of the interpretations set forth in its October 10, 2024 order.² For their part, appellants note that some of them have received written offers to meet from developers. The PSC responds that this does not establish that any application will necessarily be filed in the PSC, and that ALUs would have an opportunity to challenge the PSC's interpretations of PA 233 if and when a contested case proceeding takes place, including in any appeal from an order that is appealable under MCL 462.26(1). The PSC thus opines that appellants' arguments are premised on contingent future events and are not at this juncture ripe.

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

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

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

B. THE PSC’S INTERPRETATION OF THE STATUTE

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

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

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

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

1. CREO

With respect to appellants’ argument that the PSC erred in its interpretation of the term CREO, the Legislature defined “CREO” as:

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

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

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

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

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

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

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

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

³ MCL 460.1231(5) provides:

Except as provided in this section, this part does not exempt an electric provider or IPP to whom a certificate is issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that is required by federal law, any other law of this state, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451,

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

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

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

In challenging the PSC’s interpretation of the term CREO, appellants also rely on *In re Procedure & Format for Filing Tariffs Under Mich Telecom Act*, 210 Mich App 533, 548-550; 534 NW2d 194 (1995), where the PSC defined the phrase “access services” that was used in a telecommunications statute, *id.* at 548. Although the phrase “access services” was not statutorily defined, the term “access” was. *Id.* This Court stated that “[t]he Legislature used ‘access’ and

MCL 324.101 to 324.90106, any rule promulgated under a law of this state, or a local ordinance.

‘access services’ interchangeably in [the statute], and consequently there was no need for the PSC to establish a special definition for ‘access service.’ ” *Id.* at 549. We held that “[t]he PSC’s definition of ‘access service’ is erroneous to the extent that it departs from the definition of ‘access’ provided by the Legislature.” *Id.* That holding has no relevance here, as the Legislature did not define a subcomponent of the term CREO and use that defined subcomponent interchangeably with the term CREO itself, and the PSC did not provide a definition of CREO that differed from the legislative definition. The PSC properly interpreted the term CREO in accordance with the statutory definition and the statute as a whole.⁴

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

2. ALU

We now turn to appellants’ argument that the PSC erred in interpreting the term ALU to include only those units of local government that exercise zoning jurisdiction. To that point, PA 233 defines an ALU as “a unit of local government in which all or part of a proposed energy facility will be located.” MCL 460.1221(a). “ ‘Local unit of government’ or ‘local unit’ means a county, township, city, or village.” MCL 460.1221(n). Thus, the Legislature provided a purely geographic definition of an ALU, as being an ALU depends exclusively on whether a proposed energy facility will be located (even in part) within a local unit of government’s borders.

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

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

purpose should, if possible, be read together to create a harmonious body of law.” *People v Mazur*, 497 Mich 302, 313; 872 NW2d 201 (2015).

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

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

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

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

Moreover, the PSC noted that PA 233 transfers siting authority to the PSC in four limited circumstances, and each involve a local unit that has zoning jurisdiction. Those four circumstances are: (1) “[a] local unit of government exercising zoning jurisdiction” asks the PSC to require a developer to obtain a certificate from the PSC, MCL 460.1222(2); (2) an ALU fails to timely approve or deny a developer’s application under the local siting process, MCL 460.1223(3)(b), (c)(i); (3) a developer’s application under the local siting process complies with the requirements of MCL 460.1226(8), but an ALU denies the application, MCL 460.1223(3)(c)(ii); and (4) an ALU amends its zoning ordinance after its chief elected official notifies the developer that the ALU has a CREO, “and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in [MCL 460.1226(8)],” MCL 460.1223(3)(c)(iii). The PSC also quoted language from MCL 460.1221(f) stating that “[a] local unit of government is considered not to have a [CREO] if it has a moratorium on the development of energy facilities in effect within its jurisdiction.”

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

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

C. HYBRID FACILITIES

Appellants next argue that the PSC improperly added the term “hybrid facilities” to the list of energy facilities to which PA 233 applies, thereby inappropriately expanding its jurisdiction to include this new category of facilities.

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

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

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

Appellants object to this method, suggesting that, by allowing multiple technology types to be used to meet the applicable capacity threshold, the PSC expanded its “authority over smaller projects that band together to avoid local zoning regulations.” But appellants fail to articulate a reason why the relative proportion of each technology type may not be considered when determining whether the applicable capacity threshold has been satisfied. No basis exists to exclude part of a facility’s capacity when assessing whether the capacity threshold is met. Overall,

⁷ MCL 460.1221(w) defines “[s]olar energy facility” as including “energy storage facilities,” and MCL 460.1221(x) defines “[w]ind energy facility” as including “energy storage facilities.”

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

and in light of the statutory definitions, appellants fail to establish that the PSC erred with respect to the recognition of hybrid facilities.

D. TIMELINE

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

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

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

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

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

In their briefs on appeal, the PSC and intervening appellees express concern that an ALU could unreasonably delay meeting with a developer and thereby upend the entire PA 233 process. But our concern is what the statute requires, and MCL 460.1223(3) unambiguously provides that the 30-day timeline begins with the meeting itself. Unambiguous statutory language must be enforced as written, *In re Implementing Section 6w of 2016 PA 341 for Cloverland Electric Coop*, 329 Mich App 163, 177-178; 942 NW2d 38 (2019), and the PSC erred in implementing a timeline different than that required by law.

E. APA

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

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

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

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

* * *

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

* * *

(j) A decision by an agency to exercise or not to exercise a permissive statutory power, although private rights or interests are affected. [MCL 24.207.]

Therefore, under MCL 24.207(h) and (j), an agency may interpret a statute or exercise a permissive statutory power without engaging in formal rulemaking.

“An executive agency’s power derives from statute. Yet an agency has the authority to interpret the statutes it administers and enforces.” *O’Halloran*, 515 Mich at 635-636 (citation omitted). The PSC thus “has the authority to interpret the statutes it administers and enforces.” *In re Reliability Plans II*, 505 Mich at 119. “[A]n interpretive statement in itself lacks the force and effect of law because it is the underlying statute that determines how an entity must act, i.e., that alters the rights or imposes obligations.” *O’Halloran*, 515 Mich at 637 (quotation marks and citation omitted). “[W]here an agency policy interprets or explains a statute or rule, the agency need not promulgate it as a rule even if it has a substantial effect on the rights of a class of people because an interpretive statement is not, by definition, a rule under the APA.” *Faircloth*, 232 Mich App at 404. “Even if a regulated entity does not comply with the statement, the interpretive

statement does not bind an administrative law judge to sanction an entity in an enforcement action, nor does it bind a court on judicial review.” *Mich Farm Bureau v Dep’t of Environment, Great Lakes, & Energy*, 515 Mich 481, 524; 28 NW3d 629 (2024). Also, “statements explaining how an agency plans to exercise a discretionary power are usually considered to lack the force and effect of law.” *Id.* “[S]tatements announcing a policy the agency plans to establish in future adjudications generally lack the force and effect of law.” *Id.* at 526.

In the challenged order, the PSC provided interpretations of provisions of PA 233, including with respect to the statutory terms CREO and ALU and the concept of hybrid facilities. The fact that the PSC misinterpreted portions of the statute does not mean that the PSC enacted a rule subject to APA rulemaking requirements. “[A]n interpretive statement that goes beyond the scope of the law may be challenged when it is in issue in a judicial proceeding. An interpretation not supported by the enabling act is an invalid interpretation, not a rule.” *O’Halloran*, 515 Mich at 637-638 (quotation marks and citation omitted). Through this order the PSC did not establish a regulation or policy having the force and effect of law. Rather, the PSC interpreted the relevant statutes, which did not require rulemaking.

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

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

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

The procedural history significantly undercuts appellants’ position.

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

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

/s/ Christopher M. Murray

/s/ Michael F. Gadola

/s/ Michael J. Kelly

Appendix B

Application for Leave to Appeal of Appellants in *In re Impelementing the Provisions of Public Act 233 of 2023*

See Attached.

STATE OF MICHIGAN
IN THE SUPREME COURT

*In re Implementing Provisions of Public Act 233
of 2023*

Court of Appeals No. 373259
PSC Case No. U-21547

MICHIGAN PUBLIC SERVICE
COMMISSION,

Appellee,

and

MICHIGAN ENERGY INNOVATION
BUSINESS COUNCIL, INSTITUTE FOR
ENERGY INNOVATION, CLEAN GRID
ALLIANCE, AND ADVANCED ENERGY
UNITED,

Intervening Appellees,

v

ALMER CHARTER TOWNSHIP; ARGENTINE
TOWNSHIP; AUGUSTA CHARTER
TOWNSHIP; BEAVER TOWNSHIP (BAY
COUNTY); BENGAL TOWNSHIP; BINGHAM
TOWNSHIP (CLINTON COUNTY);
BLISSFIELD TOWNSHIP;
BRIDGEHAMPTON TOWNSHIP;
BROCKWAY TOWNSHIP; CASCADE
CHARTER TOWNSHIP; CANTON CHARTER
TOWNSHIP; CATO TOWNSHIP; CLINTON
COUNTY; COHOCTAH TOWNSHIP;
COLUMBIA TOWNSHIP (VAN BUREN
COUNTY); COLUMBUS TOWNSHIP (ST
CLAIR COUNTY); CONWAY TOWNSHIP;
COOPER CHARTER TOWNSHIP; DALLAS
TOWNSHIP; DEERFIELD TOWNSHIP
(LENAWEE COUNTY); DENMARK
TOWNSHIP; DICKINSON COUNTY;
DOUGLASS TOWNSHIP; DUPLAIN
TOWNSHIP; EAGLE TOWNSHIP; EASTON
TOWNSHIP; ELLINGTON TOWNSHIP;

**APPELLANT'S APPLICATION
FOR LEAVE TO APPEAL**

ORAL ARGUMENT REQUESTED

**THIS APPEAL INVOLVES A
RULING THAT A PROVISION
OF THE CONSTITUTION, A
STATUTE, RULE OR
REGULATION, OR OTHER
STATE GOVERNMENTAL
ACTION IS INVALID.**

June 18, 2026

RECEIVED by MSC 6/18/2026 9:15:57 PM

ELMWOOD TOWNSHIP; ESCANABA
TOWNSHIP; FRANKENLUST TOWNSHIP;
FREMONT TOWNSHIP (SANILAC
COUNTY); GARDEN TOWNSHIP; GARFIELD
TOWNSHIP (BAY COUNTY); GENOA
TOWNSHIP; HANDY TOWNSHIP; IDA
TOWNSHIP; INGHAM TOWNSHIP; IONIA
COUNTY; IOSCO TOWNSHIP; ISABELLA
TOWNSHIP; JOYFIELD TOWNSHIP;
JUNIATA TOWNSHIP; KAWKAWLIN
TOWNSHIP; KEENE TOWNSHIP; KIMBALL
TOWNSHIP; LAKE TOWNSHIP (HURON
COUNTY); LEROY TOWNSHIP (INGHAM
COUNTY); MAPLE VALLEY TOWNSHIP
(MONTCALM COUNTY); MARION
TOWNSHIP (LIVINGSTON COUNTY);
MARION TOWNSHIP (SANILAC COUNTY);
MILAN TOWNSHIP; MONITOR CHARTER
TOWNSHIP; MONTAGUE TOWNSHIP;
MONTCALM TOWNSHIP; MOORE
TOWNSHIP; NORTH BRANCH TOWNSHIP;
OGDEN TOWNSHIP; ORLEANS TOWNSHIP;
PARIS TOWNSHIP; RIGA TOWNSHIP;
SANILAC COUNTY; SCHOOLCRAFT
COUNTY; SEVILLE TOWNSHIP;
SHIAWASSEE COUNTY; SIDNEY
TOWNSHIP; SPEAKER TOWNSHIP;
STOCKBRIDGE TOWNSHIP;
SUMMERFIELD TOWNSHIP (MONROE
COUNTY); TUSCOLA COUNTY; TYRONE
TOWNSHIP (LIVINGSTON COUNTY);
VENICE TOWNSHIP; WALES TOWNSHIP;
WATERLOO TOWNSHIP; WATERTOWN
TOWNSHIP (SANILAC COUNTY); WHITE
OAK TOWNSHIP; WHITE RIVER
TOWNSHIP; WILLIAMS CHARTER
TOWNSHIP; WORTH TOWNSHIP; AND
YORK CHARTER TOWNSHIP

Michael D. Homier (P60318)
Laura J. Genovich (P72278)
Keith T. Brown (P84193)
FOSTER, SWIFT, COLLINS & SMITH, PC
Attorneys for Appellants
1700 E. Beltline Ave. NE, Suite 200
Grand Rapids, MI 49525
(616) 726-2200

Nicholas Q. Taylor (P81020)
Anna B. Stirling (P84919)
ASSISTANT ATTORNEYS GENERAL – PUBLIC
SERVICE DIVISION
Attorneys for Appellee
7109 W. Saginaw Highway, 3rd Floor
Lansing, MI 48917
(517) 284-8140

Laura Chappelle (P42052)
Timothy J. Lundgren (P62807)
Brion B. Doyle (P67870)
Justin Ooms (P82065)
Regan A. Gibson (P83322)
Neil E. Youngdahl (P82454)
VARNUM LLP
Attorneys for Intervening Appellees
Michigan Energy Innovation Business
Council, Institute for Energy Innovation,
Clean Grid Alliance, and Advanced Energy
United
P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000

TABLE OF CONTENTS

INDEX OF AUTHORITIES.....	v
STATEMENT OF BASIS OF JURISDICTION	vi
STATEMENT OF QUESTION PRESENTED	vii
INTRODUCTION	1
STATEMENT OF FACTS	3
<i>What is PA 233?</i>	3
<i>The Process Under PA 233</i>	5
<i>PA 233’s grant of authority to the PSC</i>	12
<i>PA 233’s Relationship with Other Laws</i>	12
<i>The PSC Opens a “Docket” on its Own Motion</i>	13
<i>Appellants’ Work Toward Compatibility</i>	14
<i>The October 10, 2024 Order</i>	15
<i>Appellants’ Stand For Local Control</i>	18
STANDARD OF REVIEW	21
ARGUMENT	23
The Court of Appeals erred when it affirmed the PSC’s narrow definition of CREO, its invention of hybrid facilities, and its rewriting of the Legislature’s carefully crafted compromise.	23
A. <i>The Order unlawfully and unreasonably redefines “compatible renewable energy ordinance”.</i>	25
B. <i>The Order unlawfully creates a new category of eligible facilities.</i>	34
C. <i>This Court should vacate the Order.</i>	36
CONCLUSION.....	37
WORD COUNT CERTIFICATION	39

INDEX OF AUTHORITIES

CASES

<i>Apsey v Memorial Hosp.</i> , 477 Mich 120; 730 NW2d 695 (2007)	27
<i>Consumers Power Co v Pub Serv Comm'n</i> , 460 Mich 148; 596 NW2d 126 (1999)	21, 24, 31
<i>DeRuiter v Byron Twp</i> , 505 Mich 130; 949 NW2d 91 (2020)	32, 33
<i>Four Zero One Associates LLC v Dep't of Treasury</i> , 320 Mich App 587; 907 NW2d 892 (2017)	34
<i>Huron Portland Cement Co v Michigan Pub Serv Comm'n</i> , 351 Mich 255; 88 NW2d 492 (1958)	24
<i>In re Mich Consol Gas Co's Compliance with 2008 PA 286 & 295</i> , 294 Mich App 119; 818 NW2d 354 (2011)	21
<i>In re Michigan Cable Telecommunications Ass'n Complaint</i> , 239 Mich App 686; 609 NW2d 854 (2000)	21
<i>In re Procedure & Format for Filing Tariffs Under Michigan Telecom Act</i> , 210 Mich App 533; 534 NW2d 194 (1995)	24, 31
<i>In re Pub Serv Comm'n for Transactions Between Affiliates</i> , 252 Mich App 254; 652 NW2d 1 (2002)	23
<i>In re Rovas Complaint Against SBC Mich</i> , 482 Mich 90; 754 NW2d 259 (2008)	22, 23, 24
<i>Ins Inst of Mich v Commr, Fin & Ins Servs, Dept of Labor & Econ Growth</i> , 486 Mich 370; 785 NW2d 67 (2010)	22
<i>Slis v State</i> , 332 Mich App 312; 956 NW2d 569 (2020)	22
<i>Tahoe-Sierra Preservation Council, Inc v Tahoe Regional Planning Agency</i> , 535 US 302; 122 S Ct 1465; 152 L Ed 2d 517 (2002)	5

STATUTES

MCL 125.3205	26, 29
MCL 125.3206	29
MCL 125.3513	29
MCL 460.1223	passim
MCL 460.1224	23
MCL 460.1225	23, 27, 31
MCL 460.1228	23
MCL 460.1230	23
MCL 460.1231	26
MCL 460.1221	25, 34
MCL 460.1222	36
MCL 460.1226	passim
MCL 462.25	21
MCL 462.26(8)	21

STATEMENT OF BASIS OF JURISDICTION

The Court of Appeals issued a published decision in this case on May 8, 2026.¹
Accordingly, this Court has jurisdiction over this Application under MCR 7.305(C)(2)(a).

¹ The Court of Appeals issued an amended decision on May 14, 2026.

STATEMENT OF QUESTION PRESENTED

Under longstanding Michigan law, courts strictly construe the authority of the Public Service Commission.

Public Act 233 of 2023 grants the PSC limited jurisdiction over siting qualifying utility-scale renewable energy facilities. PA 233 unambiguously specifies procedures and certain specific definitions.

On October 10, 2024, the PSC issued an order that purportedly establishes application filing requirements for qualifying facilities. But the order also rewrites key statutory definitions and reframes key process specified in PA 233. The order unlawfully expands the PSC's limited statutory jurisdiction and divests local governments of zoning authority in ways that violate the Legislature's express intent.

The Court of Appeals vacated the PSC's order in part, but it upheld two key, unreasonable deviations from the statutory text.

Did the Public Service Commission unlawfully and unreasonably exceed its authority in issuing all or parts of the October 10 Order?

Appellants answer: Yes

Appellee likely answers: No

Intervening Appellees likely answer: No

The Court of Appeals likely answers: Yes in part, No in part

INTRODUCTION

“Thirty-seven million acres is all the Michigan we will ever have.”

-Governor William G. Milliken

Once in a great while, a relatively simple statutory interpretation case has immense importance to Michigan’s jurisprudence and to countless people and entities from every corner of this great state. This is one of those cases.

Here are some numbers. Seventy-two townships. Seven counties. Four industry trade associations. One executive agency. And those are just the number of parties to this case. An additional 43 townships and counties (that Appellants are aware of) adopted resolutions in support of Appellants. Plus, 11 amicus briefs were filed at the Court of Appeals.

What is at stake? This case presents long-settled questions of agency authority and some new questions about who gets to decide what happens to countless thousands of acres of Michigan land in hundreds of communities across this state.

Michigan law has long held that administrative agencies possess only the powers expressly authorized by the Legislature. Agencies have no common law powers. And this Court has never granted deference to agency decisions on nontechnical issues of statutory interpretation. These principles are deeply rooted in this Court’s separation-of-powers jurisprudence.

In this case, 79 municipalities, consisting of townships and counties from every corner of Michigan, seek to restore a carefully crafted legislative compromise that has been upended by an agency acting wholly outside its statutory authority.

In Public Act 233 of 2023, the Legislature struck a delicate balance between creating a state-level path for the siting of certain utility-scale renewable energy facilities and maintaining longstanding local zoning practices. PA 233 allows developers of utility-scale renewable energy

facilities to bypass local approval processes and instead obtain project approval from the Public Service Commission unless the local municipality has adopted a “compatible renewable energy ordinance” (“CREO”) that meets specific minimum standards outlined in PA 233. A municipality with a CREO retains the power to regulate certain aspects of the project that are not covered by PA 233, such as the project’s location, insurance requirements, and decommissioning procedures, among other things.

But before the law took effect, the PSC entered an order (the “Order”) that purports to implement the law and establish instructions and procedures for renewable energy facility siting certificate applications. This Order, however, performed a wholesale rewriting of unambiguous statutory terms and aimed to implement a policy approach expressly rejected by the Legislature. In short, the Order undermines the authority of local communities, including Appellants, to regulate the siting of utility-scale renewable energy facilities as permitted by PA 233.

The Order adopts a “narrow definition” of CREO and holds that “a CREO may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of [PA] 233 and *may not contain additional requirements.*” The Order further creates a new category of facilities not contemplated by PA 233 (so-called “hybrid energy facilities”). It also purported to narrow the definition of “affected local units” to local governments that exercise zoning jurisdiction, even though PA 233 contains no such restriction; to alter unambiguous statutory deadlines; and to fundamentally alter unambiguous condition precedents to PSC jurisdiction.

The PSC did not have the power to rewrite PA 233, and in doing so through the Order, the PSC overstepped its limited authority, violating longstanding Michigan law.

The Court of Appeals recognized this overreach in part: it vacated the PSC's erroneous rewriting of statutory timelines and the definition of "affected local unit." But it upheld the PSC's redefinition of "CREO" and its administrative creation of "hybrid facilities." In other words, the Court of Appeals correctly held that the PSC could not rewrite "affected local unit" or statutory timelines to solve what it perceived as practical problems with the statute. But it then allowed the PSC to do the same thing with CREOs and hybrid facilities.

The Court of Appeals' holding on the CREO question makes nullities of entire sections of PA 233, upsets the delicate compromise crafted by the Legislature, and creates wholly unworkable scenarios for local governments.

For the reasons set forth in this Application, leave to appeal is proper under MCR 7.305(C)(B)(2), (3), and (5). Accordingly, Appellants request that this Court grant leave to appeal. In lieu of granting leave to appeal, Appellants request that this Court vacate Section II(B)(1) (CREO) and II(C) (hybrid facilities) of the Court of Appeals' opinion, vacate what remains of the Order, and remand for further proceedings.

STATEMENT OF FACTS

For the last 20 years, local zoning authority in Michigan has been governed by the Michigan Zoning Enabling Act ("MZEA"), PA 110 of 2006, MCL 125.3101 *et seq.* In the MZEA, the Legislature reaffirmed broad powers to local units of government to exercise various authorities related to the use of land.²

² The MZEA repealed and replaced the former Rural Township Zoning Act, the County Zoning Act, and the City and Village Zoning Act. MCL 125.3702(1).

Over time, the Legislature has expressly restricted some of those powers. In a few instances, those preemptions are complete. For example, the MZEA states that townships and counties “shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes.” MCL 125.3205(2). Other times, the preemption is more limited. For example, the MZEA provides that a family child-care home is a residential use of property for the purposes of zoning and cannot be subject to special or conditional use permit procedures. MCL 125.3206(3). In short, the Legislature knows how to preempt local authority, in part and in full.

Then, in late 2023, the Michigan Legislature passed and the Governor signed Public Acts 233, 234, and 235.

What is PA 233?

PA 233 adds a new Part 8 to the Clean and Renewable Energy and Energy Waste Reduction Act, Act 295 of 2008. PA 234 amends Section 205 of the Michigan Zoning Enabling Act, PA 110 of 2006 (“MZEA”), to provide that local zoning ordinances are “subject to” the new Part 8.³

PA 233 establishes limited or conditional preemptions to local regulations for utility-scale renewable energy facilities. In short, energy storage facilities, solar energy facilities, and wind energy facilities that meet threshold power capacity requirements may be authorized by the Commission, rather than by the affected local units, but only under limited circumstances.

Before applying to the PSC, a developer of a wind, solar, or energy storage facility must first perform a series of tasks in each “affected local unit” or “ALU.” “Affected local unit” is

³ This new line, providing that zoning ordinances are “subject to” PA 233, is now the very next line above the MZEA’s provision that “[a] county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells.”

defined by PA 233 to mean “a unit of local government in which all or part of a proposed energy facility will be located.” § 221(a). A “local unit of government” or “local unit” “means a county, township, city, or village.” § 221(n). A CREO is defined by PA 233 as “an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are *no more restrictive than the provisions included in* section 226(8).” § 221(f)(emphasis added).⁴ A “local unit of government is considered to not have a [CREO] if it has a moratorium on the development of energy facilities in effect within its jurisdiction.” *Id.*⁵

The Process Under PA 233

Under PA 233, a developer⁶ of a proposed project that meets the threshold nameplate capacity requirements may, under limited circumstances, seek a certificate from the PSC.⁷ The PSC may only review and consider applications for the following proposed facilities:

- a. Any solar facility with a nameplate capacity of 50 megawatts or more.
- b. Any wind facility with a nameplate capacity of 100 megawatts or more.

⁴ References to PA 233 will simply cite to the relevant section.

⁵ Moratoriums are temporary ordinances “used widely among land-use planners to preserve the status quo while formulating a more permanent development strategy.” Moratoriums “are an essential tool of successful development.” *Tahoe-Sierra Preservation Council, Inc v Tahoe Regional Planning Agency*, 535 US 302, 341; 122 S Ct 1465; 152 L Ed 2d 517 (2002).

⁶ PA 233 at times refers to “independent power producers, “IPPs,” and “electric providers” to describe different categories of electric providers. For simplicity, Appellants will refer to all electric providers and producers as “developers,” or “applicants” when appropriate. A developer becomes an “applicant” when it submits an application to the PSC. See §§ 221(c), 226(5).

⁷ Even if a proposed project meets the threshold capacity requirements of § 222(1), the developer may choose to submit their application only to appropriate local units and seek local approval, regardless of whether the local units have CREOs.

- 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. [§ 221(1).]

Specifically, the developer must schedule and hold a public meeting in each ALU. § 223. This meeting must be properly noticed by the developer. *Id.* For example, at least 30 days before the meeting, the developer must provide written notice of the meeting to the clerk of the ALU and provide the clerk with the site plan (or a way to access it electronically). § 223(1).

Additionally, at least 60 days before the public meeting, the developer must offer to meet with the chief elected official, or their designee, of each ALU to discuss the site plan. § 223(2). After the developer offers to meet with the chief elected official(s), the ALUs may choose to decline or accept the offer to meet. If the ALU meets with the developer, a 30-day window opens (after the meeting) during which the local unit may inform the developer that it has a CREO. § 223(3). Once the ALU provides this notice, the developer *must* submit their application to the ALU, not the PSC, and comply with the ALU's CREO to obtain approval. *Id.*

As PA 233's co-sponsor stated during a legislative hearing, "[f]or those municipalities that want to be more involved in the [permitting] process they now have the opportunity to come up with their own local permitting process, which must mirror tenets of the state process."⁸

Once an application is submitted to an ALU, the ALU has 120 days to approve or deny the application. § 223(3)(b). An application submitted to an ALU must comply with § 225(1), except for § 225(1)(j) and (s), and an ALU "may require other information necessary to determine compliance with the" CREO. § 223(3)(a). Mandatory information under § 225(1) includes, for

⁸ Senate Committee on the Energy and Environment, Hearing, November 11, 2023, at 6:40, <https://cloud.castus.tv/vod/misenate/video/654a810ef6b51700084a0c94?page=HOME> (accessed November 22, 2024).

example, a soil and economic survey report; a stormwater assessment; if the proposed site is undeveloped, a description of feasible alternative developed locations; a fire response and emergency response plan; and a decommissioning plan.

In limited circumstances, the developer may still submit its application to the PSC following the local process held pursuant to a CREO. Those circumstances are: (1) if the ALU does not approve or deny the application within 120 days; (2) if, after the chief elected official of the ALU notifies the developer that the ALU has a CREO, the ALU adopts an amended ordinance that “imposes additional requirements on the development of energy facilities that are more restrictive than those in [S]ection 226(8);” or (3) if “[t]he application complies with the requirements of Section 226(8), but the local unit denies the application.” § 223(3)(c).

When a developer files an application with the PSC, ALUs receive funds from the applicant to help cover the costs of intervention before the PSC. “Upon filing an application with the [PSC], the applicant shall make a 1-time grant to each affected local unit for an amount determined by the [PSC] but not more than \$75,000.00 per affected local unit and not more than \$150,000.00 in total.” § 226(1). “Each affected local unit shall deposit the grant in a local intervenor compensation fund to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate.” *Id.*

ALUs also benefit from “host community agreements.” Under § 227(1), an applicant before the PSC must “enter into a host community agreement with each affected local unit.” Such an agreement must provide that the facility owner will pay the ALU \$2,000 per megawatt of nameplate capacity located within the ALU. *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.” *Id.*⁹ In other words, these agreements provide compensation for costs associated with protecting and advancing the health, safety, and welfare of ALU residents and businesses, and they have nothing to do with zoning.

An application to the PSC (just like an application to an ALU) must include the several categories of information listed in § 225(1). Again, mandatory information includes, for example, a soil and economic survey report; a stormwater assessment; if the proposed site is undeveloped, a description of feasible alternative developed locations; a fire response and emergency response plan; and a decommissioning plan. *Id.*

To review an application, the PSC must conduct a contested case proceeding. § 226(3). ALUs and both participating and nonparticipating property owners¹⁰ may intervene in that proceeding by right. *Id.* When evaluating an application, the PSC must consider the feasible alternative developed locations described in the application and the impact of the proposed facility on local land use, including the percentage of land within the ALU dedicated to energy generation. § 226(6). The PSC may also condition a certificate on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including, but not limited to: establishing and maintaining for the life of the facility vegetative ground cover; meeting or exceeding pollinator standards throughout the lifetime of the facility; providing for community

⁹ If an ALU and an applicant fail to enter to enter into a host community agreement, after good-faith negotiations, the applicant may choose to enter into a “community benefits agreement” and direct at least \$2,000 per megawatt of nameplate capacity to community-based organizations. § 227(2). In short, a developer must grant the \$2,000 per megawatt of nameplate capacity to either the ALU or community-based organizations in each ALU.

¹⁰ “ ‘Nonparticipating property’ means a property that is adjacent to an energy facility and that is not a participating property.” §221(q).

improvements in the ALU; and making a good-faith effort to maintain and take proper care of the property where the energy facility is proposed to be located during construction and operation of the facility. § 226(6)(a)–(d).

Then, much like a local planning commission is required to do under a local zoning ordinance, if the application and site plan meet specific requirements, the PSC must grant the application. § 226(7). Specifically:

The [PSC] shall grant the application and issue a certificate if it determines all of the following:

(a) The public benefits of the proposed energy facility justify its construction. 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. In determining any contributions to meeting identified energy, capacity, reliability, or resource adequacy needs of this state, the commission may consider approved integrated resource plans under section 6t of 1939 PA 3, MCL 460.6t, renewable energy plans, annual electric provider capacity demonstrations under section 6w of 1939 PA 3, MCL 460.6w, or other proceedings before the commission, at the applicable regional transmission organization, or before the Federal Energy Regulatory Commission, as determined relevant by the commission.

(b) The energy facility complies with the standard in section 1705(2) of the natural resources and environmental protection act, 1994 PA 451, MCL 324.1705.

(c) The applicant has considered and addressed impacts to the environment and natural resources, including, but not limited to, sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species.

(d) The applicant has met the conditions established in section 227.

(e) All of the following apply:

(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.

(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.

(f) The 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.

(g) The proposed energy facility does not present an unreasonable threat to public health or safety. [*Id.*]

Regarding § 226(7)(g) specifically, the Legislature defined what “an unreasonable threat to public health or safety” is for qualifying facilities. Section 226(8) states that “[t]he proposed energy facility meets the requirements of subsection (7)(g) if it will comply with the following standards. . .” Those standards are specific requirements for things like setbacks, fencing, noise, blade tip height for wind energy facilities, and dark sky lighting solutions.

If the PSC approves a certificate submitted under § 223(3)(c), “the local unit of government is considered to no longer have a [CREO], unless the [PSC] finds that the local unit of government’s denial was reasonably related to the applicant’s failure to provide” specific required

information under § 223(3)(a). § 223(5). In other words, once the PSC approves a certificate, it *could* determine that an ALU no longer has a CREO.

This process is also summarized in the table below:

Initial Local Unit Contact: Applicant must “offer in writing to meet with the chief elected official of each affected local unit . . . to discuss the site plan.”	
Meeting with Local Unit Chief Elected Official: Applicant meets with chief elected official to discuss site plan (unless local unit declines) Local unit must provide notice of compatible ordinance <u>within 30 days</u> after this meeting.	
Next Step (Depending on ALU Action/Compatible Renewable Energy Ordinance)	
No notice of CREO from within 30 days (PSC route)	Notice of CREO from local unit local unit within 30 days (local route)
Applicant must notify Clerk that a public meeting will be held in the local unit and provide site plan (at least 30 days before public meeting)	Applicant must file application for approval with local unit, pursuant to compatible ordinance
Applicant must publish notice of the public meeting (at least 14 days before public meeting)	Local unit must approve or deny application within 120 days (can be extended another 120 days with consent from provider)
Public meeting is held in local unit	Applicant can <i>still</i> go to the PSC if: • Local unit fails to timely approve or deny the application • The application complies with statute [226(8)] but local unit denies it • Local unit amends ordinance so that it is no longer compatible • Any individual affected local unit does not send notice of a CREO PSC’s review is whether the applicant supplied all required information to the local unit, and the PSC must grant a certificate if the application meets the requirements of § 226.

PA 233's grant of authority to the PSC

PA 233 grants limited powers and duties to the PSC. To administer PA 233, the PSC has only those powers that are granted to it by PA 233. § 230(1). PA 233 gives the PSC only the following specific powers:

- a. prescribe the format and content of the notice required for certain public meetings. § 223(1).
- b. establish application filing requirements. § 224(1).
- c. reasonably require information to be contained in an application. § 225(s).
- d. conduct proceedings on applications. § 226(3).
- e. assess reasonable application fees. § 226(4).
- f. grant or deny applications and issue certificates. § 226(5).
- g. issue orders to protect the confidentiality of certain information. § 228(2).
- h. consolidate proceedings. § 230(2).

PA 233's Relationship with Other Laws

The Legislature made clear its intent regarding PA 233's relationship with other laws. PA 233 provides that, except in one circumstance, it controls in any conflict between it and any other law of this state. § 230(3).¹¹ As discussed above, PA 234 of 2023 expressly amended the MZEA so that the MZEA is subject to PA 233. But PA 233 also contains other qualifying language,

¹¹ "However, the electric transmission line certification act, 1995 PA 30, MCL 460.561 to 460.575, controls in any conflict with" PA 233. § 230(3).

including limits on its own reach and limits on local control. Regarding local control, PA 233 states that “[a] local ordinance shall not prohibit or regulate testing activities undertaken by [an electric provider or producer] for purposes of determining the suitability of a site for the placement of an energy facility.” § 231(1). It also provides that “a zoning ordinance or limitation imposed after” an applicant applied to the PSC may “not be construed to limit or impair the construction, operation, or maintenance of the energy facility.” § 231(2). It provides that “[i]f a certificate is issued, the certificate and [PA 233] 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” certificate. § 231(3). Additionally, it provides that:

this part does not exempt [an applicant] to whom a certificate is issued from obtaining any other permit, license, or permission to engage in the construction or operation of an energy facility that is required by federal law, any other law of this state, including, but not limited to, the natural resources and environmental protection act, 1994 PA 451, MCL 324.101 to 324.90106, any rule promulgated under a law of this state, or a local ordinance. [§ 231(5).]

The PSC Opens a “Docket” on its Own Motion

On February 8, 2024, the PSC opened a docket, on its own motion, to implement PA 233.

That same day, it also entered an order in that docket that stated the following:

THEREFORE, IT IS ORDERED that:

- A. The Commission Staff shall engage with interested persons in transparent open meetings, as described in this order.
- B. The Commission Staff shall file recommendations on application filing instructions, guidance relating to compatible renewable energy ordinances, and any other issues in this docket by June 21, 2024.
- C. Any interested person may file comments regarding the Commission Staff’s recommendations in this docket. Comments shall be filed no later than 5:00 p.m. (Eastern time) on July 17, 2024, and reply comments shall be filed no later than 5:00 p.m. (Eastern time) on August 9, 2024. [PSC Order, 2/8/2024; Exhibit C.]

Over the following few months, the PSC drafted application instructions and procedures and a public comment process proceeded as outlined in the February 8 Order.

Appellants' Work Toward Compatibility

Between the adoption of PA 233 and its effective date (approximately one year later), many Appellants adopted CREOs based on the statutory definition of that term in PA 233 (see, e.g., White River Township Solar Ordinance; Exhibit D; Ida Township Wind Ordinance; Exhibit E). Many other Appellants are either in the process of adopting a CREO or intend to do so.

Adopting CREOs is not a quick or simple process. Most CREOs are zoning ordinances, and approval of those CREOs must follow the process outlined in the MZEA. Zoning ordinance adoption formally begins with publishing notice at least 15 days before a planning commission holds a public hearing on the draft ordinance. MCL 125.3103(1). After the hearing, the planning commission may choose to recommend that the jurisdiction's legislative body either approve or deny the ordinance. MCL 125.3305, 3306. Then, in some jurisdictions, a 30-day window opens during which the county or regional planning commission may comment on the draft ordinance. MCL 125.3307. After that 30-day window expires, the jurisdiction's legislative body may adopt the ordinance, but only following another hearing if one is requested or if it chooses to hold one. MCL 125.3401. The legislative body must then publish a notice of adoption. MCL 125.3401. If after the expiration of 7 days following the publishing of the notice of adoption no notice of intent to file a petition for referendum has been filed, the ordinance takes effect. MCL 125.3401(6). If a notice of intent is filed, the referendum petitioner has 30 days following publication to file an adequate petition. MCL 125.3402(2). If an adequate petition is filed, the ordinance cannot take effect until after the next regular election or after a special election called for the purpose of approval or rejection of the ordinance. MCL 125.3402(3)(c).

This process may take several months. Indeed, many Appellants spent most of 2024 preparing, reviewing, and adopting CREOs. The public hearings regarding CREOs were extensive and thorough, with several Appellants' planning commissions receiving public comment for several hours. At least two Appellants, Speaker and Fremont Townships, had their CREOs petitioned for referendums. In both Townships, voters overwhelmingly approved the CREOs. (Exhibit F). The underlying rationale for Appellants adopting CREOs was to retain local control over qualifying projects. If they did not adopt CREOs, they would cede all control over the siting of qualifying facilities to the PSC as outlined in PA 233, at the sole discretion of a developer that chose to bypass them.

When drafting their CREOs, Appellants relied on PA 233's definition of what a CREO is. Many Appellants copied the plain language of § 226(8) of PA 233 related to the restrictions "included in" that subsection, while continuing to exercise the zoning authority granted to them by the Legislature in adopting other requirements that do not conflict with it, such as locating PA 233 qualifying facilities in specific zoning districts.

The October 10, 2024 Order

Despite its limited authority under PA 233, on October 10, 2024, the PSC issued an order in Case Number U-21547 and purported to redefine statutory definitions of PA 233 and improperly expanded its authority to approve applications for projects not covered by PA 233. The PSC, in the Order, stated that a CREO "may *only* contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of Act 233 and *may not contain additional requirements* more restrictive than those specifically identified in that section" (Order, 18) (emphasis added). The PSC further added "hybrid facilities" to the list of alternative energy projects it has authority to approve (Order, 4). Such facilities, which the PSC characterizes as

combinations of wind, solar, or energy storage facilities that only together can meet the power capacity threshold of PA 233 for PSC authorization, are not defined or contemplated in PA 233. Although the statutory definitions of “solar energy facilities” and “wind energy facilities” include energy storage facilities, the Order also allows for the combination of solar and wind energy facilities, which is not contemplated by the statute. Compare § 221(w), (x) with Order, 84-85. The Order also redefined “affected local unit” to include “only those local units of government that exercise zoning jurisdiction,” or “a unit of local government exercising zoning authority in which all or part of a proposed energy facility will be located.” (Order, 10, 83). This rewriting of the definition of “affected local unit” meant the number of ALUs for any portion of a project fell from two (or possibly three, if the site is in a village) to one, or even zero. Put another way, for some projects, specifically those proposed for siting in unzoned communities, *no one* would be entitled to pre-application notice, according to the PSC.

In other words, the PSC has purported to both narrow the statutory definition of “CREO” such that Appellants’ CREOs are no longer “compatible” and expand the types of projects that it can authorize, so that even municipalities with CREOs, as PA 233 defines them, will lose zoning control over smaller facilities that band together to be “hybrid facilities.” Additionally, jurisdictions without “zoning authority” under the Order, such as Appellant Ogden Township, were cut out of the process entirely and deprived of the financial benefits provided for by the Legislature in PA 233 because it was unzoned at that time.

But the Order went even further. The Order purported to rewrite and completely change the pre-application timelines laid out in PA 233. The Order stated that ALUs must respond to offers to meet within 30 days and that failing to do so allows the applicant to proceed as if the ALU does not have a CREO. (Order, 11). Again, PA 233 is clear that the deadline to send an

applicant notification that the ALU has a CREO is *30 days after a meeting with the ALU's chief elected officer*. § 223(3).

Even further still, there was a fifth instance of PSC overreach in the Order. Section 222 of PA 233 provides four qualifications on the Commission's jurisdiction. *First*, § 222 provides that PA 233 applies to energy facilities of a certain size. *Second*, it states when a developer may apply for a siting certificate. *Third*, it provides for limits regarding changes to the site plan a developer may make after a siting certificate is approved. And *fourth*, it provides that siting certificates may not be issued under specific circumstances if the facility would involve a city or village. Relevant here, § 222(2) provides that a developer may only apply for a siting certificate "before beginning construction." It also provides that the developer must "comply with the requirements of sections 223 and 224, *and then* submit to the commission an application as described in section 225." *Id.* (emphasis added).

Diving into the second requirement, § 223 provides that, before a developer applies to the Commission for a siting certificate, the developer must first perform a series of tasks in each ALU. Chief among these mandatory jurisdictional tasks in § 223 is that the developer must schedule, properly notice, and hold a public meeting in each ALU. § 223(1). Yet, specifically, the statute allows the Commission to prescribe the format and content of the notice. *Id.* But § 223(1) mandates as follows: "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*." (Emphasis added.) There are no exceptions to the locational requirement for these meetings.

Yet the Order states that the PSC has adopted an exception to this clear and unambiguous requirement. The Order states that "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.” (Section C-3 of the Application Filing Instructions and Procedures; Order, 126).

The effects of the PSC’s overreach were felt quickly. In a matter of days after PA 233 took effect, five Appellants received written offers to meet from developers. Three of these offers referred to the Order’s timeline, not PA 233’s. (Written Offers to Meet, various dates; Exhibit F). During the pendency of this case, several applications were filed with the PSC even though the local county was not afforded the pre-application procedures guaranteed to ALUs. Several applications were filed on the basis of the applicants’ arguments that local CREOs are not compliant with the Order. And at least one application was filed even though the applicant admitted in the application that it did not hold the required public meeting in the ALU, relying on the PSC’s “exception.” At the time of this writing, 10 siting certificate applications are pending in the PSC, several of which are directly impacted by the PSC’s interpretations of the statute.

Appellants’ Stand For Local Control

In the time available to claim this appeal in the Court of Appeals, (30 days under MCL 462.26), 72 Michigan townships and 7 counties banded together to jointly appeal the Order.

The window to approve claiming the appeal was merely a month long and occurred in the midst of a regular general election and the transition of public officials joining and leaving local legislative bodies. Between the time the appeal was claimed and Appellants’ briefs were filed in the Court of Appeals, at least 43 additional townships and counties adopted resolutions supporting

Appellants' cause and retaining local control, indicating that they would have joined this appeal if they had more time to do so. (Resolutions in Support of Appellants, various dates; Exhibit G).¹²

The Court of Appeals Decision

In a published split decision, the Court of Appeals struck down the PSC's redefinition of ALU and its rewriting of the statutory timelines. But it upheld the PSC's extra legislative redefinition of CREO and its creation of hybrid facilities.

In striking down the PSC's redefinition of ALU, the Court of Appeals noted that "an agency cannot—just like a court cannot—rewrite the plain terms of a statute under the guise of statutory interpretation." (COA Opinion, 11). On this point, the court explained as follows:

The statutory definition of ALU is plain and unambiguous: it includes all local units of government where a proposed energy facility will be located. It does not refer to only those local units of government that have zoning jurisdiction; instead, when defining an ALU, the Legislature included within the definition all local units of government in which all or part of a proposed energy facility will be located. This definition is plain and unambiguous, requiring no interpretation. Quite simply, in crafting what jurisdictions will be entitled to a plethora of statutory rights under PA 233, the Legislature explicitly included all local units of government in which any part of an energy facility will be located. It is a straightforward and simple definition to apply. [*Id.*, 12.]

The Court of Appeals explained that, while the PSC was concerned about what it deemed as "practicalities," the PSC ignored "the entire context of the statute." (*Id.*, 13).

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

¹² As acts of governmental subdivisions of Michigan, this Court may take judicial notice of these resolutions under MRE 202.

Legislature, which is our public policy making branch of government, results in all affected local units of government having some involvement in the process of a proposed energy facility, which appears consistent with the intent of the Legislature. The PSC's more limited definition effectively re-writes the statutory definition of ALU, impedes the legislative policy choice to include all affected local units of government in at least part of the process, and cannot stand. [*Id.*]

As to the statutory timelines, the Court of Appeals again held that the PSC overreached, rewriting unambiguous statutory provisions based upon a "concern that an ALU could unreasonably delay meeting with a developer and thereby upend the entire PA 233 process." (*Id.* at 15). "But our concern," the court wrote, "is what the statute requires." (*Id.*)

The PSC indicated that the chief elected official must notify the developer of the existence of a CREO within 30 days following the receipt of the offer to meet and that, absent such notification, the developer may proceed as if the ALU does not have a CREO. But under MCL 460.1223(3), the 30-day timeline begins not with the receipt of the offer to meet but with the actual meeting between the developer and the chief elected official or the official's designee. The statute indicates that the chief elected official has 30 days following the meeting itself to notify the developer of the existence of the CREO and that, if such notice is provided, the developer must file for approval with the ALU. The PSC thus incorrectly interpreted PA 233 with respect to the statutory timeline. [*Id.* at 15.]

However, the court departed from this sound reasoning in upholding the PSC's re-definition of CREO and the administrative invention of hybrid facilities. Again, Section 221(f) states, in relevant part, that a CREO is "an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8)." The PSC was not satisfied with this definition, however. As the Court of Appeals recounted:

The PSC found "that a CREO under Act 233 means an ordinance that provides for the development of energy facilities within a local unit of government, the requirements of which are no

more restrictive than the provisions included in Section 226(8).” More specifically, the PSC concluded “that a CREO may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of Act 233 and may not contain additional requirements more restrictive than those specifically identified in that section.” [*Id.* at 8.]

The Court of Appeals upheld this rewriting of the statute. It held that “[t]he addition of requirements not contained in MCL 460.1226(8) would inherently be more restrictive, and the Legislature has commanded that a CREO not be more restrictive.” (*Id.* at 9).

The Court of Appeals also upheld the PSC’s invention of “hybrid facilities,” holding that the PSC did not err when it decreed that, for instance, a wind energy facility of 70 MWs combined with a solar energy facility of 30 MWs meets the statutory threshold of a 100 MW wind energy facility. (*Id.* at 14).

Appellants now request leave to appeal the Court of Appeals’ decision as to CREOs, hybrid facilities, and the PSC’s unreasonable and unlawful interpretations of PA 233.

STANDARD OF REVIEW

“The standard of review applicable to orders of the Commission is narrow and well defined.” *In re Mich Cable Telecom Ass’n*, 239 Mich App 686, 689; 609 NW2d 854 (2000). Under MCL 462.25, “[a]ll rates, fares, charges, classification and joint rates fixed by the commission and all regulations, practices and services prescribed by the commission shall be in force and shall be prima facie, lawful and reasonable until found otherwise[.]” “[T]he burden of proof shall be upon the appellant to show by clear and satisfactory evidence that the order of the commission complained of is unlawful or unreasonable.” MCL 462.26(8). An order is unlawful if the PSC failed to follow a mandatory provision of the relevant statute or abused its discretion in the exercise

of its judgment. *In re Mich Consol Gas Co's Compliance with 2008 PA 286 & 295*, 294 Mich App 119, 125; 818 NW2d 354 (2011).

“The PSC’s determination regarding the scope of its authority is one of law,” which this Court reviews de novo. See *Consumers Power Co v Pub Serv Comm'n*, 460 Mich 148, 157; 596 NW2d 126 (1999). “In construing the statutes empowering the PSC,” Michigan courts do “not weigh the economic and public policy factors that underlie the action taken by the PSC.” *Id.* at 156. As this Court has explained generally, “the power and authority to be exercised by boards or commissions must be conferred by clear and unmistakable language, since a doubtful power does not exist.” *Id.* at 155 (cleaned up). It “strictly construes the statutes which confer power on the PSC.” *Id.* Although “respectful consideration” is given to the PSC’s construction of a statute it is empowered to execute and a court must have “cogent reasons” to overturn the PSC’s interpretation, appellate courts should on de novo review give no greater consideration to the PSC’s judgment than it would that of a circuit court judge. *In re Rovas Complaint Against SBC Mich*, 482 Mich 90, 108; 754 NW2d 259 (2008). “Respectful consideration is not equivalent to any normative understanding of ‘deference’ as the latter term is commonly used in appellate decisions.” *Id.* (cleaned up).¹³

“An agency rule is substantively invalid when the subject matter of the rule falls outside of or goes beyond the parameters of the enabling statute, when the rule does not comply with the

¹³ This Court never adopted the now-defunct federal framework commonly known as “*Chevron* Deference.” The Court explained that “the unyielding deference to agency statutory construction required by *Chevron* conflicts with this state’s administrative law jurisprudence and with the separation of powers principles . . . by compelling delegation of the judiciary’s constitutional authority to construe statutes to another branch of government. For these reasons, we decline to import the [now defunct] federal regime into Michigan’s jurisprudence.” *Rovas*, 482 Mich at 111.

intent of the Legislature, or when the rule is arbitrary or capricious.” *Slis v State*, 332 Mich App 312, 340; 956 NW2d 569 (2020); see also *Ins Inst of Mich v Commr, Fin & Ins Servs, Dept of Labor & Econ Growth*, 486 Mich 370, 385; 785 NW2d 67 (2010). While an agency’s construction of a statute “is entitled to respectful consideration,” a “court’s ultimate concern is a proper construction of the plain language of the statute.” *Rovas*, 482 Mich at 108. “[T]he agency’s interpretation cannot conflict with the plain meaning of the statute.” *Id.*

ARGUMENT

The Court of Appeals erred when it affirmed the PSC’s narrow definition of CREO, its invention of hybrid facilities, and its rewriting of the Legislature’s carefully crafted compromise.

PA 233 expressly grants the PSC limited authority in administering its provisions. As discussed above, “[t]he PSC, as a creature of statute, derives its authority from the underlying statutes and possesses no common-law powers.” *In re Public Service Comm’n*, 252 Mich App 254, 263; 652 NW2d 1 (2002). Under PA 233, the PSC may only do the following:

- a. Prescribe the format and content of the notice required for certain public meetings. § 223(1).
- b. Establish application filing requirements. § 224(1).
- c. Reasonably require information to be contained in an application. § 225(s).
- d. Conduct proceedings on applications. § 226(3).
- e. Assess reasonable application fees. § 226(4).
- f. Grant or deny applications and issue certificates. § 226(5).
- g. Issue orders to protect the confidentiality of certain information. § 228(2).
- h. Consolidate proceedings. § 230(2).

In § 230 of PA 233, the Legislature unequivocally stated that “[i]n administering this part, the commission has only those powers and duties granted to the commission under this part.” §

230(1). And PA 233 “shall control in any conflict between [it] and any other law of this state.” § 230(2). PA 233 does not permit the PSC to redefine terms in PA 233 that the Legislature has already clearly defined. Yet the Order purports to do both by adding “hybrid facilities” to the explicit and limited list of solar, wind, and energy storage facilities to which PA 233 applies and by limiting and changing the definition of “compatible renewable energy ordinance.” It also purported to redefine “affected local unit” in ways that further stripped Appellants and all municipalities of their zoning and police powers, rewrote unambiguous statutory timelines, and created exceptions to unambiguous mandatory public meeting requirements. These attempts by the PSC to effectively re-write PA 233 are unlawful and unreasonable.

Before the Court of Appeals, the PSC argued that the Order reasonably provides clarity necessary to promote the State’s renewable energy policies and to reduce the costs of applying for siting approval either through a local municipality or the PSC. Such arguments are inappropriate and unpersuasive. “In construing the statutes empowering the PSC, [the Supreme Court] does not weigh the economic and public policy factors that underlie the action taken by the PSC.” *Consumers Power Co*, 460 Mich at 156. “Those are matters of legislative concern.” *Huron Portland Cement Co v Mich Pub Serv Comm'n*, 351 Mich 255, 262; 88 NW2d 492 (1958).

Again, while an agency’s construction of a statute “is entitled to respectful consideration,” a “court’s ultimate concern is a proper construction of the plain language of the statute.” *Rovas*, 482 at 108. “[T]he agency’s interpretation cannot conflict with the plain meaning of the statute.” *Id.* “When a statute’s meaning is clear, construction of that statute is neither necessary nor permitted.” *In re Procedure & Format for Filing Tariffs Under Michigan Telecom Act*, 210 Mich App 533, 551; 534 NW2d 194 (1995). “[S]tatutory language is the most authoritative evidence of the intentions of the drafters of the legislation.” *Id.* at 553.

The Order unlawfully alters PA 233's statutory definitions and creates new ones, and it does so unlawfully and unreasonably in light of the statutory scheme.

A. *The Order unlawfully and unreasonably redefines "compatible renewable energy ordinance".*

Again, a CREO is:

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

The question before this Court is what the Legislature meant by the second clause of the first sentence: "the requirements of which are no more restrictive than the provisions included in section 226(8)." The PSC and the Intervening Appellees believe it means that a CREO may only contain the items listed in Section 226(8). The Court of Appeals agreed.

This theory, however, ignores the clause's plain language, makes nullities of whole sections of PA 233, disregards the Michigan Zoning Enabling Act, and creates an entirely unworkable system that could not have been the Legislature's intent.

Contrary to the statute, the Order states as follows regarding CREOs:

The Commission further specifies that a CREO *may only contain* the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8) of Act 233 and *may not contain additional requirements* more restrictive than those specifically identified in that section. [Order, 18 (emphasis added).]

Yet PA 233 says no such thing. The statute explicitly states that a CREO may not contain provisions more restrictive than those "*included in*" § 226(8). The PSC's redefinition writes "included in" out of the statute. For the PSC to be correct about what the Legislature intended to allow in a CREO, the statute would have to state that a CREO is an "ordinance that provides for

the development of energy facilities within the local unit of government, the requirements of which *include no other provisions* than those included in section 226(8).” Or, it could say “. . .the requirements of which only include those included in section 226(8).” Or, as the Legislature has done before, it could have provided that a CREO “may not regulate” any items beyond those included in § 226(8). See MCL 125.3205(2) (“A county or township shall not regulate or control the drilling, completion, or operation of oil or gas wells or other wells drilled for oil or gas exploration purposes and does not have jurisdiction with reference to the issuance of permits for the location, drilling, completion, operation, or abandonment of such wells.”) But the Legislature did not choose any such language.

Instead, the Legislature chose to craft the clause as it is: “the requirements of which are no more restrictive than the provisions included in section 226(8).” The “no more restrictive” phrase directly modifies “*included in* section 226(8).” It means that a CREO’s noise regulations cannot be more restrictive than § 226(8)’s noise regulations. It means that a CREO’s setback provisions cannot be more restrictive than § 226(8)’s setback provisions. It cannot mean, however, that requiring a special land use permit for the approval of an energy facility is “more restrictive” than § 226(8)’s noise or setback provisions.

Put another way, the PSC’s position is that “additional” and “more restrictive” are synonyms. They are not. A requirement may be additional without being more restrictive than a state standard addressing a different subject. A site-plan submission requirement, zoning-district limitation, or decommissioning-plan requirement is not “more restrictive than” a sound limit or setback standard; it regulates a different aspect of land use.

In PA 233 itself, the Legislature expressed its intent that providers granted a certificate by the PSC must comply with local ordinances. § 231(5). The language of the statute as a whole and

of § 226(8), in particular, demonstrates the Legislature’s intent that CREOs may contain additional, but not more restrictive, regulations to those included in § 226(8). Section 226(8) explicitly relies on § 226(7)(g) to explain that a “proposed energy facility does not present an unreasonable threat to public health or safety” if it complies with the enumerated requirements of § 226(8). Put another way, § 226(8) merely defines what does not constitute “an unreasonable risk to public health or safety” as a matter of law.

Read in context, the provisions of § 226(8) are only a small piece of the total information required by an application presented to the PSC. The application must also contain the information described in § 226(6) and (7), § 223(3)(a), and most of the information described in § 225(1). Moreover, § 223(3)(a) also permits an ALU to “require other information necessary to determine compliance with the” CREO.

Notably, the Legislature’s definition of CREO does not speak to process at all. Yet the broader statute does. And the PSC’s rewriting of what a CREO can be makes nullities of those other provisions mentioned above.

By the PSC’s logic, applications submitted to the PSC and to ALUs must contain the information required by § 223(3)(a), § 225(1), the rest of § 226, and the PSC must consider all pertinent categories of information described in that Section, but ALUs are prohibited from considering or reviewing the various categories of information required outside of § 226(8). This defies simple logic, and it would render § 223(3)(a), among other provisions, irrelevant and without a remedy to enforce them. *Apsey v Memorial Hosp*, 477 Mich 120, 127; 730 NW2d 695 (2007) (“Whenever possible, every word of a statute should be given meaning. And no word should be treated as surplusage or made nugatory.”). When § 226(8) is viewed in this light, not only does the Order add words to the definition of “CREO” already unambiguously chosen by the

Legislature, but the Order's interpretation also is an unreasonable and unlawful reading of the entire context of § 226, of PA 233, and of general zoning law.

This leads to the process problem: how the PSC's view of the local review process works under its narrow redefinition of CREO. It appears that, according to the PSC, if a developer takes the pre-application steps outlined in Section 223 and an ALU notifies the developer that it has a CREO, the Zoning Enabling Act simply ceases to apply. In fact, under the PSC's logic, an ALU *cannot* look to the MZEA at all once a developer chooses (unilaterally) the path to the PSC. Here's some of what it means for an ordinance to contain "no other provisions" than those found in § 226(8):

- No special land use permit can be required.
- No site plan can be required.
- No public hearing can be held. If one is held (and properly noticed), it must done at the ALU's expense.
- The ALU cannot charge an application fee or require an escrow account for review of the application.
- No consultations with, or permits from, the drain commissioner, the road commission, EGLE, MDARD, EPA, DOD, MDOT, FAA, or any other agency may be taken or required.
- No screening may be required to buffer the site from neighboring properties.
- No decommissioning plan may be required.
- No fire or emergency response plan may be required.

Plus, energy facilities must be a permitted use in *every* zoning district. ALUs could not consider the proposed facility's effects on neighboring land uses, the amount of land in the ALU already

dedicated to energy generation or storage, or whether the facility would unreasonably diminish farmland. Yet if an ALU does not do some of the items listed above as part of its review of an application (like holding and properly noticing a public hearing), it may violate the MZEA, and any approval would be subject to possible appellate challenge on that basis.

Of course, the Legislature knows how to preempt many of these possible ordinance requirements. It has done so before. For example, the MZEA provides that a family child-care home is a residential use of property for the purposes of zoning and cannot be subject to special or conditional use permit procedures. MCL 125.3206(3). It provides the same for biofuel production facilities, under certain circumstances. MCL 125.3513. Same for wireless communications equipment. MCL 125.3514(1). But further still, although the MZEA provides that wireless communications equipment is a permitted use of land not subject to special land use approval under certain circumstances, it also provides that zoning ordinances are “subject to” “[t]he small wireless communications facilities deployment act, 2018 PA 365, MCL 460.1301 to 460.1339.” MCL 125.3205(1)(c). Curiously, the Legislature similarly provided that zoning ordinances are “subject to” PA 233, but it did not add any provision to the MZEA stating that energy facilities are a permitted use in all, or in any particular, zoning district. In short, the Legislature knows how to state that a land use is permitted without special land use approval in a specific or all zoning districts. It chose not to do so for energy facilities.

In other words, separate from applicable zoning ordinances (and other local ordinances), PA 233 requires an application to an ALU to include a whole host of materials not included in § 226(8). So, under the PSC’s theory, what is an ALU to do with that other information? What questions may it ask? What information may it require? According to the PSC, the required inclusion of that additional information is meaningless.

The Legislature explicitly chose to require an application submitted locally pursuant to a CREO notification to “comply with the requirements of section 225(1), except for section 225(1)(j) and (s).” § 223(3)(a). This provision (and all others) must be given meaning. It is simply absurd to argue—as the PSC does—that the Legislature intended for the items enumerated in Section 225(1) to be meaningless to ALUs. If the Legislature intended for a CREO to contain no other requirements than those specifically identified in § 226(8), § 223(3)(a) should read something like “an application submitted under this subsection need only contain information required to confirm compliance with section 226(8).” But again, the PSC’s desired language is not what the Legislature chose, and the PSC’s power grab cannot stand.

Under the PSC’s theory, it is essentially a developer’s choice what local regulations are. As discussed, a developer *may* invoke PA 233; it does not have to. Indeed, Developers can ignore PA 233 and apply locally under the MZEA, just as they had done so previously. But the PSC envisions a system where the developer essentially, by invoking PA 233, has the unilateral authority to choose its siting path: the old way, under the MZEA; locally under PA 233, which would include perfunctory review to determine compliance with § 226(8); or at the PSC, subject to the litany of standards it must comply with there.

Agreeing with the PSC’s definition of CREO, the Court of Appeals relied heavily on § 223(5), which states that, “If the commission approves an applicant for a certificate submitted under subsection (3)(c), the local unit of government is considered to no longer have a compatible renewable energy ordinance, unless the commission finds that the local unit of government’s denial of the application was reasonably related to the applicant’s failure to provide information required by [§ 223] (3)(a). But the Court of Appeals ignored the second phrase. The court stated:

An ALU's entitlement to information does not alter the plain meaning of the statutory language defining a CREO. Appellants seem to suggest that an ALU should be allowed to deny an application on the basis of a developer's failure to provide information unrelated to the requirements of MCL 460.1226(8) and that an ordinance should not thereby lose its status as a CREO. But MCL 460.1223(3)(c)(ii) provides that a developer may file an application in the PSC if an ALU denies an application that complies with the requirements of MCL 460.1226(8). If the PSC approves the application and issues a certificate in that situation, the ALU would no longer be considered to have a CREO. [*Id.* at 10.]

The Court of Appeals' analysis misses that PA 233 explicitly provides for an ALU's denial of an application under a CREO unrelated to the items in § 226(8). An ALU will no longer be considered to have a CREO *if* (1) the PSC grants a certificate *and* (2) finds that the local unit of government's denial of the application was reasonably related to the applicant's failure to provide information required by § 223 (3)(a). Put another way, the statute itself allows an ALU to deny an application based on the items in § 223 (3)(a)—which includes most of the information enumerated in § 225(1) *and* this catch-all sentence: "An affected local unit may require other information necessary to determine compliance with the compatible renewable energy ordinance."

In short, the PSC may not redefine CREO to mean that a local ordinance may contain no other restrictions than those found in § 226(8) because such an action violates basic tenets of administrative law in Michigan, including precedent directly tied to the PSC. Again, the PSC's authority is limited and it must rely on clear and unmistakable language when executing statutes it is charged to enforce. *Consumers Power Co*, 460 Mich at 155–157. PA 233 contains no clear and unmistakable language allowing it to redefine CREO or ALU, or to create new terms like "hybrid facilities." The PSC's redefinition of CREO ignores the full text of § 226(8) itself, the whole context of PA 233, and broader Michigan law.

This is not the first time Michigan courts have had to rein in the PSC. In *Procedure & Format for Filing Tariffs Under Mich Telecom Act*, telecommunication providers challenged an order from the PSC in which the PSC adopted a definition of “access services” which differed from Act 179’s definition of “access.” 210 Mich App at 548. Act 179 expressly defined “access” as “the provision of access to a local exchange network for the purpose of *enabling a provider* to originate or terminate telecommunications service within the exchange.” *Id.* at 548 (citing MCL 484.2102(a)) (emphasis added). The Legislature used “access” and “access services” interchangeably throughout Act 179. *Id.* at 549. Nonetheless, the PSC defined “access services” as “services and facilities provided to enable *all providers and customers* to originate or terminate *any intrastate telecommunication.*” *Id.* at 548 (emphasis added). This Court held that this overly broad definition was unlawful, in part, because it departed from the statutory definition. *Id.* at 550.

In defining “access service,” the PSC also misconstrued the section of Act 179 that provides that rates for access services set by a provider shall not exceed the rates allowed from the same interstate services by the federal government. *Id.* The PSC believed this section demonstrated a legislative intent that the PSC regulate any intrastate access service for which there was an equivalent interstate access service regulated by federal authorities. *Id.* This Court disagreed. “The provision is merely a cap on rates,” and “[t]here is no indication in [the provision] that the Legislature intended that all regulated interstate services would also be regulated intrastate.” *Id.* Other statutory schemes shed light on these concepts, and looking to preemption jurisprudence is helpful. Before the Court of Appeals, Appellants argued that PA 233 is a form of “conflict preemption.” The PSC argued that “This is not a preemption case.” (Appellee’s COA Brief, 31). Intervening Appellees argued that PA 233 expressly preempts the MZEA. (Intervening Appellees’

COA Brief, 28). But then, for its part, the Court of Appeals simply stated (without explanation) that “[t]he present issue does not involve implied preemption.” (COA Opinion, 11).

This Court has long held that “an ordinance is not conflict preempted as long as its additional requirements do not contradict the requirements set forth in the [state] statute.” *DeRuiter v Byron Twp*, 505 Mich 130, 147; 949 NW2d 91 (2020). It has explained that “[t]he mere fact that the State, in the exercise of its police power, has made certain regulations does not prohibit a municipality from exacting additional requirements.” *Id.* (cleaned up). “So long as there is no conflict between the two, and the requirements of the municipal bylaw are not in themselves pernicious, as being unreasonable or discriminatory, both will stand.” *Id.* (cleaned up). “The fact that an ordinance enlarges upon the provisions of a statute by requiring more than the statute requires creates no conflict therewith, unless the statute limits the requirement for all cases to its own prescription.” *Id.* (cleaned up).

In *DeRuiter*, this Court analyzed whether the Michigan Medical Marihuana Act, which states that medical marijuana must be cultivated in an “enclosed, locked facility” preempted a local ordinance that restricted *where* such a facility could be located (including through zoning). *Id.* at 143–144. The Court held that the ordinance was not preempted and that because the statute was silent as to where “enclosed, locked facilities” had to be located, local ordinances could regulate the “where.” *Id.* at 148.

Here, many Appellants have exercised their authority under the MZEA to determine where qualifying energy facilities may be located by copying the provisions of § 226(8) into their CREOs while also specifying the zoning districts where such facilities may be located. Like the statute at issue in *DeRuiter*, PA 233 is silent on the issue of “where,” which means municipalities retain the

statutory authority to regulate the location in their zoning ordinances. The PSC’s redefining of CREO runs afoul of Michigan’s preemption jurisprudence.

B. The Order unlawfully creates a new category of eligible facilities.

The Order also creates a completely new category of facilities, “hybrid facilities,” that are not contemplated by PA 233. Although the statutory scheme of PA 233 grants the PSC limited jurisdiction over specific types of facilities that meet threshold requirements, the PSC purports to use the Order to expand its jurisdiction to this additional new category of facilities. The Order states that a developer may apply if the proposed facility is a wind facility that includes solar facilities or storage facilities or a solar facility that includes storage facilities, which, when combined, meet the jurisdictional threshold. (Order, 5–6, 84–85).

True, the Legislature allowed energy storage facilities to be included in solar and wind facilities,¹⁴ but it did not include a provision allowing solar and wind facilities to be combined. The absence of such a provision is telling, and it must be deemed intentional. See *Four Zero One Associates LLC v Dep’t of Treasury*, 320 Mich App 587, 596; 907 NW2d 892 (2017).

As to the additional confusion—and unlawful formula—created by the PSC’s use of “hybrid facilities,” the Michigan Townships Association filed helpful public comments:

The inclusion of energy storage facilities in [PA 233’s] definitions is to recognize that energy storage does not have to be at least 50 MW capacity with 200 MWh of discharge capability to be in support of the qualifying wind or solar facility. Otherwise, the 50 MW solar project could not include energy storage if the energy storage did not qualify on its own ... For example, a 50 MW solar could have a 2 MW energy storage as part of its facility. This is NOT the same as saying a 10 MW solar qualifies if there is a 40 MW energy storage facility. In that case, neither would qualify under the legislation enacted into law ... The hybrid formula being proposed would allow

¹⁴ § 221(w), (x).

the combination of a 2-megawatt wind facility and a 98-megawatt battery storage facility to equal the 100 megawatts for a wind energy facility. This is not supported by any legal interpretation of the statute. [MTA Comments on MPSC Staff Draft Application Instructions; Exhibit I (emphasis in original).]

Yet the PSC once again ignored the clear intent of the Legislature and adopted a new term that not only confuses and conflates the statutory requirements but also expands its own authority over smaller projects that band together to avoid local zoning regulations.

Affirming the PSC's extralegislative creation of hybrid facilities, the Court of Appeals held that "the PSC merely gave a name to a concept implicit in the statutory text" and it stated Appellants "have not identified a reason why a facility comprised of multiple technologies types (each of which are permitted by statute) may not fall within the PSC's jurisdiction under PA 233." (COA Opinion, 14). It stated that Appellants "fail to articulate a reason why the relative proportion of each technology type may not be considered when determining whether the applicable capacity threshold has been identified." (*Id.*)

But the logic that hybrid facilities are "implicit" in the text of PA 233 assumes some sort of threshold finding that the applicable minimum megawatt configurations are ambiguous. As the Court of Appeals correctly explained regarding the definition of affected local units: "an agency cannot—just like a court cannot—rewrite the plain terms of a statute under the guise of statutory interpretation." (COA Opinion, 11). The same legal standard must apply to the hybrid facility question. And the answer must be that the Legislature's expressed its intent clearly and unambiguously that solar and wind facilities cannot be combined to meet the PSC's jurisdictional minimum capacity requirements. The inclusion of one thing (solar OR wind plus storage) and the exclusion of another (solar and wind) must be deemed intentional: *expression unius est exclusio alterius*. The Legislature expressly included energy storage facilities as part of both solar and wind

facilities. It did not include, however, solar facilities within the definition of wind facilities. Accordingly, PSC's administrative invention of hybrid facilities cannot stand.

C. This Court should vacate the Order.

For the reasons described above, the Order is riddled with missteps, overreaches, and plainly confounding "interpretations" of an unambiguous statute. Two of the PSC's central findings in the Order were already struck down by the Court of Appeals (ALUs and statutory timelines). Another is simply made up and wholly divorced from the statutory text (hybrid facilities). And another ignores the plain language of the statute, its broader context, and longstanding Michigan law (CREOs).

The Court of Appeals correctly held that the PSC could not rewrite "affected local unit" or statutory timelines to solve perceived practical problems. But it then allowed the PSC to do the same thing with CREOs and hybrid facilities.

Still, the best evidence of the PSC's overreach was the wholesale, extralegislative invention of an "exception" to the requirement that a pre-application public meeting be held in each ALU. Again, § 223(1) 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.*" § 223(1) (emphasis added). Section 222(2) states that, "[t]o obtain a certificate for an energy facility, an electric provider or IPP must comply with the requirements of sections 223 and 224, *and then* submit to the commission an application as described in section 225" (emphasis added). In other words, a public meeting must be held by the developer in each ALU before the developer submits an application. The statute contains no exceptions.

Yet the Order states that "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.” (Section C-3 of the Application Filing Instructions and Procedures; Order, 126).¹⁵

Simply put, the PSC was not satisfied with the unambiguous, mandatory requirements the Legislature imposed on developers. And it decided that it would cure what it perceived to be the Legislature’s mistakes. But the PSC does not get to make those decisions. Only the Legislature does.

“Thirty-seven million acres is all the Michigan we will ever have.” This case will decide who gets to choose what happens to countless thousands of those acres.

For the reasons stated above, the Order is unlawful and unreasonably further limits the power of municipalities to reasonably regulate land uses within their borders, well beyond what the Legislature intended. Accordingly, this Court should vacate the Order.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court

- grant leave to appeal, or
- in lieu of granting leave to appeal,
 - vacate the Order, or,
 - vacate the portions challenged herein and Section II(B)(1) (CREO) and II(C) (hybrid facilities) of the Court of Appeals’ decision.

Respectfully submitted,

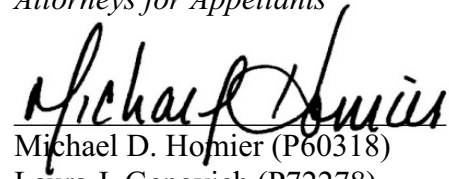
FOSTER SWIFT COLLINS & SMITH, PC

¹⁵ The PSC is applying this “exception” as of the time of this writing. In PSC Case No. U-22003, a solar facility siting case, the applicant held the required public meeting in an adjacent township, not in the ALU. The ALJ overseeing the case denied the ALU’s motion to dismiss that case, relying on this “exception.”

Dated: June 18, 2026

Attorneys for Appellants

By:

A handwritten signature in black ink, appearing to read "Michael D. Homier", written over a horizontal line.

Michael D. Homier (P60318)

Laura J. Genovich (P72278)

Keith T. Brown (P84193)

1700 E. Beltline Ave. NE, Suite 200

Grand Rapids, MI 49525

(616) 726-2200

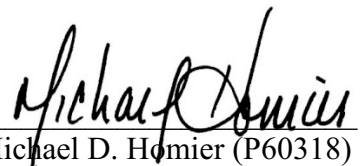
RECEIVED by MSC 6/18/2026 9:15:57 PM

WORD COUNT CERTIFICATION

This brief contains 11,660 words, in compliance with MCR 7.312(A)(1) and MCR 7.212(B).

FOSTER SWIFT COLLINS & SMITH, PC
Attorneys for Appellants

Dated: June 18, 2026

By: 
Michael D. Homier (P60318)
Laura J. Genovich (P72278)
Keith T. Brown (P84193)
1700 E. Beltline Ave. NE, Suite 200
Grand Rapids, MI 49525
(616) 726-2200

89561:00001:202807022-3

Appendix C

The Michigan Public Service Commission's Application for Leave to Cross Appeal in *In re
Implementing the Provisions of Public Act 233 of 2023*

See Attached.

STATE OF MICHIGAN
IN THE SUPREME COURT

ALMER CHARTER TOWNSHIP,
ARGENTINE TOWNSHIP, AUGUSTA
CHARTER TOWNSHIP, BEAVER
TOWNSHIP, BENGAL TOWNSHIP,
BINGHAM TOWNSHIP, BLISSFIELD
TOWNSHIP, BRIDGEHAMPTON
TOWNSHIP, BROCKWAY TOWNSHIP,
CASCADE CHARTER TOWNSHIP, CATO
TOWNSHIP, CLINTON COUNTY,
COHOCTAH TOWNSHIP, COLUMBIA
TOWNSHIP, COLUMBUS TOWNSHIP,
CONWAY TOWNSHIP, COOPER
CHARTER TOWNSHIP, DALLAS
TOWNSHIP, DEERFIELD TOWNSHIP,
DENMARK TOWNSHIP, DOUGLASS
TOWNSHIP, DUPLAIN TOWNSHIP,
EAGLE TOWNSHIP, EASTON
TOWNSHIP, ELLINGTON TOWNSHIP,
ELMWOOD TOWNSHIP, ESCANABA
TOWNSHIP, FRANKENLUST
TOWNSHIP, FREMONT TOWNSHIP,
GARDEN TOWNSHIP, GARFIELD
TOWNSHIP, GENOA TOWNSHIP,
HANDY TOWNSHIP, IDA TOWNSHIP,
INGHAM TOWNSHIP, IONIA COUNTY,
IOSCO TOWNSHIP, ISABELLA
TOWNSHIP, JOYFIELD TOWNSHIP,
JUNIATA TOWNSHIP, KAWKAWLIN
TOWNSHIP, KEENE TOWNSHIP,
KIMBALL TOWNSHIP, LAKE
TOWNSHIP, LEROY TOWNSHIP,
MARION TOWNSHIP, MARION
TOWNSHIP, MILAN TOWNSHIP,
MONITOR CHARTER TOWNSHIP,
MONTAGUE TOWNSHIP, MONTCALM
TOWNSHIP, MOORE TOWNSHIP,
NORTH BRANCH TOWNSHIP, OGDEN
TOWNSHIP, ORLEANS TOWNSHIP,
RIGA TOWNSHIP, SANILAC COUNTY,
SCHOOLCRAFT COUNTY, SEVILLE

Supreme Court No. 170249

Court of Appeals No. 373259

MPSC Case No. U-21547

THE MICHIGAN PUBLIC
SERVICE COMMISSION'S
APPLICATION FOR LEAVE TO
CROSS APPEAL

**The appeal involves a ruling
that a provision of the
Constitution, a statute, rule or
regulation, or other state
governmental action is invalid.**

RECEIVED by MSC 7/16/2026 3:18:43 PM

TOWNSHIP, SHIAWASSEE COUNTY,
SIDNEY TOWNSHIP, SPEAKER
TOWNSHIP, STOCKBRIDGE
TOWNSHIP, SUMMERFIELD
TOWNSHIP, TUSCOLA COUNTY,
TYRONE TOWNSHIP, VENICE
TOWNSHIP, WALES TOWNSHIP,
WATERLOO TOWNSHIP, WATERTOWN
TOWNSHIP, WHITE OAK TOWNSHIP,
WHITE RIVER TOWNSHIP, WILLIAMS
CHARTER TOWNSHIP, WORTH
TOWNSHIP, YORK CHARTER
TOWNSHIP, and PARIS TOWNSHIP,

Appellants, Cross Appellees,

v

MICHIGAN PUBLIC SERVICE
COMMISSION,

Appellee, Cross Appellants,

and

MICHIGAN ENERGY BUSINESS
INNOVATION BUSINESS COUNCIL,
INSTITUTE FOR ENERGY
INNOVATION, CLEAN GRID
ALLIANCE, and ADVANCED ENERGY
UNITED,

Intervening-Appellees.

**THE MICHIGAN PUBLIC SERVICE COMMISSION'S APPLICATION FOR
LEAVE TO CROSS APPEAL**

Nicholas Q. Taylor (P81020)
Anna B. Stirling (P84919)
Assistant Attorneys General
Attorneys for the Michigan Public
Service Commission
Appellee, Cross Appellant
Public Service Division
7109 West Saginaw Highway
Lansing, MI 48917
(517) 284-8140

Dated: July 16, 2026

TABLE OF CONTENTS

	<u>Page</u>
Index of Authorities	iii
Statement of Jurisdiction.....	vii
Statement of Questions Presented.....	viii
Statutes Involved	ix
Introduction	1
Statement of Facts and Proceedings.....	3
Standard of Review	14
Argument	16
I. The Supreme Court should grant leave and reverse the Court of Appeals' ALU holding and instead affirm the Commission's interpretation.	16
A. The ALU issue meets multiple grounds for review: under MCR 7.305(B)(2), it is an issue of significant public interest; under MCR 7.305(B)(3), it raises an issue major jurisprudential significance; and under MCR 7.305(B)(5)(a), the erroneous decision below will cause a material injustice.....	18
B. The Commission's interpretation is lawful, reasonable, and consistent with the legislative intent of PA 233.	23
C. The Court of Appeals erred in reversing the Commission's ALU interpretation.....	28
II. The Supreme Court should grant leave and reverse the Court of Appeals' application timeline holding and instead affirm the Commission's interpretation.....	35
A. This issue meets multiple grounds for review: under MCR 7.305(B)(2), it is an issue of significant public interest; and under MCR 7.305(B)(5)(a), the erroneous decision below will cause a material injustice.....	36
B. The Commission's application timeline interpretation is consistent with the statutory requirements of PA 233.	38

C. Alternatively, the Supreme Court should grant leave and make clear that MCL 460.1223(2) does not require a meeting to be held to avoid injustice from otherwise erroneous interpretations.....	41
Conclusion and Relief Requested	42
Word Count Statement.....	43

INDEX OF AUTHORITIES

	<u>Page</u>
Cases	
<i>Attorney General v Michigan Pub Serv Comm’n No. 2</i> , 237 Mich App 82 (1999)	16
<i>Batista v Office of Retirement Servs</i> , 515 Mich 283 (2024)	15
<i>Brackett v Focus Hope, Inc</i> , 482 Mich 269 (2008)	14, 15
<i>Consumers Power Co v Michigan Pub Serv Comm’n</i> , 460 Mich 148 (1999)	5
<i>Daniel v Dep’t of Corrections</i> , 468 Mich 34 (2003)	14
<i>General Motors Corp v Erves</i> (On Rehearing), 399 Mich 241 (1976)	25
<i>Herman v Berrien Co</i> , 481 Mich 352 (2008)	15
<i>Honigman Miller Schwartz and Cohn LLP v City of Detroit</i> , 505 Mich 284 (2020)	passim
<i>In re Complaint of Rovas Against SBC Michigan</i> , 482 Mich 90 (2008)	16
<i>In re Implementing Provisions of Public Act 233 of 2023</i> , ___ Mich App ___ (2026)	passim
<i>In re Reliability Plans of Electric Utilities for 2017–2021</i> , 505 Mich 97 (2020)	15, 16, 17, 29
<i>Karaczewski v Farbman Stein & Co</i> , 478 Mich 28 (2007)	14
<i>People v Gardner</i> , 482 Mich 41 (2008)	17

<i>People v Weeder</i> , 469 Mich 493 (2004)	15
<i>Residential Ratepayer Consortium v Michigan Pub Serv Comm’n</i> , 239 Mich App 1 (1999)	16
<i>State ex rel Gurganus v CVS Caremark Corp</i> , 496 Mich 45 (2014)	15, 30
<i>Warren Consolidated School District v School District of the City of Hazel Park</i> , ___ Mich ___ (2026)	15, 20, 29
<i>Younkin v Zimmer</i> , 497 Mich 7 (2014)	16
Statutes	
MCL 125.3102(x)	20, 24, 30
MCL 125.3209.....	20, 24, 30
MCL 460.1221.....	3
MCL 460.1221(a)	passim
MCL 460.1221(f)	6, 27, 30
MCL 460.1221(n)	10, 23, 30
MCL 460.1221(p)	3
MCL 460.1221(q)	8
MCL 460.1222.....	32, 39
MCL 460.1222(1)	3
MCL 460.1222(2)	passim
MCL 460.1223(1)	6, 7, 8, 31
MCL 460.1223(2)	passim
MCL 460.1223(3)	passim
MCL 460.1223(3)(a)	7

MCL 460.1223(3)(b).....	27
MCL 460.1223(3)(c)	7, 8
MCL 460.1223(3)(c)(i)	27, 39
MCL 460.1223(3)(d)	7
MCL 460.1223(5)	8
MCL 460.1223(c).....	7
MCL 460.1223(c)(ii).....	27
MCL 460.1223(c)(iii)	27
MCL 460.1224.....	32
MCL 460.1224(1)	8, 35
MCL 460.1224(2)	8, 31
MCL 460.1225(1)	6, 8
MCL 460.1225(1)(j).....	7
MCL 460.1225(n)	5
MCL 460.1226.....	32
MCL 460.1226(1)	7, 21
MCL 460.1226(2)	8, 31
MCL 460.1226(3)	4, 8, 19
MCL 460.1226(5)	4
MCL 460.1226(6)	5
MCL 460.1226(7)	4
MCL 460.1226(7)(g).....	6
MCL 460.1226(8)	6
MCL 460.1227.....	8, 22, 32

MCL 460.1228.....	8
MCL 460.1230(1)	5
MCL 460.1230(4)	6
MCL 460.1231.....	32
MCL 460.1231(1)	41
MCL 460.1231(2)	5, 33
MCL 460.1231(3)	5, 33, 41
MCL 460.1231(4)	6
MCL 460.1231(5)	5
 Rules	
MCR 7.212(J)(1)(f)	9
MCR 7.305(B)(2)	1, 18, 36
MCR 7.305(B)(3)	1, 19
MCR 7.305(B)(5)(a)	1, 20, 23, 37

STATEMENT OF JURISDICTION

On May 7, 2026, the Court of Appeals issued an opinion in the case below (Attached as Appendix A)¹ affirming in part, and reversing in part, the Michigan Public Service Commission’s (the “Commission”) October 10, 2024 order (the “October 10th Order”) (Attached as Appendix C) providing interpretive guidance related to various portions of 2023 PA 233 (“PA 233”) (attached as Appendix D) and adopting Application Filing Instructions and Procedures. On October 21, 2024, the Commission issued an erratum (Attached as Appendix E) in which the Commission corrected errors in the adopted Application Filing Instructions and Procedures that were included as an exhibit to the October 10th Order. On June 18, 2026, the various townships and counties that originally appealed the Commission’s October 10th Order (the “Local Units”) filed for leave to appeal the Court of Appeals’ decisions regarding the Commission’s interpretation of the term Compatible Renewable Energy Ordinance (“CREO”) and the Commission’s recognition of hybrid facilities.² The Commission files this Application for Leave to Cross Appeal pursuant to MCL 600.215, MCR 7.303(B)(1), and MCR 7.307.

¹ On May 14, 2026, the Court of Appeals issued a subsequent order amending its opinion to correct a clerical error. (Attached as Appendix B.)

² The Commission is filing its response in opposition to the Local Units’ Application for Leave to Appeal separately and concurrently with this Application for Leave to Cross Appeal.

STATEMENT OF QUESTIONS PRESENTED

1. The Commission interpreted the term “affected local unit” consistent with PA 233, giving effect to the entire act as this Court has directed. The Court of Appeals recognized the provisions of PA 233 regarding the term “affected local unit” and the requirements for local siting that demand interpretation but provided none. Did the Court of Appeals erroneously undermine the Legislature’s siting structure for renewable energy and energy storage projects when it reversed the Commission’s “affected local unit” interpretation?

Cross Appellant’s answer: Yes.

Cross Appellees’ answer: No.

Court of Appeals’ answer: No.

1. MCL 460.1223(3) creates a timeline for affected local units to respond to developers regarding their compatible renewable energy ordinance status if a MCL 460.1223(2) meeting is held. The Commission’s order included a separate, nonconflicting timeline ensuring applications are not filed prematurely and that local units do not assert unauthorized veto power over PA 233 siting. Should this Court reverse the Court of Appeals’ decision to set aside this separate and nonconflicting timeline?

Cross Appellant’s answer: Yes.

Cross Appellees’ answer: No.

Court of Appeals’ answer: No.

STATUTES INVOLVED

MCL 460.1221(a):

“Affected local unit” means a unit of local government in which all or part of a proposed energy facility will be located.

MCL 460.1223:

(1) An electric provider or independent power producer that, at its option or as required by the commission, proposes to obtain a certificate for and construct an energy facility shall hold a public meeting in each affected local unit. At least 30 days before a meeting, the electric provider or IPP shall notify the clerk of the affected local unit in which a public meeting will be held of the time, date, location, and purpose of the meeting and provide a copy of the site plan as described in section 224 or the address of an internet site where a site plan for the energy facility is available for review. At least 14 days before the meeting, the electric provider or IPP shall publish notice of the meeting in a newspaper of general circulation in the affected local unit or in a comparable digital alternative. The notice shall include a copy of the site plan or the address of an internet site where the site plan is available for review. The commission shall further prescribe the format and content of the notice. For the purposes of this subsection, a public meeting held in a township is considered to be held in each village located within the township.

(2) 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.

(3) If, within 30 days following a meeting described in subsection (2), the chief elected official of each affected local unit notifies the electric provider or IPP planning to construct the energy facility that the affected local unit has a compatible renewable energy ordinance, then the electric provider or IPP shall file for approval with each affected local unit, subject to all of the following:

(a) An application submitted under this subsection shall comply with the requirements of section 225(1), except for section 225(1)(j) and (s). An affected local unit may require other information necessary to determine compliance with the compatible renewable energy ordinance.

(b) A local unit of government with which an application is filed under this subsection shall approve or deny the application within 120 days after

receiving the application. The applicant and local unit of government may jointly agree to extend this deadline by up to 120 days.

(c) The electric provider or IPP may submit its application to the commission if any of the following apply:

(i) An affected local unit fails to timely approve or deny an application.

(ii) The application complies with the requirements of section 226(8), but an affected local unit denies the application.

(iii) An affected local unit amends its zoning ordinance after the chief elected official notifies the electric provider or IPP that it has a compatible renewable energy ordinance, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in section 226(8).

(d) An electric provider or IPP that submits an application to the commission pursuant to this subsection is not required to comply with subsection (1) or section 226(1), or the requirement to submit a summary of community outreach and education efforts pursuant to section 225(1)(j).

(4) If a local unit of government approves an application pursuant to subsection (3), construction of the proposed energy facility must begin within 5 years after the date the permit is granted and any challenges to the grant of the permit are concluded. The local unit of government may extend this timeline at the request of the electric provider or IPP without requiring a new application. The local unit shall not revoke a permit issued under subsection (3) except for material noncompliance with the permit by the electric provider or IPP.

(5) If the commission approves an applicant for a certificate submitted under subsection (3) (c), the local unit of government is considered to no longer have a compatible renewable energy ordinance, unless the commission finds that the local unit of government's denial of the application was reasonably related to the applicant's failure to provide information required by subsection (3)(a).

(6) Nothing in this section shall be construed to limit remedies available to an applicant to appeal a denial by a local unit of government under any other law of this State.

MCL 460.1224(2):

When it submits a site plan required under section 223 or 225 to the commission, an electric provider or independent power producer shall, for informational purposes, submit a copy to the clerk of each affected local unit.

MCL 460.1226(1):

Upon filing an application with the commission, the applicant shall make a 1-time grant to each affected local unit for an amount determined by the commission but not more than \$75,000.00 per affected local unit and not more than \$150,000.00 in total. Each affected local unit shall deposit the grant in a local intervenor compensation fund to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate.

MCL 460.1226(2):

Upon filing an application with the commission, the applicant shall provide notice of the opportunity to comment on the application in a form and manner prescribed by the commission. The notice shall be published in a newspaper of general circulation in each affected local unit or a comparable digital alternative. The notice shall be written in plain, nontechnical, and easily understood terms and shall contain a title that includes the name of the applicant and the words "NOTICE OF INTENT TO CONSTRUCT _____ FACILITY", with the words "WIND ENERGY", "SOLAR ENERGY", or "ENERGY STORAGE", as applicable, entered in the blank space. The commission shall further prescribe the format and contents of the notice.

MCL 460.1226(3):

The commission shall conduct a proceeding on the application for a certificate as a contested case under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. An affected local unit, participating property owner, or nonparticipating property owner may intervene by right.

MCL 460.1226(6):

(6) In evaluating the application, the commission shall consider the feasible alternative developed locations described under section 225(1)(n), if applicable, and the impact of the proposed facility on local land use, including the percentage of land within the local unit of government dedicated to energy generation. The commission may condition its grant of the application

on the applicant taking additional reasonable action related to the impacts of the proposed energy facility, including, but not limited to, the following:

(a) Establishing and maintaining for the life of the facility vegetative ground cover. This subdivision does not apply to an application for an energy facility that is proposed to be located entirely on brownfield land.

(b) Meeting or exceeding pollinator standards throughout the lifetime of the facility, as established by the "Michigan Pollinator Habitat Planning Scorecard for Solar Sites" developed by the Michigan State University Department of Entomology in effect on the effective date of the amendatory act that added this section or any applicable successor standards approved by the commission as reasonable and consistent with the purposes of this subdivision. Seed mix used to establish pollinator plantings shall not include invasive species as identified by the Midwest Invasive Species Information Network, led by researchers at the Michigan State University Department of Entomology and supporting regional partners. This subdivision does not apply to an application for an energy facility that is proposed to be located entirely on brownfield land.

(c) Providing for community improvements in the affected local unit.

MCL 460.1227:

(1) The applicant for a certificate shall enter into a host community agreement with each affected local unit. The host community agreement shall require that, upon commencement of any operation, the energy facility owner must pay the affected local unit \$2,000.00 per megawatt of nameplate capacity located within the affected local unit. The payment shall 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.

(2) If 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 residents of, the affected local unit. The amount paid by the applicant under this subsection must be equal to, or greater than, what the applicant would pay to the affected local unit under subsection (1). Community benefits agreements shall prioritize benefits to the community in which the energy facility is to be located. The topics and specific terms of the agreements may vary and may include, but are not limited to, any of the following:

(a) Workforce development, job quality, and job access provisions that include, but are not limited to, any of the following:

(i) Terms of employment, such as wages and benefits, employment status, workplace health and safety, scheduling, and career advancement opportunities.

(ii) Worker recruitment, screening, and hiring strategies and practices, targeted hiring planning and execution, investment in workforce training and education, and worker input and representation in decision making affecting employment and training.

(b) Funding for or providing specific environmental benefits.

(c) Funding for or providing specific community improvements or amenities, such as park and playground equipment, urban greening, enhanced safety crossings, paving roads, and bike paths.

(d) Annual contributions to a nonprofit or community-based organization that awards grants.

(3) A host community agreement or community benefits agreement is legally binding and inures to the benefit of the parties and their successors and assigns. The commission shall enforce this requirement, but not the actual agreements, which are enforceable in a court of competent jurisdiction.

INTRODUCTION

In 2023, the Michigan Legislature passed one of the most profound sets of state renewable energy laws in this country's history. Public Acts 229, 231, 233, 234, and 235 included some of the most ambitious renewable energy targets passed by any state, measures to further energy efficiency, and crucial authority for the Commission to site certain renewable energy and energy storage projects that will be needed to meet Michigan's clean energy goals. In particular, 2023 Public Act 233 ("PA 233") set forth the process by which developers of certain renewable energy and energy storage projects could seek alternative siting approval at the state level. The Commission sought to implement its new siting responsibility in a manner that implements the Legislature's directions and intent. This legislative intent balanced the need for a state siting process with preserving a voice and role for the local units of government that would otherwise be responsible for siting projects through their zoning authority.

The Commission asks this Court to uphold its interpretations, which give effect to the language and intent of PA 233 as a whole. The Court of Appeals erred when it found the Commission's affected local unit ("ALU") and application timeline interpretations were inconsistent with the statutory language of PA 233. Grounds exist for this Court to take up these issues under MCR 7.305(B)(2), (B)(3), and (B)(5)(a). As discussed further below, there is a significant public interest in ensuring that PA 233 can be implemented to meet the renewable energy demand in the manner that the Legislature directed. The Court of Appeals' decision also brings into question a major legal principle for the state's jurisprudence. Namely,

whether proper statutory interpretation demands reading legislation holistically to enact the intent of the statute.

Finally, as shown below, the Commission's interpretations were consistent with the text of PA 233 as a whole, and the Court of Appeals clearly erred when it found PA 233's definition and use of the term ALU was plain and unambiguous. These errors could cause material injustice if allowed to upend the renewable energy and energy storage siting process that the Legislature carefully crafted through PA 233. This injustice could be borne by landowners who wish to host these projects, developers who seek to build them, local units of government that wish to make full use of the benefits intended for them, and the state that sought to ensure sufficient resources to meet its ambitious clean energy goals.

STATEMENT OF FACTS AND PROCEEDINGS

PA 233

On November 28, 2023, Governor Gretchen Whitmer signed PA 233 into law, which amended Public Act 295 of 2008, Michigan’s Clean and Renewable Energy and Energy Waste Reduction Act. As expressed by the legislation’s title, the Legislature enacted PA 233, in part, “to authorize certification by this state before the construction of certain wind and solar energy facilities and energy storage facilities; to regulate certain local ordinances; [and] to protect personal property rights.” (Appendix D, p 1.) PA 233, which went into effect on November 29, 2024, prescribes the powers and duties of the Commission to provide certification before the construction of certain wind, solar, and energy storage facilities. MCL 460.1221 *et seq.*

PA 233 applies to certain renewable energy and energy storage projects, which are eligible to receive a siting certificate from the Commission. Specifically, PA 233 applies to solar energy facilities with a nameplate capacity³ of 50 megawatts or more; wind energy facilities with a nameplate capacity of 100 megawatts or more; and energy storage facilities with nameplate capacity of 50 megawatts or more and an energy discharge capability of 200 megawatt hours or more. MCL 460.1222(1). PA 233 provides that an electric provider or independent power producer

³ PA 233 defines nameplate capacity as “the designed full-load sustained generating output of an energy facility. Nameplate capacity shall be determined by reference to the sustained output of an energy facility even if components of the energy facility are located on different parcels, whether contiguous or noncontiguous.” MCL 460.1221(p).

(collectively referred to as developers throughout this Application) that intends to build such eligible projects, can seek a certificate from the Commission. MCL 460.1222(2). In addition, local units of government that would otherwise be responsible for siting such projects through their zoning jurisdiction can request that the Commission require a project to obtain a Commission certificate. *Id.* For purposes of PA 233, these local units of government are referred to as “affected local units” or, as used in the Court of Appeals’ opinion and this brief, “ALUs.” As will be discussed further below, PA 233 defines ALU as “a unit of local government in which all or part of a proposed energy facility will be located.” MCL 460.1221(a).

The Commission has one year from the time a complete application is filed to determine whether to grant or deny the certificate, pursuant to a contested case process. MCL 460.1226(3), (5). MCL 460.1226(7) provides that the Commission must grant a certificate if it determines the following:

1. The public benefits of the proposed facility justify its construction (e.g. expected tax revenue; landowner payments; community benefits agreements; local job creation; and contributions to energy, capacity, reliability, or resource adequacy needs).
2. The project complies with MCL 324.1705 (i.e. the administrative proceeding standard of the Natural Resources and Environmental Protection Act).
3. The applicant has considered and addressed impacts on the environment and natural resources (e.g. sensitive habitats and waterways, wetlands and floodplains, wildlife corridors, parks, historic and cultural sites, and threatened or endangered species).
4. The applicant has met the conditions established in MCL 460.1227 (i.e. PA 233’s host community agreement and community benefit agreement requirements).

5. The project complies with various labor requirements.
6. The proposed energy facility will not unreasonably diminish farmland.
7. The proposed energy facility does not present an unreasonable threat to public health or safety, as further articulated by MCL 460.1226(8). MCL 460.1226(7).

The Commission must consider feasible alternative developed locations, including vacant industrial property and brownfields, and local land use impacts. MCL 460.1225(n); MCL 460.1226(6). Local land use impacts include the “percentage of land within the local unit of government dedicated to energy generation.” MCL 460.1226(6). The Commission may also condition a certificate on additional applicant actions related to the impacts of the proposed project. *Id.* Consistent with the ordinary scope of the Commission’s authority, *Consumers Power Co v Michigan Pub Serv Comm’n*, 460 Mich 148, 130 (1999), the Commission only has those powers and duties granted under PA 233 when administering PA 233. MCL 460.1230(1).

The effect of a certificate, if granted, is to ensure that construction, operation, and maintenance of the project cannot be limited or impaired by any subsequent zoning ordinance or limitation, nor by any “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(2), (3). A certificate does not otherwise exempt the developer from obtaining other permits, licenses, or permissions that are not preempted by the certificate. MCL 460.1231(5). A PA 233 certificate does not confer powers of

eminent domain and does not determine public convenience and necessity for purposes of eminent domain or condemnation actions. MCL 460.1230(4). If no certificate is issued, “all local policies, practices, regulations, rules, or ordinances relating to the siting of energy facilities . . . remain in full force and effect.” MCL 460.1231(4).

PA 233 provides an alternative path for ALUs that would prefer to continue siting projects locally. The statute creates a concept known as a CREO. A CREO is “an ordinance that provides for the development of energy facilities within the local unit of government, the requirements of which are no more restrictive than the provisions included in section 226(8).”⁴ MCL 460.1221(f). PA 233 sets forth various pre-application requirements for developers that plan to seek a certificate from the Commission, including public meetings, notice requirements, and an offer to meet with the ALUs to discuss the proposed site plan. MCL 460.1223(1), (2). If the developer and the ALUs hold the meetings and each ALU notifies the developer that it has a CREO, then the developer must first file for approval with each ALU pursuant to MCL 460.1223(3). Such local applications must comply with the application requirements of MCL 460.1225(1), with some exceptions, and an ALU

⁴ MCL 460.1226(8) provides the standard which, if met, demonstrate that a project “does not present an unreasonable threat to public health or safety.” MCL 460.1226(7)(g), (8). The standard includes requirements for setbacks, fencing, project height, sound generation, and lighting solutions, along with other technology-specific requirements for the various eligible project types. MCL 460.1226(8).

may require other information necessary to determine compliance with the compatible renewable energy ordinance. MCL 460.1223(3)(a).

Local siting under MCL 460.1223(3) does not necessarily preclude a developer from eventually pursuing a Commission certificate. Rather, PA 233 provides three paths to Commission siting even if each ALU notifies the developer that it has a CREO. After filing with the ALUs under MCL 460.1223(3), a developer may nonetheless submit its application to the Commission if: (1) “[a]n affected local unit fails to timely approve or deny an application”; (2) “[t]he application complies with the requirements of section 226(8), but an affected local unit denies the application”; or (3) “[a]n affected local unit amends its zoning ordinance after the chief elected official [“CEO”] notifies the [developer] that it has a compatible renewable energy ordinance, and the amendment imposes additional requirements on the development of energy facilities that are more restrictive than those in section 226(8).” MCL 460.1223(c).

There are consequences for the ALU if a developer files a certificate application with the Commission pursuant to MCL 460.1223(3)(c) after initially having been reviewed at the local level. Developers filing such applications need not follow the public meeting and associated pre-application requirements of MCL 460.1223(1), provide the one-time grant funds to ALUs for participation in the contested case, or provide the summary of community outreach required by MCL 460.1225(1)(j). MCL 460.1223(1), (3)(d); MCL 460.1225(1)(j); MCL 460.1226(1). Additionally, if a project is granted a certificate after being denied locally and

brought to the Commission pursuant to MCL 460.1223(3)(c), then the ALU is considered to no longer have a CREO, unless the Commission finds the local government's denial was reasonably related to the developer's failure to provide the required application materials. MCL 460.1223(5).

PA 233 provides other requirements and provisions. These include the public meeting and associated outreach efforts noted above, MCL 460.1223(1); requirements regarding the proposed site plan and granting the Commission authority to issue additional filing requirements, MCL 460.1224(1), (2); enumerating required application materials and noting that the Commission can require any other reasonable information, MCL 460.1225(1); notice requirements, MCL 460.1226(2); authorizing ALUs, participating property owners, and adjacent landowners to intervene by right, MCL 460.1226(3); MCL 460.1221(q); host community agreement or community benefit agreement requirements, MCL 460.1227; and authorizing the Commission to take necessary steps to protect confidential information, which may be exempted from disclosure under the Freedom of Information Act, MCL 460.1228.

Commission's October 10th Order

After PA 233 was passed, on February 8, 2024, the Commission opened a docket in Commission Case No. U-21547 and directed its staff "to file recommendations on application filing instructions, guidance relating to [CREOs], and any other issues involving Act 233." (MPSC Case No. U-21547, 10/10/2024

Order, p 2, F # 0025⁵.) The Commission staff then held eight public meetings at which it presented a series of straw proposals and reviewed informal comments. (*Id.*); *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___ (2026) (Docket No. 373259); slip op at 17. Based on these outreach efforts and work with external consultants, Staff filed its recommendations to the docket. (MPSC Case No. U-21547, 10/10/2024 Order, pp 2–4, F # 0025.) The Commission sought comments from interested persons on its staff’s recommendations. As the Court of Appeals noted, “[f]ollowing the filing of the staff’s proposed draft, more than 100 comments were submitted to the PSC, including comments from many stakeholders” and the Commission “and its staff considered all of the comments in developing the application filing requirements.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 17; (see also MPSC Case No. U-21547, 10/10/2024 Order, p 3, F # 0025.)

In its October 10, 2024 order, the Commission evaluated PA 233, its staff’s recommendations, and the comments filed in response to those recommendations to issue guidance on a variety of topics related to PA 233 and to adopt final Application Filing Instructions and Procedures. (MPSC Case No. U-21547, 10/10/2024 Order, pp 1–77, F # 0025.) Shortly thereafter, the Commission issued an

⁵ The record in this matter appears in the MPSC’s electronic docket found at <https://mi-psc.my.site.com/s/case/5008y000009kJfbAAE/in-the-matter-on-the-commissions-own-motion-to-open-a-docket-to-implement-the-provisions-of-public233-of-2023>. The Commission has included the F # consistent with MCR 7.212(J)(1)(f). “F # 0025” is the filing number where the cited order can be found on the e-docket.

erratum to the October 10th Order correcting errors that were inadvertently included in the Application Filing Instructions and Procedures that were attached to the October 10th Order. (MPSC Case No. U-21547, 10/21/2024 Erratum, p 1, F # 0026.)

The Commission's October 10th Order provided, among other guidance, the Commission's interpretation of the term ALU. (MPSC Case No. U-21547, 10/10/2024 Order, pp 6–10, F # 0025.) As stated above, the Commission recognized that PA 233 defined the term to mean “a local unit of government in which all or part of a proposed energy facility will be located.” (*Id.* at 6, quoting MCL 460.1221(a).) The Commission further recognized that PA 233 defined “local unit of government” or a “local unit” to mean “a county, township, city, or village.” (*Id.*, citing MCL 460.1221(n).) Despite this geographic definition, the Commission received numerous comments pointing out the conflict and ambiguity between the CREO definition and other provisions of PA 233 that required interpretation. (MPSC Case No. U-21547, 10/10/2024 Order, pp 7–9, F # 0025.)

As the Commission pointed out, MCL 460.1223(3) requires the chief operating officer of *each* ALU to notify the developer that the ALU has a CREO if the ALUs are to retain initial local siting jurisdiction over a project. Importantly, however, the Commission noted that:

under the Michigan Zoning Enabling Act (MZEA), Public Act 110 of 2006, the zoning jurisdiction of a county does not include areas subject to a township zoning ordinance. See, MCL 125.3102(x); MCL 125.3209. It is therefore impossible for a county to have an applicable CREO if a township has enacted a CREO. [*Id.* at 6–7.]

As one potential resolution of this statutory conflict, the Commission staff recommended all local units of government be considered ALUs and that the Commission interpret MCL 460.1223(3) to require only those ALUs with zoning jurisdiction, instead of every ALU, have a CREO to trigger initial local siting under MCL 460.1223(3). (*Id.*) Staff focused on what is required by ALUs under MCL 460.1223(3) to trigger initial local siting, as opposed to focusing on the ALU definition and which local units constitute an ALU. Other commenters disagreed with Staff's proposal and, instead, submitted various arguments for why the Commission should resolve this statutory ambiguity by interpreting the term ALU to only refer to those local units exercising zoning jurisdiction. These comments included various points asserting that the proper interpretation of PA 233 (given the provisions of MCL 460.1223(3)), the context with respect to the MZEA, and the merits of interpreting the term ALU consistently throughout PA 233 as a whole indicate that the term ALU should be limited to those local units that exercise zoning jurisdiction. (*Id.* at 7–9.) The commenters asserted that this interpretation properly harmonizes the terms of the statute and resolves the ambiguity. (*Id.*)

The Commission agreed with these commenters and rejected staff's recommendation. The Commission stated:

The Commission has reviewed Act 233, the Staff Draft, and pertinent comments and agrees with the commenters' argument that the term ALU should be restricted to only those local units of government that exercise zoning jurisdiction. Importantly, Act 233 only transfers authority to site an energy facility from the local unit to the Commission under limited circumstances.

* * *

Critically, the Commission finds that all the circumstances that trigger the Commission's limited authority to site energy facilities necessarily require a local unit of government to exercise zoning jurisdiction. As such, although the statutory definition of ALU does not reference zoning jurisdiction, reading the term in light of the entire context of Act 233's statutory scheme to provide a limited transfer of siting authority to the Commission reveals that such a restriction is not only reasonable, but necessary. [*Id.* at 9–10.]

Also relevant to this Application is the Commission's interpretation with respect to the application timeline. The Commission recognized that PA 233 includes certain pre-application requirements, including a requirement for developers to offer in writing to meet with the chief elected official, or a designee, to discuss the proposed project's site plan. (*Id.* at 10, citing MCL 460.1223(2).) The Commission also evaluated a staff proposal recommending that an applicant "may proceed as if there is not a [CREO] in the event that the local official has failed to respond to the offer to meet after thirty days following receipt of the certified mail have passed." (*Id.* at 10–11.)

The Commission recognized that a developer is only required to go through the initial local siting process under MCL 460.1223(3) if each ALU notifies the developer that it has a CREO. (*Id.* at 10.) The ALUs, therefore, have an affirmative obligation to notify the developer of a CREO. Based on this recognition, the Commission went on to find that "if that CEO fails to notify the electric provider or IPP of the existence of a CREO within 30 days following receipt of an offer to meet, the electric provider or IPP may proceed as if an ALU does not have a CREO." (*Id.* at 11–12, citing MCL 460.1223(3).) The Court of Appeals overturned these two Commission findings in its May 7 Opinion.

Court of Appeals' Opinion

Following the issuance of the October 10th Order, the Local Units filed an appeal to the Michigan Court of Appeals challenging various portions of the Commission's interpretation and procedural approach. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 1–18. This included challenges to the Commission's interpretation of the terms CREO, ALU, hybrid facility, and the application timeline. *Id.* The Local Units also claimed the Commission violated the Administrative Procedures Act by failing to follow the rulemaking requirements. *Id.* at 16. The Court of Appeals rejected all of these arguments, except for those challenging the Commission interpretation of the term ALU and challenging the Commission's interpretation of the application timeline. *Id.* at 1–18.

Regarding the term ALU, the Court of Appeals found that the Commission erred in interpreting the term to include only those units of government that exercise zoning jurisdiction. *Id.* at 11–12. The court recognized that MCL 460.1223(3) requires each ALU to notify a developer that it has a CREO to trigger initial local siting. With respect to the Commission's MZEA findings, the court stated that:

A county's zoning jurisdiction does not include areas subject to a township zoning ordinance. See MCL 125.3209 and MCL 125.3102(x). Under these provisions it is impossible for a township and a county to each have a CREO in the same area. [*Id.* at 12–13, n 6.]

However, the court held that the Legislature, through MCL 460.1221(a), included an unambiguous and purely geographic definition of the term ALU and that the

Commission erred in interpreting the term to apply only to those units exercising zoning jurisdiction. *Id.* at 11–12. The Court of Appeals also referenced several portions of PA 233 that it stated were furthered by its reversal of the Commission’s ALU interpretation, including the public meeting and ALU outreach requirements, ALU intervention rights, and ALU one-time grant and host community agreement availability. *Id.* at 12. The court rejected the Commission’s interpretation based on the statutory provisions triggering Commission jurisdiction. *Id.*

The Court of Appeals also rejected the Commission’s application timeline interpretation. *Id.* at 15. The court noted that, to trigger initial local siting, MCL 460.1223(3) provides an ALU 30 days from the time a meeting is held pursuant to MCL 460.1223(2) to notify the developer that it has a CREO. *Id.* The court held that the Commission’s interpretation that a developer could proceed as if an ALU does not have a CREO if the ALU fails to notify the developer of the existence of a CREO within 30 days following receipt of an offer to meet differed from that MCL 460.1223(3) timeline. *Id.* On that basis, the court held that the Commission incorrectly interpreted PA 233. The court was unconvinced by concerns that an ALU might seek to unreasonably delay the meeting and thereby seek to upend the entire PA 233 process. *Id.*

STANDARD OF REVIEW

The Supreme Court reviews questions of law de novo. *Brackett v Focus Hope, Inc.*, 482 Mich 269, 275 (2008), citing *Karaczewski v Farbman Stein & Co.*, 478 Mich 28, 32 (2007); *Daniel v Dep’t of Corrections*, 468 Mich 34, 40 (2003). Questions of

statutory interpretation are such questions of law that are reviewed de novo. *Id.* This means that the Court reviews the legal issue independently, “without deference to the lower court.” *In re Reliability Plans of Electric Utilities for 2017–2021*, 505 Mich 97, 118–119 (2020).

While clear and unambiguous statutes can be enforced based on their plain language as written, *People v Weeder*, 469 Mich 493, 497 (2004), proper statutory interpretation seeks to give effect to the legislative intent as expressed through the statutory language. *Warren Consolidated School District v School District of the City of Hazel Park*, ___ Mich ___ (2026) (Docket No. 167643); slip op at 8–9 (Attached as Appendix F). This Court has explained that, in doing so, it examines “the statute as a whole, reading individual words and phrases in the context of the entire legislative scheme” and “each word and phrase in a statute must be assigned such meanings as are in harmony with the whole of the statute, construed in light of history and common sense.” *Id.*, quoting *Batista v Office of Retirement Servs*, 515 Mich 283, 297–298 (2024) and *Honigman Miller Schwartz and Cohn LLP v City of Detroit*, 505 Mich 284, 295 (2020). This Court has also warned against “[v]iewing an excerpt of a subsection with a magnifying glass to the exclusion of its relevant context,” which “eschews this Court’s dictate that ‘we must consider both the plain meaning of the critical word or phrase as well as its placement and purpose in the statutory scheme.’” *State ex rel Gurganus v CVS Caremark Corp*, 496 Mich 45, 60–61 (2014), quoting *Herman v Berrien Co*, 481 Mich 352, 366 (2008).

The standard of review for Commission decisions depends on the nature of the agency decision involved. In matters of administrative expertise, the courts give due deference to the Commission, *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 101 (2008), and do not substitute their “judgement for that of the [Commission].” *Attorney General v Michigan Pub Serv Comm’n No. 2*, 237 Mich App 82, 88 (1999); see also *Residential Ratepayer Consortium v Michigan Pub Serv Comm’n*, 239 Mich App 1, 3 (1999). The standard of review for the Commission’s legal interpretations is less deferential, but courts still give the interpretations respectful consideration and do not overturn the interpretations unless there is a cogent reason to do so. *Younkin v Zimmer*, 497 Mich 7, 10 (2014); *In re Reliability Plans of Electric Utilities for 2017–2021*, 505 Mich at 119. This Court has explained that, as long as the agency’s “interpretation does not conflict with the Legislature’s intent as expressed in the language of the statute at issue, there are no such cogent reasons to overrule it.” *Younkin*, 497 Mich at 10 (citation and quotation marks omitted).

ARGUMENT

I. The Supreme Court should grant leave and reverse the Court of Appeals’ ALU holding and instead affirm the Commission’s interpretation.

The Court of Appeals largely recognized the validity of the Commission’s October 10th Order, which interpreted the terms of PA 233 consistent with legislative intent as expressed through the plain language of the statute. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___, slip op at 8–

11, 14–15, 16–17. However, it erred when rejecting the Commission’s interpretation of the term ALU. Despite indications to the contrary in the Court of Appeals’ decision, the Commission’s ALU interpretation gave effect to PA 233 as a whole based exclusively on the statutory language of PA 233 and the MZEA.

The Court of Appeals recognized the Commission’s authority to interpret the statutes it administers, and there can be no serious challenge to this authority. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 8, citing *In re Reliability Plans of Electric Utilities for 2017–2021*, 505 Mich at 118–119. The Court of Appeals’ rejection of the Commission’s ALU interpretation was premised, not on questioning this authority, but on the position that when the statutory meaning is plain, “judicial construction is neither necessary nor permitted.” *Id.* at 11, citing *People v Gardner*, 482 Mich 41, 50 (2008). However, as shown below and in the Commission’s October 10th Order, the meaning of PA 233’s provisions with respect to ALUs demands interpretation. (See MPSC Case No. U-21547, 10/10/2024 Order, pp 6–10, F # 0025.) The Commission not only has the authority, but also the responsibility, to interpret the statutory terms consistent with this Court’s directions. The Commission did just that.

The Court should affirm the Commission’s ALU interpretation as it is the one that gives meaningful effect to the Legislature’s intent and resolves the statutory ambiguity. This issue meets multiple grounds for this Court’s review.

- A. The ALU issue meets multiple grounds for review: under MCR 7.305(B)(2), it is an issue of significant public interest; under MCR 7.305(B)(3), it raises an issue major jurisprudential significance; and under MCR 7.305(B)(5)(a), the erroneous decision below will cause a material injustice.**

Upholding the Commission’s interpretation would prevent foreseeable material injustices and uphold core legal principles.

This Court should grant the Commission’s application for leave to cross appeal and uphold the Commission’s interpretation of ALU because it is a matter of significant public interest. Pursuant to MCR 7.305(B)(2), one basis on which an application for leave can be granted is if “the issue has significant public interest” and if the case “is one by or against the state or one of its agencies. . . .”

There can be little doubt that there is significant public interest in PA 233 itself. However, the Commission recognizes that 7.305(B)(2) demands more—it requires there be significant public interest in “the issue” for which the party is seeking appeal. MCR 7.305(B)(2). Here, the issue of how to interpret the term ALU goes to the core of PA 233. As shown below, some interpretation is required to reconcile the requirement that each ALU notify a developer that it has a CREO in order to retain initial local siting and the fact that two overlapping jurisdictions (e.g. a county and a township) cannot have applicable ordinances governing the same location at the same time. The Court of Appeals recognized this reality of the MZEA but went on to claim that the statute was unambiguous and without need of interpretation with respect to the term ALU. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___, slip op at 12–13, n 6. The court did not explain how ALUs without siting jurisdiction could ever satisfy the conditions

necessary to retain local siting (i.e. notifying the developer that it has a CREO) when they cannot have an applicable ordinance with respect to the project. The state of this critical component of PA 233's structure is uncertain in the wake of the Court of Appeals' opinion, which is certainly of significant public interest.

Determining who has a say in siting renewable energy generation is also of significant public interest. PA 233 ensures the input of interested community voices is preserved beyond its recognition of ALUs. Not only does the statute ensure that ALUs are able to intervene in the contested Commission case by right, but it also ensures that both participating and nonparticipating adjacent landowners can intervene by right. MCL 460.1226(3). The Local Units may disagree with the Commission's interpretation of the term "ALU," but one can hardly dispute that the question poses an issue of significant public interest. As this case is also one against the Michigan Public Service Commission, an agency of the State of Michigan, grounds exist for this Court to grant leave under MCR 7.305(B).

The Court of Appeals' treatment of the Commission's ALU interpretation also raises a legal principle of major significance to the state's jurisprudence and is, therefore, appropriate for appeal under MCR 7.305(B)(3). The Court of Appeals did not, as this Court has directed, give effect to the statute as a whole. *Honigman Miller Schwartz and Cohn LLP*, 505 Mich at 309. Rather, after superficially acknowledging that context is important in statutory interpretation, the Court of Appeals reversed the Commission's interpretation of provisions that unavoidably require some interpretation without providing any further guidance or explanation.

This Court should make clear that the principles articulated in cases like *Warren Consolidated School District* and *Honigman Miller Schwartz and Cohn LLP* do not permit a court to acknowledge the importance of context then proceed to interpret terms of the statute in isolation. Rather, these cases direct the courts, and the Commission, to interpret statutes in a wholistic manner. The Commission attempted to do so, and this Court should grant leave to cross appeal in order to restore and validate those attempts.

The Court should also grant this Application under MCR 7.305(B)(5)(a), because the Court of Appeals' decision is clearly erroneous and will result in material injustice. As shown below, the Court of Appeals clearly erred when it recognized the provisions of PA 233 that require interpretation of the term ALU but failed to incorporate that recognition into its determination. The court recognized that MCL 460.1223(3) requires each ALU to notify the developer of a qualifying renewable energy or energy storage project that it has a compatible renewable energy ordinance in order to retain initial siting at the local level. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 4. The court also explained that "[a] county's zoning jurisdiction does not include areas subject to a township zoning ordinance. See MCL 125.3209 and MCL 125.3102(x). Under these provisions it is impossible for a township and a county to each have a CREO in the same area." *Id.* at 12–13, n 6. Yet, the court did not explain how the statute should be read in light of its rejection of the Commission's interpretation, which gave effect to PA 233 as a whole.

This error will result in material injustice. In the wake of the Court of Appeals opinion, it must be determined what it means for “each affected local unit” to notify the developer “that the affected local unit has a compatible renewable energy ordinance.” MCL 460.1223(3). One possible interpretation is that the conditions required to initially retain siting at the local level can never be met. Given that a township and county cannot “each have a CREO in the same area,” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12–13, n 6, every renewable energy siting case is arguably eligible to come to the Commission for a certificate. This would cause injustice to ALUs with zoning jurisdiction that do have a CREO and that could otherwise retain initial local siting review.

Regardless of how this interpretation is resolved, the Court of Appeals’ decision to set aside the Commission’s ALU interpretation will impose injustice on project developers and ALUs exercising zoning jurisdiction alike by increasing costs to developers and reducing the funds that individual ALUs receive to participate in the contested case process.

MCL 460.1226(1) requires that, upon filing an application with the Commission, a developer must make a one-time grant to each ALU for an amount not more than \$75,000 per ALU and not more than \$150,000 in total. This “local intervenor compensation fund” is “to be used to cover costs associated with participation in the contested case proceeding on the application for a certificate.” *Id.* The interpretation of ALU promulgated by the Court of Appeals increases the

number of ALUs that are entitled to these participation funds in each case. For every additional party that is considered an ALU, the maximum financial assistance intended to allow local participation in the contested case proceeding for a project located in a county, township, city, or village decreases reciprocally. If this Court upholds the decision of the Court of Appeals, local units of government exercising zoning jurisdiction that would otherwise receive \$75,000 to represent their interests may have to split those funds with ALUs that would, under the MZEA, have no zoning authority to site a renewable energy project.

Developers applying to the Commission for a certificate, in turn, are required to either enter into host community agreements with each ALU that pays the ALU at least \$2,000 per megawatt of nameplate capacity or enter into community benefits agreements with eligible community-based organizations if the ALU refuses.⁶ MCL 460.1227. Expanding the number of local units that constitute ALUs will increase the number of agreements that must be entered into and the associated costs, potentially impacting a project's viability. To be clear, these economic considerations are not the basis for the Commission's interpretation.

⁶ For example, if a proposed 75-megawatt project is located within two townships that exercise zoning jurisdiction in the same county, then under the Commission's interpretation, the developer must sign a host community agreement with each township for at least \$150,000 (\$300,000 total). Under the Court of Appeals' interpretation, the developer would be required to sign an additional host community agreement with the county for at least another \$150,000 (\$450,000 total). If the two townships were in two separate counties, then the developer would have to sign two additional host community agreements under the Court of Appeals' interpretation for at least an additional \$300,000 (\$600,000 total).

Rather, they are the material injustices that flow from the erroneous Court of Appeals decision that address the grounds for appeal under MCR 7.305(B)(5)(a).

The Commission's ALU interpretation is a lawful and reasonable interpretation that, as this Court has directed, gives effect to PA 233 as a whole. The Court of Appeals erred when it reversed this interpretation, particularly given that the Court of Appeals recognized the components that demanded statutory interpretation but failed to provide any explanation or guidance on how the remaining provisions of the statute should be read in the wake of its opinion. This Court should restore the Commission's interpretation and, thereby, restore the process the Legislature intended to create through PA 233.

B. The Commission's interpretation is lawful, reasonable, and consistent with the legislative intent of PA 233.

The Commission's interpretation of the term ALU to include "only those local units of government that exercise zoning jurisdiction" is not only consistent with the legislative intent of PA 233, as manifest in the plain language, but is also necessary. (MPSC Case No. U-21547, 10/10/2024 Order, p 10, F # 0025.) This Court should reverse the Court of Appeals' decision to set aside the Commission interpretation that gave effect to the language of PA 233 as a whole.

The term "affected local unit" is defined by the statute to mean "a unit of local government in which all or part of a proposed energy facility will be located." MCL 460.1221(a). A "local unit of government" or "local unit" is, in turn, defined as "a county, township, city, or village." MCL 460.1221(n). MCL 460.1222(2) generally

allows developers to apply to the Commission for a certificate for qualifying renewable energy and energy storage projects. Yet, there is a key mechanism in the statute that allows initial siting determinations to remain at the local level. MCL 460.1223(3) requires developers to first apply for siting with the ALU if, and only if, the chief elected official in each ALU notifies the developer, within 30 days following a meeting with that developer, that the ALU has a CREO. MCL 460.1223(3). If each chief elected official confirms its ALU has a CREO, the developer must apply for approval through the ALUs' local processes, at least initially. *Id.*

As the Court of Appeals appeared to recognize, however, there is a feature of zoning authority in Michigan that must be considered when determining if a local unit is even able to enact an ordinance that could constitute a CREO. Under the MZEA, the zoning jurisdiction of a county does not include areas subject to a township zoning ordinance. MCL 125.3102(x); MCL 125.3209. In fact, when a township exercises zoning jurisdiction, its ordinances supplant any attempt by the County to exercise zoning jurisdiction in the township or to otherwise act through rule or regulation pursuant to the MZEA. MCL 125.3209. The Court of Appeals put it simply when it found:

A county's zoning jurisdiction does not include areas subject to a township zoning ordinance. See MCL 125.3209 and MCL 125.3102(x). Under these provisions it is impossible for a township and a county to each have a CREO in the same area. [*In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12–13, n 6.]

A township and the county in which a project is located could never represent that they “each” have CREOs applicable to the same portion of the potential project.

It is an established principle of statutory interpretation that the words of a statute should be read in their context. *Honigman Miller Schwartz and Cohn LLP*, 505 Mich at 309. And more than merely noting that context is important, as the Court of Appeals did, *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 11, this Court has explained that “words in a statute should not be construed in [a] void, but should be read together to harmonize [their] meaning, **giving effect to the act as a whole.**” *Honigman Miller Schwartz and Cohn LLP*, 505 Mich at 309 (2020) (emphasis added), quoting *General Motors Corp v Erves* (On Rehearing), 399 Mich 241, 255 (1976). The Commission recognized this Court’s directions in its October 10th Order when it stated, “[a] statute should be interpreted in light of the overall statutory scheme, and [a]lthough a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context.” (MPSC Case No. U-21547, 10/10/2024 Order, p 10, F # 0025, quoting *Honigman Miller Schwartz and Cohn LLP*, 505 Mich at 307 (quotation marks omitted).) The Local Units themselves have acknowledged, albeit in support of a different and erroneous argument, that “PA 233, as PA 234 suggests, must be read in context with the MZEA.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 9, quoting the Local Units’ brief to the Court of Appeals.

Because of the zoning jurisdiction structure between various levels of local government in Michigan, the Commission rightfully refused to interpret the term ALU in a void, as a purely geographical term. Rather, as this Court has instructed, the Commission gave effect to PA 233 as a whole. Harmonizing the term ALU with the overall statutory structure—a product of the statutory language itself—is necessary for the requirements under MCL 460.1223(3), which allow initial siting proceedings to remain under local processes.

The requirement that each ALU notify a developer that it has a CREO is not the only provision of MCL 460.1223(3) that demanded the Commission’s interpretation. When each ALU meets that notification requirement, the statute provides “then the electric provider or IPP shall file for approval with each affected local unit.” MCL 460.1223(3). Once again, this statutory language makes clear the legislative intent that ALUs are those units of government exercising zoning jurisdiction. The Local Units have not, and cannot, explain how an ALU without zoning jurisdiction is supposed to approve a project under MCL 460.1223(3) or what happens if, for example, the ALU with zoning jurisdiction approves the project and the ALU without zoning jurisdiction denies the project. The Court of Appeals does not attempt to answer these questions either. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___, slip op at 11–13.

In making its determination, the Commission examined the statutory language and recognized that Act 233 transfers authority to site energy facilities to

the Commission under four limited circumstances. (MPSC Case No. U-21547, 10/10/2024 Order, p 9, F # 0025.) These include when:

(1) “a local unit of government exercising zoning jurisdiction” requests the Commission require a developer to obtain a certificate from the Commission, MCL 460.1222(2);

(2) an ALU fails to approve or deny an application under the local siting process within 120 days, MCL 460.1223(3)(b), (c)(i);

(3) an ALU, under the local siting process, denies an application that complies with Section 226(8) of Act 233, MCL 460.1223(c)(ii); and

(4) an ALU amends its zoning ordinance after its chief elected official notifies the developer that the ALU has a CREO, and the amendment imposes additional requirements that are more restrictive than those outlined in Section 226(8) of Act 233. MCL 460.1223(c)(iii).

The Commission further recognized that an ALU “is considered not to have a [CREO] if it has a moratorium on the development of energy facilities in effect within its jurisdiction.” (MPSC Case No. U-21547, 10/10/2024 Order, p 9, F # 0025, quoting MCL 460.1221(f).)

As the Commission explained, all of the instances providing the Commission authority to site an energy facility under Act 233 “necessarily require a local unit of government to exercise zoning jurisdiction.” (*Id.* at 10.) This statutory language is further evidence, in addition to the language of MCL 460.1223(3), of the Legislature’s intent that the term ALU be read to apply only to those entities exercising zoning jurisdiction. (*Id.*)

Importantly, the Commission’s analysis was rooted in the statutory text. Given that PA 233’s structure demands interpretation to harmonize provisions that are otherwise incompatible, the Commission’s interpretation was lawful,

reasonable, and consistent with this Court’s direction to give effect to the act as a whole. The Court should find, like the Commission, that the term ALU, as used in PA 233, applies only to those entities exercising zoning jurisdiction.

C. The Court of Appeals erred in reversing the Commission’s ALU interpretation.

Despite recognizing the relevant language of PA 233 and the MZEA that necessitated the Commission’s interpretation of the term ALU, the Court of Appeals rejected that interpretation. The Court of Appeals cautioned against focusing more on practicalities than the plain language of the statute. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12. Yet, it focused itself on the Legislature’s inferred policy choices. *Id.*

While the Court of Appeals was correct to start with the definition of ALU provided in MCL 460.1221(a), it erred when it failed to interpret that definition considering PA 233 as a whole. *Honigman Miller Schwartz and Cohn LLP*, 505 Mich at 309. Rather, the Court of Appeals merely stated that “statutory provisions cannot be read in isolation, as **the context in which the words are used is also important.**” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 11 (emphasis added). The Court of Appeals articulated some of the appropriate standard but failed to follow this Court’s clear direction that statutory language should be read “in the context of the entire legislative scheme” and that “each word and phrase in a statute must be assigned such meanings as are in harmony with the whole of the statute, construed in light of history and common

sense.” *Warren Consolidated School District*, ___ Mich ___; slip op at 9. This failure did not stop at the Court of Appeals’ articulation of this interpretation standard. It carried into its application.

The Court of Appeals notes that when a statute is “clear and unambiguous, no further judicial construction is required or permitted.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 8, quoting *In re Reliability Plans of Electric Utilities for 2017–2021*, 505 Mich at 119. Yet, as shown above, the remaining questions and unworkability of the Court of Appeals’ interpretation demonstrate that the language is anything but clear and unambiguous. See Section I.A. above. Under the Court of Appeals’ interpretation, it is unclear how each ALU can ever “notif[y] the [developer] planning to construct the energy facility that the [ALU] has a compatible renewable energy ordinance.” MCL 460.1223(3). It is also unclear how a developer can “file for approval” to local units that possess no zoning jurisdiction. *Id.* As such, interpretation to give effect to the act as a whole is not only appropriate pursuant to this Court’s previous directions, but also necessary due to the ambiguity of the statute.

In fact, the Court of Appeals itself appears to recognize the ambiguity that its interpretation creates, or at least the components of that ambiguity. The court noted the requirements of MCL 460.1223(3) and the fact that “it is impossible for a township and a county to each have a CREO in the same area.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12–13, n 6. Taken together, the only possible conclusion is that there is some ambiguity that requires

statutory interpretation – either of the term ALU or the requirements of MCL 460.1223(3). It is then, perhaps, telling that the Court of Appeals decision makes no attempt to reconcile the ambiguity that it creates. To do so requires recognition that the plain language of PA 233 cannot be the end of this analysis. The Court of Appeals’ isolated review of the ALU definition eschewed the purpose of the term in the statutory scheme. See *State ex rel Gurganus*, 496 Mich at 60–61.

Despite the Commission’s ALU interpretation being premised solely on statutory language, the Court of Appeals frames the Commission’s interpretation as paying more attention to “practicalities than the plain language of the statute.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12. The Commission’s interpretation is explicitly and exclusively based on the statutory language, particularly on the language of MCL 460.1221(a), MCL 460.1221(f), MCL 460.1221(n), MCL 460.1222(2), MCL 460.1223(3), MCL 125.3102(x), and MCL 125.3209. (MPSC Case No. U-21547, 10/10/2024 Order, pp 6–10, F # 0025.) The Commission’s ALU interpretation was not premised on policy preferences or other practical considerations.

The Court of Appeals’ decision, on the contrary, does point to several practical benefits of being considered an ALU as what it claims is supportive context for its interpretation. The opinion notes the following practical benefits that ALUs receive: (1) notice of public meetings and the opportunity to comment on the

Commission proceeding; (2) receipt of site plan copies;⁷ (3) intervention by right in the Commission proceeding and potential funds to cover associated costs; and 4) host community agreements. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12. The Court of Appeals states that all of these benefits are “geared to benefit localities where the energy facility is proposed to be located.” *Id.* Yet, one could just as easily, and perhaps more precisely, note that all of these benefits are geared to benefit localities that would have otherwise been involved in, and responsible for, siting such projects locally absent PA 233—local units exercising zoning jurisdiction. And, unlike the statutory language that the Commission relied on for its interpretation, there is no conflict in the statutory language if those benefits are applied exclusively to the local unit exercising zoning jurisdiction.⁸

⁷ The Court of Appeals cites MCL 460.1224(2) for the proposition that an “ALU is also entitled to review and comment upon proposed projects that would, again, be located at least partially within its jurisdiction.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12. Yet, that portion of the statute explicitly states: “When it submits a site plan required under section 223 or 225 to the commission, an electric provider or independent power producer shall, **for informational purposes**, submit a copy to the clerk of each [ALU].” MCL 460.1224(2) (emphasis added).

⁸ In fact, most of the benefits noted by the Court of Appeals are arguably more appropriate for those local units that would have otherwise been responsible for siting renewable energy and energy storage projects through their zoning authority absent PA 233. For example, the right to intervene in the Commission proceeding would serve to ensure that such entities can continue to weigh in on the project. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12, citing MCL 460.1226(3) . The Court of Appeals also points to the requirement to provide information to the ALU regarding the pre-application public meetings and the opportunity to comment on the application submitted to the Commission. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 12, citing MCL 460.1223(1); MCL 460.1226(2). If a township exercises zoning

This is not the only error in the Court of Appeals’ contextual analysis. The court also states that “focusing only on those local units of government that do have zoning jurisdiction and therefore may cause PSC involvement with energy facility approval, ignores the entire context of the statute.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 13. This statement is perplexing. PA 233 serves as an alternative to local siting for certain qualifying renewable energy and energy storage projects. See MCL 460.1222; MCL 460.1231. The ALU benefits that the Court of Appeals lists, and the term ALU itself, only exist within this alternative siting process at the Commission. MCL 460.1221(a); MCL 460.1223; MCL 460.1224; MCL 460.1226; MCL 460.1227. They have no meaning or bearing outside of the Commission context.

The Court of Appeals states that the Commission’s ALU interpretation “ignores (1) that the statute was not passed solely out of concern for the PSC, and (2) that there may be some local units of government where the proposed facility may be located, but that do not have zoning authority.” *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 13. With respect to the first point, while the Commission’s interpretation was based exclusively on statutory language and not “concern for the [Commission],” PA 233 is solely concerned with the alternative siting process at the Commission. It imposes no

jurisdiction, thereby depriving the county of jurisdiction, the residence of that township will still have the benefits of these provisions by virtue of the communications to their township officials who would have otherwise been responsible for siting the project.

requirements and has no bearing on siting processes outside of the PA 233 context. So, while the statute was not passed solely out of concern for the Commission, it was passed solely out of concern for the Commission siting process.

It is unclear what the Court of Appeals meant by the second point “that there may be some local units of government where the proposed facility may be located, but that do not have zoning authority.” *Id.* If this statement is referring to the fact that a county and a township cannot exercise zoning jurisdiction over the same area simultaneously, this fact supports the Commission’s interpretation, as it guarantees the provisions of MCL 460.1223(3) cannot be applied without interpretation. Also, it would be imprecise to state that such circumstances “may” occur, as this will be the reality with respect to every project. If this statement is instead referring to jurisdictions where no local unit exercises zoning jurisdiction, then a PA 233 certificate has very little, if any, work to do in such locations. The effect of obtaining a PA 233 certificate is to preempt existing and future local policies, practices, regulations, rules, or other ordinances that would restrict the construction, operation, or maintenance of the project.⁹ MCL 460.1231. In jurisdictions where there are no zoning obstacles to building a project, a developer

⁹ MCL 460.1231(2) (“If a certificate is issued for an energy facility under this part, a zoning ordinance or limitation imposed after the electric provider or IPP submitted the application for the certificate to the commission shall not be construed to limit or impair the construction, operation, or maintenance of the energy facility.”); MCL 460.1231(3) (“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.”)

could presumably build and operate the project without a certificate.¹⁰ Such jurisdiction should not, therefore, serve as the basis for interpreting the statute above the statutory language that the Commission relied on.

The Local Units may, once again, seek to rely on broad claims that the Legislature did not authorize the Commission to “redefine” what the term ALU means. Yet, those assertions, which fail to recognize the Commission’s authority to interpret the statutes it administers, are no more convincing here than they are with respect to the Commission’s CREO interpretation. See *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 8–10. The Court of Appeals rejected such arguments in that context. *Id.*

The Court of Appeals correctly recognized the Commission’s well-established authority to interpret the statutes it administers. *Id.* at 8. Yet, the court failed to apply this Court’s instructions that, when doing so, one should give effect to the statute as a whole. The Commission did just that when it recognized the statute requires interpretation. The Commission’s ALU interpretation was consistent with, and gave effect to, the language of MCL 460.1223 and PA 233 as a whole. This Court should reverse the Court of Appeals’ erroneous decision to set aside that interpretation and impose its own isolated reading of the statutory definition,

¹⁰ With respect to unzoned areas, the Commission found that PA 233 “requires the Commission to review the entire project for an energy facility that spans multiple jurisdictions, including portions of the project that are located in unzoned areas.” (MPSC Case No. U-21547, 10/10/2024 Order, pp 32–33, F # 0025.)

without addressing the unavoidable ambiguity and need for interpretation that the Court of Appeals' decision left behind.

II. The Supreme Court should grant leave and reverse the Court of Appeals' application timeline holding and instead affirm the Commission's interpretation.

PA 233 undoubtably requires developers to offer in writing to meet with the chief elected official of each ALU or their designee to discuss the site plan. MCL 460.1223(2). The law does not, however, require that any such meeting occur. Under a plain reading of the statute, a developer could file an application to the Commission immediately after making this offer to meet.

As discussed above, PA 233 also provides that, if each ALU notifies the developer that it has a CREO within 30 days of a meeting described in MCL 460.1223(2), then the developer must first seek siting authority at the local level. MCL 460.1223(3). The Commission recognized that PA 233, therefore, places an affirmative obligation on each ALU to notify the developer that it has a CREO to retain initial local siting jurisdiction. (MPSC Case No. U-21547, 10/10/2024 Order, p 11, F # 0025.) Given this affirmative duty and the fact that PA 233 is otherwise silent on whether, and how long, a developer must wait before filing with the Commission, the Commission reasonably provided its 30-day application timeline interpretation.¹¹

¹¹ The Commission notes that it is expressly authorized by the statute to issue filing requirements, and the timeline interpretation is also a reasonable extension of that authority. MCL 460.1224(1) ("A site plan required under section 223 or 225 shall meet application filing requirements established by commission rule or order to

The Commission's timeline interpretation ensures that local units do not claim unsupported authority to somehow delay the Commission siting process by refusing to meet. It also ensures that developers do not seek to apply to the Commission immediately after offering to meet with ALUs. The interpretation in no way supplants or contradicts the language of MCL 460.1223(3) providing that a developer must apply for siting initially at the local level if each ALU notifies the developer that the ALU has a CREO within 30 days of a meeting held pursuant to MCL 460.1223(2). Instead, it reasonably implements the process the Legislature created in a way that protects both developers and ALUs from possible abuse. Like the first ALU issue, this timeline issue meets multiple grounds for this Court's review.

A. This issue meets multiple grounds for review: under MCR 7.305(B)(2), it is an issue of significant public interest; and under MCR 7.305(B)(5)(a), the erroneous decision below will cause a material injustice.

Grounds exist for granting this appeal pursuant to MCR 7.305(B)(2). This action, which was brought against a state agency, has significant public interest. Similar to the ALU issue, the timeline issue has the potential to undermine the structure of PA 233 if not correctly interpreted. While the Court of Appeals did not find that a meeting between the developer and ALU is required before an application is filed to the Commission or that the ALU could indefinitely delay

maintain consistency between applications. The site plan shall include the following.”)

Commission review of projects by refusing to meet, it also did not address these implications from the Local Units. Instead, the Court of Appeals dismissed the concerning nature of these assertions by stating that its concern is with what the statute requires. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 15. If an ALU erroneously asserted that it can simply choose not to meet with developers and, thereby, indefinitely delay Commission review of renewable energy and energy storage projects, it has the potential to undermine the entire purpose and structure of PA 233. This is certainly a matter of significant public interest and leave to cross appeal this application timeline issue should be granted.

Additionally, the Court of Appeals' erroneous application timeline decision constitutes a basis for granting leave to cross appeal under MCR 7.305(B)(5)(a) because it could result in material injustice. As explained below, the Commission's timeline interpretation prevents injustice for both developers and ALUs.

The Local Units may seek to imply they have the authority to hold up the Commission siting process by merely choosing not to meet with developers. This Court should, at a minimum, make clear this notion is unsupported by the plain language of PA 233, which only requires a developer offer to meet with the ALUs before applying to the Commission. To let the Court of Appeals' decision stand without this clarification will result in material injustice and continued dispute over this erroneously declared local veto power.

B. The Commission's application timeline interpretation is consistent with the statutory requirements of PA 233.

The Commission's interpretation of MCL 460.1223 is reasonable and lawful. This includes the Commission's interpretation that a developer "is only required to go through the local siting process if the CEO of each ALU notifies the [developer] that the ALU has a CREO." (MPSC Case No. U-21547, 10/10/2024 Order, p 11, F # 0025.) Because of this, it was also reasonable and lawful for the Commission to find that, if the CEO "fails to notify the [developer] of the existence of a CREO within 30 days following receipt of an offer to meet, the [developer] may proceed as if an ALU does not have a CREO." (*Id.* at 11–12.)

MCL 460.1223(2) makes clear that the developer is required to offer, in writing, to meet with the chief elected official of each ALU, or the chief elected official's designee, to discuss the site plan. MCL 460.1223(2). Both the Court of Appeals opinion and the Commission's October 10th Order also note that, if the chief elected official of each ALU notifies the developer that the ALU has a CREO within 30 days of that meeting, the project must be sited, at least initially, through the ALUs. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 15; (MPSC Case No. U-21547, 10/10/2024 Order, p 6, F # 0025.)

In addition, and separately, the Commission recognized the ALU's statutorily-derived affirmative duty to notify a developer of a CREO, as well as the statutory requirement that an ALU process applications in a timely manner or risk a developer being able to file with the Commission immediately. (MPSC Case No. U-21547, 10/10/2024 Order, pp 11–12, F # 0025.) In doing so, the Commission found

that a developer could proceed as if there was no CREO if the ALU did not respond to the request to meet within 30 days. (*Id.*); see also MCL 460.1222; MCL 460.1223(2); MCL 460.1223(3); MCL 460.1223(3)(c)(i). Specifically, the Commission stated that “if that CEO fails to notify the [developer] of the existence of a CREO within 30 days following receipt of an offer to meet, the [developer] may proceed as if an ALU does not have a CREO.” (MPSC Case No. U-21547, 10/10/2024 Order, pp 11–12, F # 0025.) This constitutes a reasonable interpretation of the requirement for timely action on the part of ALUs that is wholly consistent with the requirements of PA 233.

To be clear, the Commission’s interpretation regarding the Commission application timeline does not contradict any provision of PA 233. The Court of Appeals found that PA 233 provides an ALU with 30 days following a meeting with the developer to notify the developer of its CREO status. *In re Implementing Provisions of Public Act 233 of 2023*, ___ Mich App ___; slip op at 15. On this basis, the court claimed it was erroneous for the Commission to interpret the statute such that a developer could file an application with the Commission if the ALU did not respond with its CREO status within 30 days of the offer to meet. *Id.* Yet, this Commission interpretation does not seek to replace, or contradict, the statutory provision relied on by the Court of Appeals, nor does the interpretation lower the bar for Commission siting.

MCL 460.1223(2) only requires a written offer to meet before proceeding with Commission siting. Rather than allowing developers to file applications to the

Commission immediately after they send the written offer, the Commission's interpretation provides for a minimum 30-day period to allow the ALUs to act. (MPSC Case No. U-21547, 10/10/2024 Order, pp 11–12, F # 0025.) The Commission's interpretation takes no position on whether an application must first go before the ALUs if a meeting is subsequently held and, within 30 days of that meeting, each ALU notifies the developer that it has a CREO. On the contrary, and as noted above, the Commission recognized the 30-day window following a meeting between the developer and ALU representative that the Court of Appeals relied on. (MPSC Case No. U-21547, 10/10/2024 Order, p 6, F # 0025.) The Commission's interpretation merely recognizes that the statute does not require any such meeting be held before an applicant files with the Commission.

MCL 460.1223(3) clearly requires a chief elected official to make an indication regarding the ALU's CREO status if siting is to initially be retained locally. Put another way, MCL 460.1223(3), which limits a developer's ability to seek a certificate from the Commission under MCL 460.1222(2) if each ALU provides post-meeting notification that it has a CREO, is not triggered if the ALU does not engage in the MCL 460.1223(3) process.

The Commission's interpretation of the statutory timeline is consistent with the plain meaning of the statute and reasonable. The Commission would ask that this Court reverse the Court of Appeals' decision to set aside this interpretation, which will avoid the injustice described further in the following section.

- C. **Alternatively, the Supreme Court should grant leave and make clear that MCL 460.1223(2) does not require a meeting to be held to avoid injustice from otherwise erroneous interpretations.**

The Local Units may seek to imply, as they have previously, that an ALU can indefinitely delay the PA 233 process by declining the offer to meet with the developer. This is wholly unsupported and, in fact, contradicted by the plain language of the statute. Yet, when taken together with the Court of Appeals' rejection of the Commission's timeline interpretation, some might erroneously argue that ALUs have a veto power over a project ever reaching Commission siting. This unjust understanding of the law must be rejected.

As explained above, MCL 460.1223(2) only requires a developer offer to meet with the ALUs to discuss the site plan. There is no statutory requirement anywhere in PA 233 that the meeting actually occur before a developer files an application with the Commission pursuant to MCL 460.1222(2). Any implication that the Local Units can simply refuse to meet and, thereby, block Commission siting would defeat the statutory framework. This interpretation is not only unsupported by the statutory text, but it runs contrary to the legislative intent of PA 233 as clearly expressed through the statutory language. PA 233 is explicitly intended to provide a siting path for projects at the state level that would allow such projects to overcome local attempts to "limit or impair the construction, operation, or maintenance of the energy facility." MCL 460.1222(2); MCL 460.1231(1)–(3). It would be contrary to this intent to somehow interpret PA 233 to

provide an unenumerated power for ALUs to indefinitely block any Commission siting.

The Commission respectfully requests that this Court, regardless of whether it reverses the Court of Appeals' timeline decision, make clear that PA 233 contains no requirement for a meeting to occur before Commission siting proceeds and that ALUs have no statutory authority to indefinitely block Commission siting. This holding is necessary to avoid the injustice that may result from the Court of Appeals' erroneous finding.

CONCLUSION AND RELIEF REQUESTED

There can be no doubt that the Michigan Legislature sought, through PA 233, to create an alternative state siting process for eligible renewable energy and energy storage projects. The Commission's interpretations of the term ALU and regarding the application timeline requirements were consistent with the language of PA 233 and this legislative intent. The Court of Appeals' decision to reverse these interpretations was not only erroneous, but it left unresolved questions of how to administer PA 233 that have the potential to cause material injustice.

The Commission requests that this Court grant its application for leave to cross appeal these two aspects of the Court of Appeals' opinion. The Commission further requests that this Court reverse the Court of Appeals' holdings with respect to the Commission's ALU and application timeline interpretations, reinstate those interpretations, make clear that PA 233 provides no veto power to indefinitely

prevent a project from seeking Commission siting, and preserve the process articulated by the language of PA 233.

Respectfully submitted,

/s/ Nicholas Q. Taylor
Nicholas Q. Taylor (P81020)
Anna B. Stirling (P84919)
Assistant Attorneys General
Attorneys for Appellee
Michigan Public Service Commission
Public Service Division
7109 W. Saginaw Hwy.
Lansing, MI 48917
(517) 284-8140
taylorn10@michigan.gov
stirlinga1@michigan.gov

Dated: July 16, 2026

WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.305(A)(1) and 7.212(B) because, excluding the part of the document exempted, this **application for leave to appeal** contains no more than 16,000 words. This document contains 11,313 words.

/s/ Nicholas Q. Taylor
Nicholas Q. Taylor (P81020)
Assistant Attorney General
Attorneys for Appellee
Michigan Public Service Commission
Public Service Division
7109 W. Saginaw Hwy.
Lansing, MI 48917
(517) 284-8140
taylorn10@michigan.gov

Appendix D

Intervening Appellees'/Cross-Appellants' Application for Leave to Cross-Appeal in *In re
Implementing the Provisions of Public Act 233 of 2023*

See Attached.

STATE OF MICHIGAN
IN THE SUPREME COURT

In the matter, on the Commission's own
motion, to open a docket to implement the
provisions of Public Act 233 of 2023

PSC Case No. U-21547

ALMER CHARTER TOWNSHIP, et al.

Court of Appeals No. 373259
MSC No. 170249

Appellants,

v

MICHIGAN PUBLIC SERVICE
COMMISSION,

Appellee

and,

MICHIGAN ENERGY INNOVATION
BUSINESS COUNCIL, INSTITUTE FOR
ENERGY INNOVATION, CLEAN GRID
ALLIANCE, and ADVANCED ENERGY
UNITED,

Intervening Appellees.

Michael D. Homier (P60318)
Laura J. Genovich (P72278)
Leslie A. Abdoo (P78850)
FOSTER, SWIFT, COLLINS & SMITH, PC
Attorneys for Appellants
1700 E. Beltline Avenue, N.E., Suite 200
Grand Rapids, MI 49525
(616) 726-2200
mhomier@fosterswift.com
lgenovich@fosterswift.com
labdoo@fosterswift.com

Nicholas Q. Taylor (P81020)
Anna B. Stirling (P84919)
ASSISTANT ATTORNEYS GENERAL – PUBLIC
SERVICE DIVISION
*Attorneys for Appellee Michigan Public
Service Commission*
7109 W. Saginaw Highway, 3rd Floor
Lansing, MI 48917
(517) 284-8140
Taylorn10@michigan.gov
Stirlinga1@michigan.gov

Brion B. Doyle (P67870)
Laura Chappelle (P42052)
Timothy J. Lundgren (P62807)
Justin Ooms (P82065)
Regan A. Gibson (P83322)
Neil E. Youngdahl (P82452)

VARNUM LLP

*Attorneys for Intervening Appellees Michigan
Energy Innovation Business Council, Institute
for Energy Innovation, Clean Grid Alliance,
and Advanced Energy United*

P.O. Box 352

Grand Rapids, MI 49501-0352

(616) 336-6000

bbdoyle@varnumlaw.com

lachappelle@varnumlaw.com

tjlundgren@varnumlaw.com

jkooms@varnumlaw.com

ragibson@varnumlaw.com

neyoungdahl@varnumlaw.com

INTERVENING APPELLEES/CROSS-APPELLANTS'
APPLICATION FOR LEAVE TO CROSS-APPEAL

TABLE OF CONTENTS

INDEX OF AUTHORITIES	iii
STATEMENT OF JUDGMENT APPEALED	vii
STATEMENT OF QUESTIONS PRESENTED.....	viii
I. INTRODUCTION	1
II. STATEMENT OF FACTS	2
A. ACT 233 WAS ENACTED TO ENSURE THAT LOCAL OPPOSITION TO DEVELOPMENT WOULD NOT PREVENT MICHIGAN FROM ACHIEVING ITS RENEWABLE ENERGY STANDARDS.	2
B. ACT 233’S PREEMPTIVE EFFECT AND GRANTS OF AUTHORITY TO THE COMMISSION.	7
C. THE MPSC’S OCTOBER 10, 2024 ORDER AND APPLICATION FILING INSTRUCTIONS AND PROCEDURES.....	8
D. THE COURT OF APPEALS PROCEEDINGS.	10
III. ARGUMENT	12
A. THE COURT SHOULD GRANT LEAVE TO CROSS-APPEAL UNDER MCR 7.305(B)(2).	12
B. THE COURT SHOULD GRANT LEAVE TO CROSS-APPEAL UNDER MCR 7.305(B)(5).	12
1. The Court of Appeals Incorrectly Expanded the Definition of ALU to Local Units of Government with no Siting Authority.....	13
a. <i>The Court of Appeals’ Interpretation of ALU Creates a Conflict Within Act 233.</i>	13
b. <i>The Court of Appeals’ Broad Construction of ALU Contradicts the Remedial Purpose of Act 233.</i>	16
2. The Court of Appeals’ Decision to Overturn the Commission’s Deadlines for CREO Notification Threatens to Leave Prospective Applicants Without Guidance.	20
3. Any Decision Reversing the MPSC Should Be Prospective Only.	24

a.	<i>This Court Can Decide Whether the Court of Appeals’ Opinion or its Own Opinion is Given Only Prospective Effect.</i>	24
b.	<i>Any Reversal of the October 10, 2024 Order Should Be Prospective Only.</i>	25
1)	Reversal of the October 10, 2024 Order Would Establish A New Rule of Law. ..	26
2)	The Factors Support Non-Retroactivity.	27
CONCLUSION AND REQUEST FOR RELIEF		34

INDEX OF AUTHORITIES

Cases

<i>Chevron Oil Co v Huson</i> , 404 US 97; 92 S Ct 349 (1971).....	26
<i>Dep't of Health & Human Servs v NRK RX, Inc</i> , --- NW3d ---, 167917, 2026 WL 1656773 (Mich, June 8, 2026)	14
<i>Devillers v Auto Club Ins Assn'n</i> , 473 Mich 562; 702 NW2d 539 (2005).....	25
<i>Exelon Corp v Dep't of Revenue</i> , 234 Ill2d 266; 917 NE2d 899 (2009).....	25
<i>Fisher v Sears, Roebuck & Co</i> , 88 SD 1; 214 NW2d 85 (1974).....	25
<i>In re Implementing Provisions of Public Act 233 of 2023</i> , -- NW3d --, 2026 WL 1261321 (Mich Ct App May 7, 2026).....	vii
<i>In re Reliability Plans of Electric Utilities</i> , 505 Mich at 119	22
<i>Jackson v State</i> , 122 NM 433; 925 P2d 1195 (1996)	25
<i>League of Women Voters of Michigan v Secretary of State</i> , 508 Mich at 569 n26	passim
<i>Mich Dairy Co v Runnels</i> , 96 Mich 109; 55 NW 617 (1893).....	16
<i>Nowell v Titan Ins Co</i> , 466 Mich 478 (2002)	14
<i>People v Arnold</i> , 502 Mich 438; 918 NW2d 164 (2018).....	16
<i>People v Bewersdorf</i> , 438 Mich 55; 475 NW2d 231 (1991).....	14
<i>People v Robinson</i> , 167595, -- NW3d --; 2026 WL 303034 (Feb 4, 2026).....	26
<i>People v Roy</i> , 346 Mich App 244 (2023).....	5, 16

<i>People v Sexton</i> , 458 Mich 43; 580 NW2d 404 (1998).....	27
<i>Pohutski v City of Allen Park</i> , 465 Mich 675; 641 NW2d 219 (2002).....	26, 27
<i>Schafer v Kent County</i> , 515 Mich 1; 29 NW3d 25 (2024).....	26, 31
<i>Tebo v Havlik</i> , 418 Mich 350; 343 NW2d 181 (1984).....	28
<u>Statutes</u>	
MCL 1222(2)	17
MCL 125.3102(x)	14
MCL 125.3103	19
MCL 125.3205(1)(d).....	5
MCL 125.3209	14
MCL 125.3307	19
MCL 125.3502	19
MCL 24.207(j)	22
MCL 460.1001(2)	5
MCL 460.1028(2)	3
MCL 460.1221(f)	18
MCL 460.1222(2)	5, 18
MCL 460.1223(1)	7
MCL 460.1223(2)	15, 20, 21
MCL 460.1223(3)	passim
MCL 460.1223(3)(b).....	27
MCL 460.1223(3)(c)(i)–(iii)	18
MCL 460.1223(3)(d).....	24

MCL 460.1224(1)(c)	7
MCL 460.1225(1)(s)	8
MCL 460.1226(4)	8
MCL 460.1226(5)	8, 27, 33
MCL 460.1226(6)(b).....	8
MCL 460.1226(7)(a)	8
MCL 460.1226(8)	18
MCL 460.1226(8)(a)(vi)	8
MCL 460.1226(8)(b)(viii).....	8
MCL 460.1226(8)(c)(v)	8
MCL 460.1228(2)	8
MCL 460.1230(2)	8
MCL 460.1230(3)	7
MCL 460.1231(3)	7
MCL 460.4	10
MCL 462.26	10
 <u>Other Authorities</u>	
2023 Senate Journal (No. 99, November 8, 2023).....	6
Clean and Renewable Energy and Energy Waste Reduction Act	17
Enterline & Valainis, <i>Laws in Order: An Inventory of State Renewable Energy Siting Policies</i> , Regulatory Assistance Project (June 2024).....	4
House Legislative Analysis, HB 5120 & 5121 (February 5, 2024).....	16, 17
House Legislative Analysis, HB 5120 & 5121 (October 17, 2023)	4
Michigan Zoning Enabling Act.....	passim

Public Act 233 of 2023	1
Public Act 234.....	5, 14, 17
Senate Fiscal Agency Bill Analysis, HB 5120 & 5121 (November 8, 2023)	3, 17, 33
Senate Legislative Analysis, HB 5120 & 5121 (November 7, 2023)	6, 17
<u>Rules</u>	
MCR 7.215(C)(2).....	32
MCR 7.215(E)(1).....	vii
MCR 7.215(F)(1)(a).....	25, 32
MCR 7.305(B)(2).....	12
MCR 7.305(B)(5)(a)	12

STATEMENT OF JUDGMENT APPEALED

Pursuant to MCR 7.307(A), Intervening-Appellees/Cross-Appellants seek leave to cross-appeal the Court of Appeals’ judgment of May 7, 2026. See *In re Implementing Provisions of Public Act 233 of 2023*, -- NW3d --, 2026 WL 1261321 (Mich Ct App May 7, 2026); MCR 7.215(E)(1) (providing that “[w]hen the Court of Appeals disposes of . . . an appeal . . . its opinion or order is its judgment.”).

STATEMENT OF QUESTIONS PRESENTED

1. Did the Court of Appeals err when it held that the statutory term “affected local unit” under Public Act 233 of 2023 includes local units of government that lack zoning jurisdiction over a proposed energy facility, even though such local units could never enact a compatible renewable energy ordinance applicable to the facility?

Court of Appeals’ Answer:	No.
Cross-Appellants’ Answer:	Yes.
Cross-Appellees’ Anticipated Answer:	No.

2. Did the Court of Appeals err when it invalidated the MPSC’s interpretation requiring the chief elected official of an affected local unit to notify a developer of a compatible renewable energy ordinance within 30 days of receipt of the developer’s offer to meet, thereby leaving no clear deadline to prevent local units from indefinitely delaying the statutory process by refusing or indefinitely delaying a meeting?

Court of Appeals’ Answer:	No.
Cross-Appellants’ Answer:	Yes.
Cross-Appellees’ Anticipated Answer:	No.

3. If this Court denies leave or declines to reverse the Court of Appeals on either issue above, should any ruling reversing the MPSC’s October 10, 2024 Order be applied prospectively only, so as not to prejudice the numerous pending applications filed in reliance on the MPSC’s authoritative guidance?

Court of Appeals’ Answer:	N/A
Cross-Appellants’ Answer:	Yes.
Cross-Appellees’ Anticipated Answer:	No.

I. INTRODUCTION

In 2023, Michigan’s Legislature enacted a package of bills aimed at accelerating the state’s adoption of clean and renewable energy resources. The foremost of these bills, Public Act 235 of 2023, committed the state’s retail electric providers to bold and ambitious renewable and clean energy and energy storage goals. If these goals were to be met, however, the Legislature recognized that it must solve a problem: local governmental obstructionism. For years, despite willing landowners eager to host renewable energy projects on their land, developers of renewable and clean energy resources were faced with obstructionist municipalities determined to stymie development at all costs. Because many local governments had failed to show they could exercise the authority granted to them under the Michigan Zoning Enabling Act (“MZEA”) responsibly in this arena, the Legislature also enacted Public Act 233 of 2023 (“Act 233”) granting the Michigan Public Service Commission (“MPSC” or “Commission”) responsibility for siting utility-scale wind, solar, and energy storage facilities unless local governments complied with the restrictions imposed in the new law.

Throughout the implementation process and the ensuing appeal proceedings, the local governments that are party to this appeal have continued to push for a construction of Act 233’s provisions that would preserve their ability to obstruct clean and renewable energy development and the development of energy storage resources in Michigan. The Court of Appeals correctly rejected the most egregious of these tactics—the employment of exclusionary restrictions like renewable energy overlay districts—by affirming the MPSC’s interpretation of the term “compatible renewable energy ordinance” (“CREO”). Nonetheless, the Court of Appeals still erred in two critical ways.

First, the Court of Appeals erred by reading the scope of the statutory term “affected local unit” to include local units of government without zoning jurisdiction over a proposed energy

facility, even though these local units have no statutory role in the pre-existing local process and could never enact a CREO applicable to the facility. The Court of Appeals' interpretation (1) creates an impossible expectation for local units of government with no zoning authority to notify developers that they have a CREO applicable to a proposed energy facility and (2) reads Act 233 as *expanding* rather than *limiting* the pre-Act-233 scope of the rights of local units of government, contrary to the remedial purpose of the statute.

Second, the Court of Appeals erred by rejecting the MPSC's attempt to provide a reasonable timeline on which affected local units of government must assert their limited rights to prevent the MPSC from assuming responsibility for reviewing a proposed energy facility. This finding is expressly contrary to the purpose of Act 233 and simply provides another avenue by which local units may "game" the process to prevent development by delaying or refusing to meet with the developer, all while ostensibly operating within the confines of Act 233.

As outlined below, both of these errors should be reversed and corrected by this Court. However, to the extent that the Court denies leave or declines to reverse one or both of the Court of Appeals' errors, then this Court should exercise its authority to make clear that the ruling applies only prospectively from the date of the Supreme Court's order or opinion. This will ensure that the projects currently under consideration by the MPSC are not stymied by the developers' following of the MPSC's guidance, as it existed at the time of their application.

For the reasons outlined below, Intervening Appellees/Cross-Appellants respectfully request that this Court grant this application for leave to cross-appeal and reverse the Court of Appeals' determinations on the above issues.

II. STATEMENT OF FACTS

A. ACT 233 WAS ENACTED TO ENSURE THAT LOCAL OPPOSITION TO DEVELOPMENT WOULD NOT PREVENT MICHIGAN FROM ACHIEVING ITS RENEWABLE ENERGY STANDARDS.

Late in 2023, Michigan’s Legislature enacted Public Act 235 of 2023 (“Act 235”), which amended the renewable portfolio standard (“RPS”) previously applicable to electric providers in Michigan under Public Act 295 of 2008 (“Act 295”) from 15% (the status quo before Act 235) to 50% by 2030 and 60% by 2035.¹ Act 235 also amended Act 295 to require electric providers in Michigan to achieve a clean energy² portfolio of 80% by 2035 and 100% by 2040.

In order to realize these ambitious renewable and clean energy goals within the time allotted by Act 235, however, the Legislature had to solve a problem. The State would never meet its renewable and clean energy goals if large-scale renewable energy development remained subject to local approval and if local governments were left to create their own subjective (and often exclusionary) standards for utility-scale renewable energy projects:

If enacted, the bill [i.e., what became Act 235] would *necessitate the buildout of more utility-scale renewable energy resources like solar, wind, and storage in the State*; however, according to testimony, *the current process for siting and permitting renewable energy resources in local governmental units has proven complex and has delayed the buildout of these resources*. Accordingly, it has been suggested that the siting and permitting of renewable energy resources be regulated by the MPSC unless local governmental units demonstrated that they had requirements for the buildout of these resources that were compatible with those proposed by Part 8.

Senate Fiscal Agency Bill Analysis, HB 5120 & 5121 (November 8, 2023), p 2 (emphasis added).

This concern was and is not illusory. At the time Act 235 was being debated, renewable energy facilities proposed to be sited in Michigan faced many tactics employed by municipalities

¹ The term “electric provider” for the purposes of Act 235’s RPS and clean energy standard includes investor-owned, rate-regulated utilities like Consumers Energy Company and DTE Electric Company as well as competitive alternative electric suppliers (“AESs”), cooperative utilities, and municipal utilities. In other words, *all* retail suppliers of electricity in Michigan are subject to the requirements. This effectively requires 50% of *all kWh of electricity sold in Michigan* to be renewable by 2030 (60% by 2035). See MCL 460.1028(2).

² “Clean energy” includes renewable energy as well as nuclear and certain limited types of natural gas generation.

that opposed any development, based either on “not in my backyard” sentiments of residents or, more fundamentally, local (and outside) political opposition to the very concept of clean or renewable energy. Examples abound of local governments enacting lengthy or repeated zoning moratoria, exclusionary zoning ordinances, or simply refusing to follow their existing ordinances to allow lawful developments to move forward. This phenomenon is not unique to Michigan. Several other states, including Ohio, Kentucky, Massachusetts, and Washington, have enacted laws that place renewable energy siting with a state body, recognizing that state goals for renewable energy development cannot be met if development is subject to unchecked local control and approval. See generally Enterline & Valainis, *Laws in Order: An Inventory of State Renewable Energy Siting Policies*, Regulatory Assistance Project (June 2024) (available at <https://www.catf.us/resource/laws-in-order/>) (last accessed February 6, 2025).

To address this problem in Michigan, the Legislature passed Public Act 233 of 2023 (“Act 233”) to preempt local zoning where development and land use standards exceeded the statutory requirements:

House Bill 5120 [which would become Act 233] would amend the Clean and Renewable Energy and Energy Waste Reduction Act to create a certification process, through the Michigan Public Service Commission (MPSC), of wind or solar energy facilities and energy storage facilities with a capacity of 100 megawatts or more. *The process would preempt local zoning or regulation of such facilities.*

House Legislative Analysis, HB 5120 & 5121 (October 17, 2023), p 1 (emphasis added); *see also* House Legislative Analysis, HB 5120 & 5121 (February 5, 2024), p 1 (“Generally speaking, the MPSC certification *process preempts local regulation of those facilities*, although a local government with an ordinance whose *requirements do not exceed the bill’s certification standards* can act as a permitting authority in some circumstances.”) (emphasis added). In cases where local governments fail or refuse to follow the State’s standards, the Legislature looked to the MPSC to

assume responsibility for the siting of utility-scale renewable energy projects. See 2023 Senate Journal 2454 (No. 99, November 8, 2023) (“It is important to understand that the Michigan Public Service Commission already has siting authority over critical infrastructure—that’s gas and oil pipelines, oil and gas wells, the electrical transmission and distribution networks, as well as utility generation facilities. This legislation brings utility-scale renewable generation under the same existing siting authority.”).³ Act 233 is therefore properly viewed as a necessary tool to assist the State in achieving those renewable and clean energy standards.

Act 233 created a new Part 8 within existing Act 295, the “Clean and Renewable Energy and Energy Waste Reduction Act,” whose purpose is “to promote the development and use of clean and renewable energy resources.” MCL 460.1001(2) (emphasis added). Act 234, in turn, amended the MZEA to make that act expressly subject to the new Part 8 of Act 295. See MCL 125.3205(1)(d).

All of this context makes the purpose of Act 233 abundantly clear: to ensure that siting decisions relating to Michigan’s energy infrastructure necessary to meet these goals are held to uniform, objective standards. See *People v Roy*, 346 Mich App 244, 249 (2023) (“[C]ourts may look to the legislative history of an act, as well as to the history of the time during which the act was passed, to ascertain the reason for the act and the meaning of its provisions.”).

In setting these standards, the Legislature considered whether utility-scale renewable energy projects should be restricted to certain zones within a municipality (presumably to allow

³ Affected local units may also voluntarily request the Commission to assume responsibility for reviewing a proposed project. See MCL 460.1222(2); Senate Legislative Analysis, HB 5120 & 5121 (November 7, 2023), p 1 (“The bills would allow an electric provider or an independent power producer (IPP) to apply to the Michigan Public Service Commission (MPSC) for a certificate to construct a wind, solar, or energy storage facility that had at least 100 megawatts of generational capacity; *they would also allow an affected local governmental unit to request that the MPSC require a provider or IPP to undergo the certification process*” (emphasis added).).

local governments to control where projects would be located) and ultimately decided that *no such locational restrictions should exist*. For instance, in the House of Representatives Committee on Energy, Communications, and Technology, Representative David Prestin sought to amend HB 5120 to require that a developer applying to the MPSC must enter an agreement with the MPSC and each affected local unit “on the size and location of the energy project within that affected local unit.” See October 18, 2023 Committee Meeting Minutes, at Intv App 026. This proposed amendment was rejected. *Id.*

Similarly, Senator Ed McBroom attempted to amend HB 5120 to restrict the location of projects to areas with industrial zoning. 2023 Senate Journal 2447 (No. 99, November 8, 2023). As Senator McBroom explained:

[M]y amendment seeks to correctly identify land that is taken and used for siting of solar projects as being the industrial operations that they are. It is wrong to pretend that these things are anything less than an industrial operation and they should be taxed thusly, they should be zoned thusly, and that should be a great benefit to the entirety of the state and our local communities to see that designation reflect that proper tax base that they would then be, and make sure these huge corporations that are seeking to build these places are paying their fair share.

Id. at 2453. This amendment was likewise voted down. *Id.* at 2447. As a result, *Act 233 was intentionally enacted without any sort of restriction on the location of utility-scale projects, including that such projects should only be located in certain zoning districts.*

The legislative history makes clear that the Legislature wanted to ensure that local ordinances would not create additional barriers to projects that otherwise complied with the standards set forth in Act 233. HB 5120 “would require a provider or [independent power producer] to file for approval of a facility with an affected local government unit, instead of the MPSC, [only] if that unit had a renewable energy ordinance *compatible with the bill’s*

requirements.” Senate Legislative Analysis, HB 5120 & 5121 (November 7, 2023), p 1 (emphasis added).

The Legislature was concerned about local zoning of utility-scale renewable energy projects, including the issues and delays in permitting projects that had taken place prior to Act 233. With that concern in mind, the Legislature enacted Act 233 to create a mechanism for utility-scale projects to be reviewed by the MPSC in cases where local governments refuse to fairly enforce Act 233’s standards (or adopt standards that exceed the scope of requirements they are permitted to adopt under Act 233).

B. ACT 233’S PREEMPTIVE EFFECT AND GRANTS OF AUTHORITY TO THE COMMISSION.

Act 233 was enacted to cut through the thicket of local government obstructionism and provides sufficient authority to the Commission to do so. Act 233 explicitly grants certain powers to the MPSC and requires that it carry out certain duties. See MCL 460.1230(1). The Legislature also declared that Act 233 preempts any other state law, with the exception of the Electric Transmission Line Certification Act. See MCL 460.1230(3) (“This part shall control in any conflict between this part and any other law of this state.”). Further, the Legislature stated that an issued certificate under Act 233 and the Act itself “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) (emphasis added). The preemptive effects of the Act and the Commission’s rulings on certificates are consistent with the above-cited legislative history stating that the Act was intended to preempt local zoning.

Act 233 explicitly authorizes the MPSC to do the following:

- (1) to prescribe the format and content of public notices (MCL 460.1223(1));
- (2) to set application filing requirements, which may be established by rule or order (MCL 460.1224(1));

- (3) to set the site plan requirements by rule or order (MCL 460.1224(1)(c));
- (4) to determine the contents of an application before the Commission (MCL 460.1225(1)(s));
- (5) to determine reasonable application fees (MCL 460.1226(4));
- (6) to grant or deny applications and to issue certificates (MCL 460.1226(5));
- (7) to determine reasonable pollinator standards as necessary (MCL 460.1226(6)(b));
- (8) to decide what proceedings at the MPSC, the regional transmission organization, or the FERC are relevant to determining the contribution of the proposed energy facility to meeting the identified energy, capacity, reliability, or resource adequacy needs of this state (MCL 460.1226(7)(a));
- (9) to set more stringent zoning requirements for solar (MCL 460.1226(8)(a)(vi)), for wind (MCL 460.1226(8)(b)(viii)), and for energy storage (MCL 460.1226(8)(c)(v));
- (10) to issue orders necessary to protect information in an application for a certificate (MCL 460.1228(2));
- (11) to consolidate related proceedings (MCL 460.1230(2)).

Collectively, the statutory language setting forth the preemptive effect of Act 233 and the explicit grants of authority to the Commission demonstrate the desire of the Legislature to enlarge the authority of the Commission with respect to renewable energy and energy storage siting and, correspondingly, to diminish local control.

C. THE MPSC’S OCTOBER 10, 2024 ORDER AND APPLICATION FILING INSTRUCTIONS AND PROCEDURES.

Pursuant to Act 233, on February 8, 2024, the MPSC issued an order opening the docket U-21547 for the purposes of developing application filing instructions, guidance relating to CREOs, and any other issues involving Act 233. February 8 Order in Case U-21547 at Intv App

032-33 (the “February 8 Order”). The docket was not opened as a contested case proceeding but rather as a comment proceeding that sought engagement with experts, local units of government, project developers, and other interested persons “in transparent open meetings to consider issues relating to application filing instructions or guidelines, the potential use of consultants and assessment of application fees, whether and how pre-application consultations with the Staff would be helpful to potential applicants, guidance for use in the development of CREOs, as well as any additional issues that may arise during the engagement process from potential applicants and local units of government.” *Id.* at Intv App 032. The Commission also directed Staff to hold public meetings starting in March 2024 and to file recommendations on application filing instructions, guidance relating to CREOs, and any other issues in the docket by June 21, 2024. *Id.* The Commission noted that it would accept comments on the Staff’s recommendations until 5:00 p.m. on July 17, 2024, and reply comments until 5:00 p.m. on August 9, 2024. *Id.*

The MPSC also established a website where information on Act 233 and the Commission’s actions could be found: <https://www.michigan.gov/mpsc/commission/workgroups/2023-energy-legislation/renewable-energy-and-energy-storage-facility-siting>. This website hosted documents from the MPSC Staff meetings, such as presentations and agendas, comments requested and received, recordings of the meetings, and other resources such as Frequently Asked Questions, in addition to offering an opportunity to sign up to be on the mailing list for all activities of this MPSC Staff effort. The MPSC Staff held meetings on the following dates in 2024: March 7, March 19, April 5, April 26, May 15, May 28, July 10, and September 4. Staff circulated various draft straw proposals for comment at the meetings on April 5, May 15, and May 28. MPSC Staff filed their Application Instructions and Procedures, Staff Draft, final straw proposal for comment in the docket on June 21 (“Straw Proposal”). Meetings continued into July and September for

stakeholders to discuss concerns with and support for various parts of the Straw Proposal, and to bring attention to additional issues not addressed in the Straw Proposal. As ordered by the Commission, filed comments were received on the Straw Proposal until July 17 and reply comments until August 9.

On October 10, 2024, the Commission issued an Order in the docket, adopting final Application Filing Instructions and Procedures to be used by electric providers and independent power producers seeking to obtain a certificate from the Commission for authority to site an energy facility pursuant to Act 233 of 2023. The Commission's 77-page Order discussed the Straw Proposal and the comments received on the many issues addressed in the months of meetings, and it appended a much-reworked version of the Application Filing Instructions and Procedures from the Staff's Straw Proposal. On October 21, 2024, the Commission issued an Errata in this docket approving corrected Application Filing Instructions and Procedures.

D. THE COURT OF APPEALS PROCEEDINGS.

Appellants sought judicial review of the Commission's October 10, 2024 Order. See MCL 460.4; 462.26. As relevant to this Application for Leave to Cross-Appeal, Appellants challenged two aspects of the order: (1) the Commission's conclusion that the statutory term "affected local unit" (ALU) should be limited to units of government that exercise zoning jurisdiction; and (2) the Commission's conclusion that the statutory 30-day period for the chief elected official of an ALU to notify a developer of a CREO begins when the developer offers to meet the official.⁴

The Court of Appeals ruled in favor of Appellants on these two discrete issues, holding that ALU status turns only on the geographic location of the proposed facility, and that the MPSC

⁴ Appellants challenged other aspects of the October 10, 2024 Order. However, the Court of Appeals affirmed those portions of the order, a decision which is now subject to Appellants' Application for Leave to Appeal to this Court. This Cross-Application deals only with issues upon which Appellants prevailed at the Court of Appeals.

may not impose a 30-day CREO-notice period beginning after the date a prospective applicant's written offer to meet with a chief elected official of an ALU is received.

Reading Act 233's definition of ALU as "a unit of local government in which all or part of a proposed energy facility will be located," and the separate definition of a "local unit of government" or "local unit" as "a county, township, city, or village," the court characterized that definition as "purely geographic," reasoning that ALU status depends "exclusively" on whether any part of the proposed energy facility will be located within the local unit's borders. See 5/7/2026 Opinion, Intv App 012. The court concluded that the statutory text "does not refer to only those local units of government that have zoning jurisdiction" and instead includes "all local units of government in which all or part of a proposed energy facility will be located." *Id.* at Intv App 013. The court also observed that ALUs under Act 233 have a "plethora of statutory rights," including the right (1) to receive notice of public meetings, (2) for their residents to hear about and comment on proposed projects, (3) to notice of certificate-application proceedings, (4) to review and comment on proposed projects, (5) to intervene in contested case proceedings before the Commission, (6) to potentially receive a one-time grant of funds from the developer to cover participation costs in those proceedings, and (7) to enter into a host-community agreement with a developer under which the developer must pay the ALU \$2,000 for each megawatt of nameplate capacity located within the ALU. *Id.* In the court's view, those statutory rights and benefits are directed to localities where the facility will be located, which the court found reinforced the Legislature's geographic definition of ALU. *Id.*

On the 30-day issue, the Court of Appeals held that the statutory text starts the 30-day period "not with the receipt of the offer to meet but with the actual meeting between the developer and the chief elected official or the official's designee." *Id.* at Intv App 016. The court further

explained that, if the ALU gives notice within 30 days after the meeting, the developer must file for approval with the ALU. *Id.* The court dismissed possible-delay concerns, explaining that its concern was “what the statute requires” and that MCL 460.1223(3) “unambiguously provides that the 30-day timeline begins with the meeting itself.” *Id.* The court concluded that the timeline must run from the meeting itself. *Id.*

III. ARGUMENT

A. THE COURT SHOULD GRANT LEAVE TO CROSS-APPEAL UNDER MCR 7.305(B)(2).

MCR 7.305(B)(2) provides this Court’s review is appropriate if the application shows (1) “the issue has significant public interest” and (2) “the case is one by or against the state or one of its agencies or subdivisions in the officer’s official capacity.” Because the MPSC is party to this proceeding, the second requirement is satisfied, so the only remaining question is whether the ALU issue and the 30-day issue have “significant public interest.”

The record readily establishes that the answer to that question is “yes.” This appeal involves the Commission, 76 municipalities, trade groups (representing hundreds of entities), state- and nation-wide public interest groups, political groups and public officials, unions, private companies, and individual property owners. All told, over 100 individuals or entities appeared at the Court of Appeals, either as parties or amici, and opined on the Commission’s October 10, 2024 Order. That breadth of participation confirms the substantial public importance of the issues presented in this Application for Leave to Cross-Appeal. Moreover, the Court of Appeals itself recognized that this matter is “of public significance.” 5/7/2026 Opinion, Intv App 019. Accordingly, this Court’s review is appropriate under MCR 7.305(B)(2).

B. THE COURT SHOULD GRANT LEAVE TO CROSS-APPEAL UNDER MCR 7.305(B)(5).

MCR 7.305(B)(5)(a) provides that this Court’s review is appropriate if “the [Court of Appeals’] decision is clearly erroneous and will cause material injustice.” The Court of Appeals’

interpretation of “ALU” and the 30-day timeline, as well as the court’s decision to apply its judgment retroactively, fit squarely in this subrule, justifying this Court’s review.

1. The Court of Appeals Incorrectly Expanded the Definition of ALU to Local Units of Government with no Siting Authority.

The Court of Appeals erred by overturning the MPSC’s interpretation of the scope of which local units of government are ALUs under Act 233. In doing so, the Court of Appeals made two key mistakes. First, it undermined the operation of Section 223 of Act 233, creating a situation where *no* local unit of government with zoning authority could ever require an electric provider or independent power producer (“IPP”) to file for siting approval locally. Second, it read Act 233 as *expanding* rather than *limiting* the pre-Act-233 scope of the rights of local units of government, contrary to the remedial purpose of the statute.

a. The Court of Appeals’ Interpretation of ALU Creates a Conflict Within Act 233.

The Court of Appeals held that the definition of ALU in Section 221(a) read on its own effectively settles the matter:

[T]he Legislature provided a purely geographic definition of an ALU, as being an ALU depends exclusively on whether a proposed energy facility will be located (even in part) within a local unit of government’s borders. . . . This definition is plain and unambiguous, requiring no interpretation. Quite simply, in crafting what jurisdictions will be entitled to a plethora of statutory rights under PA 233, the Legislature explicitly included all local units of government in which any part of an energy facility will be located. It is a straightforward and simple definition to apply.”

5/7/2026 Opinion, Intv App 012-13. In doing so, however, the Court of Appeals ignored the fact that it created an irresolvable tension within Act 233 that undermines the operation of Section 223, one of its central provisions.

Under longstanding principles of statutory construction, courts must construe statutes in such a way as to harmonize their various provisions: “[P]rovisions of a statute that could be in

conflict must, if possible, be read harmoniously. . . . In . . . a case of tension, or even conflict, between sections of a statute, it is our duty to, if reasonably possible, construe them both so as to give meaning to each; that is, to harmonize them.” *Nowell v Titan Ins Co*, 466 Mich 478, 482–83 (2002). A corollary to this principle holds that Courts must construe statutes in such a way as to avoid nullifying their provisions: “[C]ourts are duty-bound to avoid an interpretation that would render any part of the statute surplusage or nugatory if at all possible. This canon therefore compels us to reject interpretations that would render a statute a mere descriptor without any independent legal meaning.” *Dep’t of Health & Human Servs v NRK RX, Inc*, --- NW3d ---, No. 167917, 2026 WL 1656773 (Mich, June 8, 2026) (internal quotations and citations omitted). The Court of Appeals’ order does the opposite, introducing a conflict within Act 233 that the MPSC’s October 10 Order had avoided and nullifying one of its key provisions. Furthermore, even if it were true (it is not) that the definition of ALU is, as the Court of Appeals states, “plain and unambiguous, requiring no interpretation,” it remains the case that “departure [from an unambiguous statute] may be justified when a literal construction would produce an absurd and unjust result and would be clearly inconsistent with the purposes and policies of the act in question.” *People v Bewersdorf*, 438 Mich 55, 68; 475 NW2d 231 (1991) (internal quotations and citations omitted).

As the Court of Appeals correctly noted in its opinion, “A county’s zoning jurisdiction does not include areas subject to a township zoning ordinance. See MCL 125.3209 and MCL 125.3102(x). Under these provisions it is impossible for a township and a county to each have a CREO in the same area.” 5/7/2026 Opinion, Intv App 014 (n.6).⁵ Given this, under the Court of

⁵ Appellants have also conceded in this litigation that “CREOs are zoning ordinances,” (Appellant Br at Court of Appeals at 12), and that “PA 233, as PA 234 suggests, must be read in context of the MZEA,” (*id.* at 24).

Appeals' favored definition of ALU, it would also be impossible for *any* local unit of government to require an electric provider or IPP to file for approval locally as contemplated under Section 223 of the Act.

Section 223 provides that “[a]n electric provider or independent power producer that . . . proposes to obtain a certificate for and construct an energy facility” must take certain steps before filing an application with the MPSC, including offering to meet with the “chief elected official of each affected local unit.” MCL 460.1223(2). If, and only if, “the chief elected official of each affected local unit notifies the electric provider or IPP planning to construct the energy facility *that the affected local unit has a compatible renewable energy ordinance*, then the electric provider or IPP *shall* file for approval with each affected local unit.” MCL 460.1223(3) (emphasis added).

Reading the definition of ALU as the Court of Appeals does, coupled with its acknowledgment that “it is impossible for a township and a county to each have a CREO in the same area,” results in a situation where neither a township with zoning authority nor a county with zoning authority would *ever* be able to require the electric provider or IPP to file for approval locally, since, by law, it would be impossible for “each” of the county and the township to “notify the electric provider or IPP planning to construct the energy facility” that it has a CREO. For a facility located within a single township with township zoning, the county would be unable to notify the developer that it has a CREO governing the facility. The same issue would arise if the county were to exercise zoning authority—the township would be unable to notify the developer that it has a CREO governing the facility. Expanding the facility into a neighboring township would not help. Assuming one township zones itself and the other is zoned by the county, such that both the first township and the county could notify the developer that they have CREOs applicable to the facility, the second township still could not make the notification.

All of this makes a nullity out of Section 223(3) in violation of canons of statutory interpretation and cannot be what the legislature intended. See House Legislative Analysis, HB 5120 & 5121 (February 5, 2024), p 1 (“Generally speaking, the MPSC certification *process preempts local regulation of those facilities*, although a local government with an ordinance whose *requirements do not exceed the bill’s certification standards* can act as a permitting authority in some circumstances” (emphasis added)).

The MPSC’s construction of ALU as only extending to local units of government exercising zoning jurisdiction thus represents much more than an overemphasis on “practicalities,” as the Court of Appeals asserted. 5/7/2026 Opinion, Intv App 013. Rather than demonstrating a myopic focus on itself and its own authority, 5/7/2026 Opinion, Intv App 013-14, the MPSC’s construction of ALU is in fact necessary to effectuate the operation of Section 223 of Act 233.

b. The Court of Appeals’ Broad Construction of ALU Contradicts the Remedial Purpose of Act 233.

As this Court recently reiterated in *People v Arnold*, “[I]n construing a statute it is important to consider the law as it existed prior to the enactment, and particularly the mischief sought to be remedied by legislation.” 502 Mich 438, 454; 918 NW2d 164, 170 (2018) (quoting *Mich Dairy Co v Runnels*, 96 Mich 109, 111; 55 NW 617 (1893)); see also *People v Roy*, 346 Mich App 244, 249 (2023) (“[C]ourts may look to the legislative history of an act, as well as to the history of the time during which the act was passed, to ascertain the reason for the act and the meaning of its provisions.”).

Act 233 is a remedial statute. That much is clear from the legislative history:

If enacted, the bill [i.e., what became Act 235] would necessitate the buildout of more utility-scale renewable energy resources like solar, wind, and storage in the State; however, according to testimony, *the current process for siting and permitting renewable energy resources in local governmental units has proven complex and has delayed the buildout of these resources*. Accordingly, it has been suggested that the siting and permitting of renewable energy resources be regulated

by the MPSC unless local governmental units demonstrated that they had requirements for the buildout of these resources that were compatible with those proposed by Part 8.

Senate Fiscal Agency Bill Analysis, HB 5120 & 5121 (November 8, 2023), p 2 (emphasis added); see also House Legislative Analysis, HB 5120 & 5121 (October 17, 2023), p 1 (“House Bill 5120 would amend the Clean and Renewable Energy and Energy Waste Reduction Act to create a certification process, through the Michigan Public Service Commission (MPSC), of wind or solar energy facilities and energy storage facilities with a capacity of 100 megawatts or more. *The process would preempt local zoning or regulation of such facilities*”) (emphasis added). The “mischief sought to be remedied” by Act 233 was not a *dearth* of local government participation or an inadequacy of local governmental rights in energy facility siting processes. Rather, the legislature perceived the problem to be the improper *assertion* of local authority and aimed to *displace* local authority by transferring it to the MPSC “unless local governmental units demonstrate[] that they ha[ve] requirements for the buildout of [energy] resources that [a]re compatible with those proposed by [Act 233].” Senate Fiscal Agency Bill Analysis, HB 5120 & 5121 (November 8, 2023), p 2.

Act 233 represents a transfer, under certain circumstances, of authority for zoning approvals from a local unit of government to the state. This is made clear by the legislative intent expressed in both Act 233 and its tie-bar to Act 234, which amended the MZEA. The language of Act 233 demonstrates that the Commission’s new authorities are an exercise of zoning authority specifically, including:

Act 233 itself refers specifically to units of government “exercising zoning jurisdiction.” See MCL 1222(2). It is only those local units that can request the state issue a certificate, which signals that the state’s certificate process is understood to be an alternative zoning process. (The legislative history, moreover, identifies these local units with zoning jurisdiction with affected local units under the statute. Senate Legislative Analysis, HB 5120 & 5121 (November 7, 2023), p 1.

- The Commission is given jurisdiction over a project in only two circumstances: (1) if a local unit of government exercising zoning jurisdiction so requests, see MCL 460.1222(2), or (2) if an electric provider or independent power producer is unable to obtain a zoning approval from a local unit of government exercising zoning jurisdiction despite the project's being in compliance with Section 226(8) of Act 233, see MCL 460.1223(3)(c)(i)–(iii). Section 223(3)(c)(iii), furthermore, specifically refers to amendments to an affected local unit's "zoning ordinance" as a ground for Commission jurisdiction.
- The description of an ordinance that deprives the Commission of jurisdiction (*i.e.*, a CREO) is a long list of items that are routinely and exclusively part of zoning ordinances (*e.g.*, setbacks, height restrictions). See MCL 460.1221(f); MCL 460.1226(8).

These points clearly illustrate that Act 233 was intended to provide a new, alternative path for *zoning* approval rather than a distinct approval process outside of the zoning context.

The remedial purpose of Act 233 detailed above is incompatible with interpreting the statute with a view towards local units of government that lack zoning jurisdiction, such that they should be given *more* rights to notice, participation, and financial benefits than they possessed and possess under the MZEA. Yet that outcome is exactly what the Court of Appeals used to ground its construction of ALU. 5/7/2026 Opinion, Intv App 014.

The Court of Appeals makes much of the "plethora of statutory rights" provided to ALUs under Act 233, 5/7/2026 Opinion, Intv App 013, highlighting their right to:

- "notice of public meetings so that affected residents can hear about, and comment upon, the proposal";
- "review and comment upon proposed projects that would, again, be located at least partially within its jurisdiction";
- "intervene in a contested case proceeding";
- "potentially receiv[e] a one-time grant of funds from the developer to cover costs associated with participating in that proceeding"; and
- "a host community agreement with each ALU, under which the developer must pay the ALU \$2,000 for each megawatt of nameplate capacity located within the ALU."

Id. In citing these rights as support for its holding that the scope of ALU extends beyond those local units of government with zoning authority over an energy facility, *Id.* (claiming that “This unambiguous definition also furthers several other provisions within PA 233,” before listing the rights of ALUs), the Court of Appeals attempted to ground its opinion in a purpose clearly at odds with the remedial purpose of Act 233.

This becomes obvious when considering the rights of each type of local unit of government had under the MZEA before the enactment of Act 233. Under the MZEA, when a county has zoning jurisdiction over a particular township, the township has no statutory rights to notice, participation in zoning review and approval processes, subsidization of its participation in review and approval processes, or host community payments. See, *e.g.*, MCL 125.3502 & MCL 125.3103 (prescribing notice requirements for hearings concerning rezonings and special land uses, which extend only to owners and occupants of property within 300 feet of the property that is the subject of the rezoning or special land use request). Similarly, a county in which a township with zoning jurisdiction is located has no such rights under the MZEA. While the MZEA includes limited opportunities for local units without zoning jurisdiction for notice and comment in certain circumstances, including the right of a county to review and provide recommendations regarding a proposed ordinance or ordinance amendment, MCL 125.3307, a township has no reciprocal right to review and make recommendations regarding a county zoning ordinance.

Thus, under the MZEA, the rights provided to ALUs under Act 233 do *not* belong to local units of government that do not exercise zoning jurisdiction, even when a project coming in for special land use approval might be located within their geographical boundaries. The Court of Appeals’ decision therefore does not “further[] several other provisions within PA 233.” 5/7/2026 Opinion, Intv App 013.

In view of the statute as a whole, therefore, and against the background against which it was enacted and its remedial purpose, the Commission appropriately construed the definition of ALU to include only those local units of government that exercise zoning jurisdiction, and the Court of Appeals inappropriately expanded it.

2. **The Court of Appeals’ Decision to Overturn the Commission’s Deadlines for CREO Notification Threatens to Leave Prospective Applicants Without Guidance.**

The MPSC’s October 10 Order requires ALUs to notify a developer as to whether or not the ALU has a CREO within 30 days of receipt of a developer’s offer to meet under MCL 460.1223(2). October 10 Order at 11–12. The Order grounds this conclusion in a finding that “the [chief elected official (“CEO”)] of an ALU has an affirmative obligation to notify an electric provider or IPP of the existence of a CREO.” *Id.* at 11. The Court of Appeals’ decision below rejects this notification deadline, finding:

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

5/7/2026 Opinion, Intv App 016. The Court of Appeals, furthermore, simply dismissed without comment Appellees’ and Intervening Appellees’ concerns regarding the potential for ALUs to abuse the process by avoiding or even refusing to meet with a prospective applicant. 5/7/2026 Opinion, Intv App 016.

The Court of Appeals’ decision to leave this interpretive gap undermines Act 233’s entire statutory scheme, an outcome the Legislature can never have intended. Act 233 does not expressly

impose a timeline in which the meeting between the developer and the CEO pursuant to MCL 460.1223(2) must occur. This creates a gap that, if left alone, threatens to thwart the preemptive effect of the statute and place a developer entirely at the mercy of an uncooperative and unreasonable ALU.

Consider a scenario where a developer reaches out to an ALU on August 31 of this year with a request to meet, offered in writing in accordance with the requirements of the statute and the October 10 Order. The CEO responds three months later on November 30, indicating that the next opening for a meeting is not until the new year. Come January, the CEO indicates in response to a developer request to confirm the date and time of the meeting that the CEO was mistaken and that in fact the next available time would not be until June. Meanwhile, no notification regarding a CREO (or lack thereof) is given, effectively freezing the process under Act 233 between the steps outlined in MCL 460.1223(2) and MCL 460.1223(3). A developer might of course simply take the position at some point during this period that it may apply to the MPSC on account of the ALU's failure to notify it of a CREO. It does so at some risk, however, since even if it were to complete the yearlong process before the MPSC and obtain an Act certificate, a court could later find on appeal (a year or more later) that because the developer did not wait to hear from the ALU regarding its CREO status, its application was not properly before the MPSC. Adopting the Court of Appeals' decision would be to remove any barrier to an ALU pursuing such a bad-faith strategy in order to effectively force the developer to go through a local process inconsistent with Act 233 or else simply to kill the project by delay.

The MPSC's finding that "the CEO of an ALU has an affirmative obligation to notify an electric provider or IPP of the existence of a CREO," October 10 Order at 11, addresses this concern in a reasonable manner. And given that the meeting referenced in MCL 460.1223(2)

requires the attendance of only one official (either the CEO or the CEO's "designee"), it is reasonable to conclude that the meeting, if scheduled by both parties in good faith, need not take place more than several days after the offer to meet is received. This meeting need be no more than the developer's providing the CEO with enough information about the proposed project to enable the CEO to evaluate whether the threshold jurisdictional requirements for an Act 233 CREO are triggered or not. This does not require significant time on the CEO's part to prepare for such a meeting. Nor should the determination as to whether or not the Act 233 criteria are triggered by the proposed project require significant time investment. The October 10 Order's provision, therefore, that a CREO notification be given within 30 days of an offer to meet provides ample opportunity to schedule and hold such a meeting. It also hews closely to the 30-day requirement in MCL 460.1223(3) while simultaneously remedying the potential issue of an ALU's gaming the meeting requirements to derail the Act 233 process.

This Court should therefore reverse the Court of Appeals' determination on this portion of the October 10 Order and find that the MPSC's notification timeline is a reasonable interpretation of the Act and a reasonable exercise of a permissive statutory power in furtherance of its responsibility to enforce and administer the Act. See MCL 24.207(j); MCL 460.1230(1); *In re Reliability Plans of Electric Utilities*, 505 Mich at 119 (noting that among the Commission's powers is "the authority to interpret the statutes it administers and enforces").

To the extent that this Court agrees with the Court of Appeals that the MPSC impermissibly "implement[ed] a timeline different than that required by law," 5/7/2026 Opinion, Intv App 016, however, it should not leave prospective ALUs and prospective applicants without guidance as to the application of this section of Act 233.

The Court of Appeals recited relevant portions of the MPSC's October 10 Order:

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

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

The PSC's timeline differs from that set forth in the statute.

5/7/2026 Opinion, Intv App 016. Here, the court appears to accept the MPSC's assertion that "a developer is required to follow a local siting process only if the chief elected official of each ALU notifies the developer that the ALU has a CREO," see MCL 460.1222(2); MCL 460.1223(3), and that the CEO "has an affirmative obligation to notify [a developer] of the existence of a CREO."

Given this, and given Act 233's direction that prospective applicants "offer in writing to meet with the chief elected official of each affected local unit" is specifically required to be given "[a]t least 60 days before a public meeting held under subsection (1)," it is reasonable and entirely consistent with the statute to conclude that the offer to meet and the public meeting are connected. In fact, it is entirely reasonable and consistent with the statute to conclude that the reason the offer is required to be made at least 60 days in advance of the public meeting is to provide sufficient time for the CEO meeting to take place *before* the public meeting. See MCL 460.1223(3). The fact that Section 223(3)(d) of Act 233 *excuses* a prospective applicant from hosting a public meeting if it proceeds through the local process first (after a CREO notification is given) ties the two even closer together.

Thus, to the extent that the Court seeks to follow the Court of Appeals in rejecting the Commission's CREO notification timeline, two reasonable interpretations remain. First, this Court could conclude that the CEO meeting must occur within 30 days of the offer to meet, leaving

the CEO an additional 30 days, up to the date of the public meeting to provide a CREO notification under MCL 460.1223(3). This interpretation maps most neatly onto the statute, since it would provide the prospective applicant an answer as to the existence or non-existence of a CREO before or on the earliest date set aside for the public meeting, which needn't take place if the CEO notifies the prospective applicant that the ALU has a CREO. See MCL 460.1223(3)(d). Alternatively, this Court could conclude that the CEO meeting must occur within the 60 days between the offer to meet and the public meeting, leaving an additional 30 days for the CEO to provide a CREO notification (for a total of 90 days between the offer to meet and the CREO notification deadline). Both of these interpretations preserve the clear relationship in the statute between the offer to meet and the public meeting, and both interpretations provide sufficient clarity to ALUs and prospective applicants to avoid the undoing of the entire statutory scheme described above.

In sum, this Court should reverse the Court of Appeals' rejection of the MPSC's reasonable CREO notification deadline. If it does not, however, this Court should at a minimum provide interpretive guidance to those whose activities will be governed by Act 233 by adopting one of the interpretations of the applicable timelines in Section 223 discussed above to ensure that the statute operates as the Legislature intended—and that it operates at all.

3. Any Decision Reversing the MPSC Should Be Prospective Only.

The Court should grant leave and reverse the Court of Appeals' rulings on the ALU and 30-day issues. But if it denies leave or affirms either ruling, it should make clear that the ruling applies only prospectively from the date of the Supreme Court's order or opinion.

a. This Court Can Decide Whether the Court of Appeals' Opinion or its Own Opinion is Given Only Prospective Effect.

Although the parties did not explicitly litigate whether the Court of Appeals should have given its decision only prospective effect, the Michigan Court Rules and this Court's inherent

authority allows this Court to make that decision now. As this Court explained in *League of Women Voters of Michigan v Secretary of State*, “a decision by the Court of Appeals does not ordinarily become effective until ‘after expiration of the time for filing an application for leave to appeal to the Supreme Court, or, if such an application is filed, after the disposition of the case by the Supreme Court.’” 508 Mich at 569 n26 (quoting MCR 7.215(F)(1)(a)). Because Appellants filed an application, the Court of Appeals’ opinion in this case remains “pending.” *Id.* Accordingly, by determining whether this Court’s decision on the applications should be prospective, the Court is able to also determine the prospectivity of the Court of Appeals’ decision, as it did in *League of Women Voters. Id.*

Moreover, this Court has previously ordered *sua sponte* that parties address whether a judicial opinion should be given retroactive or prospective effect, confirming that the Court has inherent authority to decide this issue. See, e.g., *Devillers v Auto Club Ins Assn’n*, 473 Mich 562, 586; 702 NW2d 539 (2005); see also *Exelon Corp v Dep’t of Revenue*, 234 Ill2d 266, 285; 917 NE2d 899 (2009) (“[T]his court has the inherent power to conclude that a decision will not apply retroactively, but only prospectively.”); *Jackson v State*, 122 NM 433, 434; 925 P2d 1195 (1996) (recognizing that “it is within the inherent power of this Court to give its decision prospective or retroactive application[.]”). *Fisher v Sears, Roebuck & Co*, 88 SD 1, 4; 214 NW2d 85 (1974) (“[I]t is easily established that there is inherent power in this Court to declare, at the time of the decision, whether a case will achieve only prospective application.”).

b. Any Reversal of the October 10, 2024 Order Should Be Prospective Only.

Although “the general rule is that judicial decisions are to be given complete retroactive effect . . . where injustice might result from full retroactivity, this Court has adopted a more flexible approach, giving holdings limited retroactive or prospective effect.” *League of Women Voters*, 508 Mich. at 564-65. This Court has a two-part “test for deciding retroactivity.” *Id.* at 565. First, the

Court answers the “threshold question [of] whether the decision clearly establishes a new principle of law.” *Id.* at 565. If so, the Court then weighs three factors: “(1) the purpose to be served by the new rule, (2) the extent of the reliance on the old rule, and (3) the effect of retroactivity on the administration of justice.” *Id.* at 566.

1) Reversal of the October 10, 2024 Order Would Establish A New Rule of Law.

The Court of Appeals decision readily satisfies the threshold inquiry for non-retroactivity. “A rule of law is new for purposes of resolving the question of its retroactive application either when an established precedent is overruled or when an issue of first impression is decided which was not adumbrated by any earlier appellate decision.” *League of Women Voters*, 508 Mich. at 566; see also *Chevron Oil Co v Huson*, 404 US 97, 106; 92 S Ct 349 (1971) (“The decision to be applied nonretroactively must establish a new principle of law . . . by deciding an issue of first impression whose resolution was not clearly foreshadowed.”). Even if the Court’s holding depends on its reading of a statute’s plain language, the non-retroactivity threshold is met when, “practically speaking, [the] holding is akin to the announcement of a new rule of law,” given prior “erroneous interpretations,” *Pohutski v City of Allen Park*, 465 Mich 675, 696; 641 NW2d 219 (2002), especially when the statute’s interpretation “has been subject to vigorous debate since [it] was enacted, *League of Women Voters*, 508 Mich at 566; see also *People v Robinson*, Dkt No 167595, -- NW3d --; 2026 WL 303034, at *4 (Feb 4, 2026) (concluding that a judicial decision announced a new rule of law by interpreting a century-old statute because “no appellate court had ruled” on the issue and “no existing precedent dictated” the result); *Schafer v Kent County*, 515 Mich 1, 37; 29 NW3d 25 (2024) (“[P]rospective application has often been reserved for significant reversals in the interpretation of statutory provisions[.]”).

Here, any decision striking down the MPSC’s Order regarding the definition of ALU or the 30-day timeline would establish a new principle of law. Act 233 was enacted in 2023, and this is the first court proceeding that has interpreted these provisions of the statute. As the Court of Appeals recognized, however, the MPSC is charged with interpreting and implementing these provisions in the first instance. To discharge that duty, the MPSC considered over 100 comments and held eight public meetings, which ultimately resulted in an authoritative Order. This level of input demonstrates that the meaning of Act 233 was “subject to vigorous debate.” *League of Women Voters*, 508 Mich at 566. Until the Court of Appeals’ decision, the Order governed parties’ applications before the MPSC. If the MPSC’s interpretation is indeed “erroneous,” then a court’s correction of it necessarily establishes a “new rule.” *Pohutski*, 465 Mich at 696. The non-retroactivity threshold is met.

2) The Factors Support Non-Retroactivity.

The three relevant factors (the purpose to be served by the new rules; the reliance on the old rule; and the administration of justice) all favor non-retroactivity. First, the Court of Appeals’ rulings on ALU status and the 30-day timeline are procedural. Such rules, which do not affect “the integrity of the fact-finding process,” are “amenable to prospective application.” Compare *People v Sexton*, 458 Mich 43, 63; 580 NW2d 404 (1998). Here, the Court of Appeals’ interpretations of Act 233’s statutory terms do not affect the merits of whether a particular energy facility should be sited, nor would the new rules have prevented any application from being filed with the MPSC. Such procedural clarifications are not the type of decisions that demand retroactive application. See *id.* at 61–63. Moreover, Act 233’s defining feature is its tempo: the statute provides a 120-day window for local approval where there is a CREO; and, when local approval is not forthcoming, a mandate that the MPSC grant or deny each certificate application within one year after the application is deemed complete. MCL 460.1223(3)(b); MCL 460.1226(5). The Legislature

demand speed because its clean-energy objective depends on infrastructure that takes years to develop and build. It did not leave that demand to implication but enacted it, deadline by deadline, into the statute’s text. Retroactive application of the Court of Appeals’ decision would directly contravene this statutory design by restarting procedural clocks that are already running.

Second, the extent of reliance on the “old rule”—here, the MPSC’s interpretation of ALU and the 30-day timeline—strongly favors prospective application. “[W]hen a Michigan appellate court does construe a statute and unequivocally declares what it means, the bench and bar are entitled, indeed obligated, to accept that construction as authoritative, and lawyers can be expected to render professional advice consistent with that interpretation.” *Tebo v Havlik*, 418 Mich 350, 370; 343 NW2d 181 (1984) (Ryan, J., concurring). Here, although the MPSC is not a court, it is charged with interpreting and implementing PA 233 in the first instance, and its October 10, 2024 Order constituted an authoritative, controlling interpretation that developers were obligated to follow before the MPSC. There are currently eleven applications pending at the MPSC. These contested cases span ten counties and seven developers, and represent roughly 1.9 gigawatts of potential clean-energy generation—enough to power millions of homes. These developers necessarily relied on the MPSC’s interpretation of which entities qualify as ALUs and the applicable timelines for notifying developers of the existence of a CREO when submitting their applications.

To help the Court appreciate the scope of the reliance at stake, the following table identifies each pending Act 233 siting application, the date it was deemed complete, and the date by which Act 233 would—in the ordinary course—require decision:

Case Name / Applicant	Case Number	Project Type and Size	Project Location	Filing Date and Status	Anticipated One-year Statutory Decision Deadline
Washtenaw Solar Energy, Invenergy	U-21962	150 MW Solar	Saline Township, Washtenaw County	September 25, 2025 Complete	September 25, 2026
Acceleration Solar, Ranger Power	U-21932	90 MW Solar	Leslie, Onondaga, and Vevay Townships in Ingham County	Initial: June 18, 2025 Amended: October 3, 2025 Complete	October 3, 2026
Otisville Solar, EDF	U-21956	125 MW Solar	Forest and Thetford Townships, Genesee County	Initial: September 8, 2025 Amended: December 11, 2025 Complete	December 11, 2026
Rouget Road Solar, RWE	U-22003	175 MW Solar	Palmyra Township, Lenawee County	December 12, 2025 Complete	December 12, 2026
Headland Solar, Ranger Power	U-22004	220 MW Solar	Cohoctah and Conway Townships, Livingston County	Initial: December 19, 2025 Amended: February 19, 2026 Complete	February 19, 2027
Glacier Meadows Solar, Ørsted Onshore North America	U-22044	200 MW Solar	Blissfield and Deerfield Townships, Lenawee County	February 27, 2026 Complete	February 27, 2027

Case Name / Applicant	Case Number	Project Type and Size	Project Location	Filing Date and Status	Anticipated One-year Statutory Decision Deadline
Washtenaw Solar Energy, Invenergy	U-21962	150 MW Solar	Saline Township, Washtenaw County	September 25, 2025 Complete	September 25, 2026
Silver Maple Solar, RWE	U-22071	200 MW Solar	Jamestown and Zeeland Townships, Ottawa County	April 3, 2026 Complete	April 3, 2027
Birch Valley Solar, Ranger Power	U-22072	162 MW Solar	Arbela Township, Tuscola County	April 10, 2026 Complete	April 10, 2027
Riverbend Wind, REV Renewables	U-22036	300 MW Wind	Elk, Fremont, and Speaker Townships, Sanilac County	Initial: February 2, 2026 Amended: April 30, 2026 Complete	April 30, 2027
Walker Road Solar, RWE	U-22130	150 MW Solar	Bingham Township, Clinton County	May 29, 2026 Under review	N/A
Lakeside Solar and Storage, Geronimo Power	U-22143	200 MW Solar and Storage	White River Township, Muskegon County	July 6, 2026 Under review	N/A

As the foregoing reflects, the first statutory deadline falls on September 25, 2026—before this Court could realistically dispose of the Applications through ordinary appellate procedures. The question is therefore not *whether* an MPSC decision will issue under unsettled standards, but rather *how many* decisions will occur. Each month of delay without prospective-only application

adds another decision entered under an unsettled paradigm that may not survive review, and each such decision carries its own cloud of potential vacatur or re-litigation.

The reliance factors dictating that retroactive application would materially impair or destroy the commercial viability of these projects are not abstract. Viable projects hold multi-year interconnection queue positions with the Midcontinent Independent System Operator and significant financing commitments keyed to permitting certainty. Forfeited positions and development windows cannot be recaptured. Federal tax-credit qualification deadlines, where applicable, mean that permitting delay might permanently raise costs eventually borne by Michigan customers. These are not recoverable losses; they are permanent injuries to parties who followed the rules as they were interpreted at the time of their applications.

This Court has consistently held that parties who rely on authoritative interpretations “should not be faulted for relying on that approval, which, at the time it was given, was compliant with then-existing law.” *League of Women Voters*, 508 Mich at 568 n25. In fact, this Court has recognized that prospective application is *best suited* for “significant reversals in the interpretation of statutory provisions.” *Schafer v Kent County*, 515 Mich 1, 37; 29 NW3d 25 (2024). For example, in *League of Women Voters*, the Court applied its ruling prospectively because ballot-question committees had obtained pre-approval of their petition forms from the Board of State Canvassers and “did what they could to ensure compliance with the law by seeking and obtaining preapproval of their petitions[.]” *Id.* at 568. The Court explicitly rejected the argument that entities “assumed the risk” of complying with the then-operative rule “before a final resolution on the merits could be reached regarding the challenges in this litigation.” *Id.* The same reasoning applies here. Developers in this case did not simply proceed without guidance; they sought to comply with the MPSC’s interpretation and submitted applications consistent with that interpretation.

Retroactive application would unfairly penalize those developers for complying with the governing interpretation at the time.

Third, retroactive application would significantly disrupt the administration of justice and undermine Michigan’s renewable energy policy goals. As this Court explained in *League of Women Voters*, courts “have an interest in avoiding a disruption in the administration of justice” when deciding whether to apply a decision retroactively. 508 Mich at 568. In that case, the Court noted that retroactive application “would at minimum face the near certainty of additional litigation” and would “cause serious confusion” for parties who had already acted in reliance on the prior rule. *Id.* at 568-69.

The same concerns are present here—indeed, they are amplified by the significant public interest at stake. Eleven developers have submitted applications to the MPSC under the October 10, 2024 Order. The Court of Appeals’ decision now raises substantial doubt as to how the MPSC should adjudicate those pending applications. Should the MPSC apply its original interpretation, which it adopted after extensive public comment and deliberation? Or should it apply the Court of Appeals’ interpretation, despite the fact that developers submitted their applications in reliance on the MPSC’s interpretation and this pending appeal? The operative interim regime is itself unclear: the Court of Appeals’ precedential effect binds lower tribunals from the date of filing under MCR 7.215(C)(2), yet the judgment does not become effective—including the partial vacatur of the Commission’s order—until this Court’s disposition of the Applications under MCR 7.215(F)(1)(a). Pending dockets thus confront a binding precedent whose corresponding judgment may yet become ineffective. The MPSC has no clear authority to suspend the statutory deadlines, and a statewide freeze (whether de facto or de jure) on utility-scale siting is precisely what the Legislature’s timeline forbids. Only this Court’s decision supplies

the answer—and prospective-only application provides the certainty needed to avoid cascading administrative disruption.

This uncertainty has consequences—not just for developers, but also for Michigan’s citizens. Any delay threatens Michigan’s public policy goals regarding renewable energy. As explained above, Act 233 was enacted specifically because “the current process for siting and permitting renewable energy resources in local governmental units has proven complex and has delayed the buildout of these resources.” Senate Fiscal Agency Bill Analysis, HB 5120 & 5121 (November 8, 2023), p 2. The Legislature recognized that Michigan cannot meet its renewable portfolio standards—50% by 2030 and 60% by 2035—if utility-scale renewable energy development is subject to unnecessary delay. Retroactive application of the Court of Appeals’ decision would create precisely the type of delay that the Legislature sought to avoid by calling into doubt pending applications, undermining the very purpose of Act 233. Developers who followed the MPSC’s interpretations by offering to meet with local officials and proceeding under the 30-day timeline as interpreted by the MPSC may now face challenges to the validity of their applications. This would not only harm the developers who acted in good faith reliance on the MPSC’s interpretation but would also further delay the renewable energy projects that Michigan needs to meet its statutory goals.

Retroactive application would invite collateral litigation over whether pending applications, public meetings, notices, ALU grants, contested-case interventions, and host-community agreements must be restarted or restructured under the Court of Appeals’ new ALU and 30-day rules. The burden on the administration of justice is amplified by Act 233’s one-year deadline for the MPSC to grant or deny a certificate after a complete application is filed. MCL 460.1226(5). If completed pre-application steps can be retroactively challenged under rules

announced after the fact, contested-case proceedings will be diverted into threshold litigation over notice, ALU status, CREO-triggering events, and the validity of process steps taken under the PSC's Order. Indeed, this has already begun to occur. Since May 7, presiding administrative law judges in multiple pending cases have convened status conferences and directed supplemental filings on how to interpret and apply the opinion. See, *e.g.*, Case No. U-22004-0106 (Katherine E. Talbot, ALJ); Case No. U-22071-0150 (James M. Varchetti, ALJ).

A serial-appeal problem is imminent. The first MPSC decision, anticipated in September 2026, may present the same threshold questions—the first of a queue likely to be held in abeyance for this case in any event. Nor would a later appeal be a better vehicle; waiting for it to mature would add a year or more while the same questions, fully briefed on a complete record and presented purely as questions of law, are before the Court now. A decision from this Court making clear that its ruling applies only prospectively would cap the number of decisions subject to potential vacatur and provide certainty for future applicants, while protecting those who have already acted in reliance on the MPSC's authoritative interpretation.

This Court can avoid these consequences—to the extent that it does not simply reverse the Court of Appeals' holdings regarding the ALU and 30-days issues, which would moot this question altogether—through a narrow transition rule that preserves reliance on the MPSC's Order for pre-decision applications while making this Court's interpretation controlling for future conduct. This mirrors the remedial logic of *League of Women Voters*, where the Court preserved pre-decision conduct but required compliance going forward. 508 Mich at 569.

CONCLUSION AND REQUEST FOR RELIEF

Wherefore, for the foregoing reasons, Intervening Appellees/Cross-Appellants respectfully request that the Court grant its application for leave to appeal as a cross-appellant.

Respectfully submitted,
VARNUM LLP

*Attorneys for Intervening Appellees/Cross-
Appellants Michigan Energy Innovation Business
Council, Institute for Energy Innovation, Clean Grid
Alliance, and
Advanced Energy United*

Dated: July 16, 2026

By: /s/ Brion B. Doyle

Brion B. Doyle (P67870)
Laura Chappelle (P42052)
Timothy J. Lundgren (P62807)
Justin Ooms (P82065)
Regan A. Gibson (P83322)
Neil E. Youngdahl (P82452)
VARNUM LLP
P.O. Box 352
Grand Rapids, MI 49501-0352
(616) 336-6000
bbdoyle@varnumlaw.com
lachappelle@varnumlaw.com
tjlundgren@varnumlaw.com
jkooms@varnumlaw.com
ragibson@varnumlaw.com
neyoungdahl@varnumlaw.com

*Attorneys for Intervening Appellees Michigan
Energy Innovation Business Council, Institute for
Energy Innovation, Clean Grid Alliance, and
Advanced Energy United*

CERTIFICATE OF COMPLIANCE

I certify that this Application for Leave to Cross-Appeal contains 10,991 words, including headings, footnotes, citations, and quotations, according to the word count in Microsoft Word 365 (2019).

Dated: July 16, 2026

By: /s/ Brion B. Doyle
Brion B. Doyle (P67870)

CERTIFICATE OF SERVICE

I hereby certify that on July 16, 2026, I electronically filed the foregoing document with the Clerk of the Court using the MIFILE system which will send notification of such filing to all parties of record.

Dated: July 16, 2026

By: /s/ Brion B. Doyle
Brion B. Doyle (P67870)

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

In the matter of the Application of **MI Energy**)
Developments, LLC for a certificate for the)
siting of a Wind Energy Facility in Fremont)
Township, Speaker Township, and Elk)
Township in Sanilac County, pursuant to Public)
Act 233 of 2023.)
_____)

Case No.: U-22036

PROOF OF SERVICE

STATE OF MICHIGAN)
) ss.
COUNTY OF KENT)

Pamela Fox, the undersigned, being first duly sworn, deposes and says that she is a Legal Secretary at VARNUM LLP and that on Friday, August 7, 2026, she served a copy of MI Energy Developments, LLC's Response to the Petition to Intervene of Sanilac County and Motion to Extend Act 233 Statutory Deadline and this Proof of Service upon those individuals listed on the attached Service List via email.

Pamela
Fox

Digitally signed by: Pamela
Fox
DN: CN = Pamela Fox email =
plfox@varnumlaw.com C =
US O = Varnum
Date: 2026.08.07 13:54:31
-04'00'

Pamela Fox

ADMINISTRATIVE LAW JUDGE

Honorable Jonathan F. Thoits
thoits@michigan.gov

CARL L. ROGERS

Carl L. Rogers
Carlpinetree76@outlook.com

**FREMONT TOWNSHIP, SANILAC
COUNTY & SPEAKER TOWNSHIP**

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

MI ENERGY DEVELOPMENTS, LLC

Justin K. Ooms
Timothy J. Lundgren
Seth B. Arthur
David T. Caldon
Haylee N. Skank
jkooms@varnumlaw.com
tjlundgren@varnumlaw.com
sbarthur@varnumlaw.com
dtealdon@varnumlaw.com
hnskank@varnumlaw.com

MPSC STAFF

Alena M. Clark
Anna B. Stirling
Adam M. Cozort
Amelia Arnold
ClarkA55@michigan.gov
StirlingA1@michigan.gov
CozortA1@michigan.gov
ArnoldA11@michigan.gov