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April 24, 2024

Michigan Public Service Commission
7109 W. Saginaw Hwy.
Lansing, MI 48917

Members and Staff of the Michigan Public Service Commission,

The Michigan Association of Counties (MAC) is grateful for the opportunity to comment on the straw proposal created by the commission (MPSC). Public Act 233 of 2023 has presented a unique challenge for local units of government by requiring them to adhere to state standards while also considering the implications that renewable energy facilities will have on their communities. As the MPSC staff makes recommendations for implementing the new law, it is imperative that local voices are not only protected but elevated to the forefront of these discussions.

The below excerpts and responses reflect the relevant areas of concern for MAC and its members:

The Staff recommends that the statutory definition of affected local unit, "a unit of local government in which all or part of a proposed energy facility will be located," be read to include all counties, cities, townships and villages in which all or a part of the proposed facility will be located.

> MAC concurs with the MPSC's definition of "affected local unit." Though many counties do not handle zoning powers, all will be impacted by the presence of a renewable energy facility: county resources will be utilized, infrastructure will be altered, acres will be occupied, constituents will voice their concerns, master plans will be re-examined, etc. It is critical that all levels of government are recognized when administering PA 233.

The Staff recommends that public meetings should be held in each city and township where the proposed project is located and also serve to meet the requirement to hold a public meeting within the affected county as well as affected villages.

- ***Unless otherwise requested by the local official, the public meeting should be held outside of the traditional workday hours of 8 a.m. to 5 p.m.***
- ***The applicant shall provide a copy of the notice submitted to the clerk in each affected local unit to the MPSC Executive Secretary on the same date in which the local clerk was provided notice.***

The Staff recommends that the notice of the public meeting should be sent by U.S. mail to postal addressees within 1 mile of proposed solar or proposed energy storage projects, and within 5 miles of a proposed wind energy project.

- ***The notice shall include the date, time, and location of the public meeting; a description and location of the proposed project; and directions for submitting written comments for those unable to attend the public meeting.***

  MAC agrees public meetings held in "each city and township where the proposed project is located" is an appropriate means of communication, and that the proposed provisions for notifying the local unit and the public are adequate.

The Staff recommends that the titles of chief elected officials may vary between jurisdictions. Chief elected officials typically include mayors, village presidents, township supervisors, and board chairs.

The Staff recommends that the offer to meet with the chief elected official be delivered by email and by certified U.S. mail.

The Staff recommends that the offer in writing to meet with the chief elected official be submitted as evidence with an application filed pursuant to PA 233.

MAC proposes that the offer in writing to meet with the chief elected official be submitted to the entirety of the legislative body for each affected local unit of government. The law does not command the chief elected official to share the notice of meeting, or contents of the meeting, with the rest of the board, effectively limiting transparency. To ensure there is an open dialogue between an applicant and local unit, they should meet collectively.

The Staff recommends that when each chief local official notifies the applicant that it has a CREO, the MPSC does not have jurisdiction pursuant to PA 233 for facilities located in that local unit's area. The facilities may come before the MPSC due to a lack of a CREO in any one affected local unit with zoning jurisdiction, or by request of one affected local unit with zoning jurisdiction.

Should an applicant apply for siting approval at the MPSC even though a local unit of government notified it has a CREO, the local unit of government, or another intervenor, may file a motion to dismiss the case to be ruled upon by the administrative law judge. The judge's ruling could be appealed to the Commission.

The Staff recommends that the developer 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 have passed.

The MPSC should consider the requirements of MCL 460.1223(3) met as long as the entire footprint of the proposed project is covered by one or more effective ordinances meeting the requirements of MCL 460.1221(f) or is un-zoned, regardless of whether local units of government without zoning jurisdiction have an ordinance addressing siting.

Given concerns raised regarding jurisdictional issues between various local units of government, including townships' authority to enact a zoning ordinance, the Staff recommends that the MPSC should not require a binding zoning ordinance in an affected local unit without zoning jurisdiction for the purposes of PA 233 compliance.

The definition of a CREO should be revisited for the purpose of clarity. If a CREO were to be defined explicitly as a zoning ordinance, it would allow the local unit in control of zoning to adopt a CREO and prevent redundancy or contradictions through any other police power or regulatory ordinances.

The Staff recommends that the MPSC should consider the local unit to no longer have a CREO only until the local unit has modified its ordinance to be compliant with the statute. Likewise, when a local unit lifts a moratorium and approves an ordinance in compliance with the statute, it should be considered that the local unit has a CREO until such time found otherwise.

MAC is supportive of allowing local units to adjust and adapt. Each election cycle can change the composition of a board, and perspectives may shift with time. Additionally, PA 233 takes effect in November, and we find ourselves in April without proper guidance from the state on how to administer the act; this does not grant local units much time to draft and adopt a CREO. Allowing a local unit to come into compliance at a later date grants boards flexibility.

The Staff recommends the following calculation methodology for the 1-time grants:

- ***Grant $5000 to each affected local unit, regardless of which local units may have zoning jurisdiction, contemporaneous with submitting an application pursuant to PA 233.***
- ***Within 7 days following the pre-hearing, the remaining funds ($150,000 minus the total of the $5000 grants already made) would be granted to all affected local units that have intervened in the case as follows:***
    - ***An additional $5000 to any intervening affected Counties which would cap intervening Counties at $10,000 to preserve the bulk of the funds for the localities where the facility would be located regardless of whether the locality or the County has zoning jurisdiction; as well as setting aside $5000 for Counties that have not intervened to maintain the availability of those funds in the event that a late intervention is approved; and***
    - ***The remaining portion of the $150,000 should be divided by the nameplate MW of the project to calculate $/MW. The $/MW would be allocated to the affected local units other than Counties that have intervened based on the MW located within each local unit's area subject to the $75,000 cap per local unit.***

Staff recommends that grants are intended to cover the cost of participation for local units of government. Individual landowners seeking to participate in proceedings will continue to follow established processes for intervention and public comment but are not eligible recipients for grant funding under Sec. 226. Local landowners may work with the affected local units at the discretion of the local units and may seek alternate funding from other sources.

Applicants and affected local units may consult with Staff on 1-time grant calculations ahead of filing the application at their discretion.

Staff recommends that affected local units for a particular facility be allowed to pool funds allocated for the purposes of participating in the MPSC siting case.

Staff recommends that affected local units should each file an exhibit in the case record prior to the close of the record containing the balance of unspent funds in the local intervenor compensation fund, outstanding unpaid invoices, and an estimate for funds to be used for briefing and exceptions. Remaining funds not utilized for intervention in the case will be refunded to the developer within 90 days of the close of the record. Any initial $5000 one-time grants made to local units contemporaneous with the application that have not been granted intervention status shall also be refunded to the developer following the close of the record.

The proposed method of distribution for the intervenor grant funds is convoluted, nor does it treat counties equally with cities, villages and townships in covering the costs of legal counsel. To ensure clarity and consistency, MAC recommends the funds be distributed evenly across all affected local units of government. After all, the cost of retaining legal counsel will not be dependent on the size of the project or megawatts within a locality.

Furthermore, the language in PA 233 explicitly refers to these funds as a "grant." Unexpended grant funds are not typically returned to the granting party. MAC proposes that any unexpended funds be deposited in the local unit's general fund.

On behalf of Michigan's 83 counties, we urge the commission to consider these points when crafting their final proposal.

Respectfully,

Madeline Fata

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