





Update on MPSC Renewable Energy Guidelines



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Reminder: Summary of PA 233-234

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- **Makes significant changes to the permitting process for utility-scale renewable energy facilities**
 - Including solar, wind, and battery energy storage
- **Allows developers to apply directly to the Michigan Public Service Commission (MPSC) to construct utility-scale renewable energy facilities**
 - Unless all affected local units adopt “compatible renewable energy ordinance” (to be discussed shortly)
- **Severely limits local control**



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Reminders: Size of Projects

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- Solar Energy – 50 MW or more across entire project
- Wind Energy – 100 MW or more across entire project
- Battery Storage – 50 MW or more across entire project
- Existing project – expansion or repowering of existing project that meets the above requirements
- Hybrid projects – adding up MW output
 - For example: 30 MW solar plus 20 MW battery storage would satisfy, even though the two by themselves would not

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Reminder: Local Authority Remains

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- Can still regulate small scale utility projects
- Can regulate roof-mounted or ground-mounted solar systems as accessory uses on property
- Workable ordinances remain available



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In short...

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There is no way to prohibit large-scale renewable energy projects in your township.

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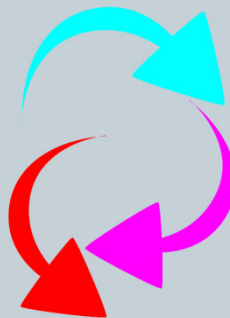
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Project Approval Options

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Three main avenues for approval:

1. Entirely through the State (MPSC)
2. CREO – Township, but limited
3. Workable – Township, but not guaranteed



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New Guidelines

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New guidelines formally issued 10/10 on the following:

1. Affected Local Units – who are they?
2. Hybrid projects
3. CREO
4. Workable ordinances
5. Sound regulations
6. Notice of meetings
7. MPSC Application Process

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Affected Local Units (ALU)

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- Statute defines local unit as “a county, township, city, or village.” An ALU is “a unit of local government in which all or a part of a proposed energy facility will be located.”
- MPSC Guidelines state: ALU is only the one with zoning jurisdiction
 - If Township has zoning, County is not the ALU
 - If Township has no zoning, County is the ALU

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ALU and Intervenor Funds

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- **Intervenor funds: One-time payment of money into a special fund for the ALU to spend participating in the hearing at the MPSC**
- **Only ALUs with zoning authority get intervenor funds**
 - \$150,000 split equally, but no one ALU shall receive more than \$75,000
 - If the project is only in your Township, you get \$75,000
- **Any unspent money must be returned near end of contested case**

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ALU and CREO

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- **For project spanning multiple ALUs, all of them must have a CREO to avoid MPSC**
 - If even one does not have a valid CREO, the entire project is sent to the MPSC
 - Township and County do not both need a CREO, only the one with zoning authority
 - Any neighboring townships with same project need CREO
- **If Township is unzoned, they cannot adopt a CREO and they are not considered an ALU**
 - Get virtually no benefits from the State statute
 - Specifically, they receive no notice of meetings, siting, etc.

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Property Acquisition

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- MPSC does not have power of eminent domain
- Landowners must agree
- “Participating or not participating in a renewable energy or energy storage project is a decision for individual landowners. Commission approval of a certificate under PA 233 does not confer the power of eminent domain or require landowners to participate against their wishes.” –MPSC Guidelines

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Hybrid Projects

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- Guidelines permit “hybrid” facilities, combined wind, solar, and/or battery storage
- Hybrid facilities add up their MW output – do not need to independently reach thresholds
 - For example: 40 MW solar plus 10 MW battery storage would satisfy, even though the two by themselves would not
 - 50MW wind plus 20MW solar plus 30MW would satisfy

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Compatible Renewable Energy Ord (CREO)

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- New Guidelines dictate that CREO is very narrow
- “A CREO under Act 233 may only contain the setback, fencing, height, sound, and other applicable requirements expressly outlined in Section 226(8), and may not contain additional requirements beyond those specifically identified in that section.”
- If township adopts a CREO that is in any way more restrictive than Section 226(8), Developer can challenge it
 - Successful challenge invalidates the ordinance
 - Successful challenge significantly reduces local benefits – no intervenor funds, no notice of any future meetings/actions

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“Workable” Ordinance

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- Township adopts ordinance that it knows is not a CREO: sets standards above statute and/or regulates what State does not allow
- Developer voluntarily chooses to follow this local ordinance instead of MPSC
- Developer can always fall back on the State/MPSC process. Township cannot force them to use a “workable” ordinance.
- MPSC Guidelines recognize workable ordinances as valid. MPSC staff encourage workable.

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“Workable” process – The Catch

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- Workable sounds great! However....
- Its name comes from being “workable” to the developer.
- Workable does not allow a township to completely prohibit, or to add so many restrictions that a developer would never be able to meet them
- Any regulations must be reasonable, otherwise the developer will go to the State
- There is no way to prohibit large-scale renewable energy projects in your community.

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Sound Regulations

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- **Complicated, but seemingly well-researched:**
 - 5 dB tonal penalty and 6 dB façade pressure doubling penalty applied, effectively lowering dBA requirement from 55 to 44.
 - Essentially relies on American National Standards Institute
- **No requirement for pre-construction sound monitoring**
 - But sound modeling is required
- **Post-construction sound monitoring is required to ensure compliance**

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Notice of Meetings

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- **Notice of meetings must be published by applicant in newspaper or digital alternative**
 - Not required to be directly mailed to residents
- **Notice of right to comment on project must be published and directly mailed to residents**
 - Within 1 mile of solar or battery storage, 2 miles of wind
- **Before applicant can go to the MPSC, they must offer to meet with the Supervisor of the Township**
 - At this meeting, Supervisor can declare that they have a CREO, state that they have workable, or request the developer go to the MPSC for review and approval

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MPSC Application Considerations

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- **MPSC can consider much more than CREO**
- **Public benefits of facility**
 - Payments to participating landowners are confidential
 - Only zoning ALU gets community host agreement
- **Feasible alternative developed locations**
 - If proposed project is on undeveloped land, applicant must describe other developed areas (i.e. brownfield) and why they were not feasible
- **Emergency and Fire Response Plans**
 - Applicant must meet with local first responders/fire depts.
 - Applicant must offer or pay for training

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MPSC Application Considerations

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- **Construction monitoring**
 - MPSC will require applicant to pay for 3rd party independent monitor who will be on site at least once per week during construction
- **Debate over whether applicants need building permits from local unit**
 - MPSC says they must get “all local permits” but isn’t specific
 - Developers state they do not need them

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MPSC Community Host Agreement

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- **All Affected Local Units get a one-time payment of \$2,000 per MW of project in their jurisdiction**
 - To be used for police, fire, infrastructure, or other lawful uses

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MPSC Decommissioning

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- Must adopt decommissioning plan, updated every five years for the first 20 years of operation, and every 3 years thereafter
- Return soil to useful condition, not “same” condition
- Applicant can substitute PA 116 bond for PA 233 bond as long as the costs are covered
- No requirement to remove below-surface facilities
- Townships cannot see leases between applicant and landowner
- Decommissioning bond built in stages:
 - 25% at start of construction
 - 50% one year from start of construction
 - 100% by start of full commercial operation

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Questions

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