STATE OF MICHIGAN
IN THE COURT OF APPEALS

In re Implementing Provisions of Public Act 233 of 2023

ALMER CHARTER TOWNSHIP, et al.

Appellants,

v

MICHIGAN PUBLIC SERVICE COMMISSION,

Appellee,

and

MICHIGAN ENERGY INNOVATION BUSINESS COUNCIL, et al.

Intervening Appellees.

Court of Appeals No. 373259

MPSC Case No. U-21547

AMICUS CURIAE PROPOSED BRIEF BY MICHIGAN ENVIRONMENTAL COUNCIL, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, AND EVERGREEN ACTION

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CONCURRENCE WITH APPELLANTS' STATEMENT OF JURISDICTION

Amicus curiae Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Evergreen Action (collectively, the Environmental Organizations) concur with Appellants' statement of jurisdiction for this appeal.

COUNTER-STATEMENT OF QUESTIONS PRESENTED

Amicus curiae Environmental Organizations concur with question I of the Counter-Statement of Questions Presented in the brief by Intervening Appellees Michigan Energy Innovation Business Council, et al.

STATUTES INVOLVED

Amicus curiae Environmental Organizations concur with the listing of Statutes Involved in this appeal found in the brief by Appellee Michigan Public Service Commission.

INTRODUCTION

Public Act 233 of 2023 is a critical component of a package of clean energy laws enacted by the Michigan Legislature in 2023, with the support of amicus curiae Michigan Environmental Council, Natural Resources Defense Council, Sierra Club, and Evergreen Action (collectively, the Environmental Organizations).[1] Act 233 adopted uniform state standards and a process for permitting utility-scale renewable energy and energy storage facilities. These facilities must be built in large numbers in the coming years to meet the renewable energy and clean energy standards in a related statute passed at the same time: Public Act 235 of 2023.

The Environmental Organizations submit this amicus brief to provide their perspective regarding two issues before the Court in this appeal.

The first issue is whether the Michigan Public Service Commission (Commission or MPSC) lawfully and reasonably interpreted the definition of a Compatible Renewable Energy Ordinance (CREO) in Public Act 233 of 2023. Act 233 provides that the MPSC will administer land use approvals for large renewable energy and energy storage facilities unless the local unit of government where such a facility will be located has a CREO. The Commission sensibly determined that to be *compatible*, a local ordinance may contain only the requirements in Act 233, and no additional requirements. The Commission's decision is supported by the plain text of the statute, comports with legislative intent, is necessary to accomplish the objectives of the related statute – Act 235 – and is consistent with the decisions of other state utility commissions regarding the same issue.

[1] This brief was not authored by counsel for any party in this matter. No party or its counsel has made any monetary contribution to fund the preparation or submission of this brief.

The second issue is whether the MPSC lawfully and reasonably interpreted the applicability thresholds in Act 233 for projects that combine wind or solar generation with energy storage. These "hybrid facilities" play an increasingly important role in the modern electric grid. The Commission determined that the nameplate capacity threshold of 50 megawatts (MW) for solar energy facilities includes hybrid facilities containing both solar generation and energy storage, and that the nameplate capacity threshold of 100 MW for wind energy facilities includes hybrid facilities containing both wind generation and energy storage. The Commission's interpretation is reasonable, consistent with industry practice, and comports with law.

In addition to these issues, the Environmental Organizations concur with the arguments by Appellee MPSC and Intervening Appellees MEIBC et al. on whether the Commission was required to make the determinations it did by administrative rule rather than by order; the definition of an Affected Local Unit (ALU); and the deadlines for an ALU to notify the developer of a renewable energy or energy storage facility that the ALU a CREO.

On all these issues, the Environmental Organizations submit that the MPSC's decisions were lawful, reasonable, supported by the facts, and therefore this Court should uphold them.

COUNTER-STATEMENT OF FACTS AND PROCEEDINGS

Amicus curiae Environmental Organizations concur with and adopt the Counter-Statement of Facts and Proceedings in the brief by Intervening Appellees Michigan Energy Innovation Business Council, et al.

STANDARD OF REVIEW

"The scope of appellate review of PSC orders is narrow." *In re MCI Telecommunications Complaint*, 255 Mich App 361, 365 (2003). A party challenging an order of the MPSC has the burden of proving by clear and satisfactory evidence that the order is unlawful or unreasonable. *Id*. "All rates, fares, charges, classification and joint rates fixed by the [MPSC] and all regulations, practices, and services prescribed by the [MPSC] are presumed to be lawful and reasonable." *In re Application of Indiana Michigan Power* Co, 329 Mich App 397, 402 (2019). "The reviewing court must give due deference to the PSC's administrative expertise and is not to substitute its judgment for that of the commission." *General Motors Corp v Public Service Comm*, 175 Mich App 584, 589 (1988). When supported by competent evidence, Commission findings are conclusive. *Consumers Power Co v Public Service Comm,* 196 Mich App 687, 691 (1992).

Questions of statutory interpretation are reviewed de novo. *Consumers Energy Co v MI Public Service Comm,* 268 Mich App 171, 174 (2005). However, the Commission's interpretation of the statutes it is charged to administer – while not binding on the courts – "is always entitled to the most respectful consideration and ought not to be overruled without cogent reasons." *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103 (2008); *In re Michigan Consol Gas Co Application to Increase Rates*, 293 Mich App 360, 365 (2011).

ARGUMENT

I. The MPSC's Interpretation of a Compatible Renewable Energy Ordinance is Consistent with Act 233's Plain Meaning and with Legislative Intent as Embodied by the Package of Clean Energy Laws of which Act 233 was a Part.

Public Act 233 of 2023 vests ultimate land use authority over specified types of energy facilities – solar, wind, and energy storage – in the MPSC. However, the Act also provides that local units of government can retain their land use authority over these facilities under certain specified conditions. One of those conditions is that the local unit has a Compatible Renewable Energy Ordinance, or CREO. MCL 460.1223(3). The statute defines a CREO in relevant part 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) . . ." MCL 460.1221(f). Section 226(8) provides detailed set-back, fencing, height, sound, lighting, and other requirements for the renewable energy and storage facilities subject to the statute. MCL 460.1226(8).

In its October 10, 2024, Order in Case No. U-21547, the Commission found that "the plain language of the definition of a CREO in Act 233 expressly limits a CREO to requirements that are 'no more restrictive than the provisions included in section 226(8).'" Case No. U-21547, Doc. No. 0025, October 10, 2024, Order, p. 17 (October 10 Order). The Commission concluded that to be no more restrictive than Section 226(8), "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 18.

Appellants claim that the Commission's clarification that a CREO may not contain

additional requirements beyond those listed in section 226(8) is so inconsistent with the statutory language that it "rewrites a definition already provided by statute." Appellants' brief, p 20. On the contrary – an ordinance with additional requirements beyond the ones listed in section 226(8) would inherently be more restrictive than section 226(8). No other conclusion can reasonably be drawn.

In addition to this natural reading of the statutory language, there are other reasons to conclude that the Commission correctly interpreted Act 233 to prohibit a CREO from containing any other requirements beyond those listed in section 226(8). These reasons include the Commission's broad authority to administer Act 233, the role and purpose of Act 233 within the overall package of laws passed along with it, and the consistency of the Commission's decision with decisions of public utility commissions in other states concerning similar issues. This brief discusses each of those reasons further below.

A. The Commission has broad authority to administer the statutes over which it has responsibility.

In issuing the October 10 Order adopting the Application Filing Instructions and Procedures, the Commission performed its statutory duties under 2023 PA 233 to establish application filing requirements by rule or order; to require additional information by rule or order related to the site plan; and to determine what other information to require as part of an application. MCL 460.1224(1); MCL 460.1224(1)(c); and MCL 460.1225(1)(s), respectively. The process the Commission undertook to accomplish these tasks – as described in the Appellee's and Intervening Appellees' briefs –is consistent with the MPSC's typical practice and with the authority that the Legislature and courts have vested in the Commission to use its statutory authority to regulate

utilities.

This Court has been clear that deference must be afforded to "the PSC's administrative expertise" and Courts "will not substitute [their] judgment for that of the PSC." *In re Application of Indiana Michigan Power Co,* 275 Mich App 369, 373 (2007). When further administrative actions are required to fulfill a statutorily imposed duty, the Commission has the authority to take those actions. *In re Consumers Energy Co,* 279 Mich App 180, 191 (2008) (holding that the PSC has authority to take measures to secure funding to administer a statutorily mandated program). And the Commission does not require separate statutory endorsements for each action taken in administering its statutory mandate: "[t]he Legislature is not required to micromanage the PSC by statutorily delineating every aspect of its administrative power . . ." *Id*. To that end, the Commission did not reach beyond its authority or rewrite Act 233. Instead, the Commission performed its standard duty to interpret and implement the Act to effectuate its statutory purpose – which is to streamline renewable energy land use permitting and vest oversight of major siting decisions with the Commission when local ordinances are not compatible with the requirements of PA 233.

B. Public Act 233 is part of a broader statutory scheme that supports the Commission's interpretation of a CREO.

The Commission's interpretation of a CREO is consistent with legislative intent as illustrated by other renewable energy laws passed in concert with Act 233. The purpose of statutory interpretation is "to ascertain and give effect to legislative intent." *In re Consumers Energy Co*, 279 Mich App 180, 191 (2008); *Ameritech Mich v PSC (In re MCI)*, 460 Mich 396 (1999); *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515 (1998); *Twentieth Century*

Fox Home Entm't Inc v Dep't of Treasury, 270 Mich App 539, 544 (2006). Legislative intent can be illustrated by how a relevant word or phrase sits within a statutory scheme: "A statute must be read in conjunction with other relevant statutes to ensure that the legislative intent is correctly ascertained. The statute must be interpreted in a manner that ensures that it works in harmony with the entire statutory scheme." *Bush v Shabahang*, 484 Mich 156, 167 (2009). Related statutes that share a common purpose should be read together and if there is a legislative construction "that avoids conflict, that construction should control." *City of Coldwater v Consumers Energy*, 500 Mich 158, 167-168 (2017).

In 2023, the Legislature passed and the Governor signed a package of energy laws that impacts the scope of the Commission's regulation of renewable energy activities. Public Acts 233 and 235 – among other laws covering related topics – were enacted by the Legislature on November 8, 2023, and signed by the Governor on November 28, 2023. Viewed together, these Acts charge the Commission with overseeing expanded development of renewable energy resources. In concert, these statutes a) clearly prioritize substantial growth in renewable resource development, and b) expand the Commission's authority over this development.

Public Act 235 of 2023 establishes higher renewable energy standards for Michigan utilities, under which electric providers must generate 50% of their electricity from renewable energy systems by 2030 and 60% by 2035 – up from the current requirement of 15%. MCL 460.1028(1). Providers must also meet a clean energy standard under which they must generate 80% of their electricity from clean energy sources – defined as renewable, nuclear, or gas with carbon capture and sequestration – by 2035, and 100% by 2040. MCL 460.1051(1) and MCL 460.1003(i). PA 235 further sets a statewide energy storage target and vests the Commission with

the authority to approve mandatory plans for electric utilities to comply with the energy storage target. MCL 460.1101.

As detailed above, Act 233 expands the Commission's authority over the siting of renewable energy and energy storage systems, unless a local unit of government has an ordinance that complies with the state standards administered by the Commission. Therefore, PA 233 is part of a broader statutory scheme under which the Legislature directed utilities to substantially increase the deployment of clean energy. Within this scheme, PA 233 is most logically read to expand the Commission's authority to remove local obstacles to siting these facilities, in order to help utilities meet the requirements of PA 235 – rather than to enable local units of government to continue blocking these facilities through restrictive zoning ordinances. Appellants' interpretation of the CREO definition as enabling local units of government to continue enacting additional requirements beyond those in the statute would require reading Public Acts 233 and 235 in disharmony.

C. The Commission's interpretation of a CREO fulfills the purpose of Act 233.

Statutes must be construed to prevent absurd results. *People v Tennyson*, 487 Mich 730, 741 (2010). The clear purpose of Act 233 is to vest the MPSC with the power to grant land use approval to major renewable energy and energy storage facilities, unless a local unit has a siting ordinance *compatible* with the requirements set forth in the statute and supplemented by the Commission. Thus, the only reasonable interpretation of Act 233 is one that enables the Commission to define CREOs consistent with the statute to prevent local units from obstructing projects that are consistent with state policy. Appellants' reading would create the absurd result where local units of government could add requirements to a CREO beyond those in the statute

that would make project development more costly or more difficult. The absurd consequence would be a "compatible renewable energy ordinance" that is incompatible with the uniform state requirements embodied in the Act.

1. The MPSC's interpretation fulfills the purpose of Public Act 233 by facilitating renewable energy and energy storage deployment through uniform state siting requirements.

Act 233 fits within the state's plan to accelerate renewable energy development, reduce reliance and coal and gas-burning units to produce electricity and mitigate the impacts of climate change. *See* Case No. U-21547, Doc. No. 0057-CC, July 16, 2024, Comments of Sierra Club, MEC, NRDC, and Earthjustice. A proper interpretation of Act 233 is necessary for the realization of Michigan's climate and clean energy priorities. While Michigan is beginning to retire its coal units, the state's electricity grid still relies on coal for 19 percent of electric generation hours and on natural gas for 46 percent of electric generation hours.[2] Meeting the renewable energy and clean energy standards in PA 235 will require substantial buildout of solar, wind, and energy storage projects to replace coal and gas capacity. Local ordinances that utilize restrictive zoning to prevent or delay solar and wind development will prolong the lifespan of Michigan's coal and gas-burning units by preventing renewable energy facilities from being built in the best locations.

The same is true of energy storage facilities, which play an increasingly important role in achieving Michigan's statutory renewable and clean energy mandates. Increasingly affordable battery storage unlocks the potential of renewable development on the grid by enabling intermittent

[2] U.S. Energy Information Administration, Michigan State Energy Profile, <https://www.eia.gov/state/print.php?sid=MI>, accessed February 18, 2025.

renewable energy systems to meet peak electricity demand that until now has been met by gas-fired plants. Battery storage has the potential to reduce electric rates as well: a report prepared for the Michigan Department of Environment, Great Lakes and Energy notes that battery storage "allows for more efficient integration of renewable energy and decreased costs due to rapid ramping of fossil fuel generators."[3] The Midcontinent Independent System Operator (MISO), which operates the electric grid throughout most of Michigan and many other states, added storage to its market portfolio in 2022.[4] And last summer, battery storage demonstrated its value for reliability, helping grids in Texas and California to avoid blackouts during heat waves.[5]

The Legislature recognized this potential in Act 235, which requires Michigan utilities to deploy 2,500 MW of energy storage by 2030. MCL 460.1101. A reasonable interpretation of Act 233's definition of a CREO should facilitate the achievement of this target. As of March 2024, no zoning ordinance in Michigan addressing battery storage "likely matched" the requirements of Act

[3] Anctil, *Energy Storage Roadmap for Michigan,* Michigan Institute for Energy Innovation, <https://mieibc.org/wp-content/uploads/2022/03/IEI_EnergyStorageReport_FINAL.pdf>, accessed February 18, 2025.

[4] Colthorpe, *US regional transmission organization MISO adds electricity storage to market portfolio,* Energy Storage News, <https://www.energy-storage.news/us-regional-transmission-organisation-miso-adds-electricity-storage-to-market-portfolio/> (September 8, 2022), accessed February 18, 2025.

[5] Walton, *ERCOT successfully navigates heat wave, new peak demand record,* Utility Dive, <https://www.utilitydive.com/news/ercot-successfully-navigates-heat-wave-new-peak-demand-record/725197/> (August 26, 2024), accessed February 18, 2025; Dowell, *Batteries can help California reach its clean energy goals and retire gas plants*, <https://www.sierraclub.org/articles/2024/10/batteries-can-help-california-reach-its-clean-energy-goals-and-retire-gas-plants> (October 15, 2024), accessed February 18, 2025.

233.[6] And *every* single such ordinance included requirements beyond what is in section 226(8), including location limitations, which close off entire areas to development of energy storage facilities.[7]

2. Local zoning can and has blocked the development of renewable energy facilities.

The potential consequence of Appellants' interpretation of the definition of a CREO to allow further restrictions renewable energy development is not merely theoretical. Comments from Case No. U-21547 show that local governments use "additional requirements" to block solar and wind development:

> In multiple cases, townships are putting in place restrictions that amount to exclusionary zoning for renewable energy projects, but claiming that the resulting ordinance will still be considered a CREO. More specifically, it is our understanding that townships have been instructed by their attorneys that they are permitted to enforce any aspect of their existing solar ordinance other than those provisions that are explicitly stated in 2023 PA 233. Practically, this has resulted in multiple townships insisting that existing "Solar Overlay Districts" (which were adopted with the implicit goal of blocking solar projects) or restrictions of solar projects on farmland held in the Farmland Preservation Program are enforceable as long as the other aspects of the ordinance comply with Section 226(8) of 2023 PA 233. For example, one township has a Solar Overlay District that is less than 200 acres, contains a substantial number of wetlands, and is several miles away from existing high-voltage transmission lines (i.e. completely unworkable for utility-scale solar), but the same township is insistent that an ordinance containing this Solar Overlay District is a CREO. [Case No. U-21547, Doc. No. 0005, Comments

[6] Mills, et al., *Local Government & Local Community Views and Questions*, (March 7, 2024), PDF p. 42, <https://www.michigan.gov/mpsc/-/media/Project/Websites/mpsc/workgroups/2023-Energy-Legislation/Renewable-Energy-and-Energy-Storage-Siting/Siting-Presentation-3-7-24.pdf>, accessed February 20, 2025. The presentation was given by representatives of local government at one of the workgroup meetings convened to develop the Application Filing Instructions and Procedures.

[7] *Id.*

of MEIBC, July 17, 2024.]

Other commenters explained that there were townships that claimed to have CREOs but had "included requirements that are not considered in PA 233 and would zone out nearly all renewable development. An example of this is the adoption of wind overlay districts which zone out 90% of the turbines that would be accepted under PA 233." Case No. U-21547, Doc. No. 0015, Comments of Liberty Power, July 17, 2024. As other commenters pointed out, section 226(8) does not cover every possible type of zoning that could restrict renewable energy. De facto bans on solar through agricultural zoning, for example, would not fall under section 226(8). Case No. U-21547, Doc. No. 0041-CC, Comments of Nicholas Schroeck, et al., July 15, 2024. Other townships enacted even more drastic restrictions: "On June 27, 2024, the Planning Commission in Deerfield Township voted to recommend adopting new restrictions on renewable energy development, including: (i) limiting utility-scale wind and solar projects to within 1,250 feet of one existing transmission line; and (ii) prohibiting utility-scale solar projects from any properties enrolled in the PA 116 program." *Id.* Indeed, without the Commission's interpretation that CREOs are limited to the requirements in section 226(8), townships could continue to exclude renewable energy development by simply zoning land for other uses or restricting the total amount of land available for development. Case No. U-21547, Doc. No. 0012, Comments of Orsted North America, July 17, 2024.

These real-world examples of townships misinterpreting PA 233 demonstrate the importance of the Commission's interpretation that CREOs cannot include additional requirements between those delineated in section 226(8) of the Act. Without that clarification, PA 233 could have no effect on land use permitting for renewable energy and storage facilities at all – a plainly

absurd outcome.

3. Decisions by public utility commissions in other states support the reasonableness of the MPSC's interpretation.

Many states share the renewable energy siting challenges that led to the development of Act 233, and, in response, many other states have passed similar statutes to streamline renewable energy siting processes efficiently and responsibly across multiple processes and stakeholders. Courts regularly uphold interpretations by other states' public utility commissions to implement state renewable energy policies, particularly in determining whether local ordinances are unduly restrictive towards renewable energy projects.

Like Michigan, many states have sought to streamline renewable energy permitting processes, centralize decision-making, and reduce redundancy to ensure that overly restrictive local regulations do not unduly impede renewable energy projects. For example, Illinois passed 2023 Public Act 102-1123, which barred local governments from having rules that are more restrictive than state rules on wind and solar projects. 55 Ill Comp Stat Ann 5/5-12020 (2023). California passed 2020 AB 205, which allows renewable energy developers to opt-in to a permitting process via the California Energy Commission in lieu of obtaining permission by any other state, local or regional agency. Cal Pub Res Code §§ 25545.1–25545.12 (2022). New Mexico law allows its Public Regulation Commission to preempt local regulations that it deems to be "unreasonably restrictive" or not in the public interest. NM Stat Ann § 62-9-3(G). The same law even grants the Commission "conclusive" judgment on all questions of siting, land use, aesthetics and any other state or local requirements affecting the siting. *Id.* Indiana law allows counties to adopt "reasonable restrictions" on solar projects only if the restrictions (a) do not significantly

increase the project costs or decrease efficiency, or (b) allow for an alternative system of comparable cost and efficiency. Ind Code § 36-7-2-8. Massachusetts law allows the state attorney general's office to reject an unreasonably burdensome requirement in a local government's zoning law, stating that no zoning ordinance may prohibit or unreasonably regulate the installation of solar energy systems "except where necessary to protect the public health, safety, or welfare." Mass Gen Laws ch 40A § 3. The Energy Facilities Siting Board may override local restrictions when issuing a certificate of environmental impact and public interest. *Id.* at ch 164 §§ 69H.

The state law most like PA 233 may be New York's Accelerated Renewable Energy Growth and Community Benefit Act (NY AREGCBA), which passed in 2020. Title 19 New York Codes, Rules, and Regulations (NYCRR), Part 1100 et al. Like Michigan, New York passed the AREGCBA in response to concerns that New York's existing regulatory framework was too slow and cumbersome, delaying critical clean energy developments. This law aimed to streamline the permitting and construction process for large-scale renewable energy projects to meet the state target of 70% renewable electricity by 2030 and a zero-emissions grid by 2040.

The Act created the Office of Renewable Energy Siting (ORES) to centralize and expedite project approvals while ensuring that environmental protections and community benefits are upheld. Under the Act, local governments can provide recommendations and comments on proposed projects, but ORES has the authority to approve projects even if they do not fully comply with local zoning or land-use laws. *See* 16 NY Comp Codes R & Regs § 1100-2.25(c) (2023) ("…the Office may elect to not apply, in whole or in part, any local law or ordinance which would otherwise be applicable if it makes a finding that, as applied to the proposed facility, it is unreasonably burdensome in view of the CLCPA targets and the environmental benefits of the

proposed facility."). However, ORES is required to assess whether local laws are "unreasonably burdensome" in relation to the state's clean energy goals. *Id.* If ORES deems local laws to significantly hinder renewable energy development, it can waive or modify those local laws. *Id.* This ensures that large-scale renewable projects are not stalled by restrictive municipal regulations.

Townships challenged New York's AREGCBA and the decisions of the ORES, but the courts have rejected their arguments. In *Town of Copake v New York State Office of Renewable Energy Siting*, multiple municipalities and interest groups challenged the regulations that ORES promulgated. 216 AD3d 93, 98, 191 NYS3d 181, 187 (2023); appeal dismissed, 41 NY3d 990, 234 NE3d 1050 (2024); reconsideration dismissed, 42 NY3d 1034, 248 NE3d 166 (2024). The plaintiffs contended that the ORES regulations overstepped ORES's authority to preempt local laws that it found unreasonably burdensome. However, the New York State Supreme Court dismissed the petition, affirming that ORES acted within its statutory authority when establishing the new regulatory framework. This decision was confirmed by appeal in May 2023, when the New York Appellate Division upheld the lower court's ruling, maintaining the validity of ORES's regulations. The court explained that, in addition to express language in the enabling statute, "unreasonably burdensome local laws would thwart the ultimate goals of the legislation." *Town of Copake*, 216 AD3d at 191-92. In response to plaintiffs' arguments that the waiver failed to comport with the enabling act, the court held that agencies could adopt regulations that go beyond the text of the legislation, provided they are not inconsistent with the statutory language or its underlying purposes. The appellate court's decision reinforced the state's streamlined permitting process for large-scale renewable energy projects, which is crucial for meeting New York's ambitious clean energy goals.

Similarly, in Maryland, the state Court of Appeals found that the state's renewable energy siting policy granted full regulatory authority to the Public Service Commission (PSC) and complete preemption over local zoning authorities. In *Bd. of Cnty. Comm'rs of Washington Cnty. v Perennial Solar, LLC*, , a group of landowners challenged on several grounds a local zoning board's decision to grant a special exception from local zoning laws for the construction of a solar energy facility. 464 Md 610; 212 A3d 868 (2019). In particular, the landowners argued that, although Maryland Public Utility Code § 7-207 grants the PSC broad authority on siting solar energy facilities, the PSC overstepped that authority by overriding local zoning ordinances. The Maryland Court of Appeals held that the same code granted the PSC general regulatory authority over solar facilities, effectively preempting the county's local zoning authority. *Id*. at 637-38.

In sum, the MPSC's interpretation of the definition of a CREO in Act 233 is consistent with the plain text of the statute, legislative intent, the statutory scheme embodied by Acts 233 and 235, and the decisions of other state public utility commissions. For all these reasons, this Court should affirm the Commission's interpretation.

II. The MPSC's guidance regarding the capacity thresholds for hybrid facilities is reasonable, consistent with industry practice, and comports with law.

The Commission also included guidance in its October 10 Order concerning the eligibility of hybrid facilities under Section 222 of the Public Act 233. Hybrid facilities are projects where renewable generation is combined with energy storage. The Commission determined that the capacity threshold of 50 MW for solar energy facilities includes hybrid facilities containing both solar generation and energy storage; and that the capacity threshold of 100 MW for wind energy

facilities includes hybrid facilities containing both wind generation and energy storage. The Commission's guidance is reasonable, consistent with industry practice, and comports with law.

Section 222(1) states:

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

The statutory definition of a "solar energy facility" states that it "includes, but is not limited to . . . photovoltaic solar panels [and] . . . energy storage facilities . . ." MCL 460.1221(w). Likewise, the definition of a "wind energy facility" states that it "includes, but is not limited to . . . wind turbines [and] . . . energy storage facilities . . ." MCL 460.1221(x).

The statute does not define "nameplate capacity" or "hybrid facilities," but both are terms of art with specific, technical meanings. "Nameplate capacity" means the "maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer."[8] Capacity has substantial economic value and importance to the electric grid, independent of energy. The Michigan Supreme Court lucidly explained the nature and importance of generating capacity in *Ass'n of Bus Advocating Tariff*

[8] U.S. Energy Information Administration, *Glossary*, definition of "Generator nameplate capacity (installed)," <https://www.eia.gov/tools/glossary/index.php?id=G#gen_cap> (accessed February 16, 2025).

Equity v Consumers Energy Co (In re Reliability Plans of Elec Utils for 2017-2021), 505 Mich 97, 103-111 (2020).

"Hybrid" – when used to describe the combination of electricity generation and storage facilities – is also a technical term of art. It most commonly refers to co-located generating systems and batteries.[9] Hybrid facilities combining generation and storage add significant value to the grid in several ways. Charging the storage system during periods of lower electricity demand and discharging it during periods of higher demand can result in lower overall wholesale electricity prices.[10] It can also provide more effective use of intermittent renewable generation, by allowing hybrid plants to respond to supply requests from grid operators when direct generation from solar or wind generators is limited or not available.[11] Storage equipment located within a solar project can also recapture "clipped" energy that results when the power generated by the facility's solar equipment exceeds the rating of its inverters.[12] Because of the value of pairing generation and storage, it is becoming standard industry practice to include onsite storage with wind or solar facilities. Standalone storage is rare and projects almost always include both generation *and* storage.

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[9] Gorman, et al, *Motivations and options for deploying hybrid generator-plus-battery projects within the bulk power system*, The Electricity Journal 33 (2020) 106739, p. 2, available at <https://www.sciencedirect.com/science/article/pii/S1040619020300312?via%3Dihub> (accessed February 17, 2025).

[10] U.S. Energy Information Administration, *Electricity explained: Energy storage for electricity generation,* <https://www.eia.gov/energyexplained/electricity/energy-storage-for-electricity-generation.php> (accessed February 17, 2025).

[11] *Id*.

[12] National Renewable Energy Laboratory, *Annual Technology Baseline,* "Utility-Scale PV-Plus-Battery," <https://atb.nrel.gov/electricity/2024/utility-scale_pv-plus-battery> (accessed February 17, 2025).

The Legislature has determined that charging storage systems with renewable energy benefits the electric grid so much so that Act 235 provides incentive "renewable energy credits" (RECs) for that activity. See MCL 460.1039(2)(c) (providing an incentive of "1/5 renewable energy credit for each megawatt hour of electricity generated from a renewable energy system during off-peak hours, stored using an energy storage system or a hydroelectric pumped storage facility, and used during peak hours.").[13]

In its October 10 Order, the Commission agreed with its Staff's recommendation to count the total capacity of hybrid facilities – comprised of both generation and storage – when determining whether such facilities meet the nameplate capacity thresholds in the statute: "the Commission finds 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." Case No. U-21547, Doc. No. 0025, October 10, 2024 Order, pp. 5-6.)

Accordingly, the Application Filing Instructions and Procedures approved by the Commission state that projects are eligible to obtain a certificate from the MPSC where their nameplate capacities meet the following criteria:

> i. Solar facilities, including hybrid or co-located facilities comprised of solar and storage facilities, having a nameplate capacity of 50 megawatts (MW) or more.

[13] Public Act 235 requires compliance with the renewable energy portfolio standard through the accumulation of RECs. One REC is equal to one megawatt hour of electricity generated from a renewable energy system, before incentives. MCL 460.1039(1). The renewable energy and storage facilities do not need to be co-located as a hybrid facility to earn the storage incentive REC, but co-located hybrid facilities can more directly demonstrate the use of renewable energy to charge the storage system than storage systems charging with power from the grid at large.

> ii. Wind facilities, including hybrid or co-located facilities comprised of wind with solar and/or storage having a nameplate capacity of 100 MW or more.
>
> iii. Energy storage facilities of nameplate capacity of 50 MW or more with a discharge capability of 200 megawatt hours (MWh) or more. [*Id*., Exhibit A, pp. 2-3.][14]

Appellants argue that the Order "creates a completely new category of facilities, 'hybrid facilities,' that are not contemplated by P.A. 233." Appellants' brief, p. 22. They further argue that including the capacity of storage equipment co-located within solar or wind facilities in the calculation of those facilities' total capacity to determine whether P.A. 233 applies to them is an attempt by the Commission "to expand its jurisdiction to this additional new category of facilities." *Id*.

Appellee MPSC responds that the statutory definitions of solar energy facility and wind energy facility expressly include energy storage facilities. Appellee MPSC brief, p. 40. Intervening Appellees MEIBC, *et al* rely on the same definitions. Intervening Appellees brief, p. 42.

The Environmental Organizations concur with the positions of Appellee MPSC and the Intervening Appellees. Indeed, there is no other logical way to interpret the express inclusion of energy storage in the definitions of solar and wind facilities when determining whether those facilities meet the capacity thresholds in the statute. As an example, consider a 40 MW solar array co-located with 10 MW of battery energy storage equipment. Both the solar panels and the batteries meet the definition of solar facilities under the statute. Yet, Appellants' position would exclude the capacity of the batteries – which are expressly *part of* the solar facility – from the capacity of the

[14] The Application Filing Instructions are not paginated but the page numbers can be discerned from their table of contents.

solar facility. "[S]tatutes must be construed to avoid absurd or illogical results." *Stanton v City of Battle Creek,* 237 Mich App 366, 372 (1999).

To the extent the Court finds any need to inquire further, the Environmental Organizations highlight two additional principles of statutory construction that support the Commission's decision. First, when an ordinance or statute employs technical words or terms of art, "it [is] proper to explain them by reference to the art or science to which they [are] appropriate." *West Bloomfield Charter Twp v Karchon*, 209 Mich App 43, 51 (1995), quoting *Corning Glass Works v Brennan*, 417 US 188, 201 (1974). Second, "technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning." MCL 8.3a; see also *Woodard v Custer,* 476 Mich 545, 561 (2006) ("specialty" had a peculiar and appropriate meaning in the medical field).

These principles have been applied to the MPSC's interpretation of technical terms. For example, in *Attorney General v Mich Pub Serv Comm'n (In re Detroit Edison Co),* the Michigan Supreme Court held that "booked costs of purchased and net interchanged power transactions" from the power supply cost recovery (PSCR) statute, MCL 460.6j, "is a technical phrase that has acquired a 'peculiar and appropriate' meaning in the regulation of electric utilities to include 'transmission costs' charged by third parties." 483 Mich 993, 993 (2009). Therefore, the Court held that the booked costs of purchased and net interchanged power transactions "shall be construed and understood according to such peculiar and appropriate meaning," and upheld the MPSC's decision to permit Detroit Edison to recover transmission costs through its PSCR clause. *Id*.

In the electric utility industry, when generation and storage are co-located, the capacity of the hybrid facilities is calculated by adding the capacity of the generating facilities and the capacity of the storage facilities together – just as the Commission did in this case. For example, the Lawrence Berkley National Laboratory tracks hybrid plants across the country on an ongoing basis and reports their capacity in exactly this way.[15]

Thus, the Commission did not create a "new category" of facilities to expand its jurisdiction – as Appellants charge. Rather, the Commission interpreted a "solar facility" that "includes, but is not limited to . . . energy storage facilities," MCL 460.1221(w), as a term of art within the electric utility industry, based on its peculiar and appropriate meaning within that industry, and in accordance with common industry practice for calculating the nameplate capacity of such a facility. The Commission did the same thing in its interpretation of a wind facility that "includes, but is not limited to . . . energy storage facilities." MCL 460.1221(x).

The Commission's interpretation is reasonable, comports with law, and is consistent with practice in the electric utility industry. This Court should therefore give the Commission's interpretation respectful consideration and uphold it.

CONCLUSION AND RELIEF REQUESTED

For the reasons discussed above, the amicus curiae Environmental Organizations respectfully request that this Court affirm the decisions of the Michigan Public Service Commission concerning the implementation of Act 233 in Case No. U-21547.

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[15] Lawrence Berkley National Laboratory, *Hybrid Power Plants: Status of Operating and Proposed Plants,* <https://emp.lbl.gov/hybrid>, accessed February 17, 2025 (see Excel data file linked in the article with details on individual plants).

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