

STATE OF MICHIGAN
IN THE COURT OF APPEALS

In re Implementing Provisions of Public Act
233 of 2023

ALMER CHARTER TOWNSHIP, et al.

Court of Appeals No. 373259

Appellants,

MPSC Case No. U-21547

v

MICHIGAN PUBLIC SERVICE
COMMISSION,

Appellee,

and

MICHIGAN ENERGY INNOVATION
BUSINESS COUNCIL, et al.

Intervening Appellees.

**PROPOSED AMICUS CURIAE BRIEF BY
MICHIGAN SENATOR SAM SINGH, SENATOR ERIKA GEISS,
REPRESENTATIVE RANJEEV PURI, AND REPRESENTATIVE LAURIE POHUTSKY**

Christopher M. Bzdok (P53094)
Troposphere Legal, PLC
Counsel for Amicus Curiae Michigan Legislators
420 E. Front St.
Traverse City, MI 49686
(231) 709-4700
chris@tropospherelegal.com

Dated: February 28, 2025

RECEIVED by MCOA 2/28/2025 1:16:06 PM

TABLE OF CONTENTS

INDEX OF AUTHORITIES..... ii

CONCURRENCE WITH APPELLANTS’ STATEMENT OF JURISDICTION..... iv

COUNTERSTATEMENT OF QUESTIONS PRESENTED..... iv

STATUTES INVOLVED..... iv

STATEMENT OF INTEREST..... v

INTRODUCTION 1

COUNTERSTATEMENT OF FACTS AND PROCEEDINGS 2

STANDARD OF REVIEW 2

ARGUMENT 3

I. The Legislature Intended that Act 233 Establish a Uniform Set of Standards for Utility-Scale Renewable Energy and Energy Storage Projects. The MPSC’s Interpretation of the Term “Compatible Renewable Energy Ordinance” Effectuates the Legislature’s Intent. 3

 A. The plain meaning of the statutory definition of a CREO is sufficient to uphold the MPSC’s guidance..... 3

 B. If the Court inquires beyond the plain meaning of the statutory text, legislative history shows that the purpose Act 233 was to establish a uniform set of requirements for qualifying renewable and energy storage facilities. 5

 C. Interpreting the definition of a CREO to allow local governments to impose additional requirements would defeat the expressed purpose of Act 233. 10

 D. The Commission’s interpretation of what constitutes a CREO is consistent with the general legislative plan and purpose of the 2023 clean energy laws. 11

II. The Legislators also support the MPSC’s guidance regarding the capacity thresholds for hybrid facilities. 12

CONCLUSION AND RELIEF REQUESTED 13

WORD COUNT STATEMENT..... 14

INDEX OF AUTHORITIES

Cases

<i>Adrian School Dist v Michigan Public School Employee Retirement Sys</i> , 458 Mich 326, 332 (1998)	5
<i>DeRuiter v Twp of Byron</i> , 505 Mich 130, 140 (2020)	11
<i>Draprop Corp v Ann Arbor</i> , 247 Mich App 410, 415 (2001).....	5
<i>Guardian Envtl Servs v Bureau of Constr Codes & Fire Safety</i> , 279 Mich App 1, 12 (2008)	5
<i>In re Complaint of Rovas Against SBC Michigan</i> , 482 Mich 90, 103 (2008).....	2
<i>In re Michigan Consol Gas Co Application to Increase Rates</i> , 293 Mich App 360, 365 (2011).....	2
<i>Kerbersky v Northern Mich Univ</i> , 458 Mich 525, 534-35 (1998).....	10
<i>Marquis v Hartford Accident & Indemnity (After Remand)</i> , 444 Mich 638, 644 (1994)	5
<i>Seymour v Sallan (In re Estate of Seymour)</i> , 258 Mich App 249, 254 (2003).....	5
<i>Soaring Pine Capital Real Estate & Debt Fund II, LLC v Park St Group Realty Servs, LLC</i> , 511 Mich 89, 129 (2023)	11
<i>Stand Up For Democracy v Sec’y of State</i> , 492 Mich 588, 598 (2012)	4
<i>State Farm Fire & Cas Co v Old Republic Ins Co</i> , 466 Mich 142, 146 (2002)	10
<i>Twentieth Century Fox Home Entm’t, Inc v Dep’t of Treasury</i> , 270 Mich App 539, 546 (2006).....	5

Statutes

2040. MCL 460.1051(1)	11
MCL 460.1003(i)	11
MCL 460.1028(1)	11
MCL 460.1101	11
MCL 460.1221(f).....	4
MCL 460.1222(1)	3
MCL 460.1222(2)	3

MCL 460.1223(3) 3
MCL 460.1223-1226..... 3
MCL 460.1226(8) 4
MCL 460.1231(2)-(3) 3
MCL 460.1231(3) 10
Public Act 233 of 2023 1

CONCURRENCE WITH APPELLANTS' STATEMENT OF JURISDICTION

The Amicus Curiae, Senator Sam Singh, Senator Erika Geiss, Representative Ranjeev Puri, and Representative Laurie Pohutsky (collectively, the Legislators) concur with Appellants' Statement of Jurisdiction for this appeal.

COUNTERSTATEMENT OF QUESTIONS PRESENTED

Amicus Curiae Legislators concur with Question #I of the Counterstatement of Questions Presented in the brief by Intervening Appellees Michigan Energy Innovation Business Council, et al. (MEIBC).

STATUTES INVOLVED

Amicus Curiae Legislators concur with the listing of statutes involved in this appeal found in the brief by Appellee Michigan Public Service Commission.

STATEMENT OF INTEREST

Amici are Michigan legislators who supported the passage of the laws at issue in this case. All legislators listed as *amici* voted in favor of House Bills 5120 and 5121 of 2023, which became Public Acts 233 and 234 of 2023, respectively. Because of their direct involvement in crafting these laws throughout the legislative process, they are uniquely positioned to explain how the plain language of Public Acts 233 and 234 reflect their legislative intent.

Senator Sam Singh represents District 28 in the Michigan Senate. He has served in the Senate since 2023. His district covers portions of Ingham, Clinton, and Shiawassee Counties and includes approximately 261,214 constituents. He is a member of the Senate Committee on Energy and Environment, which oversaw the development of Public Acts 233 and 234.

Senator Erika Geiss represents District 1 in the Michigan Senate. She has served in the Senate since 2019. Her district covers portions of Wayne County and includes approximately 266,557 constituents.

Representative Ranjeev Puri represents District 24 in the Michigan House of Representatives. He has served in the House since 2021. His district covers a portion of Wayne County and includes approximately 91,480 constituents. Representative Puri was the sponsor of House Bill 5121, which became Public Act 234 of 2023.

Representative Laurie Pohutsky represents District 17 in the Michigan House of Representatives. She has served in the House since 2019. Her district covers a portion of Wayne County and includes approximately 90,737 constituents.

INTRODUCTION

In November 2023, the Michigan Legislature enacted a transformative package of clean energy laws. Among these laws was Public Act 233 of 2023, which established statewide standards for utility-scale renewable energy and energy storage facilities, and a process before the Michigan Public Service Commission for approving them. The Legislature determined that statewide standards and a functional process were needed to replace a patchwork of local zoning ordinances that had blocked scores of projects from moving forward in recent years. Stopping so many projects at the local level was obstructing the clean energy transformation, putting upward pressure on electricity prices, and threatening the reliability of the electric grid.

The Amicus Curiae Legislators – Senator Sam Singh Senator Erika Geiss, Representative Ranjeev Puri, and Representative Laurie Pohutsky (collectively, the Legislators) – were sponsors and proponents of that legislation. They believe that transforming the electric grid in Michigan is critical to address climate change, grow the economy and tax base of our state, and support good-paying jobs in this vital industry. The Legislators submit this amicus brief to provide important context to the Court regarding two issues in this appeal.

First, the Michigan Public Service Commission (MPSC or Commission) provided accurate and correct guidance regarding the definition of a Compatible Renewable Energy Ordinance (CREO) under the statute. Act 233 says that a developer may seek a certificate from the MPSC for an eligible renewable energy or energy storage facility unless the local government where the facility is to be located has a CREO. The MPSC’s determination that a CREO may not contain any additional requirements beyond the requirements in Act 233 is supported by the plain text of the statute – but it also effectuates the Legislature’s intent, as shown by the legislative history. This brief provides the Court with important details regarding that legislative history.

Second, the MPSC provided accurate and correct guidance regarding the eligibility of hybrid facilities that pair renewable generation and energy storage for certificates under Act 233. The Legislators support the arguments of the Appellee and Intervening Appellees on this issue – and weigh in only to note the importance of it to the objectives of Act 233.

Finally, the Legislators believe that the MPSC made lawful and correct decisions regarding all the issues raised by the Appellants and urge the Court to affirm all the Commission’s decisions at issue here. The Legislators focus this brief on the CREO and hybrid facility issues because they can offer unique context and perspective to the Court regarding the legislative history and purposes.

COUNTERSTATEMENT OF FACTS AND PROCEEDINGS

The Amicus Curiae Legislators concur with and adopt the Counterstatement 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.* 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 Michigan Consol Gas Co Application to Increase Rates*, 293 Mich App 360, 365 (2011).

ARGUMENT

I. The Legislature Intended that Act 233 Establish a Uniform Set of Standards for Utility-Scale Renewable Energy and Energy Storage Projects. The MPSC’s Interpretation of the Term “Compatible Renewable Energy Ordinance” Effectuates the Legislature’s Intent.

Act 233 governs the land use permitting process for solar, wind, and energy storage facilities that meet minimum capacity thresholds specified in the statute.¹ MCL 460.1222(1). Act 233 allows an electric provider or independent power producer who seeks to develop such a facility to apply to the MPSC for a certificate for that facility. MCL 460.1222(2). If the Commission approves a certificate for such an energy facility, the certificate preempts local zoning with respect to that facility. MCL 460.1231(2)-(3). Act 233 establishes detailed application requirements and approval standards for a certificate and prescribes a multi-step approval process. See MCL 460.1223-1226.

While Act 233 creates uniform statewide standards and a process overseen by the MPSC, the Act also authorizes local units of government to retain land use authority over energy facilities subject to the statute – *if* the local unit has a compatible renewable energy ordinance (CREO). MCL 460.1223(3). The nature and kinds of requirements that may – or may not – be included in a CREO is one of the issues in this appeal.

A. The plain meaning of the statutory definition of a CREO is sufficient to uphold the MPSC’s guidance.

Fortunately, Act 233 contains a clear definition of a CREO. It is “an ordinance that provides

¹ The thresholds are expressed in “nameplate capacity” – essentially a manufacturer’s rating: 50 megawatts for solar; 100 megawatts for wind; and 50 megawatts for energy storage (plus a minimum energy discharge capability for storage of 200 megawatt hours). MCL 460.1222(1).

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) contains setback distances, height and noise limits, and similar requirements. MCL 460.1226(8). The Commission followed this clear definition and determined that a CREO “may not contain additional requirements more restrictive than those specifically identified in . . .” section 226(8). Case No. U-21547, Doc. No. 0025, October 10, 2024, Order, p. 18.

Despite the clear statutory definition and the MPSC’s faithful application of it, the Appellants challenge the Commission’s conclusion that an ordinance is not a CREO if it contains additional requirements beyond those listed in the Act. Appellants’ Br, p 20. But the MPSC’s interpretation comports with the plain meaning of the statute, and it also effectuates the Legislature’s intent, as explained below.

As just noted, and as described more fully in the MPSC and MEIBC briefs, the plain text of the statutory CREO definition is all that is needed to affirm the Commission’s interpretation. The Court’s “primary task in construing a statute, is to discern and give effect to the intent of the Legislature.” *Stand Up For Democracy v Sec’y of State*, 492 Mich 588, 598 (2012). Moreover, “the words of the statute are the most reliable evidence of the Legislature’s intent . . .” *Id.* To interpret a statute, Courts “consider both the plain meaning of the critical word or phrase as well as ‘its placement and purpose in the statutory scheme.’” *Id.*

The MPSC’s conclusion that for the requirements of an ordinance to be “no more restrictive than the provisions included in section 226(8),” the ordinance may not contain additional requirements beyond those in section 226(8) is a straightforward reading of the words “no more restrictive than . . .” Conversely, the Appellants’ position that an ordinance may contain additional requirements and still be “no more restrictive than” the statute is contrary to the statute’s plain

meaning. *Guardian Envtl Servs v Bureau of Constr Codes & Fire Safety*, 279 Mich App 1, 12 (2008). The plain meaning of the CREO definition is all that is necessary to resolve this issue.

B. If the Court inquires beyond the plain meaning of the statutory text, legislative history shows that the purpose Act 233 was to establish a uniform set of requirements for qualifying renewable and energy storage facilities.

While not necessary given the plain meaning of the statute, the legislative history and purpose of Act 233 also support the MPSC’s interpretation. If reasonable minds could differ regarding the meaning of a statute, judicial construction is appropriate. *Adrian School Dist v Michigan Public School Employee Retirement Sys*, 458 Mich 326, 332 (1998). In that event, “[s]tatutory language should be reasonably construed, keeping in mind the purpose of the statute.” *Draprop Corp v Ann Arbor*, 247 Mich App 410, 415 (2001). “When construing a statute, a court must look at the object of the statute in light of the harm it is designed to remedy and apply a reasonable construction that will best accomplish the Michigan Legislature’s purpose.” *Seymour v Sallan (In re Estate of Seymour)*, 258 Mich App 249, 254 (2003), quoting *Marquis v Hartford Accident & Indemnity (After Remand)*, 444 Mich 638, 644 (1994). The Court “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.” *Twentieth Century Fox Home Entm’t, Inc v Dep’t of Treasury*, 270 Mich App 539, 546 (2006).

1. The Legislature enacted Act 233 because local governments were blocking projects through restrictive zoning ordinances and creating a patchwork of regulation across the state.

Testimony before legislative committees in 2023 cogently explained the harm that the bills ultimately enacted Act 233 were designed to remedy: restrictive local zoning ordinances that

stymied the development of clean energy facilities. The Chair of the MPSC, Dan Scripps, told the House Committee on Energy, Communications, and Technology that in the years leading up to 2023, “the Commission has approved significant levels of wind, solar and energy storage resources through the integrated resource plans filed by Michigan utilities” under MCL 460.6t.² “However, the current challenges around siting represent the single largest threat to achieving these targets, which have been found to be a central element of the most reasonable and prudent means of meeting each utility’s energy and capacity needs, as required by law.”³ Chairman Scripps noted that in developing its plan, DTE Electric Company found it necessary to limit the amount of renewable energy in the plan, even though higher amounts would have been more cost-effective for customers because of local zoning that prevented development of those resources.⁴ He noted that the legal treatment of renewable energy was at odds with most other forms of energy infrastructure, over which the MPSC already had land use approval authority.⁵

A month later, Scripps explained to the Senate Committee on Energy and Environment that local government obstruction through zoning was threatening the reliability of the electric grid:

Having the ability to add generation to maintain reliability during this transition is vitally important as MISO currently faces an estimated 2.1-gigawatt capacity shortfall starting in the 2025-2026 planning year. Even as it has nearly 25 times that amount approved for interconnection that has been hung up due to siting and other challenges. So, it’s not just that local opposition is limiting the adoption of low-cost renewable energy resources, effectively raising energy costs for Michigan families and businesses, it is very much the case that our broken approach to siting is

² Testimony of Dan Scripps before House Committee on Energy, Communications, and Technology, October 11, 2023, Amicus Appendix A, p. 1.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

threatening our ability to build the generation needed to maintain reliability.⁶

MEIBC explained to the House Committee that renewable energy projects can provide a dependable source of income for landowners . . . ensuring that farmland remains in farming families for generations to come.”⁷ However, “outside opposition groups have succeeded in taking these opportunities away from communities across the state, using fear tactics and misinformation to block renewable energy projects at the local level.”⁸

A group of clean energy trade associations told the House committee that “more than 40 Michigan counties and townships have restrictive ordinances that make it very difficult to site projects and limit[] private landowners[’] ability to utilize their land as they see fit.”⁹ The trade associations explained that “[r]eforming the siting and permitting process will eliminate the current patchwork to permitting, ensure landowners have the opportunity to host projects, create jobs, and unlock billions of investment across the state.”¹⁰ The trade associations stressed the need for “a predictable siting and permitting process in Michigan for renewable energy facilities” to “pave the way for future development and economic opportunities across the state.”¹¹

⁶ Testimony of MPSC Chair Dan Scripps to Senate Committee on Energy and Environment, November 7, 2023 (Scripps Senate Testimony), at 19:30, <<https://cloud.castus.tv/vod/misenate/video/654a810ef6b51700084a0c94?page=HOME>>, accessed February 26, 2025 (emphasis added).

⁷ Statement of MEIBC submitted to House Committee on Energy, Communications, and Technology, October 10, 2023, Amicus Appendix C, p. 1.

⁸ *Id.*

⁹ Testimony of Clean Grid Alliance, et al. before House Committee on Energy, Communications, and Technology, October 11, 2023, Amicus Appendix B, p. 2.

¹⁰ *Id.*

¹¹ *Id.*

2. The Legislature’s intent in passing Act 233 was to replace obstructionist local zoning restrictions with uniform statewide requirements for clean energy projects.

The bill sponsors explained to the legislative committees that their intent was to remove the authority of local governments to continue blocking projects, and to replace the patchwork of local regulations with a uniform set of standards and processes that would apply across the state. Representative Philip Skaggs told the House Committee on Energy, Communications, and Technology: “Our bill sets up a common-sense process where a willing landowner and a renewable energy developer have a streamlined process to move from private agreement to public permit to construction to electricity generation.”¹² He emphasized the need to make the land use approval process for renewable energy and storage “more simple and painless . . .”¹³

Representative Ranjeev Puri told the Senate Committee on Energy and Environment: “We have seen hundreds of projects delayed and abandoned due to permitting issues here in Michigan” – each of which “leaves behind millions in investments and high paying jobs and local economic benefits.”¹⁴ Rep. Puri said that “[f]ar too often a local authority denies permits because someone on the township board doesn’t like the way these look” – forcing a farm owner to “turn away an

¹² Testimony of Rep. Philip Skaggs before House Committee on Energy, Communications, and Technology, October 11, 2023, at 9:20, <https://www.youtube.com/watch?v=3tM_FMfym8w&list=PLPsJNegb72EypVPae5pGjpg1b0nn6T0Qj&index=17>, accessed February 25, 2025.

¹³ *Id.*

¹⁴ Testimony of Rep. Ranjeev Puri to Senate Committee on Energy and Environment, November 7, 2023 (Puri Senate Testimony), at 4:32, <<https://cloud.castus.tv/vod/misenate/video/654a810ef6b51700084a0c94?page=HOME>>, accessed February 26, 2025.

opportunity to make hundreds of thousands of dollars . . .”¹⁵ He testified that the legislation “would simply streamline the process to approve utility-scale solar and wind projects around our state.”¹⁶

3. Bill sponsors and proponents testified that a CREO would have to mirror the state requirements and could not contain additional requirements.

In addition to vividly portraying the problem the legislation was intended to address, bill sponsors and proponents specifically noted that local ordinances would *only* continue to have effect if their requirements were identical to state requirements. Representative Puri told the Senate committee that under the bill, local governments “now have that opportunity to come up with their own local permitting process which must mirror the tenets of the state process.”¹⁷ MPSC Chair Scripps echoed: “A developer can only receive approval of their projects if the local jurisdiction rejects their [application], adds additional restrictions to their zoning ordinance, or fails to make a decision in a reasonable amount of time.”¹⁸

In sum, the history of Act 233 demonstrates that the Legislature sought to remedy the problem of local governments blocking clean energy projects by replacing a patchwork of regulation with uniform state requirements. This history also shows a clear intent that local governments would only be permitted to maintain land use authority over such projects if their zoning were identical to the state requirements. This history supports the MPSC’s determination that a CREO may not contain any requirements that are in addition to Act 233’s requirements.

¹⁵ *Id.* at 5:08.

¹⁶ *Id.* at 3:00.

¹⁷ *Id.* at 6:45 (emphasis added).

¹⁸ Scripps Senate Testimony, *supra* note 6, at 22:52.

Further, it exposes Appellants' position that an ordinance may contain additional requirements and still be a CREO as contrary to legislators' specifically expressed intent.

C. Interpreting the definition of a CREO to allow local governments to impose additional requirements would defeat the expressed purpose of Act 233.

Courts should not read a statute in such a way as to defeat its purpose. *Kerbersky v Northern Mich Univ*, 458 Mich 525, 534-35 (1998). Appellants' position – that an ordinance may impose additional requirements beyond those in section 226(8) of Act 233 – would defeat the purpose of the Act just described above. If local zoning ordinances may contain additional requirements and still be deemed a CREO, then the requirements for developing renewable and energy storage facilities will not be uniform across the state. If local zoning ordinances may contain additional requirements and still be deemed a CREO, then the patchwork of regulations that Act 233 intended to eliminate would persist.

Further, Appellants' position is at odds with the rule that Courts “must give effect to every word, phrase, and clause in a statute and avoid an interpretation that would render any part of the statute surplusage or nugatory.” *State Farm Fire & Cas Co v Old Republic Ins Co*, 466 Mich 142, 146 (2002). Section 231(3) of Act 233 states: “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.” MCL 460.1231(3) (emphasis added). If a local ordinance could impose additional or more restrictive requirements than Act 233 and still be a CREO, then the MPSC approval process would lose its value and meaning. A clean energy developer would not be able to obtain a certificate that preempts additional or more restrictive local requirements, because the local government could impose such requirements in its ordinance, deem it a CREO, and prevent the

developer from filing an application with the MPSC. Such an ordinance would prohibit what the statute permits, contrary to a fundamental principle of preemption. See *DeRuiter v Twp of Byron*, 505 Mich 130, 140 (2020).

D. The Commission’s interpretation of what constitutes a CREO is consistent with the general legislative plan and purpose of the 2023 clean energy laws.

Finally, if the plain language of Act 233 and all the evidence of legislative intent described above is still not sufficient to affirm the MPSC’s guidance regarding a CREO, the Court may also consider which interpretation “is more consistent with the general legislative plan and purpose.” *Soaring Pine Capital Real Estate & Debt Fund II, LLC v Park St Group Realty Servs, LLC*, 511 Mich 89, 129 (2023). In this case, the Commission’s interpretation of a CREO is more consistent with the general legislative plan and purpose than the Appellants’ argument.

The Legislature enacted Act 233 as part of a package of clean energy laws passed in 2023. These laws included Act 235, which significantly increased the renewable energy standards that Michigan utilities must achieve – raising those standards from 15% currently to 50% by 2030 and 60% by 2035. MCL 460.1028(1). Act 235 also enacted for the first time a clean energy standard that follows on the renewable energy standard, and a statewide energy storage target. MCL 460.1051(1) and MCL 460.1003(i) (clean energy standard); MCL 460.1101 (energy storage target).

Considering the facts outlined above, it is apparent that Michigan utilities will not be able to meet these ambitious targets if local governments can continue to block development of renewable and energy storage facilities by imposing additional requirements in their ordinances beyond the requirements of Act 233. Representative Puri made exactly this point before the Senate Committee: “Michigan will be unable to meet its future climate goals without passing this

legislation.”¹⁹ So did MPSC Chair Scripps: “the current approach to renewable siting is broken and threatens our ability to both meet our renewable energy goals including the goals that were included in Senate Bill 271 [which became Act 235], as well as the ability to add new generation resources necessary to maintain reliability as older resources are retired.”²⁰ Thus, the MPSC’s guidance that a CREO may not contain additional requirements beyond those in Act 233 is consistent with the general legislative plan and purpose of both statutes, and the Appellants’ position is not.

II. The Legislators also support the MPSC’s guidance regarding the capacity thresholds for hybrid facilities.

In its October 10, 2024 Order in Case No. U-21547, the MPSC also provided guidance regarding the eligibility of hybrid energy facilities to seek a certificate under Act 233. Hybrid facilities pair renewable generation such as solar or wind with energy storage – usually in the form of batteries – and usually on the same site. The MPSC determined that a project containing both solar generation and storage with a combined capacity of at least 50 MW was eligible to apply for a certificate. Case No. U-21547, Doc. No. 0025, October 10, 2024 Order, pp. 5-6. Similarly, the MPSC determined that a project containing both wind generation and storage with a combined capacity of at least 100 MW was eligible to apply for a certificate. *Id.*

The Amicus Curiae Legislators do not wish to rehash the arguments already made on this issue by Appellee MPSC and Intervening Appellees MEIBC, *et al.* The Legislators simply submit that they are aware of the importance of hybrid generation and storage facilities to the package of

¹⁹ Puri Senate Testimony, *supra* note 14, at 2:55.

²⁰ Scripps Senate Testimony, *supra* note 6, at 17:35 (emphasis added).

clean energy laws enacted in 2023 and to the future of the electric grid in Michigan. For this reason, and in reliance on the arguments already ably made by the MPSC and MEIBC, the Legislators support the Commission's decision on this issue and urge the Court to affirm it.

CONCLUSION AND RELIEF REQUESTED

For the reasons discussed above, the Amicus Curiae Legislators respectfully request that this Court affirm all the decisions of the Michigan Public Service Commission concerning the implementation of Act 233 in Case No. U-21547.

Respectfully Submitted,



Digitally signed by
Christopher M. Bzdok
Date: 2025.02.28
12:50:18 -05'00'

Christopher M. Bzdok (P53094)
Troposphere Legal, PLC
Counsel for Amicus Curiae Legislators
420 E. Front St.
Traverse City, MI 49686
(231) 709-4700
chris@tropospherelegal.com

Dated: February 28, 2025

WORD COUNT STATEMENT

This document complies with the type-volume limitation of Michigan Court Rules 7.212(B)(1), (3) because, excluding the part of the document exempted, this merits brief contains no more than 16,000 words. This document contains 3,645 words.



Digitally signed by
Christopher M. Bzdok
Date: 2025.02.28
12:50:33 -05'00'

Christopher M. Bzdok (P53094)
Troposphere Legal, PLC
Counsel for Amicus Curiae Legislators
420 E. Front St.
Traverse City, MI 49686
(231) 709-4700
chris@tropospherelegal.com

Dated: February 28, 2025