



To: Cathy Cole & Jule Baldwin, Michigan Public Service Commission

From: Sarah Mills & Madeleine Krol, University of Michigan Center for Empowering Communities

Date: May 30, 2024

RE: Staff Straw Proposal Batch 2 feedback

Dear Cathy and Julie,

Our apologies for the delay (though not as long as the first batch!) in submitting comments on the Straw proposals presented on May 15th. Our comments here are not as extensive since we (or specifically Sarah) have already weighed in on decommissioning at the April 5th meeting, drawing on the decommissioning provisions in the Michigan communities where there are existing wind or solar farms. Here we just underscore elements that we think deserve highlighting. Please do not hesitate to contact us if you have any questions or would like any clarification.

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Decommissioning Plans (Pages 1-3)

Overall, this provides much more thorough instructions than what is provided in statute so that applicants know what they are expected to provide. The combination of the decommission plan content and the decommissioning agreements appear to cover everything that is typically covered by local ordinances.

Commission staff may consider the following:

1(c): Since the decommission agreement spells out triggering events, would you want the applicant to focus here on “developer-initiated decommissioning (3.1.1)”?

2(b): The use of “or” in this requirement suggests the applicant has the choice of whether to list the facilities removed or those kept in place. It may be clearer to have the applicant list only the facilities/equipment that will be kept in place, since the public’s assumption is likely that all facilities/equipment will be removed. Or, if it is beneficial for the Commission to have the developer enumerate the facilities that need to be removed, it might be better to replace the “or” with “and”.

8(b): Having the MPSC hold the financial assurance for decommissioning seems consistent with the idea that the agreement is between the Commission and the applicant, and the MPSC would be the body enforcing when the project needs to be decommissioned.

9: The required timing of reviewing the costs seems reasonable.

10 and Appendix 3: Since you need one of these for each landowner, it would be shocking to us if you see any wind or solar applications with only one agreement. We suggest that you say “agreement(s)”, but maybe also spell out that these are Decommissioning Agreements between the Developer, MPSC, and all landowners with infrastructure on their property [or some other designation]. From our research, we have found sometimes participating landowners don’t have any assets on their property—they are participating to give the developer more flexibility in project placement (e.g., closer to their house or property line). It may not be necessary to have them provide site access in the case of decommissioning, but there may be other reasons we aren’t thinking of for them to be part of the submission. The instructions should make clear who needs to complete a decommissioning agreement.

Sample Decommissioning Agreement (pages 1-9)

We are not familiar with decommissioning agreements but provide the following observations.

3.1.3: Initially, we were trying to reconcile the 12 months and 5 year numbers given in this paragraph. Our understanding is that 12 months seems to apply once the project is operational. The 5 years is the time given to get a new project operational once construction has commenced. Operational date is likely something that’s easier to track than commencement of construction. If commencement of construction isn’t defined elsewhere, it might be helpful to do so. [Originally, we thought perhaps pegging this to when the Commission issues the certificate would be a clearer way to measure projects were construction has stalled. But since Section 226(10) states that a Commission-issued certificate is invalid if construction hasn’t commenced within 5 years of the certificate being issued, it just seems cleaner to just define “commencement of construction” for both the decommissioning agreement and Section 226(10).]

3.1.3: It might be helpful to spell out what is meant by “portion of a project”. A single turbine? Solar panels in a single row, or all of the panels feeding a single inverter?

3.1.3: We might suggest that the Commission have the applicant annually file proof (perhaps at the same time that they file their financial assurance annual showing in 4.2.2) that the project is still operational to allow the Commission to assess whether the project or portion of the project has entered the “depowered” state. For this, it appears that the Commission may want daily or weekly summaries of generation, storage, and/or production so that they can determine when Day 0 of the depowered state begins. Or perhaps the Commission may only want monthly summaries and will request more information if the applicant ends the reporting period with some portion of the project depowered.

3.1.4: This stipulation, but also with ample warning, opportunity to cure, etc., seems like a good way to ensure that the financial assurance stays valid and would allow for it to be drawn upon in the case of abandonment.

4.2: While the phase-in of a decommissioning bond is not commonplace in Michigan, this appears to balance the concern we have heard from local officials that projects are most likely to go awry in construction, with the concern voiced by developers that having 100% posted as soon as the project is approved is challenging to finance.

6.1: Does this stipulation account for what happens if the landowner, who is a party in this agreement, sells their property? Do they need to get it in writing or does this agreement move with the land? [As non-lawyers, we're not sure what this is saying.] Relatedly, we have not studied wind or solar leases in any detail but have heard that they may not all "run with the land" (i.e., the land was sold but the original landowner kept the wind easement). It may be important to clarify which landowner is supposed to sign this agreement in such a case (or just verify with developers that their lease/easement agreements are non-severable).

Not in either section

In situations where maintaining soil quality characteristics are important (e.g., level of compaction, types of soil), where maintaining water quality or drainage is important, or where there is a particular concern about components of a facilities that are classified as hazardous waste, the commission could consider whether it wants to require any pre-construction baselines to alleviate disputes that may arise during decommissioning.