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EXPERT COUNSEL REAL SOLUTIONS


STAYING AHEAD OF STATE SITING

A REVIEW OF NEW CLEAN ENERGY LEGISLATION

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PRESENTATION GOALS

1. Discuss new renewable energy legislation from 2023 (and impacts to municipalities).
2. Do a deep dive on the controversial “state siting” legislation to take effect November 29, 2024.
3. Discuss open questions regarding the legislation.


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DISCLAIMER

- The following presentation is comprised of general information and is not intended to constitute legal advice to any particular municipality. Further, to assist readability, information within the presentation may not be individually cited to legal authority and readers are encourage to cross-reference statements made in this presentation with cited acts.



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WHY NOW? ECONOMICS

Table 1b. Estimated unweighted levelized cost of electricity (LCOE) and levelized cost of storage (LCOES) for new resources entering service in 2027 (2022 dollars per megawatt-hour)

Plant type	Capacity factor (percent)	Levelized cost of electricity (\$/MWh)	Levelized cost of storage (\$/MWh)	Levelized cost of storage (\$/MWh)	Levelized cost of storage (\$/MWh)	Levelized cost of storage (\$/MWh)	Total system LCOE or LCOES (\$/MWh)	Total system LCOE or LCOES (\$/MWh)
Dispatchable technologies								
Oil-fired supercritical	80%	\$22.13	\$0.71	\$23.67	\$1.12	\$24.61	\$1	\$24.61
Combined cycle	87%	\$20.26	\$1.08	\$21.77	\$1.14	\$23.94	\$1	\$23.94
Advanced nuclear	90%	\$20.71	\$14.15	\$19.80	\$1.08	\$20.28	\$6.52	\$26.71
Geothermal	90%	\$22.04	\$10.18	\$13.23	\$1.40	\$15.82	\$2.20	\$17.62
Biomass	47%	\$40.80	\$10.10	\$30.67	\$1.19	\$31.17	\$1	\$31.17
Resource constrained technologies								
Wind onshore	47%	\$29.90	\$7.70	\$0.00	\$2.43	\$40.23	\$1	\$40.23
Wind offshore	44%	\$109.17	\$30.17	\$0.00	\$3.97	\$143.51	\$46.18	\$189.69
Solar conventional	20%	\$14.40	\$5.30	\$0.00	\$1.51	\$16.49	\$10.00	\$26.49
Solar hybrid ¹	20%	\$14.98	\$11.92	\$0.00	\$3.43	\$30.33	\$10.00	\$40.33
Hydroelectric ²	54%	\$45.18	\$11.48	\$0.11	\$1.08	\$56.87	\$1	\$56.87
Capacity resource technologies								
Combustion turbine	20%	\$14.78	\$8.37	\$45.44	\$0.89	\$117.86	\$1	\$117.86
Battery storage	10%	\$68.09	\$20.66	\$24.81	\$10.05	\$123.55	\$1	\$123.55

Source: U.S. Energy Information Administration, Annual Energy Outlook 2022

¹ LCOE = operations and maintenance



² The tax credit component is based on suggested federal tax credits such as the Production Tax Credit (PTC) for investment Tax Credit (ITC) available for some technologies. It reflects tax credits available only for plants entering service in 2027 and the substantial absence of both the PTC and ITC are scheduled under current law. Technologies not eligible for PTC or ITC are indicated as NA, or not available. The results are based on regional models, and state or local incentives are not included in LCOE and LCOES calculations. See text box on page 2 for details on how the tax credits are represented in the model.

³ Technology is assumed to be a geothermal PTC with single well mining. The solar hybrid system is a single unit PV system coupled with a four-hour battery storage system. Costs are expressed in terms of net AC (after removing current power available to the grid for the combined capacity).

⁴ As modeled, we assume that hydroelectric and hybrid solar PV generating assets have seasonal and diurnal storage, respectively, so that they can be dispatched either a season or a day, but never operators is limited by resource availability by site and season for hydroelectric and by daytime for hybrid solar PV.

Source: US Energy Information Administration: Levelized Costs of New Generation Resources in the Annual Energy Outlook 2022

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WHY NOW? POLICY

1. DTE goal to have net zero carbon emissions by 2050.
2. Consumers goal of 90% of energy derived from renewable energy sources by 2040.
3. PA 235 of 2023 – Requirement of 100% Clean Energy by 2040.

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2023 WAS A “WHIRLWIND YEAR” FOR RENEWABLE ENERGY LEGISLATION

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PA 108 AND PA 109 – SOLAR PILTS


- Effective July 27, 2023.
- Allows establishment of “solar energy districts” by cities, villages, or townships.
- Then allows the ability for applicants to apply for “solar energy facility exemption certificates.”
- Upon receipt of certificate, payment of \$7,000 per megawatt of nameplate capacity in lieu of taxes (allocated in same way as taxes) for 20-year period.
- Voluntary process.
- Avoiding issues of tax appeals in wind turbine litigation?

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PA 235 – “CLEAN ENERGY MANDATE”

- Approved November 28, 2023 (Effective Date: February 27, 2024)
- Section 51 Mandates (Clean Energy Portfolio)
 - 2035 to 2039 - 80%
 - 2040 – 100%
- Section 28 Mandates (Renewable Energy Credit Portfolio)
 - Through 2029 – 15%
 - 2030 – 2034 – 50%
 - 2035 – 60%
- Applies to “electric providers” (MPSC regulated utilities, cooperatives, municipally-owned utilities)
- Clean energy standard includes renewable energy, nuclear, natural gas with carbon capture, or defined by MPSC rule.
- Renewable energy standard includes solar, wind, geothermal, certain methane digestors, certain biomass.






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CURRENT – SITING UTILITY-SCALE SOLAR AND WIND PROJECTS

- Most communities with own zoning had zoning ordinances with specific regulations.
- Typical zoning regulations required renewable energy developments to go through the special use permit process.
- Special use permit process involves: (1) public hearing; (2) broad “discretionary criteria”; and (3) ability to add customized conditions on a project.
- Most projects our clients approved would have 10+ conditions (decommissioning, escrows, glare, etc.).



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LANDOWNER/DEVELOPER CONCERNS

- Communities have zoning ordinances with varying standards.
- Feeling from those applying for utility-scale wind and solar projects that some communities may be enacting "unworkable" ordinances.
- Case law not favorable to support "exclusionary zoning" challenges.
- Tuscola Wind III, LLC v Almer Charter Twp*, 2017 U.S. Dist. LEXIS 182278, at *71-72 (E.D. Mich, Nov. 3, 2017)
- Meetings to consider projects became extremely contentious and issue led to divided communities and recalls of elected officials.

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STATE SITING – RENEWABLE ENERGY PROJECTS (PA 233 & 234)

- NOT MANDATORY!**
- Coverage:**
 - Solar Projects 50+MW
 - Wind Projects 100+ MW
 - Battery Storage (50+ MW and Discharge Ability 200+MW)
- Ability to Bypass Local Review** – Option to apply for certificate in Michigan Public Service Commission
- Requires Prevailing Wage & Host Community Agreements**
- PA 233 Effective November 29, 2024

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SOLAR PROJECTS UNDER PA 233 & 234 (PA 233, SEC 226(8))

- Setbacks**
 - 300-foot setback from building on nonparticipating properties
 - 50-foot setback from the edge of a public road
 - 50-foot setback from the property line of a nonparticipating property
- National Electric Code compliant fencing
- Maximum height of 25-feet at full tilt
- 55 average hourly decibels on the A-weighted scale
 - Not at property line
 - Wall of the nearest nonparticipating dwelling
- Dark sky friendly lighting solutions

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WIND PROJECTS UNDER PA 233 & 234 (PA 233, SEC 226(8))

- Setbacks
 - 2.1 times the maximum blade tip height from residences on nonparticipating properties
 - 1.1 times the maximum blade tip height from buildings on participating properties, overhead utility line easement, or the center line of a public roadway
- No more than 30 hours of shadow flicker on nonparticipating residences
- Maximum height – None
 - Federal Aviation Administration conflicts only
- 55 average hourly decibels on the A-weighted scale
 - Not at property line
 - Wall of the nearest nonparticipating dwelling
- Light-mitigating technology—which may vary by project



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WHAT'S MISSING?

- Decommissioning (Phased / Salvage Value)
- Glare Standards
- Continuing Escrow Enforcement
- Fees / Escrow for Local Zoning Review
- Post-Construction Sound and Glare
- Roadway Repair / Transportation Agreements
- Landscaping Screening
- Complaint Resolution Process
- Insurance Requirements

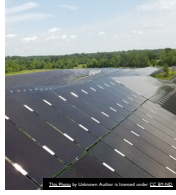
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PATHWAYS UNDER STATE SITING

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PATHWAY I – MPSC PROCESS

- Not mandatory
- Does not apply if “affected local unit” has “compatible renewable energy ordinance”
- Initiated by developer applying for “certificate” from MPSC
- Municipality with zoning power can require this process. PA 233, Section 222(2).



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PATHWAY I –MPSC PROCESS (STEPS)



1. Filing of “site plan” and application for certificate
2. Public meeting at municipality
3. Meeting with Supervisor or designee
4. MPSC grant (up to \$75,000) to municipality for MPSC participation
5. “Contested Case” proceeding
6. MPSC decision on application
7. “Host Community Agreement” (payment of \$2,000 per megawatt)




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PATHWAY I – MPSC PROCESS (FACTORS & REQUIREMENTS)

- PA 233, Section 226(8) – “Performance Criteria” (See prior slides)
- PA 233, Section 224 (Site Plan)
 1. Location and description of project
 2. Anticipated impacts on environment and natural resources
 3. Additional information required by MPSC rule




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PATHWAY I – MPSC PROCESS (FACTORS & REQUIREMENTS)


- PA 233, Section 225 (Application to MPSC)
 1. Expected public benefits
 2. Impacts to environment
 3. Soil and economic survey report
 4. Feasible alternative development locations (brownfields)
 5. Stormwater assessment
 6. Fire and emergency response plan
 7. Decommissioning plan




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PATHWAY I – MPSC PROCESS (FACTORS & REQUIREMENTS)


- PA 233, Section 226(6) and (7) (MPSC Consideration Factors)
 1. Public benefits justify construction
 2. Compliance with environmental laws
 3. Consideration and addressing environmental impacts
 4. Prevailing wage will be used
 5. No unreasonable diminishment farmland
 6. Percentage of lands dedicated to energy generation






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PATHWAY 2 – “COMPATIBLE RENEWABLE ENERGY ORDINANCE” (PA 233, SECTION 223)



- Not mandatory for municipalities
- Ability to inform developer that it has a “compatible renewable energy ordinance”
- 120 days (or 240 with extension) to consider project locally
- Ordinance can’t be more restrictive than Section 226(8)
- If denied, generally goes to MPSC
 - Improper “compatible” ordinance denials could lose a municipality the ability to receive funding in MPSC or to receive funding under community host agreement




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PATHWAY 3 – LOCAL ZONING

- Developers can choose to work under local ordinance (at their option)
- Traditional zoning process would occur
- For this to work, developers will likely want to use what they'd consider a "reasonable ordinance"



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OPEN QUESTIONS (STATE SITING)

1. How "compatible" is compatible? If PA 233 is silent on zoning conditions, are they more restrictive?
2. What factors of review will the MPSC value?
3. Does not tying "affected local unit" definition to a zoning jurisdiction allow counties to have compatible renewable energy ordinances with other jurisdictions?
4. MPSC Case No. U-21547
 - March 2024 public meetings with local units
 - June 21, 2024 submission dates for compatible ordinances from staff.
 - Comments on staff recommendation July 17, 2024





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BALLOT MEASURE?

- Ballot measure "Citizens for Local Choice" would reverse state siting legislation and return review and approvals to local control
- Endorsed by Michigan Townships Association
- Statewide ballot initiatives have large signature requirements to get on the ballot and often result in legal challenges
- <https://www.miccitizenschoice.org/>





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QUESTIONS

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