

MICHIGAN COURT OF APPEALS

In re Implementing Provisions of Public Act 233 of 2023

In re Implementing Provisions of Public Act 233 of 2023 · No. 373259 · Decided May 7, 2026

SUMMARY

The Michigan Court of Appeals reviews an October 10, 2024 Michigan Public Service Commission order implementing 2023 Public Act 233, which governs certification and siting of certain wind, solar, and energy storage facilities. The court holds that the Commission incorrectly interpreted one statutory timeline and improperly narrowed the definition of an affected local unit, but otherwise upholds its interpretations, including its construction of compatible renewable energy ordinances and hybrid facilities. The court also concludes that the Administrative Procedures Act rulemaking requirements did not apply to the Commission’s order, affirming in part and reversing in part.

CASE DETAILS

COURT	Michigan Court of Appeals
WRITING FOR THE COURT	Christopher M. Murray; Michael F. Gadola, Chief Judge; Michael J. Kelly
JURISDICTION	Michigan Court of Appeals
DECIDED	May 7, 2026
DOCKET	373259
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellants appealed as of right from an October 10, 2024 order of the Michigan Public Service Commission implementing provisions of 2023 Public Act 233 concerning certification and siting of certain wind, solar, and energy-storage facilities.
STANDARD OF REVIEW	The court reviewed the PSC's statutory interpretations de novo, while respectfully considering those interpretations and overturning them when cogent reasons existed, including when the agency rewrote clear statutory language. Ripeness was reviewed de novo. Whether an administrative policy was invalid for failure to undergo APA rulemaking was reviewed de novo as a question of law.
PRECEDENTIAL VALUE	published
PARTIES	Almer Charter Township, Argentine Township, Augusta Charter Township, Beaver Township, Bengal Township, Bingham Township,

Blissfield Township, Bridgehampton Township, Brockway Township, Cascade Charter Township, Cato Township, Clinton County, Cohoctah Township, Columbia Township, Columbus Township, Conway Township, Cooper Charter Township, Dallas Township, Deerfield Township, Denmark Township, Douglass Township, Duplain Township, Eagle Township, Easton Township, Ellington Township, Elmwood Township, Escanaba Township, Frankenlust Township, Fremont Township, Garden Township, Garfield Township, Genoa Township, Handy Township, Ida Township, Ingham Township, Ionia County, Iosco Township, Isabella Township, Joyfield Township, Juniata Township, Kawkawlin Township, Keene Township, Kimball Township, Lake Township, Leroy Township, Marion Township, Marion Township, Milan Township, Monitor Charter Township, Montague Township, Montcalm Township, Moore Township, North Branch Township, Ogden Township, Orleans Township, Riga Township, Sanilac County, Schoolcraft County, Seville Township, Shiawassee County, Sidney Township, Speaker Township, Stockbridge Township, Summerfield Township, Tuscola County, Tyrone Township, Venice Township, Wales Township, Waterloo Township, Watertown Township, White Oak Township, White River Township, Williams Charter Township, Worth Township, York Charter Township, Paris Township v. Michigan Public Service Commission

TOPICS

judicial review of agency action

statutory interpretation

administrative procedure act

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PRACTICE AREAS

administrative law

municipal law

energy regulation

statutory interpretation

appellate procedure

QUESTIONS PRESENTED

1. Whether the appellants' challenge to the PSC's implementation order was ripe for judicial review.
2. Whether the PSC correctly interpreted the statutory definition of a compatible renewable energy ordinance under 2023 PA 233.
3. Whether the PSC improperly limited the statutory definition of an affected local unit to local governments exercising zoning jurisdiction.
4. Whether the PSC properly recognized hybrid energy facilities and applied the applicable statutory capacity thresholds.
5. Whether the PSC correctly interpreted the 30-day timeline for notification that an affected local unit has a compatible renewable energy ordinance.

6. Whether the PSC's implementation order was a rule requiring formal promulgation under Michigan's Administrative Procedures Act.

HOLDINGS

1. The challenge was ripe because the PSC's order made threshold determinations regarding the meaning and operation of Public Act 233 that had present real-world implications and did not depend on a further PSC decision.
2. A compatible renewable energy ordinance may contain only requirements expressly outlined in MCL 460.1226(8) and may not add requirements or categories of requirements that are more restrictive than those provisions.
3. The PSC improperly limited an affected local unit to a local government exercising zoning jurisdiction. Under MCL 460.1221(a) and (n), an affected local unit includes every county, township, city, or village in which all or part of a proposed energy facility will be located.
4. The PSC did not exceed its authority by recognizing hybrid energy facilities and applying the higher applicable capacity threshold when multiple technology types are combined.
5. The PSC incorrectly changed the statutory 30-day period. The period begins after the actual meeting between the developer and the chief elected official or designee, not upon receipt of the developer's written offer to meet.
6. The PSC's order was not subject to the APA's formal rulemaking requirements because it interpreted statutes and exercised permissive statutory authority rather than establishing a regulation or policy having the force and effect of law.

KEY QUOTATIONS

"We hold that (1) the PSC incorrectly interpreted PA 233 with respect to a statutory timeline, (2) the PSC improperly expanded the statutory definition of an affected local unit (ALU), but did not otherwise err in its interpretations of PA 233, and (3) the rulemaking requirements within the Administrative Procedures Act of 1969 (APA), MCL 24.201 et seq., do not apply to the PSC's order." (2)

"The statutory definition of ALU is plain and unambiguous: it includes all local units of government where a proposed energy facility will be located." (14)

"The PSC thus incorrectly interpreted PA 233 with respect to the statutory timeline." (15)

"Through this order the PSC did not establish a regulation or policy having the force and effect of law." (17)

FACTUAL BACKGROUND

Public Act 233 of 2023 added Part 8 to Michigan's Clean and Renewable Energy and Energy Waste Reduction Act, authorizing the PSC to certify certain large wind, solar, and energy-storage facilities. The PSC issued an implementation order interpreting the terms compatible renewable energy ordinance and affected local unit, recognizing hybrid facilities, establishing application procedures, and setting a timeline for local officials to notify developers of a compatible ordinance. The appellant townships and counties challenged the PSC's interpretations and argued that the order was an unpromulgated rule under the Administrative Procedures Act.

PROCEDURAL HISTORY

The Michigan Public Service Commission opened a docket on its own motion to implement Public Act 233, held eight public meetings, received staff recommendations and more than 100 comments, and issued an order on October 10, 2024. The affected townships and counties appealed as of right to the Michigan Court of Appeals. The Court of Appeals affirmed in part, reversed in part, and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The matter was remanded for further proceedings consistent with the opinion, including correction of the PSC's affected-local-unit interpretation and statutory timeline. The court did not retain jurisdiction.

CASES CITED

- King v Mich State Police Dep't, 303 Mich App 162, 188; 841 NW2d 914 (2013)
- Van Buren Charter Twp v Visteon Corp, 319 Mich App 538, 553; 904 NW2d 192 (2017)
- Taxpayers of Mich Against Casinos v Michigan, 471 Mich 306, 333, 336; 685 NW2d 221 (2004)
- In re Reliability Plans of Electric Utilities for 2017-2021, 325 Mich App 207, 218; 926 NW2d 584 (2018), rev'd on other grounds, 505 Mich 97 (2020)
- In re Reliability Plans of Electric Utilities for 2017-2021, 505 Mich 97, 118-119; 949 NW2d 73 (2020)
- Bonter v Progressive Marathon Ins Co, ___ Mich ___, ___; 21 NW3d 908, 909 n 4 (2025)
- In re Complaint of Rovas Against SBC Mich, 482 Mich 90, 93; 754 NW2d 259 (2008)
- In re Procedure & Format for Filing Tariffs Under Mich Telecom Act, 210 Mich App 533, 548-550; 534 NW2d 194 (1995)
- DeRuiter v Byron Twp, 505 Mich 130, 134-140; 949 NW2d 91 (2020)
- Consumers Power Co v Public Service Commission, 460 Mich 148, 156; 596 NW2d 126 (1999)
- People v Davis, 337 Mich App 67, 78; 972 NW2d 304 (2021)
- People v Gardner, 482 Mich 41, 50; 753 NW2d 78 (2008)
- Honigman Miller Schwartz & Cohn LLP v Detroit, 505 Mich 284, 307; 952 NW2d 358 (2020)
- People v Mazur, 497 Mich 302, 313; 872 NW2d 201 (2015)
- In re Implementing Section 6w of 2016 PA 341 for Cloverland Electric Coop, 329 Mich App 163, 177-178; 942 NW2d 38 (2019)
- Faircloth v Family Independence Agency, 232 Mich App 391, 401, 404; 591 NW2d 314 (1998)
- O'Halloran v Secretary of State, 515 Mich 606, 635-638; 29 NW3d 429 (2024)
- Michigan Farm Bureau v Department of Environment, Great Lakes, & Energy, 515 Mich 481, 524, 526; 28 NW3d 629 (2024)
- Michigan Trucking Ass'n v Michigan Public Service Commission (On Remand), 225 Mich App 424, 430; 571 NW2d 734 (1997)

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