

Please Consider the MPSC Option Before Amending Gratiot County's Ordinance

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Commissioners and Administrator Dolehanty,

I have spent considerable time reviewing PA 233, the MPSC process, and the information Honeyoye Creek/libV Energy Partners presented to the County. Before any decision is made to amend Gratiot County's existing solar ordinance to become a CREO, I hope you will carefully consider whether allowing the developer to pursue the MPSC process may actually provide some important advantages to the County and affected property owners.

The legal landscape surrounding PA 233 is still developing. Litigation over the implementation of this law is not necessarily finished, and we are only months away from an election that could affect the future direction of Michigan energy policy. With that uncertainty, I question the need to permanently change an existing County ordinance now. Determining that your ordinance is not a CREO and deciding to amend your ordinance to become one are two separate decisions.

Honeyoye's own "Why Work Together?" presentation lays out two paths: Gratiot County adopts CREO amendments and Honeyoye is permitted locally, or the ordinance remains unchanged and Honeyoye seeks permitting through the MPSC. I believe that second option deserves much more consideration.

There seems to be a widespread assumption that if a community does not adopt a CREO and the project goes to the MPSC, the community loses the financial benefits. Honeyoye's own presentation shows otherwise. Their chart estimates approximately \$9 million in 20-year PILT revenue under BOTH options. Under the MPSC route, PA 233 also provides for a \$2,000-per-MW host-community payment to affected local units. So the choice is not simply CREO = money and MPSC = no money. The real question is: How much additional money is being offered for changing your ordinance, and what exactly are you being asked to change in return?

That question becomes especially important because Honeyoye's own Code Analysis identifies Gratiot County's decommissioning financial assurance requirements — specifically the timing, amount and scope — as differing from the PA 233 standards. Before changing those provisions, I believe the County should require a clear explanation of exactly what Honeyoye wants changed and why.

You are being presented with millions of dollars in projected financial benefits over the next 20 years, but you also need to think about who bears the financial risk 30 or 40 years from now. Honeyoye Creek, LLC may not own this project for its entire life. Projects are sold, companies merge, ownership changes, and businesses can become insolvent or bankrupt. The important question isn't simply who promises to decommission the project; it is where will the money actually be? What financial instrument guarantees decommissioning, who controls it, is it protected in the event of insolvency or bankruptcy, does it follow every successor owner, and will it remain sufficient to cover the actual future cost of removal and restoration? Before weakening any existing financial assurance, those questions deserve answers.

I also think there is a misconception that going to the MPSC means the project simply gets approved by the state. It does not. Honeyoye would still have substantial requirements to satisfy through a formal application and contested-case process. There are also consultations and potentially separate regulatory requirements involving agencies and entities such as EGLE, MDARD, DNR, U.S. Fish & Wildlife Service, the State Historic Preservation Office, tribal representatives and the applicable County Drain Office. Wetlands, waterways, drains, agriculture, wildlife and other regulatory responsibilities do not simply disappear because the MPSC becomes the siting authority. Honeyoye would still have to address decommissioning and financial assurance, and the MPSC can impose conditions upon a certificate.

Another important part of the MPSC process is something I don't believe many residents realize: participating and nonparticipating property owners may intervene by right. That is much different from attending a local public hearing and giving a few minutes of public comment. An intervenor becomes an actual party to the contested case and can present testimony and evidence, participate in discovery, challenge the developer's evidence, cross-examine witnesses, file motions and briefs, and help build the formal evidentiary record. Gratiot County and other qualifying affected local units can intervene as well, with PA 233 providing funding to assist local governments with the cost of participating.

That formal evidentiary record could also become extremely important. If the MPSC ultimately approves a project and that decision is later challenged, the administrative record matters. Issues generally need to be raised and preserved for judicial review. In other words, an MPSC proceeding is not necessarily the end of opposition or scrutiny of a project. It can be the place where the factual and legal record is built. The County could put its Master Plan, farmland-preservation concerns, drainage and road issues, expert testimony and other evidence directly into that record, while affected property owners could present evidence concerning impacts on their own properties.

Finally, this decision extends far beyond Honeyoye. There are other landowners throughout Gratiot County who have entered into leases or options for future energy development, and whatever the County does here will be watched by developers that may come next. If Gratiot County changes its ordinance at the request of this developer, those changes may establish the framework for future projects.

The County can determine that your existing ordinance is not a CREO without automatically deciding that we must change it. If the County keeps its ordinance, Honeyoye then has to decide whether it wants to undertake the MPSC process.

I understand that retaining local permitting authority has value, but I don't think the MPSC option should automatically be viewed as Gratiot County losing everything. The County does not necessarily lose the PILT or all financial benefits. It does not lose its ability to participate. Other regulatory agencies do not disappear. Honeyoye still has substantial requirements to satisfy, and affected nonparticipating property owners gain the significant right to intervene as parties.

Before changing an ordinance that was adopted to protect Gratiot County, I hope the Board will ask one simple question:

What exactly does Gratiot County gain by changing its ordinance that it would not have if it kept the ordinance, intervened at the MPSC, and required Honeyoye to prove its case there — and what protections would you give up in exchange?

I believe that question deserves a complete answer before any ordinance amendments are considered.

I hope this information was helpful.

Sheila Salmon