



## ENVIRONMENTAL LAW & POLICY CENTER

April 13, 2026

Ms. Lisa Felice  
Michigan Public Service Commission  
7109 W. Saginaw Hwy.  
P. O. Box 30221  
Lansing, MI 48909

RE: MPSC Case No. U-21985

Dear Ms. Felice:

Attached for paperless electronic filing is the Opening Brief of Michigan Trout Unlimited, Michigan Steelhead and Salmon Fishermen's Association, the Great Lakes Council of Fly Fishers International, Anglers of The Au Sable, and the Michigan Hydro Relicensing Coalition (together, "MHRC"). Proof of service is also attached.

Please note that Opening Brief contains confidential information and has been redacted for this public filing. The full unredacted and confidential version has been directly sent to [LARA-MPSC-Confidential-Filings@michigan.gov](mailto:LARA-MPSC-Confidential-Filings@michigan.gov) to be filed under seal.

Thank you,

Daniel Abrams (P87696)  
Environmental Law & Policy Center  
dabrams@elpc.org

cc: Service List, Case No. U-21985

HQ: 35 East Wacker Drive | Suite 1600 | Chicago, IL 60601

ELPC.org | (312) 673-6500

Manny Flores, Chair | Howard A. Learner, Executive Director

Illinois | Indiana | Iowa | Michigan | Minnesota | North Dakota | Ohio | South Dakota | Wisconsin | Washington D.C.



**STATE OF MICHIGAN**

**BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION**

---

In the matter of the application of	)	
Consumers Energy Company for	)	
approval of the sale of its River	)	Case No. U-21985
Hydroelectric Generating Fleet, related	)	
Power Purchase Agreement, and other	)	
relief.	)	

---

**OPENING BRIEF OF**

**MICHIGAN TROUT UNLIMITED, MICHIGAN STEELHEAD AND SALMON  
FISHERMEN’S ASSOCIATION, THE GREAT LAKES COUNCIL OF FLY  
FISHERS INTERNATIONAL, ANGLERS OF THE AU SABLE, AND  
MICHIGAN HYDRO RELICENSING COALITION**

**PUBLIC**

**April 13, 2026**

## TABLE OF CONTENTS

<b>I. INTRODUCTION .....</b>	<b>1</b>
<b>II. FACTS .....</b>	<b>7</b>
A. Consumers Energy’s 13 Hydro Dams and the Five Iconic Michigan Rivers .....	7
B. Consumers Energy’s Proposed Sale of the 13 Dams .....	8
C. Financial Risks of the Proposed Dam Sale .....	9
D. Environmental Risks of the Proposed Dam Sale .....	10
E. Consumers Energy’s Flawed Business Cases and Alternatives Analysis .....	11
F. Natural Resource Value of Dam Removal .....	14
<b>III. LEGAL STANDARD.....</b>	<b>15</b>
A. Sale of Jurisdictional Assets Under MCL 460.6q .....	15
B. Approval of PPA and FCM Under MCL 460.6j. ....	16
C. Burden of Proof.....	17
<b>IV. THE PROPOSED TRANSACTION WILL HAVE AN ADVERSE IMPACT ON RATES BECAUSE THE SALE IS MORE COSTLY THAN THE ALTERNATIVES .....</b>	<b>17</b>
A. Consumers Energy Significantly Inflated Its Decommissioning Estimates .....	19
1. Consumers Energy Failed to Sample Sediment Quantity and Composition Rendering Their Estimates Inaccurate .....	22
2. Consumers Energy’s Cost Estimates Include a Set of Unnecessary Activities That Inflate Total Cost .....	24
3. MHRC and Other Intervenors Demonstrated That Lower Decommissioning Costs Are Probable and Produce Lower Overall Costs .....	25
B. Consumers Energy Has Not Adequately Explained Why Confluence Hydro Can Operate the Dams at A Significantly Lower Cost.....	30
C. Parties Supporting the Sale Made Several Other Flaws and Omissions in Their Analysis.....	33
1. Consumers Energy Skewed the Alternatives Analysis by Excluding the Value of 32,000 Acres of Land Around the Dams from the Sale/PPA Option .....	33
2. MPSC Staff and the Attorney General Incorrectly Identify the Sale/PPA as the Lowest Cost Option .....	34
D. The Commission Should Reject Consumers Energy’s Proposal to Apply the Financial Compensation Mechanism to Further Profit on the Power Purchase Agreement.....	37
<b>V. THE PROPOSED TRANSACTION WILL HAVE AN ADVERSE IMPACT ON THE PROVISION OF SAFE, RELIABLE, AND ADEQUATE ENERGY SERVICE .....</b>	<b>39</b>

A.	Private Equity Firm Ownership of the 13 Dams Would Jeopardize Safe and Reliable Operation-Namely, Dam Safety .....	40
1.	MHRC’s Business Case Analysis Shows Confluence Will Likely Underinvest in Dam Safety or Will Divest Unprofitable Dams .....	44
2.	FERC Oversight Is Not Sufficient .....	50
3.	The history of private dam ownership in Michigan shows what will happen when an owner is unwilling or unable to safely maintain and operate its dams	55
B.	If the Sale is Approved, Confluence Hydro Can, In Turn, Sell Some or All of the 13 Dams to Some Other Entity .....	57
<b>VI.</b>	<b>THE COMMISSION SHOULD NOT ALLOW CONSUMERS ENERGY TO IGNORE THE VALUE OF THE LAND IN THE BUSINESS CASE ANALYSIS OF THE PROPOSED SALE .....</b>	<b>59</b>
<b>VII.</b>	<b>THE PROPOSED SALE IS CONTRARY TO SOUND PUBLIC POLICY AND THE PUBLIC INTEREST .....</b>	<b>62</b>
A.	Commission Approval of the Sale Would Create an Untenable Amount of Risk for the State of Michigan .....	63
1.	The proposed transaction transfers significant liability from Consumers to Confluence without any assurance that Confluence will have the financial resources to address those liabilities .....	63
2.	The structure of the transaction means that the State will bear the risk if anything goes wrong .....	66
B.	The Lands and Rivers Around the Dams are Valuable Michigan Natural Resources, and It Is in the Public Interest to Have Commission Oversight of the Dams’ Impact on Them .....	68
1.	The dams impair the water quality of these rivers and neither Consumers Energy nor Confluence Hydro have a remediation plan .....	69
2.	MHRC demonstrates that the recreational, economic, and property value of free-flowing rivers offsets any negative impacts of dam removal .....	70
<b>VIII.</b>	<b>THE COMMISSION MUST APPLY MICHIGAN’S PUBLIC TRUST DOCTRINE</b>	<b>72</b>
<b>IX.</b>	<b>THE COMMISSION MUST CONDUCT A MEPA REVIEW AND DETERMINE THE EXTENT TO WHICH THE PROPOSED SALE OF THESE DAMS IMPAIRS MICHIGAN RIVERS.....</b>	<b>76</b>
<b>X.</b>	<b>CONCLUSION .....</b>	<b>79</b>

## I. INTRODUCTION

The Michigan Public Service Commission (“Commission”) should deny approval of Consumers Energy’s proposed transaction because it is contrary to law, sound public policy, the facts in the record, fundamental fairness and common sense. The Commission must exercise its constitutional and statutory responsibility to protect Michigan ratepayers, rivers and taxpayers now and for the future.

Consumers Energy owns and operates thirteen hydroelectric dams on five iconic rivers in Michigan. The dams, on average, are more than 100 years old, and the existing FERC licenses for many of the dams expire in the early 2030s. Consumers Energy now proposes to sell the dams to a Maryland-based private equity firm, Hull Street Energy, through its newly-created Hull Street Energy Partners III, LP, and, in turn, its newly created wholly-owned subsidiary, Confluence Hydro, for \$1 each, combined with buying the power back through an over-priced Power Purchase Agreement (“PPA”) at about double the current rate. Consumers Energy states that its intended purpose of this proposed deal is to transfer its financial and environmental responsibilities and liabilities risks to the out-of-state private equity firms: The proposed deal *“allows Consumers Energy to transfer substantial future operational and environmental liabilities and risk to Confluence.”* Consumers Energy (“CE”) Application at 1 (emphasis added). Michigan Trout Unlimited, Michigan Steelhead and Salmon Fisherman’s Association, Great Lakes Council of Fly Fishers International, Anglers of the Au Sable and the Michigan Hydro Relicensing Coalition (collectively, “MHRC”) join Michigan DNR and ABATE in opposing this unfair, imbalanced and unreasonable proposed transaction. Consumers Energy’s proposal does not comply with governing law, overcharges utility ratepayers and worsens energy affordability both in the short-term and long-run, is contrary to sound public policy, puts dam safety and

Michigan taxpayers at risk, undermines conservation goals for Michigan's great river resources, and, overall, does not serve the public interest.

Consumers Energy has not even come close to meeting its burden of proof under applicable Michigan statutory standards to justify the Michigan Public Service Commission's approval of its proposed transaction. MCL 460.6q(7). Hull Street Energy and Confluence Hydro defaulted by failing to provide any testimony at all in this case, and by providing little detail in response to substantive discovery requests. They are playing "hide the ball" and essentially saying that the Commission should base its decision on "trust us." Hull Street Energy is a private equity firm that answers to its investors who are seeking and expecting to receive much higher profits than Consumers Energy's 9.9% return on equity, otherwise the investors could simply buy stock in Consumers Energy. Moreover, on top of all the risks that Michigan faces with the deal as proposed, Consumers Energy proposes to (mis-)apply a financial compensation mechanism ("FCM") to gain an 8.75% rate of return on the PPA.

The Commission must make its legal determination based on the record evidence, statutory standards and sound public policies, and exercise its required oversight for the benefit of the State of Michigan and its citizens. For the reasons explained in more detail below and summarized here, the Commission should not approve Consumers Energy's proposed sale and PPA because:

**1. The record evidence shows that the Consumers Energy's Sale/PPA option is the most costly alternative to ratepayers, introduces unnecessary financial and safety risk for the State of Michigan, and is contrary to both sound public policy and to the public interest.**

**2. Three of these rivers—the Au Sable, Manistee and Muskegon—are premier coldwater streams in the Midwest, supporting excellent fisheries and ecosystems. Seelbach**

Direct, 3 TR 458. These rivers are significant public trust resources which belong to the people of Michigan, and which the State is bound to protect. *Collins v. Gerhardt*, 237 Mich. 38, 46-48 (1926). Selling the dams would violate this public trust because the Commission would lack ongoing oversight of the dams.

**3. Consumers Energy has repeatedly emphasized Confluence Hydro's intention to operate the dams for the long term, but nothing in the record substantiates those assurances.** *See, e.g.*, Blumenstock Direct, 3 TR 48; Ex. MHRC-42. Hull Street Energy, Hull Street Energy Partners III, LP and its wholly owned, new subsidiary Confluence Hydro have no obligation to continue operating any of the dams, Ex. MHRC-47; Ex. MHRC-67. They can bankrupt any of the dams the day after Commission approval and can sell the dams to some other third-party as it pleases if it is in their own financial interests to do so. Ex. MHRC-48. **BEGIN**

**CONFIDENTIAL** [REDACTED]

[REDACTED] **END CONFIDENTIAL.** Hull

Street Energy's track record says it all: They have sold 46 of 47 dams they have owned, many within three years, and all but one within about five years. Ex. MHRC-45.

**4. The Commission approving the sale of these 13 dams to the private equity firms would undermine the State's ability to ensure dam safety.** Consumers Energy has incentives to operate the dams in the best interests of ratepayers and the Michigan public under the Public Service Commission's oversight, while Confluence Hydro will operate the dams for the best interests of its investors. Confluence Hydro will argue that it is not answerable to the State of Michigan's public officials, ratepayers, and taxpayers. Ex. MHRC-49. FERC regulation is not sufficient to protect Michigan and its citizens.

**5. Consumers Energy has not demonstrated that Confluence Hydro—or more accurately, the separate, individual LLCs for each of the 13 dams—has adequate capital or cash flow to cover the substantial operational, financial, and environmental liabilities and responsibilities that attach to Confluence Hydro’s ownership of the dams.** Consumers Energy intends to transfer “all liabilities, including environmental liabilities” from itself to Confluence Hydro, which it describes as “the most significant benefit” of the transaction. CE Application at 4; *see* Ex. MHRC-12. The record plainly shows an unacceptable level of risk that Confluence Hydro will underinvest, at best, or abandon, at worst, some of the dams. Jester Direct, 3 TR 621–23. The structure of the transaction transfers too many risks to the State of Michigan and its taxpayers and ratepayers. Wedoff Rebuttal, 3 TR 503.

**6. Consumers Energy failed to support its proposal with an accurate assessment of reasonable alternatives such as decommissioning or relicensing the dams, or a combination of the two.** Consumers Energy skewed the alternatives analysis by (a) declining to include the value of the land it plans to sell to Confluence, worth roughly \$167 million; (b) failing to conduct basic due diligence around its decommissioning scenario, resulting in uncertain and incomplete estimates which Michigan DNR expert Witness Lucas Trumble (Supervisor of EGLE’s Dam Safety Unit) and MHRC expert Witness Martin Melchior of the Inter-Fluve consulting firm demonstrated to be excessively high; and (c) arguing that Confluence Hydro can somehow operate the dams, which the public utility has owned for over a century, at about half the cost, thereby pricing the relicensing scenario out of the analysis. Consumers Energy has agreed to transfer all of the employees currently running the dams to Confluence Hydro. CE Application at 5. The public utility fails to explain how the same employees, with the same experience, will now somehow run the dams for the 13 LLC’s for about 50% less costs. Hull Street Energy and

Confluence Hydro have submitted *no* testimony at all explaining how they would achieve this cost reduction.

These omissions are not some bookkeeping quirks—they are inaccuracies that truly make a difference. Consumers Energy’s skewed analysis drives real rate impacts. The utility’s failure to properly assess decommissioning and relicensing costs leaves customers paying more at a time when bills are already increasing.

**7. The risks of private ownership and “judgment proof” LLCs are not hypothetical, and Michigan public officials have unfortunately learned the hard lessons.** The State is still dealing with the liabilities and property damage from Boyce Hydro, LLC’s Edenville Dam breach and Sanford Dam failure on the Tittabawassee River in Midland County in 2020. Ex. MHRC-63; Lyon Direct, 3 TR 678–79. Now, UP Hydro, LLC is abandoning its responsibilities and liabilities for the Au Train Dam in Alger County. Ex. DNR-4. The gaps in FERC regulation and the importance of continuing state oversight led Michigan DNR to take the unprecedented step to intervene in this case to oppose the sale. DNR expert Witness Jessica Mistak testified that Confluence Hydro has an “unproven track record,” and the Department opposes the sale. Mistak Revised Direct, 3 TR 400.

**8. In Case No. U-21783, the Commission will be addressing Consumers Energy’s proposal to wipe off its books the millions of dollars that it has charged and collected from Michigan ratepayers through depreciation expenses over the years for the future decommissioning of the dams.** Consumers Energy is selling the 13 dams to Confluence Hydro for only \$1 each while they are fully depreciated. For years, Consumers Energy has been depreciating the investment in the dams and saving towards decommissioning through depreciation rates. If this proposed sale is approved and Consumers Energy’s responsibility to

decommission the dams is transferred to the private equity firm purchasers, then Consumers Energy plans to “clear” from its books the hundreds of millions of dollars for decommissioning that it has been charging to ratepayers for many years through depreciation. *See Coker Direct*, 3 TR 226. MHRC and other parties have intervened in Case No. U-21783.

**9. A broad coalition of conservation, community, business, and state agency intervenors opposes the proposed sale.** MHRC represents five conservation groups, with longstanding interests in these dams, dating back to the last relicensings in the early 1990s. MHRC is joined in opposition by Michigan DNR and ABATE. While MPSC Staff and the Michigan Attorney General sought to add conditions to the sale to protect customers, Consumers Energy demands no changes and presented an “all or nothing” position in rebuttal testimony, stating: “Any conditions or adjustments to the transaction are not appropriate and Confluence Hydro and Consumers Energy are not open to their consideration.” *Blumenstock Rebuttal*, 3 TR 74.

When the Commission adds it all up, Consumers Energy has failed to meet its burden of proof to demonstrate with sufficient record evidence that its proposed asset sale, the PPA with its escalators, and the FCM meets the statutory standards that apply to the Commission’s determination in this case. MHRC and other intervenors have submitted evidence demonstrating that: (1) the Sale/PPA option is the most expensive option, thereby adversely impacting rates; (2) the structure of the transaction and the nature of FERC regulation incentivize Confluence Hydro to underinvest in or abandon the dams and declare bankruptcy for each, some, or even all of the 13 separate LLC owners; (3) Consumers Energy’s failure to incorporate the value of the land around the dams into the proposed sale improperly subsidizes Confluence Hydro at the expense of ratepayers; and (4) the sale is plainly contrary to the public interest and sound public policy.

Therefore, the Commission should not approve Consumers Energy’s proposed sale of its hydroelectric dam fleet, the proposed PPA, and other components of its proposed transaction.

## II. FACTS

### A. Consumers Energy’s 13 Hydro Dams and the Five Iconic Michigan Rivers

Consumers Energy operates 13 hydroelectric dams (“dams”) located on five rivers in Michigan’s Lower Peninsula. Blumenstock Direct, 3 TR 259. The dams were constructed between 1905 and 1936, CE Application at 2, on the Au Sable, Grand, Kalamazoo, Manistee and Muskegon Rivers. The dams have a nameplate capacity of 132 megawatts and produce roughly 439,462 MWh per year. Blumenstock Direct, 3 TR 43, 60.

The Au Sable, Manistee, and Muskegon Rivers are some of the finest groundwater-fed coldwater streams in the United States. Seelbach Direct, 3 TR 458; *see also* Ex. MHRC-2. These three rivers are unique and “significant natural resources” because they have “very high groundwater feeds,” which “provide exceptional cold-water habitats that support recreational trout fishing.” Seelbach Direct, 3 TR 457. The dams and impoundments adversely impact these watersheds and ecosystems by flooding important riverine habitat and by raising water temperatures and reducing dissolved oxygen in the waters. *Id.* at 462–63; Ex. DNR-12 at 1.

MHRC’s local river experts’ testimony explains the “unique,” “special,” waterways they live and recreate near, *see, e.g.*, Greenberg Direct, 3 TR 722; Pitser Direct, 3 TR 748; Sendek Direct, 3 TR 730; and the detrimental impact of the dams on the ecosystem, *see, e.g.*, Nelkie Direct, 3 TR 713–14; Garlock Direct, 3 TR 758; Buhr Direct, 3 TR 740–41. MHRC Witness Pitser captured the local river experts’ concerns, explaining, “[t]his area is especially dear to me for the fishery it supports. I am concerned that the proposed sale of the hydro dams from Consumers Energy to Confluence Hydro is not in the best interest of the public. Privatizing

hydro dams in Michigan has historically had disastrous consequences for our rivers and public use of lands that surround the rivers and dam locations.” Pitser Direct, 3 TR 749. Several witnesses recognized Consumers Energy’s generally responsible ownership over the last century, and they questioned whether Confluence Hydro will carry forward the same commitment to safety. *See, e.g.*, Greenberg Direct, 3 TR 724.

**B. Consumers Energy’s Proposed Sale of the 13 Dams**

On October 31, 2025, Consumers Energy filed its proposal to sell the 13 dams to Confluence Hydro, a newly-created subsidiary of Hull Street Energy Partners III, LP (“HSE Fund III”). CE Application at 1. Hull Street Energy is a Maryland-based private equity firm, which has investors in its separate, HSE Fund III, which, in turn, created Confluence Hydro. *See* Lyon Rebuttal, 3 TR 696; *see also* Ex. MHRC-68. **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **END CONFIDENTIAL.**

Consumers Energy proposes that the Commission approve:

- The proposed asset sale of the 13 hydro dams to Confluence Hydro for the price of \$1 for each dam. CE Application at 4.
- The proposed power purchase agreement (“PPA”) as part of the transaction, which commits Consumers Energy to buy back the power generated by the dams at the rate of \$160/MWh, with provisions to escalate that rate annually, and to escalate for cost overruns on key projects. *Id.* at 5. *The \$160/MWh PPA is more than double Consumers Energy’s projected costs for replacement power.*
- Consumers Energy gaining a proposed extra financial compensation mechanism rate of return of 8.75% on top of the PPA from what are fully depreciated hydro dam assets. *Id.*

- Transferring the public utility’s employees that support the dams to Confluence Hydro. *Id.*
- The proposed Regulatory Disallowance Agreement (“RDA”), *id.* at 4, provides Confluence Hydro a mechanism to recover the contract revenues from Consumers Energy in the event that the Commission disallows any payments under the PPA. *Id.* at 5.
- The proposed Environmental Indemnity Agreement (“EIA”), which requires Confluence Hydro to maintain only \$2.5 million in a bank account or through a letter of credit, as well as obtain only \$50 million in insurance coverage. Blumenstock Direct, 3 TR 57.
- Transferring 32,000 acres of land adjacent to the dams to Confluence Hydro. *Id.* at 43.

### **C. Financial Risks of the Proposed Dam Sale**

Confluence Hydro plans to place each of the 13 dams into a separate LLC. Ex. MHRC-64; Ex. DNR-34. This structure “ring-fences” each asset, which would allow Confluence Hydro to bankrupt one or some of the LLCs to avoid liability while shielding the others from penalty or exposure. It also distorts incentives: each LLC weighs repair, safety, and operations costs against only its own projected revenues, creating a risk that its assets will be insufficient to cover damages from an accident or unexpected event. Lyon Direct, 3 TR 680. University of Michigan Ross School of Business Professor Thomas Lyon explained how this setup could encourage Confluence Hydro to defer necessary safety improvements when costs outweigh benefits—or even to bankrupt and abandon a dam when expenses far exceed expected revenue. *Id.* at 682, 685–86.

The Attorney General’s, MPSC Staff’s and Michigan DNR’s expert witnesses all also testified on the financial and environmental risks to Michigan and its taxpayers and ratepayers from Confluence Hydro’s proposed corporate structure. DeCooman Direct, 3 TR 850–56; Coppola Direct, 3 TR 1081–83; Mistak Revised Direct, 3 TR 400, 406–08. Confluence Hydro intervened in this case but did not file testimony at all. Hull Street Energy did not intervene.

#### **D. Environmental Risks of the Proposed Dam Sale**

Michigan has recent disastrous experience with undercapitalized privately-owned dams. In 2020, the Edenville Dam, owned by Boyce Hydro, LLC, failed after a heavy rain, sending a massive wave downstream that caused the Sanford Dam to overflow ten miles below. Lyon Direct, 3 TR 678; Ex. MHRC-63. The flooding caused an estimated \$200 million in damages and forced the evacuation of over 10,000 local residents in Midland County. Lyon Direct, 3 TR 678. UP Hydro, LLC, the owners of the Au Train Dam in Alger County, declared bankruptcy after FERC revoked the dam's license. *Id.* at 679. The Au Train Dam needs roughly \$4 million in repairs, which will likely fall on the State and the local community residents. *Id.* at 680; *see also* Ex. DNR-3 at 1-3.

Consumers Energy asserted that “[t]he PPA price is designed to ensure that Confluence will have sufficient annual revenues to fund capital and maintenance, and Confluence will be incented to safely and reliably operate the dams so that it can receive revenue, through the PPA price, for the entire term of the PPA.” Blumenstock Direct, 3 TR 47. Importantly, the proposed transaction allows Confluence Hydro to unilaterally increase the base price of the PPA through cost overruns on specific projects like the Hardy Dam Spillway and a set of other provisions. *Id.* at 53. Consumers Energy Witness Blumenstock argued that he “do[es] not believe that Confluence Hydro’s long-term ownership intentions are a legitimate concern.” *Id.* at 119.

Hull Street Energy has a track record of flipping dams. Since 2017, Hull Street Energy has owned 47 dams, and soon thereafter flipped all but one of them within approximately five years. Lyon Direct, 3 TR 689; Ex. MHRC-45. Hull Street Energy sold 32 of those dams within 3 years. Jester Direct, 3 TR 618; Ex. MHRC-45.

**BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. **END CONFIDENTIAL** As MHRC Witness

Jester testified, “Confluence Hydro has not demonstrated that it has a business plan or business case consistent with continuing to operate all of these hydroelectric facilities for the long term, particularly in a way that maintains high safety standards during operations....” Jester Direct, 3 TR 624.

**E. Consumers Energy’s Flawed Business Cases and Alternatives Analysis**

Consumers Energy presented a business case analysis of three alternatives, by evaluating costs under each scenario through the year 2086: (1) Sale/PPA; (2) Decommissioning; and (3) Relicensing. Blumenstock Direct, 3 TR 57; *see also* Ex. A-7. Consumers Energy converted those costs to a net present value in 2027 dollars to compare the relative financial outcome of each outcome. Blumenstock Direct, 3 TR 57.

On cross examination, Witness Blumenstock conceded that he has never worked on and has never managed a dam decommissioning in his career. Blumenstock Cross Exam, 3 TR 137. He nonetheless testified that the Sale/PPA was the least costly option for ratepayers.

---

<sup>1</sup> MHRC filed a corrected version of Witness Jester’s Confidential testimony that did not alter his public redacted version. References to Witness Jester’s testimony in the confidential transcript are referred to as “Jester Corrected Direct.” The same is of true for MHRC Witness Lyon’s testimony.

Blumenstock Direct, 3 TR 67; *see also* Ex. A-7. Witness Blumenstock projected that the total cost to ratepayers for the Sale/PPA option is \$1,251,902,000; the total cost to ratepayers for the decommissioning option is \$1,775,910,000; and the total cost to ratepayers for the relicensing option is \$1,842,130,000. Ex. A-7. Blumenstock concluded that the Sale/PPA option is roughly \$500 million less costly than decommissioning and just under \$600 million less costly than relicensing.

As part of its business case, Consumers Energy retained consultant WSP to create its decommissioning estimates. Blumenstock Direct, 3 TR 43. WSP, in turn, relied on prior decommissioning estimates conducted for Consumers Energy by Mead & Hunt. Ex. A-9. WSP produced a final Class 5 Association for the Advancement of Cost Engineering (“AAACE”) estimate of \$1,539,461,996, which under AAACE best practice is better expressed as between \$770 million and \$3.1 billion. Ex. A-9; *see* Melchior Direct, 3 TR 552.

MHRC Witness Melchior of the Inter-Fluve consulting firm, DNR Witness Trumble and DNR Witness Mistak submitted evidence pointing out flaws in the WSP study and projecting much lower costs for decommissioning. Mistak Direct, 3 TR 416–422. MHRC Witness Melchior, who has 30 years of extensive dam decommissioning and management experience, projects decommissioning costs ranging from \$489,983,318<sup>2</sup> to \$1,281,461,336. Melchior Direct, 3 TR 585. Michigan DNR Witness Trumble, who is the Michigan Department of Environment, Great Lakes, and Energy’s (“EGLE”) leading dam safety expert, identified numerous flaws in WSP’s assumptions; when he adjusted WSP’s estimate to reflect these flaws that lowered their high costs from \$1.5 billion to \$937 million. Trumble Direct, 3 TR 448.

---

<sup>2</sup> While the USGS model produced a broader range of numbers, MHRC focused its analysis on the upper 50% and upper 95% intervals, as discussed below in Section IV.A.3. Melchior Direct, 3 TR 585.

Intervenors MHRC, ABATE, the Michigan Attorney General and MPSC Staff each testified to their own business analyses that modified Consumers Energy's initial case. MHRC and ABATE each found that the Sale/PPA option was the most expensive option.

MHRC Witness Douglas Jester is a public utilities expert who has testified in over 70 proceedings, and he served as Michigan DNR's lead on hydro licensing in the 1980s and 1990s. Witness Jester testified about his alternatives analysis that reached a very different outcome than Consumers Energy's, and found that both relicensing and decommissioning the dams carried a lower cost than the Sale/PPA. Witness Jester concluded that decommissioning costs roughly \$310 million less than the Sale/PPA and \$175 million less than relicensing. Witness Jester projected that the total cost to ratepayers for the Sale/PPA option is \$1,421,568,000; the total cost to ratepayers for the decommissioning option is \$1,105,756,000; and the total cost to ratepayers for the relicensing option is \$1,283,805,000. Jester Direct, 3 TR 638.

ABATE also presented a comparative analysis of the three alternatives which concluded that the Sale/PPA option was the most expensive of the three alternatives. ABATE Witness Brian Andrews concluded that Consumers Energy materially inflated decommissioning costs and that a proper cost estimate for decommissioning would be 23% lower than the Sale/PPA. Andrews Direct, 3 TR 362. Similarly, Witness Andrews found that a more accurate cost estimate for relicensing would be 87% less expensive than the Sale/PPA. *Id.*

MPSC Staff and the Michigan Attorney General each conducted their own alternatives analysis which concluded that the Sale/PPA option was the least costly alternative. MPSC Staff Witness DeCooman made several adjustments to the Company's business case. Most importantly, he applied inflation to the cost of replacement power and thereby concluded that the Sale had the lowest overall cost and the lowest cost variance. DeCooman Direct, 3 TR 844.

Witness DeCooman supported the sale if a set of specific conditions were imposed to protect ratepayers. *Id.* at 857–59. Similarly, AG Witness Coppola made several adjustments to the business case, primarily reducing Consumers Energy’s overhead in the relicensing and decommissioning scenario by 20%, and he concluded that the Sale/PPA was the least cost option for customers. Coppola Direct, 3 TR 294. Witness Coppola proposed that a set of 13 conditions to modify the proposed transaction be imposed to protect ratepayers. *Id.* at 323–25.

#### **F. Natural Resource Value of Dam Removal**

Consumers Energy retained Public Sector Consultants to hold public engagement meetings and to assess the economic contribution and impact of the dams. Thompkins Direct, 3 TR 257–58. Public Sector Consultants conducted a limited review of the impacts of removing the impoundments, finding that partial or full removal would reflect a significant negative impact. *Id.* at 257.

MHRC Expert Witness Ben Scuderi, an economist with a master’s degree in resource economics and policy, conducted an analysis of the natural resource impacts of dam removal. First, Witness Scuderi reviewed existing academic literature on dam removal impacts on local economies and on property value. He noted several gaps in Public Sector Consultants’ analysis and literature review and ultimately concluded that “the existing body of evidence about the economic impacts of dam removal on local and regional economies consistently find little to no negative economic effects associated with dam removal, with several studies documenting positive short- and long-run economic outcomes.” Scuderi Direct, 3 TR 544.

### III. LEGAL STANDARD

#### A. Sale of Jurisdictional Assets Under MCL 460.6q

Under Michigan law, Consumers Energy cannot “sell, assign, transfer, or encumber its assets to another person without first applying to and receiving the approval of the commission.” MCL 460.6q(1). In evaluating transactions subject to approval, the Commission has broad authority to review and to approve or reject the proposed transaction, as well as to impose conditions. The Commission is required to “consider among other factors all of the following” in evaluating whether or not to approve a utility’s proposed acquisition or sale:

- a. Whether the proposed action would have an adverse impact on the rates of the customers affected by the acquisition, transfer, merger, or encumbrance.
- b. Whether the proposed action would have an adverse impact on the provision of safe, reliable, and adequate energy service in this state.
- c. Whether the action will result in the subsidization of a nonregulated activity of the new entity through the rates paid by the customers of the jurisdictional regulated utility.
- d. Whether the action will significantly impair the jurisdictional regulated utility's ability to raise necessary capital or to maintain a reasonable capital structure.
- e. Whether the action is otherwise inconsistent with public policy and interest.

MCL 460.6q(7). The Commission may consider other factors as well.<sup>3</sup>

The Commission has authority to “impose reasonable terms and conditions” on these transactions “to protect the jurisdictional regulated utility” and “the customers of the jurisdictional regulated utility.” MCL 460.6q(8), (9). The utility can either accept the

---

<sup>3</sup> “The commission shall consider **among other factors** all of the following in its evaluation of whether or not to approve a proposed acquisition, transfer, merger, or encumbrance: ....” MCL 460.6q(7) (emphasis added).

Commission’s conditions and proceed with the transaction or reject the Commission’s conditions and not proceed with the transaction. *Id.* <sup>4</sup>

The transaction price is relevant to whether the proposed sale is in the public interest. “A sale in the public interest would be a sale that properly valued the asset, thereby affording ratepayers an appropriate return on the sale.” *In the Matter of the Application of Wisconsin Elec. Power Co. for Approval, Pursuant to MCL 460.6q, of the Sale of Its Int. in the Edgewater 5 Generating Unit*, April 26, 2011, Order at pp 7–8 (Case No. U-16366). In another case, the Commission required the proposed purchaser to provide its “capital and operations plan for review by Staff on an ongoing basis” in order to ensure that the purchaser was committed to “making necessary investments and expenditures in the short and long term to maintain distribution reliability, safety, and customer service.” *In the Matter of the Application of Wisconsin Elec. Power Co. et al.*, Nov. 7, 2016, Order at p 7, (Case No. U-18061).

**B. Approval of PPA and FCM Under MCL 460.6j.**

Consumers Energy seeks approval of its proposed PPA with Confluence Hydro, and its use of the Financial Compensation Mechanism (“FCM”) pursuant to MCL 460.6j. This provision requires the Commission to review a utility’s proposals for “reasonableness and prudence.” *In re Consumers Energy Co. for approval of power purchase agreement amendments*, March 15, 2024, Order at p 7 (Case No. U-20496) (rejecting proposed amendments to a power purchase agreement where it was “unable to find the amendment to be reasonable and prudent”); MCL 460.6j(13)(g).

---

<sup>4</sup> The Commission has approved a number of mergers, acquisitions, and sales that were the result of settlement agreements containing additional terms or conditions imposed on the transaction. *See, e.g., In the Matter of the Application of Axiom Up Holdings LLC & Lake AIV, L.P.*, May 26, 2021, Order (Case No. U-20995). In this case, there is no settlement, and the record stands that Consumers Energy has said it will not accept any conditions or any changes to the proposed transaction. Blumenstock Rebuttal, 3 TR 74.

Further, Consumers Energy argues that the Commission should approve its proposed FCM in this case pursuant to MCL 460.1028(8)(2), because it is a utility “enter[ing] into a purchase power agreement for renewable energy resources or a third-party contract for an energy storage system or clean energy system with an entity that is not an affiliate.”

### **C. Burden of Proof**

Consumers Energy bears the burden to demonstrate its proposals meet the statutory requirements of MCL 460.6q and 460.6j. The Commission has long held that it “applies the preponderance of the evidence standard when making findings of fact or weighing conflicting evidence.” *In re Consumers Energy Co for authority to increase its rates*, March 21, 2025, Order at p 4 (Case No. U-21585). The “Commission is tasked with weighing and evaluating the evidence of each party to the proceeding and may choose the evidence that results in a reasonable and just outcome.” *Id.* The Commission “may reject even uncontradicted evidence.” *Id.* at 5. When the burden of proof falls on the utility, the other party does not have the burden of proving the opposite fact: “The submission of evidence by the utility does not shift the burden of proof to the other parties to the case to disprove the utility’s evidence.” *In re Indiana Mich Power Co for authority to increase its rates*, July 2, 2024, Order at p 9 (Case No. U-21461).

### **IV. THE PROPOSED TRANSACTION WILL HAVE AN ADVERSE IMPACT ON RATES BECAUSE THE SALE IS MORE COSTLY THAN THE ALTERNATIVES**

The first factor under MCL 460.6q(7) is that the Commission must consider “[w]hether the proposed action would have an adverse impact on the rates of the customers affected by the...transfer...” Consumers Energy framed the case as a comparison between the Sale/PPA, decommissioning, and relicensing. Consumers Energy presents the Sale/PPA as the least costly option, but that is demonstrably incorrect based on the evidence in this record. MHRC

introduced evidence explaining why the exact opposite is the case here. For reference, below is a comparison of net present value cost estimates from each of the parties.<sup>5</sup>

	Sale/PPA	Decommissioning	Relicensing
Consumers Energy	\$1.25 billion	\$1.78 billion	\$ 1.84 billion
MHRC	\$1.42 billion	\$1.11 billion	\$ 1.28 billion
Michigan AG	\$1.17 billion	\$1.49 billion	\$1.53 billion
MPSC Staff	\$1.34 billion	\$1.55 billion	\$1.80 billion
Michigan DNR	N/A	\$0.94 billion	N/A

Three analytical failures drive this discrepancy.

**First**, Consumers Energy inflated decommissioning costs by failing to properly measure and analyze the key cost drivers (particularly sediment quantity and chemistry) and by choosing not to consult with Michigan DNR and EGLE about decommissioning requirements.

**Second**, Consumers Energy provided no record evidence explaining how Confluence Hydro could operate the dams at roughly half the costs that Consumers Energy estimates for itself.

**Third**, the proposed transaction transfers 32,000 acres of land around the dams to Confluence Hydro, but Consumers Energy’s economic analysis assigns no value (\$0) to this land. Ex. MHRC-60. Upon relicensing, Confluence Hydro could sell these valuable lands (which are clearly worth much more than zero dollars), but that value is excluded from the sale price. That improperly further skews Consumers Energy’s economic analysis.

---

<sup>5</sup> Consumers Energy’s estimates derive from Ex. A-7; MHRC’s estimates derive from Jester Direct, 3 TR 632; Michigan AG’s estimates derive from Exs. AG-17; AG-18; AG-19; MPSC Staff estimates derive from DeCooman Direct, 3 TR 836. DNR’s estimate comes from Trumble Revised Direct, 3 TR 447–48 (DNR did not adjust Consumers Energy’s Sale/PPA or Relicensing alternatives). ABATE also conducted a business case, which is referenced below, however rather than drawing comparisons to Consumers Ex. A-7 and the net present value of the value of cash flows, ABATE conducted its analysis in comparison to Consumers Energy’s Ex. A-10 and the Company’s net present value revenue requirement. Therefore, its comparison is not an exact equivalent to the rest of the values in the table.

Taken together, these analytical errors mean that Consumers Energy has not shown that the proposed transfer avoids adverse rate impacts. To the contrary, the record demonstrates that the Sale/PPA exposes customers to higher costs than either Decommissioning or Relicensing as MHRC further explains below.

**A. Consumers Energy Significantly Inflated Its Decommissioning Estimates**

Consumers Energy's consultant WSP based its analysis on prior decommissioning analysis conducted for Consumers Energy by another firm, Mead & Hunt. *See, e.g.*, Ex. A-9 at 14. WSP estimated that the cost of dam removal for the entire fleet of dams would be \$1,539,461,996. Melchior Direct, 3 TR 552. WSP's \$1.54 billion estimate is three times higher than Mead & Hunt's 2021 estimate of \$511 million. *Id.* at 585.

Consumers Energy then *arbitrarily imposed a 40% adder* on top of WSP's estimates to for the utility's overhead. Blumenstock Direct, 3 TR 98. Consumers Energy concluded that the net present value of the decommissioning alternative is \$1,777,000,000.<sup>6</sup> Ex. A-7.

As the Commission considers this proposed transaction, it must weigh the credibility and expertise of the witnesses. DNR Witnesses Mistak and Trumble have decades of experience regulating and working on dam removals and decommissioning. Mistak Revised Direct, 3 TR 390; Trumble Revised Direct, 3 TR 426. Witness Trumble leads EGLE's dam safety team. He testified to "experience with over 50 dam removal projects in the state of Michigan." Trumble Revised Direct, 3 TR 444. Similarly, MHRC Witness Martin Melchior of the Inter-Fluve consulting firm has managed or designed 69 dam removal projects nationwide. Melchior Direct, 3 TR 550; Ex. MHRC-24.

---

<sup>6</sup> Consumers Energy imposed its 40% adder and estimated that removal would occur in the 2030s and 2040s around when the licenses expire. That larger number was converted into 2027 dollars, which led to Consumers final estimate of \$1.77 billion.

By contrast, Consumers Energy’s Witness Blumenstock conceded on cross examination that he has *no* experience working with dam removal and decommissioning. 3 TR 137. Witness Blumenstock has never worked on, managed, or designed a dam decommissioning project. *Id.* Nor could Witness Blumenstock answer questions about WSP’s experience with actual dam decommissioning. He simply did not know. *Id.* at 140–43. While WSP alluded to a limited number of projects related to its relevant experience, Ex. MHRC-82, (1) it is not clear what role WSP played in each project; (2) whether all of the projects WSP included in its portfolio produced power, Blumenstock Cross Exam, 3 TR 143; (3) several of the projects have not been completed, *id.*; and (4) none of the projects were located in Michigan or the Midwest. *Id.* at 143–144; Ex. MHRC-82.

Expert witnesses for DNR, MHRC and ABATE all found that Consumers Energy and WSP inappropriately inflated their decommissioning cost estimates, created cost estimates without sampling the quantity or character of sediment at the bottom of the impoundments, and included unnecessary activities within the scope of work. Melchior Direct, 3 TR at 588–89; Trumble Revised Direct, 3 TR 444–48; Mistak Revised Direct, 3 TR 416–22; Andrews Direct, 3 TR 338–43.

MHRC Witness Melchior undertook a comprehensive review of WSP’s decommissioning reports, Ex. A-9, and he also reviewed several iterations of Mead & Hunt reports created over the last two decades. Exs. MHRC 25–29; Melchior Direct, 3 TR 557–60. Witness Melchior based his conclusions and analysis regarding Consumers Energy’s cost estimates on his extensive experience with dam decommissioning, including managing or designing 69 dam removal projects nationwide. *Id.* at 550; Ex. MHRC-24. He concluded that WSP’s processes, particularly around sediment management, “did not follow...practice standards developed over 25 years of

dam removal experience...[which] creates significant uncertainty around the final estimated costs for decommissioning.” Melchior Direct, 3 TR 588–89.

In addition to Consumers Energy witnesses’ lack of experience, the utility also conceded that it has not had any conversations about decommissioning with Michigan’s EGLE and DNR, who regulate and oversee the decommissioning process for dams in this state. In discovery, Consumers Energy admitted that it had not held preliminary negotiations with EGLE and DNR. Ex. MHRC-74. MHRC Witness Melchior, who has managed or designed 69 dam removal projects, explained in testimony that his approach to “dam removal feasibility and cost estimation usually includes...preliminary meetings with state regulatory agencies to determine a permissible sediment management plan, and accurate measurements of sediment volumes.” Melchior Direct, 3 TR 553–54. By choosing not to consult with the Michigan state agencies that will dictate the scope, sequencing, and cost of decommissioning, Consumers Energy produced estimates that are materially less credible.

Consumers Energy is effectively asking the Commission to “trust us” and overlook the incomplete analysis and the gaps in their testimony. Witness Blumenstock testified that “[f]or high-level and early-stage planning purposes, Consumers Energy submits that [WSP’s cost estimates are] reasonable, prudent and sufficient.” Blumenstock Rebuttal, 3 TR 112. But Witness Blumenstock did not persuasively rebut the highly credible testimony of the more experienced DNR and MHRC witnesses.

Witnesses Melchior, Trumble, and Mistak bring decades of direct experience managing and designing dam-removal projects. By contrast, Consumers Energy’s expert has never worked on a decommissioning project, and its consultant has only minimal relevant experience. The disparity in expertise matters: where Consumers Energy offers assumptions, MHRC and DNR

expert witnesses offer grounded, field-tested, experienced *expert* judgment, knowledge and testimony. On this record, Consumers Energy has not met its burden to show that the proposed sale benefits ratepayers or protects the State of Michigan.

*1. Consumers Energy Failed to Sample Sediment Quantity and Composition Rendering Their Estimates Inaccurate*

Consumers Energy’s cost estimates lack precision because, among other things, the utility failed to identify the quantity or composition of sediment behind the impoundments.

Blumenstock Cross Exam, 3 TR 137. MHRC Witness Melchior explained that “[a]ccurate sediment volume estimates and recent contaminant sampling data are the most important elements needed to estimate dam removal costs.” Melchior Direct, 3 TR 559. He testified that sediment management makes up between 38% and 80% of WSP’s total estimated full removal costs for each dam. *Id.* at 555. The “lack of accuracy in sediment volumes [and sediment characterization] creates significant uncertainty around the final estimated costs of decommissioning.” *Id.* at 588–89.

Instead of sampling sediment quantity and composition, WSP relied on earlier Mead & Hunt reports, which, in turn, relied on an outdated, 35-year-old “Lawler” study, which was an analysis of reservoir filling rates to determine the operating life of the hydropower projects, commissioned by Consumers Energy *in 1991*. Ex. MHRC-30. MHRC Witness Melchior testified that the Lawler Study is “outdated and...not standard practice for estimating sediment in dam removals and facilitating costs for feasibility.” Melchior Direct, 3 TR 560. He also explained several incorrect assumptions embodied in the Lawler study. *Id.* at 561. Witness Melchior concluded that “the methods used in the Consumers Energy studies to estimate sediment volume and sediment character did not follow my standards of practice for dam removal feasibility studies, developed over dozens of dam removals across the United States.” *Id.* at 553.

Consumers Energy and WSP’s estimated costs for sediment management are overstated for at least two reasons: **First**, WSP assumed significant contamination in all of the impoundments despite a lack of evidence to support that conclusion. WSP’s assumption is not supported by the facts:

- MHRC Witness Melchior explained that “[a]ccording to the WSP 2025 reports and the older studies...the composition of the sediment behind the impoundments in the northern rivers (Au Sable, Manistee, and Muskegon) is likely to be sand.” *Id.* at 565. Sand dries out quickly, making it easier to handle (and therefore less costly), but most critically, “sandy impoundments typically have lower concentration of contaminants.” *Id.* at 566.
- DNR Witness Trumble similarly found that the removal and offsite disposal of “presumed contaminated sediment” was not standard practice for EGLE-regulated Michigan dam removals. Trumble Revised Direct, 3 TR 445.
- DNR Witness Mistak estimated the total cost of contaminated sediment management in the WSP reports at \$318 million, roughly 20% of Consumers Energy’s total \$1.5 billion estimate. Mistak ultimately concluded that “without actual sediment testing, I have no faith in this number and can attest that...[Consumers Energy’s] broad assumption of contaminated sediment is without merit.” Mistak Revised Direct, 3 TR 419.

**Second**, WSP proposed unnecessary and excessive removal solutions for sediment management, which reflected their limited experience. WSP assumed active removal<sup>7</sup> via hydraulic dredging of impoundment sediments and dragline excavations. Melchior Direct, 3 TR 564. But DNR Witness Trumble pointed out that hydraulic dredging and overuse of dredging is “not standard practice” in Michigan dam removals. Trumble Revised Direct, 3 TR 444. Witness Melchior also testified that WSP’s methods “would likely be unnecessary” particularly “in the sand filled impoundments likely found in the Manistee, Au Sable and Muskegon Rivers.” Melchior Direct, 3 TR 564.

---

<sup>7</sup> Active removal refers to activities like excavation or dredging to handle sediment, as opposed to “passive” removal where the sediment is allowed to transport downstream. “Active sediment management occurs when regulatory agencies restrict the transport of sediment [downstream] due to concerns over habitat impacts, flooding or contamination.” Melchior Direct, 3 TR 564.

Consumers Energy did not rebut MHRC Witness Melchior's, nor Michigan DNR's testimony regarding the lack of accuracy in the utility's estimates and the utility's failure to ascertain the composition or quantity of sediment in the impoundments. Consumers Energy conceded that it "ha[d] not collected data" on sediment, and that it "cannot definitely identify what activities will be required or how much sediment or contamination is present," Blumenstock Rebuttal, 3 TR 104. Consumers Energy argued that "[d]ata collection...would take several years to complete," *id.*, and responded in discovery that it had not even solicited proposals to test sediment in the impoundments. Ex. MHRC-74.

This combination—acknowledging the absence of essential data, asserting that collecting it would take years, and simultaneously failing to take even the first step toward obtaining it—underscores the fundamental unreliability of Consumers Energy's decommissioning cost estimates.

2. *Consumers Energy's Cost Estimates Include a Set of Unnecessary Activities That Inflate Total Cost*

WSP's decommissioning estimates are further inflated because they include numerous activities that are unnecessary, atypical, or far beyond standard practice. DNR Witness Trumble, the state's leading dam safety and removal regulator, identified several such additions, including: layered "large contingencies,"<sup>8</sup> draining reservoirs over a 50-month period, hydraulic dredging and overuse of dredging, overestimation of contaminate sediment, excessive grading costs, and unusually large seeding and planting costs. Trumble Revised Direct, 3 TR 445. Based on his experience, Trumble concluded that "[m]any of these practices do not occur." *Id.* Removing these unnecessary activities would eliminate many millions of dollars from WSP's

---

<sup>8</sup> ABATE Witness Andrews also critiqued the Company's overreliance on contingencies and overhead. This is discussed in more detail below at page 30.

decommissioning estimate, making it less costly compared to Consumers Energy's preferred Sale/PPA.

MHRC Witness Melchior reached similar conclusions. He identified at least five types of costs in WSP's estimates that he did not expect to be necessary, including: excessive use of grade control measures, bank stabilization, grading and surface preparation, and complete demolition of earthen berms and the inclusion of lamprey barriers.<sup>9</sup> Melchior Direct, 3 TR 568–71, 580–81.

DNR Witness Trumble, EGLE's experienced dam safety manager, raised many of the same points as Melchior. Trumble Revised Direct, 3 TR 445–48. Consumers Energy Witness Blumenstock, *who has never worked on a dam decommissioning*, unpersuasively argued against Trumble's analysis as supposedly a "low-ball estimate," based on "hypothetical, pie-in-the-sky scenarios." Blumenstock Rebuttal, 3 TR 104–05.

Taken together, the testimonies of the State of Michigan's leading dam-removal regulator and a practitioner with decades of field experience show that WSP's estimates are systematically overstated. These inflated assumptions materially distort Consumers Energy's comparison of alternatives and improperly bias the analysis in favor of the Sale/PPA. The Commission should instead consider the decommissioning evidence put forward by DNR's and MHRC's experts as more accurate, more credible and entitled to more weight.

3. *MHRC and Other Intervenors Demonstrated That Lower Decommissioning Costs Are Probable and Produce Lower Overall Costs*

Several parties, including MHRC, presented alternate, less costly decommissioning costs compared to Consumers Energy's inflated numbers. MHRC Witness Melchior used "the United States Geological Survey's ('USGS') statistical approach to dam removal" to estimate costs for

---

<sup>9</sup> MHRC and Witness Melchior support the necessity of responsibly controlling invasive species, but do not necessarily agree that the costs of invasive species control should be borne by the utility through decommissioning. Melchior Direct. 3 TR 571.

each dam. Melchior Direct, 3 TR 581; Ex. MHRC-37. The USGS model takes a different approach than the estimate created by WSP. The USGS relies on dam height and average annual discharge to create a cost estimate derived from its database of 668 U.S. dam removals. Melchior Direct, 3 TR 582. Because of its focused inputs, the “model helps give decision makers a high-level approximation of dam removal costs.” *Id.* The model produces a range of costs under different “prediction intervals” which express where a given dam removal may fall within a range of potential expected costs. Ex. MHRC-37 at 5.

The USGS model produced much lower decommissioning costs than WSP’s flawed estimates:

Dam	Median Cost Est.	USGS Model			Mead & Hunt (2021)	WSP (2025)
		Lower 50% Prediction Interval	Upper 50% Prediction Interval	Upper 95% Prediction Interval	Complete Removal	Complete Removal
Hodenpyl	\$13,867,108	\$4,866,767	\$46,936,146	\$115,488,211	\$87,123,781	\$195,493,171
Tippy	\$15,826,263	\$5,254,311	\$50,249,958	\$143,911,483	\$43,464,608	\$96,249,846
Rogers	\$14,209,359	\$6,140,347	\$41,120,228	\$102,512,667	\$33,669,946	\$75,362,505
Hardy	\$16,004,913	\$6,059,542	\$52,272,732	\$145,615,681	\$74,476,605	\$280,432,071
Croton	\$14,907,518	\$6,507,937	\$47,126,205	\$137,668,962	\$51,028,803	\$147,014,561
Mio	\$10,662,017	\$4,727,474	\$23,353,059	\$66,585,932	\$26,674,243	\$82,791,646
Alcona	\$14,839,323	\$5,800,603	\$48,129,389	\$116,084,759	\$24,021,213	\$81,680,654
Loud	\$12,444,818	\$5,696,706	\$31,083,081	\$81,284,912	\$20,751,731	\$47,075,060
Five Channels	\$12,981,700	\$5,696,706	\$35,291,096	\$97,246,503	\$20,996,951	\$39,587,216
Cooke	\$14,362,768	\$5,696,706	\$40,774,904	\$110,674,567	\$39,849,871	\$103,103,058
Foote	\$14,030,848	\$5,653,176	\$34,680,172	\$107,122,859	\$52,050,657	\$121,496,940
Allegan	\$8,103,710	\$4,467,012	\$18,489,009	\$28,425,952	\$13,243,669	\$209,327,853
Webber	\$8,226,128	\$4,570,202	\$20,477,339	\$28,829,947	\$23,698,752	\$ 59,847,415
Total	\$170,466,473	\$71,137,489	\$489,983,318	\$1,281,461,436	\$511,050,830	\$1,539,461,996

Melchior Direct, 3 TR 585.<sup>10</sup>

<sup>10</sup> This table is primarily based on the table in Melchior’s Direct, 3 TR 585; however, the 95% prediction interval values are derived from a chart in Jester’s Direct, 3 TR 636.

This table shows that WSP’s cost estimates—*before* Consumers Energy’s 40% overhead adder that further inflates the costs—for many of the dams exceed the removal costs projected for the 95% prediction interval. The USGS model explains the role of probability in the dam removal estimates for the 13 dams. While some of the dams might cost more than the median cost estimate and some others might cost less, as MHRC Witness Melchior explains, “it is also improbable that all 13 dam removals end up costing well in excess of the 95 to 100% percentile of prediction intervals.”<sup>11</sup> Melchior Direct, 3 TR 587. The chart above shows that for six out of the 13 dams, WSP’s estimates exceed the 95% prediction interval, and, in a few cases, nearly double the USGS estimates (Hodenpyl, Hardy, Allegan, Webber). Accordingly, the USGS model “cast[s] doubt on cost estimates constructed to result in universally high cost estimates, such as the WSP numbers contained in Consumers Energy’s proposal.” *Id.* at 588.

Consumers Energy Witness Blumenstock questioned the validity and usefulness of the USGS model, but ultimately, failed to demonstrate a basic understanding of the model or its use case. Blumenstock Cross Exam, 3 TR 149–50. On cross-examination, he conceded a lack of familiarity with the concept of “prediction intervals,” or the difference between the median interval and the 95% prediction interval. *Id.*

Witness Blumenstock’s critiques of the USGS Report either reflect a misunderstanding of the USGS model or apply with equal force to WSP’s own decommissioning estimates. Most importantly, he criticized the model for its higher error rate and underestimate of costs among larger and more expensive dam removal projects. Blumenstock Rebuttal, 3 TR 114. However, as the paper supporting the USGS model states: “even for the most extreme outliers, actual cost values were encompassed within the 95% prediction interval.” Ex. MHRC-37 at 10;

---

<sup>11</sup> Put another way, the statistical probability of all 13 dam removals exceeding the more modest upper median 50% interval (\$489 million) is equivalent to  $.25^{13}$  or 0.0000015%

Blumenstock Cross Exam, 3 TR 152–153. In other words, the model’s uncertainty is transparent and accounted for, while median predictions may understate the highest-cost projects, the full prediction interval still captures the actual costs of even the most expensive removals.

Witness Blumenstock also attempted to critique the model by pointing out that it did not contain a sufficient database of large dams or dams in Michigan. Blumenstock Rebuttal, 3 TR 113. The database of dams used in the study, however, did, in fact, include both Michigan dams, and several large Michigan dams, including the Boardman River Dam. Blumenstock Cross Exam, 3 TR 153. If dataset size and regional representation are the metrics, the USGS model, *as well as MHRC Witness Melchior’s relevant experience*, are plainly more robust than WSP’s limited project history.

In summary, Witness Blumenstock’s criticisms do not undermine the USGS model. They either mischaracterize how the model works or highlight limitations that apply even more strongly to WSP’s own work.

**MHRC Witness Douglas Jester** utilized the 95% prediction interval<sup>12</sup> USGS cost estimate in his updated business case and concluded that decommissioning is the lowest fleet-wide cost at \$1,283,805,000 net present value. (Using the 95% prediction interval cost, \$1,281,461,336). He also concluded that some mix of relicensing and decommissioning would produce even lower total costs for ratepayers: \$997 million net present value. Jester Corrected Direct, 3 TR 638.

**DNR Witness Lucas Trumble** presented “a representation of what costs might be” after removing the set of “unnecessary” activities he identified based on his Michigan dam removal

---

<sup>12</sup> Witness Jester also analyzed the business case using the 75% prediction interval, \$489,983,318, and found that decommissioning was universally the lowest cost option, \$706 million net present value. Jester Corrected Direct, 3 TR 637.

experiences. Trumble Revised Direct, 3 TR 445, 448. He concluded that removing WSP's unnecessary project activities would save **\$937 million** compared to WSP's fleetwide estimate of \$1.5 billion in decommissioning costs. *Id.* at 448.

**ABATE Witness Andrews** also re-ran Consumers Energy's business case, adjusting decommissioning costs downward to more accurately reflect true costs. He criticized Consumers Energy's use of overlapping contingencies to inflate the cost of decommissioning. Andrews Direct, 3 TR 339. He found that when these unnecessary costs are removed, "decommissioning is approximately 23% less expensive than the Sale and PPA on a net present value basis." *Id.* at 341.

MHRC, DNR and ABATE expert witnesses directly and convincingly refuted: (1) WSP's methodology; (2) the inflated and non-standard scope of work WSP prescribed; and (3) Consumers Energy's post-hoc addition of a 40% "overhead" adder. Each of these flaws materially changes the decommissioning cost estimates that Consumers Energy relies on. Every intervenor experts' analysis produced significantly lower, evidence-based decommissioning estimates.

The credibility gap is stark. MHRC, DNR, and ABATE presented experts with decades of hands-on dam-removal and dam-safety experience. Consumers Energy, on the other hand, relies on a witness with little to no direct experience with dam decommissioning and on a consultant whose project history is far narrower than the intervenors' experts.

Because the utility bears the burden of proof under MCL 460.6q, these flaws are fundamental and dispositive. Consumers Energy has not demonstrated that the Sale/PPA is the least-cost option for ratepayers, and the record instead shows that its decommissioning estimates are overstated and unsupported.

**B. Consumers Energy Has Not Adequately Explained Why Confluence Hydro Can Operate the Dams at A Significantly Lower Cost**

Consumers Energy estimates that relicensing and continuing to operate the dams itself would cost ratepayers a net present value of \$1,842,130,000 compared to \$1,251,902,000 to sell the dams to Confluence Hydro. Ex. A-7. Consumers Energy estimated that for the first nine years of the analysis period, it would incur \$1.081 billion in capital expenditures. Ex. A-6. For the same period, however, Confluence Hydro projects **BEGIN CONFIDENTIAL** [REDACTED] [REDACTED] **. END**

**CONFIDENTIAL** Consumers Energy has failed to adequately explain how and why its capital plans for maintaining the dams differ so greatly from Confluence Hydro, particularly when Consumers Energy is essentially supplying its Michigan dam workforce to Confluence Hydro. As MHRC Witness Jester reasoned, if Confluence Hydro can safely operate the dams at nearly half the capital costs that Consumers Energy projects, then why can Consumers Energy not do the same? Jester Direct, 3 TR 632.

Witness Jester set up two hypothetical alternatives. **Option 1**—Consumers Energy’s capital expenditure plan represents the optimal plan to safely operate the dams. As explained below in more detail in Section V, Confluence Hydro would lose \$710 million through the PPA period under this scenario. *Id.* at 621. According to Witness Jester, “capital spending below [Consumers’ proposed] level is necessary to make it rational for Confluence Hydro to enter this transaction.” *Id.* at 631. This leads to **Option 2**—a lower level of spending, endorsed by Confluence Hydro, which either (a) leads to an unsafe underinvestment in the dams, or (b) Confluence Hydro’s projections are in fact the optimal plan to safely operate the dams.<sup>13</sup>

---

<sup>13</sup> Note that even under this scenario, **BEGIN CONFIDENTIAL** [REDACTED] **END CONFIDENTIAL.**

If Option 2(b) is valid, and the lower capital spending is the reasonable and prudent path forward, then “the same change of assumptions that make this proposal a rational business decision by Confluence Hydro also undermine Consumers Energy’s case that a sale is the best option for its customers.” *Id.* at 632.

When Witness Jester used Confluence Hydro’s lower capital expenditure plan as the cost inputs for Consumers Energy’s relicensing scenario, he found that Relicensing becomes lower cost than the Sale/PPA option, \$1,283,000,000 compared to \$1,421,568,000, roughly a \$139 million difference in net present value. *Id.* at 632. He explained: “The Commission must consider that if Confluence Hydro can support a rational business decision to acquire these facilities based on projected capital spending substantially different than the spending projected by Consumers Energy, then Consumers Energy could also reasonably and prudently limit its spending to that level, in which case the transaction is not justified as a net savings to Consumers Energy’s customers.” Jester Direct, 3 TR 632.

ABATE also made significant adjustments to the Relicensing scenario, finding that Consumers Energy inflated the costs, thereby making the Sale/PPA option more attractive. ABATE Witness Andrews concluded that Consumers Energy’s “assumptions of substantial and ongoing capital expenditures extending decades beyond relicensing, extremely overstated decommissioning costs, significantly higher ongoing operations and maintenance expenses, and the exclusion of reasonable operational benefits” inappropriately skew the Company’s Relicensing case. Andrews Direct, 3 TR 348. When ABATE’s witness adjusted relicensing to reflect lower end of life operation, lower capital and O&M and upgraded generators, “the total cost of relicensing declines substantially. Under these more accurate assumptions, relicensing is

approximately 87% less expensive than the proposed Sale and PPA on a [net present value] basis.” *Id.* at 354.

Witness Blumenstock responded by arguing that Intervenors did not account for Consumers Energy’s significant overhead, and the differing cost structures of the two organizations. Blumenstock Rebuttal, 3 TR 121. His argument is flawed for several reasons.

**First and foremost**, Witness Blumenstock argues that the utility’s overhead accounts for nearly half of the total costs in the relicensing scenario, specifically 46.6%. *Id.* Consumers Energy provides no support for this number with record evidence, and it is purely arbitrary to attempt to include it here.

**Second**, while Witness Blumenstock opines on the differing cost structure and risk tolerance of Confluence Hydro, he admitted that his opinions are not based on first-hand knowledge. He conceded in discovery that he did not discuss long-term risk tolerance with Confluence Hydro. Ex. MHRC-75. Nor did he explain why Confluence Hydro can operate the dams for so much less than Consumers Energy, especially when Confluence Hydro will be importing its workforce from Consumers Energy itself. Newly created Confluence Hydro has no ability to safely operate the dams on its own. Ex. MHRC-78.

**Third**, Consumers Energy has not established why the 13 dams must be treated as an “all-or-nothing” package instead of choosing to sell, relicense, or decommission each of the dams individually. MHRC Witness Jester demonstrated through his business case that “[a] differentiated strategy that considers each facility individually has an even lower cost to customers.” Jester Direct, 3 TR 632. He concluded that combining decommissioning some dams with relicensing others produces the best result. *Id.* at 638. For example, if Consumers Energy removed Five Channels (Au Sable) and Tippy (Manistee) dams from the deal and

decommissioned them, it would save ratepayers \$75 million (even using the utility’s flawed decommissioning numbers). *Id.* at 613.

**Fourth**, Witness Blumenstock argues that Confluence Hydro, just incorporated in 2025, “has proven to be a financially responsible business....” Ex. MHRC-73. “Proven” since when, and based on what real track record? *See infra* Section V.B.

**C. Parties Supporting the Sale Made Several Other Flaws and Omissions in Their Analysis**

*1. Consumers Energy Skewed the Alternatives Analysis by Excluding the Value of 32,000 Acres of Land Around the Dams from the Sale/PPA Option*

As part of the transaction, Consumers Energy proposes to transfer 32,000 acres of land around the dams to Confluence Hydro. Blumenstock Direct, 3 TR 43. Because this land is currently included in the project boundary, which is a buffer zone created by FERC, it cannot be sold at present. However, the FERC project boundary could change in the future. Jester Direct, 3 TR 628; Mistak Revised Direct, 3 TR 415.

Consumers Energy’s failure to consider the significant value of the land transferred to Confluence Hydro skews the financial analysis to favor the sale. This land has outdoor recreational, conservation and habitat value. These 32,000 acres of land have substantial economic and financial value. This land is worth millions. Consumers Energy concedes, however, that its “business cases [associated with the Sale/PPA] do not include revenues from property agreements or value of lands being sold to Confluence Hydro.” Ex. MHRC-60.

When these costs are included, the costs and net present value of the proposed Sale/PPA option increase. As explained in more detail below in Section VI, Consumers Energy invested in these lands decades ago using ratepayer funds, and if the utility sells these 32,000 acres of land, that revenue should be returned to ratepayers. Jester Direct, 3 TR 626. MHRC Witness Jester

conservatively estimated that the land around the dams that could potentially be available for sale would be worth at least \$80 million. However, even if the land cannot be sold, it all has value, and therefore, Witness Jester included a total value of \$167 million for all lands in his business case. *Id.* at 629. When this value is included in the Sale/PPA option as a cost to Confluence Hydro, the net present value of the proposed Sale/PPA option changes accordingly: increasing from \$1.251 billion to \$1.421 billion. That adjustment makes the Sale/PPA option at \$1.421 billion, almost \$500 million more expensive than DNR's decommissioning estimates (\$937 million) and \$317 million more expensive in net present value than MHRC's decommissioning estimates (\$1.11 billion).

2. *MPSC Staff and the Attorney General Incorrectly Identify the Sale/PPA as the Lowest Cost Option*

MPSC Staff Witness DeCooman and Attorney General Witness Coppola made several adjustments to Consumers Energy's numbers before concluding that the proposed Sale/PPA is the least costly alternative. DeCooman Direct, 3 TR 836-38; Coppola Direct, 3 TR 322. Witness DeCooman adjusted Consumers' replacement power estimates after the PPA ends, or the dams are decommissioned to account for inflation. DeCooman Direct, 3 TR 836-38. He also extended all three scenarios to 2098 to put them on equal footing and reflect the staggered timing of decommissioning in the relicensing scenario. Witness Coppola reduced the cost of replacement power, limited Consumers Energy's ability to collect on purchased energy, and cut the utility's projected overhead for the decommissioning and relicensing scenarios. Coppola Direct, 3 TR 322.

MHRC Witness Jester identified a flaw in Witness DeCooman's adjustment applying inflation to the replacement power costs used in the business cases. DeCooman Direct, 3 TR 816-17. That adjustment inappropriately skewed the analysis towards a sale because in PPAs like the

one modeled in the Sale and decommissioning scenarios, Consumers Energy typically *levelizes* the cost of power, and, therefore, the price remains flat over the course of the contract. Jester Rebuttal, 3 TR 659-60. In addition, the U.S. Energy Information Administration projects that the nominal cost of replacement resources, like wind and solar, will decrease between today and when Consumers Energy must actually replace the dams. *Id.* at 660-61. This decrease in project costs offsets any need to apply inflation. According to Witness Jester, this error “invalidates Staff’s revisions of Consumers Energy’s business case analyses.” *Id.* at 661.

Witness Jester also explained that Witness DeCooman’s determination that the Sale/PPA has the most narrow range of outcomes results from Consumers Energy’s lack of due diligence in creating the Decommissioning and Relicensing scenarios: “Had Consumers Energy diligently investigated these estimates through consultation with regulators and stakeholders to determine definitive assumptions about strategy and requirements, field measurements of sediments and contaminants, preliminary design of facility modifications and the like, uncertainties about the costs of Decommissioning and Relicensing scenarios would be substantially lessened.” *Id.* at 663.

Witness Jester also identified structural problems with AG Witness Coppola’s analysis. **First**, Witness Coppola misstated the legal standard by ignoring the five factors set forth in the Michigan statute, and, instead, created a “major test” of how each alternative “compare[s] in total benefits accruing to the customers of [Consumers Energy] and surrounding communities.” Coppola Direct, 3 TR 285; Jester Rebuttal, 3 TR 645. Witness Jester explained that this reformulation of the legal standard ignores the importance of safety (MCL 460.6q(7)(b)), broader considerations of public policy and interest (MCL 460.6q(7)(e)), and potential negative impacts of the sale on the State of Michigan and its taxpayers.

**Second**, as discussed above, Witness Coppola “did not support his choice to reduce capital expenses by 20%.” Jester Rebuttal, 3 TR 648. “Every other witness that examined decommissioning costs found that the estimates should be lower than the arbitrary 20% reduction evaluated by witness Coppola, and the witnesses with the greatest expertise on decommissioning and dam removal, particularly EGLE’s Dam Safety Manager, Luke Trumble [~40%], and MHRC witness Melchior [~27%-67%], made the deepest reduction in the estimate costs of decommissioning and dam removal.” *Id.* at 651-52. Jester then explained that “Witness Coppola’s comparison of the Sale Scenario to a Relicensing scenario based on an arbitrary 20% reduction of Consumers Energy’s highly inflated cost estimates does not justify his conclusion that the Sale scenario is the best option for Consumers Energy’s ratepayers.” *Id.* at 654.

ABATE Witness Brian Andrews likewise testified that Witness Coppola’s adjustments to the proposed business cases are “arbitrary” and “not tied to any specific methodological error or unsupported assumption.” Andrews Rebuttal, 3 TR 380-82.

**Third**, neither the AG (or Staff) accounted for the value of the land around the dams in the transaction. Jester Rebuttal, 3 TR 665, 661. This omission by Consumers Energy and others skewed the alternative analysis by making the Sale/PPA option appear less costly than it actually is.

As explained above, the record contains persuasive evidence demonstrating that the decommissioning option would be less costly to ratepayers, especially when considered individually for each dam rather than as a “package” applying to all 13 dams. The much more persuasive and credible expert testimony and evidence was presented by Michigan DNR and EGLE, who are the relevant state dam safety and river water quality regulators, and MHRC

Witness Melchior, who likewise has decades of experience working on dam decommissioning and removal projects.

**D. The Commission Should Reject Consumers Energy’s Proposal to Apply the Financial Compensation Mechanism to Further Profit on the Power Purchase Agreement**

The 13 dams are fully depreciated after a century of operation, during which Consumers Energy recovered its costs from customers and earned a regulated return on those rate-based capital assets. Their current net book value is **negative \$28.9 million**. Coker Direct, 3 TR 227. That reality is reflected in the proposed sale price: \$1 per dam. Consumers Energy then layers on an overpriced PPA to the transaction at the direct expense of Michigan ratepayers. As if an inflated PPA were not enough, Consumers Energy now proposes that the Commission allow it to apply a “financial compensation mechanism” (“FCM”) that would allow the utility, which has sold the dams, to earn a rate of return of 8.75% on the PPA itself. CE Application at 5; Blumenstock Direct, 3 TR 59. Consumers Energy is proposing that the Commission approve: (1) selling fully depreciated, negative-value assets for \$1 each, (2) locking Michigan ratepayers into a double-the-current price PPA to subsidize the purchaser, and (3) also collecting an additional rate of return on that same PPA. This structure underscores the core problem: Consumers Energy is attempting to extract new earnings from assets whose value has already been fully recovered from its ratepayers, while transferring long-term operational, financial, and environmental liabilities and risks to an out-of-state private equity firm, and onto Michigan ratepayers and taxpayers.

The FCM was created by the Legislature in order to incentivize construction of *new* renewable energy projects, MCL 460.1028, not to allow utilities to transform old, fully-depreciated negative value assets by selling them to a third-party so that the utility could profit

by imposing a rate of return on the same fully-depreciated asset. There is no principled policy or legal basis to support Consumers Energy's unjust enrichment proposal.

The Attorney General and ABATE both submitted expert testimony explaining that Consumers Energy's proposed utilization of an FCM here is improper, because the utility has already earned a rate of return on the 13 hydro dams for over 100 years, and they are fully paid off. Coppola Direct, 3 TR 298; Andrews Direct, 3 TR 359. Allowing Consumers Energy to further charge ratepayers for an 8.75% profit on the PPA creates an unjustified windfall for Consumers Energy that AG Witness Coppola calculates at more than \$270 million over the 30-year term of the PPA. Coppola Direct, 3 TR 297. AG Witness Coppola explains: "This type of transaction in which the Company sells it[s] generation assets and replaces them with generation from a PPA *is not what was intended* when the Commission approved the FCM in Case No. U-20165." *Id.* at 297-98 (emphasis added). He further testifies: "This PPA allows the Company to divest itself of the Hydro Facilities, which it has owned for decades," and already earned a rate of return on and depreciated. *Id.* at 297.

Similarly, ABATE Witness Andrews testified that the FCM increases the cost of the PPA from \$160/MWh to \$174/MWh. Andrews Direct, 3 TR 359. Witness Andrews explained that the purpose of the FCM is to "encourage renewable developments, incent the Company to select PPAs rather than simply build its own assets," and accordingly, the existing hydro dams do not match this intent. Andrews Direct, 3 TR 360.

Consumers Energy concedes that it is "not aware" of the Commission ever authorizing an FCM where "a regulated utility sold its assets to a third-party and then bought back the energy and capacity from its sold asset(s) from the third-party." Ex. AB-10. While the FCM statute instructs that the Commission "shall" authorize an annual financial incentive, the Commission

need not do so where the statutory intent is clearly different. Approving an FCM would lead to an “absurd result” in the factual circumstances of this case. *Jennings v. Southwood*, 446 Mich. 125, 133 (1994); *see also Salas v. Clements*, 399 Mich. 103, 109 (1976). The Commission should deny Consumers Energy’s requested FCM as legally unwarranted and unreasonable in this case. To the extent the Commission believes it is somehow required by law to apply the FCM to this transaction, this is further reason for the Commission to deny approval of the proposed sale as “inconsistent with public policy and interest.” MCL 460.6q(7)(e).

**V. THE PROPOSED TRANSACTION WILL HAVE AN ADVERSE IMPACT ON THE PROVISION OF SAFE, RELIABLE, AND ADEQUATE ENERGY SERVICE**

Michigan has sadly learned the unfortunate lessons of private LLC ownership of the Edenville Dam by Boyce Hydro, LLC, and the Au Train Dam by U.P. Hydro LLC. MCL 460.6q(7)(b) requires the Commission to determine “[w]hether the proposed action would have an adverse impact on the provision of safe, reliable, and adequate energy service.” The proposed sale of 13 dams in need of significant repairs to a private equity firm would evade the Commission’s future oversight and would adversely impact their safe and reliable operation.

Selling these dams to private equity firms that prioritize investor profits above all else is a bad idea and is at odds with the statutory standard. Confluence Hydro’s proposal to create 13 separate “ring-fenced” LLCs for each of the dams should raise red flags for the Commission. *Lyon Direct*, 3 TR 677. Confluence Hydro is clearly trying to shield its investors from liability from a disaster or bankruptcy affecting any one of the dams. Moreover, the proposed dam sale could take away the Commission’s oversight that can help ensure that Consumers Energy operates the dams for the long-term interest of everyone in Michigan. *Lyon Rebuttal*, 3 TR 700; *see also Ex. MHRC-49* (Consumers Energy acknowledging that if the sale is approved, the Commission “will not have any continuing oversight authority over the safe and compliant operation of the [dams]”).

Consumers Energy has an obligation to operate the dams for the public interest while the out-of-state private equity firms do not. The Commission should not approve the proposed sale.

**A. Private Equity Firm Ownership of the 13 Dams Would Jeopardize Safe and Reliable Operation-Namely, Dam Safety**

Consumers Energy's proposed sale to Confluence Hydro could remove the dams from Commission oversight through its ratemaking and resource planning functions, thus eliminating a powerful safeguard for the safe operation and maintenance of the dams. As a regulated utility, Consumers Energy recovers its reasonable and prudent costs, including those incurred to ensure safety and reliability. Lyon Rebuttal, 3 TR 700. By contrast, Hull Street Energy, Hull Street Energy Partners III LP, and Confluence Hydro are incentivized to both maximize profits and minimize costs. Confluence Hydro's proposed structure of separate LLCs for each of the 13 dams, combined with the known repair and maintenance needs at the dams—for example, many of the dams do not comply with water quality standards, Mistak Revised Direct, 3 TR 410, and Hardy Dam needs \$350 million in repairs, DeCooman Direct, 3 TR 804—exacerbates the risk of dam safety problems. These risks have led the Michigan DNR to take the unprecedented action of strongly opposing this dam sale.

Consumers Energy's proposal to sell these dams to private equity raises serious public policy questions that the Commission must consider. **What are the real economic and financial risks for Michigan taxpayers and ratepayers if the private equity firms proposing to buy the dams don't pay for the real dam repair costs needed for safety, and they don't set aside sufficient funds for decommissioning? What are the bankruptcy risks to Michigan taxpayers if private equity purchasers Hull Street Energy and Confluence Hydro walk away from their financial and environmental responsibilities for one or more of the 13 separate LLCs that they are creating for each of the individual dams?** Michigan has, unfortunately, learned painful

bankruptcy lessons from the Edenville and Sanford Dams owned by Boyce Hydro, LLC, and the Au Train Dam, owned by UP Hydro, LLC. What are the risks of a dam breach, or a bankruptcy of one or more of the LLCs, which would then transfer repair and decommissioning costs onto Michigan taxpayers and ratepayers? Michigan taxpayers and ratepayers should not be saddled with these real disaster costs and risks.

Confluence Hydro's incentives are fundamentally different than those of rate-regulated public utility Consumers Energy when it comes to spending money needed to operate, repair, maintain, and decommission the dams. As MHRC Witness Jester points out, "[t]he key difference is that a utility can recover through rates the reasonable and prudent costs of owning and operating the dams, and that cost recovery ensures dam safety and protection of natural resources." Jester Rebuttal, 3 TR 664; *see also* Wedoff Rebuttal, 3 TR 502; Lyon Direct, 3 TR 700; Monroe Cross Exam, 3 TR 185 (Company Witness Monroe explaining that in his experience, "there [has] never been a time where the Company has denied a dam safety project"). On the other hand, a private company, such as Confluence Hydro, has a powerful incentive "to minimize costs and thereby maximize profits." Jester Rebuttal, 3 TR 664; *see also* Lyon Rebuttal, 3 TR 706 (explaining that the higher return on investment demanded by private equity will "leave[] less money available for other purposes, including maintenance, repair, upgrading and decommissioning."). This profit motive creates additional, untenable risk to safety when the owner is responsible for maintaining and operating aging, high risk critical infrastructure as Confluence Hydro would be doing here.

The condition of the dams exacerbates the risk. According to DNR, the dams high hazard classification "indicates that failure or mis-operation would not only cause expected loss of life and severe natural resource impacts, but also means higher investment costs for improvements and repairs to meet dam safety requirements." Mistak Revised Direct, 3 TR 402. Similarly, Staff

Witness DeCooman recognizes: “These Dams have ongoing significant costs to adequately and safely maintain them, further heightening the need for careful planning around their long-term operation and eventual decommissioning. Failure to maintain dam safety can have immediate catastrophic impacts to people, communities, and the environment.” DeCooman Direct, 3 TR 1257–58.

Consumers Energy, which can recover its reasonable and prudent costs through its charges to ratepayers, has incentives to make the necessary and prudent investments for safe dam maintenance and operation. Lyon Direct, 3 TR 684; Wedoff Direct, 3 TR 492; Jester Direct, 3 TR 606. The same is not true for Confluence Hydro for which the PPA is its sole source of revenue, and it “benefits financially from reducing costs.” Jester Direct, 3 TR 606. Because “Confluence will not be guaranteed cost recovery for safety investments[,], it will evaluate them based on whether they are likely to earn a high enough return to satisfy its private equity owners.” Lyon Direct 3 TR 685.

MHRC presented testimony by two highly-qualified experts on the risks of private equity ownership: (1) **Professor Thomas Lyon**, the Dow Chair of Sustainable Science, Technology and Commerce Professor with appointments in both the Ross School of Business and the School of Environment and Sustainability at the University of Michigan; and (2) and **Judge Eugene Wedoff (ret.)**, who served as the Chief Judge of the U.S. Bankruptcy Court for the Northern District of Illinois and as the President of the American Bankruptcy Institute.

Professor Lyon testified regarding the risk associated with selling the dams to a non-regulated entity. He explained about the concept of “judgment proofness,” meaning assets in an LLC cannot cover potential damages. Lyon Direct, 3 TR 680-84; Lyon Rebuttal, 3 TR 706-07. Professor Lyon also discussed the Edenville Dam, Sanford Dam and Au Train Dam problems in

Michigan. Lyon Direct, 3 TR 678-80. He then assessed the arguments for profitability that Confluence Hydro, the private equity firm, and explains reasons why the Commission should not approve the proposed sale.<sup>14</sup> Lyon Direct, 3 TR 684-91; Lyon Rebuttal, 3 TR 705-07.

(Retired) U.S. Bankruptcy Court Judge Eugene Wedoff testified about the legal concept of “fraudulent transfer,” whereby an entity retains valuable assets while disposing of liabilities to a firm without sufficient assets to cover the liabilities. Wedoff Direct, 3 TR 494-97; Wedoff Rebuttal, 3 TR 1129. He explained the difficulty for the state and the public to recover funds under the fraudulent transfer doctrine and the potential that the State of Michigan and its taxpayers will be left to clean up the mess if Confluence Hydro (the private equity firm creating 13 separate new LLCs, one for each of the dams) walks away from its liabilities and responsibilities.<sup>15</sup> Wedoff Direct, 3 TR 497-98; Wedoff Rebuttal, 3 TR 1129.

According to these expert witnesses, Confluence Hydro will “make safety investments decisions based on the calculus of profit-maximization and any binding regulatory requirements.” Lyon Direct, 3 TR 685. Quite simply, it may not be within Confluence’s financial interests “to invest in necessary repairs or replacements for public safety or protection of natural resources.” Jester Direct, 3 TR 606. Or, it may not be within Confluence’s financial capacity. *Id.*; *see also* Lyon Rebuttal, 3 TR 704-07.

---

<sup>14</sup> Prof. Lyon responded to AG Witness Coppola regarding the insufficiency of the proposed parental guarantee condition, and the condition that Hull Street Energy should fund Confluence Hydro beyond its initial commitment as necessary. Prof. Lyon raised a number of situations in which these conditions would be insufficient to protect the State of Michigan, even if they were accepted by the deal proponents, including: (1) If Hull Street, its subsidiary limited partnership Hull Street Energy #3, or Confluence Hydro go bankrupt; (2) If Hull Street does not maintain sufficient assets to support the guarantee; (3) If Hull Street and/or Confluence Hydro sell the Michigan dams portfolio; and (4) If Confluence Hydro and Hull Street decline to relicense the facilities and choose to walk away from the dams without completing all necessary steps to decommission them. Lyon Rebuttal, 3 TR 695-704.

<sup>15</sup> Judge Wedoff’s rebuttal testimony also explains the insufficiency of the parental guarantee proposed by AG Witness Coppola. Judge Wedoff explained that altering the deal in such a fashion defeats the parties’ ultimate purpose – transferring the liability *from* Consumers Energy to Confluence Hydro, which, based on the corporate structure design, will likely not satisfy all the liabilities that it takes on. Wedoff Rebuttal, 3 TR 1127-31.

DNR Witness Mistak testified to the real-world consequences in Michigan how this financial calculus can work out when a private owner is responsible for hydro dams:

I have witnessed systematic problems with other private entities who own critical infrastructure such as hydropower projects and do not have the accountability associated with being a regulated utility company. These problems include lack of attention to dam safety and natural resources, as revenue is instead directed to shareholders rather than timely management of infrastructure.

Mistak Revised Direct, 3 TR 400. Confluence Hydro’s incentive structure is especially concerning because these 13 aging dams require “significant investment [for] continued operation.”

Blumenstock Direct, 3 TR 43.

Consumers Energy, Hull Street Energy and Confluence Hydro are essentially asking the Commission to “trust us,” notwithstanding their own 13 separate ring-fenced LLCs structure, and Michigan’s experiences with the Edenville, Sanford and Au Train Dams. They have not met their burden of proof in justifying the Commission’s approval of this risky and unfair transaction that does not comply with the statutory standards.

1. *MHRC’s Business Case Analysis Shows Confluence Will Likely Underinvest in Dam Safety or Will Divest Unprofitable Dams*

Consumers Energy Witness Blumenstock argues that the PPA revenue “will provide [Confluence] sufficient revenues to continue operating the facilities safely for the long term, complete all necessary upgrades, account for a range of potential contingencies and earn a profit.” Blumenstock Rebuttal, 3 TR 103. But the record evidence does not support this assertion. Confluence Hydro submitted no testimony regarding its business plan or anything else, and Consumers Energy is merely conjecturing about an opaque private equity firm’s internal financials. MHRC’s analysis demonstrates that Confluence Hydro “cannot sustain the operations, maintenance, and maintenance capital that Consumers estimates will be necessary, let alone put funds aside to finance decommissioning and removal.” Jester Corrected Direct, 3 TR 621.

**BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

**END CONFIDENTIAL.** The evidence in the record compellingly supports this conclusion: Confluence Hydro, as a “profit-maximizing firm,” likely cannot and will not maintain and invest in each of the dams at a level sufficient to ensure their safe and reliable operation. Jester Direct, 3 TR 614.

MHRC identified a number of red flags. **First**, MHRC Witness Jester analyzed the business case from Confluence Hydro’s perspective using revenues from the PPA and Consumers Energy’s estimated costs. Jester Direct, 3 TR 620. He assumed that Confluence Hydro “will bear the costs of operations and maintenance, as well as relicensing but do not bear any costs of decommissioning and removal.” *Id.* If Consumers Energy’s capital expenditure plan represents the optimal plan to safely operate the dams, **Confluence Hydro would lose \$710 million through the entire PPA period.** Jester Direct, 3 TR 621. The table below summarizes those losses.

<b>Facility</b>	<b>Confluence's NPV through PPA (\$1,000)</b>	<b>Observations during PPA Period</b>
Alcona	(\$26,348)	Margin is intermittently positive or negative
Calkins Bridge	(\$24,407)	Persistent annual losses
Cooke	(\$11,526)	Margin is intermittently positive or negative
Croton	(\$10,624)	Margin intermittently positive or negative
Five Channels	(\$15,311)	Margin intermittently positive or negative
Foote	(\$17,052)	Margin intermittently positive or negative
Hardy	(\$201,497)	High initial losses, intermittent thereafter
Hodenpyl	\$17,307	Positive margin except intermittent investments
Loud	(\$33,961)	Persistent annual losses
Mio	(\$39,587)	Persistent annual losses
Rogers	(\$41,716)	Persistent annual losses w/ occasional good years
Tippy	\$50,620	Persistent annual gains w occasional investments
Webber	(\$36,882)	Persistent annual losses
<b>TOTAL</b>	<b>(\$710,248)</b>	

“Capital spending below [Consumers’ proposed] level is necessary to make it rational for Confluence Hydro to enter this transaction.” Jester Direct, 3 TR 631.

**BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



collaboration with the management, operations, and maintenance teams.” Ex. MHRC-66; *see also* MHRC-51; Ex. MHRC-59 **(BEGIN CONFIDENTIAL** [REDACTED]

**END**

**CONFIDENTIAL).**

MHRC Witnesses Jester and Lyon both demonstrate that, in most scenarios, it would not be financially profitable for Confluence Hydro to make the investments necessary to operate all of the dams safely through relicensing and the end of the PPA. Jester Direct, 3 TR 621; Lyon Direct, 3 TR 1197–1201. Neither Confluence Hydro, nor Consumers Energy has provided sufficient evidence to conclude otherwise. In responses to MHRC’s concerns that Confluence Hydro would not have sufficient revenues to safely maintain the dams, Consumers Energy Witness Blumenstock asserted “it is possible that [Confluence’s] costs will be lower than the Company’s,” pointing to potential “value beyond the term of the 30-year PPA,” “industry optimized practices,” and “other business opportunities to roll up other river hydro facilities.” Blumenstock Rebuttal, 3 TR 122. (Blumenstock, though, never discussed any of these theories with Confluence Hydro. Ex. MHRC-75.) Or, as DNR and MHRC witnesses testified, Confluence Hydro’s costs may be lower precisely because it will choose the financially rational option of *investing less than is optimal for dam safety*. Lyon Direct, 3 TR 689–90; Jester Direct, 3 TR 621; Mistak Revised Direct, 3 TR 400.

**Second**, Confluence Hydro’s creation of separate LLCs incentivizes foregoing necessary safety improvements on a specific dam when the costs exceed the benefits, or to divest of or abandon a dam—essentially declare that LLC to be bankrupt, as is happening with the UP Hydro LLC owner of the Au Train Dam—when the costs significantly exceed projected revenue. Lyon

Direct, 3 TR 682, 685–86. “Confluence Hydro’s plan to create separate limited liability corporation for each dam creates a severe problem of judgment-proofness,” because if the LLC’s “assets are worth less than the damages” the dam may cause, the Company “cannot be held fully financially accountable” for those damages. *Id.* at 680-83. Without the risk of financial accountability for the full costs associated with a dam failure, Confluence Hydro also has less incentives to prevent one. *Id.* at 680. Professor Lyon illustrates this point with a simple example, using a hypothetical dam that needs \$3 million in repairs, owned by an LLC with only \$1 million in assets. “If an accident occurs [at the dam] and damages exceed \$1 million, the LLC declares bankruptcy and has no liability to pay for any further damages. It has shielded itself from \$99 million of possible damages.” Lyon Direct, 3 TR 682. For this LLC, it may not be financially rational to spend \$3 million on repairs. “If the firm makes the safety investment, it spends \$3 million on repairs and has an expected value of negative \$2 million. Now it is unprofitable for the firm to invest in safety.” *Id.*

Staff Witness Heidemann likewise recognized that if the amount of money needed for repairs and upgrades exceeds the net present value of the PPA, Confluence Hydro “may choose not to make those repairs and would simply surrender the FERC licenses for the hydro generators at the time of relicensing.” Heidemann Direct, 3 TR 904. The Attorney General, MPSC Staff, Michigan DNR and MHRC all recognize the risks of Confluence Hydro’s proposed corporate structure. *See* DeCooman Direct, 3 TR 850–56; Coppola Direct, 3 TR 1081–83; Mistak Revised Direct, 3 TR 400, 406–08. The Commission has previously addressed a proposed transaction in which the record did not demonstrate sufficient evidence of the purchaser’s ability to maintain safety and reliability. In that case involving the sale of Wisconsin Electric Power Company’s Michigan electric distribution assets and Wisconsin Public Service Corporation’s

electric and natural gas distribution assets to Upper Michigan Energy Resources Corporation, pursuant to MCL 460.6q, the Commission ultimately required the purchaser to provide “its capital and operations plan for review by the [Commission] Staff on an ongoing basis.” *In the matter of the application of Wisconsin Electric Power Company, et al.*, Case No. U-18061, Nov. 7, 2016, Order at p 7. Without that information, “[h]ow can the Commission be assured that [the buyer] is committed to making necessary investments and expenditures in the short and long term to maintain distribution reliability, safety, and customer service...?” *Id.*

Here, based on the evidence in the record, **first**, the Commission simply cannot be “assured” that Confluence is committed to “making necessary investments and expenditures in the short and long term” to maintain safety and reliability; and, **second**, the Commission will potentially lose oversight of Confluence Hydro and Hull Street Energy if the proposed dam sale is approved. Consumers Energy has not met its burden of proof to demonstrate that Confluence Hydro has a business plan consistent with operating all 13 of the dams in accordance with high safety standards, and to fund decommissioning if and when a dam ceases to be profitable going forward. *Jester Direct*, 3 TR 640.

## 2. *FERC Oversight Is Not Sufficient*

At present, both the Commission and the Federal Energy Regulatory Commission’s (“FERC”) regulate the dams. The Commission has oversight authority to ensure Consumers Energy lives up to its obligation to operate and maintain the dams consistent with the public interest and with the Commission’s directives. In return, Consumers Energy can recover its reasonable costs, including those associated with maintaining dam safety. Consumers Energy asserts this FERC oversight will be sufficient to ensure dam safety and protect Michigan communities and natural resources. *Monroe Rebuttal*, 3 TR 182.6.

DNR Witness Mistak strongly disagrees. She has direct experience with FERC oversight in action and testifies that “FERC is often slow to act and the only meaningful action they are willing to take is license revocation or enacting an implied surrender of the license. When this happens, the burden of regulating the dam for safety falls on to the State of Michigan.” Mistak Revised Direct, 3 TR 400. Consumers Energy’s reliance on FERC is inconsistent with evidence in the record, including the history of private dam ownership under FERC oversight in Michigan, and with FERC’s past practice and performance.

Consumers Energy is simply incorrect in concluding that the FERC license transfer review process will ensure that Confluence Hydro has the “technical expertise and financial capability to safely operate the facilities.” Monroe Rebuttal, 3 TR 182.5. Witness Monroe, however, lacks experience regarding FERC and his suggested basis for his conclusions are not persuasive. On cross examination, Witness Monroe conceded that he has never worked on a FERC license transfer until this one and has not reviewed any prior FERC transfer decisions. Monroe Cross Exam, 3 TR 187.

This Commission should not and cannot rely on the FERC license transfer process as a sufficient substitute for the Commission’s oversight under state law, and its thorough evaluation of Confluence Hydro’s ability to safely maintain and operate the 13 dams on five iconic Michigan rivers. Section 8 of the Federal Power Act, which governs license transfers, does not articulate a standard for approving a transfer application. 16 U.S.C. § 801; *see also* 18 C.F.R. §§ 9.1–9.3. According to FERC, “a license transfer proceeding is a **limited inquiry** of the ability of the transferee to carry out its responsibilities under the license.” *Alcoa Power Generating Inc. Cube Yadkin Generation LLC*, 157 FERC ¶ 62,188 at P. 4 (2016) (emphasis added). In evaluating a license transfer application, FERC will “consider the fitness of the transferee to carry out its

responsibilities under the license, including the transferee’s control over the project’s facilities and payment of the project’s annual charges under the FPA, and whether the transfer is in that sense in the public interest.” *Id.*

FERC is not required, however, to “revisit all issues that must be considered” in the licensing or re-licensing process. *Id.* Contrary to the assertion by Consumers Energy’s Witness Monroe, FERC will not likely look seriously at a transferee’s financial resources or capabilities. Monroe Rebuttal, 3 TR 182.5. FERC makes this clear in its decision in *Fraser Papers Inc., Flambeau Hydro, L.L.C.*, where it declined to consider whether the transferee had the ability to pay if upgrades at the dam were needed in the future. 89 FERC ¶ 61,286, 61,897 (1999). FERC explained that although it “did not expect the projects to be profitable to operate, it has been our policy not to deny license authority on that basis, but to allow the licensee and its lenders and investors to make their own independent judgment.” *Id.*

Consistent with FERC’s “limited inquiry” view, FERC routinely approves the transfer of dam licenses without much discussion or scrutiny. For example, when FERC approved the license transfer for the Sanford, Edenville,<sup>16</sup> Secord, and Smallwood Dams from Wolverine Power Company to Synex Michigan in 2004, FERC said the following:

Synex Michigan is not a Commission licensee. Therefore, we have no hydroelectric compliance record to review. Synex Michigan is a subsidiary of Synex International Inc. ... [and] was created to take over and operate the four Wolverine projects and is affiliated with Synex Energy Resources. The transferee is qualified to hold the licenses and to operate the properties under the licenses. It has agreed to accept all the terms and conditions of the licenses, and to be bound by the licenses as if it were the original licensee.

107 FERC ¶ 62,266 at 2–3 (2004).

---

<sup>16</sup> These are the Midland dams that failed in 2020.

In other words, the transferee’s complete lack of compliance record was no barrier to transfer approval by FERC. FERC has similarly provided surface-level discussion of the transferee’s ability to comply with the license going forward in other cases.<sup>17</sup> DNR Witness Mistak testified: “In my experience, FERC’s review of proposed license transfers appears to be an administrative review process; transfer applications are not heavily scrutinized, and transfer requests are rarely (if ever) denied.” Mistak Revised Direct, 3 TR 405. Consumers Energy admitted it is unaware of any instance of FERC denying a license transfer. Ex. MHRC-39.

Consumers Energy also overstates FERC’s ability to ensure compliance with dam safety requirements and license conditions. Multiple knowledgeable, expert witnesses credibly testified about the real-world deficiencies in FERC’s willingness and ability to enforce dam safety mandates. *Id.* at 400; Jester Direct, 3 TR 604–05; Trumble Revised Direct, 3 TR 429–30; DeCooman Direct, 3 TR 852, 854. DNR Witness Trumble, who is the state’s leading dam safety regulator at EGLE, explained:

In my experience, I have often witnessed FERC struggle to compel compliance by licensees on dam safety matters utilizing regulatory tools they have at their disposal. This is highlighted by events at the Edenville Dam, Au Train Dam, and several other examples where FERC tried for years, unsuccessfully, to compel licensees to make necessary dam safety improvements.

Trumble Revised Direct, 3 TR 430.

Consistent with Witness Trumble’s experience for the State of Michigan, these limitations are especially acute in situations where an owner or operator lacks the financial resources to comply with a license requirement or is simply unwilling to do so. “The most common responses from licensees when requesting additional time to complete these [FERC-mandated] upgrades, or

---

<sup>17</sup> See, e.g., *FirstLight Hydro Generating Co. FirstLight MA Hydro LLC*, 168 FERC ¶ 62,014 (2019); *AER NY-Gen, LLC Eagle Creek Hydro Power; LLC Eagle Creek Water Res., LLC Eagle Creek Land Res., LLC*, 139 FERC ¶ 62,132 (2012); *City of Denton, Texas, City of Garland, Texas*, 112 FERC ¶ 62,232 (2005).

explaining why they cannot, is lack of sufficient funding to complete necessary projects to come into compliance with safety regulations.” Trumble Revised Direct, 3 TR 431. FERC has no real ability to force—or even incentivize—a hydro dam owner or operator to make necessary safety upgrades. *Id.*; Mistak Revised Direct, 3 TR 400; Ex. MHRC-63 at 12.

If it does find safety issues, FERC can only impose civil penalties or, in the face of continued non-compliance, revoke the license as was the case for the Edenville Dam. *Id.* However, as Staff Witness DeCooman explained, “revocation of a license does not necessarily mean that the Dam owner will address any violations or the Dam will be brought into safe operating condition.” DeCooman Direct, 3 TR 851. Indeed, license revocation may have the opposite effect—by taking “revenue away from licensees who are already struggling to finance necessary safety upgrades,” it makes it less likely the upgrades are ultimately made. Trumble Revised Direct, 3 TR 432.

DNR Witness Mistak and EGLE Witness Trumble are the State of Michigan officials most knowledgeable and credible regarding dam safety, finances and operations in Michigan. The Commission—as a fellow Michigan state agency—should weigh their expertise heavily in considering their very credible testimony. The record here demonstrates that FERC cannot ensure dam safety compliance. As DNR Witness Mistak confirmed, “[w]hen this happens, the burden of regulating the dam for safety falls to the State of Michigan.” Mistak Revised Direct, 3 TR 400; *see* Trumble Revised Direct, 3 TR 432–33. The evidence in the record demonstrates that relying on FERC oversight does not adequately protect Michigan ratepayers and taxpayers.

3. *The history of private dam ownership in Michigan shows what will happen when an owner is unwilling or unable to safely maintain and operate its dams*

The recent history of private dam ownership in Michigan provides sufficient evidence for the Commission to find that Confluence Hydro's purchase of the 13 Michigan dams creates too many risks when it comes to assuring dam safety. It also demonstrates how FERC oversight is insufficient to address the dam safety risks posed by Confluence Hydro's ownership.

(a) Edenville and Sanford Dams

Boyce Hydro LLC, the private entity that owned and operated the Sanford and Edenville Dams at the time of their breach and failure, is a clear example of how FERC dam safety oversight does not adequately protect Michigan communities and natural resources. Prior to the dams' failure in 2020, FERC tried for years to address dam safety issues at the dams without success. FERC explained: "Commission staff[] attempted to ensure the licensee corrected noncompliance issues at this project since Boyce Hydro's acquisition of the license in 2004—a *period of over 14 years.*" *Boyce Hydro Power, LLC*, 164 FERC ¶ 61,178, at P. 4 (2018).

DNR Witness Mistak provides additional insight into FERC's engagement with Boyce Hydro. "[F]or over a decade, the dam owner did very little to come into compliance with FERC's dam safety directives, but FERC did nothing more than continue to send the owner letters." Mistak Revised Direct, 3 TR 401. Finally, in 2018, FERC revoked the Edenville Dam license. But this did not protect Michigan communities from the safety issues created by Boyce Hydro's ownership. Two years later, the Edenville Dam failed, "causing the failure of the downstream Sanford Dam" and resulting in the "evacuation of over 10,000 residents, impacting 2,500 structures, and causing hundreds of millions of dollars in structural and environmental damages." *Id.* The State of Michigan and its taxpayers have borne the costs of this failure. Lyon Direct, 3 TR 679.

FERC oversight never resolved the “long history of violations” and “missed deadlines” by Boyce Hydro, LLC. 164 FERC ¶ 61,178, at P. 4. As the FERC-ordered independent audit conducted after the 2020 dam failures explained, where an owner claims to have insufficient financial resources to support the upgrades, “[n]one of FERC’s enforcement options would help this situation, and, in fact, they all would make the situation worse by reducing the owners’ revenue.” Ex. MHRC-63 at S-8. The audit concluded that “[t]he action ultimately taken by FERC, license revocation, did not reduce the risks presented by Edenville Dam.” *Id.*

(b) Au Train Dam

FERC oversight also failed to ensure necessary safety investments were made at the Au Train Dam owned by UP Hydro, LLC. DNR Witness Mistak testified: “FERC allowed dam safety issues to persist for more than 25 years, doing little more than sending letters reminding the owner to address the dam safety deficiencies.” Mistak Revised Direct, 3 TR 402. Like the Edenville Dam, the Au Train is a high hazard dam with an inadequate spillway. Exhibit DNR-4 at 1. According to EGLE and DNR, “[i]f the Au Train Dam fails, the water escaping the impoundment will likely destroy M-94, cause major environmental harm, and send flood water rushing into Au Train Township.” *Id.* at 2.

FERC never took direct enforcement action, however, even as “multiple owners continued to disregard FERC’s numerous demands.” Mistak Revised Direct, 3 TR 401. In late 2025, FERC terminated the license by implied surrender after UP Hydro, LLC declared bankruptcy and lost control of the property. *Id.* The Au Train Dam safety issues still exist today, including the inadequate spillway as well as structural and embankment stability concerns. Trumble Revised Direct, 3 TR 437. Like Edenville and Au Train, two of Consumers Energy’s dams, Rogers and Hardy, have inadequate spillways and are in need of upgrades. Blumenstock Direct, 3 TR 53.

FERC's track record in Michigan demonstrates that it has limited ability to ensure private dam owners make appropriate safety upgrades to protect the public from costly and potentially deadly disasters.

**B. If the Sale is Approved, Confluence Hydro Can, In Turn, Sell Some or All of the 13 Dams to Some Other Entity**

Consumers Energy points to representations made by Confluence Hydro in negotiations, in public, and in press releases as evidence that Confluence will relicense all of the dams and operate them itself through the end of the PPA. The Commission should give little weight to these representations, because Confluence did not submit any sworn testimony and is not necessarily bound to do the things that it may have stated in private negotiations or in public meetings. Without Commission oversight, Confluence will make its future decisions based on its own assessment of financial, operational or environmental factors that could change at any time. Jester Direct, 3 TR 614; Lyon Rebuttal, 3 TR 704. Even with a 30-year PPA, things may not go as planned, as MHRC Witness Lyon explained, “[a] contract that lasts 30 years is almost certain to come under pressure from unanticipated circumstances whether due to changes in technology, demand, or environmental understanding.” Lyon Rebuttal, 3 TR 704.

Moreover, the record evidence supports that it is reasonably foreseeable that Confluence Hydro will not own all of the dams for the long term. Confluence Hydro itself is newly created and has no operating experience at all. It is a wholly owned subsidiary of Hull Street Energy III Partners LP. Hull Street Energy's past practice is “flipping dams” within five years or less, selling 46 of the 47 dams it has owned, many within a short time after they were purchased.

Consumers Energy itself admits that, on its face, this history demonstrates a tendency to short-term ownership. According to Consumers Energy Witness Monroe, “as part of the initial due diligence, the Company had concerns that Hull Street Energy would possibly flip the river

hydros after reviewing the timeline of their past ownership.” Monroe Rebuttal, 3 TR 182.13.

**BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **END**

**CONFIDENTIAL.** Consumers Energy’s stated concerns are quite understandable in light of the history here: Hull Street sold the majority (32) of the 47 dams that it purchased *within three years*. Ex. MHRC-45. Hull Street Energy sold all but one of the remaining dams within about 5 years or less. *Id.*

No law, regulation, or contract prohibits Confluence Hydro from selling the dams any time after the Commission approves this proposed sale. The contract between Consumers Energy and Confluence Hydro does not obligate it to sell power or continue operating the dams through the end of the PPA nor are there any contractual provisions to prohibit Confluence Hydro from selling the dams. Ex. MHRC-47; Ex. MHRC-48; Jester Direct, 3 TR 619–20. FERC’s surface-level evaluation of license transfers is insufficient to ensure that a future owner will safely maintain and operate the dams.

Confluence Hydro and Hull Street Energy did *not* testify for themselves in this proceeding. Consumers Energy now argues that it is “confident in Hull Street Energy’s intent to relicense” the 13 dams. Monroe Rebuttal, 3 TR 182.13; *see also* Blumenstock Rebuttal, 3 TR 119. Based on what evidence? While the PPA does provide an incentive for Confluence Hydro to produce power, it does not include any obligation to do so.<sup>18</sup> Ex. MHRC-67. Consumers

---

<sup>18</sup> Importantly, Confluence is paid for the MWs produced by the entire fleet of facilities and is not obligated to produce power from any specific facility. In other words, if Confluence were to sell or stop operating some of dams, Confluence could still get paid for power produced by the remaining dams.

Energy's naked assertion that Confluence Hydro will own the dams through the length of the PPA is directly contradicted by other evidence in the record, by Hull Street's track record, and by Consumers Energy's own internal due diligence.

**BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **END**

**CONFIDENTIAL.**

Hull Street Energy's track record is flipping dams. Based on the evidence in this case, Consumers Energy has not met its burden of proof to show otherwise, and the Commission must rely on the facts in this record, not Consumers Energy's wishful thinking. The record evidence establishes that Consumers Energy's proposed transfer would have an adverse impact on the safe and reliable operation of the dams. MCL 460.6q(7)(b).

**VI. THE COMMISSION SHOULD NOT ALLOW CONSUMERS ENERGY TO IGNORE THE VALUE OF THE LAND IN THE BUSINESS CASE ANALYSIS OF THE PROPOSED SALE**

Consumers Energy proposes to transfer 32,000 acres of land in the FERC-established boundaries around the dams as part of its proposed transaction with out-of-state private equity

firms Hull Street Energy and Confluence Hydro. Blumenstock Direct, 3 TR 43. This land giveaway and land grab is just plain wrong and should be not allowed by the Commission.

The 32,000 acres of lands are used for outdoor recreation, conservation, wildlife habitat and other purposes. Mistak Revised Direct, 3 TR 414. The lands have been paid for by Michigan utility ratepayers for about 100 years. Jester Direct, 3 TR 626. While this land is currently restricted by Consumers Energy's FERC licenses for the 13 dams, there is no guarantee that the same boundaries would remain at relicensing.

DNR Witness Jessica Mistak testified that "FERC is increasingly allowing dramatic reductions to project boundaries, both as stand-alone requests by licensees and in relicensing proceedings and is largely ignoring recommendations by resource agencies to retain existing project boundaries for the benefit of the public." Mistak Revised Direct, 3 TR 415. MHRC Witness Jester testified about this same concern. Jester Direct, 3 TR 628.

These lands are very valuable as was made clear in the information obtained by MHRC in discovery from Consumers Energy. Ex. MHRC-60. 16,900 acres are adjacent to water. Jester Direct, 3 TR 625. MHRC Witness Jester analyzed the value of the lands in question, and he testified that "market value" is considerably higher: roughly \$167,808,040 (or the State Equalized Value multiplied by two). Jester Direct, 3 TR 629. Because more than half of the land includes water rights (and therefore are likely to remain within the FERC boundary), Witness Jester removed those acres and concluded that nearly \$80 million worth of land would be available for sale. *Id.* Witness Jester noted that this estimate is conservative because, in his experience, "most land sells for well above twice the [State Equalized Value]." Jester Direct, 3 TR 626.

Consumers Energy conceded it did not include the value of the land in the business case analyzing the sale. Ex. MHRC-60. Consumers Energy also conceded that “[t]here are no contractual provisions in the sale agreements that prevent Confluence Hydro from selling the river hydro facilities.” Ex. AG-24.

Consumers Energy attempts to dismiss these concerns by arguing that the land should not be included in the sale price because the existing FERC license requires all land within the boundary remain in the boundary and that “[t]he Company anticipates that agencies are likely to request a similar condition be tied to the FERC licenses in 2034 for the 11 projects.”

Blumenstock Rebuttal, 3 TR 120. There is no assurance or other basis to support Consumers Energy Witness Blumenstock’s optimistic conjecture about Confluence Hydro’s future actions, especially in light of MHRC Witness Jester and DNR Witness Mistak experience with FERC’s recent practice of downsizing project boundaries. Mistak Revised Direct, 3 TR 415; Jester Direct, 3 TR 628.

The significant value associated with the land, along with the trend at FERC and lack of contractual safeguards presents a real risk that Confluence Hydro will sell the land for development and unjustly gain a windfall profit at the expense of Consumers Energy’s ratepayers. Consumers Energy bought these lands many years ago and charged ratepayers over the years. As MHRC Witness Jester explained, if Consumers Energy sold the land, “[t]he revenue from the land would normally be credited to customers as either a reduction to rate base or as a revenue credit against revenue requirements.” Jester Corrected Direct, 3 TR 626. “Confluence Hydro will have significant financial incentive to sell off project lands not required for project operation.” Jester Direct, 3 TR 630.

As long as Consumers Energy owns the dams, the Commission maintains regulatory authority. The Commission has previously considered sale prices under the public interest factor, MCL 460.6q(e), concluding that “[a] sale in the public interest would be a sale that properly valued the asset, thereby affording ratepayers an appropriate return on the sale.” *In the Matter of the Application of Wisconsin Elec. Power Co. for Approval, Pursuant to MCL 460.6q, of the Sale of Its Int. in the Edgewater 5 Generating Unit*, Nov. 7, 2016, Order at p 8, (Case No. U-16366). Whether considered as an improper subsidy, or simply not in the public interest, the Commission should ensure that the value of the land is properly accounted for in this transaction.

The Commission should reject Consumers Energy’s proposed sale of the 13 hydro dams and should not allow this land grab. If it considers allowing the sale, the Commission should take into account the land value as MHRC Witness Jester recommends. *See* Section IV.C.1.

## **VII. THE PROPOSED SALE IS CONTRARY TO SOUND PUBLIC POLICY AND THE PUBLIC INTEREST**

The governing statute required the Commission to determine whether the proposed sale is consistent with public policy and the public interest, and Consumers Energy bears the burden of proof. MCL 460.6q(7)(e). Consumers Energy’s proposed sale fails to meet this standard because it imposes an unreasonable and unjustified amount of risk on the State of Michigan, its taxpayers and its ratepayers, and it would undermine the Commission’s oversight to protect ratepayers and the public’s interest. In contrast to the risk the sale would create, Consumers Energy’s continued ownership allows the Commission—on behalf of the State of Michigan and its citizens—to help determine the future of the dams, safe operations, and the future of five iconic Michigan rivers. It also allows the Commission to help facilitate dealing with the significant water quality problems caused by dams on Au Sable, Manistee and Muskegon Rivers.

**A. Commission Approval of the Sale Would Create an Untenable Amount of Risk for the State of Michigan**

Consumers Energy argues that it is selling the dams to Confluence Hydro in order to transfer financial liabilities and environmental risks: “The transfer of *substantial* future operational and environmental liabilities and risk to Confluence” is a primary reason for its proposed sale. Blumenstock Direct, 3 TR 48 (emphasis added); CE Application at 1; Witness Wedoff Rebuttal, 3 TR 502. But Consumers Energy has not demonstrated that Confluence Hydro has the ability to pay for those liabilities should the need arise, and the structure of the transaction means that the State (and its citizens) would potentially be left holding the financial bag if anything goes wrong. Notably, Confluence Hydro defaulted by failing to present any testimony on this point and, indeed, by failing to present any testimony at all in this case.

1. *The proposed transaction transfers significant liability from Consumers to Confluence without any assurance that Confluence will have the financial resources to address those liabilities*

Confluence Hydro and its 13 individual LLCs for each dam do not have adequate capital or cash flow to cover such “substantial” operational or environmental liabilities that may arise during Confluence’s ownership of the dams. Lyon Direct, 3 TR 680; Wedoff Direct, 3 TR 498; AG Witness Coppola Direct, 3 TR 310–11. Confluence Hydro is a newly created entity and the only physical assets being transferred to Confluence are the dams themselves and the adjoining land and buildings. Wedoff Rebuttal, 3 TR 503. Confluence’s sole source of revenue is the PPA, which is insufficient to cover Confluence’s *expected* O&M and capital expenditures at least through 2035 let alone unexpected expenses or a dam failure. *See* Section V.

Under the terms of the proposed Environmental Indemnity Agreement, Confluence Hydro must maintain \$2.5 million in a bank account or through a letter of credit, as well as obtain \$50 million in insurance coverage. AG Witness Coppola Direct, 3 TR 317. But neither of

these terms are sufficient to cover “substantial” environmental or operational liabilities. For example, the failure of the Edenville dam caused over \$200 million in damages. MHRC Witness Lyon Direct, 3 TR 678. In discovery, Confluence Hydro admitted it has not assessed the scope or magnitude of potential damages from a dam failure. Ex. MHRC-15.

**BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

**END CONFIDENTIAL.**

MHRC Witness U.S. Bankruptcy Court Judge Eugene Wedoff (ret.) explained in his testimony that an entire legal doctrine of fraudulent transfer exists to provide a potential remedy for exactly this scenario where one entity transfers to a new entity an amount of liabilities that exceed the value of the transferred assets. Wedoff Direct, 3 TR 494–97. Federal and Michigan law provides that a “transfer of property may be avoided (that is, treated as a nullity) if one of the parties received less than reasonably equivalent value in the transfer and as a result was left with liabilities exceeding its assets.” Wedoff Direct, 3 TR 494. The laws on “fraudulent transfer” allow the resulting liability to return to the seller. *Id.* If there is a dam failure during Confluence Hydro’s ownership that results in greater liability than the dam’s LLC has in assets, a fraudulent transfer action could revert the liability back to Consumers Energy. But as Witness Wedoff notes, even that outcome is “both uncertain and costly.” *Id.*

Finally, the Commission cannot be assured that Confluence Hydro intends to assume all liabilities associated with ownership of the dams. Consumers Energy identifies decommissioning as an “end-of-term-cost risk[.]” associated with the dams. Ex. MHRC-83; Blumenstock Cross Exam, 3 TR 156–57. But Confluence Hydro has stated it “believes each of these projects has perpetual viability”<sup>19</sup> and provided no evidence on its plans, if any, for decommissioning and no evidence on its plans, if any, to set money aside to pay for decommissioning. Ex. MHRC-52; Ex. MHRC-53; Ex. MHRC-54. Based on these facts, witnesses for MHRC, Staff, and the Attorney General, testified to the substantial risks that Confluence Hydro would not be able to meet all of its obligations should large liabilities arise from poor management of the dams or other unexpected events. *See* Lyon Direct, 3 TR 677; DeCooman Direct, 3 TR 850–56; Coppola Direct, 3 TR 1081–83.

---

<sup>19</sup> DNR has stated that in its expert opinion the “dams *inevitably* face retirement and decommissioning.” Ex. DNR 12 at 3. Elsewhere DNR stated that “[t]he facilities that exist today cannot last forever.” *Id.* at 6.

2. *The structure of the transaction means that the State will bear the risk if anything goes wrong*

Confluence Hydro's creation of a separate LLC for each dam means that any liability from the operation—or failure—of one dam can only be exercised against the assets of that individual LLC. Jester Direct, 3 TR 620; Lyon Direct, 3 TR 680. Although Confluence Hydro has not explained how it will transfer any net revenues from each LLC to its parent corporation, Ex. MHRC-65, MHRC Witness Jester explained that the “use of LLCs to limit exposure to legal liabilities including adverse judgements would be normal business practice and would involve the routine transfer of most available cash out of each LLC.” Jester Direct, 3 TR 620. Accordingly, as multiple witnesses testified, it is unlikely that any individual LLCs would have sufficient assets to cover the full costs of damages should an accident or dam failure occur. Lyon Direct, 3 TR 680; Wedoff Direct, 3 TR 493; DeCooman Direct, 3 TR 855–56.

MHRC witnesses Jester and Lyon both point out that in the event of an accident or dam failure that results in large liabilities, the most likely outcome is that the individual LLC will declare bankruptcy. Lyon Direct, 3 TR 685–86; Jester Direct, 3 TR 623. Staff Witness DeCooman similarly concluded that “[b]ecause each Dam is wholly owned by an individual [LLC], one potential outcome could be the individual LLC filing for bankruptcy. These liabilities would not become the responsibility of Confluence Hydro, LLC, or Hull Street.” DeCooman Direct, 3 TR 855. The individual LLC, with few assets and limited revenue, simply would not be able to pay for substantial liabilities—instead, that the damages will fall on the property owners directly affected, the State of Michigan, and its taxpayers. Wedoff Direct, 3 TR 493.

This is exactly what occurred in the recent case of Michigan's Edenville and Sanford dams, which failed in May 2020, caused over \$200 million in damages, and forced the evacuation of over 10,000 local residents. As MHRC Witness Lyon explained:

The owner of the two dams, Boyce Hydro LLC, declared bankruptcy, forcing Michigan taxpayers to pick up the bill instead of charging it to the company that caused the damage. Boyce Hydro was what legal experts call “judgment-proof,” meaning that the owners of the company could not be held financially liable for their failure to invest in proper maintenance and upgrades for the dam—because they did not have enough assets to cover the damages they caused.

Lyon Direct, 3 TR 678. The proposed structure for Confluence’s ownership creates the conditions for the same problem to occur here. As MHRC Witness Wedoff explained, “the Commission could consider the State of Michigan and Michigan taxpayers as, in effect, a third-party to this transaction, being forced to accept potential liabilities and risks which Confluence will potentially externalize onto it through its corporate structure.” Wedoff Rebuttal, 3 TR 503.

In response, Witness Blumenstock wrongly asserts that Boyce Hydro LLC was not “judgment proof,” citing to a federal district court’s summary judgment decision. Blumenstock Rebuttal, 3 TR 110; Exhibit A-42. But that summary judgment only entered declaratory relief against Boyce Hydro LLC, explaining that Boyce’s “bankruptcy plan precluded Plaintiffs [Michigan DNR and EGLE] from seeking damages” from the owners of the dams. Exhibit A-42 at 2. On cross examination, it was clear that Witness Blumenstock (a non-lawyer) did not understand what “judgment-proof” means in a bankruptcy context. Blumenstock Cross Exam, 3 TR 148. As MHRC Witness Lyon explains, “[w]hen a firm’s assets are worth less than the damages the firm may cause, the company is said to be ‘judgment-proof’ in the sense that even if the law renders a judgment against the firm, the company *cannot be held fully financially accountable for the damages it has caused.*” Lyon Direct, 3 TR 680–81. Blumenstock conceded he is not aware whether Boyce Hydro or Mueller have ever actually paid the State of Michigan any damages. Blumenstock Cross Exam, 3 TR 147–48; *see also* Lyon Direct, 3 TR 679.

Confluence Hydro’s separate LLC structure would also facilitate bankruptcy of individual LLCs to avoid paying the costs of decommissioning. Jester Direct, 3 TR 620. Because

Confluence Hydro has no plan to prepare financially for decommissioning any of the dams, Ex. DNR-35, the sale creates a substantial risk that State of Michigan and its taxpayers are ultimately left paying the costs of decommissioning. Lyon Direct, 3 TR 620; DeCooman Direct, 3 TR 855.

In contrast to these risks, Consumers Energy's continued ownership allows the Commission to help determine the future of the dams, safe operations, and the future of five iconic Michigan rivers. The Commission has broad discretion in considering what is consistent with the public interest, and what is not. *GTE North, Inc. v. Public Service Comm*, 215 Mich. App. 137, 159; 544 N.W.2d 678, 689 (1996). It is in the public interest to reduce the risk of unsafe dam operation and maintenance. The Commission should reject Consumers Energy's attempt to offload the responsibility for the future of the dams, along with significant environmental and operational liabilities, to an out-of-state private equity firm because this proposal is contrary to sound public policy and the public interest.

**B. The Lands and Rivers Around the Dams are Valuable Michigan Natural Resources, and It Is in the Public Interest to Have Commission Oversight of the Dams' Impact on Them**

The dams are located on five large rivers—the Au Sable, Grand, Kalamazoo, Manistee and Muskegon—all of which are important to the State, its economy, and its citizens. Multiple community members testify to the importance of each river to their communities. *See, e.g.*, Greenberg Direct, 3 TR 722; Pitser Direct, 3 TR 748; Sendek Direct, 3 TR 730. In addition, the Au Sable, Manistee and Muskegon, Rivers are some of the finest groundwater-fed coldwater streams in the United States. Seelbach Direct, 3 TR 458; *see also* Ex. MHRC-2. The dams are surrounded by a combined 32,000 acres—mostly outdoor recreation and conservation lands—that provide opportunities for hiking, camping, and for people to enjoy the outdoors. MHRC Witness. Buhr Direct, 3 TR 738.

The recreational lands and iconic rivers around the dams are valuable public resources. These rivers and surrounding communities are already negatively impacted because the dams impair water quality. Ex. DNR-12 at 1. They would also bear significant environmental and safety risks if the dams are not adequately maintained and safely operated. It is in the public interest to mitigate these harms and reduce the risk of unsafe dam operation and maintenance. Accordingly, it is in the public interest that the Commission retain oversight of the dams, the impoundments, and the surrounding lands. Otherwise, control over the operations of the dams, their future, and the future of valuable Michigan rivers will rest almost entirely in the hands of federal regulators and an out-of-state company with no history of natural resources protection and outdoor recreation in Michigan.

1. *The dams impair the water quality of these rivers and neither Consumers Energy nor Confluence Hydro have a remediation plan*

Confluence Hydro responded to DNR discovery that it does not have a “specific plan to address water quality issues” present at six (or more) of the 13 dams. Ex. DNR-19. As discussed in more detail in Section VIII below, the uncontroverted evidence in the record demonstrates that the dams heat the water and reduce dissolved oxygen, negatively impacting the fisheries and ecosystems of the rivers in question. Mistak Revised Direct, 3 TR 408–09. According to Michigan DNR and EGLE, “11 of the [dams] on the Muskegon, Manistee, and Au Sable rivers are consistently not meeting water temperature standards at downstream monitoring locations.” Mistak Revised Direct, 3 TR 410. Relatedly, FERC has determined that almost half of Consumers Energy’s dams do not meet the Michigan water quality criteria in their licenses, as Company witness Monroe conceded on cross-examination. Monroe Cross Exam, 3 TR 190; Ex. A-42 at 9. Consumers Energy has spent substantial amounts of money on mitigation measures at

these dams; these measures have attempted to improve water quality but have not resulted in compliance. Ex. DNR-20 at 5; Ex. A-42 at 9.

As a regulated utility, Consumers Energy is able to recover those costs of its mitigation measure through its rates. *Id.* at 3; Ex. DNR-20 at 5. Confluence Hydro cannot do the same, and may not be willing (or able) to spend the money necessary to address water quality problems at the dams. Michigan DNR asked Confluence Hydro for its “plans address any water quality issues, including known downstream temperature violations,” and Confluence answered that it has not identified a “specific plan to address water quality issues.” Ex. DNR-19.

It is in the public interest to rectify the significant water quality issues caused by the dams on the Au Sable, Manistee and Muskegon Rivers. That is better accomplished through the Commission’s oversight of Consumers Energy’s ownership as a regulated public utility.

2. *MHRC demonstrates that the recreational, economic, and property value of free-flowing rivers offsets any negative impacts of dam removal*

In the next several years, the dam owner must decide whether to seek renewed licenses from FERC in order to continue operations. If not, the dams will need to be decommissioned and removed. Consumers Energy has submitted reports by Public Sector Consultants concluding that removal of the dams would result in negative impacts to surrounding communities. Thompkins Direct, 3 TR 260; Exhibits A-12 through A-25. But MHRC expert witness testimony has explained why the Commission cannot and should not rely on these reports that have “limited transparency, unreasonable assumptions, and limitations in scope,” all of which result in “an incomplete assessment of economic impacts of dam retention versus removal.” Scuderi Direct, 3 TR 542.

For example, MHRC Witness Scuderi explained that Public Sector Consultants only looked at economic impacts in the first year following dam removal, which is a “highly

restrictive assumption” given that “dam decommissioning and river restoration typically occur over multiple years.” Scuderi Direct, 3 TR 543. This assumption fails to capture long-term economic adjustments and benefits, and “overstates localized economic losses by assuming recreational activity disappears rather than being replaced by alternate forms.” *Id.* This kind of artificial, unreasonable limitation can mean the difference between projecting negative economic impacts and positive ones from dam removal. For example, in a study completed for a different project and client, Public Sector Consultants found *positive* impacts on the local recreational economy and property values of full removal of the Flat Rock and Huroc Dams on the Huron River. Scuderi Direct, 3 TR 514. In discovery, Public Sector Consultants confirmed that key differences between studies for the Huron River Dams and Consumers Energy’s 13 dams—for example, examining the impacts “beyond one-year after removal” for the Huron River Dams—were due to client preferences, i.e. Consumers Energy. Ex. MHRC-76 (When asked by MHRC about this difference, the consultant explained that the Flat Rock Study “was conducted with several partners that had a different set of questions agreed upon at the start of the project.”). Consumers Energy’s preference and choice to limit its economic impact analysis to only one year after removal undermines the credibility and reasonableness of the analyses. Scuderi Direct, 3 TR 538.

Witness Scuderi highlighted other deficiencies in Public Sector Consultants’ reports, including: serious methodological concerns with their property value analyses; unreasonable assumptions that local recreational activity will disappear rather than relocate nearby; and uncertain visitation rates and expenditure profiles, which resulted in unreliable estimates of economic losses. Scuderi Direct, 3 TR 543. The Commission cannot reasonably rely upon the

Public Sector Consultants' reports as persuasive evidence that dam removal results in negative impacts to local communities.

Contrary to Public Sector Consultants' reports, MHRC Witness Scuderi explains that the "existing body of evidence about the economic impacts of dam removal on local and regional economies consistently finds little to no negative economic effects associated with dam removal, with several studies documenting positive short- and long-run economic outcomes." Scuderi Direct, 3 TR 544. These economic improvements are "driven by enhanced water quality resulting from river restoration, increased access to public goods, and expanded opportunities for alternative recreational activities." Scuderi Direct, 3 TR 544. Based on a thorough review of available studies that evaluate the impact of dam removal on property prices, MHRC Witness Scuderi also determined there can be "an insignificant to positive impact on surrounding property values from the decommissioning of dams and restoration of rivers." Scuderi Direct, 3 TR 515–17. In many cases, dam removal could benefit the public interest because the recreational, economic and property value of free-flowing rivers offsets any negative impacts of dam removal.

The Commission's oversight of the dams, especially as they come up for relicensing over the next decade, is in the public interest. Decisions regarding the future of the dams should be made by Michigan public agencies and with full and fair consideration of the impact on the Michigan rivers and communities on which they are located.

## **VIII. THE COMMISSION MUST APPLY MICHIGAN'S PUBLIC TRUST DOCTRINE**

The 13 dams are on five important Michigan rivers. As discussed above, the Au Sable, Manistee and Muskegon Rivers "are particularly significant natural resources within Michigan and the Midwest region." Seelbach Direct, 3 TR 457. MHRC Witness Paul Seelbach, a 30-year

Michigan DNR staff person explained: “These three rivers are unique, public-trust natural resources. These rivers are state treasures and highly valued for their beauty and recreational fisheries. They stand out from other rivers in the state and in the Midwest.” Seelbach Direct, 3 TR 460.

MHRC submitted testimony from seven witnesses who live, work, and recreate near these unique and special of these rivers. MHRC Witness Tess Nelkie, who owns an outdoor recreation business and has long-term local knowledge, described the Au Sable River as “a natural jewel in northeast Michigan, valued by local businesses, residents and tourists.” Nelkie Direct, 3 TR 712. She also described the Au Sable River as “nature at its finest...where a person can experience the sound of nature alone.” Nelkie Direct, 3 TR 713. MHRC Witness Brian Pitser, a fishing guide and recreation business owner, described the Manistee River as a “unique waterway with incredible amounts of public land surrounding” the river. Pitser Direct, 3 TR 748. He described “the backwaters above Tippy dam [as]...a magical place...[that] offers some pretty spectacular warm water fly fishing opportunities.” Pitser Direct, 3 TR 748. Similarly, MHRC Witness Kevin Feenstra, a professional fishing guide and author, described the “awesome” fishing on the Muskegon River and added that, “the Muskegon River watershed is rich from an ecological standpoint.” Feenstra Direct, 3 TR 765, He explained that “[c]onstantly observing the river in an intimate way has convinced me that it is a very rare and special resource.” Feenstra Direct, 3 TR 765.

The public trust doctrine establishes that the State of Michigan “must preserve and protect navigable waters for its people.” *Glass v. Goeckel*, 473 Mich. 667, 677 (2005). The public trust doctrine applies to navigable Michigan rivers, regardless of who owns the shoreline. *Collins v. Gerhardt*, 237 Mich. 38, 46-48 (1926). The Michigan Supreme Court has explained: “The beds

of navigable waters, like any other part of the public domain may pass by grant, or the common-law rule of riparian ownership to individuals; but the sovereign power retains, because inalienable, all public rights of navigation therein or thereover.” *Nedtweg v. Wallace*, 237 Mich. 14, 16-17 (1926). The Commission must ensure that the rivers associated with this transaction remain “subject to a public trust for the preservation of the public right of navigation, fishing, etc.” *Gross Ile Tp. v. Dunbar & Sullivan Dredging Co.*, 15 Mich. App. 556, 566 (1969).

DNR Witness Jessica Mistak’s testimony addressed how the public trust plays into DNR’s regulatory role. Mistak Revised Direct, 3 TR 395. She explained: “DNR is charged with the management of public trust natural resources of the state, meaning that we hold natural resources in trust for the public and have an affirmative duty to manage those resources for the benefit of the public.” *Id.* DNR’s unusual and substantial intervention in this case, and DNR’s strong recommendations against the proposed sale demonstrate how the transfer to a private equity firm threatens the public trust resources that DNR has an affirmative duty to protect.

The public trust doctrine is implicated in this transaction for two reasons.<sup>20</sup> **First**, as discussed above, the uncontroverted record evidence demonstrates that the dams impermissibly heat the water, reducing dissolved oxygen and negatively impacting the fisheries and ecosystems of the rivers in question. Mistak Revised Direct, 3 TR 408-09. MHRC Witness Ralph Haefner’s expert testimony provided detailed analyses documenting the water temperature and dissolved oxygen exceedances on the eleven dams with USGS gages above and below the dams. Haefner Direct, 3 TR 479–85. “All 11 of the stream gages had months when the FERC and Michigan Water-Quality Standard for water temperature were exceeded,” and “[d]issolved oxygen at 10 of

---

<sup>20</sup> MHRC recognizes that the nature and scope of the Commission’s consideration of the public trust doctrine is before the Michigan Supreme Court in *For Love of Water v. MPSC*, 25 N.W.3d 319 (Mich. 2025) (Mem) (granting application for leave to appeal on whether MEPA requires agencies to comply with the common law public trust doctrine), and the Court’s decision may be relevant to the Commission’s deliberations in this case.

11 stream gages fell below 7 mg/L at least once during the period of record.” Haefner Direct, 3 TR 489, 483. Similarly, DNR Witness Jessica Mistak documented Michigan DNR and EGLE’s long-standing concerns related to water quality issues around the dams on the Au Sable, Manistee and Muskegon Rivers. Mistak Revised Direct, 3 TR 410; *see also* Ex. DNR-12; Ex. DNR-13; Ex. DNR-15; Ex. DNR-16; Ex. DNR-17; Ex. DNR-18.

Consumers Energy Witness Adam Monroe essentially conceded that the dams impair the rivers where they are located. For example, Witness Monroe concluded that the Hardy Dam was out of compliance for temperature in October and November 2025, and it was out of compliance for dissolved oxygen in June, July, August, September, and October 2025. Monroe Rebuttal, 3 TR 182.10. He did not rebut the remainder of MHRC Witness Haefner’s analysis.

Witness Monroe further conceded that six of the dams have been historically unable to meet the temperature criteria in their license. Monroe Cross Exam, 3 TR 190. As FERC Staff explained in 2023, Consumers Energy’s own “historical temperature data [] indicate” that those dams “have generally and consistently not been able to meet the temperature criteria specified [in their licenses].” Ex. A-43 at 6. Instead, these dams only comply with their FERC licenses through their (unsuccessful) attempt at mitigating these issues through the installation of bubblers. Monroe Cross Exam, 3 TR 190-191; *see also* Ex. A-43 at 9. Thus, while Witness Monroe argues that “the river hydros are compliant with the water quality standards from the FERC license settlement agreement,” Monroe Rebuttal, 3 TR 182.8. they are mostly seeking to achieve “compliance” through *attempts* to mitigate the issues, *not successful* mitigation and compliance. Ex. A-43 at 9; *see also* Ex. DNR-15 (DNR letter to FERC describing how state water quality standards “are consistently exceeded, despite efforts to improve water quality using engineering solutions”).

The data and analysis conducted by MHRC experts and DNR’s detailed testimony and explanation of Consumers Energy’s continuing, long-term failures to comply with important water quality standards paints a troubling picture that must be part of the Commission’s considerations in determining whether or not to approve Consumers Energy’s proposed dams transaction. The state has an “inalienable” obligation to preserve these river resources for the public. *Nedtweg*, 237 Mich at 16-17.

In a discovery response, Confluence Hydro conceded that it has “not identified a specific plan to address water quality issues.” Ex. DNR-19. These public trust resources, which the state holds “in perpetual trust to secure to the people their rights of navigation, fishing, and fowling,” will possibly continue to be impaired for the foreseeable future. *Collins*, 237 Mich. at 46.

**Second**, as explained above, the proposed sale of the dams to private equity firm Confluence Hydro dramatically increases the risk of abandonment of these dams and bankruptcy of one, some, or all of Confluence Hydro’s 13 separate LLCs, which could lead to disrepair and failure. The Commission must address these real-world consequences of the proposed private equity ownership when these “unique, public-trust natural resources” are at stake and, here, at risk.

**IX. THE COMMISSION MUST CONDUCT A MEPA REVIEW AND DETERMINE THE EXTENT TO WHICH THE PROPOSED SALE OF THESE DAMS IMPAIRS MICHIGAN RIVERS**

The Michigan Constitution states that: “The Conservation and Development of the natural resources of the state are hereby declared to be of paramount public concern in the interest of the health, safety and general welfare of the people. The legislature shall provide for the protection of the air, water and other natural resources of the state from pollution, impairment and destruction.” Mich. Const. 1963, art. 4, § 52. The Michigan Environmental Protection Act

(“MEPA”) puts this constitutional declaration of “paramount public concern” into direct effect for the Commission here by instructing that:

In administrative, licensing, or other proceedings, and in any judicial review of such a proceeding, the alleged pollution, impairment, or destruction of the air, water, or other natural resources or the public in these resources, shall be determined, and conduct shall not be authorized or approved that has or is likely to have such an effect if there is a feasible and prudent alternative consistent with the reasonable requirements of the public health, safety, and welfare.

MCL 324.1705(2).

MEPA requires the Commission to determine “whether a natural resource is involved” and “whether the impact of the activity on the environment rises to the level of impairment” necessary to act. *Kimberly Hills Neighborhood Ass’n v. Dion*, 114 Mich. App. 495, 503 (1982). MEPA is implicated where “existing or probable future pollution, impairment or destruction of natural resources or of the public trust in those resources” is at issue. *Stevens v. Creek*, 121 Mich. App. 503, 507 (1982). The Michigan Supreme Court has explained that MEPA “does not...merely provide a separate Procedural route for protection of environmental quality, it is also a source of supplementary environmental law.” *Petition of Highway US-24, in Bloomfield Tp., Oakland County*, 392 Mich. 159, 184 (1974). The Court further explained that MEPA added “new considerations in the proper exercise of” the Michigan State Highway Commission’s “discretion in the choice of alternatives.” *Id.* at 186.

MEPA applies to this case,<sup>21</sup> and the Commission must not approve the proposed sale because the continued operation of the dams results in impairment, and there are “feasible and prudent alternatives consistent with the reasonable requirements of the public health, safety, and

---

<sup>21</sup> MHRC recognizes that the nature and scope of the Commission’s consideration of MEPA is before the Michigan Supreme Court in *Little Traverse Bay Bands of Odawa Indians, et al. v. MPSC*, 25 N.W.3d 377 (Mich. 2025) (Mem) (granting application for leave to appeal on the proper scope of MEPA), and the Court’s decision may be relevant to the Commission’s deliberations in this case.

welfare.” MCL 324.1075(2). **First**, these Michigan rivers are unquestionably natural resources within the purview of the statute, as are the fisheries they support. **Second**, the undisputed evidence in the record shows that the dams violate the State’s water quality standards for temperature and dissolved oxygen. Haefner Direct, 3 TR 479, 483; Mistak Revised Direct, 3 TR 410 at 21; Ex. DNR-12; Ex. DNR-13; Ex. DNR-15; Ex. DNR-16; Ex. DNR-17; Ex. DNR-18.

MHRC’s supplemented Witness Haefner’s expert analytical testimony with further direct observational testimony from local river experts who shared similar concerns about the dams’ impact on the waterways. MHRC Witness Thomas Buhr, an avid fly fishermen, author, and recognized authority on the Au Sable River, described the impact of warm water temperatures on fishing in the Au Sable River, as well as the creation of the “70 degree pledge,” whereby anglers do not fish in water that is 70 degrees or warmer. Buhr Direct, 3 TR 740-41. MHRC Witness Nelkie testified that “[i]n the past the 70-degree temperature was not reached until mid- to late July. Now, the water is over 70 degrees in early June....[a]nd the time for enjoying fly fishing on the lower Au Sable River is done until Mid-September.” Nelkie Direct, 3 TR 714. Other MHRC witnesses shared similar concerns about the impacts of the dams on these rivers. Sendek Direct, 3 TR 732; Greenberg Direct, 3 TR 722; Garlock Direct, 3 TR 758.

MHRC also demonstrated that both continued operation or decommissioning by Consumers Energy are more “feasible and prudent alternatives.” MHRC Witness Paul Seelbach provided expert testimony that removal of the dams would “help lower downriver river temperatures,” “reveal high-quality, high gradient large river habitats and allow full access among habitats for riverine fishes.” Seelbach Direct, 3 TR 463–64. Further, as explained above, the Commission’s ongoing oversight and regulation matters and can make a difference in how effectively the dams are managed to mitigate water quality issues.

MEPA is not only a procedural statute, but also “prescribe[s] the substantive environmental rights, duties and functions of subject entities,” including the Michigan Public Service Commission. *Petition of Highway US-24*, 392 Mich. at 184. The dams continue to impair these rivers, and Confluence Hydro has no plan to mitigate the water quality and dam safety issues, Ex. DNR-19. The Commission must do a MEPA review in this case, and MEPA, as it should be applied, provides an additional reason why the Commission cannot and should not approve the proposed sale of the dams to an out-of-state private equity firm.

**X. CONCLUSION**

For the foregoing reasons, MHRC respectfully requests that the Commission not approve Consumers Energy’s proposed sale of its 13 hydroelectric dams to an out-of-state private equity firm, the proposed overpriced PPA, and the other unreasonable components of its proposed transaction. The Commission must analyze the facts and evidence in the record against the legal standards under MCL 460.6q(7). Consumers Energy has not met its burden of proof related to the statutory standard. That is crystal clear in this record. Hull Street Energy, Hull Street Energy Partners III LP, and Confluence Hydro and its 13 separate LLCs did not even submit testimony in support of the proposed transaction or explain fundamental elements of their plans and finances. **BEGIN CONFIDENTIAL** [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] **END CONFIDENTIAL**

Confluence Hydro’s silence leaves the Commission with Consumers Energy Witness Blumenstock’s conjecture that Confluence Hydro will somehow run the dams more efficiently at about half the costs using the same Consumers Energy management and employees who run the

dams today. That defies common sense. At the core of the case, Consumers Energy and Confluence Hydro have not and cannot explain how a losing venture for Consumers Energy can suddenly turn into a profitable endeavor for Confluence Hydro. The math does not add up, and the State of Michigan has learned unfortunate lessons from the Edenville and Sanford Dam disasters, the Au Train Dam financial mess, and the bankruptcies of the Boyce Hydro LLC and UP Hydro LLC owners.

These 13 dams are on Michigan rivers that are public treasures worthy of protection. No reasonable person can refute that Confluence Hydro's primary obligation is to its investors who seek high returns from their investments, while Consumers Energy is a public utility regulated by the Michigan Public Service Commission that has an obligation to serve the public. The Commission should not approval this proposed sale, PPA and related components of the deal because Consumers Energy has not come close to meeting its burden of proof; approval would violate Michigan law and be contrary to sound public policy, and this scheme would unduly transfer financial and environmental risks and liabilities from Consumers Energy to the State of Michigan, ratepayers and taxpayers.

Dated: April 13, 2026



Daniel Abrams (P87696)  
Katie Duckworth (P86670)  
Howard A. Learner (*pro hac vice*)  
Rob Kelter (*pro hac vice*)  
Brad Klein (*pro hac vice*)

Environmental Law & Policy Center  
35 E Wacker Dr., Ste. 1600  
Chicago, IL 60601  
312-673-6500  
[dabrams@elpc.org](mailto:dabrams@elpc.org)

*Counsel for Michigan Trout Unlimited,  
Michigan Steelhead and Salmon Fishermen's  
Association, Great Lakes Council of Fly Fishers  
International, Anglers of the Au Sable, and the  
Michigan Hydro Relicensing Coalition*

**STATE OF MICHIGAN  
MICHIGAN PUBLIC SERVICE COMMISSION**

In the matter of the application of ) Consumers Energy Company for approval ) of the sale of its River Hydroelectric ) Generating Fleet, related Power Purchase ) Agreement, and other relief. )	Case No. U-21985
--	------------------

**PROOF OF SERVICE**

I hereby certify that a true copy of the foregoing *Confidential Opening Brief of Michigan Trout Unlimited, Michigan Steelhead and Salmon Fishermen’s Association, the Great Lakes Council of Fly Fishers International, Anglers of The Au Sable, and the Michigan Hydro Relicensing Coalition* were served by electronic mail upon the following Parties of Record, Monday, April 13, 2026.

<b>Administrative Law Judge</b> * James M. Varchetti	<a href="mailto:varchettij@michigan.gov">varchettij@michigan.gov</a>
<b>Consumers Energy Company</b> *Bret A. Totoraitis *Evan Keimach	<a href="mailto:mpsc.filings@cmsenergy.com">mpsc.filings@cmsenergy.com</a> <a href="mailto:bret.totoraitis@cmsenergy.com">bret.totoraitis@cmsenergy.com</a> <a href="mailto:evan.keimach@cmsenergy.com">evan.keimach@cmsenergy.com</a>
<b>Michigan Public Service Commission Staff</b> *Daniel E. Sonneveldt *Amit T. Singh *Adam Cozort	<a href="mailto:sonneveldtd@michigan.gov">sonneveldtd@michigan.gov</a> <a href="mailto:singha9@michigan.gov">singha9@michigan.gov</a> <a href="mailto:cozort1@michigan.gov">cozort1@michigan.gov</a>
<b>Department of Attorney General</b> *Celeste R. Gill *Amanda Churchill *Sebastian Coppola	<a href="mailto:GillC1@michigan.gov">GillC1@michigan.gov</a> <a href="mailto:AG-ENRA-Spec-Lit@michigan.gov">AG-ENRA-Spec-Lit@michigan.gov</a> <a href="mailto:SebCoppola@corp.lytics.com">SebCoppola@corp.lytics.com</a>
<b>Michigan Trout Unlimited, Michigan Steelhead and Salmon Fishermen’s Association, the Great Lakes Council of Fly Fishers International, Anglers of The Au Sable, and the Michigan Hydro Relicensing Coalition</b> *Daniel Abrams *Katherine S. Duckworth *Bradley Klein *Robert Kelter *Howard Learner *Alondra Estrada	<a href="mailto:dabrams@elpc.org">dabrams@elpc.org</a> <a href="mailto:kduckworth@elpc.org">kduckworth@elpc.org</a> <a href="mailto:bklein@elpc.org">bklein@elpc.org</a> <a href="mailto:rkelter@elpc.org">rkelter@elpc.org</a> <a href="mailto:hlearner@elpc.org">hlearner@elpc.org</a> <a href="mailto:aestrada@elpc.org">aestrada@elpc.org</a> <a href="mailto:ktoolan@elpc.org">ktoolan@elpc.org</a>

<p>*Katie Toolan          *Bob Stuber          *Dave Peterson          *Bryan Burroughs          *Tom Baird          *Scott Steiner          Dennis Eade</p>	<p><a href="mailto:stuberbob@gmail.com">stuberbob@gmail.com</a>  <a href="mailto:dpeterson6325@gmail.com">dpeterson6325@gmail.com</a>  <a href="mailto:bryanburroughs@michigantu.org">bryanburroughs@michigantu.org</a>  <a href="mailto:tombaird51@gmail.com">tombaird51@gmail.com</a>  <a href="mailto:sjsteiner21@gmail.com">sjsteiner21@gmail.com</a>  <a href="mailto:deneade@charter.net">deneade@charter.net</a></p>
<p><b>Association of Businesses Advocating          Tariff Equity</b>          *Michael J. Pattwell          *Stephen A. Campbell          Lauren Degnan          *James R. Dauphinais          *Jessica A. York          *Brian C. Andrews</p>	<p><a href="mailto:mpattwell@clarkhill.com">mpattwell@clarkhill.com</a>  <a href="mailto:scampbell@clarkhill.com">scampbell@clarkhill.com</a>  <a href="mailto:jdauphinais@consultbai.com">jdauphinais@consultbai.com</a>  <a href="mailto:ldegnan@clarkhill.com">ldegnan@clarkhill.com</a>  <a href="mailto:jyork@consultbai.com">jyork@consultbai.com</a>  <a href="mailto:bandrews@consultbai.com">bandrews@consultbai.com</a></p>
<p><b>Confluence Hydro, LLC</b>          *Laura A. Chappelle          *Timothy J. Lundgren          *Justin K. Ooms          *Halyee N. Skank</p>	<p><a href="mailto:lachappelle@varnumlaw.com">lachappelle@varnumlaw.com</a>  <a href="mailto:tjlundgren@varnumlaw.com">tjlundgren@varnumlaw.com</a>  <a href="mailto:jkooms@varnumlaw.com">jkooms@varnumlaw.com</a>  <a href="mailto:hnskank@varnumlaw.com">hnskank@varnumlaw.com</a></p>
<p><b>Lake Allegan Association, Inc.</b>          *Jennifer U. Heston</p>	<p><a href="mailto:jheston@potomacclaw.com">jheston@potomacclaw.com</a></p>
<p><b>Michigan Environmental Council</b>          *Christopher M. Bzdok          *Natasha Fowles</p>	<p><a href="mailto:chris@tropospherelegal.com">chris@tropospherelegal.com</a>  <a href="mailto:natasha@tropospherelegal.com">natasha@tropospherelegal.com</a></p>
<p><b>Michigan Department of Natural          Resources</b>          *Hadley Tuthill          *Nathan Gambill</p>	<p><a href="mailto:tuthillh@michigan.gov">tuthillh@michigan.gov</a>  <a href="mailto:gambilln@michigan.gov">gambilln@michigan.gov</a></p>
<p><b>The Township of Croton</b>          *Michael J. Watza          *Nathan D. Inks          Clifford H. Bloom          *Tonya Voakes</p>	<p><a href="mailto:mike@bloomsluggett.com">mike@bloomsluggett.com</a>  <a href="mailto:nathan@bloomsluggett.com">nathan@bloomsluggett.com</a>  <a href="mailto:cliff@bloomsluggett.com">cliff@bloomsluggett.com</a>  <a href="mailto:tonya@bloomsluggett.com">tonya@bloomsluggett.com</a></p>

\* Receives confidential material



Daniel Abrams  
 Environmental Law & Policy Center  
[dabrams@elpc.org](mailto:dabrams@elpc.org)